

LIEBER NOTES

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Lieber Notes is the quarterly newsletter of the Lieber Society on the Law of Armed Conflict. Any views expressed in this newsletter are those of the authors in their private capacities and do not purport to represent the official view of the Society or any government or organisation.

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International Law and Military Operations

**By Commander Eric M Hurt,
JAGC, USNR**

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.

Keynote address by Professor Craig Allen, Stockton Professor of International Law, Naval War College

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. Last summer 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 Maritime 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 U.S. Navy had 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.

The opportunity to heed Professor O'Connor's admonition appears at hand. Professor Allen noted that the current world situation is marked by a global security deficit. Geopolitical entropy, a decline in state sovereignty, non-state access to weapons of mass destruction



and the democratization of violence and technology have helped create this deficit. Any contemporary security strategy must be designed to manage both state and non-state threats. When the experts came together at the Naval War College to develop ideas, they concluded that; some existing international organizations seem incapable of coping with emerging challenges; the institutions charged with managing global problems will be overwhelmed by them; and bilateral agreements will rise as international organizations fall short in their objectives. These experts also agreed that a new Maritime Strategy must include an express reference to international law.

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 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. In achieving 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 US to shape the global and legal order as a good faith participant in the system.

Professor Allen added that the Naval War College is the only war college in the United States with a dedicated law department and the Navy can seize the opportunity to enhance its legitimacy and its ability to attract coalition partners, instill pride in its members and position itself to more effectively shape the global order by embracing a position that promises the rule of law in the new Maritime Strategy.

Panel I: Law of the Sea and Maritime Security

Rear Admiral Horace B. Robertson, Jr., USN, (Ret.), Judge Advocate General of the United States Navy from 1974-1976, opened the panel by providing a historical background for the United States' position on the United Nations Convention on Law of the Sea (UNCLOS). 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 United States' opposition to UNCLOS, 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 be addressed. Despite these remedies opposition to ratification persists.

RADM Robertson outlined the continuing objections to UNCLOS. These objections all appear to be ideological and lack substance. Chief among the opposition's argument is that a ratification of UNCLOS is a surrender of US sovereignty to the UN. This is not supported by the text of the document or the machinery used to administer the Convention. Opponents also claim that the US 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.



In May 2007, President George W. Bush urged the United States Senate to ratify UNCLOS. For the first time since 1982, the United States seems poised to ratify UNCLOS with the support of as many as 80 senators. This ratification will advance the national maritime security of the United States.

The Staff Judge Advocate for United States Pacific Command, Captain Raul (Pete) Pedrozo, USN, observed that there are many challenges to free navigation of the seas. These challenges include regimes adopted by the International Marine Organization (IMO), such as 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 Coast Guard and NOAA enforcement of the mandatory ship reporting system that will encircle the PSSA. The prolif-

eration of IMO-adopted measures could also adversely impact the operations of the United States Navy worldwide.

Moreover, Nation states, including allies have imposed restrictions on the freedom of the seas. Australia has enacted, contrary to UNCLOS, a compulsory pilotage regime in the Torres Straits. This requires transiting ships to use an Australian pilot or face fines as high as \$100,000. Other nations, such as China and India have challenged US vessels conducting ocean surveys in the Exclusive Economic Zone (EEZ), again in apparent contravention of UNCLOS. These situations are made more problematic because the US is not a signatory to UNCLOS.

CAPT Pedrozo further explained that the Nippon Foundation, a Non-Governmental Organization, is advocating a significant series of restrictions on the conduct of warships in a nation's EEZ. They also advocate no military activity in marine protected areas. The successful implementation of these positions would severely limit the operational area of the Pacific Fleet. It is incumbent upon the United States to do a better job in engaging maritime policy and organizations to insure the protection of military operational areas.

Judge Advocate General for the United States Coast Guard, Rear Admiral William Baumgartner, USCG, spoke on the increasing importance of conditions of port entry as a tool for ensuring maritime security and the need for an analytical structure to evaluate proposed 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 or arrival for commercial vessels arriving from abroad, are and will continue to be an import 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. 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? National security is clearly of significant importance and this goal is most effectively met by stop

ping 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 Dr. Guifang (Julia) Xue of Ocean University of China observed that China is moving from being a coastal state to a maritime state. This move results from China's growth as a major influencer on globalization. The realization of the importance of free navigation in the form of UNCLOS caused a reevaluation of China's laws and policies. This reevaluation takes the form of modifying Chinese domestic law to come into compliance with UNCLOS and working to settle tensions among various states such as Taiwan, Japan and Vietnam.

China realizes that its coastal areas are critical to its economic future and is adjusting its world view to work for constructive cooperation with other countries on maritime issues.

Luncheon Keynote Address by Rear Admiral William J. Schachte, Jr., JAGC, USN (Ret.)

