



Annual Conference of the Security and Defence Forum (SDF) Centres

Conference Report

International Security Challenges and the Law: Constraining or Enabling Effective Policy?



Old City Hall
Ottawa, Canada
1-2 October 2009

**Hosted by the Centre for Security and Defence Studies
Norman Paterson School of International Affairs, Carleton University**



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PART A
Conference Agenda

**International Security Challenges and the Law
Constraining or Enabling Effective Policy?**

Annual Conference of the Security and Defence Forum [SDF] Centres

Fairmont Chateau Laurier and Old City Hall
1-2 October 2009

Hosted by the Centre for Security and Defence Studies
of the Norman Paterson School of International Affairs, Carleton University

1 October 2009

Fairmont Chateau Laurier, Renaissance Room

19.00-23.00 Private Dinner for SDF Centre Representatives and Invited Guests

Keynote Speaker: **DAVID SANGER**, Chief Washington Correspondent, *New York Times*
"Obama's Grand Strategy: What We've Learned and the Risks Ahead"

2 October 2009

Victoria Hall, Old City Hall, Ottawa

08.00-09.00 Registration and Continental Breakfast

09.00-09.15 Welcome and Opening Remarks

DAVID MENDELOFF, Director, Centre for Security and Defence Studies [CSDS],
Norman Paterson School of International Affairs, Carleton University

09.15-10.45 Panel 1: LAW and COUNTER-INSURGENCY

MARCO SASSÒLI, Université de Genève

Commentators:

OR ARTHUR HONIG, University of Calgary | Centre for Military and Strategic
Studies [CMSS]

BGEN DENIS THOMPSON, Canadian Forces

MARIE-JOËLLE ZAHAR, Université de Montréal | Research Group on International
Security [REGIS]

Moderator: **JONATHAN PAQUIN**, Université Laval | Programme Paix et Sécurité
Internationals [PSI]

10.45-11.00 Break

11.00-12.30 Panel 2: LAW and COUNTER-TERRORISM

RUTH WEDGWOOD, Paul H. Nitze School of Advanced International Studies, Johns Hopkins University

Commentators:

JANE BOULDEN, Royal Military College of Canada | Queen's Centre for International Relations [QCIR]

GAVIN CAMERON, University of Calgary | Centre for Military and Strategic Studies [CMSS]

MARGARET PURDY, University of British Columbia | Centre of International Relations [CIR]

Moderator: **ALISTAIR EDGAR**, Wilfrid Laurier University | Laurier Centre for Military Strategic and Disarmament Studies [LCMSDS]

12.30-14.00 Lunch

14.00-15.30 Panel 3: LAW and COUNTER-PROLIFERATION

MARY ELLEN O'CONNELL, University of Notre Dame

Commentators:

CLAUDE LEBLANC, Department of National Defence

DAVID MUTIMER, York University | Centre for International and Security Studies [YCIS]

JULIAN SCHOFIELD, Concordia University | Centre d'études des politiques étrangères et de sécurité [CEPES]

Moderator: **JAMES FERGUSSON**, University of Manitoba | Centre for Defence and Security Studies [CDSS]

15.30-15.45 Closing Remarks

CHRIS PENNY, Deputy Director, Centre for Security and Defence Studies [CSDS], Norman Paterson School of International Affairs, Carleton University

15.45-17.00 Reception, Victoria Hall Lobby

Complimentary hors d'oeuvres and soft drinks; cash bar.

PART B

Executive Summary

The 2009 Annual Conference of the Security and Defence Forum (SDF) Centres – "International Security Challenges and the Law: Constraining or Enabling Effective Policy?" – addressed key questions and debates around the intersection of law and security policy: How does the law influence and shape Canada's response to some of its most serious international security challenges? Is the law a help or a hindrance to effective international security and military policy? To answer these questions, the conference brought together three distinguished international legal specialists and representatives of Canada's leading Centres of Expertise on security and defence issues, each focused on the relationship between law and security policy in the specific areas of counter-terrorism, counter-proliferation, and counter-insurgency. The conference provided a forum for engagement between a select group of acknowledged international experts and Canada's leading scholars, practitioners and public policy experts on security and defence affairs. The specific inclusion of foreign legal specialists as core presenters for each panel was designed to provide a forum for calibrating current Canadian thinking on the specific topics under consideration and to provoke discussion and debate to help relate Canadian policy to broader international concerns.

