CONFERENCE REPORT

A NATION AT WAR

Seventeenth Annual Strategy Conference
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Edited by
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Comments pertaining to this report are invited and should be forwarded to: Director, Strategic Studies Institute, U.S. Army War College, 122 Forbes Ave, Carlisle, PA 17013-5244.

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FOREWORD

The U.S. Army War College (USAWC) Strategy Conference each year addresses a major security issue of relevance to the United States and its allies. Recognizing that the ultimate symbol of the nation's commitment is "boots on the ground," the USAWC focuses the Strategy Conference on the subject's implications for ground power. The conference brings together top national security strategists, senior military leaders, media, university faculty, and the policymaking community to consider, discuss, and debate topics concerning America's national security strategy. The 2006 conference was designed to help frame vital questions that offer insights on the conference theme: "A Nation at War."

The phrase "A Nation at War" evokes images of mobilization of the nation's resources: military surely, but also the government, industry, and the population. Thus far in the Global War on Terrorism (GWOT), though, the mobilization has not been on the scale seen in past "global" wars. As the Nation approached the 5-year mark of the start of the GWOT, the USAWC focused the attention of its Seventeenth Annual Strategy Conference on whether or not the evidence supports the continuing assumption that the Nation is really at war. Some would insist that the answer is obviously yes. The conference studied this question in depth with panels on the homeland security aspects, the international context, the legal foundation for the war, and the associated economic and domestic policy issues. The conclusion was that the answer to the question is not as clear as first thought. Much of the evidence suggests that the Nation—or at least some parts of it—is not at war.

The Strategic Studies Institute is pleased to provide this summary, analysis, and associated papers from the 2006 conference.

DOUGLAS C. LOVELACE, JR.
Director
Strategic Studies Institute

INTRODUCTION

Is America at war? To the soldier under attack today from a roadside bomb or a group of insurgents in Iraq, the answer seems clear: a resounding yes. The same unequivocal response would have emanated from Afghanistan in 2002, although that theater has suffered from inattention in the intervening years. In Afghanistan, the answer to the war question is a bit harder: soldiers in Kabul recognize that they are at "something other than peace," but may not be sure that they are at war . . . and with whom. As one draws farther and farther from the theaters of war, confusion increases about whether or not the Nation is really at war. Even in some parts of the Defense Department, bureaucracy—in the most pejorative sense of the word—reigns, providing examples that suggest even the agency charged with prosecuting the war is unable to instill in all its people the urgency that should attach when a nation is involved in an existential fight. Military personnel serving in Iraq and Afghanistan sometimes can see the faults of their own Department, but are more likely to focus their attention on other parts of the government. In 2005 (and undoubtedly continuing in 2006), senior leaders in Iraq increasingly were asking, "Where's the rest of the U.S. Government?" The State Department, with its significant investment of personnel and other resources in Iraq, is protected somewhat from the implied criticism, but many parts of the diplomatic corps also are missing the expected sense of urgency. Perhaps worst of all is the answer that would come from the broad American public. Their vocal response might be affirmative, but except for those families with loved ones in the military, there

might be scant tangible evidence that the Nation is at war.

Part of the confusion stems from the nature of the Global War on Terrorism (GWOT). The war is certainly existential, but judging the performance of the nation by the standard of the fight for the nation's life in World War II is wrong. Even in World War II, some parts of the United States—government and public—might have been only marginally affected, but the overwhelming majority of the country felt in daily life the sacrifices required for the war effort. Mobilization was immense; American industry was mobilized on par with the nation's citizenry. Although some actions—like saving tin foil to be used in building battleships—were more symbolic than significant, virtually every American was acutely aware of his or her role in the war. When making comparisons against the World War II standard, analysts of today's GWOT can not be faulted for suggesting that the Nation really is not at war.

A better standard to use for comparison would perhaps be the Cold War. The Department of Defense (DoD), in its *Quadrennial Defense Review* and other documents, has recognized that the United States is engaged in ". . . what will be a long war."[1] During the Cold War, the nuclear threat sometimes seemed like the Sword of Damocles hanging over the head of the U.S. populace, but faith in deterrence—even that provided by mutually assured destruction—allowed Americans to continue with their everyday lives. Industry was able to focus on products other than military materiel, contributing to the strength of the economy that was key in the eventual defeat of the Soviet Union. The analogy with the Cold War is not perfect: the economy may be of less importance in the GWOT than finding

the intellectual capital to win the diplomatic and informational "battles" that lie ahead. Nonetheless, the Cold War paradigm is probably more appropriate for a comparison with today's GWOT.

For the U.S. Army War College's Seventeenth Annual Strategy Conference, the Strategic Studies Institute proposed analysis of several of the many dimensions of the GWOT. Recognizing that no conference could hope to be comprehensive in such an analysis, the conference organizers decided to concentrate on five distinct aspects of the current war, hoping to touch in some way on each of the elements of national power.

1. Defending the nation's borders (addressing—at least in part—the informational element of national power). When in a war—either of the Cold War or World War II variety—defense of the borders is an imperative. One side of a current political debate suggests that open borders are the more desirable alternative. While not specifically addressing the national security risks, the pundits on this side of the equation point out that tightening borders and limiting foreign entrance into the country are accompanied by real costs: economic costs, intellectual costs, and costs in international goodwill. Finding the balance between open and tightly-constricted borders presents a major national security challenge.

2. Building and maintaining international support (addressing an issue for the diplomatic element of national power). Even a "unilateral" preemptive attack requires the support of other nations, whether organized in a loosely-bound coalition or bonded together as allies in a legally-binding treaty. In Iraq and other recent operations, some part of that support simply has served a legitimizing function. Absent an international mandate—from the United Nations (UN)

or other internationally-recognized body—the addition of coalition partners confers a degree of legitimacy on a particular operation. Those partners, though, join because of their own national interests, not necessarily because of some shared rationale for the conflict at hand. Those same interests drive alliances, too, but alliance partners usually can be expected to contribute significant—not token—forces to a fight. Both alliances and legitimizing coalitions provide a valuable service in the GWOT and any war; again the question is one of balance.

3. The domestic context and the Reserve Components (addressing domestic support through an analysis of one part of the military element of national power). Available evidence suggests that the Army's personnel and equipment are stressed by the on-going requirements of "the long war" and the continuing obligations for engagement around the world. One key piece of evidence is the paradigm shift in how the Army Reserve and National Guard are mobilized, deployed, and employed. While supporting processes remain mired in a Cold War mentality, the Reserve Components have gone from being a strategic reserve—the Cold War model—to an operational reserve. A new force generation model is attempting to put some predictability into deployment cycles, but the reserves in the GWOT are deploying more regularly, with some predictable adverse impacts on recruiting, retaining, and equipping the force. Another adverse impact became obvious in the aftermath of Hurricane Katrina, when many of the National Guard first responders in the affected States were unavailable because of deployment. As with nearly all of the adverse impacts of limited force size, adaptable leaders found "work around" solutions that dedicated soldiers could

execute to accomplish the mission. However, these solutions frequently fell short of the desired end-state and were clearly executed on the backs of war-weary soldiers, both active and reserve.

4. Economic dimensions (addressing the economic element of national power). Economic globalization may be a good phenomenon for those nations blessed with the ability to move rapidly as markets shift. However, globalization also creates a regime of "loser" nations, those with no ability to adapt quickly and with no safety net when a broad swath of their citizenry find themselves unemployed, possibly producing recruiting opportunities for America's enemies around the world. Another economic phenomenon that affects the means to execute the nation's strategy is the amount of America's external debt. A robust economy is needed to prosecute the war; some of the current monetary and taxation policies put the economy at significant risk in the mid-term.

5. The rule of law (also addressing the information element of national power). One of America's enduring values is the legal foundation of society. Even when—perhaps **especially** when—America's enemies ignore the basic provisions of international law, America should set an example for the rest of the world by adhering to the highest legal standards. In the GWOT, that example has been tarnished by perceived inadequate justification (*casus belli*) for the war in Iraq and by inappropriate conduct during the war. Notable among the latter is the treatment of prisoners at Abu Ghraib prison in Iraq, but the practice of rendition of prisoners to third countries and the use of "aggressive interrogation techniques"— some believe this to be a euphemism for torture—are not helping the United States win the "war of ideas" in the Muslim world.

Legal scholars are challenged to lay out the legal basis for the war and then to state the rules under which the war should be prosecuted. Neither the war model nor the law enforcement model covers precisely all the situations being encountered in the GWOT. Soldiers fighting the war deserve clear guidance on the application of *jus in bello*; American citizens asked to support the war need to know that their soldiers are acting appropriately in a war that was justified adequately.

This book is a compilation of the papers that resulted from panels convened to discuss the five particular aspects of the war described above. Where papers were not provided, the editor's comments seek to provide the gist of each panelist's presentation. A brief analysis of each panel's contribution—analysis sometimes engendered by questions asked by the Strategy Conference audience—is also part of this conference report and may provide some added meaning to the panelists' presentations and help in understanding the complex issues addressed.

ENDNOTES - INTRODUCTION

1. *Quadrennial Defense Review Report*, February 6, 2006, p. v, *inter alia*.

PANEL I

THE HOMELAND SECURITY CONTEXT: NATIONAL ACCESS VERSUS NATIONAL SECURITY

General.

Immigration—especially changing the status of millions of illegal immigrants—is a "hot button" topic as the President and Congress attempt to craft a reasonable policy, while listening to a cacophony of voices recommending one solution or another. To their great credit, the panelists on "National Access vs. National Security" steered clear of the controversy. They focused instead on the national security interests that help to locate the balance between a theoretical "hermetically sealed" border and one that is so open that unwanted personnel are able to cross at will to do Americans harm or to perpetrate their own criminal enterprises. Without saying so explicitly, the panel made the point that the largely-Hispanic illegal immigrant issue is a by-product of a border management system that lacked appropriate enforcement and resources to work effectively. Nonetheless, the real national security interest is not immigrants who provide cheap labor (although they do have an economic and social impact); the threat is from those—not immigrants at all—who come to the United States to do harm to the American people.

In his opening remarks, panel moderator Ted Gong pointed out the paradigm shift that followed the terrorist attacks of September 11, 2001 (9/11). Prior to those attacks, the granting of visas was perceived as increasingly liberal. Perhaps a result

of the government's decreased ability to process a growing number of visa requests, the average visit length had progressively increased, causing concern about overstays. Further, with some countries, the visa requirement was eliminated altogether in favor of the Visa Waiver Program, developed for those countries which were considered least likely to have citizens overstaying their visa-authorized time in the U.S. Whether strategic calculation or simple workload analysis produced the liberal policy was moot; the open borders were considered good for American commerce and society, which benefited from the free exchange of goods and ideas. The policy also supported government efforts to open other countries to American travelers and business.

September 11, of course, forced lawmakers and the public to think differently about visa policies and immigration management. The indefinite visa—even for America's strongest allies—was eliminated entirely, and visas granted after 9/11 were often for significantly shorter stays. In an age when an airplane could be used as a guided missile, the restrictions seemed appropriate, but produced immediate impacts on personal access to the United States for businessmen and tourists. In the longer term, adverse impacts were felt on other forms of commerce, too. Diplomatic efforts to open targeted countries by offering reciprocal entry to America also were affected negatively. The latter seemed especially counterproductive to efforts to spread American values abroad. Almost 5 years after 9/11, some technological applications and procedural changes have mitigated the effects of restricted cross-border flow, but no final balance has been found between tight borders and the need for adequate screening of international traffic terminating in the United States.

Ms. Elaine Dezenski.

At an International Organization for Migration (IOM) conference earlier this year, Panelist Elaine Dezenski said,

> On any map, national borders look like big, imposing monuments to national sovereignty, but the number of places where reality meets image is very small. Instead, boundaries between countries often amount to imaginary lines across mountain ranges or deserts, or simply a counter at an airport. People may cross borders either temporarily or to migrate for reasons ranging from tourism, business, to seek economic or social opportunity,—or to engage in acts of terrorism. Our challenge today is to develop approaches that make that line on a map as transparent and welcoming as possible for those in the first group while making it as imposing as possible to the second.[1]

Border security is too often translated as sealed borders, but the demands of legitimate commerce require that borders be as transparent as possible. Ms. Dezenski provided insights into the "layered security" that the Department of Homeland Security (DHS) sees as key for integrated border management, describing three key parts: interoperability, biometrics, and international cooperation. Although she described the first two as separate components, she did not really distinguish between them as she spoke about the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program. The biometrics was explained in some detail; the interoperability had to be assumed, though she was clear that the concept of US-VISIT is based on the idea that integrated border management systems are the foundation of ensuring that those visiting the United States are appropriately

identified and assessed for risk. At established ports of entry, those seeking entry to the United States are required to submit two fingerprints and to have a digital photo taken. Ms. Dezenski claimed that it takes only 15 seconds for the data to be gathered and for it to be processed through a database that identifies those to whom the United States would deny access. The processing time seems incredible, especially when the process must include a search through various databases (perhaps what she meant when she mentioned interoperability[2]). This technology generally was available earlier, but it took the horror of 9/11 to provide the political will to develop and install such a system at the borders. The goal of the program seems to be to slow down legitimate visitors—tourists, students, legal immigrants—only imperceptibly, while filtering the terrorists, criminals, and illegal immigrants. The system seems to be working in both regards: 15 seconds is not a too-high price to pay for border security, and the identities of undesirable entrants are being unraveled before they gain entry to the United States.

Two problems remain. First, US-VISIT screens only people who use the normal and legitimate ports of entry. Those who take advantage of porous American borders to bypass the system are still able to enter the United States. Second, in an age in which terrorists contemplate the use of weapons of mass destruction (WMD), the system to keep them out of the United States needs to be perfect, not just "a help" in screening the millions of visitors to America each year. In the end, US-VISIT cannot reach this lofty goal, but is probably the best possible program until alternatives or improvements are developed.

International cooperation is a requirement for "layered security" that essentially extends America's

borders further from U.S. shores. The second program Ms. Dezenski discussed—the Western Hemisphere Travel Initiative—was an outgrowth of the Intelligence Reform and Terrorist Prevention Act of 2004, which required the Department of State and DHS to close the so-called "Western Hemisphere loophole" that allowed travelers—including U.S. citizens—to cross borders in the Americas, the Caribbean, and Bermuda without a passport or other identification proving name and citizenship. The initiative will be phased in over the course of the next 2 years and is the cause of much consternation, especially in Canada. Some options are being considered for new credentialing options that would provide frequent travelers an option other than a passport.

Ms. Dezenski concluded her remarks with an overview of the Security and Prosperity Partnership (SPP) with Canada and Mexico. According to the leaders of the three North American nations, the program's aim is to ". . . ensure North America is the most economically dynamic region in the world and a secure home for our citizens."[3] The partnership covers a variety of issues, from avian influenza pandemics and emergency management to energy security, but calls for "smart, secure" borders in North America. The partnership looks closely at development of common American/Canadian/Mexican strategies for the free and secure flow of commerce across the borders of the continent. Just as a natural—or man-made—disaster in one country can affect the other continental neighbors, a unilateral border enforcement regime can have impacts beyond the enacting nation's shores. The SPP goal is to ensure common external border processes and procedures that allow the governments to have less concern about commerce

crossing the borders shared by the three countries. To paraphrase Ms. Dezenski, "We're not there yet. . . and it will be a while." As with the "simpler" process of personnel flow, the goal for such partnerships must be perfection so long as one terrorist cell can produce such dramatically disproportionate casualties, either with WMD or with improvised "weapons" as seen on 9/11. That goal is impossible, of course, but SPP provides a policy framework to focus on those areas of shared importance.

A common framework is only as effective as its ability to get it right every time, by stopping the flow of terrorists, their money or their weapons. Arguably, the best policy would "push the borders" even further from North American shores. Ms. Dezenski provided some detail about initiatives with Canada and Mexico, two countries with which the United States has frequent immigration or travel issues, but with which the United States also is traditionally very friendly. Left unaddressed by Ms. Dezenski was the greater challenge with nations—especially those with interests inimical to those of the United States—further from U.S. borders. Obtaining their cooperation in extending America's borders will be problematic. At the same time, broader challenges exist with key trading partners in Europe and elsewhere. Obtaining their cooperation in American border policies will be essential to creating a lasting and effective border management system.

Mr. Mark Krikorian.

Mark Krikorian and Demetrios Papademetriou were perhaps the most likely panelists to raise the controversial illegal immigrant issue—from both sides of the aisle: Mr. Krikorian from the "low immigration,

tight border" perspective and Mr. Papademetriou from the "high immigration, loose border" side. They both stayed away from inflammatory statements, but the structure of their comments made their separate positions clear. Mr. Krikorian's comments were based on the thesis that mass immigration is fundamentally incompatible with homeland security in the modern security environment.[4] According to Mr. Krikorian, borders should not be viewed simply as obstacles to overcome for the free flow of goods; they should be seen as the "home front," which has become more than just an expression for the Global War on Terrorism (GWOT). In World War II, references were made numerous times to the "home front," but the likelihood of attack on the North American continent was remote. That same paradigm does not hold today: The attacks of 9/11 made it clear that attacks are possible and likely if the borders are not better protected. Even though the contours of the fight against radical Islam were visible before 9/11, the "loose border" immigration policy allowed fully one-third of the al-Qa'ida operatives from 1993 to 9/11 to have visas. Another third were in the country illegally; the other third were naturalized citizens or temporary residents. To Mr. Krikorian, the "loose borders" did not protect American citizens adequately.

Mr. Krikorian then went on to postulate how loose borders might affect the United States in future wars. Having learned from asymmetric successes in Iraq and elsewhere, future foes may choose to challenge American intervention in their affairs by attacks on the mainland. Imagine a war with Colombia, perhaps precipitated by U.S. intervention to protect the Colombian government from insurgents of the *Fuerzas Armadas Revolucionarias de Colombia* (Revolutionary Armed

Forces of Colombia or FARC). Irregular attacks could be facilitated by the half-million Colombians already in the United States. Similar "friendly" populations are resident in the United States for potential challengers like China, Russia, and even north Korea. Attacking the United States at home will figure into the calculation of all future enemies, and immigrants from the enemies' particular part of the world may very well act to help their former—or current—countrymen. What Mr. Krikorian fails to explain is the absence of such attacks during the current GWOT. Hundreds of thousands of Iraqis and Afghans—not to mention even-larger Muslim communities—live in the United States, but there have been virtually no attacks since 9/11. That may simply speak well of assimilation into American society, but it is evidence that Mr. Krikorian should not ignore as he attempts to "raise the borders" around the United States. He did make one valuable comparison, stating that al-Qai'da is to terrorism as the Mafia was to crime. The Mafia was able to operate among the large Italian immigrant community only until assimilation "drained the sea" in which the criminal "fish" were swimming. Neglecting the value of assimilation, he implied that denying immigration—and concurrently reducing the number of illegal immigrants already in the country—will achieve the same result.

The initial response to insecurity at the borders was to profile Arabs and Muslims. This selective law enforcement is doomed to failure—and not just because of protests about racial profiling. Such profiling may be the prudent step to take, but targeting the citizens of one region or country is a gamble; none of the 9/11 attackers came from a country that was on the American terrorist list prior to 9/11. Expanding the "blacklist" to all Arab countries—even if possible—would also

not stop the flow of terrorists. Radicals—both Muslim and otherwise—live in Russia, China, the Philippines, India, Pakistan, etc. Extending a visa waiver program even to some long-term allies is fraught with risk.

Although he was short on specific proposals, Mr. Krikorian emphasized the need for a huge investment in border controls. He denies that the impact of tightened controls would be inimical to the U.S. economy,[5] but nonetheless calls for significant investment of money into programs like US-VISIT. The greater investment—and eventually the harder one to achieve—is in the political will to enforce unpopular immigration policies. The policies being enforced need to be the right ones, e.g., allowing entry for those genuinely being persecuted in their own countries, allowing entry to those who have the right technical or advanced skills needed for technological or industrial development, and allowing bona fide family members to join the American citizen member of their family. This retains America's traditional image as a haven for immigrants, while also balancing the national security and societal development interests of the United States. Access to America is not a right or entitlement, as many on both the right and left of the political spectrum seem to believe; it is a privilege that should be granted based on American interests.

Ms. Susan Sim.

An international perspective on immigration and borders was gained from panelist Susan Sim. Ms. Sim started by pointing out Singapore's contributions of police trainers, LSTs (Landing Ship, Tank), and transport planes to the coalition in Iraq and identified Singapore as an "unwavering partner" in the GWOT.

She explicitly stated that the risk of terrorism is a risk that Singapore recognizes that it shares with the United States. Not all countries, of course, recognize that—or at least will not explicitly say so, perhaps because they are content to have the United States and its closest partners in the terrorists' cross-hairs. Singapore clearly understands the need to defend one's borders from those wishing to do its citizens harm, and is situated in a part of the world where demographics suggest that the risk may be very near. Singapore and abutting Malaysia have sizable Muslim populations of their own, but also are located just a few dozen miles across the Singapore Strait from Indonesia, with the largest Muslim population in the world. Some profiling is prudent in light of the Bali bombings in 2002 and 2005, but it also is important to remember that not all Muslims are extremists and terrorists, of course.

Ms. Sim also recognized the difficulties in erecting barriers at a nation's borders. One of those is cost, which was addressed only obliquely. While Singapore is supporting U.S. initiatives for "biometric passports," there is clearly a direct cost involved, one that poorer nations will not be able to cover on their own. Ms. Sim's real concerns were with the costs that are more difficult to measure: the impact of increased border security on Singapore's trade, which is crucial to its prosperity. The United States also is affected by trade restrictions, but not to the same extent as Singapore, a nation directly dependent on international trading for its prosperity. When traders find themselves slowed more than imperceptibly at ports, they will seek other outlets for their products. When buyers find themselves unable to inspect products in Singapore because of visa restrictions, they will quickly learn to go elsewhere, to places where security is not as cumbersome. Just

like the United States, Singapore must find a way—perhaps technologically—to balance border security with commerce.

An even greater concern for Ms. Sim was the effect on personal travel—especially for the purpose of education—to the United States. She mentioned the value of the education that she personally received in the United States, but also pointed at Indonesian President Susilo Bambang Yudhoyono (who is known—thankfully—as SBY) as a major example of the value of an American education. While an officer in the Indonesian Army, SBY received training in the United States at Fort Benning, Georgia, and Fort Leavenworth, Kansas, both under the auspices of the International Military Education and Training (IMET) program. While in the United States, he also received a master's degree and ". . . picked up the ideas of Samuel Huntington." His career is considered a great model of integrity in public service and resulted in his being the first directly-elected president of Indonesia. Additionally, several of the reformers who wrote the election laws in 1999 were educated in political science in the United States; Ms. Sim was a journalist covering those proceedings and heard them several times break out into debates about the U.S. Constitution. There are other benefits to the United States in foreign education: Costs for American students are held down because of what Ms. Sim described as a $13 billion "industry" of foreign education. American students also are exposed to other cultures as they share classrooms and dormitory spaces and interact socially with foreign students on their campuses.

The "transforming experience" of an education in America cannot be understated, although there certainly are examples of people—such as several of

the 9/11 terrorists—who were exposed to American culture and were revulsed by what they perceived as the libertine nature of U.S. society. Ms. Sim—as with Ms. Dezenski—also left uncovered any discussion of how to get other nations to see that terrorism is a risk for them and how to get countries antithetical to the United States to work to tighten their borders. Singapore's contributions in this regard are significant and appreciated, but getting friends and allies to help is the easy part of extending borders virtually. Although perhaps only implicitly, Ms. Sim concluded that technological and other improvements to border security can only go so far; what is really needed to complement them is an "ideological counterforce" that enlists Muslim "moderate elites" in stopping Muslim extremists and their message of hatred and violence.

Dr. Demetrious Papademetriou.

Dr. Demetrious Papademetriou has been an immigration scholar for many years; as an immigrant himself, he brought yet another unique perspective to the panel. In his brief comments, Dr. Papademetriou emphasized that hermetically-sealed borders are impossible and that, even if they were possible, the adverse impact—culturally, economically, and technologically—on the United States would be more than its citizens would care to bear. Technology in some distant future may be able to sort people perfectly through some automated process, but no such system will be available at least for the foreseeable future. He supports biometric initiatives, but does not believe they will achieve the level of security protection desired by many Americans.

Although realistic, the statements about imperfect sealing of the borders may have been a bit of a red

herring. Dr. Papademetriou has long been an advocate of broad immigration policies.[6] To some, that advocacy will seem not to have been sufficiently tempered by the experience of 9/11. However, he presented a compelling argument that immigration is critical to address the needs of the "losers" of globalization. Some nations are unable to keep up with the rapid pace of technology and commerce and find themselves with citizens whose livelihood is no longer sustainable. Richer nations like the United States, according to Dr. Papademetriou, have the financial capacity—and perhaps the moral obligation—to help those disadvantaged by globalization and the United States has "enormous capacity" to absorb them. In later questioning, he nonetheless averred that there should be some need in the United States for the immigrants to be allowed legally into the country.

Tamar Jacoby, another immigration scholar, says,

> If it really were a choice . . . between cheaper produce and American security, no one would even pose the question . . . But that isn't the choice. We can have security and remain connected to the world, too. Most of the war against terror ought to take place beyond our borders, using military means and intelligence to stop evildoers before they arrive at our shores. Then, when it comes to immigration, the key is recognizing the reality of how many are coming, creating legal channels for those we can vet easily and focusing resources—money, agents, technology, and the rest—on the much smaller number who might conceivably do us harm.[7]

While Ms. Jacoby's desire to see the war on terrorism far away from American shores is idealistic, her point is solid: America has the ability to have secure borders that do not unnecessarily hinder commercial or intellectual intercourse. Technology will play an important role in

providing that security, but will never bring the perfect solution that seems necessary in an age of non-state terrorist actors with potential access to WMD. While these procedural and technological initiatives should be pursued, they must be complemented by efforts to win the war of ideas, to address radical and violent terrorists—Muslim or otherwise—in a holistic way that encompasses more than simply placing obstacles in the way of their access to America.

ENDNOTES - PANEL I

1. Elaine Dezenski, at the January 24, 2006, IOM Conference on Reinforcing the Area of Freedom, Security, Justice, and Prosperity in Europe and its Neighboring Countries. Available at *www.belgium.iom.int/pan-europeandialogue/documents/elaine%20dezenski.pdf*, accessed on August 24, 2006. Distributed by the International Information Programs, U.S. Department of State, *usinfo.state.gov*.

2. In an e-mail after the conference, Ms. Dezenski explained,

> Regarding interoperability, I'm referring to the ability to link border management functions throughout DHS and more broadly throughout the government so that all information on a particular person is consolidated into a common operation picture, and that all relevant [government] databases are accessed as part of the "check" on that person. This notion of interoperability could also extend as far as connectivity with foreign governments where systems can be developed to conduct real time checks of documents such as passports and visas.

E-mail correspondence between Elaine Dezenski and Colonel (Ret) John R. Martin, May 24, 2006.

3. The White House, Office of the Press Secretary, "The Security and Prosperity Partnership of North America: Progress," March 31, 2006, *www.spp.gov/pdf/security_and_prosperity_partnership_of_north_america_statement.pdf*, accessed August 24, 2006.

4. In other writing, Mr. Krikorian makes the case that uncontrolled immigration is bad for society more broadly than only in the security arena. For example, he debunks the argument

that the masses of illegal immigrants are doing jobs that Americans will not do. Americans "won't" do them because they do not pay enough. Without the cheap labor readily available from illegal immigrants, market forces would act to raise wages (and benefits) for the jobs that absolutely need to be done manually. The artificiality of the cheap labor also inhibits innovation, both technological and otherwise. Mark Krikorian, "Jobs Americans Won't Do: Voodoo Economics from the White House," NRO (*nationalreviewonline*), January 7, 2004, *www.nationalreview.com/comment/krikorian200401070923.asp*, accessed on August 24, 2006. An unintended consequence may occur if borders are tightened and market effects force change: The affected industries may simply move off-shore. Off-shore out-sourcing, of course, is not possible with some industries, e.g., lettuce growers will not be able to move their agricultural "industry" off-shore. See Tamar Jacoby, "Dealing With Illegal Immigrants Should Be a Top Priority of the War on Terror. Round III," NRO, NRO Debates, Pros v. Cons, February 14, 2003, *www.nationalreview.com/debates/debates021403.asp*, accessed August 24, 2006.

5. Mr. Krikorian writes that labor provides for only ten percent of the cost of lettuce, so even a doubling in the labor costs would not wreak economic havoc on farmers. He also claims that unskilled labor accounts for perhaps four percent of the gross domestic product (GDP); surely the dire impacts predicted by the "loose border" advocates are not going to be precipitated by such a small part of the GDP. Krikorian, "Jobs Americans Won't Do."

6. See "Think Again: Migration," Foreign Policy 109, Winter 1997-98, also at *www.ceip.org/people/papthink.htm*, accessed August 24, 2006.

7. Jacoby.

PANEL I

BORDER SECURITY: A FOREIGN PERSPECTIVE

Ms. Susan Sim

The National Security Imperative.

In the war against terrorism, the first imperative for any government is to stop would-be terrorists from entering the country's shores. A nation's borders constitute at least part of its first line of defense, and it is good strategy to push the borders as far out as possible so that terrorists and their materiel are stopped at their point of departure before they get on a plane to a New York airport or send a dirty bomb on a container ship to Long Beach. With stringent visa requirements, each U.S. consulate abroad can be turned into a virtual border checkpoint to identify aliens who might pose a security threat to the United States and to deny them entry. Various U.S. border security measures—Container Security Initiative (CSI), Proliferation Security Initiative (PSI), Radiation Detection Initiative (RDI), Customs-Trade Partnership Against Terrorism (C-TPAT)—to check and clear containers bound for the United States start in Singapore, thousands of miles from any American customs check points. And in pushing its borders out, the United States has shifted some of the burden—and shared the costs—of U.S. homeland security with other countries like Singapore, which have to invest in building up home-front security capabilities to take into account American requirements as well as their own.

The government of Singapore agrees that these border initiatives are necessary security measures. Singapore was among the first to sign up for CSI, PSI, RDI and C-TPAT. As a participant in the U.S. Visa-Waiver Program, Singapore will begin issuing biometric passports to Singaporeans in August 2006, before the October 26 deadline.[1] Singapore strongly supported Operations ENDURING FREEDOM and IRAQI FREEDOM, and sent police trainers, LSTs (Landing Ship, Tanks), and transport planes to assist in the reconstruction of Iraq. One LST is still in the Gulf region. Last year, Prime Minister Lee Hsien Loong signed with President Bush a Strategic Framework Agreement for a Closer Cooperation Partnership in Defence and Security that further expands the scope of U.S.-Singapore cooperation. In the Global War on Terror (GWOT), Singapore must be an unwavering partner. As Homeland Security Secretary Michael Chertoff put it when he met Ambassadors from the Association of South East Asian Nations (ASEAN) countries at the Singapore Residence last year, "We are all equally at risk because the terrorist networks are equally hostile to your governments as to the United States." The common goal is to take down terrorist cells, deny them sanctuary, and to stymie their recruitment.

The main debates over immigration policies in this security environment center on two difficulties:

- One, how to balance freedom of quick access of people, goods, and services with the security demands for greater scrutiny of these flows and the integrity of the supply chain; and,
- Two, how to formulate a differentiated-enough risk profile to detect security threats accurately without unnecessarily victimizing those who are of no risk.

Security risk profiling is an operational tool that governments have no choice but to use. Based on research, intelligence gathering and sharing with the security agencies, including those from the United States, risk profiling is necessary from a risk management standpoint as it allows Singapore to utilize finite operational resources better and to strike a good balance between facilitating trade and travel while ensuring a robust security threshold at border checkpoints. In the CSI program, for example, cooperation procedures between Singapore and the United States allow for the exchange of information, identification, screening, and sealing of targeted U.S.-bound containers.

Singapore has also invested heavily in technology which can help conduct inspections of goods and people quickly, efficiently, and with good detection rates. In fact, Singapore believes that one strategic effort on which countries can work together more urgently is the development and deployment of biometric passports. Such a project is an investment which would restrict the space for terrorist movement by tightening passport controls and border security. It will not only make mobility extremely difficult for terrorists; it will also boost the chances of timely detection of suspects after an incident. But it is an expensive proposition. If the United States did not lead on this issue in international fora like the International Civil Aviation Organisation (ICAO), no one would have much incentive to invest in the technology. But leadership means providing assistance or resources to encourage countries to develop the system, especially less-developed ones where borders are often most lax and passport controls weak.

