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CANADIAN FORCES COLLEGE / COLLÈGE DES FORCES CANADIENNES
JCSP 35 / PCEMI 35

EXERCISE/EXERCICE NEW HORIZONS

**THE CANADIAN FORCES AND INTER DEPARTMENTAL COOPERATION
TOWARDS DOMESTIC SECURITY: TEAR DOWN THOSE WALLS !**

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La présente étude a été rédigée par un stagiaire du Collège des Forces canadiennes pour satisfaire à l'une des exigences du cours. L'étude est un document qui se rapporte au cours et contient donc des faits et des opinions que seul l'auteur considère appropriés et convenables au sujet. Elle ne reflète pas nécessairement la politique ou l'opinion d'un organisme quelconque, y compris le gouvernement du Canada et le ministère de la Défense nationale du Canada. Il est défendu de diffuser, de citer ou de reproduire cette étude sans la permission expresse du ministère de la Défense nationale.

Abstract

This paper argues that the current inter-relationship between Other Government Departments in Canada does not meet the requirements for domestic security as envisioned by the federal National Security Policy. Drawing from examples of uncoordinated and ineffective joint federal efforts to provide domestic security to Canadians, it examines the challenges which may lead to threats to Canadian sovereignty and security. Impediments between the military and civilian organizations which are collectively charged for various aspects of domestic security are examined and proposed changes are recommended. The paper concludes that there remains a requirement for legislative and mandate changes within all affected departments to achieve successful integration and deliver an effective domestic security regime in Canada.

First and foremost, the Canadian Forces must ensure the security of our citizens and help exercise Canada's sovereignty. Canadians rightly expect their military to be there for them in domestic crises. The Forces must also work closely with federal government partners to ensure the constant monitoring of Canada's territory and air and maritime approaches, including the Arctic, in order to detect threats to Canadian security as early as possible.¹

INTRODUCTION

The world is now over seven years past the tragic events of September 11, 2001 and it has been nearly a half decade since the release of Canada's inaugural National Security Policy (NSP).² Fundamental to the NSP was the basic concept that "there can be no greater role, no more important obligation for a government, than the protection and safety of its citizens."³ The NSP was intended to be a comprehensive whole of government action plan which implemented a fully integrated approach to contemporary and future security threats.⁴ It assumed rightly that national security was increasingly multi-dimensional and not limited to strictly military threats.

This precept continues to be fully supported by the current government within the Canada First Defence Strategy (CFDS) which puts forward clear roles and missions for

¹ Department of National Defence, *Canada First Defence Strategy*. <http://www.forces.gc.ca/site/focus/first-premier/defstra-stradef-eng.asp>, Internet; accessed 21 February 2009, 7.

² The National Security Policy is intended to put Canada on a long-term path to enhance the security of the country and to contribute to the creation of a safer world. The policy highlights the importance of engaging Canadians on its content to facilitate the iterative process of reassessing Canada's security requirements.

³ Privy Council Office, *Securing an Open Society: Canada's National Security Policy* (Ottawa: Privy Council Office, 2004), vii. Privy Council Office, "Securing an Open Society: Canada's National Security Policy," April 2004, [document on-line]; available from http://www.pco-bcp.gc.ca/docs/Publications/NatSecurnat/natsecurnat_e.pdf; Internet; accessed 6 March 2009, 6.

⁴ *Ibid.*, 3.

the Canadian Forces (CF). In fact, of the six core missions given to the CF, four are domestic in nature, including defence against terrorist attack, assisting civilian authorities during crisis situations, supporting the 2010 Winter Olympic Games and undertaking daily domestic and continental defence operations.⁵

The global security environment is complex, multi-national, networked and not solely restricted to the more traditional expressions of terrorism and war. The nation and its people are at risk from natural disasters, pandemics, transnational organized crime and an increasing multitude of terrorist organizations with a variety of goals and ideologies that run counter to Canada's national interests. Good governance at the federal level requires the coordination and integration of all department and agencies (including non-governmental organizations (NGO's) implicated in national security issues.

