



# Conference Brief

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## International Law and Military Operations

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From 20 – 22 June, 2007 the Naval War College and its co-sponsor The Lieber Society invited 140 renowned international scholars and practitioners, military and civilian, and students representing government and academic institutions to participate in a colloquium to examine International Law of the Sea, developments in maritime enforcement of UN Security Council resolutions, the law of armed conflict, coalition operations and the 2006 Lebanon Conflict.

### Highlights:

- Stockton Professor of International Law, Craig Allen opened the conference by reminding participants of the importance the influence of law plays in the development of the nation's Maritime Strategy and how it is imperative to recognize the important role law plays in making the strategy effective. Such recognition will enhance the ability of the United States to more effectively shape the global order.
- Panelists and participants emphasized the importance of the 1982 United Nations Law of the Sea Convention to world maritime order and expressed the need and desire for the United States to accede to the treaty and take its place as a world leader in maritime law.
- The growing importance of coalition operations and the difficulties which arise as a result of varying treaty and domestic law obligations among the various coalition partners.
- The ability of non-state actors to engage in devastating armed attacks has created uncertainty in the application of international law to these conflicts. As the distinction between civilians and combatants becomes blurred nation states must struggle to effectively apply the appropriate international legal framework.



### **Keynote Address**

In his address opening the conference, Professor Allen reflected that three decades have elapsed since law of the sea scholar Daniel Patrick O'Connell challenged conventional thinking with his book *The Influence of Law on Sea Power*. O'Connell wrote that the law of the sea is the stimulus to sea power and that future naval operations planning staffs must acquire an appreciation of the law. Professor Allen used this groundbreaking book as the backdrop for a discussion of the development of the new maritime strategy of the United States. During the summer of 2006, the Chief of Naval Operations tasked the Naval War College with developing ideas that will guide the team charged with crafting the new maritime strategy. The new strategy will be nested within the security strategies which emanate from the *National Security Strategy* of the United States. This is not the first time the US Navy has launched a grand strategy development project, but common to all of the predecessor documents is a lack of express discussion of the role of law and legal institutions in naval operations.

This unanimous agreement on the need to reference international law arises from the role of law as an ordering force. Order is necessary for successful trade, transportation and the interaction of nations pursuing their national interests. Professor Allen observed that the rule sets which bring about this order will not always be voluntarily complied with and that, for that, enforcement must be added. This enforcement requires new ways of thinking. The historical "DIME" construct of diplomatic, information, military and

economic methods of engagement must be supplemented by law enforcement, judicial and cultural measures. To achieve these goals within a maritime strategy, Professor Allen advanced the idea that law, as a proven promoter of order, security and prosperity, can be a powerful unifying theme. Law provides the language and logic of cooperation. It is clear that respect for international law and our recognition of such will allow the United States to shape the global and legal orders as a good-faith participant in the system.

### **Panel I – Law of the Sea and Maritime Security**

Rear Admiral Horace B. Robertson Jr., JAGC, US Navy (Ret.), Judge Advocate General of the United States Navy from 1974 to 1976, opened the panel by providing a historical background for the US position on the 1982 United Nations Convention on the Law of the Sea (1982 LOS Convention). The United States, as early as 1966, under President Johnson proclaimed that the seas must not be the source of a land grab. This position was reinforced by President Nixon's 1970 call for a seabed treaty. In 1982, then-President Reagan announced the US opposition to the 1982 LOS Convention, citing the machinery of implementation. President Reagan detailed his specific objections to the treaty. In the time since these objections were registered, they have all been addressed. Despite these remedies, opposition to US accession to the Convention persists.

Rear Admiral Robertson outlined the continuing objections to the 1982 LOS Convention. These objections all appear to be ideological and lack substance. Chief



among the opposition's arguments is that a ratification of the Convention is a surrender of US sovereignty to the United Nations. This is not supported by the text of the document or the machinery used to administer the Convention. Opponents also claim that the United States need not ratify UNCLOS, as customary international law provides all of the same benefits. While customary international law does set forth a legal framework, it does not provide the precision of UNCLOS or the institutions by which to seek resolution of disputes.