The Costs of Prevention.

The rub is that successful prevention does not give governments a demonstrable success story that will convince their citizens that the extra effort is worth the risks to economic competitiveness. Singapore is primarily a trading nation. Without trade, Singapore would die. Singapore is now the world's busiest container port by volume and has to be very careful that CSI, RDI, and C-TPAT combined do not lead to unacceptable delays and extra costs for shippers, because they will then go to other ports that are not as rigorous in inspecting their goods. For example, since the launch of C-TPAT in April 2005, Singapore has registered 10,434 applicants, 5,777 certified members, and 1,500 validated companies who exceed minimum security criteria. But those applicants are all still waiting to see what the hullabaloo is about since there are no "green lane" benefits for them. Since eligibility for the program is restricted to U.S. companies, the downstream/spin-off benefits for Singaporean exporters are still unclear.

Many Americans—Senators, Congressmen, university heads, and captains of industry—have been extremely concerned about the impact the post-9/11 U.S. immigration regime is having across a wide range of activities.

- According to a study released June 2, 2004, by the Santangelo Group, an international business and economic development consulting firm based in Washington, DC, visa backlogs have cost U.S. businesses more than $30 billion in revenue loss and indirect expenses. In particular, small- to medium-sized exporters experience disproportionately severe losses because of the way the government handles visas for foreign

business travellers. Two concrete examples were highlighted in *The Los Angeles Times* last year:

1. In "Hawaii Loses Out Big," the paper reported that the organizers of a conference for Asian insurance executives moved the event from Hawaii to Hong Kong out of concern that they would not be able to get visas for the thousands of Chinese participants they were expecting. That is a lot of hotel rooms cancelled.
2. The *Times* also reported that Boeing has lost millions of dollars because foreign customers, particularly those from the Middle East and other Muslim countries, could not get visas for their pilots to pick up their new jets or undergo training in the United States. Is it any wonder that major U.S. companies now feel they need to set up training centers overseas if they are to sell their products abroad?

- Speaking at a conference in Washington, DC, on the role of foreign visitors last year, Senators Norm Coleman and Jeff Bingaman noted that 2005 was the first school year since September 11, 2001, that the total number of international students in the United States actually decreased. International applications to U.S. graduate schools fell 28 percent from the fall of 2003 to the fall of 2004, and 54 percent of all English-as-a-Second-Language programs reported declines. Where are these students going? According to the Senators, they are going to the United Kingdom, Canada, and Australia because they have fewer hurdles for international students.

Senator Coleman found this decline troubling. In his words:

> In a world that too often hates Americans because they don't know us, international education represents an opportunity to break down barriers. It is in our local and national interest for the best and the brightest foreign students to study in America because these are the people who will lead their nations one day. The experience they gain within our democratic system and our values gives them a better understanding of what America is and who Americans are. I've also heard from American colleges and universities. The presence of international students give American students an irreplaceable opportunity to learn about other cultures and other points of view.

And here's the kicker: International education is a $13 billion-a-year industry, and foreign students who pay full tuition help keep costs down for American students.

Many industry chiefs have expressed concern that the United States is not producing enough engineers and science graduates. The percentage of U.S. undergraduates taking engineering is the second lowest of all developed countries; China graduates three times as many engineering students as the United States. A recent *U.S. News and World Report* article on "The Fight for the Future: What America must do to keep up with roaring economies like those of China, India and South Korea" noted that 56 percent of engineering doctorates awarded in the United States go to foreign-born students. U.S. research institutes traditionally have attracted some of the best scientific scholars in the world. Their continued commitment to the institutes will, to an extent, be influenced by their experience in getting their visas renewed. Anecdotal evidence suggests that many Indians and Chinese

are now choosing to stay at home as their economies grow and afford them greater opportunities. And if these research and development talents want to work abroad, Singapore—and others perhaps less friendly to the United States—will grab them.

These statistics and anecdotes speak to questions that only Americans can answer: questions of America's economic competitiveness, America's role as the intellectual hub of the world, and—since perception is reality for most people who live outside the United States—the impact of such horror stories about visa backlogs on U.S. foreign policy goals. America cannot afford isolationism to deal with terrorism.

Transformational Power of Access.

As President George Bush has said, the war on terror is a generational and global struggle of ideas—a struggle that pits the power of hate against the power of hope. A key task that the administration has set for itself is how to speak more effectively with Muslim countries: to show them that there is no war on Islam or a clash of civilizations, perceptions that will create a perpetual cycle of hate. But America cannot hector on one hand, and slap with the other, and hope to decrease anti-Americanism. Visa regimes with the announced intention of profiling male Muslims aged 16 to 45 from Muslim countries can only be seen as tarring all Muslims indiscriminately.

A critical component of a comprehensive strategy to counter al-Qa'ida and its ilk is the development of an ideological counterforce to challenge the rhetoric of the extremist preachers who recruit in *madrassahs* and on the Internet. As non-Muslims, Americans are not up to the task. America and its allies in the GWOT

need to support the mobilization of the moderate elite in Muslim communities and not allow them to be intimidated by the extremist fringe. But it is difficult for American diplomats to encourage moderate Muslims to speak out against extremist violence when American policies say in effect: Muslims are all the same and we do not trust them to do right.

Karen Hughes, the Undersecretary of State for Public Diplomacy and Public Affairs, outlined four strategic pillars in her public diplomacy efforts to ensure the United States prevails in this battle of ideas. She calls them the Four Es: engagement, exchanges, education, and empowerment. In her words, "People who have the opportunity to come here learn for themselves that Americans are generous, hard-working people who value faith and family." That is generally agreed . . . but foreigners first have to *get* to America before they can *learn* about Americans.

To end on a positive note: an education in the United States is a transforming experience, and people so empowered are key to changing their own societies. One of the most successful examples of the benefits—to America—of an American education is Indonesian President Susilo Bambang Yudhoyono. While in the United States for military training (under the International Military Education and Training program), he earned a master's degree from Webster University and picked up the ideas of Samuel Huntington on democracy. "SBY," as he is popularly known, won Indonesia's first direct presidential election in 2004 and is making sure that his country's reform efforts are irreversible. Another less well-known but crucial success story: the reformers who wrote Indonesia's new election laws in 1999. Three of them studied political science in graduate programs

at Northern Illinois University in the early 1990s and used their training to strengthen Indonesia's experiment with democracy. It was surreal to watch them at work in Jakarta. As they wrote the new laws, they occasionally would break into debates about the U.S. Constitution and its applicability to Indonesia. Anything that America can do to ensure the continued ready availability of these transformational experiences will redound to the benefit of the United States and to friendly—and less than friendly—nations around the world.

ENDNOTES - SIM

1. Explanatory notes on Singapore's participation in U.S. border security initiatives:

- Container Security Initiative (CSI). Singapore was the first in Asia to implement the CSI program on March 17, 2003. This is a container trade supply chain initiative. Singapore believes in CSI's value for global maritime security, and has signed a Declaration of Principles with U.S. Customs Administrations. This Declaration provides a framework to implement joint CSI procedures such as the exchange of information, identification, screening and sealing of U.S.-bound containers whose profiles are considered high-risk for weapons of mass destruction (WMD) or other implements of terrorism. U.S. customs inspectors, located side-by-side with Singapore Customs officials, study the manifests and help decide which containers to screen using scanners the Singapore government purchased.
- Proliferation Security Initiative (PSI). Again Singapore was the first—and may still be the only—country in Southeast Asia to participate in PSI. This initiative builds on efforts by the international community to prevent the proliferation of WMD. Singapore's policy support and resource investment in this initiative involve surveillance and/or interdiction of suspect vessels and the deployment of mobile radiographic scanners to scan and detect the presence of WMD in shipping containers.

- Radiation Detection Initiative (RDI). This is a U.S. Department of Energy initiative that Singapore agreed to implement in March 2005. Radiation detection equipment will be deployed at Singapore's ports to deter and detect the trafficking of nuclear material that may be used to make illicit nuclear weapons or "dirty bombs." For the pilot project at Singapore's Pasir Panjang Container Terminal, the U.S. Energy Department will be responsible for acquiring, installing and maintaining the equipment while Singapore will be responsible for operating it.
- U.S. Customs-Trade Partnership Against Terrorism (C-TPAT) Program. C-TPAT is much applauded as a volunteer government-trade community/industry scheme that will be an important component for securing the global supply chains and facilitating legitimate cargo and conveyances. Under this scheme, goods imported by eligible U.S. importers will be provided a gradation of facilitated clearance through Customs access if they qualify for certification and validation.

Level	Groupings	Level of Checks
Tier 1	Certified members	Front-of-Line inspections
Tier 2	Validated members, meeting minimum security criteria	Reductions in checks
Tier 3	Validated members, exceeding minimum security criteria	Green Lane Privilege

- Biometric passports. Singapore is one of the 26 countries under the Visa Waiver Program (VWP). This program commits Singapore to develop and issue tamper-resistant machine-readable passports (MRP) with biometric identifiers by October 26, 2006. The United States also requires that any travel documents issued with biometrics identifiers must comply with the standards laid down and endorsed by the International Civil Aviation Organization (ICAO). Singapore has supported this initiative as an excellent security measure and has begun a pilot project to issue biometric passports to frequent travellers; by August 2006, every Singaporean will be able to apply for a biometric passport that complies with the standards set by ICAO.

PANEL II

THE INTERNATIONAL CONTEXT: COALITION BUILDING AND MAINTENANCE

General.

An international perspective on "A Nation at War" was gained by a look at coalition building and maintenance, one of the challenges inherent in executing a global strategy. A global strategy is certainly appropriate for the American global superpower, but adequate forces to execute that strategy must be available to avoid a significant disconnect between ends, ways, and means. By itself, the U.S. military is too stretched by the ongoing war in Iraq—among other challenges—to carry out the many aspects of the current strategy. That is certainly cause for alarm, but the *Quadrennial Defense Review* makes the case in various places that international partners will complement American forces to close the gap between strategic requirements and available military power.[1] For this plan to work, those partners must come with very real capabilities, not just be accepted as a partner for political reasons.

Fighting a war alongside soldiers of other nations is nothing new to American forces, of course. Some of the earliest nation's fights may seem to have been mainly solo events, but even then other nations participated in a variety of ways. More recently—at least in an historical sense—success in the two World Wars of the past century was only possible because of the combined efforts of many nations. From the U.S. perspective, American leadership in World War II was key, but

even more observers would draw that conclusion from studies of the Korean War and the Vietnam War. Other nations contributed significant forces for both, but both conflicts are remembered much more—at least by Americans—as American wars. That phenomenon may have been a result of the bipolar geopolitical situation of the Cold War, but the trend continued in the first Gulf War with another important distinction reflected in the rhetoric. In Operation DESERT STORM, the other nations were described as "friends" or "coalition partners," not allies as in the previous wars.[2] A few of those coalition partners contributed major forces in the Gulf (although the United States still provided the preponderance); most seemed to be accepted as part of the coalition less for any real combat capability they could provide than to show the rest of the world that the conflict was supported broadly internationally. With no real international mandate for the current war in Iraq, this "legitimizing function" of a coalition is even more important.[3]

The political difficulties of building and maintaining a coalition in this strategic situation are significant. If the goal is to show international support, virtually any applicant to the coalition will be accepted with open arms—even if the United States and the applicant country have fundamentally different purposes for participating in the conflict. Some may join an operation hoping for a quid pro quo from the United States in other areas. They may still ask the United States to fund their participation, but seek more important trade or aid agreements as a precondition or as a result. Other national interests—trade, ethnicity, and ideology, for example—in a particular region also can drive nations to join a coalition; when those interests conflict with U.S. interests, the results predictably are suboptimal.

One characterization of U.S.-led coalitions is that "the United States does the killing; the other members of the coalition do the healing." That characterization has some credibility as many nations find it more politically palatable to contribute forces to a post-hostilities situation or for some role other than combat: peacekeeping, reconstruction, or training indigenous forces. Building a coalition in post-hostilities situations generally is easier than for combat, but the challenges remain significant and similar. American funding—whether supporting another nation's operating forces or provided in a different venue—can help to gather coalition members, but those forces are more likely to serve a legitimizing function than to add real capability.

The operational challenges of fighting or otherwise operating with a coalition force are no less daunting. Language—even with English-speaking countries or members of the North Atlantic Treaty Organization (NATO), where English is the official language—still presents many barriers to efficiency and effectiveness. These barriers become even higher with weapons, communications systems, and other interoperability considerations. Most of these technical issues are surmountable. Probably the most demanding barrier is much harder to overcome. National chains-of-command continue to operate—intentionally and unintentionally—to stymie efforts by coalition leaders to effect coordinated action. Even when forces in the field want to execute coalition plans, obtaining national permission can take an inordinate amount of time. The result is frequently an uncoordinated operation—if the operation proceeds at all.

Lieutenant General (French Army, Retired) Christian Delanghe.

Lieutenant General Delanghe noted that most interventions since the end of the Cold War have been done with a coalition and cited his experience in suggesting three bases for successful coalition operations. While not claiming his list was exhaustive, Lieutenant General Delanghe said that one of the most important factors in coalition success is a good consultation process between the nations involved. Perhaps even more important is a common understanding of the strategic objectives for the intervention. Finally, once strategic objectives are agreed upon and solid consultation is established, the coalition needs a good concept of operation, i.e., a coordinated strategy that integrates all elements—not just the military arm—of national power.

Consultation—for the involved nations—may be of less importance when a lead nation has "coerced, bribed, or bullied"[4] other nations to join a coalition to give an operation international legitimacy. In such a case, the lead nation may be able to act essentially unilaterally, although some adjustment of the coercion, bribing, or bullying may be necessary to ensure acquiescence. When the coalition is comprised of nations joined together because of shared interests,[5] consultation is a much more important part of coalition maintenance, but also can be a major hindrance to effective action in operations. Without honest consultation for a shared-interest coalition, the coalition will be unable to mount effective operations easily and may very well fall apart. Lieutenant General Delanghe also pointed out that even when interests converge and a nation's military leaders want to act in accordance with coalition directives, the

coordination of differing national processes can be unacceptably slow in approving action. When either the military or political leaders wish to act contrary to the lead nation's desires, bureaucratic roadblocks can be used to stymie coalition action.[6] The consultation process must be crafted very carefully if the coalition is not to be denied effectiveness while awaiting coalition approval on various levels: military, alliance, and political.

Finding common strategic objectives is key, but doing so since the end of the Cold War is an increasing challenge. During the Cold War, western nations shared a general strategic objective of containing the Soviet threat. In that war, the threat was a known one and common to all; in addition, the threat could be quantified mechanically. The number of tanks and fighter jets in East Germany could be counted, as could the number of Soviet ships at sea and nuclear missiles pointed at the west. The common assessment of the threat made coalition building easier, although the nations at the nexus of the west and the Soviet world were always torn. Lieutenant General Delanghe likened today's threat to a chemical process, where all the ingredients of crisis are extant permanently and occasionally explode. He elaborated further that the process may even be alchemical, in that certain actors are looking to change the nature of the ingredients. According to Lieutenant General Delanghe, the five- to six-million Muslim citizens of France were able to act as "alchemists" in keeping France from acting in a positive way—a way that reflected its enduring national interests—in Operation IRAQI FREEDOM.

Yet another example cited by this panelist was the British/French/Israeli action in the Suez Canal in 1956. The three partners entered the conflict with differing

motives: the French to solve problems with the Algerian war, the British to gain the Canal, the Israelis to address a military threat. The strategic environment of the Cold War was forgotten completely, but the real decisions about the conflict would be taken in Washington and Moscow, not Paris, London, Jerusalem, and Cairo. As a result of these differing objectives and disregard for the strategic calculus, the coalition encountered severe difficulties and ultimately failed to achieve the disparate national goals. The coalition actions also changed the balance of power in the Middle East, giving the Soviets increased leverage in the region and adversely affecting the coalition members' broader strategic interests.

Even when strategic objectives are commonly held and effective and timely consultation processes are established, goals may not be accomplished because of coalition disagreement over strategy and operations. The chosen strategy and concept of operations must also take into account all the elements of national power; the military is too often the only element used, at least in quantity. The strategy and resulting operations must cover all expected phases of the conflict and see what combinations of the elements are most effective. Economic, diplomatic, and informational elements may be more effective than military in pre-hostilities engagement. Conversely, ignoring the other elements in favor of military power during the hostilities phase can lead to open-ended commitments, as in Bosnia—and perhaps Iraq—for the United States; the same was true in Africa for France. Lieutenant General Delanghe ended by emphasizing that a "coalition of coalitions" may be appropriate when all elements of national power are involved. As stated previously, some nations may be unwilling to provide combat forces for active hostilities, but will be willing to contribute

reconstruction or peacekeeping forces. One coalition may be necessary for the hostilities phase of an intervention; another may address only the rebuilding of the legal structure after the war; yet another may work to ensure development of a fair electoral process. The coalition leader or leaders must work each of these "sub-coalitions" carefully, or the military will be handed too many tasks—including ones for which they are not the best candidates.

Colonel Pete Mansoor.

How a coalition is built affects how it works and whether or not it stays together. Having commanded a U.S. brigade under the tactical control of a Polish brigade when Moqtada al-Sadr called for an uprising by his Mahdi Army in Najaf in April 2004, Colonel Mansoor was able to provide first-hand observations on what it takes to make a coalition effective in combat. His unit was sent to Karbala because the rules of engagement for Multi-national Division-Center South (MND-CS) did not allow for offensive operations by any of the units. All could defend themselves, as the Poles capably did when attacked by the Mahdi Army, but were not authorized to counterattack to regain ground once lost. Other units had even stricter requirements: The Thais, for example, were not even allowed to leave their operating base once serious hostilities commenced. No nation is immune from national political guidance; even the United States had to restrict itself to operations outside of certain exclusion zones around the Muslim shrines in Najaf.

With these constraints, why was this ad hoc organization successful? According to Colonel Mansoor, several factors were important:

1. **Senior U.S. Embeds.** At various positions in the Polish Brigade and at MND-CS, the United States sent a senior leader to advise their coalition counterpart. This leader was senior enough—with the requisite skills and experience—that his advice had credibility with the coalition partners. He also was able to provide diverse types of external resources (e.g., aviation, supplies, and medical evacuation) that enhanced the ability of the coalition units to succeed in their missions. Finally, because of his presence, he was able to work on developing consensus in the coalition. He served to explain the U.S. direction to the coalition leaders, but also to explain to his U.S. chain of command how the coalition leaders felt about a particular order.

2. **Standardized Procedures.** The Polish Brigade included battalions from Poland, Bulgaria, and Thailand and a Lithuanian platoon. Although Thailand was not a member of NATO, the other major contributors were and enforced the use of NATO standard operating procedures. This included the use of English as the lingua franca in coalition operations. Although translated English still presents difficulties on both sides of the equation, there was at least a basis for common understanding. Familiar procedures for reporting logistics requests and other routine functions made operations simpler at all levels.

3. **Previous Relationships.** The Chief of Staff of the Polish Brigade was a 2002 graduate of the U.S. Army War College under the International Military Education and Training (IMET) program; Colonel Mansoor graduated from the War College in 2003. Since they shared this particular experience, they were able to begin their cooperation with a shared idea of strategic issues. Habitual relationships between the United States and the other NATO countries, including

their time in the NATO Partnership for Peace, were complemented by a similar relationship between the United States and Thailand, built on a basis of 25 years of joint training exercise COBRA GOLD. Although the relationships may not have been personal, just because the other coalition members had previously worked or trained with American forces, they were able to operate together more easily in hostilities in Iraq.

4. **Sensitivity to Coalition Needs.** Different members of the coalition need a range of support from the coalition leaders. Logistics support comes quickly to mind as one of the ways that the larger coalition—frequently the lead nation—can assist the individual members. Intelligence support is also key, although normally subject to restrictions on dissemination outside of national channels. Less frequently considered is the news media. National contingents often are accompanied by national news media and coalition leaders must be attuned to how they can support the various governments by highlighting the contributions of the national forces. The news media support builds popular support that helps to keep friendly governments in power and part of the particular coalition.

Even the strongest of coalitions is stretched under crisis. When the Madrid train bombings occurred in March 2004, the Spanish government was voted out of power under the resulting pressure and withdrew its forces from the coalition in Iraq shortly afterward. Conversely, the United Kingdom, when subjected to its own terrorist attacks with the London subway bombings in July 2005, stood as a staunch ally. The attention paid to both nations by the U.S. Government prior to and after the attacks was significant, but other

political factors come into play when the citizens of a coalition member are under direct attack. In such cases, only the closest convergence of national interests—which would probably need to be sustained by broad popular support—will sustain the coalition.

Mr. Sebestyén L. V. Gorka.

In comments he described as deliberately provocative, Sebestyén Gorka diverged from the panel's focus on coalition building and maintenance, preferring instead to discuss the broader issue of a European perspective of the United States at war. He first provided his answer to the question: "Is the U.S. at war?" He explored the issue from the perspectives of the law, politics, and the common man. Answering the question in the negative, he then attempted to describe where the United States was, if not in a war.

From the legal perspective, Mr. Gorka applied traditional standards, using a definition that describes war as a prolonged conflict between nation-states. Applying this narrow definition strictly, Mr. Gorka asserted that the United States is not at war. Some of the conflict may have been against nation-states—in Iraq and Afghanistan—but the fights there were short ones that toppled the governments quickly. The current fight against the insurgency in Iraq meets the "prolonged" requirement; certainly there is no shortage of evidence that the fight there will be an enduring part of what the *Quadrennial Defense Review* report calls "a long war."[7] However, there is no identified nation-state in opposition. The panelist also may have been implying that major combat is another requirement of his definition. If that were added to the rubric, the Iraq counterinsurgency—with its short and scattered

responses to car-bombings and other quick attacks—would be further disqualified as a war.

The problem, of course, is with the definition. It still works to identify some types of war, but needs to be broadened to encompass the war in which the United States and its partners are engaged. To a soldier on the ground, a period of intense combat—no matter how short—can seem to be a war. That broadest of definitions can be discarded, though, in favor of one that says war is the prolonged application of violence against each other by competing entities. The nation-state part of Mr. Gorka's definition falls short in an era in which non-state actors are capable of attacks like those of September 11, 2001 (9/11). The "prolonged" part of Mr. Gorka's definition still fits; there must be some way to distinguish a war from a punitive border raid or cruise missile attack. The rhetoric on the U.S. side clearly states that the war is a long one. And the multiyear attacks by al-Qa'ida[8] further suggest that this particular competing entity also takes a long view of the war.

Mr. Gorka next addressed the question from what he described as the realpolitik perspective. Realpolitik describes foreign policy based on raw national interests, not moral or ideological considerations. This may not have been the best descriptor for the observation he made, but that in no way attacks its accuracy. As evidence that the United States is not at war, he points to the lack of mobilization by the people. The line of reasoning would not be that mobilization is sufficient to define war, but that it is surely necessary for a nation to be at war. Mr. Gorka points to the mobilization of World War II to make his point, then refers to the draft of the Vietnam War to say that those were wars, not like the "war" of today. Unfortunately, World War II

is a particularly bad analogy. That was clearly a war, with the nation's resources mobilized to a significant extent, but it was a different type of war against a different type of enemy. As written in the introduction to this report, the Cold War would present a better exemplar for comparison. As in this war, there was no full mobilization, even in the military forces. But to suggest that the United States was not engaged fully in an existential war against the Soviet Union is ludicrous. The definition of war should not be stretched beyond recognition, but must adapt to the evolving nature of war. At least from this perspective, Mr. Gorka may not have proven his assertion that the nation is not at war.

His next perspective was that of the layman, described by Mr. Gorka as someone who "doesn't know Clausewitz from any other tactical or strategic writer." This person, if he or she thinks about the concept of a nation at war at all, would be guided by the fact that a war has a beginning and an ending. Even the layman would recognize, though, that terrorism always has been around and will endure no matter how—and perhaps precisely because—the powers of the world array themselves against it. Because of this, the layman would say that the United States is not at war. According to Mr. Gorka, the layman also must have a well-defined sense of the enemy if the nation is truly at war. As evidence to the contrary, he points to comments made by a U.S. dockworker about the recent imbroglio over the Dubai Ports deal, where a friendly Middle Eastern country was trying to secure the rights to run port security operations along the eastern seaboard of the United States.[9] The dockworker said that he did not understand how the United States could put its port operations in the hands of a Middle Eastern country when it is "those guys who are responsible for 9/11."

While a finely-tuned categorization of the enemy is helpful in a war, the dockworker's statements do not necessarily answer the question of whether or not the nation is at war. From the layman's perspective, the war may very well include a larger enemy, but the fact of war is still true for him or her.

Mr. Gorka may not have been convincing in his presentation of evidence that the nation is not at war, but his provocative comments nonetheless left a sense that the answer to the question is not clear. His next attempt was at defining where the nation was, if not at war. Reiterating his conclusion that the nation is not at war, Mr. Gorka made a comparison with the Cold War, saying that the threat of Osama bin Laden easily can be called Marxist-Leninism "informed by religion." As with the Soviet Union, there is an idea of global control, this time in a Muslim "caliphate."[10] As in the Cold War, there also is a sense of a zero-sum game, where nations are "either for us or against us."[11] Despite those and other similarities, the terrorists and insurgents fighting the United States today are different from the Soviet Union in at least one regard: they do not possess the capability to destroy the United States. They are certainly capable of damaging attack, but not of total destruction. They actively seek such capability and would use it if allowed, which makes the question of the Nation at war so important. If the Nation does not perceive itself to be at war, the chances of bin Laden and his ilk obtaining and using devastating attack capabilities grows.

Mr. Gorka seemed to be saying that the United States needs to wake up: if Americans do not believe they are at war, they are putting the rest of the world in danger. The rest of the world has its own responsibility, of course, but is unable to gather the political will to face the clear threat, so American leadership—

and unilateral action, when necessary—is critical. He understands that the answer must not be only military. The greater contribution must come from a generational information campaign that transforms the image of America in the Middle East to what it was in Europe while America and its allies were facing the Soviet Union. The United States was viewed then as a "shining beacon" of freedom, liberty, and democracy. That is not true in today's Middle East. The average resident of that volatile region may not want a bin Laden caliphate, but he or she still responds positively to what bin Laden says about the Palestinian issue and about the encroachment of "western" globalization on the values of the Muslim world. None of the steps required in prosecuting the war are easy or quick, but they must be taken as soon as possible.

In conclusion, Mr. Gorka pointed out that comparisons with the Cold War can lead people to think of the 1950s. He prefers instead to talk about 1905, when Lenin and Trotsky were busy organizing the Bolshevik revolution, but nobody took them seriously. The United States must come to the realization that it is in an existential war—different from other conflicts, but still existential and still a war—and learn to fight it with all the assets at its disposal. Solving the problem of Islamic extremism may be impossible, but a solid application of all the instruments of national power can at least manage it so that answering a question about the Nation being at war becomes easier.

Lieutenant Colonel Francisco Flores-Hernandez (El Salvador Army).

Returning to coalition-building and maintenance, Lieutenant Colonel Francisco Flores-Hernandez supported Colonel Mansoor's comments about the value

of a shared language in coalition operations. As part of the Spanish Brigade in Iraq in 2003, Lieutenant Colonel Flores-Hernandez enjoyed the ease of communicating in a common language for combat operations, as well as for logistics and other support. The value of the common language became even more apparent when the Spanish withdrew their forces in 2004 after the Madrid train bombings. Relying afterwards on U.S. and Polish units for command, control, and support was much more difficult because of the language and procedural barriers for a non-NATO country.

Lieutenant Colonel Flores-Hernandez' most important contribution to the panel discussion was probably his commentary on why El Salvador joined and stayed with the coalition. Although Lieutenant Colonel Flores-Hernandez undoubtedly does not speak officially for either his government or the population of El Salvador, he spoke movingly about the gratitude felt by the Salvadoran people for American support during their 12 years of civil war and in the ensuing reconstruction of El Salvador. This translated into ready acceptance of the U.S. invitation to join the coalition in Iraq. That gratitude, according to the panelist, was buttressed by the Salvadorans' commitment to supporting the spread of democracy, a stated U.S. objective in Iraq and the Middle East. When Salvadoran soldiers died and were wounded in fighting in Najaf in 2004, the support for El Salvador's role in the coalition remained strong because of this sense of gratitude and these shared objectives.

Other evidence suggests that the support of the population is much lower[12] than Lieutenant Colonel Flores-Hernandez says, but the fact remains that El Salvador continues to be part of the coalition in Iraq, despite having been bloodied in combat. Yet to be seen is whether or not the country will stay—as attested by

Lieutenant Colonel Flores-Hernandez—the years the Salvadorans know will be required to win against an insurgency. And while his comments seem to ring true, there remains the troubling fact that El Salvador—the smallest country in Latin America—is the only Latin American nation[13] represented in the coalition in Iraq. Countless others of those nations were helped by the United States, even if only in the bipolar era of the Cold War, when support was more to counter Communist expansion than any alignment of national interests. Although gratitude and shared interests may be critical in coalition-building and maintenance, there must be other factors that also come into play.[14]

In any event, Lieutenant Colonel Flores-Hernandez was correct in his overall assessment of coalitions: coalition-building must begin years before the coalition takes the field. Engagement—diplomatic, economic, and military—sets the stage for construction of a coalition. Shared doctrine, language, and procedures may make coalition operations easier and should also be built early, but engagement is key to these, too. Whether developing consensus or the means for coercion, the time invested in maintaining ties with a government and its people pays dividends when that country's resources—whether primarily for legitimacy or for actual capability—are needed in a fight.

ENDNOTES - PANEL II

1. Secretary of Defense Donald Rumsfeld, *Quadrennial Defense Review Report*, Washington, DC, February 6, 2006. See, for example, p. vii and p. 2 (where the military is to move from performing tasks itself to focus on building partner capabilities), p. viii (where NATO is to be enlarged and transformed and its role in Iraq and Afghanistan extended) and p. 6 (where the document says, "... the vision set out in this Report will only be possible by maintaining and adapting the United States' enduring alliances.").

2. Some dictionaries suggest that coalition and alliance are synonymous. For the purposes of this report, a coalition is a short-term and informal agreement for two or more nations to utilize certain elements of their military or other national power in concert to oppose the interests of another nation or coalition. The purposes for that cooperation may be divergent. An alliance also opposes the interests of another nation or coalition, but is more formal and usually exists for a longer period of time. The purposes for opposing those interests are usually similar.

3. On the website of the Multi-National Force-Iraq (on a graphic stating it was last updated on April 27, 2006, at 8:27 a.m.), 28 flags—one of them being the U.S.—are shown comprising the coalition. For details, see "Operation Iraqi Freedom, Official Website of the Multi-National Force-Iraq, Inside the Force, Coalition Partners," *www.mnf-iraq.com/coalitionpartners.htm*, accessed July 5, 2006. Despite the United States being represented by just one of the 28 flags, America contributes approximately 133,000 troops to the coalition in Iraq and Kuwait, "The Army as of June 15," *The Army Times*, June 26, 2006, p. 7. The largest contribution from the other countries is the United Kingdom, with approximately 8,000 troops. Close behind are the Republic of Korea (3,200 troops) and Italy (2,900 troops). Several other countries (Poland, Australia, Georgia, Romania, Japan, and Denmark) each account for about a battalion (530 to 900 soldiers). Approximately 1,140 troops are contributed by the remaining 17 or 18 countries. For details, see "The International Coalition in Iraq," RadioFreeEurope RadioLiberty, June 20, 2006, *www.rferl.org/featuresarticle/2006/06/262E1945-27F0-4916-8E4A-25489CAD03E9.html*, accessed July 5, 2006.

4. Sarah Anderson, Phyllis Bennis, and John Cavanaugh, *Coalition of the Willing or Coalition of the Coerced: How the Bush Administration Influences Allies in its War on Iraq*, Washington, DC: Institute for Policy Studies, February 26, 2003, p. 1. Available at *www.ips-dc.org/COERCED.pdf*, accessed July 5, 2006.