Key to any likely federal response to an impending or ongoing domestic threat or crisis is the utilization of the extensive and diverse capabilities of the Department of National Defence (DND) and the CF. As such, the CF would typically act in a supporting role to other federal departments and as a force multiplier to the overall national response. The consequence management function, while of prime importance, involves a much lesser role for the CF. The aim of this paper is to examine the challenges faced by the CF in improving the cooperation and integration with other federal departments in relation to its role in preserving domestic security. Specifically, this paper aims to determine the actions that must be taken to enable the CF to enhance Canada's domestic security strategy.

⁵ Department of National Defence, *Canada First Defence Strategy*. . . , 3.

The intent is to show that while the policies delineated within the NSP and follow on efforts have led to improvements, there remain impediments to effective and efficient cooperation and integration of the CF within the larger federal context. Within this parameter the issue of emergency management will not be addressed as domestic security is primarily centered on the federal government's ability to detect, prevent, prepare for, respond to and recover from domestic security crises which threaten the country and Canadian citizens. It is intended to review the barriers which currently exist and then examine instances where domestic security interaction is most prevalent. The focus will be towards those domains in which the CF is able to act as a supporting element towards improving domestic security.

CANADIAN DOMESTIC SECURITY SITUATION

The security and defence of Canadians is a core responsibility of the government. The well-being and prosperity of Canadian society is the basis for a sound, stable and flourishing economy, which in turn funds the machinery of government. This circle of dependence must survive within a new world order that is dealing with the effects of globalization; developments anywhere in the world can have immediate and long lasting effects on Canada and its citizens. The current global economic crisis is an acute example of this phenomenon.

Domestically, Canada's federal government recognizes the role in domestic security which the citizens expect it to play. The much maligned response (accurate or not) by the United States (US) government to the effects of Hurricane Katrina is a standard against which no government would want to be measured. Canadians expect that events such as catastrophic natural disasters, terrorist attacks, threats to Canadian

sovereignty or to its natural resources will be met with a an effective and coordinated response. All of these factors point to the requirement for a hardy and rigorous domestic security process which can deal with both the domestic effects of globalization and the possibility of national crises occurring domestically.

In the past, domestic security was often was seen as a combination of a criminal element which was primarily dealt with by law enforcement and a national security (now more commonly called homeland defence) element handled by the military. The operating environment of each element remained exclusive to each organization. But domestic security threats are not limited to crime or foreign attack; they may include natural disasters, pandemics or other unforeseeable events. While national defence is solely the responsibility of the CF, domestic security, a more complex issue which crosses many boundaries, requires federal, provincial and municipal integration as well as coordination and synchronization during the stages of crisis and consequence management.

Canada faces significant security challenges resulting not only from its relatively small population and moderate economic strength, but also due to its immense geographic size, stretching over four time zones and encompassing three oceans with the longest coastline in the world. It is inconceivable that full security could be expected or achieved. The Standing Senate Committee on National Security and Defence (SCONSAD) noted in 2003 that “. . . the enormity of the territory demands risk assessment. Triage is essential because Canada cannot defend every spot on every coast

all the time.”⁶ Equally applicable is the idea that no federal department or agency can be in all places, all the time, always ready to respond to a security issue. Every major challenge which can be foreseen will undoubtedly require the dynamic and coordinated participation of a wide range of federal capabilities.

The events of September 11th changed the security landscape as Canadians came to realize that their country was not as safe and secure as they had previously assumed. As stated in the NSP “. . . we face new and more complex ones [threats to national security]. Today, individuals have the power to undermine our security in a way that only hostile states were once able to accomplish.”⁷ Effectively, September 11th reset the international security agenda. The NSP, published almost 3 years later was Canada’s framework and action plan to address the ever complex security environment that the world was facing daily. In light of these events it is evident (and arguably has been for some time) that Canada is not, as was noted in 1926 by Senator Raoul Dandurand “. . . a fireproof house, far from the sources of conflagration”⁸

This awakening is not unique to Canada. The defence portion of the International Policy Statement of 2005 noted that “An increasingly interdependent world has tightened the links between international and domestic security. . . .”⁹ The cumulative effects of globalization, mass communication in a networked society, inexpensive global

⁶ Senate of Canada, Standing Senate Committee on National Security and Defence. “*Canada’s Coastlines: The Longest Under-Defended Borders in the World.*” in The Report of the Standing Committee on National Security and Defence. 37th Parliament, 2nd Session, Vol. 1, October 2003, 7.

