

THE LOSS OF HMAS SYDNEY II IN NOVEMBER 1941
SUBMISSION TO THE HMAS SYDNEY II COMMISSION OF INQUIRY

Evidence for Captain Burnett's Defence

by
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SCOPE

This is a response to the invitation for submissions to the 'Cole Inquiry' [1], regarding the battle between HMAS *Sydney* and HSK *Kormoran*.

The aim of this paper is to present lines of argument that might be presented in a court of law.

It is assumed that the officially accepted account of the battle is much as stated in Wikipedia articles on the subject [2], which blamed Captain Burnett and his crew for the loss of *Sydney*.

Those accounts can be thought of as outlining the case against Burnett, while this document seeks to outline the case for his defence, based on information that is in the public domain.

INTRODUCTION

The officially accepted account of the engagement between HMAS *Sydney* and HSK *Kormoran* is based on that given by the German prisoners, who were the only survivors of the battle. In the absence of evidence to the contrary, the truth of the enemy's account was accepted by the Australian authorities, and Captain Burnett was blamed for the loss of his ship.

The recent Parliamentary Inquiry into the Loss of HMAS SYDNEY contains the statement: "The Committee believes a strong case can be made that the *Kormoran's* underwater torpedo capability played a major role in the defeat of *Sydney*." [3]. The Government did not follow this up

This paper reviews the evidence in the light of current knowledge, and outlines a case for the defence of Captain Burnett based on information about German motives and opportunities for conspiring to give false evidence about the conduct of the battle. It is argued that the wartime finding against Burnett is open to reasonable doubt, and that it should therefore be regarded as technically unsound.

It is concluded that the evidence is sufficiently compelling to warrant Burnett's exoneration. At worst, it is shown that the case for the prosecution is not proven: In either case the verdict should be not guilty.

Annexes A and B present a probable scenario for the preliminaries to the battle, based on the German account interpreted in the light of evidence that has become available since WW II.

RAIDER STRATEGY

The following factors affected the strategy adopted by German raiders.

The Secret Weapon.

The Allies did not know that the second wave of German raiders (of which *Kormoran* was the first) were armed with underwater torpedo tubes mounted at 135° to the centre line of the ship [4], to cover the 'safe' position used by Allied warships.

A key feature of this weapon was that it could be used without the raider having to decamouflage. Furthermore, *Kormoran* was probably armed with the electric powered torpedoes as used by German U-boats that did not leave a chain of bubbles, so that the crew of a target ship could not see them approaching, and in the event of a miss would not be aware that they had been under torpedo attack [5].

The crews of all such raiders must have had standing orders to say nothing to their captors that could give away the use or even hint at the existence of the underwater torpedo tubes.

The Captain and crew of *Kormoran* succeeded in this deception. The fact that Allied warships continued to be advised to take station on a suspect ship's quarter prior to boarding is evidence that the Allies did not become aware until later in the war that enemy vessels might be equipped with torpedo tubes covering the 'safe' position.[6]

Method of use.

When Detmers took command of *Kormoran*, he was given clear written instructions regarding the action he should take if he encountered an enemy warship:

“Armed clashes with enemy forces or auxiliary ships are to be avoided. If, however an encounter is unavoidable, every attempt to destroy the enemy by means of camouflage, by means of unexpected and ruthless use of all weapons should be made.” [7]

The underwater torpedo tubes could only be used when the raider and the target ship were both almost stationary [8]. To achieve this, the raider would have to stop and pretend to surrender, before the warship would come close enough and stop in a position where the raider could launch a torpedo from an underwater torpedo tube.

Detmers rehearsed the use of *Kormoran's* underwater torpedo tube during his work-up in the Baltic [9].