5. Most coalitions will not be in only one of these two categories, and the consultation process will be encumbered even more. The lead nation will have to tailor the consultation process according to the category of the country involved.

6. As a final point about consultation, Lieutenant General Delanghe also said that military leaders often are not given any real guidance from their political masters. As an example, he

cited the early days of the intervention in Bosnia, when he felt the only guidance the French forces received was a vague statement from the French President to "do something" to keep the Balkans conflagration from reaching western Europe and to make sure the "something" was done in "the European way."

7. Curiously, though, the tense used in the QDR is future: "The United States is a nation engaged in what **will be** [emphasis added] a long war." Rumsfeld, p. v. Many would contend, of course, that the passage of nearly five years since the 9/11 attacks suggests that this already is a long war.

8. Although the then-anonymous author of *Through our Enemies' Eyes* acknowledged that Osama bin Laden (and hence al-Qa'ida) may not have "masterminded, ordered, or had foreknowledge" of all the following attacks, he does stress that they fit squarely with bin Laden's themes. The attacks include ones in the Philippines in 1991-94 by the Abu Sayyaf Group, in Bosnia from about 1992 until the Dayton Accord ended the war there, in the United States in 1993 by Ramzi Yousef on the World Trade Center, in Saudi Arabia in 1996 on Khobar Towers, in Kenya and Tanzania in 1998 on U.S. embassies there, in Yemen in 2000 by suicide bombers on the USS *Cole*. For more detail on less well known attacks, see Anonymous, *Through Our Enemies' Eyes: Osama Bin Laden, Radical Islam, and the Future of America*, Washington, DC: Brassey's, Inc., 2002, pp. 137-143, 198-204.

9. See CNN.com, "Bush, Congress clash over ports sale," February 22, 2006, at *www.cnn.com/2006/POLITICS/02/21/port.security/*, accessed July 5, 2006.

10. "Caliphate" may not be exactly the right term here. A recent National Defense University paper says that the term describes an era of just rule, particularly that of the first four caliphs in 632-661 A.D. What bin Laden and his ilk propose is called a caliphate, but is more accurately described as a global totalitarian state. See Douglas E. Streusand and Lieutenant Colonel (P) Harry D. Tunnell IV, "Choosing Words Carefully: Language to Help Fight Islamic Terrorism," Washington, DC: Center for Strategic Communications, National Defense University, May 23, 2006, p. 4. Available at *www.ndu.edu/csc/docs/Choosing%20Words%20Carefully – Language%20to%20Help%20Fight%20Islamic%20Terrorism%2024%20May%2006.pdf*, accessed July 5, 2006.

11. "You are either with us or you are against us in the fight against terror." President George W. Bush, The White House,

Washington, DC, November 6, 2001, press briefing with France's President Jacques Chirac; available from *www.whitehouse.gov/news/releases/2001/11/20011106-4.html*, accessed July 5, 2006.

12. "A poll this year by the University of Central America shows that 72 percent of Salvadorans oppose their government's decision to send troops to Iraq." Joe Rubin, "El Salvador: Payback," *PBS Frontline World*, October 12, 2004, available at *www.pbs.org/frontlineworld/elections/elsalvador/*, accessed July 6, 2006.

13. El Salvador was originally part of a Central American battalion with soldiers from Honduras, Nicaragua and the Dominican Republic, but is the only remaining member, with forces still roughly equivalent to its original commitment of just under 400 soldiers. Jim Garamone, American Forces Press Service, "El Salvador to Continue Iraq Deployment," American Forces Information Service News Articles, *DefenseLINK News*, July 22, 2004, available at *www.defenselink.mil/news/Jul2004/n07222004_2004072207.html*, accessed on July 6, 2006. See also Denis D. Gray, "Salvadoran Soldiers Praised for Iraq Role," *The Washington Times*, May 4, 2004, available at *www.washingtontimes.com/world/20040503-115511-7092r.htm*, accessed on July 6, 2006.

14. One of those factors may be the continued easy flow of remittances from the United States. During the 2004 presidential election in El Salvador, U.S. lawmakers and others suggested that election of a *Frente Farabundo Martí para la Liberación Nacional* (Farabundo Martí National Liberation Front or FMLN) government might cause restrictions on the flow of remittances (cash sent to families in El Salvador by Salvadorans working in the United States). Chris Ney and Kelly Creedon, "Preemptive Intervention in El Salvador," *Peacework Magazine*, American Friends Service Committee, Cambridge, MA: May 2004, available at *www.afsc.org/pwork/0405/040515.htm*, accessed on July 6, 2006. As with U.S. support, though, the value of remittances must apply to several other Latin American countries.

PANEL II

COALITION BUILDING

Lieutenant General (Retired) Christian Delanghe

Introduction.

Since the end of the Cold War, most conflict situations in the world have been addressed by coalitions rather than by a single nation. The process of building a coalition normally begins with the identification of a deteriorating or crisis situation by one or more nations with an interest in the area involved. The motives that drive the nation (or nations) to build or join a coalition are numerous: to share costs, to increase the effect of chosen actions (such as sanctions), to add needed capability to the coalition forces, or to add international legitimacy to a potential intervention. Recent coalition operations have involved short periods of major combat, but have generally been less concerned with high-intensity warfare than with conflict prevention, humanitarian assistance, and post-conflict stabilization and reconstruction actions. That same trend is expected to continue for the foreseeable future. These complex operations pose specific challenges and carry specific requirements for coalitions. The issue at hand is no longer simply winning a war, but rather crisis management, conflict resolution, and long-term stabilization. The aim is not "victory" and the end of the particular national security problem, but "success" at managing the issue. The measure of success is not the total defeat of an enemy; it is the normalization of a country or a region.

Once a coalition is formed, its success in operations depends on at least three important aspects: a consultation process that is responsive to operational needs, a shared understanding of the strategic environment (including strategic and operational objectives), and a concept of operations that integrates all elements of national power.

The Consultation Process.

In most cases, the nations intending to respond to a deteriorating situation or to a crisis will engage in high-level political consultations prior to making any decisions. These consultations will be held by a group of representatives from each nation and each representative will have direct contact with the appropriate national bodies. If not already decided, a lead nation normally emerges at an early stage of political discussions. The lead nation will seek to build a coalition that will address its specific national interests, but should seek and consider partners' national assessments, positions, and desired outcomes.

At the political level, the consultation process allows a potential coalition to determine whether intervention is required, as well as the foundation (whether rationalization or justification) for any intervention. The process is also important in deciding objectives and the ways in which those objectives are to be pursued. A shared and agreed understanding of the situation, desired end state, exit strategy, and predictable risks and costs is necessary to ensure robust cohesiveness within any coalition.

The consultation process must be iterative and flexible enough to respond to changing operational and strategic circumstances, but still must be conducted through existing national processes. Political leaders

do not always give clear—or any—guidance to forces in the field, but sufficient contact must be maintained with political authorities to allow them to communicate guidance, if desired.

Common Understanding of the Strategic Environment.

During initial stages of coalition building, potential coalition members must exchange their national views on the situation and their understanding of the strategic environment. A shared assessment of the situation must be obtained through the comparison of different national assessments, after also taking into account any relevant inputs from international organizations (IOs) and nongovernmental organizations (NGOs). This enables potential coalition members to understand different national perspectives and, in particular, to assess the thresholds of acceptability of the situation at hand. The objective is to identify overlapping interests and develop a desired end state that is not only the lowest common denominator between the nations, but a common objective for all. Based on their national vision of the area under consideration, on their understanding of what the situation there is and could become, and on the means they are willing to commit, potential coalition members have to agree on what they want to achieve. Understanding the strategic environment is a fundamental element of a successful intervention. Strong situational analysis and understanding of the strategic environment within the country and region—as well as the global international context—are crucial elements of any intervention.

The 1956 French-British-Israeli "Suez Expedition" is an excellent example of faulty analysis of the

geopolitical context. The actors completely failed to take into account the broader geopolitical context of the Cold War and failed to realize that the key decisions in the situation were going to be made in Washington and Moscow, not in the capitals of Europe. The coalition partners did not perceive that their colonialist attitudes would gain no support from the United States and did not take into account the possible risk of nuclear escalation (in rhetoric, at least) their intervention could entail.

A coalition is—by definition—vulnerable to tensions, and it is essential to ensure that the coalition has common strategic objectives. The Suez Expedition is again an excellent illustration of this point. Although France, Great Britain, and Israel shared the common goal of removing Egyptian President Gamal Abdel Nasser from power, their underlying motivations diverged significantly. France aimed at isolating the Algerian rebellion by eliminating its main source of external support. Great Britain wanted to maintain its control over the Suez Canal. The Israelis sought to conduct a preventive action before an Arab coalition led by Nasser could become strong enough to try to conquer Palestine.

Because of these different underlying aims, the members of the coalition disagreed during the military planning phase. The French wished to arrive in Cairo quickly and therefore make Alexandria the coalition's point of entry; the British insisted on entering the country at Port Said, the mouth of the canal; meanwhile, the Israelis wanted to deal a significant defeat to the Egyptian military before proceeding. These differences of opinion considerably delayed planning—long enough for Nasser to act effectively on the diplomatic front, consolidating support from the Soviet Union and

ensuring that the coalition would be unable to reach its political objectives.

Coordinating and Integrating All Elements of National Power.

Successful coalition intervention requires the integration of all instruments of national and multinational power during all phases of the operation: preliminary actions, military intervention, stabilization, and reconstruction. Given the complex environments in which most operations take place, the success of a coalition no longer depends on the application of military power alone. It has become essential to make use of all instruments of national power when intervening abroad: during coercion or engagement exercises, for counterterrorist operations, or during the stabilization and reconstruction period. To minimize the duration of the military involvement and to facilitate transitions from one phase to another in a campaign, militaries should develop mechanisms to interact effectively with long-term players in the other agencies of national power. This requires interagency coordination—conducted multinationally—from the advance planning phase through the execution phase.

The concept of operations must encompass the whole spectrum of political, diplomatic, military, informational, and economic actions. The activities and capabilities of the multinational interagency community (including all relevant governmental ministries, as well as IOs and NGOs) must be closely coordinated with the work of military planners to permit the incorporation of their perspectives, capabilities, and support requirements. This acts to improve the overall coherence and effectiveness of

the operation. The general concept of operations must include a position on conflict-termination issues. Crisis resolution will not occur simply because the situation is no longer deteriorating or when military operations are completed.

In reality, a complex international intervention may require the construction of several coalitions: a military coalition, of course, but also different types of ad hoc coalitions organized to conduct activities such as political development, humanitarian relief, instituting the rule of law, building electoral capability and capacity, human rights protection, weapons inspection, and various reconstruction and economic development activities. Each coalition would have its own organization, leadership, and group of participants. The coordination between these coalitions or subcoalitions has to be assured at the political level by a "contact group" set up by major contributing nations. This "coalition of coalitions" must be in place very early during the consultation and planning process.

The intervention in Kosovo is a good example of the importance of combining various instruments of power. All political, diplomatic, military, information, and economic instruments were used during this intervention, both during the short military phase and in the much longer stabilization and reconstruction phase. The Balkans Contact Group, a political coordinating body, facilitated consultation and coordination among the governments involved. Planning for various nonmilitary aspects of the stabilization and reconstruction phase began early and took into account the roles of the European Union, the North Atlantic Treaty Organization (NATO), various United Nations (UN) bodies, and the Organization for Security and Cooperation in Europe (OSCE).

A coordinated strategy, issued at the political and strategic level, is necessary to assure coherence and convergence of the mission, the mandate, the means, and the situation on the ground, and initiates the coordinated planning of all national instruments of power. This convergence ensures that the coalition will have appropriate troop levels, equipment, rules of engagement, etc.

The early years of the UN mission in Bosnia are perhaps the most tragic example of incompatibility between the situation on the ground and the mandate and rules of engagement. It demonstrates that an intervention in a so-called peacekeeping operation can, in fact, be a way for Western political leaders to do nothing while presenting a face-saving appearance of action. This type of situation is particularly hard on the military and ought to be avoided. As learned the hard way, deploying to a crisis or conflict zone where the situational reality is disconnected from the mandate and the means, with no coherent plan or vision of strategic objectives or desired end state, can only be disastrous.

PANEL III

THE DOMESTIC CONTEXT: THE RESERVE COMPONENTS AT WAR

General.

At first glance, the choice of the Reserve Components[1] of the military as a venue for looking at the domestic context of a nation at war seems unusual. The choice may even have confused the panel's moderator, Dr. James Carafano: He identified selection of the Reserve Components as "absolutely the right choice" to talk about "the **military** component [technically, not the focus of the panel] of a nation at war." Although "absolutely the right choice" is a judgment call, various aspects of the military context of the Nation at war certainly could be addressed through analysis of the Reserve Components' role in the war and would be a valuable addition to the debate on the main topic of a nation at war. Domestic context, though, implies a broad analysis of the impact of the war on the American population. A domestic content panel should not look exclusively at the military, but at the "home front" to analyze popular support of the war or what sacrifices the people were making because of the war's conduct. The panel would look at issues like those that George Packer mentioned in *The Assassins' Gate*:

> The home front of the Iraq War was not like World War II, and it was not like Vietnam. It didn't unite Americans across party lines against an existential threat (September 11 did that, but not Iraq). There were no war bonds, no collection drives, no universal call-up, no national mobilization, no dollar-a-year men. We were not all in

> it together. Nor did it tear the country apart. As soon as the war began, the American antiwar movement quietly folded up its tent and went home. . . . Iraq provided a blank screen on which Americans were free to project anything they wanted, and because so few Americans had anything directly at stake there, many of them never saw more than the image of their own feelings. The exceptions, of course, were the soldiers and their families, who carried almost the entire weight of the war.[2]

These issues deserve separate in-depth analysis and public discussion, but a look at the Reserve Components is not necessarily the antithesis of a study of popular support. Believers in what is known as the "Abrams Doctrine"[3] would contend that analysis of the Reserve Components inevitably leads to a measurement of popular support for any conflict. The impact on the reserves—more than the impact on the more-insular active forces—reflects broadly the impact on the citizenry. The choice of the Reserve Components as the focus of the domestic context panel seems somewhat more prescient in that light.

Images of the Nation at war usually include mobilization of the nation's reserve forces. That image almost certainly is produced by the Nation's experience in World War II, although more recent conflicts in Korea and Vietnam adjusted that paradigm significantly. Just as they have for all the deployments of the U.S. Army since the end of the Cold War, the Army Reserve and the Army National Guard—although certainly not fully mobilized—are just as certainly carrying a large load in the Global War on Terrorism, especially in Iraq. The Commission on the National Guard and Reserves recently reported to Congress that, "Following the terrorist attacks on September 11, 2001, unprecedented numbers of reservists and national guardsmen have

been involuntarily recalled to active duty and have served for longer periods than at any other time since the Korean War."[4] That involvement does not come without costs. The capability to respond to disasters like Hurricane Katrina in Louisiana or forest fires in Montana is diluted by the National Guard deployment to Iraq and Afghanistan. Although current statistics[5] suggest that the situation has reversed itself, recruiting and retention have been continuing challenges for both the National Guard and the Army Reserve (as well as for the active forces).[6] The very nature of reserve service has changed; the force now is considered an operational reserve, not the traditional strategic reserve.[7]

Describing the Reserve Components as the center of gravity of the military in the 21st century, Dr. Carafano framed the subject by saying that the success of the U.S. military in the next few decades will depend strongly on the health of the Reserve Components. Three factors will determine that health. First, the military will either get more money . . . or it won't. Barring the politically unpopular step of limiting entitlements, the current trend of spending 4 percent of the gross domestic product is about the best the military can expect. If defense spending decreases, the Army will depend on the "cheaper" Reserve Components—cheaper in peacetime, not necessarily in war or other operations—but the reduced dollars available will limit readiness and capability of the total force, especially since much of that money will have to be spent on manpower costs. Second, the military will change . . . or it won't. According to Dr. Carafano, the military will need to change to make military careers remain "consistent or congruent with the civilian sector." Some 21st century phenomena—more women in the workplace, telecommuting, changing careers,

people working longer—will need to be reflected in the military structure if the military and its Reserve Components are to succeed. If the personnel structure of the total force does not accommodate and reflect this change in the civilian sector, the Reserve Components—dependent on citizen-soldiers—will lose their vitality. Finally, the military will include a larger active force—or it won't. The Reserve Components are acting as an operational reserve because of the continuing need for more active troops. If that trend continues, the Nation may decide simply to increase the size of the active component, with corresponding reductions in the Reserve Components.[8] If, however, the Nation sees the need for active troops waxing and waning in some type of sine wave, maintaining healthy Reserve Components will be an essential part of any national security strategy. That construct of the future has not yet been decided.

Brigadier General David Burford
(Army National Guard [ARNG]).

Acknowledging the shift from a strategic to an operational reserve, Brigadier General Dave Burford described some of the differences in the reserve force since the start of the Global War on Terrorism. When the terrorists attacked on September 11, 2001, the Reserve Components—along with the rest of the Army—were based on a symmetrical threat that was expected to start a war overseas with enough notice for time-phased mobilization and deployment, if and when needed. That force also was organized in a linear fashion, in contrast to the modular form being established today to provide capabilities that can be used against an unpredictable enemy. With its modular organization,

the current force is better prepared for an asymmetric threat that may attack anywhere, including in the continental United States, giving no real opportunity for a lengthy mobilization and deployment timeline. For the National Guard, the mission of support to the various states presents an additional overlay to their federal mission.

Although some of Brigadier General Burford's presentation simply described the National Guard and some of the programs underway to improve the force,[9] he did make three important points. The first related directly to the conflict between the state and federal missions of the Guard. No better example exists than the response to Hurricane Katrina to show the challenge of accomplishing state missions while that state's National Guard forces are deployed elsewhere on a federal mission. Up to 40 percent of the National Guard forces—and their equipment—from Louisiana and Mississippi were on active duty in Iraq when Katrina hit their homes.[10] Wartime equipment shortages—compounded by fielding decisions that traditionally put less-capable equipment into the Guard formations—limited the National Guard response even more. Despite those challenges, there were ". . . over 50,000 National Guardsmen engaged in the recovery..." from the disaster within 96 hours after Hurricane Katrina cleared New Orleans. Although the affected governors might have felt better with their own forces at hand, the response shows just how much residual capacity still exists within the National Guard. Tapping into that residual may require some extraordinary efforts,[11] but the Global War on Terrorism apparently has not pushed the National Guard to a breaking point if it can still respond to a natural disaster in such numbers and so quickly.

Brigadier General Burford briefly mentioned the Army Force Generation (ARFORGEN) model. ARFORGEN is part of an effort to put some predictability into the lives of Reserve Component soldiers by development of a cycle that would deploy them no more than once every five or six years. Manning, equipping, and training levels within the force also would be adjusted to bring units to maximum readiness on the same cycle. Brigadier General Burford focused on the fact that the cycle is only a goal; soldiers still can be mobilized and deployed more frequently if strategic or operational requirements demand it. Left unstated were questions about how the lower readiness of units in the early years of the ARFORGEN cycle might impact on the readiness of those forces to accomplish either state or other federal missions. The National Guard, although pleased with the increased predictability, also might find itself unhappy with a reduced number of training and equipping dollars provided to the Reserve Component units in those same early years.

Brigadier General Burford's final point hit upon homeland security. In his comments, he simply stated that homeland security should not be assigned as a mission for the National Guard, but that making it a role might make more sense. Semantics aside, homeland security is such an all-encompassing activity that it requires the involvement of the whole federal government and multiple agencies of local and state government. Consequence management alone can quickly overwhelm response capacity locally or regionally within the United States; adding just the responsibility for critical infrastructure protection makes the problems even more difficult to manage. Assigning the National Guard the mission of homeland

security would force it to reorganize and equip for the mission, and would deprive the Nation of its use in other strategic and operational crises. The National Guard always will have a role in homeland security, but should not be optimized for that role. Optimizing the Guard for that mission would deprive the Nation of some more-flexible forces that would be better capable of responding to other crises at the strategic and operational level.

Brigadier General Michael Squier (ARNG, Retired).

Brigadier General Mike Squier brought a historical perspective to his discussion of the Reserve Components. As a senior leader of the Army National Guard at the National Guard Bureau for many years, he worked through the Quadrennial Defense Review (QDR) 1997 "fistfight" between the active Army and its Reserve Components. He also was around for the "culminating point" of QDR 2001, when more reason was applied and the components worked as a team after identifying the need for "more Army" than was available at the time.

As one of the architects of the current Army National Guard force, Brigadier General Squier spoke with some pride about the capabilities of the force, but saved his greatest compliments for the "can do" attitude that he believes permeates the entire force. He then spoke realistically about the problems created by that "can do" attitude. According to him, the National Guard got caught up in the zeal to "get into the game" after the attacks of 9/11 and National Guard soldiers and units suffered as a result. The recruiting and retention challenges experienced in the past couple of years followed from decisions made about utilizing the

Reserve Components more than most Reservists and Guardsmen desired. Cross-leveling of soldiers from one unit to another also affected retention decisions, but the greater effect was organizational. Units with new personnel added just before deployment suffer from loss of unit cohesion. Cross-leveling occurs with equipment, too, to ensure that deploying units have the best and the right amounts of their authorized gear. That is the right decision for the deploying units, but a severe adverse impact can be felt on the units that remain behind, stripped of manpower and equipment needed for training or operations. Thus far, the plans to reconstitute reserve forces look good on paper, but the huge associated bill undoubtedly will force changes, limiting the Reserve Components' ability to perform either state or other federal missions.

To address these issues, Brigadier General Squier suggested looking closely at how the Reserve Components are planned to be employed, and specifically reexamining the roles and missions of the reserves. Although some disagreement continues to exist, in QDR 2001 the reserves' roles were defined as expanding Army capabilities in time of need, enhancing Army capabilities (often possible because Guardsmen and Reservists bring civilian professional and trade skills and associations with them into uniform), and providing a sustainment capability for long-term operations. Those roles seem to remain valid for the near- and mid-term future, but that paradigm could be changed if the Nation decides to pursue a larger active duty force, for example. Brigadier General Squier did not provide any insight into just what other roles and missions might be appropriate for the Reserve Components, but he did caution against wholesale discarding of the reserve forces. Although they are

expensive in operations because of predeployment training and equipping requirements, the Guard and Reserves are still cost-effective forces over the long term. He also cautioned against changing the laws affecting mobilization without understanding the intent of those laws. Guardsmen and Reservists understand their responsibility to answer the Nation's call in time of crisis, but if changes to mobilization processes result in more frequent mobilizations, there will be an accompanying impact on recruiting and retention. Brigadier General Squier also suggested asking why there was such a need to cross-level equipment and personnel for deploying units. The reason is because reserve units have not been resourced for success. The bill is significant, but the force can be more readily employed if appropriately manned, equipped, and trained.

Brigadier General Squier buttressed Brigadier General Burford's comments about ARFORGEN and homeland security. He described ARFORGEN as useful in identifying requirements, but warned against using it to restrict the flow of money to the Reserve Components. Without adequate funding, the Guard and Reserve will not be ready when needed. He also agreed with Brigadier General Burford that homeland security is not a National Guard mission, stating emphatically that ". . . the Guard is not . . . the federal response force for homeland security." This seems somewhat contradictory to his image of the Guard as "the force that never says no," but is understandable in the context of missions added without accompanying resources. Probably recognizing that the Nation's civilian infrastructure is the better place to assign the homeland security mission, he challenged the panel and the audience to define the role that the military

should play in homeland security. The mission of homeland security can be assigned to the National Guard, but there will be associated costs. Some of those costs are in equipping and training, but a greater cost may be the impact of not having a deployable reserve force—either operational or strategic—when needed to augment active capabilities.

Major General Robert Ostenberg (U.S. Army Reserve [USAR]).

Major General Robert Ostenberg, like other panelists, discussed homeland security in the context of military support to civilian authorities. The case used for discussion was Hurricane Katrina. In his remarks, he compared the natural disaster of Katrina to the effects of a terrorist attack. The 1,300 deaths there and the $96 billion in damage (including the loss of approximately 300,000 homes) are comparable in many respects to the results that could be expected after a terrorist attack with a weapon of mass destruction in one of the Nation's major cities. The 9/11 attacks killed more people, but the physical impact[12] could be considered much smaller than the damage to New Orleans alone. The metaphor is a good one; after a terrorist attack or after a natural disaster, the military—particularly the National Guard—can be expected to be involved in the response. After a terrorist attack, the response is called consequence management, but the effect is much the same. The metaphor breaks down, though, if broader arguments are made about homeland security based only on consequence management/disaster relief. Homeland security covers preventive measures, too, such as critical infrastructure protection, not "just" consequence management.

As did the previous two panelists, Major General Ostenberg pointed out that the homeland security and disaster relief missions will take more capacity and capability than are resident in the military, active or reserve. Specifically for disaster response (and—by implication—consequence management), he said that the first responders need to come from the Nation's cities. When the cities' response capabilities become overwhelmed, their leaders should call on state resources first; the governors should then call on federal resources if the magnitude of the event requires it. What he didn't mention was the fact that not all disasters (or terrorist attacks) allow for such a neat and linear process. Just as Hurricane Katrina immediately overwhelmed city and state resources, a terrorist attack can do the same thing, particularly if a weapon of mass destruction is somehow unleashed in an American city. In such cases, the federal force must be leaning forward, not waiting for some beleaguered local or state politician to call for help. Despite the complaints of slow response to Hurricane Katrina, the federal force anticipated some or much of the need. Guardsmen from the region, experienced in responding to hurricanes, were naturally mobilized, but Guard forces from across the Nation—including far away Wyoming, Ohio, Vermont, and many others—were also among the responding forces. Some events—like a Category 5 hurricane or a terrorist attack of similar magnitude—are so unprecedented as to deny any real opportunity for adequate prior planning and preparation. In such cases, some "ad hoc-racy" must be expected. The natural patriotic response of all Americans—not just the military or those in the government—to volunteer in such cases will help, but the response and recovery nonetheless will be slow, at least in the eyes of those who most need the help.

On the subject of cross-leveling, Major General Ostenberg noted a shift from the early days of the Global War on Terror, when units were told to "come as you are." As the war has progressed, there is no longer any need to send units that are not fully manned, equipped, and trained, but he cautioned against "gold plating" units by sending them with more people and equipment than needed. Sending too many people now makes it harder to sustain required manpower levels for the long war. He recognized the stress on the Army Reserve, but emphasized that significant potential remains, at least in quantity of people. The challenge is not just numbers of people; it also is making sure that the right skills are part of the package. Reclassification and retraining actions are underway to address some of these issues in various military occupational specialties, but they have not yet been enough to avoid units being deployed with up to 70 percent of their strength being "fillers," people not originally assigned to the unit.

Major General Donna L. Dacier (USAR).

Major General Donna Dacier started her comments by mentioning some of the ways the Army Reserve has adapted to meet the needs of the regional combatant commanders. Three of those ways are several years old: the move to reduce the number of nontactical organizations and the soldiers in them, the formation of multiple-component units (multi-compo units—consisting of units with some combination of elements of the ARNG, the USAR and the active force), and the USAR effort to change its force structure to reduce the number of high-demand, low-density units. Each of these initiatives may have been accelerated in

execution since the onset of the Global War on Terror, but nonetheless have been around in concept for quite some time. All could probably trace their origin back to reductions in the total force either taken or planned prior to 9/11.

The first was used in all components to increase the number of tactical units by eliminating "unnecessary" organizations involved in generating and projecting the force, replacing them in some cases with contractors or government civilian employees. The second could be touted as a more economical use of assets, but also was necessitated by the continuing need to "make do with less" caused by post-Cold War and post-Operation DESERT STORM reductions in the size of the force. There may be no way to eliminate all high-demand, low-density units, but they have been around for years, again a result of a focus on tactical units, specifically the combat units. To keep the fighting edge on the force, "superfluous" units like civil affairs, military police, and psychological operations units were cut or put into the reserves without due regard for how often they would be utilized in the post-Cold War world. While it is easy enough to identify these problems in the USAR,[13] the same problems abound in the ARNG and the active force. The shame is just that it took the Global War on Terror to fix or to accelerate fixing these old problems.

The one true innovation Major General Dacier covered was the use of the USAR Division (Institutional Training) for training of Iraqi security forces. The DIV (IT) was designed to augment active training programs in peacetime, then to provide backfills in the event of large-scale deployment of the active force. Instead, as the program to build the Iraqi police and military accelerated in late 2004, a DIV (IT) was mobilized to

deploy to Iraq to assist in that effort by providing individual staff for the multinational training command and training teams to the Iraqi army and police forces. This was an excellent example of the particular flexibility of the USAR, which—unlike the ARNG—easily can mobilize and deploy individual soldiers, not just units. If criticism were to be leveled at this action, it would mention timeliness.[14] The same action could have been taken with the training of Afghan security forces in 2002, which would have freed Special Operations Forces from the training mission.

Like the others, Major General Dacier covered the stressors afflicting the military, explaining that some stress in the early days of the current war seemed to be self-induced by leaders and planners who did not possess the insight needed to put together force structure needed for the long war. She did emphasize that "breaking point" stress on the military is a problem that transcends the Reserve Components and even the total Army; it is an issue that reaches deep into each part of the Department of Defense and must be resolved at that or higher levels.

Major General William Nesbitt (ARNG).

After saying he would avoid redundancy with the other panelists' comments, Major General William Nesbitt was only partially successful in that effort, as is probably to be expected due to the nature of the subject. Like the other panelists, he covered the stressors on personnel and equipment. For the former, he asserted that the deployment stress on Reserve Component personnel is greater than for the active force. All of the components generally put "boots on the ground" for twelve months in theater, but for the

Reserve Components, that is in addition to the lengthy mobilization and predeployment training process that can add another 6 months to the time that a Guard or Reserve soldier is away from his or her family. That may be somewhat misleading, though, as—by Major General Nesbitt's own admission—active soldiers tend to be deployed more frequently. In congruence with the other panelists, he called for a better mobilization process to limit the total time away from home, but also suggested that the use of the Reserve Components in the operational reserve role means that they need to be better trained and equipped before mobilization.

Although he said his opinion only reflects a personal perspective, Major General Nesbitt argued that the National Guard ". . . is not in danger of breaking." He also opined, though, that the Guard cannot sustain mobilization of approximately 100,000 Guardsmen as in 2005, but can sustain ". . . in the neighborhood of 20,000 to 40,000 over the long haul . . . ." In the context of an authorized end strength of 350,000, the former number seems to make sense, but the latter may not. Even under the ARFORGEN cycle of one mobilization and deployment every six years, the number of soldiers available each year—assuming the "spaces" in the structure are all filled with "faces" of soldiers—would be over 58,000.[15]

In talking about equipping the National Guard, Major General Nesbitt withdrew his comment about not being in danger of breaking. His comments about the equipping levels of the National Guard are hard to dispute. The equipment may not be substandard, as he charged, but fielding priorities do allot the better equipment more broadly across the active force.[16] For the same reasons, equipment shortages are more prevalent across the reserve force; the ravages of wartime losses

have aggravated this situation, made even worse for some units by equipment cross-leveling that leaves some nondeploying units unready. Major General Nesbitt pointed out that the Reserve Components are no longer functioning as a strategic reserve, but are still budgeted that way. That is in part due to inadequate allocation of the gross domestic product to defense. That is compounded by the fact that the Army gets less than 25 percent of the Defense budget, but is ". . . carrying most of the load . . ." in the Global War on Terror. From the National Guard perspective, that is made even worse by the active force—with only 27 percent of the total Army strength—spending approximately 79 percent of the (pre-supplemental) budget. At least one of his statistics may be misleading: 47 percent of the force is active and can be expected to consume more of the budget than the 53 percent of the force that is in reserve and not doing the same level of training and operations. Nonetheless, his depiction of the Guard and Reserves as ". . . kind of at the bottom of [the budgeting] food chain . . ." is fair. That will only get worse—at least for the early years of the cycle—with implementation of ARFORGEN.

As at least a partial solution, Major General Nesbitt recommended that Congress consider a dedicated appropriation for the ARNG, much like is done for the Special Operations Forces. According to him, this would be more likely to ensure that the Guard receives adequate resources and would force the active force to stop using the Guard like a "teller machine" when a budgetary shortfall is encountered. The active leadership can be expected to oppose this because of the limitations on total force readiness it would produce. Friction between the Guard and the federal force also could be expected to ensue, even if some of

the funding came from the Department of Homeland Security.

