

Military Responses and Capabilities in Canada's Domestic Context Post 9/11

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If the terrorist attacks of 9/11 on New York City and Washington D.C. were a rude wake-up call for potential security threats to continental North America, the reaction on part of Canada has been measured and typically cautious. The acts were of course immediately condemned and temporary refuge given to thousands of travellers stranded by closure of airspace over the United States until declared safe. The federal government and most Canadians extended sympathy and offers of assistance to their closest neighbour and main trading partner. Close cultural and economic ties between the two countries ensured as much. Unease, however, set in about the tough talk and next progression characterized by President George Bush's now famous "You're either with us or against us" speech. Canada's then Liberal prime minister decided not to send the Canadian military wholeheartedly into the invasion of Iraq, though deployment of Canadian troops in Afghanistan duly became a major commitment. Reassuring the United States of Canada's reliability and loyalty as a partner was imperative.¹ To this end, the federal government tightened up financial restrictions on potential fund-raising by identified terrorist groups, introduced new legislation and bureaucratic structures focused on security issues, and better coordinated intelligence gathering and information sharing activities across government agencies and with principal allies. Canadians convinced themselves that any possibility of a 9/11 scale

¹ Bernard James Brister, *The Same Yet Different: Continuity and Change in the Canada-United States Post 9/11 Security Relationship*, PhD dissertation (Kingston: Royal Military College of Canada, 2009).

terrorist attack on Canada was unlikely, and even if one was planned or happened, the effect would be minimized by the pro-active measures of authorities. Selected use of security certificates and arrest of home grown Islamic terrorists, the so-called Toronto 18, apparently showed that the police and intelligence agents were up to the task. The threat of terrorism, if not eliminated, could at least be managed and thwarted when required to provide a reasonable level of safety to the Canadian state and society. Ten years on, the course of events has shown the chosen policy decisions to have been mostly sound. Though the highest leadership of Al Qaeda remain at large and defiant as ever in their stated resolve to attack the West, Canada has not yet experienced a major terrorist incident since 9/11.

Whether such a terrorist incident is only a matter of time or represents an ever more remote likelihood, the expectations on Canada's armed forces remain essentially the same. The military is principally a tool of the government in power, most particularly the prime minister and minister of national defence, to be organized and ready to provide armed violence if and when deemed necessary in the public interest and toward state ends. It is trained and equipped for a range of contingencies from humanitarian assistance up to major war fighting. Deployment of the Canadian Forces on operational missions happens both outside and inside Canada, even though international engagement around the globe naturally gets most attention at any given time.² Still, in the last instance, the primary purpose of the Canadian military includes defence of Canada from external attack. Recognizably, the relative size of the Canadian Forces and available resources puts certain limits on what can realistically be achieved in this regard without too much reliance on the United States, a superpower with a nuclear arsenal and large, sophisticated standing armed forces.³ Canada, in the end, maintains discretionary armed forces just enough to do the government's bidding, keep credibility with the Americans, and provide some measure of insurance against worst case scenarios on the domestic scene. That is what most informed Canadians see from the small military. The prospect of significant terrorist actions and the aftermath of any such acts on Canadian soil involve the Canadian Forces to some extent on numerous

² Robert W. Murray and John McCoy, "From Middle Power to Peacebuilder: The Use of the Canadian Forces in Modern Canadian Foreign Policy", *American Review of Canadian Studies* 40(Summer 2010), p. 178.

³ Elinor C. Sloan, *Security and Defence in the Terrorist Era: Canada and the United States Homeland* (Montreal and Kingston: McGill-Queen's University Press, 2010).

levels. The proper role of the military in relation to Canadian society and polity guides what can be done in times of emergency and crisis.

Is the Canadian military better prepared now for major security threats to North America and Canada than ten years ago? What unique capabilities could the Canadian Forces furnish to thwart and respond to terrorist attacks on Canadian targets? Does the level of effort reasonably balance risk with other concerns of the Canadian populace in regard to the military? Though answers to these questions are far from clear-cut and open to debate, the federal government and the Canadian Forces have been serious about the nature of the threat and responded advisedly in a measured fashion. The Canadian Forces and Department of National Defence boast specialized capabilities available nowhere else in the federal inventory. True, whatever one does in terms of emergency preparedness is never enough if and when the day of reckoning actually comes. In this sense, terrorism presents a dilemma for the Canadian Forces: the smallish military has to devote resources to core activities that undeniably encompasses safety of the Canadian state from armed attack, yet in the larger scheme of deployment and readiness, domestic use of the Canadian Forces has taken lesser priority as little more than a sideline to the military's real business, namely going abroad on international operations. Sustained operations in Afghanistan have reinforced this view.

