

NOTE TO READERS

Military Ranks and Titles

In recounting events and reporting on testimony received, this report refers to many members of the Canadian Forces by name, rank and, sometimes, title or position held. Generally, we have used the rank and title in place at the time of the Somalia deployment or at the time an individual testified before this Commission of Inquiry, as appropriate. Thus, for example, the ranks mentioned in text recounting the events of 1992-93 are those held by individuals just before and during the deployment to Somalia, while ranks mentioned in endnotes are those held by individuals at the time of their testimony before the Inquiry.

Since then, many of these individuals will have changed rank or retired or left the Canadian Forces for other reasons. We have made every effort to check the accuracy of ranks and titles, but we recognize the possibility of inadvertent errors, and we apologize to the individuals involved for any inaccuracies that might remain.

Source Material

This report is documented in endnotes presented at the conclusion of each chapter. Among the sources referred to, readers will find mention of testimony given at the Inquiry's policy and evidentiary hearings; documents filed with the Inquiry by government departments as a result of orders for the production of documents; briefs and submissions to the Inquiry; research studies conducted under the Inquiry's commissioned research program; and documents issued by the Inquiry over the course of its work.

Testimony: Testimony before the Commission of Inquiry is cited by reference to transcripts of the Inquiry's policy and evidentiary hearings, which are contained in 193 volumes and will also be preserved on CD-ROM after the Inquiry completes its work. For example: Testimony of LCol Nordick, Transcripts vol. 2, pp. 269-270. Evidence given at the policy hearings is denoted by the letter 'P'. For example: Testimony of MGen Dallaire, Policy hearings transcripts vol. 3P, p. 477P.

Transcripts of testimony are available in the language in which testimony was given; in some cases, therefore, testimony quoted in the report has been translated from the language in which it was given.

Documents and Exhibits: Quotations from some documents and other material (charts, maps) filed with the Inquiry are cited with a document book number and a tab number or an exhibit number. These refer to binders of documents assembled for Commissioners' use at the Inquiry's hearings. See Volume 5, Chapter 40 for a description of how we managed and catalogued the tens of thousands of documents we received in evidence.

Some of the references contain DND (Department of National Defence) identification numbers in lieu of or in addition to page numbers. These were numbers assigned at DND and stamped on each page as documents were being scanned for transmission to the Inquiry in electronic format. Many other references are to DND publications, manuals, policies and guidelines. Also quoted extensively are the National Defence Act (NDA), Canadian Forces Organization Orders (CFOO), Canadian Forces Administrative Orders (CFAO), and the Queen's Regulations and Orders for the Canadian Forces (which we refer to as the Queen's Regulations and Orders, or QR&O). Our general practice was to provide the full name of documents on first mention in the notes to a chapter, with shortened titles or abbreviations after that.

Research Studies: The Commission of Inquiry commissioned 10 research studies, which were published at various points during the life of the Inquiry. Endnotes citing studies not yet published during final preparation of this report may contain references to or quotations from unedited manuscripts.

Published research and the Inquiry's report will be available in Canada through local booksellers and by mail from Canada Communication Group Publishing, Ottawa, Ontario, K1A 0S9. All other material pertaining to the Inquiry's work will be housed in the National Archives of Canada at the conclusion of our work.

Acronyms and Abbreviations

This report contains many acronyms and abbreviations for government departments and programs and Canadian Forces elements, systems, equipment, and other terms. Generally, these names and terms are spelled out in full with their abbreviation or acronym at their first occurrence in each chapter; the abbreviation or acronym is used after that. For ranks and titles, we adopted the abbreviations in use in the Canadian Forces and at the Department of National Defence. A list of the acronyms and abbreviations used most often, including abbreviations for military ranks, is presented in Appendix 8, at the end of Volume 5.

ACKNOWLEDGEMENTS

On one level, public inquiries are temporary agencies of government with an official life of their own, reported in the media and identifiable to citizens as in our particular case, The Somalia Inquiry. On another level, they are organizations of expert personnel summoned to work together for a limited period of time. They have a life-cycle of birth, learning, productive maturity, and death -- somewhat untimely, in our case. The crisis that usually calls public inquiries into being, the urgency of the task and its difficulties, create an almost wartime atmosphere that demands great effort, close teamwork, and a tight focus on the ultimate goal. This challenge can bring out the best in men and women, as it did in our group.

Public inquiries are identified publicly with their Chairs and Commissioners but they flourish or fail in large part according to the strengths or weaknesses of their staffs who work behind the scenes. Our excellent staff was led and was largely the creation of our Secretary, Stanley Cohen. A brilliant lawyer with deep experience and understanding of government, he was able to quickly assemble a core team in the spring of 1995. His skills as an administrator, counsellor, negotiator, and animator of our group were extraordinary and vital to our success.

As have other inquiries in the past, we relied primarily on the work of legal and research components. Our Senior Counsel were Simon Noël and Barbara McIsaac who dealt masterfully with an overwhelming amount of documentary evidence, sometimes conflicting requirements of lawyers for the various parties, and the task of examining witnesses fairly and comprehensively during our televised hearings. They were assisted by Intermediate Counsel Ian Stauffer, Sylvie Roussel, and Thomas Conway, as well as Junior Counsel Hélène Dorion, Lynn Lovett, John McManus, Eloise Arbour, and Jennifer Oulton.

During part of our Inquiry we also benefited from the wisdom, wit, and courtroom experience of Hymie Weinstein before he was called back to Winnipeg by the demands of a public inquiry in his home city. François Daviault and François Lemieux also played an important role in our counsel group at different stages of our Inquiry.

Our research group, consisting of lawyers and academics with varied and extensive experience, was under the able direction of David Pomerant: Glenn Gilmour, Janice Tokar, Holly Solomon, Laura Farquharson, Donna Winslow, Claude Bouchard, David Goetz, Ellen Margolese, and Robert Young. This team carried out the monumental task of reviewing, analyzing, and distilling thousands of pages of material related to our terms of reference and, under our direction, participated in the drafting of major portions of this report. Eric Myles served as Special Assistant to the Secretary and Chief Historian responsible for the supervision of the group of file analysts who organized, classified, summarized, and evaluated the massive documentation that we obtained from hundreds of sources (Judith Shane, Robert LeBlond, Stephen Bierbrier, François-René Dussault, Deirdre Hilary, Christopher Bolland, Pierre Léonard, Tom Clearwater, Deryn Collier, Karen Capen, Ella Heyder, Maureen Armstrong, Ouafaa Douab, Suzanne Alexander, Cheryl Ringor, Marcia Waldron, Sophie Boulakia, and Alain Laurencelle). Eugene Oscapeella and Greg Rose also provided invaluable assistance to both the research and the file analyst groups in the final report writing phase of our process.

Our military advisers brought a wealth of domestic and international experience to their role as our Technical Advisors: BGen (ret) Jim Simpson, LGen (ret) Jack Vance, LCol (ret) Doug Bland, Col (ret) Ted Nurse, and François Lareau. Their selfless service to our Inquiry embodied the true meaning of "fidelity to the military institution". Special investigations were the responsibility of Inspector Gerry Braun and Inspector Dan Killam on loan to us from the RCMP. Their tireless professional service was crucial to the success of our operation.

Director of Administration, André Plante, managed our own personnel and resources efficiently, assisted by Management Adviser Maurice Lacasse. Some of the essential services that we depended on throughout our Inquiry, and which were always performed above and beyond the call of duty, were provided by Library Technician, Linda Cameron; Neil Blaney, Dennis Brook, and Stephen Charron in Network Support for our computer system; Gail Bradshaw in Information Management; Finance Officer, Hélène Berthiaume; Records Manager, Gilles Desjardins; and Jane Simms, our supervisor of document processing clerks.

John Koh was both a member of our counsel group and Manager, Litigation Support. He, along with Michael Burn and Paul Harte, was of great assistance to us in organizing and gaining mastery over the enormous flow of documentation that we were obliged to process.

Our interface with the public, through hearings and media exposure, was the responsibility of Hearing Coordinator, Françoise McNamee, and Communications Manager, Sheena Pennie, of Delta Media, who handled more than 100 media calls daily on occasion.

During the hearings we relied on the experience and abilities of our Registrars, Linda Martel and Susan Fraser. We also wish to thank Denis Vezina, Marc Mayer, Michel Valiquette, and Gilles Franche who provided security and other support to us during our hearings.

In writing this report we were fortunate to have had the assistance of a team of hard working and professional writers and editors, under the direction of Tom Gussman, Ian Sadinsky, and Pauline McKillop.

In addition to these, we depended on a daily basis on the dedicated work of our able secretaries, Suzanne Yule, Kim LaViolette, Rachel Sauvé, Kim Lutes, Sandra Racine, and Ghislaine Trottier, and our receptionist, Ann McAuliff as well as many specialists and technicians throughout our Inquiry, all of whom worked together as a team and exceeded the formal requirements of their tasks.

Outside our own group, we worked closely with military personnel who were designated to assist us, as we describe in this report. But we want to pay special tribute to the soldiers and officers, serving and retired, who volunteered to appear before our Inquiry and who assisted us informally by providing information of many kinds to Commissioners and Counsel, even when it was damaging on occasion to their own interests. Their bravery was an inspiration to us and their support encouraged us throughout.

Finally, we wish to express our thanks to the organizations that submitted briefs to us and the hundreds of individuals who communicated with us by e-mail, mail, and phone during the course of our Inquiry. They reminded us constantly that we were not alone in seeking answers to the difficult questions confronting our soldiers and politicians.

PREFACE

From its earliest moments the operation went awry. The soldiers, with some notable exceptions, did their best. But ill-prepared and rudderless, they fell inevitably into the mire that became the Somalia debacle. As a result, a proud legacy was dishonoured.

Systems broke down and organizational discipline crumbled. Such systemic or institutional faults cannot be divorced from leadership responsibility, and the leadership errors in the Somalia mission were manifold and fundamental: the systems in place were inadequate and deeply flawed; practices that fuelled rampant careerism and placed individual ambition ahead of the needs of the mission had become entrenched; the oversight and supervision of crucial areas of responsibility were deeply flawed and characterized by the most superficial of assessments; even when troubling events and disturbing accounts of indiscipline and thuggery were known there was disturbing inaction or the actions that were taken exacerbated and deepened the problems; planning, training and overall preparations fell far short of what was required; subordinates were held to standards of accountability that many of those above were not prepared to abide by. Our soldiers searched, often in vain, for leadership and inspiration.

Many of the leaders called before us to discuss their roles in the various phases of the deployment refused to acknowledge error. When pressed, they blamed their subordinates who, in turn, cast responsibility upon those below them. They assumed this posture reluctantly -- but there is no honour to be found here -- only after their initial claims -- that the root of many of the most serious problems resided with "a few bad apples" -- proved hollow.

We can only hope that Somalia represents the nadir of the fortunes of the Canadian Forces. There seems to be little room to slide lower. One thing is certain, however: left uncorrected, the problems that surfaced in the desert in Somalia and in the boardrooms at National Defence Headquarters will continue to spawn military ignominy. The victim will be Canada and its international reputation.

This is the final report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia. To the best of our ability, it fulfills our obligation with respect to various orders in council to investigate the chain of command system, leadership, discipline, and actions and decisions of the Canadian Forces, as well as the actions and decisions of the Department of National Defence in respect of the Canadian Forces' participation in the peace enforcement mission in Somalia during 1992-93.

During the deployment of Canadian troops, certain events transpired in Somalia that impugned the reputations of various individuals, Canada's military, and the nation itself. Those events, by now well known to most Canadians, included repugnant hazing activities prior to deployment involving members of the Canadian Airborne Regiment (revealed through the broadcast of videotapes made by participants), the shooting of Somali intruders at the Canadian compound in Belet Huen, the beating death of a teenager in the custody of soldiers from 2 Commando, an apparent suicide attempt by one of those Canadian soldiers, and, after the mission, alleged instances of withholding or altering key information. Those events, with the protestations of a concerned military surgeon acting as a catalyst, led the Government to call for this Inquiry. Ironically, a military board of inquiry into the same events was considered insufficient by the present Government because it was held *in camera* and with much more restricted terms of reference. It was considered to fall short of Canadian standards of public accountability, and a full and open inquiry was demanded.

Our overall conclusion, as the title of this report and the opening passages of this preface make clear, is simple: the mission went badly wrong; systems broke down, and organizational failure ensued. Our report canvasses a broad array of issues and events to reach this unhappy result.

The *Inquiries Act* provides the authority to subpoena witnesses, hear testimony, hire expert counsel and advisers, and assess evidence. Under normal circumstances, such powers should have given us the confidence to present our findings without qualification. However, on January 10, 1997, while Parliament was adjourned, the Minister of National Defence announced that Cabinet had decided that this Inquiry had gone on long enough, that all hearings must be cut off on or about March 31, 1997, and that a report with recommendations was required by June 30, 1997. This was the response of the Government to our letter

setting out reporting date options and requesting an extension until at least December 31, 1997, a period that would have allowed us to continue and conclude our search for the truth. That search had already involved, among other things, thousands of hours of preparation and cross-examination of the individuals who played various roles in this mission -- and as time progressed, the superior officers to whom they reported. Because of the initial difficulty of estimating the actual magnitude of the work, compounded by the late arrival of certain documents we requested, we were twice granted extensions to enable our Inquiry to proceed. Each time the Inquiry was given an extension, however, it was for a shorter period than we had requested on the basis of the estimated work involved. Each 'compromise extension' left us short and generated more requests for additional time than would have been necessary if our initial time forecasts had been accepted. Adjustments to our plans or schedule were always made to respond specifically to our mandate from the Government and were communicated to and understood by the Government and officials in the Privy Council Office. As our investigation progressed we were able to move closer to the key centres of responsibility as we moved up the chain of command. Unfortunately, the Minister's decision of January 10, 1997 eliminated any possibility of pursuing this course to its logical conclusion and prevented us from expanding the focus from those who actually committed the deplorable acts in the field to those who were responsible before, during and after the Somalia mission throughout the full chain of command.

The Government's decision to cut off our hearings and impose a reporting date rendered it impossible for us to address comprehensively all the matters assigned to us under our original terms of reference. Applications were brought before the Federal Court Trial Division by John Edward Dixon (a potential witness whom we concluded could not be called because of time limitations) to challenge the legality of the Government's actions. In a decision rendered on March 27, 1997, Madam Justice Sandra J. Simpson ruled that the Government's actions were *ultra vires* and unlawful.

Essentially, her ruling meant that the Governor in Council would have two choices: to extend sufficient time to the Inquiry to complete the work set out in the terms of reference, or to revise the original terms of reference and, in so doing, limit what we would be required to cover in our report. On April 3, 1997, the Governor in Council issued another Order-in-Council recognizing "that the Commissioners will not be able to address all issues within their Mandate" (P.C. 1997-456). That Order-in-Council directed us to report on all paragraphs of our original terms of reference pertaining to the pre-deployment phase of the deployment of Canadian forces to Somalia. On all other matters, we were given discretion concerning the extent to which we would inquire and report within the imposed June 30, 1997 time frame, which was again confirmed.

This report, in compliance with that Order-in-Council, now addresses, in some sense, every paragraph of our original terms of reference. However, we have not been able to explore several important matters (notably, the March 16th torture death of Shidane Arone, the response of the upper echelons of National Defence Headquarters to the events of March 4th and March 16th, 1993, and allegations of high-level cover-up pertaining to those events) because of the curtailment of our mandate.

The decision to impose time constraints of the kind that have been forced upon us is without precedent in any previous Canadian inquiry of this magnitude. It has compromised our search for the truth. It will also inhibit or delay corrective actions to the system that allowed these events to occur in the first place.

The careful search for truth can be painstaking and, at times, frustrating. Public inquiries are equipped with the best tools our legal system can furnish for pursuing the truth, but even with access to significant procedural powers, the goal may prove elusive.

Even in the areas where we were able to conduct hearings -- on the predeployment phase of the mission and part of the in-theatre phase -- we were too often frustrated by the behaviour of witnesses whose credibility must be questioned. The power to compel testimony was our principal mechanism for determining what transpired in Somalia and at National Defence Headquarters. Some 116 witnesses offered their evidence to the Inquiry in open sessions that were televised across Canada.

We are cognizant of the institutional and peer pressure on witnesses appearing before us. Giving testimony before a public inquiry is a test of personal integrity that demands the moral courage to face reality and tell the truth. It also involves a readiness to be held to account and a willingness to accept the blame for one's own wrongdoing. Many soldiers, non-commissioned officers and officers have shown this kind of integrity.

They have demonstrated courage and fidelity to duty, even where doing so required an acknowledgement of personal shortcomings or the expression of unwelcome criticism of the institution. These soldier-witnesses deserve society's respect and gratitude for contributing in this way to improving an institution they obviously cherish.

With regret, however, we must also record that on many occasions, the testimony of witnesses before us was characterized by inconsistency, improbability, implausibility, evasiveness, selective recollection, half truths, and even plain lies. Indeed, on some issues, we encountered what can only be described as a 'wall of silence'. When several witnesses behave in this manner, the wall of silence becomes a wall of calculated deception.

The proper functioning of an inquiry depends upon the truthfulness of witnesses under oath. Truthfulness under oath is the foundation of our system of justice. Some witnesses clearly flouted their oath.

Perhaps more troubling is the fact that many of the witnesses who displayed these shortcomings were officers, non-commissioned members (active or retired) or senior civil servants -- individuals sworn to respect and promote the values of leadership, courage, integrity, and accountability. For these individuals, undue loyalty to a regiment or the military institution or, even worse, naked self-interest, took precedence over honesty and integrity. By conducting themselves in this manner, these witnesses have also reneged on their duty to assist this Inquiry in its endeavours. In the case of officers, such conduct is a breach of the undertakings set out in their Commissioning Scroll.

Soldiers, even those of high rank, can become confused about where their ultimate loyalties reside. Loyalty to one's comrades is a high virtue. But in the larger scheme of things it must find its place among loyalty to the unit, regiment, the forces as a whole, and loyalty to one's country. Soldierly life in Canada's military is dedicated to preserving and safeguarding the national interest and civil society under the rule of law. Accountability requires submission to law and legal authority. Soldiers who are called to account may wish to protect others or lash out in anger at those to whom they must account, but military decorum and duty require the stifling of these less worthy impulses. A higher standard of conduct than this is demanded. It was for this reason that we found so disturbing the spectacle put on before us by the Canadian military's highest serving officer, the acting Chief of the Defence Staff. His display of near-contemptuous behaviour, before an inquiry established by his government to examine problems in the very institution he serves and represents, was a shocking departure from appropriate standards. As we explained to him at the time of his testimony,* this kind of behaviour represents an affront to the rule of law which, after all, is the bulwark of democracy and democratic values. It strays far from the path of military ideals that are of concern to us in this report.

Our concern is not with the mere fact of contradictions in testimony. Even where all who testify speak the truth as they know it, contradictions can occur. Contradictions often relate to recollections of conversations that took place between or among people without the presence of other witnesses and without the benefit of notes. At the time, a particular conversation may have seemed unimportant. The passage of time may have driven its details from memory. We are not concerned with differences in recollection that simply reflect the frailty of human memory. We are concerned, however, with something darker than imprecision and contradiction, something closer to a pattern of evasion and deception.

This appearance, which in our view surrounded many of the senior officers who testified before us, reveals much about the poor state of leadership in our armed forces and the careerist mentality that prevails among many at the Department of National Defence. These senior people are part of an elite group in which soldiers and the general public place their trust and confidence. In responding as they have, many of these senior people have failed their subordinates and betrayed the public trust. Some of them will have retired by the time this report is made public. Those who remain in senior positions in the military should have their status reviewed.

We are well aware of recent private reports to the Minister of National Defence addressing issues of leadership and management in the Canadian Forces. Certainly, such studies and reports enhance the discussion. But no single study, especially one conducted behind closed doors, can detect the problems that pervade an organization such as the military and understand the organizational culture and myriad interpersonal and professional relationships within it. Only a full public examination of these issues, with an

opportunity for members of the military to provide information and respond to criticism, could provide an in-depth assessment of the scope and magnitude of problems. Only a thorough analysis of the people, events and documentation involved could lead to a blueprint for meaningful change.

This Commission of Inquiry was established for that exact purpose. Its truncation leaves the Canadian public and the Canadian military with many questions still unanswered. In fact, the decision itself raises all kinds of new questions about responsibility and accountability.

Although we have raised concerns about the credibility of witnesses and leadership in the armed forces, it would be unfair to leave an overall impression that the mission to Somalia was a total failure. While we point out flaws in the system and shortfalls in leadership, we must acknowledge that many soldiers and commanders performed their duties with honour and integrity, even without direction from the helm. It is to the credit of these individuals and of the Canadian Forces that they were able to do so under such difficult circumstances.

The good work carried out by these members of the Canadian Forces is described in this report, and we believe that public recognition of their accomplishments is warranted. Accordingly, we support strongly the issuance of appropriate medals to Canadians who served so well during this troubled mission.

It is important to acknowledge the invaluable contribution that the Canadian Forces has made and continue to make on Canada's behalf. Thousands of soldiers have performed difficult and often dangerous tasks in pursuit of the nation's goals. Most often their dedication, selflessness and professionalism have been taken for granted, because these qualities were always assumed to be the norm. This is in part what made the events that are the subject of our mandate so unpalatable. It is the sharp contrast between those events and the accustomed performance of our military that elicited reactions of alarm, outrage and deep sadness among many Canadians. In the end, we are hopeful that our Inquiry will yield corrective measures to help restore the Canadian Forces to the position of honour it has held for so long.

As documented in this report, the disclosure of relevant documents by the Department of National Defence to this Inquiry was often a seriously flawed and deficient process. During our mandate, we attempted to make available as many documents as possible for public reference. It is our hope that concerned Canadians will continue to study those documents and will use our report to guide them in their search for the truth about the actions and events associated with the deployment of Canadian military personnel to Somalia.

* See testimony of VAdm Murray, Transcripts of Evidentiary Hearings, volume 153, pp. 31281-31283.

INTRODUCTION

In the spring, summer, and fall of 1992, the United Nations, concerned about the breakdown of national government in Somalia and the spectre of famine there, sought international help to restore some semblance of law and order in Somalia and feed its starving citizens. Canada, among other nations, was asked to help. After months of planning and training, and after a change in the nature of the United Nations mission from a peacekeeping mission to a peace enforcement mission, Canadian Forces personnel, as part of a coalition of forces led by the United States, were deployed for service to Somalia, mainly in December 1992. Many of the Canadian personnel involved in the deployment belonged to the Canadian Airborne Regiment Battle Group, itself made up largely of soldiers from the Canadian Airborne Regiment (a paratroop battalion), with other army personnel added to it, including A Squadron, an armoured car squadron from the Royal Canadian Dragoons, a mortar platoon from 1st Battalion, The Royal Canadian Regiment, and an engineer squadron from 2 Combat Engineer Regiment.

On the night of March 16-17, 1993, near the city of Belet Huen, Somalia, soldiers of the Canadian Airborne Regiment beat to death a bound 16-year-old Somali youth, Shidane Arone. Canadians were shocked, and they began to ask hard questions. How could Canadian soldiers beat to death a young man held in their custody? Was the Canadian Airborne Regiment suitable or operationally ready to go to Somalia? Was racism a factor in improper conduct within the Regiment? Before long, Canadian media began to publicize accounts of other incidents involving questionable conduct by Canadian soldiers in Somalia. Major Barry Armstrong, surgeon to the Canadian Airborne Regiment, acting in fulfilment of his military duties, alleged that an earlier incident on March 4, 1993, where an intruder was shot dead and another was wounded by Canadian Airborne soldiers, appeared to have been an execution-style killing. And so, other questions arose: Were incidents in Somalia covered up and, if so, how far up the chain of command did the cover-up extend? Did the Canadian Forces and the Department of National Defence respond appropriately to the allegations of cover-up? And perhaps most problematic of all, were the mistreatment of Shidane Arone and other incidents of misconduct caused by a few "bad apples", or were they symptomatic of deeper institutional problems in the Canadian military at the time -- problems relating to command and control, accountability, leadership, or training? If so, did these problems still exist?

The Canadian Forces responded in many ways to the death of Shidane Arone and other incidents that occurred in Somalia. Several courts martial, arising mostly though not exclusively from misconduct relating to the death of Shidane Arone, were launched and concluded. A court martial trial began against Master Corporal Clayton Matchee, the person who allegedly beat Shidane Arone to death. The trial did not proceed, however, because injuries resulting from an apparent suicide attempt rendered MCpl Matchee unfit to stand trial. The most prominent court martial was arguably that of Private Kyle Brown, who was convicted of manslaughter and torture in the death of Mr. Arone. In some cases, appeals of the courts martial arising from the Somalia operation were launched. Other individuals involved suffered sanctions less severe than imprisonment upon conviction.

But perhaps more important, the Canadian Forces recognized the need for additional measures to respond to public concern about what happened in Somalia. Accordingly, the Chief of the Defence Staff of the Canadian Forces appointed an internal board of inquiry under section 45 of the *National Defence Act* to look into issues arising from the Somalia operation. The board conducted the first phase of its work from April to July 1993. The board's final report made several recommendations for change. However, its terms of reference were restricted in two ways. First, to avoid challenges to its jurisdiction under the *Canadian Charter of Rights and Freedoms*, it was essentially precluded from looking into incidents that could give rise to court martial proceedings. As its terms of reference said, "[n]o inquiry shall be made into any allegation of conduct that would be a service offence under the *National Defence Act*, and in particular any *Criminal Code* offence, that has resulted in the laying of a charge, the arrest of a person or the ordering of a military police investigation."¹ Second, its focus was on issues such as leadership and discipline relating to the CARBG, which included the antecedents of the CARBG in Canada and higher headquarters in Somalia before and during its deployment there.² Thus, it had no authority to look into the actions or omissions of persons at the highest levels of the chain of command within the Canadian Forces. As well, the hearings were not open to the public. It was intended that there would be a second phase of the inquiry to address issues not addressed in its first phase.³

Critics argued that an open inquiry was needed to get to the truth of what happened and why. Representatives of the Liberal Party of Canada, the official opposition at the time the board of inquiry was established, argued for an open public inquiry under the *National Defence Act*.⁴ When the Liberals gained power after the 1993 federal election, they continued to express this view.⁵ However, as more revelations suggesting possible cover-up and other disclosures were made, the Government eventually decided to establish a public inquiry independent of the military that would have the power to subpoena witnesses not belonging to the military. As a result, on March 20, 1995, this Commission of Inquiry, governed by the federal *Inquiries Act*, was created.⁶ The act sets out the statutory powers and responsibilities of inquiries, generally giving us broad powers to summon and enforce the attendance of witnesses and to require the production of documents.⁷

APPROACH OF THE INQUIRY

Our Inquiry carried out its work under three closely interrelated components, each assigned a specific task. The three prongs were investigation, research, and hearings. The work was allocated among these three areas to ensure that the results of their efforts, when combined, would address in full each and every aspect of the terms of reference.

Our Investigative Team methodically sought factual evidence by studying over 150,000 documents and interviewing hundreds of potential witnesses in a relentless search for the truth. In parallel, our Research Team carried out an exhaustive comparative assessment of rules and policies affecting military operations and decision making. The third component of our approach, the part that was most visible to the public, was our hearings.

The hearings were divided into two parts: policy hearings and evidentiary hearings. Following procedural hearings on May 24, 1995, we held policy hearings during the week of June 19, 1995, at which the parties and the Department of National Defence (DND) presented policy submissions on a number of issues. Those hearings were limited strictly to receiving evidence on policy issues necessary to enable the Commission of Inquiry to clarify its mandate. The purpose of the evidentiary hearings was to elicit and probe litigious facts or those that could be established only through testimonial evidence. They commenced on October 2, 1995, beginning with hearings on the pre-deployment phase of the Somalia mission. Extensive hearings on the in-theatre phase of the deployment commenced on April 1, 1996. An unanticipated phase of the hearings, commenced on April 15, 1996, related to difficulties we had experienced in obtaining documents from DND and its Directorate General of Public Affairs (DGPA). This phase lasted more than five months, with many witnesses testifying on matters related to the handling of documents within DND, the CF and the DGPA. As a result of the Government's decision to order the early termination of the Commission of Inquiry,⁸ it was not possible to complete our hearings on some of the events and actions in theatre and on some of the issues arising in the post-deployment phase. Nevertheless, we are confident that during our mandate we heard and reviewed sufficient testimonial and documentary evidence on a comparative basis to enable us to address the institutional and systemic problems we were asked to investigate in our terms of reference.

INTERPRETATION OF THE TERMS OF REFERENCE

The scope of a public inquiry is determined by its terms of reference, and ours were detailed and complex.⁹ Essentially, they required us to examine several major matters, such as the chain of command as it applied to the Somalia operation, and the leadership shown before, during and after the Somalia operation. The terms of reference were divided into two parts. The first part contained a broad opening paragraph, generally requiring us to inquire into and report on the chain of command system, leadership within the chain of command, discipline, operations, actions and decisions of the Canadian Forces, and actions and decisions of the Department of National Defence in respect of the Somalia operation. The terms of reference stated clearly that our investigation need not be limited to the details and issues set out in subsequent paragraphs.

The second part required us to look at specific matters relating to the pre-deployment, in-theatre, and post-theatre phases of the Somalia operation. Specific pre-deployment issues (before January 10, 1993) included the suitability of the Canadian Airborne Regiment for service in Somalia; the operational readiness of the

Canadian Airborne Regiment Battle Group for its missions and tasks before deployment; and the state of discipline within the Canadian Airborne Regiment. In-theatre issues (January 10, 1993 to June 10, 1993) included the missions and tasks of Canadian Joint Task Force Somalia and the suitability of the composition and organization of the Task Force for its missions and tasks; the extent, if any, to which cultural differences affected the conduct of operations; the attitude of all rank levels toward the lawful conduct of operations; and the manner in which the Task Force conducted its mission and tasks in theatre and responded to the operational, disciplinary and administrative problems encountered, including allegations of cover-up and destruction of evidence. Post-deployment issues (June 11, 1993 to November 28, 1993) were to address the manner in which the chain of command of the Canadian Forces responded to the operational, disciplinary, and administrative problems arising from the deployment.

The terms of reference of this Inquiry obliged us to conduct an examination of the joint structure, planning and execution of the Somalia operation by the Canadian Forces and the Department of National Defence. We reviewed the military's actions and decisions (including those of the Department of National Defence) to determine whether structural and organizational deficiencies lay behind the controversial incidents involving Canadian soldiers in Somalia. We also reviewed the institutional reaction and response to these incidents. Our mandate includes proposing appropriate corrective measures for future missions. The Inquiry was not intended to be a trial, or a retrial of any trial previously held, although our hearings did include an examination of the institutional causes of and responses to incidents that previously resulted in the charge and trial of individuals. In the same way, the Inquiry was not an examination or re-examination of the issue of compensation for the victims. Hence, the Inquiry's primary focus was the organization and management of the Canadian Forces and the Department of National Defence, as well as institutional and systemic issues, rather than the individuals who constitute them. However, this focus inevitably required us to examine the actions of the chain of command and the manner in which leadership was exercised. Nevertheless, we refrain in this report from making findings of individual misconduct, save as regards the pre-deployment phase and on the issue of disclosure of documents by the Department of National Defence and the Canadian Forces and the events involving the Directorate General of Public Affairs.

Our mandate thus required us to consider several fundamental institutional issues. How is accountability defined, determined and exercised in the chain of command of the Canadian Forces? Were reporting procedures adequate and properly followed so as to enable the flow of information within the chain of command and the adoption of appropriate corrective measures when required? Did actions taken and decisions made in relation to the Somalia operation reflect effective leadership or failures in leadership? To determine this, we intended originally to examine the decisions and conduct not only of officers and non-commissioned officers in the Canadian Forces, but also of top civilian staff at National Defence Headquarters, including the Deputy Minister of National Defence. We have been able to cover the vast majority of issues assigned to us under the terms of reference. However, because of the Government's decision to terminate the Inquiry, we were unable to carry out this intention with regard to the upper echelons, the allegations of cover-up, and the extent of their involvement in the post-deployment phase.

We were obliged to consider whether the correct criteria were applied to determine whether Canada should have committed troops to Somalia in the first place and whether the mission and tasks of the Canadian Forces and the rules of engagement governing their conduct in theatre were adequately defined, communicated and understood. It was also necessary, given the disciplinary and organizational problems that became apparent in the Canadian Airborne Regiment at relevant times, to assess the extent to which senior military leaders advised or should have advised the Minister of National Defence, through the chain of command, about the true state of readiness of the Canadian Airborne Regiment to participate in the mission. In the circumstances, we had also intended to address the scope of the responsibility and duty of the Deputy Minister of National Defence to keep the Minister of National Defence informed of significant events or incidents occurring in theatre and the extent to which these responsibilities and duties were carried out. Further, we had intended to examine in detail the duties and responsibilities of the political and civilian leadership at the ministerial level, including the scope of the duties and responsibilities of the Minister of National Defence at the time of the in-theatre activities, the Hon. Kim Campbell, and whether she was being kept accurately informed of problems occurring during the Somalia operation. In examining this broad issue, we had determined the importance of considering both the nature and the scope of the duties and responsibilities of the ministerial staff to keep the minister appropriately informed as well as the duty and

responsibility of the deputy minister to organize the department in such a way as to ensure that information appropriate and necessary to its proper functioning was conveyed and received. Finally, where we identified failures to fulfill necessary duties or convey appropriate information, we addressed the nature and scope of appropriate accountability for such failures.

In short, we interpreted our mandate reasonably and limited it to the issues set out in the terms of reference, which themselves were quite broad. We would not examine issues that appeared to us to fall outside our mandate. Some parties asked us to interpret our mandate to cover two issues that, while undoubtedly relevant in examining the effectiveness of the Canadian military, appeared to us to fall outside the terms of reference: the issue of the disbandment of the Canadian Airborne Regiment, and the issue of racism in the Canadian Forces generally. We ruled that the disbandment of the Regiment fell outside the scope of our mandate. An investigation of racism in the Canadian Forces would have required us to examine racist organizations throughout Canada and allegations of racist conduct in all units of the Canadian military. In our view, the terms of reference did not authorize such a broad inquiry, although we were prepared to examine aspects of racism that may have affected the Canadian Airborne Regiment Battle Group or that conceivably had an impact on the deployment. Nonetheless, we asserted that we would call any evidence that would do justice to issues falling within the terms of reference.¹⁰ Thus, we concluded that the terms of reference would permit us to inquire into racist conduct, insofar as it reflected systemic problems within the Canadian military, such as inadequate screening of recruits or inadequate training.

OUR METHODOLOGY

At the outset, we recognized that if we were to obtain all relevant facts, we would have to create a positive environment that would foster co-operation between the Canadian Forces members involved in the Somalia deployment and the Inquiry. Concerned that soldiers who wished to testify might feel intimidated and keep silent out of fear that testifying or co-operating might jeopardize their careers or promotions, we announced that we would take steps to monitor the career progress of any soldier who wished to testify. We paid particular attention to the case of Cpl Michel Purnelle, who was court-martialled after publishing a book critical of leadership in the Canadian Forces. Cpl Purnelle testified before us and was a credible witness who is to be commended for the example he set for other soldiers and for the assistance he rendered to the Inquiry. We were involved in his case at numerous junctures and made public statements with respect to actions taken against him. In particular, we intervened actively in an attempt by military authorities to prevent him from bringing important evidence to the Inquiry. We had several meetings with DND officials regarding the propriety of actions taken with respect to Cpl Purnelle and have continued to monitor his progress.

As well, we were determined to penetrate any wall of silence that might be erected around the Somalia operation. Accordingly, in 1995 and 1996 we visited many of the soldiers who served with the Canadian Airborne Regiment during the deployment in locations across the country --Petawawa, Ontario, Valcartier, Quebec, Winnipeg, Manitoba, and Calgary and Edmonton, Alberta. We talked to them in groups and in one-on-one sessions. We were initially optimistic that these efforts had succeeded in breaking down any barrier of mistrust that might have existed, but as events unfolded and witnesses appeared, that optimism began to wane. Nonetheless, the visits did prove useful and, in some cases, helped us obtain new information and a better understanding of the deployment.

SOURCES OF INFORMATION AND ASCERTAINING THE FACTS

The facts and information in this report came to us from a variety of sources. We ordered the production of relevant documents from the Department of National Defence, the Department of Foreign Affairs and International Trade (formerly the Department of External Affairs) and the Privy Council Office.¹¹ At the Department of National Defence, the Somalia Inquiry Liaison Team (SILT) was created to collect and send documents, videos, and other information sought by the Inquiry. More than 150,000 documents were received from these departments, all of which were painstakingly categorized by the Inquiry's staff according to relevance and issue.

Recognizing that the reconstruction of what happened in Somalia would require full disclosure by DND and the rest of the government of all relevant material, we issued an order on April 21, 1995 for the production

of all such documents. Initial estimates from SILT were that some 7,000 documents were likely involved and subject to disclosure. SILT representatives made a convincing case that great efficiencies would be associated with computer-scanning all such material and making it available in electronic form. What transpired after we agreed to this procedure was totally unexpected and painted a most unflattering picture of SILT officials.

DND's faulty scanning and transmission process placed an enormous burden on us to reconstruct files. All documents that were maintained collectively in subject-matter files at DND were scanned into individual file folders, effectively destroying the structural integrity of the DND file system by obscuring the subject-matter relationship between and among documents. This was tantamount to handing over pieces of a jigsaw puzzle to the Inquiry. This process was merely the first chapter in a saga of failure.

Document disclosure never came to formal closure throughout the life of the Inquiry. Disclosure took the form of a slow trickle of information rather than an efficient handing over of material. Key documents were missing, destroyed, or even altered. Many documents we requested were not forthcoming, and some of them came to our attention only by happenstance, such as when they were uncovered by a third-party Access to Information request. Some key documents were disclosed officially only after their existence was confirmed before the Inquiry by third parties. Representatives from SILT were reminded constantly of the slow pace and incomplete nature of DND disclosure. Following numerous meetings on the document transmittal process and private meetings with SILT officials at which we expressed frustration with the process, there were still no results. Finally, faced with an attempt to destroy Somalia-related documents, missing and destroyed field logs, and a missing National Defence Operations Centre computer hard drive, we were compelled to embark on the 'DPGA/document disclosure' phase of our investigation and to address the issue of compliance with our orders for production (see Volume 5, Chapter 39 for further details).

Many of the documents that were made available were filed as exhibits. Documents researched included the report of the internal board of inquiry, consisting of 11 volumes of documentation, the response of the Chief of the Defence Staff to the board's recommendations;¹² the transcripts of the courts martial of those prosecuted as a result of alleged misconduct in Somalia; Canadian and other military manuals and policy documents; and literature on the Canadian military and United Nations peacekeeping and peacemaking missions.

The analysis in this report is based on testimony and submissions made by all parties at our hearings, the documents and other material entered as exhibits at the hearings, authoritative articles and books, material collected from conferences attended by Inquiry staff and consultants on relevant topics, papers written and other information provided by special consultants to the Inquiry, and original research and analysis conducted by our own research staff.

Research staff and technical advisers also travelled to points in Canada and abroad to obtain comprehensive information on relevant issues. For example, in the United States, they visited the Pentagon in Washington, D.C., and obtained information about the structure and doctrine of relevant aspects of the U.S. military, such as the role of the Inspector General in their armed forces. In March 1996 the Chairman, Commission Secretary and Director of Research travelled to London, England for meetings with the British Judge Advocate General and other senior military officials. In December 1996 the Director of Research met with senior Australian military officials. A conference sponsored by the United Nations focusing on the lessons learned from the Somalia mission was also attended by a member of our research staff.

In Canada, members of the research staff, technical advisers and consultants visited sites such as the Department of National Defence's Directorate of History in Ottawa, the Canadian Forces Base at Camp Borden, Ontario, and Royal Military College at Kingston, Ontario. The co-operation of members of the military who assisted Inquiry personnel on these visits was outstanding. Research staff also contacted numerous military personnel and independent experts and consultants for information on such issues as military ethics, training, and leadership. Experts and consultants also attended the Inquiry's premises to provide background information on major issues: for example, in October 1995, Professor Jarat Chopra of Brown University discussed "The Changing Nature of Peacekeeping: Missions to Somalia".

FAIRNESS OF THE INQUIRY'S PROCEDURES

Rules of Practice and Procedure

Early on, we established rules of practice and procedure to govern our proceedings. These rules were designed to ensure that persons appearing as parties were treated in a fair and just manner in accordance with due process. On May 24, 1995, we held initial hearings to determine whether certain persons or organizations should be given full or limited standing before the Inquiry. We also considered and disposed of a number of subsequent applications. A list of parties granted standing is found in Appendix 2. Parties given full standing, in addition to being able to file written submissions, were allowed to examine or cross-examine witnesses and make oral submissions subject to terms set by the Inquiry. Parties with limited standing were allowed to make written submissions and, with the permission of the Inquiry, to make oral submissions after the filing of their written statements. If a party believed that a person not called by Commission counsel could provide relevant evidence, the party could apply in writing for an order that the witness be called to testify. Also, a party could, on written application, be authorized to call a witness. In effect, our procedures were created to ensure that all relevant witnesses were identified and their evidence advanced if it might assist us to carry out our mandate. As well, counsel for parties with full standing had broad powers of cross-examination.¹³ To prevent the Inquiry from becoming adversarial, we decided that all witnesses would first be examined in chief by Commission counsel. Counsel for parties or witnesses had the right to conduct a supplementary examination of their client after Commission counsel and a right of re-examination after cross-examination. To allot the time allowed for examination and cross-examination by parties, a rule of thumb was adopted: the total time allocated to all parties for questioning witnesses was to be equal to the time taken by Commission counsel to conduct the examination in chief.

In the latter phases of our hearings, we had the unfortunate task of issuing rulings denying the requests of various individuals to be heard. Under the time constraints imposed on the Inquiry, we were unable to accommodate such individuals because of our inability to explore the issues on which they wished to testify.

Key rulings of the Inquiry are reproduced in Appendix 3. Later in this chapter, we elaborate on the contents of some of our rulings.

Notices Under Section 13 of the *Inquiries Act*

The powers conferred by the *Inquiries Act*, such as the power to subpoena witnesses and obtain documents, were tempered by our commitment to fairness. A key rule of fairness is prescribed in section 13 of the *Inquiries Act*:

No report shall be made against any person until reasonable notice has been given to the person of the charge of misconduct alleged against him and the person has been allowed full opportunity to be heard in person or by counsel.¹⁴

We rejected a narrow interpretation of this provision, that is, that a "charge of misconduct" involved only misconduct of such a nature as to attract a criminal charge.¹⁵ Analyzing the law in this area, we decided that a "charge of misconduct" should be defined more broadly. Thus, we gave section 13 notices to all persons in relation to whom an allegation or finding had been or might be made that could reasonably bring discredit upon that person. In this way, the protections afforded by section 13 were made widely available, thereby ensuring a more effective commitment to fair process throughout the course of this Inquiry.

Section 13 of the *Inquiries Act* exists to provide procedural fairness to affected individuals. With this in mind we were determined to provide notification as early in our process as possible to individuals with regard to whom we expected allegations of misconduct to be made. For this reason notices affecting the pre-deployment phase of our proceedings were sent out in September 1995. Similarly, notices with regard to other phases of our hearings were sent to affected individuals at the first reasonable opportunity after we assessed the evidence we anticipated receiving in that phase.

The advantages of early receipt of section 13 notices are considerable. The affected individuals knew the nature of their jeopardy and were therefore able to examine and cross-examine witnesses with this reality in

mind. Also, notice recipients were called to testify before the Inquiry and could prepare for their testimony in light of knowledge of Commissioners' concerns about their actions and conduct.

The Government's decision to curtail our Inquiry resulted in the truncation of the in-theatre phase of the hearings and necessitated a decision to withdraw the section 13 notices sent out in relation to that phase. However, the DPGA/document disclosure and pre-deployment phases were self-contained and did not require this drastic step. In January 1997 we sent a letter to each section 13 recipient providing greater particularization and further specification of the allegations contained in the notices sent to them previously. We then reserved time in the final days of our hearings (the order in council curtailing the Inquiry obliged us to end our hearings "on or about March 31, 1997") for section 13 recipients to call witnesses to answer or rebut the allegations in their notices.

Section 13 recipients were also accorded substantial rights to file affidavit evidence and make written or oral submissions to Commissioners at the conclusion of our proceedings.

Finally, as a matter of fairness and to protect the reputations of the individuals involved, we ensured that the contents of section 13 notices would remain confidential until they were addressed in our final report or filed with the Inquiry by the recipient for the purpose of examining or cross-examining witnesses as to their contents. We also kept confidential the names of the recipients of such notices and invited them to protect such confidentiality.

Rulings and Formal Statements

In preparation for our hearings, and throughout the course of the investigation, it was necessary to make rulings on matters of procedure and various motions put before us. On August 3, 1995 we issued a detailed interpretation of our terms of reference as well as a statement on the role of Commission counsel. Copies of these and related documents can be found in Appendix 3.

On May 24, 1995 we issued a document on rules of practice and procedure that dealt with a number of procedural issues, including the requirements for standing, procedural, and public hearings; provisions for the calling of witnesses; a definition of "documentary evidence"; the requirements for written submissions; and conditions relating to media coverage of hearings. During April and May 1995, we issued orders for the production of documents to the Minister of National Defence, the Minister of Foreign Affairs and the Clerk of the Privy Council. Orders were also issued at various times to give individuals standing before the Inquiry.

A different example of an order was that of June 12, 1995, which contained reasons for our decision respecting an objection by counsel for the Government of Canada to the filing of an unedited version of the proceedings of the internal board of inquiry appointed by the Chief of the Defence Staff to investigate the leadership, discipline, operations, actions, and procedures of the Canadian Airborne Regiment Battle Group. The objection was made on the basis of counsel's argument that some of the information in that report related to national security or that the release of certain information could affect Canada's good international relations. Our terms of reference require that matters relating to national security be heard *in camera* and kept confidential. In the end, considering arguments relating to the balance between the need for secrecy and the public's right to know, we adopted the test enunciated in section 38 of the *Canada Evidence Act* and developed by the Federal Court of Appeal in *Goguen v. Gibson*: A document will not be disclosed to the public if disclosure would likely be injurious to national security or international relations and if such injury would outweigh the importance and benefit of the disclosure to the public in the inquiry proceedings.¹⁶ Applying those principles, we ruled that certain information contained in the report of the board of inquiry would be severed from the documents to be filed.

It was also necessary to rule on a motion for disclosure of the transcript or tapes of Military Police witness interviews that formed the basis of Military Police Report Summaries filed at our hearings. This request was based on a claim of procedural fairness, and we took into consideration the fact that this was an investigation, not a civil or criminal trial. In the end, we granted the applicant's motion for disclosure.

Most challenging were rulings regarding individuals who received section 13 notices. Any individual who received such a notice faced the possibility of adverse findings regarding his or her conduct. On November 30, 1995 we issued a ruling dismissing a motion from counsel for LCol(Retired) Carol Mathieu to adjourn

the Inquiry's proceedings and to declare that the representatives of the Department of National Defence, the Canadian Forces, the Government of Canada, and the Attorney General of Canada at the Inquiry were in a conflict of interest to the prejudice of the applicant.

On April 19, 1996, we considered a motion put forward by counsel for BGen Ernest B. Beno that sought either to disqualify the Chairperson of the Inquiry from continuing to act as a Commissioner for this Inquiry, on the grounds that his conduct with respect to the applicant created a "real apprehension of bias", or, alternatively, from participating in any way in the making of adverse findings with respect to BGen Beno. The applicant's concerns arose over questions and statements perceived to demonstrate "unfairness" toward the witness, both inside and outside the hearings. We considered the legal arguments and, in the end, dismissed the motion on the grounds that any findings to be made would be based solely and scrupulously on the evidence formally disclosed to the participants and received in our hearings, and that all findings and conclusions would be collective, that is, those of all Commissioners together. The applicant sought judicial review of our decision in the Federal Court Trial Division, which on February 20, 1997 upheld the claim of bias and prohibited the Inquiry Chairperson from participating in any discussions or decisions regarding matters of conduct where BGen Beno was involved. We immediately filed an appeal of that decision, believing that the facts did not support it, that the reasons for decision rested on an assumption of standards of conduct for a judge during a trial, and that those standards should not be applied to a Commissioner acting as an investigator in a hearing that is not a civil or criminal trial. On May 2, 1997, the Federal Court of Appeal, in a unanimous decision, quashed the decision of the Trial Division and concluded that there was no evidence of bias and no reasonable apprehension of bias on the part of the Chairman.

In addition to dealing with a variety of motions, we issued formal statements from time to time to clarify certain matters. These included opening statements at the commencement of each phase of the hearings, comments on our investigation into the integrity of documents made available to us, and a statement on a letter sent by counsel for the Government regarding legal and ethical standards for all counsel contacting members of the military.¹⁷

We issued formal statements at a press conference following the January 10, 1997 decision to cut short our hearings, at which time each of us expressed concerns about the implications of such a decision, but reaffirmed our individual and collective commitment to stay on in pursuit of the truth. That was, after all, the only goal we had set for ourselves -- to seek the truth on behalf of Canadians. The impact of the Government's decision to cut short the Inquiry is discussed more fully in Volume 5, Chapter 42. Our hope is that the report sheds additional light on what actually transpired in Somalia, and that implementation of our recommendations will help to prevent such events from recurring.

Structure and Organization of the Report

This section explains, in broad outline, how this report is organized and presented. The report consists of five volumes and an executive summary.

Executive Summary

The executive summary contains a brief summary of the facts and issues and sets out our major recommendations. Its purpose is to give readers an overview of the major points found in the chapters on context and narrative (Volume 1) and analysis and recommendations (Volumes 2 through 5).

Volume 1

The preface in this volume sets the tone and introduces the challenges we faced in the Inquiry. This is followed by a discussion of the major themes and principles stemming from the terms of reference and significantly affecting our approach. These issues include leadership, the chain of command, discipline, mission planning, personnel selection and training, personnel suitability and cohesiveness, rules of engagement, operational readiness, cover-up, disclosure of information, military justice and accountability. These topics and themes appear throughout the report and form an integral part of our analysis and recommendations. At the beginning of our report, we explain the broad principles underlying these concepts and demonstrate the linkages between and among them.

Then we describe our approach to the Inquiry, how we interpreted the terms of reference, the methodology used to conduct our investigation, and various rulings and formal statements rendered during the course of the Inquiry.

The bulk of Volume 1 consists of nine chapters describing the background to the Inquiry and our report. It describes things as they were at the time of the Somalia mission. It is not intended to be interpretive or to pass judgement. Rather it presents our research on the military, legal, and cultural factors that defined Canada's participation in the mission during 1992 and 1993. Its purpose is to give readers a basic familiarity with the nature and organization of the Canadian military and the role of the military in society. Thus, it provides a context for understanding our detailed analysis of the issues raised in the terms of reference.

The volume concludes with three chapters describing what happened before Canadian troops were deployed to Somalia, during the deployment, and after they arrived home. It describes the events and actions that define the issues and points to areas where we believe an investigation of the facts is warranted. This part of the report points out where we suspect systemic problems exist, whereas volumes 2 through 5 provide an analysis of those suspicions. These three chapters are thus a detailed narrative summary of the events, actions and decisions relating to the Somalia operation. All controversial or disputed facts are noted there.

Volumes 2 through 5:

Analysis, Findings, and Recommendations

This is where we present our findings. We explore the events described in Volume 1 to reach conclusions about what happened during the mission and to make recommendations. For each of our key themes, we describe the standards and norms (what should have been expected), identify the variances detected (the concerns flagged in our narrative of events), and draw findings from that analysis. Recommendations follow the findings, and these appear again at the end of the report and in the executive summary.

Our analysis and findings are presented in volumes 2 through 5. Volume 3 is devoted to a case study of the mission planning process for the Somalia deployment. Volume 4 is devoted to our findings with respect to individual misconduct on the part of those officers of the Canadian Forces who received section 13 notices for the pre-deployment period of the mission and as regards the DPGA/document disclosure phase. Volume 5 contains additional findings on several important topics, including a thorough analysis of the incident of March 4, 1993 and its aftermath, and a detailed assessment of the military justice system, with recommendations for extensive change. In the same volume we spell out the implications of the government decision to truncate our Inquiry in midstream, and what else we could have accomplished with sufficient time. Volume 5 also contains a summary of our recommendations and appendices to the report.

The Appendices

The appendices contain important material relating to the operations and the content of the Inquiry, for example, our rules and procedures; and our terms of reference as contrasted with those of the internal board of inquiry appointed by the Chief of the Defence Staff. The appendices contain various lists covering administrative and procedural matters. These include names of staff, advisers and consultants, and lists of persons and organizations with standing. In addition we provide copies of Commissioners' rulings, lists of witnesses appearing before the Commissioners, the names of research studies undertaken by external consultants, a description of background briefings and seminars attended by Commissioners and staff, and a list of acronyms and abbreviations used in the report.

NOTES

1. See Board of Inquiry, Canadian Airborne Regiment Battle Group, Phase I, vol. XI (1993), exhibit p. 20.11, Terms of Reference: Board of Inquiry, as amended on 9 July 1993, Appendix 1 to Appendix A to the Statement by the Board, p. 3237 (hereafter, Board of Inquiry, CARBG). A copy of this document is provided in Appendix 1 to this Report.
2. Board of Inquiry, CARBG, pp. 3236-3237.
3. Board of Inquiry, CARBG, p. 3237.
4. See, for example, House of Commons, *Debates*, April 29, 1993, p. 12863 (Mr. David Dingwall).

5. Originally, the former minister of National Defence, David Collenette, believed that a public inquiry, headed by a civilian, should be held under the auspices of the *National Defence Act*. See House of Commons, *Debates*, November 17, 1994, p. 7931.
 6. Order-in-Council, P.C. 1995-442, March 20, 1995, a copy of which appears in Appendix 1. Initially, the Hon, Gilles Létourneau, Peter Desbarats and Anne-Marie Doyle were appointed commissioners. Ms. Doyle was later replaced by Mr. Justice Robert Rutherford. See Order-in-Council P.C. 1995-614, April 23, 1995, a copy of which appears in Appendix 1.
 7. *Inquiries Act*, R.S.C. 1985, chapter I-11, sections 4 and 5.
 8. Our evidentiary hearings concluded on March 19, 1997. In all, we heard from 116 witnesses.
 9. For the complete details of the terms of reference, see Order-in-Council P.C. 1995-442 (Appendix 1).
 10. See Commission of Inquiry into the Deployment of Canadian Troops to Somalia, "Statement on the Terms of Reference" (August 3, 1995), p. 13 (a copy of which is provided in Appendix 3): In investigating racism to the extent that our terms allow, the Commission will of necessity be required to investigate aspects of military operations possessing systemic dimensions and implications. Issues such as training and screening involve factual inquiries that lead beyond the narrow confines of any single regiment or unit and may require our analyzing various operations, procedures...that may have system-wide application.... Although the Commission is not in a position to embark on an exploration of the state of racism and human rights violations in the Canadian Forces in general, it is quite prepared to call and examine evidence for the purpose of doing justice to such issues as validly fall within its Terms of Reference.
 11. See Exhibits P-6, P-7, and P-8.
 12. This report was introduced as an exhibit subject to material ordered severed, among other things, to protect national security and to avoid prejudice to international relations. See Board of Inquiry, CARBG, vols. I-XII (July 19, 1993), Exhibit P-20; and Commission of Inquiry into the Deployment of Canadian Forces to Somalia, Order for Severance, June 12, 1995.
 13. "Commission of Inquiry into the Deployment of Canadian Forces to Somalia Rules", Exhibit P-5, a copy of which is provided in Appendix 3.
 14. *Inquiries Act*, section 13.
 15. See Commission of Inquiry into the Air Ontario Crash at Dryden, Ontario, Final Report, vol.III (Minister of Supply and Services: 1993), p. 1194, where Commissioner Moshansky interpreted a "charge of misconduct" under section 13 of the *Inquiries Act* in this manner. However, out of an abundance of caution, he instructed commission counsel to give notice to all persons against whom comment might be made in the final report that could be considered adverse in nature.
 16. [1983] 2 F.C. 463 (Fed C.A.).
 17. Our concern was that the letter left an unfortunate impression that no contact could be made with any individual without prior notification to and approval of counsel for the Government. Upon clarification from another counsel for the Government, we advised counsel for all parties that the Government did not intend to prevent any initial contacts with potential witnesses, and that initial contact was permissible so long as any individual so contacted was advised of the availability of Government counsel before being interviewed.
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THEMES

In this chapter we introduce the major themes that are central to our terms of reference and thus merit substantial attention in our account of what transpired in the desert in Somalia and across the boardroom tables of National Defence Headquarters in Ottawa. These themes are as follows:

- leadership
- accountability
- chain of command
- discipline
- mission planning
- suitability
- training
- rules of engagement
- operational readiness
- cover-up
- disclosure of documents
- military justice

Even a casual reading of our terms of reference reveals that two of these concepts are pre-eminent and central to our investigation and must therefore infuse this report: **leadership** and **accountability**.

These may appear to be easily understood concepts. In truth, the surface simplicity of these twin pillars can be a beguiling trap for the unwary. Like much that is profound, apparent simplicity can mask deceptive depth and texture. Take leadership, for example. Can we address the definition of leadership in the armed forces in the way that U.S. Supreme Court Justice Potter Stewart attempted to deal with the vexing question of defining obscenity by concluding, "I know it when I see it."¹ We think not.

LEADERSHIP

Leadership, while difficult to define, is capable of articulation. Indeed, we address leadership in detail in Volume 2, Chapter 15 of this report. Leadership, as we make clear, encompasses, at least in part, certain qualities that enable the person possessing them to lead others in the accomplishment of an assigned mission or task -- one that requires harnessing the talents and energies of all for its successful completion.

Leadership is essential to the exercise of command in the armed forces. Occupying a position of authority does not make an individual a leader. Leadership includes not merely authority but also the ability to lead others. It has been described by the legendary Canadian military leader, Gen Jacques Dextraze, as "the art of influencing others to do willingly what is required in order to achieve an aim or goal." General Dextraze listed such qualities of leadership as self-sacrifice, loyalty, integrity and courage, and we do not quarrel with his list. Others add to or refine such formulations, but the core that constitutes real leadership is irreducible.

There is little doubt that military leaders occupy a position of trust with regard to their troops -- leaders must care about their troops, and their first thoughts must be for their troops' welfare. Military men and women subscribe to a cause that insists upon their unlimited liability, and thus it is incumbent upon those who would lead them into peril or place them in harm's way to put the well-being of their subordinates before their own.

Leadership is central to the matters under consideration by this Inquiry, because at issue is the extent to which the mission failed because the system and its leaders failed. The Inquiry must answer the question of whether, in the context of the deployment of Canadian forces to Somalia, proper military leadership was exercised. The recurring issue is whether the leaders in the chain of command fulfilled their responsibilities: did they do what ought to have been done?

ACCOUNTABILITY

This question leads us naturally to the second of the twin pillars -- accountability. How can we measure or assess the role and actions of senior leaders in the Somalia deployment without insisting upon a full accounting of what transpired? Accountability is a vexing concept for theorists across a broad range of disciplines. It is often ill-defined and erroneously merged with the allied concept of responsibility. Clarity of thought and precision in definition are of the utmost importance for an adequate understanding of this key concept.

This Inquiry, in discharging its mandate, was asked to focus on the nature of the mission and tasks assigned to the Canadian Joint Task Force Somalia and the suitability of the forces deployed to accomplish the tasks assigned. The actual manner in which the mission was conducted, the effectiveness of the decisions and actions of leadership at all levels of the chain of command, and the adequacy of the command response to the operational, disciplinary, and administrative problems encountered must all be examined. In addition, the professional values and attitudes of all rank levels to the lawful conduct of operations, the treatment of detainees, and the extent to which cultural attitudes affected the conduct of operations must be explored. Beyond this, the Inquiry was asked to review allegations of cover-up and destruction of evidence and, if these allegations were found to be substantial, to assess whether those in command responded appropriately. In essence, what the Government of the day and the Canadian people are seeking from this Inquiry is the accountability of senior officials for the failures of the Somalia mission.

As we define it, accountability is the mechanism for ensuring conformity to standards of action. In the military, this means that those called upon to exercise substantial power and discretionary authority must be answerable (i.e., subject to scrutiny, interrogation and, ultimately, commendation or sanction) for all activities assigned or entrusted to them. In any properly functioning system or organization, there should be accountability for actions, whether those actions are executed properly and lead to a successful result or are carried out improperly and produce injurious consequences.

Accountable leaders cannot shelter behind the actions of their subordinates. Accountable officials are always answerable to their superiors. In the military, with its elaborate system of rank and hierarchy, this reality is especially apparent.

In any organization, however structured, those at the apex should be accountable for the actions and decisions of those in the chain of authority who are subordinate to them. In a properly linked chain of command, accountability does not become attenuated the farther removed one is from the source of the activity. When the subordinate fails, that failure is shouldered by all who are responsible and exercise the requisite authority -- subordinate, superior, and superior to the superior.

Accountability in its most pervasive and all-encompassing sense resides inevitably with the chief executive officer of the organization or institution. In the diarchy that presides over Canada's military, this refers to the Chief of the Defence Staff and the CDS's civilian counterpart, the Deputy Minister of National Defence.

The term responsibility is not synonymous with accountability. One who is authorized to act or exercises authority is 'responsible'. Responsible officials are held to account. An individual who exercises powers while acting in the discharge of official functions is responsible for the proper exercise of the powers or duties assigned. In the chapter devoted to accountability (see Volume 2, Chapter 16) we make it clear that responsible officials include supervisors and delegates or agents who act on behalf of a superior officer. All are responsible for their actions and can be held to account for what goes wrong on their watch. One cannot delegate responsibility (and hence accountability) even if the authority to act has been delegated.

It is the responsibility of those entrusted with authority, those who exercise supervisory authority, and those who delegate the authority to act to others to know what is transpiring in the area of their assigned authority. Even if subordinates, whose duty it is to inform their superior of all relevant facts, circumstances, and developments, fail to fulfill their obligations, this cannot absolve the superior of responsibility for what has transpired. Ignorance of significant facts bearing on the discharge of an important responsibility does not often provide an adequate excuse for those who lead or are responsible when the time comes to account. In the military, unlimited liability and unrestricted access to the use of force impose a premium on those entrusted with the responsibility of leadership.

These principles of accountability and their corollaries are the yardsticks by which we have assessed the actions and decisions of senior leaders with respect to those aspects of the Somalia deployment that we were able to explore in the time available to us.

CHAIN OF COMMAND

Chain of command is a quintessentially military notion and method of organization that has been appropriated by the captains of industry and professions other than the military. In its simplest terms, the 'chain' referred to is the line of responsibility that flows from the most superior officer of the organization, through subordinates at various rank levels, to those at the farthest reaches of the organization, all of whom are asked to take action or discharge obligations in the name of the organization. In the military, the chain of command is the line of authority and responsibility extending from the Chief of the Defence Staff to the lowest-ranked member of the Canadian Forces. It is the military connection that joins a superior officer to a subordinate for the legal transfer of orders and instructions.