⁷ Privy Council Office, *Securing an Open Society*. . . , 1.

⁸ Senator Raoul Dandurand, Canadian Emissary, in an address to the League of Nations.

⁹ Department of National Defence, *Canada’s International Policy Statement: A Role of Pride and Influence in the World – Defence* (Ottawa: Department of National Defence, 2005), 5.

transportation, the threat of pandemic, failing states and integrated economies led most nations to the same conclusion. Often these threats and conditions do not exist in isolation to one another and this serves to magnify the risk. Ever increasing levels of instability from a variety of directions have necessitated a whole of government approach to solving problems, not just security issues. So many aspects of a crisis are inter-related that most will bridge the responsibilities of more than one department or agency. This process must be able to respond effectively to existing threats and to new ones which may emerge. The sharing of both information and resources in a collaborative effort is now intended to be the modus operandi for all federal responses to significant national crises.

As a result of CF transformation and the realities of the new security environment, Canada is now viewed by the CF as a single theatre of operations. The function of being a supporting element to other departments and agencies in a domestic security role has worked well and should continue to guide the CF as Canada responds to new and previously unanticipated challenges. As noted by the Commander of CANADACOM, “While the CF focuses primarily on war-fighting missions and tasks, the inherent flexibility of a military organization makes it a most important source of assistance to Civil Authorities.”¹⁰ DND brings capabilities and resources to the federal government that no other department or agency can. Its strengths include unity of command, organizational and planning skills and a vast and talented pool of capable, highly disciplined and specialized individuals accustomed to conducting operations under trying and diverse circumstances.

¹⁰ Department of National Defence, *Canada Command Direction for Domestic Operations* (Ottawa: Canada Command Headquarters, 2006), 1/8.

LEGISLATIVE AUTHORITIES

A Whole of Government approach to domestic security requires a legislative framework which will allow the CF to meet the goals and tasks of the government and accomplish the missions assigned to them. Notwithstanding the government direction provided within the NSP, as it stands today this framework does not yet fully exist. If Canada is viewed as a single theatre of operation, the ability of the CF to act in the manner desired by the federal government is contingent on there being such legislative authorities in place to allow the CF sufficient freedom of maneuver to execute its responsibilities. As noted within Canada Command Direction for Domestic operations, “The CF does not have a standing mandate to enforce the laws of Canada.”¹¹

Current legislation for national security reflects the division of jurisdiction and authority to respond to threats to national security. All federal departments and operating agencies are regulated by respective legislative acts which limit their actions if situations arise outside their mandate and authority. There are a number of legal instruments which exist that may facilitate inter-departmental cooperation and assistance, specifically Memorandums of Understanding (MOU’s) and federal orders-in-council(OIC) between the CF and other federal departments and law enforcement agencies. These MOU’s and OIC’s set out the boundaries detailing the exact type of support provided by the CF, the

¹¹ *Ibid.*, 11-1/9.

duration of the support and the relationship between the parties.¹² Except in a very specific anti-terrorism situation, any law enforcement agency requesting support, either via a MOU or other means will always “. . . retain full responsibility for the conduct of all law enforcement operations.”¹³

The federal *Emergencies Act* of 1988 gave federal authority to the government to invoke exceptional powers, specific to an incident, to respond to emergencies, including public welfare emergencies, public order emergencies, international emergencies and war emergencies as defined below:

Public welfare emergencies

Severe natural disasters or major accidents affecting public welfare, which are beyond the capacity or authority of a province or territory to handle.

Public order emergencies

Security threats that are beyond the capacity or authority of a province or territory to handle.

International emergencies

Intimidation, coercion or the use of serious force or violence that threatens the sovereignty, security or territorial integrity of Canada or any of its allies.