The Staff Judge Advocate for United States Pacific Command, Captain Raul (Pete) Pedrozo, JAGC, US Navy, observed that there are many challenges to free navigation of the seas. These challenges include regimes adopted by the International Maritime Organization (IMO), such as establishment of mandatory ship reporting systems and particularly sensitive sea areas (PSSA). These IMO measures have the practical effect of impeding freedom of navigation in designated portions of the ocean. Captain Pedrozo indicated that the National Oceanic and Atmospheric Administration (NOAA) has requested the designation of over 140,000 square miles of ocean surrounding the Northwest Hawaiian Islands as a PSSA. Such a designation, in his view, is not necessary and will pose significant challenges for the US Coast Guard and NOAA to enforcement of the mandatory ship reporting system that will encircle the PSSA. The proliferation of IMO-adopted measures could also adversely impact the operations of the US Navy worldwide.

The Judge Advocate General for the United States Coast Guard, Rear Admiral William Baumgartner, US Coast Guard,

spoke on the increasing importance of conditions on port entry as a tool for ensuring maritime security and the need for an analytical structure to evaluate proposed entry conditions. Given the importance of port security, the Coast Guard has developed a comprehensive strategy to combat maritime terrorism called Maritime Sentinel which takes a three-pronged approach: 1) achieving maritime domain awareness, 2) undertaking effective maritime security and response operations, and 3) creating and overseeing an effective maritime security regime. Conditions on port entry, such as advanced notice of arrival for commercial vessels arriving from abroad, are and will continue to be an important part of executing this strategy.

Rear Admiral Baumgartner noted that additional conditions may be added in the future and suggested that the following questions should be asked in evaluating those conditions:

- Will the proposed condition be effective in addressing an issue of significant importance?
- Is there a better, less expensive and less objectionable way to accomplish the same policy goal?
- Will it be consistent with customary and conventional international law of the sea, i.e., does it impinge on important navigational freedoms?
- Does it have a rational nexus in time, place and purpose to the actual entry into port?

The goal of enhancing national security is most effectively met by stopping threats before they reach our shores. Conditions on port entry are one of the most effective tools in accomplishing this but they must be prudent and well considered.



Professor Guifang (Julia) Xue of Ocean University of China observed that China is moving from being a State historically focused on coastal State interests to becoming a maritime State. This move results from China's growth as a major influencer of globalization. The importance of free navigation, as reflected in the 1982 LOS Convention, has caused a reevaluation of China's laws and policies. This reevaluation takes the form of modifying Chinese domestic law to come into compliance with the Convention and working to settle tensions between China and various States, such as Taiwan, Japan and Vietnam.

#### *Luncheon Address*

Rear Admiral Schachte began by outlining how opponents of the 1982 LOS Convention have dealt in misrepresentations to defeat its approval by the US Senate. These misrepresentations center mainly on the argument that the Convention will rob the United States of its sovereignty. In fact, there is nothing in the treaty which takes away from the maritime power of the United States. Opponents also claim the Convention will serve as a threat to US freedom of navigation on the high seas. With over one hundred illegal claims against navigation, the 1982 LOS Convention stands as the mechanism which will allow for greater freedom of navigation and the resolution of impediments to movement.

The Convention provides a stable legal environment which improves the US ability to succeed in the Global War on Terror. Despite claims to the contrary, the Convention does not give the United Nations the authority to tax the United

States or to board US ships. Accession to the 1982 LOS Convention would give the United States the ability to shape and influence world maritime policy and law. With President Bush's endorsement of the Convention and a large number of senators indicating support, Rear Admiral Schachte expressed hope that the Senate will soon provide its advice and consent, but stressed that party or non-party, a robust freedom of navigation program must continue to be a part of US oceans policy.