Chain of command is the central organizing concept through which military discipline and leadership are effected. Once orders are given, the chain of command becomes the vehicle for ensuring compliance with those orders. When orders are given, the appropriate legal authority is vested in the recipient to carry out those orders. According to military theory, responsibility is not delegated. Rather, each link in the chain of command is responsible and accountable for the satisfactory performance of the obligation imposed.

The chain of command is organized around the principle of hierarchy, superior to subordinate, and the concept of 'command'. Commanders at each level respond to the orders and direction of their immediate superiors and subsequently issue orders appropriate to their level of command. In carrying out their responsibilities, commanders are empowered to issue orders and directions to those immediately subordinate to them.

Without an effective chain of command, the military enterprise is destined to failure. In our Inquiry, where the task is to examine and analyze the sufficiency of the actions and decisions of leaders and the effectiveness of the operation as a whole, the importance of an effective chain of command is very clear.

DISCIPLINE

Discipline is fundamental to the military endeavour. A few years ago, in a ground-breaking decision on military justice, the Chief Justice of the Supreme Court of Canada discussed the need for discipline in the armed forces:

The safety and well-being of Canadians depends considerably on the willingness and readiness of a force of men and women to defend threats to the nation's security. To maintain the armed forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. Breaches of military discipline must be dealt with speedily and, frequently, punished more seriously than would be the case if a civilian engaged in such conduct.²

Discipline, for the military, has at least two important meanings. The first, discussed by the Chief Justice, applies the same connotations to the term that the larger society would: namely, that discipline entails the enforcement of laws, standards and mores in a corrective and, at times, punitive way. The second, and arguably more important meaning from a military perspective, entails the application of control to harness energy and motivation to a collective end. Discipline, thus conceived, is more positive than negative. It seeks actively to channel individual efforts into a collective enterprise. Where that enterprise is the waging of war or armed conflict, it permits the application of force in a controlled and focused manner. Controlling aggressivity so that the right amount of force is applied in exactly the right circumstances is of primary significance to the military. Discipline is the means of achieving such control.

Few professions are as dependent on discipline as the military. Since the chief purpose of military discipline is harnessing the capacity of the individual to the needs of the group, the probability of success for a particular mission varies in proportion to the extent to which there is concert or cohesion among soldiers. This cohesion occurs when soldiers are disciplined.

Discipline seeks to elicit from individuals their best and most altruistic qualities. It depends on the development of a sense of co-operation and teamwork in support of the group. While imposed initially through the rigours of training, the goal of discipline is to lead individuals gradually to the stage where, of their own volition, they control their own conduct and actions.

The task of ensuring the discipline of subordinates is a major priority of a commander. Good leadership begins with self-discipline, and for the sake of those serving below, a commander must establish a standard of self-discipline that merits emulation. The capacity of the individual soldier for self-correction may originate in the fear of punishment but, over time, respect for authority and willing obedience must reflect the individual's own self-discipline.

Our terms of reference obliged us to investigate and report on "the chain of command system, leadership within the chain of command, discipline, operations, actions and decisions of the Canadian Forces and the actions and decisions of the Department of National Defence in respect of the Canadian Forces deployment to Somalia...". We were also asked to inquire into whether the institutional responses to the operational, disciplinary and administrative problems encountered in the various phases of the Somalia operation were adequate. In our view, only by considering whether proper discipline existed can we determine whether an effective unit, capable of operational tasks, was dispatched to serve in Africa.

MISSION PLANNING

Mission planning is a major theme in this report, since an understanding of the nature of the mission and the tasks undertaken by the Canadian Airborne Regiment is fundamental to our mandate. As our narrative history of the Somalia operation recounts (see chapters 12 through 14 in this volume and chapters 24 and 25 in Volume 3), the precise definition of the Somalia mission in the early days of deployment was slow to emerge. The mandate itself was imprecise and ephemeral, changing in midstream from a United Nations Chapter VI peacekeeping mission (Operation Cordon) to a considerably more dangerous Chapter VII peace enforcement operation (Operation Deliverance). The nature of the UN leadership and oversight was itself transformed as UNOSOM mutated into the U.S.-led UNITAF operation.

Mission planning considerations permeate our terms of reference, particularly as they relate to pre-deployment issues. Not only do the terms of reference direct us to investigate the mission and tasks assigned to the Canadian Airborne Regiment in the context of an assessment of the suitability of the Regiment for the mission, but they also indirectly require a comprehensive review of the operational readiness of the Regiment and the appropriateness of the training objectives and standards used to prepare the unit for deployment. Further, as noted earlier, we were required to report on the effectiveness of the decisions and actions taken by leadership in preparation for the mission, a task that necessitates a clear understanding of the nature of the mission assigned to the Regiment.

The importance of proper mission planning is undeniable. Inadequacies in planning and preparation can create the conditions for mission failure. When regular, deliberate, conscientious and comprehensive planning processes are followed, senior decision makers can identify areas where deficiencies exist or extra effort is needed. With this knowledge, they are obliged to ensure that the requisite steps are taken to prepare the force properly, for example, by adjusting training or altering the composition of the force. Consequently, we focused our hearings with respect to mission planning on issues such as last-minute changes to the mission, its location, the tasks involved, the rules governing the use of force, and the leadership of the force, and whether they led to planning failures affecting the organization, composition, and structure of the force, as well as shortfalls in logistical support, weapons and materiel, and force training.

SUITABILITY

Suitability in the context of this Inquiry embraces a plethora of issues, including general and mission-specific factors such as cohesion, as well as selection, screening, and promotion processes or mechanisms. More particularly, our task was to determine whether a unit composed of parachutists and, more particularly, the Canadian Airborne Regiment, was suitable for selection for service in this particular mission in Somalia.

A Department of National Defence publication lists five characteristics that differentiate airborne forces from more conventional forces: air mobility; quick reaction; flexibility in terms of tactical deployment; lightness (referring to light scale of equipment); and suitability to low-intensity conflicts (including peacekeeping or peace enforcement).³ While few would argue with the requirement for paratroops to have these general attributes, some would contend that there is a basic incompatibility between the elite parachutist's creed, including a commitment to fight on to the objective and never surrender, and the peacekeeper's constabulary ethic, which requires a commitment to the minimum use of force. The question for us was whether the selection of a paratroop unit with this different ethic as Canada's UN standby unit could be offset by proper training preparations.

If one accepts that there is no inherent characteristic disqualifying an airborne regiment from selection for deployment on the Somalia mission, the question of suitability then focuses on the suitability of the actual unit selected for service in Somalia. In assessing this question, we were also obliged to pay attention to the availability and suitability of an alternative to the CAR in the selection process.

Since the CAR was selected to serve in Somalia and was, in this sense, deemed suitable, we have been obliged to evaluate the adequacy of that choice by senior leadership, given such realities as, among others, recognized deficiencies in the organization and leadership of the regiment; the restructuring and downsizing of the regiment; the reduction (from colonel to lieutenant-colonel) in the rank necessary to command the CAR; the failure to remedy known disciplinary problems; and the substantial turnover in personnel just before deployment.

As we have indicated, the probability of success in a mission varies in proportion to the extent of concert or cohesion among soldiers. This kind of cohesion occurs where soldiers are properly disciplined and trained. Cohesion imparts to the group a unity of purpose. Our Inquiry was to assess to what extent, by dint of proper leadership, training, discipline and values, group cohesion was achieved in the Somalia deployment. Cohesion, thus comprehended, is an important indicator in the assessment of overall suitability.

Suitability can also be examined at the micro level in terms of the acceptability for service of those within the unit designated for deployment to Somalia. This measure of suitability involves considering the adequacy and application of the mechanisms and processes in place for selecting and screening candidates for admission to the forces or for deployment to an operational theatre.

The Somalia deployment underscores the importance of judgement regarding such key personnel issues as behavioural suitability and professionalism. In 1992, almost no guidance on these factors was available to the chain of command in the deploying unit. Leaders of deploying units relied heavily on the overall CF personnel system to select, screen, employ and promote unit members appropriately at any given time.

In Somalia, a great many unsavoury events conspired to call into question the adequacy of the individual selection and screening processes in place before deployment. In our report, we analyze and assess the essential capacity of the Canadian Forces processes to screen for criminal tendencies, psychological instability, security risks, disciplinary threats, and racism. However, the full story of the Somalia deployment cannot be recounted without describing the rash of disciplinary incidents, the unbounded hazing rituals, and the presence of right-wing extremists and racist incidents and paraphernalia within the CAR.

A persistent and lingering allegation of rampant careerism in the CF has made it necessary for us to evaluate the methods and mechanisms in place for securing the appropriate career development of officers and members of the armed forces, including performance evaluation reports, merit boards, and criteria for promotions. We have been obliged, in this regard, to examine whether bureaucratic and administrative imperatives were allowed to dilute the merit principle in the appointments process. Also, we wanted to investigate whether individual career management plans were allowed to take precedence over the operational needs of the mission. In essence, was the merit principle observed, and were the best, most suitable candidates selected for service in Somalia?

TRAINING

Suitability is intimately linked to the theme of appropriate training. Training in the military is the bedrock of discipline and the foundation for the professional image of the armed forces. Our Inquiry was directed to look into "the appropriateness of the training objectives and standards used to prepare for deployment of the

Airborne Regiment". Training, in turn, is linked to the question of the operational readiness of the CAR for deployment to Somalia. Fundamental to the operational readiness of a unit is the question of whether troops are well trained to perform all aspects of the mission for which the unit is being deployed.

We assume that the Canadian Forces accepts a duty to train and prepare adequately all armed forces personnel slated for deployment on a peacekeeping mission. This is as much for the protection of Canada's soldiers as it is for the safety and security of civilians living in the area of the intended deployment.

Peacekeeping, and even peace enforcement, differ fundamentally from the conduct of war. There is an established, traditional method of preparing to wage war. This kind of training is referred to as general purpose combat training (GPCT). According to military regulations, GPCT involves basic soldiering skills, including firing specific weapons, throwing grenades, achieving fitness standards, applying military first aid, performing individual fieldcraft, performing nuclear/biological/chemical defence, applying mine awareness, navigating using a map and compass, communicating using communications equipment, and identifying fighting vehicles and aircraft. In the Canadian Forces, GPCT forms the basis for peacekeeping training. Any other training is mission-specific and is delivered as part of a unit's pre-deployment preparations for a peacekeeping mission.

In addition to providing fighting skills, GPCT instills a strong sense of discipline in a unit, together with the impetus and ability to work cohesively and efficiently. These attributes can enhance the performance of any task, whether in combat or delivering aid to civilian populations. A combat-ready contingent commands respect, and this can be of critical importance in a theatre where war or civil strife is occurring.

At this time there is no consensus with regard to whether general purpose combat training is sufficient preparation for non-traditional military missions such as peacekeeping and peace enforcement. Certainly within the Canadian Forces there was a belief (at least until the fall of 1995) that GPCT was sufficient training for all purposes, and very little non-traditional training, if any, was given in preparation for peacekeeping/peace enforcement missions. This is remarkable, given Canada's long history of involvement in peacekeeping.

Today's soldiers must be more than avid warriors. They must exercise skills that fit more naturally within the realms of civilian policing, diplomacy and social service. In developing the appropriate skills for a given peace support operation, training is arguably more effective than ad hoc experience.

In Chapter 21 on training we devote considerable attention to the question of what constitutes valid and useful non-traditional training for peace support missions. Suffice to say that a mix of generic and mission-specific training beyond GPCT seems to be required. Peacekeeping soldiers require an understanding of the peacekeeper's roles and responsibilities; they must learn advanced techniques of negotiation and conflict resolution to be effective; the diversity of their assignments demands sensitivity to issues of intercultural relations; they require an appreciation of the full gamut of UN procedures affecting such matters as the establishment of buffer zones, the supervision and monitoring of cease-fires, and the protection of humanitarian relief efforts. The modern peacekeeper must know how to establish and maintain law and order, impose crowd control, conduct searches, and handle detainees, while at the same time lending assistance to relief efforts and co-operating with humanitarian agencies. These general skills must be supplemented by an acquired knowledge of the language, culture, geography history, and political background of the theatre of operations.

To discharge our obligation in this report, we must answer the question of whether the soldiers sent to Somalia were properly trained for their mission. This is a complex question. It involves an assessment of the nature and adequacy of the training received and of the policies underlying that training, together with an examination of whether the performance of our soldiers could have been improved or enhanced if they had been exposed to additional, perhaps more sophisticated, training.

RULES OF ENGAGEMENT

One specific area of training that has commanded our attention, whether in the context of non-traditional training or general purpose combat training, is the formulation and observance of rules of engagement (ROE).

Rules of engagement are the operational directions that guide the application of armed force by soldiers in a theatre of operations. The ROE define the degree and manner and the circumstances and limitations surrounding the application of force. To take an example that had some prominence during our hearings, the rules of engagement tell soldiers when they can fire a weapon and whether it is appropriate to shoot to kill.

The rules of engagement in effect constitute official commands. They are an expression of government policy and are promulgated by the Chief of the Defence Staff. ROE are the means by which the government ensures that military activity aligns with Canadian foreign policy and legal objectives. In *R. v. Mathieu* Mr. Justice Hugessen stated that the ROE "constitute orders to Commanders and Commanding Officers",⁴ which is undoubtedly correct, but they are also of crucial importance to soldiers in the field, since they are the clearest and most concise authoritative expression of when force can be employed. For this reason, the ROE are condensed and printed on a card, to be carried at all times by soldiers on duty in an operational theatre.

Since the ROE are of importance to the soldier's tasks and duties while on deployment, they are an integral part of training for the mission. Training performance can be assessed, at least in part, against the standards enunciated in the ROE. Since the rules of engagement are tantamount to orders, a soldier could be charged under the Code of Service Discipline for failing to comply with them.

The rules of engagement depend to a great extent on clarity of expression. To the extent that they are ambiguous, their utility is compromised. Soldiers are entitled to look to their commanders for clarification of what is intended by any given rule within the ROE. Thus, it is critical for commanders to know and to understand what is contained in and intended by the rules of engagement.

Our terms of reference direct us to evaluate "the extent to which the Task Force Rules of Engagement were effectively interpreted, understood and applied at all levels of the Canadian Forces chain of command". Significant questions arose in Somalia in relation to the ROE. The mission changed from peacekeeping under Chapter VI of the UN Charter to peace enforcement under Chapter VII. The planned deployment took place in a rapidly changing environment in which the ROE were very slow to find their way to the soldiers. In addition, the interpretation of the ROE changed significantly during the deployment, resulting in serious confusion about the meaning and application of the rules. The adequacy of training on the rules of engagement during pre-deployment and in theatre was also raised for our consideration. Behind these questions about the practical use and application of the rules of engagement during the Somalia operation is the larger issue of the sufficiency of Canadian policy and procedures for the development, formulation and transmission of ROE.

OPERATIONAL READINESS

Operational readiness entails a rigorous and comprehensive assessment of whether an assigned unit is effective and prepared to mount its mission in an operational theatre. It embraces all the themes described to this point. If a unit is led by competent and accountable leaders who respect and adhere to the imperatives of the chain of command system; if the soldiers serving under these leaders are properly recruited and screened, cohesive, well trained, and disciplined; if they have a clear understanding of adequately conceived and transmitted rules of engagement, then we can have confidence that this is a unit that merits the right to bear arms under the Canadian flag or the UN banner and that is operationally ready to deploy.

The assignment of missions and the assessment of operational readiness are the responsibility of commanders.

Operational readiness contains both qualitative and quantitative aspects. Strategic and tactical doctrine, leadership, discipline, morale, unit cohesion, technical competence and logistical support are all factors contributing to operational effectiveness and preparedness -- all must be measured and assessed to determine operational readiness. If assessments of readiness are left wholly or mainly to subjective determinations, the process becomes fundamentally flawed. Subjectivity, by its nature, complicates the ability to confirm the accuracy of an assessment. We must regard as suspect the reliability of wholly subjective determinations on an issue as contentious as the readiness of a military unit to perform appropriately in a hostile theatre.

In fulfilling our mandate to investigate the state of readiness of the Canadian Airborne Regiment when it was deployed to Somalia, we evaluated whether the Canadian Forces Operational Readiness and

Effectiveness System (ORES) -- in place at the time Operation Cordon and Operation Deliverance were planned and used in the assessment of the state of readiness of the CAR -- was flawed by its excessively subjective nature. More generally, we saw it as our responsibility to take the measure of the defence policies in place in 1992 and 1993 concerning operational readiness in the Canadian Forces.

COVER-UP

Cover-up is an important theme of this report. It finds expression in paragraph (k) of our terms of reference, which directs us to investigate, in relation to in-theatre events, 'the manner in which the Task Force conducted its mission and tasks in-theatre and responded to the operational, disciplinary and administrative problems encountered, including allegations of cover-up and destruction of evidence'.

This Inquiry had its genesis, at least in the public's mind, in the events surrounding the torture and death of a Somali citizen, Shidane Arone. Our work was expected to take us at least as far as that March 16, 1993 incident and its aftermath. The Government's decision to truncate the work of this Inquiry curtailed our ability to investigate this incident and the allegations of cover-up surrounding it. However, our Inquiry equally owes its origins to the courageous efforts of Maj Barry Armstrong to bring to light another incident, also involving the death of a Somali citizen at the hands of Canadian soldiers. This incident occurred some 12 days before the homicide of Mr. Arone, on March 4, 1993. This incident, like the one involving Mr. Arone, also prompted allegations of cover-up, which we have been able to explore, albeit only within the ambit of the theatre of operations. For the most part, the upper echelons of the Canadian Forces and the major figures in the National Defence Headquarters bureaucracy have been excluded from our examination by reason of the Government's decision to shorten our Inquiry.

The term 'cover-up' is used in this report to describe a deliberate course of conduct that aims to frustrate broader moral, legal, or public claims to information. Most attempts at a more thorough definition tend to require a purposeful attempt at concealment. It is probably accurate to say that this element of wilfulness conforms to the usual understanding of the term cover-up. Most people, we believe, would not consider failures to report, reveal, or preserve information that result from pure accident or even benign neglect as constituting a cover-up. The term has more sinister connotations, usually reflecting a suspicion that the concealment is purposeful and, quite possibly, orchestrated. Cover-up is the handmaiden of conspiracy.

In the case of a public institution like the military, special laws and regulations typically impose specific duties in relation to reporting, retaining, or divulging information. Furthermore, the criminal law requires individuals to refrain from acting or attempting to act in a manner that compromises the functioning or integrity of public institutions. This is especially important when those institutions play a fact-finding and/or adjudicative role. Together these affirmative and negative legal duties constitute, at least partially, the prevailing standard for openness on the part of public institutions and their personnel. These duties exist to support individuals' legal accountability in criminal, civil, or professional terms for their personal conduct and performance and, in certain contexts like the military, the conduct and performance of their subordinates.

But cover-up is not a legal term, and the concept clearly extends beyond the scope of legally mandated claims to information or evidence. Before there can be a cover-up, there must be some obligation, legal or moral, to maintain an accessible record, and to report or divulge the information in question. Within the military there are many such obligations. A few examples of the legal obligations under which members of the military operate will suffice to map the terrain at this point.

All Canadian Forces members are required to report "to the proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the Code of Service Discipline."⁵ Also, a commander of a base, unit, or other element of the forces must report significant events that occur on or affect a base, unit, station, or other element. Essentially, "significant" incidents are deemed to be those that could engender public interest or that might otherwise come to the attention of senior departmental officials by means outside the normal military reporting chain.⁶ Moreover, an officer commanding a command is required to report immediately to NDHQ and to the appropriate regional headquarters any serious or unusual incident of military significance, affecting any base, unit, or element in the command, that is not otherwise required to be reported if it is likely to be the subject of questions to NDHQ.⁷

Beyond these Code of Service Discipline matters, CF Military Police are required, among other things, to investigate and report on all criminal and serious service offences committed or alleged to have been committed by persons subject to the Code of Service Discipline and on all criminal offences, serious service offences and security violations or offences that occur on or in respect of a defence establishment, works, materiel, or operation. They must also investigate and report on all incidents involving CF members, DND employees or defence works in which the security of Canada could be threatened.

Hence, military life is subject to broad requirements to observe and report and, by the same token, to a high degree of supervision and oversight. Reporting of significant or unusual incidents may spawn a variety of investigations and inquiries, examples of which are discussed throughout this report. Our own Inquiry, for example, was preceded by an internal board of inquiry.

The seeds of a cover-up can reside in the simple fact that some official may not wish to "let the bad news out". Careers can be made or lost simply because mistakes or errors are made on one's watch. Thus, the requirement to report may invite an unwelcome spotlight and can provide the impetus or the motivation to conceal or cover up matters of importance.

But it is not only internal processes involving disclosure and oversight that may produce this result. The *Access to Information Act* gives the public, on request and subject to a variety of exceptions, the right to access to "any record under the control of a government institution."⁸ The Department of National Defence is listed in a schedule to the act as a government institution that is subject to this right of access. The public's right to know, as facilitated by this act, might be seen by some bureaucrats, or even by senior officials, as focusing unwanted attention on matters that some would prefer to keep in the shadows.

Both internal and external reporting mechanisms have their place in our consideration of allegations of cover-up. The inadequate reporting of significant incidents in theatre and the inadequacy of the investigations prompted by such reports raise the spectre of one kind of cover-up. The alteration and falsification of documents and the manipulation of access to information processes led us in the direction of another, perhaps related, kind of cover-up. These matters are pursued in the chapters dealing with the incident of March 4, 1993 and our examination of the public affairs branch of DND (which we refer to as the DGPA phase of our investigation), both in Volume 5.

DISCLOSURE OF DOCUMENTS

Disclosure of documents became a thorny issue for this Inquiry almost from its inception. An organization as massive and as extended as the Department of National Defence relies in an exceptional way on processes that document the transmission of official instructions. We recognized that it would be fruitless to attempt to reconstruct what occurred in Somalia in 1993 without full disclosure from the Department of National Defence and the Government of Canada of all relevant documentation. Accordingly, on April 21, 1995 we issued an order pursuant to section 4 of the *Inquiries Act* for the immediate production of all such material. Since documents are the communications lifeblood of the Canadian military, it was naturally expected that the documentation involved in the Commissioners' request would be extensive.

Representatives from the Somalia Inquiry Liaison Team (SILT) established by DND confirmed this impression. Their initial estimation of the amount of material to be disclosed was some 7,000 documents. Over time it would be demonstrated that this figure, substantial in itself, represented a vast underestimation of what would be necessary to satisfy the Commissioners' order.

As discussed in the chapter dealing with the DGPA phase and with the general subject of DND disclosure (Volume 5, Chapter 39), document disclosure never really came to formal closure throughout the life of the Inquiry. We were drawn inescapably to the conclusion that all that should have been disclosed was not disclosed.

In that chapter we document how disclosure took the form of a slow leak of information, rather than an efficient handover of material. We describe our efforts to determine why documents went missing or were altered or destroyed. We also describe our efforts to remind representatives of SILT of the urgency of our requests and of the need for an appropriate level of compliance with our orders. Finally, when these efforts came to nought, and with the unfolding spectacle of altered Somalia-related documents, missing and/or destroyed field logs, and a missing National Defence Operations Centre computer hard drive, we had no

choice but to embark upon the 'document destruction' or DGPA phase of our proceedings so as to call senior DND officials to account for these many shortcomings in disclosure.

Document disclosure was no mere side issue for our Inquiry. A legal or quasi-legal tribunal must have the capacity to vindicate itself and ensure the integrity of its processes. When the possibility of manipulation of the documentary record or, even worse, possible obstruction, appears, it must be pursued. The entire credibility of the inquiry process hinges on matters such as these.

MILITARY JUSTICE

Military justice merits its place as a major theme of this report since that system played a pivotal role in the aftermath of the central events in Somalia. Military justice encompasses far more than the adjudicative process -- that is, the process for trying service, disciplinary or criminal offences within the military. The adjudicative process was certainly on display in the aftermath of the Somalia deployment (12 court martial proceedings were convened) but it is only one of the three main components of the military justice system. The other two processes are policing or investigation, and prosecution. These two elements command the bulk of our attention in this portion of our report.

We declared on several occasions that the Inquiry was not a trial and that it was not the purpose of the Inquiry to try or retry any matter that had been heard in the civil or criminal courts. We were charged primarily with reporting on institutional and systemic failures and shortcomings. Our findings in relation to these systemic issues may also be linked to individual failings. Because of the Government's decision to restrict the time within which we were to report, however, we determined that we would not comment or report on individual misconduct, except as regards issues pertaining to the pre-deployment and DGPA phases. Our examination of military justice is therefore entirely institutional or systemic -- which is not to say that it fails to concern itself with facts and circumstances that are part of the record of this Inquiry or that the discussion fails to describe faithfully the relevant testimony of relevant actors on relevant events and incidents.

In March 1997 we published one of the research studies we commissioned, *Controlling Misconduct in the Military*, by Martin Friedland. The study examines at some length a variety of issues bearing on the subject of military justice. The military justice system is the core mechanism for controlling misconduct in the military. When less harsh controls -- leadership, loyalty to one's unit or comrades, administrative sanctions, and rewards -- fail, the military justice system may still deter improper conduct on and off the battlefield.

One of the major purposes of the military justice system is to curb misbehaviour or, more positively, to encourage appropriate conduct. The intimate link between military justice and discipline was discussed in our treatment of the theme of discipline. Anthony Kellett, in his excellent text, *Combat Motivation: The Behavior of Soldiers in Battle*, states that the "first and, perhaps, primary purpose of military discipline is to ensure that the soldier does not give way in times of great danger to his natural instinct for self preservation but carries out his orders, even though they may lead to his death." A further purpose, he states, is to maintain order within an army so that it may be easily moved and controlled so that it does not abuse its power. If an army is to fulfill its mission on the battlefield, it must be trained in aggression; however, its aggressive tendencies have to be damped down in peacetime, and the medium for this process is discipline."² The use of internal military discipline to ensure adherence to laws, standards and mores is an aspect of the operation of the military justice system. The military requires almost instinctive obedience to lawful military orders. Drill is used to instill instinctive obedience. Taken as a whole, the military justice system also serves this purpose.

Policing, which is the responsibility of Military Police, and the charging and prosecutions process, which is under the control of the commanding officer but heavily influenced by the office of the Judge Advocate General, play very important roles in attempting to control misconduct in the military. As our probe into the Somalia operation unfolded, it became progressively more evident that an examination of the Somalia deployment would be incomplete without serious attention being devoted to these key elements of the system. The deployment, beset as it was by numerous problems involving serious breaches of discipline and several instances involving the loss of civilian lives, cast an unflattering light on the way the military organizes itself to investigate and prosecute possible criminal behaviour.

With regard to investigations, we were interested in the role that Military Police play in the Canadian Forces. This led us inevitably to consider the relationship of Military Police to their commanding officers and, more generally, to the entire chain of command. Did they, because of their relatively junior status, experience a wall of non-co-operation when investigating serious misconduct? Since Military Police are controlled and restrained by such mundane realities as available resources, physical location, and the chain of command's inherent ability to control these variables, how significant is the problem of 'command influence' and its first cousin, 'conflict of interest'? In our chapter on the military justice system (Volume 5, Chapter 40) we examine these and other questions in light of a number of incidents or events that occurred during the Somalia deployment.

Problems relating to the charging and prosecutions process also owe much of their pertinence to the issues of command influence and conflict of interest. Here, once again, our discussion is driven by the examples afforded by the deployment itself.

In general terms, we wanted to analyze key roles in the charging process -- those of the commanding officer (CO) and the Judge Advocate General (JAG) -- in order to assess to what extent a lack of institutional independence could be discerned and whether an appearance of unlawful command influence exists. We examined subsidiary questions such as whether a lack of clarity in the criteria for laying charges results in too wide a grant of discretion to the CO with regard to the actual laying of charges. If the CO's powers are indeed too broad in this respect, then questions of both apparent and actual command influence arise, since there is a need for both the appearance of justice and actual justice.

Our discussion of command influence and conflict of interest leads naturally to a consideration of the adequacy of safeguards to prevent conflict of interest. The role of the commanding officer in the prosecutions process can pose difficulties if the CO has had any involvement in the decision to charge or in the incident itself. This has particular relevance in the Somalia context, where the incidents are clearly linked to problems within the chain of command.

As a final element of our treatment of military justice, we examine the office of the Judge Advocate General and its institutional independence. We assess the validity of the widely held perception that the JAG lacks institutional independence in the area of prosecutions. Our discussion here is primarily of a theoretical nature, owing to our tight deadline. Nevertheless, the public record does reveal a few significant examples, and it is these that have commanded our attention and yield important insights concerning whether the JAG and the JAG's office have conflicting roles that ultimately undermine the appearance of justice.

The themes discussed in this chapter are strongly interrelated. Individually and together, they define the standards for and relationships within a properly functioning military system. They form the foundation for our investigation into the events surrounding the Somalia mission and provide a framework for our analysis and conclusions. These themes serve as a roadmap to understanding our journey, which began in the fall of 1992 in Petawawa and took us to the theatre of operations in Somalia and to National Defence Headquarters in Ottawa.

NOTES

1. *Jacobellis v. Ohio*, 378 U.S. 184 (1964), p. 197.
 2. *R. v. Généreux*, [1992] 1 S.C.R. 259 at 293.
 3. Department of National Defence, *Airborne*, vol. 1, Airborne Operations (B-GL-310-001/FT-001, 1990), p. 1-2-2.
 4. CMAC 379, November 6, 1995, p. 4.
 5. *Queen's Regulations and Orders* (QR&O) 4.02(e) and 5.01(e).
 6. Canadian Forces Administrative Order (CFAO) 4-13.
 7. QR&O 4.11.
 8. R.S.C. 1985, chapter I-11, section 4(b).
 9. Boston: Kluwer, Nijhoff, 1982, pp. 89-93.
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STRUCTURE AND ORGANIZATION OF THE CANADIAN FORCES

This chapter describes the organization and structure of the Canadian Forces (CF) at the time of the Somalia mission in 1992-93. In addition, it defines and explains a number of terms and concepts that appear throughout the report. The goal is to give readers an overview of the complexity of the organization as a context for understanding the environment in which decisions were taken before, during and after the deployment to Somalia. In particular we want to highlight the complexity inherent in an organizational structure based on the amalgamation of defence department and military staff at National Defence Headquarters in Ottawa.

Second, we want to draw a distinction between organization for function and organization for process. Understanding how an organization is structured does not always help in understanding how it actually works -- how decisions are made, how information flows, how the work of the organization is actually accomplished. In this chapter we concentrate mainly on structure, leaving for later chapters our analysis of how this structure affected the issues and incidents that are the substance of our mandate.

BACKGROUND

Before July 1964, the head of each of the three armed services in Canada -- the Royal Canadian Navy, the Canadian Army, and the Royal Canadian Air Force -- had direct access to the minister of National Defence and provided service-related advice to government. In July 1964, Parliament amended the *National Defence Act* to integrate the three services under a newly created position, the chief of the defence staff (CDS). The CDS became the senior serving officer of the three services and solely responsible for the "control and administration" of them.¹ In April 1967, Parliament passed the *Canadian Forces Reorganization Act*, abolishing the three services and creating a new single service, the Canadian Armed Forces, with common uniform and rank designations for sea, land, and air members.

The Department of National Defence, a department of government, and the CF the "armed forces of Her Majesty raised by Canada", are separate entities.² Until 1972 each had entirely separate staff. In the early 1970s, a management review, ordered by the minister to investigate defence and CF organization at the centre, recommended amalgamation of the staffs of the Department of National Defence (DND) and CF Headquarters into a new organization with a single staff -- National Defence Headquarters (NDHQ).³ The department, headed by the minister, and the forces, headed by the chief of the defence staff, were to remain separate entities, served by the integrated staff. However, the deputy minister (on behalf of the minister) and the CDS presided over the integrated NDHQ staff as a diarchy. This arrangement often confuses attempts to separate and define departmental and CF issues.

Since 1972, although DND and the CF have undergone several organizational and structural modifications, the essentially collegial nature of the structure has remained unchanged. Air Command was created in 1975, bringing command and control of air resources together under a single commander. The Land Force Area Commands were approved in 1990, dividing the Canadian land mass into four regions to simplify control of the army's domestic activities and support. The creation of Maritime Forces Atlantic (MARLANT), an operational-level maritime headquarters on the east coast, was approved in 1992, providing a second regional headquarters, balancing Maritime Forces Pacific (MARPAK), and allowing Maritime Command HQ to concentrate on strategic issues. NDHQ itself has been restructured several times. In addition, at NDHQ, a CF joint staff system was adopted in 1992, and the joint force headquarters system was put in place in 1994.

HIGHER ORGANIZATION FOR DEFENCE

Civil control of the CF is rooted in the parliamentary system. The Governor General of Canada, as the Sovereign's representative, is the Commander in Chief of the CF. Cabinet is responsible to Parliament for formulating and implementing government policy, including defence and military policy. The minister of National Defence, under the *National Defence Act* (NDA), presides over DND and is responsible for the "management and direction" of the CF and all matters related to national defence. The minister is assisted

by two senior advisers, the deputy minister and the chief of the defence staff. The deputy minister is appointed by the Governor in Council (that is, the Cabinet) under the NDA but draws power and authority from other statutes, such as the *Interpretation Act* and the *Financial Administration Act*. The CDS draws authority from the NDA, section 18, which charges the CDS with the "control and administration of the CF", but "subject to the regulations and under the direction of the Minister". All orders and instructions of the government to the CF are issued through the CDS, unless the Governor in Council directs otherwise.⁴

LEGAL ASPECTS OF COMMAND

Through the *National Defence Act* Parliament has set out the basic law governing command in the CF. However, command is exercised under the law in large measure through traditional methods derived from the customs of the service. Officers and non-commissioned members of the CF are, of course, expected to exercise command prudently and to maintain "good order and discipline" fairly. To understand the structure of the CF we need to appreciate the legal basis for command, the special responsibilities and duties of the CDS and subordinate officers and the traditional methods for exercising command in peace and war.

Primary authority rests with the Governor in Council to implement and amplify the NDA by regulations for the "organization, training, discipline, efficiency, administration and good government of the Canadian Forces."⁵ Under section 12(2) of the NDA, the minister has the power to regulate the same matters but subject to any regulation made by the Governor in Council and Treasury Board. The minister has the power to make regulations governing who commands what and whom, but the "exercise" of command is then in the hands of the designated commanders subject to law.

Subsection 18(1) of the NDA states that the Governor in Council may appoint a CDS "who shall, subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Canadian Forces." Furthermore, "command" of and in the CF is confirmed as a military activity that flows through commissioned and non-commissioned officers under section 18(2):

Unless the Governor in Council otherwise directs, all orders and instructions to the Canadian Forces that are required to give direction to the decisions and to carry out the directions of the Government of Canada or the Minister shall be issued by or through the Chief of the Defence Staff.

Although the CDS is subject to the minister's direction in exercising general powers, the responsibilities of the CDS are not delegated from the minister. Moreover, the CDS has responsibility exclusive of the minister of National Defence in three areas: powers in respect of which the CDS is not subject to the direction of the minister, for example, in the promotion of members below the rank of general;⁶ in all matters related to "aid of the civil power";⁷ and in the conduct of military operations.

The CDS may assign some command and administrative responsibilities to subordinate officers, who may in turn assign or allocate duties and responsibilities to officers and members of the CF under their command.⁸ Such assignments or allocations are not to be confused with a delegation that in law cannot be further delegated, for example, a CO's jurisdiction to conduct summary trials may be delegated to certain subordinate officers under QR&O 108.10. The assignment of command is limited by regulation or custom of the service (NDA, section 49). Specifically, commanding officers at every level are always "responsible for the whole of the organization" they command and cannot delegate "matters of general organization and policy; important matters requiring the commanding officer's personal attention and decision; and the general control and supervision of the various duties that the commanding officer has allocated to others."⁹

THE CHAIN OF COMMAND

In the next chapter we explore in detail the principles and construction of the chain of command -- the chain of authority and accountability that extends from the office of the CDS to the smallest element of the CF and back to the office of the CDS. The chain is formed when the CDS assigns a portion of the CDS's authority to carefully selected subordinate commanders immediately below the CDS and directly accountable to the CDS. Each of these commanders in turn, and following established custom, assigns a portion of their entrusted authority to subordinates directly accountable to them. Thus the chain of command is formed. It is also a hierarchy of individual commanders who take decisions within their linked

functional formations and units. The chain of command, therefore, is a military instrument joining a superior officer -- meaning "any officer or non-commissioned member who, in relation to any other officer or non-commissioned member, is by [the NDA], or by regulation or custom of the service, authorized to give a lawful command to that other officer or non-commissioned member"¹⁰ -- to other officers and non-commissioned members of the CF. No other person, including ministers and public servants, is part of the chain of command, nor does any other person have any command authority in the CF.

Image: [Ranks and Insignia](#)

CIVILIANS IN DND

In 1992 DND employed about 32,000 civilians at NDHQ and in the commands (but not in operational units). The majority of civilians work on bases and stations throughout Canada, in research, technical or administrative positions. They are an important part of the "Defence Team"¹¹ and contribute their services in the management, scientific and professional, administrative, foreign service, and technical categories, in more than 50 different occupational groups and sub-groups. DND maintains its own civilian career management system, focusing on matching employees' developmental needs with departmental needs. The defence staff is roughly 30 per cent civilian.

NATIONAL DEFENCE HEADQUARTERS

NDHQ, in Ottawa, combines DND's corporate headquarters and CF strategic headquarters. It is directed collegially by the deputy minister and the chief of the defence staff. By virtue of its leadership diarchy, its functional organization, and its trans-functional processes, NDHQ operates through a series of committees.¹²

- **Defence Council (DC)**, the senior of these committees, is designed to give the minister a forum for discussing items of current interest. Defence Council is not a decision-making body. It is chaired by the minister and is usually attended by the DM, the CDS, and group principals.¹³
- **Defence Management Committee**, co-chaired by the DM and the CDS, is the major departmental co-ordinating committee. It is advisory in nature and considers all significant matters of policy, plans, programs, and administration that require the approval of the minister, the DM or the CDS. Its membership consists of the vice chief of the defence staff (VCDS), the deputy chief of the defence staff (DCDS), group principals, and the commanders of Maritime Command, Land Force Command and Air Command.
- **Program Control Board (PCB)**, chaired by the VCDS and attended mainly by the DCDS and the group principals, reviews all matters involving the assignment of departmental and Canadian Forces financial, personnel, and materiel resources to approved projects and activities. Decisions are made on a consensual basis, and approved changes within the authority of PCB are entered into the Defence Services Program.¹⁴ Changes beyond PCB's mandate are referred to the Defence Management Committee.
- **The Daily Executive Meeting (DEM)** is an informal early-morning meeting intended to co-ordinate DND and CF responses to fast-breaking developments. DEM is broken into two parts: part one deals with intelligence, operations, and other military matters and is chaired by the CDS; part two covers departmental matters, with the DM taking the lead. The meeting is attended by the VCDS, group principals and their key subordinates. Where required, direction is given by the CDS and the DM to the DCDS and the group principals.
- **Armed Forces Council** is a CF advisory body, chaired by the CDS, that brings together the collective military leadership to provide military advice to the CDS. The membership includes the lieutenant-generals and vice-admirals of the CF.

NDHQ RESPONSIBILITIES

NDHQ takes government policy, funding allocations, current operational considerations, and other issues to provide

- defence policy advice to government;
- contributions to other government departments; and
- the strategic plan for the provision of combat-capable multi-purpose forces for use as the Government of Canada directs.¹⁵

NDHQ has always been organized on functional rather than process lines. The operation of NDHQ is co-ordinated by the vice chief of the defence staff, on behalf of the deputy minister and the chief of the defence staff, through six major functional groups: operations, policy and communications, personnel, materiel, finance, and defence information services; and by two special groups, the Chief of Review Services, and the Judge Advocate General. The VCDS is the *de facto chief* of staff of NDHQ. The VCDS is also the senior resource manager for the department and the co-ordinating authority for inter-group activities. The VCDS acts for the CDS in the absence of the CDS.

Five assistant deputy ministers -- Policy and Communications, Personnel, Materiel, Finance, and Defence Information Services -- are accountable to the DM and the CDS for the effective and efficient execution of the responsibilities assigned to their respective groups.¹⁶ The deputy chief of the defence staff is accountable to the CDS for the efficient and effective performance of the operations of the CF.¹⁷ The Chief of Review Services reports to both the CDS and the DM and is responsible for providing independent and objective assessments of the effectiveness, efficiency and economy of the CF and DND, as these qualities relate to performance of operations, programs or activities. The Judge Advocate General superintends the CF military justice system and is the senior legal adviser in DND and the CF providing services and advice in all legal matters. The Director General Public Affairs, whose office came under scrutiny during our Inquiry, is responsible for both external and internal communications and public affairs and reports to the DM and the CDS through the assistant deputy minister (Policy and Communications).¹⁸

ORGANIZATION OF THE CANADIAN FORCES

Image: [NDHQ Organization Before and During the Somalia Deployment](#)

The CF consists of three components: the Regular Force, the Reserve Force, and the Special Force. The Regular Force comprises officers and non-commissioned members who are enrolled for continuing full-time military service. The Reserve Force consists of officers and non-commissioned members who are enrolled for other than continuing full-time service when not on active service. The Special Force can be constituted by the Governor in Council in an emergency or if considered desirable in consequence of any action undertaken by Canada under the United Nations Charter, the North Atlantic Treaty or any similar instrument for collective defence.¹⁹ The Special Force does not exist at present.

All members of the CF are assigned, for purposes of administration and discipline, to serve in a unit or other element of the CF called a ship, squadron, battalion, regiment, station, or any other appropriate designation in accordance with the customs and traditions of the service.²⁰ The minister is the only authority who can create "units or other elements" of the CF. When a unit or other element is established, the CF is notified by the CDS through the promulgation of a Canadian Forces Organization Order (CFOO). The CFOO details such things as role, command and control arrangements, and administrative and disciplinary arrangements.²¹

A formation is defined in the *Queen's Regulations and Orders* as an element consisting of two or more units grouped under a single commander that has been designated a formation by or on behalf of the minister.²² The role of a formation is assigned at the time of its creation. Units and other elements, such as formations, are usually assigned to 'commands' on the basis of a common grouping of like resources, e.g., army units and elements are assigned to Land Force Command.

The major commands of the CF are Maritime Command, Land Force Command (previously called Force Mobile Command), Air Command, and Communication Command. The commanders of these commands report to the CDS and are responsible for the day-to-day leadership and management of the forces assigned to them, their peacetime training requirements, and their operational readiness. The commands function as force-generators, meaning they must ensure their troops are assembled and properly equipped, trained and tested, so that they are operationally ready for the tasks that may be assigned to them by the CDS.²³ Maritime, Land, Air, and Communications commands, having produced the forces, do not usually continue

to command their troops once they have been deployed for an operational task -- instead, the troops are placed under the command of the CDS and controlled from NDHQ.

ORGANIZATIONS RELEVANT TO THE WORK OF THE INQUIRY

National Defence Operations Centre

The main command, control and information centre for military operations is the National Defence Operations Centre (NDOC). It serves the CDS by tracking operations in progress, maintaining information received, compiling reports and returns from units, briefing senior officers and officials, and maintaining operational communications with units and formations in Canada and abroad. It is thus the information exchange facility between the CDS and staff at NDHQ and units and formations deployed in the field. The NDOC operates under the direction of the deputy chief of the defence staff, the principal staff officer for operations in NDHQ, on behalf of the CDS. The NDOC is made up of a joint staff, specially trained in operational planning and control of deployed forces.²⁴ The Canadian Joint Task Force Headquarters in Somalia passed information to NDHQ through the NDOC.

Image: [Major Commands in the CF](#)

Land Force Command

The role of Land Force Command (LFC) in 1992-93 was to provide general-purpose, combat-ready land forces to meet Canada's defence commitments. The Commander LFC, a lieutenant-general, was accountable to the CDS for the operational readiness of the command and for all aspects of training, discipline, and administration of units, formations, and other elements under command. Immediately subordinate to LFC were four geographic regions commanded by major-generals. Land Force Central Area was one of the regions and contained most of the land forces deployed to Somalia.²⁵

Area commanders are major-generals and are responsible to the Commander LFC for the operational readiness of their troops and for all aspects of training, administration, and discipline of units and formations under their command. The role of Land Force Central Area (LFCA) in 1992-93 was to generate general-purpose, combat-ready land forces for LFC in accordance with assigned tasks,²⁶ from assigned resources in Ontario.²⁷ LFCA HQ in Toronto was the superior headquarters of the Special Service Force.

The role of the Special Service Force (SSF), a brigade-sized formation with its headquarters at Canadian Forces Base Petawawa in 1992-93, was to provide general-purpose, combat-ready land forces in accordance with assigned tasks.²⁸ The Commander SSF, a brigadier-general, was responsible to the Commander LFCA for the operational readiness of the SSF and for all aspects of training, administration, and discipline for units under command. The SSF HQ was the superior headquarters to the Canadian Airborne Regiment before its departure for Somalia.

The senior Canadian military formation created and deployed for Operation Deliverance was Canadian Joint Force Somalia (CJFS), commanded by a colonel. The role of CJFS headquarters was to assist the commander of the CJFS in his duties.²⁹ The headquarters as of December 15, 1992 was onboard the ship HMCS *Preserver*, which was situated near Mogadishu. On January 8, 1993, the headquarters moved to the United States embassy compound in Mogadishu.³⁰

When given its assignment for Operation Deliverance, the CAR was strengthened by the addition of other units and combat capabilities,³¹ making it a battle group (CARBG). Upon deployment to Somalia, the superior headquarters of the CAR became the Canadian Joint Force Somalia Headquarters (CJFS HQ). The mission of the CARBG was not yet established when it arrived in Somalia.

Image: [Land Force Command Organization](#)

The Organization of Army Units

The basic fighting component in the army is the unit. A unit is a self-contained organization led by a commanding officer. Army units have a command and control element, a combat service support element, and several operational elements. Units are characterized by type as combat arms (armour, artillery, and

infantry), combat support arms (field engineers, signals, intelligence, and tactical aviation), or combat service support (transport, maintenance, supply, medical, dental, and military police). Combat arms units fight in contact with the enemy; combat support arms units provide direct and indirect support to combat arms units; combat service support units serve a useful and necessary purpose, but their fighting capability is limited to self-defence.

In the Canadian army order of battle, the major infantry unit is called a battalion. It is led by a commanding officer, normally a lieutenant-colonel, and consists of a number of sub-units called companies. By the fall of 1992, the Canadian Airborne Regiment was a battalion-sized infantry unit. Its companies were called commandos and were led by officers with the rank of major. Companies or commandos usually consist of three platoons, each led by a lieutenant. A platoon usually consists of three sections, each led by a sergeant.

In armour (tank), engineer and signal units, battalion-sized units are called regiments, companies are called squadrons, and platoons are called troops. In artillery units, battalion-sized units are referred to by number (for example, Second Regiment, Royal Canadian Horse Artillery), companies are called batteries, and platoons are called troops.

In operations for a particular mission and in training, units of one type and sub-units of other types are often brought together; for example an infantry battalion might be grouped with an armour squadron. This temporary organization, larger than a battalion, is called a battle group. In preparation for the deployment to Somalia, the CAR was augmented with additional troops and became the Canadian Airborne Regiment Battle Group. It included, in addition to the three airborne commandos, the service commando and the headquarters commando integral to the CAR, an armour squadron and a field engineer squadron.

The Chain of Command for Somalia

When orders are issued, the appropriate legal authority is vested in the recipient to carry out those orders. Responsibility is not delegated. Each commander in the chain of command is responsible for ensuring that orders are carried out satisfactorily. The chain of command is hierarchical. Commanders at each level respond to orders and direction received from their immediate superior commander and, in turn, issue orders and direction to their immediate subordinates.

The chain of command in place before deployment of the CARBG to Somalia began with the Chief of the Defence Staff and ran to the Commander Land Force Command, to the Commander Land Force Central Area, to the Commander Special Service Force, to the Commanding Officer of the Canadian Airborne Regiment Battle Group. The chain of command in place during the deployment to Somalia was different from the previous chain of command. It began with the Chief of the Defence Staff and ran to the Deputy Chief of the Defence Staff, to the Commander Canadian Joint Task Force Somalia, to the Commanding Officer of the CARBG.

Image: [Land Force Central Area Organization 1992-1993](#)

Image: [Special Service Force Organization 1992-1993](#)

Image: [Canadian Joint Force Somalia Organization 1](#)

Image: [Canadian Joint Force Somalia Organization 2](#)

COMMAND AND CONTROL DEFINED

The terms command and control, although closely related and often used together, are not synonymous. These terms are important because they clearly identify the limits of authority when command or control is delegated. **Command** is the authority vested in an individual member of the armed forces to direct, coordinate, and control military forces. The CDS exercises command over the CF Subordinate commanders exercise command, under the authority of the CDS, over their units or elements. Command is further defined in the CF Joint Doctrine Manual in three levels: full, operational, and tactical command.³²

- **Full command** is the military authority and responsibility of a superior officer to issue orders to subordinates. It covers every aspect of military operations and administration and exists only within national services. No alliance or coalition commander has full command over forces

assigned to an alliance or coalition. In assigning forces to an alliance or coalition, countries belonging to the alliance or coalition assign only operational command. (Full command is sometimes referred to as national command.)

- **Operational command** is the authority of a commander to assign missions or tasks, redeploy forces, and reassign forces. It does not include responsibility for administration or logistics.
- **Tactical command** is the authority of commanders to assign tasks to forces under their command. It is narrower in scope than operational command and is used primarily in maritime operations.

Control is the authority exercised by a commander over part of the activities of subordinate organizations or other organizations not normally under command. Control is defined more specifically as operational, tactical, administrative, or technical.³³

- **Operational control** is the authority of a commander to direct forces assigned so that the commander can accomplish specific missions or tasks, which are usually limited by function, time, or location; to deploy units concerned; and to retain or assign tactical control of those units.
- **Tactical control** is the authority of a commander to give detailed direction and control the movement of units necessary to accomplish a mission or task.³⁴
- **Administrative control** is the direction or exercise of authority over subordinates regarding administrative matters.
- **Technical control** is control within certain specialized areas such as medical or legal jurisdiction, parallel to but outside the chain of command, for purely technical issues. Operational commanders can override this control if it is seen to jeopardize the mission.

It is interesting to note, for example, that in Somalia the U.S. Commander of UNITAF had operational control over the Canadian troops, but the Canadian commander of the CJFS retained full and operational command of those troops.

The Role of Commanders

Commanders have authority to issue legal orders to subordinates. They have two principal responsibilities. Their primary responsibility is to achieve the assigned mission. Commanders have the authority to direct the operations of a formation, and they alone are accountable for the outcome. Second, commanders must ensure the adequate welfare of the troops and that their troops do not face needless hardship and sacrifice.³⁵ Although commanders are always responsible and accountable for every aspect of the units and elements under their command, they usually restrict their involvement to important issues affecting their troops and leave routine issues to be resolved by subordinate commanders or staff.

A commander is responsible and accountable for knowing and understanding the situation being faced, identifying and considering the options available, developing a plan, informing subordinates, assigning missions, tasks and resources to subordinates, and motivating, directing, and leading troops.³⁶ Commanders exist at all levels and are joined by degrees of authority; hence the term chain of command. In the Canadian Airborne Regiment, the commanding officer, the officers commanding the commandos (and equivalents), the platoon commanders, and the section commanders were all commanders in their own right and empowered to receive and to issue orders.

The foremost principle of command is the concept of unity of command; a single commander is vested with the authority to plan and direct operations.³⁷ The term 'commander' is applied to an individual placed in charge of a battle group or formation. The term 'commanding officer' is used to identify a person placed in command of a unit or other element whose organization expressly calls for a commanding officer. The term 'officer commanding' is used to identify a person placed in command of a sub-unit. To avoid ambiguity, the term 'commander', when used in any other sense, is combined with the level of command, for example, 'platoon commander'.

Ranks and Typical Appointments Within LFC

Rank

Lieutenant-General
 Major-General
 Brigadier-General
 Colonel
 Lieutenant-Colonel
 Major
 Captain
 Lieutenant
 Chief Warrant Officer
 Master Warrant Officer
 Warrant Officer
 Sergeant
 Corporal³⁸
 Private

Appointment

Commander Land Force Command
 Area Commander
 Brigade Commander
 Area Chief of Staff
 Battalion Commander
 Company Commander
 Platoon Commander
 Platoon Commander
 Regimental Sergeant-Major
 Company Sergeant-Major
 Platoon Second-in-command
 Section Commander
 Fully trained soldier
 Trained soldier

DISCIPLINE

Members of the CF submit to the Code of Service Discipline as set out in the *National Defence Act*. That code allows formal trials, by military tribunals, of members of the CF and certain civilians and punishment of those convicted of service or criminal offences. We discuss our findings on the subject of discipline in Chapter 18 (Volume 2).

Order and obedience among members of the CF are accomplished through training and discipline, especially self-discipline. Violations of routines, procedures or orders, if infrequent and considered to be minor in nature, rarely merit use of the powers of punishment under the QR&O and are handled by the appropriate non-commissioned officer or warrant officer. In such cases, corrective action normally takes the form of additional supervised training for the violator. Serious breaches of good order and discipline, on the other hand, can lead to charges and punishments under the Code of Service Discipline.

RELATIONSHIPS IN UNITS

Each unit consists of a combination of officers, warrant officers and other noncommissioned members, grouped in accordance with a prescribed organizational structure. They work together to carry out their mission in accordance with the orders and directions of their commanding officer.

THE ISSUING OF ORDERS

The chain of command converts orders into work as orders and instructions flow downward. The normal medium for the transfer of orders from one level to another in a unit is the orders group. This is the formal relationship for transferring orders and information and usually takes the form of a meeting of the commanding officer with direct subordinates and liaison personnel from organizations affected by the CO's orders. Orders are usually issued in a prescribed pattern, beginning with the situation, followed by a statement of the mission, the method of execution, and the necessary administrative and logistics support; orders conclude with directions for command and control of the operation. At battalion level, commanding officers normally issue their orders orally and may distribute written notes for confirmation and verification. At company level, officers commanding normally issue their orders orally. At platoon and section level, orders are almost always oral.

A unit of the CF, by its very structure, also possesses less formal mechanisms for passing information; for example, there is a customary pairing structure in units whereby at each level of command, commissioned officers are advised by non-commissioned members. A commanding officer with the rank of lieutenant-colonel would normally have a chief warrant officer (CWO) as the regimental sergeant-major. Sub-unit company officers commanding (majors), would have master warrant officers as company sergeants-major, and platoon commanders (captains or lieutenants) would have warrant officers as platoon seconds-in-command. This pairing provides a balance of experience and mutual respect at each level that allows for frank and confidential discussion of the full range of issues affecting a unit or sub-unit.

The personnel in each unit are also segregated socially into three groups: officers, warrant officers and sergeants, and corporals and privates. This gives each group an opportunity to share ideas and experiences with peers, while respecting the inherent differences of authority between ranks. It also gives individuals an opportunity to relax away from the observation of their superiors. While a unit is living in a non-operational setting on a CF base, this segregation is formalized into the officers' mess, the warrant officers' and sergeants' mess, and the junior ranks' club. During long periods of field training or, in operations, if the unit remains in one location, similar institutions can be created in temporary facilities, if circumstances and resources permit.

Authority in any unit or other element of the CF centres unequivocally on the commanding officer. COs have the legal power to place subordinates in harm's way and to punish those who fail to carry out assigned tasks. The CO's experience, uniqueness, demeanour, conduct, and confidence all contribute to leadership style. The CO's authority to issue legal orders is unquestioned. These conditions may contribute to what is called the loneliness of command.

On the other hand, the RSM, combining broad experience and easy access to the CO, has relatively little authority but considerable power. In keeping with the function of ensuring that the soldiers are well looked after and that the unit is well disciplined and in good order, the RSM is free to visit all parts of the unit lines. The RSM can resolve minor issues as they are found or refer more serious concerns to an officer commanding or to the CO, if the RSM believes it might affect the unit as a whole. The RSM is held in high regard by all officers in the unit and is a role model for non-commissioned members.

Chief warrant officer is the highest rank that can be achieved by a noncommissioned member. Appointment of a CWO to be the regimental sergeant major is considered the most prestigious appointment attainable by a non-commissioned member within the regimental family. Since relatively few RSMs are appointed (only one in a unit at any time), those who reach this position are treated with the highest respect. In a unit, the CO and the RSM together form an imposing team, possessing both authority and power. They are usually treated with a certain degree of circumspection by all, both inside and outside the regiment. Their attitudes, priorities, likes, and dislikes are often emulated by other members of the regiment, and in this sense they set the tone for how the unit operates.

THE ROLE OF COMMAND AND STAFF

The term 'command' in the context of 'command and staff' is the authority vested in a member of the CF to direct, co-ordinate, and control military forces.³⁹ Orders and the appropriate delegated authority to act on those orders flow down through officers and non-commissioned officers in the chain of command. Command represents the executive authority to give direction.

Staff activities are the management activities associated with the executive authority of the commander.

The term 'staff' applies both to personnel who assist in planning and preparing the orders that commanders wish to issue, and to those who assist commanders in monitoring and controlling the actions taken by subordinate units in executing those orders. Staff officers have no authority independent of the commander and must not interfere in the relationship between a commander and a subordinate commander. Staff must not reject requests or proposals from a subordinate commander without the commander's direction. Nevertheless, staff serve two masters. Although their final loyalty is unreservedly to the commander, staff must work tirelessly to support subordinate commanders and troops in the field.

Staff officers at all levels work (directly or indirectly) for line officers. As a rule, staff size increases as the complexity of operations and the level of organization increases. For example, a battalion may have only a few staff officers, while a brigade may have many.

There are three types of staff: general staff, special staff, and personal staff. General staff assist the commander in meeting the operational responsibilities of command. They assist by preparing and issuing the commander's orders, arranging the support necessary to achieve the mission successfully, and monitoring and co-ordinating current and subsequent activity. General staff responsibilities are divided into six broad categories: personnel (G1), intelligence (G2), operations (G3), logistics (G4), civil/military relations (G5), and communications (G6). The prefix G is used when referring to a single environmental force (land or air), N refers to maritime staff, and J designates joint staff- staffs supporting more than one

environment. Thus staff of Canadian Joint Force Somalia were designated with the prefix J to denote the joint nature of the force, which included HMCS *Preserver*, the Canadian Airborne Regiment Battle Group, and air force resources. No matter what the designation, however, staff in each of the six groups perform the same functions.

G 1 (or N1 or J1) staff assist the commander in personnel administration. This includes planning for personnel replacements, manpower allocations, promotions, course selection for individuals, and record keeping. They also co-ordinate all areas related to the discipline and well-being of soldiers, such as notifying next-of-kin; administering honours and awards; the provision of pay, postal, medical, dental, chaplain, and legal services; public affairs; and handling and administering prisoners of war.

G2 staff provide the commander with the intelligence needed to plan and conduct operations. This includes, among many tasks, preparing intelligence reports and summaries; co-ordinating the analysis of incoming information; directing the interrogation of prisoners of war; and assisting in the planning of deception, surveillance, and patrol operations.

G3 staff assist the commander in planning, directing, supervising, and co-ordinating operations. The G3 branch is the pre-eminent staff branch, and all other staff effort must support its activities. Its activities include preparing staff estimates; preparing and distributing operations orders and instructions; co-ordinating (in consultation with other members of the staff) movement, surveillance, deception and concealment, and nuclear; biological, and chemical defence; liaison; electronic warfare; communications; engineer support; fire support; and tactical aviation support.

G4 staff assists the commander in planning all the logistics aspects of a proposed operation. This includes planning for the provision of supplies (ammunition, fuel, rations, clothing, and other supplies); maintenance and repair of all classes of vehicles and equipment; disposal policies; and the use of transportation resources, including airlift, movement control services, and administrative movement. The G4 staff has a large responsibility to ensure that the commander's mission is supportable and that logistics support is co-ordinated to ensure that the logistics plan supports the development and execution of the operational plan.

The G5 staff assists the commander by developing and executing plans and policies related to local national authorities and the civilian population. This includes gathering information on civilian/military matters and determining the state of political, psychological, and economic factors and their potential impact on planned operations. G5 also deals with liability claims from civilians and provides advice to other staff branches on local national issues.

The G6 staff assists the commander by developing and executing plans and policies related to communication and information systems. This includes developing procedures to identify, collect, process, present, and distribute information needed to implement the commander's plan.⁴⁰

Special staffs provide a narrow or specialized type of advice, including legal, medical, dental, religious, and public information. These staff often hold designated appointments within a unit, formation, or other element and have direct access to the commander on matters within their specialty, for example, the regimental medical officer.

Personal staffs provide direct assistance to the commander in meeting personal needs and arranging work and visit programs; a personal staff may include *aides-de-camp*, secretaries, drivers, and executive assistants.

Image: [Organization of Staff](#)

CONCLUSION

Although the CF appears to be a large and ponderous organization with an endless set of rules, regulations and traditions, these elements are considered necessary and have evolved over time, largely through trial and error, and primarily during times of war. They are intended to provide a clear and easily recognizable line for the exercise of authority and the chain of command.

NOTES

1. *National Defence Act* (NDA), Part II, section 18(1).
2. NDA, Part II, section 14.
3. See *The Management Review Group Report* (July 1972).
4. NDA, Part II, section 18.
5. NDA, section 12.
6. *Queen's Regulations and Orders (QR&O)* 11.01(2).
7. NDA, section 236.
8. QR&O 1.13.
9. QR&O 4.20(3).
10. NDA, section 2, "Interpretations". To paraphrase, an 'officer' is a person who holds Her Majesty's commission in the Canadian Forces, and a 'non-commissioned member' is any other person enrolled in the CF.
11. The term Defence Team was coined by D2000, an internal management renewal committee seeking to eliminate wasteful bureaucratic practices. The term includes all personnel, both military and civilian, in the department.
12. These descriptions are drawn from DND, *Concept and Policy: Organization* (November 1, 1993), vol. 1, chapter 4.
13. Group principals are the senior managers of the personnel, materiel, policy and communications, finance, and information services groups. The deputy chief of the defence staff, the senior military operations staff officer in the CF is also considered a group principal.
14. The Defence Services Program is the spending portion of the DND business plan.
15. DND, *Management, Command and Control Re-engineering Team: Phase One Report*, Revision 1 (March 1, 1995), p. 23.
16. DND, *Concept and Policy: Organization*, p. 4-2-2.
17. DND, *Concept and Policy: Organization*, p. 4-2-1.
18. Public Affairs operated separately for many years and became linked to policy only in 1990.
19. NDA, Part II, section 15 (1) (Regular Force); NDA, Part I, section 15 (Reserve Force); NDA, Part II, section 16 (Special Force).
20. In NDA, section 2, a unit is defined as "an individual body of the Canadian Forces that is organized as such pursuant to section 17, with the personnel and material thereof".
21. DND, NDHQ, 1901-3119(DGFD), EIC 941, UIC 3119, October 15, 1992, designated the Canadian Contingent United Nations Operation in Somalia, Canadian Forces Organization Order (CFOO) 1.326.
22. The QR&O contain regulations made by the governor in council, the minister and Treasury Board pursuant to the *National Defence Act*, as well as orders from the chief of the defence staff. Volume I of the QR&O deals with administration, volume II with discipline, and volume III with finance, while volume IV contains appendices, e.g., the *National Defence Act*.
23. NDA, Part II, section 18.
24. In military terminology, 'joint' denotes operations or planning involving two or more services. In Canada, with its single service, the term refers to operations or planning for units or formations of two or more from Maritime Command, Land Force Command, and Air Command. DND, *Joint Doctrine for the Canadian Forces Joint and Combined Operations*, B-GG-005-004/AF-000 (1995), p. 1-11.
25. CFOO 3.0.0, Land Force Command, 1901-280/C3-5 (DGFD), November 15, 1992.