In the original German edition of his book, Detmers wrote: "Neither of us suspected how bitterly earnest a situation should develop in which the torpedoes would play such a role." [10]. This is a clear reference to the use of a torpedo from one of *Kormoran's* underwater tubes against *Sydney*. Significantly, this statement is omitted from the English edition. There are three independent records that *Kormoran* flew a white flag.[11][12][13] These statements support the view that Detmers employed an illegal ruse, that is, he pretended to surrender, then launched a torpedo with a white flag flying, as described in my "Submission to the HMAS Sydney II Commission of Inquiry." Annex A

The timing of the hoisting of the German Ensign before decamouflaging (as claimed by Detmers) would have been significant to considerations of legality if the German ensign had

immediately replaced the neutral flag *Kormoran* had been flying. However, once a white flag of surrender has been flown the timing of the hoisting of the German Ensign has no significance, as any subsequent attack would be an illegal "act of perfidy" under the Law of Naval Operations [14].

In May 1941, *HMS Cornwall* sunk *HSK Pinguin*. The Captain learned from interrogation of enemy prisoners that the German Commanding officer was ready with a "treacherous act." He had previously contemplated stopping when forced to and then trying to get within close gun and torpedo range for a surprise attack when picking up the boarding party. [15]

MOTIVES and OPPORTUNITIES

It is probable that Detmers opened fire with a torpedo from his secret underwater tube as rehearsed during his work-up in the Baltic.[16] It is likely that Detmers would have waited for the torpedo to explode before hoisting the German Ensign, decamouflaging and opening fire with his guns.

The motives for Captain Detmers would have been:

- In accordance with his written instructions, to attempt to destroy the enemy by means of unexpected and ruthless use of all weapons.
- The necessity of employing an illegal ruse in order to gain surprise and give *Kormoran* time to decamouflage, aim the big guns, and open fire.
- The need to conceal the firing of a torpedo from the secret underwater tube after pretending to surrender.

It has been shown that Detmers had opportunities to instruct his crew over their accounts of the battle, before abandoning *Kormoran*. [17]

SYDNEY'S ORDERS

Burnett knew that there was a German raider operating off the west coast of Australia and he told his crew that he intended to get her [18]. On his way back to Fremantle from Sunda Strait, *Sydney* encountered an unidentified vessel [19].

On sighting an unidentified vessel, Burnett would have put in hand the standard procedure as follows:

1. From a point beyond the range of a raider's guns, order the unidentified vessel to stop. If the vessel does not comply, fire a shot across her bows. If this is ignored, fire for effect.
2. If the vessel stops, the warship launches a boat with a heavily armed boarding party and instructs the vessel to close and pick it up. The boarding party has instructions to take control of the ship. The warship withdraws to a safe distance and remains there until the boarding party reports that it is safe for the warship to close in.
3. If the vessel turns out to be hostile, the worst case is that the boarding party may be lost but the warship is safe.

CONFLICTING ACCOUNTS

At his first interrogation in Swanbourne, Detmers admitted that *Kormoran* stopped when challenged [20]. He subsequently changed his story [21] and it is the latter version that has become the officially accepted scenario. Furthermore, it appears that Detmers expected to be court martialled if there had been any survivors from *Sydney* who were able to give an account of the battle. He refers to this in five places in his book. In the last paragraph but one he wrote: "There was never at any time the slightest suggestion that I was to be brought before a court martial, so obviously my conduct had been accepted as within the laws of naval warfare"[21].

REDUCTIO AD ABSURDUM

If the officially accepted account is true, then it is necessary to believe that, in spite of his standing orders to make "every attempt to destroy the enemy", Detmers did not make covert use of his most powerful weapon. Instead we must believe:

1. That even though Burnett was looking for a raider, he was deceived into thinking that *Kormoran* was a neutral trader and risked his ship by acting incautiously, as described in Detmers revised account.
2. That Detmers took the risk of attacking a much more powerfully armed warship with his guns, when he had a much more decisive covert weapon available.
3. That that both ships were steaming at 14 knots (*Kormoran's* maximum speed) on parallel courses, when *Kormoran* hoisted the German Ensign, decamouflaged his guns, and opened fire.
4. That in those circumstances *Sydney* could have failed to notice *Kormoran* preparing to attack.
5. That although *Kormoran's* first salvo missed, *Sydney* failed to return fire before *Kormoran* had reloaded and fired a second salvo, even though *Sydney's* "four double turrets with their 6 inch guns and also the port torpedo tube battery were all directed at us".
6. That *Kormoran's* second salvo disabled *Sydney's* main armament with a VERY lucky hit. This was an outcome that Detmers could not have anticipated or relied upon.