#### *Panel II – Law of Armed Conflict*

Professor Yoram Dinstein, Professor Emeritus, Tel Aviv University, spoke on direct participation of civilians in hostilities and targeted killings in the context of recent decisions by the Supreme Court of Israel. The principle of distinction—between civilians and combatants, as well as civilian objects and military objectives—is the most basic principle of the international law of armed conflict. Professor Dinstein noted that the definition of military objectives (grounded on nature, location, purpose or use) is very open ended, since every civil object—including a hospital or a church—is liable to be used by the enemy, thereby turning into a military objective. Hence, the key element in practice is the requirement of proportionality, meaning that—when a military objective is attacked—incidental injuries to civilians and damage to civilian objects must not be excessive in relation to the anticipated military advantage gained. Of course, what is considered excessive is often a subjective assessment made in the mind of the beholder, subject only to a test of reasonableness.

On the subject of direct participation of civilians in hostilities, Professor Dinstein



observed that there is a virtual consensus that, at those times when the direct participation is occurring, the individual may be targeted. But what is he in terms of classification? Professor Dinstein believes that the person has become a combatant, and indeed (more often than not) an unlawful combatant. The International Committee of the Red Cross (ICRC), on the other hand, adheres to the view that he remains a civilian (although agreeing that he may be attacked while directly participating in hostilities). The difference of opinion has a practical consequence only when the person is captured. Professor Dinstein takes the position that, as an unlawful combatant, the person loses the general protection of the Geneva Conventions and only benefits from some minimal standards of protection, whereas the ICRC maintains that the general protection of civilian detainees under Geneva Convention IV remains in effect. Professor Dinstein also addressed the issue of human shields. When a civilian is voluntarily attempting to shield a military objective from attack, he is directly participating in hostilities. As for the involuntary use of civilians to shield military objectives, the act is unlawful and even (under the Rome Statute of the International Criminal Court) a war crime. But what if involuntary human shields are used? Does it mean that the principle of proportionality remains intact, so that the opposing belligerent may be barred from attacking the military objective? This is the position taken by Additional Protocol I of 1977. Professor Dinstein disagrees. In his opinion, under customary international law, the principle of proportionality must be stretched in such an instance and applied with greater flexibility. If the outcome is that a large number of civilians

are killed, their blood is on the hands of the belligerent party that abused them as human shields.

Doctor Nils Melzer, of the International Committee of the Red Cross, stressed that in the current conflict against terrorism, there is no defined battlefield. This leads to confusion in distinguishing between civilians and combatants. Civilians enjoy protection under international law until such time as they participate in hostilities. Unfortunately, there is no clarity on what it means to participate. An ICRC/Asser Institute initiative on direct participation seeks to define the term "direct participation" in the context of the concept of civilians, the nature of hostilities and the modalities of the suspension of hostilities. He defined direct participation in hostilities as action taken by an individual which is designed to have an adverse effect on the military operations of a party.

Doctor Melzer indicated that the duration of this participation is also difficult to quantify. Concrete steps toward the preparation of a hostile act, deployment to commit the act, commission of the act and return from deployment are all considered by the ICRC to be part of the hostile act, and cause civilians to lose their protection under international law. Once these actions are complete, the civilians regain their protected status and are not lawfully subject to attack. As with all combat actions, proportionality must factor into the targeting decision involving the civilian engaged in the commission of a hostile act. Ultimately, if there is any question concerning the status of a civilian, the presumption must be that the individual is protected and not subject to lawful targeting.



Professor David Turns of the University of Liverpool detailed the recent House of Lords decision in the case of *Al-Skeini*. This case involved the deaths of one Iraqi civilian while in British military custody, and five others during British military operations on the streets of Basra. The House of Lords held that an inquiry should be held into the death of a prisoner in custody in Iraq in certain extraordinary circumstances. Such an inquiry is appropriate when the person is within the jurisdiction of the United Kingdom for purposes of British human rights law. This is a fact-specific determination that centers upon whether the individual is in British custody. In this case, the death of the individual who was in British custody requires an inquiry under the law. In situations where individuals are killed and not in British custody, they are not within the jurisdiction of the United Kingdom for human rights law purposes, and therefore there is no requirement for an inquiry. In effect, when the British Army deploys to a foreign country, it takes with it British human rights law which must be applied to those under its control and custody.