Such thinking, however, is badly mistaken. In fact, domestic operations closer to home are equally or more important, especially given a still existent terrorist threat. As long as hemisphere defence and homeland (writ continental) security continue to exercise opinion in the United States, Canada will be engaged on the military side, if only to have a voice in the matter. The legal framework for how the Canadian Forces are actually used inside Canada, while adequate enough in normal times, still needs further reconsideration and refinement to meet every eventuality. Neither too much nor too little should be assumed on the part of Canada's military in relation to demonstrable terrorist threats against North America. The circumstances of the time shall determine the appropriateness of response.

Military First Responders

The Canadian Forces possesses inherent capacity within Canada to deal with terrorist threats as part of broader government efforts to improve preparedness in the event of emergency or crisis. These material and personnel resources augment rather than duplicate existing arrangements in the civilian sphere of emergency preparedness at the national, provincial, territorial, and municipal levels. The initial answer to any terrorist act is by necessity civilian, whether on the part of police forces, emergency services such as firefighters and paramedics, or the requests of responsible political and civic leaders.⁴ The Canadian military awaits tasking and orders through the established chain of command once procedures are followed and decisions made to deploy military assets. Given the almost instant nature of present day communications, the timeframe for analysis of the problem and resulting decision-making can happen either very quickly or deliberately slower. In the interim, the military offers advice, expertise, and if asked recommendations.

Arrival of military elements on the scene of action puts the Canadian Forces amongst the first responders. At that stage, the military contribution could take the form of military units or forces with specialized skills and training, routine patrol, surveillance, and interception duties, or provision of troops for general manpower purposes to secure afflicted areas, maintain order, and start recovery operations. Domestically, the Canadian Forces performs, in most cases, a supporting role to another agency or department that takes the lead in responding to a terrorist-type incident.⁵ Nevertheless, troops and units so deployed always owe obedience to immediate military superiors from whom they receive orders directly. The military character is preserved.

Canada's military maintains several dedicated units suited to activities and work connected with countering terrorism and mitigating its effects. The highly secretive Joint Task Force 2, whose formation pre-dates the terrorist attacks of 9/11, transferred the domestic counter-terrorism armed assault function from the Royal Canadian

⁴ B-GJ-005-308/FP-010, *Inter-Agency Handbook for Domestic Operations* (15 May 2005): http://www.cfd-cdf.forces.gc.ca/cfwc-cgfc/Index/JD/Pub_Eng/J3%20Publications/CF%20Joint%20Doctrine%20-%20B-GJ-005-308%20FP-010%20-%20Inter%20Agency%20HP%20-%20Dom%20-%20EN.pdf.

⁵ B-GJ-005-300/FP-001, *CFJP 3.0 Operations* (July 2010), p. 6-1: http://www.cfd-cdf.forces.gc.ca/cfwc-cgfc/Index/JD/Pub_Eng/J3%20Publications/CFJP_3_0_Operations_En_Web.pdf.

Mounted Police to the Department of National Defence.⁶ Members are recruited from the larger military and trained to military standards common to special forces in other western militaries. Dwyer Hill, near Ottawa, serves as the main training base, while Joint Task Force 2 nominally comes under the Canadian Special Operations Forces Command for administrative and operational purposes. Within Joint Task Force 2, personnel organized into teams specially trained in counter terrorism techniques are kept ready to move anywhere in the country once a request is received from appropriate civilian authorities.⁷ The black clad members of Joint Task Force 2 are capable of delivery by ground, helicopter insertion, and small boat. Tactically, they can neutralize terrorists holding hostages in buildings or ground-based aircraft and come under the on-site police commander or similar authority when so deployed. Joint Task Force 2 provides Canada with a small, mobile, professionally-trained force when armed violence is required against known terrorists. Also under the auspices of the Canadian Forces Special Operations Forces Command is the Canadian Joint Incident Response Unit, which was created in 2007 to enhance Canada's first responder defence against nuclear, chemical, and biological threats posed by terrorists.⁸ The Canadian Joint Incident Response Unit resides in Trenton where specially packaged instruments and equipment to measure, assess, and counter the effects of such forms of attack can be airlifted to points of contamination. It represents the operational arm of a very specialized capability within the federal government that surpasses that available at other public levels and even related private sectors such as the nuclear industry. Additional in-depth training of first responders and basic research is undertaken at the Counter-Terrorism Technology Centre, a part of the Defence Research and Development Canada establishment at Suffield, Alberta.⁹ The work complements advanced research done under sponsorship at universities or through contracts with

⁶ David Pugliese, *Canada's Secret Commandos: The Unauthorized Story of Joint Task Force Two* (Ottawa: Esprit de Corps Books, 2002).