Major General Nesbitt added some specific comments about the ARFORGEN model, describing it as good for predictability for individual soldiers, but not good for the sustained readiness of the force. On the high point of the cycle, the model would provide forces that are ready: trained, equipped, and manned appropriately. The problem is the other years of the cycle, when ARFORGEN will create various levels of unreadiness to accomplish the Guard's normal state missions and unexpected missions in both the state and federal arena.

Contradicting his fellow panelists, Major General Nesbitt stated that the Guard was not only capable of providing rapid response forces in support of homeland security, but they have been doing so for some time. Whether stated as a Guard role or mission, the Guard—because of its state mission and its proximity to affected communities—will be involved intimately at least in consequence management for any large-scale terrorist attack. As with the other panelists, he ignored the "non-consequence management" aspects of homeland security, but did argue for more accessibility of "other Reserve Component units" (presumably USAR) to the governor when a catastrophic event occurs. That has been addressed at least partially by the development of joint force headquarters in the states.

ENDNOTES - PANEL III

1. The Army has various components associated with it. The first three are the active force, the Army National Guard, and the Army Reserve, known as Components 1, 2, and 3, respectively.

2. George Packer, *The Assassins' Gate*, New York: Farrar, Straus and Giroux, 2005, pp. 381, 382.

3. The so-called Abrams Doctrine allegedly originated with Army Chief of Staff General Creighton Abrams as he reorganized the Army after Vietnam. The "legend" says that General Abrams, wary of political leadership ever again committing the Nation's military to a conflict without popular support, structured the force with large numbers of combat support and combat service support units in the reserves. This meant that any commitment of the military to a war would necessitate mobilization of the reserves, thus ensuring broad involvement of the population, if not in supporting the war, at least in the decision to go to war. While recognizing that the Abrams Doctrine actually may not have been developed except in response to budgetary constraints, Dr. Carafano refers to it in "The Army Reserves and the Abrams Doctrine: Unfulfilled Promise, Uncertain Future," *Heritage Lectures*, No. 869, The Heritage Foundation, April 18, 2005, available at *www.heritage.org/Research/NationalSecurity/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=77058*, accessed July 11, 2006. For more on development of the Abrams Doctrine, see Lewis Sorley, *Thunderbolt*, New York: Simon & Schuster, 1992. An alternative view (that suggests the available evidence does not support Sorley's conclusion) can be found in Conrad Crane, *Avoiding Vietnam: The U.S. Army's Response to Defeat in Southeast Asia*, Carlisle, PA: The Strategic Studies Institute, September, 2002.

4. Arnold L. Punaro, *et al*., *Commission on the National Guard and Reserves: 90-Day Report*, June 5, 2006, p. 21-22, available at *www.cngr.gov/pdf/CNGR percent20Ninety-day percent20Report.pdf*, accessed July 12, 2006.

5. Lieutenant General James R. Helmly, the Chief of the Army Reserve, wrote in early 2005 that the Reserves were "rapidly degenerating into a broken force." Lionel Beehner, "Recruitment Woes for U.S. Guard and Reserve," backgrounder from the Council on Foreign Relations, October 26, 2005, available at *www.cfr.org/publication/9101/recruitment_woes_for_us_guard_and_reserve.html*, accessed July 13, 2006. However, data on reserve forces recruiting for October 1, 2005, to June 30, 2006, show the Army National Guard at 103 percent of its goal and the Army Reserve at 101 percent of its goal. Retention numbers "are well within acceptable limits" and "indications are that trend will continue . . ." Office of the Assistant Secretary of Defense (Public Affairs), U.S. Department of Defense, "DOD Announces Recruiting and Retention Numbers for June," news release, July 10, 2006, available at *www.defenselink.mil/releases/2006/nr20060710-13413.html*, accessed July 13, 2006.

6. Perhaps the better measure of the challenge is the change in recruiting standards: The Army is accepting more recruits with lower scores on qualification tests; the maximum age for a recruit was increased to 40 (from 35) in January 2006 and further increased in June 2006 to 42. Increased cash bonuses also complement the call that patriotism has on potential recruits. An increased recruiter force also undoubtedly has an impact. With continuing low unemployment, such measures are necessary to meet recruiting goals. Tom Vanden Brook, "Military on pace to meet recruiting goals for this year," *USA Today*, July 10, 2006, available at *www.usatoday.com/news/washington/2006-07-10-military-recruiting_x.htm*, accessed on July 13, 2006.

7. This may be a false dichotomy, because the Reserve Components must be capable of fulfilling both roles: as the strategic reserve and as the operational reserve. The Commission on the Guard and Reserves defines the strategic reserve as ". . . a pool of replacement manpower and capability to be employed in a large-scale conflict with a peer or near-peer military competitor . . ." Use of the reserves in an operational context—as in Operations IRAQI FREEDOM and ENDURING FREEDOM—defines the new paradigm. The Commission then goes on to say, "Policymakers must strike an appropriate and sustainable balance between the operational and strategic use of the reserve components that will be necessary to achieve national security objectives in a long war." Punaro, *et al.*, p. 22-23.

8. The USAR leadership in the past has said that falling below their current authorized end strength would make viability of the force problematic. The constitutionally-protected National Guard would probably survive, but might have to use as force structure justification the federal homeland security mission, complementing its traditional state role in disaster response.

9. Brigadier General Burford spoke specifically about the state and federal missions of the National Guard, saying that was one of the only real distinctions between them and the Army Reserve. He also briefly mentioned two programs to improve manning of the force. The first is a program to make "every soldier a recruiter" and to give them bonuses for getting friends to join and to complete training. The second was about the initiative to provide a trainees, transients, holdees, and students (TTHS) account. Formation of this account will not increase National Guard readiness, but will improve the accuracy of reporting and is long overdue. The active force has had a TTHS account for years.

10. Bryan Bender, "Demands of Wars Since 9/11 Strain National Guard's Efforts," *The Boston Globe*, September 2, 2005, available at *www.boston.com/news/nation/washington/articles/2005/09/02/demands_of_wars_since_911_strain_national_guards_efforts/*, accessed July 17, 2006.

11. *Ibid*.

12. The national psychological impact of the terrorist attacks arguably is greater.

13. The Chief of the Army Reserve, Lieutenant General Jack Stultz, confirmed in testimony to the Congressionally-mandated Commission on the Guard and Reserves that some of the issues faced by the mobilized Reservists and Guardsmen were not new, although he said new problems have arisen because of the Army's heavy reliance on them in Iraq and Afghanistan and because of the failure to predict the long war. John W. Gonzalez, "New Strategy Urged to Retain Reservists," *Houston Chronicle*, July 20, 2006.

14. Any criticism of this innovation also would have to ask why Reservists—instead of better qualified active forces—were used for this mission. The Reservists could have been used to backfill training programs from which active forces had been drawn. That discussion is beyond the scope of this report.

15. This assumes that the "spaces" of the force structure are filled with "faces" of actual soldiers, which is never a good assumption. However, even if the active force's TTHS account of 13 percent is applied and subtracted from the Guard end strength, the ARFORGEN model would still produce over 50,000 soldiers for deployment every six years.

16. New equipment is distributed to units based on deployment plans. Since most active forces deploy earlier, they generally have newer equipment on hand. Both for political reasons and for warfighting readiness, some of the newer equipment also is allotted to high-priority Guard and Reserve units.

KEYNOTE ADDRESS

BUILDING A DEFENSE FORCE FOR THE 21ST CENTURY

Dr. William J. Perry

Without addressing specific theaters in the Global War on Terrorism, former Secretary of Defense William J. Perry provided some general guidance and a framework for evaluating the extant strategy. His general guidance stemmed from time he spent with the various Services' senior enlisted personnel while he was the Secretary of Defense and was very simple: Remember the soldiers.[1] During his time as Secretary, Dr. Perry met regularly with enlisted personnel. While they may have raised a whole pantheon of issues, several of them stuck with the Secretary on strategic matters.

First, the soldiers—and Dr. Perry—said that training must be protected. Too often, training suffers as budget crises force tradeoffs in requirements. The soldiers recognized that the U.S. military is the best in the world because of that training and told him not to cut it because of fiscal pressures. Other things—e.g., force structure, technology, pay—must also be protected, but one of the real keys to success with the modern military system is training.[2] As seen with the war in Iraq, that training must be focused on the right kind of battle, but a force without adequate training tends to be a force in name only.

Second—and related to the first—soldiers told the Secretary to sustain education. Dr. Perry's comments revolved around education benefits—e.g., the

Montgomery G.I. Bill—but also could have referred to the individual education programs for soldiers while they are on active or reserve duty. That education teaches them how to think and provides the skills—especially critical for leaders—that enable them to succeed in unfamiliar surroundings with only vague guidance.

The soldiers next gave the Secretary guidance on deployments. As part of an all-volunteer force, they knew that it was their lot to deploy—often into harm's way—when the nation's leaders required it. They simply asked him to make sure that each deployment was important enough to warrant the sacrifices asked of the soldiers—and they reminded him to ensure that the soldiers being deployed were supported fully by the Nation generally, but also particularly by the Department of Defense.

Finally, the soldiers asked the Secretary to remember their families and to ensure that they—not the soldiers themselves—had the best possible quality of life. None of these points seem particularly earth-shattering, but the Secretary correctly emphasized them as what must undergird any effective strategy.

After his general guidance, Dr. Perry launched into a description of a fairly basic framework for building a defense force. Steps included evaluation of both the threat and the existing friendly force (which he identified as the "legacy force"); development of a strategy, to include basing, budget and alliance needs; and subsequent development of plans of action to implement the strategy. He next provided some case studies for evaluation. He identified World War II as perhaps the easiest because there were basically no budget limits. The start point for the American forces was not at all high, but the strategy developed—to overwhelm the enemy on the ground in Europe and

at sea and on the ground in the Pacific—required full mobilization of the nation's resources, particularly the human and economic ones.

The Cold War was much more challenging. The Soviets, seeing the success of overwhelming U.S. mobilization in World War II, decided to do the same thing. American leadership, convinced that the U.S. economy could not match the Soviet mobilization, opted for deterrence and containment, counting on treaties and a healthy nuclear force to keep the peace. Secretary Perry skipped the Korean War and its sad example of how dependence on that nuclear force so weakened U.S. ground forces that the nation's leaders initially were unable to use them effectively in sustained combat. Similarly ignoring the war in Vietnam, Dr. Perry focused next on the 1970s, when the United States decided to use technological advantages to offset the Soviet forces. From this stemmed various major programs that produced capabilities such as stealth, precision guided munitions, the Global Positioning System, the Airborne Warning and Control System, and the Joint Surveillance and Target Attack Radar System. Dr. Perry identified this "offset strategy" as the Revolution in Military Affairs (RMA) or at least the RMA's underpinnings.

As the Cold War ended, the threats changed and included "loose nukes," failed states, and major regional conflicts, not global nuclear war. The RMA continued to be applied, though, as a way to minimize the costs of war. This may have been the first indicator that the strategy was being driven—at least in part—by current programs and capabilities. It may also have been an indicator that equating the RMA with the offset strategy was the wrong thing to do. An offset strategy looks at ways to counter an enemy's strengths with

friendly forces' strengths or—better yet—to attack an enemy's weaknesses with friendly strengths. While the technological aspect should have been included, the offset strategy also should have looked at other ways to overcome enemy strengths. The post-9/11 enemy certainly was looking at the United States with an eye toward attacking its weaknesses. Although Dr. Perry did not say so explicitly, the force that the United States possessed when attacked on 9/11 was optimized somewhat for a major regional conflict, not the type of war which was thrust upon it. The U.S. and its military were dominant in the world, with generally strong alliances and solid finances, but they were vulnerable to terrorist attack and had failed to see the shifting paradigm, despite numerous warnings before 9/11. Fighting the war with a heavy force was appropriate in several aspects—and that capability needs to be maintained—but the more likely scenario is one in which the United States is confronted on an asymmetric battlefield where the enemy uses lawfare[3] and information operations to make points that the United States thus far has been unable to counter effectively. The offset strategy that Dr. Perry described is still valid, but has to be seen as much more than simply the technology-centric Revolution in Military Affairs.

ENDNOTES - PERRY

1. All enlisted personnel—soldiers, sailors, airmen, and Marines—are included in Dr. Perry's comment. The term soldier is used in this report as emblematic of all of them.

2. For a compelling argument about the importance of training, see Stephen Biddle, *Military Power: Explaining Victory and Defeat in Modern Battle*, Princeton, NJ: Princeton University Press, 2005.

3. "Lawfare" suggests the situation where a foe, unable to address an issue symmetrically, turns to the field of international or domestic law to achieve its military goals. The term is used extensively in the Panel V discussions and is specifically addressed in endnote 6. of the Panel V summary (p. 141.)

PANEL IV

THE ECONOMIC CONTEXT: GLOBALIZATION VERSUS NATIONAL SECURITY

General.

Accurately calculating the costs of the Global War on Terrorism is a major challenge. Some estimates focus strictly on military expenditures; others add the costs of U.S. aid. Others look at commitments only from the planned budget, but not at supplemental funding. Another covers current obligations, but not future costs of increasing intelligence capabilities, replacing worn equipment, and providing pensions and payments for those wounded and killed. Estimates range from half-a-trillion dollars to over two trillion dollars for the ultimate cost of the Global War on Terrorism, including the Iraq War and the Afghan War. By any measure, the Global War on Terrorism—and not just the war in Iraq—has been costly, placing huge demands on the defense budget, the federal budget, and the national economy.[1] Any study of the Nation at war should include a look at the cost of the war and the ability of the Nation to pay that price. The economic health of the Nation—and the world—is critical to providing the means to execute the strategy to achieve desired ends. And from the perspective of the American people, the shape of the economy is not good.[2]

Curiously enough, the economics panelists made little direct mention of the Global War on Terrorism except for a couple of comments thanking U.S. servicemen for their sacrifices in this time of war.

Instead of costs and budgets and ends-ways-means mismatches, the panel chose to look almost exclusively at globalization, with a heavy dose of concerns about China added to the mix. In his opening remarks, the panel moderator stated that the purpose of the panel was to "try to build a bridge between the notions of national security and globalization." Much of the ensuing panel discussion might have been as relevant before 9/11 as afterward, but the effects of globalization—and the impact of China on the U.S. and global economy—are nonetheless important factors in the economic health of the United States and, hence, its ability to wage war. To some, the international interdependence resulting from globalization removes some of the motivation for one country to go to war with another; for others, globalization's creation of international "winners and losers" provides powerful incentive for war, particularly one that would be fought asymmetrically. Is the globalization of commerce antithetical to national security? The answer is not clear, particularly in an era in which one of globalization's disaffected "losers" might be able to find and use a nuclear weapon. The panel provided some insight into the interrelationship between globalization and national security. That may appear not to tell if the Nation is at war or not, but does provide good information on how prepared America is to fund this war—or the next.

Dr. Edward M. Graham.

Kicking off his presentation, Dr. Edward Graham listed two major concerns about international exchanges between the United States and the rest of the world. First was the significant trade deficit, which he described as approximately $800 billion in 2005.

Many people look at the $1.8 trillion (approximately 15 percent of the gross domestic product) imported in 2005 and wring their hands about the trade imbalance. They tend to forget that the United States is not only a "voracious importer," but also a ". . . very, very effective exporter" of goods and services, with exports of approximately $1.0 trillion for the same year. After defining foreign direct investment (the equity of foreign investors in operations under their direct control in the United States), Dr. Graham pointed out that the amount of foreign direct investment[3] is of the same order of magnitude as the cost of imports: approximately $1.7 trillion.[4] Nonetheless, the United States is a creditor in this area because of approximately $2.0 trillion dollars invested similarly by U.S. investors in overseas locations.

In somewhat of an aside, Dr. Graham mentioned one purchase of services made by foreigners: education. For example, about 55 percent of the students in U.S. science and engineering graduate programs are foreign. Linking this point to the previous panel on immigration, Dr. Graham said that the foreign students would like to see the post-9/11 student visa restrictions eased, at least for countries like China which were not involved in the 9/11 attacks.

Acknowledging that the statistics he was presenting are less than interesting in their own right, Dr. Graham said the point is that all this international exchange—whether students in the United States, trade deficit, or foreign direct investment—provide tangible and intangible benefits to the United States. Although a parent pays high out-of-state tuition costs for a son or daughter, foreign students paying higher tuition fees at U.S. universities and colleges make those academic institutions more affordable for American students.

Exposure to American culture is an intangible benefit, but very important as pro-American attitudes are developed in many of the foreign students. The size of the trade deficit is daunting, but the fact that certain commodities are purchased overseas should be of less concern than many Americans think. Commodities produced more cheaply overseas result in less expensive items for U.S. consumers. The lower cost of production overseas allows American firms to concentrate on developing goods and services in which they have a distinct advantage. This concept, of course, has limits. Many—certainly not all—products can be made overseas with negligible impact on U.S. national security. Some products, though, are critical to national security and overseas control of the means of production could be contrary to U.S. national interests in time of conflict or crisis. One way to ameliorate this effect is by diversification. If certain national security-specific items are made in a number of countries, the risk that all of them would shut down production during a crisis is more remote.

Alternatively, foreign direct investment offers a way out of the conundrum. While some may still look with distaste on foreign ownership of U.S.-based factories, it is still better to be dependent on foreign-owned production based in the United States than on production in the same foreign countries. In the former case, factories and other proprietary materials can be nationalized under the Trading with the Enemy Act,[5] as happened with the explosives industry in World War I and with rubber in World War II. What Dr. Graham did not mention was the huge international political cost this would incur, making it an option of last resort—at best.

In closing, Dr. Graham asserted that the huge U.S. external debt is unsustainable, but that it is caused in

part by a low U.S. savings rate. In one of the few panel references to the Global War on Terrorism, Dr. Lange said that the other major factor in the external debt is the very large government fiscal deficit, the result of tax cuts and significant government expenditure increases since 9/11. Trade deficits and the amount of foreign direct investment in the United States should not be addressed on the same track with the government deficit, which is, at least partially, a domestic issue. Blaming the Chinese—as seems to be the wont in Congress—simply does not work. Although Americans may feel better if foreign debt is owed to the United Kingdom than to China, the fact is that the Chinese simply are responding to American demands.

Mr. John D. Lange.

In many respects, the dollar—since being taken off the gold exchange standard in 1970—has been little more than a commodity, traded on international markets like any other commodity, from hog bellies to semiconductors, and subject to trading and manipulation by others for their own purposes. One of the effects of globalization and free trade is the rapid flow of various nations' commodities—especially their currency, enabled by electronic transmission—around the world. As a nation's currency becomes resident in other countries' banks, that nation loses some level of control over its own money, which is particularly worrisome when the money is concentrated in one nation, and that nation is not a traditional ally. Although his subsequent comments made the event seem less likely, Mr. John Lange talked initially of a very real risk of a collapse of the U.S. dollar because of the large amounts of American dollars now held overseas,

particularly in China. The enormous fiscal and current accounts deficits were described as a "double tsunami" waiting to envelop the American economy with the potential for significant decreases in the value of the dollar and major increases in interest rates. As the dollar goes down, interest rates rise (which will be particularly troublesome for homeowners or businessmen with adjustable rate mortgages). The costs of other currencies also rise, making import costs soar. U.S. treasury bonds become less attractive to investors, domestic or foreign. As the dollar continues downward, other changes can be expected: invoicing in U.S. dollars probably will stop, creating some international financial instability before another nation—perhaps less than friendly to the United States—steps into the breach with its own currency. Consumer prices will begin to rise, and the inflationary spiral will begin. These events occur in any downward slide of the dollar; a collapse of the dollar would accelerate the processes and worsen their results.

Fortunately, there are some dampers that will act against any slide of the dollar. Not to be outdone by how easily Dr. Graham bandied about measurements of trillions of dollars, Mr. Lange mentioned the foreign exchange market of approximately $2 trillion daily. The first damper is the inertia inherent in a market of that size. Even the $400 billion that China holds in U.S. dollars can be absorbed if China decides to begin selling its holdings. Buyers would have to be other holders of euros or yen, who would be facing the same loss of confidence in the power of the dollar and would be trying to divest themselves of their own stores of U.S. currency. Buyers could be found, but the laws of supply and demand would act to keep the price below what China—if concerned about the value of its own treasury—would be willing to accept.

A second damper is more direct: coordinated intervention. This is an attempt to match the increased supply of dollars for sale with an artificially-induced demand. Whenever the market is being disrupted by a sell-off, the United States and its friends intervene. At an agreed-upon hour, they begin buying massive amounts of dollars, making speculators—individuals or nations—more wary about their chances for profits in currency dealings. Mr. Lange described the process and opined that it would work today, but he did not address changes in the international system since he used coordinated intervention to good effect in the past. His collaborator in some of the past interventions was the *Bundesbank*; today he would have to work through the European Central Bank, which probably would be more prone to inaction because of the conglomeration of nations which would have to be consulted first. And he did not cover the remaining international—particularly European (French and German)—hostility over the war in Iraq. Nations that would cooperate with the U.S. Treasury Department during the Cold War may be much less likely to do so in the current environment. Coordinated intervention requires friends with similar interests. He did recognize one of the challenges of coordinated intervention: It is impossible to control a two-trillion-dollar market, even with infusions of "$400 million in 20 minutes".

If the selling of dollars is done for political purposes—to hurt the United States, not for profit—the selling nation may be willing to accept tremendous losses to destabilize the U.S. currency. In that event, the United States still has an option: ordering U.S. banks to stop trading with the Bank of China (or whichever other nation has initiated the action). As with coordinated intervention, being effective in shutting down a nation's

bank requires allies; it will be much less likely to work if it is applied only by the United States. As with Dr. Graham's threat of nationalization, this draconian action should be attempted only as an absolutely last resort, but having this "arrow in the quiver" makes a destabilizing sell-off less likely.

Dr. Leif Rosenberger.

As might be expected from a representative of Pacific Command, Dr. Leif Rosenberger focused on China. He first presented what could be considered a case study of how a "loser" in globalization might turn out not to have been hurt as much as anticipated. For that study, Dr. Rosenberger took the case of textile manufacturers in China and Bangladesh. The latter—and some other poor countries—had been protected for years by an agreement that gave them guaranteed U.S. and European Union (EU) markets. Without that guarantee, the Chinese textile price was unbeatable. When the agreement expired, Bangladeshis feared for the loss of an industry that accounted for 80 percent of their exports. In a separate action—for unrelated reasons—at about the same time, China eliminated a millennia-old agriculture tax, making farming a more profitable enterprise. Unintentionally, this reduced the flow of workers from rural areas to the urban centers, making it much harder for textile manufacturers to find the cheap labor they needed to maintain their prices. Although at least some of the Chinese textile exports to the United States increased tenfold in the short-term, the offsetting action of elimination of the agriculture tax very quickly returned the competitive edge to Bangladesh and the other poor countries. What Dr. Rosenberger failed to mention, though, was how

often offsets like this occur. Offsets do occur, of course, but the odds that two disparate actions will produce offsetting actions in different countries probably are low. More likely is a scenario in which one country gains an edge over another, and the second country's industry simply withers on the vine. An offsetting decision may be made, but the results would affect a third country, not the one wounded by the first action.

Dr. Rosenberger next made a long argument that shared prosperity in Asia is good for all concerned. He seemed to be saying that increased trade between China and Japan and Australia, for example, makes conflict between any two of them less probable. The same would be true for trade between China and Taiwan: As their mutual interests in prosperity coincide, the risk of cross-straits war reduces. Unfortunately, that shared prosperity also ties the hands of those desiring to act. Some would argue that a war on the Korean peninsula is much less likely because of the economic impact it also would have on China and Japan. However, the term "rogue actor" fits Kim Jong-Il better than most, so American and Korean soldiers stationed in Korea continue to be prepared for a no-notice war. If that war (or war between Beijing and Taipei) started, America could find its access to the region denied by those countries too worried about the effect on their trade with China. That near-term effect may not be the worst result. China's growing influence in the region would be part of a zero-sum game with the United States. American influence would decrease proportionately, and the growth of a peer competitor would be possible much sooner than many pundits predict.

ENDNOTES - PANEL IV

1. For a look at the varying estimates (and their bases), see Anthony Cordesman, "The Uncertain Cost of the Iraq War" (working draft), Washington, DC: Center for Strategic and International Studies, May 10, 2006, available at *www.csis.org/media/csis/pubs/060509_iraq_war_costs.pdf*, accessed on July 27, 2006.

2. "Almost two-thirds [of Americans] say the U.S. economy is getting worse, not better, and well less than half are willing to rate the economy as excellent or good." Frank Newport, "Americans Still Dour on U.S. Economy," Gallup News Service, July 17, 2006, available at *poll.gallup.com/content/default.aspx?ci=23782*, accessed on July 26, 2006.

3. This includes both *de novo* investment (as when Toyota buys land and builds a factory in the United States) and acquisition of U.S. firms (as the abortive attempt in 2005 by the China National Offshore Oil Corporation to buy UNOCAL—the Union Oil Company of California).

4. With approximately 18 percent of the U.S. manufacturing base owned by foreign investors, Dr. Graham said that the influence is pervasive. Some of these organizations (e.g., British- and Dutch-owned Shell Oil and Belgian-owned Food Lion) have been in the United States so long that they often are considered to be American companies.

5. Available at *www.treasury.gov/offices/enforcement/ofac/legal/statutes/twea.pdf*, accessed July 27, 2006.

PANEL IV

GLOBALIZATION AND U.S. NATIONAL SECURITY: AN OVERVIEW OF SOME BASIC ISSUES

Dr. Edward M. Graham

Introduction.

"Globalization" has become a household term in the United States only during the past 10 years or so, and for many Americans, the term brings on fear of job loss and/or U.S. economic decline. That it does so is unfortunate for at least two reasons. First, globalization is a process that has affected the economy of the United States since at least the end of the 19th century (yes, the 19th, not the 20th!) and, moreover, over this whole course of time, the U.S. economy certainly has not suffered on account of the process. Second, for the overwhelming majority of Americans, globalization is bringing net benefits, not harm, to them personally.[1] The benefits include goods and services that can be bought at lower prices and greater product variety than would be the case had there never been any globalization. (Would most Americans, for example, really want to go back to a time when Toyotas, Hondas, and Nissans were not available in addition to Ford, General Motors, and Chrysler vehicles, or to pay much higher prices—and possibly have to give up altogether—the DVDs, flat-panel TVs, compact cell phones, laptop computers, and other high-end electronics products that now are mostly imported into the United States?).

The benefits also include, for many—albeit not all—Americans, better job prospects at higher wage rates

than would be available in the absence of globalization.[2] This is especially true for highly educated persons or those who otherwise are technically skilled. It is true, however, that some Americans, especially at the low-skill end of the labor spectrum, do suffer net losses (either reduced wages or loss of job opportunity) as a result of globalization, and account should be taken of such persons.[3] The total losses are, according to serious measurement, significantly less than the gains from globalization,[4] but the losses do tend to be concentrated upon persons who are at the lower end of the economic scale in the United States. This concentration is unfortunate; it almost surely exacerbates income inequality in the United States. More could be done to alleviate the suffering of those who are adversely affected by globalization in this country. Moreover, it curiously is true that Americans tend to weight the costs of globalization more heavily than the benefits, and this weighting in public attitudes, in turn, gives more weight to the "negative" or "anti-globalist" side of the debate over globalization than pure economic considerations might suggest are appropriate.[5]

Globalization also does present some special issues specifically relevant to national security. The essence of globalization is greater interdependence among national economies, including the U.S. economy, such that some goods and services consumed in the United States that once might have been produced in the domestic economy by firms owned by U.S. nationals, now are produced abroad and imported or perhaps made in the United States but by foreign-owned firms. The non-domestic location or ownership of production enables cost reductions or greater product variety, as already noted, and for certain goods and services these factors actually can enhance national security,

e.g., by freeing resources needed to produce an item at home and enabling these resources then to be used to produce goods or services of greater value for security purposes.

But, even so, most Americans would not be comfortable if certain goods and services of high strategic importance were to be produced overseas or by foreign nationals operating in the United States. This is especially so if, in time of conflict, control of this production were to enable foreign powers hostile to the United States to gain access to technologies or other information that, if retained exclusively in the Nation or under national control, would give the United States some sort of strategic advantage over these foreign powers. This is true particularly where the information or technology remaining exclusively under domestic control is otherwise vital to national security. Also, in some cases, there might be an opposite concern, notably that foreign control of certain activities enables a foreign power to withhold information from Americans where this information is of import to national security. Moreover, even if control of the production of the goods or services did not impart such technology or other information, Americans might be uncomfortable if a foreign location of production were to render the goods or services vulnerable to short supply in the event of conflict.

Thus, there can be a significant security-related tradeoff between the benefits of globalization (e.g., lower costs or greater product variety) and the risks of supply interruption or loss of strategically-sensitive information, including technology, that can ensue from globalization. It is important not to exaggerate the risks, however. One thinks of the example of the U.S. textile and clothing industry, which in the early 1990s mounted an advertising campaign claiming that U.S.

policy allowing increased imports of clothing would put at risk the domestic industry, such that in time of war U.S. soldiers would have no battlefield clothing to wear.

This claim, in fact, was bogus in the extreme for three reasons. First, while much of U.S. demand for clothing indeed was being met by imports, a substantial U.S. apparel industry remained in place (and still does). Indeed, one consequence of globalization has been that, while certain U.S. sectors indeed shrink, other sectors expand and, moreover, few—if any—of the shrunken sectors disappear altogether. Second, battlefield clothing is a highly specialized sub-sector of the total apparel industry, and there was never any danger whatsoever that this sub-sector would disappear due to import competition. Third, even had U.S. domestic production of (non-battlefield) military clothing been shut down (it was not), most such clothing needs could be provided by imports from any of at least a dozen friendly nations. (Very high tech battle gear, even in this last instance, would continue to have been produced at home.) Thus, and in a word, the textile industry was using "threats to the U.S. national defense" as a front in a demand for plain, old-fashioned protectionist policies against imports (ones which, in fact, the industry already had secured, so what was being sought at that time was still more protectionism).

"National defense" has been advanced as a reason for protectionism in other sectors, where defense-related arguments for protection against imports again have been bogus, or at least largely so. One thinks, for example, of the steel industry, which consistently has claimed that imports of steel pose a risk to the U.S. national defense, even though the domestic industry has retained far more capacity than is needed for defense production.

In this case, it also is true that many traditional uses of steel for military goods are disappearing, thanks to new technologies, e.g., whereas armor once was made 100 percent of steel, modern armor consists largely of composite materials not containing steel. Indeed, it is possible in the future to envisage armored vehicles for which only a limited number of parts, and perhaps even none at all, are made of steel. Moreover, to the extent that imports of certain goods create security risks, in many cases those risks can be mitigated by means that are less costly than import protection. For example, if the risk is disruption of supply in times of conflict or national emergency, strategic stockpiles of the relevant material can be created. If the risk is that the principle supplier is located in a country that might prove to be an "unfriendly" in time of conflict, alternative suppliers in more friendly countries can be developed. Also, it must be remembered that, even in times of war, many goods and services can continue to be imported more economically from overseas than produced domestically (international trade in certain strategic goods flourished during World War II, for example), and this is especially true for those goods or services that can be obtained from multiple and diverse sources.

Let us explore some of these facts and issues just introduced in more detail. We will begin by looking at some measures of the extent and consequences of globalization.

How "Globalized" is the U.S. Economy, and What Does this Mean for National Security?

Table 1 below indicates U.S. imports and exports, broken into goods and services, for each of the years 2005 and 1985. The numbers mostly speak for

themselves, indicating the extent to which both imports and exports, as a percent of gross domestic product (GDP), have grown during the 20 years from 1985 to 2005. Imports thus were 9.7 percent of GDP in 1985 but had grown to 16 percent in 2005. But U.S. exports have also grown, from just under 7 percent of GDP in 1985 to more than 10 percent in 2005. Indeed, what surprises some persons is that U.S. exports of goods have grown as a percent of the national economy, although not by as much as imports of goods. Such persons often tend to think of "globalization" as a one-way street, whereby domestic U.S. markets are captured increasingly by imports while U.S. exports stagnate. This, in fact, has not been so.