RADM Schachte began by outlining how opponents of UNCLOS have dealt in misrepresentations to defeat the passage of UNCLOS. These misrepresentations center mainly on the argument that UNCLOS 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 US. Opponents also claim that UNCLOS will serve as a threat to our freedom of navigation on the high seas. With over 100 illegal claims against navigation, UNCLOS stands as the mechanism which will allow for greater freedom of navigation and the resolution of impediments to movement.

UNCLOS provides a stable legal environment which improves the United States' ability to succeed in the Global War on Terror. Despite claims to the contrary, UNCLOS does not give the UN the authority to tax the United States or to board our ships. Ratification of UNCLOS would give the United States the ability to shape and influence world maritime policy and law. With President Bush's endorsement of UNCLOS and a large number of senators indicating support, RADM Schachte expressed hope that UNCLOS will soon be ratified, but stressed that party or non-party, a robust freedom of navigation must be a part of United States Oceans Policy.

Panel II: Law of Armed Conflict

Dr. Yoram Dinstein, Professor Emeritus, Tel-Aviv University, spoke on direct participation 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 losses to civilians must not be expected to be excessive in relation to the anticipated military advantage. Of course, what is considered excessive is often a subjective assessment in the mind of the beholder, subject only to a test of reasonableness.

Moving on to the subject of direct participation of civilians in hostilities, Professor Dinstein observed that there is a virtual consensus that - at such time as direct participation happens - the person in question 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 ICRC, on the other hand, adheres to the view that he remains a civilian (although he may be attacked). 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.

The Supreme Court of Israel held that the term "at such time" (as regards a civilian participating in hostilities) reflects customary international law, even though it ruled out the possibility of a "revolving door" (a farmer by day and a terrorist by night). It must be understood that the temporal qualification of "at such time" applies also to preparatory stages and to disengagement at the end of the operation. The Court held that direct participation in hostilities covers not only the use of firearms, but also the gathering of information, participation in planning and decision-making, etc., yet not sale of food or medication, financial support or mere propaganda. The Court endorsed the view, debated among experts, that a civilian driver of an ammunition truck near the frontline is directly participating in hostilities.

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) a war crime. But what if involuntary human shields are used contrary to LOAC? Does it mean that the principle of proportionality remains intact, so that the enemy is actually 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.

Dr. Nils Melzer, of the International Committee of the Red Cross, addressed the fact that in the current conflict against terrorism, there is no defined battlefield which leads to confusion as to the distinction 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. The ICRC /Asser classification process is to define what is meant by the term "direct participation." This classification looks at the concept of civilians, the nature of hostilities, and modalities of the suspension of hostilities. Direct participation in hostilities is action taken by an individual which is designed to have an adverse affect on the military operations of a party.

The duration of this participation is also difficult to quantify. Concrete steps toward the preparation of a hostile act, deployment to commit the act, committing 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 civilian regains 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 hostile act. Ultimately, if there is any question concerning the status of a civilian, the presumption must be that they are protected and not subject to lawful targeting.

Next, 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. The inquiry is appropriate when the prisoner is within the jurisdiction of the United Kingdom for purposes of British Human Rights law. This is a fact

specific determination but 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 purposes and there is therefore no requirement for an inquiry. In effect, when the British Army deploys to a foreign country, they take with them British Human Rights law which must be applied to those under their control and custody.

Professor Turns then considered the United States Supreme Court decision in *Hamdan*. In that case the Court found that the Global War on Terror is not a conflict of an international nature and therefore Common Article 3 must be applied as a minimum standard of protection for all detainees, irrespective of combatant or civilian status. This case stands in contrast to the High Court of Israel decision on targeted killings. In that case the Israeli Court found that the conflict in the occupied territories is of an international nature and therefore a distinction exists between civilians and combatants.

In closing, Professor Turns noted that the United Kingdom's legal view of Iraq is similar to the position 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 the Geneva Convention because the conflict is not a war. Professor Turns concluded by arguing that no matter the classification of the Global War on Terror, detainees should be treated either as prisoners of war under Geneva Convention IV or in accordance with Common Article 3 and be given the maximum benefit of such treatment.

Ashley Deeks from the Legal Adviser's Office at the United States 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 U.S. 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 status and ongoing detention is reviewed periodically.

The situation in Afghanistan is somewhat 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.

In concluding, Ms. Deeks urged that the United States be evaluated on its current detainee policies. As they have evolved from 2002, the United States has improved on the manner and means of dealing with individuals detained during the conflict with al Qaeda and the Taliban.

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 United Nations Security Council Resolutions (UNSCR). In short, may a non-flag state take action against a vessel outside the waters of the non-flag state? The answer depends upon the nature of the UNSCR. These resolutions cover many areas including economic sanctions, counter-terrorism, counter-proliferation and peace keeping. The interpretation of these resolutions can be undertaken by the sanctions committee, 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 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 UNSC members in passing the resolution and the prior resolutions and practices of the UNSC.