The conference was organized and hosted by the **Centre for Security and Defence Studies (CSDS)** of the Norman Paterson School of International Affairs (NPSIA) at Carleton University. The conference opened with a private dinner on the evening of Thursday, October 1, for SDF Centre representatives and select invited guests held at the Chateau Laurier Hotel. David Sanger, Chief Washington Correspondent for the *New York Times* and author of the bestselling book *The Inheritance: The World Obama Confronts and the Challenges to American Power* was the dinner keynote speaker, providing the dinner guests a unique perspective on the key themes of his book as well as insights into the current state of Washington and world politics.

More than 200 people, including nearly 50 representatives of the SDF Centres, registered to attend the conference, held the following day, Friday October 2. The three conference panels addressed the conference theme in the specific areas of counter-terrorism, counter-proliferation, and counter-insurgency. Panels consisted of a core presentation of 20-25 minutes by an invited speaker, and 3 commentators drawn from the SDF and the Ottawa-based policy community. The presenter was then given the opportunity to respond briefly to the comments before the floor was opened for general discussion.

The first panel of the day examined Law and Counter-Insurgency featuring Professor Marco Sassòli of the Université de Genève who considered the complex and contentious question of the possibility of international law binding insurgents and how to ensure its respect. Moderating the panel was Jonathan Paquin, Programme paix et sécurité internationales (PSI) at the Université Laval. Commenting on Professor Sassòli's talk were Or Arthur Honig, University of Calgary's Centre for Military and Strategic Studies (CMSS), BGen Denis Thompson from the Canadian Forces, and Marie-Joelle Zahar, Université de Montréal's Research Group on International Security (REGIS).

The second panel featured Professor Ruth Wedgwood from the School of Advanced International Studies at Johns Hopkins University speaking on the topic of Law and Counter-Terrorism. Moderating the panel was Alistair Edgar of the Laurier Centre for Military Strategic and Disarmament Studies, Wilfrid Laurier University. Commenting on Prof. Wedgwood's remarks were: Jane Boulden, Queen's Centre for International Relations/Royal Military College of Canada; Gavin Cameron, Centre for Military and

Strategic Studies, University of Calgary and Margaret Purdy, Centre of International Relations, University of British Columbia.

The final panel of the day featured Mary Ellen O'Connell of the Kroc Institute for Peace Studies at the University of Notre Dame speaking on the issue of Law and Counter-Proliferation. James Fergusson of the Centre for Defence and Security Studies at the University of Manitoba served as moderator. Commenting on Prof. O'Connell's presentation were: Claude LeBlanc, Director, Arms and Proliferation Control, Department of National Defence; David Mutimer, Centre for International and Security Studies, York University and Julian Schofield, Centre d'études des politiques étrangères et de sécurité, Concordia University.

Conference presentations were audio recorded and these recordings are now available in podcast format on the CSDS website: www.careleton.ca/csds/sdfconference09.html.



2009 SDF Annual Conference

PART C

Panel Summaries

Panel 1 – Law and Counter-Insurgency

The first panel of the day featured Professor Marco Sassòli of the Université de Genève who considered the complex and contentious question of the possibility of international law binding insurgents and how to ensure its respect. Moderating the panel was Jonathan Paquin, Programme paix et sécurité internationales (PSI) at the Université Laval. Commenting on Professor Sassòli's talk were Or Arthur Honig, University of Calgary's Centre for Military and Strategic Studies (CMSS), BGen Denis Thompson from the Canadian Forces, and Marie-Joelle Zahar, Université de Montréal's Research Group on International Security (REGIS).



Marco Sassoli

Marco Sassòli

Professor Sassòli's thesis is that the new frontier of international humanitarian law (IHL) must involve the active engagement of armed groups inasmuch as more than half of today's armed conflicts are insurgencies involving non-state armed groups. He opened his remarks with the observation that law marks the difference between war and crime – the commission of crime, unlike war, is not regulated by rules. In his view, both insurgents and counter-insurgents have an interest in ensuring that both insurgency and counter-insurgency are regulated by rules.

In a decreasingly state-centric international reality, argued Sassòli, international law, including International Human Rights Law (IHRL), is focused on and mainly addressed to states. IHRL, also referred to as the laws of armed conflicts, has a branch intended to regulate armed conflicts not of an international character, i.e. between insurgents and States. Since 1949 these rules have been legally progressive by specifically addressing insurgents as much as governmental armed forces. It is open to debate whether it is realistic to expect insurgents to respect these very detailed and far-reaching obligations. These and other rules of IHL might need to be 'translated' so that we can realistically expect insurgents to comply with them. For IHRL, this exercise is certainly even more difficult, but it deserves serious efforts by legal specialists, at least concerning those insurgents who control territory populated by civilians.