Indicator	Amount ($ billions) 1985	Percent of U.S. GDP 1985	Amount ($ billions) 2005	Percent of U.S. GDP 2005
Imports into the U.S.	411.0	9.7	1995.8	16.0
Of which:				
Goods	338.1	8.0	1674.3	13.4
Services	72.9	1.7	321.6	2.6
Exports from the U.S.	289.1	6.9	1272.2	10.2
Of which:				
Goods	215.9	5.1	892.6	7.1
Services	71.2	1.7	379.6	3.0
Memo: U.S. GDP in current $	4220.3	100.0	12487.1	100.0

Note: Data do NOT include factor income.

Source: U.S. Department of Commerce, Bureau of Economic Analysis; data available on-line at *www.bea.gov.*

Table 1. Indicators of Globalization of the U.S. Economy Exports and Imports of Goods and Services.

Indeed, one category of U.S. exports—exports of services— actually has been the fastest growing item in Table 1; these exports jumped from 1.7 percent of GDP in 1985 to 3.0 percent in 2005. In spite of this, many trade policy specialists believe that the potential for U.S. exports of services is greater than the figures in Table 1 indicate, and this potential is one reason why the U.S. Government has placed priority on negotiation of "free trade agreements" with a number of countries wherein service sector opening is emphasized. Moreover, the U.S. Government has supported continuance of work in the World Trade Organization (WTO) on the General Agreement on Trade in Services (GATS), an agreement that came into force in 1995, but which most trade policy analysts believe is "incomplete."[6]

It is true that U.S. exports consistently have been less than U.S. imports during the past 25 years or so, creating a trade deficit, and this is the result of macroeconomic factors. In recent times, the two such factors that have most affected the U.S. trade deficit are the Federal fiscal deficit and the low U.S. savings rate, especially at the household level. An analysis of how these factors create the U.S. trade deficit and why in the long run this deficit almost surely is unsustainable are contained in Mann and Plueck (2005).[7] A consequence of the large U.S. trade deficit is a continuing need for international inflows of capital to finance the deficit.[8] Were, at some point in the future, foreigners to become reluctant to invest in the United States in the amounts required to finance the trade deficit, the likely consequence would be a very sharp depreciation of the dollar. Such a depreciation eventually would "correct" the trade deficit (that is, bring the value of U.S. imports more into line with the value of exports) because prices of imported goods to Americans would increase—and

hence Americans would cut back their imports—and, also, foreign prices of U.S. exports would decline, causing foreigners to buy more American-made goods and services. However, a precipitous decline of the U.S. dollar almost surely would require rises in U.S. interest rates (risking a recession) and, moreover, a dollar decline would reduce the wealth of Americans relative to the rest of the world.

Moreover, some analysts fear that a rapid decline of the U.S. dollar could trigger an international financial crisis. Thus, analysts do worry that the several international "imbalances" caused by the U.S. trade deficit could have serious effects on U.S. and world economies sometime in the future. Even so, the United States seems unprepared to take any action to correct the imbalances, or at least that appears to be the case at the time of this writing, and this could prove in the future to create a major problem.

Globalization is not just about international trade, however; a big piece of "globalization" has to do with the spread of foreign-controlled economic activity via international operations of multinational firms. The standard measure of this activity is foreign direct investment (FDI), which technically is the equity component of international investors (i.e., the "parent" firms of multinational firms, where the "parent" is the home nation or headquarters firm[9]). A problem is that foreign direct investment is a financial concept, not a national income concept; it really makes no sense, then, to calculate a ratio of FDI to GDP, as we have done for international trade (imports and exports) above. Imports and exports are components of national income or national consumption, but FDI is not.

A better measure is value added by foreign-controlled firms to the national economy. GDP, in

fact, is simply the sum of value added by all economic activity, and thus value added by foreign-controlled firms as a percentage of GDP is a number that makes sense. The problem is that value added by foreign-controlled firms is not a data item that is commonly collected; indeed, even for the United States—and we are a nation that collects a lot of data pertaining to our economy—such data go back only a relatively few years. (Multinational firms, by contrast, have been around since the late 1800s.) Table 2 presents some such data for the United States for 1997-2003, where the 2003 data are the most recent available at the time of this writing. The data indicate value added by foreign firms in the economy both as a whole and in the manufacturing sector.

Year	1997	1999	2001	2003
Total value added by foreign-controlled firms ($ billions)	313.7	397.3	417.1	486.3
Above as a percent of total U.S. GDP	3.8	4.3	4.1	4.4
Value added by foreign-controlled firms in U.S. manufacturing ($ billions)	169.3	219.1	200.5	227.7
Above as a percent of total U.S. GDP	2.0	2.4	2.0	2.1
Above as a percent of U.S. mfg national income	14.1	19.0	18.3	20.1
Memo: U.S. Mfg National Income as a percent of U.S. GDP	14.4	12.4	10.8	10.3
Memo: U.S. GDP ($ billions)	8304.3	9268.4	10128.0	10971.2
Memo: U.S. Mfg National Income ($ billions)[10]	1195.8	1150.3	1094.1	1133.4

Source: U.S. Commerce Department, Bureau of Economic Analysis. Data available on-line at *www.bea.com.*

Table 2. Value-added by Foreign-controlled Firms in the U.S. Economy.

A number of points can be made from the data of Table 2. First, the line "U.S. manufacturing national

income as a percent of U.S. GDP" tells the story that the manufacturing sector as a whole in 1997 accounted for only 14.4 percent of the U.S. economy, but that this percent had declined to 10.3 percent by 2003. Some of this decline doubtlessly is cyclical, because manufacturing sectors are more sensitive to business cycles than other sectors, and 2001 and 2003 were years of economic slowdown, but much of it does seem to be a long-term trend. But, second, value added by foreign-controlled firms in the U.S. manufacturing sector actually climbed somewhat in those years, from 2.0 percent of GDP in 1997 to 2.1 percent in 2003. It follows that value added by foreign-controlled firms in the U.S. manufacturing sector increased their share of U.S. manufacturing national income in those years, from 14.1 percent in 1997 to 20.1 percent in 2003.

Is this latter worrisome? One way to look at this issue is that foreign-controlled firms do account, then, for about one-fifth of all domestic U.S. manufacturing activity. They also account for a fast-growing share of this activity. On the other hand, of course, four-fifths of U.S. manufacturing activity is under domestic control. Moreover, in light of the fact that manufacturing is a declining sector in the United States, it seems reasonable to claim that foreign-controlled activities in this sector are contributing not to its decline (as has been asserted), but rather to its preservation! Some implications of this for the U.S. defense industrial base are discussed in the final section of this essay.

Third, overall, foreign-controlled business activity in the United States accounts for a rather small share of the total U.S. GDP; this share was 3.8 percent in 1997, but it did grow to 4.4 percent in 2003. In fact, the share seems rather stable; in 1985, it was 3.5 percent.[11]

Trying to Put All of This in Perspective.

A number of further points can be made pertaining to globalization and the U.S. economy and globalization of the world economy, ones that hopefully provide some perspective on these two important sets of issues. First is simply this: that, at the end of the day, for all of the talk about "globalization," the vast majority of economic activity in the United States remains basically domestic in nature. Thus, for example, of annual "absorption" (net expenditures on goods and services by domestic residents, including on imports) in the United States in 2005 of $12.889 trillion,[12] only 13 percent consisted of goods and services produced outside the country, while 87 percent consisted of goods and services produced in the United States. If one were to be asked then, "How much of the U.S. economy is 'globalized'?" a sensible answer would be "about 13 percent." Moreover, as just noted, of all goods and services produced in the United States, more than 95 percent is produced in business firms that are under domestic control, and less than 5 percent in business firms under foreign control. The point, of course, also can be made that the U.S. economy is significantly more integrated internationally, i.e., "globalized," in 2005 than was the case only 20 years ago, and, also of course, the economy is much more "globalized" than it was 40 or 50 years ago. Even so, the United States remains a large economy that is, at the end of the day and by almost any measure one can think of (and in this essay we have examined a number of such measures), less dependent upon foreign economies than some of the rhetoric surrounding "globalization" might suggest.

At the same time, it must be remembered that the trend towards "globalization" of the world economy

is a phenomenon that affects all major nations of the world. There is some tendency for certain economic nationalists in the United States to talk as though "globalization" is something that affects the United States singularly. This is, with a moment's thought, simply not possible. Rather, almost by definition, increased integration of the world's economies implies mutual interdependence, not dependence that extends in one direction only. Here is an interesting fact in this latter direction. There has been concern expressed, as noted earlier, about the high degree of control of domestic business activity by foreign investors in the United States. As we have noted, this degree of control is less than alarmists might have one think. But it also is true that firms that are both based in the United States and under domestic control hold more activities outside the United States than foreign firms hold in the United States. For this comparison, the stock of foreign direct investment is a relevant measure. Foreign direct investment in the United States totaled $1,709 billion at the end of 2004, the latest data available. This is a large number of course, but direct investment abroad by U.S.-based firms at the end of 2004 was $2,367 billion.

Thus, if the United States is becoming more dependent on the economies of other countries (and if the message here is "we are becoming more dependent, but let's not exaggerate"), the economies of other nations also are becoming more dependent on foreigners (where, of course, from the point of view of another country, the United States itself is a "foreigner," indeed, the biggest one). For example, if one takes a close look at the economy of China, where China is the nation most consistently identified as a possible challenger to U.S. power in the coming decades, this economy, in fact, is far more dependent upon foreigners than is the U.S. economy.[13]

An interesting fact is that nationalists in all nations, and not just the United States, decry the increased dependence upon other nations that currently is being witnessed worldwide. For example, the rapid growth of China, which, in turn, enables Chinese leaders to dream of a future in which their nation is a global power, is being driven in very large part by firms in that nation that are under foreign control. Thus, some Chinese nationalists wonder, and wonder quite loudly, would it not be better for China if China could somehow expel these firms and put a greater share of its economy—especially in the high technology sectors—under purely domestic control.

The answer to this last question, in fact, is probably "no." In thinking about this, this author thinks about his recent purchase of a laptop computer. The price, after a rebate from the manufacturer (Hewlett-Packard) was $800 plus change. The computer itself was made in China, but from components imported from the United States (CPU), South Korea and/or Taiwan (memory), Singapore (hard drive and DVD), and other locations. The benefits of globalization are embodied highly in this machine (the last time I bought a laptop had been 7 years earlier; I had paid over $2,000 for a machine that had considerably less capabilities, not to mention a much smaller screen), but this type of product also has enabled China to become a major producer and exporter of advanced electronic products. Would this have been possible without massive foreign investment in China? Probably not! It is exactly because China has become part of the global economy, via this investment, that it has been able to modernize, grow, and turn itself into a rising power. But that I paid less than half what I did 7 years ago for a better product also might not have been possible without this investment. Thus, my

new laptop represented a "win/win" for China and the United States; I, as an American, benefited, but so did China and a number of other countries as well.

Some Last Thoughts on Globalization and National Security.

The points raised in the previous section notwithstanding, there are activities that Americans would, for national security reasons, want to remain on U.S. soil and/or under domestic U.S. control. The production of advanced weapons systems, for example, surely is one of these. But how "far down the line" does production "on U.S. soil and under U.S. control" actually go? Do we care if major components of these systems (e.g., memory chips, flat panel displays, etc.) are sourced from abroad or from non-U.S. controlled firms?

The answer to the latter is probably "no, we don't care" if the component in question is produced in a number of places or by a number of firms, so that the United States is not dependent excessively upon just one or a small number of production locations or producers. But what is the threshold where either of these numbers becomes too small? It can be difficult to say. One issue in this matter is whether or not, in times of national emergency, a domestic alternative source of supply could be established and how quickly. If a domestic alternative could be quickly established, we might be willing to deal with a very small number of suppliers; but if domestic entry were to be difficult, we might still not worry if the number of foreign suppliers were sufficiently diverse that the risk of a complete cutoff of supply was to be negligible.

Implicit in the above is that the component not embody a technology that uniquely is held in the United

States, and where that technology conveys a defense-related advantage to the U.S. military. But in assessing whether such a technology figures, it is important to distinguish between one that is truly unique and one that, at the end of the day, is not. Here is an example of what this author would argue is the "wrong case" to be made for preservation of a U.S. technological capability: "We don't want to be dependent upon foreigners for this type of product." When this line of argumentation is made, it is often the case that not only does the relevant technology not reside uniquely in the United States, it is often the case that the leading edge of the technology has shifted to foreigners (e.g., in the production of memory chips, Samsung, a South Korean firm, at the moment seems to be the most advanced producer of these). In such a case, what the "wrong case" thinking can lead to is this: The U.S. military buys from a domestic source where, in fact, a foreign source not only can supply the same product at a lower price, but can supply a better version of the product than can the domestic source. This makes no sense whatsoever unless, perhaps, there is some possibility of a critically-short supply in the event of a national emergency.

The main point, then, is this: There, indeed, are some activities that, for security purposes, should be maintained domestically and under domestic control. But there are many wrong reasons for designating a particular activity as one of these. Indeed, there are situations where to maintain domestic supply under domestic control could be costly and not provide any security benefit to the United States. What activities should not be under foreign control, then, is a difficult question. In fact, with respect to foreign takeovers of U.S. firms, there is in place a review mechanism, under the Exon-Florio provision of the Defense Production

Act, that is meant to make this sort of determination. Has this provision worked well? In fact, the Exon-Florio provision and the inter-agency committee that implements the law have been subject during the past year to considerable congressional scrutiny and criticism, most of it misplaced (the review process, in fact, has worked quite well)[14]. There are those members of Congress who would pass legislation to modify the review process and perhaps to force the process to take seriously bogus arguments for maintaining domestic control of activities that could, without damage to U.S. national security, be maintained under foreign control.

A final word: What if a technology exists that is security-sensitive but is also dominated by a foreign firm? What is the best course of action for the United States to take then? This author would suggest that the best option is to encourage that firm to produce those products that embody that particular technology right here in the United States. If foreign control of a security-sensitive technology is simply a fact of life (and in some instances it will be; the United States cannot be best at everything, as much as we might like it to be!), it is better to have the relevant production facilities on U.S. soil than elsewhere. This is true because, in times of war or other national emergency, the U.S. Government can seize control over the facilities if necessary, under either the International Emergency Economic Powers Act (IEEPA) of 1977 or, more drastically, under the Trading with the Enemy Act of 1917. Indeed, the latter act was used to seize German investments in the United States during World War I. At that time, German firms in the chemicals sector dominated the technology of high explosives, and this dominance early in World War I conveyed significant advantages

to the Germans. But the German industry had invested abroad and especially heavily in the United States. The net result was that we, too, had access to these technologies when we needed them to use against the Germans. This might not have been the case had the German investments in the United States never been made, perhaps as the result of misguided legislation to restrict foreign ownership in strategically-sensitive sectors had such legislation been passed in, say, 1905. Of course, no such legislation was passed, and the U.S. war effort in 1917-18 benefited accordingly. And may the obvious lesson not be forgotten.

ENDNOTES - GRAHAM

1. Scott C. Bradford, Paul Grieco, and Gary C. Hufbauer, "The Payoff to America from Global Integration," in C. Fred Bergsten, ed., *The United States and the World Economy: Foreign Economic Policy for the Next Decade*. Washington, DC: The Institute for International Economics, 2005. They calculate that the average net benefit from globalization to the United States adds up, in effect, to something between $7,100 and $12,900 in additional annual income per U.S. household. Most of this derives from lower prices paid for goods and services, but some of the benefit arrives from incomes of persons that are increased by globalization, most especially those who are employed in export-generating activities that expand under globalization.

2. It is demonstrable, for example, that workers employed in sectors that are export-intensive are paid higher wages than workers in other sectors, controlling for such variables as skill level of the worker. See Howard Lewis III, and J. David Richardson, *Why Global Commitment Really Matters!* Washington, DC: The Institute for International Economics, 2001.

3. See, for example, Lori G. Kletzer, *Job Loss from Imports: Measuring the Costs*, Washington, DC: The Institute for International Economics, 2001.

4. Bradford, Grieco, and Hufbauer.

5. On this, see Kenneth F. Sheve, and Matthew J. Slaughter, *Globalization and the Perceptions of American Workers*, Washington, DC: The Institute for International Economics, 2001.

6. Pierre Sauvé, "Completing the GATS Framework: Addressing Uruguay Round Leftovers," *Aussenwirtschaft* (*Swiss Economic Review*), Vol. 57, No. 3, 2002, pp. 301-341; reprinted in Pierre Sauvé, *Trade Rules Behind Borders*, London: Cameron, May 2003.

7. Catherine M. Mann and Katharina Plueck, "The U.S. Trade Deficit: A Disaggregated Perspective," Institute for International Economics Working Paper WP-05-11, 2005, available on-line at *www.iie.com/publications/wp/wp05-11.pdf*.

8. To determine the total capital inflow of the United States, one must add certain other quantities to the balance of trade deficit, most notably net factor income paid to foreigners. When all is added, the total capital inflow into the United States in 2005 was slightly more than $804 billion.

9. Thus, for example, one of the world's largest multinational firms is Toyota Motor Corporation. The "parent" firm in this case is the Toyota Motor Company of Japan. This firm, in turn, holds control of many international subsidiaries, e.g., Toyota Motor Corporation of North America. The subsidiaries are legally separate firms from the parent firm, but the parent maintains control over them, most often by owning the majority of the stock (equity) of these subsidiaries.

10. Without capital consumption allowance.

11. Edward M. Graham, and Paul R. Krugman, *Foreign Direct Investment in the United States, 3rd Edition*, Washington, DC: The Institute for International Economics, 1995, Table 1.2.

12. Calculated as follows: Absorption = GDP - (exports) + (imports) or, in numbers, $12.889 trillion = $12.487 trillion - $1.272 trillion + $1.674 trillion.

13. See, for example, the economics chapters in C. Fred Bergsten, Bates Gill, Nicholas R. Lardy, and Derek Mitchell, *China: The Balance Sheet*, Washington, DC: The Center for Strategic and International Studies and the Institute for International Economics, 2006.

14. On this process, see Edward M. Graham, and David M. Marchick, *U.S. National Security and Foreign Direct Investment*, Washington, DC: The Institute for International Economics, 2006.

PANEL IV

THE ECONOMIC RISE OF CHINA: COMMERCIAL THREAT OR BLESSING?

Dr. Leif Rosenberger

Is China a commercial threat? Or is China a commercial blessing due to what can be called shared prosperity? To address these questions, analysis of the following four case studies can be helpful:

- The rise and fall of China's commercial threat to Bangladesh;
- A comparison and contrast of the China-Australia economic relationship with the U.S.-Australian economic relationship;
- The U.S. trade deficit with China; and,
- The China-Taiwan economic relationship.

Bangladesh.

A decent start is exploration of China's commercial threat to Bangladesh from January 1, 2005—the day something called the Multi-Fiber Arrangement (MFA) expired. MFA was a system of textile quotas for poor countries like Bangladesh. It gave textile producers guaranteed export markets with the European Union and the United States. After the MFA was eliminated, countries like Bangladesh, Cambodia, and Indonesia were afraid they could not compete head-to-head with China. Why not?

For the 6 years between 1998 and 2004, China had price deflation in textiles and other low-end

manufacturing. Simply put, the "China price" was unbeatable. Those poorer countries benefiting from the MFA worried they would not be able to compete with China. A number of people told them, though, "Don't worry; be happy. It will take China a long time to capture new market shares after January 1, 2005." Market events proved them wrong. In the first quarter of 2005, China's cotton shirt sales to the U.S. skyrocketed 1,250 percent from the same period in 2004. Similarly, China's cotton trouser sales in the United States increased 1,500 percent from the same period in 2004. Bangladesh, in particular, was on the ropes, on the verge of losing an industry that accounted for 80 percent of its exports and had lifted 13 percent of the country's poor households out of poverty.

The 9/11 Commission Report says, "When people lose hope, the breeding grounds for violent extremism are created." As hope became a scarce commodity in Bangladesh following the MFA expiration and its unpredicted impact, violent extremist groups moved into the vacuum, blaming the United States for globalization and its adverse effects. Although incorrect, the perception of U.S.-caused social and economic injustice was pervasive. Violent extremists in Bangladesh were planning to exploit this ill-advised but pervasive perception of social and economic injustice. Again, some pundits said, "Don't worry; be happy. We've beefed up the capacity of the Bangladeshi government to counter terrorism. All is well." Of course, building capacity to counter terrorism was necessary, but not sufficient. (If success at capacity-building was a silver bullet, there would be no terrorism in Israel—because God knows the Israeli military has no shortfall in capacity.)

At this point, the socio-economic demand for violence was rising. Frustrated people were at risk of buy-

ing the propaganda of violent extremists. Unfortunately, in August 2005, the worst fears were played out when Bangladesh suffered through 500 bombings in one month. But at a time when things looked especially bleak in Bangladesh, things were changing in China that would reverberate in every nook and cranny in the international business world and would reduce the demand for violent extremism in Bangladesh. Social unrest was rising in the Chinese countryside. In 2005, there were 87,000 public disturbances, a 13 percent rise over 2004. In an effort to placate at least some of its apparently restive populace, Beijing in September 2005 announced that the agriculture tax would be eliminated in 2006. This unprecedented step—the agriculture tax dates back over 2,000 years—would benefit 730 million Chinese farmers. Many Chinese farmers opted to stay on the farm as the elimination of the tax improved their lives in rural China, but that produced an unintended consequence. It meant fewer migrant workers were leaving the countryside and looking for work in the cities.

Now imagine the person running a textile factory in Shanghai. He now has a shortfall of workers knocking on the doors looking for work. How will he attract more textile workers? The supply-demand curve suggests that higher wages would be required, and in 2005, there was a double-digit rise in Chinese wages. And the rising wages did not just happen in the textile industry; wages rose across the board in Chinese low-end manufacturing. As a result, Chinese manufacturing competitiveness declined in 2005, and China is no longer the producer of lowest cost in low-end manufacturing. Who benefited from rising production costs in China? Textile factories in Bangladesh, along with those in India, Cambodia, Indonesia, and the Philippines. In

Bangladesh, textile factories are over-booked, the way China used to be.

Now imagine the recruiter or propaganda specialist for a violent extremist group in Bangladesh. He has been bashing the United States and globalization. With orders for textiles pouring into Bangladesh factories, bashing globalization loses its punch. As the number of textile jobs rise in Bangladesh, textile workers now see globalization as a blessing, not a curse. Job creation in Bangladeshi textile factories helps to reduce the socio-economic demand for extremist violence.

The China-Australia and U.S.-Australia Economic Relationships.

Juxtapose the effect of globalization in a poor country like Bangladesh with a relatively rich country like Australia. Is China's economic rise a commercial threat or a blessing to Australia? The answer to this question—at least commercially—is a "no brainer." Australia's economic ties with China are booming, with Sino-Australian merchandise trade skyrocketing 248 percent between 2000 and 2005. In contrast, the United States is losing its economic high ground with Australia, with U.S.-Aussie trade being virtually flat, only growing 13 percent in the same time frame. Beyond commerce, though, the answer is more difficult to discern. At a strategic level, China's shared prosperity with Australia can be seen as positive: Their shared prosperity gives both China and Australia a stake in stability and makes war less likely. But Pacific Command plans for worst-case scenarios. What if war breaks out between China and Taiwan? In that case, China's shared prosperity with countries in the region increases the risk for the U.S. military, which may be

denied operational access to bases and places in Asia—including Australia—because of their economic and other links to China. In other words, China's military strategy of access denial is enhanced by their shared prosperity with Australia. Some evidence suggests that this effect already is being seen: Back in August 2004, Australian Foreign Minister Alexander Downer publicly told Beijing that Australia was not bound to help the United States defend Taiwan in the event of a China-Taiwan military conflict. Today—20 months later—Australia's trade with China dwarfs its trade with the United States. Australia has significant incentive to bend over backwards not to antagonize China and not to jeopardize this highly-prized economic relationship.

But Australia is not alone. Even Japan—with longstanding security ties with the United States and with ongoing political strains with China—now trades more with China than with the United States. The United States undoubtedly can expect some operational military support from Japan in a China-Taiwan scenario. But the nature and extent of Japanese support to the United States arguably would be less than if Japan had nothing to lose and had virtually no economic equities to weigh with China. Japan's booming exports to China are critical to sustaining Japan's long-awaited recovery, so Tokyo will think twice before jumping on the U.S. bandwagon against China in a China-Taiwan conflict. That would be especially true if Taiwan were to trigger the war. Of course, there would also be considerable pressure from the U.S. business community to make sure any China-Taiwan conflict does not trigger a larger U.S.-China war. That community—with billions of dollars invested in China—is not the only one in the United

States that would want to avoid expansion of the war: U.S. consumers benefit from low-cost Chinese goods they buy at Wal-Mart.

U.S. Trade Deficit with China.

In contrast to Australia's positive economic perceptions of China, the United States sees China as much more of a commercial threat. U.S. Senators Lindsey Graham (R-SC) and Charles Schumer (D-NY) argue that China's foreign exchange rate against the U.S. dollar is 20 percent to 30 percent undervalued, which underprices Chinese exports. The two Senators view China's 2.1 percent revaluation in July 2005 as a drop in the bucket. Their bill would raise tariffs by 27.5 percent on all Chinese-made goods coming into the United States unless China strengthens its *yuan* (or *renminbi*) currency by a comparable percentage against the U.S. dollar. China also could be designated a currency manipulator, triggering immediate U.S.-China foreign exchange rate talks. This is just one of the laundry list of economic problems that need to be discussed at the highest levels of both governments.

That said, much of the U.S. bashing of China for its $200 billion trade surplus is ill-advised. If the U.S. trade deficit with all of Asia for the past decade is examined, not much has changed. What has changed is the breakdown of U.S. trade with Asia. The United States used to have relatively high trade deficits with many countries in Asia. Now many of these trade deficits have fallen as the U.S. trade deficit has risen with China. Why? It is all about supply chain management in international business. For instance, Japanese and South Korean companies have moved their final assembly of products to China. It stands to

reason that the U.S. trade deficit with China would rise now that final assembly is in China.

Interestingly enough, the United States asked Beijing to open China to foreign direct investment (FDI), and the Chinese did so—far more than Japan or South Korea have done. Yet some people in the U.S. Government are bashing China for what are really international business decisions to relocate to the cheaper production opportunities there. In addition, those U.S. Government bashers of China who point to the Chinese trade deficit as a threat to the United States need to learn more about the nature of these so-called Chinese exports. About 60 percent of these "Chinese exports" are made by foreign-funded or wholly-owned companies based in China. The percentage is even greater—at 80 percent to 90 percent—if the analysis is narrowed to high-technology exports. A Chinese political leader might very well ask, "Is foreign domination of Chinese exports—especially in the high-tech sector—such a good thing for China?" Finally, if the Chinese *yuan* is so undervalued, the same complaint should be heard from the many Asian countries with foreign exchange rates that they keep at least loosely tied to the U.S. dollar to boost their export-led growth. But only the United States is complaining. Why? For starters, much of Asia is running a trade surplus with China. Nevertheless, the odds are rising that the United States will use trade sanctions against China.

The China-Taiwan Economic Relationship.

A few words about the China-Taiwan economic relationship also are warranted. That relationship should be viewed as a continuum with economic nationalism at one extreme and shared prosperity at

the other extreme. Unfortunately, Taiwan is moving in the wrong direction toward economic nationalism, putting Taipei on a collision course with Beijing and Taiwan businessmen.

Taipei now has strict regulations on Taiwanese investment on the mainland. For instance, Taiwanese companies can not invest over $100 million on the mainland. If Taiwanese companies want to invest more, Taipei demands that those companies make financially unattractive investments in Taiwan. At first glance, Taiwan's new regulations seem to threaten China's economic security if Taiwanese companies abandon investment on the mainland. That is because Taiwanese companies have been at the forefront of China's economic growth. Over 60,000 Taiwanese businesses now operate on the mainland. Officially, Taiwan's business investment on the mainland is $48 billion. However, Taiwan's central bank puts this figure at $70 billion and private estimates of Taiwan's investments suggest that the total may run over $100 billion.

Taiwanese companies simply may not submit to the measures; they are considering taking drastic actions. Many Taiwanese businesses are considering cutting ties altogether with Taiwan and moving their headquarters to China. If so, Taiwan's heavy-handed micro-management and economic nationalism would backfire, resulting in a loss of tax revenue to Taiwan's treasury.

This certainly would forestall any increase in Taiwan's military budget. Such a scenario would widen the military gap between China and Taiwan. Just for starters, China's economy is four to five times larger than Taiwan's economy. Additionally, China's economic growth has been about twice that of

Taiwan's for the past decade, and the U.S. Department of Defense says China is spending a larger percent of its gross domestic product (GDP) on defense than Taiwan. Pacific Command has been trying to get Taiwan to increase its military spending from 2.3 percent of GDP to 3 percent of GDP. If Taiwanese businesses move en masse to the mainland and stop paying taxes to Taiwan, the government will be challenged to continue its defense—and other—spending. The U.S. government needs to dissuade Taipei from this reckless zero-sum game, to move away from economic nationalism and toward shared prosperity with the mainland.

PANEL IV

THE DOLLAR AS A COMMODITY OF STRATEGIC NATIONAL INTEREST

Mr. John D. Lange

Providing adequate economic support for a nation at war requires a strong currency, but the dollar is buffeted by deficits, among other economic currents. What are the risks of a collapse of the dollar? And what can be done to prevent it?

Risks of a Collapse of the Dollar.

The United States has enormous fiscal and balance-of-payments deficits which are unsustainable. They are like a "double tsunami" that reduces the value of the dollar while simultaneously reducing the incentive for other nations to buy dollars. Barring unforeseen circumstances, this "double tsunami" will weigh on the value of the dollar sooner or later. China alone is holding $400 billion in U.S. Treasury debt and accumulating more. Should China and other foreign holders of U.S. debt have enough, they eventually will decide to stop buying American dollars and even may start to sell dollars for other currencies. If China cannot find ready buyers, the price of the dollar will decline. What happens then? At least four things, each of them major political problems for the White House:

1. The Japanese *yen* and the *euro* will rise in value. So will the Chinese *yuan* (or *renminbi*), the Korean *won*, etc. The cost of imported goods will soar.

2. The U.S. Treasury will find a suddenly shrinking market to finance its fiscal deficit. The interest rate on

Treasury bonds will soar and so will other rates of interest. Monthly mortgage payments on homes will rise sharply for those homeowners with adjustable rate mortgages.

3. Businesses will pass the increasing cost of their operating capital to consumers in the form of higher prices. In short, the United States will have significant inflation.

4. Oil is priced at the well-head in dollars. So are airline tickets and much of the world trade in other goods and services. If the dollar collapses and confidence in U.S. Treasury bonds evaporates, that will not last. The global economic community may be set adrift or—perhaps worse—the currency of a nation with values antithetical to those of the United States will replace the dollar.

Preventive—or Compensatory—Steps.

The foreign exchange market has some transparency, so it is easy enough to discern that China holds nearly half-a-trillion dollars in the market. While that is clearly a large amount, the daily turnover—purchases and sales—in the foreign exchange market is approximately two trillion dollars each day! The foreign exchange market is active almost 24 hours each day and very deep. Although they would be unwilling to pay the premium price China desires, buyers in the market will meet any dollar sell-off by China. The Chinese would be stupid to sell too much too soon and trigger a major loss in the value of its savings in foreign assets, but governments occasionally do what seem to others to be stupid things. If China decides that a large sell-off—even at great expense to themselves—is the right thing to do, the United States still has a first line

of defense. It is called coordinated intervention, a term especially familiar to macroeconomists and one which should be familiar to all national security strategists.

The Treasury has conducted coordinated foreign exchange market intervention before. In the 1990s, the dollar was weak and weakening beyond fundamental economic justification. The downward trend was fueled by speculators using rumors and *faux* analysis to foment sell-offs. Germany and Japan agreed with the United States that it was time to do something. Over a 2-year period, the United States found moments when the market was quiet and when the short-term debt positions of the speculators were vulnerable. At the same moment in the day, the *Bundesbank* sold massive amounts of *deutschmarks* (DM), the Bank of Japan sold *yen*, and the U.S. Treasury sold DM and *yen* from the Exchange Stabilization Fund. For example, in 20 minutes one morning, the U.S. Treasury sold $400 million in DM and *yen*. Germany and Japan took similar steps at the same time. Even in a market measured in trillions of dollars per day[1], that got the attention of the speculators.