⁷ *Canadian Special Operations Forces Command: An Overview* (Ottawa: Department of National Defence, 2008): <http://www.cansofcom.forces.gc.ca/pub/doc/ove-ape-eng.pdf>; D. Michael Day and Bernd Horn, "Canadian Special Operations Command: The Maturation of a National Capability", *Canadian Military Journal* 10:4(Autumn 2010), pp. 69-74: <http://www.journal.forces.gc.ca/vol10/no4/doc/12-day%20horn-eng.pdf>.

⁸ DAOD 8006-0, "Chemical, Biological, Radiological and Nuclear Defence", 25 June 2009; David Pugliese, "Canada to Expand Emergency Response Unit", *Defense News* 22(8 June 2007), p. 14.

⁹ Counter-Terrorism Technology Centre web-site: http://www.suffield.drdc-rddc.gc.ca/CTTC-CTA/index_eng.html.

private firms. These specialized capabilities residing in the Canadian Forces represent the sharp end of the military first responder both in terms of armed action and expertise.

Conventional military units can also encounter terrorists and terrorist activity in the course of routine operations and special tasking looking for such individuals. The use of civilian airliners hijacked by terrorists as flying bombs on pre-chosen commercial and political targets in the 9/11 attacks alerted authorities to such a possibility in Canada. CF-18 fighter jets instituted roaming patrols of Canadian airspace over major urban areas and points of vulnerability such as nuclear power plants as part of an American operation known as "Noble Eagle".¹⁰ Once any hijacked aircraft was identified as posing a threat, pilots would await shoot-down authority from the prime minister or minister of national defence to destroy the plane accepting that civilian lives would be lost. Although still a hypothetical scenario in Canada's case, the basic procedures and requirement for political approval prior to military action essentially stands the same today. Military pilots would be ordered to shoot down a civilian airliner under terrorist control in the last resort. Deployment of air, sea, and air defence forces during the Vancouver Olympics and Toronto G20 Summit during 2010 addressed the same contingency should terrorists strike. High value principals were to be protected first and the Canadians who resided in those cities and urban areas second. Any military action, coordinated through inter-agency coordination centres, was ultimately a strategic political decision. The Canadian Force's tracking and interception of an unreporting ship carrying Tamil migrants and suspected terrorists toward the British Columbia coast represented yet another example of military forces used in a first responder capacity.¹¹ Although representatives from the Royal Canadian Mounted Police and Canadian Border Services Agency were present to effect arrest and detention, a warship carried the intimidating firepower to ensure the vessel stopped and obeyed Canadian directions; indeed, the small boat boarding teams tasked to seize and secure the vessel were military from the warship. The sea and air approaches to

¹⁰ Glen Butler, "Noble Eagle is Not Average Operation", *United States Naval Institute Proceedings* 129(August 2003), p. 49.

¹¹ Paul Pendergast, "Domestic Stories: HMCS Regina intercepts migrant vessel, Canadian Navy web-site news: http://www.navy.forces.gc.ca/cms/3/3-a_eng.asp?category=7&id=761; Michael McWhinnie, "Migrant Vessel escorted to CFB Esquimalt", *The Maple Leaf* 13:28(15 September 2010), pp. 1-2: http://www.army.forces.gc.ca/lfwa/what_is_jtfw.asp.

Canada from which terrorists might enter are regularly patrolled and screened by electronic and satellite means using military assets. The security of Canada and greater North America from terrorist threat is tied to the general military capabilities at the disposal of the government within the country.

The total number of military personnel and units available for tasking, in fact, is hardly inconsequential. At any one time, the vast majority of the 65,000 strong regular Canadian Forces are resident inside the country engaged in training, garrison, headquarters, and administrative duties. In keeping with section 33 of the National Defence Act, all regular force members "are at all times liable to perform any lawful duty" when so ordered.¹² In other words, they are subject to deployment as the government and chain of command sees fit for domestic purposes. In the event of a terrorist attack or serious national emergency, every available soldier and officer could be put on active service in formed units or individually as warranted. A further 27,000 personnel in the primary reserve are trained to certain levels of proficiency, whilst 11-15,000 former military and retired personnel are kept on the books in the supplementary reserve. Call-up for duty on domestic operations within Canada is obligatory for primary reserve members, unlike international operations which are largely by the choice of the individual reservist.¹³ The federal government and various provinces have legislation which protects, to a greater or lesser degree, the jobs of reservists called out by the military for such service. Regular and reserve units so mobilized for terrorist-related domestic operations represent a significant manpower pool under military organization and control.¹⁴ Troops could establish perimeters around affected areas, assist the population, and initiate rehabilitation. The military possesses the advantage of its own communications networks, military engineering assets, medical and health services, as well as moveable platforms for temporary power generation, clean water, and feeding. The 2010 flooding in Newfoundland after Hurricane Igor hit shore showed how rapidly troops could be on the scene and scale of

¹² National Defence Act, R.S.C. 1985, c. N-5, s. 33.