Sassòli noted that the mechanisms for the implementation of IHL in non-international armed conflicts remain very limited. However, implementation efforts directed at insurgents must be strengthened in several respects if we want to achieve a minimum of protection for the civilian population in counter-insurgency operations. First, he argued, the obligations articulated under IHL should be disseminated in ways to take into account the unique circumstances in which insurgents recruit their members and in which they fight. Respect of the rules should be rewarded, which is not yet the case in present IHL of non-international armed conflicts. For example, a citizen who is involved in an intrastate armed conflict against the government will be prosecuted for treason and murder once captured by government forces even if he kills only soldiers and complies with IHL. This is why acts committed in an armed conflict and not prohibited under IHL should never fall under any definition of terrorism.

Second, he argued, respect for the law must also be monitored. Under Article 3 of the Geneva Conventions, the ICRC may offer its services to insurgents. If they accept, the ICRC may monitor their respect in exactly the same way that it monitors states parties involved in international or non-international armed conflicts. As for punishing violations, Sassòli noted that international criminal law is as applicable to insurgents as to governmental armed forces. Insurgent groups are responsible for violations committed by their members. Their responsibility to the international community has already been demonstrated by sanctions imposed on them by the UN Security Council. Understanding how humanitarian organizations react and how they should react to violations of IHL by insurgents is an area deserving of exploration.

Sassòli then responded to two objections to his call for better application of IHL to armed groups. First, some argue that it encourages them to continue fighting. While a world without insurgents, he argued, would be a better world, they are as real as armed conflicts; they will not disappear if we ignore them. Second, others believe that only some, but not all, insurgents should be engaged. However, he argued, it is important to engage all armed groups that are parties to genuine armed conflicts, a concept that is admittedly not very clearly defined in IHL. Beyond the need to clarify this concept, it is difficult to articulate a universally acceptable distinction between 'good' and 'bad' insurgents. Their willingness to comply with legal restraints will be revealed by the result of the process and therefore cannot be a precondition to the process. From a humanitarian point of view, any distinction between insurgents would mean that those in need of the greatest protection would be deprived of efforts aimed at their protection. In addition, there is a diplomatic problem: if we refuse, for example, to engage the Taliban in Afghanistan, how can we justify to the Government of Colombia efforts to engage the FARC? Therefore, the only way forward is to try to engage all insurgents and to develop mechanisms for the real world in which armed conflicts are fought by insurgents as much as by governments. This is the new frontier of IHL. If the law does not develop on this frontier, it will become slowly, but increasingly, irrelevant.

Commentators' Responses to Sassòli



Or Arthur Honig

Or Arthur Honig

Or Arthur Honig commented that insurgent groups are not unitary actors. The internal political dynamics of armed groups make it unlikely that such groups would be likely to bind themselves to IHL. Group leaders moving towards conformity would be perceived as moderates and would become isolated and vulnerable to retaliation by other group members. This would be a hindrance to the prospects for conflict resolution inasmuch as it would result in a splintering of the insurgent group providing opportunities to more radical leaders and decreasing opportunities for dialogue.

BGen Denis Thompson

BGen Thompson emphasized the importance of rational self-interest in any calculation of the prospect for conformity to anybody of rules. The legitimacy of rules is tightly coupled to the consent to be bound by those rules. Further, that consent is contingent on mechanisms of enforcement. Most insurgents do not rule by consent but through intimidation and/or repression and would be unlikely to concede to the provisions of IHL. Insurgents with broader popular bases of support, however, could see it as in their self-



Marco Sassoli and BGen. Denis Thompson

interest to subscribe to IHL as a means of broadening their consent. From a counter-insurgency perspective, the efforts to win hearts and minds involves the process of removing the word armed from armed insurgency – thereby obliging insurgents to seek popular consent and thus providing incentives to follow IHL. Counter-insurgency is, from this perspective, a process of empowering people, giving them the opportunity to choose between the platforms of the insurgency and those of the government.



Marie-Joelle Zahar and Marco Sassoli

Marie-Joelle Zahar

Marie-Joelle Zahar considered the importance of labelling in the legality and legitimacy gap between state and non-state actors. The state enjoys a natural and often-presumed legitimate monopoly in its ability to label opposition as illegitimate. Armed oppositions are often armed because they lack any other means to express their opposition. It is necessary to differentiate the extent to which opposition groups are institutionalized, not just the degree to which they are militarized but also the extent to which they span other political or social dimensions. This matters because these other dimensions present opportunities to engage groups on a variety of levels and offer alternative entry-points for conflict resolution. Failing to take these opportunities risks pushing groups in the wrong direction.