War emergencies

War or other armed conflict, real or imminent, involving Canada or any of its allies.¹⁴

¹² Canada. Order in Council. P.C. 1975-1, *Assistance to Corrections Service Canada-Federal Penitentiaries*. 1975; Canada. Order in Council. P.C. 1993-624, *Canadian Forces Armed Assistance Directions*. 1993; Canada. Order in Council. P.C. 1996-833, *Canadian Forces Assistance to Provincial Police Directions*. 1996.

¹³ Department of National Defence, *Canada Command Direction for Domestic Operations . . .*, 11-1/9

¹⁴ Department of Justice, *Emergencies Act (1985, c. 22 (4th Supp.))* <http://laws.justice.gc.ca/en/E-4.5/index.html>, Internet; accessed 21 March 2006.

The legal framework under which CANADACOM and the CF must operate is strict and tightly regulated. The use of military force by a government against its own population is a controversial and sensitive issue but it is likely that such a use may be required in light of the blurring of security and defence roles which are occurring. In practice, western democratic governments have rightly constrained the internal use of their military forces. Though normally used to exercise national foreign policy abroad, the distinctive attributes a military possesses can justifiably be employed domestically in distinct and exceptional circumstances. The nature, scope and ramifications of the increasing threats to Canada and North America are likely to increase in the coming years and means must be found to counter them and effectively apply the full weight of government resources. The CF are able to provide invaluable attributes such as communications, mobility, command and control, logistic support and coordination that is not inherent or timely in other departments and agencies to the degree available from DND.

CANADA COMMAND

It is critical for our key security instruments to work together in a fully integrated way to address the security issues for Canada. The lack of integration in our current system is a key gap that has been recognized . . .¹⁵

The new command structure which came about as a result of CF transformation saw the activation of CANADA COMMAND (CANADACOM), an operational command responsible for all routine and contingency CF operations in Canada and continental North America. Beyond the strictly CF defence role and mission to deter,

¹⁵ Privy Council Office, *Securing an Open Society ...*, 9.

prevent, preempt, and defeat threats and aggression aimed at Canada, CANADACOM is mandated, when requested, to “. . . provide military assistance to civil authorities, including consequence management, in order to protect and defend Canada.”¹⁶ The reality of the post 9/11 security environment saw the need for the CF to be able to “. . . work closely with civil authorities . . . to prevent serious threats to Canada from materializing, countering these threats if prevention fails, and helping mitigate the consequences of an attack should one occur.”¹⁷

CANADACOM provides the CF with the capability to have a unified and integrated chain of command for all domestic operations. By considering Canada, and its approaches, as a single operational theatre the CF is more responsive in its ability to provide relevant and effective forces from across the nation to wherever they are needed should a crisis occur. The Commander of CANADACOM is the single operational authority for the defence of Canada and may use any available military assets to carry out this mission. In a domestic security role, the commander can assist civilian authorities with a variety of direct military support for both routine (such as fisheries patrols) or contingency scenarios incidents. Though normally considered the force of last resort for domestic situations, the CF is likely to play an increased role across the security spectrum in the future.

CF SUPPORT TO OTHER GOVERNMENT DEPARTMENTS

CF support to other federal departments in this broad security spectrum could take many forms. While some are administrative and fairly benign, such as a provision of

¹⁶ Canada Command Website, <http://www.canadacom.forces.gc.ca/site/mis-mis-eng.asp>; Internet; accessed 24 March 2009.

¹⁷ Department of National Defence, *Canada's International Policy Statement: . . .*, 17.

service (i.e. the use of weapons firing ranges), others require approval at the highest level, such as assistance to law enforcement agencies (ALEA). This section will evaluate those areas in ALEA which the CF may make a contribution to Canadian domestic security, the processes involved and illustrate the hurdles which currently exist under current operating procedures.

