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Panel III

Commentary—Maritime & Coalition Operations

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Canada has contributed a significant number of personnel and assets to the global war on terrorism. Over the last several years, Canadian warships have conducted maritime interdiction missions to interdict shipping in breach of the UN Security Council resolutions on Iraq. However, such resolutions do not apply in Operation ENDURING FREEDOM (OEF) and Canada deployed its ships to conduct maritime interdiction operations for this operation pursuant to the right of collective and individual self-defense contained in Article 51 of the UN Charter.

Canada is considered to be in armed conflict with the Taliban and al Qaeda and such conflict is not limited geographically to the territory of Afghanistan but extends to the international waters of the high seas. Canadian maritime operations searching for those who support the Taliban or al Qaeda, or who are themselves such, were termed “visit and search” operations. These

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visit and search operations were conducted pursuant to the principles found in the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*.²

Canadian warships could also intercept other vessels pursuant to Article 110 of the United Nations Convention on the Law of the Sea.³ The point here is that while there are differing legal bases for conducting boarding operations, the facts surrounding each such boarding must be carefully studied so as to ensure a legitimate basis for boarding exists in international law.

Recognizing that each state in a coalition is truly the master of its own ROE, much effort must be spent to harmonize ROE throughout the coalition by sharing and deconflicting competing ROE and understanding the limitations and constraints each coalition member has on its missions. Still, harmonizing ROE in a coalition, although sometimes problematic, must remain a priority. Each state will have a different interpretation of the application of international law. Operational factors relating to coalition member forces must be considered and domestic and international policy considerations must be adhered to. Two weapons systems provide good examples of the challenges inherent in structuring ROE for coalition operations: anti-personnel landmines and riot control agents. Many states have different rules and restrictions based on policy reasons, domestic law, or international law that make the use of these systems sometimes quite difficult to synthesize. However, working through this process is important for commanders as it helps them understand the constraints and limitations on assigning certain tasks to certain coalition units.

On a different matter, Canada too had difficulties getting its forces into the theater of operations for Operation ENDURING FREEDOM. This demonstrated the need for improving strategic partnerships with other states throughout the world to improve this situation.

Finally, it is interesting to note the efforts that Canada has undertaken since the events of September 11th unfolded. In the area of anti-terror and domestic legislation, the Canadian government passed federal legislation

2. See generally, *SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA* (Louise Doswald-Beck ed., 1995), Section II Visit and Search of Neutral Vessels [hereinafter *SAN REMO MANUAL*].

3. UN Convention on Law of the Sea, UN Doc. A/CONF.62/122 (1982), art. 110, reprinted in BARRY CARTER AND PHILLIP TRIMBLE, *INTERNATIONAL LAW SELECTED DOCUMENTS*, (2001) at 553.

4. See Anti-Terrorism Act, R.S.C., C-36 (Dec. 18, 2001); see also, Unknown Author, *Highlights of Anti-Terrorism Act*, available at http://canada.justice.gc.ca/en/news/nr/2001/doc_27787.html (Oct. 1, 2002) [hereinafter *Anti-Terrorism Act*].

permitting it to better identify, prosecute, and convict terrorist groups.⁴ This Anti-Terrorism Act permits Canada to ratify the two remaining counter terrorism conventions it has signed but has yet to ratify.⁵ Finally, the Canadian Legislature has amended the Official Secrets Act⁶ to address national security concerns pertaining to terrorist related activities as well as the Canada Evidence Act⁷ to provide a new process for dealing with the disclosure of sensitive information in judicial proceedings. Clearly, Canada's response to the events of September 11th have been quite measured and serious.

5. These two conventions are: The International Convention for the Suppression of the Financing of Terrorism, G.A. Res. 109, U.N. GAOR 6th Comm., 54 Sess., 76th mtg., Agenda Item 160, U.N. Doc. A/54/109 (1999) and International Convention for the Suppression of Terrorism Bombings, G.A. Res. 165, U.N. GAOR, 52 Sess, U.N. Doc. A/52/164 (1998).

6. See Anti-Terrorism Act, *supra* note 4.

7. *Id.*