¹³ B.G. Derbach, "*Citizen Soldiers*": *Support to Domestic Operations*, research paper (Toronto: Canadian Forces College, 2006), p. 10; Preface, in Robert Martyn (ed.), *Domestic Operations: Canadian Army Perspectives* (Toronto: 33 Canadian Brigade Group, 2005), p. V:
http://armyapp.forces.gc.ca/ael/pubs/domestic_operations_en.pdf.

¹⁴ Michael A. Rostek, "Developing a Surge Capacity for Canadian Forces", *Defence and Peace Economics* 17(October 2006), p. 430.

likely assistance.¹⁵ Military first responders, therefore, bring a great deal of support in the aftermath of any major terrorist attack. A significant military effort would be likely and probably unprecedented on the part of the Canadian Forces.

Command and Control

Since 9/11, a key area of concern has been organizational improvements to the structure of command and control governing the military, specifically affecting the conduct of continental and domestic operations in light of potential terrorist threats. Those changes have been made at the highest levels working downward. Wherever possible, clear lines of authority and responsibility pertain. The overriding principle is informed civilian decision-making based on the best available appreciations of the situation aided by military advice and intelligence-gathering. The prime minister and minister of national defence, in particular, are instrumental in this process because they ultimately decide what action is appropriate; the chief of defence staff in turn directs what resources are immediately available to carry out the decisions and policy of the government. Strategic oversight, planning of operations, and monitoring rests with a single command headquarters with purview over Canada and continental North America, which considers operational ramifications of requests for assistance and issues orders to subordinate commanders of task forces and formations where appropriate.¹⁶ The contingency planning done by Canada Command contemplates the possibility of one or more significant terrorist incidents occurring inside the country and has exercised command arrangements accordingly. The seemingly orderly chain of command, however, still stands to be tested under the shock and confusion of an actual event wherein the sway of personalities and bureaucratic inertia hold fast. Whether those involved rise to the occasion and allow command and control arrangements to work as envisioned remains hard to predict.

¹⁵ DND News Release NR 10.04, *The Canadian Forces Complete Relief Operations in Newfoundland and Labrador* (6 October 2010): <http://www.forces.gc.ca/site/news-nouvelles/news-nouvelles-eng.asp?cat=02&id=3590>; The previous 1997 Manitoba floods entailed a major domestic operation that mobilized over 8,500 troops to assist: Walter Semianiw, "Operation Assistance - aid to the civil power operations", *Peacekeeping & International Relations* 27(May/June 1998), pp. 7-10.

¹⁶ B-GJ-005-300/FP-001, *CFJP 3.0 Operations* (July 2010), p. 6-4: http://www.cfd-cdf.forces.gc.ca/cfwc-cgfc/Index/JD/Pub_Eng/J3%20Publications/CFJP_3_0_Operations_En_Web.pdf.

The national command authority for responding to terrorist threat is centred in the nation's capitol city Ottawa. Most particularly, one person, the prime minister, exercises under Canada's parliamentary system overwhelming power to commit military forces to operations, with or without the concurrence of ministers in cabinet and elected members of parliament from the ruling and opposition political parties. The minister of national defence and minister of public safety are the next important political figures on questions related to national security and terrorism by virtue of their departmental portfolios, though other ministers and bureaucrats are certainly involved.¹⁷ A prime minister may choose to consult with them or simply direct once deciding on the employment of military forces and national police in response to identified terrorist threats or actions in Canada. A war room operating on a 24/7 basis, the national command centre, fuses available information from military and civilian feeds in a central location and provides meeting space for senior decision makers. Liaison with other government departments and agencies is also actively maintained during times of crisis. The national command centre is at the disposal of the prime minister and the minister of national defence for real-time situational awareness and consultation with senior military leadership. Requests for assistance from other government departments and provincial and territorial authorities are channelled through the minister of national defence. Though a permanent fixture, the national command centre could also be used as a crisis management location within the military confines of the higher national defence headquarters. Routine, contingency, and emergency matters affecting Canada are handled by a standing military strategic headquarters, Canada Command, also located in Ottawa.