26. CFOO 3.2.0, Land Force Central Area, 1901-280 (DGFD), December 30, 1992.
 27. The other parts of LFC are Land Force Western Area (LFWA), Land Force Quebec Area (LFQA), and Land Force Atlantic Area (LFAA).
 28. CFOO 3.20, Special Service Force, 1901-1 (DGFD), October 1, 1990.
 29. CFOO 1.327, Canadian Joint Force Somalia, February 10, 1992, p. 2/6.
 30. CJFS HQ War Diary, January 1993, p. 11/25.
 31. DND 007331, Op Deliverance Op O [operation order] 1, paragraph 2 B 1, 091823Z [December 9, 1992].
 32. DND, *Joint Doctrine for the Canadian Forces Joint and Combined Operations*, pp. 2-1 and 2-2.
 33. DND, *Joint Doctrine for the Canadian Forces Joint and Combined Operations*, p. 2-2.
 34. DND, *Joint Doctrine for the Canadian Forces Joint and Combined Operations*, pp. 2-3 and 2-4, paragraph 3b.
 35. CF, *Land Formations in Battle: Book 1* (Publication B-GL-301-001/FT-001, November 26, 1987), vol. 1, p. 3-2-1.
 36. CF, *The Army* (Publication B-GL-300-000/Fp. 000, Interim 1), p. 8-5.
 37. CF, *The Army*, p. 8-2.
 38. The term master corporal was created during the integration/unification process (see QR&O 3.08). It is an appointment, not a rank. The second-in-command of a section is a master corporal.
 39. CF, *Operational Staff Procedures*, vol. 2, Staff Duties in the Field (B-GL-303-002/Fp. 002, Interim 1, May 1991), p. 1-1.
 40. DND, *Joint Doctrine for Canadian Forces Joint and Combined Operations*, p. 3-6.
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THE CHAIN OF COMMAND

MILITARY COMMAND, DISCIPLINE, AND LEADERSHIP

Command, discipline, and leadership are the essence of the military system. At the head of the system stands the commander, the officer from whom all authority radiates. Traditionally, command is defined as the legal authority to issue orders and to compel obedience. It must be clear in law, organization, and execution. Thus, command, decision, and organization are all highly integrated.¹ The chain of command describes a linked system of officers in command of units and formations.

Military command is of course a human activity, fashioned by creative imagination and therefore beset by the frailties of human nature. The operations of the armed forces place people in harm's way and may demand that they sacrifice their lives. Often soldiers follow their leaders willingly and obey their orders even in the most trying situations. At other times, soldiers have resorted to mutiny and resisted every effort to compel them. Although command authority is usually reinforced by a code of military laws to maintain discipline, authority without sound leadership is rarely effective by itself.

Military leadership -- the ability to gain the willing obedience of subordinates -- is an essential component of command. Personal courage, integrity, sacrifice, a willingness to take difficult decisions, and "a clear sense of personal responsibility" have characterized military leadership throughout the ages. When this sense of responsibility is married to "a deep personal understanding of the troops and their problems, a clear purpose, discipline, and hard training", soldiers have followed leaders without coercion.² War is conducted in an environment of great personal danger, and orders alone may not hold troops under fire, but respected leaders usually do.

The most successful leaders, however, can accomplish little if they are indecisive or if their decisions are flawed. Careful plans, the best weapons and well trained troops are all wasted if the commander fails to employ them wisely. Sound decisions may be the essence of command, but commanders need sound training, proven staffs, and a balanced combination of logic and intuition gained from experience. Without these aids, according to experienced commanders, "an uncertain perspective, intuition, and the plausible will dominate and action will tend to be haphazard or misdirected."³

Command decision begins from a clear perspective and careful analysis of the circumstances in which the decision will be made. A commander's staff and subordinate commanders may help to assess any situation, but "[t]he commander, by his own statement and analysis of objectives, fulfills his inescapable obligation to provide unity of concept in the midst of diverse distractions, contradiction, and paradox."⁴ Finally, however, the decision is left to the commander alone and ultimately depends on the commander's courage to make it and integrity in taking responsibility for it.

Command includes choice and judgement and therefore involves ethics. Traditionally, commanders are held "ethically responsible for what they do precisely in terms of what they promise to do and not to do. Specifically, soldiers are ethically responsible for observing the code of ethics they agreed to uphold when they acquired special membership in the profession of arms."⁵ In the CF, this 'code' is implicit in the custom of the service⁶ and enforced by the Code of Service Discipline,⁷ and it applies to all officers and non-commissioned members. For commanders, however, it carries special meaning.

Although all persons are ultimately responsible for their own fate, military service in effect transfers individual choice from subordinate to superior. Moreover, the effects of command carry risks for those who are obliged by law to obey commands and orders. Commanders therefore must, through intellect, training, and experience, understand the reasons for and the consequences of their actions or inactions. Furthermore, commanders may be called upon to explain and defend their choices in terms of both the Code of Service Discipline and what society perceives as right and wrong.

The chain of command in the CF is, first, an authority and accountability chain from the office of the CDS to the lowest element of the CF and back to the office of the CDS. It is also a hierarchy of individual commanders who take decisions within their linked functional formations and units. The chain of command, therefore, is a military instrument joining a superior officer -- meaning "any officer or non-commissioned member who, in relation to any other officer or non-commissioned member, is by [the *National Defence*

Act], or by regulation or custom of the service, authorized to give a lawful command to that other officer or non-commissioned member"⁸ -- to other officers and non-commissioned members of the CF. No other person, including ministers and public servants, is part of the chain of command, nor does any other person have any command, authority in the CF.

The chain of command in the CF, beginning with the CDS, is composed of commanders who have different degrees of authority. An officer commanding a command is usually a general officer appointed by the CDS. The Commander Land Force Command is an example. Commanding officers are appointed to command units and elements of the CF, and their terms of reference are drawn from their superior's orders, custom, and regulation. An officer who is appointed to command a sub-unit or sub-element of a major unit, such as a commando in the Canadian Airborne Regiment, is usually referred to as an 'officer commanding'.

The major difference between these appointments is that commanders of commands, commanding officers, and officers commanding all have graduated powers of punishment and other powers drawn from the *National Defence Act* (NDA) and regulations. Commanders of commands have powers prescribed by regulation, extending to the "exercise [of] command over all formations, bases, units and elements allocated to the command"⁹ and certain other powers, such as the power to convene courts martial.¹⁰ On the other hand, commanding officers and officers commanding have authority only over their units and sub-units and lesser powers under the NDA.¹¹

In the CF, the term commander can be used generally to describe any officer who is appointed to a position of command of a command, unit, or element of the CF. In this report, the term commander is used in this general sense to refer to officers in any command appointment.

Where our report refers to actual establishment positions in the CF, the more exact term is used. For example, we refer to officers commanding CF commands as 'commanders of commands' and officers commanding units or elements of the CF as 'commanding officers'. Where we refer to individual officers commanding CF commands, their rank and name are used, for instance, LGen Gervais, Commander Land Force Command. Similarly when we refer to particular commanding officers, the individual is identified by rank and name, for instance, LCol Morneault, Commanding Officer, CAR.

Commanders give direction to members of the CF and subordinate commanders by issuing lawful commands and orders, which subordinate commanders are compelled to obey. These lawful orders originate in the NDA as amplified in regulations, principally the *Queen's Regulations and Orders* (QR&O). Orders can take several forms. For example, the CDS may issue CF-wide orders. Examples of these include Canadian Forces Administrative Orders (CFAOs) and Canadian Forces Organization Orders (CFOOs). Commanders of commands may issue command-wide orders, and commanding officers might issue orders applicable throughout their units. Often, commanders and commanding officers issue so-called 'standing orders' and 'routine orders' covering routine matters such as the duties of guards and sentries. All these orders, notwithstanding their method of transmittal, have the force of a direct order from the issuing commander.

During operations, commanders at all levels issue orders to their troops and subordinate commanders to give effect to their plans. These orders may be issued in writing or orally, depending on the urgency of the situation, the level of command, and the complexity of the operation, among other things. In the army, a commander may bring subordinates together and give orders in what is called an 'orders group'. Again, regardless of the method used to give orders, they are orders from the authorized commander and must be obeyed.

Members of the CF are not required to obey any orders or directions issued to them by anyone other than superior officers of the CF. On the other hand, every person who disobeys a lawful command of a superior officer may be guilty of an offence under the NDA.¹² This stipulation defines accountability in the CF -- subordinate to superior -- and is reinforced by section 129 of the NDA which states that "any act, conduct, disorder, or neglect to the prejudice of good order and discipline is an offence." Moreover, the fact of enrolment in the CF (section 20, NDA) places an individual under the provisions of the Code of Service Discipline and requires that individual to act in conformity with the norms of good order and discipline. Members of the CF, therefore, are always required to obey lawful orders and are always liable to be called to account by their superiors, whether they are under specific orders or not.

The chain of command functions within the CF. Appointment of an officer to command a command, unit or element of the CF confers special responsibilities on that officer because it requires the officer to train, discipline, and administer the forces under command. Several aspects of the custom of the service distinguish superior officers appointed as commanders from all other superior officers. First, such appointments are usually limited in time. Second, the organization of units provides for a clear hierarchy of officers and non-commissioned members so that a commander is usually the only lawful source of commands and orders within a particular unit or other element.

This status is emphasized by the fact that officers appointed as commanders have special powers, such as the power to authorize officers or other ranks to lay charges under the Code of Service Discipline and special powers of punishment, only while they hold that appointment. Also, under the custom of the service and regulation, commanding officers are held directly accountable and responsible for the performance of their units and formations.¹³

Officers appointed to command CF commands, units, and formations have special responsibilities under regulations. Among other things, commanding officers at every level are "responsible for the whole of the organization" they command and cannot delegate "matters of general organization and policy; important matters requiring [the commander's] personal attention and decision; and the general control and supervision of the various duties that the commanding officer has allocated to others."¹⁴ It is our understanding that an officer commanding a command and all other senior commanders have in custom, and by analogy with QR&O 4.20, the same or similar responsibilities as a commanding officer. These responsibilities and the additional powers given to commanders under the NDA and regulations demand their unqualified diligence in the performance of their duties.

While officers are always accountable for the units under their command, it would be unusual for a superior officer to bypass immediate subordinate commanders to issue orders directly to units or individuals. Nevertheless, both the custom of the service and the NDA compel superior officers -- inside or outside the extant chain of command -- to take corrective action whenever they believe subordinates have issued illegal orders or endangered their troops and when they observe acts contrary to good order and discipline. Therefore, although the organization of the CF into units and other elements provides for a logical way to issue orders, maintain discipline, conduct operations, and assess accountability, it is not sacrosanct.

THE LEGAL ASPECTS OF COMMAND

The law governing command authority in the CF is prescribed in the NDA and in regulations. Primary authority rests with the Governor in Council for the "organization, training, discipline, efficiency, administration, and good government of the Canadian Forces" (section 12). The minister, under section 12(2), also has the power to regulate the same matters but is subject to Governor in Council and Treasury Board primacy. Command of and in the CF, however, is a distinct activity, separate from these general categories.

The legislative aspects of command are addressed in two provisions. Section 18(1) of the NDA states that the Governor in Council may appoint a chief of the defence staff "who shall...subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Canadian Forces." "Control and administration" must be interpreted as the military notion of full command, subject only to the prerogatives of the Queen of Canada, the NDA, and the direction of the minister. Furthermore, command of and in the CF is confirmed as a military activity that flows through officers and non-commissioned members of the CF by section 18(2):

Unless the Governor in Council otherwise directs, all orders and instructions to the Canadian Forces that are required to give effect to the decisions and to carry out the directions of the Government of Canada or the Minister shall be issued by or through the Chief of the Defence Staff.

The NDA provision regarding command states that "[t]he authority and powers of command of officers and non-commissioned members shall be as prescribed in regulations."¹⁵ One of the regulations implementing this statutory provision is QR&O 1.13. It is a regulation made by the Governor in Council and states that the

CDS *may* assign some of the CDS's powers to assistant deputy ministers of DND who are officers of the CF:

Where any power or jurisdiction is given to, or any act or thing is required to be done by, to or before the Chief of the Defence Staff, the Chief of the Defence Staff may, on such terms and conditions as he deems necessary, assign that power or jurisdiction to, or authorize that act or thing to be done by, to or before *an officer* [of the CF] not below the rank of major-general holding [an associate or assistant deputy minister appointment] at National Defence Headquarters...and, subject to any terms or conditions prescribed by the Chief of the Defence Staff, that power or jurisdiction may be exercised by, or that act or thing may be done by, to or before that officer (emphasis added).¹⁶

QR&O 1.14, 1.15, and 1.16 empower the CDS to authorize anyone (officer or civilian) holding a position of assistant deputy minister to exercise powers or jurisdiction of the CDS under regulations made by the Treasury Board, the Governor in Council, or the minister.¹⁷ Thus, the law allows civilian assistant deputy ministers to exercise certain responsibilities of the chief of the defence staff, although with limitations. Assistant deputy ministers have no right to act in the place of the CDS without the CDS's authority. In any case, these individuals are expressly excluded from acting in areas dealing with rank and structure of the CF, aid of the civil power, code of service discipline, and any aspect of operations or the chain of command of the armed forces.¹⁸ These provisions provide only for the delegation of the powers of the CDS to civilian assistant deputy ministers in the non-command areas of policy, finance, and materiel.

Thus, the chain of command the linked military system of authority and accountability in the CF -- can be described in two ways. First, it is a hierarchy of individual commanders beginning (and ending, ultimately) in the office of the CDS. Whereas the CDS serves at the pleasure of the government, commanders serve only at the pleasure of the CDS. Second, the chain of command is also an organizational hierarchy of functional formations, units, and elements together constituting the CF. These formations, units and elements exist only at the pleasure of the minister of National Defence, and none has any permanent life or legal status beyond the CF as a 'single service'.

The Code of Service Discipline is applicable only to members of the CF except in special circumstances. Therefore, not only are civilians normally not subject to the orders of military persons, but members of the CF are not in any way subject to orders issued to them by civilians. Even the minister is not in the chain of command. The minister has no authority to issue orders to the CF except through the CDS and then only within prescribed limits. As Brooke Claxton once remarked during his long term as defence minister, "The chain of command flows from the commander-in-chief... in Canada the Governor General, down to the lowest recruit... The minister is not in the chain of command; nor should he issue orders any more than he should wear a uniform."¹⁹

The chain of command in the CF as set out in the NDA and regulations is unambiguous. Beginning with the CDS, it links superior officers of the CF to every individual member of the CF. The NDA stipulates how lawful orders are to be passed down in the CF, that is, from superior to subordinate members. The regulations compel subordinates to obey any commands and orders that are not manifestly illegal. Furthermore, the law, regulations, and custom of the service imply that superior officers will oversee carefully the execution of lawful commands, orders, and directions, for to do otherwise would be prejudicial to good order and discipline within the CF and a dereliction of duty.²⁰ The chain of command therefore defines accountability and responsibility within the CF, because it indisputably links individuals with authority and responsibility to other individuals with lesser levels of authority and responsibility.

THE CHIEF OF THE DEFENCE STAFF IN THE CHAIN OF COMMAND

The chief of the defence staff is obviously distinct from every other officer of the CF. This position encompasses several unique (and overlapping) duties and responsibilities as leader of the Canadian Forces and as the government's military adviser. This is the officer who connects the armed forces to the government and the government to the armed forces. No CDS should attempt to force a military solution on the defence minister or the Cabinet, but neither can the CDS temper advice to satisfy partisan political

interests. But no CDS is ever a neutral messenger, because a principal duty of the CDS is to give the government sound apolitical military advice and then to ensure that the government's decisions are carried out by the Canadian Forces.

In reality, the relationship between any CDS and the government is not set by rules, but rather is defined by the confidence each has in the other. The government must have confidence in the integrity of the advice offered by the chief of the defence staff, and the CDS must have confidence in the government's defence policy. Furthermore, the CDS must weigh government policy against the responsibility to support the members of the CF and to protect them from undue harm. Where confidence is absent on either side, civil/military relations suffer; this in turn has negative consequences for control over the armed forces and accountability.

Although it is not so stated in the NDA, the CDS is the *de jure* and *de facto* commander of the CF, and officers look to that person for command decisions. The CDS is responsible ultimately for the CF and for the duties that the incumbent delegates to subordinate commanders. The CDS cannot stand apart from the chain of command without breaking the chain of authority and accountability in the armed forces. Furthermore, because the CDS is the link between Parliament and the CF, any separation of the CDS from the commanders and units in the field reduces civil control over the military. Unity of command, therefore, is an essential part of civil/military relations, more important, perhaps, than a mere prerequisite to military discipline and efficiency.

The CDS shares responsibility for national defence with government leaders. In both law and custom, the CDS has duties to Canada and to the members of the CF that transcend the line between the preferences of the government and military operations. No CDS can acquiesce in policies that might recklessly endanger national defence or the lives of service personnel. The chief of the defence staff is by statute responsible for the control and administration of the CF at all times, and these professional duties cannot be compromised. The CDS is responsible for providing appropriate but apolitical advice to ministers and for carrying out wide-ranging duties without regard for partisan politics. It is possible, therefore, that the competing nature of the CDS's duties could bring that individual into conflict with the government's opinions, policies and interests. Certainly, any chief of the defence staff would want to avoid such a situation, but, at the same time, whoever occupies that office must compromise neither political neutrality nor responsibility to Canada or the CF simply to avoid a confrontation.

Parliament demands that the Canadian Forces be commanded by officers who are accountable to Parliament. The system of command of the CF in peacetime, crisis, and war is therefore an essential component of national civil/military relations. If the system of command is not precise, then accountability and parliamentary control of the armed forces will be diminished.

NOTES

1. Henry Eccles, *Military Concepts and Philosophy* (New Jersey: Rutgers University Press, 1965), pp. 118-119. See also testimony of MGen Dallaire, Policy hearings transcripts vol. 3P, pp. 477p. 479P.
2. Eccles, *Military Concepts and Philosophy*, p. 245. See also testimony of MGen Dallaire, Policy hearings transcripts vol. 3P, pp. 479p. 480P.
3. Eccles, *Military Concepts and Philosophy*, p. 119.
4. Eccles, *Military Concepts and Philosophy*, p. 149.
5. Richard Gabriel, *To Serve with Honor* (Westport, Connecticut: Greenwood Press, 1982).
6. These are traditions and customs that, although unwritten, have come to be accepted aspects of military practices and behaviour. See MGen Dallaire, Policy hearings transcripts vol. 3P, pp. 480p. 481P; and MGen Roy, Transcripts vol. 1, pp. 69-77.
7. *National Defence Act* (NDA), R.S.C. 1985, Chapter N-5, Part IV (as amended to April 30, 1993).
8. NDA, section 2, "Interpretation": an 'officer' is a person who holds Her Majesty's commission in the Canadian Forces, and a 'non-commissioned' member is any other person enrolled in the CF.

9. *Queen's Regulations and Orders for the Canadian Forces* (QR&O) 3.21.
 10. QR&O 111.05(c).
 11. QR&O 4.20, and QR&O 1.02 and 101.01.
 12. NDA, Part V section 83, p. 32.
 13. NDA, section 4.20.
 14. QR&O 4.20.
 15. NDA, section 19. This section must be read with section 49 of the NDA.
 16. An 'officer' includes an officer cadet or any person pursuant to law attached or seconded to the CF as an officer (NDA, section 2).
 17. The minister of National Defence can give approval for any officer (of or above the rank of colonel serving outside Canada) to do anything that can be done by the CDS.
 18. QR&O 1.14, 1.15, and 1.16.
 19. National Archives of Canada, "Brooke Claxton", *Memoirs*, Manuscript Group. 32, B5, vol. 221, pp. 21-22.
 20. It is an offence to issue unlawful orders.
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MILITARY CULTURE AND ETHICS

The culture and ethics that inform the Canadian military are important to an understanding of the events that took place in Somalia. While a series of isolated incidents may seem unrelated on the surface, they may also reflect deeper institutional shortcomings regarding ethical matters and underlying cultural attitudes regarding duty and accountability.

This chapter briefly explores some elements of Canadian military culture and ethics as a background to our inquiry into the experience of the Canadian Forces in Somalia.¹ The specific focus is three aspects of military life: its corporate separateness from society, changes in the nature of military professionalism, and the role of ethics in the military.

SEPARATENESS

Common to most modern military organizations is the notion of being different from the rest of society. The Canadian military is no different from other armed forces in feeling a consequent separateness from society. In 1869, William Windham described armed forces generally as "a class of men set apart from the general mass of the community, trained to particular uses, formed to peculiar notions, governed by peculiar laws, marked by peculiar distinctions".² According to a recent DND statement of the Canadian military ethos, the Canadian military sees itself as "a distinct sub-set of the entire Canadian fabric".³

This notion of corporate separateness flows from the distinctive mandate of the CF to maintain the security and defend the sovereignty of Canada, if necessary by means of force. Unlike other professions in our society, the CF can be called on to ensure the very survival of Canada.

Moreover, the service to be performed by Canada's military is total, involving what British General Sir John Hackett has called the "clause of unlimited liability" -- or loss of life:

The essential basis of military life is the ordered application of force under an unlimited liability. It is the unlimited liability which sets the man who embraces this life somewhat apart. He will be (or should be) always a citizen. So long as he serves he will never be a civilian.⁴

The concept of unlimited liability in defence of national interests distinguishes members of the military profession from other professions. Furthermore, the military allows for the lawful killing of others in the performance of duty. Moreover, the responsibility of military leadership permits the sacrifice of soldiers' lives in order to achieve military objectives. The stark and brutal reality of these differences from normal society has traditionally been a distinguishing feature of military life, contributing to a sense of separateness -- even superiority -- in relation to the civilian population.

Distinctive Culture

As a result of its distinctive mandate and the need to instill organizational loyalty and obedience, most military organizations develop a culture unto themselves, distinguished by an emphasis on hierarchy, tradition, rituals and customs, and distinctive dress and insignias. The separation between civilian and military society in Canada, as in other countries, is also maintained by physical and social space. For example, military bases are located for the most part in relative isolation, such as Petawawa, Ontario, and Gagetown, New Brunswick. Military activities are centred on the base, which discourages interaction with civilian society. Single men and women live on the base, while many married personnel live nearby in the town, which sometimes seems an extension of the military base. Most Canadian military operations since the Second World War have been overseas on NATO and UN missions, keeping elements of the CF distant from the Canadian public.

Regimental Culture

The military culture of a nation is made up of sub-cultures. The Canadian army has regimental divisions reflecting geographic and linguistic divisions in Canada, for example -- western anglophone (PPCLI, Princess Patricia's Canadian Light Infantry), central and eastern anglophone (The RCR, The Royal Canadian Regiment), and central francophone (Royal 22^e Régiment, or Royal 22nd Regiment, often referred

to in English as the 'Vandoos'). These territorial divisions define areas of recruitment, training and residence for regimental members.

A recent DND board of inquiry noted that the "regimental system forms a strong subculture within the CF that is a pervasive and often unforgiving milieu within which all combat arms and most other Army personnel live their daily lives."⁵ This regimental sub-culture provides a common bond uniting its members. According to MGen (ret) Dan Loomis, the regiment is a pseudo-kinship organization.⁶ It is often referred to as a family and, according to another analyst, its essence is tribal and corporate rather than instrumental and bureaucratic.⁷

One is considered a member of a regiment for life. This link continues throughout a member's career in the military and after retirement. According to MGen Loomis, "The Regimental Family permeates all facets of one's life from pseudo-birth as a new member to death."⁸ Regiments influence the career advancement of members through the administration of career assessment and recommendations to promotion boards at NDHQ. Within each regiment, there is a horizontal infrastructure of messes, and 'paternal' guidance is provided by a senior advisory organization, often known as the 'senate', made up of regimental 'elders'.

A vertical chain of command within the regiment ensures that discipline is maintained and that information flows freely through the system. However, this can also lead to an attitude among officers of looking after only their own. DND's recent board of inquiry concerning Canbat 2 (investigating the serious breakdown of discipline during the CF mission in the former Yugoslavia) noted that

there was a widespread tendency for all personnel in the chain of command to concern themselves almost exclusively with their own subordinate commands. The command structure of 'A' squadron was reticent to concern itself with anything which occurred in the Engineer Sqn and vice versa. Although Army culture has inculcated officers and [senior] NCOs not to overlook a fault, there has been a growing tendency not to meddle in the affairs of others.⁹

The corporate nature of army culture may also lead to a sense of exclusiveness and an apparent tendency to justify disrespect for authority outside the group. The same board of inquiry noted that at the unit level in the army, "there has been too often the tendency to ignore criticism which comes from outside of one's own unit or the chain of command" .¹⁰

It is a well accepted axiom that a soldier's regiment is his family. Many studies of battlefield stress and why soldiers fight have reinforced the notion that a soldier will risk his life for his comrades and for the honour and survival of his regiment. This issue is fraught with emotion. Many officers and soldiers spend their entire lives in a single regiment and they naturally become blind to many of its faults. Criticism of one's regiment, especially from an outsider, is tantamount to blasphemy and is not tolerated.¹¹

In addition, information that could tarnish the reputation of the regiment may be deliberately hidden.¹² 'Whistleblowing' is frequently perceived as counter to the corporate nature of the military. Similarly, revealing wrongdoing to outsiders, particularly civilians, is by nature suspect.

It is understandable that a soldier would want to keep any news of wrongdoing within his regiment. The concept of family is strong and it is reinforced daily. As a parallel illustration, if one has an alcoholic sibling one does not go out into the street and announce it to the world...in the military this concept of washing dirty linen entre nous can actually work against the chain of command if it is applied with too much rigour.¹³

While unit loyalty is essential for armed conflict, smaller group loyalty can also undermine disciplinary authority. Walls of silence can be erected to protect a unit member. "Not only might a schismatic group of this kind foster and maintain inappropriate norms, but by assuring anonymity through norms of group loyalty and by imposing severe sanctions for violations of the solidarity norm, it can facilitate acts of subversion and defiance." ¹⁴

CHANGES IN THE NATURE OF MILITARY PROFESSIONALISM

Similar to professions such as medicine and law, the military controls the education, training, and socialization of its members by means of its own specialized training programs, including schools. The

educational format is determined by the military, which defines content, means, methods, and planning, with minimal influence exercised by the student. In the Canadian army, for example, regiments make up the basic organization of the land force, providing the institutional framework for the career training and advancement of individuals after they have completed basic training.¹⁵

The CF trains its junior officers for the major commands (Maritime, Land Force, Air), and support services together in a single institution -- the Royal Military College of Canada. In addition, the Canadian Forces Command and Staff College in Toronto and the Canadian Land Force Command and Staff College in Kingston provide developmental training for future senior officers of the Canadian Forces.

These training programs are designed to impart professional standards of knowledge, skill and competence in addition to core military values. Instruction in ethics is not formalized or presented to officers early in their careers.¹⁶ As well, programs in military ethics and values are taught by instructors with a divergence of credentials and without service-wide standards or objectives to guide them.

A common assertion in the military is that the profession of arms has a long tradition, with a high and exacting standard and inherent nobility derived from the nature of war and the conditions of service. Traditionally, soldiers are expected to possess military virtues in all facets of their lives. This is inherent in the idea that the military is not a job but a way of life. For the military, performance expectations are believed to be higher than for civilians and include the notion that individual soldiers should serve as a symbol of all that is best in the national character.

A man can be selfish, cowardly, disloyal, false, fleeting, perjured, and morally corrupt in a wide variety of other ways and still be outstandingly good in pursuits in which other imperatives bear than those upon the fighting man. He can be a superb creative artist, for example, or a scientist in the very top flight, and still be a very bad man. What the bad man cannot be is a good sailor, or soldier, or airman. Military institutions thus form a repository of moral resource that should always be a source of strength within the state.¹⁷

In order to fulfill these moral obligations, the military must promulgate and enforce explicit rules derived from formal ethical standards, hold personnel accountable for following minimal standards of duty and conduct demanded by these rules, and sanction or even punish those who fail to do so.

Civilianization and Bureaucratization

A major factor that has influenced the concept of professionalism within the Canadian military is a shift toward 'civilianization'. This has been accompanied by the introduction of occupational values as opposed to the traditional institutional values of the military. American observers noticed this change after the World War II, attributing it mainly to changes in the technology of war.

Technological trends in war-making have necessitated extensive common modification in the military profession.... The changes in the military reflect organizational requirements which force the permanent military establishment to parallel other large-scale civilian organizations. As a result, the military takes on more and more the common characteristics of a government or business organization. Thus the differentiation between the military and the civilian is seriously weakened. In all these trends the model of the professional soldier is being changed by 'civilianizing' the military elite to a greater extent than the 'militarizing' of the civilian elite.¹⁸

This raised concern among military analysts that officers, in particular, were acquiring skills and an orientation characteristic of civilian administrators or political leaders.¹⁹

These occupational values are thought to have emerged in Canada because of increased job specialization, a decline in the perceived importance of the combat arms, the introduction into the military of civilian management principles, and bureaucratic rationalization. These elements were noted after unification in 1968, but became a significant concern only after the amalgamation of Canadian Forces headquarters and departmental headquarters in 1972. It was claimed that a traditional perception of military service as a calling or vocation, made legitimate by broadly based national values, had given way to a subjective definition of military service as an occupation in the labour market, involving the performance of work for civilian forms of rewards under specified contractual conditions.²⁰

The post-World War II Canadian military has also been affected by increased levels of bureaucracy. This is related to the maintenance of the army during peace time. In the CF, the majority of enlisted personnel are engaged in technical and administrative roles rather than in purely military endeavour.²¹ They form part of a complex defence bureaucracy, which resembles the traditional pyramid model of a combat organization in form but not in spirit.²² Bureaucratization has been seen by some traditionalists as a threat to the military's distinctiveness in society because of its replacement of traditional standards of military leadership with managerial principles.²³ Officers were seen to be in danger of becoming mere managers of human and materiel resources. Military analysts noted a dichotomy between two sets of skills and attitudes: the heroic qualities of loyalty, unity, obedience, hardiness, and zeal versus the managerial, oriented toward coping with the larger political and technological environment.²⁴

These changes may have influenced standards of accountability. Owen Parker has written rather critically that "occupationalists in the professional military devote substantial effort to ensuring that nothing untoward or unflattering can ever be attributed to them: if blame can be deflected elsewhere then that course should be followed".²⁵ If true, this may have a significant effect on the obligation to report difficulties.

ETHICS IN THE CANADIAN MILITARY

According to one CF document, it is generally accepted that there are three elements to military ethics:

There is a military ethos which can best be understood as a general statement of what we serve in terms of the spirit of the profession. There is ethics or military ethics which is usually used as a title of the various components or facets of the military ethos, such as obedience, courage and so on. Finally there is the code of military ethics which contains obligatory statements of duty and responsibility.²⁶

Although the Canadian military does not have a standardized ethical code, professional ethics are considered in basic military documents such as the officer's commission and oath, the enlisted member's contract and oath, the law of armed conflict, the code of service discipline, the *National Defence Act*, and, of course, the Canadian constitution.

When soldiers become non-commissioned or commissioned officers, they freely enter into a moral and legal contract that imposes professional duties and standards. The texts of their commissions and oaths establish broad parameters, such as the vow to discharge the officer's duties of office faithfully.

It is only logical for soldiers to be aware of their ethical obligations and to have an ability to perform them. In this regard, some have promoted the adoption of a code of ethical conduct for the military: "One needs a very clear statement of the ethical obligations that one ought to observe if one is to be expected to behave ethically."²⁷ Canadian authors such as LCol (ret) Charles Cotton and Maj A.G. Hines have proposed various ethical statements of purpose for the Canadian military.²⁸ The Australians maintain that soldiers cannot truly be held ethically responsible for obligations unless they are aware of them.²⁹ They believe that a formalized code of military ethics is one of the surer ways of informing members of the profession of their ethical obligations as professionals.

In Canada, the Oath of Allegiance is the soldier's code of moral obligation. The obligations of enlisted personnel and officers are similar. In addition, the oaths for officers and enlisted personnel provide the formal foundation for an officer's greater authority and responsibility.³⁰ However, an officer solemnly swears to discharge duties, while the enlisted member swears to obey orders of officers in the ranks above. Even though only the enlisted oath explicitly requires obedience, some authors have argued that all soldiers have the same obedience duties.³¹ Officers also have a greater responsibility to disobey or dissent that may compete with the basic duty to obey.

Teaching of Ethics in the Canadian Forces

Training in ethics in the Canadian military forms one component of the education received by officers and non-commissioned members of the CF. There has been some concern regarding the difference in training received among the ranks, particularly among the lower ranks. Formal ethics education is evidently uneven between commissioned officers, non-commissioned officers and non-commissioned soldiers.

Before 1992, the recruiting, training and education system in the CF provided training for officers, up to and including the rank of major, on how to command and lead subordinates, ethics and professionalism, as well as control and supervision.

Since 1992, ethics training has received considerable attention and has been modified to include specific lectures on ethics, the Canadian military ethos, and qualities such as loyalty, honesty, integrity, dedication, and courage. These courses are often structured as a liberal arts university course might be, delving into the complexities of ethical concepts and examining topics such as moral obligation, the moral basis of traditional military values, and the study of codes of honour. Ethics training and development occupy an important place in the Staff College curriculum.

Before 1992, training provided to non-commissioned members, up to and including the rank of warrant officer, examined definitions of truth, duty, bravery, integrity, loyalty, and courage. Post-1992 training added more on ethics and the development of personal and military values.³² Non-commissioned officer training suggests that military ethics are subsumed under the law of war (now called the law of armed conflict). The law of war is based on The Hague conferences of 1899 and 1907, the Geneva conferences of 1929 and 1949, and numerous separate pacts and treaties. It establishes the conditions of war and the rights of non-combatants, prisoners of war, the wounded and the sick.³³

Since 1993, a variety of additional training and educational programs has also been introduced to employees at the Department of National Defence and to members of the CF. According to a briefing note prepared for the chief of the defence staff, the primary rationale for these changes is "the ethical political imperative that the composition and the culture of our military must reflect the population that it serves".³⁴ Subjects include Aboriginal awareness, cultural values, and ethics. Another initiative is the defence ethics program which has been in place since the late 1980s. Its major elements are "ethics awareness and education, the development and enhancement of core values, and the provision of practical advice on ethics in the workplace".³⁵

NOTES

1. The information in this chapter is drawn mainly from an independent research study prepared for our Inquiry. See Donna Winslow, *The Canadian Airborne in Somalia: A Socio-Cultural Inquiry*, study prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (Ottawa: Public Works and Government Services, 1997).
2. William Windham, quoted in Maj Louis E. Grimshaw, "Ethical Tensions for Senior Leaders in the Canadian Forces", notes for a seminar workshop at JSCOPE XVII, Washington D.C., January 1995.
3. "Canadian Forces Officer General Specification", Revision 2 (A-PD-150-001/AG-001, October 1994), Preface, pp. ii-iii.
4. General Sir John Hackett, *The Profession of Arms* (London: Times, 1963), p. 222.
5. DND Board of Inquiry, *Command Control and Leadership in Canbat 2, The Board Report* (November 15, 1996), paragraph 702.
6. MGen (ret) Dan Loomis, *The Somalia Affair: Reflections on Peacemaking and Peacekeeping* (Ottawa: DGL Publications, 1996), p. 51.
7. Charles A. Cotton, "Commitment in Military Systems", in *Legitimacy and Commitment in the Military*, ed. Thomas C. Wyatt and Reuven Gal (New York: Greenwood Press, 1990), p. 50.
8. Loomis, *The Somalia Affair*, p. 60.
9. DND Board of Inquiry, *Command Control and Leadership in Canbat 2*, paragraph 410.
10. DND Board of Inquiry, *Command Control and Leadership in Canbat 2*, paragraph 411.
11. DND Board of Inquiry, *Command Control and Leadership in Canbat 2*, paragraph 718.
12. DND Board of Inquiry, *Command Control and Leadership in Canbat 2*, paragraph 719.
13. DND Board of Inquiry, *Command Control and Leadership in Canbat 2*, paragraph 720.

14. LCol K.W.J. Wenek, "Behavioural and Psychological Dimensions of Recent Peacekeeping Missions", *Forum, Journal of the Conference of Defence Associations Institute* 8/5 (1993), p. 20.
 15. Maj C.A. Cotton, "Military Attitudes and Values of the Army in Canada", Research report 79/5 (Willowdale, Ontario: Canadian Forces Personnel Applied Research Unit, 1979), p. 5.
 16. Maj C.R. Shelley, "A Crisis of Character? Ethical Development in the Canadian Officer Corps", *Canadian Defence Quarterly* (1996), p. 26.
 17. General Sir John Hackett, "The Military in the Service of the State", in *War, Morality, and the Military Profession*, second edition, ed. M.M. Walkin (Boulder, Colorado: Westview Press, 1979), pp. 124-125.
 18. Morris Janowitz, *Political Conflict: Essays in Political Sociology* (Chicago: Quadrangle Books, 1970), p. 126.
 19. Janowitz, *Political Conflict*, p. 130.
 20. Charles A. Cotton, "The Institutional Organization Model and the Military", in *The Military, More than just a Job?* ed. Charles Moskos and Frank Wood (Washington: Pergamon-Brassey's, 1988), p. 41.
 21. Cotton, "The Institutional Organizational Model and the Military", p. 11.
 22. F.C. Pinch and Charles Cotton, "The Winds of Change: Manning the Canadian Enlisted Force", in *Life with the Rank and File*, ed. D.R. Segal and H.W. Synayko (Washington: Pergamon-Brassey's, 1986), p. 242.
 23. Richard A. Gabriel, *To Serve with Honor: A Treatise on Military Ethics and the Way of the Soldier* (Westport, Connecticut: Greenwood Press, 1982), p. 98.
 24. Gary L. Wamsley, "Contrasting Institutions of Air Force Socialization", *American Journal of Sociology* 78/2 (1972), pp. 400-402.
 25. Owen Parker, "The Influences of Organizational Culture on the Personnel Selection Process", Ph.D. dissertation, York University, 1995, p. 81.
 26. DND, Directorate of Personnel Development Studies, Annex G to 4503-1 (CO), April 22, 1996.
 27. Gabriel, *To Serve with Honor*, p. 9.
 28. See Charles A. Cotton, "A Canadian Military Ethos", *Canadian Defence Quarterly* 12/3 (1982); and A.G. Hines, "Military Ethics: A Code for the Canadian Forces," speech to the Canadian Forces Staff College, 1992.
 29. The Australian army issues a pamphlet entitled "Army Ethos and Values" to all members and operates a defence ethics and fraud awareness campaign in addition to code of conduct and ethics programs.
 30. See Gerald E. Miller, "Public Law and the Military Commander: Responsibility and Authority", *Naval War College Review* 4 (1971).
 31. This argument is made by Miller in "Public Law and the Military Commander"; in M.M. Walkin, "Ethics of Leadership", in *War, Morality and the Military Profession*; in Kenneth Wenker, "Professional Ethics: An Attempt at Definition", *U.S. Air Force Academy Journal of Professional Military Ethics* (April 1981); and in Lawrence Crocker, *The Army Officer's Guide* (Harrisburg, Pennsylvania: Stockdale, 1979).
 32. Col Gordon King, Deputy Chief of Staff for Education in Canadian Forces Recruiting, Training and Education System Headquarters, briefing for Commissioners.
 33. See Anthony E. Hartle, *Moral Issues in Military Decision Making* (Lawrence: University Press of Kansas, 1989) for details.
 34. CDS Briefing note, NS 014291.
 35. CDS Briefing note, NS 014292.
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CIVIL-MILITARY RELATIONS

In Canada, as in most liberal democratic states, *civil control* of the military means the control of the armed forces by civilians elected to Parliament acting in accordance with statutes passed by that legislative body. This principle is distinctly and conceptually different from the notion of *civilian control* of the military, which may mean control by anyone not enrolled in the armed forces, such as public servants.

CIVIL CONTROL OF THE CANADIAN ARMED FORCES

Civil control is intended to ensure that decisions and risks affecting national defence and the employment of the Canadian Forces are taken by politicians accountable to the people rather than by soldiers, officials, and others who are not. In practice, therefore, the Cabinet collectively, under the direction of the prime minister, is responsible and accountable to Canadians to control the Canadian Forces (CF) in all respects.

Canadians entrust the federal government with the responsibility to prepare defence policy and to provide reasonable assurance that the armed forces are able to defend the nation. However, the delegation of these responsibilities to the government of the day is limited. Governments do not have unrestricted control over the CF. Rather, Canada's constitutional arrangements and laws provide a set of checks and balances meant to control the authority of the government, the armed forces, and the civil bureaucracies. In effect, responsibility for formulating defence policy and implementing and administering that policy is shared among the governor general; the prime minister; the minister of national defence, the chief of the defence staff (CDS), and, in a narrow sense, the deputy minister of national defence.¹

Customs and norms, evolved from history and now inherent in the relationship between politicians and soldiers, together with certain explicit laws and regulations, usually protect society from the armed forces and from any attempt by the government to use the armed forces for partisan purposes. Generally, politicians and military officers perform different, but complementary, roles in planning for national defence and controlling the armed forces. That is to say, the law gives politicians control over matters affecting the establishment, provision, and use of armed forces, while officers are *allowed, under the direction of ministers*, to control matters more strictly military. Such military matters include force standards and doctrine, discipline, organizing units and formations, certain promotions, and the direction of field operations. There is a narrow space between what is a civil and what is a military responsibility, but it is sufficiently wide to permit ministers and officers to adjust to political and military circumstances without either party crossing inappropriately into the other's domain.

ORGANIZATION FOR NATIONAL DEFENCE

Civil control of the armed forces is based in law. The *National Defence Act*, supplemented by regulations -- principally the *Queen's Regulations and Orders* (QR&O) -- governs almost all aspects of civil-military activity in Canada.² Moreover, all subordinate arrangements for defence organization, levels of authority, and the relationships between politicians, officers, and officials are also subject to the laws and regulations governing national defence and its public administration. Few meaningful discussions, reforms or changes in arrangements for civil control of the CF command authority, or defence administration can be advanced without reference to the act and regulations.

The act clearly establishes two broad areas of jurisdiction that determine the parameters and relationships between the civil authority and the CF. The first area concerns the organization of the defence department and relations between civil authorities and military officers. The second concerns military organization and command and the specific powers of military authorities.

The Canadian defence establishment comprises two separate entities: the Department of National Defence (DND) and the CF. This distinction is important and has a long history. Legislation governing the three separate armed services always referred to the army, navy, and air force as "the armed forces of Her Majesty", strongly implying that the armed forces are distinct, even from the government. Parliament carried this terminology into the *National Defence Act* (NDA) when it consolidated the separate service acts in 1950.³ Furthermore, during the 1950 debate on the NDA, parliamentarians specifically separated the

department from the armed forces by organizing the act into two "parts".⁴ When the services were unified in 1968, this separation remained.

After the Canadian Forces Headquarters and the bureaucratic staffs of DND were amalgamated in 1972 to become National Defence Headquarters (NDHQ), officers and officials began to refer to the CF and DND as if they were one entity. This error prompted the Judge Advocate General (JAG) to declare in 1988 that "a major confusing factor for those dealing with the two national defence organizations [the CF and DND] is the integrated structure of NDHQ", which left the impression that the two entities were simply branches of one organization. Concluding that the inference was wrong, the JAG noted that "to refer to DND and the Canadian Forces as if they were the same organization is incorrect and has significant legal consequences."⁵

THE DEPARTMENT OF NATIONAL DEFENCE

DND is a department of government authorized under Part I, section 3 of the NDA:

There is hereby established a department of the Government of Canada called the Department of National Defence over which the Minister of National Defence appointed by commission under the Great Seal shall preside.

Part I of the act relates only to DND; the remaining parts relate to the CF. The department, like all other federal departments, is managed by a department head, the deputy minister, who directs a civilian staff. The DM is guided by various acts and regulations that assign responsibility for the financial control of the budget and management of departmental public servants.⁶

The Canadian Armed Forces

The CF is clearly shown to be separate from DND in Part II, section 14 of the NDA:

The Canadian Forces are the armed forces of Her Majesty raised by Canada and consist of one Service called the Canadian Armed Forces.

Part II of the NDA provides direction on the composition, organization, command, and administration of the armed forces. Parts IV through IX prescribe the *Code of Service Discipline*. Indeed, except for Part I, all other parts of the NDA apply only to members of the CF (except in unique circumstances), further distinguishing the CF from DND.

Also, whereas DND is a single entity a department without other elements, the NDA states that "[t]he Canadian Forces shall consist of such units and other elements as are from time to time organized by or under the authority of the minister."⁷ Under QR&O 2.08(1), the minister may authorize:

1. the establishment of commands and formations; and
2. the allocation to commands and formations of such bases, units and elements that the Minister considers expedient.⁸

The Administration of National Defence

Clearly, officials in DND and officers of the CF must co-ordinate their activities and co-operate to fulfill the directions and policies of the government. However, the broad organization of the defence establishment and its management processes must not interfere with the government's capacity to maintain effective direct control of the armed forces. Furthermore, because command in the CF provides special powers to individuals over Canadian citizens and carries with it specific responsibility to use deadly force in the defence of Canada, command authority and accountability in the armed forces must be unambiguous and exercised according to law.

The CF and DND are unique among government agencies and departments in that neither has a stated statutory purpose. The employment of the Canadian Forces, except for "aid of the civil power", provided in Part XI of the *National Defence Act*, is at the discretion of the Crown.⁹ Therefore, the government of the day must choose how it wishes to use the Canadian Forces. This condition places special responsibilities on the government and Parliament to give clear direction to the CF and to oversee its activities carefully.

In practical terms of command and administration, how the defence establishment is structured -- as one entity or two -- has significant consequences as well for civil control of the armed forces. That is not to say that the relationship between the CF and DND is immutable. However, when the statutory structure of the CF and DND is changed by administrative fiat, civil-military relationships can become dangerously confused. Uncertified, such confusion can lead to situations where no one is sure of who has authority over whom and who is accountable within the defence establishment for policy, command, and administration of the CF. What the law makes clear, bureaucratic practices may make ambiguous.

THE DECISION MAKERS

An understanding of the laws governing the key actors and the relationship between them is central to any discussion of the exercise of power and policy outcomes in Canada's national defence. It is also important to understand that any change in the distribution of responsibilities and authority and the relationship between the key actors in the defence establishment may have significant consequences for the formulation of defence policy, command of the CF, and defence administration. Therefore, any suggestions for reform or changes in relationships between the minister, the CDS, and the deputy minister must be made with reference to the NDA, and only after careful analysis of the impact of such reforms on civil-military relations.

The statutory position of and relationships between the minister of national defence, the deputy minister, and the chief of the defence staff are established principally by the National Defence Act. The minister and the deputy minister are appointed by the Governor in Council under "Part I, Department of National Defence" of the NDA, while the CDS is appointed by the Governor in Council under "Part II, The Canadian Forces".

The Minister of National Defence

As noted earlier, section 3 of the NDA establishes the "Department of National Defence over which the Minister of National Defence...shall preside." The NDA provides, under section 4, that the minister "holds office during pleasure, has the management and direction of the Canadian Forces and of all matters relating to national defence". Generally, the minister's powers fall into three main groups:

1. those exercised by virtue of the minister's constitutional position as a minister of the Crown, such as making submissions to the Governor in Council and advising the Cabinet on defence matters;
2. those of a legislative nature, such as making regulations within the minister's powers or under the authority of an act of Parliament, e.g., subsection 12(2) of the NDA; and
3. all other powers vested in the minister by or under various acts of Parliament, e.g., the *Aeronautics Act*, the *Visiting Forces Act*, and the NDA, including the minister's power under the NDA to manage and direct the Canadian Forces and the CDS.

Section 12(2) provides that the minister, subject to any regulations made by the Governor in Council, may make regulations for the "organization, training, discipline, efficiency, administration and good government of the Canadian Forces". However, the minister "does not have power to make regulations" when "there is express reference to regulations made or prescribed by the Governor in Council or the Treasury Board in respect of any matter" ¹⁰

The Chief of the Defence Staff

An important distinction between Part I and Part II of the NDA clearly sets the CDS apart from the minister and DND. Specifically, section 18(1) of the NDA states:

The Governor in Council may appoint an officer to be the Chief of the Defence Staff, who shall...subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Canadian Forces.

The powers of the CDS are derived from the NDA and regulations (principally, the QR&O, volumes I,II, and III). As noted, the CDS is subject to the direction of the minister in the exercise of general powers, but

the duties of the CDS are not delegated from the minister. The CDS has responsibility exclusive of the minister and deputy minister of national defence in three areas:

(a) Those powers in respect of which clearly the CDS is not subject to direction by the minister or the deputy minister. QR&O articles 204 and 205 are examples of regulations that imply that the power given to the CDS is not subject to the direction of the minister. Under those articles, the rate of pay of a general officer is, within the annual ranges prescribed by Treasury Board, "as determined from time to time by the Chief of the Defence Staff on the basis of merit." In this case, the CDS will be influenced strongly by the deputy minister in respect of the financial resources available and other financial implications, but the ultimate decision must be that of the CDS.

(b) Powers given to the CDS in a form that, of necessity, implies that the CDS is not subject to the direction of the minister or the deputy minister in exercising those powers. For example, Part XI, section 278 of the NDA allows the CDS to call out "in aid of the civil power" such part of the Canadian Forces as the CDS considers necessary. Here Parliament has specifically placed reliance on the opinion of the CDS, and it is that opinion, not that of the prime minister, the minister of national defence, or the deputy minister, that is critical. In forming an opinion the CDS will, of course, consider various factors such as operational and financial requirements. As the senior military officer the CDS is the best judge of the former but may seek the deputy minister's advice on the latter. Although the CDS will eventually form an independent opinion, the views of the prime minister and the minister of national defence are undoubtedly influential, as the CDS must retain their confidence.

(c) Powers that concern *purely military matters*, such as the conduct of military operations within political, financial or foreign policy restraints imposed by the government.¹¹

Thus, there is an organization known as "the department", which is primarily civilian, over which the minister "presides". There is a separate organization known as the "Canadian Forces", which is under the control of the CDS. Whereas the minister has different statutory powers in respect of both organizations, the statutory powers of the chief of the defence staff apply only to the CF and those of the deputy minister only to DND.

It is important to note also that the minister has the "management and direction" of the Canadian Forces, whereas the CDS, "under the direction of the Minister", has the "control and administration of the Canadian Forces". The distinction between "management" and "administration" is not clear. But what is clear is that Parliament chose to vest "control" of the Canadian Forces directly in the chief of the defence staff, subject only to the "direction" of the minister.

There have been suggestions that the *National Defence Act* should be amended to state that the CDS has "command" of the CF -- the word command being generally synonymous with "control" but emphasizing more strongly the authority to be exercised over a military force. Such suggestions have never gone far, however, because the "Command-in-Chief...of all...Military Forces [is] vested in the Queen",¹² and changing the status of the CDS might raise complicated constitutional questions regarding the role of the governor general.

The Deputy Minister

Section 7 of the NDA provides for a "Deputy Minister of National Defence who shall be appointed by the Governor in Council." The act is silent, however, about the DM's authority in matters of defence policy and administration. Generally, the deputy minister has powers only regarding the department, and they are usually only those related to powers vested in the position by acts of Parliament. That is, the deputy minister's authority is derived from acts such as the *Financial Administration Act* and the *Interpretation Act*, including regulations made under those acts. The DM's position and relationship with the minister and the CDS are governed by section 23(2) of the *Interpretation Act*, which reads in part:

Words directing or empowering a minister of the Crown to do an act or thing, regardless of whether the thing is administrative, legislative, or judicial or otherwise applying to him by his name of office, include (a) a minister acting for a minister; (b) the successor of that minister; (c)

and his or their deputy. Nothing in this paragraph (2) (c)...shall be construed to authorize a deputy to exercise any authority conferred on a minister to make a regulation

Thus the deputy minister may have, subject to authority delegated by the minister, substantially the same powers as the minister. Nevertheless, the main powers of the deputy minister of DND that are conferred by statutes relate primarily to financial management and the direction of civilian personnel. Some individuals believe that because deputy ministers act at times as the 'alter ego' of ministers and because, generally, they can exercise any power assigned to them by ministers, the deputy minister of DND has near unlimited authority over any defence matter, including operational decisions of the CF.

Such an argument is invalid for several reasons. First, ministers of national defence do not exercise total control over every aspect of defence policy, because the chief of the defence staff has statutory responsibilities under the *National Defence Act*, including "control" of the Canadian Armed Forces. Therefore, because in some respects the minister does not control the CF, a deputy minister of DND obviously cannot exercise control over the Canadian Forces or the chief of the defence staff. Second, according to some authorities, where a minister presides over two distinct departments, "officials from one department cannot act for and on behalf of the minister presiding over [the other] department."¹³ If that is so, given that the CF and DND are two separate entities, the deputy minister of DND would be precluded from acting for the minister in the management and direction of the Canadian Forces. Third, it is also argued that ministers cannot delegate "serious" duties that Parliament intends them to fulfill and can delegate to an official only powers and duties that are "incidental and appropriate to [the] functions" of that official.¹⁴ The management and direction of the armed forces are certainly serious matters, and military planning and operations are never "incidental" functions of public servants. Fourth, members of the CF are not public servants subject to the direction of public service leaders, and the DM has no authority over them. Finally, the law states clearly that orders and directives to the CF must be issued by the CDS which means, of course, that the DM cannot issue orders to the CF.

In addition to these inherent legal limitations, other limitations to the authority of the deputy minister over the Canadian Forces have their roots in custom. By long established custom, the deputy minister of DND does not exercise the powers of the minister in respect of matters of an operational nature or having to do with military discipline. A legal opinion was given by the Judge Advocate General in 1961 to the effect that, although the Interpretation Act did in law permit the deputy minister to direct the former chiefs of staff of the three services in the control and administration of the services, it is a well established departmental custom that such legal power should be exercised only in relation to procurement, defence property, and civilian personnel, or where there are serious financial implications.

CONCLUSION

Civil control of the armed forces and the relationship between political and military leaders is a critical issue. Canadians generally are unaware of the significance of this political responsibility until serious issues about the behaviour of members of the Canadian Forces and the Department of National Defence become public. In 1994, however, a Special Joint Committee of the Senate and the House of Commons reported that "whatever our individual views on particular issues of defence policy or operations, there was one matter on which we agreed almost from the beginning -- that there is a need to strengthen the role of Parliament in the scrutiny and development of defence policy."¹⁵ We explore this matter further in later chapters.

NOTES

1. See Douglas Bland, *National Defence Headquarters: Centre For Decision*, study prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (Ottawa: Public Works and Government Services, 1997).
2. These regulations, as prescribed in the *National Defence Act*, sections 12 and 13, can be made by the governor in council (that is, the cabinet), the minister, or the Treasury Board.
3. *National Defence Act* (NDA), Part II, section 14.
4. See House of Commons, Special Committee on Bill No. 133, "An Act Respecting National Defence", *Minutes of Proceedings and Evidence*, especially No. 1, May 23, 1950.

5. DND, Office of the Judge Advocate General, *Newsletter* (April 1988), p. 4.
 6. Two of the main acts are the *Financial Administration Act* and the *Interpretation Act*.
 7. NDA, section 17(1). Section 17(2) provides that units and other elements can be "embodied" in such of the components (regular, reserve or special) as the minister may direct.
 8. The chief of the defence staff (CDS) can exercise the minister's powers (QR&O 2.08(1)(b)) whenever the CDS considers it necessary to do so by reason of "training requirements or operational necessity", provided that it is not a permanent reallocation of units to a command or formation.
 9. NDA, section 277 provides that the attorney general (or equivalent) of a province may ask the CDS for the call-out of the Canadian Forces in aid of the civil power, but only to quell a riot or other disturbance of the peace beyond the capacity of the civil powers. See also sections 275, 279, and 280.
 10. NDA, section 13.
 11. These descriptions are based in part on the NDA and in part on interviews conducted at NDHQ. They also reflect interpretations made by DND officials from time to time concerning the relationship between the minister of national defence, the deputy minister, and the CDS. Readers are cautioned to use only the NDA for formal terms of reference, as some DND documents include descriptions that are of uncertain validity.
 12. Constitution Act, 1867, Part III, section 15. See also House of Commons, Special Committee on Bill 133, pp. 40-41.
 13. Henry Molot, "The *Carltona* Doctrine and Recent [Amendments] to the *Interpretation Act*", *Ottawa Law Review* 26/2 (1994), p. 272.
 14. Molot, "The *Carltona* Doctrine", p. 275.
 15. Parliament of Canada, Special Joint Committee on Canada's Defence Policy, *Security in a Changing World* 1994 (October 25, 1994).
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THE MILITARY JUSTICE SYSTEM

In our earlier discussion of themes we identified discipline as an essential aspect of military operations. Few professions are as dependent on discipline as the military. Ensuring appropriate discipline within the CF entails, in part, using the military justice system to enforce laws, standards and mores in a corrective and, at times, punitive way.

The military justice system is separate from the civilian justice system. The Code of Service Discipline, set out in the *National Defence Act*, establishes the standards of conduct expected of members of the CF. The conduct is enforced in part through a system of service tribunals, the military substitute for civilian courts. In essence, the military justice system complements the civilian justice system to accommodate -- in theory, at least -- the unique operational demands of the military.

However, the military justice system in place during the Somalia deployment, and largely still in place today, exhibited serious deficiencies. These deficiencies contributed to disciplinary problems before and during deployment. Just how the military justice system contributed to these problems is analyzed in depth in Volume 5, Chapter 40. In this chapter we describe the system to provide a context for this later discussion of deficiencies.

THE JUDGE ADVOCATE GENERAL

The *National Defence Act* provides for the Governor in Council to appoint a Judge Advocate General (JAG).¹ The act does not require the Judge Advocate General to be an officer or other member of the CF. However, in practice, the Governor in Council has always appointed a CF officer to the position. The Judge Advocate General is, "in addition to those duties and functions devolving upon him by virtue of the *National Defence Act*, responsible to the Minister for such legal matters pertaining to the Canadian Forces as the Minister may direct".²

The Judge Advocate General performs several roles:

1. in a judicial capacity, superintending the CF military justice system, including courts martial;
2. as the senior legal adviser to the CF, providing legal advice associated with the command, control, management, and administration of the CF and its activities;
3. as senior legal adviser to the Department of National Defence, providing departmental legal advice and services; and
4. managing and directing the Legal Branch of the CF, consisting of about 80 regular force legal officers and 50 reserve force legal officers.³

Each of these major roles involves multiple duties. For example, the role of superintending the military justice system requires the JAG to control the provision of legal advice and services to the military justice system; ensure the efficient planning, organization, staffing, directing, and administering of the courts martial and summary trial processes; and provide qualified legal officers to act as prosecutors and defending officers at courts martial. The specific duties associated with the four main roles are set out in an annex to this chapter.

The Judge Advocate General has direct contact with senior political, departmental, and military officials. Within National Defence Headquarters (NDHQ), the Judge Advocate General has direct contact with the minister, deputy minister, chief of the defence staff, vice chief of the defence staff, deputy chief of the defence staff, assistant and associate assistant deputy ministers, branch chiefs, and directors general. Outside NDHQ, the Judge Advocate General has direct contact with the commanders of commands and formations.⁴ The Judge Advocate General also works with federal, provincial, and municipal governments on legal matters affecting the CF and the Department of National Defence.⁵

MILITARY POLICE

Military Police (MP) are an essential part of the military justice system. There are now about 1,300 Security and Military Police (SAMP) positions in the CF -- about 2 per cent of the CF.⁶ The percentage in the U.S.

Army is considerably greater, at about three to four per cent of its military forces.⁷ Some CF military police are attached to bases, units or NDHQ. Others form platoons in each of the brigades, but they could be deployed as separate units.

One of the central roles of the MP is to maintain law and order within the CF, including the enforcement of the criminal law and the Code of Service Discipline. MP investigate possible violations of the Code of Service Discipline and report violations to the appropriate military authorities. This 'routine policing' mandate is vast and occupies the most time and resources in the administration of military policing.

Military Police also have limited responsibilities with respect to the enforcement of civilian law. As discussed below, MP have the powers of peace officers. This gives them some authority, beyond that granted by the *National Defence Act*, to enforce civilian law. In this role, MP may also become involved in civilian law enforcement matters by agreement with civilian authorities.

In addition to their role in the military justice system, MP perform important combat functions. These include tactical and administrative movement control; route signing and traffic control; reception, custody, and control of prisoners of war or detainees; control of refugees; and all aspects of security. We acknowledge that MP performing these operational functions must form an integral part of the field formation and function under the operational chain of command. However, such an arrangement for Military Police engaged in providing *police* support to the military justice system may not afford adequate protection from command influence and thus may well undermine their effectiveness.

A 1996 report recommended several changes to the operational focus, command and control, and services provided by MP.⁸ The recommendations included the creation of alternative reporting lines to the CDS or deputy minister in certain cases to protect the integrity of investigations and a reduction in garrison policing. The report also proposed minor changes to the current structure, functions and accountability framework of MP.

Military Police Powers⁹

Military police personnel are "specially appointed persons" under section 156 of the *National Defence Act*.¹⁰ As such they have the power to arrest,¹¹ investigate,¹² and use force in certain circumstances.¹³ Military Police do not, however, have the power to lay charges (even charges for criminal offences) under the Code of Service Discipline.¹⁴ Only an officer or non-commissioned member authorized by a commanding officer to lay charges can lay a charge.¹⁵

Military Police personnel are also "peace officers"¹⁶ under section 2 of the *Criminal Code*. Section 2 defines peace officers to include officers and noncommissioned members of the CF appointed for purposes of section 156 of the *National Defence Act*. The definition also includes any officer or noncommissioned member performing duties prescribed by the Governor in Council as being of such a kind that they "necessitate" the person having peace officer powers. In the QR&O,¹⁷ the Governor in Council prescribes the duties that necessitate peace officer powers as any lawful duties performed as a result of a specific order or established military custom or practice related to any of the following:

1. the maintenance or restoration of law and order;
2. the protection of property;
3. the protection of persons;
4. the arrest or custody of persons; or
5. the apprehension of persons who have escaped from lawful custody or confinement.

When acting as peace officers, military police have the powers of arrest set out in section 495 of the *Criminal Code*.¹⁸ They can also lay charges in civil courts without the concurrence of the commanding officer.