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, the proper resolution would be to return to the UNSC 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 UNCLOS. It is clear that UNSCRs routinely interfere with UNCLOS navigational rights. This interference takes the form of enforcement of eco-

nomie sanctions, prevention of trafficking in WMD technology and the prevention of terrorism. These conflicts take place when the UNSC, through a resolution, places limits on what a state may do upon the seas. There are also situations where there is no conflict between the UNSCR and UNCLOS. When the UNSCR is not a formal decision or when the UNSCR calls upon the member states to act in conformity with international law, there is no conflict.

Professor Churchill then turned to the resolution of these conflicts. Resolution seems quite non-controversial. Pursuant to Article 103 of the UN Charter, UNSCRs will always prevail over provisions of UNCLOS. When conflicts do occur, they may be resolved by the various dispute settlement bodies, previously chosen by the parties to the dispute. 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 UNSCR is invalid.

University of Central Lancashire Professor Dr. Keyuan Zou, announced that China is taking domestic action to comply with international non-proliferation standards and regimes. The recognition of these regimes does not mean that force should be used without limitation. In fact, force in support of these regimes should be as limited as possible and should be used only when explicitly authorized. Professor Keyuan noted that UNCLOS has no force provision 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 a UNSCR must specifically reference Article 42. 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.

Even where a UNSCR calls for force to be used, countries may still retain their right of self defense under Article 51. Professor Keyuan closed by stating that while foreign law does not give states the ability to use force on a vessel within their EEZ, the success of maritime enforcement relies upon member's capacity and determination.

Panel IV: Coalition Operations

Brigadier-General Ken Watkin, Judge Advocate General of the Canadian Forces, began by noting that the Global War on Terror is referred to as the Campaign Against Terrorism in Canada. One of the challenges for nations

involved in coalition operations is reaching agreement as to the nature of the conflict. This includes the question 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 Geneva Conventions would apply to conflicts such as Afghanistan. However, not all Coalition partners are bound by the same treaties. For example, Canada and many other nations are bound by Additional Protocol I of the Geneva Conventions while the United States is not.

AP I does not apply as a matter of law to most conflicts, however, it is integrated into the doctrine of the Canadian Forces. However, this has not presented any significant problems. Unlike some nations Canada recognizes the concept of "unlawful combatant". In looking at how to treat unlawful combatants, it is important to rely on both customary international as well as the black letter of the 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, as the Canadian definition uses AP I wording rather than incorporate the phrase "war sustaining" capability. 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 may not participate in the targeting mission. On other issues such as the anti-personnel mine treaty, problems rarely arise. This is due to the fact that most NATO members are signatories, even though the US is not, and the nature of operations does not lend itself to consideration of the use of non-command detonated anti-personnel mines.

Deployment on coalition operations can result in the consideration of four sets of law on the battlefield: international humanitarian law, international human rights law, domestic Canadian law and the domestic laws of the host nation. Like many nations Canadian courts are being asked to consider the application of Canadian domestic human rights law to actions taken on the battlefield. Coalitions must also agree upon the relevant international law to be applied. Are individual operations primarily law enforcement in nature with human rights law being applicable or do they involve participation in armed conflict with the attendant humanitarian law? These

questions all must be addressed by the coalition. Despite these often difficult issues, our current coalition operations have been successful with some 30,000 troops from 37 nations operating in Afghanistan under ISAF command as well as the multi-national US-led coalition operations under OEF. The ability to do so comes from our common understanding of international law.

Next, the Director General Australian Defence Force Legal Services, Commodore Vicki McConachie, RAN, underscored the importance of close coordination among coalition partners. This coordination is due to 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 partner's responsibilities under both international law and their own domestic laws is necessary to maintain any 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 Geneva Conventions the United States disagreed with. 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 that the US is still able to reach accord on important issues such as targeting and the applicable ROE. 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 both international and 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 positions. In their planning for the 2003 invasion of Iraq, and despite having 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 UK certainly found during the prosecution of the campaign that IHL was entirely appropriate

for modern conventional warfare. The fact that the US and UK forces operated throughout under their national Targeting Directives and ROE 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 UK'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. A new area which proved problematic was in ensuring legal input to information operations (IO), for example ensuring that IO tools did not appear to threaten military action which could be interpreted as being in violation of IHL and which was never even contemplated by commanders.

In relation to prisoners of war, internees and detainees, a common position on common article 3 of the Geneva Conventions and Geneva Convention IV ensured maximum scope for a coalition approach to prisoners of war, including their transfer between coalition partners. Although different national approaches were initially taken on the use of lethal force against escaping PWs, a coalition position was agreed on the ground 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 both 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 the UNSCR maintained the 'imperative threat to security' requirement to intern under common article 4 of the Geneva Conventions, some commanders pressed for a wider approach based on the requirement to gather intelligence.