General Discussion

Audience comment probed the potential contradiction between the broader international goals of strengthening IHL and the growing emphasis on counter-terrorism efforts amongst western nations. Other comment raised the IHL issues regarding the handling of detainees by Canadian Forces in Afghanistan and the broader role of foreign forces acting on behalf of a domestic government in face of insurgency. This discussion stressed the importance of separating the issues of reconciliation from humanitarian issues and the underlying importance of engaging with humanitarian rules. This discussion then evolved into a broader consideration of the distinctions, in such contexts, between human rights law and international humanitarian law and the legitimacy of the rule of law more broadly.

Panel 2: Law and Counter-Terrorism

The second panel featured Professor Ruth Wedgwood from the School of Advanced International Studies at Johns Hopkins University speaking on the topic of Law and Counter-Terrorism. Moderating the panel was Alistair Edgar of the Laurier Centre for Military Strategic and Disarmament Studies, Wilfrid Laurier University. Commenting on Prof. Wedgwood's remarks were: Jane Boulden, Queen's Centre for International Relations/Royal Military College of Canada; Gavin Cameron, Centre for Military and Strategic Studies, University of Calgary and Margaret Purdy, Centre of International Relations, University of British Columbia.



Ruth Wedgwood

Ruth Wedgwood

Ruth Wedgwood's presentation tackled the complex and contentious relationship between international law and counterterrorism. In particular, she explored the way in which International Human Rights Law (IHRL) and International Humanitarian Law (IHL) affect the way that states and the international community deal with the threat of terrorism. Though she conceded that she likes to think of herself as adhering to liberal principles and norms, she asked the question: What does it mean to be liberal on terrorism? Wedgwood stressed that while all are entitled to the protections afforded by IHRL, the plight of victims should be central to answering this question.

From here Wedgwood addressed a number of tensions between the need to develop effective counterterrorism measures and the requirement to treat individuals according to basic standards of fairness and the principles of human rights. She also highlighted some of the tensions that have arisen between the international community and states over how and what laws should be applied. As an example, Wedgwood pointed out that despite the powers afforded the Security Council through Article 103 of the UN Charter, recent European court cases have demonstrated the European Union's insistence that its citizens' human rights are paramount, and accordingly, that EU norms trump UN security measures. Wedgwood then asked whether criminal law alone is capable of dealing with terrorism, whereby she assessed the differing form and application of criminal law under common law as opposed to civil law systems. Careful not to endorse the more illiberal aspects of civil law, Wedgwood nevertheless observed that criminal law under this type of system is sufficiently invasive and unconstrained as to negate the need to find alternative sources of law to get at terrorism. Common law systems on the other hand, facing as they do higher standards of evidentiary admissibility and due process, are forced to find other legal mechanisms and types of law to address the problem of terrorism. In Canada, for example, this takes the form of Security Certificates.

Wedgwood then addressed IHL directly by stating that her one critique of the field is that its principles are scattered throughout the most



Jane Boulden and Alistair Edgar

oddly numbered provisions of the Geneva and Hague Conventions, and thus there is no “architectonic simplicity” to it. Moreover, difficulties in applying the rules of IHL arise as a result of the desire to find a single paradigm that fits all types of conflict, what she termed a “fallacy of concreteness.” Wedgwood suggested that what is needed is simplicity: if you don’t keep IHL simple it’s an impediment to its acceptance. Similarly, she underscored the deficiencies within the current state of IHL and IHRL by pointing out that there is as yet no definitive agreement on where to put Guantanamo’s detainees when it is fully shut down. Wedgwood views IHRL and IHL as able to play effective roles in certain circumstances, such as the legal issues surrounding non-refoulement. But her concluding remarks made plain that in regards to the relationship between international law and terrorism, very few of the pertinent legal questions have been joined or settled, and this is likely to present persistent problems.

Commentators' Responses to Wedgwood



Jane Boulden

Jane Boulden

Jane Boulden began her remarks by illustrating how the UN Security Council (UNSC) is increasingly adopting a legislative role in relation to counterterrorism, by establishing, for example, a set of baseline standards for state action and its recent tendency to “reach through the state” to target suspected terrorists. She argued that there has been a blurring of the line between what are essentially internal state matters and what fall under the purview of the international community. In conjunction with this legislative aspect, there has also been a shift on the part of UNSC toward an administrative role, where the Council finds itself at the centre of a large-scale information-gathering exercise. With this in

mind, Boulden posed the following questions: What, if any, are the implications of this new role and how should we be thinking about it, both in terms of the state and the individual? Recalling Resolution 1368 affirming the right to self defense and that the US has gone to war under this rubric, should international terrorism be seen as a criminal activity, or as an aggressive act on the level of state conflict and war? And finally, given the UNSC’s recent initiatives targeting individuals, can we envisage, or do we even want to envisage, the UNSC moving beyond the targeting Al Qaeda to encompass other groups?

