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Sharon Williams at ICTY

Professor Sharon Williams has been elected by the United Nations General Assembly to serve as an *ad litem* judge on the International Criminal Tribunal for the Former Yugoslavia (ICTY). *Ad litem* judges are judges appointed to serve on an "as needed" basis for individual trials, allowing the Tribunal to hear more cases in a shorter period of time. Professor Williams went to the ICTY in The Hague on September 1, 2001 and commenced her first trial on September 10, 2001. It is scheduled to last approximately one year.

Université de Montréal to host 2002 Jessup Moot

The Faculty of Law of the Université de Montréal has generously volunteered to host the 2002 Canadian Round of the *Philip C. Jessup International Law Moot Court Competition* from February 14 to 16, 2002. Professor Daniel Turp has also kindly agreed to act as National Administrator for the event. The 2002 Jessup problem, titled "The Case Concerning Regulation of Access to the Internet", was released by the International Law Students' Association in Washington D.C. on August 31, 2001. Preparations by the Université de Montréal and Professor Turp for the Canadian Round of the competition are already well underway.

The Canadian Round of the Jessup competition draws together teams representing law faculties from across Canada. Winners of the Canadian Round will proceed to represent Canada at the International Round of the competition, to be held in Washington, D.C. in April 2002 in conjunction with the annual conference of the American Society of International Law.

Congrès 2001 du CCDI

Le Congrès annuel 2001 du CCDI aura lieu du 18 au 20 octobre 2001 au Château Laurier à Ottawa. Les formulaires d'inscriptions au Congrès sont inclus avec le *Bulletin*, mais veuillez noter que cette année vous pouvez également choisir de remplir le formulaire en ligne. Vous pouvez bénéficier d'une économie en vous inscrivant **au plus tard le 28 septembre 2001**. Si votre formulaire est postdaté ou si vous soumettez la fiche en ligne au plus tard à cette date, les frais d'inscriptions au Congrès seront de $290. Les frais d'inscription après cette date seront de $325. Les frais d'inscription pour les étudiant(e)s sont de $30.

2001 CCIL Conference

The 2001 CCIL Annual Conference will take place October 18-20, 2001 at the Château Laurier in Ottawa. In addition to the registration and membership forms included with this *Bulletin*, this year you have the option of completing an on-line registration form, Please note that the early Conference Registration period has been **extended until September 28, 2001**. If your registration form is post-dated up to this date or if you submit the on-line registration form by this date, conference registration is $290 (not including additional meal tickets and interest group fees). Registration fees after this date are $325. Student registration is $30 at all times.

Message du président

J'écris ce message dans l'ombre fantomatique du World Trade Center. Je me trouvais à Manhattan au moment de l'odieuse attaque sur New York et Washington, ainsi j'ai vécu directement une partie de l'horreur que nous avons tous partagée au moins indirectement. Être témoin de la disparition de deux énormes tours et méditer sur les conséquences humaines est une expérience bouleversante. Mais pour les avocats en droit international, envisager les conséquences sociales, politiques et légales est potentiellement accablant. Comme des centrales téléphoniques, les circuits de la pensée peuvent être surchargés. Pourtant, il appartient à nous tous de réfléchir soigneusement et d'apporter notre expertise et expérience aux discussions publiques qui suivront cet outrage.

Nous serions tous sages de prendre une profonde respiration avant d'énoncer des comparaisons historiques faciles, ou d'avancer une rhétorique exagérée dictée par nos émotions. Ce qui s'est produit mardi le 11 septembre n'est pas identique à Pearl Harbour parce qu'il est bien plus difficile de définir «l'ennemi». L'attaque n'a pas eu lieu non plus au milieu d'une guerre traditionnelle entre états dans laquelle les États-Unis pourraient participer. En effet, bien que les attaques à Washington et à New York puissent être caractérisées comme « actes de guerre », nous ne faisons pas face maintenant à une guerre dans le sens compris par des générations de stratèges militaires. Les lignes de bataille ne sont pas tracées, la portée spatiale de l'action potentielle n'est absolument pas définie, « l'ennemi » ne s'est toujours pas déclaré, et les paramètres de guerre seront difficiles à établir: comment les « règles d'engagement » peuvent-elles être déterminées en l'absence de cibles militaires définies? Est-ce que la «guerre » dont beaucoup de gens parlent serait une guerre contre des cibles civiles? Est-ce que ce ne serait pas là une ironie macabre, étant donné la révulsion que nous ressentons tous à la perte de vies innocentes dans deux grandes villes américaines?

Déjà, les pontifes créés par les médias parlent d'un « nouveau monde » ou « de changements politiques irréversibles ». Ceci m'apparaît prématuré. Pour chaque conclusion qu'on pourrait être tenté de tirer au sujet des conséquences possibles à long terme de ces événements, des conclusions autres sont également plausibles. « Cela renforcera le sentiment des États-

President's Message

I write this message in the ghostly shadow of the World Trade Center. I found myself in Manhattan at the time of the grievous attack upon New York and Washington, so experienced directly some of the horror that we have all shared at least vicariously. To witness the disappearance of two enormous towers, and to ponder the human consequences, is a shattering experience. But for international lawyers, to contemplate the social, political and legal consequences is potentially overwhelming. Like telephone exchanges, the circuits of thought can be overloaded. Yet it is incumbent upon all of us to reflect carefully and to bring our expertise and experience to bear upon the public debates that will follow this outrage.