In light of the policy and legal differences that arise within coalition operations, there need not be a single set of Rules of Engagement (ROE), in that a single set of ROE cannot gloss over these differences. A full understanding of respective legal positions enables effective coordination. In 2004, following a suicide attack on the gas oil platforms in the Northern Gulf, an immediate US security plan which was developed with an eye on the coalition legal approaches to the use of force outside of armed conflict, and national ROE, was approved and implemented by the UK within hours.

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, as

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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, ROE should be developed which 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 which are ready to operate. 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 sets of ROE are in use, adjacent forces are briefed on and made aware of what those ROE contain. As the various coalition partners begin their operations, other incidental frictions will arise. This has occurred recently as coalition partners' domestic courts have conducted investigations of battlefield incidents and then sought to exercise jurisdiction over American soldiers. The United States has opposed this at every level, thereby creating incidental friction. While this friction will always be present, it is supremely important that all steps be taken to minimize such friction within the coalition.

Panel V: Lebanon Conflict

Professor Michael Schmitt, the incoming Stockton Chair of International Law at the Naval War College, commenced this last panel with a riveting presentation of the historical events leading up to the 2006 Lebanon Conflict. These events included elections in which Hezbollah gained positions in the Lebanese government; Israeli soldiers were taken captive; and the launching of rocket attacks against Northern Israel. The actions of Hezbollah culminated in the Israeli government responding in Southern Lebanon with military force. 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 under Article 4 of Geneva Convention III should be treated as a militia. 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 the 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 United States' 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 that 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 UNSCRs following 9/11 show, attacks need not be made by a state actor, i.e. US response against Al Qaeda.

The nature of Israel's action may be classified, in the words of Professor Dinstein, as extra-territorial law enforcement. Much like the facts of the *Caroline* case, Hezbollah was acting from within Lebanon, Israel asked Lebanon to police its borders and stop Hezbollah's actions, and Lebanon either could not or would not stop Hezbollah. The result was 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 in protecting itself from rocket attacks by Hezbollah.

Sarah Leah Whitson of Human Rights Watch

discussed the actions of the Israelis and Hezbollah during the Lebanon Conflict. Human Rights Watch sent teams of investigators to Lebanon both during and following the conflict and conducted numerous interviews with the local population, representatives of the IDF, Lebanese government, Hezbollah, humanitarian agencies, journalists and hospital and local officials. The findings of this investigation are set out in three reports on the conflict that examine Israel's and Hezbollah's conduct (see www.hrw.org/campaigns/israel_lebanon). The investigation revealed very few instances of Hezbollah using the local population as shields for their attacks on Israel. In addition, very little of Hezbollah's rocket fire and storing of munitions and arms was in close proximity to civilian objects. Thus, there were few Hezbollah actions which resulted in civilian deaths.

The investigation found numerous instances in which Israel targeted any person or group associated with Hezbollah, whether or not they directly contributed to hostilities. An example was the killing of extended family members of Hezbollah religious leaders, including the killing of women and children. While Hezbollah infrequently operated from areas that put civilians at risk, Israel bombed the civilian population on the deliberate but wrong assumption that all civilians had fled and all those remaining were supporters of Hezbollah. Israel did provide a warning to civilians in Southern Lebanon to leave or face the risk of death from the fighting. But Israel then indiscriminately targeted all movement, civilian and military, causing many civilian deaths. Israel also indiscriminately targeted many who remained after the warning, ignoring the need to distinguish between civilians and combatants. Finally, Israel used cluster munitions which killed indiscriminately. This usage was a violation of international humanitarian law.

Colonel Pnina Sharvit-Baruh, Head of the International Law Department, Israeli Defense Forces, outlined the Lebanon Conflict from the point of view of the Israelis. It was clear from intelligence obtained that Hezbollah was making every effort to blend in with the civilian population. This obscured the distinction between civilians and combatants and resulted in Hezbollah shielding its military activities with civilians. Israel went to great lengths to limit civilian casualties. When dual use targets were identified, the IDF always tried 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.

COL Sharvit-Baruh noted that there were

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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 who does not observe the Law of Armed Conflict.

The last panel, and the Conference, closed with a large number of questions for the panel. Among the observations offered by questioners was that there is no hindsight rule in the Law of Armed Conflict, meaning that it is not a question of what should have been known at the time of the action but what information was available at the time. The questioning then moved to the amount of attention that must be paid to public relations. Professor Schmitt noted that NGOs and their influence have be-

come part of the battlespace and cannot be ignored. Public opinion has a profound impact on conflicts and defines the battlespace. In a war or international conflict attention must be paid to those who help form public opinion. To ignore this public relations component of the battlespace is to risk failure.

Editor's Comment: The Naval War College particularly mentioned its sincere appreciation of the support provided by the Lieber Society to the conference reported on in this issue of *Lieber Notes*.

Roger Williams University School of Law, the Naval War College Foundation and the Israel Yearbook on Human Rights also received thanks for their support. The Conference Coordinator, Major Michael Karsten, USMC, was congratulated on a highly successful conference.