The Security Orders for the Department of National Defence and the Canadian Forces describe the jurisdiction of the Military Police as follows:

1. MP are the primary police force of jurisdiction and exercise police authority with respect to:

- 1.1. persons subject to the Code of Service Discipline, without regard to their rank, status or location; and
 - 1.2. any other person, including civilian employees, dependants, visitors or trespassers, in regard to an event, incident or offence, real or alleged, which occurs or may occur on or in respect to defence establishments, defence works, defence materiel or authorized Canadian Forces programmes, activities or operations.
2. Prior to exercising police authority off a defence establishment, MP must first satisfy themselves that some other police agency does not have a right of primary jurisdiction. A connection, or nexus, to the Service is an essential prerequisite. In the absence of such a nexus, police authority should only be exercised by MP with the concurrence of the appropriate civil authority. Police authority is clearly distinct from the implicit duties and responsibilities of any good citizen.
 3. Where an offence has been committed in Canada by a person subject to the Code of Service Discipline outside of a defence establishment, the matter should be dealt with by the appropriate civilian authorities, unless a Service connection, or nexus, is apparent. In these latter cases, the matter may be considered a Service offence and dealt with accordingly.
 4. NDA, Section 70, provides that certain offences shall not be tried by a Service tribunal in Canada. When an offence which should be dealt with by civil authorities is reported to MP, it shall be the responsibility of the appropriate MP or of a security adviser to ensure that the incident is expeditiously reported to the appropriate crown prosecutor or civil police. Subsequent MP enquiries will normally be conducted parallel to or in concert with any civil police investigation. Such incidents will, in any event, be documented by means of an MP report. Should the civil authority fail to act in such an instance, then an MP enquiry will be completed and recorded to the extent deemed necessary by the appropriate security adviser. Should the circumstances so warrant, local authorities will be advised of the outcome of MP inquiries conducted separately from those of the civil authority. Where appropriate, an information may be sworn. Outside of Canada, MP will investigate and report in accordance with international agreements and practices.¹⁹

The CF uses the military justice system whenever possible.²⁰ For persons subject to the Code of Service Discipline, the Military Police are "using the military disciplinary system whenever legally possible",²¹ whether the conduct occurred on or off DND property. Similarly, the Security Orders for the Department of National Defence and the Canadian Forces state:

MP shall not resort to the indiscriminate use of the civilian courts in dealing with persons subject to the Code of Service Discipline, when it would be more appropriate to permit a commanding officer to deal with such persons in a Service proceeding.²²

Military Police Independence

The Security Orders for the Department of National Defence and the Canadian Forces state:

MP form an integral part of CF organizations and are operationally responsible to their commanders and commanding officers (COs) for the provision of effective police and security services. Specialist advice and technical direction, on these services, is provided by security advisers within their respective organizations.²³

Military Police are clearly members of the unit or other element of the CF in which they serve. In other words, MP are not part of a chain of command outside the normal chain of command. A recent *Police Policy Bulletin* reinforces this position: the Military Police "are subject to orders and instructions issued by or on behalf of Commanders."²⁴ Furthermore, "police and investigative functions must be conducted in such a manner to, within the law, support the Commander's legitimate operational mission."²⁵ Another section states:

"Specially Appointed Persons [i.e., the Military Police] and Commanders share a common interest of maintaining discipline and reducing the incidence of crime and criminal opportunities. Specially Appointed Persons must therefore be the agent of their Commander and his community in the attainment of this goal."²⁶

However, significant links to National Defence Headquarters remain. The Military Police are "technically responsive" to NDHQ.²⁷

MP assigned to bases, stations and CF units are under the command and control of the appropriate commanders or commanding officers (CO) of those bases, stations or units. Still, when performing a specific policing function related to the enforcement of laws, regulations and orders, they are also technically responsive to NDHQ/DG Secur [Director General Security] and D Police Ops [Director Police Operations].²⁸

"[S]ignificant or unusual incidents having criminal, service or security implications" must be reported to NDHQ.²⁹ The Director General Security is the department's senior security and police adviser and is responsible for the "technical direction, coordination and supervision of all security and police matters in the CF and DND."³⁰ DG Secur in turn is responsible to the deputy chief of the defence staff.

A new police policy published in 1994, after the Somalia deployment, deals with the reporting requirements of Canadian military police employed as part of a multi-national force: "[T]he senior Canadian Military Police member appointed as a SAMP [Security and Military Police] Advisor of a Canadian Contingent deployed overseas shall be at least a Warrant Officer notwithstanding the size of the Canadian Contingent."³¹ The SAMP adviser is to "ensure that all investigations involving members of the Canadian Contingent are conducted in accordance with DND Police Standards and Policies."³² Furthermore, "all incidents involving Canadian Contingent members which would be reportable if they had occurred in Canada, must be reported to D Police Ops." A copy of all reportable incidents that have been investigated must be sent to the D Police Ops.³³

Widespread communication outside the chain of command is also encouraged: "To facilitate the resolution of matters related to police and security inquiries, lateral and vertical channels of communication are authorized between military police at all levels".³⁴ In addition, Military Police Investigation Reports (MPIR) of more than "local significance" are sent to NDHQ.³⁵

NDHQ approval is required before an investigation can be stopped. One police policy bulletin provides that military police must notify the senior local military police person if "aware of an attempt, by any person, to influence illicitly the investigation of a service or criminal offence."³⁶

REGULATIONS AND ORDERS

The *National Defence Act* empowers the Governor in Council, the minister and the Treasury Board to make certain regulations. The Governor in Council and the minister can each make regulations for the "organization, training, discipline, efficiency, administration and good government of the Canadian Forces and generally for carrying the purposes and provisions"³⁷ of the act into effect. Treasury Board can make regulations "prescribing the rates and conditions of issue of pay and allowances of officers and non-commissioned members and for forfeitures and deductions".³⁸ Regulations made under the act are normally published in the *Queen's Regulations and Orders for the Canadian Forces*.³⁹ The word orders in the title of the QR&O refers to orders made by the chief of the defence staff.⁴⁰

HISTORY OF THE MILITARY JUSTICE SYSTEM IN CANADA

The Canadian military justice system is based on the military justice system of the United Kingdom. Until the *National Defence Act* first came into effect in 1950, British statutes governed military discipline in the Canadian Army and in the Royal Canadian Air Force (RCAF). Canada's *Militia Act*⁴¹ (1927) and *Royal Canadian Air Force Act*⁴² (1940) provided that the *Army Act* of Great Britain and the *Air Force Act* of the United Kingdom applied to the Canadian Army and the RCAF respectively. A Canadian statute, the *Naval Service Act*⁴³ (1944), dealt with naval discipline. However, almost all discipline provisions in the *Naval Service Act* closely resembled the British provisions.⁴⁴

Today the CF military justice system is governed solely by Canadian law. However, the main features of the system -- types of offences, basic powers of trial and punishments -- closely resemble the British system that formerly applied to the CF.

THE CODE OF SERVICE DISCIPLINE AND RELATED PROVISIONS

The Code of Service Discipline consists of Parts IV to IX of the *National Defence Act*:

- Disciplinary Jurisdiction of the Canadian Forces (Part IV)
- Service Offences and Punishments (Part V)
- Arrest (Part VI)
- Service Tribunals (Part VII)
- Mental Disorder Provisions (Part VII.1)
- Provisions Applicable to Findings and Sentences after Trial (Part VIII)
- Appeal, Review and Petition (Part IX)

In this section we examine these parts and discuss provisions of the act that do not form part of the code but are nonetheless integral parts of the military justice system -- for example, release from custody pending appeal and search warrants.

Disciplinary Jurisdiction of the CF (Part IV of the *National Defence Act*)⁴⁵

Persons Subject to the Code of Service Discipline

The *National Defence Act* sets out who can be tried by a military tribunal for an alleged service offence under the Code of Service Discipline.⁴⁶ (A service offence includes offences against the *Criminal Code* of Canada or other federal statute.⁴⁷) Members of the regular force are subject to the Code of Service Discipline 24 hours a day. Members of the reserve force are subject to the Code only while on military service or at certain other times specified in the *National Defence Act*. These include being in or on a vessel, vehicle or aircraft of the CF or on any defence establishment or work for defence. Civilians can also be subject to the Code of Service Discipline -- for example, if they are dependants accompanying members of the CF serving abroad.⁴⁸

Place of Offence

Under the Code of Service Discipline all service offences committed outside Canada and most committed in Canada can be tried by service tribunals. The only exceptions are certain offences committed in Canada -- murder, manslaughter, certain sexual offences, and abduction offences under sections 280-283 of the *Criminal Code*.⁴⁹ These can be tried only by civil courts.

Place of Trial

The *National Defence Act* states that a service tribunal may, in or outside Canada, try a person subject to the Code of Service Discipline.⁵⁰ However, under international law, before such a trial can be held in another country, that country must normally consent. The consent is usually set out in a 'status of forces agreement'. For example, the jurisdiction of CF tribunals in North Atlantic Treaty Organization countries is prescribed in the *NATO Status of Forces Agreement*.⁵¹ The United Nations usually obtains the agreement of the host country to allow national contingents of United Nations peacekeeping forces there to exercise disciplinary and criminal jurisdiction over their own troops. However, as usually happens with peace *enforcement* missions, neither the United Nations nor Canada had a status of forces agreement with Somalia.

Limitation Periods and Double Jeopardy

Except for a few very serious offences,⁵² the limitation period for prosecuting offences at a trial by service tribunal is three years. However, the limitation period does not apply to trials of a CF member by a civil court. For example, a civil court may try a charge of theft under the *Criminal Code* after the three-year period, but the same offence can be tried only within the three-year period as a service offence under

section 130(1) of the *National Defence Act*. When a service tribunal convicts or acquits a person of an offence, no civil court in Canada, and no other Canadian service tribunal, can try that person again for the same or a substantially similar offence. As well, when a civil court or a court of a foreign state convicts or acquits a person of an offence, no service tribunal can try that person for the same or a substantially similar offence.⁵³

Service Offences and Punishments (Part V of the *National Defence Act*)

Service Offences

Part V of the act specifies various service offences for which a person subject to the Code of Service Discipline can be tried by a service tribunal.⁵⁴ Some of these offences are not criminal or otherwise punishable in civilian life -for example, desertion, talking back to a superior, and showing cowardice before the enemy.⁵⁵ Members of the CF in Canada are also subject to trial under the Code of Service Discipline for Canadian criminal law offences committed in Canada.⁵⁶ The Supreme Court of Canada has described the Code of Service Discipline as follows:

Although the Code of Service Discipline is primarily concerned with maintaining discipline and integrity in the Canadian Forces, it does not serve merely to regulate conduct that undermines such discipline and integrity. The Code serves a public function as well by punishing specific conduct which threatens public order and welfare. Many of the offences with which an accused may be charged under the Code of Service Discipline...relate to matters which threaten public order and welfare. For example, any act or omission that is punishable under the *Criminal Code* or any other Act of Parliament is also an offence under the Code of Service Discipline.⁵⁷

Persons subject to the Code of Service Discipline can also be tried by Canadian service tribunals for offences against the criminal law of any country in which they are serving.⁵⁸ Unlike most Canadians, CF members remain subject to Canadian criminal law even while outside Canada.⁵⁹ Thus, Pte Brown and MCpl Matchee were charged with second degree murder (an offence under section 235(1) of Canada's *Criminal Code*) for the death of Shidane Arone in Somalia on March 16, 1993.⁶⁰

Punishments

The *National Defence Act* sets out the punishments that can be imposed for service offences. Punishments depend on the tribunal and the offence,⁶¹ and may include death, imprisonment for two years or more, dismissal with disgrace from Her Majesty's service, imprisonment for less than two years, dismissal from Her Majesty's service, detention, reduction in rank, forfeiture of seniority, severe reprimand, reprimand, fine, or minor punishments.⁶² The death penalty still exists for several military offences, such as a commander acting traitorously in action or a soldier showing cowardice before the enemy.⁶³ Sentences of death were carried out against 25 Canadian soldiers in the First World War and one during the Second World War.⁶⁴ There have been no executions in the CF since then.

Part V of the *National Defence Act* also deals with substantive law⁶⁵ -- for example, the definition of parties to offences, the effect of ignorance of the law, and the application of civil defences -- and with procedural law, including provisions on conviction for related offences.⁶⁶

Investigations into Possible Violations of the Code of Service Discipline

Investigations Generally

The Duty to Investigate

The *National Defence Act* and QR&O include several powers allowing for the investigation of possible breaches of the Code of Service Discipline, but few provisions compelling such action.

Investigation Before a Charge is Laid

Regulations appear contradictory as to whether an investigation of an alleged offence must take place before a charge is laid.⁶⁷ The QR&O state, "An investigation *shall* be conducted as soon as practical after

the alleged commission of an offence."⁶⁸ Yet the next article of the QR&O advises simply that, where a complaint is made or where there are other reasons to believe that a service offence has been committed, an investigation "should" be conducted to determine whether sufficient grounds for charging exist.⁶⁹ An investigation would be mandatory only after a charge is laid. However, the Office of the Judge Advocate General appears to favour the interpretation that an investigation is mandatory even before charges are laid.⁷⁰

In specific cases, such as the extended illegal absence of a CF member, commanding officers are clearly obliged to investigate.⁷¹ As well, a commanding officer must cause any suspected contravention of the *Narcotic Control Act* to be investigated as soon as practicable. The investigation is to be carried out as the commanding officer considers appropriate, "having regard to the means of investigation at the CO's disposal and the circumstances giving rise to the suspicion or alleged contravention".⁷²

Investigation After a Charge is Laid

Once a person is charged with an offence under the Code of Service Discipline, the *National Defence Act* requires that an investigation be conducted:

Where a charge is laid against a person to whom this Part applies alleging that the person has committed a service offence, the charge shall forthwith be investigated in accordance with regulations made by the Governor in Council.⁷³

The method of carrying out the investigation of a charge is left largely to the investigator's discretion. The investigator may investigate "in such a manner as seems...appropriate in the circumstances."⁷⁴ The results of the completed investigation must then be sent to the commanding officer or delegated officer to whom the charge report was referred.⁷⁵

Types of Investigations

Some of the investigative resources available to commanding officers, such as boards of inquiry and summary investigations, are described in the *National Defence Act* and the QR&O respectively. Others, such as very informal investigations ordered by a commanding officer, have no grounding in the act or QR&O,⁷⁶ but seem to have become an established part of military culture. If the commanding officer decides to investigate alleged misconduct, the commanding officer generally has considerable discretion in choosing the type of investigation and who will undertake the investigation. However, in more serious cases, the commanding officer is required to request the help of the Special Investigation Unit (SIU). For example, the commanding officer must ask for SIU assistance in investigating acts of subversion, espionage, sabotage or terrorism, and theft of identification or pass material. The commanding officer must also request SIU assistance in the case of suicide by a CF member or civilian employee who holds a Level 3 security clearance.⁷⁷

Summary Investigations

A summary investigation refers to an investigation, other than a board of inquiry, ordered by the chief of the defence staff, an officer commanding a command or formation, or a commanding officer.⁷⁸ Commanding officers are given great latitude in deciding which matters will be subject to a summary investigation. Summary investigations, therefore, can be used to investigate both possible misconduct by an individual and systemic problems within the CF. The summary investigation, the QR&O simply state, is to be conducted "in such manner" as the authority ordering the investigation "sees fit."⁷⁹

In some cases, commanding officers are obliged to investigate an incident, such as a serious injury or death not sustained in action, but they have the choice between a summary investigation and a board of inquiry.⁸⁰

Boards of Inquiry

The minister, the chief of the defence staff, an officer commanding a command or a formation, and a commanding officer have the authority to convene a board of inquiry.⁸¹ The board of inquiry is a more formal means of investigation than the summary investigation. The *National Defence Act* allows the convening of a board of inquiry "where it is expedient that the Minister or any such other authority should

be informed on any matter connected with the government, discipline, administration or functions of the Canadian Forces or affecting any officer or non-commissioned member."⁸² For example, following the Somalia deployment, a board of inquiry was appointed to examine the actions of the Canadian Airborne Regiment Battle Group.

There is some discretion in deciding whether to order a summary investigation or a board of inquiry. However, death or serious injury in an aircraft accident must be examined by a board of inquiry.⁸³ Furthermore, the CDS (in CFAO 21-9) has ordered that a board of inquiry must be convened to investigate

- matters of unusual significance or complexity;
- when specifically required by QR&O, CFAO or other regulations and orders; or
- when directed by higher authority.⁸⁴

Like a summary investigation, a board of inquiry can look into the conduct of individuals, broader organizational issues, or both. The QR&O detail how a board of inquiry is to be conducted, as do the CFAO.⁸⁵

Military Police Investigations Ordered by Commanding Officer

A commanding officer may also order a Military Police investigation. The commanding officer or a delegated officer normally does not order MP to investigate minor offences. Instead, the commanding officer will usually order an officer or NCO other than an MP to investigate a minor offence,⁸⁶ such as being absent without leave. If the offence is not minor, MP conduct the investigation, even though the Code of Service Discipline permits any competent or qualified person to be assigned the task of investigating an offence.⁸⁷ The Military Police present an investigation report to the commanding officer but do not lay charges under the Code of Service Discipline. In its brief to this Commission, the Department of National Defence submitted that "Military police personnel form an integral part of Canadian Forces units and formations, and when so employed they are operationally responsible to the commanding officer or superior commander [of the unit or formation concerned] for the provision of effective police and security services and advice".⁸⁸

Military Police Investigations Initiated by MP

MP also have the authority to investigate alleged service offences of their own accord. The *Military Police Procedures* in force at the time of the Somalia deployment stated that "MP shall conduct an investigation and report on all criminal and serious service offences" committed or alleged to have been committed by those subject to the Code of Service Discipline and on all criminal, serious service offences and security violations relating to a defence establishment.⁸⁹ However, the apparent freedom of MP to select investigative methods can be severely restricted by the commanding officer, particularly when the MP are 'first line' MP, meaning that they fall directly under the commanding officer's authority. Practical considerations such as limited resources and personnel can further circumscribe the freedom of MP to investigate as they might otherwise see fit.

Informal Investigations

If the commanding officer is not required by regulation or order to order a summary investigation or board of inquiry, it is not unusual for a commanding officer to order an investigation that is less formal than the summary investigation contemplated by the QR&O and CFAOs. These are sometimes called CO's investigations. Although they have no specific statutory authority and have not been provided for in regulations or orders, they have become a method of investigation in the CF.

Action After the Investigation

If an investigation uncovers apparent misconduct by an individual, the commanding officer has several options:

- if the misconduct appears to be a service offence, deal with the misconduct through the disciplinary system by authorizing someone to lay a charge;

- deal with the misconduct through the administrative process; or
- ignore the misconduct, even criminal misconduct, in which case no further action will likely be taken unless civilian authorities have the legal right to undertake proceedings.

It appears that commanding officers also sometimes deal with misconduct through informal sanctions, such as confinement to camp or extra work, without any trial.

Image: [Figure 7.1s--Options for Responding to Misconduct](#)

Arrest (Part VI of the *National Defence Act*)⁹⁰

Grounds for Arrest and Arrest Warrants

The *National Defence Act* contains a broad power of arrest: "Every person who has committed, is found committing or is believed on reasonable grounds to have committed a service offence or who is charged with having committed a service offence may be placed under arrest."⁹¹ An officer may arrest without warrant any non-commissioned member (NCM), an officer of equal or lower rank, or any officer "engaged in a quarrel, fray or disorder".⁹² A non-commissioned member may arrest without warrant any NCM of lower rank, or any NCM who is "engaged in a quarrel, fray or disorder".⁹³ Any specially appointed officer or non-commissioned member (that is, members of the Military Police) may detain or arrest without warrant any person subject to the Code of Service Discipline regardless of the rank or status of that person.⁹⁴ Commanding officers and delegated officers⁹⁵ can issue a warrant of arrest authorizing "any person to arrest any other person triable under the Code of Service Discipline"⁹⁶ who has committed, is believed on reasonable grounds to have committed, or is charged under the act with having committed a service offence.

Duties of Person Arresting, Forms of Custody, and Reviews of Custody

A person who has been arrested or detained must be given appropriate information without delay, including the fact of being under arrest, the reason for the arrest, and the right to counsel. The person must be released from custody unless certain conditions justify custody.⁹⁷ Custody may be close (confinement to a cell) or open (confinement to a unit, base, or ship).⁹⁸ The act requires that a decision to keep a person in custody be reviewed in some situations.⁹⁹ If a summary trial has not been held or a court martial ordered for the person in custody after 28 days, that person can petition the minister for release or for disposition of the case; if no summary trial has been held or a court martial ordered within 90 days, the person in custody must be released unless the minister decides otherwise.¹⁰⁰

Service Tribunals (Part VII of the *National Defence Act*)

The Pivotal Role of the Commanding Officer

The commanding officer (CO) is extremely important in the military justice system. A commanding officer is defined as (a) the officer in command of a base, unit or other element of the CF, (b) any other officer designated a CO by the chief of the defence staff, or (c) for disciplinary purposes, a detachment commander.¹⁰¹ The CO has both disciplinary powers and powers like those available to a judge. These include the power to issue arrest and search warrants, cause investigations to be conducted, dismiss any charge of any disciplinary or criminal offence, try most military personnel, delegate some powers of trial and punishment to junior officers, and apply for the convening of courts martial. The mere presence of an accused person on a base or with a unit or other element under the command of a CO is sufficient to give to the CO disciplinary jurisdiction over the person.

Charges and Investigations

A charge or formal accusation alleging a service offence by a person subject to the Code of Service Discipline is laid when it is put in writing on a charge report and signed by an officer or non-commissioned member authorized by a CO to lay charges.¹⁰² Hence, only an officer or an NCM authorized by the CO to lay charges can lay a charge.¹⁰³

However, by authorizing subordinates to lay charges, the commanding officer can in practice influence the decision to charge and the charges that are laid.

Once a charge is laid, it must be investigated. The results of such an investigation must be delivered to the commanding officer or to an officer to whom the commanding officer has delegated powers of trial and punishment. A delegated officer who receives the report of an investigation has three choices:¹⁰⁴

1. if the officer believes that the results of the investigation do not warrant proceeding with the charge, the officer must refer the charge to the commanding officer and recommend that it be dismissed;
2. if the officer can try the offence using powers delegated by the commanding officer, and if the officer considers that the powers of punishment would be adequate, the officer must proceed with the trial of the charge; or
3. in any other case, the officer must refer the charge to another delegated officer having greater powers of punishment or to the commanding officer.

If after receiving the results of an investigation, a commanding officer concludes that the charge should not be proceeded with, the charge must be dismissed.¹⁰⁵ If the commanding officer does not dismiss the charge, it must be proceeded with "as expeditiously as circumstances permit."¹⁰⁶

Military Trials

The military justice system has two kinds of trials: summary trials and courts martial. Summary trials are the less formal of the two. Military rules of evidence do not apply at summary trials, and there is no right to be represented by legal counsel. Summary trials are not meant to try serious military offences. Summary trials are the most widely used disciplinary process in the CF. Courts martial are used much less frequently and are reserved for more serious offences.

Image: [Military Justice System: Types of Trial](#)

Image: [Military Justice System: Types of Trial](#)

Image: [Military Justice System: Types of Trial](#)

Summary Trials

There are three types of summary trials: summary trial by a commanding officer, summary trial by an officer to whom a CO has delegated some of the CO's power to conduct trials, and summary trial by a superior commander.¹⁰⁷

Summary Trial by Commanding Officer

At a summary trial a commanding officer can try an officer cadet or a non-commissioned member below the rank of warrant officer. For some offences, the commanding officer must give the accused the right to elect trial by court martial. The right to elect must be offered when the accused is charged with certain offences¹⁰⁸ -- for example, a *Criminal Code* offence incorporated¹⁰⁹ into the Code of Service Discipline -- or when the punishments envisaged as appropriate in the likely event of conviction would include imprisonment, detention or a fine greater than \$200. The greatest punishment a CO can impose on a sergeant, master corporal, corporal or private is 90 days of detention, which for an NCO includes the consequential punishment of reduction in rank.¹¹⁰ Although a CO cannot sentence a person to imprisonment, "detention" consists of service in a service detention barracks with a rigorous routine. Detention is thus at least as severe as imprisonment. Also, the accompanying reduction in rank is tantamount to a fine possibly amounting to thousands of dollars.

Summary Trial by Delegated Officer

At a summary trial, a delegated officer not below the rank of captain can try a non-commissioned member below the rank of warrant officer for offences for which the accused has no right to elect a court martial.¹¹¹ The greatest punishment a delegated officer can impose on a sergeant, master corporal or corporal is a

severe reprimand. The greatest punishment that can be imposed on a private is a \$200 fine.¹¹² Thus, a delegated officer cannot sentence a convicted person to imprisonment, detention, or reduction in rank.

Summary Trial by Superior Commander

A superior commander can try an officer of the rank of major, captain, lieutenant, or second lieutenant, or a non-commissioned member of the rank of chief warrant officer, master warrant officer or warrant officer.¹¹³ The superior commander must allow the accused to exercise the right to elect trial by court martial when the accused is charged with a serious offence¹¹⁴ or when the punishment envisaged as appropriate in the likely event of conviction would include a fine of more than \$200. A superior commander can award a severe reprimand, a reprimand or a fine. Thus, a superior commander cannot sentence a person to imprisonment or detention or reduction in rank. However, conviction of any offence is likely at least to delay normal promotion of an officer, and that could be the equivalent of a fine of thousands of dollars.

Procedure, Right to Assisting Officer, and Other Matters

The procedure at a summary trial is relatively simple. The accused has the right to be represented by an assisting officer but not by legal counsel.¹¹⁵ An assisting officer can be an officer or, exceptionally, a non-commissioned member.¹¹⁶ Proof of the offence beyond a reasonable doubt is required for conviction.¹¹⁷ There is no formal statutory right of appeal. However, the accused can apply for redress of grievance¹¹⁸ under regulations that permit CF members to make a complaint to a CO if they consider that they have "suffered any personal oppression, injustice or other ill-treatment" or have any other cause for grievance.¹¹⁹

Courts Martial

A court martial normally occurs if the accused elects to be tried by court martial or if a CO for other reasons applies to a higher authority for disposal of charges¹²⁰ and the "convening authority" directs trial by court martial. The minister, the chief of the defence staff, an officer commanding a command, and other service authorities as prescribed or appointed by the minister are convening authorities.¹²¹ A court martial can be convened only if the commanding officer has signed a charge sheet and sent an application to a higher authority for disposal of charges. This again demonstrates the pivotal role of the commanding officer in the military justice system.

Types of Courts Martial

There are four types of courts martial -- general courts martial (GCM), disciplinary courts martial (DCM), standing courts martial (SCM), and special general courts martial (SGCM). Disciplinary courts martial and standing courts martial can try members of the armed forces only.¹²² General courts martial can try civilians and members of the armed forces.¹²³ A special general court martial can try civilians only.

GCMs and DCMs consist of a panel of non-lawyer officers, one of whom is president; seated with them is a judge advocate military officer who is *not* a member of the court. SGCMs and SCMs both consist of a legally trained person as a judge alone, with no panel.

A GCM can try a person of any rank and can impose any punishment prescribed for any offence, but a DCM cannot try an officer of or above the rank of major and cannot impose a punishment greater than imprisonment for less than two years.¹²⁴ A GCM consists of five members (officers) assisted by a judge advocate, while a DCM consists of three members (officers), also assisted by a judge advocate, all appointed by the chief military trial judge.¹²⁵ The president of a GCM is of the rank of colonel or above, while the president of a DCM is of the rank of major or above.¹²⁶

There are important similarities in the relationship of a judge advocate to the members of a GCM or DCM and that of a judge to a jury in a criminal trial in the civilian justice system. The judge advocate, like a judge presiding at a jury trial, determines questions of law or mixed law and fact.¹²⁷ However, the role of the members of a GCM or DCM differs substantially from that of a jury. For example, the verdict of the jury must be unanimous, but the verdict of a GCM or DCM is determined by majority vote of the members. As well, the judge, not the jury, passes sentence at a civil trial, but the sentence at a GCM or DCM is determined by majority vote of the members.¹²⁸ The Court Martial Appeal Court stated recently that a trial

before a general court martial is not a jury trial "although such court may share some of the characteristics of a civilian criminal jury trial."¹²⁹

The third category of courts martial is the standing court martial. An SCM is established by the Governor in Council and consists of one officer, called the president, who is or was a barrister or advocate appointed by the minister of National Defence.¹³⁰ The maximum punishment that such a court can impose is imprisonment for less than two years.¹³¹

The fourth type of court martial is a special general court martial, which consists of a person designated by the minister "who is or has been a judge of a superior court in Canada or is a barrister or advocate of at least ten years standing."¹³² An SGCM can try civilians only.¹³³ As punishment, an SGCM can impose a fine, imprisonment or the death penalty.¹³⁴

The procedure at an SCM or SGCM is similar to a trial before a magistrate or a judge alone. The Court Martial Appeal Court has stated that an SCM is "obviously very like a civilian criminal trial by judge alone; it is a trial by judge alone for an offence, which might or might not be criminal in a civilian context, provided for by the Code of Service Discipline".¹³⁵

Evidence, Right to Legal Counsel, and Other Matters

An accused at a court martial has the right to representation by legal counsel or a defending officer. The accused also has the right to an adviser. A defending officer may be any commissioned officer, a legal counsel may be any barrister or advocate in good standing, and an adviser may be any person, regardless of status or rank.¹³⁶ A prosecutor is appointed for each new trial.¹³⁷ The rules of evidence at trials by court martial have been codified.¹³⁸ Almost all courts martial are public.¹³⁹ Part VII of the *National Defence Act* also deals with matters such as witnesses at courts martial, evidence on commission, objections to being tried by the judge advocate and members chosen for the court martial, and oaths at courts martial.¹⁴⁰ There are no preliminary inquiries for courts martial. However, the accused receives a synopsis of the evidence before trial. The synopsis should include a brief summary of the circumstances relating to the charge and the names of witnesses.¹⁴¹

The Charter and Service Tribunals

The only direct reference in the *Canadian Charter of Rights and Freedoms* to military tribunals is section 11(f), which provides that a person charged with an offence that carries a maximum penalty of five years or more is entitled to a jury trial, unless the offence is one under military law tried before a military tribunal.

Despite only one mention of military tribunals in the Charter, many court decisions have considered the extent to which the military justice system is subject to the Charter. The Supreme Court of Canada decided in *R. v. Généreux*¹⁴² that the structure of the general court martial at the time of the *Généreux* trial infringed section 11(d) of the Charter¹⁴³ because the GCM was not an independent and impartial tribunal for several reasons. Among these was the appointment of the members of the court by the military authority ordering the trial. The Supreme Court also decided that the violation of section 11(d) could not be justified under section 1 of the Charter. Amendments to the *National Defence Act* and the QR&O made after the *Généreux* trial (but before the Supreme Court of Canada decision) have to some extent addressed the problems noted by the Supreme Court.¹⁴⁴ *Généreux* is also noteworthy for the Court's express recognition of the "need for separate tribunals to enforce special disciplinary standards in the military".¹⁴⁵

Mental Disorder (Part VII.1 of the *National Defence Act*)

Part VII.1 of the act deals with fitness to stand trial and the defence of mental disorder.¹⁴⁶ It also contains provisions on assessment orders and reports, provincial review boards established under the *Criminal Code*, and periodic inquiries into the sufficiency of the evidence by courts martial after an accused has been found unfit to stand trial.

Like the *Criminal Code*, the *National Defence Act* states that an accused "is presumed fit to stand trial unless the court martial is satisfied on the balance of probabilities that the accused person is unfit to stand trial."¹⁴⁷ In April 1994, the GCM of MCpl Matchee found him unfit to stand trial. In June 1994, the Ontario Criminal Code Review Board also decided that MCpl Matchee was unfit to stand trial by court martial.¹⁴⁸

However, if a person initially found unfit to stand trial later becomes fit, the *National Defence Act* permits trying the person on the same charge.¹⁴⁹

After a finding of unfitness, a court martial must hold an inquiry within two years after the finding and every two years thereafter until the accused is tried. The purpose of the inquiry is to decide whether there is sufficient evidence at that time to put the accused on trial if he or she were fit to stand trial. If the court martial concludes that sufficient evidence for a trial does not exist, the accused must be acquitted.¹⁵⁰

Provisions Applicable to Findings and Sentences After Trial (Part VIII of the *National Defence Act*)

Part VIII of the act allows the minister to designate service prisons and detention barracks.¹⁵¹ It also deals with such matters as committal to penitentiaries, civil prisons, and detention barracks and the rules applicable there.¹⁵² The persons who can act as committing authorities are the minister of national defence, the chief of the defence staff, an officer commanding a command, a commanding officer, and "such other authorities as the Minister prescribes or appoints for that purpose."¹⁵³

Part VIII also sets out the conditions that apply to certain punishments. For example, the punishment of death requires approval by the Governor in Council, and carrying out the death penalty punishment is subject to regulations by the Governor in Council.¹⁵⁴ The punishment of dismissal with disgrace or dismissal from Her Majesty's Forces must first be approved by the minister of national defence or, in the case of a non-commissioned member, the CDS.¹⁵⁵

The minister, the CDS, an officer commanding a command, and "such other authorities as the Minister prescribes or appoints for that purpose"¹⁵⁶ have various discretionary powers relating to punishments. They can "mitigate, commute or remit any or all of the punishments included in a sentence passed by a service tribunal."¹⁵⁷ They can also quash or substitute findings, substitute a new punishment for one that has not been approved or one that is illegal, or suspend a punishment of imprisonment or detention.¹⁵⁸ Commanding officers can do the same in respect of punishments or findings of a summary trial if the offender is under their command and the trial was not a summary trial before a superior commander.¹⁵⁹ The minister can set aside a finding of guilty and direct a new trial when the Judge Advocate General certifies that there should be a new trial because of an "irregularity in law".¹⁶⁰

Other provisions of Part VIII deal with matters such as the transfer of offenders and restitution of property.¹⁶¹

Appeal, Review, and Petition (Part IX of the *National Defence Act*)

The Court Martial Appeal Court of Canada

The *National Defence Act* establishes a Court Martial Appeal Court of Canada (C.M.A.C.) as a superior court of record¹⁶² and provides for the chief justice of the court to make rules for the court.¹⁶³ A person who is subject to the Code of Service Discipline can appeal from a court martial (but not from a summary trial) to the C.M.A.C. on the legality of any finding of guilty, the legality of the sentence, and other matters mentioned in section 230 of the act. With the permission of the C.M.A.C., a convicted person can appeal the severity of the sentence. The minister of national defence may appeal in respect of the legality of a finding of not guilty and on several other matters specified in section 230.1 of the act, including, with the permission of the C.M.A.C., the severity of the sentence.¹⁶⁴

Several provisions govern the disposition of appeals by the C.M.A.C. For example, on an appeal by a convicted person about the legality of a finding of guilty, the C.M.A.C. can dismiss the appeal, allow the appeal and enter a finding of not guilty, or order a new trial.¹⁶⁵ On an appeal by the minister from a finding by any court martial of not guilty, the C.M.A.C. can dismiss or allow the appeal. If it allows the appeal, the court can set aside the finding and direct a new trial.¹⁶⁶

The Supreme Court of Canada

The *National Defence Act* provides for appeals to the Supreme Court of Canada by a person convicted at a trial by court martial whose appeal has been dismissed by the C.M.A.C. The appeal is as of right if it is on a question of law and there is a dissenting opinion on that question of law in the C.M.A.C. Even if there is no dissenting opinion, the Supreme Court may grant permission to the person to appeal the question of law. Where the C.M.A.C. has wholly or partially allowed an appeal by a person, the minister of national defence can, as of right, appeal any question of law to the Supreme Court of Canada if there is a dissenting opinion by a judge of the C.M.A.C. on that question; if there was no dissenting opinion, the Supreme Court of Canada may grant the minister permission to appeal on a question of law.¹⁶⁷

Review and Petition

If there is no appeal from a court martial as to the legality of any finding of guilty or the legality of the sentence, the Judge Advocate General must review the proceedings. If the Judge Advocate General decides that any punishment or finding is illegal, the minutes of proceedings must be referred to the chief of the defence staff. The CDS can take such action under the *National Defence Act* as the CDS deems fit.¹⁶⁸ A person who has been found guilty by a court martial can also petition for a new trial on grounds of new evidence discovered after the trial.¹⁶⁹

Redress of Grievance

There is no formal statutory right to appeal a conviction at a summary trial. However, a convicted person can apply for redress of grievance¹⁷⁰ under regulations permitting CF members to make a complaint to a commanding officer if they consider that they have "suffered any personal oppression, injustice or other ill-treatment", or have any other cause for grievance.¹⁷¹ However, the perception among CF members that relying on a redress of grievance can harm one's career¹⁷² could limit its use.

Miscellaneous Provisions

Release Pending Appeal

When a person subject to the Code of Service Discipline is sentenced to a period of imprisonment or detention, that person may apply to the sentencing court martial or to a judge of the Court Martial Appeal Court for release from incarceration pending appeal.¹⁷³ The *National Defence Act* sets out the conditions for the release,¹⁷⁴ which may include an undertaking by the person.¹⁷⁵ Appeals from decisions about release can be made to the Court Martial Appeal Court.¹⁷⁶

Inspections, Searches, and Search Warrants

Part I of the *Inspection and Search Defence Regulations* authorizes an officer or non-commissioned member to "conduct an inspection...of any officer or non-commissioned member or any thing in, on or about. ..any controlled area, or...any quarters under the control of the Canadian Forces or the Department, in accordance with the custom or practice of the service".¹⁷⁷ Part II of the regulations applies to all persons subject to the Code of Service Discipline; it authorizes searches of the "person or personal property while entering or exiting a controlled area".¹⁷⁸ Part II also authorizes searches of "personal property about a controlled area or any restricted area within the controlled area where the designated authority has reasonable grounds to believe that the personal property is or may contain anything that is likely to endanger the safety of any person within the controlled area".¹⁷⁹

The *Defence Controlled Access Area Regulations* also allow searches.¹⁸⁰ These regulations apply to everyone except those subject to the Code of Service Discipline. Searches under the Inspection and Search Defence Regulations and the Defence Controlled Access Area Regulations are "conducted for the maintenance of security of defence establishments and do not require a search warrant".¹⁸¹

The *National Defence Act* permits a commanding officer to issue a search warrant when the purpose of the search is to gather evidence of an offence.¹⁸²

Minor Punishments and Informal Sanctions

The *National Defence Act* sets out the punishments that can be imposed for service offences¹⁸³ including the following 'minor punishments' that can be imposed on a person convicted at a summary trial.¹⁸⁴

- confinement to ship or barracks
- extra work and drill
- stoppage of leave
- extra work and drill not exceeding two hours a day
- caution

Professor Friedland states that almost all of these minor punishments are sometimes imposed by a commanding officer even without holding a summary trial.¹⁸⁵ Such punishments are referred to here as informal sanctions. There is no authority in the act or QR&O for informal sanctions.

Using Administrative Action and Career Review Boards in Addition to or in Lieu of Disciplinary Action

Misconduct is often dealt with through disciplinary action -- that is, via the military justice system's service tribunals. In addition, commanding officers can apply administrative sanctions regarding the same misconduct. In some cases, commanding officers may use administrative action as a substitute for disciplinary action. As well, NDHQ may convene a career review board (CRB) to examine and make a recommendation about the career prospects of a CF member who violates the Code of Service Discipline.

Administrative action by a commanding officer

A commanding officer may take both administrative and disciplinary action. For example, a CF member who violates the *Narcotic Control Act* is liable to administrative action, disciplinary action, or both.¹⁸⁶

The impact of administrative action on a CF member can be profound, including release from the CF. The specifics of administrative action differ between officers and non-commissioned members, although the process is generally similar. The administrative sanctions that can be imposed on non-commissioned members, by escalating degree of severity, are as follows:

1. verbal warning
2. recorded warning¹⁸⁷
3. counselling and probation¹⁸⁸
4. suspension from duty¹⁸⁹
5. compulsory release¹⁹⁰

The process for officers is similar. However, rather than a recorded warning, the lower level of administrative action for an officer is a 'reproof'. A reproof can also be given to a non-commissioned member of warrant officer rank or above. The reproof is something of a hybrid mechanism, in that it is more disciplinary in nature than the recorded warning. However, the QR&O clearly state that a reproof "is not a punishment and shall not be referred to as such."¹⁹¹

There appears to be little to guide a commanding officer (or any other authorized person) on when it is appropriate to give a reproof. A commanding officer must restrict the administering of a reproof to conduct that "although reprehensible is not of sufficiently serious nature, in the opinion of the commanding officer, to warrant being made the subject of a charge and brought to trial". Still, conduct for which a reproof has been administered "should not subsequently form the subject of a charge."¹⁹²

Hence by using discretion to determine that misconduct is not sufficiently serious to warrant a charge, a commanding officer could preclude altogether the possibility of later disciplinary action against the officer or NCM concerned.

Instead of counselling and probation, officers are subject to a report of shortcomings, which similarly is considered a "final attempt to salvage the career of an officer of the Regular Force or Reserve Force."¹⁹³

Administrative action is not to be used as a substitute for disciplinary action. For example, the CFAO on report of shortcomings states that a report "shall not be considered a substitute for disciplinary action. A CO shall consider taking action under the Code of Service Discipline with respect to shortcomings attributable to misconduct which may, by their seriousness or repetition, result in a report of shortcomings."¹⁹⁴ Still, the CFAO on Personal Relationships states that "disciplinary action is to be considered when the conduct is so unacceptable that disciplinary action is more appropriate than administrative action, or *when administrative action has failed to correct the inappropriate conduct*".¹⁹⁵

Career review boards

Career review boards (CRBs) are convened from time to time at NDHQ to review the service career of members of the CF whose conduct has raised questions about suitability for further service.

CRBs are not mentioned in the *National Defence Act* or in the QR&O, and there is no specific CFAO on the subject, although some CFAO do mention CRBs. Some of the circumstances in which a CRB may be convened, and the nature of the decisions it makes, are set out in two manuals used by the Personnel Careers Branch.¹⁹⁶ These documents do not identify the role of the commanding officer in the process; however, it seems likely that the CRB would be aware of the circumstances that allegedly justify the ordering of a CRB from a superior -- in some cases, the commanding officer.

A CRB makes one of the following recommendations:

- continued employment in current military occupation code (MOC) without career restrictions;
- continued employment in current MOC with career restrictions;
- compulsory occupational transfer;
- recourse or reassessment after a stipulated period of time;
- release; or
- another decision that serves the best interests of the CF and takes account the circumstances of the member.

CONCLUSION

In this chapter we have described the military justice system in place during the Somalia deployment -- a system that has remained largely untouched since then. We have not attempted to explain the deficiencies of the system. In Volume 5, Chapter 40 we take this next step, examining how the military justice system failed to secure and preserve an acceptable standard of discipline before and during the deployment. Among the issues addressed in Chapter 40 are the breadth of the discretion given to commanding officers to control investigations and the charging and disciplinary processes. In Chapter 40 we also address the many conflicts of interest inherent in the military justice system -- conflicts of interest that led to incomplete investigations, inappropriate decisions and, ultimately, serious abuses of Somali civilians.

ANNEX A

Major Responsibilities of the Judge Advocate General and Duties Related to Those Responsibilities*

*

MAJOR RESPONSIBILITY

DUTIES ASSOCIATED WITH RESPONSIBILITY

*

Superintendence of the Military Justice System
for the Canadian Forces

1. controls the provision of legal advice and services to the military justice system;
2. ensures, in conjunction with other Canadian Forces and Departmental authorities, the efficient planning, organizing, staffing, directing and administering, according to law, of the court martial and summary trial processes;
3. is responsible for the provision of qualified legal officers to act as prosecutors and defending officers at courts martial and qualified court reporters to record the proceedings;
4. appoints judge advocates for General and Disciplinary Courts Martial and recommends to the Minister qualified persons for designation as Special General Courts Martial and Standing Courts Martial;
5. appoints persons to take evidence on commission under section 161 of the *National Defence Act*;
6. is responsible for the transcription of courts martial, the production and certification of verbatim transcripts, their distribution to military authorities and convicted persons and the maintenance of official records of all courts martial;
7. as required by Part IX of the *National Defence Act*, is responsible for:
 - 7.1. the review of all courts martial proceedings;
 - 7.2. the preparation of opinions concerning the legality of all findings of fact and law and the legality of sentences;
 - 7.3. the formulation of recommendations concerning the exercise of powers to quash findings, substitute findings and to substitute, mitigate, commute, remit or suspend punishments, and
 - 7.4. receipt, review and referral for disposition to the Court Martial Appeal Court or an appropriate Canadian Forces authority of all appeals by persons convicted by courts martial;

8. in relation to new trials:
 - 8.1. pursuant to section 211 of the *National Defence Act*, receives, reviews and recommends to the Chief of the Defence Staff disposition of petitions for new trials, and
 - 8.2. pursuant to section 181 of the *National Defence Act*, certifies to the Minister the need in individual cases for new trials;

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9. pursuant to section 212 of the *National Defence Act*, summons witnesses to give evidence before courts martial and commissions taking evidence;
10. certifies for the purposes of proceedings under section 256 of the *National Defence Act*, convictions of Canadian Forces members for desertion or absence without leave; and
11. pursuant to *Queen's Regulations and Orders* 101.055, approves restoration of evidence submitted to service tribunals.

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MAJOR RESPONSIBILITY

*Senior Legal Adviser to the Canadian Forces -- provision at all levels of the Canadian Forces of legal advice and services associated with the command, control, management and administration of the Canadian Forces and its activities

DUTIES ASSOCIATED WITH RESPONSIBILITY

1. The JAG controls:
 - 1.1. the monitoring of developments in federal, provincial, municipal, international, and, in some cases, foreign law;
 - 1.2. the evaluating of their impact on current and proposed policies, plans, objectives and operations, and
 - 1.3. the identification of options and trends and the recommending of responses in light of those options and trends;
2. oversees the provision of legal guidance to responsible authorities in the formulation, implementation and review of policies, plans and programs;
3. oversees the review and validation for legality of headquarters and command operations plans and orders and the

provision of legal guidance in the execution of those plans and orders;

4. ensures the selection and appointment of suitable qualified counsel to represent the Canadian Forces and Department of National Defence in cases before the Supreme Court of Canada, the Court Martial Appeal Court, the Federal Court of Canada and other federal and provincial tribunals;
5. oversees the preparation, administration, presentation and departmental review of submissions and pleadings by appointed counsel in the above mentioned cases;
6. cooperates with Canadian Forces and Department of National Defence authorities and officials of the Department of Justice in the preparation and submission to Parliament of bills to amend defence-related legislation;
7. oversees the review, drafting and amendment of all defence-related regulations, orders and submissions to higher authority to ensure that they conform to government drafting standards, are lawful and do not conflict with the *Canadian Charter of Rights and Freedoms*, the *Canadian Bill of Rights* and the *Statutory Instruments Act* and other applicable legislation;
8. cooperates with Canadian Forces and Department of National Defence authorities and other government officials in the planning, preparation, negotiation, review and administration of:
 - 8.1. intergovernmental agreements and memoranda of understanding,
 - 8.2. contracts, and
 - 8.3. interdepartmental memoranda of understanding affecting the Canadian Forces and Department of National Defence;
9. establishes, in consultation with Canadian Forces authorities, objectives and priorities for Canadian Forces training concerning:

- 9.1. the Geneva Conventions and the Protocols additional to them, the law of armed conflict and related matters, and
- 9.2. military law related to:
 - 9.2.1. the Code of Service Discipline,
 - 9.2.2. administrative and quasi-judicial procedures under the *National Defence Act*, its regulations and orders,
 - 9.2.3. constitutional law, particularly the *Canadian Charter of Rights and Freedoms*, and human rights law, particularly the *Privacy Act*, *Access to Information Act*, the *Canadian Human Rights Act*, and their impact on the operation of the Canadian Forces and Department of National Defence, and
 - 9.2.4. emergency legislation and its impact on the operation of the Canadian Forces and Department of National Defence
10. and ensures the development, provision and continuing review of Canadian Forces training in the above-mentioned areas to meet those priorities and objectives;
11. approves contingency plans for Legal Branch involvement;
12. provides qualified legal officers to work as legal staff officers within the Assistant Deputy Minister (Personnel) Group;
13. ensures the provision of legal aid in accordance with Canadian Forces Administrative Order 56-5 to Canadian Forces members both inside and outside Canada and to the dependants of Canadian Forces members accompanying Canadian Forces members serving outside Canada; and
14. establishes and maintains effective working relationships with officials of government departments and with

representatives of civilian and other military organizations, on a national and international level, in order to further their cooperation and participation in the advancement of Canadian Forces and Department of National Defence goals.

*

MAJOR RESPONSIBILITY

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Senior Department of National Defence Legal Adviser -- provision, of Departmental legal advice and services in support of Department of National Defence and its activities

DUTIES ASSOCIATED WITH RESPONSIBILITY

1. the procurement, management and disposal of material including capital equipment and real property;
2. contracting for personal services;
3. the entering into of leave and licence agreements;
4. the constitution and operation of Department of National Defence schools and the drafting, review, negotiation and administration of agreements and contracts with Department of National Defence teachers and local school boards;
5. the administration of the *Canada Elections Act* and Special Voting Rules, including the establishing and operating of polls in Canada and abroad to receive votes of Canadian Forces members, certain public servants and dependants for federal general elections;
6. the administration of civilian grievance and disciplinary processes;
7. the administration of the *Canadian Forces Superannuation Act*; and
8. the administration of the *Garnishment, Attachment and Pension Diversion Act*.

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MAJOR RESPONSIBILITY

*Management and Direction of the Legal Branch

DUTIES ASSOCIATED WITH RESPONSIBILITY

1. determining, in consultation with senior officials, the Canadian Forces and Department of National Defence legal requirements;
2. ensuring the development, promulgation and review of legal policies and plans to meet those requirements;

3. organizing the Legal Branch and ensuring the development and recommendation of resource requirements, in terms of money, manpower and material, for the Legal Branch to meet established Canadian Forces and Department of National Defence requirements;
4. controlling the development, monitoring and review of standards of professional competence, training, performance and responsiveness for the Legal Branch;
5. exercising professional and technical control over all legal personnel;
6. controlling the employment of legal officers (except those posted to Director Personnel Legal Services and SHAPE), court reporters and support staff; and
7. developing, recommending and administering personnel policies and plans concerning the recruitment, employment, posting, compensation and career development of legal officers, court reporters and support staff.

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MAJOR RESPONSIBILITY

*Additional responsibilities

DUTIES ASSOCIATED WITH RESPONSIBILITY

1. in accordance with the *Crown Liability Act* and the *National Defence Claims Order (1970)* and Regulations, managing and administering the processing of claims by and against the Crown for damage, injury or death arising out of the activities of the Canadian Forces and Department of National Defence including settling, without reference to the Department of Justice, any claims not exceeding \$10,000;
2. acting as the Director of Estates responsible for collecting, administering and distributing according to law the service estates of all deceased officers and non-commissioned members;
3. sitting as a member of the Department of National Defence Contracts Settlement Committee;

4. acting as Chairman of the Service Pension Board established by statute to determine the reason for release of, and thereby the benefits to be paid to, officers and non-commissioned members of the Canadian Forces upon release from the Regular Force;
5. in accordance with an agreement with the Department of Justice, administering the employment of civilian lawyers conducting prosecutions under the Defence Controlled Access Area Regulations and the Government (Department of National Defence) Property Traffic Regulations;
6. acting as Branch Adviser for the Legal Branch, and
7. authorizing publication of the Judge Advocate General Journal, the Judge Advocate General Newsletter and other military legal publications and periodicals.

* Source: Terms of Reference for National Defence Headquarters Staff, Judge Advocate General, TOR 1.0.2 (1988-08-24) (Document A-AE-D20-001/AG-001).

NOTES

1. *National Defence Act* (NDA), R.S.C. 1985, chapter N-5, section 9.
2. *Queen's Regulations and Orders* (QR&O) 4.08.
3. These figures were obtained in June 1997 from the administrative section of the Office of the Judge Advocate General. The Office of the Judge Advocate General consists of its main office at NDHQ in Ottawa and sub-offices at certain CF bases in Canada staffed by military lawyers and administrative personnel (military and civilian) responsible to the Judge Advocate General for the performance of their duties; see Canadian Forces Administrative Order (CFAO) 4-1, "Office of the Judge Advocate General: General Duties and Jurisdiction of Legal Officers".
4. Terms of Reference for National Defence Headquarters Staff, Judge Advocate General (JAG), TOR 1.0.2, article 2 (1988-08-24) (Document A-AE-D20-001/AG-001).
5. Terms of Reference for JAG, article 8.
6. Martin L. Friedland, *Controlling Misconduct in the Military*, study prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (Ottawa: Public Works and Government Services, 1997), p. 47. These figures do not include civilian employees or people working for the Communications Security Establishment.
In the Canadian civilian population, there is about one police officer for 500 citizens, compared with one military police member for every 50 CF members; see Canadian Centre for Justice Statistics, "Police Personnel and Expenditures in Canada -- 1994", *Juristat* 16/1 (January 1996). Several factors explain the relatively high ratio of military police to CF members. Some military police are involved in policing Canadian embassies around the world, and more than 120 are seconded to United Nations forces or NATO. Moreover, the military police control the detention barracks and the service prison in Edmonton. Spouses, children, and other dependants of CF members who accompany the members outside Canada -- all subject to the Code of Service

Discipline -- are not included in the calculation of the ratio of MP to CF members; this makes the relative size of the MP force appear greater than it actually is.

7. Major M.R. McNamee, "Military Police: A Multipurpose Force for Today and Tomorrow", paper prepared for the United States Naval War College, June 1992, p. 26. The U.S. Army military police also play a modest combat role.
8. Management, Command and Control Re-engineering Team, C-18 Security and Military Police (known as "Op Thunderbird"), Final Report, September 30, 1996.
9. Two official CF publications discuss the powers and jurisdiction of the military police: Security Orders for the Department of National Defence and the Canadian Forces, *Military Police Procedures*, vol. 4 (1991) (A-SJ-100-004/AG-000, April 1991), superseded by *Military Police Policies* (A-SJ-100-004/AG-000, October 31, 1995, with modifications on February 28, 1996).
10. Section 156 states:

156. Such officers and non-commissioned members as are appointed under regulations for the purposes of this section may

 - a) detain or arrest without a warrant any person who is subject to the Code of Service Discipline, regardless of the rank or status of that person, who has committed, is found committing, is believed on reasonable grounds to have committed a service offence or who is charged with having committed a service offence;
 - b) exercise such other powers for carrying out the Code of Service Discipline as are prescribed in regulations made by the Governor in Council.

QR&O 22.02(2) spells out who is included in section 156:
The following persons are appointed for the purposes of section 156 of the *National Defence Act*:

 - a) every officer posted to an established position to be employed on military police duties, and
 - b) every person posted to an established military police position and qualified in the military police trade, provided that such officer or person is in lawful possession of a Military Police Badge and an official Military Police Identification Card.

See also *Military Police Procedures*, chapter 2-2.
11. See QR&O 22.02 and *Police Policy Bulletin* 5.0/94. Section 3 of the Bulletin contains limitations on the power to arrest contained in section 495 of the *Criminal Code*.
12. See *Police Policy Bulletin* 5.0/94. See also QR&O 101.12, which seems somewhat more favourable to the accused than civilian procedures. Paragraphs 6 and 8 state that military police cannot read a fellow accused's statement to the accused and that the accused should not be cross-examined on a statement he or she has given.
13. See *Police Policy Bulletin* 7.0/94.
14. They can lay charges under the *Criminal Code* in civil courts when they are acting as "peace officers" under the *Criminal Code*.
15. QR&O 106.01 and 106.095.
16. See *Military Police Procedures*, vol. 4, chapter 2-2. See also *Police Policy Bulletin* 3.11/94 (Specially Appointed Persons), and 3.2/95 (Specially Appointed Persons: Status and Discretion).
17. QR&O 22.01(2).
18. See *Courchene* (1989), 52 C.C.C. (3d) 375 (Ont. C.A.); *Nolan v. The Queen* (1987), 34 C.C.C. (3d) 289, [1987] 1 S.C.R. 1212.
19. *Military Police Procedures*, vol. 4, chapter 2-1, paragraph 7 and following.
20. As a military police warrant officer testified before the Inquiry in October 1995, "If it can be handled in the military, it is handled within the military" (testimony of WO Ferguson, Transcripts vol. 5, p. 974).
21. *Police Policy Bulletin* 3.0/94.
22. *Military Police Procedures*, vol. 4, chapter 2-1, paragraph 13.

23. *Military Police Procedures*, vol. 4, chapter 11-1, paragraphs 1-10. Paragraph 11 provides that the appropriate commanders and COs should be informed of military police investigations "at the earliest practical moment". See also chapter 1-1 (paragraph 10).
24. *Police Policy Bulletin 3.2/95*, paragraph 7.
25. *Police Policy Bulletin 3.2/95*, paragraph 8.
26. *Police Policy Bulletin 3.2/95*, paragraph 18.
27. *Military Police Procedures*, vol. 4, chapter 1-1, paragraph 12.
28. CFAO 22-4, paragraph 4, states: "Technical direction means the specific instruction on the performance of security and military police functions provided by security advisors (with the advice and direction of military and/or civil legal authorities as the circumstances warrant)." See also Joint Doctrine for Canadian Forces: Joint and Combined Operations ((1995) B-GG-005-004/AF-000), paragraph 3(d).
29. CFAO 22-4, paragraph 14, states: "Significant or unusual incidents having criminal, service or security implications and involving the CF or DND will be reported forthwith by the military police via a Military Police Unusual Incident Report (MPUIR)...directly to DG Secur." The submission of such a report, the paragraph continues, "does not absolve commanders of the requirement to submit a Significant Incident Report (SIR) in accordance with CFAO 4-13, "Unusual Incidents". CFAO 22-4 reaffirms *Military Police Procedures*, vol. 4, chapter 48, "Military Police Unusual Incident Report".
30. CFAO 22-4, paragraph 5.
31. *Police Policy Bulletin 14.0/94*, paragraph 6.
32. *Police Policy Bulletin 14.0/94*, paragraph 8.
33. *Police Policy Bulletin 14.0/94*, paragraphs 9 and 10.
34. CFAO 22-4, paragraph 13.
35. *Military Police Procedures*, vol. 4, chapter 47, paragraph 3 of Annex B: "MPIR are distributed...on a need-to-know basis within DND." See also paragraph 5: "Distribution/circulation of MPIR of local significance only are usually limited to the base/station."
36. *Police Policy Bulletin 3.2/95*, paragraph 25. Paragraph 27 states further that "if the allegation of illicit influence involves a superior Specially Appointed Person, the member shall submit their complaint to the next senior Specially Appointed Person in the military police technical net/channel." *Police Policy Bulletin 3.11/94*, paragraph 14-10, provides that a military police appointment may be suspended for "submission to improper or illicit influences with respect to the performance of their duties." These provisions recognize the danger of command influence being exerted by persons in the chain of command, particularly by those higher up the chain.
37. NDA, section 12.
38. NDA, section 12.
39. Volume I of the QR&O is entitled Administration; vol. II, Disciplinary; vol. III, Financial; and vol. IV, Appendices. Unless otherwise indicated, all references to the QR&O in this chapter are to vol. II.
40. QR&O, vol. I, article 1.23(1), states that the CDS "may issue orders and instructions not inconsistent with the *National Defence Act* or with any regulations made by the Governor in Council, the Treasury Board or the Minister: (a) in the discharge of his duties under the *National Defence Act*; or (b) in explanation or implementation of regulations." Section 18(2) of the NDA states that "Unless the Governor in Council otherwise directs, all orders and instructions to the Canadian Forces that are required to give effect to the decisions and to carry out the directions of the Government of Canada or the Minister shall be issued by or through the Chief of the Defence Staff".
41. R.S.C. 1927, chapter 132, section 69.

42. S.C. 1940, chapter 15, section 11.
43. S.C. 1944-45, chapter 23.
44. R.A. McDonald, "The Trail of Discipline: The Historical Roots of Canadian Military Law" *Canadian Forces JAG Journal* 1/1(1985), p. 10.
45. Part IV of the *National Defence Act* is amplified in QR&O, chapter 102, "Disciplinary Jurisdiction".
46. NDA, section 60(1).
47. NDA, section 130(1).
48. NDA, sections 60(1)(f) and 61(1)(c).
49. NDA, sections 67 and 70. Section 2 of the act defines a "service tribunal" as "a court martial or a person presiding at a summary trial". Section 2 also defines "service offence" as "an offence under this Act, the *Criminal Code* or any other Act of Parliament, committed by a person while subject to the Code of Service Discipline".
50. NDA, section 68.
51. QR&O, vol. IV, Appendix 2.4.
52. NDA, section 69. Among the exceptions are the offences of desertion and spying and those relating to a grave breach of the *Geneva Conventions*, referred to in the *Geneva Conventions Act*, R.S.C. 1985, chapter G-3, section 3(1).
53. See NDA, sections 66 and 71. These provisions reflect the rule against double jeopardy in section 11 (h) of the *Canadian Charter of Rights and Freedoms*. Section 2 of the *National Defence Act* defines a "civil court" as meaning "a court of ordinary criminal jurisdiction in Canada and includes a court of summary jurisdiction".
54. Section 2 of the *National Defence Act* defines "service offence" as "an offence under this Act, the *Criminal Code* or any other Act of Parliament, committed by a person while subject to the Code of Service Discipline". For an analysis of the offences contained in the NDA, sections 73 to 130 and 132, see QR&O, chapter 103, "Service Offences".
55. NDA, sections 88, 85 and 74.
56. NDA, section 130(1)(a).
57. *R. v. Généreux*, [1992] 1 S.C.R. 259, p. 281 (Chief Justice Lamer for the majority).
58. NDA, section 132.
59. NDA, section 130(1)(b).
60. Note also NDA, section 273, regarding the competence of civil courts in Canada to try such an offence committed outside Canada by a person subject to the Code of Service Discipline.
61. Various tribunals have limits on the punishments they can hand down. For the provisions on punishments and sentences, see NDA, sections 139 to 149, 203 and 206, and QR&O, chapter 104, "Punishments and Sentences". As for minor punishments, see QR&O 104.13(2) and 108.48 to 108.53. For limitations on the powers of service tribunals to punish, see QR&O, chapter 108, "Summary Trial by Delegated officers and Commanding Officers"; chapter 110, "Summary Trials by Superior Commanders"; General Courts Martial, QR&O 111.17; Disciplinary Courts Martial, QR&O 111.36; Standing Courts Martial, QR&O 113.53; and Special General Courts Martial, QR&O 113.04.
62. NDA, section 139(1).
63. NDA, sections 73-74.
64. Desmond Morton, "The Supreme Penalty: Canadian Deaths by Firing Squad in the First World War", *Queen's Quarterly* 79 (1972), pp. 345, 351.
65. For the examples given, see NDA, sections 72(1), 150 and 151.
66. NDA, sections 133-138.