We would all be wise to take a deep breath before we voice facile historical comparisons, or utter the inflated rhetoric that our emotions may demand. What happened on Tuesday, September 11th was not equivalent to Pearl Harbor because the "enemy" is far harder to define. Nor did the attack take place in the middle of a traditional inter-state war that the US can now join. Indeed, although the attacks in Washington and New York may arguably be characterized as "acts of war," we are not now facing a war as generations of military strategists have understood that term. The battle lines are not drawn, the spatial scope of potential action is completely undefined, the "enemy" has not even declared itself, and the parameters of war will be hard to establish: how can lawful "rules of engagement" be determined in the absence of defined military targets? Would the "war" that so many are mooting be a war against civilian targets? Would that not be a sick irony, given the revulsion that we all feel at the loss of innocent life in two great American cities?

Already, media-invented pundits are talking of "a new world" or "irreversible political shifts." This strikes me as premature. For every conclusion one might be tempted to draw about the possible long-term consequences of these events, alternative conclusions are equally plausible. "This will reinforce the USA's sense of threat and garner further support

Unis qu'ils sont menacés et augmentera le soutien pour le système de défense anti-missile ». Ou « cela montrera que les vraies menaces ne viennent pas des missiles, mais des instruments plus aisément disponibles, ainsi le système de défense anti-missile est un gaspillage d'argent ». Ou encore, « même si la défense anti-missile est nécessaire, le capital politique de George W. Bush s'évapore et il ne pourra pas mettre à exécution une initiative aussi énorme ». Je ne veux pas tomber dans une analyse facile du genre «qui vivra verra ». Je suggère plutôt que les dirigeants d'opinion doivent considérer une gamme de scénarii et doivent peser soigneusement les facteurs sociaux, politiques et normatifs, avant de développer chez le public des attitudes visant à appuyer des lignes de conduite dangereuses.

Le droit international a-t-il quelque chose à dire dans de telles circonstances? Sûrement oui - et nous devons en être la voix. Quels sont les paramètres normatifs de la légitime défense? Que veut dire «sécurité collective» dans l'ordre établi par la Charte des Nations Unies? L'OTAN est-elle un instrument de «sécurité collective»? Comment le droit de la guerre restreint-il les options militaires considérées dans les capitales occidentales? Comment le cadre de la coopération contre le terrorisme pourrait-il être renforcé? De façon plus large, comment le droit international pourrait-il être utilisé pour façonner le dialogue et pour renforcer les cadres normatifs qui nous permettraient de dépasser la rhétorique de la guerre? Ce ne sont là que certaines des questions auxquelles les dirigeants et le public seront confrontés dans les prochains jours et semaines. Nous devons aider à articuler des réponses convaincantes.

Finalement, les horreurs des quelques derniers jours, horreurs qui ne feront qu'augmenter au fur et à mesure que sera révélée l'ampleur de la souffrance humaine, nous forcent naturellement à faire face à des problèmes que le droit peut seulement aborder sans jamais résoudre. Comment allons-nous collectivement traiter du sentiment d'injustice et de haine qui motivent ces actes méprisables? Solidaires avec ceux et celles qui sont morts et ceux et celles qui souffrent maintenant, nous avons l'obligation de nous efforcer à prévenir et non pas simplement punir. ∢

for a missile defense system." Or, "this will prove that the real threats do not come from missiles, but from instruments more readily at hand, so the missile defense proposal is a waste of money." Or, "even if missile defense is needed, George Bush's political capital is evaporating and he won't be able to carry out such a huge initiative." My point is not to descend into easy "only time will tell" analysis. Rather, opinion leaders must consider a range of scenarios, and carefully weigh social, political and normative factors, before shaping public attitudes in support of dangerous courses of action.

Does international law speak in these circumstances? Surely it does – and we must be its voice. What are the normative parameters of self-defence? What does "collective security" mean in the order established by the United Nations Charter? Is NATO an instrument of "collective security"? How do the laws of war constrain military options being considered in Western capitals? How might the framework for cooperation against terrorism be strengthened? More broadly, how might international law be employed to shape dialogue and strengthen normative frameworks that take us beyond the rhetoric of war? These are just some of the questions that policymakers and the public will confront in the coming days and weeks. We must help to articulate compelling answers.