So what if this game does not work the next time? What if China sells massive amounts of dollars to destabilize the United States for political reasons? China must know that the United States has a trump card. While it has never been necessary before, the U.S. Treasury—acting in concert with the European Central Bank and the Bank of Japan—could and probably would forbid banks to buy dollars or dollar assets from the Bank of China. A draconian measure, this would be tantamount to defaulting on U.S. Treasury debt, with all that implies. That would be done only under extreme financial duress, but—like many things in this business—no options are off the table.

ENDNOTES - LANGE

1. In the intervention period cited (1993-96), the daily turnover was $1.5 trillion per day. E-mail message from Mr. John D. Lange, received August 23, 2006.

PANEL V

THE INTERNATIONAL LAW AND NATIONAL SECURITY CONTEXT: COMPETING LEGAL ISSUES

General.

In at least one narrow legal sense, America is not at war: There has been no constitutionally-required Senate declaration of war against any of the current foes of the Nation. As with the various non-declared wars fought since World War II, that distinction appears to be of little significance. President George W. Bush might have been able to follow the lead of former presidents in circumventing the attempt by Congress to limit presidential authority to lead the nation to war,[1] but explicit congressional authority has been granted for broad action against terrorists[2] and specifically against Iraq.[3]

The long-term degradation of Congress' role in declaring war is a valid subject for in-depth discussion, but is generally a U.S. domestic issue. When war has not been declared, though, questions of international law—and morality—arise very quickly[4] and usually revolve around two parts: *jus ad bellum* and *jus in bello*. The former asks if the reasons for going to war (*casus belli*) are legitimate; the latter asks if the war is being fought in a proper way. A less well-known part, *jus post bellum*, asks about the justice of the peace settlement, to include the trying of war criminals. The American view of all three parts of the theory has been assailed internationally and domestically for the wars in both Afghanistan and Iraq. Although some question

of proportionality still can be asked, responding to the 9/11 terrorist attacks by deposing the Taliban in Afghanistan should be allowed under just war theory as a response to an unprovoked attack. The attack into Iraq has less international legal justification, especially since it now seems clear that intelligence about weapons of mass destruction in the country and the nexus between Iraq and al-Qai'da or other terrorist groups was grossly overstated. Although they may be rare exceptions to the rule, recent revelations of possible war crimes by American soldiers and Marines in Iraq leads to questions about how justly the war is being fought. The line between *jus in bello* and *jus post bellum* may be crossed, but the treatment of enemy detainees[5] in Afghanistan and Iraq is another cause for concern. Similarly, the planned trials of the detainees may not be following international precedent or U.S. law.

In his remarks introducing the panel, Colonel Dave Gordon said that the United States long has been a proponent of the rule of law and should continue to provide an example of adherence to that standard ("Americans should be the good guys"). The challenge, of course, is doing so even in a war in which the enemy regularly and egregiously violates the laws of armed conflict. Failure to maintain the moral high ground, though, has an adverse impact in the court of public opinion, both domestically and internationally. Describing the law as a "front" in the current war, Colonel Gordon introduced the term "lawfare" and described it as when "legal matters are used by our opponents as a way of attacking us and degrading our position in public opinion. . . ." As an example, he cited the mistreatment of detainees at Abu Ghraib prison in Iraq. According to Colonel Gordon, this was an aberration, and those responsible were investigated

and punished appropriately, but the enemy seized upon it as evidence of bad faith by the United States and U.S. unwillingness to "play by its own rules." He also cited the tendency of the enemy to publicize legitimate—though unfortunate—collateral damage in Afghanistan and other places as evidence of wanton attacks on civilians by U.S. forces. Although the definition has some merit, these examples are better used as illustrations of information warfare. Other definitions[6] and examples of lawfare may provide greater fidelity on the conundrum facing America when the rule of law—which the United States traditionally supports—is used to limit its ability to fight foes that ignore the law except when it is to their advantage. In lawfare, a foe—unable to address an issue symmetrically—turns to the field of international or domestic law to achieve its military goals. A better example might be the use of the International Court of Justice to condemn the building of a defensive fence by Israel.[7] In this forum, the plaintiffs attempted in court to eliminate a barrier that they could not remove militarily. Another good example is the potential use of cases in the International Criminal Court as political tools to limit U.S. military action.[8] Although the term may not be defined precisely, lawfare—used by both U.S. foes and friends, as well as by the United States itself—undoubtedly will continue to be a part of the geostrategic environment. As the 2005 *National Defense Strategy* says, "Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism."[9]

The issue of lawfare is related to another conundrum: whether to address terrorism as a law enforcement issue or as a military/warfare issue. The

answer undoubtedly is some combination of the two approaches, but this and the other issues raised by the panelists suggest that the role of the law in the Global War on Terrorism (GWOT) needs to evolve. As Colonel Gordon articulated, that is normal when a conflict enters uncharted territory.

Dr. Michael F. Noone.

Dr. Michael Noone addressed what he termed GWOT anomalies: actions taken by U.S. operatives (military and covert) that do not adhere to the rule of law,[10] and for which the administration has offered no compelling justification. Dr. Noone asserted that the U.S. military has lost the moral high ground—both internationally and domestically—by these extra-legal activities, but believes that some of that ground can be regained by providing public justification for the changes in customary law that are required by the changing circumstances of the GWOT. That justification has to be more than the British offered for its "Special Air Service dirty war" against the Irish Republican Army (IRA). Their response was essentially, "These are big boys' games, played by the big boys' rules."

Dr. Noone spent the majority of his time explaining why traditional analysis of the discrete legal problems of the GWOT has not been satisfactory. Much of the international legal community points to the United Kingdom's (UK) "troubles" in northern Ireland and asks why the United States would not treat its own terrorist problems similarly. That is probably at best a false dichotomy: The IRA was a domestic threat with a hierarchical structure, whose members wanted to avoid capture and who generally eschewed attacks that would produce large numbers of casualties. They

also had no expressed interest in acquiring and using weapons of mass destruction. The distinctions in al-Qai'da—geographic dispersion, cellular structure, disregard for their own safety, willingness to inflict maximum numbers of casualties among civilians—are remarkable. Some of these differences, though, simply make law enforcement difficult or inconvenient, neither of which offer adequate justification for extraordinary extra-legal methods. The problem is that law enforcement is ineffective in today's conflict environment. The American and international legal systems are built on the concept of justice that convicts perpetrators of crimes, not on preventing crimes (except in the sense that convicting one perpetrator might deter another). There is little or no prophylactic effect if a law enforcement philosophy is applied to the GWOT. Justice requires due process, but the presentation of evidence in a regular criminal court of law easily could compromise intelligence sources and collection methods. Unreasonable searches are prohibited unless a subject is suspected of acting as the agent of a foreign government. Finally, and perhaps most important, the post-trial penalties that normally follow conviction in criminal court are ineffective in achieving their normal goals: deterrence of others' similar behavior and removal from society until rehabilitation occurs. Such penalties do not convince suicide bombers to change their minds.

The 1998 bombings of two of its embassies in Africa led the United States to adopt a new standard, sometimes called "law enforcement plus," exemplified by the extra-legal action of calling for the killing of Osama bin Laden if he could not be arrested or otherwise captured. In normal criminal law, the violator of the law still is protected by the law, both domestic

and international. Human rights law, in particular, might not have allowed the taking of bin Laden's life except in self-defense. Like the Bush administration a few years later, the Clinton administration offered no specific public justification for the action with regard to bin Laden, but the changed threat assessment after the 1998 bombings seemed to warrant the extraordinary step taken.

Under the law of armed conflict, the law generally does not protect the violator; in fact, it authorizes at least some level of reciprocity when violations occur. Because there is still some application of law enforcement standards, the post-9/11 philosophy might be characterized as "belligerency minus." There is still some effort to act in accordance with law enforcement requirements, but the laws of armed conflict are applied more frequently, as in the killings in Yemen in 2002. The individuals killed—including a U.S. citizen—were identified as belligerent combatants and their deaths were allowed under the law of armed conflict. This, of course, has some penalty: If they are combatants, they should be afforded protections as prisoners of war when captured, and some of their actions (except war crimes) as a combatant may be immunized.

Dr. Noone was not arguing that the steps taken by the United States were inappropriate; instead, he seemed more than willing to accept that the changed circumstances of the GWOT required changes in the law. He insisted, though, that some public justification of those extra-legal steps is required. The U.S. domestic population seems to accept those extra-legal actions, seeing the tradeoff with their own security. While the domestic audience also could appreciate the debate, the public justification is most needed with the internation-

al community, which sees America arrogantly refusing to justify the extra-legal steps being taken simply because it can act with impunity. Dr. Noone suggests that the appropriate forum for the discussion is Congress, which should "live up to its constitutional obligations to make laws for the U.S. Armed Forces and to monitor their execution." In suggesting this, Dr. Noone ignored the fact that the Congress generally has been put on the sidelines by the consolidation of much power in the office of the President, a trend that started well before the 9/11 attacks, but that has accelerated since. Nonetheless, Dr. Noone believes that it would be easy to convene a panel of specialists in the law of armed conflict to answer questions about what is wrong with that law today and how to relook the law in light of the current situation. He believes that the panel would suggest no major changes—probably no changes at all in treaties and only moderate changes in customary law—but that the hearings would go a tremendous distance in achieving democratic domestic support and much-needed international support.

Rear Admiral (Retired) Jane G. Dalton.

At the beginning of her presentation—after a brief interlude to say that the Global War on Terrorism could have been more appropriately named—Rear Admiral Jane Dalton said that the international community was clearly supportive of the American decision to go to war following the attacks of 9/11. Accordingly, she questioned how the international community could now conclude that the war against al-Qai'da and international terrorism is over simply because the al-Qai'da leadership has fled Afghanistan. Although much of the leadership may have been routed there,

al-Qai'da still actively seeks ways to attack the United States, so the threat and the rationale for the GWOT still exist. Unfortunately, the problem the international community has with the GWOT is with Iraq, not necessarily Afghanistan or al-Qai'da. Although Rear Admiral Dalton did not address the war in Iraq, the current administration's position is that the war there is part of the GWOT. International support of the war against al-Qai'da may still exist; it is the war in Iraq that so much of the rest of the world finds ignominious.

After first stating that changing international treaties would be next to impossible—because of both lawfare and hyperbolic reactions to proposed changes—Rear Admiral Dalton seemed in general agreement with Dr. Noone's ideas about the need to adapt the customary aspects of international law. In her comments, she identified the need for international support in this effort. Since changes to customary law evolve through state practice, there is no need to negotiate treaties – or find universal international consensus – to change customary law. Nonetheless, customary law changes develop slowly and require general consensus through the practice of those states most particularly affected by the law in question. Changes cannot be applied unilaterally, but not all nations have to agree for the United States to have a firmer foundation for its extra-legal actions.

In the remainder of her presentation, Rear Admiral Dalton provided several maritime examples of where customary law should be adapted. The first point covered the boarding of ships. If a warship's commander believes a ship is engaged in piracy, he legally can board the ship to search for evidence and to stop the activity. Despite efforts to get terrorism internationally branded in the same way as piracy, no similar right exists for boarding ships suspected of supporting terrorism or

violating nonproliferation regulations. This may reflect the difficulty in distinguishing one man's terrorist from another man's freedom fighter. The United States nonetheless should assert the right—under the rules of self defense—to board those ships. Protests by nations like the Democratic People's Republic of Korea—which called such actions a "brigandish naval blockade"—perhaps cannot be ignored in diplomatic channels, but should not gain much traction with other nations.

Another maritime example covers hospital ships, which are protected as vessels of mercy. Current treaties are interpreted to permit the crews of hospital ships to carry small arms for defense of themselves and their patients, but not to carry other armaments. Unfortunately, the brutal enemy the United States faces today has shown no proclivity to respect that convention. The United States probably needs to assert the right to provide better armaments to those ships, while still maintaining their protected status.

The concept of a "war" on terror has resulted in some apparent incongruities in U.S. practice. One example is seen in the U.S. Navy action to replace active duty sailors on U.S. warships with civilian mariners. If the war on terrorism is not really a war and the U.S. is not engaged in an international armed conflict, then it does not matter whether civilians on warships operate the propulsion plant, navigate the ship or serve on boarding parties to take down a terrorist platform. But if the U.S. is engaged in a war, then replacing active duty sailors with civilian mariners may call into question whether the civilians are taking a direct part in armed conflict, thus risking their protected status as "civilians accompanying the force". Although the enemy in the GWOT has shown no tendency to respect that right, the United States probably should stop this blurring of the line between combatants and noncombatants.

Enforcing the law of armed conflict is undoubtedly easier when the enforcer is above reproach. Detainees being held at Guantanamo Bay, Cuba, under the rules of war may rightly claim that the state of war cannot be applied unevenly: either a state of war exists and civilians should not be engaged in direct participation in armed conflict, or the Nation is not at war and the status of the detainees might have to be reexamined.

Professor Charles Garraway.

The fear of lawfare might be compared to the fear of individual or organizational lawsuits. Some people or organizations so fear lawsuits that they become immobilized. Others accept some prudent risk and continue to pursue their goals. Professor Charles Garraway suggested that the perception is that Europe is already in the immobilized category, while the United States is carefully maintaining its freedom of action. As a Briton, he presented a view from across the transatlantic divide, saying that there are some areas of legitimate concern, but that at least some of the debate is just "hot air."

His first example was the furor over the International Criminal Court (ICC), which of course pre-dates the current war. Professor Garraway contended that the effect on U.S. and UK operations has been nil. The two nations have approached the matter quite differently, though. The UK chose to support the ICC, but to make sure that no British soldier ever stood before it. The U.S. position effectively is the same: No American soldier will ever appear before the ICC. The United States, though, chose not to support the idea of the court. That position at least was partially the result of past experiences when ad hoc courts with similar mandates found themselves—wittingly or not—used

for political purposes. For example, the International Criminal Tribunal for the former Yugoslavia received a request to prosecute the Supreme Allied Commander in Europe, General Wesley Clark, for war crimes in connection with the attack on Yugoslavia, citing "overwhelming evidence that the attack was unlawful and that the conduct of the attack on civilian objects . . ." breached the Geneva Conventions.[11] Indeed, even the ICC already has been used for political purposes—or lawfare—when Saddam Hussein recently petitioned the court to "investigate alleged violations of law regarding his treatment by U.S. personnel."[12] Professor Garraway argued that the ICC has little interest in picking a fight with a major power, which he described as the court's "heavyweight backers." Nonetheless, the potential exists for the court to be used by the Nation's foes in an exercise of lawfare.

Professor Garraway also described the debate about which law to apply: human rights law or the law of armed conflict. Again, the transatlantic divide is exemplified. While most accept that neither human rights law nor the law of armed conflict normally can be applied exclusively, many Europeans believe in the primacy of the former. The U.S. administration believes in the primacy of the law of armed conflict. Professor Garraway came down in favor of the law of armed conflict because it takes into account the reality of conflict, but also argued that the law needs to be updated to include specific circumstances of the GWOT. If the U.S. administration persists in ignoring this need, legal uncertainty will continue to pervade military action from strategic to tactical levels.

Identifying it as his fundamental issue, Professor Garraway—alone among the law panelists—rather explicitly answered the question about whether or not

the nation is at war, saying, "In the traditional sense, this is not a war. In the legal sense, it doesn't fit with the definitions of armed conflict to which the existing international law treaties apply." Complementing the reference to the Constitution earlier, he cited the applicable articles of the Geneva Conventions and said that it fits the definition of neither international conflict nor non-international conflict. Nonetheless, it is not difficult to see that the GWOT presents a new paradigm for armed conflict. Given that, the rules for that new model of warfare must be defined. "Cherry picking" rules that provide a benefit and ignoring those that are inconvenient leads to a legal morass. That legal morass affects not only U.S. Armed Forces; it also adversely affects America's ability to form coalitions.

In closing, Professor Garraway quoted the eloquent words of John Reid, the UK Secretary of State for Defence:"Our values of law, democracy, restraint, and respect are at the core of our national beliefs and even if, as some suggest, they create a short-term tactical disadvantage, they represent a long-term strategic advantage." A concerted effort by great legal minds is necessary to establish the parameters of the war in which the nation finds itself. While leadership is required, the effort cannot be a unilateral one. Broad—although undoubtedly not universal—acceptance of those parameters is key.

ENDNOTES - PANEL V

1. The War Powers Act of 1973, Public Law 93-148, 93rd Congress, "Joint Resolution Concerning the War Powers of Congress and the President," November 7, 1973, available at *www.cs.indiana.edu/statecraft/warpow.html*, accessed on August 9, 2006.

2. "[T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the

terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." Public Law 107-40, 107th Congress, "Joint Resolution to authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States," approved September 18, 2001, available at *news.findlaw.com/wp/docs/terrorism/sjres23.es.html*, accessed on August 9, 2006.

3. "The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to (1) defend the national security of the United States against the continuing threat posed by Iraq; and (2) enforce all relevant United Nations Security Council resolutions regarding Iraq." Public Law 107-243, 107th Congress, "Joint Resolution to authorize the use of United States Armed Forces against Iraq," considered and passed by House and Senate, October 10, 2002, available at *frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ243.107*, accessed on August 9, 2006.

4. The circumstance of undeclared war makes it even more important that legal and moral justification be clearly apparent to the international community.

5. Even the use of this term suggests a break with international law. Enemy prisoners of war are accorded certain rights; "detainees" may not qualify for those same rights. Declaring that persons captured on a battlefield are not prisoners leads soldiers and Marines to question just how they are to treat them: according to their normal training or following some unclear – if provided – guidance.

6. "Lawfare" is defined in one source as "the pursuit of strategic aims, the traditional domain of warfare, through aggressive legal maneuvers." Jeremy Rabkin, "Lawfare: The International Court of Justice Rules in Favor of Terrorism," *WSJ.com Opinion Journal from The Wall Street Journal Editorial Page*, July 17, 2004, available at *www.opinionjournal.com/forms/printThis.html?id=110005366*, accessed on August 9, 2006. That definition ignores the reality that the pursuit of strategic aims is not solely the domain of warfare. Those aims are pursued in a variety of ways, using all the elements of national power: diplomatic, informational, military and economic. Another source defines lawfare as "a strategy of using

or misusing law as a substitute for traditional military means to achieve military objectives." "Lawfare: the latest in asymmetries," Council on Foreign Relations, March 18, 2003, available at *www.cfr.org/publication.html?id=5772*, accessed on August 9, 2006.

7. Rabkin.

8. Council on Foreign Relations.

9. Donald H. Rumsfeld, Secretary of Defense, "The National Defense Strategy of the United States of America," Washington, DC: March 2005.

10. These actions are those sanctioned by the U.S. Government. Rendition of terrorism suspects would fall into this category, as would actions like the killing of suspected al-Qai'da operatives in Yemen in 2002. Although some unusual interrogation methods also might be covered, outright abuse of prisoners—such as occurred at abu Ghraib prison in Iraq—would not. Nor would war crimes such as rape or murder perpetrated by individual soldiers acting on their own volition.

11. Statement of the International Action Center, "Stop War Criminal Wesley Clark From Testifying in Secret," New York: December 15, 2003, available at *www.iacenter.org/archive2004/clark_1203-1.htm*, accessed on August 14, 2006.

12. Tom Henry, "Hussein Lawyers ask International Criminal Court to investigate violations," *Jurist, Legal News and Research*, University of Pittsburgh School of Law, July 6, 2006, available at *jurist.law.pitt.edu/paperchase/2006/07/hussein-lawyers-ask-international.php*, accessed on August 14, 2006.

PANEL V

JUSTIFYING THE AMERICAN WAY OF WAR

Professor Michael F. Noone

There are legal consequences for a nation at war. These consequences are both domestic and international since legal doctrine acknowledges that belligerency—a state of war—permits governmental behavior which would be forbidden in peacetime. The U.S. Government therefore must be prepared to offer legal justification for actions in its Global War on Terrorism which otherwise would violate legal norms. It is doing so, slowly and reluctantly, in the domestic realm as individual cases are adjudicated and appealed in the U.S. court system, where the government claims that a state of war justifies extraordinary measures. It has not, in any coherent way, justified its apparent deviations from the law of war. Three recent Executive Branch documents—the President's *National Security Strategy* of the United States, the 2006 *Quadrennial Defense Review Report*, and the unclassified version of the Joint Chiefs' *National Military Strategic Plan for the War on Terrorism*—were issued at the highest levels of the U.S. Government, but fail to acknowledge or respond to claims that U.S. forces have violated the rule of law in waging the war. The Executive Branch's refusal to justify past actions is troubling. That it intends to continue some controversial practices—kidnapping and targeted killing, for example—without offering legal justification should cause grave concern. Perhaps the government's silence can be attributed to the fact that traditional legal doctrines—human rights

and humanitarian law—intended to address the legal issues raised by the Global War on Terrorism (or "Long War") have proven to be inadequate.

The pre-9/11 U.S. response to Islamic terrorism has been described as "Law Enforcement Plus." In 1997-98, the National Security Council (NSC) directed that bin Laden, who had been indicted, should be captured and held for trial. If he could not be captured—because he had sought refuge in Afghanistan, which refused to extradite him—the NSC authorized his killing. Human rights law forbids killing criminals simply because they cannot be arrested and tried. No matter how heinous their crimes, human rights law starts from the premise that a person's right to life is absolute unless there is immediate need to act in self defense. A human rights regime would call for the Executive Branch to follow a law enforcement model similar to that followed by the British during the Irish "Troubles." Unfortunately, Islamic terrorism is quite different from the warfare practiced by the Irish Republican Army (IRA). The former relies on the infliction of mass casualties and seeks—and would employ—weapons of mass destruction. The IRA never sought mass casualties as an end in itself. The IRA was essentially domestic, focused in Northern Ireland; Islamic terrorism is transnational. The IRA was tightly structured and, as has been learned recently, could be and was penetrated at the highest levels. Islamic terrorism is loosely organized and difficult to penetrate. Finally, the IRA had a negotiable agenda, and Islamic terrorism does not. There are important differences between U.S. and United Kingdom (UK) legal institutions as well. IRA terrorists had no fundamental right to a jury trial; they were tried before special courts whose judges were concerned neither with jury intimidation nor with the

elaborate U.S. evidentiary rules designed to protect jurors from information which could prejudice their decision. Moreover, U.S. legal doctrine fails to make the clear distinction between criminal and political motivations, which is a fundamental characteristic of the British system. Faced with an implacable alien enemy committed to maximizing civilian casualties with weapons of mass destruction and capable of mounting complex attacks, the Executive Branch sought and was granted authority to initiate armed conflict—no matter how contested that authority may be—from Congress, the United Nations (UN), and the North Atlantic Treaty Organization (NATO). In doing so, the paradigm changed: from criminal justice and human rights law to war and the Law of Armed Conflict. That paradigm can be described as "Belligerency Minus."

The terms "law of war," "law of armed conflict (LOAC)," and "humanitarian law" essentially are synonymous, although each is intended to emphasize a different aspect of the phenomenon. LOAC has two significant components: treaty law, characterized by rules, arrived at by negotiation and compromise, and exemplified in the Geneva Conventions; and customary law, characterized by standards, arrived at by state practice and exemplified in the Martens Clause (named after the Russian delegate to the Hague Conventions), which provided "that in cases not included in the Regulations . . . the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience." Unlike Human Rights Law, LOAC traditionally has relied on reciprocity: either that assured by treaty obligation or assumed by common

usage. LOAC treaty law resembles human rights law in one respect: Both are characterized by rules which are composed of a protasis ("if"), a statement of circumstances which calls a rule into play, and an apodosis ("then"), which describes the consequences of the rule's application. Thus, if a prisoner satisfies the Geneva Convention's criteria for prisoner of war status, then he or she is entitled to the treaty's enumerated protections. Typically, the customary LOAC is based not on rules, but on standards. Standards call for balancing and are sensitive to individual circumstance. Thus, "unnecessary" suffering, killing, or destruction must be avoided. The United States has argued that treaty law does not apply in its war on terror because terrorist groups are nonstate actors who have agreed neither to the treaties nor adopted their standards. Nor, the United States claims, does customary law apply, because it also assumes reciprocity and a general adherence to "the usages established among civilized peoples." Furthermore, neither the human rights nor LOAC regimes offer acceptable punitive mechanisms for terrorists' violations of international norms. Potential suicide bombers are not deterred by routine criminal justice penalties (bound by human rights strictures): incarceration or even death. The LOAC merely can threaten international obloquy of an organization or individual war crimes penalties similar to those imposed in domestic legal systems.

Since neither legal regime offers adequate solutions, it is not surprising that the Executive branch has refused to offer a principled and coherent rationale for its apparent deviations from international legal norms and that the British Minister of Defense recently called for reexamination and revision of the Geneva Conventions. His proposal—apparently focused on

changing treaty law language—is unrealistic. The United States has, for more than 30 years, refused to accept language in proposed Protocols I and II amending and "clarifying" the Geneva Conventions. However, it would be relatively easy for LOAC experts to identify gaps in treaty and customary law, created by changed conditions, and to suggest principled solutions to the legal problems posed by those conditions.

Was the November 2002 *Predator* missile ambush in Yemen (a neutral country) of six suspected al-Qai'da operatives as legally justified as the 1943 ambush of Admiral Yamamoto? Can those two cases be distinguished from the Soviet/Bulgarian London assassination of dissident Georgi Markov? Or from the European Court of Human Rights ruling that the UK had violated the human rights of three IRA terrorists when its forces killed them in Gibraltar? The United States has lawyers capable of answering those questions in a venue more suitable than the Department of Justice's Office of Legal Counsel or the Department of Defense General Counsel's Office. Congress, charged with the constitutional obligation to make laws for the administration of the armed forces and thus with the duty to oversee the application of those laws, should undertake hearings which address these questions. Has the Executive Branch adequately established that it remains engaged in hostilities with an entity or movement which constitutes a state of war? If there is no belligerent state, can there be enemy aliens subject to internment or expulsion from sensitive areas? Do Hague prohibitions of assassination, proscription, and outlawry apply? Do Hague restraints—which assume reciprocity on weapons and tactics, e.g., perfidy—apply when these restraints are not honored by opponents as a matter of policy? If a state of war

exists, what obligations does the United States have to captured persons who are not entitled to prisoner of war status? How is the termination of hostilities to be decided? These questions, addressed by Congress and answered in a democratic fashion, would assure U.S. forces and neutral observers of America's continued commitment to the rule of law. If America is to re-take the moral high ground, public engagement in this kind of principled discussion is essential.

PANEL V

THE NATION AT WAR

Rear Admiral (Retired) Jane G. Dalton

Since September 11, 2001 (9/11), the topic of the "Nation at War" has been, and remains, one of considerable discussion and disagreement among lawyers, policymakers and the general public. Whether one agrees with the U.S. position that the nation is truly "at war" in the *jus ad bellum/jus in bello* context or not, the subject raises many legal issues that bear discussing. This section focuses on just a few of those topics, primarily those related to maritime law.

First, one criticism of the Global War on Terror is that the United States is attempting to wage war on an abstract concept—one that cannot be defined or identified in any concrete sense. The truth is, however, that the United States and its coalition partners are not fighting an abstraction. Perhaps it would have been more precise for the President to have announced a "global war on the transnational, networked organization of al-Qai'da and its affiliate organizations that are committed to the ultimate destruction of the United States and other free societies the world over"—the GWOTNOAQAOCUDUSOFSWO. The acronym certainly does not have the same cachet as the simpler GWOT, but it reflects the fact that the country is fighting an organized, identifiable enemy that has attacked the United States, the United Kingdom, Spain, Indonesia, Jordan, and many other countries, and killed well over 4000 innocent men, women, and children.

In the aftermath of the 9/11 attacks there was little, if any, doubt in the international community that the

United States had been the victim of an armed attack that entitled the United States and its coalition partners to respond with armed force in self-defense. The United Nations (UN) Security Council (in Resolution 1368), the North Atlantic Treaty Organization (NATO) (by invoking Article 5 of the North Atlantic Treaty) and the Organization of American States (OAS) (by invoking Article 3(1) of the Rio Treaty) all made that perfectly clear, and the outpouring of support for Operation ENDURING FREEDOM was overwhelming. It thus appears somewhat disingenuous that many of those same supporters now announce that the war is over simply because Afghanistan largely has been freed from the tyranny of the Taliban and al-Qai'da, while the leaders of the organization simply have moved their headquarters and are conducting armed attacks from another undisclosed location or locations.

That approach reflects a very narrow view of *jus ad bellum* and the inherent right of self-defense. The *Final Report of the National Commission on Terrorist Attacks on the United States* (the *9/11 Commission Report*) made clear that misconstruing the scale of terrorism is dangerous and has cost the United States and its allies dearly. The Report opined that "an unfortunate consequence" of the superb criminal investigative and prosecutorial efforts in the aftermath of the first World Trade Center bombing in 1993 was "that it created an impression that the law enforcement system was well-equipped to cope with terrorism."[1] Law enforcement is certainly one of many instruments of national power available to the President to combat terrorism, but it is not the sole and exclusive instrument when dealing with an enemy that is committed to the ultimate destruction of the United States and other democratic societies world-wide.

The problem with the approach of many critics is that they have not proposed an alternative other than the 19th-20th century concept of war as a conflict between two nation-states played out on defined battlefields by massed armies wearing uniforms and firing guns. United Kingdom (UK) Defense Secretary John Reid, in a speech at the Royal United Service Institute think-tank, reportedly called for "sweeping changes" to international law, including the Geneva Conventions, to counter the threat of global terrorism. "The legal constraints upon us have to be set against an enemy that adheres to no constraints whatsoever."[2] John Reid, of course, was criticized immediately by Human Rights Watch, which implied that he sought to change such rules as "the basic principles of not torturing people"[3]—the sort of hyperbolic reaction that leads to doubt whether there could ever be a successful renegotiation of law of armed conflict treaties in a reasoned and thoughtful manner.

Accordingly, it seems the only available alternative is to adapt the 19th and 20th century rules to the realities of the 21st century war on global terrorism. Those rules and concepts are flexible enough to be adapted to the 21st century—but doing so will require some creative thinking and a willingness to adapt. Several examples of where that is happening in the maritime context will be illustrative.

First is command of the commons. The U. S. Navy always has been one of the premier advocates of "freedom of the seas" and "freedom of navigation." At first blush, then, the concept of "command of the commons"—command of the seas (including under the surface of the seas), air, space, and cyberspace—could appear to be inconsistent with the Navy's traditional viewpoint. The U. S. Air Force has identified command

of the commons as "the" key military enabler of the United States. That approach is not unrealistic when one considers that both the National Strategy for Maritime Security[4] and the National Defense Strategy[5] identify the global commons—particularly the oceans and cyberspace—as "ambiguous."

Ambiguity means that the same global commons that give life, food, resources, and means of communication also provide conduits for threats to national security and offer vast expanses conducive to anonymity and surreptitious activity. The oceans, for example, provide an immense maritime domain of enormous importance to the security and prosperity of all nations and all peoples, but they also provide a "vast, ready and largely unsecured medium for an array of threats by nations, terrorists, and criminals."[6] So it is particularly important to be able to operate in, through, and from the commons—and to "command" the commons in the sense that the nation is able to identify and counter threats emanating from the commons.

The U.S. Navy recently has been involved in aggressive efforts to counter piracy at sea off the African coast. There is a well-established legal regime under customary international law, and reflected in Part VII of the 1982 Law of the Sea Convention, that authorizes warships to board and inspect any ship at sea, flying any nation's flag, if there are reasonable grounds to believe the ship is engaged in piracy. In this situation, the law is clear and fully adequate to address concerns about threats emanating from the global commons.

