

**International Conference
of Ombuds Institutions
for the Armed Forces**

13 IC OAF

Daily Summary

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Session 2: The contribution of ombuds institutions to respecting the legal limits of operational effectiveness

The Afghanistan Inquiry by the Inspector-General of the Australian Defence Force (IGADF)

Following the emergence of rumours and allegations relating to possible breaches of International Humanitarian Law (IHL) by members of the Australian armed forces during their deployment in Afghanistan, the IGADF led an Inquiry and published its findings and recommendations in a report released in November 2020. The Inquiry, which had as its aim to dispel or confirm said allegations, found credible information that there is substance to rumours, namely, that war crimes were committed by members of the Special Operations Task Group, and that efforts were undertaken to conceal these crimes.

The Inquiry which ultimately found credible evidence of unlawful killings and cruel treatment broadly involved four overlapping phases: familiarisation and socialisation, identification and exploration of incidents and issues of interest, respectively, and procedural fairness and finalisation of the report. The Inquiry was conducted in private due to its nature and purpose to inform options for further action. In the course of the extensive effort to gather and collect evidence, the Inquiry encountered great challenges in eliciting truthful responses from the tightly-knit special forces community. With the use of immunities, witness welfare support, and a commitment to confidentiality when appropriate the Inquiry was able to recount the unlawful conduct that unfolded and issue recommendations to prevent their future occurrence.

New Zealand's Inquiry into Operation Burnham

A similar Inquiry conducted between 2018 and 2020 re-affirmed the principle that no public institution is above independent scrutiny, and placed ombuds institutions as the most appropriate entity to safeguard and enforce said principle. The Inquiry scrutinised personnel from New Zealand's special forces deployed in Afghanistan and their responsibility in causing civilian casualties, as well as subsequent mischaracterisations by the New Zealand Defence Force which led to the erosion of public trust.

Challenges faced by the Inquiry manifested in the Inquirers lacking expertise in military matters, significant logistical barriers in accessing classified information and resistance within the Defence Force, striking the fine balance between maintaining confidentiality and enlightening the public, and applying IHL. These challenges, closely connected to the interaction between military and civilian authorities, led to the inquiries main conclusion that an office of an Independent Inspector-General of Defence should be created in New Zealand, both to improve the quality of civilian control of the military and as a complementing investigatory mechanism to strengthen the public accountability and trust of New Zealand's Defence Force.