Gavin Cameron

Gavin Cameron began his remarks with the question: How much does terrorism really matter? Is it a strategic threat, or simply an irritant? The failure to explicitly address these questions risks an overestimation of the threat posed by terrorism and the adoption of excessive countermeasures. Cameron expressed concern over the passive acceptance of extraordinary legal regimes,



Ruth Wedgwood, Margaret Purdy, Gavin Cameron, Jane Boulden and Alistair Edgar

since the latter are likely to exist in perpetuity because what is required for their removal is proof of an “absence of threat” – a standard that is not easily achieved. Cameron poignantly reminded the audience that decisions to invoke counterterrorism measures are a political choice, not a legal or a strategic choice. Thus to look at things strictly in legal terms in a sense misses a critical part of what is actually going on.

Margaret Purdy

For her part, Margaret Purdy zeroed in on the Canadian context, specifically whether the law has constrained or enabled not just policy, but also counterterrorism operations themselves. She observed that the focus of public dialogue in Canada has largely been dominated by legal considerations and the legal framework, and she cited recent Charter based challenges to Canada’s Anti-Terror Act, the torture of Canadians in Syria and Egypt, and Security Certificates as examples. With this as a background she went



Ruth Wedgwood and Margaret Purdy

on to ask, among other things: What are the implications of drawing intelligence agencies into legal issues like disclosure and evidentiary standards? Why do our laws seem inadequate to deal with recurring counterterrorism challenges, such as deportation? And what impact has all the legal discourse and controversy had on public confidence in governmental institutions that deal in counterterrorism?

General Discussion

The first question put to the panel was: how effective are western criminal justice systems at modifying the behavior of terrorists? The implication was that western models of justice are not well equipped to deal with terrorists who have very different value systems and who espouse fundamentalist principles. Cameron, Wedgwood and Boulden all seemed to concur that the deterrent effects of western-style prosecutions probably are not very effective at deterring terrorists. However, Cameron suggested that there is still some value in having robust legal systems, as this might force terrorists to choose as targets states that have weaker legal regimes. Wedgwood claimed that what the courts are really trying to achieve is incapacitation as opposed to deterrence, but most helpful would be to spawn a debate over these issues in the Muslim community itself. For her part, Boulden observes that we do not always know whether western criminal justice has had an effect. Two more questions were then put to the panel: First, would we have been better off had we not rushed to institute various legal measures and amendments following the events of 9/11, and instead proceeded on an issue-by-issue basis? Second, have economic measures, such as the targeting of financial flows and the levying of sanctions, been effective in countering terrorism? Both Wedgwood and Boulden, though acknowledging that hurrying to institute legal measures has certainly left us with some difficulties, argue that these measures were by and large required for a number of reasons.

Panel 3: Law and Counter-Proliferation

The final panel of the day featured Mary Ellen O'Connell of the Kroc Institute for Peace Studies at the University of Notre Dame speaking on the issue of Law and Counter-Proliferation. James Fergusson of the Centre for Defence and Security Studies at the University of Manitoba served as moderator. Commenting on Prof. O'Connell's presentation were: Claude LeBlanc, Director, Arms and Proliferation Control, Department of National Defence; David Mutimer, Centre for International and Security Studies, York University and Julian Schofield, Centre d'études des politiques étrangères et de sécurité, Concordia University.



Mary-Ellen O'Connell

Mary-Ellen O'Connell

Professor O'Connell prefaced her discussion of international law and counter-proliferation by emphasizing that within the US, there is no serious public discussion of international law regarding the use of force. This is puzzling because the US is currently involved in two conflicts that would have been avoided had the US complied with international law. She argued that part of the problem is that there is a view of international law as a constraint on US foreign policy. O'Connell argued, however, that international law is both wise and pragmatic in counter-proliferation, as seen particularly regarding ongoing concerns about Iran's nuclear program. She reaffirmed that the rules on the use of force in the Iranian situation are no different than those articulated in the UN Charter, with self-defence and UN Security Council (UNSC) authorization being the only legal justifications for the resort to force. The Security Council condemnation of Israel's bombing of the Osirak reactor in Iraq in 1981 reaffirms that the use of force in counter-proliferation is illegitimate. UN members are barred from

exercising force in the face of the threat of force, and mere possession of nuclear weapons does not constitute an unlawful use of force. The interpretation that preemptive self-defense is covered under the right of self-defence outlined in Article 51 of the UN Charter is incorrect since an armed attack must be imminent.