Ultimately, of course, the horrors of the last few days, horrors that will only be magnified as the full extent of human suffering is revealed, force us to confront problems that law can only touch, but never itself solve. How might we collectively address the sense of grievance and hate that motivates these despicable acts? In solidarity with those who have died and those who now suffer, we are bound to strive not for mere punishment, but for prevention. ∢

Stephen J. Toope
Président intérimaire / Acting President

International Legal Implications of the Terrorist Attacks in the US: The American Debate

Editor's note: The September 11, 2001 attacks by terrorists on targets in New York and Washington raise many international law questions, some of which have been referred to in President Toope's message. The public debate has already begun among members of the ASIL. Below are excerpts of five commentaries distributed as ASIL Insights *over the course of the last week. The full texts are available at <http://www.asil.org/insights.htm>.*

Frederic L. Kirgis of Washington and Lee University School of Law opened the discussion by addressing the criminal and international legal aspects of the attacks, commenting that: "If the persons responsible … can be identified and apprehended, they could face prosecution in virtually any country that obtains custody of them. Moreover, the widely ratified *Hague Convention for the Suppression of Unlawful Seizure of Aircraft* makes aircraft hijacking an international criminal offense. … The offense is deemed to be extraditable under any extradition treaty in force between contracting states.

On the issue of whether the use of hijacked aircraft as lethal weapons amounts to a crime against humanity, he remarked that: "The *Statute of the International Criminal Court* … defines a crime against humanity as any of several listed acts 'when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.' The acts include murder and 'other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.' … The United States would have jurisdiction under customary international law to proscribe such terrorist acts that occur within its own borders and to prosecute the offenders under federal anti-terrorism statutes already in force. Other countries could exercise what is known as universal jurisdiction."

Turning to the legitimate scope of any retaliation, Professor Kirgis commented that: "Armed reprisals are highly questionable under the United Nations Charter … because of its strong emphasis on peaceful resolution of disputes. Nevertheless, article 51 of the U.N. Charter recognizes 'the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.' Thus, if the [attacks] can be classified as an armed attack against the United States, and if it is necessary to take counter-measures involving the use of armed force in order to prevent further attacks, the United States arguably could use force under article 51 until such time as the Security Council can act to maintain international peace and security. … If the party responsible for the attacks … is not the government of the country from which the terrorists operate, a question could arise whether use of armed force that causes injury to that country is lawful. The U.N. Charter was not drafted with such situations in mind. An argument can be made, however, that the principle of article 51 could extend to such a case if the government is knowingly harboring the terrorists. Any use of force in self-defense would have to be roughly proportional to the use of force defended against."

Gregory H. Fox of the Chapman University School of Law was the first to respond, addressing his comments to the United States' intention to not distinguish between the perpetrators of the acts and the states that harbor them. Fox argues that the self-defense justification for armed reprisals could not be used to support retaliation against "harbouring" states. He points to an 1985 Israeli bombing of PLO headquarters near Tunis, Tunisia, which the Israeli government tried to justify to the Security Council on the grounds that: "A country cannot claim the protection of sovereignty when it knowingly offers a piece of its territory for terrorist activity against other nations…".

According to Fox, "The Security Council evidently rejected this claim and voted in Resolution 573 to condemn the Israeli action by a margin of 14-0, with the United States abstaining. The resolution condemned 'vigorously the act of armed aggression perpetrated by Israel against Tunisian territory in flagrant violation of the Charter of the United Nations, international law and norms of conduct.' It described the air raid as a 'threat to peace and security in the Mediterranean region.' The resolution further requested UN member states 'to take measures to dissuade Israel from resorting to such acts against the sovereignty and territorial integrity of all States.' Finally, it stated 'Tunisia has the right to appropriate

reparations as a result of the loss of human life and material damage.'

Professor Jordan Paust of the Law Center of the University of Houston weighed in on the issue of whether the US was "at war", concluding that: "Under international law, we could not be at 'war' with an entity that has a status less than that of an insurgent, … We would clearly be at 'war' if we are fighting a 'belligerent' …We could also be at war with a state (e.g., Iraq) or nation … We could not be at 'war' with Osama bin Laden, since he and his entourage are in no way representatives or leaders, *et al.*, of an 'insurgency' within the meaning of international law. He is also not a recognized leader of a 'nation'. 'belligerent', or 'state. We are in fact engaged in an armed conflict of an international character with Iraq, a continual use of force during which all laws of war apply even though there is no formal U.S. declaration or recognition of "war".

He adds: "Assassination during an armed conflict is a war crime, subject to universal jurisdiction and nonimmunity from criminal or civil sanctions. … '[P]utting a price upon an enemy's head, as well as offering a reward for an enemy 'dead or alive" is a war crime. In times of armed conflict or relative peace, assassination is also impermissible extra-judicial killing that constitutes a serious violation of customary and treaty-based human rights law, also implicating universal jurisdiction and nonimmunity.

On the scope under UN Charter Article 51 for military response, Paust conludes that: "In case of an armed attack or process of armed attacks on the United States, whether or not a war or armed conflict exists, the targeting of nonstate or state leaders and entities in charge of or directly engaged in the attack is a permissible measure of self-defense … A self-defense military mission to capture and arrest those ordering and directly engaged in ongoing processes of attack would also be permissible under the Charter."