In closing, Professor Turns noted that the United Kingdom's legal view of the British presence in Iraq is similar to the position taken with regard to the presence of British forces in Northern Ireland during the "Troubles." In both cases, the British military was invited to aid the existing government and quell unrest; therefore detainees are not prisoners of war under Geneva Convention III, because the conflict is not a war. Professor Turns concluded by arguing that no matter how the Global War on Terror is classified, detainees should be treated either as prisoners of war under Geneva Convention III or in accordance with Common Article

3 of the four 1949 Geneva Conventions and be given the maximum benefit of such treatment.

Ashley Deeks from the Legal Adviser's Office at the US Department of State explained that the United States has engaged in a detailed, ongoing analysis of the rules pertaining to the treatment and classification of detainees. The rules and policies regarding detainees that the United States put in place in 2002 have evolved considerably, due to input from all three branches of the US government. Under the present regimes in Iraq, Afghanistan and Guantanamo Bay, the detention of individuals is the subject of constant and ongoing review. The United States has taken concrete steps to ensure that detainees are treated appropriately and that their statuses and ongoing detention are reviewed periodically.

Ms. Deeks noted that the situation in Afghanistan is complicated, given the makeup of the coalition involved in operations. Different members of the coalition have different domestic laws and policies concerning detainees. In addition, different countries are signatories to different law of war and human rights treaties. These factors, combined with the difficult-to-classify nature of the operation, make detainee operations challenging. Despite these challenges, the United States has achieved a sustainable detainee regime in Afghanistan.

***Panel III – New Developments in  
Maritime Enforcement  
of UN Security Council Resolutions***

Professor Alfred Soons, University of Utrecht, opened this panel by raising the question of who may enforce UN Security Council resolutions (UNSCRs). In short,



may a non-flag State take action against a vessel outside the national waters of that State? The answer depends on the nature of the Security Council resolution. These resolutions cover many areas, including economic sanctions, counterterrorism, counterproliferation and peacekeeping. The interpretation of these resolutions can be undertaken by Security Council-established sanctions committees, UN member States, domestic courts and international tribunals. When interpreting these resolutions it is important to note that the UNSCRs are not governed by the Vienna Convention on the Law of Treaties because the resolutions are not treaties. The interpretation must be driven by looking to customary international law and the general principles of law on interpretation. Given the special nature of UNSCRs, it is also helpful to look at the statements of Security Council members in passing the resolution and the prior resolutions and practices of the Council. Nevertheless, as UNSCRs often involve a potential for incursion into national sovereignty, it is important to take a narrow approach to interpreting the resolution. This may lessen the possibility of an incursion upon sovereignty. If there is significant doubt about the meaning or intent of a UNSCR and its application to particular circumstances, the proper action to take would be to return to the Security Council and ask for a determination as to whether a breach has occurred. Professor Soons closed by stating that when action is taken in a State's territorial waters, the UNSCR must state explicitly that force is allowed.

Professor Robin Churchill, University of Dundee, Scotland, focused on potential conflicts between UNSCRs and the 1982 LOS Convention. It is clear that UNSCRs

may routinely interfere with navigational rights reflected in the Convention. This interference may arise from activities occurring during the enforcement of economic sanctions, prevention of trafficking in weapons of mass destruction (WMD) technology and the prevention of terrorism. These conflicts take place when the Security Council, through a resolution, places limits on what a State may do upon the seas.

Professor Churchill then turned to the question of resolving conflicts between Security Council resolutions and the 1982 LOS Convention. He observed that pursuant to Article 103 of the UN Charter, UNSCRs will always prevail over provisions of that or any other international agreement. When conflicts do occur, Professor Churchill argued that they may be resolved by one of the various dispute settlement bodies, previously chosen by the parties to the dispute under Article 287 of the LOS Convention. Of course, these decisions bind only the parties to the dispute and the rulings have no precedential value. Finally, these dispute resolution bodies may decide the dispute but they have no authority to declare that a UN Security Council resolution is invalid.