There is another area, however, where the law is not so clear. The authority to board vessels suspected of supporting terrorism, or of shipping weapons of mass destruction (WMD) components or precursors by sea to terrorist organizations or rogue states, is not

addressed in the Law of the Sea Convention, or in any other international legal instrument. More precisely, that authority was not addressed prior to 9/11. The 2002 *National Security Strategy* announced the American intention to convince the international community to view terrorism in the same light as piracy and the slave trade—and to interdict shipments of WMD-enabling technologies and materials.[7]

Unfortunately, the administration was not entirely successful in this regard. A series of UN Security Council resolutions after 9/11 identified terrorism as a threat to international peace and security and reaffirmed the inherent right of individual and collective self-defense, but never went so far as to equate terrorism with universal crimes such as piracy or the slave trade—and certainly never authorized the use of "all necessary means" to combat terrorism or to interdict the shipment of WMD on the high seas or in international airspace. In what could be considered a minor victory, UN Security Council Resolution 1390 of January 28, 2002, decided that all states should prevent the use of their flag vessels or aircraft to provide arms and related materiel to al-Qai'da and associated terrorist groups. But for the most part the resolutions simply stressed the need for improved coordination and information exchange, and called upon states to enforce and strengthen domestic legislation and international cooperation.

So it was that after the unfortunate incident in December 2002 with the un-flagged freighter *So San* carrying Scud missiles and fuel to Yemen, the Bush Administration announced the Proliferation Security Initiative (PSI), in May 2003. The PSI is a global effort to create a dynamic, creative and more proactive approach to the problem of air and sea shipment of WMD, their

delivery systems and related materials. It relies on a series of bilateral agreements with cooperating nations, exercises to test and train expedited procedures for obtaining consent to search another state's flag vessels, and strengthening domestic legislation and international instruments. Some have criticized PSI's legitimacy—calling it a "brigandish naval blockade" and "vigilante attacks on the high seas."[8] Nevertheless, UN Security Council Resolution 1540 of April 28, 2004, "welcomed" "multilateral arrangements which contribute to nonproliferation"—a subtle reference to the PSI. Over 70 nations are cooperating with the United States on PSI, which has had publicly-announced successes in preventing the shipment of material and equipment to Libya and Iran.[9]

The United States has introduced a number of other international initiatives to enhance national security in the global commons, such as the Long-Range Information and Tracking regime, which would enable tracking vessels as far as 2,000 nautical miles from the U.S. coastline. Furthermore, in October 2005, the International Maritime Organization adopted significant antiterrorism and nonproliferation amendments to the 1988 UN Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. These amendments include a comprehensive framework for boarding suspect vessels at sea, establishment of expedited boarding procedures, and bringing certain terrorist-related and nonproliferation offenses (such as the unlawful transport of WMD) within its ambit. [10]

Make no mistake, however: Given the right circumstances, the inherent right of national self-defense, under customary law and as reflected in Article 51 of the UN Charter, would support the interdiction of Osama bin Laden or other terrorists, or WMD, at sea or

in the air, based on reliable and actionable intelligence. Such an action would be an example of adapting 19th and 20th century rules to the realities of the 21st century war on global terrorism. The President should use all the diplomatic, economic, law enforcement, and other tools at his disposal, but if military action is the most appropriate action in a given situation, then military action is a lawful tool for the President to employ.

The U.S. Navy is facing a number of other issues where the correct answer may turn on whether the war on terrorism is an actual "war." For example, when Admiral Vern Clark was Chief of Naval Operations, he challenged the Navy to maximize the use of active duty sailors in warfighting positions. The Military Sealift Command proposed replacing sailors with civilian mariners in a number of key positions onboard warships—positions such as navigation, engineering, and deck operations. Currently, half the crew of USS *Mount Whitney* is civilian. The ship serves as the flagship for the U.S. Sixth Fleet, NATO's Joint Command Lisbon, and NATO's Naval Striking and Support Forces. This Navy practice would be a candidate for examination if a review as called for by Secretary John Reid were ever conducted.

The other services also are wrestling with the issue of civilians in the battlespace—operating unmanned aerial vehicles, providing perimeter or distinguished visitor security in combat zones, and maintaining sophisticated weapons systems. The issue is whether or not these civilians have lost their protected status as "civilians accompanying the force" by taking a "direct" part in armed conflict.

If the war on terrorism is not really a "war" and the United States is not engaged in an international armed conflict, then it does not matter whether civilians on

board warships operate the engineering plant, navigate the ship, or serve as small-boat coxswains for boarding parties engaged in a take-down of a terrorist platform. It is certainly true that the United States is not at war with a nation-state party to the Geneva Conventions, and there is no expectation that the adversary would provide Geneva protections to anyone. But it seems somewhat incongruous for the United States to detain several hundred "enemy combatants" at Guantanamo Bay, Cuba, for engaging in warlike acts against the United States, while denying that civilians involved in seizing a terrorist ship are directly participating in armed conflict.

The Navy's solution to this dilemma was to introduce legislation that would have placed the civilian mariners in a reserve status, from which they would have been recalled to active duty prior to the ship engaging in international armed conflict. That legislation was not passed, and the Navy is now assessing the extent, if any, to which civilian mariners can be used in traditional armed conflict onboard warships such as those planned for the Maritime Prepositioned Force (Future).

Another 20th century maritime-related legal doctrine that needs review in light of the global war on terrorism relates to military hospital ships, which are granted extraordinary protections under the Second Geneva Convention of 1949. Those protections depend, however, on the ships being used solely to assist, treat, and transport the wounded, sick, and shipwrecked.

To guarantee that hospital ships will not transmit intelligence or engage in offensive military operations, the Geneva Convention approach is to ensure they are incapable of engaging in those activities. Thus, article 34 forbids the possession or use of a "secret code" for communication—meaning hospital ships cannot

use encrypted communications systems. Concerning weapons, article 35 provides that the crews of hospital ships may be armed for maintaining order and for defense of themselves and their patients—a provision understood to mean that the ships themselves cannot carry armaments, but that their crews may carry small arms for self-defense.

In the post-USS *Cole*, post-9/11 world, these requirements simply are unacceptable. The San Remo Manual on International Law Applicable to Armed Conflicts at Sea, prepared by a group of military and legal experts and published in 1995, attempted to be forward-leaning by opining that hospital ships may be armed with "deflective" means of defense, such as chaff and flares, but not with means that could be used in offensive fashion, such as anti-aircraft guns.[11]

Chaff and flares, however, would be decidedly ineffective against a determined suicide attack like that launched against USS *Cole*. While there is merit in taking a cautious approach to deploying hospital ships bristling with "defensive" armaments, the realities of the war on terrorism require that hospital ships and their crews be provided with crew-served weapons such as machine guns and grenade launchers, and even with the Phalanx close-in weapons system and other state-of-the-art defensive anti-air and anti-surface weapons. Surely it is possible to devise some method of ensuring the integrity of hospital ships (such as by placing international observers on board) other than denying them armaments necessary for force protection against pirates and terrorists.

Sea-basing is another maritime concept that will challenge accepted notions of "warfighting." It is part of Chief of Naval Operations Admiral Mike Mullen's vision of a 1,000-ship Navy. Not merely a Navy/Marine Corps program, sea-basing will support all

services, coalition partners and other interagency organizations. One of 21 "Joint Integrating Concepts," sea-basing reflects a vision of how to aggregate, sustain, and project combat power at sea. It is defined as the rapid deployment, assembly, command, projection, reconstitution, and reemployment of joint combat power from the sea, without reliance on land bases within the Joint Operations Area.

How does sea-basing work? Basically, large, floating military bases are staged 12 nautical miles off the coastline and project people, machinery, armaments, and materiel ashore to conduct an assigned mission—whether the mission is counterterrorism or disaster relief. In Admiral Mullen's vision of the 1,000-ship Navy, no single nation would have that many ships, but the world's navies and coast guards would work together to fight wars, defeat pirates, deter illegal drug traffickers and terrorists, and deliver humanitarian assistance—moving rapidly from place to place as required . . . all as part of the "long war" of winning hearts and minds to defeat the conditions that sustain terrorist ideology.[12]

Interestingly, in this area, 19th and 20th century rules completely support the freedom of the seas to conduct military operations in international waters without the consent or prior knowledge of the coastal state. Some recent expansive views of coastal state rights in the 200-nautical mile exclusive economic zone (EEZ), however, would hold that such operations are not permitted. China, for example, asserts sovereignty over air and sea operations in the EEZ. As noted, in this case the existing laws are consistent with U.S. projected operations. However, the United States and its coalition partners must be vigilant to ensure traditional high seas rights and freedoms do not atrophy from lack of use or misuse.

Finally, a word about detainee operations. One does not typically think of detainee operations as a Navy or maritime issue. Given the U.S. Navy's long-term association with Guantanamo Bay, Cuba, however, Secretary of the Navy (now Deputy Secretary of Defense) Gordon England was named as the Designated Civilian Official for the Combatant Status Review Tribunals (CSRTs) and the Administrative Review Boards (ARBs) conducted for the detainees at Guantanamo Bay. One of the most frequent criticisms lodged against the United States in the Global War on Terrorism is that the enemy combatants are being held "indefinitely," without trial or other due process. That was a second criticism raised by Human Rights Watch against Secretary Reid's reported call for a renegotiation of the Geneva Conventions.[13] Yet through the CSRT and ARB processes, almost 250 detainees have been released from detention in Guantanamo Bay, either because they were determined no longer to be enemy combatants or no longer to pose a threat to the United States.

Furthermore, the terrorists consider themselves enemy combatants in a global war. One of the July 2005 London bombers stated, "We are at war, and I am a soldier in that war."[14] A number of the Guantanamo detainees also readily acknowledge they were, and continue to be, combatants against the United States.[15]

The Department of Defense has detained and screened around 83,000 individuals in Afghanistan, Iraq, and elsewhere. The vast majority are freed shortly after initial questioning. There remain about 14,500 in custody, primarily in Iraq, consistent with the Fourth Geneva Convention concerning security detainees. Less than 700 individuals have been transferred to Guantanamo Bay. The government already has released

about 245 Guantanamo detainees to 12 countries—and, unfortunately, the government has been wrong about 10 percent of the time. About a dozen have been captured after they returned to the battlefield to wage war against the United States.[16]

The International Military Tribunal at Nuremberg made clear that since the 18th century, captivity during time of war "is neither revenge nor punishment, but rather is solely protective custody, the only purpose of which is to prevent the prisoners of war from further participation in the war."[17] What is the alternative to detaining these individuals as enemy combatants—to let them go? It hardly seems to be in the interest of humanity at large to release individuals who intend to return immediately to the fight and kill more innocent men, women, and children. Certainly, this is an area where a review of the Geneva Conventions would be in order, though, as mentioned earlier, there is probably little hope of success in that regard.

ENDNOTES - DALTON

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PANEL V

COMPETING LEGAL ISSUES: A EUROPEAN VIEWPOINT

Professor Charles Garraway

Introduction.

Robert Kagan, in his seminal article entitled "Power and Weakness", written in 2002,[1] stated that "on major strategic and international questions today, Americans are from Mars and Europeans are from Venus." He referred to the "transatlantic divide" and sought to set it in a historical context, referring to Europe moving from the horrors of the first half of the 20th century into a "Kantian paradise" while the United States is left to sort out "the dangerous Hobbesian world that still flourishes outside Europe." The question he asks is whether the point has now been reached where, in military terms, the United States will do the fighting and Europe the cleaning up. Put another way: Does the real division of labour consist of the United States "making the dinner" and the Europeans "doing the dishes"?

It is becoming popular now to talk about the "transatlantic divide." Another example is Jeffrey Kopstein, who discusses the subject in "The Transatlantic Divide over Democracy Promotion."[2] In that article, he compares the European preference for "order over freedom," contrasting this with the United States rhetoric about the spread of democracy, particularly the January 2005 speech of President Bush arguing that promoting the freedom of other countries

was now an "urgent requirement of our nation's security and the calling of our time."[3]

I myself have written previously on the "trans-atlantic divide."[4] This arose from a presentation made at the International Conference on Current Issues in International Law and Military Operations, at the U.S. Naval War College in Newport, Rhode Island, in June 2003. Three years on, with increasing arguments on the relevance—and indeed the applicability—of international law to current military operations, it perhaps is necessary to revisit the issue and look at the differing views of the United States and its European allies. Differences there certainly are, but as I stated in my earlier article, "what is needed is greater communication between the parties and a willingness to talk *with* each other rather than *at* each other."[5]

Is it correct to argue that the European nations are now so bound by constitutional and other legal constraints that they cannot effectively contribute to high intensity conflict? Is the increasing emphasis on the law in its relation to military operations justified or is it an attempt to bind the powerful Gulliver with Lilliputian cords? In an address to the Air and Space Conference and Technology Exposition 2005,[6] Brigadier General (now Major General) Charles Dunlap, U.S. Air Force, referred to this as "lawfare" and "an asymmetrical form of warfare." He defined lawfare as "the strategy of using or misusing law as a substitute for traditional military means to achieve an operational objective." While pointing out that this can work both positively and negatively, he went on to say that "most adversaries are using Lawfare . . . as a form of asymmetrical warfare by manipulating a value of our societies, which is respect for law."

My purpose is to look at those areas of law where there is dispute or disagreement between the United

States and Europe and to examine exactly where those disagreements are in the hope that this may generate a debate and contribute to the resolution of these disagreements. I will not look at constitutional constraints as these are, on both sides of the Atlantic, effectively self-imposed. I will, however, look at two issues that I consider serious. The first is the application of human rights; the second is the differing interpretations of the law of armed conflict. I will then look at an issue that I consider fundamental and that underpins the whole impasse: the differing views on the "campaign (or war) against terror." However, before I move on to these subjects, I need to deal with one area that has been raised frequently in debate, but is—in my view—a complete red herring: the International Criminal Court.[7]

International Criminal Court.

In 1998, in Rome, a Diplomatic Conference adopted the Statute for an International Criminal Court.[8] Unfortunately, there remained major disagreements on a number of key issues and as a result, it was not possible to achieve a consensus text in negotiations. A compromise text was put forward on a "take it or leave it" basis, and it was this text that was adopted by a large majority after a vote. Sadly, one of those countries voting against it was the United States. The United States had played a major—and very positive—role in the negotiations, and it must be acknowledged that many of the key areas of the Statute benefited from U.S. expertise in both subject matter and drafting. This is particularly true in relation to the crimes that fall within the jurisdiction of the Court.

After Rome, the United States initially seemed to adopt a position of benevolent neutrality, though

maintaining its objections. The line seemed to be "don't mess with us, and we won't mess with you." The delegation continued to play a major role in the drafting of the subsidiary documents, including the Rules of Procedure and Elements of Crimes, the latter being primarily a joint Swiss-U.S. venture. Indeed, on almost his last day in office, President Clinton signed the Rome Statute, although indicating that the United States still had some fundamental problems that needed to be resolved before there could be any question of the United States becoming a Party to the Court.

President Bush, on gaining office, took a different line and launched a policy of strong opposition to the Court. On both the domestic and international stage, he took steps to ensure that the Court could not in any circumstances take jurisdiction over any American citizen and, in a letter to the United Nations (UN) Secretary General, the administration sought to "unsign" the Treaty.[9]

As a result of these actions, many in the U.S. military community see the International Criminal Court as a major threat to U.S. operations—and this concern has spread to the United Kingdom to some extent. On July 14, 2005, six former Chiefs of the Defence Staff launched a debate in the House of Lords expressing concern over the impact that on-going investigations in Iraq into the conduct of operations were having both on the morale of the British Army and on the chain of command. The International Criminal Court was blamed for much of this.[10]

In fact, I would suggest that the International Criminal Court has had no effect at all on operations in Iraq—or elsewhere. Furthermore, it is not responsible for the level of inquiries carried out. The problem lies elsewhere as I will outline later. It has always been

United Kingdom policy to investigate allegations of misconduct by British forces (as it is in the United States) and that has not changed. What may have changed is the greater public awareness of these investigations, caused partly by greater civilian involvement. But that cannot be laid at the door of the International Criminal Court.

It is official British Government policy that no British service person will ever appear in front of the International Criminal Court.[11] However, in seeking to achieve this policy objective, we have approached the matter from a different angle. We have indeed become a Party to the Court and intend to rely on the principle of "complementarity" laid down in Article 17 of the Rome Statute. This key principle was one of those that benefited from U.S. input at the negotiating stage and is worth examining in full. The text of Article 17 of the Statute states:

> *Article 17 – Issues of Admissibility*. (Emphases below added by the author.)
>
> 1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:
>
>   (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
>
>   (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
>
>   (c) The person concerned already has been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

   (a) The proceedings were or are being undertaken or the national decision was made **for the purpose of shielding** the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

   (b) There has been an unjustified delay in the proceedings which in the circumstances is **inconsistent with an intent to bring the person concerned to justice**;

   (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is **inconsistent with an intent to bring the person concerned to justice.**

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

The test is a very high one and the default position, as is made clear by Article 17(1) is "inadmissibility." Of course, the final decision rests with the Court, but if the Court is to be truly international, no State can have a veto. Attractive as it might have been to give the five permanent members of the UN Security Council such a veto—effectively exempting their personnel—that was utterly unacceptable to the rest of the world. If the United States thinks that it is the only major power likely to come under scrutiny, the example of

Russian operations in Chechnya comes to mind. These are already the subject of human rights investigations under the jurisdiction of the European Court of Human Rights, as we shall see later.

The United Kingdom began by passing domestic legislation ensuring that every offence in the International Criminal Court Statute became (if it was not already) an offence under our domestic law in all our various jurisdictions.[12] This enables us to investigate and, where appropriate, try before our domestic courts, both military and civilian, any cases that might be within the jurisdiction of the International Criminal Court. While this does not, and cannot, give us an absolute guarantee of exemption, the bar imposed on the Prosecutor by Article 17 is a very high one—and one on which he must satisfy a three-Judge Pre-Trial Chamber, and subsequently, a five-Judge Appeals Chamber. Put another way, he must obtain the agreement of a minimum of five judges in the two Chambers. We have a British Judge in the Court who, in the normal course of events, would educate his fellow Judges on the UK judicial system. It must be considered highly unlikely, to put it mildly, that the Court could be persuaded that, in a particular case, the British judicial system had so moved from its fundamental principles that it was being used with one of the intents described in Article 17 (2). If we reach the stage of Article 17 (3), then I would suggest that the United Kingdom is in real trouble!

The fear in the United States is primarily one of politically-motivated prosecutions. However, this works both ways. The Court is going to need to rely on its heavyweight backers for support as it has no real capabilities of its own on the ground. Politically, it is not in the Court's interests to pick a fight with a major power. If it were minded to do so, particularly

on political grounds, then it would be in the process of self-destruction. With British personnel operating within the Court structure, we would have ample warning of any such fundamental shift in the Court's philosophy and our own participation would have been called into question long before matters got that far.

Thus, on legal grounds and political grounds, we have no fear of the Court but our objectives are exactly the same as those of the United States: to ensure that matters are dealt with in our own domestic courts. We do so by applying our ordinary procedures and standards, and thus the International Criminal Court has had no effect whatsoever on ongoing operations. Although we have adopted all the International Criminal Court offences into UK domestic law, the **conduct** which they reflect always would have been prosecutable, though perhaps under different titles. Investigations therefore always would have been undertaken where such conduct came to light. Nothing has changed.

Human Rights Law.

Where there has been a change is in the growing influence of human rights law. Here, there is a marked difference between the United States and Europe, a divide that is likely to get more pronounced before it gets better. There are two major areas of difference.

First, the U.S. position is that the International Covenant on Civil and Political Rights only applies to "individuals within its territory **and** subject to its jurisdiction."[13] The wording is taken directly from Article 2 (1) of the Covenant and the issue is the use of the word "and." The U.S. view is that this is a two-part test, and thus the obligations imposed on the U.S.

by the Covenant do not extend beyond the territorial boundaries of the United States. This position was confirmed recently in the official reply by the Administration to the Report of the Special Rapporteurs on Guantanamo.[14] The argument put forward is that this is the literal reading of the words of the Covenant, and the negotiating history supports such a limitation. The detailed arguments are well-outlined in a commentary on the International Court of Justice Advisory Opinion on the Wall, written by Michael Dennis, a legal adviser to the State Department.[15] The counter argument is that times have moved on and that, whatever was the position when the Covenant was drafted in 1966, or even when it came into force in 1976, it generally **is** accepted that the words should be read disjunctively. This view is supported by General Comment 31 of the Human Rights Committee.[16]

For the United Kingdom and other European States, this argument is, to a considerable extent, only of academic interest. The European Convention on Human Rights refers to "everyone within their jurisdiction."[17] The territorial reference has been removed. But what does this phrase mean? In Europe, the European Court of Human Rights exists to interpret the Convention and can issue judgements which are binding on the 41 Member States of the Council of Europe who have ratified the Convention. This issue of the meaning of "jurisdiction" has been raised in a number of cases and, while the full extent of any extra-territorial effect is perhaps still unclear, what is beyond peradventure is that, while the Convention is primarily territorial, it can, in exceptional circumstances, be applied extra-territorially. The leading case to date was that of Banković,[18] in which the Court recognised only exceptionally extra-territorial acts as constituting an exercise of jurisdiction:

> . . . when the respondent State, through the effective control of the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory, exercised all or some of the public powers normally to be exercised by that Government.[19]

The Court has indeed gone further in some other specific cases, accepting, for example, the application of the Convention to the acts of Turkish agents in Kenya during the capture of Ocalan.[20]

The wording of Banković is interesting and the test laid down somewhat obtuse. The British courts have been wrestling with this in domestic cases arising from the occupation of Iraq. While the British courts have been reluctant to concede that military occupation necessarily brings into full force all the relevant provisions of the Convention, its partial applicability seems not to be in doubt. The question therefore is not **whether** the Convention applies but **to what extent**.[21]

Where this is particularly important in relation to military operations is that the Court has held in numerous cases that subsumed in the nonderogable right to life enshrined in Article 2 of the Convention is the right to an effective investigation where life has been taken by State officials. This has been applied also to conflict situations, as in the Turkish operations to counter the Kurdish insurgency in the east of the country and, most recently, in a series of cases arising from Russian operations in Chechnya, including Khashiyev v. Russia, Akayeva v. Russia,[22] Isayeva v. Russia (No. 57947/00), Yusupova v. Russia, Bazayeva v. Russia,[23] and Isayeva v. Russia (No. 57950/00).[24] It is, if anything, this concern over the application of the human rights norms to military operations that has caused the greater attention to investigations

being undertaken in respect of deaths arising from such operations in Iraq. It brings into sharp focus the second point, which is the application of human rights law in situations of armed conflict and the relationship between human rights law and the law of armed conflict. Again, there is a difference between the European and American positions, though here it may more be a matter of emphasis rather than substance.

What seems to be agreed is that the law of armed conflict is the *lex specialis* in time of armed conflict. There is clear authority for this from the International Court of Justice[25] and it does not appear to be in dispute. What is in dispute is what this means. The U.S. position is linked to its earlier position on extraterritoriality: In armed conflict, the law of armed conflict prevails and overrides human rights law to the extent that the latter is almost *de minimis.* To the Europeans, while it is accepted that the law of armed conflict is the primary law applicable in conflict situations, the coexistence of human rights law is considered a "given." This is again based on the slightly different language between the International Covenant and the European Convention. While the International Covenant has no direct reference to "war" or "armed conflict," the European Convention does. Thus Article 15, the derogation clause of the Convention, makes a number of references. It states:

> *Article 15 – Derogation in Time of Emergency.* (Emphasis added)
>
> 1. In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention **to the extent strictly required by the exigencies of the situation,** provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

What is important to note is that death caused by lawful acts of war requires a derogation. Furthermore, it is for the Court itself to decide whether the measures taken in derogation are "to the extent strictly required by the exigencies of the situation." The Convention clearly envisages that it will continue to apply in time of war, though subject to such derogations as the Court may approve. There is no reference in the Court's jurisprudence directly to the law of armed conflict as *lex specialis*, though it is to be anticipated that, where there was a clear divide between the two bodies of law, the Court would indeed apply the *lex specialis* argument. However, it is notable that in the Chechnyen cases mentioned above, there is no mention of the law of armed conflict, and the cases were decided wholly on human rights law arguments. There was no derogation there, but there is clearly the risk of a collision between the two legal systems if the Court is not careful. In those particular cases, the result probably would have been the same under either legal system. However, in the Banković case, involving the attack on the TV station in Belgrade during the Kosovo campaign, it was argued that the deaths of the civilians in the attack were a breach of the right to life in Article 2 of the

Convention. Could the respondent states have argued that these were deaths "resulting from lawful acts of war" without invoking a derogation? If not, would those States be limited to arguing the issue purely on human rights grounds?

The danger here lies in the fact that the law of armed conflict is exactly that: the law of armed conflict. It recognizes the reality of armed conflict and has developed in a pragmatic way balancing the needs of the military with humanitarian considerations. That fine balance does not appear in human rights law, which is designed fundamentally for times of peace.

The relationship between the two legal frameworks is going to be the challenge of the next generation. To maintain a position that, in armed conflict, human rights law is **replaced** by the law of armed conflict is simply not an option for the European states and is likely to be seen as a step backwards by many states racked by internal conflict. However, to permit human rights law to dominate in an area where its requirements have not been crafted to take into account the realities of the situation may in turn lead to the ridicule of the law. As human rights law in principle governs the behaviour of states towards those within their jurisdiction, it is an attractive weapon for nonstate actors to use in propaganda campaigns. It is perhaps the classic example of "lawfare." However, if a conflict arises between human rights law and the law of armed conflict, giving primacy to human rights law will not be in anybody's interests—least of all the victims of war who will again fall prey to new legal uncertainty.

The Law of Armed Conflict.

However, even if we accept the argument that the *lex specialis* is applicable, that does not decide the problem,

as it remains to be decided exactly what makes up that *lex specialis*: the law of armed conflict. While this is a large subject on which books have been written, I wish to limit my examination of this to one area where, again, an apparent divide has developed between the United States and Europe. That relates to Additional Protocol I to the Geneva Conventions of 1949 drafted in 1977.[26] This treaty, drafted in the aftermath of the Vietnam War, always was controversial. It contained elements within it that caused considerable concern to Western nations, particularly the extension of the law relating to international armed conflict to conflicts in which:

> . . . peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.[27]

This and other provisions relating to the principle of distinction led Douglas Feith to describe it as "Law in the Service of Terror."[28] It was thus no surprise that President Ronald Reagan in his Letter of Transmittal to the Senate on January 29, 1987[29] declined to recommend that the Senate grant advice and consent to Additional Protocol I, describing the protocol as "fundamentally and irreconcilably flawed."[30]

However, that was not his sole comment. The Protocol itself contains 102 articles, many of which codify existing customary international law and many others of which, while perhaps creating new law, were inserted with the active encouragement of the United States delegation.[31] President Reagan thus also referred

to the Protocol as containing "certain sound elements" and to "the positive provisions of Protocol I that could be of real humanitarian benefit if generally observed by parties to international armed conflicts." He went on to state:

> We are therefore in the process of consulting with our allies to develop appropriate methods for incorporating these positive provisions into the rules that govern our military operations, and as customary international law. I will advise the Senate of the results of this initiative as soon as it is possible to do so.[32]

This was a sensible approach, and one that reflected actual practice. For several years, North Atlantic Treaty Organization (NATO) lawyers had been meeting on a regular basis discussing how best to handle interoperability issues arising from the ratification or otherwise by NATO States of Additional Protocol I. In fact, there were few issues that caused any serious concern and, while there may have been minor differences of interpretation, the fundamental principles that underlay much of Protocol I were unchallenged. In 1986, speaking at a Washington College of Law Conference, Michael Matheson, then Deputy Legal Adviser at the Department of State, had laid out what was considered to be the official U.S. position on Additional Protocol I. That speech was turned into an article[33] and has been cited frequently all over the world, including in U.S. military manuals.[34] It always has been the document to which other Coalition militaries have turned when seeking to ascertain the U.S. position. However, all has now changed and current United States thinking threatens to throw out the baby with the bath water.

In 2005, the Operational Law Handbook issued by the Judge Advocate General's Corps as guidance to its officers contained reference to the Matheson article.[35] However, an "Errata Sheet" quickly was issued, stating, in relation to the citation, "Information was taken from an Article written by Michael Matheson in 1986. It takes an overly broad view of the U.S. position and, as a result, may cause some confusion as to U.S. Policy."[36]

This creates confusion as it is now impossible to find any official source which clearly lays down what is the U.S. position. Arguments rage, even over such basic issues as the definition of military objective in Article 52 (2) and, in particular, as to the customary law status of Article 75, which lays out fundamental guarantees—a baseline for treatment of detainees. The current U.S. State Department Legal Adviser, John Bellinger, speaking at Chatham House in London, in February 2006, is reported as saying:

> We have said that that's customary international law in the past, we are looking at whether that's appropriate, and we haven't said that it isn't, but we have not yet said that it is, because this really is in that regard—dealing with people whose whole aim in life is to kill civilians—is sort of a different situation. [37]

This creates serious interoperability problems on the ground. How is it possible for Allied Forces to hand detainees over to American custody if it is unclear as to whether they will even be granted the most basic guarantees granted under the law of armed conflict? This is but one example of where such uncertainty exists and is beginning to prove a serious difficulty. In turn, it raises perhaps the most fundamental issue of all: the nature of conflict.

The Global War on Terror.

When President Bush announced "We are at war," he touched a chord with the American people. After all, the United States had just suffered the first major attack on its continental territory since the Civil War. However, in Europe, terrorism was a problem that had existed for many decades. Throughout that period, the authorities resolutely had refused to treat terrorism other than as a domestic law matter. In Northern Ireland, through almost 30 years of insurgency, the United Kingdom had insisted that the situation did not reach the international law definition of "armed conflict." The point was made firmly when the United Kingdom ratified the Additional Protocols to the Geneva Conventions. One of the statements of understanding made on ratification read: "It is the understanding of the United Kingdom that the term 'armed conflict' of itself and in its context denotes a situation of a kind which is not constituted by the commission of ordinary crimes, including acts of terrorism, whether concerted or in isolation."[38]

Spain, Germany, Italy, and other countries faced similar problems and took a similar line. Terrorists were "criminals." However, this of itself caused difficulties. As with organized crime, terrorists were adept at using the criminal process to their advantage, and it was found necessary to introduce special provisions to counter this. In Northern Ireland, intimidation of juries led to the introduction of "Diplock courts," where specialist judges heard criminal cases sitting alone without juries. While this might seem to offend the common law principle of trial by one's peers, it caused no ruffled feathers in continental Europe, where professional judges had long been the deciders of both

issues of fact and law. Other evidential provisions were also introduced to ensure that the balance was not tilted too far towards the accused.

It should be noted that the countries that introduced these specialist provisions were all subject to the European Convention on Human Rights and, while in some cases, partial derogation was required, there was little challenge. The balance between the rights of the individual and the rights of society was maintained.

However, from the start, the Bush administration made it clear that "war" was no political statement. This was "war" in every sense of the word, and terrorists would be hunted down and killed as "enemy combatants." Of course, if captured, they would be subject where appropriate to trial, but even those trials would take wartime form in the shape of Military Commissions, and detention would not be subject to the usual domestic law controls.

While this may have seemed a logical position, it created legal difficulties. Under the law of armed conflict, there are two types of armed conflict: international and non-international armed conflict. Each is defined in the Geneva Conventions. In the case of international armed conflict, the definition is ". . . all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them."[39] Similarly, Common Article 3 is applicable ". . . in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties."[40]

The war against Afghanistan seems to fit into the first category, international armed conflict, and so far as Europe is concerned, it did. However, the administration saw it differently. The Presidential

Memorandum of February 7, 2002[41] makes it clear that, in the view of the administration, there were two conflicts (at least) going on in Afghanistan. First, there was the "conflict with the Taliban" which, with some reluctance, the President accepted as a "Geneva" conflict. However, he determined that "none of the provisions of Geneva apply to our conflict with al-Qai'da in Afghanistan or elsewhere throughout the world." So what is this "conflict with al-Qai'da?"

Clearly al-Qai'da is not a state, and so this is not an international armed conflict within the terms of Common Article 2. However, similarly, it is not a conflict limited to the territory of a High Contracting Party within the terms of Common Article 3, and so it would appear that the President is right. This is not a "Geneva" conflict. But then what is it? The President elsewhere in the memorandum stated that "the war against terrorism ushers in a new paradigm." If it is indeed a war within the legal meaning of the term, that would appear to be correct. It is a "war" in which there are no written rules, in which there is no reciprocity and to which none of the normal conventions apply.

