LIU INSTITUTE FOR GLOBAL ISSUES

Canadian Red Cross

ON THE EDGES OF CONFLICT

CONFERENCE REPORT

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MODERATED BY

Prof. Benjamin Perrin, Conference Chair
University of British Columbia

INTRODUCTION

A great deal has changed since the birth of the modern humanitarian movement in 1859 when Henry Dunant, who would go on to create the Red Cross, witnessed the heart-wrenching suffering of the Battle of Solferino. One hundred and fifty years later, the Edges of Conflict project is working to better understand the changing nature of armed conflict and improve respect for the rule of law in complex security environments.

PROJECT OVERVIEW
Phase 1: Identifying Priority Areas
Phase 2: Conference Session Summaries

OBJECTIVE

The Edges of Conflict project was launched in 2007 as an innovative partnership between the Canadian Red Cross and the Centre of International Relations, Liu Institute for Global Issues, at the University of British Columbia, funded by Canada's Department of Foreign Affairs and Department of National Defence.

The primary objectives of the Edges of Conflict initiative are to:

1. Examine and debate contemporary challenges of armed conflict;

2. Develop new conceptual approaches, policy recommendations and areas for further research to address the challenge of the changing nature of armed conflict on international humanitarian law; and

3. Raise awareness of contemporary conflict issues, build Canadian capacity and ensure policy coherence by engaging a wide range of Canadian and international actors.

PHASE I: IDENTIFYING PRIORITY AREAS

September 2007- March 2008

Phase I of this project involved a "fast talk" consultation of several leading experts in January 2008 to identify priority areas for research. This led to the commissioning of five research papers that were published on the project website in March 2008: **http://www.edgesofconflict.com**. Through this initial round of research activity, a clear focus for further research emerged.

First, the proliferation of non-state actors operating in conflict and post-conflict environments is taking place on a vast scale, to an extent not envisaged when the 1949 Geneva Conventions and 1977 Additional Protocols were adopted, namely: (a) numerous humanitarian organizations operating with diverse mandates, (b) private security and military contractors hired by a wide array of clients, and (c) non-state armed groups that often deliberately violate basic norms of international humanitarian law. The interplay between these non-state actors, as well as with state armed forces, raises particularly complex challenges that concepts like "humanitarian space" and counter-insurgency doctrines have attempted to address. The co-existence of these actors in modern armed conflict environments is a central focus of this project.

Second, the growth of widespread forms of violence affecting civilians that may not fall within the definition of an "armed conflict", as is necessary to engage international humanitarian law, has also spread (i.e. endemic urban violence and low-level insurgencies).

These developments since the end of the Cold War are particularly relevant to Canada, given increasingly significant overseas missions involving the Canadian Armed Forces in countries such as Afghanistan and Haiti, as well as the multiplicity of humanitarian organizations based in Canada that operate in conflict and post-conflict environments around the world. As a result, this project is directly relevant to building Canadian-capacity to address these challenges, while providing policy-relevant outcomes to pertinent global efforts.

PHASE II: RESEARCHING & DEBATING ALTERNATIVE APPROACHES, INTERNATIONAL CONFERENCE

March 2009

The major undertaking of Phase II was the planning and hosting of an international conference, March 29-31, 2009 in Vancouver, British Columbia. Experts from across Canada, Switzerland, Uganda, Sierra Leone, the United States and the United Kingdom participated in this Edges of Conflict conference to share their current research and views on the project's priority areas, identified in Phase I (see Appendix for detailed conference program and list of participants).

The *Edges of Conflict* conference was highlighted by a special panel on Afghanistan as a complex humanitarian and security environment, followed by thematic panels addressing: the proliferation of non-state armed groups and improving their compliance with international humanitarian law; issues related to the use of private military and security companies for defensive armed protection by humanitarian organizations; challenges presented by diverse approaches to the delivery of humanitarian relief, assistance and development by humanitarian organizations versus state armed forces; and approaches to enhance the protection of civilians in situations of endemic urban violence. Each panel of experts was asked to identify any gaps or challenges in the implementation and enforcement of the applicable legal regime, and recommendations to address the most pressing challenges presented by the subject area. A summary of each of these panels appears in this report to provide further information about the conference deliberations.

CONFERENCE OVERVIEW: POINTS OF CONSENSUS AND POINTS OF DISAGREEMENT

Emerging from the conference as a whole, there were several significant points of consensus and disagreement.

Traditionalist or classical approaches to international humanitarian law have become outmoded in many situations and have frequently failed to deliver on their objectives of mitigating unnecessary suffering and protecting civilians and civilian objects. Gone are the days when armed conflict was contested between relatively evenly-matched professional armies of sovereigns, under the command of gentlemen generals – if such a romanticized view of war ever truly existed. The archetypical armed conflict of the early 21st century is asymmetrical and protracted, fought by an array of armed groups on both physical and political battlefields, and causes disproportionate suffering and death to civilians. Restoring peace and security in these divided societies requires democratic development and respect for the rule of law. Non-state armed groups threaten these pre-conditions.

A tectonic shift in the identity and scope of actors involved in contemporary armed conflicts has taken place in recent decades. As a result, laws designed to address the problem of international armed conflict between states are the most advanced, but such conflicts are becoming increasingly rare in proportion to non-international armed conflicts that encompass a new range of players that are involved in perpetuating widespread violence for various motivations. Not only has the proportion of non-international armed conflicts been increasing over the last two decades, but so has the number of non-state armed groups that are active in individual conflicts.

Law that is known, agreed to, and has an enforcement mechanism is more likely to be respected than law that is unclear, unilaterally imposed, and lacks a means of ensuring compliance. In many instances, each of these elements is problematic in contemporary armed conflicts and post-conflict environments. Attempting to enhance compliance with humanitarian law by state and non-state actors that see little prospect of its independent enforcement has rekindled calls for greater emphasis on the concept of reciprocity as a means to ensuring proper conduct. However, recourse to reciprocity in this way has been questioned on both empirical and ethical grounds. Engaging non-state armed groups directly to secure their commitment on key standards, developing a "culture of compliance" and fostering ownership of international humanitarian law standards were all proposed alternatives to addressing violations perpetrated by non-state armed groups. However, it was also generally agreed that some non-state armed groups will simply have no interest in respecting international humanitarian law, and there could be serious ethical problems with validating such entities through meetings and negotiations. These discussions opened some new questions for consideration, including: What is the effectiveness of alternative approaches to enhance compliance by non-state armed groups with international humanitarian law? What criteria should guide the decision to engage a non-state armed group in a program to enhance international humanitarian law compliance, and under what terms and conditions?

As non-state actors have multiplied in their scope and activities, new questions have been raised with respect to threshold issues concerning the status and obligations of non-state actors under international law (including international human rights law, international humanitarian law and international criminal law). A number of these concerns were examined in detail and some preliminary answers were vetted. For example, regardless of the advisability of the practice, there was some agreement on the proposition that humanitarian personnel and objects do not legally lose or have their protected status as civilians suspended if they resort to defensive armed protection by private military and security contractors, unless and until such time as they take acts hostile to one of the parties to the conflict. Importantly, legitimate self-defence against an imminent unlawful attack by a party to the conflict should not be considered as directly participating in hostilities.

However, more significant in the lives of those affected by armed conflict than the law in the books is practice in the field. Inter-disciplinary and multi-sector approaches to meeting the original objectives of international humanitarian law are being developed. Diverse initiatives to directly engage non-state armed groups, private military and security contractors and humanitarian organizations in improving respect for international humanitarian law have significant potential to improve the lives of civilians caught up in situations of armed conflict. Addressing endemic urban violence through alternative legal regimes and policies was viewed by many participants as necessary, particularly given that international humanitarian law largely contains rules that legitimize violence (i.e. proportionality, collateral damage) and could do more harm than good in seeking to address the problem of urban violence. Instead, alternative approaches seek to address the root causes of the problem of urban violence, such as improving the arms trade regime to stem the flow of illegal firearms used by street gangs, enhancing training and monitoring of use of force by law enforcement, and greater use of stabilization programs to foster resilience in communities.

Numerous experts participating in the Edges of Conflict conference emphasized the need to re-focus global efforts on the protection of civilian populations from the often generational impact of armed conflict and violence, rather than focusing on actors perpetuating harm or others seeking to provide relief and assistance. For example, the debate around the concept of "humanitarian space" frequently reaches a dead end with humanitarian organizations insisting that aid delivery be exclusively civilian in character (respecting core principles of neutrality, independence and impartiality), while modern counter-insurgency doctrines view the delivery of aid and development by uniformed military and affiliated entities as a means of achieving peace and security. International humanitarian law, unfortunately, does not provide clear-cut answers to some of the most problematic aspects of this reality

on the ground. On one hand, state armed forces are obliged to provide such aid, but on the other, there is a need for non-discriminatory delivery of assistance and providing humanitarian access for aid that is neutral, independent and impartial. It is hoped that a sharper focus on civilians as the beneficiaries of humanitarian aid and protected status from attack will provide an alternative paradigm to consider the challenges of delivering such aid in the midst of a complex environment.

MODERATED BY

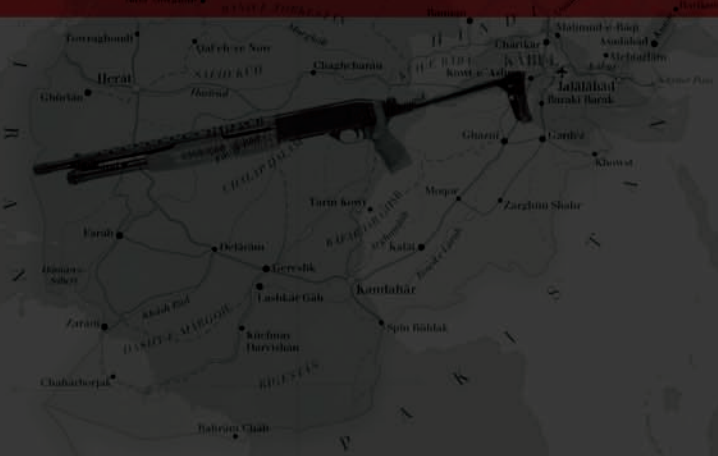
Vice-Admiral Larry Murray (Retd.)
Trudeau Foundation Mentor

PANELISTS

1. Taylor Owen, Trudeau Foundation Scholar
2. Emily Paddon, Trudeau Foundation Scholar
3. David Morley, CEO, Save the Children Canada
4. Brigadier-General Guy Laroche, Commander of Land Forces Quebec Area and Joint Task Force East, Former Commander of Joint Task Force Afghanistan
5. Sam Millar, Director of Policy, CIDA Afghan Task Force
6. Paul Wells, Senior Columnist, Maclean's Magazine

Note that Brigadier-General Ken Watkin (JAG) joined the panel for the question and answer period.

A CASE STUDY:
Afghanistan & The Changing Nature of Armed Conflict



Afghanistan is a compelling case study in which the changing nature of armed conflict has stretched and, at times, challenged the assumption and principles of international humanitarian law.

As part of the strategy to win "hearts and minds" in Afghanistan, the Canadian Armed Forces together with their allies have integrated military and security activities with humanitarian and development work. Private security and military companies are active throughout the country, working for a diverse array of clients, including humanitarian organizations. Non-state armed groups and terrorist activities abound, and increased levels of urban violence threaten the prospects of peace and stability.

Under international law, armed groups are not to target humanitarian workers or civilians – but non-state armed groups in Afghanistan are neither intimidated by local law nor international humanitarian law. How to make them conform to international humanitarian law and bring safety to humanitarian workers is an ongoing issue.