While not a normal task, law enforcement remains a legitimate function of the CF in specific instances and this has been reflected in current legislation to a certain extent. Section 273.6(2) of the National Defence Act (NDA) is the key legal mechanism which allows for the federal government to utilize the CF for ALEA.¹⁸ This authority is currently one of the sole methods by which ALEA is authorized but it remains limiting in that it requires approval at the highest levels (Minister of National Defence (MND)) and may only be utilized for specific incidents. While this assistance often involves benign aid such as the use of ranges or training areas, it can also be used for the provision of personnel support or unique equipment capabilities of the CF.

The current application of 273.6(2) is often restrictive, time consuming and hampers the responsiveness of CANADACOM.¹⁹ Thus the freedom of action at the operational level is not appropriate for the necessary actions which may be required for a domestic security issue. In terms of naval operations, there exists a requirement for maritime forces to be empowered with the “. . . necessary legal authority to allow them to enforce selected federal statutes on a routine basis throughout the maritime zones of

¹⁸ Department of Justice, *National Defence Act*, <http://laws.justice.gc.ca/en/showtdm/cs/N-5>, Internet:accessed 3 April 2009.

¹⁹ Dr. Brad Gladman, *Enabling Appropriate Freedom of Action at the Operational Level: The Legal Authorities for the Conduct of Domestic Operations*, Technical Memorandum 2006-17 (Ottawa: Centre for Operational Research and Analysis, Defence Research and Development Canada, 2006), 17.

Canadian jurisdiction.”²⁰ As it currently stands, the CF remain in a supporting role except under very specific circumstances and then only if force is deemed necessary and if requested by the appropriate Minister.

By way of example, in September 2005, in response to the direction of the NSP which stated that Canada was “. . . increasing on water patrols to better position the RCMP, Coast Guard and the [CF] to intervene, interdict and board ships that may pose threats to Canada”²¹, the Navy, in concert with the RCMP, DFO and Transport Canada, attempted to conduct integrated maritime security patrols on the west coast of Canada with enforcement officers from each department embarked in a frigate. Following the appropriate requests from the respective ministers for ALEA from the CF, the legal opinion offered by the JAG indicated that such patrols did not (under 273.6(2)) meet the two part test required by the NDA to allow CF involvement in routine law enforcement activities.²² Essentially the opinion offered was that though the security patrols were in the national interest, the request for ALEA was not in response to a specific matter but was anticipatory in nature. As such, these patrols, and other similar CF actions which attempt to enhance domestic security

²⁰ Capt(N) Laurence M. Hickey, “*Enhancing The Naval Mandate for Law Enforcement: Hot Pursuit or Hot Potato?*”, *Canadian Military Journal*, Vol 9, no. 3, 2009.

²¹ Privy Council Office, *Securing an Open Society* ..., 39.

²² *National Defence Act*, Art 273.6(2), <http://laws.justice.gc.ca/en/showtdm/cs/N-5> The Governor in Council, or the Minister on the request of the Minister of Public Safety and Emergency Preparedness or any other Minister, may issue directions authorizing the Canadian Forces to provide assistance in respect of any law enforcement matter if the Governor in Council or the Minister, as the case may be, considers that

(a) the assistance is in the national interest; and

(b) the matter cannot be effectively dealt with except with the assistance of the Canadian Forces.

. . . creates the perception that the CF will become actively engaged in routine law enforcement as opposed to remaining an available capability to assist law enforcement authorities in situations where there is a genuine need to ensure those authorities are able to effectively deal with circumstances that might otherwise overwhelm them.²³

The legal opinion (which was respected and such patrols were not subsequently conducted) also noted that the NDA requires the MND to personally exercise discretion (unless delegated to the CDS) in cases of CF ALEA and were such patrols authorized, the result would be that the MND's decision making responsibility would be effectively delegated to a Commanding Officer of a ship. Based on the wording of the NDA, such delegation of responsibility is not authorized. Finally, the opinion noted that the NSP and IPS were policy frameworks to guide and shape government decision making in response to the security challenges of the 21st century and were not, in and of themselves, legislative authorities for the conduct of CF and other governmental operations.²⁴ While illustrative of governmental policy, these documents do not provide the necessary independent legal authority for the RCMP, DFO or the CF to conduct activities outside their respective legislatively mandated areas of responsibility and thus make effective contributions to overall domestic security.

