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IN MY VIEW . . .

"Theater Ballistic Missile Defense"

Sir:

Lieutenant Commander Swicker writes extremely well, his logic is sound, and his argument demonstrates a sound grasp of a broad range of complex, interdependent issues. His original study for the Naval War College is a superb examination of the subject, particularly for his thought-provoking discussion of rules of engagement, and command and control, for active defense operations in theater ballistic missile defense (TBMD). This article is another superb piece of work, but several of the author's omissions bypass important responsibilities of the joint force maritime component commander (JFMCC). My comments largely serve to reinforce the author's main ideas, however; they do not take issue with his conclusions.

This article is a first-rate discussion of Navy active defense from the sea, a very important part of TBMD but also central to the larger mission of theater air defense. The article discusses the complex relationships involved in active defense but downplays the larger context of theater air defense. His discussions of loadout planning and firing doctrine, particularly for the SM-2 Block IVA (the Navy area defense weapon), become even more important in light of the requirements made on SM-2 Block IVA for defense against cruise missiles and piloted aircraft. As the range of the SM-2 increases, its role in the joint battlespace will increase, adding a requirement for sea-based air defense of forces ashore. Since the Marines are placing increasing emphasis on sea-based air defenses as a central part of their future tactics, the SM-2 Block IVA inventory will be vital

to ship-to-objective maneuver. The Marines will not have area defense weapons to accompany them ashore in the future; they are trading their organic area air defense artillery for increased mobility and additional logistic capacity. Given the Marine commitment to fully navalizing air defense, including adoption of the Cooperative Engagement Capability (CEC), demands on the sea-based supply of theater-wide and area defense weapons will sharply escalate.

Commander Swicker writes of "a smooth transition of the TBMD fight from protection of strategically significant areas to flexible maneuver," but in fact the TBMD fight doesn't transition: active defense coverage will adapt to the arrival of reinforcements, permitting Navy ships to increase their level of protection for Marine maneuver forces ashore as non-Navy forces assume responsibility for rear area assets. From the start, flexible maneuver will characterize naval operations throughout ship-to-objective maneuver. It isn't a phase. What can be threatened by the enemy doesn't transition, but the assignments given to Navy ships may.

His true focus is on command of active defense against ballistic missiles armed with weapons of mass destruction (WMD). By themselves, ballistic missiles are no more decisive than most other weapons, though their extreme speed and long range make them a very difficult tactical problem. Without WMD, however, the decisive factor becomes one of relative precision in targeting capability and missile guidance. Speed and range amount to very little without accuracy and precision, in targeting information and in the weapon system. This brings us back to the larger context of theater air defense, for cruise missiles can be armed with WMD as easily as ballistic missiles and may be harder to detect and engage early in their flight. This emphasizes the naval capability for networked air defense, linking individual units together via CEC and the Joint Tactical Information Display System (JTIDS) to enhance force-wide situational awareness, decision support, and engagement.

The pressure to use Navy theater-wide capability for ascent phase interception will be overwhelming. Not only can a small number of ships protect large areas, but ascent phase interception also destroys or neutralizes the missile prior to deployment of penetration aids and decoys, the technology for which is as certain to proliferate as earlier sophisticated technologies did. Relatively simple decoy and countermeasure technologies are likely to be deployed by some of our potential enemies in the coming decade, creating confusion and losing time for target discrimination during mid-course and terminal area engagements. In the worst cases, the wrong target may be engaged, wasting interceptors and possibly allowing one or more WMD warheads to leak through to their targets.

Cruisers likely will be the preferred ships for forward interception stations, given their larger magazine capacity and longer endurance, but also because Aegis cruisers embark as many as two LAMPS helicopters, strengthening their

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ability to stand and fight against surface ships and submarines, a principal concern for exposed ships in forward stations. (The submarine problem haunts ships in area defense stations as well, pinned as they are to predictable patrol areas limited by engagement geometry.)