The Edges of Conflict project will use Afghanistan as a case study to illuminate the conference themes relating to non-state actors, private military and security companies, humanitarian space, and urban violence.

TAYLOR OWEN
Trudeau Foundation Scholar

The panel intended to use Afghanistan as a case study for the new challenges faced by the international community and in armed conflict. Canada, the USA and the UK have all stated that they are not just fighting a war in Afghanistan but merging disparate areas of international engagement.

The panellist argued that the concept of 'integration' – known alternatively as 3D (defence, diplomacy and development), Whole of Government (WoG), Joined Up– is not a new phenomenon. Integration is important because of the complexity and nature of armed conflict, the diversification of actors and actions involved and the comprehensive objectives in military missions. Integration is being done by NATO partners in Afghanistan (Canada, US, UK, Netherlands), as well as by other government, regional and international institutions and the UN's Joint Coordination and Monitoring Board and the Peacebuilding Commission.

Owen commented that while integration in Ottawa first arose in Martin's white paper, it has survived political change. The Conservative government has adopted the WoG strategy. He pointed to a number of examples of integration in Afghanistan, including: the reopening of embassy in Kabul in 2003, the decision to go to Kandahar in 2005 and the formation of the Provincial Reconstruction Teams (PRT).

The panellist drew attention to the Manley Panel's criticism of the strategic objectives of the mission in Afghanistan. Lack of coordination in military and civil programs led to broader problems in the mission beyond on-the-ground operations. This report led the government to make a number of structural changes.

EMILY PADDON
Trudeau Foundation Scholar

Paddon identified three central challenges of integration in Afghanistan. These challenges are a lack of consensus in Canada about the integration strategy, a lack of international coordination and a lack of clarity about the role of humanitarian actors in this approach.

While some feel Canadian integration is not achieving the goal of joint decision making, others feel the visions of various stakeholders have begun to converge. Yet another view is that integration has begun to happen in the field, but not at headquarters. International coordination is challenged by conflicting operations and positions amongst the allies on such issues as predator drones and aerial spraying of poppy fields.

Afghanistan also presents difficulties in terms of humanitarian space. Many NGOs believe that there is no humanitarian space left in Afghanistan. There has been a loss of neutrality and impartiality due to the association of NGOs with military actors or private security companies. The practical effects of WoG on NGOs are that NGOs are tainted by a perception of association. There is increased insecurity and tension among NGOs (some of whom align with the PRT model and some who do not). The Afghan government and NGOs are also both competing for funds and personnel. Increased insecurity has also led to a greater distance between NGOs and the community, as tools like remote management become more common.

Paddon concluded with a number of questions, including whether WoG was an appropriate strategy and whether it was a flawed approach to fixing states.

DAVID MORLEY
CEO,Save the Children Canada

Morely, like Paddon, identified the lack of humanitarian space in Afghanistan as a major challenge. The panellist noted that Afghanistan is dangerous for aid workers regardless of the tactics their organizations use. He cited the example of MSF aid workers being targeting and killed despite that organization's strict adherence to neutrality and refusal to accept funding from parties to the conflict. Morely argued that

> **while Western humanitarian agencies claim all kinds of neutral basis, they are, in fact, part of a machine which is involved in a culture war in the eyes of many people.**

These agencies bring a set of values that are culturally normative: MSF believes in Western medicine, Save the Children believes in "children's rights". No matter how many humanitarian organisations want to distance themselves, they are part of Western liberal democratic ideals, which challenges their impartiality.

Morely further argued that NGOs must also share in the responsibility for the blurring of lines. When Western humanitarian workers are off-duty, they tend to spend time with other Westerns, including military actors. This contributes to the idea that all Westerners are on the same "side". He also reflected that western NGOs were not active in North Vietnam during that war.

There are factors beyond the actions of the humanitarian aid organizations which contribute to the danger they face in Afghanistan. Morely concurred that the "hearts and minds" strategy creates difficulties in the long run for NGOs. He cited an example of attaching conditionality to humanitarian aid: flyers distributed in Afghanistan asked people to share information on the Taliban with coalition forces in order to ensure continued humanitarian aid.

The panellist concluded by stating his belief that humanitarian relief must be given unconditionally and on the basis of need.

When military provides aid with conditions (military or political), it is no longer humanitarian relief. Non-state armed groups begin to see the honest efforts of humanitarian actors as legitimate military targets.

BRIGADIER-GENERAL GUY LAROCHE

Commander of Land Forces Quebec Area and Joint Task Force East, Former Commander of Joint Task Force Afghanistan

The fourth panellist discussed the security challenges in Afghanistan. The aim of military intervention is to restore the situation to a point where police and security forces can maintain law and order. Laroche noted that progress has been made in this area. Furthermore, the Canadian military is providing the security framework in which other organizations are working. For example, CIDA, DFAIT and the RCMP are all working closely with the Canadian military in Afghanistan.

Laroche listed four security concerns in Afghanistan:

- Gaining control of the Pakistani-Afghan border presents the first challenge. In order to have an effect on the crossing of insurgents, he noted that there was a need to continue coordination between the Afghan and Pakistani border forces.
- The second challenge is that military weight should be distributed according to need. The panellist noted that all NATO countries should make efforts to send troops to where they are most needed. Laroche emphasized that there are not enough troops in Kandahar.
- The third challenge is winning hearts and minds in favour of the Afghan government and its allies. Again, the panellist felt that more troops would address this challenge by improving security and stability conditions for local populations. He also noted that soldiers can connect with the population and forge relationships.
- The fourth challenge relates to drugs. Laroche believes that the Government of Afghanistan has a responsibility to tackle the narcotics problem but cannot do it alone. The Taliban earn up to $100 million a year from drug trafficking, funding their activities. This issue also affects corruption with the Afghan government and the overall security situation in Afghanistan.

In conclusion, Laroche noted that there are many security challenges in Afghanistan but the root problem remain political.

> **There will be no conventional military victory; rather, the victory will be political.**

He also believed that no matter how hard the mission is in Afghanistan, Canada and Canadian Forces make a difference there.

SAM MILLAR

Director of Policy, CIDA Afghan Task Force

Millar began with the observation that the conflict in Afghanistan presents us with new and challenging terrain. It is the recipient of CIDA's largest bilateral aid program and receives approximately twice as much as the next biggest program.

The panellist stated that Canada has a number of "strategy pillars" in Afghanistan, the first of which is "focus". Within this pillar, there are number of objectives:

1. Security in Kandahar
2. Basic Services
3. Humanitarian Assistance
4. Border Management
5. Democratic Development
6. Afghan-led reconciliation (Also noted in Obama's white paper)

CIDA has taken lead on #2 (for example, schools and the Dahla Dam), #3 and #5 (continued support to ministries). Under humanitarian assistance, CIDA meets its goals by providing support to traditional humanitarian actors and capacity-building to Afghan organisations.

Millar addressed some of Morely's comments on impartiality and humanitarian space. He agreed that humanitarian assistance should not be conditional. CIDA is not seen as neutral in Kandahar, which is why it looks to humanitarian actors to deliver the aid on its behalf. The panellist noted that CIDA works to ensure an appropriate military role, for example, by discouraging the military from engaging in activities which could be seen as humanitarian. The panellist also stated that CIDA works to protect the independence of its humanitarian partners.

Millar noted that Afghanistan is a unique situation. It is not a traditional disaster relief or peace-keeping operation. The government is not neutral in this operation. The panellist was sceptical of solutions which delineate between military and civilians. He noted that in Afghanistan insurgents may derive tactical gain by attacking soft targets like humanitarian workers. He clarified that CIDA does not deliver humanitarian aid itself – it asks its humanitarian aid partners to do that. It does however engage in development and reconstruction in its own name.

PAUL WELLS

Senior Columnist, Maclean's Magazine

Wells began by stating that the war in Afghanistan started as a question of physics (unmanned drones) and has developed into the realm of humanities and social sciences (hearts and minds). He also noted that modern wars increasingly resemble 18th century warfare.

The panellist contrasted the accomplishments of Tommy Franks and General Petraeus. Tommy Franks organized and planned two of the most successful land advances in history. He took Afghanistan

and Iraq in a matter of weeks. However these two "victories" were not sustained in the long run. In contrast, General Petraeus is seen as the guru of counter-insurgency. His most important prior deployments were in Haiti and Bosnia. The panellist noted that the real world looks more like Petraeus' world than Franks'.

Wells then turned to counter-insurgency, the use of force and the range of alternatives.

> **The perception of the population is the primary battle space; this is a war for public opinion.**

Western armies failed to comprehend this for a long time, which may have contributed to the protracted conflicts in Iraq and Afghanistan. When one sees the conflict from this perspective, it becomes clear the damage the practice of torture can cause. The news of torture certainly pushed many people into jihad.

The panellist noted that all of the armed actors need to preserve their forces. Both sides feel every casualty and are unwilling to tolerate high losses. NATO forces need to maintain public support by keeping causality rates low. Furthermore their personnel are incredibly expensive to train. The insurgents must avoid causalities because they are under-staffed, under-funded and they cannot afford to meet a Western force in the battlefield.

Wells listed four challenges that threatened the success of the mission:

- Corruption in government officials: The panellist believed that there are widely understood prices for a local election and a judge. Corruption undermines the core of Afghans' ability to believe in their government. The panellists believed that Western forces were wasting their time if they were supporting an illegitimate Afghan government.

- Coordination: Coordination is a constant challenge with 40 countries operating in Afghanistan, generally with both civilian and military actors.

- Resources: The panellist noted that 200,000 – 600,000 soldiers were needed to stabilize Afghanistan. He believed that training the ANA and ANP is a better method than sending troops, but that there were not sufficient resources to do this adequately.

- Leakage: There are new people joining the insurgency all the time (i.e. from Pakistan).

The panellist concluded that the recently released Obama plan appeared to address all of the four noted challenges. While this plan is not guaranteed to improve the situation, the panellist was heartened by the efforts.

DISCUSSION & CONCLUSION

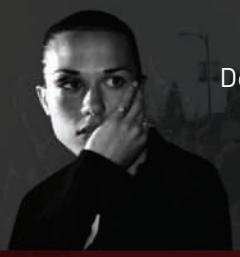
The discussion particularly outlined the extremely complex nature of the situation in Afghanistan. While these types of conflicts are not new, perhaps they have increasingly come into focus because of the near absence of interstate warfare. Technology and the lack of control over information (like the videos of beheadings) radically change the dynamic of conflict. Finally, 9-11 was a defining moment in bringing non-state actors under the spotlight.

Afghanistan may be the most forward-looking of these new types of conflict; while the same issues are seen in more conventional conflicts, the institutional responses in Afghanistan are unique. The presence of NGOs and the private sector are a very new innovation. As a panellist noted there were no NGOs in the war in Vietnam. "A generation ago, NGOs did not attempt this type of work." However, Afghanistan is not just a military operation Afghanistan is the fourth poorest country in the world, and one of the largest high intensity development projects on the list of most western states foreign policy.

In this challenging context the classical approach of Defence, Diplomacy and Development (3D) it put to the test. In practice it seems that the experience in Afghanistan has also pushed towards the integration of the classic 3 D approach. With the new Representative of Canada in Kandahar (RoCK) there has been a move to prioritize integration in the Canadian government, resulting in institutional changes. This has brought about more joint planning with partners and one can see a difference on the ground. The military have been driving the push towards integration, because of their experience on the ground.

However, it was noted that integration of this approach can have its pitfalls. Moreover in Afghanistan there is an added challenge to neutrality and the protection of humanitarian workers because Western governments are also engaged in the war. This has led agencies such as CIDA to avoid having a pre-conceived notion of how their relationships with NGOs will work and how to be responsive to NGO requests. Panellists pointed out that, although frustrating, the Canadian military was careful to not do the work of civilians and Canadian civilians were careful to not do the work of the Afghan government. Rather, they prioritized capacity building.