Thus it can be seen that while the NSP and IPS reflect the desire of the government to improve cooperative arrangements amongst departments and agencies in regards to domestic security, they do not displace the law and current mandated

²³ Office of the Judge Advocate General. "Analysis of DFO Request For CF Assistance During Proposed Maritime Security Patrols" 1459-13-36 (D Law/Ops 2-2) 6 September 2005, para 7.

²⁴ Office of the Judge Advocate General. *Analysis of DFO Request . . .*, para 10.

authorities. While there are valid and practical restrictions on the use of the CF in ALEA there must also be recognition that new ways must be sought for an effective domestic security process. In 2004 the Standing Senate Committee on National Security and Defence stated

. . . we believe that it is essential that Canada, a country of limited military capacity, find ways of squeezing the maximum out of the resources it *does* possess in the interest of countering all types of illicit behaviour on our coasts, particularly terrorism-oriented.²⁵

MARINE SECURITY

As can be seen in figure 1, the role of the Canadian Navy in contributing to marine security lies within current accepted doctrine and plays a key role in the constabulary functions of the navy.

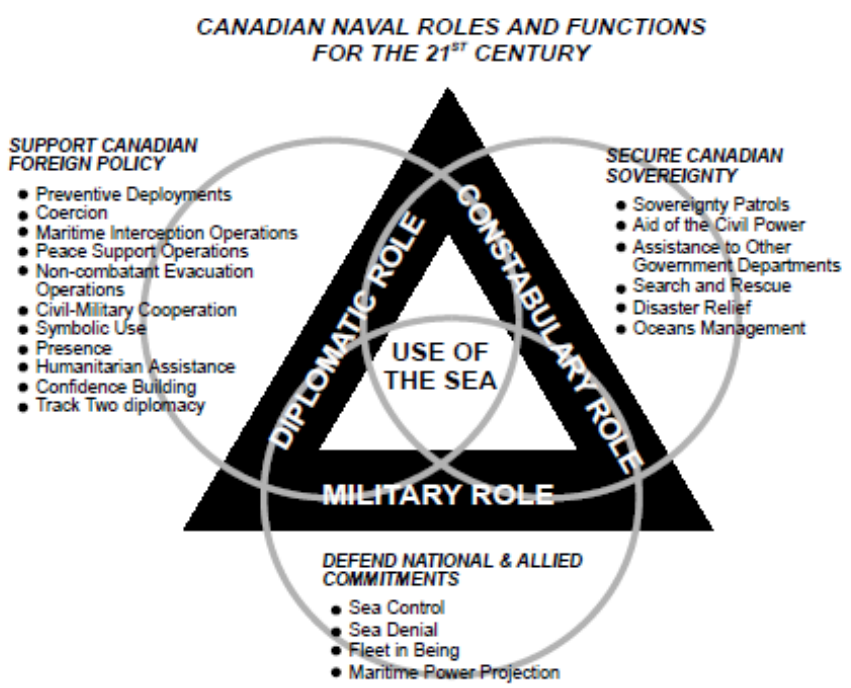


Figure 1

²⁵ Senate of Canada, Standing Senate Committee on National Security and Defence. “Canada’s Coastlines: The Longest Under-Defended Borders in the World, . . . 44.

Much of this constabulary role can be encompassed within the concept of domestic marine security, a mission fully in line with the stated Canada First Defence Strategy task of daily domestic and continental defence. Inclusive in this role is a requirement for the peacetime surveillance of Canadian waters which contributes to the role of countering illegal activities such as drug and migrant smuggling, natural resources depletion and environmental protection. Resultant products of these tasks is the monitoring and control of maritime areas of jurisdiction which also serves to protect Canadian sovereignty and provide effective and appropriate response to security incidents.