Canada Command provides the main command, control, and coordination functions to operationalize a military response within a common government approach to any terrorist threat against Canada and North America. As part of efforts to transform and rationalize the Canadian Forces, the separate command was created in 2006 to oversee domestic and continental operations.¹⁸ A single commander, thus,

¹⁷ B-GJ-005-308/FP-010, *Inter-Agency Handbook for Domestic Operations* (15 May 2005): http://www.cfd-cdf.forces.gc.ca/cfwc-cgfc/Index/JD/Pub_Eng/J3%20Publications/CF%20Joint%20Doctrine%20-%20B-GJ-005-308%20FP-010%20-%20Inter%20Agency%20HP%20-%20Dom%20-%20EN.pdf.

¹⁸ Backgrounder BG 10.001, *Canada Command* (12 January 2010): <http://www.canadacom.forces.gc.ca/nr-sp/bg-do/10-001-eng.asp>

became the responsible authority for directing, planning, and executing routine and contingency operations with requisite staffs as required. Canada and North America were henceforth treated as a single geographical theatre of operations for the purposes of command and control.¹⁹ Canada Command first receives requests from civilian authorities for assistance, stays connected with other government departments, provincial and territorial authorities, and police forces, and provides an established point of interaction with similar American commands in regard to any operations performed by militaries in the two countries and across borders. Six regional joint task forces throughout Canada fall under Canada Command: North, Pacific, West, Central, East, and Atlantic.²⁰ This framework gives extensive and continuous coverage of the country to anticipate developing threats and marshal suitable military forces in responding. Canada Command, which is still evolving as the military institution itself slowly changes, has encountered staffing challenges and notably must rely on other parts of the Canadian Forces to furnish actual military forces beyond those specifically earmarked for domestic operations.²¹ In this respect, the environmental chiefs remain the principal force generators for land, sea, and air forces in the Canadian context. The multitude of headquarters and staffs in the small armed forces without further rationalization appears overdone to some commentators inside and outside national defence. Nonetheless, Canada Command's mandate and operational function in respect to countering terrorist threats against Canada with available military means has been firmly established.

Below the levels of Canada Command and the regional joint task forces, command and control essentially rests on the basic structure of the Canadian Forces and dispersion of regular force and reserve units in Canada. This fact is both a strength and a weakness should a terrorist threat or incident be faced. A military presence exists in most urban centres and selected rural settings by way of military bases, installations, armouries, and naval reserve divisions. Consequently, some military forces should be reasonably nearby an affected area or event because of

¹⁹ *Canada Command Direction for Domestic Operations* (Ottawa: Canada Command, 2006).

²⁰ K.L. Woiden, *Domestic Operations in Canada: The Relevance and Applicability of Mission Command*, research paper (Toronto: Canadian Forces College, 2007), pp. 10-11; Joint Task Force West web-site: http://www.army.forces.gc.ca/lfwa/what_is_jtfw.asp.

²¹ B-GJ-005-300/FP-001, *CFJP 3.0 Operations* (July 2010), p. 6-7: http://www.cfd-cdf.forces.gc.ca/cfwc-cgfc/Index/JD/Pub_Eng/J3%20Publications/CFJP_3_0_Operations_En_Web.pdf.

decentralization. Whether a sufficient number of the right troops are capable of being ready in a timely manner is another question. Past decisions on the basis of cost and policy have moved military units, created fewer super base concentrations, and disbanded other longstanding formations. Cities and towns without resident military forces could very well have to wait for readiness and mobilization longer than if regular and reserve forces were on the spot. Calgary, for example, would require a road convoy from Edmonton, the nearest permanent military base in Alberta. Military-owned facilities also have the advantage of being potential command and control centres or hubs in times of terrorist threat or crisis. Of course, temporary headquarters could readily be established in public buildings, office buildings, and warehouses given the right equipment, power supply, and communications connections. It would also make sense to co-locate with any police forces or agencies taking a lead. Whatever the military response, flexibility would be a key factor in maintaining command and control over deployed forces at the lowest levels. The can-do attitude of the Canadian Forces could be relied upon to make arrangements work in adversity in line with training and preparation.

Coordination and Liaison with the Americans

The close relationship Canada has with the United States as a neighbour, economic trading partner, and military ally means that any terrorist threat or attack against continental North America invites a shared military response from the two countries. Indeed, it is hard to foresee Canada ever going it alone on this score. At the very least, the security-conscious Americans would act out of self-interest to protect themselves and by extension Canadians from known terrorist acts. Multiple points of contact between Canada and the United States run across all political, bureaucratic, military, and business levels, through formal and informal channels.²² In the hours after 9/11, Canada's prime minister phoned the US president to offer Canada's unreserved assistance in that country's time of need. If the situation was reversed, no doubt the US president and administration officials could be counted to do the same should Canada confront a major terrorist act or incident. In spite of minor differences, relations are

²² Dwight N. Mason, "The Future of Canadian-US Defense Relations", *American Review of Canadian Studies* 33(Spring 2003), pp. 80-81.

generally beyond good and cordial. The Canadian Forces have excellent working relationships with the American armed services, to the point of inter-operability and cross-exchange postings.²³ In turn, Canadian defence policy relies on several important bi-lateral and alliance cooperative military bodies for the provision of national and continental defence. The United States is central to Canada's security from external threat, whether direct military or terrorist.