67. Under general rules for investigation of service offences, the QR&O state, "An investigation *shall* be conducted as soon as practical after the alleged commission of an offence" (QR&O 107.02, emphasis added). However, the next section of the QR&O advises simply that an investigation "should" be conducted to determine if sufficient grounds for charging exist where a complaint is made or where there are other reasons to believe that a service offence has been committed; an investigation would be mandatory only after a charge is laid (QR&O 107.03).
68. QR&O 107.02 (emphasis added).
69. QR&O 107.03.
70. According to the JAG's policy submission to the Inquiry, "The Code of Service Discipline requires a commanding officer. . .to investigate any service offence that may have been committed by a person under his or her command." See DND, "Brief for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia: Military Justice", Document book 3P, p. 10, paragraph 30.
71. QR&O 21.43.
72. CFAO 19-21, paragraph 14.
73. NDA, section 161.
74. QR&O 107.05.
75. QR&O 107.05.
76. CFAO 21-9, paragraph 2, does state that the authority directed to order an investigation should consider means other than summary investigations and boards of inquiry for obtaining information. The authority should "exercise discretion in his choice of the type of investigation."
77. CFAO 22-3, paragraph 7.
78. QR&O 21.01(1).
79. QR&O 21.01(2) and (3).
80. QR&O 21.46.
81. NDA, section 45(1) and QR&O 21.07(2).
82. NDA, section 45(1).
83. QR&O 21.56(2).
84. CFAO 21-9, paragraphs 1-10. See also G1 Pers Svcs, Special Service Force (SSF) Standing Administrative Instruction 204: Boards of Inquiry and Summary Investigations, May 8, 1989, article 1: "Generally speaking, unless orders specify otherwise, BOI will be restricted to matters of considerable importance or complexity."
85. QR&O 21.07 and following, and CFAO 21.
86. QR&O 107.05.
87. DND, "Brief for the Commission of Inquiry: Military Justice", p. 11.
88. DND, "Brief for the Commission of Inquiry: Military Justice", p. 10. The title "superior commander" applies to an officer commanding a formation (QR&O 110.01). QR&O, vol. 1, 1.02, defines a formation in part as "an element of the Canadian Forces comprising two or more units designated as such by or on behalf of the Minister...". The usual title for an officer commanding a formation is "commander".
89. *Military Police Procedures*, vol. 4, chapter 15-1, paragraph 1. However, CFAO 22-4, paragraph 15, states simply that "Military police investigate and report on" the offences described in paragraph 15. Note that new procedures were implemented in 1995.
90. Part VI of the NDA is amplified in QR&O, chapter 105, "Arrest, Close Custody and Open Custody".
91. NDA, section 154(1).

92. NDA, section 155(1). Section 2 of the act states that an officer is "a person who holds Her Majesty's commission in the Canadian Forces" and that a noncommissioned member is "any person, other than an officer, who is enrolled in...the Canadian Forces". The ranks of officers and non-commissioned members are set out in a schedule to the NDA enacted pursuant to section 21 of the act.
93. NDA, section 155(2).
94. NDA, section 156, and QR&O, vol. I, chapter 22, "Military Police and Reports on Persons in Custody".
95. A delegated officer is a junior officer to whom the commanding officer has delegated powers of trial and punishment (NDA, section 163(4), and QR&O 108.10).
96. NDA, section 157(1).
97. NDA, section 158(1), and QR&O 105.16.
98. See QR&O 105.32 to 105.35 for conditions of close and open custody.
99. QR&O 105.21 to 105.23 and 105.28.
100. NDA, sections 159(2) and 159(3).
101. QR&O, vol. I, article 1.02, and vol. II, article 101.01.
102. QR&O 106.01.
103. QR&O 106.01 and 106.095.
104. QR&O 107.12(1).
105. Once the commanding officer dismisses the charge, the *National Defence Act* prevents the person from being tried in respect of that offence or any other substantially similar offence. NDA, section 66(1); QR&O 107.12, note (C).
106. NDA, section 162.
107. NDA, sections 163(1), 163(4) and 164. These jurisdictional provisions of the *National Defence Act* are augmented by QR&O, vol. II, chapter 108, "Summary Trial by Delegated Officers and Commanding Officers"; chapter 109, "Application for Disposal of Charges by Higher Authority"; chapter 110, "Summary Trials by Superior Commanders"; and CFAO 19-25, "Summary Trials", and 110-2, "Summary Trials of Majors".
108. Those included in QR&O 108.31(2).
109. Under section 130 of the NDA.
110. Before passing sentence of more than 30 days' detention on a private or any detention or reduction in rank on an NCO, the CO would need to have the punishment approved by higher authority; see QR&O 108.33(3).
111. NDA, section 163(4), and QR&O 108.10.
112. QR&O 108.11.
113. A superior commander is usually an officer of the rank of brigadier-general or above; see QR&O 110.01. CFAO 110-2, "Summary Trial of Majors", explains that summary trials for majors should be held only for "minor traffic offences committed outside Canada". However, this CFAO, an order by the CDS, could not legally restrict the authority under section 164(1) of the *National Defence Act* for a superior commander to try a major on any charge.
114. Specified in QR&O 110.055(2)).
115. QR&O 108.03(1) and 108.03(8)(b).
116. QR&O 108.03(2).
117. QR&O 108.15, 108.32(1), and 110.07.
118. DND, "Brief for the Commission of Inquiry: Military Justice", p. 17. On redress of grievance, see QR&O, vol. 1, 19.26 and 19.27, and CFAO 19-32, "Redress of Grievance".

119. QR&O, vol. 1, 19.26(4). Where the decision of the CO does not afford redress, the member can seek redress (in progressive order) from other "redress authorities", including the chief of the defence staff and, as the last resort, the minister.
120. Unless a CO dismisses a charge or there has been a summary trial, the CO must apply to higher authority to dispose of the charge; see QR&O, chapter 109, "Application for Disposal of Charges by Higher Authority". The CO must apply to a higher authority to dispose of the charge when he or she is prohibited from trying the accused because of the rank of the accused -- for example, if the offence was committed by a commissioned officer. In such an instance, the decision to convene a court martial will depend on factors that include the recommendation of the CO, the rank of the accused, the charge, the sufficiency of the powers of punishment of the superior commander, and the possibility of a right to elect trial by court martial.
121. NDA, section 165, and QR&O 111.05, 113.06, and 113.55.
122. QR&O, chapter 111, "Convening and Powers of Courts Martial"; chapter 112, "Trial Procedure at General and Disciplinary Courts Martial"; and chapter 113, "Special General Courts Martial and Standing Courts Martial"; and CFAO 111-1, "Courts Martial Administration and Procedures".
123. NDA, section 166.
124. QR&O 111.16, 111.17, 111.35, and 111.36.
125. NDA, sections 167 and 173, and QR&O 111.051, 111.22, and 111.41.
126. NDA, sections 168 and 174, and QR&O 111.21 and 111.40.
127. See NDA, section 192(3), and QR&O 112.06, 112.54, and 112.55.
128. However, when the only punishment a court martial can impose is death, the finding of guilty must be unanimous. When a punishment of death is possible but not mandatory, it can be passed only with the concurrence of all the members (NDA, section 193).
129. *R. v. Deneault* (C.J.A.G.) (1994), 167 N.R. 138, p. 144.
130. NDA, section 177(1).
131. NDA, section 177(2).
132. NDA, section 178(1).
133. NDA, section 178(1), and QR&O 113.03.
134. NDA, section 178(2), and QR&O 113.04.
135. *Lunn v. R.*, C.M.A.C. file # 352, December 8, 1993, p. 6.
136. QR&O 111.60; see also NDA, section 179.
137. QR&O 111.24, 111.43, 113.107, and 113.60.
138. *Military Rules of Evidence*, C.R.C. 1978, chapter 1049. These rules are also found in QR&O, vol. IV, Appendix 1.3. The statutory authority for these rules is the NDA, section 181.
139. NDA, section 180, QR&O 112.10, and CFAO 19-25, paragraph 17.
140. NDA, sections 183, 187 and 188.
141. QR&O 109.02(2)(a).
142. *R. v. Généreux*, [1992] 1 S.C.R. 259 (Chief Justice Lamer for the majority).
143. Section 11(d) reads: "Any person charged with an offence has the right...to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal."
144. See C.F. Blair, "Military Efficiency and Military Justice: Peaceful Co-Existence", *University of New Brunswick Law Journal* (1993), p. 240, and G. Cournoyer and T. Dickson, "Of Legal Free Trade and Opportunity Lost: How Canadian Constitutional law could have tipped the scales in favor of an independent military justice system in the United States", *Federal Bar News and Journal* 41(1994), p. 275.

- 145.*R. v. Généreux*, [1992] 1 S.C.R. 259, p. 293 (Chief Justice Lamer for the majority).
- 146.Part VII.1 of the NDA, sections 197 to 202.25, is amplified in QR&O, chapter 119, "Mental Disorder".
- 147.NDA, section 198(1). The corresponding *Criminal Code* provision is section 672.22.
- 148.The jurisdiction of the Ontario Criminal Code Review Board comes from the NDA, section 202.25.
- 149.NDA, section s. 198(5). The corresponding *Criminal Code* provision is section 672.32(1).
- 150.NDA, section 202.12. The corresponding *Criminal Code* provision is section 672.33.
- 151.NDA, section 205(1). See also QR&O 114.41, "Designation of Service Prisons and Detention Barracks".
- 152.NDA, section 220, and QR&O, vol. IV, Appendix 1.4, "Regulations for Service Prisons and Detention Barracks".
- 153.NDA, section 219(1), and QR&O 114.40(2).
- 154.NDA, sections 206(1) and 203.
- 155.NDA, section 206(2). Under QR&O 1 14.08(2)(b), the CDS can approve the punishment when the offender is a non-commissioned member.
- 156.QR&O 114.27.
- 157.NDA, section 212.
- 158.See NDA, sections 207-209, 211, and 213-218, and QR&O 114.15-114.18, 114.25-114.26, 114.30-114.31, and 114.35-114.36.
- 159.QR&O 114.55.
- 160.NDA, section 210(1), and QR&O 117.01.
- 161.NDA, sections 226 and 227.
- 162.NDA, sections 234 to 236. On appeals, see QR&O, chapter 115, "Appeals from Courts Martial".
- 163.NDA, section 244, and QR&O, vol. IV Appendix 1.2, "Court Martial Appeal Rules", SOR/86-959.
- 164.In *R. v. Boland*, Court Martial Appeal Court (C.M.A.C.) file # 374, May 16, 1995, p. 18, the C.M.A.C. increased the sentence of imprisonment of Sgt Boland to one year (technically the sentence was not "increased", since the original sentence was a punishment of 90 days' detention, not imprisonment; 'detention' and 'imprisonment' are different punishments).
- 165.NDA, section 238.
- 166.NDA, section 239.1(1). In *R. v. Mathieu*, C.M.A.C. file # 379, November 6, 1995, the Court set aside the acquittal of LCol Mathieu and ordered a new trial.
- 167.NDA, section 245.
- 168.NDA, sections 246 and 247, and QR&O 116.01 and 116.02. For example, in the case of an illegal punishment, the CDS could substitute a legal punishment; see NDA, section 213.
- 169.NDA, section 248, and QR&O 117.03.
- 170.DND, "Brief for the Commission of Inquiry: Military Justice", p. 17. On redress of grievance, see QR&O 19.26 and 19.27, and CFAO 19-32, "Redress of Grievance".
- 171.QR&O 19.26(4). where the decision of the CO does not afford redress, the member can seek redress (in progressive order) from other "redress authorities", including the CDS and, as the last resort, the minister.
- 172.Friedland, *Controlling Misconduct in the Military*, pp. 41-42.
- 173.NDA, sections 248.1 to 248.2, and QR&O, chapter 118, "Release from Detention or Imprisonment Pending Appeal Following Court Martial". Although section 248.1 of the act permits an

- application to be made to a standing court martial in "such circumstances as may be provided for by the regulations", no regulations have been enacted.
- 174.NDA, section 248.3.
- 175.NDA, section 248.5, and QR&O 118.09.
- 176.NDA, section 248.9.
- 177.SOR/86-958, section 3; also found in QR&O, vol. IV; Appendix 3.3; see also QR&O 19.76, 19.77, and 19.78. The regulations define "controlled area" to mean "any defence establishment, work for defence or materiel".
- 178.SOR/86-958, section 5. The expression "persons subject to the Code of Service Discipline" includes a broader range of persons than does the expression "officers and non-commissioned members". NDA, section 60.
- 179.SOR/86-958, section 8.
- 180.SOR/86-957, found in QR&O, vol. IV, Appendix 3.2.
- 181.QR&O 107.06, note (C); see also QR&O 19.76, notes (C) and (D). Sections 5 and 8 of the *Inspection and Search Defence Regulations*, SOR/86-958, and section 14 of the DCAAR, SOR/86-957, provide expressly that the searches are without warrant.
- 182.See NDA, sections 273.2 to 273.5, and QR&O 107.06 to 107.12.
- 183.NDA, section 139(1).
- 184.QR&O 104.13(2).
- 185.See Friedland, *Controlling Misconduct in the Military*, pp. 42-43, and note 23, p. 150. See also oral presentation by Capt Reed at our policy hearings (Transcripts vol. 3P, p. 444P): "Informal sanctions may range from verbal reprimands to remedial additional training."
- 186.CFAO 19-21, paragraphs 18 and 20. Administrative and disciplinary guidelines are included in this order and in A-AD-005-002/AG-000. Commanding officers dealing with drug offences are subject to guidelines about which form of action to take. However, "the decision whether to take disciplinary action and the nature of that action is within the authority and at the discretion of the CO."
- 187.CFAO 26-17, "Recorded Warning and Counselling and Probation-Other Ranks". Note that this is only a general outline of the process. There are a number of qualifications in the policy and procedures for the application of these mechanisms, and the process is complicated by the fact that there are specific recorded warnings for reasons relating to alcohol, drugs, indebtedness, and obesity, each with somewhat different procedures required.
- 188.CFAO 26-17, "Recorded Warning and Counselling and Probation Other Ranks".
- 189.QR&O 19.75: "'suspend from duty' means to relieve an officer or non-commissioned member from the performance of all military duty." The person can be suspended "in any circumstances that, in the authority's opinion, render it undesirable in the interests of the service that the member remain on duty." See its use with respect to racist conduct set out in CFAO 19-43, paragraph 22.
- 190.CFAO 15-2, Annex A, "Specific Release Policies", Section 2 Compulsory. See also CFAO 49-10, Annex E, Appendix 2 Recommendation for Compulsory Release; and QR&O 15.01, Table C, item 2 and 5F.
- 191.QR&O 101.11, paragraph 3. Paragraph 2 states that "a reproof shall be reserved for conduct which although reprehensible is not of sufficiently serious nature, in the opinion of the officer administering the reproof, to warrant being made the subject of a charge and brought to trial." This seems more disciplinary in tone than the recorded warning. See also CFAO 101-1 (Reproof Officers and Warrant Officers) for the amplification of QR&O 101.11.
- 192.QR&O 101.11.
- 193.CFAO 26-21, paragraph 1(a).
- 194.CFAO 26-21, paragraph 3.

195.CFAO 19-38, paragraph 17 (emphasis added).

196.CPDP/Operating Procedures Manual 301-2 (for non-commissioned members) and CPCD/OPM 203-7 for officers.

THE CANADIAN FORCES PERSONNEL SYSTEM

The Canadian Forces (CF) operates an elaborate and highly structured system for personnel recruitment, development and management. This chapter reviews the chief features of this system to place the selection, screening and training of military personnel for the Somalia mission in context.¹ Questions of selection, screening, and training specific to that mission are dealt with in Volume 2, chapters 20 and 21.

In any major CF deployment, the personnel who serve are sent largely on the basis of their current job and posting. With the exception of the contingent commander, CF members go because the unit or sub-unit in which they serve has been assigned to participate in the mission. Some categories of personnel within a unit may be left behind as a 'rear party' because their military trade or specialization is not required or is not a priority. Personnel may also be left behind simply to comply with the manning ceiling set for the mission. But in general, once a unit is selected by the chain of command, all members of that unit are presumed to be deploying unless they are specifically screened out for some reason.

There is a set of explicit and uniform standards for deployment suitability, which relate primarily to administrative, medical, and family considerations.² The concern is to minimize the operational disruption and financial cost of unexpectedly and prematurely repatriating and replacing personnel in a distant operational theatre.³

Behavioural suitability, on the other hand, is a matter of discretion for the chain of command within the deploying unit. Until recently (May 1994), there was little formal guidance on how that discretion should be exercised.⁴ To identify personnel who might pose a significant disciplinary risk during a mission, the system relied on the attitude and judgement of commanders and supervisors within the deploying unit. Obviously this approach also relied heavily on the general personnel system to recruit, screen, train, employ, and promote CF members appropriately.

Thus, an understanding of the critical elements of this system is useful before delving into the selection, screening, and training of CF personnel participating in the Somalia deployment.

The military is not a typical employer for several reasons. One important reason is that the CF has a monopoly on the legitimate development and use of military force in and for our society; that is, for all intents and purposes, the CF is the only social institution that can provide contemporary military training and is, at the same time, the only legitimate consumer of such skills.

A number of special precepts about service in the CF flow from this basic reality. First, since it is the only place to learn and develop combat and combat management and support skills, there are no lateral transfers into the military. All CF members start at the bottom of their respective rank structures (officers as lieutenants and non-commissioned members as privates), and all subsequent career progression is based on acquiring specific experience and knowledge through education, training, and employment over time.

Moreover, there are established patterns to career progression in the military. Each level of responsibility fits into a functional structure designed to conduct or support military operations. One cannot intelligently employ and manage a particular component of that structure without intimate knowledge of how the sub-components work. The only way to acquire such knowledge in a meaningful and reliable way is through the particular training, education and employment experience offered at each level of responsibility.

Hence, military employment, training and education opportunities, as well as promotion to higher rank, are carefully structured to progress in a specified order and at a certain rate.⁵ For example, promotions are given only one rank level at a time, and levels of responsibility cannot be skipped in military employment. To take a simple example, officers cannot expect to command a battalion until they have commanded platoons and companies.

Progression through this highly structured and physically challenging system of professional development takes a lot of time and training. As a result, military careers begin at a relatively young age and involve many years of service before retirement.

Military service is, indeed, a career rather than a job. A number of factors contribute to this. First, as noted earlier, the CF is the country's only real consumer of military skills; second, the military requires its leaders

at all levels (including the highest levels) to have undergone its elaborate program of in-house professional development; third, Canada has a standing, full-time, military force to staff, maintain, support and lead; and fourth, the recruitment, training, education, and maintenance of a soldier represents a considerable investment of resources. The CF has a strong institutional interest in providing meaningful careers to those with significant potential in their military trade and to avoid premature attrition among them. The intense and continuous nature of combat readiness and the corresponding requirement for military discipline make special demands on CF members. There is also a unique role for morale as a factor in military life and, indeed, in operational capability. Hence, the CF concerns itself with the broader welfare of its members, not just job performance.

RECRUITMENT

Having reviewed some of the distinctive features of personnel management in the CF, we now turn to an examination of the key elements of the personnel system designed to meet the particular requirements of the CF. Unless otherwise indicated, the procedures described in this chapter were in place in 1992.

Basic Standards

Under the QR&O for the Canadian Forces, recruits must be at least 17 years of age and must be "of good character" to be enrolled in the forces.⁶ The preferred age for entry into 'operational' and 'unskilled' military trades (called military occupation codes, or MOCs), like the infantry, is 17 to 25 years.⁷ All direct-entry applicants for the officer corps must have a university degree, membership in a professional association, be a graduate of a suitable course of a recognized institute of technology, or have former commissioned service.⁸ For service in the non-commissioned ranks, an applicant must normally have completed grade 10.⁹ Other basic conditions for enrolment relate to citizenship and health standards.¹⁰ Both officer and non-commissioned member (NCM) applicants undergo various aptitude tests to determine the MOC for which they are best suited.¹¹

The following persons, among others, are normally precluded from enrolment in the CF: anyone previously released from the CF, the RCMP or any foreign force for inefficiency or poor conduct; anyone who has previously been punished with dismissal with disgrace from Her Majesty's service; anyone who has engaged in "sexual misconduct"; and anyone who has "an outstanding obligation to the judicial system", meaning anyone awaiting trial, incarcerated, under suspended sentence, on probation, or on parole.¹² Aside from these restrictions, recruiters appear to have considerable discretion in weighing criminal record information when assessing an applicant's character or general suitability for military service.¹³ In terms of screening out active racists, before October 1993, there was no policy on this subject.¹⁴

These are the minimum legal standards for enrolment. With larger pools of qualified applicants and a smaller recruitment quota, there has been a significant increase in the quality of recruits over recent years. By the same token, there were some problems with applicant quality at certain times during the 1970s and 1980s, when civilian job market conditions were better and recruitment quotas were higher.

Since the late 1980s, recruitment standards for the full-time Regular Force and the part-time Reserve Force have been the same.¹⁵ Currently, some 10,000 members are recruited annually, with about 20 per cent going into the Regular Force.

The Recruitment Process

The first stage in the recruiting process is the contact interview, which takes place at a recruitment centre. At this stage, the applicant is counselled about the forces and the various trades available in the military. Basic eligibility is confirmed at this stage. Applicants are also asked whether they have ever been convicted of a criminal offence for which they have not received a pardon.¹⁶ Applicants are asked only about convictions under the *Young Offenders Act* for which they are currently under a resulting disposition, such as a probation order. Such applicants are not asked for details about the offence itself.¹⁷

The next stage is testing for specific employment aptitudes and, in the case of non-commissioned members, general learning ability.¹⁸

A medical assessment is then conducted to determine, among other things, the sort of employment for which the applicant is fit.¹⁹ Applicants are also asked to reveal their medical history, including, specifically, any previous treatment by a psychiatrist, psychologist, or social worker.²⁰

An assessment interview is then conducted by a military career counsellor. Applicants are questioned more thoroughly about their qualifications, education and employment history, and motivation.²¹ Further military career counselling is also conducted. Applicants are asked about their history of drug use, and the CF policy on drugs is explained. Applicants are also questioned about their experience with and attitudes toward people of diverse racial and cultural backgrounds, and the CF policy in this regard is reviewed. This last component of the interview has been in place only since October 1993.²²

The next step is reliability screening. All CF enrollees must pass an 'enhanced reliability' check.²³ This includes review of identification documentation; verification of qualifications, employment history and references; a criminal record check; and a credit check.²⁴

If the reliability status is granted, the applicant is given a Military Potential rating by the military career counsellor. This rating integrates everything the counsellor knows about the applicant from interviews, tests and other sources, and assesses this profile in relation to the demands of the military and of the particular occupation in which the applicant is interested.²⁵ The general attributes that counsellors are to look for in applicants are teamwork, perseverance, physical endurance, conformity to rules, acceptance of criticism, and initiative. In the case of applicants for the officer ranks, leadership skills are also sought. The ratings range from one to nine, with those scoring only one or two deemed unsuitable. Applicants are eligible to receive offers of enrolment with the CF in order of merit, based on their Military Potential rating.²⁶

The aim of the Military Potential rating is to predict whether an applicant will integrate successfully into the Canadian Forces, particularly during basic recruit training and initial military occupation training.²⁷ However, recent internal research casts doubt on the effectiveness of this rating as a predictor of performance, either in basic training or subsequent military occupation qualification training.²⁸

Criminal Records and Recruitment

Even in cases where a pardon has not yet been granted, a previous criminal conviction does not necessarily preclude admission to the CF. However, since hiring for the CF is competitive, past offences do adversely affect an applicant's chances of enrolment. Moreover, if sufficiently serious, a criminal record could lead to denial of reliability status (a prerequisite for enrolment) or denial of a security clearance.²⁹ The consequences of a denial or revocation of a security clearance range from various employment restrictions to occupational transfer to release from the CF.³⁰

Use of information about convictions under the *Young Offenders Act* is carefully controlled. Young offender information is not sent to the relevant recruitment centre. Instead, it goes to the CF Recruitment, Education and Training System headquarters, where the implications of the information for enrolment suitability are assessed. If personnel at the recruitment centre do happen to learn about young offender convictions, they are not permitted to use that information in determining an applicant's suitability for enrolment.³¹

Psychological Assessment

During the medical examination, applicants are asked about problems with drug or alcohol abuse and any previous treatment by a psychiatrist, psychologist, or social worker.³² Disclosures of past treatment are followed up, and details are obtained from the treating professional.³³

In most cases, however, psychological testing is used only to help determine an individual's aptitude for particular military occupations, not to assess psycho-social stability.³⁴ By contrast, applicants for most civilian police forces undergo a series of psychological screening tests.³⁵ Normally, psychological fitness (in the sense of predisposition to aberrant behaviour) is assessed subjectively by recruiters on the basis of the applicant's behavioural and social history.³⁶ To this end, recruiters investigate applicants' education, work experience, family and social relationships, criminal convictions, drug use, and debts.

Recruiters are not trained in the behavioural sciences, but guidelines for recognizing and assessing psychological warning signs are provided in the *Recruiter's Handbook for the Canadian Forces* and various recruiting directives. Moreover, recruiters receive training from CF personnel selection officers, who have at least a master's degree in psychology,³⁷ as well as specialized training and work experience. Personnel selection officers are also available to provide technical advice to recruiters and others in the personnel selection system in particular cases of concern, or on general issues.³⁸ Furthermore, specific cases can be referred to a personnel selection officer where the recruiter has a doubt about an applicant's psychological fitness.³⁹

Post-Enrolment Screening and Monitoring

Screening and monitoring of CF personnel continue after enrolment.

Basic Training

In addition to its essential developmental value, basic military training is considered an excellent opportunity to gauge a recruit's ability to adapt psychologically to military life and discipline.⁴⁰ This period is marked by intensive training and indoctrination combined with extensive direct observation by superiors and frequent peer evaluations. Moreover, specialist personnel are available on training bases to assist in the diagnosis of psychological disorders and behavioural instability.⁴¹

Security Clearance

To perform their duties, most CF members require some level of security clearance in addition to the reliability vetting that is a condition of enrolment.⁴² The main additional elements for the security clearance are the personal character reference check and the Canadian Security Intelligence Service (CSIS) indices check.⁴³ This latter check could expose involvement in extremist organizations, provided the organization is deemed to represent a "threat to security" as defined in the *Canadian Security Intelligence Service Act*.⁴⁴

For example, white supremacist groups were not necessarily seen as security threats by CSIS at the time of the Somalia deployment, and whatever interest CSIS did have in such organizations focused on their leaders, rather than the general membership.⁴⁵ Moreover, before October 1993, active affiliation with racist groups was not, in itself, deemed inconsistent with membership in the CF.⁴⁶

Updating Reliability and Security Clearance Data

Supervisors must report changes in circumstances or behaviour that could be relevant to a member's suitability to hold a security clearance, and reliability screening information must be updated at least every 10 years.⁴⁷

Maintenance of Conduct Sheets

Convictions for civil or military offences that occur after enrolment are recorded on a member's conduct sheet, which will be seen by superiors, career managers, and merit boards.⁴⁸

Performance Evaluation and Career Review

CF members are assessed at least once a year on their performance by their supervisors.⁴⁹ Performance appraisals are seen by at least the supervisor's superior, and they are reviewed at even higher levels if they are particularly good or bad.⁵⁰ Members are liable to be released involuntarily from the CF for a range of shortcomings, including serious or persistent disciplinary problems and poor performance.⁵¹

TRAINING

Training for peace support operations must be seen in the context of military training in general.⁵² In the CF, training is aimed first at achieving operational readiness to perform missions and tasks and, second, at supporting the career development of CF members. Training forms part of the overall personnel management system and is of two types: individual and collective. Responsibility for individual training falls within the mandate of the assistant deputy minister for personnel (ADM(Per)), while collective training

is within the purview of the deputy chief of the defence staff, who retains the overall policy-setting function. The planning, development, and management of collective training are delegated to the functional commands through the Chief of the Defence Staff Direction to Commanders, which details the missions to be accomplished, including training missions.

Individual Training

Individual training is aimed at satisfying professional and technical requirements of CF members operating within the CF's military occupational structure and the separate career development/management systems for officers and non-commissioned members. It includes general military training, occupational training, and specialty (or specialist) training, conducted mainly at in-service training establishments or educational institutions (basic training schools, military colleges, command and staff colleges, warrant officers' academies, etc.), but also outside DND (for example at civilian universities). Basic occupational training for operational personnel -- including members of the combat arms -- is typically conducted within the operational command environments, with technical support from the central system if required.

There are both basic and advanced levels in all categories of individual training. General military training, which is tied to general specifications for both officers and non-commissioned members, can take place any time during a service career. It includes such training as leadership courses for senior officers and senior non-commissioned members, usually offered to enable them to fulfil a requirement for a specific rank or as a prerequisite for a higher rank.

Individual training for CF members is progressive. It begins at the basic (new entry) level, which is designed primarily to teach general military skills and provide initial indoctrination into the CF way of life. It then proceeds through basic and advanced occupational training (usually a rank progression prerequisite) and is finally interspersed with general military training and/or specialty training as required by the level of responsibility achieved or a specific duty assignment within an occupational group.

The CF controls the quality and quantity of individual training by means of a planning and management model encompassing a five-phase approach to training: analysis, design, conduct, evaluation, and validation. The analysis phase focuses on the specific need for training, and the result of the process is a course-training standard or on-job training standard. These standards, against which individual performance is assessed, are monitored and updated periodically.

Responsibility for individual training is dispersed through three levels of management:

1. NDHQ, where policy is established and its implementation verified; quantitative needs are determined, and occupational specifications are developed and approved.
2. Designated commands/training agencies, where training standards are produced, training is validated, and resources are provided.
3. Training establishments, which design and conduct training, as well as evaluate course members and course training.

Collective Training

Collective (or operational) training is planned, scheduled, and conducted at the formation or unit level. It is designed to build cohesive teams and units that can act independently or in concert with others to perform a variety of missions or tasks (e.g., peace operations, war fighting, etc.). Collective training capitalizes on general military and occupational skills and competencies already acquired by CF members and forms the bulk of mission-specific peacekeeping training for the combat arms and support elements to be deployed. Refresher training may occur as part of an annual operational training cycle or as required by a specific mission, generally at the unit level; in the case of the Land Force, it is regulated by individual battle task standards and offered only if a deficiency in a skill is detected through testing.

Whereas the ADM(Per) has a direct and an indirect, as well as a relatively continuous monitoring function respecting adherence to policies and standards in the individual training system, the deputy chief of the defence staff has only indirect and periodic mechanisms for monitoring consistency across commands (e.g., annual training plans, Chief Review Services reviews). Thus, collective training is decentralized training,

with a minimum of control being exercised by NDHQ over how policies and standards are applied. The bulk of training for peacekeeping falls into this category. As a consequence, standardization in peacekeeping training must be maintained primarily through well developed policies and supporting documentation to ensure a thorough understanding of direction and requirements.

Training is central to the Canadian Forces. It not only provides the basis for developing the knowledge, skills, and abilities needed for a wide range of functions, but is also a primary vehicle for promoting morale and cohesion. From the perspective of operational capability, a well managed training system with adequate resources provides the best means -- short of actual operations -- of developing and practising command and leadership skills.

CAREER DEVELOPMENT OF MEMBERS AND OFFICERS

Career Development of Non-Commissioned Members

Throughout their careers, NCMs are required to take general military training, as well as occupation-related training.⁵³ The requirements -- common and environmental -- for all NCMs are found in the NCM General Specification. The development of NCMs includes on-the-job training, as well as training in leadership, management, occupational and specialty training, and self-study.⁵⁴

Under the Canadian Forces training system, there are three basic developmental periods in the career of an NCM: basic recruit, junior leader and senior leader.

- **Basic Recruit:** The aim of this primary developmental period is to produce an individual who is well motivated, disciplined, physically fit, capable of handling personal weapons, and capable of survival in hostile environments.⁵⁵ The NCMs in the CAR in 1992 would have attended basic recruit training at CFB St. Jean or CFB Cornwallis. Today, because of rationalization required by budget cuts, all basic training for recruits is done at the Canadian Forces Recruit School at St. Jean.⁵⁶ This first developmental period for NCMs would include, in addition to basic training, army-specific training, either as part of their basic occupational training or through a separate course.⁵⁷ Combat arms NCMs would normally have attended one of the battle schools.
- **Junior Leader:** This stage involves significant on-the-job training, training at the base and unit, and formal courses, notably the Junior Leader Course. Junior leader training aims to broaden knowledge of general military subjects; develop leadership/management skills; and provide practical experience in leadership and supervisory duties, to a level required of junior supervisors (master corporal to sergeant ranks).⁵⁸

For infantry NCMs, in addition to the cross-environmental junior leader course, there are also formal courses and other training related to the infantry MOC, e.g., weapons use and training.

- **Senior Leader:** This final stage aims to provide NCMs of sergeant-level rank with the knowledge, skills, and experience described for junior leaders at the higher level required by warrant officers. Again, on-the-job experience is a crucial component of this stage. It is complemented by the senior leader course, which is cross-environmental, involving personnel from Land Force, Air, and Maritime commands. There is an increased emphasis on leadership and management, given the importance of these to the normal functions of NCMs at the rank of warrant officer and above.

As with the other two periods, this one includes continuing occupational and environmental training through formal courses and on-the-job learning.

Career Development of Officers

The progression of an officer's career involves training, education and employment. During an officer's tenure with the Canadian Forces, this includes on-the-job training, as well as training in leadership, management, occupational and specialty training, and self-study.⁵⁹

Officer candidates can be recruited at the beginning of their post-secondary education, which is then integrated with their development as an officer. This can be done through attendance at a military college (of the original three -- Royal Military College of Canada in Kingston (RMC), Royal Roads Military

College in Victoria, and Collège militaire royal de Saint-Jean in Quebec -- only RMC remains) or through attendance at another university, combined with summers spent in officer training.

Alternatively, officers can be recruited at the end of their university studies, in which case their initial training is more intensive and compressed. Finally, a small number of officers are recruited from the ranks, through plans that permit serving NCMs to upgrade their education as required to qualify them for officer responsibilities. Whatever the method of entry, the basic approach to the development of officers remains the same. Under the Canadian Forces training system, there are four basic developmental periods in the career of an officer.

- **Basic Officer Development:** This provides the training and education required for the officer's first appointment and runs from the time of entry to the stage of military occupation qualification. At the end, officers meet their common and specific occupational requirements and possess the fundamental information and skills required to begin their first leadership position. It includes training in elementary aspects of leadership.

The key element of training during this period is the Basic Officer Training Course.⁶⁰ It also includes training specific to the officer's environment (Maritime, Land Force, or Air) and MOC. The basic MOC training for all three combat arms branches of Land Force (artillery, infantry, and armour) is given through courses at the appropriate school at the Combat Training Centre at Gagetown.

- **Junior/Intermediate⁶¹ Officer Development:** Normally, this development period runs from MOC qualification, which leads to the first appointment, until a junior officer is promoted to the rank of major. Again, all aspects of the junior officer's development -- employment (on-job learning), education, and training -- are geared to multiple requirements, in this case occupational, environmental, and functional command. During this stage lieutenants and captains would apply and practise their MOC and common skills from the first development period, but would also be doing self-study, through the Officer Professional Development Program,⁶² and formal courses. The junior officer at this stage would be leading CF members at the sub-unit level.

A key educational component for a Land Force officer is attendance at the Canadian Land Force Command Staff College at Fort Frontenac in Kingston.⁶³ As well, during this period an army officer would normally complete the Intermediate Tactics Course.⁶⁴

- **Advanced Officer Development:** By this stage the officer -- typically at the level of major or lieutenant-colonel -- is increasingly skilled as a leader, with the requisite knowledge of principles and techniques of leadership. Training is by no means over, but rather continues, meeting the needs of the officer's current rank and possible higher ranks. This period may also involve specialized training for a particular appointment or appointments. It is at this level that officers are considered for command of units.

A key educational component at this stage is attendance at the Canada Forces Command and Staff College, which is a course given for senior officers from all three environments.⁶⁵ This course has been described as "the cornerstone activity in the development of the senior officer cadre and the centre for instruction of operational level environmental, joint and combined doctrine within the CF."⁶⁶

During this period of officer development, officers would normally occupy a combination of staff and command positions of increasing responsibility. In combination with major and shorter courses both in leadership and in a specific occupational field, officers can be expected to acquire the guidance, leadership training/experience, and management skills necessary to discharge their functions as senior leaders in the CF.

- **Colonel and General Officer Development:** This is the culminating developmental period for a select group of CF officers. During this stage they receive the training and experience required for high-level command and staff employment and for particular senior appointments. This is when the officer's development as a highly skilled leader and commander is completed. Ordinarily, this period would entail command of a base or formation and more. Since 1994, when the National Defence College program was terminated, no formal course of development has been available for officers at this level.⁶⁷

PROMOTIONS AND APPOINTMENTS

Although the key criterion in promotion and appointment decisions in the CF is ostensibly merit, it cannot be said that this is the only factor. Staffing needs and limitations appear to be the real driving force behind the promotion and appointment system.⁶⁸ Generally speaking, there are no promotions unless there are vacancies -- no matter how deserving those eligible for promotion may be.⁶⁹ But the converse is equally true. In the event of a vacancy, a member of the relevant class of eligible candidates will be promoted.⁷⁰ The military personnel system cannot go outside itself to fill the position, nor can it leave a significant gap in its organization indefinitely.

The number of personnel available to fill a position is necessarily restricted by a variety of systemic constraints. As the only source of training in military skills and knowledge, the CF can hire only from within, and all entrants must move up the relevant rank structure to acquire specific knowledge and abilities through training, study and employment experience.⁷¹ Before being eligible for promotion, members must have been in their current rank for a minimum number of years.

There are also many functional and occupational categories in the military. Despite unification, Land Force Command, Maritime Command, and Air Command continue to function as distinct branches to a significant degree. In terms of staffing, this means that, below the level of the national command and support bureaucracy (or a joint force headquarters), positions tend to be restricted to a particular command. This is certainly true for combat positions. Beyond that, the military personnel structure is divided into numerous fields and sub-disciplines (called branches and military occupation codes respectively).⁷² Many positions in the military are trade-specific. In addition, the key combat arms occupations in the Land Force environment have a regimental system that adds a further dimension to promotions and appointments.

Since environmental command, MOC, and rank all imply certain types or levels of knowledge, training and experience, this elaborate and self-contained personnel structure enables the military to focus quickly on a manageable pool of candidates.

Promotion in the CF

For the most part, promotion to higher rank is based on competition among peers (i.e., personnel holding the same rank within the same occupation) and is determined by relative ranking by centralized panels called merit boards.⁷³ There are several key exceptions to this general rule. First, certain promotions are handled outside the competitive merit board process. After enrolment as an NCM, promotions up to and including the rank of corporal are handled within the member's unit by the commanding officer.⁷⁴ The same process can be extended to master corporal appointments in the Land Force combat arms occupations where the need arises, through the Delegated Authority Promotion System (described later in this chapter).⁷⁵ Promotion to major-general or above is by personal selection of the chief of the defence staff with the approval of the minister.⁷⁶

In addition, a number of entry-level promotions for officers are automatic upon meeting the requirements. After enrolment as an officer-cadet and completion of the stipulated requirements, commissioning in the rank of second lieutenant and promotion to lieutenant are automatic. In the case of officers commissioned from the NCM ranks, commissioning in the rank of second lieutenant with simultaneous promotion to lieutenant (where the prior rank attained was master corporal or higher) or captain (where the prior rank attained was master warrant officer or higher) are automatic. For specialist officer classifications (chaplain, medical, legal), post-commissioning promotion up to the rank of captain is non-competitive.⁷⁷

In all other cases, personnel are selected for promotion from merit lists ranking all eligible members of a given military occupation and rank relative to each other. Merit lists are compiled annually by the various merit boards based on the annual performance evaluation reports and other personnel file contents, such as course reports, conduct sheets, and records of administrative actions against the member.⁷⁸ This process is outlined in greater detail below.

Performance Evaluation Reports

These reports (known as PERs) are completed on all CF personnel each year. More than one can be done in a year if there is a new posting or in cases of exceptionally good or poor performance. Reports are completed by members' supervisors, who are usually their immediate superiors in the chain of command.⁷⁹

Members are rated, in comparison with their peers, on the basis of a variety of performance-related skills or factors. These include acceptance of responsibilities and duties; application of job knowledge and skills; problem analysis; decisiveness; planning and preparation; delegation, direction and supervision; communication; working with others; and ensuring the well-being and development of subordinates. Members are also rated on the following professional attributes: professional knowledge, appearance, physical fitness, conduct, intellect, integrity, loyalty, dedication, and courage. On each of these points, members are rated as low, normal or high, and within these broad ratings there are often two to three further gradations. There is also space on the report form for comments by the supervisor.

Finally, members are given an overall rating on their potential: 'adverse', 'low normal', 'normal', 'high normal', 'superior', or 'outstanding'.⁸⁰ The report also indicates whether the member is recommended for promotion. In addition to the other reporting requirements relating to disciplinary actions, such actions must also be noted in the performance evaluation report. In the case of officers, this includes convictions under civilian penal law (but, in the case of provincial offences, only those where there is a sentence of imprisonment) and under the Code of Service Discipline.⁸¹ However, a reproof is not referred to in a PER.⁸² In the case of NCMs, only serious breaches need to be reported on the member's PER.⁸³

PERs must be shown to the member.⁸⁴ They are then reviewed by the supervisor's superior who also provides comments and recommendations. In the case of PERs with an outstanding or an adverse rating, a further review by more senior levels of command is mandatory. In fact, CFAO 26-6 defines an outstanding or adverse PER rating as a judgement by the reporting officer that the member being evaluated "is so exceptional in every respect, in comparison to other officers of the same rank, that the officer's effectiveness and potential, or lack thereof, should be brought to the attention of senior officers in the chain of command." In addition to these mandatory reviews, PERs can be reviewed by other senior officers. A member's CO is obliged to report any change in circumstances occurring after submission of the PER that may affect the member's eligibility or suitability for promotion.⁸⁵

When an officer receives an adverse overall rating on a PER, the CO must follow the procedure governing career shortcomings in CFAO 26-21 and counsel the officer or -- if this has already been attempted without success -- place the officer on report of shortcomings.⁸⁶

Finally, all PERs are sent to the appropriate NDHQ career management staff.⁸⁷ Copies are not to be retained by units, bases or commands.⁸⁸ The career manager makes sure that the report is complete and otherwise meets established requirements. Among other things, a team at NDHQ monitors all NCM PERs to ensure that reporting practices are standardized, exceptionally high or low ratings are substantiated, and higher ratings are not being over-used.⁸⁹ Personnel staff at NDHQ may even send a PER back if there is a problem with it. For example, evidence before us indicated that, occasionally, a PER contains a contradiction between the supervisor's comments and the overall rating.⁹⁰ Career managers retain the PERs, along with other relevant documentation, on the CF members for whom they are responsible.

Colonel Arp, a former career manager for lieutenant-colonels and -- at the time of his testimony -- special assistant to the ADM (Per), gave evidence about the PER system among other things. He conceded that PERs do tend to emphasize the positive elements of a member's performance and downplay problems. Interpreting a PER properly, therefore, involves considering not only what it says, but also what it does not say. To deal with the problem of inflated ratings, a ceiling was placed on the proportion of personnel who could receive the top two overall ratings. Each formation was limited to rating 8 per cent of its personnel 'outstanding' and 22 per cent as 'superior'; exceptions had to be approved by the Commander Land Force Command. These constraints led units to conduct their own internal boards to decide who would receive the top ratings. In Colonel Arp's experience, officers did not get promoted without at least a 'superior' rating on their most recent PERs. In other words, members had to be in the top third of their rank and occupation, according to PER ratings, in order to advance.

Generally, members must have served two or three years in their current rank to be eligible for merit board consideration. It is largely their PERs that determine which of the eligible personnel are selected by the career manager for consideration by a merit board. Current practice is to submit only eligible members in the top 50 per cent of their rank and classification --based on their last three PERs -- to a merit board for promotion ranking.

Merit Boards

Some 86 different merit boards are convened annually to consider promotions within the various ranks and military occupations. The boards are structured to ensure experience and familiarity with the needs and challenges of the branch in question, while maintaining objectivity and independence.

Officer merit boards normally consist of six to eight officers from a trade or branch similar to that of the candidates being considered. Within the relevant branch, the widest possible representation from the various sub-disciplines is sought, and at least two of the three elements of the armed forces should be represented.⁹¹ Where applicable, there is also representation from the appropriate regiments. Normally, the board chair is three ranks above the candidates, and board members are two ranks higher. COs from the combat arms branches are precluded from sitting on officer merit boards, and no one can serve more than two consecutive years on a board.

NCM boards have four members, including either two or three officers and one or two senior NCMs, depending on the rank level of the promotion.⁹² Like the officer boards, experience in the relevant branch, inter-element representation, and official language representation are sought in merit board composition. Board members are not normally to serve in consecutive years. In the case of infantry NCMs, promotions are handled by regimental merit boards, which include battalion COs and regimental sergeants-major.⁹³ NCM merit boards decide who will be offered further periods of service and indefinite service, as well as promotions.⁹⁴

The results of board decisions are sent to the appropriate promotion authority for approval.⁹⁵ Once approved, merit lists are in force until replaced by the next ones, usually after a year. Promotions must be made based on the order of precedence in the lists. Only the chief of the defence staff personally can authorize a deviation from the list. The CDS is responsible for approving promotions to all ranks up to colonel and recommends all promotions to the general officer ranks. The minister of national defence approves all promotions to the general officer ranks, and the Cabinet appoints the CDS. In the case of promotion to ranks below colonel, however, the CDS's responsibility can be, and has been, delegated to other officials.⁹⁶

Criteria for Promotion

Normal Progression

In addition to the existence of a vacancy and a potential candidate's merit list position, a variety of criteria for promotion are prescribed by the CDS, depending on the rank and occupation in question.⁹⁷ The common criteria for promotion among officers are the completion of specified periods of qualifying service in the current rank; attaining the qualification requirements of the particular MOC; medical fitness in relation to the officer's field of employment; and possession of the minimum security clearance required in that MOC.⁹⁸ The common criteria for promotion of NCMs are similar, except that NCMs must also have a recent history of satisfactory performance and conduct and the recommendation of their CO.

All candidates for competitive promotion in the officer ranks are also rated by merit boards on their performance -- as indicated in PERs and course reports -- and their potential for more senior rank, which includes an assessment of experience, qualifications, linguistic ability, remaining years of service, personality, and physical fitness.⁹⁹ In the case of NCMs, COs are to recommend promotion only where the member has demonstrated the necessary potential and where the CO is prepared to retain and develop the member in that rank.¹⁰⁰ In the infantry, only the top five per cent are promoted in a given year.¹⁰¹

Incidents of misconduct or poor performance generally jeopardize a member's promotion prospects, at least in the immediate term. In the case of NCMs, recent satisfactory conduct is a formal criterion for promotion,

although that standard is open to interpretation and thus allows for the exercise of discretion by the chain of command and NDHQ.¹⁰² In the case of officers, any conduct sheet entries must be indicated on the PER, so merit boards will be aware of civil or military offences.¹⁰³ Officers on report of shortcomings will not be posted out of their parent units.¹⁰⁴ Where officers or warrant officers have received a reproof, a record of this remains in their file for one year and is therefore seen by the merit board in that year but not thereafter.¹⁰⁵ NCMs on counselling and probation are not eligible for promotion and will not be posted out of their current unit during the probation period.¹⁰⁶ By itself, a recorded warning does not affect promotion or posting eligibility,¹⁰⁷ but in a competitive environment, it can obviously be a handicap.

Exceptions

The CDS can waive any promotion requirement,¹⁰⁸ and NCMs can be promoted in recognition of meritorious service or an act of gallantry.¹⁰⁹

Accelerated Promotion

Accelerated promotion allows members of the CF who demonstrate exceptional ability and potential to be promoted more quickly than normal.¹¹⁰ Normally, members must serve two to four years in a rank (depending on the rank) to be eligible for promotion to the next rank.¹¹¹ If accelerated promotion is authorized, officers can be promoted after as little as one year in rank; NCMs can be promoted after one to three years, depending on the rank.¹¹² In the case of accelerated private to corporal promotions, NDHQ (specifically, the Director General Personnel Careers Other Ranks) establishes annual ceilings for each of the commands.¹¹³

For both officers and NCMs, accelerated promotion first requires the recommendation of the member's CO.¹¹⁴ The promotion authorities are the same as for normal promotions: the member's CO, for promotions up to corporal; and the Director General Personnel Careers Other Ranks, for promotions to master corporal and above.¹¹⁵

For officers, a special PER is prepared on the nominee and forwarded to NDHQ. The report must set out in detail "the reasons why the officer is deserving of rapid and extraordinary promotion, and why such promotion will be in the interests of the CF."¹¹⁶ The report must include specific assessments of the nominee's "leadership and management abilities" and a description of the officer's "outstanding qualities". The report must also be supported by the most senior officer at each level of the chain of command. If fully supported, the PER is referred to the next scheduled merit board for consideration.

For NCMs, the procedure is somewhat different, depending on the rank and MOC. For accelerated promotion to corporal, the approving authority is the same as for a regular promotion -- the member's CO, subject to any limitations prescribed by the commands.¹¹⁷ The general procedure for accelerated promotion to master corporal or above is similar to that for officers. A special PER is submitted and considered by the regular merit board.¹¹⁸ The criteria are distinct however: accelerated promotion to corporal requires demonstration of outstanding performance in the member's trade, whereas promotion to master corporal or above also requires leadership potential. Aside from the normal minimum time in rank, the member must meet all other qualifications for the promotion.

Delegated Authority Promotion System (DAPS)

The DAPS is a special form of accelerated promotion to the rank of master corporal that applies to certain MOCs, including the infantry. In fact, DAPS replaces the general accelerated system just described with respect to promotions to master corporal in the affected classifications. DAPS aims to ensure an adequate number of master corporals in the combat arms occupations.¹¹⁹ So, in contrast with accelerated promotion, which is merit-driven, the DAPS responds to organizational requirements.

If vacancies in the affected occupation classifications cannot be filled by application of the normal criteria, the Director General Personnel Careers Other Ranks authorizes DAPS promotions.¹²⁰ Privates or corporals selected by their CO who meet all qualifications for promotion to master corporal, except for time served in current rank, can then be promoted to master corporal.¹²¹ The CO is responsible for ensuring that the member has all the necessary qualifications.

The key difference between DAPS and accelerated promotion generally is that no special PER is prepared or considered by a merit board. Once NDHQ determines the need for DAPS to fill vacancies at the master corporal level and COs have selected candidates, promotions are automatic rather than competitive. In this respect, DAPS differs from both the normal promotion system for master corporals and the accelerated system.

The Regimental System

In the case of the combat arms occupations in the Land Force environment -- armour, artillery, field engineer, and infantry -- promotion occur in the context of a regimental system. Each regiment has its own history and traditions. Members progress in their careers within a particular unit or family of units. Along the way, they may serve in extra-regimental postings such as staff positions at higher headquarters and CF training and educational institutions or when units or sub-units of their regiment have been grouped in larger formations with units or sub-units from other regiments. But members remain affiliated with their home regiment, and they are not transferred between regiments.¹²²

In addition to the official command structure of the component units, each regiment has a semi-official oversight and advisory entity, a regimental council known variously as the Senate, the Regimental Guard, or la Régie, the heads of which are known colloquially as 'Godfathers'. These bodies are normally composed of the serving general officers of the regiment and certain honorary appointees, such as retired generals from that regiment. The role is to oversee the long-term well-being of the regiment.

An important aspect of their mandate is to provide advice and input to NDHQ personnel staff on key promotions and appointments within the regiment. This is, to a certain extent, a natural role for them, since they know the officers who are candidates for promotion, having observed their development from officer-cadet to lieutenant-colonel. They also know the candidate supervisors better than career managers are likely to do.¹²³

By contrast, a member's superiors in the chain of command and the career manager at NDHQ change regularly. Because of their unique corporate memory, input from the regimental councils on personnel matters is highly valued by the chain of command. Although they have no formal authority in the process, the personnel recommendations of these regiment councils are, in practice, very influential.

Within the regimental council, a regimental colonel is appointed by the other members, among other things, to track the career development of key personnel in the regiment and advise NDHQ career managers on particular serving members. Col (ret) John Joly -- who held this position for Princess Patricia's Canadian Light Infantry between 1988 and 1991 -- described his role as follows:

to act on behalf of the regiment to manage the postings, career development, major corps selections and grooming of our officers and NCOs and soldiers in order to maintain the health and vitality of the regiment as a whole, the battalions in particular. And more importantly, [to manage] the individuals in their development so that in the longer term the regiment would not suffer any declines through mismanagement of the personnel assets...¹²⁴

Regiments also conduct their own merit boards to rank the serving personnel of the regiment. In the case of NCMs, promotions are actually decided by these regimental boards, which are recognized in the CFAOs. For officers, however, the official merit boards are established according to rank level and combine candidates from all regiments as well as other combat arms occupations, resulting in "a much broader base of comparison and a higher standard [for promotion]."¹²⁵ The regiment's advice on officer promotions is conveyed to NDHQ merit boards, either directly through their representatives on the boards,¹²⁶ or indirectly through the career managers. In the case of key appointments in the regiment, the regiment provides recommendations to career managers and often directly to Land Force Command Headquarters as well.

Appointments in the Infantry

As with promotions, the filling of unit and sub-unit command appointments involves a subtle interaction between NDHQ personnel staff (chiefly career managers), the chain of command, and the regimental councils. The appointment process involves more discretion, however, and the influence of regimental councils is more decisive. PERs and regimental rankings are important in the appointments process, but

since command appointments usually occur within the first five years of achieving the required rank, many candidates for such postings will not be on a merit list, because they will not yet be eligible for further promotion. Another difference is that with postings or appointments, the wishes of the member are also an important factor. CF members do not apply for promotion, but they do, to a degree, apply for appointments.

The appointments system operates under certain constraints that do not affect promotions. A particular posting may have a bilingualism requirement. Postings have a specific tour length: three years generally, but only two years for command appointments, so candidates would generally have to be available for that period. Moreover, the CF tries to ration certain highly prized appointments, so that more members have a chance at them. Such postings include unit commands, certain senior staff positions, and various NATO, UN and other foreign postings -- generally, a member will not receive any of these appointments more than once. In addition, there may be personal constraints on a particular member, such as family situations, and for budgetary reasons, career managers are limited to a certain number of subsidized personnel relocations per year. Career managers testifying before this Inquiry, however, stated this constraint does not apply to unit command appointments.

Furthermore, appointments must be filled on the basis of the manning priorities established by the vice chief of the defence staff. Priority one postings such as UN appointments, must be filled first. There are relatively few priority two postings, but they include command of combat arms units. The majority of postings are priority three, including positions within units most positions at NDHQ.

Operating within these constraints, career managers consult widely in compiling their list of potential candidates. The environmental command -- in the case of the Canadian Airborne Regiment, Land Force Command -- is consulted and provides input on the requirements of the position and the available personnel. The branch adviser¹²⁷, -- in this case the Director of Infantry -- also has some understanding of the criteria candidates should meet, as well as further information on the career advancement needs, preferences and prospects of candidates. The adviser is also in touch with the regime and with Land Force Command HQ. In the case of a sub-unit command appointment, the unit commanding officer is also a key player and effectively has a veto over postings to the unit. For unit CO appointments, the brigade commander is consulted. However, this is not part of the formal process. Strictly speaking, the key players in the selection process are the career manager, the branch adviser, and the Land Force Commander. But peers and subordinates are not consulted; only superiors are consulted.¹²⁸ Candidates are also interviewed before being put on the list of personnel recommend for a posting. Once career managers have arrived at a tentative posting plan for the personnel in the rank and occupations for which they are responsible, they interview those members, discussing their options based on their performance, the positions of interest to the members, and their long-term career goals. These interviews are not an occasion to evaluate the candidate; this is the responsibility of the chain of command through the PERs.

Based on these consultations and members' personnel files, the career manager and the branch adviser come up with a list of suitable candidates for appointment. This list is taken to the appropriate regimental council by the branch adviser. The regimental council makes a selection from this list. Barring any administrative problems with the regiment's choice, the career manager takes their recommendation to the Deputy Commander LFC, where it is reviewed and discussed in detail. The career manager then interviews the members about the proposed postings. Finally, the matter goes to the Commander LFC for final approval, although the formal posting order is put out by the NDHQ personnel staff under the assistant deputy minister for personnel on behalf of the chief of the defence staff.

In the case of NCMs, the key players in promotions and postings are the unit CO and the regimental sergeant-major. The appropriate NDHQ career manager does everything in consultation with those officials.¹²⁹

The effectiveness of the CF personnel system -- in combination with the mission-specific training, selection and screening of CF personnel -- in the case of the deployment to Somalia in 1992-93 is considered in Volume 2.

NOTES

1. As Dr. Franklin Pinch wrote in "Screening and Selection of Personnel for Peace Operations: A Canadian Perspective" (Gloucester, Ontario: 1994), "Screening and selection do not stand alone but are part of the overall human resources management strategies of any armed force, including the CF."
2. See Canadian Forces Administrative Orders (CFAO) 20-46 (Annex A-J) and 20-50; and Force Mobile Command Operating Procedure 101, November 29, 1977.
3. CFAO 20-50, paragraph 3.
4. The only formal rule on the subject was in CFAO 20-50, paragraph 4a, which stipulated that "Members with a history of repeated misconduct shall not be considered for a posting outside Canada." Since Somalia, behavioural suitability has become a distinct factor in pre-deployment screening, and the unit CO has been given specific criteria to consider in making such assessments. See NDHQ, CANFORGEN 023 of 021500Z May 1994, re Social and Behavioural Suitability Screening, Document book 89A, tab 10.
5. Chief Review Services, Program Evaluation Division, "Report on NDHQ Program Evaluation Assessment Study -- EA 1/86: Personnel -- Recruiting, Development and Distribution", May 13, 1988, p. 11, paragraph 27.
6. *Queen's Regulations and Orders* (QR&O) 6.01(1).
7. CFAO 6-1, Annex A, Serial 2a, and Annex B, Serial 2b.
8. CFAO 6-1, Annex A, Serial 3.
9. CFAO 6-1, Annex B, Serial 5.
10. See QR&O 6.01(1)(a); and CFAO 6-1, Annex A, Serials 1 and 4, and Annex B, Serials 1 and 4.
11. CFAO 6-1, Annex A, Serial 5, and Annex B, Serial 3.
12. QR&O 6.01(2)(b), (3) and (4); and DND, *Recruiter's Handbook for the Canadian Forces* (April 1, 1995, Publication AL 1/95), p. 2-4, section 213, paragraphs 1 and 3, and p. 2-2, section 233, paragraph 1.
13. No such guidance could be found in the QR&O, the CFAO, the *Recruiter's Handbook*, or the Recruitment Directives.
14. Testimony of Cdr Jenkins, Transcripts vol. 6, pp. 1201-1202, vol. 14, p. 2537; and Briefing note for Minister of National Defence (MND), April 15, 1994, re Racism and the Canadian Forces, Document book 89A, tab 9, p. 4, paragraph 8c.
15. Recruiting Directive 12/89, Integrated Recruiting Operations, August 16, 1989, p. 4, paragraph 10.
16. MGen C.W. Hewson, "Report on Disciplinary Infractions and Anti-Social Behaviour within Force Mobile Command with Particular Reference to the Special Service Force and the Canadian Airborne Regiment" (Ottawa: September 1985), p. 12, paragraphs 31-32, and Annex K, Letter of August 28, 1985, from Capt McAlea, Deputy Judge Advocate -- Eastern Region, re Recruit Screening -- Criminal Convictions, p. K-1, paragraph 2 (hereafter, Hewson report).
17. *Recruiter's Handbook*, p. 2-5, section 215, paragraph 3.
18. CFAO 6-1, Annex A, Appendix 1, serial 5, and Annex B, serial 3.
19. CFAOs 34-30, 34-31, paragraph 3, and 34-43.
20. Hewson report, p. 12, paragraph 34.
21. The information in this paragraph comes largely from *Recruiter's Handbook*, Chapter 2, and Annex E to Chapter 2.
22. Briefing note for MND re Racism and the Canadian Forces, p. 4, paragraph 8c.
23. DND, *Security Orders for the Department of National Defence and the Canadian Forces* (Publication A-SJ-100-001/AS-000), vol. 1, paragraphs 20.01 and 21.11.

24. *Security Orders*, vol. 1, paragraphs 21.06 and 21.10.
25. Information drawn from *Recruiter's Handbook*, p. 2-33, sections 266 and 267.
26. Chief Review Services, "Report on NDHQ Assessment Study -- EA 1/86", p. 16, paragraph 42.
27. *Recruiter's Handbook*, p. 2-33, section 266, paragraph 1.
28. Maj L.J. Grandmaison and Maj A.J. Cotton, "An Empirical Review of the Military Potential Rating of Non-Commissioned Member Applicants", Technical Note 11/94 (Willowdale, Ontario: Canadian Forces Personnel Applied Research Unit (CFPARU), August 1994), p. 7, paragraph 14, and p. 14, paragraph 31; and Capt J.M. Stouffer and Maj J.P. Bradley, "Assessing the Defensibility of the 1993/94 Direct Entry Officer and Officer Candidate Training Plan Selection Boards", Technical Note 22/94 (CFPARU, September 1994), p. 4-5, paragraph 11.
29. *Security Orders*, vol. 1, paragraphs 21.54 and 22.48e.
30. *Security Orders*, vol. 1, paragraph 22.25; QR&O 15.01 Item 5(d) or (f); and testimony of Cdr Jenkins, Transcripts vol. 6, p. 1199.
31. *Recruiter's Handbook*, p. 2-5, section 215, paragraph 4.
32. Hewson report, p. 12, paragraph 34.
33. Maj K.W.J. Wenek, Directorate of Personnel Selection Research and Second Careers, "The Assessment of Psychological Fitness: Some Options for the Canadian Forces", Technical Note 1/84 (NDHQ: July 1984), Document book 1, tab 1.1, p. 2, paragraph 4a.
34. Wenek, "The Assessment of Psychological Fitness", p. 1, paragraph 2b, and p. 2, paragraph 4a; and Chief Review Services, "Report on NDHQ Program Evaluation E 4/86: Special Review of DND Security Screening Policy and Procedures" (May 13, 1987), p. 80, paragraph 237.
35. J.-P. Brodeur, *Racism and Accountability in a Peacekeeping Context*, study prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (Ottawa: Public Works and Government Services, 1997).
36. The following information on recruitment comes from Wenek, "The Assessment of Psychological Fitness", p. 2, paragraph 4a; and CFAO 2-3, paragraph 16f.
37. CFAO 6-1, Annex A, Appendix 1, Serial c.
38. Wenek, "The Assessment of Psychological Fitness", p. 2, paragraph 4a; and CFAO 2-3, paragraph 16b.
39. CFAO 2-3, paragraphs 16b and 16i.
40. Hewson report, Document book 1, tab 1, p. 14, paragraph 40; and Wenek, "The Assessment of Psychological Fitness", p. 3, paragraph 4b.
41. Wenek, "The Assessment of Psychological Fitness", p. 3, paragraph 4b.
42. Chief Review Services, "Report on NDHQ Program Evaluation E 4/86", p. 40, paragraph 84.
43. *Security Orders*, vol. 1, Annex B, p. 22B-1.
44. R.S.C. 1985, chapter C-23, section 2; and Chief Review Services, "Report on NDHQ Program Evaluation E 4/86", p. 87, paragraph 256.
45. Briefing note, Cdr Jenkins to Deputy Chief of the Defence Staff, re Extremist and Activist Organizations, May 18, 1993, Document book 89A, tab 6, p. 2, paragraph 6.
46. Testimony of Cdr Jenkins, Transcripts vol. 14, p. 2537.
47. *Security Orders*, vol. 1, paragraphs 21.12, 22.24 and 22.84.
48. CFAO 26-16, paragraphs 3, 4, 6 and 7; and CFAO 26-6, paragraph 24.
49. CFAO 26-6, paragraph 9; and CFAO 26-15, paragraph 8.
50. CFAO 26-6, paragraphs 10 and 13.
51. QR&O 15.01.