SUMMARY

The case for the defence should be based on the following factors:

- a. Knowledge of the underwater torpedo tubes and their method of operation casts reasonable doubt on the truth of the German account.
- b. The Germans had compelling motives for concealing both the existence of the underwater torpedo tubes, and their use of them.

- c. Detmers had opportunities to conspire with and brief his crew over their account of the battle in order to preserve the secrecy of the underwater torpedo tubes.
- d. Detmers changed his story. His original statement and those of some witnesses were consistent with the use of his secret weapon against *Sydney*, exonerating Burnett. His cleverly revised story supported by some other witnesses, conflicts with independent evidence. The official account is based on Detmers' revised account.
- e. Captain Burnett was blamed for the loss of *HMAS SYDNEY* on the basis of un-sworn statements by an enemy who had motives and opportunities to conspire to conceal the truth.
- f. The presence of the secret underwater torpedo tubes and their mode of operation should have been taken into account by the recent Parliamentary Inquiry, but the importance to the case was not highlighted in their report.
- g. In any new enquiry, the *onus of proof* should not be on Burnett's defence, as it has been up to now, but on his prosecutors.
- h. These considerations cast reasonable doubt that Captain Burnett was to blame for the loss of his ship, and appear to completely exonerate him.

CONCLUSION

The case for Burnett's defence hinges on the fact that, unknown to the Allies, *Kormoran* was fitted with underwater torpedo tubes, the existence of which was required to be kept secret. Written instructions had been issued to Detmers that "every attempt to destroy the enemy by means of camouflage, by means of unexpected and ruthless use of all weapons should be made". These orders recognized that, although the use of their secret weapon was not in itself illegal, its effective use against a warship would necessarily involve an "unexpected" act. That is an illegal "act of perfidy".

Thus it is likely that Detmers (a) pretended to surrender, then (b) covertly launched a torpedo from an underwater tube, and (c) waited until the torpedo hit Sydney before hoisting the German Ensign, decamouflaging the guns, and opening fire. This view is supported by much direct and indirect evidence including Detmers' clever change of story from one that would have exonerated Burnett to one that implicated him. If this scenario is correct, the prisoners would have had compelling motives for concealing those facts. Detmers had various opportunities to instruct them what to say if captured.

It is concluded that there is now sufficient evidence either to exonerate Captain Burnett and the crew of *HMAS Sydney*, or at least to cast reasonable doubt on their blameworthiness. In either case the verdict in a court of law would be *not guilty*. A verdict of *guilty* is ruled out.

9 July 2008.

REFERENCES.

1. COMMISSON OF INQUIRY INTO THE LOSS OF HMAS SYDNEY II Opening Statement by The Honourable TRH Cole AO RFD QC. File dated 30 May 2008.
2. http://en.wikipedia.org/wiki/Battle_between_HMAS_Sydney_and_German_auxiliary_cruiser_Kormoran
3. Report on the Loss of HMAS SYDNEY, the Joint Standing Committee on Foreign Affairs and Trade dated March 1999. Page 47 Paragraph 4.114.
4. Greter, Torpedo Officer, told Templeton that *Kormoran's* underwater tubes were set at an angle of 125° to the ship's centre line and could only be fired when the ship was dead in the water. Inquiry into the Circumstances of the Sinking of HMAS SYDNEY, Volume 9, Page 2020, Paragraph 22. by A. R. Templeton.