In general, the United States takes Canada for granted as a safe and prosperous neighbouring country from which no direct threat can be envisioned. Americans spend far more time worrying about the Mexican border and illegal immigration by air and sea from other countries than the Canadian side of the border. Canadian authorities have addressed some of the supposed gaps that might allow entry of terrorists into the United States from Canada. In fact, that situation arguably has received more attention than the possibility of a terrorist strike in Canada, which many Canadians believe will never happen or least probably not be a high risk.²⁴ Even if a terrorist incident occurred, the positive view of Canada would likely not change since both countries would then be expressly targets of terrorist attack. Indeed, the relationship could very well be strengthened and closer if Canada became a victim like the United States ten years ago. On the political and military sides, the minister of national defence would soon talk with the secretary of defense, either after some exchange between the prime minister and president or on their own initiative. Offers of help and assistance could be forthcoming, which might even include movement of certain American military forces onto Canadian soil.²⁵ After all, Canada sent naval ships and forces to the US Gulf Coast to assist after Hurricane Katrina on the basis of a phone call. The intent remains benign and helpful rather than hostile. Most Canadians would understand and appreciate the gesture, just as Americans thanked Canada for its efforts after 9/11: true friends help each other in time of need. A significant terrorist incident in Canada strengthens the friendship bonds and relations between militaries in the two countries because they would be thrust into working together to a common purpose.

²³ David A. Rubin, "US/Canada Trade Problems: Excellent Relations Between Canadian and US Armed Forces", *Debt Cubed* 25(January-February 2010), pp. 14-15.

²⁴ Veronica Kitchen and Karthika Sasikumar, "Canada (En)counters Terrorism: U.S.-Canada Relations and Counter-terrorism Policy", *Terrorism & Political Violence* 21(2009), p. 160.

²⁵ Tracy Thibault, "The Security and Prosperity Partnership: Will Canada Gain Security and Prosperity at the Expense of Sovereignty and Will It Ultimately Lead to the Militarization of Canada?", *Canadian Military Journal* 10:1(2009), p. 27: <http://www.journal.forces.gc.ca/vol10/no1/doc/05-thibault-eng.pdf>

The hard edge of the military working relationship of necessity occurs in headquarters, shared planning staffs, and liaison cells populated by military members from Canada and the United States. The first level is the military attachés and staff officers attached to embassies, consulates, and special programmes; the second level is the officers on reciprocal postings and secondments at operational commands and training establishments in the other military; the third level is Canadian military members part of staffs in joint or bi-lateral commands either fully integrated or liaison. This short description probably over-simplifies since the relationship between the Canadian and American militaries is too complex to capture the actual state of affairs. It is built as much on personal relationships and familiarity as the formal organizational arrangements and structures that exist.²⁶ Canada Command deals directly with Northern Command, the American military headquarters that exercises responsibility for continental defence and homeland security. The North American Aerospace Defense Command (NORAD), on the other hand, is a historical bi-lateral defence organization that focuses on air defence and surveillance.²⁷ Both commands are located near each other in Colorado for the purposes of coordination. Canada maintains responsibility for Canadian airspace and keeps military members at US locations to participate in the day-to-day running of the commands. A suspected terrorist threat from air or sea would go through NORAD, Northern Command, and Canada Command for political and military decision in Washington and Ottawa. The existing arrangements are exceedingly close and aim to achieve best possible coordination and liaison between the two countries in the military sphere.

Beyond self-interest and close relations, the obligation of the United States to come to Canada's assistance in the event of external attack also rests in military alliance commitments. Article 5 of the North Atlantic Treaty stipulates that an attack on any member of the North Atlantic Treaty Organization "shall be considered an attack against them all" and the right of collective self-defence exercised to take "such action as

²⁶ Joseph T. Jockel and Joel J. Sokolsky, "Canada and NATO: Keeping Ottawa in, expenses down, criticism out...and the country secure", *International Journal* 64(Spring 2009), p. 318.