O'Connell noted that necessity and proportionality continue to be essential tests for the use of force that applies to counter-proliferation. Furthermore the targeted state must be responsible for the initial armed attack that warrants the use of force in response. She furthermore argued that there is no customary law for using force preemptively. Israeli responses in Suez and Osirak were condemned, for example, and US action in Cuba and Iraq was based on claims of authorization from an international organization (the OAS and UN, respectively). In these cases the US did not claim a right to preemptive self-defense, but rather justified the use of force on the grounds of international authorization. O'Connell concluded that no state may use force in a counter-proliferation case unless they are acting in self-defence or with Security Council authorization. She stated that it is impossible to sustain a legal case against Iran given the facts. Furthermore, she argued, a bombing campaign will inevitably be ineffective in halting the Iranian nuclear program anyway, and too many civilians would suffer in the process. Non-lethal means, she argued, are more effective ways to encourage compliance with the Nuclear Non-Proliferation Treaty.

Commentators' Responses to O'Connell

Claude LeBlanc

Claude LeBlanc argued that we may be witnessing a change in the way the international community views the legitimacy of the use of force in counter-proliferation cases. The Osirak bombing was greeted with condemnation, but opinion appears to be shifting as the September 2007 bombing of an alleged Syrian nuclear reactor indicates. This bombing was not debated by the UNSC or General Assembly, or the NPT Preparatory Conference the following spring. In this case no one could argue that an attack was imminent, or that diplomatic means were exhausted. Perhaps the fruitless efforts with Iran have led the international community to lose faith in diplomatic means. O'Connell responded by saying that the reason for silence in the Syrian reactor bombing was that Syria itself kept the matter quiet because it was guilty of some illicit activity.



Mary-Ellen O'Connell, Claude LeBlanc, David Mutimer and Julian Schofield

David Mutimer

David Mutimer argued that the UN Charter provides the Security Council with tremendous authority in determining what qualifies as necessitating the use of force. The limitation is proportionality, but the UNSC also has the authority to determine the nature and value of the threat in question. The use of force must be proportional to the threat that the UNSC itself determines it is facing. This is a self-referential system that allows the UNSC to authorize any force it deems necessary. On the particular case of Iran, Mutimer argued that Iran can withdraw from the NPT if its supreme interests are threatened, which is arguably the case. The hostile US posture and US invasion of a neighboring state perhaps make Iran's acquisition of nuclear weapons justifiable. Dr O'Connell argued that even the Security Council is subject to international law, citing the UNSC's inability to authorize genocide as an example.

Julian Schofield

Julian Schofield argued that the balance of power in the international system is essential, and that laws actually work to upset this balance. Deterrence is based on mutual fear of nuclear war, so by limiting

arsenals, arms control makes it safer for states to engage in violent conflict. Legal limitations discourage states to show their actual strength, therefore undermining deterrence.

General Discussion

One audience member raised the possibility of customary and conventional law coexisting in parallel, opening up the possibility that preemptive and anticipatory self-defence could be legal. O'Connell disagreed, however, arguing that there are contemporary cases that make it clear that the international system has laws governing the use of force. Necessity and proportionality are strongly ingrained in international law, so there is no question that they are a part of the law governing force. Another audience member asked about the role of other International Organizations taking action without UNSC authorization and the risk this posed to international law, with the conclusion that the UN Charter is the higher norm with respect to the rules governing force. There was disagreement on the authority of the UNSC, notably one argument claiming that the Security Council needs the authority to authorize force in unpredictable situations where force is the only possible solution.

One audience member suggested that the definition of self-defence being taken in the presentation was too narrow, arguing that a state facing armed attack has the right to eliminate the threat it faces. The proportionality assessment can therefore fall on the state posing the initial threat rather than the response. This is particularly true in cases where a state places potential military targets, such as nuclear facilities, in highly-populated civilian areas. The Iranian case also cannot be viewed in a vacuum. Beyond its nuclear program, Iran's political leaders have made threatening statements and the state has funded armed conflict elsewhere, which constitutes a use of forces. Taken together these facts make a much stronger case for the use of force against Iran.

Podcast

Each of the panel presentations and discussion were audio recorded and these recordings are now available in podcast format on the CSDS website: www.carleton.ca/csds/sdfconference09.html.