The panel was quite effective in outlining and highlighting the major themes of the Edges of Conflict conference through the case study, notably the integration of military operations with aid and the rise of non-state actors.



MODERATED BY

Don Hubert, Graduate School of Public Affairs University of Ottawa

PANELISTS

1. Carlos Fuentes
2. Pablo Policzer
3. Judi Fairholm
4. Oliver Jütersonke

Advent of Endemic Urban Violence

INTRODUCTION

We are increasingly faced with sustained and organized instances of violence that may not fall under the traditional definition of armed conflict. These unconventional types of conflict are nevertheless of great significance. In some instances the number of deaths as the result of urban violence exceeds the number deaths in situations of 'armed conflicts'.

The moderator posed the following questions to the panelists and participants: What are the legal gaps that exist in responding to endemic urban violence? Is international humanitarian law applicable to these situations? What implementation gaps within the current legal framework exist in addressing urban violence? What policy recommendations would be relevant to attempt to fill the identified legal gaps and enhance implementation?

CARLOS FUENTES

O'Brien Fellow & Doctoral Candidate (on leave, McGill University, Centre for Human Rights and Legal Pluralism)

Fuentes believes that urban violence has become a global issue and must be addressed internationally. The panelist finds that while there are elements of international humanitarian law that relate to problems arising from urban violence, IHL in general has little applicability to these situations. For instance the distinction between civilians and combatants is a problem in urban violence because in practice, the application of this protection would define those "who can be killed, and who can't be killed". Criminal and constitutional guarantees for the right to life already exist and applying this type of IHL distinction would be dangerous. There are subject areas covered by international humanitarian law which may be helpful in situations of urban violence but are difficult to implement. The panelist offered the examples of prohibiting the recruitment of children and the guarantee of safety for medical personnel in conflict areas.

In contrast, Fuentes looks towards human rights law as a means to bind non-state actors, despite traditionally applying to States. There have been cases where courts have assigned culpability in violating human rights law against paramilitary groups operating in Colombia, and through them the state. The panelist then draws on the case of *Morales et al. (Guatemala)*, whereby the Inter-American Court of Human Rights found the summary execution of five individuals (including minors) by the national police to be a violation of the *Convention of the Rights of the Child*. Most importantly, the panelist referred to the court's finding of "double aggression". This is broken down as: 1) the state did not prevent these individuals from living in misery, thus depriving them of the minimum conditions for dignified life and denying them the full and harmonious development of a personality; and 2) the police violated these individuals physical mental and moral integrity, and even their lives. Fuentes asserted that this decision is important since the Court first focused on the social rights of the victims (by referencing their right to dignity) and then assigning liability for violating their physical rights.

Fuentes concluded by noting that the United Nations Secretary General report found that there are no substantive legal gaps in the protection of individuals in situations of armed violence. However, there remains a need to address non-state actors that pose particular challenges to securing respect for human rights. He suggests one avenue of approach is to look at the systemic issues that give rise to the internal violence, namely housing rights, social economic rights and improving social conditions in general.

PABLO POLICZER

University of Calgary, Dept of Political Science

In contrast to the first panelist, Policzer sees a limited role for international humanitarian law in reducing the impact of urban violence. Namely its applicability in efforts to stem the proliferation and use of conventional weapons by non-state armed groups arms under arms trade treaties. Policzer stated that in order for arms trade treaties to be effective, it needs to account for the actions of non-state armed groups.

The panelist then discussed how actors acquire their weapons. Most entities acquire their weapons via the diversion of State stockpiles, in some instances via corruption. They also found that in less-common occasions, some non-state actors actually manufacture their own weapons. Given that most groups purchase their weapons illegally through diversions, Policzer suggested that one solution may be found by ensuring states have strong command-and-control structures. This requires States to address the principal agent problem by ensuring that agents follow the instructions given by the principal, and enhance monitoring, both internally and externally. The monitoring should extend not only to the stockpiles possessed by the State, but also with regards to the State's import and export activities.

Policzer concluded by stating that while monitoring and use may address most problems it remains a reality that some non-state actors will continue to obtain conventional weapons. He suggested one nonconventional way of engaging armed groups may be to use Geneva Call's model of external benchmarks designed to ensure such actors' activities follow standard guidelines.

JUDI FAIRHOLM

Canadian Red Cross

Fairholm began her presentation by noting that

> **urban violence is only the public manifestation of what is happening in private places.**

The systemic roots of urban violence can be found in the abuse of children.

The panelist drew on the findings made by the World Health Organization's 2002 *World Report on Violence and Health*, to state that a large proportion of violence is self-inflicted, and such violence should be addressed. The panelist cited several studies on violence against children to emphasize the point that violence affects children in a disproportionate way. This abuse is connected to the public acts of violence found in urban areas. Fairholm stressed that the harm inflicted on children manifests itself in physical and psychological ways on the public community.

The panelist presented to the audience several factors that should be addressed, these include:

- Alcohol and substance abuse,
- Violence from family and poverty,
- Cultural and societal neglect, and
- Gender inequality and group discrimination.

Fairholm presented several "Best Buy" suggestions in addressing violence, such as working closely with other organizations, assigning responsibility to adults, and encouraging societal action.

OLIVER JÜTERSONKE

Graduate Institute of International and Development Studies, Centre on Conflict, Development and Peacebuilding (CCDP)

The final panelist, Jütersonke, focused his discussion on the concept of urban resilience in reframing and addressing urban violence. The panelist found much of the popular discourse on urban violence to be incomplete in explaining this phenomenon. While Jütersonke agreed with Policzer that there are connections between population density and guns in areas of urban violence, he argued that there is no clear causal connection as to why urban violence exists in some States and not others. Similarly, the panelist accepted that State corruption and brutality may contribute to urban violence, but also highlights the fact that in some states, where there are no actors with legitimate rights to violence, there is also a lack of disorder.

Jütersonke pointed out that the term fragility is broad enough to encompass urban violence, and relatively benign in comparison with the normative concept of failed states. He discussed how the concept of fragility is increasingly being linked to stability efforts. He noted that many overseas missions conducted by Canada, the UK and US are no longer peace building but rather stability initiatives and capacity building. Such activities, like the UN stabilization mission undertaken in Haiti, and the US led effort that followed, are "whole of government" or integrative approaches providing diplomatic, military, development, and humanitarian efforts all at once. The panelist argued that these stability efforts often overlook resiliency. In his research, Jütersonke found that engaging formal and informal institutions can be a useful prevention strategy, which stabilization agendas lack.

Jütersonke concluded by stating that there is no blueprint to addressing urban violence and current data sets do not tell a coherent story. The panelists suggested that an implementation gap might be linked to the shift towards the concept of fragility and stabilization. Juternsonke responded that resiliency and engaging formal and informal actors can better address the challenges of urban violence.

DISCUSSION & CONCLUSION

The discussions initially focused on the applicable law, in situations of extreme violence. General agreement was reached that IHL was not applicable in relation to escalating urban violence and the growing escalation of gang activity. It was deemed undesirable, as a public policy measure, to attempt to apply this law to these situations as it would take away protection of certain groups and provide a type of legitimacy to the violence, making it legal for armed gang members to kill security forces like police. As one participant noted IHL should not be used in combating gang violence in Canada, and believes terms like "war on organized crime" is unhelpful. It was agreed that human rights law and more so, national legislation was the applicable normative legal framework.

Even if IHL is not applicable, characteristics associated with armed conflict can be found in relation to urban violence from which we may be able to extract learning. For example, urban violence as found on the street is often 'asymmetrical' with gangs possessing more deadly weapons than law enforcement, which is often procured through illicit arms trade. The structure of law associated with IHL was deemed potentially useful as a model with respect to an arms trade treaty. In the end, it may be that IHL *does not apply*, but it is self-evident that there is a gap. The moderator suggested that laws that govern urban violence may not be drafted yet, and we are currently in a "Solferino" moment with respect to this issue.

However, some argued that the application gap lies with the capacity of the State.

> **Situations of extreme urban violence usually imply a State which is unable to implement the laws.**

For example, when looking at the arms trade, it is evident that there is no substantive reduction despite some efforts in drafting treaty law. The situation is similar concerning the punishment of gang members. There is a substantial lack of international coordination in the deportation of gang members. The statements of Costa Rican foreign minister are particularly apropos on this issue. He once expressed his concerns that the United States has been deporting gang members back to Costa Rica without informing the receiving country.

The panel's initial focus was to articulate "Normative Principles for Characterizing Situations of Endemic Urban Violence and Mitigating Their Harm". However, no consensus was reached towards this end. Rather, the discussions revealed that there were marked differences of opinion as to the overarching strategy to address urban violence. The panel was divided as to whether the answer lied in targeted regulations and their implementation or rather in addressing the root causes of violence.

The classic debate on whether pushing targeted issues and policies were more beneficial than addressing broader, overarching

agendas. There exists a practical implementation gap, and there may be other models of law that exists. On the other hand, addressing the symptoms, especially with the arms trade, when there is no international regime which addresses the causes, may seem counterproductive. For some it is important to address the root causes of violence which very often require a much more comprehensive approach. In any event the approach to addressing this problem should be multi-pronged, and include a discussion on the improvement of police services.

Prevention measures discussed included:

- Enhancing the social economic situation, right to housing, work, water etc., making society a better place and not just focusing on victims and numbers.

- Looking into the positive obligation for states to provide a *dignified* life. In this sense, courts are telling the government to face the problem systemically – and move towards prevention and not merely refrain from torture.

Normative measures discussed included:

- Characterizing situations of urban violence as a 'hybrid' regulatory problem, and whether the fundamental standards of the ICRC can fill in this gap and engage with armed groups.

- The idea of voluntary oriented approaches to addressing fragile states. Vigilante groups, while they do not share similar idea of justice, nevertheless demonstrate the existence of the rule of law. Other examples include neighborhood watch, and gun free zones.

It seems that the panel may have to discuss policy approaches to the problem of urban violence rather than look into normative principles. In doing so it will be important to consider both prevention measures as well as targeted policy/normative measures. It is therefore proposed that the outcome of the panel should be focused on a more general policy based document rather than on normative principles such as an International policy framework for preventing and mitigating the harmful effects of endemic urban violence.

MODERATED BY

Pablo Policzer

PANELISTS

1. Sophie Rondeau, Rights and Democracy
2. René Provost, McGill University
3. Elisabeth Decrey Warner, Geneva Call
4. Sandesh Sivakumaran, University of Nottingham

Rise of Non-State Armed Groups

INTRODUCTION

The vast majorities of armed conflicts today are non-international in nature and involve non-state armed groups. International humanitarian law was originally created based on the European experience of inter-state war and the notion of reciprocity: that an obligation to comply was contingent on the other side also observing or being party to the rules. However, IHL has moved away from a participation clause towards unilateral obligations, mirroring more closely the precepts in human rights law. The Tadic ruling of the International Tribunal for the Former Yugoslavia (ITCY) stated that a lack of reciprocity could not be used as a defence.

Furthermore, recent developments in IHL have resulted in more rules applying to non-international armed conflicts. In the Tadic case, the ICTY also stated that "What is inhumane; and consequently proscribed, in international wars, cannot but be inhumane and inadmissible in civil strife". This is seen also in the creation of the Ottawa Treaty banning landmines, the Convention on Cluster Munitions and the Rome Statute. Furthermore, the ICRC's study on customary law states that all but a handful of laws in IHL are equally applicable in non-international armed conflict.