²⁷ Victor E. Renuart, Jr., "The Enduring Value of NORAD", *JFQ: Joint Force Quarterly* 54(3rd Quarter 2009), p. 95:
<https://digitalndulibrary.ndu.edu/cdm4/document.php?CISOROOT=/ndupress&CISOPTR=21255&REC=7>
; Joseph T. Jockel, *Canada in NORAD, 1957-2007: A History* (Montreal and Kingston: McGill-Queen's University Press, 2007).

it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area."²⁸ In effect, the United States would treat an external attack on Canada or any other NATO member as an attack upon itself and respond accordingly. The line between military attack, as Article 5 originally envisioned, and terrorism has become somewhat blurred over the last decade. After 9/11, President George Bush Jr. invoked Article 5 to justify military measures on the grounds of self-defence. Thus, if a terrorist attack against Canada could be traced back to a particular country, the United States might rationalize taking military action against that nation or group within on Canada's behalf. Alternatively, Canada could take military action itself or seek a collective military response sanctioned by the United Nations security council. State-sanctioned terrorism thereby would not be immune from military consequences.

Legal Limitations to Domestic Employment

The deployment of the Canadian Forces on domestic operations related to terrorism or terrorist acts perpetrated on Canadian soil must respect certain restrictions and limits under Canadian law and statute. Canada's inherited British tradition of parliamentary democracy contains a strong suspicion of standing armed forces as well as the costs and liability associated with them. Use of the military on home territory is considered exceptional, usually for a defined period of time and particular purpose. Few Canadians want a military-police state based on the pretence of countering terrorism. The fundamental nature of Canadian society, political democracy, and rights of Canadian citizens are stronger than the need to protect them at any cost. The military, therefore, takes into account issues of privacy, use of force, as well as safeguarding persons and property in the course of planning and operations. The Canadian Forces, officially, always acts in accordance with interpretations of existing law as to the legal protections and obligations afforded individual military members.²⁹ That said, the law is not static, so a significant terrorist incident in Canada involving the military might well precipitate changes to how such matters are considered in future.

²⁸ North Atlantic Treaty (April 4, 1949), Article 5.

²⁹ B-LG-007-000/AF-001, *Domestic Operations - Collection of Documents* (1 March 2007): <http://www.cda-acd.forces.gc.ca/cfm/cdmfc/doc/CollectionofDocumentsonDomesticOperations.pdf>.

Defence-related intelligence agencies and the military are expressly prohibited from collecting information and intelligence on Canadian citizens and permanent residents inside Canada. The Communications Security Establishment, which operates under the auspices of the Department of National Defence, provides cryptology and signals intelligence gathering capacity for national defence and foreign purposes.³⁰ It maintains close contacts with similar foreign intelligence services and has actively participated in the "global war on terror" coined by the Americans. The National Defence Act stipulates that the Communications Security Establishment in its activities "not be directed at Canadians or any person in Canada" and "protect the privacy of Canadians in the use and retention of intercepted information."³¹ Exemptions, however, may be made should the minister of national defence deem such action in the national interest, for a defined period of time. A commissioner, always a retired judge, is appointed to review the operation of the Communications Security Establishment and any exemptions for full compliance with Canadian law.³² The cryptology and signals intelligence agency, though intimately connected with anti-terrorism work abroad as part of national defence, cannot readily pass along messages and interceptions connected with Canadians, either to the military or civilian agencies and the police. Moreover, the military may not gather and retain information and intelligence on Canadians during domestic operations as a normal course of business. The military response to terrorist threats and acts inside Canada, therefore, lies within definite legal bounds in respect to information and privacy.

The potential and real use of force during domestic operations related to terrorism also has numerous legal ramifications. In Canada, military members have neither the status of peace officers nor powers of arrest and detention beyond those of any Canadian citizen.³³ Should another Canadian be killed or seriously injured through military action, officers and soldiers could become liable to prosecution or civil remedies before the courts. To avoid such possibilities, troops deployed on domestic operations almost always work in formed units and groups under the command and

³⁰ Communications Security Establishment web-site: <http://www.cse-cst.gc.ca/index-eng.html>.

³¹ National Defence Act, R.S.C. 1985, c. N-5, s. 273.64(2).

³² Communications Security Establishment Commissioner web-site: http://www.ocsec-bcst.gc.ca/index_e.php.

³³ B-LG-007-000/AF-001, *Domestic Operations - Collection of Documents* (1 March 2007): <http://www.cda-acd.forces.gc.ca/cfm/cdmfc/doc/CollectionofDocumentsonDomesticOperations.pdf>.

orders of superior officers. Armed violence, when necessary, becomes a collective responsibility. Typically, issued rules of engagement govern when use of force may be used and under what conditions.³⁴ For the purposes of domestic operations, rules of engagement are approved by the chief of defence staff and passed down through Canada Command to subordinate formations and units. In general, military planners and soldiers are expected to deploy the minimum force so authorized depending upon the situation, though specific rules of engagement may allow both deadly and non-deadly means.³⁵ Armed violence with weapons could be reasonable and appropriate to stop identified terrorists from acting on the moment, while crowd control and protection of private property with no threat to life would likely call for lesser scale measures.³⁶ The legal consequences of military action inside Canada are significant and nuanced when involving any use of force. Terrorist threat or act does not alter the basic requirement to comply with Canadian law and the policy that derives from it.