Minutes of the 2007 Annual Meeting

March 31, 2007
Fairmont Hotel, Washington, D.C.

By Charles J. Keever
Secretary

The Secretary/Treasurer, Chuck Keever, called the meeting to order at about 1 p.m. in accordance with the final program of the 2007 Annual Meeting of the American Society of International Law.

20 members of the Lieber Society attended this Annual Meeting.

Chuck observed that he was presiding because, as announced on 25 March 2007 in a Listserve message to all Lieber Society members, our Chair, Dennis Mandsager, had recently discovered that he would not be able to attend the annual meeting due to a medical emergency within his family. Chuck announced that we would undertake to conduct the meeting as explained in that message.

Use of the ListServe

Chuck observed that he had discussed with the Chair certain goals that we shall be undertaking to develop through discussions with the full membership on the ListServe, including how we can get

more persons participating actively in our activities. We are also trying to find volunteers to serve as our Newsletter Editor (**Ed:** appointment now filled!) and as our Portal Page Manager. All hands were encouraged to participate fully in these discussions.

Minutes of the 2006 Annual Meeting

Upon motion made, seconded and unanimously adopted, the minutes were duly approved in light of the fact that those who had attended the meeting had already approved them and they have been posted on our portal page since last May without objection or comment.

Resolution on approval of future Annual Meeting minutes

Upon motion made, seconded and unanimously adopted, it was resolved that in the future minutes of annual meetings will be deemed approved after they have been approved by those who attended the meeting.

Treasurer's report

In his capacity as Treasurer, Chuck confirmed that the ASIL no longer charges admission fees for joining Interest

Proposals For Expanding Lieber Society Membership

1. Importance of our Membership Committee

We are "the ASIL's focal point for the study and dissemination of the law of armed conflict, or international humanitarian law, and other public international law related to the conduct of military operations" (Article 1 of our Bylaws). We have a duty to use our best efforts to enhance a better understanding and implementation of these principles.

A necessary first step is to develop plans for a reorganized Membership Committee consisting of volunteers dedicated to expanding our membership.

This plan must include methods to sensitize all of our members to the importance of participating in activities designed to expand our membership.

2. Recommendation: Prepare And Utilize A "Who We Are, Where We Live, And Why We Joined The Lieber Society" Publication.

We have a very distinguished group of experts on our Executive Committee and in our membership. Brief articles from these persons explaining who they are, where they are living, and why they joined the Lieber Society would provide a very credible explanation as to why others should join with us. And constant updating of the document as we gain new members would keep the document current and would significantly enhance its effectiveness.

I submit below extracts from some of my exchanges of messages that establish the value of the proposed document. Each of the persons providing the following comments has given me authority to share his/her message, but since we have not

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Groups and that new funding procedures are being developed for the IGs. He announced that Ken Anderson, a long-time member of the Executive Committee who lives in the Washington, D.C. area, had volunteered to stand for election as our Treasurer. His election will give us an experienced volunteer to work with the ASIL staff in developing these new procedures. Attention is invited to the comments below made by Betsy Andersen on the subject of funding.

Membership Committee report

In his capacity as Chair of the Membership Committee, Chuck invited everyone's attention to a report entitled "Proposals For Expanding Lieber Society Membership", which appears on pages 7-10 of this newsletter. He requested that all hands carefully study this document with a view to participating in a later ListServe discussion on determining an appropriate course of action.

Activities Committee report

Iain Scobbie reported on our 2006 activities on behalf of the Activities Committee Co-Chairs, neither of whom was able to attend the annual meeting:

We again sponsored a prize for an outstanding publication on law and conflict by an individual 35 years of age or younger. The 2006 prize was awarded to Dr. Laura Perna, for her book, "The Formation of the Treaty Law of Non-International Armed Conflicts" (Martinus Nijhoff/Brill, 2006).

We initiated a prize for an exceptional writing in English by a member of the regular or reserve armed forces of any nation that significantly enhances the understanding and implementation of the law of war. The 2007 Prize was awarded to Lieutenant Colonel Eric Talbot Jensen, U.S. Army for his paper, "Combatant Status: It Is Time for Intermediate Levels of Recognition for Partial Compliance."

There were two Certificates of Merit awarded in the Military Prize project: to Major Simon W. Lee, Australian Army Reserve, for his paper "Making a Killing on the Battlefield: Private Military Companies and their status under International

Law" and to Lieutenant Commander Gregory Raymond Bart, JAGC, U.S. Navy, for his paper, "The Ambiguous Protection of Schools under the Law of war -- Time for Parity with Hospitals and Religious Buildings."

We co-sponsored a conference on the law of occupation with Glasgow University's Scottish Centre for War Studies and the University of London's School of Oriental and African Studies in Glasgow from May 11 to 13.

We also co-sponsored the 2006 Naval War College Conference on Global Legal Challenges: "Command of the Commons, Strategic Communications, and Natural Disasters".