This panel explored these dynamics and particularly whether or not reciprocity is a useful tool for increasing compliance with IHL among non-state armed groups.

SOPHIE RONDEAU
Rights and Democracy

Panelist Sophie Rondeau acknowledged the shift in IHL from reciprocity to unilateralism, or the "humanization" of IHL. She focused on ownership of the rules as central to increasing compliance. While States generally own the rules, Non-state armed groups are excluded from the creation of the rules. Rondeau noted that although bound by IHL legally regardless of participation, Non-state armed groups may not comply because they did not participate in the creation of the rules. Furthermore, the actions of Non-state armed groups are rarely considered when judging opinion juris and customary law, and certainly not given equal weight to State practices.

Rondeau acknowledges that we are perhaps not ready for the direct participation of Non-state armed groups in the forming of IHL. However, if participation is necessary to create ownership and ownership will lead to greater compliance, then we must find other methods of engagement. For example, there are many examples of bilateral agreements, unilateral declarations and codes of conduct created by Non-state armed groups. She proposes that these two levels – IHL in non-international armed conflict, and bilateral agreements, unilateral declarations and codes of conduct – need to intersect at some point. Deeds of Compliance, such as created by Geneva Call, and UN Security Council Plans of Action, also provide frameworks for engaging Non-state armed groups and encouraging compliance.

Rondeau also suggested that encouraging Non-state armed groups to prosecute violations of IHL themselves may be the only means by which to avoid a climate of impunity and to encourage ownership. According to Additional Protocol II, non-international armed conflict requires that armed groups have a certain degree of organization, command and discipline, and thus a capacity to enforce rules. This condition on the ability to implement the Protocol reflects the principle of reciprocity. Rondeau referred to examples of NSA courts that have faced a barrage of criticism, including from the UN, which may be fair, but none of it was constructive or aimed at helping them improve the rule of law and ownership of the rules. States are likely reticent, she noted, as they do not want to be seen as assisting terrorists, interfering in domestic affairs or decreeing the legitimacy of a group.

RENÉ PROVOST
McGill University

Internal wars are the greatest challenge for compliance with IHL because of the lack of reciprocity on both sides. Provost posed two central questions: Is reciprocity a toxic factor in the normative dynamics of IHL or does it provide a means to marshal compliance? Can reciprocity work in asymmetrical conflicts? He acknowledged the humanization of IHL: greater emphasis has been placed on the protection of individual victims of armed conflict as the dominant raison d'être of this field, leading to a recalibration of the balancing of military necessity and considerations of humanity.

> **Underpinning the skepticism that IHL can effectively regulate non-international international armed conflict is the belief that reciprocity cannot be applied in these asymmetrical contexts.**

However, Provost believes there are opportunities to leverage reciprocity.

Provost also referred to the Tadic case, and emphasized that it was dangerous to take international criminal law notions into IHL. However, criminal liability is only a small portion of IHL. Laws require a community and Provost gave the example that such a community could be supported between the Canadian armed forces and the Taliban. A neutral third party, like the ICRC could mediate a dialogue. Some groups may be uninterested in such engagement, but that would be no worse off than the current situation. Provost asserted that we can increase reciprocity through community building, despite a lack of symmetry. Sates and citizens, for example, do not have symmetry but do have reciprocity.

ELISABETH DECREY WARNER
Geneva Call

Decrey Warner described the approach adopted by her organization Geneva Call. She stated that the state-centric approach of IHL poses problems in terms of Non-state armed groups' compliance. Non-state armed groups are key players and, like States, are often violators of IHL.

In 2000, Geneva Call was created to encourage respect by Non-state armed groups for the norms of the Ottawa Treaty banning AP mines. Geneva Call has developed an ownership approach with its *Deed of Commitment* on the AP Mine Ban, which includes monitoring and verification mechanisms. Non-state armed groups are provided with an opportunity to subscribe to the AP Mine Ban because they cannot become Parties through formal treaty regimes.

Geneva Call has engaged 60 Non-state armed groups worldwide. As of early 2009, 36 Non-state armed groups have signed the *Deed of Commitment* on the AP Mine Ban and for the most part complied with their obligations. This has also furthered along demining work and stockpile destruction, and in some cases acted as a factor that convinced certain States to sign the AP Mine Ban Convention. Geneva Call is expanding its advocacy work beyond AP mines and into the protection of children and women in armed conflict.

Based on Geneva Call's experience, Decrey Warner made these additional observations on reciprocity:

i) commitments by Non-state armed groups can have a positive influence on State policy

ii) both States and Non-state armed groups have made humanitarian commitments even though the opposing party has not

iii) neither States nor Non-state armed groups, as a matter of principle, have resorted to "reprisals" with respect to commitments they have made

iv) Non-state armed groups have referred to State practices having similar effect to the use of AP mines (e.g., cluster bombs or indiscriminate bombing) to justify their refusal to commit to the AP mine ban.

The equality of belligerents is a pillar of IHL, but in a non-international armed conflict this notion can be problematic, as Non-state armed groups do not have the same status as States, even if bound by IHL.

The Optional Protocol of the Convention on the Rights of the Child (generally considered a human rights treaty) allows States to recruit children under 18 for non-combat roles but Non-state armed groups are not permitted to do the same.

Decrey Warner mentioned that the limited Geneva Call experience with Non-state armed groups does not necessarily support the suggestion of Rondeau (namely that non-participation in treaty formation has a negative impact on compliance). However, the opportunity to make a formal commitment does seem to positively influence compliance - noting that Geneva Call emphasizes the vital importance of follow up measures to ensure compliance.

Decrey Warner regrets that there are few systematic efforts to understand why Non-state armed groups might comply with IHL. Reciprocity certainly plays a role, but it has not been seen to play a significant role with respect to the AP Mine Ban where commitments have been made by Non-state armed groups. Promoting ownership of the norms is a key factor for compliance of Non-state armed groups.

SANDESH SIVAKUMARAN

University of Nottingham

Sivakumaran focused on the idea of "ownership" of the rules of IHL as a means of increasing compliance. He noted that although bound by IHL, as a matter of positive law, regardless of their participation in the creation of the rules, Non-state armed groups may not comply in practice because they did not participate in their creation.

Sivakumaran acknowledged that the international community is perhaps not ready for the direct participation of Non-state armed groups in the formation of IHL treaties and in the conclusion of customary IHL. However, if participation is necessary to create ownership and ownership does lead to greater compliance, then we must find other methods of engaging Non-state armed groups. He noted that one way in which this may take place is through the conclusion of bilateral agreements, unilateral declarations and codes of conduct. Indeed, he gave examples of existing NSA agreements, declarations and codes.

He observed, however, that the international system seems to be operating at two levels. At the level of treaties and customary international law, there is little participation by Non-state armed groups. At the level of bilateral agreements and the like, there is a wealth of practice of Non-state armed groups but the instruments are of questionable legal status. At some point, he said, these two levels need to intersect. Two novel initiatives may go some towards redressing this disconnect - Deeds of Compliance, such as created by Geneva Call, and UN Security Council Plans of Action.

Sivakumaran also suggested that encouraging Non-state armed groups to prosecute violations of IHL themselves may be a means by which to avoid a climate of impunity and also to encourage ownership of those rules. According to the definition of a non-international armed conflict, the NSA in question must have a certain degree of organization, command and discipline, and thus a capacity to enforce rules. Accordingly, they may have the means to establish courts to prosecute IHL violations. Indeed, there are several examples of courts of Non-state armed groups in practice. These courts have faced a barrage of criticism, including from UN agencies; much of the criticism may be fair, but little is constructive or aimed at helping armed groups to improve the quality of justice meted out. States are likely reticent, he noted, as they do not want to be seen as assisting terrorists, interfering in domestic affairs or affording legitimacy to the group.

DISCUSSION & CONCLUSION

The panel noted that generally the international system is operating at two levels:

> **there is a growth of treaties and customs but little role for Non-state armed groups.**

On the other hand, there is a wealth of practice of Non-state armed groups but little legal status is given to it. This growth in rules has not been accompanied by a corresponding change in the methodology for determining those rules.

Currently there is an increase in rules that apply to Non-state armed groups but no room for participation by Non-state armed groups. There are practices, statements, and codes of conduct relating to these groups but these are given little legal consideration as their legal status is uncertain. A need for a central depository was identified several times.

The group agreed that we need a better understanding of political motivations of Non-state armed groups. Perhaps, someone suggested, we are expecting too much of IHL and should look at political motivations. There are means of changing behavior without necessarily using IHL as the advocacy tool. Humanitarian agencies rarely refer to legal obligations when dealing with Non-state armed groups in the field, but rather find common ground. Reciprocity between them and the NSA is an important tool for gaining access. However, it is important to note that even though reciprocity can exist politically speaking, it no longer has a legal foundation.

In Afghanistan, the battle space is not just in the hearts and minds of Afghans, but also in the hearts and minds of Canadians so that they will support a prolonged operation. Canadian Armed Forces are thus motivated to uphold IHL. Non-state armed groups can have a similar motivation, that is to have the support of their constituency, but it was noted that they may purposely breach IHL in order to try and provoke the other side (reprisals) and/or influence interveners.

In this sense the group tended to see that there were probably more benefits than consequences in recognizing reciprocity. Several participants noted that there is both positive reciprocity (incentive to comply based on the compliance of the other) and negative reciprocity (non-compliance resulting in a race to the bottom).

A benefit of reciprocity is immunity from otherwise criminal acts. Legitimacy might be a motivating factor in Non-state armed groups declaring compliance with IHL. However, there can be a significant difference between a declaration and the reality of their actions on the ground.

Overall, Geneva Call demonstrates the viability of bilateralism even if deeds are unilateral. The formality of the signature process is significant as is the monitoring and engagement work done afterwards. Geneva Call noted that it is drafting a Deed of Commitment on Child Soldiers. However, rules need to apply equally to both sides.

In the end, the panel revealed the many meanings of reciprocity as well as outlined ways in which Non-state armed groups can be meaningfully engaged, in the creation of norms, receiving unilateral declarations, finding common ground and having them sign deeds of commitment. Each method has its own advantages and disadvantages. To date there has been limited studies outlining the effectiveness of each method of engagement. Going forward it is recommended that the panel examine the feasibility and the merit and evaluation of alternative approaches to addressing the proliferation of Non-state armed groups and the enhancement of their compliance with international humanitarian law.

MODERATED BY

Isabelle Daoust
American Red Cross

PANELISTS

1. Ketty Anyeko, Justice and Reconciliation Project
2. Sylvain Beauchamp, Rights and Democracy
3. Michael Khambatta, ICRC
4. Valerie Oosterveld, University of Western Ontario
5. Ted Itani, Pearson Peacekeeping Centre

Shrinking Humanitarian Space

INTRODUCTION

Delivering assistance in conflict zones by impartial and neutral aid organizations has been a significant contribution of the international humanitarian movement. However, increasingly aid is being delivered by military actors and inter-governmental agencies. Counter-insurgency doctrines have adopted this approach to win "hearts and minds."

Given the expansion in the actors and activities of humanitarian aid, including in disaster relief and rehabilitation, the conception of "humanitarian space" must be revisited.

In the lead paper for the Panel, Sylvain Beauchamp argued that the time is probably ripe for the development of a legally binding instrument that would focus on the rights of victims and enshrine the principles of impartiality and humanity into the three stages of the international aid continuum: humanitarian relief/assistance (both in armed conflicts and disasters), rehabilitation, and international development. Using international humanitarian law treaties as a base-line, while recognizing the reality of modern counter-insurgency doctrines, the Edges of Conflict project aims to articulate alternative principles for the delivery of humanitarian aid, while considering the concept of "humanitarian space".