Terrorists plainly target civilians and civilian locales for political statement and psychological effect. The indirect results outweigh actual deaths and physical destruction, primarily through shock and outrage. Military members, like every Canadian citizen, possess the inherent right to self-defence under the Criminal Code of Canada when faced with imminent threat perceived to be dangerous to one's own person and life.³⁷ Use of force in self-defence is justified as long as reasonable and no more than necessary in the given situation. Invoking self-defence, however, becomes problematical in respect to protection of other non-military persons and property. In either case, military members are prevented from using deadly or lethal force as a matter of legal requirement and Canadian Forces policy, especially in the domestic context.³⁸ Thus, the paradox exists that the military has a duty to protect Canadian civilians from terrorist action, though inside Canada, the extent of force that can

³⁴ CFJP-5.1(B-GJ-005-501/FP-001), *Use of Force for CF Operations* (August 2008).

³⁵ T.J. Grant, "Training on Rules of Engagement in Domestic Operations", in Robert Martyn (ed.), *Domestic Operations: Canadian Army Perspectives* (Toronto: 33 Canadian Brigade Group, 2005), p. 79 : http://armyapp.forces.gc.ca/ael/pubs/domestic_operations_en.pdf.

³⁶ B-GJ-005-307/FP-090, *Crowd Confrontation* (31 May 2003): http://www.cfd-cdf.forces.gc.ca/cfwc-cgfc/Index/JD/Pub_Eng/J3%20Publications/CF%20Joint%20Doctrine%20-%20B-GJ-005-307%20FP-090%20-%20Crowd%20Control%20Ops%20-%20EN.pdf.

³⁷ Criminal Code of Canada, R.S.C. 1985, c. C-46, s. 34(1).

³⁸ B-GJ-005-314/FP-000, *CF Joint Force Protection* (22 November 2006), s. 103: http://www.cfd-cdf.forces.gc.ca/cfwc-cgfc/Index/JD/Pub_Eng/J3%20Publications/CF%20Joint%20Doctrine%20-%20B-GJ-005-314%20FP-000%20-%20CF%20FP%20Doctrine%20-%20EN.pdf.

reasonably be used is strictly circumscribed for troops other than special units like Joint Task Force 2. Indeed, the police have more legal authority under the law to respond with armed force deploying weapons that might cause a lethal result, notwithstanding that police capability might be far less than the terrorists or other armed groups. Canada primarily treats terrorists as armed criminals subject to arrest rather than urban guerrillas or freedom fighters engaged in armed struggle against a political state or way of life. The military response can only be tailored to the degree of risk posed to the apparatus of government and its officials instead of protecting civilians at large from harm. Terrorists, on the other hand, use whatever means possible, most particularly targeting civilians, to achieve their end without legal qualms. The distinction is noteworthy since the Canadian Forces abides by the rule of law.

Summation

Given its size and resources, the Canadian Forces is reasonably prepared today for a military response to the eventuality of a terrorist incident or act in Canada. The military assumes a supporting rather than lead role in most domestic operations, which naturally come under other government departments, agencies, or police forces. The Canadian Forces has made considerable investment since 9/11 in developing specialized counter-terrorism capabilities, particularly in regard to tactical assault and weapons of mass destruction detection and handling. Joint Task Force 2 and the Canadian Joint Incident Response Unit are highly trained and mobile military units, capable of rapid deployment. Military first responders also include forces involved in the patrol of Canada's air and sea approaches as well as military elements called out in time of emergency and crisis. The command, control, and coordination of those military forces is a responsibility of Canada Command, a single strategic military headquarters with purview over Canadian and continental operations, in close touch with government, provincial and territorial authorities, and the military commands of Canada's principal ally and neighbour. In the event of any terrorist attack, Canada would likely receive assistance from the United States based on affiliation, integration, and existing military arrangements. The nature of event or incident would determine the appropriateness of response and whether military action is warranted. The legal basis for the military's conduct of domestic operations related to terrorism offers some pause for consideration.

The Department of National Defence does not normally collect and retain information on Canadians in Canada, the use of force is subject to prescribed limits, and the concept of self-defence suits civilian norms rather than the extraordinary nature of terrorist incidents. Too much should not then be asked of the Canadian Forces, which no doubt will have some prominent part in a common response to terrorism and terrorist acts in Canada. Domestically, Canada's military stands ready to protect Canadians from external attack with every means at its disposal and in keeping with Canadian values. The security of Canada and continental North America is an important priority.