University of Central Lancashire Professor Dr. Keyuan Zou observed that China is taking domestic action to comply with international non-proliferation standards and regimes. Force in support of these regimes should be as limited as possible and should be used only when explicitly authorized. Professor Keyuan noted that the 1982 LOS Convention has no provision authorizing the use of force and therefore principles of humanity must be used to resolve conflicts. If force is considered, it must be as narrow a use as



possible. In fact, before force may be authorized, it can be argued that the UN Security Council resolution must specifically reference Article 42 of the UN Charter. The use of force in a maritime matter is a law enforcement action, the scope and nature of which must also be controlled by customary international law, rules of engagement and an analysis as to proportionality and necessity. These considerations are all secondary to the consideration of the sanctity of human life and the need to preserve it.

#### *Panel IV – Coalition Operations*

Brigadier General Ken Watkin, the Judge Advocate General of Canadian Forces, began by noting that the Global War on Terror is referred to in Canada as the Campaign Against Terrorism. One of the challenges for nations involved in coalition operations is reaching agreement as to the nature of the conflict. This includes the question of whether you can have an international conflict against non-State actors. International law was designed with the idea that two State actors would be involved in a conflict; however, the majority of contemporary conflicts are internal to a State. At a minimum, there appears to be a consensus that Common Article 3 of the 1949 Geneva Conventions would apply to conflicts such as Afghanistan. Additionally, other treaties will be applicable, but not all coalition partners are bound by the same treaties. For example, Canada and many other nations are bound by Additional Protocol I (AP I) to the 1949 Geneva Conventions, while the United States is not a party to that treaty. Although AP I does not apply as a matter of law to most conflicts, it is

integrated into the doctrine of Canadian Forces. This has not presented any significant problems.

Unlike some nations, Canada recognizes the concept of “unlawful combatant.” In examining standards of treatment of unlawful combatants, it is important to rely on both customary international and “black letter” law.

Different legal obligations and approaches sometimes cause friction within coalition operations. This can occur in the area of targeting; however, those perceived differences may not be that great. Canada and the United States have slightly different definitions as to what constitutes a military object. The Canadian definition uses AP I wording and does not incorporate the “war sustaining capability” that the United States brings within its definition. Generally, however, the difference is potentially quite small since Canada, like many other AP I nations, is of the view that in considering proportionality the military advantage to conducting an attack must be considered as a whole and not be limited to individual attacks.

When disagreements arise within a coalition, they must be resolved or the objecting party will not be able to participate in the targeting mission. On other issues, such as the anti-personnel mine Ottawa Treaty, problems rarely arise. This is due to the fact that even though most NATO members are signatories and the United States is not, the nature of operations does not lend itself to consideration of the use of the non-command-detonated anti-personnel mines governed by that treaty.

Next, the Director General, Australian Defence Forces Legal Services, Commodore Vicki McConachie,



underscored the importance of close coordination among coalition partners. This coordination results from the fact that coalition partners may not all be signatories to the same treaties regarding international law and the treatment of prisoners. In situations where the partners are signatories to the same convention or treaty, they may still have different interpretations of their obligations. These differences must be quickly addressed. Accommodation of the various partners' responsibilities under both international law and their own domestic laws is necessary to maintain a coalition. The nature of the current global conflict has created a number of uncertainties. Before the attacks of 9/11, there was some certainty as to which parts of Additional Protocol I to the 1949 Geneva Conventions the United States did not accept. Post-9/11 there is less certainty on this issue, calling for a greater need to coordinate on the proper application of the concepts contained in Additional Protocol I.

Despite these uncertainties, Commodore McConachie feels the United States is still able to reach accord on important issues such as targeting and the applicable rules of engagement. In the event a specific operation violates a coalition partner's legal obligations there must be an "opt out" provision. This provision allows coalition partners to continue their participation in the overall coalition, while not participating in operations which violate their legal obligations. These obligations can be either international or domestic, as Australian forces are subject to all Australian domestic law while deployed in support of coalition operations.