KETTY ANYEKO

Justice and Reconciliation Project, Northern Uganda

Panellist Ketty Anyeko focused on the case study of Northern Uganda, drawing on her experience working with women and girls. Humanitarian space in this context is compounded by the prevalence of gender discrimination and the persistent abduction of girls and women by the Lords Resistance Army (LRA). For these girls, there is no humanitarian space: all fear abduction and those in captivity have no access to outside aid. Likewise, escape from captivity is exceedingly difficult because there are no humanitarian networks in place to support them and during the treacherous journey they are often victimized and sexually assaulted.

Once at home these women and girls continue to face threats to their security. Anyeko reported that women and girls sometimes find themselves involved in unfamiliar roles as confidence builders in peace processes under the influence of government and local leaders who encourage them to return to the bush and meet their former LRA captors to help broker peace. At home, due to community pressure and a lack of social supports, girls are also being forced to reunite with their ex-LRA husbands who have defected and been given amnesty.

Forced marriage is a crime against humanity and against customary international law. Anyeko noted that the ICC only accused Kony and his second in command of sexual slavery, despite almost all LRA leaders having committed this crime. She further recommended that the ICC prosecute commanders for forced marriage, not just sexual slavery.

SYLVAIN BEAUCHAMP

Rights and Democracy

Humanitarian space aims to open a corridor whereby humanitarian actors can bring help and assistance to those in need, including victims of violations of IHL and IHRL. The concept is simple but the implementation is complex.

In international law there are principles of non-discrimination and impartiality; these principles constitute the heart of humanitarian space. Beauchamp is of the opinion that there has always been humanitarian space in public international law. He conceded that humanitarian space does not have a universal meaning. However, from a legal point of view, it can be reduced to an issue of impartiality.

The discussion on humanitarian space can be framed around three questions: 1) Who is the actor (delivering aid)? 2) How can aid in general be delivered? 3) To whom must humanitarian space benefit (victims)? The notion of humanitarian space is rendered more complex by a number of changes. Humanitarian aid has expanded into development aid and reconstruction aid. The types of actors have changed. Furthermore, the victims of war have changed as most are now civilians.

Beauchamp outlined four different concepts of humanitarian space.

1. Some NGOs, like MSF in the 1990s, champion the need for independent space to evaluate needs and conduct activities.

2. The United Nations' OCHA refers to "humanitarian operating environments" where they would coordinate the conduct of various agencies. This is in contrast to the previous point where NGOs do not want to be coordinated and are claiming their own space.

3. Others are championing a broader vision of humanitarian space that includes relief, reconstruction and development.

4. Others chose to frame their decision in terms of independent humanitarian action, as distinct from humanitarian space.

Beauchamp noted that

> **the debate must be re-focused on the rights of victims and access to humanitarian space by victims, and not on who can deliver aid.**

Mr. Beauchamp then outlined the legal origins of the notion of humanitarian space. Under IHL, it is the responsibility of States and parties to a conflict to provide humanitarian aid. Should they be unable to assist, there may be a legal obligation to allow surrogate humanitarian aid by other actors. Mr. Beauchamp noted that IHL did not explicitly discuss a need for neutrality. Nor is it clear that there is an obligation on states to accept humanitarian aid when it is being offered; however, there is a strong obligation not to arbitrarily refuse it when it is being offered in an appropriate manner. In addition, the Red Cross has seven principles that have legal status that govern "how" humanitarian aid should be delivered. UN law also governs the "how", highlighting humanity, impartiality and neutrality. Finally, human rights law offers legal grounds for providing access to aid.

Beauchamp argued that these four different types of international law do not interact neatly, to the disservice of victims. He noted that there could be an important momentum around developing norms if there was a new treaty on the rights of victims to receive humanitarian aid.

MICHAEL KHAMBATTA

ICRC

While the contexts are often new, the issue of humanitarian space is old. In particular, "stability operations" as a part of counter-insurgency have added a new dynamic. Khambatta noted that shrinking humanitarian space is a generalization: there are also places where it is growing and places where it is stable.

The ICRC's approach is based on gaining acceptance by the parties on the ground.

> **Humanitarian space does not exist in the abstract, but is created by humanitarian actors and judged by the combatants' acceptance of and respect for their work.**

If they have credibility with the parties' to access victims, then humanitarian space exists. The ICRC's approach has to be consistent around the world and decisions are not just based on immediate situations, but on coherence across the World and over time. Khambatta outlined the seven fundamental principles of the ICRC. Humanity addresses what humanitarian workers are trying to do (alleviate suffering in conflict zones) whereas the other six speak to how they achieve this. The case of Afghanistan highlights the challenges for any humanitarian actor in maintaining neutrality. Each side must accept that the ICRC is not on a side. In accepting the work of the ICRC, the parties to the conflict must have the confidence to take large risks as the ICRC becomes aware of sensitive information. However, the ICRC cannot divulge anything because it would be detrimental to its humanitarian access both immediately and potentially in future situations around the world. According to the principle of impartiality, aid must be delivered based on need and in a non-discriminatory fashion. This is simple conceptually but difficult in practice. It can be difficult when the needs are primarily on one side. The notion of independence regulates the relationship of the ICRC as an auxiliary to government, giving primacy to the organization's Fundamental Principles.

Khambatta noted that humanitarian space is always difficult to carve out and that the margin in which to manoeuvre is very narrow. The work of the ICRC, however, is also impacted by activities of other actors, for example, when stability operations include activities that overlap with humanitarian aid like providing healthcare and education. Though the activities may be similar, Khambatta maintains that they are being done for entirely different reasons. Furthermore, Khambatta argued that Westerners, regardless of their role, are generally viewed similarly from the perspective of locals, which creates a challenging dynamic for neutral aid workers.

Khambatta noted some trends. There is a growing understanding by some militaries of the neutral role of the ICRC and the need for humanitarian space. There is also a countervailing aspiration to make it "work", and so search for ways to work with humanitarian actors. This can affect the acceptance of humanitarians by other parties to the conflict.

Khambatta concluded with an open question regarding the activity or the actor? There is often the assumption that humanitarian action is unacceptable in areas controlled by non-state actors. Where there are objections by those in control, the question should be asked as to whether they object to the activity or the Humanitarian Actor.

VALERIE OOSTERVELD

University of Western Ontario

Valarie Oosterveld focused on the implications of shrinking humanitarian space for women.

Humanitarian space may exist for many people, yet certain beneficiaries – women and girls – face greater threats and vulnerabilities. For example, refugee and IDP camps are meant to be humanitarian spaces. However, there are often a number of socio-cultural, camp design and infrastructure issues that create further vulnerabilities for women and girls. In addition, due to gender discrimination and norms in some cultures, women face greater threats to personal security, including increased incidents of rape and domestic abuse. Due to traditional roles, women are often the ones to fetch firewood, which makes them susceptible to attacks outside the camp. Oosterveld discussed institutional and operational (i.e. changes in camp designs) responses that are meant to address some of these gender specific concerns; however, many problems remain.

Furthermore, humanitarian space can disappear for females when those who are supposed to create and protect it are actually leveraging it to exploit women. Oosterveld pointed to a number of acts of violence and coercion against women and girls by peacekeepers, UN staff, government staff and humanitarian workers. It is not just the girls who trade sex or are forced to have sex who suffer, but it also affects those who see it and those who feel at risk because of these practices.

Attacks on humanitarian workers also have particular implications for women. In some communities, it is considered inappropriate for women to be in contact with men who are not part of their family. As well, women do not always feel comfortable talking about intimate subjects with male humanitarian workers. Thus, it is important to have female humanitarian workers in the field. When female aid workers are targeted for killing, kidnapping, or intimidation or their supplies are stolen, the female beneficiaries of their assistance are likewise negatively affected. Similarly, when aid workers are prevented from accessing the beneficiary population, women and girls can be specially affected. For example, in Sudan, in early 2008, the government denied access to humanitarian workers to parts of West Darfur and programs that provided some protection against gender-based and domestic violence were suspended.

> **Women and girls are at risk when they are denied humanitarian space but they are also at risk *within* what is normally defined as humanitarian space.**

TED ITANI

Pearson Peacekeeping Centre

Building on Oosterveld's comments, Ted Itani noted that aid organizations cannot ignore that humanitarian aid delivered to men can become a source of power; whereas aid when delivered to women can become an act of humanity as experience proves that women are more likely to share it with her family and the wider community and articulate what is needed rather than what is wanted. Furthermore, a different perspective is gained when women aid workers rather than male aid workers, speak with women victims. Gender issues have improved in the past number of years due to increased awareness and the growing role of women, both expatriate and local, in peacekeeping and humanitarian interventions.

Itani argued that humanitarian space is shrinking or no longer exists, and at best is ephemeral, limited in time and space. While the number of conflicts has declined, their visceral nature has increased, compounding the task of reconciliation. Itani also discussed the evolving role of the military, which includes "humanitarian" work such as reconstruction and ensuring access to basics needs such as water. Due to security situations, the military is often the only entity that is well positioned to play a role in not only building security but also in providing aid. The military is also increasingly emphasizing the need to win the hearts and minds of people.

However, Itani asked where the empirical evidence is to support the notion that humanitarian assistance provided by the military wins hearts and minds and enhances force protection, or that humanitarian tasks carried out by the military endangers humanitarians. He noted, as an example, that the killing of MSF workers in Afghanistan was not because of perceived links to the military or host government, but rather a show of force against the central government when a senior police officer was sacked.

Itani also referenced the increase in coordination in humanitarian work such as the UN Cluster system. The SPHERE standards bring some uniformity to service provision by agencies and the standards are currently under review. NATO's CIMIC Fusion Centre for Civil-Military Overview is a voluntary network that tracks specialists in such fields as DDR and governance. Local staffs are also important in achieving access and acceptance. In Itani's opinion, we have to move away from the notion of 100% results-based management that is inappropriate to the humanitarian environment as results can be elusive. Rather, local design and incremental progress to full local ownership provides a contextually secure humanitarian space over the longer term should be our barometer of success.

DISCUSSION & CONCLUSION

The discussion perhaps posed more questions than the group was able to answer. For example, does it matter who gives the aid, or just who receives it? Can negative perceptions have an impact on access? However there were significant ideas the emerged through the roundtable, including:

In a very classical approach the panel and discussions focused on the relative size of "humanitarian space", the role and impact of Civil Military Cooperation as well as the larger international context affecting the delivery of humanitarian aid.

Whether or not humanitarian space has shrunk and what kinds of generalizations can be made from these cases was quite contested. On the one hand, since there is some decline in the number of armed conflicts maybe humanitarian space has actually grown. On the other hand, patterns of violence tend to indicate a decline in human security. Humanitarian space should be examined on a case-by-case basis to evaluate whether it is increasing, decreasing, or remaining stable. Whether it is shrinking or growing, there is a real need to address whether the principles are sufficient to allow beneficiaries to get aid.

In addition, some challenged whether there has in fact traditionally been humanitarian space in war zones or if this is a recent development. For example, was there such a space in World War II or Vietnam? The context in which the conflict takes place as well as the degree of polarization will undoubtedly affect humanitarian space. One participant noted the additional challenges of working in Chechnya when the country has a veto in Security Council.

It was also noted that the international context and the role of international organizations such as the International Criminal Court can affect the delivery of aid. The recent laying of charges against Omar al-Bashir the president of Sudan resulted in him expulsing a number of humanitarian workers. There is a relationship between justice and aid. Some felt that the ICC should be mindful of the humanitarian impacts of such actions and not become involved in ongoing conflicts.