52. This section draws heavily on Paul Larose-Edwards, Jack Dangerfield and Randy Weekes, *Non-Traditional Military Training for Canadian Peacekeepers*, study prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (Ottawa: Public Works and Government Services, 1997), pp. 11-14. See also *Canadian Forces Individual Training System -- Introduction* (A-P9-000-001/PT-000), vol. 1 (PT-000), July 1989, p. 1-1-1; and *Management of Training* (A-P9-000-002/PT-000), vol. 2, March 1991, pp. 1-5.
53. General military training duties and responsibilities are outlined in the requirements in the NCM General Specification (NCMGS), as well as the QR&O; see DND, "Leadership Development in the Canadian Forces", brief for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia, p. 9.
54. "Leadership Development in the Canadian Forces", p. 4.
55. "Leadership Development in the Canadian Forces", pp. 9-10.
56. "General Service Knowledge", OPDp. 2, 1995/96, Officer Professional Development Program, Student Study Guide (A-PD-050-OD1/PG-002), p. 3-5-5.
57. "Leadership Development in the Canadian Forces", p. 10.
58. "Leadership Development in the Canadian Forces", p. 10.
59. "Leadership Development in the Canadian Forces", p. 4.
60. Successful completion of this course is, under most officer entry plans, a prerequisite to the granting of a commission: "Leadership Development in the Canadian Forces", p. 6. The course is held at the Canadian Forces Officer Candidate School at CFB Chilliwack.
61. This level is referred to as 'Intermediate' in the Officer Professional Development System Document (5570-1 (ADM (Per), May 4, 1994), p. 11, but as 'Junior' in "Leadership Development in the Canadian Forces", pp. 4-5. The two documents contain similar descriptions of the contents of this stage.
62. Completion of the Basic Level Officer Professional Development Program is a prerequisite for promotion: "Leadership Development in the Canadian Forces", p. 6.
63. For army combat arms, combat support arms, and combat service support officers, this course is a prerequisite for future attendance at the Canadian Forces Command and Staff College.
64. The Intermediate Tactics Course consists of Part One, a self-study package, and Part Two, a 20-day course. It "aims to train army officers to apply combined arms tactics, administration and training at the sub-unit level and function in a level 3 staff appointment": "Leadership Development in the Canadian Forces", p. 7.
65. Completion of Basic and Advanced Level OPDP is a prerequisite for attendance at CFCSC and for promotion to lieutenant-colonel. Completion of the CFCSE with few exceptions, a prerequisite to promotion to colonel: "Leadership Develop in the Canadian Forces," pp. 6-8.
66. "Leadership Development in the Canadian Forces", p. 8
67. In the past, officers at this high level would normally have attended the 10-month National Defence College Course in Kingston or a foreign equivalent.
68. Chief Review Services, "Report on NDHQ Program Evaluation Assessment Study -- EA 1/86", p. 11, paragraph 27, and p. 49, paragraph 162.
69. QR&O 11.02(a).
70. However, officers can decline a promotion without prejudice to future consideration. An NCM who declines a promotion is subject to a career review board, where the possible outcomes range from retention in the current military occupation classification, without any career restrictions, to release from the CF. See CFAO 11-6, paragraph 17d, and CFAO 49-4, paragraphs 8c and 41.
71. "Leadership Development in the Canadian Forces", p. 4, paragraph 12; and *Report of the Auditor General of Canada, 1990*, Chapter 20, "Department of National Defence Human Resource Management, Planning and Personnel Management", p. 485.

72. There are some 37 military occupation codes (MOCs) at present, and some 96 specific NCM occupations, all divided among 23 branches, ranging from chaplain to artillery.
73. CFAO 49-4, paragraph 9b, and Annex J, paragraph 1; and CFAO 11-6, paragraphs 6 and 7.
74. CFAO 49-4, paragraphs 4a, 8 and 9b.
75. CFAO 49-4, Annex B, Appendix 2.
76. QR&O 11.01(1) and CFAO 11-6, paragraph 8.
77. This information is drawn from CFAO 11-6, paragraph 5, and Annex A, paragraphs 6, 8, 10, 13, 14, 15 and 21, and Annex B, paragraph 4.
78. CFAO 11-6, Annex C, paragraph 8, and CFAO 26-12, paragraph 2.
79. CFAO 26-6, paragraph 9, and CFAO 26-15, paragraph 8.
80. Testimony of Col Arp, Transcripts vol. 12, p. 2174.1.
81. CFAO 26-6, paragraph 24, and CFAO 26-16, paragraph 7.
82. CFAO 101-1, paragraph 5.
83. CFAO 26-15, paragraph 15.
84. Much of the information in this paragraph comes from CFAO 26-6.
85. CFAO 11-6, paragraph 16, and CFAO 49-4, paragraph 13.
86. CFAO 26-6, paragraph 25, and CFAO 26-21, paragraphs 8 and 9.
87. CFAO 26-6, paragraphs 4 and 29, and CFAO 26-15, paragraphs 14 and 18.
88. CFAO 26-6, paragraph 21a, and CFAO 26-15, paragraph 14.
89. CFAO 26-15, paragraph 16; see also Annex B.
90. We are indebted to Maj Ralph Priestman, LCol Glen Nordick and Col Jan Arp whose testimony provided valuable background information.
91. Information on officer merit boards is found in CFAO 11-6, Annex C.
92. NCM boards are subject to the specifications in CFAO 49-4, Annex J.
93. Testimony of Col (ret) Joly, Transcripts vol. 18, p. 3309, and CWO Cooke, vol. 26, p. 4878.
94. Testimony of CWO Cooke, Transcripts vol. 26, p. 4878.
95. The various promotion authorities for Regular Force personnel are as follows: to any rank below master corporal -- the member's CO; appointment to master corporal, or promotion to sergeant or any of the warrant officer ranks -- the Director General Personnel Careers Others Ranks; commissioning in the rank of second lieutenant, or promotion to lieutenant or captain -- the Director Personnel Career Administration Officers; promotion to major -- Chief Personnel Careers and Senior Appointments; promotion to lieutenant-colonel -- the Assistant Deputy Minister (Personnel); promotion to colonel -- the Chief of the Defence Staff; and promotion to brigadier-general or subsequent general officer ranks -- the Minister of National Defence on the recommendation of the CDS. See QR&O 11.01; CFAO 49-4, paragraph 4; and CFAO 11-6, paragraph 9.
96. QR&O 11.01; CFAO 49-4, paragraph 4; and CFAO 11-6, paragraph 9. See previous note for the list of promotion authorities.
97. CFAO 11-6, paragraphs 3 and 4, and Annexes A and B; and CFAO 49-4, paragraph 9 and Annex A.
98. CFAO 11-6, paragraphs 4a to 4e.
99. CFAO 11-6, paragraph 4 f (1), and Annex C, paragraph 8.
100. CFAO 49-4, paragraph 12.
101. Testimony of Col (ret) Joly, Transcripts vol. 18, p. 3301.
102. CFAO 49-4, Annex A, Table 1.

- 103.CFAO 26-6, paragraph 24.
 - 104.CFAO 26-21, paragraph 5.
 - 105.CFAO 101-1, paragraph 4; and testimony of LCol Nordick, Transcripts vol. 2, p. 285.
 - 106.CFAO 49-4, paragraph 17, and CFAO 26-17, paragraph 6d; and testimony of LCol Nordick, Transcripts vol. 2, p. 283.
 - 107.CFAO 26-17, paragraph 4.
 - 108.QR&O 11.02(2).
 - 109.CFAO 49-4, paragraph 3.
 - 110.CFAO 11-6, paragraph 18, and CFAO 49-4, Annex B, paragraph 1.
 - 111.CFAO 11-6, Annex A, paragraph 20, and CFAO 49-4, Annex A, Table 1.
 - 112.CFAO 11-6, paragraph 18, and CFAO 49-4, Annex B, Appendix 1.
 - 113.CFAO 49-4, Annex B, paragraph 9.
 - 114.CFAO 11-6, paragraph 19, and CFAO 49-4, Annex A, Table 2 and Annex B, paragraph 1.
 - 115.CFAO 49-4, paragraph 5.
 - 116.This and the following information is from CFAO 11-6, paragraph 19.
 - 117.CFAO 49-4, paragraph 5.
 - 118.Much of the following information, including that on DAPS, is taken from CFAO 49-4, including Annex B.
 - 119.Testimony of CWO Cooke, Transcripts vol. 26, p. 4882.
 - 120.The information in this paragraph is taken from CFAO 49-4, Annex B, Appendix 2.
 - 121.However, COs, on their own authority, promote the selected privates as far as corporal without NDHQ involvement, as is the case in normal promotions to corporal.
 - 122.Testimony of LCol Calvin, Transcripts vol. 1, p. 166.
 - 123.Testimony of Col Arp, Transcripts vol. 11, p. 2169, and vol. 12, p. 2120.1.
 - 124.The testimony of Col (ret) Joly provided valuable information.
 - 125.Col (ret) Joly, Transcripts vol. 18, p. 3309.
 - 126.For captain to major, the regiment usually sends a newly appointed battalion CO, or an officer with potential for such an appointment. For major to lieutenant-colonel, there is a regimental colonel. See testimony of Col (ret) Joly, Transcripts vol. 18, p. 3310.
 - 127.Branch advisers represent and provide personnel advice on the 23 branches or trades that make up the CF (for example, armour, artillery, chaplain, communications and electronics, infantry, legal officer, and so on). They provide advice to the personnel group at NDHQ (including career managers) and maintain liaison with the commands and, in the case of Land Force, with the regiments. See CFAO 2-10 and CFAO 4-11; and testimony of LCol Nordick, Transcripts vol. 2, pp. 249, 269-270.
 - 128.Testimony of Col Arp, Transcripts vol. 11, pp. 2176-2177; and Maj Priestman, Transcripts vol. 15, p. 2733. See also testimony of LGen (ret) Reay, Transcripts vol. 45, p. 9017
 - 129.Testimony of CWO Cooke, Transcripts vol. 26, p. 4872.
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THE CANADIAN AIRBORNE REGIMENT

The Canadian Airborne Regiment had its roots in two fighting units, the 1st and 2nd Canadian Parachute Battalions. The Minister of Defence approved the formation of the 1st Canadian Parachute Battalion in July 1942, largely because of the effectiveness of airborne units earlier in the war. The battalion fought under British command with the 6th British Airborne Division and took part in the D-Day invasion, landing behind the lines to attack enemy positions and secure captured areas. It also fought in the Battle of the Bulge, crossed the Rhine and, on May 2, 1945, became the first Allied unit to meet the Russian army on German soil, in Wismar. The battalion returned to Canada after V-E day and was disbanded as the war in the Pacific was drawing to a close.¹

The 2nd Canadian Parachute Battalion, formed on July 10, 1943 (and renamed the First Canadian Special Service Battalion in 1943), along with a U.S. parachute battalion, formed the First Special Service Force. Known as the Devil's Brigade, this force was unique, in that the two nationalities were not separated into different units or sub-units. The First Special Service Force fought in Italy; its members were the first Allied troops to enter Rome in June 1944. The Force was disbanded in December 1944, and the Canadian battalion was disbanded after the war.²

For a short time after the war, the army had no parachute capability. Then, in 1946, parachuting skills were revived by the formation of a Canadian Special Air Service Company (SAS). In 1948, an airborne brigade group was established. Called the Mobile Striking Force, its assigned task was Canadian defence, particularly in the north. It consisted, in part, of battalions from The Royal Canadian Regiment, Princess Patricia's Canadian Light Infantry, and the Royal 22^e Regiment. In 1958, the Mobile Striking Force was reduced in size to one infantry company group from each infantry regiment and renamed the Defence of Canada Force.³

CREATION OF THE CANADIAN AIRBORNE REGIMENT

In 1966, the Chief of the Defence Staff, General J.V. Allard, began plans for an airborne capability in the form of a radically different, specialized unit.⁴ Out of this initiative, the Canadian Airborne Regiment (CAR) was established on April 8, 1968. Located at CFB Edmonton, the Regiment's principal roles were defence of Canada operations against small-scale enemy incursions in the north, provision of short-notice response to United Nations requests for peace operations, and operations in limited or general war within the context of a larger allied force, particularly a variety of 'special service' missions, including pathfinders, deep patrolling and winter operations, and domestic operations in response to civil authorities.⁵

The CAR was organized as a unit of the Canadian Forces within Mobile Command. Generally, membership in the Regiment was about 900 in all ranks, with a regimental headquarters and six units: the airborne headquarters and signal squadron, which provided the normal communications and headquarters function; two infantry commandos -- 1^{er} Commando Aéroporté and 2nd Airborne Commando; 1st Airborne Battery, which provided field artillery; 1st Airborne Field Engineer Squadron, providing combat support; and 1st Airborne Service Company, providing service support. Second- and third-line support was provided by 1st Field Service Support Unit (1FSSU), a special unit that, although not part of the Regiment, was created to support the Regiment. Service support was brought entirely into the CAR in 1975 with the amalgamation of 1 FSSU and 1st Airborne Service Company to form 1st Airborne Service Support Unit.⁶ The regimental commander, having the rank of colonel, exercised the powers of a commander of a formation.⁷ One of the two airborne infantry units (1^{er} Commando) was francophone. This unit was eventually manned entirely by volunteers from the Royal 22^e Regiment and moved from Valcartier to Edmonton in 1970.

MOVE TO CFB PETAWAWA

In 1976, the Chief of the Defence Staff, General Jacques Dextraze, concluded that the Canadian land forces, with a combat group and an airborne regiment in the west, a small combat group in central Canada, a combat group in Quebec, and an independent battalion in the Maritimes, were deployed in an unbalanced manner. His plan was to have a brigade group in the west, a brigade group in the east, and a quick-reaction regimental combat group in the centre. The result was the creation of a quick-reaction combat group in

central Canada, an airborne/air transportable formation created by combining units of the CAR with those of 2 Combat Group at CFB Petawawa.⁸

Thus, in 1977, the CAR became part of the new Special Service Force (SSF), a brigade-sized command with a strength of 3,500, created to provide a small, highly mobile, general-purpose force that could be inserted quickly into any national or international theatre of operations.⁹ The Regiment moved from CFB Edmonton to CFB Petawawa and was downsized in the process, losing its gunners and engineers. It also lost its field support unit; logistic support would now come instead from the SSF's service battalion.

Within the CAR itself, the Airborne Service Company was resurrected to provide immediate first-line logistical support.

In 1979, 3 Commando was established as a new airborne unit. This resulted in a ceiling of about 750 members in all ranks, organized into three smaller company-sized commandos.¹⁰ The three infantry commandos now took shape around the three regimental affiliations: 1 Commando with the Royal 22^e Régiment, 2 Commando with Princess Patricia's Canadian Light Infantry, and 3 Commando with The Royal Canadian Regiment.

With the move to CFB Petawawa, the regiment's chain of command lengthened, because it was now a unit under the Special Service Force and one link further from the most senior army commander. On the other hand, the move to CFB Petawawa did allow for closer supervision of the CAR, because it was now under the direction of the commander of the Special Service Force. Moreover, the reorganization had the effect of diluting the CAR's former uniqueness in the army, since it was now shared with the rest of the new parent formation, the SSF. Later, the introduction of the army area command system placed Land Force Central Area between the SSF and Force Mobile Command headquarters. Thus, a unit intended in 1968 to be a resource answerable directly to the commander of the army and, through that commander, to the chief of the defence staff fell inside the 'normal' chain of command, without any apparent change in its operational mandate or concept of operations.

OPERATIONS OF THE CAR

The 1970s

The Regiment was deployed operationally on three occasions in the 1970s, twice on internal security operations and once on a peacekeeping task, none of which called for a parachute capability. In 1970, in response to the October Crisis, the Regiment moved by air to Montreal, where it was divided into quick-reaction teams to assist the police in sweeps, raids, and cordon and search operations.

In 1974, in a pivotal event in its history, the CAR was assigned its first peacekeeping mission. In March 1974, about half the Regiment was deployed to Cyprus to fulfil Canada's commitment to a 450-member battalion there. In July, however, a coup by the Greek Cypriot National Guard toppled the government of Archbishop Makarios and, in response to the coup, the Turkish army invaded the island. The CAR members assigned to Cyprus were present on the island at the time of the coup. The Regiment's soldiers thus found themselves in the middle of a shooting war. The remaining half of the Regiment was deployed after the Turkish invasion. The UN forces, principally the Canadians with British support, positioned themselves in the Nicosia International Airport to deny it to both sides and prevent escalation of the conflict. Their primary role was to patrol, report, and try to maintain order without taking sides. The CAR did so with significant help from the British forces in Cyprus.¹¹ The Regiment performed well in peace-restoring operations. By the end of the operation, more than 30 men had been wounded and two had been killed.¹²

In 1976, the CAR supported successful security arrangements during the Montreal Olympics, designed to prevent a situation similar to the terrorist attack against Israeli athletes that occurred during the 1972 Olympics at Munich.

Thus, during this period the CAR performed well on operations as well as on exercise. Nonetheless, as one author concludes, "Non-airborne soldiers could state, quite correctly, that the Airborne Regiment did nothing in its three operations that could not have been done equally well by a regular Canadian infantry battalion."¹³ This was confirmed in testimony before the Inquiry by a former commanding officer of the CAR, LGen (ret) K. Foster.¹⁴

The 1980s

The Canadian Airborne Regiment had peacekeeping rotations in Cyprus in 1981 and 1986-7. It served as the 35th Canadian Contingent in Cyprus from March 19 to September 30, 1981, and as the 47th Canadian Contingent there from September 1, 1986 to March 9, 1987.

The 1990s before Somalia

On July 18, 1991, the Secretary of State for External Affairs, the Honourable Barbara McDougall, and the Minister of National Defence, the Honourable Marcel Masse, announced that Canada was to participate in the United Nations Mission for the Referendum in Western Sahara. The United Nations mandate was to establish the conditions for a referendum on the future of the Western Sahara by identifying and registering qualified voters and by supervising the repatriation of refugees and non-residents before the vote.

Canada's contribution of 740 troops was based on the Canadian Airborne Regiment. It was to be the largest contingent of the 1,700 military personnel, 900 civilian staff, and 300 civilian police provided by 36 nations. The name given to the Canadian operation was Operation Python. Their role was to monitor the cease-fire and ensure that troop reductions and POW exchanges were agreed to by Frente Polisario guerrillas and the Moroccan army.

Because of disagreements about who was qualified to vote, the referendum was postponed indefinitely. On February 19, 1992 the SSF was ordered to cancel the Operation Python task for the Canadian Airborne Regiment and have it revert back to its status as Canada's UN standby force, with the ability to move on 30 days' notice. On February 21, 1992, the Commander SSF gave the order to stand down.¹⁵

Reorganization in 1992

In 1991-92, the Regiment was downsized by some 150 personnel, and what had been a five-unit regiment (the three airborne commandos; the Airborne Service Commando, providing combat service support; and the Airborne Headquarters and Signal Squadron, exercising command and control) became a single unit. The three commandos continued to exist as sub-units, but the services and support formerly provided by Signal Squadron and the Service Commando were now provided by newly created platoons within the Regiment.

The effect of the changes was summarized by Col Holmes, Commanding Officer of the CAR at the time of the reorganization, in his testimony before us. Before the reorganization, the CAR was, in effect, a small brigade: its five unit commanders were commanding officers; it had a headquarters staff comparable to that of a brigade; and it was designed to be expandable, so that in times of tension, it could be enlarged to a brigade-size organization if needed. After the reorganization, the CAR no longer had this flexibility; the support and services that permitted expansion were no longer in place. In this respect, the Regiment was similar to the other line infantry battalions in the army; it could not operate independently and had to work under a brigade headquarters in terms of command and control; and it had to rely on other units of a brigade for combat support and combat service support.¹⁶

At the time it received the warning order for Operation Cordon (the proposed United Nations mission to Somalia), the Regiment had not yet completed the transition to the new organization: it was in the process of turning in excess vehicles and equipment; moves had been planned but not made (for example, to co-locate regimental headquarters with the commando headquarters); and buildings had not yet been renovated for their new uses. In addition, the Regiment's regulations, orders and instructions had yet to be rewritten, although a plan was in place to do so.

One significant change had already taken effect, however. With the downsizing of the CAR to a unit that was the equivalent of a battalion (instead of its former status as the equivalent of a brigade), the ranks required for the commanding officer of the CAR and its sub-units were also reduced. As a battalion-type organization without the capacity for independent operations, it could now be commanded by a lieutenant-colonel (instead of a full colonel as before). This in turn had a ripple effect on positions within the CAR below that of the commanding officer -- those heading the commandos became officers commanding with reduced authority.

During this period of reorganization, the CAR retained its role as a rapid deployment airborne/air transportable force, to be used mainly in operations to support national security and international peacekeeping. The Regiment had to be ready to respond to a variety of situations, some of them where virtually no warning would be given and others on notice of 48, 72, or 96 hours. At the same time, there was discussion within the army chain of command about what mission and tasks were appropriate for the CAR and its affiliated combat support and combat service support elements.

The proposed new mission -- referred to as its "concept of employment" -- went through several drafts between April and November 1992.¹⁷ In particular, those commenting on the drafts identified a considerable gap between the tasks anticipated for the CAR and the Regiment's actual capabilities following the reorganization, noting that equipment and personnel would have to be augmented considerably if the CAR was to be capable of fulfilling the mission set out in the concept of employment. The final document, approved in November 1992, acknowledged concerns about limitations resulting from the Regiment's downsizing but nevertheless argued that the CAR should be organized, staffed, trained, and equipped to undertake tasks across a broad continuum of conflict. Thus, before the Regiment was sent to Somalia, senior officers in Land Force Command had recognized that the CAR was not structured or equipped with the personnel and materiel it needed to fulfil the concept of employment that had been approved for it.

NOTES

1. John A. Willes, *Out of the Clouds: The History of the 1st Canadian Parachute Battalion*, 50th Anniversary Commemorative Edition (Port Perry, Ontario: Port Perry Printing Ltd., 1995), p. 9; *Ducimus: The Regiments of the Canadian Infantry*, compiled by Maj Michael Mitchell, CD (Director of Infantry, Mobile Command Headquarters), pp. 34-35; and 1st Canadian Parachute Battalion, 50th Anniversary, National Reunion, Toronto, Canada, June 3-7, 1992.
2. *Ducimus: The Regiments of the Canadian Infantry*, p. 35.
3. Testimony of MGen (ret) Pitts, Policy hearings transcripts vol. 4P, p. 615P.
4. LCol P.G. Kenward, "The Way We Were: Canadian Airborne Regiment, 1968-95" (Petawawa, Ontario: 1995).
5. Maj Louis E. Grimshaw, CD, PPCLI, "*Ex Coelis*": *The Badges and Insignia of the Canadian Airborne Forces* (1981), p. 33.
6. "*Ex Coelis*", p. 33.
7. Canadian Forces Organizational Order (CFOO) 3.11, April 25, 1968, p. 3.
8. See text of a statement to the press by the Chief of the Defence Staff, December 7, 1976, on file at Directorate of History, Department of National Defence.
9. *Canadian Airborne Insignia: 1942-Present*, first edition (Arlington, Virginia: C&D Enterprises, 1994), pp. 42-43.
10. Testimony of MGen (ret) Pitts, Policy hearings transcripts volume 4P, p. 618P.
11. One ex-Airborne officer described the Cyprus operation as follows:
Cyprus is an operation that has gone well despite massive problems. The Canadian Airborne Regiment, basically unsuited to the task, cobbled together a force for routine duty on Cyprus, and when war broke out on the island it was reinforced by the remainder of the regiment from Canada. The result was a cohesive, highly trained force that was accustomed to working together. Both before and after the reinforcement they performed well. I would like to think that it was the presence of tough soldiers from my old regiment that saved the day when the Turks were about to take over Nicosia airport, for example. Unfortunately, the truth is that without the support of modern British tanks, artillery, antitank weapons, antiaircraft weapons and modern jet fighters their task would have been impossible... The spirit was definitely there but the big guns had to be borrowed. (Nicholas Stethem, "My War with the Army", *Maclean's Magazine* 88/3 (March 1975), p. 60.)
For other descriptions of the Airborne's operations during the 1970s while it was stationed in Edmonton, see David A. Charters, *Armed Forces and Political Purpose: Airborne Forces and the*

- Canadian Army in the 1980s* (Fredericton, N.B.: Centre for Conflict Studies, University of New Brunswick, 1984), p. 73; and *Ducimus: The Regiments of the Canadian Infantry*, p. 36.
12. David Bercuson, *Significant Incident: Canada's Army, the Airborne, and the Murder in Somalia* (Toronto: McClelland and Stewart, 1996), p. 195.
 13. Charters, *Armed Forces and Political Purpose*, pp. 73-74.
 14. Testimony of LGen (ret) Foster, Transcripts volume 3, pp. 440-441. When asked whether, given the operations the Airborne had been involved in over the years, other regular regiments could have done as well, LGen (ret) Foster responded that, generally speaking, he did not disagree with that observation.
 15. "OP PYTHON Synopsis", Document book 120, tab 3, DND 039091.
 16. Testimony of Col Holmes, Transcripts vol. 4, pp. 643-644.
 17. "First Draft, Concept of Employment of the Canadian Airborne Regiment", May 7, 1992, Document book 7, tab 18; "Second Draft: Concept of Employment of the Canadian Airborne Regiment", May 12, 1992, Document book 7, tab 15; "Concept of Employment of the Canadian Airborne Regiment", November 4, 1992, Document book 29, tab 19.
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PEACEKEEPING: CONCEPTS, EVOLUTION, AND CANADA'S ROLE

Canada's respected role in international peacekeeping has been marred by events arising from the deployment of Canadian Forces (CF) to Somalia.

Many issues arise from our review of the events leading up to the deployment of Canadian Forces in 1992 as part of the United Nations-authorized operation. Some of these concern not only the Canadian and United Nations organizations for the operation in Somalia, but also the changing nature of peacekeeping generally. For example, understanding the impact of the change in mandate -- from what was first understood to be a traditional peacekeeping operation to a peace enforcement operation -- requires an understanding of the history of peacekeeping, its evolution since the Cold War, and the evolution of Canada's role in such operations. Hence, the following background information on peacekeeping is fundamental to an understanding of our findings and recommendations.

In this chapter we provide an overview of Canada's role in UN peacekeeping operations. We review Canada's early involvement before and during the Cold War era and more recent efforts since then. We explain the terminology and concepts involved in peacekeeping and provide an overview of the origins of peacekeeping. We also examine the changing nature of peacekeeping since the Cold War and discuss the international context in which peacekeeping operations have taken place. We describe the range of characteristics of contemporary operations and review the key issues arising from the new order that must be addressed in considering the future of peacekeeping. Finally, we consider, from foreign and defence policy perspectives, Canada's role in United Nations peacekeeping operations.

CONCEPTS AND EVOLUTION

Terminology

Throughout our hearings, it became evident that the terminology used to describe multi-national operations has become confused, largely because an increased number of operations with varied mandates and objectives have been conducted since the end of the Cold War under the general term 'peacekeeping'. Frequently, the limitations involved in a peacekeeping or Chapter VI mission, such as Operation Cordon, are discussed in contrast to a 'peacemaking' or Chapter VII mission, such as Operation Deliverance.¹ Such distinctions are not entirely accurate, and their legal authority is unclear. Clarification of terms and definitions used throughout the report is provided below.

Peacekeeping

The term 'peacekeeping' has been used to describe all types of operations from the first UN peacekeeping mission monitoring the cease-fire among the British, French, Israelis and Egyptians in the Sinai (the first United Nations Emergency Force -- UNEF 1, 1956), to the UN-authorized operation expelling Iraq from Kuwait, to the operations protecting the delivery of humanitarian relief during the civil war in Somalia. When used in this generalized fashion, the term "refers to any international effort involving an operational component to promote the termination of armed conflict or the resolution of longstanding disputes".² The UN continues to use the term 'peacekeeping' to refer generally to such international efforts. In this report, we use the term 'peace support operations' instead, to avoid confusion with traditional 'peacekeeping', which has a more limited meaning.

Peace Support Operations

The term 'peace support operations' covers a broad range of mechanisms for conflict resolution and management, from dialogue, i.e., preventive diplomacy, to intervention, i.e., peace enforcement, and is also the term used in current Canadian Forces doctrine.³

Traditional Peacekeeping

Because it is necessary to distinguish among the types of operations, we use the term 'traditional peacekeeping' to describe only those operations based on the following principles: consent of the parties, impartiality, and use of force only in self-defence.⁴ Traditional peacekeeping, therefore, refers to UN operations under the command and control of the Secretary-General of the United Nations, conducted by military troops provided by member states on a voluntary basis,⁵ with the costs met collectively by member states. Because such missions are authorized and carried out by the UN, troops enjoy the appearance of impartiality, which they require.

Peacemaking

Until recently, the term 'peacemaking' has referred to diplomatic activities to resolve outstanding issues such as demobilization, disarmament, or reparations, once the parties to a conflict have agreed to stop fighting.⁶ However, the term is not mentioned in the UN Charter, nor is it exclusively the purview of the United Nations,⁷ even though it is often said that peacemaking is provided for in the mechanisms included in Chapter VI on the Pacific Settlement of Disputes.⁸

The meaning of peacemaking became further muddled when Secretary-General Boutros Boutros-Ghali used the term in his 1992 report, *An Agenda for Peace*.⁹ The Secretary-General suggested that force (e.g., sanctions, peace enforcement units authorized under article 40)¹⁰ should be used to increase diplomatic leverage in bringing about a peaceful settlement, and he called this activity peacemaking. However, these kinds of operations are more properly called peace enforcement operations.¹¹

Because it is confusing to use peacemaking to describe military operations that use force to bring about peace¹² (as was the case in Operation Deliverance), in this report, we use the term 'peace enforcement'.

Preventive Diplomacy

'Preventive diplomacy' is a more precise term than 'peacemaking' to describe diplomatic or other peaceful activity taken "to prevent disputes from arising between parties, to prevent existing disputes from escalating into armed conflict and to limit the spread of the latter when they occur".¹³ Preventive diplomacy involves the peaceful resolution of disputes before they develop into armed conflict, whereas 'peacemaking' involves the peaceful resolution of disputes persisting after armed conflict stops.

Preventive Deployment

Secretary-General Boutros-Ghali used the term 'preventive deployment' for military actions that are in support of preventive diplomacy to ease tensions before a conflict erupts.¹⁴ Such operations may take place either at the request or with the consent of all parties in internal state crises, or with the consent of both countries or the host country in inter-state disputes. For example, the deployment of forces in Macedonia along the Macedonia-Serbia border in an effort to contain the Balkan conflict was a form of preventive deployment.¹⁵

Enforcement versus Peace Enforcement

Like peacekeeping, the term 'enforcement' has been used to describe a broad range of operations using force authorized under Chapter VII of the UN Charter. It has been applied to missions that impose economic sanctions or arms embargoes (in Haiti and the former Yugoslavia). The aims have been varied, for instance, to create secure conditions for the delivery of humanitarian assistance (Croatia, Somalia); to enforce a no-fly zone or create a buffer zone between belligerent forces (Croatia); to protect civilian populations in safe areas (Bosnia-Herzegovina); and to defend a member state against armed attack by another state (defence of Kuwait after invasion by Iraq).¹⁶

The term 'peace enforcement' is sometimes used interchangeably with the term 'enforcement';¹⁷ however, it is helpful to distinguish between them. In keeping with a growing consensus on terminology, this report uses enforcement to describe operations in which the United Nations authorizes collective action in

response to aggression by one state against another, such as the operation in Korea (1950-53) and the action in Kuwait and Iraq (1990-91).¹⁸

By contrast, peace enforcement refers to the use of force directed at achieving specific objectives (e.g., protecting safe areas, securing delivery of humanitarian aid) designed to support non-military efforts to bring about a peace. Peace enforcement is sometimes referred to as "third generation peacekeeping,"¹⁹ or "muscular peacekeeping".²⁰ These are missions in which

...the use of force is authorized under Chapter VII of the Charter, but the United Nations remains neutral and impartial between the warring parties, without a mandate to stop the aggressor (if one can be identified) or impose a cessation of hostilities.²¹

Consent of the parties is desirable but not necessary. Examples of peace enforcement missions include the Unified Task Force Somalia (UNITAF), the United Nations Operation in Somalia II (UNOSOM II), and the Implementation Force in the former Yugoslavia (IFOR).

Second Generation Peacekeeping

The term 'second generation peacekeeping' also has different meanings. John MacKinlay and Jarat Chopra coined the term to describe their vision of a new approach to peacekeeping.²² They suggest that between traditional peacekeeping and enforcement actions, the military is likely to be involved in second generation tasks such as supervising cease-fires between irregular forces, assisting in the maintenance of law and order, protecting the delivery of humanitarian assistance, and guaranteeing rights of passage.

In all these cases of second generation peacekeeping, the consent of the parties is likely to be elusive and dynamic. Consequently, these missions require a "humane, but more proactive, concept of operations", and forces must be able to choose from a range of military responses as situations escalate and de-escalate. In other words, they must be ready to respond with force when necessary, using only the minimum force necessary to control the situation.²³

Others use the term second generation peacekeeping to describe missions based on the fundamental principles of traditional peacekeeping -- consent, impartiality, and absence of force except in self-defence -- but with greatly expanded tasks.²⁴ Typically, these are multifunctional missions designed to implement comprehensive peace agreements that address the roots of a conflict. The functions of peacekeepers in these operations may include monitoring cease-fires; cantonment and demobilization of troops; destruction of weapons; formation and training of new armed forces; monitoring existing police forces and forming new ones; supervising or even controlling existing administrations; verifying respect for human rights; observing, supervising, or even conducting elections; repatriating refugees; or undertaking information campaigns to explain the peace settlement.²⁵

Second generation peacekeeping -- sometimes referred to as 'wider peacekeeping'²⁶ -- involves tasks beyond those associated with traditional peacekeeping, but is still based on the consent of the parties. Examples include United Nations Transition Assistance Group (UNTAG), UN Angola Verification Mission II (UNAVEM II), UN Observer Mission in El Salvador (ONUSAL), UN Transitional Authority in Cambodia (UNTAC), UN Operation in Mozambique (ONUMOZ), and UN Mission for the Referendum in Western Sahara (MINURSO).

Post-Conflict Peacebuilding

'Post-conflict peacebuilding' is another term that originates in *An Agenda for Peace*. It describes activities undertaken to consolidate peace, address the core sources of conflict, and prevent conflict from recurring. These activities may include disarmament and restoration of order; custody and possible destruction of weapons; repatriating refugees; advisory and training support for security personnel; monitoring elections; advancing efforts to protect human rights; reforming or strengthening governmental institutions; and promoting formal and informal processes of political participation.²⁷

Confusion in terminology reflects the fact that new methods of resolving conflicts are still developing and lessons are still being learned. While there is a more or less accepted understanding of the concepts involved in traditional peacekeeping and peace enforcement, there is little consensus on the meaning and

variety of missions that fall between them. The changing nature of these operations is discussed in more detail later in this chapter.

History and Development of Peacekeeping

The Political and Legal Foundation of United Nations Peacekeeping

The United Nations was created as an instrument for maintaining international peace and security in the post-war world. The first article of Chapter I of the Charter of the United Nations provides that the UN is to

maintain international peace and security and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace...²⁸

While it was not intended to exclude other functions and roles, the security dimension of the role of the UN was clearly paramount.²⁹

The UN Charter establishes a system of collective security designed to resolve disputes between sovereign states, in which the five permanent members of the Security Council (originally, the United Kingdom, France, the Soviet Union, the United States of America, and China)³⁰ were to play a leading and co-operative role. As an initial step in the resolution of disputes, Chapter VI sets out methods for the peaceful settlement of disputes through mechanisms such as negotiation and mediation. If peaceful resolution proves futile, Chapter VII can be invoked. It provides for collective action (in the form of sanctions or action by land, sea, or air forces) to deal with threats to the peace, breaches of the peace, and acts of aggression.

The Charter authorizes the Security Council to take action to maintain or restore international peace and security.³¹ However, the Security Council's ability to use this power is expressly limited by the veto that effectively demands unanimity among the five permanent members (P5)³². This limitation nullified the collective security function of the UN from the onset of the Cold War. The Security Council was limited to collective action only on issues on which the P5 could agree. One notable exception was the UN action in Korea in June 1950, authorized in the absence of the Russian delegation.³³

One result of the UN's impaired security function was the unexpected growth of defensive alliances based on the concept of collective self-defence authorized in the Charter.³⁴ The most significant were the North Atlantic Treaty Organization (NATO) and the Warsaw Pact. Another important outcome was the emergence of peacekeeping as the Security Council's tool for maintaining peace and security.

When the United Nations was founded in 1945, its Charter did not explicitly provide a peacekeeping mandate. Peacekeeping developed from the geopolitical conditions of the Cold War era, and "represented the functional adaptation of the [UN] organization to the particular character of the Cold War international system".³⁵ As the collective security powers (now known as enforcement powers) under Chapter VII of the Charter were neutralized by the veto in the Security Council, military operations for the management of conflict developed along different lines. The new operations, characterized by consensus and non-enforcement, were acceptable to the superpowers. Though peacekeeping operations were primarily a mechanism for small-scale conflict management, they were also essential to arrest the escalation of hostilities between opposing parties supported by either the Soviet Union or the United States.³⁶

The development of UN peacekeeping operations without an explicit legal basis or mandate in the UN Charter led to ambiguity.³⁷ UN Secretary General Dag Hammarskjöld referred to their basis as "the elusive Chapter VI and a half".³⁸ When compelled to identify an article authorizing peacekeeping, commentators focus either on article 36 in Chapter VI or article 40 in Chapter VII.³⁹ Article 36 provides that the Security Council may recommend, at any stage of a dispute that is likely to endanger international peace, "appropriate procedures or methods of adjustment"; while article 40 provides that the Security Council, to prevent aggravation of a situation that constitutes a threat to the peace, breach of the peace or act of aggression, may call upon the parties to comply with provisional measures. With respect to peace enforcement missions, it appears to be generally accepted that article 40 provides the authority.⁴⁰

Underlying Principles of Traditional Peacekeeping

Consent of Parties

The principle of all-party consent, first established during UNEF 1, is crucial to traditional peacekeeping. Respect for state sovereignty, explicitly stated in the UN Charter, requires the UN to obtain prior approval of the parties involved in a conflict before deploying a peacekeeping force and during its employment. In May 1967, Egypt demanded the withdrawal of UNEF 1, and the Secretary-General complied on the grounds that it could not continue without Egypt's consent.⁴¹ Consent remains a cornerstone for all traditional peacekeeping operations.

Non-Use of Force

Traditional peacekeeping missions limit the use of force to self-defence.⁴² Peacekeepers are ordinarily only lightly armed. This principle ensures that UN peacekeepers cannot be perceived as a coercive force, which might diminish their ability to mediate and facilitate. This principle of traditional peacekeeping was temporarily abrogated in the United Nations Operation in the Congo (ONUC) when, in 1961, a year after the commencement of the operation, the Security Council amended the mandate to authorize the use of force to restore order and to apprehend and deport mercenaries and all non-UN foreign military and paramilitary personnel.⁴³

Impartiality

UN forces are meant to be impartial. No party to the dispute should be seen as favoured by the UN force, or identified as an aggressor. Nor should any part of the UN force be seen to have any stake or interest in the outcome of the dispute. The rationale for this principle is that impartial troops are more likely to be accepted by the parties involved in the conflict.

Impartiality is part of the rationale for having the United Nations as the sponsoring institution, as opposed to a member state. It implies drawing troops only from states that do not have an interest in the dispute, which would exclude neighbouring states or superpowers.⁴⁴ Most traditional peacekeeping operations have generally used troops from non-aligned countries, with the exception of the Congo operation where troops were supplied by neighbouring countries, in that case to give credibility to the force.⁴⁵

Consent, non-use of force, and impartiality are interrelated and mutually reinforcing principles. All three are usually present in traditional peacekeeping operations, in conjunction with three less critical features. First, traditional operations are usually established only after the parties have agreed to a cease-fire or truce.⁴⁶ Such operations do not create the conditions for their own success, i.e., the peace agreement must be in place before the operation begins. Peacekeeping operations are thus largely reactive. Second, peacekeepers are primarily military personnel,⁴⁷ disciplined and trained as combat-ready soldiers first. Third, UN forces must be dispatched by the appropriate authorizing agency, usually the Security Council, whose mission mandate sets the legal foundation for the mission.

Strict adherence to the principles of traditional peacekeeping is paramount. While they do not necessarily determine mission success, missions are more likely to succeed if all conditions are present.⁴⁸

Traditional Peacekeeping: The Early Years

The First Operations: Observer Missions

The first peacekeeping forces were deployed in 1946, to observe and report on conflict in Greece, and in 1947, to supervise a truce and help Indonesia achieve independence from the Netherlands. However, the first official UN observer mission was the United Nations Truce Supervision Organization (UNTSO) to supervise and observe the truce in Palestine following the 1948 Arab-Israeli war. This mission, which continues in operation today, serves as the archetype for UN observer forces.⁴⁹ In 1949, the United Nations Military Observer Group in India and Pakistan (UNMOGIP) was established to supervise the cease-fires in the conflict over Kashmir.

Peacekeeping: UNEF 1

In 1956, UNTSO could not meet the challenges of the Suez crisis, and there was no consensus in the Security Council for a collective security action.⁵⁰ The Hon. Lester Pearson, at the time Secretary of State for External Affairs, proposed "that the UN send an international force to the area, position itself between the warring parties and bring an end to the hostilities".⁵¹ The first United Nations Emergency Force (UNEF 1) was deployed to the Middle East under the command of a Canadian, LGen E.L.M. Burns.⁵² Pearson, as the architect of the first UN peacekeeping force, was awarded the Nobel Prize for Peace in 1957.

UNEF 1 was the first UN operation to use military personnel to create a buffer zone between belligerents and to supervise the withdrawal of forces. Before UNEF 1, observation forces had been limited to observing and reporting on cease-fires after an agreement had been reached.⁵³ UNEF 1 also established the precedent for peacekeeping operations authorized by the General Assembly.⁵⁴ However, the Security Council wrested the peacekeeping function from the General Assembly.⁵⁵ Most significant to note, UNEF 1 established the basic principles of traditional peacekeeping.

Traditional Peacekeeping: The Cold War Era

Observer Missions⁵⁶

From 1947 to 1986, the United Nations undertook 15 operations of varying scope and duration. Canada participated in all of them.⁵⁷ Most were observer missions involving unarmed military personnel who would observe and report on a cease-fire but, unlike peacekeeping forces, would not interpose themselves between antagonists.⁵⁸ Although they would patrol and resolve cease-fire disputes, they did not have the mandate to perform weapons checks or to guard borders.

Peacekeeping Forces

Peacekeeping forces primarily act as a buffer between the belligerents. They detect violations of cease-fires, supervise troop withdrawals, help maintain law and order, and administer quasi-governmental functions, usually within the area where the force is deployed. Peacekeeping forces may also perform non-controversial humanitarian functions that enhance their impartiality -- such as helping to fix water and electricity problems or providing transportation; these are not part of their mandate, but are consistent with it.⁵⁹

Traditional Peacekeeping: A Review

After UNEF 1, traditional peacekeeping developed under uncompromising and limiting conditions. First, it was generally limited to areas that were beyond superpower zones of influence such as the Middle East, Cyprus, Kashmir, and the Congo. Second, it was limited by the mandates typically given. Often, a peacekeeping force was placed between two hostile states primarily to "freeze the situation" and avoid destabilizing regional peace. The United Nations Forces in Cyprus (UNFICYP), established in 1964, in the Golan Heights (UNDOF), established in 1974, and in Lebanon (UNIFIL), established in 1978, have all had the effect of impeding movement toward peaceful settlement of the underlying conflict. Nonetheless, all three areas might have seen more fighting had the forces not been there.⁶⁰

After UNIFIL and the UN Transition Assistance Group (in Namibia) (UNTAG) in 1978,⁶¹ there were no new peacekeeping missions until the end of the Cold War, when the UN faced unprecedented demands for help in de-escalating long-existing conflicts in areas where it had previously been unable to become involved.

The Changing Nature of Peacekeeping

The International Context

There have been almost twice as many United Nations missions established since 1988 as there were in the previous 40 years.⁶² The most important catalyst leading to this dramatic increase was the end of the Cold War and a new-found resolve in the Security Council to play a more positive, proactive role in resolving

international disputes. Toward the end of the Cold War, the former Soviet Union softened its posture on peacekeeping and began to view it as a potentially useful instrument for solving regional conflicts. At the same time, the United States began to show a greater willingness to use the United Nations for conflict management.⁶³ This broke the deadlock in the Security Council, which until then had prevented collective action in spheres controlled by the superpowers.

The Gulf War was also an important event in the development of peacekeeping after the end of the Cold War. This UN-authorized action to force Iraq out of Kuwait after its invasion of that country increased expectations, principally among Western powers, about the role the Security Council could play in international security.⁶⁴ At the same time, the elevation of human rights as an issue of global concern gave the Security Council a legitimate interest in intervening in countries where there were gross violations of human rights.⁶⁵

These factors led the Security Council to establish successively more ambitious operations, on occasion even in conflict areas where peace had not yet been reached and where the consent of the parties to the UN presence was tenuous. As consent declined, greater force was authorized to accomplish mission goals. The Somalia operations (in particular UNOSOM II) and operations in the former Yugoslavia are examples of more ambitious operations undertaken by the UN.

Characteristics of Non-Traditional Peacekeeping

Internal Conflicts

Whereas traditional peacekeeping forces were usually deployed to monitor a cease-fire line between states, the vast majority of missions since 1988, including the one in Somalia, were established to deal with internal conflicts.⁶⁶ These kinds of missions typically pose a number of challenges not encountered in traditional peacekeeping, including the presence of irregular forces, the absence of front lines or cease-fire lines, the dynamic nature of conflict, major impact on civilians, and the collapse of state institutions.

Irregular Forces

Internal conflicts may involve not only regular armies but militias and armed civilians. Unlike regular armies, which are usually trained, disciplined, and respectful of a chain of command, irregular forces typically receive little training, are poorly disciplined, and do not necessarily respect what may be an ill-defined chain of command. Perhaps most important, irregular forces are not usually constrained in their actions by the need to uphold an international reputation⁶⁷ or to conform to international conventions. This form of accountability, which might otherwise prevent a regular army from attacking UN troops, is not always present for irregular forces. Their actions are thus less predictable and therefore potentially dangerous. Political control is more difficult to define.

No Clear Front Lines or Cease-Fire Lines

In traditional peacekeeping, forces are usually deployed as interposition forces along a clearly demarcated cease-fire line between two conflicting parties (usually states). They maintain the peace agreed to by the parties by keeping them apart and preventing small incidents from escalating into wide-scale conflict. But internal conflicts are different. They may involve wars without clearly defined front lines; combatants and civilians on different sides may be intermingled; and forces may be asked to maintain a peace (if agreed upon) across a whole area and not only along a recognized line. These factors make such conflicts difficult to monitor and control and, at the same time, increase the risk to the intervening forces.

Dynamic Nature of Conflict

Internal conflicts are much more complex and dynamic than conflict between states.⁶⁸ There are often many parties involved, and their standing or influence in a conflict may change over time. It may be difficult to identify the parties whose consent must be gained for a UN presence in the country and for the UN to gain the confidence of all the parties. The UN must then be concerned with the quality of the consent necessary to allow the operation to go forward. Even if consent is forthcoming from all the leaders of the various parties, those leaders may not be able to guarantee co-operation from irregular forces that support them. As

in inter-state conflicts, parties may consent to a UN presence when it is expedient and withdraw consent when it is not. However, in internal conflicts the lack of political control may allow these decisions to be made with reference only to the short-term advantages to be gained in the internal struggle. This means that UN troops face a volatile situation.

Greater Impact on Civilians

In internal conflicts, civilians are often the principal victims and the main targets. The UN has reported that the number of refugees doubled between 1987 and 1994, from 13 million to 26 million. The number of internally displaced people has grown even more.⁶⁹ Humanitarian emergencies are therefore common. However, humanitarian assistance offered to alleviate these emergencies is not usually perceived as neutral assistance. Rather, it is seen and often used as an instrument of war. Without the consent of the majority of the parties, UN troops guarding relief supplies are likely to be viewed as assisting in the war effort of one or more of the parties.

Collapse of State Institutions

The collapse of state institutions, including the police and the judiciary, often accompanies internal conflict. With the breakdown of law and order, UN missions are often called upon to promote national reconciliation and the re-establishment of effective peace building (referred to in this chapter as post-conflict peace building).⁷⁰ Carrying out these tasks in the context of deep societal divisions is very difficult and often requires involvement in political issues.

Mission Composition and Tasks

Traditional peacekeeping operations were composed largely of military personnel carrying out military tasks to deter the resumption of hostilities between parties that had agreed to stop fighting.⁷¹ As the mandates of peacekeeping missions have expanded to include such tasks as supervising elections, rebuilding national institutions (e.g., police forces) and delivering humanitarian assistance, there has been a corresponding increase in the civilian and police components of peacekeeping missions. For example, UNOSOM II was made up of 28,000 military personnel and 2,800 civilian staff.⁷²

National representation among personnel on missions has also changed. During the Cold War period, the Soviet Union and the United States did not participate in peacekeeping missions because, among other reasons, they would not have been viewed as neutral. Rather, the so-called middle powers were the typical contributors (e.g., Scandinavian countries, Canada, Ireland). However, since 1988 a total of 76 countries, including the United States and Russia, have contributed to UN missions.⁷³

Authorization and Command

Another distinguishing feature of non-traditional peacekeeping missions, particularly peace enforcement operations, is that command and control are not always exercised by the United Nations. While the Security Council may authorize a mission -- e.g., the UN Mission in Haiti (UNMIH), and the Unified Task Force Somalia -- command and control have been typically exercised by a member state. The UN Operation in the Congo and UNOSOM II are among the only missions involving the use of force authorized under Chapter VII of the Charter that were organized, conducted, and directed under the supervision of the Secretary-General.

It is interesting to note that when the decision was made to authorize a peace enforcement mission in Somalia commanded by the United States, the Secretary-General conceded that the Secretariat did not "have the capability to command and control an operation of the size and urgency required by the present crisis in Somalia."⁷⁴ Yet, six months later, the UN found itself in command of UNOSOM II.

Issues Arising from the Changing Nature of Peacekeeping

Use of Force in More Complex Missions

There is ongoing debate over the use of force in non-traditional peacekeeping missions, and different lessons have been taken from the experience of the past nine years. There are those who, in hindsight, see

the development of two different branches of peacekeeping since the end of the Cold War: missions that implement a comprehensive peace agreement, and peace enforcement missions. They view the former as substantially based on the fundamental principles of peacekeeping -- consent of the parties, impartiality, and non-use of force except in self-defence -- but suggest that the variety and complexity of the tasks make these missions fundamentally different from traditional peacekeeping. They are careful to emphasize the differences (some would argue incompatibility) between traditional peacekeeping missions and peace enforcement missions.⁷⁵ As the Secretary-General wrote in the supplement to *An Agenda for Peace*,

The logic of peace-keeping flows from political and military premises that are quite distinct from those of enforcement; and the dynamics of the latter are incompatible with the political process that peace-keeping is intended to facilitate.... Peace-keeping and the use of force (other than in self-defence) should be seen as alternative techniques and not as adjacent points on a continuum, permitting easy transition from one to the other.⁷⁶

The U.S. Army has agreed with this view and adds, "Since [peacekeeping] and [peace enforcement] are different, any change must require review of the factors of mission, enemy, troops, terrain, and time available, and force tailoring." It advises against using forces for both peacekeeping and peace enforcement within the same operation area because, "the impartiality and consent divides have been crossed during the enforcement operation".⁷⁷

From this perspective, it is not possible to use force without sacrificing some of the fundamental principles of traditional peacekeeping.⁷⁸ Force will be required only where full consent to the UN presence and mandate is not obtained. If full consent does not exist, then it is unlikely that the UN troops will be perceived as impartial and interested in or working toward resolving a conflict. Once the force is no longer viewed as impartial, the effectiveness of UN troops in a more complex conflict or even in traditional peacekeeping is likely to be minimal. Moreover, if it becomes common for mandates to change in mid-stream from those based on traditional peacekeeping principles to peace enforcement, host countries may become reluctant to accept forces, and contributor states may become reluctant to send them. As well, it is a concern that those trained for peace enforcement situations may not find it easy to switch to peacekeeping duties and exercise the required restraint.⁷⁹

On the other side of the debate are those who argue that it is inaccurate to create this unbridgeable divide between missions implementing a comprehensive agreement and missions enforcing peace. Rather, they suggest that the tasks in these missions should be viewed as a continuum. Given the dynamic and relatively unpredictable nature of internal conflict, forces must have the tools available to deal with the myriad situations that may arise in any complex mission, be it the capacity to implement a comprehensive agreement or the capacity to enforce the peace. Although the UN may begin a mission to implement a peace agreement with consent of the parties, given the nature of internal conflict, that consent may not be lasting. The forces must therefore have a range of tools from which they can choose appropriately (always using the least amount of force necessary) to deal with a situation where consent is not forthcoming from one of the parties.

The stark difference in these views is apparent, and Canadian political leaders must deal with this issue. Is it possible, as the Secretary-General has suggested, to use force, maintain the consent of the parties, and remain impartial? Is it possible for a force to make a successful transition from a mandate based on traditional peacekeeping principles to one of peace enforcement? Does the training of individual soldiers allow for this transition? What are the necessary mechanisms for this change? Are we willing to decide that there are some conflicts where it may be preferable simply to let the parties fight until they tire if their consent cannot be obtained, even if that means hundreds of thousands of people may die in the interim? Is that a cost worth bearing in the long term? These are important questions that must be addressed to deal effectively with the changing nature of peacekeeping.

Command and Control of Operations

A second issue of increasing importance in the changing nature of peacekeeping is the command and control of operations. As noted earlier, despite the fact that command and control of UN operations reside with the Secretary-General on behalf of the Security Council, the Secretary-General has nonetheless admitted that for missions involving the use of force, the UN does not have the capacity to exercise

adequate command and control. To date, the United States has typically stepped in to take command of a peace enforcement or enforcement operation authorized by the Security Council.⁸⁰

Canadian policy makers must consider Canada's policy toward UN operations in these circumstances. Will this practice jeopardize the impartiality of a particular peace enforcement mission and, in the longer term, the impartiality and credibility of UN security operations in general? If this is found to be so, is there anything that can be done to minimize any negative aspects of U.S. command? Is it possible to enhance the UN's command capacity and if so, what role can Canada play to bring this about?

Humanitarian Intervention

Finally, of particular relevance to our Inquiry has been the issue of humanitarian intervention. As noted earlier, this has been one of the growing areas of UN involvement. Even where humanitarian intervention has not been principal goal of the mission as it was in Somalia, it often forms a part of new, more complex mission mandates (e.g., missions in Rwanda, Haiti, and former Yugoslavia). However, international involvement in these crises is sporadic and, some argue, has been determined either by Western interests or what some have referred to as the "CNN factor", that is, whatever crisis attracts media attention and therefore engages the concern of the Western world.⁸¹

Closely related to the issues raised in humanitarian intervention is the issue of co-ordination among all the different people and groups -- military, civilians, police, non-governmental organizations (NGOs), and international non-governmental organizations such as the International Committee of the Red Cross (ICRC) -- that are now often involved in more complex missions. Although the military historically has had the greatest involvement in UN operations, others, particularly development and relief NGOs, have specialized expertise built on years of experience working the grass-roots level in strengthening communities. As well, the ICRC has developed specialized expertise in humanitarian assistance. All the groups involved must work closely together to understand each others' particular expertise and co-ordinate their activities so that assistance is truly effective.

Peacekeeping and Canada's Foreign and Defence Policy

Canada's Role in United Nations Peacekeeping

Peacekeeping is often held up as an important achievement of Canadian foreign and defence policy.⁸² In 1993, the Senate Standing Committee on Foreign Affairs reported that it was the "sole military activity that Canadians fully support."⁸³ Yet in the early UN observer missions, Canada committed minimal military personnel, because peacekeeping was viewed as a drain on Canada's scarce defence resources for conflicts where Canada had little interest.⁸⁴ After Lester Pearson received the Nobel Peace Prize in 1957, peacekeeping began receiving enthusiastic public and political support, although it remained a low priority within the Department of National Defence.⁸⁵ All defence white papers and intervening defence policy statements rank the maintenance of a combat force capable of protecting Canada's sovereignty as the primary function of the Canadian Forces,⁸⁶ with peacekeeping as an ancillary function.

Peacekeeping and Canada's Security Policy

In *Canada and the World*, the 1995 articulation of Canada's foreign policy, promoting global peace for the protection of Canada's security remained a key element of Canada's foreign policy.⁸⁷ This commitment to global peace and security has been demonstrated by Canada's participation in UN peacekeeping missions since their inception. (See Annex A, Peacekeeping Operations over the Years and Canada's Contribution.)

Canada's Interest in Peacekeeping During and After the Cold War

Strategic Interest

During the Cold War, Canada's paramount strategic concern was that hostilities could escalate to a superpower confrontation which would threaten national security through direct or collateral attack.⁸⁸ In

addition to involvement in collective defence arrangements for Europe (NATO) and North America (North American Air Defence, NORAD), Canada's participation in peacekeeping was justified by the view that any threat to global peace and security was considered a threat to national security.

The end of the Cold War eliminated concern over superpower confrontation and the threat of war as a rationale for Canada's involvement in peacekeeping. However, even without the fear of superpower confrontation, concern about regional conflicts as threats to international peace and security ensures that peacekeeping is maintained as a national objective.

Foreign Policy Interest

Canada's longstanding involvement in peacekeeping has enhanced our international profile as a middle power in international affairs and is viewed by some as the reason for Canada's stature and influence in the UN. Many believe that as a prime contributor to UN peacekeeping, Canada can participate convincingly in decisions about international peace and security.⁸⁹

Canadian foreign policy is committed to multilateralism and the active role of international institutions. Peacekeeping supports this aim. Canada, as a middle power, has always favoured a co-operative collective approach to security and has supported the UN as an investment in security. After the Cold War, when the UN was considered the most appropriate institution to deal with the increase in regional conflicts, maintaining its effectiveness became even more important.

Canada's foreign policy with respect to peacekeeping has been consistent since Canadians embraced peacekeeping in the late 1950s.⁹⁰ Peacekeeping has become a characteristic Canadian *métier*,⁹¹ a function distinguishing us from Americans and reinforcing our sovereignty and independence. Americans were seen to fight wars, but Canadians pictured themselves as working for peace.⁹²

Canada's Defence Policy

Canadian foreign policy goals should be supported by a credible defence policy.⁹³ However, despite the popular perception that Canada is a 'peacekeeping' nation, senior officers of the CF have been reluctant to embrace peacekeeping as a primary mission of the CF⁹⁴. Peacekeeping has usually been viewed as "a lower military priority, what the armed forces used to call a 'derived' or secondary military task."⁹⁵ The first priority for the armed forces remains the retention and advancement of the CF combat capability for the protection of Canadians and their interests and values abroad, despite the fact that in the post-war period, combat responsibilities have greatly diminished.

However, a changed international situation was acknowledged in the government's defence policy statement of 1992, where the leaders of the CF were warned to "expect the demand for peacekeeping missions to grow".⁹⁶ These changes were emphasized in the government's 1994 White Paper on Defence.⁹⁷

Defence Issues in the Cold War Era

The CF was shaped by the Cold War. Canadian Forces members were equipped and trained to undertake combat commitments in the event of an East-West confrontation, and peacekeeping missions were organized and conducted within this paradigm.⁹⁸ Since peacekeeping had no legal mandate in the UN Charter, they were initially uncharted territory, and during its early years Canadian defence policy was silent on peacekeeping. Canada's policy lagged behind its participation in peacekeeping.⁹⁹

The first policy on peacekeeping appeared in the 1964 Defence White Paper, which ranked it a secondary priority, behind territorial defence and NATO participation. The paper expounded on the growth of peacekeeping and Canada's anticipated involvement in furtherance of its collective security responsibilities. But the 1971 Defence White Paper expressed concern and scepticism about the prospects for peacekeeping, perhaps because UNEF 1 had been expelled from Egypt in 1967.¹⁰⁰ However, Canadian participation in peacekeeping missions continued.

The 1987 Defence White Paper connected peacekeeping, regional stability, and Canada's national interest.¹⁰¹ This defence policy ranked peacekeeping fourth in priority, after maintenance of strategic deterrence, conventional defence, and protection of Canadian sovereignty. It also was the first official

document to articulate criteria for deciding whether to participate in a peacekeeping mission.¹⁰² These criteria are discussed in greater detail later (see in particular Volume 3).

Defence Policies in the Post-Cold War Era

In the years between 1987 and 1994, when the last white paper on defence was released, the government issued frequent defence statements. The most significant one, issued in 1992, articulated Canada's priorities as the defence of the nation's sovereignty and ongoing participation in collective security arrangements. Participation in multilateral peacekeeping operations to maintain international peace and security ranked third.

These priorities endorsed a general purpose combat force. The CF has always maintained that combat capability is essential to undertake peacekeeping successfully, even traditional peacekeeping. While combat capability is required, it has become increasingly apparent from the nature of the new generation of peacekeeping operations¹⁰³ that single-minded concentration on combat capability can detract from the development of appropriate training and operational procedures for peacekeeping.

The December 1994 White Paper still essentially endorsed a general purpose combat force, with peacekeeping as one of its functions.¹⁰⁴ In this respect, the new policy differed little from the previous government's 1992 defence policy. The 1994 White Paper affirms the traditional roles of the CF -- protecting Canada, co-operating with the United States in the defence of North America, and participating in peacekeeping and other multilateral operations elsewhere in the world. While the defence priorities remained intact, the CF faced comprehensive budget cuts.

Peacekeeping received considerable attention in the 1994 Defence White Paper. The criteria for evaluating a prospective operation were again spelled out, with changes reflecting the nature of peacekeeping after the Cold War. The paper offered criteria for missions involving military and civilian resources, acknowledging that a focus of authority and clear division of responsibility were required. The new criteria demanded a defined concept of operations, an effective command and control structure, and clear rules of engagement.¹⁰⁵

Development of Peacekeeping Criteria

Canada's reason for involvement in particular peacekeeping missions is not always obvious. After committing the CF to such missions, leaders often discover that the circumstances and conditions encountered at the outset of the mission change, sometimes dramatically. Closing down peacekeeping operations, or changing UN mandates, is usually difficult. Moreover, commanding officers and staff officers are often asked to organize the armed forces quickly for operations announced as "one-time events" that then become extended missions. Such was the case with the CF commitment to Cyprus, which was renewed repeatedly over more than 25 years, six months at a time.