Discussion with Betsy Andersen and Joe Patton

Elizabeth ("Betsy") Andersen, ASIL Vice President and Executive Director and Joseph Patton, ASIL Program Coordinator, accepted an invitation to appear at our annual meeting to discuss, among other things, resolutions adopted at our 2006 annual meeting relating to preparing programs at ASIL annual meetings and Interest Group funding.

Ms. Andersen made the following points in her comments.

ASIL President Jose Alvarez participated in the Interest Group Co-Chairs Breakfast this year to emphasize the important roles Interest Groups have in ASIL activities. He stressed that the ASIL needs to shift its emphasis way from the annual meetings. It should double its other activities. He encouraged Interest Groups to take a leading role in these efforts, to include organizing events at Tillar House and elsewhere throughout the year. With reference to the annual meetings, he stressed the importance of transparency in planning these events. He introduced Michael Scharf, one of the 2008 Annual Planning Committee Co-Chairs, at the breakfast, who announced that the Co-Chairs are committed to working on the modalities of including interest group input as they commencing planning the 2008 Annual Meeting. The Chairs were encouraged to work with him.

Membership continued

yet adopted the concept, I am limiting identification to job descriptions. This will, of course, cause some of you to recognize the author, but I think it is important that we realize that these recommendations come from a sound cross-section of our membership.

A legislative attorney with the Congressional Research Service observed:

"All I can think of immediately, with regard to enlisting more "recruits" for the group is to advertise the membership we already have. I confess I would have joined the group earlier had I known who was involved and what they do. I guess I figured it was probably mostly JAG officers (maybe because the annual meeting is always so early in the morning!), but it turns out there are also a lot of members from the NGO side, as well as from non-U.S. militaries."

A Legal Officer in the Human Rights and Humanitarian Law Section of the United Nations, Human Rights and Economic Law Division of the Canadian Department of Foreign Affairs, observed:

"However, I do have one thought with respect to increasing Canadian membership. Canadian members such as myself could distribute information on the Lieber Society at the Canadian Council on International Law's annual meeting (this year, from October 14-16). Every year, the CCIL has a panel on international humanitarian law issues, and this year more than one panel will touch on IHL issues (for example, I will speak on "Human Trafficking and IHL" on a panel on human trafficking). If there is a new Lieber Society newsletter by then, then that might be the ideal handout for the CCIL conference, along with some information on joining the Lieber Society. Of course, if the "Who We Are, What We Do, and Why We Joined the Lieber Society" publication is ready, that would also be an important handout." [Emphasis added]"

This member had the following additional comments relating to how our members can encourage others to join the Lieber Society:

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Overall growth in ASIL membership remains flat despite growth in the field of international law. One possible explanation is that there are not many opportunities to participate in the work of the Society. She estimated that only about 500 members play an active part in Society activities outside of the Annual Meeting. She hopes to double the number of active ASIL members in the coming year, thus making the Society a more vibrant organization, and indicated that Interest Groups will be critical to achieving success in this effort.

She highlighted recent efforts and measures that the ASIL has undertaken to support and strengthen Interest Group activities. These include: 1) investing in Interest Groups by eliminating fees to facilitate the increase in Interest Group membership; 2) developing portals for all Interest Groups to share information, and 3) hiring a full time Program Coordinator for Interest Groups.

With reference to funding, she explained that details are still being worked out. This

is a top priority. The goal is to fold interest group financing into the regular ASIL budgeting process. She invited requests for supplemental funding in 2007, but noted that not all requests for funding can be accommodated, given the ASIL budget deficit. She explained that while the ASIL is open to working with the Interest Groups to explore ways to finance their activities such as registration or attendance fees and/or grant-seeking, the Interest Groups will not be authorized to charge membership fees. All queries relating to funding should be directed to Joseph Patton.

Election results

Joe Patton announced the results of the 2007 Lieber Society election. The following persons were elected to three-year terms on the Executive Committee:

Kenneth Anderson
Louise Doswald-Beck
Dennis Mandsager
Jordan Paust

Iain Scobbie was elected to a two-year term on the Executive Committee.

Dennis Mandsager was elected as Chair and Kenneth Anderson was elected as Treasurer.

It was explained that the officers serve so long as they remain on the Executive Committee.

Adjournment

There being no further business, the meeting was adjourned and was followed by a discussion of targeted killings and direct/active participation led by W. Hays Parks, Department of Defense Office of General Counsel and by Philip Sundel, International Committee of the Red Cross Regional Delegation for the United States and Canada.

Membership continued

"As I am a panelist on one of the panels, I can also make a personal pitch for the Society, if there is an ideal opening to do so. Approximately 300-400 people attend the CCIL, but I think we usually get about 100-150 people to the IHL panels (there are various concurrent panels at any one time). I would therefore recommend that I put out about 100 copies of the newsletter. (Ed: Sorry I was unable to make the deadline for this.)"