The JFMCC's perspective on ballistic missile defense from the sea includes attack operations by naval aviation, naval fires, and special operations-capable forces. Whether they produce launcher kills or not, naval aircraft will be dedicated to attack operations against ballistic missiles and their supporting infrastructure. At the very least, they will complicate and disrupt enemy launch operations. While there is no substitute for a target kill prior to launch, attack operations are still successful if the perceived or actual presence of strike fighters or special operations forces in the vicinity prevents, interrupts, or delays ballistic missile launch activity. Attack operations may break up the timing and execution of coordinated ballistic missile raids, easing the tactical problem for active defense forces. Any kills prior to launch also help to conserve interceptors. Perceived danger to launch operations, launch assets, and launcher crews may restrict the enemy's ballistic missile operations to the cover of night and low-visibility weather, as during Operation Desert Storm, buying at least some periods which are relatively free from the threat.

Strike aircraft or surveillance assets may be able to trace launcher crews back to their reloading and rearming facilities, leading to destruction of those assets by deliberate strike operations. Even if the JFMCC perceives no value to attack operations at all, the political demand to "do something" will guarantee that naval aviation and special operations forces devote a meaningful degree of effort to attack operations.

Finally, the JFMCC must plan and incorporate passive defense measures into TBMD operations, sometimes with a detrimental impact on operational or tactical effectiveness. The JFMCC's operations include measures to prevent ballistic missile raids, protective measures to minimize the effects of raids on the force and protected assets, and recovery measures to reconstitute the force and continue operations after raids. In addition to cueing the active defense forces, the detection and warning networks will promptly alert military and civil defense authorities to ballistic missile raids for timely adoption of protective measures. The magnified importance of passive defense in the face of WMD is proven by the operational restrictions imposed by protection and decontamination measures for nuclear, biological, and chemical attack. The Navy has never had to take these as close to its heart as the other services have, but the JFMCC will not be able to avoid the responsibility, particularly when naval forces are the vanguard of the U.S. response.

All that said, I hope that Lieutenant Commander Swicker will be available when the Naval Doctrine Command designates the Primary Review Authority

(PRA) and issues the program directive for the first TBMD doctrine. In the course of my work on theater air and missile defense issues at the Naval Doctrine Command, I have not come across another officer in any service who has demonstrated so sound a grasp of an equivalent range of strategic, operational, and tactical issues attendant to active defense against ballistic missiles.

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"The Case of General Dostler"

Sir:

May I add the name of German General Anton Dostler, whose ghost has haunted me these many years, to Leslie C. Green's list of high-ranking enemy military officers tried as war criminals after the end of World War II? (See "War Crimes, Crimes against Humanity, and Command Responsibility," *Naval War College Review*, Spring 1997.) General Dostler, commander of the LXXV Army Corps in northern Italy, was tried in the fall of 1945 by an American military commission on charges of violating the laws of war, in this case ordering the shooting of fifteen unarmed American prisoners captured while attempting to land on enemy territory near La Spezia, at that time under German control. Despite his plea of following orders of a superior, the general was found guilty and sentenced to death "by musketry."

I first heard Dostler's name from two enlisted men, writers for the military newspaper *Stars and Stripes*, while traveling (very slowly) by rail from Milan to Naples in October 1945. As the train wound its way southward through the shattered countryside, we fell into conversation during which the two writers told me that they were traveling to Aversa, where a military court was trying a German general for war crimes. Before getting off at Aversa they invited me to come along with them, assuring me that there would be no difficulty in my attending the trial. I declined, telling them I was overdue from leave at my duty station in Naples but that I would read their press stories on the trial.

Specifically, General Dostler was charged with the shooting of fifteen American army personnel (two officers and thirteen enlisted men) who were trying to carry out a secret OSS mission by landing near La Spezia on the Italian coast in a boat specially designed for the operation by the U.S. Navy. They were captured almost immediately by the Germans and were shot two days later on direct orders from the commanding general. At his trial Dostler pleaded

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innocent on the ground that he was obeying orders of officers superior to him, of whom the highest was Adolf Hitler; he, like all army officers, was sworn to absolute obedience to the Führer's commands. The order in question was the notorious *Führerbefehl*, which included *inter alia* the specification that enemy personnel engaged in sabotage or so-called commando operations were to be shot immediately after interrogation, whether or not they wore identifying military badges on their clothing.