The NSP saw the formal statement of requirement to establish Marine Security Operations Centres (MSOC's) which include staff from the CBSA, Transport Canada, the RCMP, the Canadian Coast Guard and the CF, which would “. . . have the authority and capacity, through interagency staffing, to bring to bear all civilian and military resources necessary to detect, assess, and respond to a marine security threat.”²⁷ While this seems an obvious step as marine security involves more than just defence, there remains significant hurdles to realize the potential within the MSOC's as a result of substantial barriers involving the sharing of information between the involved agencies. The most immediate reason for this lack of sharing is legislative in nature and this has hampered the centres ability to effectively function as a truly inter-departmental organization.

The CCG, as a special operating agency of the Department of Fisheries and Oceans are mandated via article 41(1) of the *Oceans Act* to provide through a variety of services and programs “. . . for the safe, economical and efficient movement of ships in

²⁶ Canada. Department of National Defence, “*Leadmark: The Navy's Strategy for 2020*”, Ottawa: Directorate of Maritime Strategy, 2001

²⁷ Privy Council Office, *Securing an Open Society* ..., 38.

Canadian waters.”²⁸ Of note is the absence within this mandate for support to marine security. As such there exists no legal mechanism for the CCG and DFO to legally collect and share relevant marine security information. The Canadian Border Services Agency operates under the *Customs Act* which delineates even more stringent controls such that “. . . anything collected under the auspices of the Customs Act cannot be shared with any other department.”²⁹ As previously noted, the CF has a similarly restrictive mandate except where specifically authorized for ALEA. Thus to meet the explicit intent of the NSP and the CFDS and the implicit requirements of the purpose of the MSOC’s, there remains an outstanding need for legislative initiatives to ease the information sharing barriers or the CF will remain “. . . either legally prohibited from conducting specific operations, or insufficiently responsive to meet the requirements of the security environment.”³⁰

All above mentioned departments have their own surveillance programs and regimes to meet their respective mandates. The information gathered is fed into the MSOC’s while adhering to the necessary legal restrictions to its use. Once the information is synthesized and displayed (fusion) the next step is the ability to react to threats to Canada and most importantly the capacity to actually exercise authority within these waters and effectively counter the myriad issues which may cause a security concern. Ensuring Canadian waters are effectively monitored requires a quick response

²⁸ Department of Justice, *Oceans Act*, 1996, c.31, Article 41(1); available from http://laws.justice.gc.ca/en/showdoc/cs/O-2.4/bo-ga:s_3::bo-ga:l_1?page=3; Internet; accessed 31 March 2009.

²⁹ Chris Thatcher, “A Pan-Government Approach to Marine Security,” **Vanguard** (October/November 2006) [journal on-line]; available from <http://www.vanguardcanada.com/MSOCThatcher>; Internet; accessed 6 April 2009.

³⁰ Dr. Brad Gladman, *Enabling Appropriate Freedom ...*, 5.

with the appropriate asset, response which can be met by the CF, the RCMP or DFO (including CCG).

The constabulary functions of the CCG are restrictive and limited to environmental protection and enforcement. Fisheries Officers conduct fisheries protection and utilize CCG ships and through a MOU with the CF, naval vessels. During these patrols the fisheries officers are only armed with personal sidearm's and when with the CCG, have no authority (or ability) to use graduated force. Given that the RCMP has no offshore capable vessels, the navy is the only federal authority that can provide an armed vessel and crew. The current MOU between the CF and DFO is well out of date and provides no authority for the use of force by the CF in assistance to DFO; in effect the CF is largely a taxi service.³¹ As noted by Dr Brad Gladman, it “. . . no longer meets the requirements for responsiveness and effectiveness of the CF in domestic operations.³² Given the reality of the security environment post 9/11, all federal vessels patrolling domestic (and where necessary EEZ) waters should have the appropriate authority to respond in a fashion to enhance domestic security and meet the intent of the NSP and CFDS.

INCREASED EFFECTIVENESS

One bright point amongst the deficiencies of OGD interoperability is the ever increasing cooperation between the CF and the RCMP. Included amongst this are the following initiatives; the 1975 Order in Council which allows direct requests from the Commissioner of the RCMP to the Chief of the Defence Staff (CDS) when a disturbance

³¹ Department of National Defence. *Memorandum of Understanding between The Canadian Forces and the Department of Fisheries and Oceans Concerning Fisheries Protection Patrols*. 16 August 1993.