Captain Neil Brown, of the Royal Navy Legal Services, observed that for coalitions to work well there can be no barriers to communication, and that includes the sharing of intelligence. The key approach of staff legal advisers in mission planning is to identify, minimize and thereafter to manage different national legal positions. In planning for the 2003 invasion of Iraq, and despite distinct national positions on the *jus ad bellum*, this collaborative approach all but eliminated substantive differences between the United States and the United Kingdom on the application of international humanitarian law (IHL). The United Kingdom certainly found during the prosecution of the campaign that IHL was entirely appropriate for modern conventional warfare. The fact that US and UK forces operated throughout under their own national targeting directives and rules of engagement was not important. Of much greater significance was the fact that they were applying, in almost every respect, the same law. Some issues were more difficult to resolve, such as the United Kingdom's treaty obligations in relation to anti-personnel landmines used in the "victim-initiated mode," but in the context of the high-intensity warfighting phase of Operation Iraqi Freedom (March-May 2003) none were insurmountable.

In relation to prisoners of war, internees and detainees, a common position on Common Article 3 of the 1949 Geneva Conventions and Geneva Convention IV ensured maximum scope for a coalition approach to the prisoners of war, including their transfer between coalition partners. Although different national approaches were initially taken on the use of lethal force against escaping enemy prisoners of war, a coalition position was agreed which



required guards to take into account whether the scale and character of any escape represented an imminent threat to life. Coalition positions in 2003 were developed to reflect Common Article 3 of the Geneva Conventions and Geneva Convention IV requirements, such as the expedited screening process in advance of Article 5 procedures to determine status. The coalition position was more difficult to sustain when, although United Nations Security Council resolutions maintained the “imperative reasons of security” provision of Article 78 of Geneva Convention IV to intern, some commanders pressed for a wider approach based on the requirement to gather intelligence.

The Legal Counsel to the Chairman of the Joint Chiefs of Staff, Colonel Ronald Reed, USAF, concluded the panel with an approach to coordinating coalition operations. This coordination is designed to reduce the incidental friction that arises between partners. Understanding that this friction is inevitable, he indicated that as much pre-contingency planning as possible should take place. The planning must ensure that operations are based upon defined international law. To the extent possible, rules of engagement should be developed that seek to reconcile partner differences. Identifying pre-contingency coalition forces to react to and deal with certain situations allows for a more efficient deployment of forces. The pre-contingency planning is not a binding set of rules; rather, it is a framework or starting point for dealing with the specifics of certain contingencies.

Once forces are deployed and the coalition is actively engaged, it is imperative that, if multiple rules of engagement are in use, adjacent forces are briefed on and made

aware of what those contain. As the coalition begins operations, other incidental friction will arise. This has occurred recently when a coalition partner’s domestic courts conducted investigations of battlefield incidents and then sought to exercise jurisdiction over US soldiers. The United States opposed this, thereby creating incidental friction. While friction will always be present, all possible steps must be taken to minimize it, since legal friction can adversely impact coalition cohesion.

### *Panel V – Lebanon Conflict*

Professor Michael Schmitt, who held the Stockton Chair of International Law at the Naval War College during academic year 2007–08, began the panel with a review of the historical events leading up to the 2006 Lebanon conflict. These events included elections in which Hezbollah gained positions in the Lebanese government; the capture of Israeli soldiers; and rocket attacks launched against northern Israel. The actions of Hezbollah culminated with the Israeli government sending military forces into southern Lebanon.

Professor Schmitt then began the evaluation of Israel’s actions in the context of international law. Israel announced that it was commencing attacks pursuant to a right of self-defense against Hezbollah under Article 51 of the UN Charter. As a precursor to the question of self-defense, it is important to determine the status of the attacks against Israel. A UN inquiry into the growing conflict found that Hezbollah was part of the government of Lebanon and should be treated as a militia under Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War. Lebanon disclaimed affiliation with



Hezbollah and stated that Hezbollah was acting independently of the State of Lebanon.