It is this, perhaps more than anything else, that has concerned Europe. There is an understandable reluctance to create a "legal black hole"—and this is precisely how the war on terror is seen. This perception is not helped by the failure of the United States to outline any coherent view as to what law does apply. In the same way as with the law of armed conflict in general, there seems to be a reluctance to commit to any particular view. Perhaps understandably, there is a feeling that, in a "new paradigm," it is safer to keep one's options open. However, this does nothing for legal certainty.

Conclusion.

Can this divide be bridged? I believe that it can. In many ways, 9/11 was a classic military operation. Just as a military commander looks for the weak spot in the enemy line, often a boundary between formations, so al-Qai'da struck at the dividing line between law enforcement and armed conflict. "Catastrophic terrorism," as it is sometimes called, places severe pressure on law enforcement mechanisms. However, the nature of terrorist activity also threatens the cohesiveness of the law of armed conflict as a legal framework. It therefore poses a challenge for both domestic and international lawyers.

At present, there is too great a divide between law enforcement—where force may only be used where absolutely necessary, and human rights bind only the state to the advantage of the individual—and armed conflict—where the use of force is governed by the nature of the target, and participants are treated as equals, subject to similar rights and responsibilities. Terrorism is a method of warfare, though—in most cases—an illegitimate one. However, terrorism is also a criminal act, which can be committed outside armed conflict. Put another way, not every act of terrorism is an act of war. What is required is a more coherent legal approach to acts of terrorism to avoid the stark divide between domestic and international legal regimes. At present, the use of ordinary criminal processes to deal with "battlefield" situations is putting an immense strain on domestic criminal law as is apparent from efforts to prosecute insurgents in Iraq and elsewhere. On the other hand, the use of selective law of armed conflict provisions to replace inconvenient domestic provisions equally casts doubt on the more general

applicability of those provisions. The only victors will be the terrorists themselves who will play the two frameworks off against each other—with the unwitting help of the lawyers.

A coherent approach will not be easy to devise. It will involve an acceptance that "catastrophic terrorism" does indeed pose a major challenge and needs to be confronted. This may mean, in the domestic field, recognition that human rights no longer can be seen solely in terms of the rights of the individual set against the power of the State. The rights of the individual now need to be viewed in the light of the rights of the majority, particularly the right to security. This may require a revision of some of the interpretations of human rights conventions which have been acceptable in the past.

Similarly, those involved in the application of the law of armed conflict must test their own interpretations against the new reality. In conflicts where the majority of participants do not meet the traditional definition of "combatant," is it any longer realistic to insist that they are "civilians" and are thus entitled to the same protections as all other civilians—except that they can be prosecuted for their conduct? As we have seen, criminal prosecution based on evidence gathered on the battlefield may not be a feasible option.

One thing is clear—this is not a matter that can be subject to unilateral decision. There must be a universal response to a universal problem. National solutions, particularly those ostensibly based on international law, simply will complicate an already serious situation. The challenge that we all face is one of collaboration. In this, it is indeed correct to say that if we do not hang together, we will hang separately.

ENDNOTES - GARRAWAY

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CONCLUSION

The then-anonymous author of *Through Our Enemies' Eyes* wrote in 2002 about the threat posed by not recognizing with whom the United States was at war. He used an engaging movie excerpt to make his point:

> In the wonderfully entertaining 1940 Warner Brothers' swashbuckler titled *The Sea Hawk*, Queen Elizabeth I, played by the inestimable Flora Robson, angrily convokes her courageous, dashing, and exceptionally handsome band of privateers—known collectively in the movie as "the Sea Hawks"—for having had the temerity to sink in the English Channel a Spanish galleon carrying the new ambassador of Spain to her court. With the recently rescued, and presumably still soggy, Spanish ambassador looking on, the queen addresses herself to Captain Geoffrey Thorpe—played by the equally inestimable Errol Flynn—who is the leader of the Sea Hawks, the queen's favorite, and the sinker of said galleon. "Do you imagine, Captain Thorpe, that we are at war with Spain?" the queen thunders. Thorpe, with due respect for his sovereign, responds firmly: "Madam, Spain is at war with the world." Flash ahead 60 years and a similar question posed by any national leader in Christendom might accurately earn the response: "Madam (or Sir), Osama bin Laden is at war with the Christian world."
>
> If the exchanges above are reimagined to focus on Osama bin Laden, they would have little entertainment value, but their resulting unsubtle messages—that bin Laden has been at war with Christendom, and has longed to see a world map that is simply a map of the House Islam—should be taken with deadly seriousness. Bin Laden has declared war on the United States, the leader of invading, barbarous Crusaders, and intends there to be a struggle to the death against the United States.[1]

More well-known philosophers on war—Sun Tzu and Clausewitz among them—have extolled the virtue of knowing one's enemies and of knowing the type of conflict in which a state is engaged. Even more basic than that is the idea that a nation must know it is *at war* before it can craft a strategy to succeed in it. Evidence observed and presented by the panelists at the Seventeenth Annual U.S. Army War College Strategy Conference suggests that the Nation is at war, but that various parts of the government and the public do not appear to understand that. Some of that stems from confusion about just what constitutes a war against terrorists, and how the norms of law and custom must adapt to reflect the peculiar nature of such a war. Another part of the problem is that the comparison is made against the outdated model of World War II, not the more appropriate model of the Cold War. Unlike the major combat of both World Wars, the "long war" of the Global War on Terrorism does not necessarily require the full mobilization of the country. The country's leaders must take the necessary steps to ensure that all understand clearly that the Nation is at war and should be able to justify that in the "court" of international law. Those same leaders then must mobilize selectively the parts of the Nation, both the government and the public, that are needed to win the war. Those parts will not be simply the military arm of the government; all the tools of national power—diplomatic, informational, economic and military—must be utilized. Full mobilization—as in World War II—may not be necessary, but the government agencies involved must fully understand and vigorously execute their responsibilities. If not, they place the Nation at unnecessary strategic risk.

ENDNOTES - CONCLUSION

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BIOGRAPHICAL SKETCH OF THE EDITOR

JOHN R. MARTIN is Visiting Professor of National Security Affairs at the Strategic Studies Institute at the U.S. Army War College. During a career of over 30 years in the Army, Colonel (Retired) Martin served in a great variety of positions, including tactically in Infantry and Aviation, technically as an experimental test pilot, and strategically and operationally in numerous overseas deployments (including tours in Korea and operational deployments to Kosovo, Bosnia, Afghanistan, and Iraq). Colonel (Retired) Martin also has extensive experience at the Army Staff, where he served as Systems Integrator for the RAH-66 Comanche and as Chief of the U.S. Army Office of the Deputy Chief of Staff for Operations, Force Structure Division, and the Office of the Deputy Chief of Staff for Personnel, Plans Division. In a previous assignment (from 2000 to 2004) to the Strategic Studies Institute, Colonel (Retired) Martin was concurrently the Chairman of the Art of War Department and the Deputy Director of the Institute. His current research focuses on post-hostilities operations and training of indigenous security forces in counterinsurgency. Colonel (Retired) Martin is a 1974 graduate of the United States Military Academy and graduated with highest distinction from the College of Naval Command and Staff in 1988. He is also a 1996 graduate of the National War College.

BIOGRAPHICAL SKETCHES BY PANEL AND EVENT

Panel I—The Homeland Security Context.

TED GONG is the senior executive-ranked Foreign Service Officer assigned to work at the Department of Homeland Security (DHS) on immigration issues as the Senior Advisor in the Office of the Citizenship and Immigration Service (CIS) Ombudsman. He was involved in planning for temporary "guest worker" programs and the transformation of the CIS operation, among other issues. Prior to this assignment, he worked as the Senior Policy Advisor in the DHS Office of International Affairs responsible for the Asia-Pacific region and border security and migration issues, as well as participating in the U.S.-Mexico bilateral working group on the implementation of US-VISIT, biometrics, and electronic visa processing. Within the State Department, his foreign service assignments have focused on consular, refugee, and visa issues. He has had assignments as the director of consular programs in Guangzhou, Sydney, Manila, and Taipei and has been assigned to various positions in Hong Kong, Taiwan, and Washington, DC, which included being responsible for management oversight of consular/ visa posts in the Middle East, South Asia, and East Asia/Pacific regions.

DEMETRIOS G. PAPADEMETRIOU is the President of the Migration Policy Institute (MPI), a Washington-based think tank dedicated exclusively to the study of international migration. He is also the convener of the Athens Migration Policy Initiative (AMPI), a task force of mostly European senior immigration experts

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MARK KRIKORIAN is Executive Director of the Center for Immigration Studies, a nonprofit, nonpartisan research organization in Washington, DC, which examines and critiques the impact of immigration on the United States. The Center is animated by a pro-immigrant, low-immigration vision which seeks fewer immigrants but a warmer welcome for those admitted. Mr. Krikorian frequently testifies before

Congress and has published articles in *The Washington Post*, the *New York Times*, and *National Review*; and has appeared on *60 Minutes*, *Nightline*, the *NewsHour with Jim Lehrer*, CNN, National Public Radio, and on many other television and radio programs. Before joining the Center in February 1995, he held a variety of editorial and writing positions. His publications include *The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States* (1993-2001); and *Falling Behind on Security: Implementation of the Enhanced Border Security and Visa Entry Reform Act of 2002*. Mr. Krikorian holds a master's degree from the Fletcher School of Law and Diplomacy and a bachelor's degree from Georgetown University, and spent 2 years at Yerevan State University in then-Soviet Armenia.

SUSAN SIM has been the Deputy Chief of Mission at the Singapore Embassy in Washington, DC, since August 2003. She was previously the Indonesia Bureau Chief of *The Straits Times*, based in Jakarta, Indonesia, from August 1996 to the end of 2001. She has also been a Police Inspector and Head of Research and Policy Analysis at the Ministry of Home Affairs in Singapore. Ms. Sim graduated with a B.A. Honours degree in Politics, Philosophy, and Economics from Oxford University, United Kingdom, in 1986. An MA (Oxon) was conferred in 1992.

ELAINE DEZENSKI recently completed nearly four years of service with the U.S. Department of Homeland Security (DHS). Most recently, she served as the Acting Assistant Secretary for Policy Development within the newly-created DHS Office of Policy. She played a major role in the creation and structuring of this new entity, including expansion and integration of this office and its functions within DHS. She advised DHS leadership

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Panel II—The International Context.

JOHN AGOGLIA is the Director of the U.S. Army's Peacekeeping and Stability Operations Institute (PKSOI) at Carlisle, PA. He joined the Institute in the summer of 2004 after having served 3 years at U.S. Central Command. He arrived at CENTCOM from an assignment in Japan 4 weeks before September 11, 2001. Colonel Agoglia was involved in developing the U.S. Central Command plans for Afghanistan and the Global War on Terrorism. He was part of the planning group that initiated the campaign plan for Iraq. He accompanied Ambassador Bremer into Baghdad in May 2003 as his CENTCOM liaison officer and worked the integration of the planning efforts between the CPA and the military; the hand-off of the police training from the CPA to CJTF-7; and the initial engagement strategy for senior military commanders with the newly-appointed interim Iraqi Government leaders.

CHRISTIAN DELANGHE is a Saint-Cyr graduate from the 1963-65 class. After graduation from the Artillery School in Châlons-sur-Marne, he served in a number of positions in several Air Defense units. He also served in the Chief of Defense Joint Staff in Paris as analyst officer in the Military Intelligence Agency (1982-85), and Chief of operation division (1991-95), where he was promoted to Brigadier General in 1993. Lieutenant General (ret) Delanghe's command experience includes service with the 51st Air Defense Regiment (Roland-Mistral) in Wittlich, Germany (1987-90), as Chief of Staff of the III Corps in Lille (1995-96), as 2nd Armored Division Commander in Versailles (1996-97), as Multinational Division South-East Commander in Bosnia (1997-98), and as the Training and Doctrine

Commanding General in Paris (1998-2000). Since his retirement in early 2001, he contributes to the U.S. Center For Research and Education on Strategy and Technology activities in Arlington, Virginia, and is Vice President of the Marechal Leclerc Foundation in Paris, France. Lieutenant General (ret) Delanghe is a graduate of the Universities of Rennes and Reims, the Junior Command and Staff Course in Paris, the U.S. Air Defense Advanced Course in Fort Bliss, the Senior Command and War College in Paris, the Center for Higher Military Studies and the National Defense Institute in Paris.

PETER MANSOOR commanded the 1st Brigade Combat Team, 1st Armored Division in Iraq, where his unit was responsible for the security and stability of eastern Baghdad. He has extensive expertise in military history, Iraq, U.S. Army, national security, and stability and reconstruction operations. He commanded the 1st Brigade, 1st Armored Division in Iraq and Germany, to include 13 months in combat in support of Operation IRAQI FREEDOM (July 2003-June 2004). He served as G-3 (Operations, Plans, and Training Officer) of the 4th Infantry Division (Mechanized), Fort Hood, Texas, during a period which included multiple deployments in support of homeland defense in the wake of terrorist attacks on September 11, 2001 (2001-02); commanded the 1st Squadron, 10th Cavalry, to include a deployment to Kuwait in support of Operation DESERT SPRING, and two counterdrug deployments along the U.S.-Mexican border in support of Joint Task Force 6 (1999-2001); and served on the Joint Staff as the Special Assistant to the Director for Strategic Plans and Policy (J-5). Colonel Mansoor's publications include *The GI Offensive in Europe: The Triumph of American Infantry*

Divisions, 1941–1945 (University Press of Kansas, 2002). Colonel Mansoor received a B.S. degree from the U.S. Military Academy in 1982, an M.A. and doctorate in military history from The Ohio State University, and a Master of Strategic Studies degree from the U.S. Army War College.

SEBESTYEN L. V. GORKA is the Director of the Institute for Transitional Democracy and International Security. Following the fall of communism in Hungary, he moved to Budapest to take up a policy position in the Defense Ministry of the first newly-elected democratic government. Since then, he has been an International Research Fellow at the NATO Defense College in Rome, a Fellow at Harvard University's Kennedy School of Government, and a policy analyst with the RAND Corporation in Washington, DC. In addition to running the institute, he is also a nonresident fellow of the Terrorism Reseach Center in Virginia and member of the U.S. Council for Emerging National Security Affairs. In the past he has acted as an ambassadorial briefer for the U.S. Department of State. He has published more than 60 articles and monographs internationally on the topics of terrorism, Central European military reform, Russia and the Newly Independent States, biological terrorism, and organized crime, in publications such as the *NATO Review*, the *Harvard International Review*, the *World Policy Journal*, the *Washington Times*, *Nature* and *Defense News*. Mr. Gorka was awarded the State Secretary and Deputy State Secretary awards for work executed in the field of defense diplomacy, and is an alumnus of the Salzburg Seminar and the U.S. Atlantic Council. He received his education in the United Kingdom.

FRANCISCO JAVIER FLORES-HERNANDEZ is a Lieutenant Colonel in the El Salvadoran Army and was an International Fellow in the U.S. Army War College Class of 2006. Previously he served as an operations officer, Cuscatain Battalion, in Operation IRAQI FREEDOM. He is a 2004 graduate of the U.S. Naval Post Graduate School and of several other military service schools. Lieutenant Colonel Flores-Hernandez has been awarded the Gold Cross; the Gold Medal OIF; and the United Nations Medal, Coalition Forces OIF. He is the author of "The Salvadoran and Honduran Conflict," *Magazine of the CODEM*, 2000.

Panel III—The Domestic Context.

JAMES JAY CARAFANO is the Senior Fellow for National Security and Homeland Security in the Kathryn and Shelby Cullom Davis Institute for International Studies, The Heritage Foundation. He has been an assistant professor at the U.S. Military Academy in West Point, New York, and served as Director of Military Studies at the Army's Center of Military History. He also taught at Mount Saint Mary College and was a fleet professor at the U.S. Naval War College. He is a visiting professor at the National Defense University and Georgetown University. Dr. Carafano is a member of the National Research Council's Committee on Army Science and Technology for Homeland Security, the National Defense Transportation Association's Security Practices Committee, and is a Senior Fellow at the George Washington University Homeland Security Policy Institute. He is the coauthor of *Winning the Long War: Lessons from the Cold War for Defeating Terrorism and Preserving Freedom* (Heritage Books, 2005). As an

expert on defense and security issues, he has testified before the U.S. Congress and has provided commentary for ABC, BBC, CBS, CNBC, CNN, C-SPAN, Fox News, MSNBC, NBC, SkyNews, National Public Radio, and The History Channel. He served 25 years in the Army, rising to the rank of lieutenant colonel, and served in Europe, Korea, and the United States. Before retiring, he was executive editor of *Joint Force Quarterly*. His editorials have appeared in *USA Today*, *The Washington Times*, *The Baltimore Sun*, *The New York Post*, and *The Boston Globe*. He was also the principal author of the budget analysis in the 2003 *Independent Task Force Report*, "Emergency Responders: Drastically Underfunded, Dangerously Unprepared." His works on military history include *Waltzing Into the Cold War*, *After D-Day*, and *Made in America: Technology and GI Ingenuity on the Battlefields of Normandy*, forthcoming from Praeger (2006). A graduate of West Point, Dr. Carafano also has a master's degree and a doctorate from Georgetown University and a master's degree in strategy from the U.S. Army War College.

WILLIAM T. NESBITT, Director, National Guard Bureau-J3, is the Assistant Adjutant General-Army and also serves as the Commander of the Georgia Army National Guard. Brigadier General Nesbitt's military career began in February 1966 when he was drafted into the U.S. Army. He completed basic training at Fort Benning, Georgia, and Infantry Advanced Individual Training at Fort Ord, California. He was commissioned a second lieutenant of Infantry in January 1967 after completion of Officer Candidate School at Fort Benning. Following completion of the U.S. Army Special Forces Officer's Course at Ft Bragg, North Carolina, he was assigned to the 5th Special Forces Group (Airborne) in

the Republic of Vietnam. General Nesbitt entered the Georgia Army National Guard in June 1973. Prior to his current assignment, he was assigned as Commander of the 48th Brigade (Rear). As Acting Commander, he was responsible for the readiness and training of the portion of the brigade that did not deploy to Bosnia. Previously, Brigadier General Nesbitt served as Chief of Staff, Headquarters, Georgia Army National Guard.

MICHAEL SQUIER assumed duties as the Deputy Director, Army National Guard, National Guard Bureau, Washington, DC, in March 1998 and served there until his retirement. Prior to this assignment, he served in various positions at National Guard Bureau, including Chief of Staff, Army National Guard; Executive Officer to the Chief, National Guard Bureau; Chief, Readiness Division; and Deputy Chief, Public Affairs. He enlisted in the Idaho Army National Guard in August 1963. Brigadier General Squier was commissioned through the Infantry Officer Candidate School in August 1965. As a young officer, he served at the state level in a variety of command and staff positions in the 116th Ordnance Company and the Idaho State Military Academy, culminating in the positions of Company Commander and Commandant respectively. In September 1978, Brigadier General Squier was assigned to National Guard Bureau where, as a Major, he served in various positions of the Mobilization Readiness Division, ultimately serving 4 years as Assistant Executive to the Chief, National Guard Bureau. In 1987, he assumed command of the 145th Support Battalion, 116th Cavalry Brigade, Idaho National Guard. His last State assignment before returning to National Guard Bureau was his second command assignment, battalion-level command at The Equipment Maintenance Center in Europe.

DAVE BURFORD began his current assignment as Assistant to the Director of the Army National Guard in November 2005. Previously, he served and was mobilized in the Global War on Terror as the Deputy Commanding General of the Army's Special Forces Command at Fort Bragg, North Carolina, where he was second-in-command of the Army's 9,000-man inventory of Green Beret soldiers, consisting of seven active duty and two National Guard Special Forces Groups. During this time, he was deployed several times to several combat theaters. For the summer of 2003, General Burford served as Acting Commanding General of Special Forces Command (Airborne). His military service began in 1973 when he was commissioned as a Field Artillery officer after completing Reserve Officer Training Corps training as a Distinguished Military Graduate from Georgia Tech.

Keynote Speaker.

WILLIAM J. PERRY, a senior fellow at the Hoover Institution, is the Michael and Barbara Berberian Professor at Stanford University, with a joint appointment in the School of Engineering and the Institute for International Studies. He also is co-director of the Preventive Defense Project, a research collaboration of Stanford and Harvard Universities. His previous academic experience includes professor at Stanford from 1988 to 1993, when he was the co-director of the Center for International Security and Arms Control. He also served as a part-time lecturer in the Department of Mathematics at Santa Clara University from 1971 to 1977. Dr. Perry was the 19th U.S. Secretary of Defense, serving from February 1994 to January 1997. His previous government

experience was as Deputy Secretary of Defense (1993–94) and Undersecretary of Defense for Research and Engineering (1977–81). His business experience includes serving as a laboratory director for General Telephone and Electronics (1954–64); founding and serving as the President of ESL (1964–77); Executive Vice-President of Hambrecht & Quist (1981–85); and founding and serving as the Chairman of Technology Strategies and Alliances (1985–93). He serves on the Board of Directors of Anteon International Corporation and several emerging high-tech companies and is Chairman of Global Technology Partners. Dr. Perry is a member of the National Academy of Engineering and a fellow of the American Academy of Arts and Sciences. From 1946 to 1947, Dr. Perry was an enlisted man in the Army Corps of Engineers and served in the Army of Occupation in Japan. He joined the Reserve Officer Training Corps in 1948 and was a second lieutenant in the Army Reserve from 1950 to 1955. Dr. Perry received B.S. and M.S. degrees from Stanford University and a Ph.D. from Pennsylvania State, all in mathematics.

Panel IV—The Economic Context.

MICHAEL J. FRATANTUONO is Associate Professor of International Studies, Business and Management at Dickinson College, Carlisle, Pennsylvania. He has worked as a project manager in the software development industry. He also has been visiting professor in the Department of National Security and Strategy at the U.S. Army War College. Dr. Fratantuono is interested in international economics, government-business relations, and U.S. foreign economic policy. He received the Dickinson Award for Distinguished

Teaching for 2004-05. Dr. Fratantuono received a B.A. from Brown University in 1974; an M.A. from the University of Rhode Island in 1982; and a Ph.D. from the University of Washington in 1988.

EDWARD M. GRAHAM, senior fellow at the Institute for International Economics since 1990, has been an Adjunct Professor at Columbia University in New York since 1992. Previously he was Associate Professor in the Fuqua School of Business at Duke University (1988-90), Associate Professor at the University of North Carolina (1983-88), Principal Administrator of the Planning and Evaluation Unit at the Organization for Economic Cooperation and Development (1981-82), International Economist in the Office of International Investment Affairs at the U.S. Treasury (1979-80), and Assistant Professor at the Massachusetts Institute of Technology (1974-78). He is the author, coauthor, or coeditor of a number of studies, including *Does Foreign Direct Investment Promote Development?* (2005); *Reforming Korea's Industrial Conglomerates* (2003); *Fighting the Wrong Enemy: Antiglobal Activists and Multinational Enterprises* (2000); *Global Competition Policy and Competition Policies in the Global Economy*, with J. David Richardson (1997); *Global Corporations and National Governments* (1996); and *Foreign Direct Investment in the United States*, 3d ed., with Paul R. Krugman (1995).

LEIF ROSENBERGER has been the Economic Advisor at the U.S. Pacific Command (PACOM) since 1998. Dr. Rosenberger analyzes the strategy and performance of 43 economies in Asia and the Pacific. In January 2006, Access Asia of the National Bureau of Asian Research evaluated the top 141 experts on Asian economies and selected Dr. Rosenberger as their top-ranking expert. He

is the author of all but one chapter in Volume 1 and each chapter in Volume 2 of the *Asia Pacific Economic Update 2005*, which received the highest 5-star rating from the Australian National University. Before coming to PACOM, Dr. Rosenberger worked for 10 years at the U.S. Army War College, where he held the General Douglas MacArthur Academic Chair of Research. In October 1993, Dr. Rosenberger was promoted from Associate Professor of Economics to full Professor of Economics at the U.S. Army War College. He also worked at the Strategic Studies Institute of the U.S. Army War College, Central Intelligence Agency, and the Defense Intelligence Agency. Dr. Rosenberger currently teaches International Finance and Trade in the Executive MBA Program at the University of Hawaii. He spent his sabbatical year of 1997 as a Visiting Scholar on the Economic Faculty at Harvard University, funded by a Secretary of the Army Research and Study Fellowship. He was also a Visiting Professor of International Relations at Providence College and taught Economics and Political Science at Dickinson College. Dr. Rosenberger is a 1989 graduate of the U.S. Army War College, and received a B.A. with honors from Harvard University, a Master's Degree from Boston University, and a Ph.D. from Claremont Graduate School.

JOHN D. LANGE worked as an economist for the International Monetary Fund and as Assistant Vice President of CitiBank. He joined the U.S. Treasury in the Nixon administration and served there until the end of the Clinton administration. While in the Department of the Treasury, Mr. Lange served as Director of Foreign Exchange Operations, where he managed the U.S. foreign reserves in support of the dollar. He also

served with Treasury as the U.S. Chief Negotiator on official trade finance. Currently, Mr. Lange is Managing Director of Lange, Mullen, and Bonn, LLC, a firm which provides strategic and tactical advice and counsel for international project management, investment, and foreign exchange strategies.

Panel V: International Law and National Security Context.

DAVID S. GORDON is a Colonel in the Judge Advocate General's Corps, U.S. Army Reserve, and was mobilized in 2002 for the Global War on Terrorism. He spent a year in Kabul, Afghanistan, where he was the senior legal advisor and Rule of Law Officer for the U.S. Office of Military Cooperation. He was responsible for synchronizing efforts to bring about civilian judicial sector reforms and reforms of military law. He has remained on active duty after returning from Afghanistan. He is currently assigned to The Peacekeeping and Stability Operations Institute, U.S. Army War College, with duty at the U.S. Army Civil Affairs and Psychological Operations Command (Airborne) at Fort Bragg, North Carolina, where his primary duty is to develop training and doctrine for U.S. Army Civil Affairs military lawyers who perform rule of law missions overseas. Colonel Gordon served on active duty with the U.S. Army Judge Advocate General's Corps from 1977 to 1986. His assignments were primarily in Europe, including 2 years as an attorney in the International Affairs Division of the Office of the Judge Advocate, U.S. Army Europe. From 1987 until he was mobilized in 2002, he was the General Counsel for Caldwell Aircraft Trading

Company in Charlotte, North Carolina. He was promoted to Senior Vice President in 1990. During that period, Colonel Gordon also served in the Reserves as the International Law Officer of the 360th Civil Affairs Brigade, and deployed to Saudi Arabia in Operation DESERT STORM in 1991. He has published law journal articles on legal status and rights under the NATO SOFA and legal practice in the European Communities. He holds the Army Skill Identifier for an International Law Specialist. Colonel Gordon received AB and JD degrees from the University of Georgia, and is licensed to practice law in North Carolina, Georgia, and Maryland. He received an M.A. degree in Church History from Trinity Evangelical Divinity School, and is a graduate of the U.S. Army Judge Advocate General Course and the U.S. Army War College. Colonel Gordon has done graduate work in international law at the Hague Academy of International Law and Georgetown University Law Center.

MICHAEL F. NOONE, a member of the California and District of Columbia bars, served 20 years as a judge advocate in the U.S. Air Force, retiring as a Colonel before he joined the law faculty of The Catholic University of America in 1978. He remains active in national security issues. He is a fellow of the Inter-University Seminar on Armed Forces and Society, and serves as a member of the International Advisory Board, Geneva Centre for the Democratic Control of Armed Forces, the board of the National Institute of Military Justice, the executive board of the Judge Advocate's Association Inn of Court, and the legal committee of the National Inter-religious Service Board for Conscientious Objection. He was a distinguished visiting professor of law at the U.S. Military Academy at West Point,

New York, in 1991 and co-authored the text book used by the West Point Law Department. His professional interests include torts and products liability, remedies, and comparative and international law. His research and writing on peacekeeping and political violence have taken him in recent years to Australia and New Zealand, to South Africa, and to Northern Ireland and Israel. Professor Noone holds a B.S. in Foreign Service (1955) from Georgetown University's Edmund A. Walsh School of Foreign Service, an LL.B. (1957) and LL.M. (1962) from Georgetown University Law School, and an S.J.D. (1965) from The National Law Center of George Washington University. He is a Distinguished Graduate of the U.S. Air Force Air Command and Staff College.

JANE G. DALTON was commissioned an Ensign through Officers Candidate School in Newport, Rhode Island, in December 1977 and graduated from Surface Warfare Officers School, also in Newport, in July 1978. As a line officer, Professor Dalton was among the first 10 women assigned to sea duty and to earn designation as a Surface Warfare Officer after 10 U.S.C. 6015 was amended to permit women to serve aboard noncombatant vessels. She served as Third Division Officer (1978-80) and Assistant Operations Officer (1980-81) onboard the U.S.S. *Puget Sound* (AD-38). She then taught History at the U.S. Naval Academy, 1981-82. In 1982, she was selected for the Law Education Program. As a judge advocate, Professor Dalton's initial duty assignment was to Naval Legal Service Office, Treasure Island, San Francisco, California, where she served as a defense counsel (1985-1987) and the senior trial counsel (1987-88). Professor Dalton was the Staff Judge Advocate to the Commander, Naval Surface

Group, Middle Pacific (1988-90) and the Commander, Naval Base Pearl Harbor (1990-91). She was the Oceans Law and Policy Planner in the Strategic Plans and Policy Directorate (J-5), Joint Staff, Washington, DC (1992-94), and became the first woman to serve as the Fleet Judge Advocate to a numbered fleet, Commander, Third Fleet, San Diego, California, (1994-96). Professor Dalton served two additional tours on the Joint Staff—Deputy Legal Counsel (1996-98) and then Legal Counsel (2000-03) to the Chairman of the Joint Chiefs of Staff. She served for 2 years as the Commanding Officer, Naval Legal Service Office, North Central, headquartered in Washington, DC (1998-2000). In June 2003, then-Captain Dalton assumed duties as the Commanding Officer, Naval Civil Law Support Activity, and in July 2003, she was appointed the Assistant Judge Advocate General (Civil Law). In August 2005, Professor Dalton reported to the Naval War College as the Charles H. Stockton Professor of International Law. Professor Dalton officially retired from the U.S. Navy on October 1, 2005, with the rank of Rear Admiral (lower half). Professor Dalton graduated from the University of Kansas with a B.A. in Political Science in 1972 and an M.A. in Latin American Studies in 1974. She earned a Juris Doctor degree magna cum laude from Georgetown University Law Center and was admitted to the Maryland Bar in 1985. She also received a Master of Laws degree with a focus in international law from the University of Virginia in 1992.

CHARLES GARRAWAY retired in 2003 after 30 years in the United Kingdom (UK) Army Legal Services, initially as a criminal prosecutor but latterly as an adviser in the law of armed conflict and operational law. In that capacity, he represented the Ministry of

Defence at numerous international conferences and was part of the UK delegations to the First Review Conference for the 1981 Conventional Weapons Convention, the negotiations on the establishment of an International Criminal Court, and the Diplomatic Conference that led to the 1999 Second Protocol to the 1954 Hague Convention on Cultural Property. He was the senior Army lawyer deployed to the Gulf during the 1990-91 Gulf Conflict. Since retiring, he spent 3 months in Baghdad working for the Foreign Office on transitional justice issues and 6 months as a Senior Research Fellow at the British Institute of International and Comparative Law before taking up the Stockton Chair in International Law at the U.S. Naval War College in August 2004 for the year 2004-05. He is a Visiting Professor at King's College, London. Professor Garraway is a member of the teaching faculty at the International Institute of International Law, San Remo, Italy, and has lectured extensively on the law of armed conflict to both civilian and military audiences. His publications include contributions to *The International Criminal Court: Elements of Crimes and Rules of Procedure & Evidence* (Roy Lee, ed., Oceana Publications, 1999); as well as articles on superior orders ("Superior Orders and the International Criminal Court: Justice Delivered or Justice Denied," 1999, IRRC No.836 p.785), internal conflict ("The Code of Conduct for Military Operations during Non-International Armed Conflict," IIHL, November 2001); and interoperability ("Interoperability and the Atlantic Divide—A Bridge over Troubled Waters," *Israel Yearbook on Human Rights* [2004], p. 105).