For these reasons, and because operations under UN mandates are often ad hoc affairs, Canadian politicians, military officers, and foreign affairs officials have tried repeatedly to discipline Canada's response to requests from the international community for Canadian units. They do so by applying criteria early in the planning process. In fact, by 1987 these criteria had become more than guidelines; they were the policy of the government. This policy evolved from experience and different circumstances, but the concept of using national criteria as guides to political decision making is well established in Canada.

Criteria were first enunciated by the Hon. Mitchell Sharp in 1973¹⁰⁶ but there were no official criteria until the 1987 Defence White Paper. These criteria reflected the principles of traditional peacekeeping which, in 1987, was the only type of UN operation in which Canada took part.¹⁰⁷ These involved asking whether

- there is an enforceable mandate;
- the principal antagonists agree to a cease-fire and to Canada's participation;
- the arrangements are likely to serve the cause of peace and lead to a political settlement in the long term;
- the size and international composition are appropriate to the mandate;

- Canadian participation will not jeopardize other commitments;
- there is a single identifiable authority competent to support the operation and influence the disputants; and
- participation is adequately and equitably funded and logistically supported.¹⁰⁸

Reinforced by defence statements in 1991 and 1992, these criteria were the policy of the Government during the CF mission to Somalia.

In the Defence White Paper of 1994, the criteria were once again spelled out, but with notable additions reflecting the changing nature of peacekeeping in the post-Cold War era. The additional factors included

- that there is an effective process of consultation with mission partners;
- in missions that involve both military and civilian resources, that there is a recognized focus of authority, a clear and efficient division of responsibilities, and agreed operating procedures;
- with the exception of enforcement actions and operations to defend NATO member states, in missions that involve Canadian personnel, that Canada's participation is accepted by all parties to the conflict; and
- that there is a defined concept of operations, an effective command and control structure, and clear rules of engagement.

The 1994 Defence White Paper no longer called the factors 'criteria' or 'guidelines', but referred to them as 'principles' to be reflected in the design of all missions, as opposed to criteria upon which the government's decision would be based.¹⁰⁹ The significance of this change in characterization is not readily apparent. The additional factors are, however, a clear reflection of the changing nature of peacekeeping and, if considered, are a significant component in the decision-making process.

It is unclear whether these criteria have been consistently employed in assessing peacekeeping operations in which Canada has been asked to participate. Testimony before this Inquiry suggests that the consideration of these factors is discretionary at the level of officials, and some commentary supports that view.¹¹⁰ The Senate Standing Committee on Foreign Affairs, in its 1993 report on the new generation of peacekeeping, suggested that a key factor in the decision-making process was Canada's record and reputation in peacekeeping.¹¹¹ This implies that Canada may have participated at the time simply to maintain its record of participation in almost every mission. The Chief Review Services evaluation (MR 1/90), released in April 1992, just before the Somalia commitment, noted that there was no clear division of responsibility between the departments of National Defence and External Affairs in applying the criteria¹¹² and criticized the lack of explicit policy direction and procedures with respect to this issue.

This issue surfaced more recently in the 1996 Auditor General's report, which was somewhat critical of the Department of National Defence for lacking information relative to the decision to participate and the application of the criteria.¹¹³ In preliminary documentation leading up to the final report of the Auditor General, officials at ADM (Policy and Communications) took issue with the criticism that there was no written record of the staff analyses of the criteria. They maintained that the "criteria" have never been used as anything "more than guidelines"¹¹⁴ that are not applied strictly. Instead, the officials noted that the Department of National Defence assesses proposed missions in light of government policy toward the UN. In justifying the process, it was noted that

A proposal is addressed through numerous informal and formal meetings during which the Department will review and debate the guidelines contained in the WP [white Paper]. Depending on the mission their relative weight in the departmental decision-making process will likely vary. This is one of the reasons why we have not instituted a set of strict criteria for the review of our peacekeeping contributions.¹¹⁵

These comments indicate uncertainty in how defence officials apply defence policy and the criteria. However, in both the 1987 Defence White Paper and the 1992 defence statement, the policy states that the government decision *will* be based on the criteria. The 1994 Defence White Paper is similarly direct, noting

that the missions should reflect key principles. Despite these statements, officials at the Department of National Defence appear to consider the policy discretionary.

The new era of peacekeeping calls for a clear and direct policy on applying the criteria. Although the approach of the Department of National Defence may have advantages in terms of flexibility and response time, it lacks the clear accountability necessary to cope with the risks involved in new situations.

Image: [Peacekeeping Operations over the Years and Canada's Contribution \(page 203\)](#)

Image: [Peacekeeping Operations over the Years and Canada's Contribution \(page 204\)](#)

Image: [Peacekeeping Operations over the Years and Canada's Contribution \(page 205\)](#)

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Image: [Peacekeeping Operations over the Years and Canada's Contribution \(page 208\)](#)

Image: [Peacekeeping Operations over the Years and Canada's Contribution \(page 209\)](#)

NOTES

1. Chapter VI and Chapter VII, mentioned throughout this chapter and elsewhere in the report, refer to specific sections of the United Nations Charter under which peace-related operations can be conducted.
2. Paul F. Diehl, *International Peacekeeping* (Baltimore: The Johns Hopkins University Press, 1993), p. 4.
3. Current doctrine applying this generic term includes B-GG-005-004/AF-000, Joint Doctrine for Canadian Forces Joint and Combined Operations, 1995-04-06; B-GL-315-002/FT-001, *Intelligence*, vol. 2, Combat Intelligence, 1996-09-30; and B-GL-301-003/Fp. 001, *Operations Land and Tactical Air*, vol. 3, Peacekeeping Operations, 1995-09-15.
4. These principles are described later in this chapter. They are taken from Marrack Goulding, "The Evolution of Peacekeeping" *International Affairs* 69/3 (1993), pp. 451-464. Marrack Goulding was under secretary-general for peacekeeping at the United Nations.
5. Troops are provided on a voluntary basis because the binding agreements to commit them were never signed between the member states and the United Nations, although they were provided for in article 43 of the Charter.
6. United Nations, *Blue Helmets: A Review of United Nations Peace-Keeping*, second edition (New York: United Nations, 1990), p. 9. See also William J. Durch, ed., *The Evolution of UN Peacekeeping* (New York: St. Martin's Press, 1993), p. 4; Gen Bernard Goetze, "The Future of Peacekeeping: A Military View", in *Peacekeeping, Peacemaking or War: International Security Enforcement*, ed. Alex Morrison (Toronto: Canadian Institute of Strategic Studies, 1991), p. 30; and Alan James, "The History of Peacekeeping: An Analytical Perspective", *Canadian Defence Quarterly* 10 (September 1993), footnote 8.
7. As pointed out by the Senate of Canada, peacemaking can be a product of bilateral efforts. See *Meeting New Challenges: Canada's Response to a New Generation of Peacekeeping*, Report of the Standing Committee on Foreign Affairs (February 1993), p. 45.
8. Chapter VI provides for progressively interventionist action to resolve a dispute by peaceful means. Article 33 calls on the parties to any dispute that is likely to endanger international peace and security to "seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." Alternatively, the Security Council itself may call on the parties to resolve the dispute by these means (article 33). Furthermore, the Security Council may "recommend appropriate procedures or methods of adjustment" (article 36), and if the Security Council deems that the continuance of the dispute is likely to endanger international peace and security, it "shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate" (article 37).

9. "Agenda for Peace", Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, A/47/277-S/24111, 17 June 1992, in Boutros Boutros-Ghali, *An Agenda for Peace 1995*, second edition (New York: United Nations 1995), p. 45.
10. Article 40 provides that "in order to prevent an aggravation of the situation, the Security Council may call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable...".
11. See also Nigel White, *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security* (Manchester: Manchester University Press, 1993), p. 208.
12. White, *Keeping the Peace*, p. 210.
13. Boutros-Ghali, *An Agenda for Peace 1995*, p. 45.
14. Boutros-Ghali, *An Agenda for Peace 1995*, p. 49.
15. Senate, Standing Committee on Foreign Affairs, *Meeting New Challenges*, p. 46.
16. Department of National Defence, 1994 Defence White Paper, p. 31. In this document, all these missions are described under the heading "Enforcing the Will of the International Community and Defending Allies".
17. For example, see "Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations", in Boutros-Ghali, *An Agenda for Peace 1995*, p. 28.
18. These are the kinds of operations for which Chapter VII was devised. It is interesting to note that the U.S. Army field manual suggests that 'peace enforcement' is a misnomer for operations such as the Gulf War. The manual goes on to explain that "From a doctrinal view, these two operations are clearly wars." U.S. Department of the Army, Headquarters, Peace Operations, FM 100-23, December 1994, p. 2.
19. Michael W. Doyle, "Introduction", in *Peacemaking and Peacekeeping for the Next Century*, Report of the 25th Vienna Seminar, Co-Sponsored by the Government of Austria and the International Peace Academy, 1995, p. 4. The term 'third generation' is part of the lexicon of the UN Secretary-General.
20. Alan James, "Peacekeeping in the Post-Cold War Era", *International Journal* (Spring 1995), p. 250.
21. "Supplement to An Agenda for Peace", in Boutros-Ghali *An Agenda for Peace 1995*, p. 10.
22. John MacKinlay and Jarat Chopra, "Second Generation Multinational Operations", *Washington Quarterly* 15/3 (Summer 1992), p. 113.
23. MacKinlay and Chopra, "Second Generation Multinational Operations", p. 113. The authors suggest (p. 118) that the model for action exists in the doctrine developed by the British Commonwealth to 'keep the peace' in the colonies.
24. See, for example, Doyle, "Introduction", in *Peacemaking and Peacekeeping for the Next Century*, p. 4.
25. Doyle, "Introduction", in *Peacemaking and Peacekeeping for the Next Century*, p. 4. See also Goulding, "The Evolution of Peacekeeping", p. 457.
26. [British] Directorate of Land Warfare, *Wider Peacekeeping*, field manual. See also James, "Peacekeeping in the Post-Cold War Era", p. 247.
27. "Agenda for Peace", in Boutros-Ghali, *An Agenda for Peace 1995*, p. 61.
28. *Charter of the United Nations and Statute of the International Court of Justice*, article 1.
29. For an overview of the development of the UN and the implications for Canada of the changing nature of peacekeeping, see Allen G. Sens, *Somalia and the Changing Nature of Peacekeeping: The Implications for Canada*, study prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (Ottawa: Public Works and Government Services, 1997).

30. Russia replaced the U.S.S.R. as a permanent member of the Security Council, although the Charter has not been amended to reflect that change.
31. UN Charter, article 42.
32. The Charter's veto provision is arguably its most significant provision. Nigel White notes that without the power of veto, the organization would not have been born or, if created, would not have been able to take enforcement action against the superpowers without devastating effects. See White, *Keeping the Peace*, p. 5.
33. In response to the North Korean invasion of South Korea, the Security Council condemned the invasion, called on member states to assist South Korea, and established a unified command to assist South Korea.
34. UN Charter, Chapter VIII, article 52 and following.
35. Mats R. Berdal, "Whither UN Peacekeeping?" Adelphi Paper no. 281 (London: International Institute for Strategic Studies, 1993), p. 6.
36. Henry Wiseman, "United Nations Peacekeeping and Canadian Policy: A Reassessment", *Canadian Foreign Policy* 1/3 (Fall 1993), p. 138. See also Nigel White, "UN Peacekeeping -- Development or Destruction?" *International Relations* (1994), p. 135. In describing the Security Council's desire to retain control over the peacekeeping function, White attributes the basis for that move to the Security Council's view of peacekeeping as a useful tool for stabilizing areas of the world where neither superpower was prepared to gain supremacy by force of arms.
37. White, *Keeping the Peace*. For a full discussion of the legal parameters of peacekeeping, see p. 199 and following.
38. John F. Hillen III, "UN Collective Security: Chapter Six and a Half", *Parameters* (Spring 1994), p. 28. Also in Thomas G. Weiss, "UN Military Operations after the Cold War: Some Conceptual Problems", *Canadian Defence Quarterly* (September 1993), p. 5.
39. Philippe Kirsch, "The Legal Basis of Peacekeeping", *Canadian Defence Quarterly* (September 1993), pp. 18-19. See also White, *Keeping the Peace*, p. 201, who notes his preference for article 40 as the basis of peacekeeping.
40. White, *Keeping the Peace*, p. 209. See also David Cox, *An Agenda for Peace and the Future of Peacekeeping* (Ottawa: Canadian Centre for Global Security, 1993), p. 17. It is interesting to note that UNITAF and UNOSOM II were the only peace enforcement operations for which Chapter VII is cited as the authority. See Hillen, "UN Collective Security: Chapter Six and a Half", p. 28.
41. J.R. Macpherson, "A Canadian Initiative and its Results: Active Peacekeeping After Thirty Years", *Canadian Defence Quarterly* (Summer 1986), p. 43.
42. Marrack Goulding points out in "The Evolution of Peacekeeping", p. 455, that since 1973, self-defence has been deemed to include defence against forceful attempts to prevent peacekeepers from carrying out their mandate. However, he emphasizes that commanders have been reluctant to act on this definition. As Goulding explains, "The peacekeepers could perhaps win the firefight at that first roadblock. But, in lands of the vendetta, might they not find themselves outgunned in the third or fourth encounter?"
43. Macpherson, "A Canadian Initiative and its Results", p. 43.
44. Diehl, *International Peacekeeping*, p. 64.
45. Diehl, *International Peacekeeping*, p. 65. According to Diehl, the inclusion of neighbouring troops was not a problem with ONUC. The problem was the change in mandate over the course of the operation, which ultimately was perceived to favour the existing government of the Congo over all others.
46. An exception was the mission in Cyprus (UNIFCYP), where mediation efforts began only after the UN force was in place.
47. Paul Diehl notes in *International Peacekeeping*, p. 12, that traditional peacekeeping forces range from 1,000 or 2,000 personnel to 20,000 personnel.

48. Former Secretary-General Boutros Boutros-Ghali, in his supplement to *An Agenda for Peace* 1995, p. 14, notes that an analysis of recent successes and failures shows that such principles were respected in all the successes and that, in most of the failures, at least one of the principles was not.
49. White, *Keeping the Peace*, p. 133.
50. Diehl, *International Peacekeeping*, p. 28.
51. Alex Morrison, "Canada and Peacekeeping: A Time for Reanalysis?" in *Canada's International Security Policy*, ed. David B. Dewitt and David Leyton-Brown (Toronto: Prentice Hall Canada Inc., 1994), p. 205.
52. The force commander for UNEF 1 was LGen E.L.M. Burns.
53. White, *Keeping the Peace*, p. 192.
54. Although the Security Council had primary authority regarding peacekeeping operations, the Charter also conferred authority on the General Assembly in respect of peacekeeping missions. Pursuant to articles 10, 11 and 14 of the Charter, the General Assembly has the power to create peacekeeping forces in the same way as the Security Council. See also White, "UN Peacekeeping - Development or Destruction?", p. 134.
55. White, "UN Peacekeeping -- Development or Destruction?" p. 135.
56. Often traditional peacekeeping missions and observer missions are grouped together under the description of traditional peacekeeping. See for example, DND, 1994 Defence White Paper, p. 31; and Durch, ed., *The Evolution of UN Peacekeeping*, p. 1. For greater clarity, the terms are defined separately here.
57. For a list of the missions undertaken from 1947 to 1986, see Morrison, "Canada and Peacekeeping: A Time for Reanalysis?", pp. 206-210. The list includes a brief description of the mandate and includes the number of military personnel contributed by Canada. Allen Sens updates the list to 1995 in *Somalia and the Changing Nature of Peacekeeping*, pp. 22-23 and 108-109.
58. Diehl, *International Peacekeeping*, pp. 6, 7.
59. Diehl, *International Peacekeeping*, p. 7.
60. White, *Keeping the Peace*, p. 135.
61. UNTAG was created on paper in 1978 but was not put in place until 1989, as a result of hardened attitudes between the superpowers and in surrounding regions. See White, *Keeping the Peace*, p. 196.
62. Between 1948 and 1988, 13 United Nations peacekeeping missions were established. Since 1988, there have been 22; see United Nations, *United Nations Peace-Keeping*, Update December 1994, p. 1.
63. For a more detailed discussion of the international security context at the time, see Louis A. Delvoie, "Canada and Peacekeeping: A New Era?" *Canadian Defence Quarterly* 9 (October 1990).
64. Berdal, "Whither Peacekeeping?", p. 289.
65. This issue is discussed in Alan James, "Problems of Internal Peacekeeping", *Diplomacy and Statecraft* 5/1 (March 1994), p. 26. See also Doyle, "Introduction", in *Peacemaking and Peacekeeping for the Next Century*, p. 3.
66. In "Supplement to *An Agenda for Peace*", Boutros Boutros-Ghali notes that all but two of the operations established since 1992 involve intra-state conflicts. Alan James, defining internal as "operations which do not operate at an international border", suggests that only three of the missions since 1988 have not been internal. See "Peacekeeping in the Post-Cold War Era", p. 2.
67. James, "Problems of Internal Peacekeeping", p. 30.
68. James, "Problems of Internal Peacekeeping", p. 30.
69. "Supplement to *An Agenda for Peace*", in Boutros-Ghali *An Agenda for Peace 1995*, p. 9.

70. "Supplement to *An Agenda for Peace*", p. 8 and following.
71. Goulding, "The Evolution of United Nations Peacekeeping", p. 456.
72. *United Nations Peacekeeping*, Update December 1994, p. 157.
73. *United Nations Peace-Keeping*, Update December 1994, "Summary of Contributions to Peace-Keeping Operations by Country".
74. Letter, Secretary-General of the United Nations to President of the Security Council, November 29, 1992 (S/24868), p. 5. See also "Supplement to *An Agenda for Peace*", in Boutros-Ghali, *An Agenda for Peace*, p. 28, where Secretary-General Boutros-Ghali writes, "neither the Security Council nor the Secretary-General at present has the capacity to deploy, direct, command and control operations for this purpose [peace enforcement or enforcement operations], except perhaps on a very limited scale."
75. See, for example, "Supplement to *An Agenda for Peace*", in Boutros-Ghali, *An Agenda for Peace 1995*, p. 15; U.S. Department of the Army, *Peace Operations*, FM 100-23, December 1994; Diehl, *International Peacekeeping*, p. 163; and Durch, *The Evolution of Peacekeeping*, p. 11.
76. "Supplement to *An Agenda for Peace*", in Boutros-Ghali, *An Agenda for Peace 1995*, p. 15.
77. U.S. Department of the Army, *Peace Operations*, p. 12.
78. In *The Evolution of UN Peacekeeping*, William Durch charts operations according to the use of force and the presence of consent.
79. Diehl, *International Peacekeeping*, p. 163.
80. In fact, where outside command has been sought, the United States has taken it up, except in the case of IFOR which is under NATO command.
81. The question has been asked, why did the UN rush first to the former Yugoslavia when the crisis in Somalia was so severe, and why did the UN rush to Somalia when the crises in Liberia and southern Sudan also demanded (and still demand) international attention? Some suggest that these interventions may not be as benevolent as most suppose, arguing that humanitarian intervention is just another form of Western imperialism. See Lori Fisler Damrosch, "Introduction", in Lori Fisler Damrosch, ed., *Enforcing Restraint* (New York: Council on Foreign Relations Press, 1993), p. 21, and Marie-Dominique Perot, "L'ingérence humanitaire ou l'évocation d'un non-concept", in *Dérives humanitaires: État d'urgence et droit d'ingérence*, ed. Marie-Dominique Perot (Paris: Presses universitaires de France, 1994), p. 47.
82. Wiseman, "United Nations Peacekeeping and Canadian Policy", p. 137.
83. Senate, Standing Committee on Foreign Affairs, *Meeting New Challenges*, p. 83.
84. Joseph Jockel, *Canada and International Peacekeeping*, Significant Issues Series (Washington, D.C.: Center for Strategic and International Studies, 1994), p. 11.
85. Wiseman, "United Nations Peacekeeping and Canadian Policy", p. 137. Wiseman maintains that the Department of External Affairs was always able to demonstrate Canada's commitment to the UN and international peace and security, but the Department of National Defence saw peacekeeping as a subsidiary function of the armed forces.
86. The low priority afforded peacekeeping, while of concern, is not surprising, given the remarkable degree to which the Cold War dominated security concerns across the Western world for more than three decades.
87. "Canada in the World", statement of the Government of Canada (1995).
88. Jockel, *Canada and International Peacekeeping*, p. 11.
89. Jockel, *Canada and International Peacekeeping*, p. 12.
90. In the early 1970s, however, public support for peacekeeping operations was somewhat restrained. This was attributed by some to the fact that UNEF 1 had been expelled from Egypt in 1967. See General Paul D. Manson, "Peacekeeping in Canadian Foreign and Defence Policy", *Canadian Defence Quarterly* (August 1989), p. 8.

91. J.L.Granatstein, "Peacekeeping: Did Canada Make a Difference? And What Difference did Peacekeeping Make to Canada?", in *Making a Difference? Canada's Foreign Policy in a Changing World Order*, ed. John English and Norman Hillener (Toronto: Lester Publishing Limited, 1992), p. 225. Granatstein points out that although it is difficult to trace the source of this nationalist sentiment, the concept of Canada's role as international peacekeeper was so strong that when the Diefenbaker government demonstrated reluctance to participate in ONUC in 1960, public opinion forced the government's hand.
92. Granatstein, "Peacekeeping: Did Canada Make a Difference?" Granatstein describes Canada's role in peacekeeping in this context as "its anti-military role", a role for the military that could unite all Canadians.
93. Senate, Standing Committee on Foreign Affairs, *Meeting New Challenges*, p. 13.
94. The 1994 Defence White Paper, p. 49, supports the need to maintain multi-purpose, combat-capable sea, land, and air forces for purposes of self-protection and protecting Canada's interests abroad, by protecting Canada, co-operating with the United States in the defence of North America, and participating in peacekeeping and other multilateral missions.
95. Jockel, *Canada and International Peacekeeping*, p. 47.
96. DND, *Canadian Defence Policy* (April 1992), p. 34.
97. 1994 Defence White Paper.
98. Jockel, *Canada and International Peacekeeping*, p. 54.
99. Manson, "Peacekeeping in Canadian Foreign and Defence Policy", p. 8.
100. Manson, "Peacekeeping in Canadian Foreign and Defence Policy", p. 8.
101. *Challenge and Commitment, A Defence Policy for Canada*, June 1987 (White Paper).
102. For a more in-depth review of the development of the criteria, see *Challenge and Commitment*.
103. Jockel, *Canada and International Peacekeeping*, p. 54. Jockel argues that this determination to remain combat-capable is based on the military's belief that increased emphasis on the peacekeeping function will diminish political and public support for retaining the range of combat roles, some of which may be hard to justify for peacekeeping operations. But as Jockel points out, p. 56, public support for the military has been high precisely because of Canada's contribution to peacekeeping.
104. *Challenge and Commitment*, p. 49.
105. 1994 Defence White Paper.
106. The criteria were first expressed during a House of Commons debate about Canadian participation in UNEF II in November 1973. See House of Commons, *Debates*, November 14, 1973, comments of the Hon. Mitchell Sharp, Secretary of State for External Affairs, p. 44.
107. In preceding sections, the characteristics of traditional peacekeeping during the Cold War period were highlighted: consent, impartiality, and use of force only in self-defence. Although the peacekeeping operations varied widely in this period and included operations that departed from these characteristics -- for example, ONUC -- Canada's criteria were clearly shaped by missions that were, for the most part, traditional.
108. *Challenge and Commitment*, p. 24.
109. Contrast the wording in the 1994 Defence White Paper, p. 29, with that in *Challenge and Commitment*, p. 24.
110. See the discussion of the criteria as they were applied to the proposed mission to Somalia later in this report (in particular in Volume 3).
111. Senate, Standing Committee on Foreign Affairs, *Meeting New Challenges*.
112. Chief Review Services, *Military Review 1/90*, p. 18. Note that the ADM (Policy and Communications) response fails to see any split in responsibility in terms of the criteria and is silent on the issue of whether better and more explicit direction is needed.

113. *Report of the Auditor General of Canada* (May 1996), "Peacekeeping Chapter 7, Department of National Defence", pp. 7-12, 7-13. Review of some mission files by the Office of the Auditor General revealed gaps in planning and a lack of written assessments for the consideration of the departmental criteria.

114. Deputy Chief of the Defence Staff, "Initial Comments on the QAG PK audit", January 30, 1996, p. 2.

115. Deputy Chief of the Defence Staff, "Initial Comments on the GAO PK audit", January 30, 1996, p. 2.

THE SITUATION IN SOMALIA

This chapter is about the political and socio-economic context in which the Canadian Airborne Regiment Battle Group (CARBG) carried out its mission to Somalia. It describes the region's geography, culture, political, and social structure, and surveys significant events leading to the civil war and the end of Siad Barre's regime. It also examines the situation in Somalia when the United Nations intervened and the social and political conditions in Belet Huen when the CARBG was deployed.

An understanding of the Somalia context is necessary for evaluating the suitability and operational readiness of the Canadian Airborne Regiment (CAR) and CARBG for service in Africa, as well as for judging the appropriateness of their training for the mission and the adequacy of Canadian military intelligence. Information about Somali society helps in the evaluation of decisions and actions taken in theatre and clarifies how cultural differences between CARBG members and the Somalis may have affected the conduct of operations.¹

A PROFILE OF SOMALIA²

Somalia occupies a strategic position in the Horn of Africa. In addition to ties with other African countries, it has close religious and historical links with the Arab and Islamic world and has a seat in both the Organization of African Unity (OAU) and the Arab League. At the time of the CARBG's arrival, Somalia had a population of approximately six million, including refugees.³

Environment

Most of Somalia consists of dry savannah plains with streams flowing only after rain. Much of the country has sandy soil with little agricultural value; the scant 33 per cent of land is that is arable in the Haud Plateau. Leafless shrubs, scrub and some grassland make up the typical semi-arid vegetation. Forested areas are found along the Shebelle and Juba rivers which provide the only drainage. Between these rivers lies the richest land in the country, where there is agriculture and livestock farming. Elsewhere, herding of sheep, goats and camels predominates, with widely separated permanent settlements built around wells. Only 15 per cent of the population live in urban areas.⁴ At the time of the CF's arrival in Somalia it was estimated that of 600,000 city dwellers, approximately 350,000 lived in Mogadishu, the capital.⁵ Other main centres are Hargeisa, capital of the northern region, and Berbera and Kismayu, the principal northern and southern ports.

For most of the year, the climate is very hot and humid with mean daily highs of 30 to 40°C in a range between 17 and 45°C. In the northern plateau, the hottest months are June through September while along the northeastern coast, October and November are hottest. Annual rainfall is less than 500 millimetres in the desert region and 500 to 1000 mm in the steppe region. In the north-east, there are two wet or monsoon seasons -- one is from April to July and the other from October to November -- during which major flooding often occurs, making cross-country movement difficult. During the two dry seasons, with their irregular rainfall and hot and humid periods, droughts are common.

Winds can reach almost hurricane force. Between June and September, the swirling dust and sand create difficulties for vehicle and equipment maintenance, requiring special lubricants and fuels. Vehicles create huge dust clouds, restricting visibility to a few metres and making travel difficult. Sand irritates skin and eyes, endangering soldiers separated from their units. Desert conditions of radiant heat, humidity and wind create climatic stress on the body.

Economy

The Somali economy derives from its semi-arid climate and an environment featuring frequent drought and highly localized rainfall. Cattle, goats, and sheep are herded, but camel ownership is considered the "most noble Somali calling".⁶ Although competition for scarce resources often creates conflict over wells and pasture lands,⁷ the Somalis are united by the traditions of a herding lifestyle.

Most of the economic production in modern Somalia is based upon the traditional practice of pastoral nomadism⁸ except in the southern region where higher rainfall and river water permit mixed farming and

agropastoralism.⁹ Only 1.3 to 3 per cent of the land in Somalia is irrigated and cultivated, while the rest is used for grazing.¹⁰ Although livestock and livestock products make up the majority of Somalia's exports, bananas are the primary source of foreign exchange.¹¹ Arab states are large importers of Somali products. Along the Juba and Shebelle rivers, bananas are grown on plantations, and the area also supports important subsistence crops such as maize and sorghum.

After the country's independence in 1960, economic growth failed to keep pace with the rise in population caused by the influx of refugees.¹² This was a result of the country's heavy dependence upon agriculture and herding which are affected by drought. Somalia's largest industry is processing agricultural food products,¹³ apart from that, there is little industrial development. Except for tin, the country's minerals are not developed, although international companies have prospected for oil. During the 1980s, devastating droughts, the Ogaden War with Ethiopia, and the civil war that followed threw a failing economy into ruins. By the 1990s, Somalia was classified a "least developed country" by the UN.¹⁴ The external debt at the time of UN intervention was \$1.9 billion, with repayments estimated at 120 to 130 per cent of export earnings. The inflation rate exceeded 80 per cent.¹⁵

Following the civil war, the towns between Ethiopia and the port of Bossaso in the Mudug region showed some increased economic activity, while the surrounding countryside showed signs of serious economic collapse.¹⁶ In the south, economic collapse followed inter-clan warfare. In towns visited by an assessment team in September 1991,¹⁷ many economically active persons were women engaged in petty trading, often separated from their husbands or widowed by war. Government wage employment (mostly benefitting men) had collapsed.

Culture and Social Structure

Somalis¹⁸ are descended from herders who entered the Horn of Africa at least two millennia ago. By the seventh century, the indigenous Cushitic peoples had mixed with Arabs and Persians on the coast forming a Somali culture with common traditions, faith, and language. The official language in the country is Somali. Arabic, English, and Italian have also been used in government agencies. In addition to a common language, Somalis share the Islamic faith, most being Sunni Muslim. There are two major occupational groupings: the nomads (the Samale) and the cultivators (the Sab). These groups are further divided into clan-families, which are in turn divided into clans and lineages.

The pastoral clan-families constitute about 85 per cent of the population.¹⁹ The remaining southern clan-families are associated with mixed pastoralism and farming,²⁰ and their identity is linked more to the villages in which they live than to the clans to which they belong. They are also politically weaker and inferior in social status to the pastoral clans. These agricultural communities constitute an appreciable portion of that Somali population which is ethnically and culturally distinct. They do not have the same warrior tradition as the nomads, are not as heavily armed, and were never as involved in the workings of the central government. Because their lands became a battleground during the civil war, they became principal victims in the ensuing famine.

Clan-families, tracing their genealogy back 30 generations to a common ancestor, form a federation of kinship groups, yet these clan-families rarely operate as a unit. Common interests and mutual aid occur among smaller kin groups such as the clan (whose members trace their membership back 20 generations) or groups united by lineage (6 to 10 generations).²¹ As Somalis themselves put it, while a person's address may be in Europe, his or her genealogy is in Somaliland. "By virtue of his genealogy...each individual has an exact place in society...[and can]...trace his precise connection with everyone else."²² According to one CF document, Somalis are identified according to their clan-family and the area from which they originate. "The first thing they want to know when meeting anyone, even foreigners, is where you are from and what clan you belong to."

According to Dr. Kenneth Menkhaus, clan identity is fluid and complex enough to allow genealogical links to be recast according to the political needs of the moment: "A different clan identity could be highlighted or suppressed depending on the situation." This is "a source of tremendous frustration" for outsiders, particularly foreign military. Clan identity "made for political units that were very unstable, very fluid and this was so frustrating for the international forces and civilian diplomats who were part of the intervention

because they could not get a clean fix on political units in Somalia...this fluid situational political identity serves the interest of Somalis...but it didn't serve ours very well and it was a source of misunderstanding."

A politically significant sub-unit is a man's *diya* group. *Diya* is blood money -- usually measured in camels. It is "a corporate group of a few small lineages reckoning descent from four to eight generations to the common founder, and having a membership of from a few hundred to a few thousand men."²³ A *diya* group is sworn to avenge injustice against one of its own members if no exchange of camels is agreed upon, and to defend each other materially or aggressively when members of that group themselves do wrong.²⁴ As Dr. Menkhaus states, "this practice of blood compensation...did mitigate spiraling violence, it did allow...clans to negotiate an end to bloodshed and it also serves as a deterrent for personal vendettas and murder...". International forces needed to understand that the *diya* system creates a sense of collective rather than individual guilt; when Canadian soldiers hung placards around thieves' necks, this tactic could be perceived as humiliating an entire clan rather than punishing a few individuals.

Clan elders play a critical role in mediating and adjudicating disputes using Somali customary law (*xeer*).²⁵ They are acknowledged experts in the process of conflict-resolution negotiations. As Dr. Menkhaus testified, "Military units would treat a conflict as a discreet event, they'd bring in the clan elders, they would sit down and make a peace, there would be a document to prove it, and then there would be peace and we could all go away, when in fact that wasn't the case. In Somali political culture, conflict management never ends, they are always in dialogue, they're always meeting and it took us quite a long time to understand that to be effective in helping them manage their conflicts." Accords and arrangements struck without ratification by the clan are not viewed as legitimate and are rarely upheld. Thus, peace conferences held at a distance (in Nairobi, Addis Ababa, or Mogadishu) that were not vetted by the local populations were not considered binding.

Kinship is passed on from a father to his sons and daughters, much as family names are transmitted in Canada. A woman remains a lifelong member of her father's group and at marriage does not adopt her husband's name. Bonds of blood are permanent; they supersede those of conjugal relationships which can terminate with divorce. To Somalis, non-Somalis and foreigners are inferiors and subject to suspicion because they are not bound by Somali descent and kinship.²⁶ Marriage with non-Somalis is discouraged.

According to Somali custom, women's social status is inferior. Both sexes believe that gender inequality is normal and natural. Women submit to males and they do much of the hard physical work. Boys and unmarried men tend the camel herds, while married men engage in trade, clear wells, and manage camels. Only senior men have the right to dispose of family property. Women's security depends on their relationship to their fathers, husbands, brothers, and uncles. Male kin are expected to watch over a woman should she leave her husband.

Clan relationships are both unifying and divisive. The lineage ethic of Somalis is described by Dr. Menkhaus as emphasizing one's primary obligations to look after the interests of one's clan members, even at the expense of other Somalis. Those Somalis responsible for famine relief faced conflicting obligations: the relief organization's commitment to distribute aid evenly to famine victims, and the clan's pressure to respect family obligations by diverting relief supplies to the clan.

Dr. Menkhaus summed up the lineage ethic by quoting a well-known Somali saying: "My cousin and I against the clan; my brother and I against my cousin; I against my brother." Within this system, alliances among lineages can be formed after fighting among them, and kin who are supportive in one situation can be predatory in another.

THE HISTORICAL BACKGROUND OF THE CONFLICT IN SOMALIA

Historically, Somali society has been organized around mobile lineage units averse to centralized authority. The word *Somali* appears in no Arabic documents before the sixteenth century, yet documents refer to identifiable clan-families as early as the fourteenth century.²⁷ This may mean that Somali political unity is fairly recent, or more fiction than historical fact -- a point relevant to events since World War II.

Colonialism

In the diplomatic jockeying that followed the construction of the Suez Canal, Somalia was arbitrarily divided into spheres of foreign influence.²⁸ Aggressive advances into the Ogaden area by Ethiopia spawned a nationalist movement led by the religious sage Sayyid Mohammed Abdille Hasan. In one of the last African resistance movements against European colonialism, he opposed centralized 'infidel' rule over the independent-minded Somalis.²⁹

Under Italian rule, the capital, established in Mogadishu, doubled in population between 1930 and 1940. Trade and commerce were strictly controlled by the Italian Fascists who barred Somalis from participation in profitable sectors of the economy. Towns grew, large-scale plantations were set up, and basic health and educational services were established. By 1930, the Italian colonial system of rural administration included an armed rural constabulary of 500, and a police force of 1,475 Somalis and 85 Italian officers and subalterns.³⁰ Except at the lowest levels, there were no Somalis in the colonial government. In 1940, Italy joined the Axis powers, and the U.K. and Italy confronted each other in Somalia. After the Italian defeat,³¹ Somalia was placed under British military administration until 1949, Italian police officers were replaced by Somalis, and a police school was opened to train Somalis for higher ranks. Somali self-government was fostered by the British, and in 1948 a portion of western British Somaliland was given to Ethiopia.

The UN Trusteeship

At the end of World War II, Somalia enjoyed prosperity and progress under a 10-year UN trusteeship from 1950 to 1960. Advances were made in education; irrigation farming was extended; and wells were drilled. Plantation agriculture was revived for cotton, sugar, and bananas. Somalis replaced expatriates in the civil service. Party politics (heavily influenced by kinship) were introduced in municipal elections in 1954, and the first general election of the legislative assembly by universal male suffrage was held in 1956.

Independence

On July 1, 1960, British Somaliland united with Italian Somaliland to form the independent Somali Republic. A multi-party constitutional democracy with a national assembly of legislators was established, but loyalty to kin and clan continued to define Somali politics.³² Patronage and the numerical strength of clan coalitions were more important than personal merit since political parties identified themselves with clans and sub-clans. Some Somalis remember this time for its political freedom, others for its increasing corruption, clanism, and political gridlock. The newly independent country had to combine two judicial systems, currencies, military and civil service organizations, systems of taxation and education. Somalia became dependent on foreign aid that served to enrich the civil service and military,³³ while poverty remained endemic among the masses.

During the Cold War, Somalia acquired economic and military aid by playing the superpowers against each other. The state became a major source of wealth, with money redistributed along clan lines. By 1969, in a population of four million, there were 64 political parties representing 64 lineages and sub-lineages,³⁴ all seeking a slice of the national pie. This pattern reappeared during the international relief effort in Somalia when clan members on local councils tried to corner foreign assistance.

The Military Coup

In 1969, Major-General Siad Barre, commander-in-chief of the armed forces, seized power and established a socialist military dictatorship lasting nine years. His government suspended the democratic constitution, dissolved the national assembly, disbanded political parties, and banned professional associations. Leading civilian politicians were arrested and detained for years.³⁵ Civic organizations not sponsored by the government were banned. As president, Barre was supported by a 25-member Supreme Revolutionary Council (SRC) of army and police officers. In 1972, the government's new constitution established a national assembly, but allowed Barre's followers to create a political system without constitutional, legislative, or judicial restraints on the exercise of executive power. The National Security Service's agents and informants stamped out dissent. The regime nationalized most industry, banks, insurance companies, and the press, censored the media, denied visas to foreign journalists, and created a personality cult

featuring Barre as 'Our Father'. Through a program of 'scientific socialism', management of the economy fell to government agencies.

Because Barre's inner circle of advisers came from only three clans, his government was at times referred to as the MOD (Marehan, Ogadeni, Dolbahante).³⁶ To control the other clans (the Majerteen in 1979, the Isaaq in 1988, the Hawiye in 1989-1990), the regime became increasingly repressive. Barre declared war on tribalism. He dismantled institutions that traditionally resolved conflict. In 1973, he forbade private social gatherings -- engagements, weddings, and funerals -- unless held at government orientation centres. Many people, frustrated by these repressive measures, emigrated or turned to violence.

During the 1970s and early 1980s, the United States and the U.S.S.R. (along with Cuba)³⁷ competed for influence in the Horn of Africa because of its proximity to the Middle East. At first, the Soviet Union and East Germany supported Barre's scientific socialist regime. However, when a Marxist government gained control of Ethiopia, the United States pulled out, and the U.S.S.R. moved in to support Ethiopia during the Ogaden War. Angered by this move, Barre threw out Soviet military advisers, closed down Soviet military facilities in the country, and looked to the West for aid and military support. To ensure the security of oil supplies in the Gulf, the United States improved its relations with Somalia, took over the Soviet base at Berbera in 1980, and negotiated access for U.S. Central Command to the military facilities of Somalia.

Superpower rivalry supplied arms to power groups in the region, fanning regional conflicts. The Horn's per capita consumption of weapons was higher than in any other part of Africa. In the mid-1970s, at the height of the Soviet-Somali friendship, Somalia had the best-equipped forces in Black Africa. Soviet military equipment made the Ogaden War possible for Somalia, but Cuba helped the Ethiopians repel the Somalis.

The Ogaden (Ethiopian) War³⁸

Somalia's defeat by Ethiopia led to the collapse of the MOD alliance, leaving little common ground for clan co-operation. The army began to experience organizational problems partly because of its rapid increase in size during the 1970s in anticipation of the war. Discipline became increasingly difficult to maintain since pre-war recruitment had occurred along clan lines -- particularly the Ogadeni, Marehan, Hawiye, and Majerteen clans.³⁹ Consequently, after the war, distinctions between clan-specific military units and clan militias became blurred. The United States became Somalia's largest source of economic and military aid, established a military and naval facility at Berbera, provided weapons, held frequent consultations with the Somali regime,⁴⁰ and helped Somalia resist an invasion by Ethiopia in 1982.

The Civil War

After the Ogaden War, hundreds of thousands of Ethiopian refugees from the Ogadeni and Oromo clans poured across the border. They settled in the north where the Isaaq -- the largest clan in the region⁴¹ -- accused the Barre regime of favouring refugees over the local population. In 1981, a group of Isaaq-clan exiles formed the Somali National Movement (SNM). From their bases in Ethiopia, they conducted hit-and-run attacks on the Somali army. On May 27, 1988, the SNM attacked Burao and the northern city of Hargeisa. Unable to defeat the guerrillas, the army killed tens of thousands of civilians in northern towns.

By 1988, the Barre regime was accused of genocide against rebel factions in the north, and the West froze foreign aid. The United States stopped supplying weapons to Somalia in 1989, and the Soviets ended shipments to Ethiopia in 1991;⁴² both encouraged local governments to resolve their own disputes. During the next few years guerrilla warfare, led by emerging factions opposed to the government, spread to the centre and south of the country.⁴³ By the end of 1990, the entire southern region of Somalia was at war. Then on January 19, 1991, the United Somali Congress (USC) forces under General Mohammed Farah Aideed entered Mogadishu, forcing Barre to flee. However, factions continued to fight each other for power, with hundreds of 'freelance' soldiers and looters contributing to the violence.

The north feared that a government dominated by southern clans would exclude it from power. After consultation among provincial leadership groups, the Republic of Somaliland was declared on May 18, 1991, with Abed al-Rahman Ahmad Ali Tur of the SNM as president.⁴⁴ After several years of internal warfare, there were attempts early in 1991 to reconcile the various armed organizations. A National Reconciliation Conference in Djibouti endorsed the leadership of an interim government and gave the

presidency to one USC leader, Mohammed Ali Mahdi. General Aideed maintained that the USC should be allowed to nominate its own candidate -- himself. In August, Ali Mahdi was confirmed as president to end the war, establish a civil infrastructure, and adhere to USC policy for reconstituting a national army.⁴⁵ The Djibouti Agreement was overshadowed by tensions between two rival factions of the USC, which escalated into full-scale warfare in Mogadishu⁴⁶ in November 1991 as General Aideed's faction stepped up its effort to oust Ali Mahdi.

The central government was dissolved and clans fought for control of the country. Because of the collapse of the central government, only local clan elders or heads of factions provided leadership and administrative control, and regional rules varied with the clan in power. All regional governments lacked efficient communication and transportation, and leaders were under constant attack from rival groups.

The armed clashes and other serious problems occurred primarily in the south, where General Aideed and Ali Mahdi emerged as the two most powerful leaders. Although most Westerners understood that Ali Mahdi and General Aideed were from the Abgaal and Habar Gidir sub-clans, few realized that both sub-clans were further divided into lineages that did not support the faction leaders, and that both leaders were in constant negotiation with other groups to maintain their precarious positions.

Fighting centred on heavily damaged Mogadishu and the inter-riverine agricultural zone between Mogadishu, Kismayu and Bardhere, which quickly became a famine zone. By March 1992, the International Committee of the Red Cross noted "horrifying" levels of malnutrition -- approaching nearly 90 per cent of the population in the area surrounding Belet Huen and in the camps of displaced persons around Merca, south of Mogadishu. Lawlessness, the destruction of infrastructure,⁴⁷ and droughts combined to create enormous problems. In Mogadishu, only a third of the population had clean water.⁴⁸ Clan fighting and banditry prevented adequate distribution of food aid, and Somalia fell into a form of anarchy characterized by roving gangs of bandits and loosely organized clan militias, all fighting for control of key towns and regions. Because the militia men were unpaid, an economy of plunder emerged.⁴⁹

In a desperate attempt to contain the famine, relief agencies were forced into 'security' arrangements with the local militias, who demanded food and salaries from the convoys and compounds they protected. The militias fought for control of famine relief supplies which they diverted and resold to finance arms purchases. When it was clear that the international relief effort was fuelling the fighting that had caused the famine in the first place, the international community considered armed intervention as a solution.

The Situation in Somalia when the UN Intervened in 1992

The General Context in 1992

These conditions of political upheaval, combined with the effects of civil war and a severe drought, had created havoc.⁵⁰ There was a breakdown in the social structure. Police services had fallen apart.⁵¹ Official reports noted that political security in all parts of the country was uncertain and was likely to be subject to rapid change. These reports did not note, however, that in the absence of formal state and judicial systems, traditional law and the role of clan elders were working to mediate conflicts, as were the Islamic courts, which, with the help of armed and disciplined young men, were able to impose the *sharia* law.⁵²

Although Western media reduced the complexity of the war (in the 1990s) to clan conflict, the situation also involved a power struggle between General Aideed and Mohammed Ali Mahdi, as well as conflict among groups of heavily armed, impoverished boys and men. The Mahdi camp supported the presence of UN peacekeeping forces, whereas General Aideed, fearing that the UN might recognize the existing government, preferred national reconciliation leading to a new government in which his faction would play a more prominent role.⁵³

United Nations Actions

The UN and its agencies withdrew from Mogadishu after Barre was overthrown. It provided no assistance in 1991.⁵⁴

In mid-December 1991, prompted by harsh criticism from the Red Cross and the U.S. State Department, the UN sent Under Secretary-General James Jonah to Somalia. This led to an arms embargo on Somalia and

encouraged member countries to provide humanitarian aid. By mid-February 1992, the UN called negotiators for Ali Mahdi and General Aideed to New York and, after only two days of negotiations, declared a cease-fire. However, the fighting in Mogadishu continued. Later that month, representatives from the UN, the OAU, the Arab League, and the Organisation of the Islamic Conference (OIC) visited Mogadishu to work out the details of the ceasefire.⁵⁵ A UN force of 50 unarmed observers was authorized by the UN Security Council to help enforce a UN-brokered cease-fire in Mogadishu between Ali Mahdi and General Aideed.⁵⁶ The cease-fire was relatively effective at that time, but there was still banditry and looting by uncontrolled factions both in Mogadishu and throughout the country. As well, extortion and security problems complicated the delivery of humanitarian aid. By July 1992, the UN envisaged a long-term role in Somalia, including such actions as re-establishing a police force. A letter from the UN Secretary-General to the Security Council provided the justification for invoking Chapter VII, with its "take all necessary means" language.

Regional Conditions in Bossasso

Bossasso, Canada's original assignment in Somalia, is in the north-east, close to the Red Sea coast. It was inhabited by a single, relatively cohesive clan, the Majerteen, whose elders and leaders exercised authority, and it was relatively peaceful compared to the south. The Democratic Front for the Salvation of Somalia (SSDF) was the sole faction controlling the area. The Majerteen had a cosmopolitan view of international forces and welcomed international intervention bringing foreign assistance and goods. Thus, when Canadian officials conducted their reconnaissance survey of Bossasso and the northeast region as a possible site for Canadian peacekeeping forces, they found a permissive environment for a conventional Chapter VI operation. Bossasso was a secure, busy, well-administered city with no clan violence. Business and trade continued, and the local market was active.⁵⁷ Policemen patrolled the streets. Because of the relative calm, the port (under SSDF control) became the most active in the country. Local vehicles were available for hire. The power station had enough fuel to operate for two to six hours a day, primarily to run the fish plant and for emergency operations at the hospitals. However, spare parts and fuel were scarce, and the medium-sized airport was reported to be in poor condition.⁵⁸

There were many refugees in Bossasso, fleeing the civil war in the south. One NDHQ report stated that refugees had swelled the town's population of 7,000 to 77,000, straining local resources. Many refugees were living in makeshift huts, though the Somali national from whom this information was received reported no starvation, which was confirmed by a report from NDHQ stating that conditions were "considerably better" than in the south.⁵⁹

Regional Conditions in Belet Huen

Belet Huen is in a frontier area where two very distinct forms of production (pastoralism and agriculture) adjoin. During the first three to four months of the year, when the most notorious incidents involving the CF occurred, the temperature can exceed 40°C. If humidity is taken into account, it may feel like 50°C or more. Belet Huen is a strategic gateway between central Somalia, Ethiopia and southern Somalia. The country's only north-south highway runs from Mogadishu along the Shebelle River to Belet Huen. From there, the highway runs north to the central regions of Somalia and west into Ethiopia. According to Dr. Menkhaus, Belet Huen was a critical choke-point for the traffic of arms from Ethiopia and the movement of men from the Mudug region in central Somalia (where General Aideed's Habar Gidir clan was based) to Mogadishu. Belet Huen was an area of considerable strategic importance in the Somali political context and thus an area of fierce political competition, with local clans struggling to control the region. The CARBG was confronted with shifting clan alliances and clan-based claims on political authority and economic assets.

When the Barre regime was pushed back toward Mogadishu during 1989-1990, troops retaliated with a scorched earth policy, looting and assaulting local populations as they retreated. Belet Huen and surrounding areas along the Shebelle River were particularly hard hit by Barre's supporters. This left the region vulnerable to famine and food shortages by mid-1991, in contrast to the north-east of Somalia, which remained free of famine and most armed hostilities. Famine victims from Rahanwein flocked to Belet Huen where an international airlift relief operation was mounted.

The Hawaadle clan, a relatively small clan of the Hawiye clan-family, was the dominant social group in Belet Huen. It exerted strong control over politics and the police and was thus able to secure most of the contracts from international aid organizations. Clan members attempted to maintain control over relief supplies, political representation, and the economic assets of the region. This led to discontent among the other clans, which wanted control over the highway, a major conduit of manpower and military hardware from Ethiopia and the central regions of Somalia to General Aideed in Mogadishu.⁶⁰

Thus the Belet Huen region was known for extortion and intricate clan rivalries.⁶¹ Banditry and extortion were much more common in Belet Huen than in Bossasso. International relief agencies had to exercise considerable diplomatic skill to navigate the clan tensions that affected every part of their operations. The town was considered a challenging position in Somalia for a UN military force.

NOTES

1. For further information on the culture of the Airborne, see Chapter 9 in this volume and the research study by Donna Winslow, *The Canadian Airborne in Somalia: A Socio-Cultural Inquiry*, study prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (Ottawa: Public Works and Government Services, 1997).
2. We are indebted to Dr. Kenneth Menkhaus of Davidson College in North Carolina for his extensive testimony before the Inquiry on October 23, 1995 (Transcripts vol. 7, pp. 1266-1412). Dr. Menkhaus has been an adviser to the United Nations with respect to the situation in Somalia, and much of the discussion in this chapter concerning Somalia's political situation, history, and social and clan structure is based on information provided by Dr. Menkhaus.
3. James Wyllie, "Somalia, State Disintegration and Regional Stability", *Jane's Intelligence Review* (February 1993), p. 71
4. Department of National Defence, National Defence Headquarters, "Analysis of Area of Operations Report: Somalia", August 25, 1992, p. 9. This figure varies because of the nomadic lifestyle of many Somalis.
5. DND, NDHQ, Analysis of Area of Operations Report, p. 19.
6. David D. Laitin, *Politics, Language and Thought: The Somali Experience* (Chicago: University of Chicago Press, 1977), p. 21.
7. Control of territory means access not only to grazing but also to other sources of income. For example, before colonial occupation, a clan controlled access to its territory. Outside traders -- Somali and non-Somali -- who wished to pass through a clan's territorial stronghold had to pay protection money to a member of that clan. This practice appears to have been revived in modified form during international relief efforts.
8. In 1989, livestock products accounted for about 49 per cent of the gross domestic product. Exports of livestock products rose after 1969, reaching a peak of \$132 million in 1982, accounting for about 80 per cent of the foreign exchange that year. This sector, along with the entire economy, was dislocated by the suspension of imports in 1983 by Saudi Arabia, Somalia's largest customer. An agreement with Egypt failed to compensate for this loss, and earnings from livestock exports fell in 1984. In 1985, earnings recovered, and they increased again in 1986-87, but they declined in 1988 and 1989, owing to the fighting in the north, where most livestock is raised. The livestock sector was also affected severely by drought in the mid-1970s as well as in 1984-85.
9. See I.M. Lewis, *The Modern History of Somalia: Nation and State in the Horn of Africa* (New York: 1980), p. 7 (revised edition of *The Modern History of Somaliland from Nation to State* (Boulder, Colorado: Westview Press, 1965).)
10. DND, NDHQ, Analysis of Area of Operations Report, p. 8.
11. See *Africa South of the Sahara*, 1993, 22nd edition (London: Europa, 1992) for more detail.
12. The gross national product in 1990 was \$946 million U.S., or \$150 per capita. During 1980-90, GNP grew at an annual rate of 1.1 per cent, while per capita GNP decreased by 1.8 per cent per year (*Africa South of the Sahara*, 1993, p. 755).

13. DND, Land Force Central Area Headquarters, CFB Toronto, *The Somalia Handbook*, p. 9.
14. Samuel M. Makinda, *Security in the Horn of Africa*, Adelphi Papers No. 269 (London: Brassey's 1992), p. 34.
15. *Somalia Handbook*, p. 9.
16. DND, Director General Intelligence, NDHQ, "A Report of the Assessment Mission to Bari, Nugaal and Mudug Regions of Somalia, 17-30 September 1991", pp. 25-26.
17. "Report of the Assessment Mission to Bari, Nugaal and Mudug Regions of Somalia", p. 26.
18. Although *The Somalia Handbook* distributed to Canadian troops states that 98.8 per cent of the population is made up of the Somali ethnic group, with one per cent Arab and few foreigners (p. 8), other sources indicate that the area between Mogadishu and Kismayu, especially the district of Kismayu and the lower Juba River valley, is home to a significant number of non-Somalis. They include people of Arab descent who live in the towns of Merca and Brava, as well as descendants of slaves from eastern and southern Africa known as Gosha who have established communities in the forests of the lower Juba River valley. The Arab population of Kismayu fled the city soon after the fall of Barre's government in January 1991. In the battles during the first half of 1991, non-Somalis were among the chief civilian victims of the warring parties. In addition, the low caste status of the Gosha may have influenced the amount of relief supplies they received ([Canadian] Immigration and Refugee Board Documentation Centre, "Somalia: Inter-NGO Committee for Somalia (UK) (INCS-UK) 1991 Reports -- Executive Summary" (Ottawa: March 1992), p. 8).
19. Aman, as told to Virginia Lee Barnes and Janice Boddy, *Aman: The Story of a Somali Girl* (Toronto: Knopf, 1994), p. 295.
20. According to the documents, the five major clans, are, in order of numerical strength: the Darod, which inhabits the southwestern and northeastern regions; Siad Barre is a member of this clan; the Hawiye, another nomadic tribe living in the central eastern region; the Isaaq, the third nomadic tribal grouping living in the central region; the Dir, in the north-west; and the Rahanwein, the main non-nomadic clan grouping practising agriculture in the south.
21. *Aman: The Story of a Somali Girl*, p. 295.
22. I.M. Lewis, *A Pastoral Democracy: A Study of Pastoralism and Politics among the Northern Somali of the Horn of Africa* (London: Oxford University Press, 1961), p. 2.
23. Lewis, *A Pastoral Democracy*, p. 6.
24. *Aman: The Story of a Somali Girl*, p. 295.
25. Testimony of Dr. K. Menkhaus, Transcripts vol. 7, p. 1277.
26. *Aman: The Story of a Somali Girl*, p. 300.
27. *Aman: The Story of a Somali Girl*, p. 291.
28. Britain secured most of the northern littoral. France took the north-west headland that is now Djibouti. Italy, which had earlier established itself on the Red Sea in Eritrea, acquired control over most of Somalia's Indian Ocean shore. The southernmost part of Somali territory, much of it now in Kenya, also went to the British. Ethiopia, reacting to the European presence and seeking, unsuccessfully, an outlet to the sea, moved east, seizing the important Somali pastureland of the Ogaden steppe (*Aman: The Story of a Somali Girl*, p. 292).
29. Saadia Touval, *Somali Nationalism: International Politics and the Drive for Unity in the Horn of Africa* (Cambridge: Harvard University Press 1963), p. 7.
30. Lewis, *Modern History of Somalia*, p. 98.
31. Italy nevertheless maintained commercial links with Somalia and was the only country involved in mediating regional conflicts in the late 1980s and early 1990s (Makinda, *Security in the Horn of Africa*, p. 71).
32. Immigration and Refugee Board Documentation Centre, "Somalia -- Executive Summary", p. 12.

33. The government sought to quadruple the size of the army, which was 5,000 strong at independence. The United States, because of its ties to Ethiopia, helped to upgrade the Somali police force. In 1962, the U.S.S.R. gave Somalia loans and sophisticated weaponry and sent military advisers. Thus armed, Somalia engaged in border wars with Kenya and Ethiopia (Laitin and Samatar, *Somalia: Nation in Search of a State*, p. 74; "UK Intelligence Report, 7-1991", p. 4721; and Rakiya Omaar, "Somalia: At War with Itself", *Africa Watch* (March 1992), p. 231).
34. Said S. Samatar, *Somalia: A Nation in Turmoil* (London: Minority Rights Group Report, 1991), p. 17.
35. Omaar, "Somalia: At War with Itself", pp. 230-231.
36. Makinda, *Security in the Horn of Africa*, p. 26.
37. The former U.S. military base in Eritrea was part of the network of U.S. and NATO military communications. When the U.S.S.R. established a naval presence in Somalia and a base at Berbera beginning in the late 1960s, the move was regarded as a threat to Western security interests in the region (Makinda, *Security in the Horn of Africa*, p. 63).
38. Colonial rule had divided the Somalis into five entities: Italian Somaliland in the south, British Somaliland in the north, some Somali communities in Djibouti, a large number of communities in the Ogaden under the rule of Ethiopia, and another large group in northeastern Kenya. This separation of kinsmen was a source of some grievance, and the Somali flag contains a star with five points representing the five states into which Somalis found themselves divided during colonialism. Independence had brought together Italian and British Somalia, but this was not satisfactory. Somali foreign policy at independence became obsessed with the return of Ogaden until it actually sparked a border war with Ethiopia.
39. Makinda, *Security in the Horn of Africa*, p. 29.
40. This practice was curtailed by Congress after 1989 (Omaar, "Somalia: At War with Itself", p. 231).
41. The Isaaq clan accounts for about 20 per cent of Somalia's total population (Makinda, *Security in the Horn of Africa*, p. 31).
42. Makinda, *Security in the Horn of Africa*, p. 66.
43. For example, the United Somali Congress from the central region, led initially by General Mohammed Farah Aideed with support from the Hawiye clan, declared war on the government.
44. See Wyllie, "Somalia, State Disintegration and Regional Stability", p. 72; and Omaar, "Somalia: At War with Itself", p. 233.
45. Omaar, "Somalia: At War with Itself", p. 233.
46. The infamous 'green line' divided Mogadishu, with Ali Mahdi dominant in the north and General Aideed in the south. See Wyllie, "Somalia, State Disintegration and Regional Stability", p. 71.
47. At the time of the UN intervention, there was little infrastructure left. There were airfields at Hargeisa and Mogadishu, and all ports and roads were in poor condition. DND, NDHQ, Analysis of Area of Operations Report, p. 1.
48. DND, NDHQ, Analysis of Area of Operations Report, p. 17.
49. According to Dr. Menkhaus, You had on the one hand the young men who had no training because the educational system had collapsed in Somalia 10 years before, that were more powerful in their community in the chaos as long as they had a gun... They had made more money in the chaos looting and extorting than they had ever made before, and they had a strong interest in seeing this continue. They had leaders who had a strong interest in an economy of plunder. Warlords [is what] we have come to call them...and in a few cases this is a legitimate term for people whose power base rested on fear and instability -- the threat of attack by another clan against their owns--s-which elevated their status in their community. They were making good money extorting international relief agencies, extorting other clans and so on. There were entire Somali clans who came in and conquered vast, very valuable real estate in Somalia, and they had a continued vested interest in this whole economy of pillage (Transcripts vol. 7, pp. 1307-1308).

50. DND, NDHQ, Analysis of Area of Operations Report, p. 19.
 51. *The Somalia Handbook*, p. 5.
 52. Kenneth Menkhaus and John Prendergast, *Political Economy of Post-Intervention Somalia*, Somalia Task Force Issue Paper #3 (1995), p. 7.
 53. Omaar, "Somalia: At War with Itself", pp. 233-234.
 54. Omaar, "Somalia: At War with Itself", p. 233.
 55. Omaar, "Somalia: At War with Itself", p. 234.
 56. *Africa Watch* reported that the UN's insistence that the warring factions respect the cease-fire agreement before it provided food, medicine and other necessities was misguided, as the war in Mogadishu was fuelled by hunger (Omaar, "Somalia: At War with Itself", p. 234).
 57. DND, "Int Report OP Cordon RECCE" [Intelligence report on a reconnaissance conducted for Operation Cordon], p. 1.
 58. DND, NDHQ, "Analysis of Area of Operations Report", September 9, 1992, Annex A, p. 2.
 59. Analysis of Area of Operations Report, September 9, 1992, Annex A, pp. 1, 2.
 60. The arrangement made during the civil war was that the Hawaadle clan could enjoy pre-eminence in Belet Huen and were given by General Aideed (also from the Hawiye clan-family) the right to control the airport in Mogadishu. This was a very lucrative opportunity and one that a relatively small clan such as the Hawaadle would not normally have had, except that the Habar Gidir and General Aideed needed their acquiescence. Since they were not formal allies, the Hawadle clan was very careful to stay as neutral as it could in the civil war, but prominent members enjoyed special opportunities because of their geographic position (Testimony of Dr. Menkhaus, Transcripts vol. 7, p. 1284).
 61. A number of smaller Hawiye clans, including the Jajele, Galgaal and Badi Addo, inhabit the west bank of the town. They were not pleased that the Hawaadle monopolized opportunities in the town but were unable to do much about it. To the north of the town the powerful pastoral Habar Gidir clan (also members of the Hawiye clan-family) was dominant. It did not need to control Belet Huen directly but required the acquiescence of whoever was controlling the town to allow for the free flow of men and weapons. To the north and west, the Marehan and Bah Geri clans of the Darod clan-family controlled land north-west of the city leading to Ethiopia. This is significant since this was Siad Barre's clan-family. There were Ogadeni clansmen to the west and in Ethiopia who also wanted access to the road (Testimony of Dr. Menkhaus, Transcripts vol. 7, pp. 1284-1285).
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THE SOMALIA MISSION: PRE-DEPLOYMENT

The next three chapters in this volume form a detailed narrative summary of events, actions and decisions relating to the Somalia operation. In chapters 3 to 11 we presented the context in which the Somalia mission took place. In chapters 12 through 14 we describe, on the basis of evidence and in narrative form, the events and actions that define the issues. Chapter 12 concerns what happened before Canada agreed to participate in the mission to Somalia, chapter 13 deals with the events that took place during the deployment, and chapter 14 recounts what occurred after the Canadian Forces arrived home. In this narrative account, we identify various points where we suspect the existence of systemic problems. Then in the three remaining volumes of this report, we provide an analysis of those suspicions and our findings and recommendations.