Professor Schmitt noted that the current state of international law on what constitutes State action by a group is in flux. Under the *Nicaragua* decision of the International Court of Justice (ICJ), for a group's actions to be attributed to a State, the State must control and sponsor the group. This decision has been much criticized and does not appear to be consistent with current world reality. Hezbollah was present in the government of Lebanon; it at times had some support from government organs and was in control of much of southern Lebanon. So, while the Lebanese government may not have officially sponsored or controlled Hezbollah, there were significant ties between the State and Hezbollah.

Assuming that Hezbollah was not a State actor for purposes of the attacks on Lebanon, it is clear from the *Caroline* case that non-State actors are capable of armed attacks against States. In fact, 9/11 illustrated that non-State actors are capable of devastating attacks. This was recognized by the world community through its support of the US attacks on the Taliban following 9/11.

Israel was justified in its attacks regardless of the classification of Hezbollah. While there is some ICJ precedent suggesting Israel could not invoke Article 51 absent an attack by a State actor, this position is weak. Article 51 makes no mention of State action as a prerequisite to self-defense and, as the UN Security Council resolutions following 9/11 demonstrate, attacks triggering Article 51 need not be made by a State actor.

Professor Dinstein indicated Israel's action could be classified as extraterritorial law

enforcement. Much like the facts of the *Caroline* case, Hezbollah was acting from within Lebanon, Israel asked Lebanon to police its borders in order to prevent Hezbollah's actions, and Lebanon either could not or would not stop Hezbollah, the result being that Israel undertook the policing action itself. States have an obligation to police their territory or risk having their sovereignty violated. Evaluating Israel's self-defense in terms of necessity, immediacy and proportionality shows that Israel's response was appropriate. Israel's action was necessary and immediate, as it was under direct attack. Finally, as to proportionality, Israel's operations were tied to defensive measures to protect itself from rocket attacks by Hezbollah.

Sarah Leah Whitson of Human Rights Watch advised that Human Rights Watch had sent teams of investigators to Lebanon both during and following the conflict. These investigators conducted numerous interviews of members of the local population, and of representatives of the Israel Defense Forces, Lebanese government, Hezbollah, humanitarian agencies, journalists, hospitals and local officials. The findings of this investigation will be set out in three pending reports examining Israel's and Hezbollah's conduct. The investigation revealed very few instances of Hezbollah using the local population as shields for its attacks on Israel. In addition, very few of Hezbollah's rocket-launching sites and munitions and arms storage facilities were in close proximity to civilian objects. Thus, there were few Hezbollah actions which resulted in civilian deaths.

Colonel Pnina Sharvit-Baruh, Head, International Law Department, Israel Defense Forces, outlined the Lebanon



conflict from the Israeli perspective. It was clear from intelligence obtained that Hezbollah was making every effort to blend in with the civilian population. This blending ignored the distinction between civilians and combatants, and resulted in Hezbollah's shielding its military activities with civilians. Israel went to great lengths to limit civilian casualties. Targeting decisions were made so as to always attempt to leave one road open for civilian evacuation. Also, certain dual-use infrastructure was not targeted because it

would have had a disproportionate impact upon the civilian population.

Colonel Sharvit-Baruh noted that there were civilian casualties. These casualties were not excessive given the expected military benefit of most of the targets. Targeting was taken very seriously and decisions were made based upon a proportionality review. These decisions were difficult given the nature of the asymmetrical warfare involved while fighting a non-State actor that does not comply with the law of armed conflict.

### CHAIRMAN'S COMMENTS

We sincerely appreciate the support provided for this year's conference by The Lieber Society on the Law of Armed Conflict of the American Society of International Law, Roger Williams University School of Law, the Naval War College Foundation, and The Israel Yearbook on Human Rights. Congratulations on a highly successful conference to our Conference Coordinator Major Michael Carsten, USMC.

All the best,

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Professor of Law & Chairman  
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