John Cerone, Executive Director of the War Crimes Research Office at American University Washington College of Law, comments on the issues of state responsibility and individual criminal responsibility under international law, finding that since "it appears that the acts were committed by non-state actors, novel legal issues arise. … [While it] is clear that the individuals who perpetrated the attacks committed a crime under international law… [this fact] is separate from the questions of whether those attacks were acts of war or whether any state bears responsibility for the acts of the perpetrators. … While there is some historical precedent, the law is far from clear in such a situation. At the same time, it is necessary to bear in mind that international law is highly adaptive and subject to dynamic interpretation."

Cerone recognizes that while the Geneva Conventions "do not speak in terms of war", *but of* "armed conflict, … the Conventions themselves do not set forth a definition for armed conflict." *He finds that since the* "US considers itself to have been the victim of an act of war", *and* "NATO has determined that the US has been subjected to an armed attack", *and if* "the US responds with armed force" *rather than responding to these events* "with a purely criminal justice approach, … then it may amount to armed conflict". *The implications of this conclusion are that* "The laws of war would place additional legal restraints on the US in the conduct of its operations and in its treatment of the perpetrators."

On the question of the US' right to pursue military counter-measures against those who "harbour" the perpetrators, Cerone finds that the US may use a self-defence justification only if it is able to "first establish that the state against which it is taking counter-measures has committed an internationally wrongful act" *and even then* "such counter-measures must be proportionate and may not involve the use of armed force."

In addressing the question of when a state has committed a wrongful act, "responsibility of a state can arise with respect to the acts of non-state actors … [for example] if a state is harboring one or more of the terrorists, [in which case] it will be in breach of its international legal obligation to prosecute or extradite the offender(s). Such a breach would entitle the US to take proportionate counter-measures, not involving the use of force, against the offending state." *Furthermore, while a state* "may be treated as having committed the acts perpetrated by the non- state actors. … mere inaction would likely be insufficient to give rise to state responsibility for the acts in this case. … [I]nternational law, and human rights law in particular, is moving toward lowering the threshold for holding states accountable for the failure to prevent violations by non-state actors."

*Cerone concludes by finding that: "*If the acts committed were acts of war, and if states harboring perpetrators may be deemed to be themselves perpetrators, then the legal groundwork has been established for the use of armed force against those

states. The use of these phrases is part of the process of developing international law, and specifically, of adapting it to the changing nature of warfare."

The final commentary came from Arnold N. Pronto, of the Office of Legal Affairs of the United Nations. Pronto directed his comments to the legal framework for prosecuting the acts as hijackings, highlighting the difficulties created by the unprecedented use of the highjacked aircraft as weapons of broader destruction. He points to wording contained in the International Convention for the Suppression of Terrorist Bombings (1997) *arguing that it is* "not too much of a stretch to consider a plane filled with tons of jet fuel and used as an explosive missile as an 'explosive device' within the scope of article 2." *Of further relevance is that the treaty's* "scope also covers attempts, and those participating in the acts as accomplices or by organizing or directing others to commit such acts, and even includes groups of individuals linked to the act by a common purpose."

Pronto concludes on the framework for combating the international support networks of terrorists, referring in particular to International Convention for the Suppression of the Financing of Terrorism*, which does not* "focus on any one particular manifestation of terrorism (hijacking, bombing etc.), but rather is aimed at those individuals that 'by any means, directly or indirectly, unlawfully and willfully, [provide] or [collect] funds with the intention that they should be used' to commit terrorist acts (article 2). … The treaty … includes the now 'standard' anti-terrorism provisions, but also contains new provisions specific to the financing of terrorism with a view to providing States with the capability to counter these vast networks which commonly traverse two or more international boundaries." *While the Financing of Terrorism treaty is not yet in force, Pronto hopes that when it does enter into force it will* "provide States with further muscle in the fight against terrorism."

The CCIL invites its members to join this discussion, and many others, by sending comments for publication in the Bulletin *or on the CCIL website.* ≺

New CCIL Editorial Board

As part of ongoing efforts to deliver value-added information services to the Canadian international law community, the CCIL intends to establish later this fall a National Editorial Board. The role of this Board will be to facilitate the creation of international legal information, both informational and substantive, for publication by the Council in both electronic and print formats. The Board will also be asked to explore ideas for developing entirely new publications containing international legal analyses.

The CCIL encourages members from all regions of Canada, both student and non-student, representing all specialties in international law, to participate on the Board as editors. Depending on policies in effect at various universities across Canada, some student Board members may be able to obtain academic credit for their participation.

More information about this initiative will be made available on the CCIL Website in the coming weeks. An information session will be held at the 2001 Annual Conference in October, details of which will be released in future versions of the programme. In the meantime, any questions about participating on the Board can be addressed to <bulletin@ccil-ccdi.ca>.

Au Calendrier/Upcoming Events

September 30 - October, 5, 2001

The World Jurist Association is holding its *Twentieth Biennial Conference on the Law of the World* in Dublin and Belfast. The proposed conference theme is *Friendship, Cooperation and the Rule of Law,* and panels will cover issues such as internet regulation, environmental law, and the interplay between law, ethics and religion, among others. More information on the conference, including details on registering, is available on WJA's web site at:
<http://www.worldjurist.org>.