"An American Bar Association meeting is taking place in Houston in mid-October. I will be speaking at that meeting on a panel on the International Criminal Court. Perhaps that might be another venue to distribute information on the Society? I am not sure how many IHL specialists would attend the ABA meeting, but if the Executive Committee feels it is useful, I would be happy to distribute information there, as well."

A lawyer who is a military police officer in the U.S. Army Reserve assigned as the **Deputy Provost Marshal for U.S.**

Forces Japan but who is currently an **LLM student at NYU**, observed:

"Next time I head for Japan, I'd be happy to pass info about the Lieber Society to the JAGs at Yokota Air Base, and to anyone else who seems interested (I have a number of Japanese friends who might be)."

A **staff member of the International Criminal Tribunal for Rwanda** in Arusha, Tanzania, commented:

"I think that the contemplated publication ("Who We Are...") would serve the Society well, both for building a closer ("virtual") connection among members, especially those abroad who do not attend the annual ASIL meetings, and for introducing the Society to potential members.

"Promotional materials should emphasize that membership in the Society is open to any member of ASIL and that membership in ASIL itself is open to any person who wishes to join etc. I have heard several lawyers mention their belief that membership in ASIL was only for "Americans". It could also be highlighted

that ASIL is an independent association and not a body of the US Government, another misconception I have noticed."

The **Chief, International Law Division, UNRWA HQ Gaza**, in recognizing the significance of the proposed document, volunteered:

"I would be happy to try to help now that I am reminded as to what the Society does -- which is proof that your post is important. Please let me know if there are specific things you want from me, including a contribution to the "Who we are" project."

A **Programme Specialist, International Standards Section, Division of Cultural Heritage, UNESCO** strongly recommended that we produce the suggested document. Indeed, he has already submitted his proposed entry.

An **International Prosecutor, UNMIK HQ** supports the concept of the proposed document, but commented, "I am not sure if I am well suited to draft such a "who we are" type article." He has volun-

Defining Terrorism in International Law

Dr. Richard Burchill, Director of the McCoubrey Centre for International Law at the University of Hull, England, reviews the new book of this title by Ben Saul (Oxford: Oxford University Press, 2006) 373 pp., ISBN 0199295972, £27.95, US\$ 99, hbk

Without a doubt terrorism has become the buzzword, both domestically and internationally, of recent times: any threat to peace and security seems to have a link to terrorism, almost any threat to the state apparatus is believed to be the work of terrorists, and, rather unfortunately, any form of political dissent directed against those in power is classified as or associated in some way with terrorism. As a result we are witnessing a widespread proliferation of legal and political strategies to deal with terrorism, from the nebulous 'war on terror' being waged by the USA to the much more concrete rafts of domestic legislation around the world that aim to prevent terrorist activity and deal with those suspected of being responsible for terrorism. Significantly there has also been the monumental move by the United Nations Security Council in requiring member states to implement and report on measures taken in domestic law with regard to terrorists and terrorist acts.

Despite all of the recent activity to address terrorism there is the significant problem that there is no accepted legal definition of terrorism. In the past this was perhaps not a substantial issue in that there were no specific international rights or duties directly linked to terrorism. However, the situation has clearly changed and given the development of legal measures for dealing with terrorism there is a need to give some element of legal certainty to the terms involved (Saul, 5). Ben Saul has provided a masterful study that will spur efforts towards developing a legal definition for terrorism in international law.

The book begins with an introduction that provides a brief discussion about

the concepts of terrorism generally. Chapter 1 sets out the case for defining and criminalizing terrorism and Chapter 2 covers the necessary issue of possible justifications and excuses for terrorist violence. The remaining three chapters provide, thorough studies of different areas of international law, the extent to which a generic definition has evolved in these particular areas and has contributed to a generic definition in general international law. Chapter 3 covers terrorism in international and regional treaty law; Chapter 4 deals with terrorism and customary international law and Chapter 5 concerns itself with terrorism as understood in international humanitarian law.

To date, in efforts to deal with terrorism, the attention has been on particular acts, or targets which are commonly associated with terrorist attacks, as demonstrated in the international treaties dealing with hijacking or attacks on protected persons. These treaties do not always use the term terrorism or even refer to it. A shortcoming in this approach is that any actions that are terrorist in nature – either through severity of results, or the means used – are not necessarily dealt with in an appropriate legal fashion. There has been a relatively long history of attempts to come up with a generic definition in international law going back to the League of Nations. Due to the political, ideological and technical difficulties involved, reaching agreement on a generic definition has been extremely difficult. However, as the author points out in the chapter on terrorism in international humanitarian law, it is in this field that there exists an agreed ban on terrorism in armed conflict, even though it has been overlooked by many commentators (Saul, 270).

Membership continued

teered, however, to help distribute the document.

As indicated in the above extracts, we would seek broad distribution of this document to persons likely to be interested in joining with us. This includes personal one-on-one distributions throughout the year, but also distribution by panelists and others at appropriate conferences.