³² Dr. Brad Gladman, *Enabling Appropriate Freedom of Action . . .*, 26.

occurs or is likely to occur at a federal penitentiary and which is likely to be beyond the powers of the penitentiary staff to suppress or prevent³³ and the 1993 Canadian Forces Armed Assistance Directives which is the authoritative instrument for counter-terrorism response and allows for expeditious positioning of CF resources (now delegated from the CDS to the Commander of CANADA Command) in resolving terrorist incidents or other disturbances affecting the national interest.³⁴ Of note is that this only allows for the movement of CF assets and personnel, the employment for ALEA still must be done through, and in accordance with the provisions of NDA 273.6(2).

There are two recent MOU's which are in effect and are pursuant to NDA 273.6(2) and thus allow near seamless cooperation and interoperability between the CF and RCMP. The 2007 MOU concerning assistance by the CF to the RCMP in support of armed vessel escorts within Canadian territorial waters (normally nuclear powered vessels of the United States and others navies) and the 2008 MOU (renewed every two years) concerning CF assistance to the RCMP for counter-drug operations.³⁵ While encouraging in their delegation of authorities to operational level commanders there is still no similar standing authority for the provision of assistance to federal law enforcement authorities of

³³ Canada. Order in Council. P.C. 1975-131, *Assistance to Corrections Service Canada-Federal Penitentiaries*. 1975

³⁴ Canada. Order in Council. P.C. 1993-624, *Canadian Forces Armed Assistance Directions*. 1993.

³⁵ Canada. Department of National Defence. *Memorandum of Understanding between The Canadian Forces and The Royal Canadian Mounted Police Concerning The Provision of Assistance By the Canadian Forces in Support of The Royal Canadian Mounted Police in its Vessel Escort Mission*. 11 July 2007. ;

Canada. Department of National Defence. *Memorandum of Understanding between The Canadian Forces and The Royal Canadian Mounted Police Concerning The Provision of Assistance By the Canadian Forces in Support of The Royal Canadian Mounted Police in its Counter-Narcotics Mission*. 6 January 2008.

a general nature, authority which would greatly facilitate the execution by all departments of their respective mandates.

CONCLUSION

To effectively counter the variety of forces which threaten to put at risk the citizens and the nation there must be a more streamlined and effective synergy at all levels of government and within government itself. This paper has shown the barriers which hamper the Canadian Forces in its ability to more effectively enhance Canada's domestic security strategies. In many cases there is a requirement to allow the CF the legal authority to assist or directly enforce selected federal statutes on a routine basis, either in a supporting role to an OGD or in a direct manner on behalf of the government. In this manner if CF assets detected violations of Canadian law while in the conduct of defence missions, they would have the necessary legislative authorities to act upon those discoveries. The National Security Policy gave all federal departments and organizations their marching orders, what it did not do was allow sufficient freedom of manoeuvre within the existing legislative authorities or delineate the requirement for new authorities to allow effective coordination and cooperation.

Since the events of 9/11 there has been a myriad of innovative solutions to try and bring together the disparate organizations that each own a piece of the puzzle called domestic security. The most difficult hurdle to cross has been that most of these organizations have not historically shared mission areas, are subject to differing priorities and have unique and profound cultures and methodologies. Rather than continue on a

parochial road within federal departments which have often been uncoordinated and ineffective, there remains a requirement for integrated and efficient responses to any and all domestic crises. The current limitations due to capabilities, restricted mandates or existing legislation run counter to an effective whole of government response. There remains an explicit obligation by all involved, and most importantly the federal government to ensure that the existing walls which hamper cooperation and integration are torn down. It can only be then that Canada will truly be in a position where it can justifiably state that it is ready to “. . . pursue our national security interests and to be relentless in the protection of our sovereignty and our society in the face of these new threats.”³⁶

³⁶ Privy Council Office, *Securing an Open Society ...*, 1.

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