October 25-27, 2001

The American Branch of the International Law Association will hold an International Law Weekend 2001 at the Association of the Bar of the City of New York. The theme will be *International Law Odyssey 2001: Beyond the Limits*. To propose a panel topic, contact Valerie Epps by phone at 617-573-8562, or by email at <vepps@acad.suffolk.edu>. Further details will be available later in the summer as they become available. See:

<http://www.ambranch.org/2001weekend.htm>. ≺

Stephen Toope: International Lawyer, Scholar and Role Model

***Dominic Thompson**[*] spoke with interim CCIL President Stephen Toope to get a sense of the background and vision that he brings to the leadership of the organization.*

In any field, role models are important. For those interested in international law, Professor Stephen Toope is an excellent person to look to for his accomplishments in writing, teaching, and consulting.

Professor Toope teaches at the McGill Faculty of Law, which he joined in 1987. He is co-director of the Institute for European Studies, acts as an advisor to various departments of the Government of Canada, as well as being the interim President of the CCIL. His areas of expertise are public international law, legal theory, human rights, international dispute resolution, and family law. In 1994, Professor Toope became Dean Toope, a title that he kept until 1999. He was the youngest dean in the faculty's history.

Stephen Toope was always at the top of his class. As an undergraduate he attended Harvard University on a full scholarship and graduated *magna cum laude* in 1979. At Harvard he studied English History and Literature and was on the Dean's list for all four years. Upon completing this degree, he knew that he wanted a career in academia and considered doing doctoral work in history. Instead, he chose to pursue law and returned to Canada to study at McGill.

At McGill he was equally impressive winning a series of prizes in essay writing, constitutional law, jurisprudence, and international law, as well as the James McGill Award. He studied under Professor Ivan Vlasic who he cites as one of his major influences.

He was awarded a PhD. from Cambridge University in 1987. Another one of Professor Toope's influences was his thesis director at Cambridge, Professor D. W. Bowett, who he describes as "great and thoughtful, all you would want in a thesis advisor".

In 1986-1987 he served as Law Clerk to Chief Justice Brian Dickson of the Supreme Court of Canada. As an influence beyond the field of international law, Professor Toope praises Dickson for both his excellent instincts and his innate understanding of the complex relationships of law and society.

Throughout his career, Stephen Toope has been a prolific writer. His many articles have won awards from such groups as the American Society of International Law and the Canadian Tax Foundation. He has published extensively on both international and family law but now devotes all of his time to the former. His passion is international legal theory and more specifically, the interplay between international and domestic law and how international law influences domestic law. He is also interested in issues of state responsibility, human rights law, environmental law, and is trying to learn more about the increasingly important area of international trade law.

Presently, he is working with Jutta Brunnée from the University of Toronto on the question of what we mean when we say that international law is binding. He is also examining the role of customary law in domestic law.

Professor Toope has worked as a consultant for the Department of Foreign Affairs and International Trade, the Department of Justice, and for the Canadian International Development Agency. He has also given human rights seminars for government officials in Canada, Malaysia, Singapore, and Indonesia. He was a member of the United Nations observer delegation to the first post-apartheid South African elections. Of his skills in the field, a colleague who worked with him in Indonesia said that his most impressive skill was his thoughtful and direct questioning that was so effective in getting people to open up and tell their stories.

I asked Professor Toope about what he thinks the short-term challenges in international law might be. He pointed to two. The first challenge is the seeming withdrawal of the United States government from the frameworks of international law. While he is uncertain if this will be a long-term phenomenon, it could have damaging consequences.

A second challenge is to get international lawyers to think strategically about how international law influences international actors. This is the focus of his project with Professor Brunnée.

Regarding Canada's role in international law, Professor Toope is concerned that Canada is not playing a leadership role in those areas where it could.

[*] Dominic Thompson is a third year common law student at the University of Ottawa.

Canada no longer has a leading role in environmental issues. For the past seven to eight years it has had a stand-pat position on human rights, compared to the leading role it had fifteen years ago. In trade, Canada is pre-occupied with issues concerning bi-lateral trade with the United States, and thus pays far less attention to how trade affects many developing countries.

While there are many individuals playing important roles in and out of government, he is somewhat disappointed by the lack of government leadership and sense of stasis in government activities.

I asked Professor Toope what advice he has for those interested in or working in international law. He said that this is an exciting time for international law. While all times are times of change, the rate of change today in this field is especially striking. He points to three examples; first that international law is playing an ever increasing role and penetrating domestic legal systems more than ever. Second, he cites the anti-globalisation movement and asks whether it is possible to vest democratic control internationally. Finally, he points to the changing relationship between international organizations and states.

Professor Toope shares his life with his wife Paula Rosen and their three children aged nine, six, and four. His interests beyond law and family are in contemporary fiction and modern architecture. ∢

Profile: Pearson Peacekeeping Centre

The mission of the **Pearson Peacekeeping Centre** (PPC) is to support Canada's contribution to international peace, security and stability through research, education and training in all aspects of peacekeeping. The PPC is the only peacekeeping institution where both military personnel and civilians train together, a true reflection of the changing face of peacekeeping. Guided by President Alex Morrison, who has held the position since October 1994, the PPC has assumed a leadership role in peacekeeping and related activities.