3. Recommendation: Identify and Recruit Key Persons Throughout Our Communities.

Each of us needs to make a conscious effort to identify key persons in our respective civil governments at all levels, persons serving in our respective military services, NGOs, professional societies, or teaching in our respective educational institutions and undertake to encourage them to join with us.

4. Recommendation: Identify opportunities for encouraging persons to join the Lieber Society.

Each of us also must constantly keep the Membership Committee advised about conferences or significant meetings at which we could have one or more persons undertake to make effective liaison, including distributing copies of our Newsletter, the "Who We Are" document, and other background information.



Saul explains the importance and necessity of reaching agreement on a generic definition in general international law. As mentioned above, states are now under legal obligations established by the Security Council to take action against terrorism and to report on that action. A further need for a definition concerns the means and measures used by states to respond to terrorism. As Saul explains:

“Defining terrorism would help to confine the term and prevent its abuse. The absence of definition enables states to unilaterally and subjectively determine what constitutes terrorist activity, and to take advantage of the public panic and anxiety engendered by the designation of conduct as terroristic to pursue arbitrary and excessive counter-terrorism responses”. (Saul, 5)

There is no doubt as to the abhorrence of terrorist activities, but equally there is the need to ensure that state responses do not cross the line and become indistinguishable from the acts they are trying to prevent. The author goes on to characterise the struggles over a definition as an ‘ideological quagmire’, further underlying the need to bring some degree of legal clarity to the issue.

Saul provides a generic definition of terrorism which consists of the following:

1. Any serious, violent, criminal act intended to cause death or serious bodily injury, or to endanger life, including by acts against property;
 2. where committed outside an armed conflict;
 3. for a political, ideological, religious, or ethnic purpose; and
 4. where intended to create extreme fear in a person, group, or the general public; and
- a. seriously intimidate a population or part of a population, or

b. unduly compel a government or an international organization to do or to abstain from doing any act.

5. Advocacy, protest, dissent or industrial action which is not intended to cause death, serious bodily harm, or serious risk to public health or safety do not constitute a terrorist act. (Saul, 65-66).

The author explains that this proposed definition includes the core normative judgments about why terrorism is wrong while minimizing any overlap with other established areas of legal regulation. It also ensures the stigma of the terrorism label is reserved only for the most serious kinds of unjustifiable political violence (Saul, 66).

The term terrorism, and all of its variations, is highly emotive. It signifies acts that give rise to feeling of revulsion and repugnance. It is also something that is used as a catch-all term to refer to acts of dissent and is invoked as a justification for responses that appear to be unduly severe. The law cannot stand idly by and allow for terrorism to be defined wholly in political circles and used in such a subjective manner by individual states. It is incumbent upon international law to formulate an acceptable definition of terrorism for ensuring the severity of the crime is duly recognised and also to prevent its abuse. Ben Saul has provided an extremely important study that makes an essential contribution to the ongoing efforts to define terrorism in international law.

Conferences

On 1–2 February 2007, the Swiss Ministry of Foreign Affairs, in cooperation with NATO and the ICRC, organised a Euro-Atlantic Partnership Council/Partnership for Peace Roundtable on Customary IHL. Presentations and summaries of the discussions, as well as photos, can be found at: <http://pforum.isn.ethz.ch/events/index.cfm?action=detail&eventID=269>.

From 29–31 August 2007, the Second Commonwealth Red Cross and Red Crescent IHL Conference was held in Wellington, New Zealand. The conference was hosted by the

Customary IHL: New Initiative to Update Records of State Practice

Jean-Marie Henckaerts of the International Committee of the Red Cross reports that the ICRC and the British Red Cross Society have initiated a joint project to update the practice underlying the ICRC’s study on customary international humanitarian law. Three researchers will be working for an initial two-year period (June 2007–June 2009) to update Volume II of the Study, based at the Lauterpacht Centre for International Law of Cambridge University. For a news story, see: <http://www.lcil.cam.ac.uk/news/article.php?section=25&article=460>

New Publication

Jean-Marie Henckaerts also reports the publication of Volume 82 of the Blue Book Series:

Anthony M. Helm (ed.), *The Law of War in the 21st Century: Weaponry and the Use of Force*, U.S. Naval War College, Newport, Rhode Island, International Law Studies, Vol. 82, 2006, published 2007.

New Zealand National IHL Committee in association with the New Zealand Red Cross and supported by the New Zealand Ministry of Foreign Affairs and Trade and the ICRC. It continued the work of the First Commonwealth Conference in London, England in 2003 and the Nairobi meeting of Commonwealth National IHL Committees in 2005. One of the focuses of the Wellington conference was the preparation of initiatives for the 30th International Conference of the Red Cross movement in Geneva in November. The report of the chair of the Wellington conference, Judge Sir Ken Keith of the ICJ, and the Outcome Statement of the conference are available at: <http://www.redcross.org.nz/ihl/>.