After their capture the American soldiers had been sent to the headquarters of the 135th Fortress Brigade at La Spezia for interrogation by two German naval intelligence officers. Neither they nor their superior, Colonel Almers, had much stomach for giving the go-ahead signal to General Dostler—as Dostler required them to do. Almost immediately a dispatch came back: the American prisoners should be shot *sofort* (immediately).

One reason for Dostler's haste in obeying his higher-ups so promptly may have been the proximity of the Nazi SS killing organs, the Sicherheitsdienst, who were empowered to take over the interrogation and shooting of the American prisoners. Dostler evaded their attentions and ordered his captives shot at once. Despite attempts on the part of Colonel Almers and the two German naval interrogators to hold off the executions, Dostler's order was carried out on the morning of 26 March 1944.

At his trial more than a year later, General Dostler stated that he himself had canceled his order to shoot the prisoners but that renewed pressure from higher authorities caused him to reinstate his original order.

General Dostler was executed at Aversa on the morning of 1 December 1945. According to newsmen covering the trial, Dostler died bravely. He heard, solemnly read out, the names of the fifteen Americans who died at his orders. His last words as he was tied to the stake were "*Es lebe Deutschland!*" ("Long live Germany!"), followed by a whispered, "I give my life to my country and my soul to God."

J. G. Brennan
Stony Brook, N.Y.

Professor Green replies:

After World War II many senior Axis officers were tried for a variety of war crimes which they had ordered their troops to commit, or had failed to prevent. I only discussed those which dealt with major issues in the law of war or that developed the rules concerning command responsibility. There is nothing in the report of the Dostler case which was of this character.

As to the plea of compliance with the *Führerbefehl*, this "reliance" on the defense of superior order is chosen by every such accused, particularly when the person issuing the order is dead and cannot himself be brought to trial.

However, there is no way in which this defence could have assisted Dostler. Paragraph 4 of the *Führerbefehl* specifically stated, of any commando or saboteur captured, other than one killed in action: "It is formally forbidden to keep [them], even temporarily, under military supervision (for example, in Prisoner of War camps, etc.)." Instead, they were to be handed over without delay to the Sicherheitsdienst.

The American personnel for whose death he was prosecuted were captured virtually on landing and were shot some forty-five hours later. Clearly, therefore, Dostler was not complying with the order which he claimed was binding upon him, and he went beyond what he was ordered to do. Moreover, General von Saenger, called for the defense, testified that he "did not know a case in the German Army in which a general officer had been executed for disobeying the *Führerbefehl*."

Witnesses, including some called for the defense, pointed out that the Americans had in fact been dressed as soldiers and could not, therefore, be treated as spies. By the law of war, spies operate in plain clothes behind enemy lines—and these men did not. Further, by that law even spies must be given a fair trial and cannot be executed summarily. In this case there was no trial. Such a trial would in fact have been illegal, since they were entitled to treatment as prisoners of war under the 1929 Geneva Convention. This specifically forbids any action against prisoners of war by way of reprisal, one of the contentions put forward by the defense—and one of the grounds on which the *Führerbefehl* claimed to be based.

Finally, I might point out in regard to the defense of superior orders in general, that in 1923, in the *Llandovery Castle* case, the German Landsgericht, sitting at Leipzig, clearly established the principle that an order to commit a "manifestly unlawful" act could never be pleaded in defense. And this rule has been followed ever since.

There can be no doubt that an officer of General Dostler's rank and experience knew that it could never be lawful to order the summary execution of prisoners of war.

In view of these facts, I would suggest that Dr. Brennan may now with a clear conscience put his "ghosts" concerning Dostler to rest.

L. C. Green
Naval War College