The PPC fulfills its vision as the pre-eminent international institution in support of modern peacekeeping primarily by conducting roundtables, research, seminars, and courses. Programs are presented in English and selected courses are also offered in French and Spanish at our Nova Scotia campus or at our Montreal office. The PPC also sponsors other activities including field research and interviewing programs involving peacekeepers throughout the world. The PPC has developed an Internship Program offering a unique atmosphere with courses developed to support the New Peacekeeping Partnership.

In order to maintain its position, the PPC has several departments designed to respond effectively to the challenges, opportunities and needs of its clients. Those departments are as follows:

⇒ ***New Projects Department***: develops new educational products for the PPC. It is in charge of proposal design and is also responsible for responding to requests for specialized research or customized training programs in all areas related to peacekeeping.

⇒ ***The Publications Department***: consists of the *Canadian Peacekeeping Press* and publishes books, booklets, periodicals, annual reports, and other informative material on peacekeeping. The *Canadian Peacekeeping Press* publishes a bi-monthly journal, *Peacekeeping and International Relations,* which is distributed to over 30 countries by subscription.

⇒ ***The PPC Library:*** serves as Canada's foremost resource centre on peacekeeping. The library is dedicated to the promotion, development and support of library and information services on all aspects of Canadian and international peacekeeping, and plays a major role in the promotion of information services for the New Peacekeeping Partnership.

⇒ ***Programs Department:*** supports the PPC's wide range of activities by carrying out research into topical issues and plays an integral role in developing new modules of instruction for existing courses as well as new courses. It also assists in the design, development, delivery and management of round tables, seminars and exercises.

A permanent core of individuals from both civilian and military backgrounds as well as a wide selection of non-permanent faculty members ensure that the PPC's programs remain up to date.

COURSES OFFERED

Courses are offered both on-site and overseas by both military and civilian teachers. The courses are adapted to different levels of qualifications, from introductory courses focused on the basics of peacekeeping to more specialized ones with advanced instruction. A brief synopsis of the main courses follows:

- ***The New Peacekeeping Partnership in Action:*** Participants are introduced to the concept of the New Peacekeeping Partnership, describing the aims, roles, and strengths of each partner through the spectrum of conflict. It explores the ways in which members of the New Peacekeeping Partnership can coordinate their efforts to maximize their collective and individual effectiveness.

- ***Creating Common Ground:*** (Peacekeeping Negotiation). The course has a skills-development focus for a peacekeeper operating in the field. The participants will gain (through analysis), intensive practice and simulation exercises and the necessary theoretical grounding and practical skills to permit them to negotiate effectively in a peacekeeping situation.

- ***Myths and Reality: The Legal Framework of Modern Peacekeeping***: All activities of the New Peacekeeping Partnership take place within a framework of international organizations, charters and bodies of international law and conventions. This course describes and explores relevant issues arising from the continued evolution of the major areas of international law affecting peacekeeping.

- ***The Humanitarian Challenge: Refugees and Internally Displaced Persons:*** Key issues related to refugees and displaced persons in complex emergencies are examined. Participants analyze both the causes and the dimensions of large-scale human displacement and gain an understanding of the refugee-related roles and approaches of the United Nations and other international institutions.

- ***Live, Move and Work: Technology and Engineering in Modern Peacekeeping:*** The way in which engineering and technology are applied to peacekeeping missions greatly affects how well both peacekeepers and the people whom they help, live, move and work during times of conflict. Technology is an indispensable tool for many engineering projects and for other essential mission tasks.

- ***La Coopération Interdisciplinaire:*** This course, offered in French, provides members of the various disciplines of peacekeeping with the knowledge necessary for an efficient collaboration within the New Peacekeeping Partnership.

- ***Hard Road Home: Disarmament, Demobilization and Reintegration:*** This course covers the often difficulty issues of how to provide a future for those accustomed to fighting and avoiding renewed violence.

- ***Peacekeeping Dimension of Maritime Operations:*** Participants in this course are provided a thorough understanding of the principles and techniques used to effectively utilize sea power in the context of peacekeeping.

- ***Human Rights in Modern Peacekeeping:*** This course is an overview of the key aspects of international human rights laws and studies the contemporary issues facing this vital area. It also introduces ways that the New Peacekeeping Partnership can support the strengthening of human rights norms.

- ***Libres et Égaux : Les droits de la personne et le maintien de la paix:*** The course, in French, is structured to provide peacekeepers in all areas with an understanding of how human rights affects their work.

- ***Civil-Military Co-operation in Modern Peace-keeping:*** The course covers the issues and skills of concern to field and mission level civil-military operations staff and operators. It also provides relevant background in political and strategic issues pertinent to today's peacekeeping.

- ***Issues in Modern Peacekeeping:*** This is a four-week, advanced course that provides a comprehensive perspective on key issues in modern peacekeeping appropriate The course includes a field study trip to an active peacekeeping mission in order to experience first-hand how current peacekeeping issues are being handled.