In fact, there is evidence that the torpedo tubes were set at an angle of 135° to the centreline of the ship. Inquiry into the Circumstances of the Sinking of HMAS SYDNEY. Jocamin Greter, *Kormoran's* Torpedo Officer. Volume 18. Page 4322.
5. During World War II, German submarines generally carried electric motor torpedoes as there made little noise and were essentially wakeless. For more information see: http://WWW.navweapons.com/eapons/WTGR_notes.htm It is probable that *Kormoran* was equipped to fire this type of torpedo from her underwater tubes.
6. The fact that Allied warships were advised to take station on the suspect ship's quarter prior to boarding is evidence that the Allies were not aware that enemy vessels might be equipped with torpedo tubes covering the 'safe' position.
7. Operational Order for "SHIP 41" Paragraph F4. HMAS SYDNEY II Page 6. Edited by Captain Peter Hore RN.
8. The Raider "KORMORAN" by Captain Theodor Detmers. Paperback edition published in 1975, Page 14.
9. Inquiry into the Circumstances of the Sinking of HMAS SYDNEY. David Kennedy Volume 5 Page 974.
10. The Raider KORMORAN by Captain Detmers, Page 43.
11. Lt Petersen, RANR-S who spoke fluent German was aboard *Centaur* when she picked up survivors from *Kormoran*. He listened to survivors discussing the action. He gathered that *Kormoran* had opened fire with a torpedo from an underwater tube whilst flying a white flag. ADM Clark, letter to the Inquiry published in Submissions Volume 11, Page 2685.
12. Cardacci's son told LCDR Ean McDonald RANR (Retd) that his father was in the same POW Camp as *Kormoran's* crew. His father was told that *Kormoran* flew a white flag.

13. H. Evans, Third Mate on the *Koolinda* which picked up *Kormoran* survivors said that *Kormoran* raised a white flag and lured *Sydney* in close. Michael Montgomery, Submissions Volume 18, Page 4469.
14. i) Customary international law recognizes the white flag as symbolizing a request to cease-fire,
- ii) The use of unlawful deceptions is called "perfidy." Acts of perfidy are deceptions designed to invite the confidence of the enemy to lead him to believe that he is entitled to, or is obliged to accord, protected status under the law of armed conflict, with the intent to betray that confidence. Feigning surrender in order to lure the enemy into a trap is an act of perfidy and a breach of the law. See The Commander's Handbook on the Law of Naval Operations. Section 11.9.5.
15. HMAS *Sydney* 11 edited by Capt Peter Hore page 222 / 223.
16. During his workup in the Baltic, Detmers fired a practice torpedo from his secret underwater torpedo tube at Destroyer **Z 23**. Both ships were stopped. Detmers wrote: "Neither of us (referring to the Captain of **Z 23**) suspected how bitterly earnest a situation would develop in which the torpedoes would play such a role" This is a clear reference to the battle with *Sydney*. "The Raider KORMORAN", Page 43, by Captain Detmers.
17. In his book, "The Raider KORMORAN", Detmers wrote: "The day after the sinking of the *British Union I* assembled my crew on deck and spoke to them about what happened, giving them details about the tanker, and discussing the whole action from beginning to end; I made this after-action parade an invariable custom until the end came". Paperback edition dated 1975, Page 77. After the battle, Detmers had time to brief his men before they took to the boats.
18. Tom Fisher and Len "Buster" Crabbe remember that, after a Sunday Church Service on 5 October, Captain Burnett told his crew that there is a raider about and he intended to get it. David Kennedy. Submissions Volume 5, Page 977.
19. Robert Mason was Chief Writer to LCDR McLachlan, Commanding officer, HMAS Harman. He reported that, at about 8 PM on 19 Nov, he was told by Chief Petty Officer Telegraphist Ben Tiller that a signal had been received from *Sydney* saying that she had a queer customer bailed up in the Indian Ocean and was trying to identify her. Telegraphist John Gore provided independent support for this statement. Interview by David Kennedy. Volume 5, Page 962, Volume 9, Page 2040 and Departmental Submission N 94 by the Minister for Defence, Submissions Volume 8, Page 1849.
20. During his interrogation in Swanbourne Barracks on 1 Dec 1941, Detmers said that the cruiser signalled "stop". David Kennedy. Volume 5, Page 97. There can be no doubt that *Kormoran* stopped. If she had not done so, *Sydney* would have opened fire for effect.
21. The Raider KORMORAN. Captain Detmers. Chapter 18.