Much exchange focused on civil-military coordination and engagement. The notion of cooperation itself is often unclear: does engagement mean communication and information sharing or something more? It is the belief that all cooperation with military actors affects neutrality or perception of neutrality that leads certain NGOs to refuse to speak with military actors, though there are cases where channels of communication exists. Other organizations are willing to work closely with military actors. Some emphasized that the greater the complexity of the situation, the more solid the links need to be between each actor and the desired outcomes. If military actors communicate publically that all assistance activities are part of their overall strategy this can have impact on the security and access of humanitarian actors.

The role of military in delivering aid faces less criticism now than 5-10 years ago. Governments often have their own

guidelines on civil/military coordination and there is a growing understanding that militaries will only conduct humanitarian relief as a last resort. Some argued that beneficiaries do not care if they receive access to clean water from Canadian DART or an NGO and governments have a better chance of popular support when combat operations are cloaked with a disproportionate humanitarian cast. It is problematic, however, when delivery of humanitarian aid is linked to political or military objectives, especially when it affects the perception of humanitarians and the assistance they provide.

Another participant noted that humanitarian agreements, either formal or informal, can be negotiated between the aid organization and the parties to a conflict, such as in Colombia. The ICRC does not formally seek agreements as the group has a duty to provide access for humanitarians. It enters an implicit agreement when access is given.

The panel revealed that there are different conceptions and definitions of humanitarian space. Some formulate it in terms of a geographic area such as humanitarian corridors or refugee camps, while others see it as the potential to access the victims of armed conflict. As such this space is very different and can have different legal regulations.

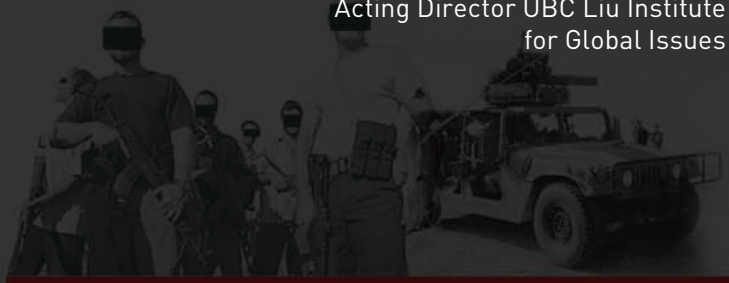
Although strictly speaking the Geneva Conventions do not speak of humanitarian space outside of humanitarian corridors, demilitarized areas or refugee IDP camps, limiting the notion that geographic space can be counterproductive since it implies there is a geographic space where humanitarians can operate and then a space beyond that.

MODERATED BY

Brian Job
Acting Director UBC Liu Institute for Global Issues

PANELISTS

1. Adele Harmer, Humanitarian Policy Group, Overseas Development Institute
2. Benjamin Perrin, University of British Columbia, Faculty of Law
3. Andrew Bearpark, British Association of Private Security Companies
4. Jamie Williamson, International Committee of the Red Cross (ICRC)



Expansion of Private Military and Security Companies

INTRODUCTION

Armed conflict is changing. Non-international armed conflicts, ethnically-motivated attacks, insurgencies and failing states present increased risks to humanitarian organizations. One thing is certain: incidents of major violence against humanitarian aid personnel are on the rise.

Humanitarian organizations have traditionally relied on negotiating the consent of States to protect their workers. But the changing nature of war has undermined this model, and some humanitarian organizations have turned to private security companies.

The use of commercial security providers to confront these challenges poses unique legal and practical problems. Using security personnel to ensure the safe and efficient delivery of aid may compromise the impartiality, neutrality, and independence of an organization. The panel aimed to outline the principle arguments in favour and against private military and security companies being hired by humanitarian organization and the parameters of their operations should they be used. Recommendations will be made for humanitarian organizations that choose to hire private security contractors to ensure respect for international humanitarian law.

ADELE HARMER

Humanitarian Policy Group, Overseas Development Institute

Harmer conducted a two year study, examining the use of private security companies (PSCs) by aid agencies. This sector in recent years has faced increased security concerns and violence against its aid workers.

Based on this study, the panelist identified the following trends:

- The use of private military companies is on the rise.
- In the past 5 years, a significant number of humanitarian actors have contracted commercial security entities.
- Private security companies are used more often in post-conflict and conflict situations, as opposed to areas recovering from natural disasters.
- Most organizations are using unarmed services as guards to provide physical security of premises, and employ international private security forces for risk management and training.
- Armed protection remains an exception. 22% of agencies reported hiring armed protection services. However, the vast majority of agencies surveyed hire unarmed local security contractors.
- It is significant that armed security has been hired by virtually all the relevant humanitarian aid agencies.
- The use of armed services is dictated by the local security culture.

The panelist found from her survey that

> **aid workers are currently operating in a complete policy vacuum in terms of hiring private security companies.**

She notes that there is a universal lack of vetting policy and guidelines. Within the UN, the policies are ambiguous. The panelist has also found that headquarters are "entirely unaware" of the actions undertaken in the field. This extends to unaccounted budgeting and the lack of clear cost-effective metrics.

The panelist concluded by noting that this is a frustrating topic because this is a very sensitive issue for all the organizations involved. She noted that security is an interdependent topic, and the actions of one organization will affect the interests of others in the field. The sector would benefit from greater communication and sharing the development of common criteria for selecting between different services and providers.

BENJAMIN PERRIN

University of British Columbia, Faculty of Law

The central focus of Perrin's presentation was the legal ramifications for aid agencies when hiring private security companies. More specifically, whether or not a decision to hire such services would suspend the aid agency's protected status under international humanitarian law.

The panelist discussed the legal dimensions of contracting private security companies. First, do humanitarian personnel lose their protected status by using private security companies? Second, do they lose their access to conflict regions by retaining such services?

Perrin is of the position that all employees of a private security company in an armed conflict are protected under international humanitarian law. This remains the case so long as they are not hired by the belligerents in the conflict, or take direct part in hostilities. On a case-by-case basis, this panelist believes that the protected status is dependent on the activities engaged by the contractors. He stated that

> **where NGOs hire private military contractors to deal exclusively with criminality and banditry, any response with armed forces should not entail an automatic loss of protected status. Conversely, any armed action undertaken by such contractors without provocation will result in the loss of protected status.**

In conclusion, Perrin believes that aid agencies will not automatically lose their protected status for hiring private military contractors. The option to hire such individuals is seen by NGOs as being the only viable option in light of the alternatives such as withdrawing or suspending their activities. Finally, Perrin concurred that there is an unwillingness to discuss the use of private military contractors generally, which poses serious ramifications for the adoption of best practices.

ANDREW BEARPARK

British Association of Private Security Companies

The third panelist provided a viewpoint from the security industry's perspective. He notes that there is no longer a debate as to whether or not NGOs *should* use private security contractors – the reality is they do; rather, Bearpark believes the focus should be how NGOs use such services.

He stated that the industry should be self-regulated in addition to being subject to regulation under national legislations where appropriate. While controls can be established both on an international and local level, Bearpark noted that given the

transnational nature of the industry national legislation is often ineffective. The panelist cited South Africa's problematic attempt in using domestic law to regulate private security companies. Instead the panelist offers the Montreux principles as a starting point for developing practical policies for the industry.

Bearpark advised that NGOs and private military companies would gain from discussing policy and best practices concerns. The industry is willing to discuss the perception of private military companies generally, and to review whether or not its role in guarding facilities like diamond mines in Africa may be beneficial to the continent overall. Additionally, Bearpark suggested that NGOs should develop their capacity to select and negotiate with private security companies, which can increase effectiveness while decreasing costs.

JAMIE WILLIAMSON

International Committee of the Red Cross (ICRC)

Williamson began by addressing comments made by the other panelists. He echoed Perrin's observation that generally armed individuals working alongside aid workers are deemed to be civilians, until such time they take part in direct acts of hostility. Williamson also supported the utility of Montreux document in PSC regulation given that 17 states have signed on, and that both NGOs and private military contractors participated in its creation. It was this panelist's belief that there is no vacuum of law as such.

As a legal adviser for the ICRC, Williamson stated that the use of private security remains exceptional. Generally, the ICRC does not use private security, and prefers dialogue between the parties. He sees the use of private military contracts only viable in instances where there is a paralysis of humanitarian action, or where *inaction* will lead to civilian deaths. Williamson supports the use of local security rather than international forces where possible, to minimize the risk of being targeted.

Williamson concluded by looking at what steps can be taken to further develop guidelines and procedures in selecting private security companies. One suggestion included having more effective sanctions, thus making the industry accountable for their actions.

DISCUSSION & CONCLUSION

Discussion on this panel focused on the legal challenges regarding the status of private military contractors and then quickly moved to the tension which exists between industry self- regulation and international controls.

The primary legal questions were the status of PMCs and what impact the use of private security has on the status of humanitarian organizations. There is an important distinction between active participation in hostility, and the passive act of carrying arms merely for self-defense. Carrying arms does not immediately constitute a direct participation in hostilities. The panel unanimously agreed that it was the nature of the work being carried out by military contractors that should be used in characterizing their status.

The situation is somewhat more complex when we are dealing with NGOs and humanitarian organizations which hire contractors. The panel's initial focus was to try and clarify this situation and seek potential guidelines for humanitarian organizations wishing to employ military contractors. However, it was quickly revealed that operational realities and challenges of the field seem to deal with this issue. If it is true that hiring the same private military company that provides services for militaries and NGOs can confuse the protected status of the NGOs themselves, this problem could be addressed by properly vetting contractors before they are hired. Additionally, when in the field, private military contractors should be visibly distinguishable from aid workers. In cases of humanitarian convoys security vehicles should also shadow a convoy and serve more of a deterrent role.

Panelists quickly moved from the issue of status to that of regulation. On this regard it was determined that there are some technical gaps in law and notably with respect to secondary norms. One of the panelists remarked that there is a current gap in regulatory or enforcement laws given that the corpus of laws governing private security actors and NGOs is contractually based. While there is an extraterritorial Military Judicial Act, it only applies to United States military personnel and defense contractors working for the military. Currently there exists legislative efforts to fill the gap and capture private military contractors that operate without any connection to the military. There is also the possibility of criminal prosecution in home states. However, there is currently no statement on whether human rights violations may entail extraterritorial jurisdiction; therefore, such acts may remain in a legal vacuum.

The main problem identified during the session dealt with the strategies going forward in order to address these gaps. Does the answer lie in industry self regulation or in building international norms?

One of the participants remarked that there is distinction between private security companies that are unregulated, and those that make an attempt for self-regulation. Another concern is the inability to effectively regulate local security actors. It will be difficult, he believes, to train local providers on the rules of engagement.

Industry self- regulation, notably through professional association, was seen by some as a flexible and an effective solution for the gaps in the law. Companies wishing to join industry associations must already undergo a thorough vetting process and adhere to standards on training staff and providing insurance. It is believed that eventually, an industry 'brand' may reach a stage where it becomes recognizable by the general public. At this point, the self-regulatory enforcement mechanism imposed on the industry may develop effective 'teeth' and companies that violate industry standards may face the ultimate sanction of losing their membership and the 'brand' associated with it. Alternatively, there could be the creation of an Ombudsperson who would be responsible to the public and paid for by the government.

Participants also brought up the example of the American industry association for private military contractors and notes that their code is membership that includes punishments such as fines and the ultimate sanction of banishment from the association which is not enough. The enforcement of the code will only be as effective as the threat of the sanctions.

A participant suggested "piercing the corporate culture" and assigning individual liability from the bottom up. This would entail sanctioning not only perpetrators of crimes, but also the corporate leaders of such companies in a similar model based on command responsibility.