Peacekeeping missions in recent years have become increasingly complex on many fronts and the skills required to meet the challenges are as diverse as the missions themselves. The men and women who are involved in peacekeeping come from varied backgrounds; military personnel work alongside trained professionals from both the public service and private business. As the leader in its field, the Pearson Peacekeeping Centre understands the nature of peacekeeping in today's reality. ∢

COMPLIANCE MATTERS

Recent Developments Relating to Compliance under Multilateral Treaties in the Area of Disarmament and International Security

• *THE MARKLAND GROUP* •

Edited by Douglas Scott*

I. IMPROVING U.N. SANCTIONS

Security Council Debates Time Limits for Future Sanctions

The following is one of a series of reports by the Markland Group on efforts to improve U.N. sanctions. Previous reports can be seen in our newsletter, *Compliance Matters*, issues 8 and 9.

At the instigation of Canada (during its term as president of the Security Council in 2000), the Security Council established a *Working Group on General Issues on Sanctions.* The Group was mandated to "examine, inter alia…[the] design of sanctions [generally] including the conditions for the maintaining/lifting of sanctions…". One of the proposals discussed by the *Working Group* would have the Group recommend to the Security Council that "sanctions be imposed for limited periods of time taking all factors into account, and renewed by decision of the Security Council…"

Until recently, no Council resolution establishing a sanction regime contained a time period during which the sanction would operate. Accordingly, once a sanction regime was established, any move to terminate it could be vetoed by any member of the P-5. Because of the veto therefore, while it was always difficult to establish a sanction regime, once established, it was even more difficult to get rid of it. This situation has given rise to numerous objections.

The proposal quoted above was intended to rectify this problem. It was one of several proposals contained in a draft report prepared by the chairman of the *Working Group* for consideration by its members. Although not officially released, a document purporting to be a copy of the draft report, prepared by the Group's chairman, Ambassador Chowdhury, has appeared on the Internet (http://www.cam.uk/societies/casi/info/scwgs140201.html). As of this writing, the draft report has failed to achieve consensus among the members of the Group.

The *Working Group* was comprised of all the sitting members of the Security Council. It was established pursuant to a "President's Note" (S/2000/319) on 17 April 2000, as a result of the initiative of Canada's ambassador Robert Fowler in his role president of the Security Council. The group was created "on a temporary basis" and was mandated to present its report on 30 November 2000. This date was extended to December 2000 and subsequently it was extended indefinitely.

In our discussions with persons acquainted with the work of the *Working Group*, one of the reasons suggested for the failure of the draft report was the reference to time limits. This conclusion needs to be matched against the Security Council's recently adopted practice of attaching time limits to its resolutions on sanctions.

The first time this occurred was in May 2000 when the Council adopted resolution 1298, which imposed an arms embargo on Eritrea and Ethiopia. Specifically, the resolution provided that the sanctions "are established for twelve months and that, at the end of that period, the Council will decide whether the governments of Eritrea and Ethiopia have complied with paragraphs 2, 3 and 4 above, and, accordingly, whether to extend these measures for a further period with these same conditions". Similar time limits have appeared in three subsequent resolutions, the latest being resolution 1343 adopted in March 2001 imposing sanctions on Sierra Leone and Liberia. Furthermore, these four resolutions represent all the new sanction regimes established by the Security Council since May 2000.

The Council has thus made it clear that it is not opposed to time limits in principle. Accordingly, to say (as was suggested above) that the reason for the rejection of Chowdhury draft was its reference to time limits needs to be nuanced. The Council has

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demonstrated that it is prepared to accept a time limit if the occasion for it arises, but it is apparently not prepared to accept a resolution that would place a restraint on its freedom to decide such issues.

On the other hand, the language used in the four resolutions referred to indicates that the Council, in addition to putting in place a limited-term sanction regime, also stipulated that, upon its expiry, any subsequent sanction adopted must itself be limited to "a further period with the same conditions". This certainly looks like a restraint on the Council's freedom to decide, although not as sweeping as that contemplated by the Chowdhury draft.

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II. Chemical Weapons Convention

The Protection of Confidential Information under the Chemical Weapons Convention

With its highly intrusive verification provisions and state-of-the-art confidentiality regime, the *Chemical Weapons Convention* (CWC) is showing signs of strain in its fourth year since entry into force. According to Jonathan Tucker of the *Center for Nonproliferation Studies* at the *Monterey Institute of International Studies*, the delicate balance struck by negotiators between transparency and confidentiality is being tipped in favour of the protection of confidential information "with the unfortunate result of eroding the intrusiveness of the CWC verification regime".[1]

"With its highly intrusive verification provisions and state-of-the-art confidentiality regime, the *CWC* is showing signs of strain in its fourth year since entry into force."