Claude Leblanc, David Mutimer and Julian Schofield

PART D

Conference Participants

Speaker Biographies

MARY ELLEN O'CONNELL holds the Robert and Marion Short Chair in Law and is Research Professor of International Dispute Resolution--Kroc Institute for Peace Studies at the University of Notre Dame. Professor O'Connell chairs the Use of Force Committee of the International Law Association. She came to Notre Dame from The Ohio State University, where she held a joint appointment in the law school and the Mershon Center for International Security Studies. She has also taught for the United States Department of Defense at the George C. Marshall European Center for Security Studies in Garmisch-Partenkirchen, Germany and the Johns Hopkins University Nitze School for Advanced International Studies in Bologna, Italy. She is the author of, among other works, *International Law and the Use of Force, Cases and Materials* (2d ed. Foundation 2009), *The Power and Purpose of International Law* (Oxford University Press 2008), and *Redefining Sovereignty, The Use of Force After the Cold War* (with M. Bothe and N. Ronzitti, Transnational 2005).

MARCO SASSÒLI is Professor of International Law at the Université de Genève, Switzerland. From 2001-2003, he was Professor of International Law at the Université du Québec à Montreal, where he remains Associate Professor. He is also Associate Professor at the Université de Laval. He chairs the board of Geneva Call, an NGO with the objective to engage armed non-State actors to adhere to humanitarian norms. He is also Vice-Chair of the board of the International Council of Human Rights Policy. From 1985-1997 he worked for the International Committee of the Red Cross (ICRC) at the headquarters, as deputy head of its legal division, and in the field, as legal adviser of the ICRC delegation in Israel and the Occupied Territories, as head of the ICRC delegations in Jordan and Syria and as protection coordinator for the former Yugoslavia. Later, he has served as first secretary-general of the Swiss Fund for Needy Victims of the Holocaust/Shoah and as registrar at the Swiss Supreme Court.

RUTH WEDGWOOD is the Edward B. Burling Professor of International Law and Diplomacy and is the director of the international law program at the School of Advanced International Studies at the Johns Hopkins University. She is also a senior fellow and director of the project on international organizations and law at the Council on Foreign Relations and serves as the U.S. member of the United Nations Human Rights Committee. She has served on numerous prestigious committees and boards, including the Secretary of State's Advisory Committee on International Law; as vice-president of the American Society of International Law; chairman of the Council on International Affairs of the Association of the Bar of the City of New York; a member of the policy advisory group of the United Nations Association; an expert consultant on the Hart-Rudman Commission on National Security in the 21st Century and as an independent expert for the International Criminal Tribunal for the former Yugoslavia.

Commentator and Moderator Biographies

JANE BOULDEN holds a Canada Research Chair in International Relations and Security Studies at the Royal Military College of Canada where she is also the Associate Chair for War Studies. From 2000 until 2004 she was a MacArthur Research Fellow at the Centre for International Studies, University of Oxford. Her recent books include, Jane Boulden, Ramesh Thakur, Thomas G. Weiss, eds., *The United Nations and Nuclear Orders* (United Nations University Press, 2009); Jane Boulden and Thomas G. Weiss, eds., *Terrorism and the UN: Before and After September 11th* (Indiana University Press, 2004), Jane Boulden, ed., *Dealing with Conflict in Africa: the United Nations and Regional Organizations* (New York: Palgrave, 2003); and *Peace Enforcement* (Westport, CT: Praeger, 2001).

GAVIN CAMERON is an Associate Professor of Political Science and Fellow of the Centre for Military & Strategic Studies (CMSS) at the University of Calgary. His research interests include international security, terrorism and counterterrorism, intelligence, and the nonproliferation of weapons of mass destruction. He is a contributing editor to the journal, *Studies in Conflict & Terrorism*, and was the 2006-8 President of the Canadian Association for Security and Intelligence Studies (CASIS).

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DAVID MUTIMER is Deputy Director of the York Centre for International and Security Studies and Associate Professor of Political Science at York University. His research considers issues of contemporary international security through lenses provided by critical social theory, as well as inquiring into the reproduction of security in and through popular culture. Much of that work has focused on weapons proliferation as a reconfigured security concern in the post-cold war era, and has tried to open possibilities for alternative means of thinking about the security problems related to arms more generally. In the past few years this programme of research has concentrated on small arms and light weapons. More recently he has turned his attention to the politics of the global war on terror, and of the regional wars around the world presently being fought by Canada and its allies.

JONATHAN PAQUIN is Assistant Professor of Political Science at Université Laval and research associate at the Programme Paix et Sécurité Internationale of the Institut Québécois des Hautes Études Internationales (IQHEI). Professor Paquin is author of the forthcoming, *A Stability-Seeking Power: US Foreign Policy and Secessionist Conflicts* (McGill-Queen's, 2010). He has published articles in *Foreign Policy Analysis*, *the Canadian Journal of Political Science*, and has an upcoming piece in *Canadian Foreign Policy* (fall 2009). He is also the author of numerous book chapters on U.S. foreign policy and international relations.