Confronting the proponents of industry self regulation are the calls and initiatives which seek an international regulatory framework. One of the participants noted that there should be a minimum standard for hiring private military contractors. He suggests that 1) a policy framework should be developed right now to replace the ad hoc nature in selecting and hiring PMCs by NGOs, and such policies should be widely disseminated. And 2) there should be an increase in the pooling of resources and data sharing between NGOs with respect hiring and selecting private military companies. Though official data sharing may be unlikely, it was suggested that it is likely that anecdotal information is already being shared. This participant then suggests that if an NGO does not have the ability to assess private military companies based on a minimum set of guidelines, it is best that these NGOs do not retain such services. A third participant added that while the United Nations has guidelines on outsourcing, there is no clear guidelines for outsourcing services to private military contractors and other entities.

The Montreux document seems to be the beginning of an answer for those seeking international controls and regulation. Despite its non biding nature and the fact that it is more a statement of principle than regulations it seemed to have acted as a precursor to hard international regulations. Since the conference in May of 2009 the U.N. Office for High Commissioner for Human Rights, Working Group on Mercenaries produced the *Draft U.N. International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies (dated July 2009)*. This draft convention undoubtedly marks a shift towards a more general acceptance of the need for international regulations.

Conclusion

The goal of the partnership between the Liu Institute for Global Studies and the Canadian Red Cross was to mark the 60th anniversary of the Geneva conventions by providing relevant and innovative policy solutions to some of the key problems faced in modern day armed conflicts. This conference report has highlighted the key findings of participants in four inter-related thematic areas related to this topic.

Since March 2009, conference participants and other international experts have completed a total of 17 papers that further explore the conference themes. These papers are being subject to an internal peer-review process with feedback to the individual authors to further refine them prior to completion of a full manuscript by March 2010. This manuscript for an edited volume will then be submitted for external peer-review and publication consideration by UBC Press, which has strongly expressed interest in this project.

Our aim is that this book, tentatively titled Edges of Conflict: Non-State Actors, Contemporary Conflict and International Humanitarian Law will be a lasting and in-depth contribution to the progressive development of international humanitarian law once it is published (estimated in 2011). The following is a list of the chapters that have been commissioned and written:

RISE OF NON-STATE ARMED GROUPS

1. Sophie Rondeau, "The Pragmatic Weight of Reciprocity: Promoting Respect for International Humanitarian Law and Non-State Armed Groups"
2. René Provost, "Reciprocity as International Humanitarian Law's Greatest Enforcement Tool"
3. Elisabeth Decrey Warner, Pascal Bongard & Jonathan Somer, "Engaging Non-State Armed Groups to Promote International Humanitarian Law"
4. Sandesh Sivakumaran, "Non-State Armed Groups in the Formation and Enforcement of International Humanitarian Law"

EXPANSION OF PRIVATE MILITARY & SECURITY COMPANIES

5. Benjamin Perrin, "Private Security Companies & Humanitarian Organizations: Implications for International Humanitarian Law"
6. Fred Schreier, "Obligations of Private Military and Security Companies Under International Humanitarian Law in Conducting Operations in Humanitarian Theatres of Operation"
7. Andrew Bearpark, "The Case for Humanitarian Organizations to Use Private Security Contactors"
8. Jamie Williamson, "The Case Against Humanitarian Organizations Using Private Security Contactors"

SHRINKING "HUMANITARIAN SPACE"

9. Sylvain Beauchamp, "'Humanitarian Space' in Search of a Home: Defining a New Approach"
10. Michael Kahmbatta, "On the Imperative of Preserving Impartial, Neutral and Independent Aid"
11. Valerie Oosterveld, "The Implications for Women of a Shrinking Humanitarian Space"
12. Emily Paddon and Taylor Owen, "Whither Humanitarian Space? The Costs of Integrated Peacebuilding in Afghanistan"

ENDEMIC URBAN VIOLENCE

13. Carlos Fuentes, "Silent Wars in Our Cities: Alternatives to the Inadequacy of International Humanitarian Law to Protect Civilians during Endemic Urban Violence"
14. Oliver Jütersonke & Robert Muggah, "Rethinking Humanitarian Action in Fragile Cities: The Case for Urban Resilience"
15. Pablo Policzer, "Non-State Armed Groups and the Arms Trade Treaty"
16. Judi Fairholm, "The Special Case of Children's Rights in Situations of Urban Violence"
17. Robert Muggah, "Case Study: Assessing Stabilization and Humanitarian Action in Haiti"

Additionally, as part of the conference debriefing, the Edges of Conflict project advisory group has identified four concrete policy-relevant documents that it recommends be developed with the assistance of a key conference participant in each area as part of the next phase of activities in 2009-2010:

1. Statement of principles to enhance compliance of non-state armed groups with international humanitarian law;
2. Written submission and commentary on the Draft U.N. International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies (dated July 2009) to the U.N. Office for High Commissioner for Human Rights, Working Group on Mercenaries;
3. Principles for the delivery of humanitarian assistance in modern armed conflicts, which involve a multiplicity of actors, to ensure maximum benefit to civilians; and,
4. International policy framework for preventing and mitigating the harmful effects of endemic urban violence.

The Canadian Red Cross and the Liu Institute for Global studies are looking forward to continuing collaborating on this project and wish to thank the Department of Foreign Affairs and the Department of Defense for their continued financial contributions.

APPENDICES

- List of Conference Participants
- Conference Program
- Edges of Conflict Partners

APPENDIX A
List of Conference Participants

Key Speakers

Brian Job
Director, Centre for International Relations; Professor, Liu Institute for Global Issues University of British Columbia

Susan Johnson
Canadian Red Cross

Michael Otim
Coordinator
Justice & Reconciliation Project

Benjamin Perrin
Faculty Fellow, Liu Institute for Global Issues; Assistant Professor, Faculty of Law University of British Columbia

Brigadier-General Kenn Watkin
Judge Advocate General
Department of National Defence and the Canadian Armed Forces

Paul Wells
Columnist
Maclean's Magazine

Panelists

Ketty Anyeko
Research Officer, Gulu/Amuru
Justice & Reconciliation Project

Andrew Bearpark
Director General
British Association of Private Security Companies

Sylvain Beauchamp
Senior Advisor - Institutional Partnerships
Rights and Democracy

Isabelle Daoust
IHL Dissemination & Chapter Support
American Red Cross

Elisabeth Decrey Warner
President and co-founder
Geneva Call

Judi Fairholm
National Technical Director
RespectED: Violence & Abuse Prevention
Canadian Red Cross

Carlos Fuentes
Doctoral Candidate, Centre for Human Rights and Legal Pluralism, McGill University

Adele Harmer
Research Fellow, Humanitarian Policy Group
Overseas Development Institute

Don Hubert
Associate Professor, Graduate School of Public and International Affairs
University of Ottawa

Ted Itani
Humanitarian Advisor
Pearson Peacekeeping Centre

Oliver Jütersonke
Head of Research, Centre on Conflict, Development and Peacebuilding (CCDP)
Graduate Institute of International and Development Studies

Michael Khambatta
Deputy Head of Delegation, Washington DC
International Committee of the Red Cross

Sam Millar
Director of Peace & Security Policy, Afghanistan Task Force
Canadian International Development Agency (CIDA)

David Morley
President and CEO
Save the Children Canada

Larry Murray
Former Acting Chief of Defence Staff; former Associate Deputy Minister and Deputy Minister

Brigadier-General Guy Laroche
Commander of Land Forces Quebec Area and Joint Task Force East
Department of National Defence and the Canadian Armed Forces

Valerie Oosterveld
Professor, Faculty of Law
University of Western Ontario

Taylor Owen
Doctoral Candidate and Trudeau Scholar
University of Oxford

Emily Paddon
Doctoral Candidate and Trudeau Scholar
University of Oxford

Pablo Policzer
Assistant Professor, Department of Political Science
University of Calgary

René Provost
Director, Centre for Human Rights and Legal Pluralism
McGill University

Sophie Rondeau
Coordinator
Rights and Democracy Network

Sandesh Sivakumaran
Professor, Faculty of Law
University of Nottingham

Jamie Williamson
Legal Advisor
International Committee of the Red Cross

Rapporteurs

Laura Best
Student, Faculty of Law
University of British Columbia

George Chandler
Manager, Humanitarian Issues Promotion
Canadian Red Cross

Leslie Leach
Director, Research & Development
Canadian Red Cross

Jacky Sin
Student, Faculty of Law
University of British Columbia

Melinda Wells
Director, Humanitarian Issues Unit
Canadian Red Cross

Attendees

Rebecca Aleem
Student, Faculty of Law
University of British Columbia

Mathieu Babin
Policy Officer, Directorate of Public Policy
Department of National Defence

Andrew Balakshin
Alumni
University of British Columbia

Michael Bonser
Deputy Director, Humanitarian Affairs and Disasters Response Group
Foreign Affairs and International Trade Canada

Maurice Copithorne
Professor, Faculty of Law
University of British Columbia

Jacqueline Fehr
Student, Faculty of Law
University of British Columbia

Laurie Fisher
American Red Cross

Michelle Hassen
Manager, Humanitarian Issues Programming
Canadian Red Cross

Major Robin Holman
Acting Director, Directorate of International and Operational Law
Office of the Judge Advocate General
Canadian Armed Forces

Annemieke Holthuis
Criminal Law Policy Section
Justice Canada

Elise Leclerc-Gagne
Doctoral Candidate, Department of Political Science
University of British Columbia

Captain Nicolas Lussier-Nivischiuk
Aide de camp GCmdt
Department of National Defence and the Canadian Armed Forces

Ilario Maiolo
Senior Legal Advisor, Humanitarian Issues
Canadian Red Cross

June McCue
Assistant Professor, Faculty of Law
University of British Columbia

Kris Miks
Student, Faculty of Law
University of British Columbia

Brendan Naef
Doctoral Candidate, Faculty of LawUniversity of British Columbia

Tasha Nijjar
Special Project Liaison
Canadian Red Cross

Kirsten Pontalti
Student, School for International Studies
Simon Fraser University

Margaret Purdy
Resident Scholar, Centre of International Relations
University of British Columbia

Sally Reay
Research Coordinator, Liu Institute for Global Issues
University of British Columbia

Carrie Santos
Senior Director, International Policy and External AffairsAmerican Red Cross

Jonathan Somer
CANSA Program Coordinator and Legal Adviser
Geneva Call

Christopher Spearin
Professor, Department of Defence Studies
Canadian Forces College

Chris Tenove
Doctoral Candidate, Department of Political Science
University of British Columbia

Julie Wagemakers
Deputy Director, Liu Institute for Global Issues
University of British Columbia

APPENDIX B
Conference Program

Opening Reception – Sunday Evening, March 29, 2009

6:30pm – 8:00pm

Opening reception ~ Fairmount Waterfront Hotel ~ MacKenzie Room
900 Canada Place Way, Vancouver, British Columbia V6C3L5

Welcome remarks
Brian Job, Liu Institute for Global Issues
Susan Johnson, Canadian Red Cross

Keynote Speakers
Paul Wells, Maclean's Magazine
Michael Otim, Justice and Reconciliation Project, Northern Uganda

Day 1 - Monday, March 30, 2009

7:30am — Pick up at Fairmont Waterfront Hotel. Travel by coach to the Liu Institute for Global Issues, UBC, 6476 NW Marine Drive, Vancouver.

8.30am - 9:00am — Registration and Breakfast

9:00am - 9:30am — **Opening Remarks and Conference Overview**
Professor Benjamin Perrin, Conference Chair, UBC Faculty of Law
Brigadier-General Ken Watkin, Judge Advocate General

9:30am - 12:00 noon — **Afghanistan: A case study in the changing nature of armed conflict**
Public Session

The panel will paint a broad picture of the current challenges during armed conflict from a legal, operational and humanitarian perspective. The panelists will present their general observations and answer questions from the public.