The Director-General of the Organisation for the Prohibition of Chemical Weapons (OPCW) has reported that during some routine inspections of Schedule 1 facilities, the access of inspectors has been restricted.[2] He has also voiced his concern that some States Parties have adopted narrow interpretations of the CWC's declaration requirements in order to protect certain industrial facilities from making declarations and from undergoing routine inspections. The Director-General has referred to the above practice as protectionism which creates an uneven playing field within the chemical industry and allows for the possibility of large amounts of scheduled chemicals to go unreported.[3]

The apparent concern for the loss of confidential information does not appear to be coming from the chemical industry. Indeed, Frederick Webber, President and CEO of the *American Chemistry Council* stated in November, 2000 that the US Chemical Industry has "been very encouraged by the demonstrated effectiveness of protection for confidential business information implemented under the CWC".[4]

It is unlikely that the measures discussed above are even indicative for the most part of a genuine concern among governments of States Parties of the loss of highly sensitive information. Rather, it would appear that some States Parties are interpreting confidentiality provisions in such a way so as to reduce the intrusiveness of the Convention's verification regime. In addition, States Parties appear to be "abusing" the confidentiality provisions in order to prevent even the release of non-confidential information to the public. According to the Director-General, this is done in most cases for "reasons of political convenience".[5]

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[1] Jonathan Tucker, "The Chemical Weapons Convention: Has it Enhanced U.S. Security?" *Arms Control Today*, April, 2001.

[2] Opening Statement by the Director-General to the Executive Council at its Twenty-Fourth Session, The Hague, April 3, 2001, para. 14. Available online: at <http://www.opcw.nl/speeches/DG_statement_to_24th_EC.html>.

[3] Opening Statement by the Director-General to the Conference of State Parties at its Sixth Session, The Hague, 14 May, 2001, para. 31. Available online at: <http://www.opcw.nl/speeches/DG_statement_CSP_VI.htm>.

[4] Frederick L. Webber, "A US Industry Perspective on the Implementation of the Chemical Weapons Convention", *3 Synthesis*, November, 2000, pp.16-18.

[5] Opening Statement by the Director-General to the Conference of State Parties at its Sixth Session, The Hague, 14 May, 2001, para.54. Available online at: <http://www.opcw.nl/speeches/DG_statement_CSP_VI.htm>.
Amy Smithson reports that the U.S. did not give Technical Secretariat consent to be named as a chemical weapons possessor in an early OPCW press release even though it was already a matter of public record and that India also refused consent to be named as a possessor even though it issued its own press release stating as much. See Amy E. Smithson, "Rudderless: The Chemical Weapons Convention at 1 1/2", Report No. 25, (Washington, D.C.: The Henry L. Stimson Center, September 1998), p. 41-2. Available online: <http://www.stimson.org/pubs/allpubs.htm>.

III. BIOLOGICAL WEAPONS CONVENTION

Search for BWC Protocol Collapses

By Sean Howard, Ph.D.*

Efforts to elaborate a sorely needed verification and compliance regime for the *Biological Weapons Convention* (BWC) have collapsed in disarray. Since January 1995, an Ad Hoc Group (AHG) of States Parties to the Convention has been meeting in Geneva, charged with preparing a compliance Protocol for submission to the Fifth BWC Review Conference, scheduled for November 19-December 7 this year. By the opening of the AHG's 24th and final session, delegations were set to consider a compromise 'composite text', introduced by the Chair, Ambassador Tibor Tóth of Hungary. Before negotiations could resume, however, the United States announced its withdrawal from discussions. Addressing delegates on July 25, Ambassador Donald Mahley declared that the US's objections ran deeper than specific flaws in the composite text, extending to the very concept of reaching agreement on any Protocol. Rather than offering delegates alternative textual suggestions, the US is promised a new approach to the issue. Faced with this stark position, the AHG soon decided it could not proceed with discussions on a text. The remainder of its session was taken up with efforts to draft a report for the Fifth Review Conference. In the early hours of August 18, the attempt was abandoned, bedeviled by the insistence of some states that the US be singled out for blame, and the refusal of the US to accept any description of developments at the 24th session.

It would be wrong to give the impression that the United States dashed agreement from the grasp of the AHG. Major differences remained to be bridged, unlikely to be satisfied by the composite text. When should the Protocol enter into force? Should the agreement encourage technology transfers and lead to an overhaul of existing export control arrangements? Under what circumstances should inspections be initiated, and what should be their extent and duration? How should States Parties respond to cases of alleged or exposed non-compliance? Nor should US concerns be dismissed as groundless. Might not the Protocol, as Mahley warned, degenerate into a "trade treaty", used by some states as a mechanism for gaining long-denied access to advanced biotechnology? Might not inadequate inspection procedures lend a sense of false assurance to the regime? There was, indeed, a lack of consensus in the AHG on any of these issues. What disturbs all other participants, however, is Washington's 'double-rejection', of process in addition to product. Without a continued commitment to multilateralism, many are asking, what hope remains for effectively revisiting the issue? Attempts to get the process back on track before or during the Review Conference will certainly pose a stern test of political will.

"Might not the Protocol, as Mahley warned, degenerate into a "trade treaty", used by some states as a mechanism for gaining long-denied access to advanced biotechnology?"

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