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JULIAN SCHOFIELD is Associate Professor of Political Science at Concordia University, Montreal. His research is focused primarily on conventional and nuclear arms races in the developing world. He has conducted field research in Pakistan, India, Bangladesh, Indonesia, and Egypt. His other on-going research includes South, Southeast and East Asian security issues; military decision-making; theory of strategic and naval arms control; combat performance and training; ballistic missile defense; defense budgeting; political economy of military regimes. He is author of *Militarization and War* (2007 Palgrave Macmillan), and articles in *Defense and Security Analysis*, *Third World Quarterly*, *Journal of Conflict, Security and Development*, *Canadian Journal of Political Science*, *Armed Forces & Society*, *International Relations*, and *Journal of Strategic Studies*. Schofield has consulted with DND and DFAIT on South Asia, particularly Pakistan, and with the US Department of Defense on missile defense.

BGEN DENIS THOMPSON is the Canadian Forces' Chief of Operations Land Staff. From May 2008 to February 2009 he served as Commander of Joint Task Force – Afghanistan in Kandahar. A graduate of the Royal Military College of Canada, BGen Thompson served initially with the 3rd Battalion, The Royal

Canadian Regiment in Winnipeg, Cyprus and Germany. In 1990, he attended the Royal Military College of Science in Shrivenham, England and was subsequently employed in the Light Armoured Vehicle Project in Ottawa. From 1992 to 1995 he served as the Training Officer for Joint Task Force 2. Upon promotion to Major in 1995, he was posted to the 2nd Battalion, The Royal Canadian Regiment as Officer Commanding G Company, leading them as part of the Queen's Royal Hussars Battle Group on the initial NATO mission in Bosnia. In 1998, he was appointed the Deputy Commanding Officer of the 1st Battalion, afterward joining Headquarters 2 Canadian Mechanized Brigade Group as the G3. In June 2000, he assumed command of the 3rd Battalion, The Royal Canadian Regiment deploying with them in 2001 as the Battle Group Commander in Bosnia. On leaving Regimental duty in July 2002, he took up a post as a policy officer with responsibility for Africa. In 2004, he was seconded to Foreign Affairs Canada, leaving on promotion to Colonel in January 2005 as the Director of Peacekeeping Policy. From June 2006 to May 2008 BGen Thompson served as Brigade Commander of 2 Canadian Mechanized Brigade Group in Petawawa.

MARIE-JOËLLE ZAHAR is Associate Professor of Political Science at the Université de Montréal. She was recently appointed Research Director of the Francophone Peace Operations Network at Université de Montréal's Centre for International Studies and Research. She is a specialist on militia politics and war economies. She was visiting professor at the Université Lyon II and the Institut d'études politiques de Lyon. She is co-editor with Stephen Saideman of *Intra-State Conflict, Government and Security: Dilemmas of Deterrence and Assurance* (Routledge 2008) and has published articles in academic journals on conflict resolution and peace implementation. A former consultant for the UN Office for the Coordination of Humanitarian Affairs (OCHA) and adjunct faculty member at the Pearson Peacekeeping Centre, she has served on the board of directors of the Canadian Political Science Association, on the executive committee of the Canadian Consortium on Human Security, and as research director of the Middle East Network at the Centre d'études et de recherches internationales of the Université de Montréal.



2009 SDF Conference venue

PART E

About the Centre for Security and Defence Studies

The Centre for Security and Defence Studies (CSDS) is one of twelve independent national academic Centres of Expertise supported through the Security and Defence Forum (SDF) of the Department of National Defence (DND). Housed at the Norman Paterson School of International Affairs, Carleton University, CSDS brings together scholars and students from across Carleton and the Ottawa area who are engaged in research and teaching on Canadian and international security, defence and foreign policy issues. More information on the Centre and its research, teaching, and outreach activities can be found at www.carleton.ca/csds.

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The conference organizing committee included **David Mendeloff**, Director of CSDS, **Chris Penny**, Deputy Director of CSDS, and **John Cadham**, CSDS Doctoral Research Fellow, who also compiled this report. **Cathleen Schmidt**, CSDS administrator and conference coordinator, provided invaluable organizational support. Special thanks to NPSIA student conference assistants – Derek de Jong, Martin Fischer, and Vanessa Reshitnyk. Conference rapporteurs, who prepared the summaries contained in this report, include **John Cadham** (executive summary and panel 1), **Stefan Fournier**, CSDS MA Fellow (panel 2), and **Justin Alger**, MA candidate, NPSIA (panel 3).

All photos in this report were kindly provided courtesy of Aaron Hywarren.



Audience questions, 2009 SDF Annual Conference