Note: There will be a 30 minute break at a suitable time during the Afghan panel. While this panel will be open to the public, the rest of the conference is for invited participants only.

Opening Remarks
Taylor Owen and Emily Paddon, Trudeau Foundation Scholars

Moderator
Vice-Admiral Larry Murray (Retd.), Trudeau Foundation Mentor

Panelists:

1. Brigadier-General Guy Laroche, Commander of Land Forces Quebec Area and Joint Task Force East, Former Commander of Joint Task Force Afghanistan
2. Paul Wells, Senior Columnist, Maclean's Magazine
3. David Morley, CEO, Save the Children Canada
4. Sam Millar, Director of Policy, CIDA Afghan Task Force

Rapporteurs
Melinda Wells, Canadian Red Cross, and Laura Best, UBC Law

Day 1 - Monday, March 30, 2009 (continued)

1:00pm – 3:00pm

Advent of Endemic Urban Violence
Alternative approaches to addressing the challenges posed by endemic urban violence will be discussed, with a focus on articulating "Normative Principles for Characterizing Situations of Endemic Urban Violence and Mitigating Their Harm".

Moderator
Don Hubert, University of Ottawa, School of Public and International Affairs

Panelists
1. Carlos Fuentes, O'Brien Fellow & Doctoral Candidate (on leave), McGill University, Centre for Human Rights & Legal Pluralism
2. Pablo Policzer, University of Calgary, Department of Political Science
3. Judi Fairholm, Canadian Red Cross
4. Oliver Jütersonke, Graduate Institute of International and Development Studies, Centre on Conflict, Development and Peacebuilding (CCDP)

Rapporteurs
Leslie Leach, Canadian Red Cross, and Jacky Sin, UBC Law

3:00pm - 3:30pm — Break

3:30pm - 5:30pm

Rise of Non-State Armed Groups
The participants will explore the nature of non-state armed groups in international humanitarian law, the criteria for recognition of "organized armed groups" and their role in the characterization of the conflict, and how they are bound to respect the principles of international law.

Moderator
Pablo Policzer, University of Calgary, Department of Political Science

Panelists
1. Sophie Rondeau, Rights and Democracy
2. René Provost, McGill University, Centre for Human Rights and Legal Pluralism
3. Elisabeth Decrey Warner, Geneva Call
4. Sandesh Sivakumaran, University of Nottingham, Faculty of Law

Rapporteurs
Isabelle Daoust, American Red Cross, and George Chandler, Canadian Red Cross

5:30pm — Travel by coach from UBC to hotel

7:00pm — **Optional dinner ~ Aqua Riva**
Suite 30, 200 Granville Street, Vancouver V6C 1S4

Day 2 - Tuesday, March 31, 2009

8:00am	Pick up at Fairmont Waterfront Hotel, travel by coach to the Liu Institute for Global Issues, UBC, 6476 NW Marine Drive, Vancouver.
9:00am - 9:30am	Breakfast (Coffee, muffins etc)
9:30am – 11:30am	**Shrinking 'Humanitarian Space'** Using international humanitarian law treaties as a base-line and recognizing the reality of modern counter-insurgency doctrines, this panel will articulate alternative principles for the delivery of humanitarian aid, while considering the concept of "humanitarian space". **Opening Remarks** Ketty Anyeko, Justice and Reconciliation Project, Northern Uganda **Moderator** Isabelle Daoust, American Red Cross **Panelists**: 1. Sylvain Beauchamp, Rights and Democracy 2. Michael Khambatta, International Committee of the Red Cross (ICRC) 3. Valerie Oosterveld, University of Western Ontario, Faculty of Law 4. Ted Itani, Pearson Peacekeeping Centre **Rapporteurs:** Leslie Leach, Canadian Red Cross, and Jacky Sin, UBC Law
11:30am - 12:30pm	Lunch
3:30pm - 5:30pm	**Expansion of Private Military and Security Companies** The panel will outline the principle arguments in favour and against private military and security companies being hired by humanitarian organization and the parameters of their operations should they be used. Recommendations will be made for humanitarian organizations that choose to hire private security contractors to ensure respect for international humanitarian law. **Moderator** Brian Job, Liu Institute for Global Issues, UBC **Panelists** 1. Benjamin Perrin, University of British Columbia, Faculty of Law 2. Andrew Bearpark, British Association of Private Security Companies 3. Jamie Williamson, International Committee of the Red Cross (ICRC) 4. Adele Harmer, Humanitarian Policy Group, Overseas Development Institute 5. Fred Schreier, Geneva Centre for the Democratic Control of Armed Forces (DCAF) Note: Mr. Schreier has contributed a paper, but is unable to attend the conference. **Rapporteurs** Melinda Wells, Canadian Red Cross, and Laura Best, UBC Law
2:30pm - 3:00pm	Closing Remarks
3:30pm	Participants who are staying in Vancouver will travel by coach from UBC to hotel

APPENDIX C
Edges of Conflict Partners

Liu Institute for Global Issues (UBC)

Named after Dr. Jieh Jow Liou, the Liu Institute conducts and facilitates research on global issues, mobilizing knowledge into solutions and policy. One of sixteen research units in the College for Interdisciplinary Studies (CFIS) at the University of British Columbia, the Institute takes an interdisciplinary problem-solving approach to explore new ideas and ways of learning to catalyze innovative thinking and positive societal change. Its current focus is on advancing sustainability, security, and social justice: understood as moving toward economic, social, and environmental interactions that promote the well-being of people in ways that are just, equitable, and sustainable.

Founded in 1998 by Professor Ivan Head and opened in 2000, the Institute acts as a hub for global research and emerging issues at the University of British Columbia (UBC).

A hallmark of the Institute is to provide innovative learning and research opportunities for UBC graduate students, postdoctoral fellows, faculty, and community members that help to bridge the gap between academics and practitioners.

The Liu Institute for Global Issues (UBC)
The University of British Columbia
6476 NW Marine Drive
Vancouver, B.C. Canada V6T 1Z2

www.ligi.ubc.ca

Canadian Red Cross

The Canadian Red Cross Society (CRC) is a non-profit, humanitarian organization dedicated to improving the situation of the most vulnerable in Canada and throughout the world. The Canadian Red Cross is a national society and member of the International Red Cross and Red Crescent Movement – this includes the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (Federation) and the 185 National Red Cross and Red Crescent Societies. In 1909, the Federal Government passed the Canadian Red Cross Society Act, which legally established the Red Cross as the corporate body responsible for providing volunteer aid in accordance with the Geneva Conventions.

CRC's mission is to improve the lives of vulnerable people by mobilizing the power of humanity in Canada and around the world. A wide range of assistance is provided to millions of people in Canada through a national Disaster Services program and injury prevention services (such as Water Safety and First Aid) and through community outreach programs. CRC is also dedicated to helping the world's most vulnerable populations - victims of armed conflicts and communities destroyed by devastating disasters - through its international programs.

Canadian Red Cross
170 Metcalfe
Ottawa, ON
Canada, K2P 2P2

www.redcross.ca

APPENDIX C
Edges of Conflict Partners (continued)

Biography: Prof. Benjamin Perrin (UBC), Conference Chair

Benjamin Perrin joined the UBC Faculty of Law in August 2007 as Assistant Professor, and is a Faculty Fellow at the Liu Institute for Global Issues. His teaching and research interests include domestic and international criminal law, international humanitarian law, and human trafficking.

A member of the Law Society of Upper Canada, Professor Perrin served as a law clerk to the Hon. Madam Justice Marie Deschamps of the Supreme Court of Canada, and was senior policy advisor to the Minister of Citizenship and Immigration. He was the assistant director of the Special Court for Sierra Leone legal clinic which assists the Trial and Appeals Chambers, and completed an internship in Chambers at the International Criminal Tribunal for the former Yugoslavia in The Hague.

Professor Perrin is also the founder of The Future Group, and he served as Executive Director of this non-governmental organization that combats human trafficking from 2000-2006, including leading its inaugural project in Cambodia. The organization works with victims overseas, assists with the extraterritorial prosecution of offenders, and conducts public policy research on the issue. He has been recognized with the Governor General's Queen's Golden Jubilee Medal, the YMCA International Peace Medal, the "Graduate of the Last Decade" Award from the University of Calgary, and a "Hero in the Fight Against Modern-Day Slavery" by the U.S. Department of State.

Professor Perrin is editing a book related to this project, tentatively titled Edges of Conflict: Non-State Actors, Contemporary Armed Conflict and International Humanitarian Law. He is writing a second book, tentatively titled Journey of Injustice: Canada's Underground World of Human Trafficking, to be published by Penguin Group (Canada) in October 2010.

Biography: Prof. Brian Job, UBC

Brian Job (Ph.D, Indiana) joined the Department as a Professor in 1989. Since 1992, he has also served as Director of the Centre of International Relations at the Liu Institute at UBC.

His teaching and research interests are in international security studies, broadly conceived. His work focuses upon the evolving security order of the Asia Pacific, on intrastate conflict, and on Canadian foreign and defence policy. The theoretical/conceptual puzzles that interest him include the evolution of norms for security communities, multilateralism, regionalism, arms acquisition processes, and the security dilemmas of and within "Third World" states.

His current research is funded through a joint SSHRC project with Michael Wallace and through the Security and Defence Forum program of the Centre of International Relations. He has published on international alliances, international theory, and the application of formal and statistical methodologies to international relations.

In recent years, his publications have focused upon the UN and regional conflict, Asia Pacific security developments, and on Canadian interests and policies vis-à-vis the Asia Pacific. Job has actively engaged in establishing academic networks, including (as co-founder) the Canadian Consortium on Asia Pacific Security and the Canadian Consortium on Human Security. With the Asia Pacific region, he is involved in regional "Track 2" activities and currently serves as Co-Chair of the Council for Security Cooperation in the Asia Pacific (CSCAP 2002-04). Job served on the Foreign Minister's Advisory Board (1995-97). He was co-editor of the International Studies Quarterly, as well as Treasurer and Vice-President of the International Studies Association.

APPENDIX C
Edges of Conflict Partners (continued)

Biography: Ilario Maiolo (CRC)

Ilario Maiolo, Member of the Quebec Bar, Ilario Maiolo has worked in a number of legal advisory positions for The Canadian Red Cross since 2004. He currently serves as Senior Legal Advisor, Humanitarian Issues where his duties include advising the Society on matters relating to International Humanitarian Law and promoting IHL and other conflict-related issues with key stakeholders particularly government departments, the armed forces and academia. He has also worked in private practice in Europe and as a consultant for the Government of Canada - most recently for the Department of Foreign Affairs and International Trade. Ilario holds Civil (LL.L.) and Common Law (LL.B.) law degrees from the University of Ottawa and a masters in international law from the Graduate Institute for International Studies in Geneva.

Biography: Michelle Hassen (CRC)

Michelle Hassen is the Canadian Red Cross Lower Mainland Regional Manager and the Humanitarian Issues Manager for BC. Over her seven years working with the Canadian Red Cross, Michelle has lead many initiatives engaging the public in international humanitarian law and other pressing global issues. In 2004 Michelle worked with the ICRC's Arms Unit around the Review Conference of the Anti-personnel Landmine Ban Convention. She also has experience with UNHCR coordinating events, researching child trafficking with WUSC and advising on business opportunities in Mexico with a trade consulate. Michelle has a degree in International Relations from UBC and a diploma in International Humanitarian Law from the ICRC.