SOMALIA: A TROUBLED COUNTRY

Anarchy and Human Suffering

During the early months of 1992, the political situation in Somalia was deteriorating rapidly. The downfall in January 1991 of Somalia's president, Siad Barre, led to an extended and often violent power struggle among clans and factions in many parts of the country. The two largest factions, located mainly in the central and southern areas of the country, were a group of United Somali Congress (USC) members who supported the interim President of Somalia, Mohammed Ali Mahdi and a rival group, also from the USC, which supported the USC Chairman, General Mohammed Farah Aideed.

These two groups controlled upwards of 50,000 militia, armed with Soviet tanks, artillery, and vast quantities of lighter weapons and ammunition to fuel their rivalries. Fighting had erupted in Mogadishu and spread throughout Somalia as well. Heavily armed elements controlled various parts of the country, with alliances developing and breaking down as time passed and hostilities persisted. Adding to the physical destruction and political chaos were groups of bandits unattached to the more organized fighting factions.

There was no functioning central government, and many of the *de facto* authorities were refusing to allow the delivery of humanitarian aid. In-bound ships carrying relief supplies were blocked from docking and, on one occasion, had even been shelled. The airport at Mogadishu had also been attacked.

By the fall of 1992, it was estimated that as many as 300,000 people had died in the previous 12 months, and at least 1.5 million more were immediately at risk of dying. UN reports estimated that approximately 4.5 million Somalis -- over half the estimated population, the majority of whom lived in rural parts of the country -- were suffering severe malnutrition and related diseases. Hundreds of thousands more were forced to flee their homes. The country was in urgent need of humanitarian assistance.

To UN mediators, Somalia was a complicated mixture of both formal and informal institutions and infrastructures. Although anarchy appeared to reign, there was still a degree of order within individual clans. There were also geographical differences, in that while the central and southern regions were severely affected by the fighting and by famine and refugees (Belet Huen was in central Somalia), the northern area of Somalia (the old British protectorate of Somaliland, where Bossasso is located) was relatively calm, with a friendly population and a clear, recognizable pattern of authority. The latter area was controlled by another faction, known as the Democratic Front for the Salvation of Somalia (SSDF).

UN Efforts to Send Humanitarian Assistance

Although there had been a sporadic UN presence in Somalia throughout 1991 and early 1992, the deteriorating situation in the central and southern areas demanded a more concentrated international effort. In January 1992, at the initiative of the departing UN Secretary-General Javier Perez de Cuellar, a UN team travelled to Somalia to assess the situation. As a result of the visit, all the factions except for that of General Aideed agreed to a cease-fire within Mogadishu. The UN Secretary-General then succeeded in securing a UN resolution to undertake action in conjunction with other international organizations to increase humanitarian assistance to the civilian population.

The Department of External Affairs was first notified by its Permanent Mission to the United Nations in New York of a possible UN action in Somalia in early January 1992. However, there was consensus among

UN member nations that the volatility of events and lack of a negotiated cease-fire precluded a peacekeeping mission.

By March 1992, the UN was fully engaged in humanitarian efforts in Somalia. But over the following months, the volatile situation forced the UN on a number of occasions to withdraw its personnel from Somalia, even though it continued its efforts through the co-operation and collaboration of the International Committee of the Red Cross (ICRC) and a number of other non-governmental organizations (NGOs).

Canada's Response Through External Affairs

During the early months of 1992, the Department of External Affairs and the Department of National Defence (DND) continued to receive reports of the humanitarian aid crisis unfolding in Somalia, although Canada had no diplomatic or military presence in that country. In March, Canada's Ambassador to the UN wrote to the Secretary-General to express support for the UN's efforts, confirming that Canada would participate in a mission to deliver food and other humanitarian supplies, once the UN was in a position to ensure the security of its force.

Discussions about possible Canadian participation in a UN or other operation in Somalia first took place through largely informal channels, involving Canadian representatives at UN headquarters in New York, officials in External Affairs, and senior civil servants and officers at National Defence Headquarters (NDHQ) in Ottawa. The formal decision to participate in peacekeeping missions, and agreement as to the scope of a prospective mission, were the responsibility of Cabinet, after having received information and recommendations from the departments of External Affairs and National Defence.

While both departments shared (and still share) responsibility for advising Cabinet on decisions regarding peacekeeping activities, the Department of Foreign Affairs and International Trade (External Affairs at the time of the Somalia mission) has the overall responsibility as part of Canada's foreign policy for conducting relations with the UN and, accordingly, assumes the lead role in the decision-making process. At the time Somalia was in crisis, a representative of the Department of External Affairs would have routinely analyzed the UN request from the perspective of Canada's foreign policy, then worked with DND officials to co-ordinate the Canadian response.

The Role of National Defence Headquarters

Within DND, the lead position for all initial peacekeeping matters prior to a formal commitment is the assistant deputy minister (Policy and Communications). At the time Somalia was being discussed, this was Dr. Kenneth Calder, a civilian who reported jointly to the Deputy Minister (DM), Robert Fowler, and to the Chief of the Defence Staff (CDS), Gen John de Chastelain who was primarily responsible for any advice given on peacekeeping. Once a commitment was made to the UN, the responsibility shifted to the Deputy Chief of the Defence Staff (DCDS), who then took over the "co-ordination of planning, structuring, mounting, deployment, command and control, sustainment and redeployment of the force."

While the Department of External Affairs would consider the request from a foreign policy perspective, NDHQ would analyze the proposed mission from both policy and operational perspectives in order to develop a response to the UN request. For the analysis leading up to a possible commitment to send troops to Somalia, officers and officials in NDHQ were guided by certain policies.

The main policy document was the 1987 white Paper on Defence, which contained seven criteria intended to be used to evaluate the proposed peacekeeping operation. Although these criteria had evolved over the years, they were considered to be the only available means to reach an informed accountable decision. When the request was made by the UN for a Canadian contingent to go to Somalia as part of the United Nations Operations in Somalia force, seven criteria were in effect.

These criteria required that there be a clear and enforceable mandate and that the principal antagonists agree to a cease-fire and to Canada's participation. They called for a mandate that would serve the cause of peace and have a good chance of leading to a political settlement in the long term. They also required that the size and composition of the force be appropriate to the mandate and that Canada's involvement not jeopardize other commitments. A single identifiable authority would be expected to oversee the proposed operation and, finally, Canada would expect the mission to be equitably funded.

However, senior officers and officials in the Department of National Defence played down the significance of these policy guidelines in the decision-making process. Moreover, both the Deputy Minister and the CDS maintained that the guidelines were "significantly" flexible and were taken into account only "somewhat, not in any particular detail".

Mr. Fowler later indicated in his testimony before us that the criteria were not generally used like a checklist and that if they had been applied to the situation in Somalia, very few of them would have made any sense. Gen de Chastelain agreed with this assessment, although a 1992 defence policy paper stated that these guidelines were policy that should have been followed.

The Creation of UNOSOM -- Humanitarian Aid

It was not until April 1992 that the first formal UN operation to provide humanitarian assistance to Somalia was established. In April, the UN Security Council adopted Resolution 751, under the authority of Chapter VI of the UN Charter, to form the United Nations Operation in Somalia, known as UNOSOM. Operations under Chapter VI provide for the use of force only in self-defence in the peaceful settlement of disputes under international law. Canada was approached at that time to participate in the UN operation.

After review of the UN request by officers and officials at NDHQ, the Department of External Affairs asked Canada's Permanent Mission to the United Nations to register Canada's security concerns and to determine whether the UN resolution could be revised to ensure that appropriate security and safety measures were in place. Also, the DM and the CDS had recommended to the Minister of National Defence (MND) that the Minister advise the Department of External Affairs to decline the UN's informal request.

The reasons for this recommendation were based on the failure of the proposed UN mission at that stage to meet Canada's policy criteria on several different issues. The mandate was uncertain; the adequacy of the agreements obtained from the rival leaders was doubtful; and, most important from NDHQ's perspective, there were serious safety concerns that had already been acknowledged by the UN. This recommendation was accepted by the Minister, and although plans continued at the UN for the deployment of military observers, Canada continued only to monitor the situation.

Throughout the spring and summer of 1992, difficulties were encountered in arranging the deployment of UN observers and technical advisers, and revisions to the mission were already being considered by UN negotiators. At the end of July 1992, the deployment of UN observers was finally permitted. But by then, the food crisis was also escalating, and the Secretary-General believed that the situation in Somalia was not receiving the attention it deserved from the international community.

On July 28, 1992, Gen de Chastelain directed staff at NDHQ to conduct a feasibility study to determine the capability of the Canadian Forces (CF) to provide a battalion to Somalia, should one be required. However, he reiterated to UN officials that Canada would not send observers or other troops into the country without a security battalion. It had been mentioned even during these preliminary discussions in Canada that the Canadian Airborne Regiment (CAR) would be a possible unit for such a peace support commitment.

Aware of the threat of mass starvation, which was being graphically portrayed in worldwide media coverage, the UN Secretary-General issued an appeal to member states for all forms of humanitarian assistance. Canada agreed, in an August 13, 1992 letter from Prime Minister Brian Mulroney to Secretary-General Boutros Boutros-Ghali, to participate in an airlift of relief supplies, designated Operation Relief, even before its commitment to the UNOSOM mission.

By late August the situation in Somalia had deteriorated significantly. Throughout the country, there were repeated sporadic outbreaks of hostilities and a proliferation of armed banditry. The humanitarian crisis continued because of the lack of security, despite the fact that the UN had the actual capacity to provide increased aid.

While acknowledging the importance of the airlift operation in the delivery of food and other supplies, the Secretary-General reported to the Security Council that "current security conditions do not permit the assured delivery of humanitarian assistance by overland transport and are thus the main cause of the current food crisis in Somalia." He made it clear that this approach neither eliminated the need nor could substitute for assistance in land-based distribution of aid.

Finally, in late August 1992, the Security Council approved, through Resolution 775, a plan proposed by the Secretary-General to deploy four security units of 750 troops each, one to each of the four operational zones identified earlier by the UN. After an amendment to include the deployment of three logistics units, the final version of the UNOSOM mandate was complete.

The security-reinforced UN force was given the responsibility to provide protection and security to UN personnel, equipment, and supplies (at first in Mogadishu, and later in the four operational zones); to escort deliveries of humanitarian supplies to distribution centres; and to provide security for UN personnel, equipment, and supplies at the airports in Somalia. Its main goal was to provide UN convoys with a sufficiently strong military escort to deter attacks. To perform these tasks adequately, the UN force was authorized to fire effectively in self-defence if deterrence should not prove sufficient.

CANADA'S PARTICIPATION IN UNOSOM

Preparation for a Peacekeeping Mission

By the time the official UN request for troops was received, plans for a formal response from Canada were well under way. The Prime Minister had indicated support through his previous pledge to contribute troops to an expanded UNOSOM in August 1992 and in correspondence to the MND. In late August, the DM and the CDS, after outlining the situation for the Minister, recommended that Canada agree to undertake relief operations in Somalia, subject to conditions concerning the length of the commitment and relief from its previously agreed-to involvement in Operation Python in the Western Sahara, a UN operation that was planned for but later cancelled.

Unlike the usual practice, the formal UN request for an infantry battalion had been forwarded to Canada's Permanent Mission in New York before Canada formally acceded, although it was apparent that a positive response from Canada would indeed be forthcoming. Reports from the Permanent Mission had indicated that officials believed it would be seen as a significant accomplishment internationally if Canada were able to respond quickly and decisively to the UN request.

The decision of the Government of Canada to participate in UNOSOM was made formally only after the Security Council had explicitly authorized the deployment of security personnel, in addition to the peacekeeping force authorized under the operation's initial mandate. UNOSOM's original mandate under Resolution 751 was considered by a number of countries, Canada included, to have been limited fundamentally by a critical flaw in the plan. The UN had not been able to secure the consent of General Aideed to the proposed plan for security personnel, despite its recommendation by UN representatives and support from rival leader Mohammed Ali Mahdi.

Canada's Historical Role as Peacekeeper

In Canada, peacekeeping has long been thought of as a significant achievement of both foreign affairs and defence policy. This public and political support originated with the award of the Nobel Peace Prize to Lester Pearson for proposing that the UN deploy peacekeeping units to monitor a cease-fire in the 1956 Suez crisis. In 1993, the Senate Standing Committee on Foreign Affairs reported that it was the "sole military activity that Canadians support". Nevertheless, government white papers on defence, produced between 1964 and 1994, and many other policy statements have consistently ranked peacekeeping as an ancillary function of the Canadian Forces.

Canada's longstanding involvement in peacekeeping is seen to have enhanced our international profile as a middle power in international affairs. It is also considered to have contributed to Canada's stature and influence at the UN. During the Cold War, Canada's main strategic concern was to avoid or prevent the escalation of hostilities between the superpowers that would threaten Canada's national security through direct or collateral attack. The end of the Cold War diminished concern about such confrontations and the threat of war as a rationale for Canada's involvement in peacekeeping activities.

Despite Canada's distinguished role as peacekeeper, the Canadian military has been reluctant to embrace peacekeeping as a priority in defence policy. Its first priority remains the retention and advancement of its combat capabilities for the protection of Canadians and their interests and values at home and abroad,

notwithstanding the fact that since the end of the Cold War, combat responsibilities have greatly diminished.

While it is generally accepted that combat capability is required for deployment on UN missions, it has also become increasingly apparent that concentration on combat capability alone may affect the development of appropriate training and operational procedures for a new generation of peacekeeping-type operations. Members of the CF knew little about Somalia before the Canadian government made its commitment to the UN's mission in that troubled country.

Involvement of the Canadian Airborne Regiment

While Canadian diplomats, civil servants, and senior military officers were considering the possibility of sending Canadian forces to Somalia, the Canadian Airborne Regiment (CAR) had reverted to its status as Canada's UN standby unit in February 1992, after an operation for which it had been assigned and for which it had trained intensively was cancelled.

That mission, Operation Python, was a projected UN operation in the Western Sahara, where a referendum was to determine whether Western Saharans would claim national independence or integrate with Morocco. Canada was to have provided a battalion to assist in ensuring a free and fair vote. Reportedly, the order to stand down affected the morale of the CAR. It represented another on-again-off-again kind of frustration caused by gearing up for major exercises followed by last-minute cancellations. As later events were to indicate, this may also have taken its toll on discipline within the regiment.

At the beginning of September 1992 just as a press release was issued announcing Canada's participation in UNOSOM, the CDS was briefed on contingency planning for the Somalia operation by military officers from Force Mobile Command (FMC, now Land Force Command, or LFC). Although the CDS was ultimately responsible and accountable in the chain of command for reviewing and approving the proposed plan and organizational structure, and had stated in July that the CAR was the ideal unit for a Somalia mission, it was the Commander Land Force Command who, at this stage of planning, formally decided that the CAR would go to Somalia.

The CAR's History

The CAR had a relatively brief existence in Canadian military history. As discussed in Chapter 9, organization for the Regiment began in 1966, under Gen J.V Allard. The plans included the development of an airborne capability in the form of a composite unit to address a number of specialized purposes such as a small-scale northern defence, short-notice response to UN requests for peacekeeping forces, operations in limited or general war within the context of a larger allied force, and domestic operations in response to civil authorities.

When it was created formally in 1968, the CAR was organized as a unit of the CF within Force Mobile Command. The unit was originally organized as a mini-brigade consisting of approximately 900 members. To join the Regiment, soldiers had to have served at least four years in the army and have, or qualify to have, the rank of corporal. Originally, it had been considered, in part, an operational training unit, so that the resulting tougher physical conditioning and sharper mental attitude eventually would be diffused throughout the regular army. Members of the CAR were to return to their parent units after two or three years in the Regiment. However, some of these original requirements changed in subsequent years.

The Regiment originally had its own regimental headquarters and six units: the Airborne headquarters and Signal Squadron which provided communications and headquarters functions; two infantry commandos (1 Commando and 2 Commando); a field artillery unit; and combat and service support units. The regimental commander exercised the powers of a commander of a formation. The Royal 22^e Régiment provided soldiers for 1 Commando; The Royal Canadian Regiment and the Princess Patricia's Canadian Light Infantry for 2 Commando. When 3 Commando was added later to the complement of CAR troops, it drew exclusively from The Royal Canadian Regiment. All three regiments contributed soldiers for the key positions in the headquarters and service commandos.

The CAR was only two years old when it undertook its first operational mission -- to help secure Montreal in the troubled days of the 1970 October Crisis. In April 1974, 1 Commando was sent to Cyprus on the

Regiment's first overseas posting, a mission that was conducted with honour under very difficult conditions. The CAR returned to Cyprus for two additional tours in 1981 and 1986-87. It also prepared for other deployments -- to Namibia in the early 1980s and the Western Sahara (Operation Python) in 1991, although, finally, neither of these operations took place.

Early Signs of Disciplinary Problems

Although the Somalia mission was to be the CAR's last deployment and possibly its most troubled experience, the Regiment had faced numerous controversies and repeated upheaval in its short history. Structural and other organizational weaknesses within the CAR had become apparent by the mid-1980s. Its move from western Canada to CFB Petawawa in Ontario was also considered to have contributed to the Regiment's instability and subsequent disciplinary problems.

Concern that Special Service Force (SSF) and CAR soldiers were not conducting themselves with proper discipline was not new. Although troops returning from Cyprus in the fall of 1981 had been told by their Commanding Officer that they had carried out their duties in an "exemplary manner" and had "excelled" in operations, a barroom incident in Nicosia involving 1 Commando soldiers gave an early indication of disciplinary problems within the Regiment. In 1982, the new Commanding Officer noted with concern a growing laxness within the unit, which he attributed to its structure and to the manpower selection system in place.

By 1984, however, discipline at CFB Petawawa had deteriorated to such an extent that the SSF Commander was forced to take action. In a memo sent to base commanding officers, he warned of indications of a lack of control over soldiers, disobedience, increased incidences of impaired driving offences, inadequate control of stores, ammunition, equipment, pyrotechnics, and weapons, resulting in thefts or losses, and cases of assault. A 1985 incident in Fort Coulonge, involving a Canadian Airborne soldier who had been embroiled in a brawl and killed a civilian with a machete, was a further impetus to the commissioning of a full review.

The Hewson Report

In 1985, the CDS ordered a study to review infractions and antisocial behaviour within Force Mobile Command, and in particular in the SSF of which the Airborne was a part. This study, known as the Hewson report, after its chairman, MGen C.W. (Bill) Hewson, then Chief of Intelligence and Security, made several observations and conclusions about the state of the CAR at that time. Issues raised in this report were to reverberate in the Regiment's experience in the months leading up to and during its deployment to Somalia.

The report concluded that the SSF displayed a higher rate of violent crime than other Force Mobile Command formations, and that the 1 Royal Canadian Regiment and the Canadian Airborne had a higher incidence of assaults than did other SSF units. Although the CDS had considered disbanding the CAR following the incident at Fort Coulonge, the report expressly refrained from making radical recommendations.

MGen Hewson had expressed the opinion that only mature, trained infantry soldiers should be eligible to serve in the Canadian Airborne, and that battalions and career managers needed to co-operate to ensure the suitable staffing of the Regiment. He observed as well that the Regiment's junior officers and non-commissioned officers needed to establish closer rapport with the soldiers.

While he acknowledged that most non-commissioned members were outstanding soldiers and leaders, he commented that some weak junior non-commissioned officers had contributed directly to the breakdown in discipline. He also noted some problems related to the disciplinary powers of the officers commanding the commandos and to the seeming reluctance of some commanding officers to empower non-commissioned members to lay charges. Finally, he recommended that qualified specialists examine the incidence of alcoholism at CFB Petawawa.

Senior officers in the CF appeared initially to support the conclusions and recommendations in the Hewson report. LGen Belzile, Commander Force Mobile Command, reported to the CDS that he intended to act quickly to address the problems within his sphere of responsibility. But by 1986 the Assistant Deputy Minister (Personnel) in DND, LGen John de Chastelain, wrote to Force Mobile Command headquarters

advising that he considered closed the particular issues of disciplinary infractions and anti-social behaviour that had initially concerned them. He added that corrective actions regarding disciplinary matters would continue within a broader context in the CF. And over the longer term, MGen Hewson's recommendations attracted less attention.

The Commanding Officer of the CAR from 1990 until 1992 indicated in testimony before this Inquiry that the Hewson report never arose in discussions during the handover from the previous Commanding Officer, nor had he seen it or heard about it in the years of his Canadian Airborne appointment. Nevertheless, there were indications that the disciplinary issues that had prompted the Hewson investigation continued to manifest themselves within the Regiment as discussions took place for its deployment to Somalia.

Selection and Screening of Personnel

Evidence has indicated that the manning practices of the Canadian Airborne determined to some extent the methods used to resolve disciplinary and other problems of the Regiment, because the commanding officer did not have the flexibility of other battalions to move soldiers from one sub-unit to another to obtain a balance of experience and talent. Each contributing CF unit was expected to do its part to ensure that a significant number of its best candidates were sent to fill its quotas in the CAR. However, this obligation was not always met and, indeed, we heard evidence that at times, battalions would actually avoid sending their better candidates to the CAR.

The CAR apparently had a high turnover of personnel, as its troops were rotated back and forth from their parent units. Also, shortly before its deployment to Somalia, the Regiment had undergone a major reorganization that included a troop reduction from a strength of 754 to 601 soldiers of all ranks. It had also just lost its formation status, and its components, in turn, had lost their status as independent units. This meant that the Regiment was converted to a normal infantry battalion, with a commander at one rank lower (lieutenant-colonel) than before, and with the commanders of its commandos losing their CO status and requiring less experience as majors.

By July 1992, the CAR consisted of a headquarters commando of 124 soldiers, three company-sized commandos of 119 soldiers each, and a service commando of 120. Even though their status of independent commands had been lost, each of the three main commando sub-units remained independently manned by the three regular CF infantry regiments.

At the time CF officers were planning for the deployment to Somalia, avoidance of costly and disruptive repatriation and replacement of personnel from an operational theatre was the focus of pre-deployment screening of soldiers. In accordance with Canadian Forces Administrative Orders (CFAO) in effect at the time, emphasis was placed on administrative, medical, and family problems, as opposed to matters involving disciplinary concerns or other suitability factors.

Pre-deployment screening of the CAR and reinforcement personnel was the responsibility of the unit's Commanding Officer who was expected ultimately to certify the fitness and suitability of each member. In practice, however, these decisions were made by sub-unit commanders. The standard practice based on the CFAO was to consider a soldier's recent conduct and performance as well as the requisite training standard and disciplinary record. Final judgement in terms of discipline was based on the soldier's overall record rather than on the basis of a single incident.

Normal and continuous personnel review determined the professionalism and behavioural suitability of various individuals for service on UN operations, but this approach suffered from significant limitations. For example, in 1992, affiliation with racist groups was not, in itself, believed to be inconsistent with membership in the CF, nor was it grounds for release from military service or for the restriction of assignments, postings, or deployments.

However, incidents had occurred, both in the past and during the CAR's preparation for the Somalia mission, that indicated that an informal leadership at the junior rank level presented a direct challenge to authority. This problem had been recognized by the legitimate leaders both within the Regiment and up the chain of command, and specific infractions in the fall of 1992 affirmed that it had not been resolved before deployment to Somalia.

Discipline breakdown within the Airborne's 2 Commando during preparations for Somalia was of particularly serious concern. This breakdown included disobedience of unit rules, socially unacceptable behaviour, and random criminal activity, ranging from the commando's mounting of the Confederate (or Rebel) flag in its quarters to reports of excessive aggression, damaging of property, the burning of a duty sergeant's car, unauthorized pyrotechnic explosions, and drunkenness.

Although the Commander of the CAR had taken steps to address the potential disciplinary challenge associated with the display of a Confederate flag, the flag reappeared in early October 1992 at the time of some serious disciplinary infractions.

A series of incidents took place on October 2 and 3, 1992, suggesting a grave lack of discipline in 2 Commando during training for operations in Somalia. In the evening of October 2nd, military pyrotechnics were exploded illegally at a party at the junior ranks' mess at CFB Petawawa. In the early morning of October 3rd, a vehicle was set on fire belonging to 2 Commando's duty officer, Sgt Wyszynski, who had reportedly called the Military Police following the disturbances at the mess. (This act resembled an earlier attack in 1990 on another officer who had responsibility for the enforcement of discipline. His car had also been burned.) Later that night, perhaps fearing their quarters would be inspected for illegally held pyrotechnics, various members of 2 Commando held another party, this time in Algonquin Park, at which they set off more pyrotechnics and ammunition.

Most officers and non-commissioned members responsible for discipline within the Airborne acknowledged that these incidents were serious infractions, and on October 6th, BGen Beno demanded an explanation of the events from Commanding Officer, LCol Morneault.

The day before BGen Beno's communication with LCol Morneault, three members of the Airborne (at least two from 2 Commando, MCpl Matchee and Pte Brocklebank, and a third unidentified individual) approached WO Murphy, 4 Platoon's sergeant-major, to report that they had participated in the party in Algonquin Park. Nevertheless, only Pte Brocklebank informed the sergeant-major that he accepted sole responsibility for the pyrotechnic discharges. Testimony before us from WO Murphy and MWO Mills, sergeant-major of 2 Commando, indicated that they viewed this 'confession' as taking the fall for the remaining participants.

Senior officers believed that 1 Commando and 3 Commando had lesser disciplinary problems, although there were reports of illegally stored personal weapons and improperly held ammunition. Videos showing degrading and violent behaviour during 1 Commando initiation sessions, which came to light following the Regiment's return from Somalia, also provide evidence of a serious breakdown in leadership and discipline within the Regiment.

The reaction of the Regiment's leadership to these infractions suggests that disciplinary matters were left unattended, even as the unit was preparing for an overseas mission. But they were not unnoticed. We were told that, following the two serious incidents in early October 1992, the CAR's CO, LCol Morneault, had sought the support of BGen Beno in threatening to leave 2 Commando behind in order to break the 'wall of silence' within that Commando. This recommendation was rejected by SSF Commander BGen Beno after consultation with the Commander Land Force Central Area, MGen MacKenzie. LCol Morneault was directed instead by BGen Beno to deal with the problem by redistributing soldiers from 2 Commando to other parts of the unit in an attempt to break up the "rebel" group.

LCol Morneault did not follow this recommendation, but chose to impose a collective punishment in an attempt to draw out the names of troublemakers. It was unsuccessful and was followed shortly after by the removal of LCol Morneault from command of the CAR, a dramatic and virtually unprecedented change in the midst of preparations for a deployment. The appointment of LCol Mathieu as the new Commanding Officer on October 26, 1992, and agreement to deploy the Canadian Airborne Regiment Battle Group (CARBG) in December 1992, on a revised operation, added further complications to the accelerated and increasingly tight time frame for planning for the mission.

Suitability of the CAR for Service in Somalia

CF estimates for the contingency plan for service in Somalia described the mission as comprising the probable tasks of port security, airfield security, convoy escort duties, distribution centre security, and base

camp security. Force Mobile Command officers were concerned that the UN estimate of the number of troops needed was inadequate to carry out the likely tasks. They stressed that the UN proposal was not driven by operational considerations but by finances.

NDHQ changed the number and make-up of the infantry companies and also increased the vehicles for each. Some senior officers considered even this revised structure barely adequate to handle the anticipated tasks for the mission. At this time, BGen Vernon in a covering letter forwarded with the plan to the Department of External Affairs and the DCDS on September 3, 1992, recommended that there should be no acceptance of a lesser capability than that presented in the proposed plan, in view of the operational risks involved in the mission.

The CDS was also briefed about the difficulties in developing Canada's plan for participation because of the limited UN concept of operations. Many issues were not addressed, according to the Canadian military assessment, including the needs of the civilian population in Somalia, the UN plan for the military component of the force, the need for more information as to tasks and boundaries, and the timetable for deployment.

At the time of deployment to Somalia, the CAR's role was to provide rapid deployment forces for operations in accordance with assigned tasks, primarily to participate in support of national security or international peacekeeping. The Regiment's primary task in the normal peacetime state (its standby phase) was to be prepared to go anywhere in the world as a light infantry battalion for peacekeeping operations.

However, given the restructuring of the Regiment, when planning began for the UN mission, which had been given the name Operation Cordon, it was not anticipated that the Canadian Airborne would go alone. The Warning Order for the force indicated that reinforcements would be required from other units. (These and subsequent orders relating to Operation Cordon referred to the 'Canadian Airborne Battalion Group' until after the suspension of the UN mission. With the emergence of Operation Deliverance, the term Canadian Airborne Regiment Battle Group came into use.)

A number of factors contributed to BGen Beno's assessment of the CAR in the context of the planned restructuring of the regiment as an independent entity. He had stated in a letter to MGen MacKenzie that "if there was a battalion that needed firm direction and leadership, it is the Canadian Airborne Regiment." Documents in evidence and testimony before us indicate that these factors were known to senior officers at the time the Regiment was selected to go to Somalia. These factors were changes as a result of the reorganization which gave the officers commanding (OCs) of the Commandos more limited powers to discipline soldiers under their command; a change in the required level of experience of these OCs; changes to the manning levels and composition of the Regiment resulting in administrative difficulties which meant that preparations for deployment would require more time; frequent changes in personnel, both at the senior officer level and down through the ranks; and unresolved personal conflicts and disciplinary matters.

Because of these concerns, the suitability of the CAR for Operation Cordon ought to have been an issue, but was not. Its nominal status as the standby peacekeeping unit, the recent cancellation of its assignment to the Western Sahara, and concern for the unit's morale seemed to prevail as the bases for its ultimate deployment. Assuming the Regiment was a balanced, disciplined unit, the time period for training for Operation Cordon is considered by the Inquiry to have been sufficient for an adequate level of preparation. But commanders and staff officers at all levels never questioned their assumption that the Airborne was trained, disciplined, and fit for deployment. Evidence provided to us suggests that the state of the Airborne was clearly and definitively not what it was assumed to be.

MISSION PLANNING

Operation Cordon

A formal Warning Order for Operation Cordon, Canada's contribution to UNOSOM, was made two days after the press announcement, on September 4, 1992, reflecting the statement of mission and tasks as they had been defined at the time. Members of the CF who were to be a part of the operation were placed on active service after an order in council was issued and tabled in the House of Commons, in accordance with the usual practice for such commitments. In a response to the UN, Canada confirmed that the agreement

was for one year only, and that Canada was to be relieved permanently from its involvement in the UN operation in the Western Sahara.

The Canadian troop contribution to UNOSOM consisted of the CAR operating as a mechanized infantry battalion, which, at the time, included two Armoured Vehicle General Purpose (AVGP) companies; one dismounted company which eventually was represented by 2 Commando; a headquarters/combat support company which included the regimental headquarters for the battalion group headquarters; a signals platoon; a reconnaissance platoon; a mounted reconnaissance platoon; and a direct fire support platoon. It had a total of 750 service members broken down in a headquarters commando of 132 soldiers, three infantry commandos of 110 soldiers each, an engineer squadron of 106 soldiers, and a service commando consisting of 182 personnel.

Within the context of the UNOSOM plan, CAR was to be responsible for the area in and around Bossasso. To support the Canadian ground forces, a naval supply ship, HMCS *Preserver*, was to stand off Bossasso to provide communications, combat and general stores, casualty evacuation, medical and dental services, and bulk fuel. Additionally, an air detachment of Hercules transport planes was deployed to Nairobi, Kenya, to fly humanitarian relief food and supplies into Somalia as part of the UN international airlift --s--Operation Relief -- organized earlier in 1992. This airlift would also be available to support Operation Cordon.

Reconnaissance

Shortly after the Warning Order was issued, a delegation of Canadian officers met with UN officials in New York for briefings on the political situation in Somalia and on operational arrangements for the deployment of UNOSOM forces. Included in the Canadian contingent was LCol Paul Morneau, at that time still CO of the CAR.

LCol Morneau reported that the briefing had been well structured and thorough but that little new information had been presented. However, another Canadian officer who was present expressed concern that other member states had not made troop commitments. He also observed that standing operating procedures for the mission were undeveloped and that, in a mission such as UNOSOM, where there appeared to be no identifiable enemy, any show of force would prove to be a continuing challenge to the Canadian CO.

Early in October 1992, Canada was finally authorized by the UN to send an advance party to Somalia for a reconnaissance. On October 12th, the group left for Somalia to try and confirm operational details for Canada's contribution. Members of this team included LCol Morneau, representatives from NDHQ and the CF, an officer from the Directorate of Peacekeeping Operations, and eight soldiers from the CAR.

Although it was considered to be somewhat late in planning for Operation Cordon, the October reconnaissance mission was critical to an understanding of some of the subsequent events. For the first time, reports from this team indicated that there could be changes to the tasks outlined in the contingency plan and the UN concept of operations. The reconnaissance revealed that humanitarian aid distribution in Bossasso had improved and that conditions in the region had stabilized.

The report also described revised, though still somewhat general, tasks for Operation Cordon: base camp security, reconnaissance convoys, and some port and airport security. There was no apparent need for aid distribution centres, nor were security convoys seen to be necessary. While concluding that the tasks were well within the UNOSOM mandate, members of the reconnaissance team stressed the need to monitor the situation.

Defining the Mission and Tasks

Changes to the tasks in the north-east sector, which had been assigned to Canada, were of major concern to Canadian officials because both the Department of National Defence and the Department of External Affairs wanted Canada to play a major part in the delivery of humanitarian relief supplies in Somalia. The revised concept of operations for the Canadian troop contribution allowed for mounted patrols to secure aid, but generally the Canadian presence was simply to show the flag.

Following discussions within DND on the revised mission plan for Operation Cordon, Col Bremner, Director of International Policy at DND, conveyed the Department's concern to the UN that the proposed role for Canadian troops, although within the broad UNOSOM mandate, was not necessarily the most appropriate role for the CAR. It was pointed out that until the reconnaissance report revealed an improved environment around Bossasso, the Airborne had been preparing for a security task for the delivery of humanitarian aid.

There was little indication following this communication with the UN that Canadian officials were persuaded that the tasks in Bossasso were suited to the CAR or to Canada's proposed organizational structure. At the UN, further clarification of the mandate was sought unsuccessfully, but shortly after, during November 1992, events transpired that led to an even more dramatic change in the mission. The original mandate for the Canadian unit's participation in UNOSOM had become irrelevant.

Preparation of the CAR for Deployment

Developing a Training Plan

Even before the Warning Order had been issued, CAR staff had begun to develop a training plan for Operation Cordon, although overall responsibility for the design and implementation of the plan rested with LCol Morneault as Commanding Officer of the Regiment. While planning at senior levels of Defence and External Affairs continued to evolve around the status of Canada's participation in UNOSOM, LCol Morneault provided input to the plan, drawing on information he had received orally from various sources, results from an earlier reconnaissance visit, training plans, and after-action reports from Operation Python, as well as other details based on his knowledge and personal experience.

CAR staff recognized that the mission had to be mounted quickly but viewed it as an unprecedented operation requiring extensive research, including a review of files from previous missions such as Cyprus and other operations on the African continent. Subsequent information provided to us indicated that written (that is, doctrinal) material from CF manuals was found to be very limited, but staff had also sought input from parent regiments to provide details for the training plan.

The first draft training program for Operation Cordon was forwarded by the CAR training officer to his superiors at SSF headquarters on the same day the Warning Order was issued, September 4, 1992. It provided a summary of regimental and commando level training activities to be conducted in mid-September in preparation for deployment. However, in spite of the efforts put into its preparation, it appeared much later that there was disagreement on whether the proposed schedule of training tasks represented a plan or a summary, and on whether its implementation would result in the regiment being ready on time.

Disagreement among Senior Officers

In any case, differences in perception among senior officers as to the satisfactory nature of the training schedule for Operation Cordon would later appear in individual accounts of the training process. LCol Morneault's superior officer, BGen Ernest Beno, had sought in a series of conversations and meetings to bring to LCol Morneault's attention his concept of an acceptable training plan. By mid-September 1992, written directions were issued for a training exercise, called Stalwart Providence, with the express aim of confirming the operational readiness of the CAR.

Two days later, BGen Beno and LCol Morneault were scheduled to meet for a review of training activities and other Operation Cordon preparations. Later evidence suggests that BGen Beno was concerned that LCol Morneault had not focused on the kind of training required or how it was to be managed. LCol Morneault, on the other hand, testified that although BGen Beno had told him during a telephone call that staff at SSF headquarters were dissatisfied with details on the training plan provided by CAR staff he came away from that conversation with the understanding only that he was to deliver a training plan through the chain of command, and not necessarily that it should include formal aims, objectives, and scope of training details.

A new package of training schedules and summaries was presented by LCol Morneault and his staff for the time period from September 8 to October 2, 1992, to be followed by the Stalwart Providence training exercise, to take place between October 3 and 9, 1992. It was apparent by this time that unexpected events at the UN and in Somalia were affecting the overall timing for UNOSOM, creating the likelihood of a delay in the deployment of Canadian troops.

Stalwart Providence Training Exercise

On September 22, 1992, BGen Beno sent LCol Morneault a detailed training direction for Operation Cordon. The document stated that its intention was to assist in the preparation of the battalion group for the UN operation in Somalia, to lay the foundation for Stalwart Providence, and to provide a means for declaring the unit's operational readiness.

BGen Beno had included three basic rules in the training order, which he believed should govern the conduct of any peacekeeping operation and therefore underlie any preparatory training. These rules were that there was to be a minimum use of force, a maximum use of deterrence, and conflict resolution at the lowest possible level. He also set out directions for individual and collective training to be completed by mid-October.

LCol Morneault stated in his testimony before us that he did not see BGen Beno's training direction until he had returned from UNOSOM planning meetings at UN headquarters on September 28th. Evidence before us indicates that by this time communication between these two officers was seriously lacking. Although it seemed a bit late for the issuance of any written guidance, LCol Morneault had not interpreted BGen Beno's direction as an expression of concern, in part because the SSF headquarters had also issued a training direction for Operation Python a year earlier. As delays in the mission planning continued, the training plan continued to evolve. Additional time was scheduled for weapons training and commando exercises, and Stalwart Providence was rescheduled to run from October 14 to 18, 1992.

Dismissal of the Commanding Officer of the CAR

It appeared at first that BGen Beno and LCol Morneault had agreed on the purpose of Stalwart Providence, but as events unfolded, their individual accounts provided to us indicate that the exercise had taken on different purposes for each officer. Their basic difference was on whether it was a training or a confirmatory (i.e., testing) activity, and whether it was intended to be a test of the leadership of LCol Morneault himself. (This confusion could possibly have been explained by the lack of clear policy or doctrine within Force Mobile Command about the need for such an exercise in advance of a UN mission.)

When the dates for Stalwart Providence were set, it was not known that LCol Morneault would be away from his unit. He was to have participated in a reconnaissance mission to Somalia authorized by the UN, but it had been delayed while the UN negotiated with Somali factions. However, by October 21, 1992, LCol Morneault had been relieved of his command of the CAR. Subsequent information indicated to us that this decision had been made based on his superior officers' loss of confidence in the CO, rather than because of any action, lack of action, or other specific factors that preceded this unusual development.

Although there was a general view that the CAR was ready for overseas deployment, officers closer to the unit appeared not to be so sure. Shortly after receiving the Warning Order, BGen Beno had spoken to LGen Gervais to express his "concerns relevant to the command and training preparations" of the regiment. LGen Gervais' response to BGen Beno was, in effect, 'take care of the problem'. Other difficulties were also apparent.

Reorganization and the reduction of staffing of the CAR had affected the functioning of the unit, especially 2 Commando, which experienced a larger turnover of officers and junior leaders than had the other two commandos. The development of the rules of engagement for Operation Cordon was delayed, and the resulting uncertainty created difficulties in addressing the training requirements for the troops, some of whom were newcomers to their Airborne tasks. The CO of the Royal Canadian Dragoons, LCol MacDonald, reported that some CAR members were not interested in the specialized training they needed, and that overall discipline was lacking.

BGen Beno was aware that LCol Morneault was concerned and frustrated with "internal disciplinary problems" within the unit. Throughout the training period for Operation Cordon, repeated incidents indicated a serious breakdown in discipline and unit cohesion. LCol Morneault's attempts at discipline had, according to some testimony before us, the opposite effect of what he had intended.

Despite the recognized and unresolved disciplinary matters, LCol Morneault reported to BGen Beno on October 9, 1992 that the CAR would be ready to undertake its UN mission in Somalia after the planned regimental exercise. However, the same day BGen Beno told his superior, MGen MacKenzie, that he had "no confidence" in LCol Morneault. In mid-October, while LCol Morneault was out of the country on the reconnaissance mission to Somalia, BGen Beno sent a message about LCol Morneault to MGen MacKenzie, while he was on a visit with other members of the Army Council to U.S. army installations in the United States. Discussions took place about LCol Morneault's leadership of the regiment at an ad hoc meeting of the Council, and a recommendation was made to LFC Commander LGen Gervais, who effectively would make the final decision.

BGen Beno also sent a letter on October 19th to MGen MacKenzie that the Canadian Airborne's training deficiencies and administrative and disciplinary problems had not been resolved, adding that if the unit "was to be adequately prepared for its mission, it was necessary to replace LCol Morneault." Reasons given were that the battalion was not adequately trained, there were unresolved leadership, disciplinary, and operational matters, and the regiment had major problems of internal cohesion, control, standardized operating procedures, administration and efficiency.

On receiving approval for the removal of LCol Morneault, BGen Beno informed LCol Morneault that he was relieved of command on October 21, 1992, a decision that was to be challenged later by LCol Morneault. (BGen Beno had also told MGen MacKenzie on October 20th that training for Operation Cordon was complete, except for individual training for some additions to the battalion group. He added that the CAR could be "employed" as a part of UNOSOM, even though it was not administratively "ready to deploy.")

UN Reviews UNOSOM

While the UN proceeded with its plan for UNOSOM and the CF prepared for the deployment of its contribution, Operation Cordon, throughout October and November 1992, the security situation in Somalia continued to deteriorate. In late November, the Secretary-General wrote to the Security Council, warning that it might become necessary to "review the basic premises and principles of the United Nations in Somalia".

At a meeting the following day, the UN Security Council requested that the Secretary-General propose options to break the impasse in Mogadishu, and while these options were being developed, the Acting Secretary of State of the United States told the Secretary-General that the United States was willing to lead a peace enforcement operation in Somalia. Its sole object, according to the Secretary of State's presentation, was to stabilize the situation throughout Somalia, using force if necessary, so that UNOSOM could resume and continue its mission.

There are indications that the UN and many of its member states were taken by surprise by this offer. The proposal had also raised some difficult issues around the appropriate role of the UN in such an operation. Nevertheless, on November 29, 1992, the Secretary-General presented five options to the Security Council, two of which were modelled on the Chapter VI (peacekeeping-type) UNOSOM mission, and three others, including the U.S. offer, that envisaged action taken under Chapter VII (peace enforcement-type) of the UN Charter.

The Secretary-General argued that for any operation to be effective, given the situation in Somalia, it would have to be conducted under a Chapter VII mandate. He also expressed doubt that a simple show of force in Mogadishu would solve the problem throughout the country. Although the Secretary-General preferred the option that called for a country-wide peace enforcement operation under the command of the UN, he doubted its feasibility and therefore recommended the U.S. -led peace enforcement operation.

The wisdom of carrying out the UNOSOM mandate and the U.S. plan simultaneously was debated at the UN. Canadian officials took the position, supported by the U.S. State Department, that the Canadian

deployment to Bossasso could continue, although details on how this arrangement would operate were not set out. This "Canadian option" was supported by members of the Security Council but not by the Secretary-General. He believed that a traditional peacekeeping mission such as UNOSOM and a peace enforcement action should not take place concurrently.

Suspension of Operation Cordon

On December 2, 1992, at the request of the Secretary-General, the Canadian deployment to Bossasso was suspended, less than two weeks before Col Labbé, the officer appointed to head Canadian Joint Force Somalia, arrived in Mogadishu to establish the Canadian headquarters for its changed mission. Until this time in the decision-making process concerning a Canadian role in the U.S.-led Unified Task Force in Somalia (UNITAF), NDHQ had not appeared to play any significant role in the developing situation.

Gen de Chastelain had requested as early as November 27th that communications be established with the Pentagon to determine U.S. intentions with respect to Somalia. A few days later, at a senior defence officials' daily meeting in Ottawa, it was noted with concern that the U.S. plan appeared only to involve security for the distribution of aid rather than assistance in the re-establishment of law and order.

By December 2nd, with UNOSOM suspended and the Bossasso deployment less likely, Gen de Chastelain telephoned the Chairman of the U.S. Joint Chiefs of Staff, Gen Colin Powell, to ask about the American position and to express his own views. He indicated that it was his personal position (not the government's) to continue with the deployment to Bossasso, but only if it were to take place immediately. He also emphasized the capabilities and readiness of the CAR and suggested that if there was going to be an open-ended delay, then his preference was to join the peace enforcement operation.

The UNITAF Peace Enforcement Mission

U.S.-Led Multi-National Coalition

On December 3, 1992, the Security Council met and authorized a Chapter VII peace enforcement mission to Somalia. Under Chapter VII of the UN Charter, Resolution 794 sanctioned the multi-national dispatch of peace enforcement troops, authorizing the use of "all necessary means" to establish a secure environment for relief operations in Somalia. The operation was to be commanded by the United States and funded by member states, not the UN.

Its mandate, briefly stated, was "to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia". On December 4th, the President of the United States directed the execution of Operation Restore Hope, to be carried out by a multi-national coalition known as the Unified Task Force Somalia, or UNITAF.

Canada's Agreement to Join UNITAF

On the same day that the United States formally assumed the leadership of UNITAF, the government of Canada announced that it would contribute to the U.S.-led operation in Somalia. This decision was made by the Ad Hoc Committee of Ministers on Somalia, following a request made by President George Bush to Prime Minister Brian Mulroney.

The President's invitation to the Prime Minister for Canada to participate in the U.S.-led mission followed shortly after the conversation between Gen de Chastelain and Gen Powell. Gen de Chastelain again called Gen Powell to advise him that he would initiate staff contact between NDHQ and the Pentagon to discuss the possibility of Canadian involvement in the peace enforcement action.

DND began in earnest to analyze the possibility of participating in the U.S.-led mission after December 1, 1992. Only three very cursory written assessments (one by LCol Clark of the Directorate of International Policy, a second by the Canadian Operations Staff Branch (J3) Plans desk officer, Cdr Taylor, and the third, an unsigned document) were done at NDHQ before Cabinet was briefed on December 4, 1992. (These assessments noted generally that plans for a U.S.-led operation should be based on the force configuration and support structure already earmarked for UNOSOM.)

At the Cabinet briefing, Gen de Chastelain and Mr. Fowler presented two options for consideration by Cabinet: immediate participation with an augmented force in the UNITAF peace enforcement mission, expected to last eight months; or participation 9 to 12 months later in a resurrected UNOSOM for one year. Normally, a recommendation would have been provided to Cabinet, but in this situation only the options, with accompanying financial and logistics analyses, were presented. The CDS and the DM accounted for this approach with the explanation that the Department of External Affairs had been designated the lead department on this issue.

The Ad Hoc Committee of Ministers on Somalia considered the advice of External Affairs and the information provided by National Defence and decided that Canada should participate "for the duration of the UN military peace enforcement operation (an estimated nine months) with a properly supported battalion-sized force of up to 900 troops", stating as well that "Canada therefore would not participate in any subsequent peacekeeping operation in Somalia".

Factors Affecting Canada's Decision

There were several important considerations in the development of the options for the Cabinet briefing, many of which, it appeared, actually favoured participation in the U.S.-led peace enforcement mission. These factors included the fact that the CAR was assumed to be ready and anxious to go on an operation; that senior CF officers desired a prominent military role in any mission; that some planners felt that the decision to participate in UNITAF had already been made, thus reducing their function to justifying the decision; that the peace enforcement mission was more sustainable given other CF commitments; and that media attention on the situation in Somalia required immediate political and/or military action.

The fact that the CAR was assumed to be ready and anxious to go appears to have been one of the most important factors favouring participation in the U.S.-led peace enforcement mission. Gen de Chastelain later testified before us that as well as having a unit ready to go, there were ships already loaded and en route to the area, and a reconnaissance had been conducted. Although Col Bremner stated in his testimony that the fact that HMCS *Preserver* was en route to Bossasso would have had no impact on the decision to participate in the mission, his direct superior, Cmdre Cogdon, and Gen de Chastelain both agreed that this was a prime factor.

Senior Canadian military officials also believed that Canada needed to secure a prominent role in a more high-profile mission, partly to satisfy the media, which, it was felt, had noted Canada's omission from significant action during the Gulf War. The CDS noted in his record of a conversation with Gen Powell that "a role that was seen to be secondary would not sit well with the troops, with me, with the Government or with Canadians". Another officer reported that he had been directed by the CDS to "make it happen and jump on the bandwagon as quickly as possible". He indicated that doing a full military analysis ("estimate") of the situation would have prevented the CF from getting involved "at the front end of the situation".

Change in Mission -- Operation Deliverance

Canada's contribution to the U.S.-led UNITAF coalition was called Operation Deliverance. UNITAF was mounted under a mandate similar to that used in Korea in the 1950s and in the Gulf War some 40 years later, and Canada's contribution consisted of an infantry battalion of 900 troops, replacing the earlier commitment to UNOSOM of 750 personnel. Originally, then, Canada was to have participated in a traditional Chapter VI peacekeeping-type operation in support of humanitarian relief distribution in the northern area of Somalia around Bossasso. Now it was to participate in a Chapter VII mission that authorized the use of force to accomplish the goals of the mission.

When the government of Canada decided to participate in the U.S.-led peace enforcement operation, it had not committed CF members to carrying out a specific mission. Defining the operational mission in theatre was placed in the hands of Col Labbé by the CDS. He was given little guidance, but urged to move as quickly as possible to secure a high-profile mission. On December 6, 1992, the Canadian contingent was assigned initial responsibility for maintaining security at Baledogle airport. On December 19th, after consultation with the UNITAF commander, Canada's ultimate mission was finally assigned. The Canadian contingent was to be responsible for security in the Belet Huen Humanitarian Relief Sector, one of eight such sectors established under UNITAF.

One of the most significant alterations for this revised mission was the reinforcement of the CAR to give it the personnel and capabilities necessary to counter situations in the more volatile location of its changed area of responsibility. The newly formed CARBG was to consist of, in addition to the Canadian Airborne Regiment, A Squadron, Royal Canadian Dragoons, the mortar platoon from 1st Battalion, The Royal Canadian Regiment, and 2 Combat Engineers Regiment, with additional minor changes in the CAR itself.

LCol Carol Mathieu, who had replaced LCol Morneault as Commanding Officer of the CAR, began the reorganization of his unit for Operation Deliverance on December 8, 1992. He made structural and operational reductions to the unit based on the immediate task of the Canadian advance party, which, according to UNITAF's plan, was to arrive in Somalia on December 13th to maintain security at the Baledogle airport. LCol Mathieu's main body of troops was scheduled to go to Somalia between December 27th and 31st.

OPERATIONAL READINESS

Rationale for the Declaration of Readiness

One of the important elements in planning for the deployment of CF for any mission or operation is the overall preparation of the troops leading to a declaration of operational readiness. The CAR had received its Warning Order for Operation Cordon in September 1992 and trained throughout the autumn of that year for the mission. It was declared operationally ready by BGen Beno, Commander of the Special Service Force, on November 13, 1992. On that day, Col O'Brien and Cmdre Cogdon, senior staff officers at NDHQ, had bypassed the chain of command to ask BGen Beno specifically about the state of readiness of the CAR for Operation Cordon. BGen Beno testified later that he had responded that "based on my judgement [the CAR] would be [ready] within a few days".

Subsequently, the CAR and necessary reinforcements were regrouped into the CARBG and warned for Operation Deliverance on December 5, 1992. The CARBG was not declared operationally ready until December 16th, even though the unit's advance party had already been deployed. Until the decision to participate in UNITAF every operational activity, training event, and logistics preparation had been aimed at preparing the Canadian Airborne for operations near Bossasso.

The determination of operational readiness took a number of factors into consideration, all of which were based on the ultimate purpose and tasks of the planned mission. The concept is defined in CF doctrine as "the state of preparedness of a unit to perform the missions for which it is organized or designed". In the army, readiness is associated with operational effectiveness -- the degree to which operational forces are capable of performing their assigned missions in relation to known enemy capabilities.

Although there was no formal standard for measuring operational readiness in Force Mobile Command units at the time of pre-deployment preparations, there are certain military notions that could have guided commanding officers in the determination of their units' operational readiness. These ideas would likely include a clearly defined mission and concept of operations appropriate to the mission; well trained and experienced officers and junior leaders; a unit organization with weapons and equipment suitable for the mission; adequate training for all personnel in tactics, procedures, and operations of weapons and equipment; well organized and appropriate command and control systems for the mission; logistics and administrative support for the mission; and good morale, strict and fair discipline, and a strong sense of cohesion and internal loyalty.

In the case of Operation Deliverance, the specific mission was not known in detail until after members of Canadian Joint Force Somalia (CJFS) arrived in Somalia and, with this uncertainty, it would not have been possible to make an objective assessment of either operational readiness or effectiveness before the force was deployed. Notwithstanding the lack of objective standards and evaluations, and the existing pressures to hurry the deployment, there was, and still is, confusion among CF officers and staff at NDHQ about the distinction between a unit that is ready to be deployed and one that is ready for the military mission it is intended to perform.

Chain of Command Responsibilities

The Commander Land Force Central Area (LFCA), MGen MacKenzie, had been directed in operation orders to declare, in writing, the readiness of the CAR for deployment for Operation Cordon. In the original order, operational readiness for the purpose of Operation Cordon's deployment was defined as "the capability of a unit/formation, ship, weapon system or equipment to perform the missions or functions for which it is organized or designed". MGen MacKenzie delegated the responsibility for this declaration to BGen Beno.

Following the cancellation of Operation Cordon, MGen MacKenzie and BGen Beno were alerted to the pending new mission. While staff adjusted their plans before deployment for the U.S.-led operation, there appeared to be little concern at more senior levels about the effects of the changes and the short planning time for determining the actual state of readiness of the newly organized CARBG.

Although there were similarities between Operation Cordon and Operation Deliverance, it eventually became apparent that there was a sufficient number of critical differences between them to raise questions as to whether the declaration of operational readiness for Operation Cordon should have been considered valid for Operation Deliverance. As already indicated, Operation Deliverance involved a deployment of CF on an uncertain mission, in a different region of Somalia, under new command arrangements, and with a changed force structure and different rules of engagement. Moreover, having just completed a stressful change of its command and unit restructuring, the CAR was still attempting to deal with leadership, unit cohesion, and discipline problems.

Although the reorganization of the Canadian unit might have been seen to provide ample reason to reassess the readiness of the newly formed group, senior officers did not appear to have been alerted to the need for a specific assessment and declaration of operational readiness of the CARBG for Operation Deliverance. However, the Defence headquarters operation order for Operation Deliverance did not ask for such a declaration.

Despite the absence of a formal requirement for a declaration of operational readiness from the CDS, the Commander LFC, LGen Gervais, realized when Operation Deliverance was announced that a new declaration of readiness would be necessary. Accordingly he ordered MGen MacKenzie, in an operation order of December 9, 1992, to provide a declaration of operation readiness for the CARBG. Later testimony revealed that it is not clear whether MGen MacKenzie gave written or oral orders to this effect to BGen Beno, nor was it determined that he had taken any other action to comply with the order from LGen Gervais.

At the level of the Battle Group, many junior officers were aware of problems associated with the new structure. It had been in existence for less than a month and the new sub-units brought in to augment the CAR had not been warned, trained, or tested for a mission outside Canada. Maj Kampman, the officer commanding A Squadron, Royal Canadian Dragoons, received his troop's Warning Order for Operation Deliverance on December 3, 1992, and he was placed under the command of the CAR only a few days later.

In his testimony before us, Maj Kampman stated that he did not know LCol Mathieu and they had never worked in the field together. He also stated that he felt he was under considerable stress, partly because he had only 10 or 12 days to prepare for deployment, but also because he did not understand the mission, had no clear explanation of the command arrangements in Somalia, and was provided with very limited intelligence reports of the expected area of operations. In particular, Maj Kampman discussed with LCol Mathieu his concerns about the state of readiness of his squadron and the hasty organization and lack of training in the battle group. He noted in particular that he expected that they would have a problem with the rules of engagement because his soldiers had not been trained on any rules whatsoever.

According to the evidence, there was confusion in the sequence of events relating to the declaration of operational readiness for Operation Deliverance. From that confusion the following events occurred. NDHQ sent a message to Land Force Central Area headquarters and Special Service Force on December 10, 1992, asking for a confirmation of readiness. A declaration was issued by BGen Beno's SSF headquarters on December 16, 1992. This was followed by a declaration to the same effect 24 hours later by

Land Force Central Area headquarters, and on December 18, 1992, the Commander LFC forwarded a declaration to NDHQ. By this time, the CARBG's advance party had departed for Somalia.

Information Gathering to Assist in Mission Planning

Another aspect of mission planning is gathering necessary information to assist in the overall preparations. There were a number of fact-finding missions to Somalia in 1992, although only one was intentionally focused on the pending Canadian operation, Operation Cordon. Two UN technical missions went to Somalia, in March and August 1992. The March visit included Col Houghton, a staff officer in the peacekeeping section at NDHQ, as a member of the UN technical team. This mission produced a detailed report for the UN, which was made available to Canada for mission-planning purposes.

The Secretary-General used the reports of these technical missions to inform the Security Council about the current situation in Somalia. Planning staff at NDHQ considered the information useful for the purposes of policy analysis and the development of options because it provided details about an area of potential operation. In this instance, the reports had recommended that the UN objective could be accomplished through the deployment of "observers" and "security escorts", the latter to be drawn from a "security battalion".

The UN reconnaissance report also noted that a UN mission could be affected negatively by a number of factors, including the absence of a host government authority, antagonism among the parties, meagre infrastructure, complete lack of a reliable communications network, and a high incidence of serious crime. The report of the Secretary-General that followed this reconnaissance clearly described a "humanitarian assistance" mission.

The reconnaissance report did not make assessments specifically focused on the potential operations of any specific participating member state. Nor had Col Houghton prepared a report or made recommendations concerning Canada's possible role in a UN mission. Eventually, both reports from the UN technical missions were studied at NDHQ, leading to the recommendation by the CDS and the DM against any Canadian participation in the area at that time.

A CF reconnaissance, to support the pending deployment to Somalia, left Canada for Somalia on October 12, 1992. This mission was led by Col Houghton and included, among others, headquarters logistics and movements staff, representatives from Maritime Command, Air Command, LFC, and the CO of the CAR, at the time LCol Morneau. This party gathered information for the deployment of the CAR battalion group to Bossasso under Operation Cordon. Its report provided the substance of a briefing given to the CDS and the DM on October 21st, and for planning and orders prepared later at Defence and supporting headquarters.

The composition of the reconnaissance team was considered important because it included officers who would have responsibility for planning and conducting the operation. The mission was meant not only to gather information but also to provide these officers with some familiarity with conditions on the ground once the unit was in Somalia. Both Col Houghton and LCol Morneau considered the reconnaissance useful. LCol Morneau's enthusiasm was reflected in his report, which included details of the location of the camp, sites for the camp's defences, and a number of other administrative requirements.

An important purpose of the reconnaissance was to inform the planning process for the deployment of Canadian troops to Bossasso. The entire logistics and materiel support plan was to be based on the use of HMCS *Preserver* as the provider of fresh water, rations, and other essential commodities. Planners in the reconnaissance party and at NDHQ understood the central role of the replenishment ship to Operation Cordon. Their concept of support involved the understanding that HMCS *Preserver* would be "alongside in Bossasso", that is, a short distance from Bossasso in the Gulf of Aden, to provide an offshore base for resupply of the CAR once it reached its area of responsibility in Somalia.

Subsequent decisions to change the nature of the mission and the deployment area within Somalia affected the ultimate value of the October reconnaissance, to the extent that LCol Mathieu would later state that it was of no value at all for the purposes of the CAR's role in Operation Deliverance. Among other changes, LCol Morneau had been relieved of his command; neither LCol Mathieu, as his replacement, nor Col Labbé, as Commander CJFS, had time to conduct a reconnaissance as a part of the new mission; the composition of the field force had been changed from a CAR-reinforced battalion group to the CARBG

(representing an increase of approximately 150 personnel and a different composition of reinforcements); and none of the new unit officers had been on the October reconnaissance.

The Essential Elements of Logistics and Materiel

A UN technical mission visited Somalia in August 1992 to study the logistics problems likely to be encountered by the UNOSOM force. Although no CF officer was a member of the group, the mission was significant because it visited 11 locations in Somalia, including Bossasso and Belet Huen, and the findings were subsequently made available to Canadian planners.

Two particular issues were highlighted in the report of the UN's technical team: the virtual absence of an infrastructure throughout Somalia, and the difficulties of obtaining services and supplies for troops based there. Under these circumstances, the report indicated that the logistics challenge would be to construct an entirely self-sufficient deployment and resupply system. The logistics problems identified by the technical mission occupied and tested Canadian logistics planners for both operations Cordon and Deliverance.

The UN technical mission report after an August 1992 reconnaissance stated that nearly all food for UN troops would have to come from abroad, but apparently it had underestimated the water requirements for individual military personnel. Fuel, specialized vehicles, spare parts for equipment and vehicles, weapons and ammunition, generators, tents and other camping equipment, sandbags, wire, and water were identified in the report as some of the most important kinds of materiel for the deployment.

An early premise of logistics planning was that the basic supply lines would extend the whole distance from Canada to Somalia. This planning also had taken into account the changes to the structure of the Canadian Airborne in the summer of 1992, which included losses of logistic capability. One possible option to offset these problems was the organization of a National Support Element (NSE) to provide what was referred to as second- and third-line support, which would allow for supplies and equipment once in Somalia to be forwarded directly to Canadian personnel.

When the CARBG finally went to Somalia, however, only the CAR's service commando and a few second-line elements accompanied it. An NSE component was not put in place officially as a sub-unit of the CJFS headquarters until about two months after the troops had arrived.

Early in September 1992, Canada had received UN guidelines for governments that were contributing military personnel to UNOSOM. These guidelines stipulated that logistics planners should provide for troop self-sufficiency for at least 60 days after deployment. This goal had also informed the planners of Operation Deliverance, although shortly after the deployment had occurred, it was realized that the 60-day time period was inadequate.

Logistics matters had also been addressed during the October 1992 reconnaissance trip to the Bossasso region for Operation Cordon. A report submitted in late October by LCol Mathieu suggested that Canadian planners had already identified some of the potential logistics problems. The Canadian resupply ship HMCS *Preserver* was to have anchored offshore near the port of Bossasso, but LCol Mathieu's report indicated that the port was too small to accommodate the ship and that another type of vessel would be required instead.

Logistics planning during the early stages of Operation Cordon preparation was affected by a UN request that Canadian troops deploy as soon as possible. The cancellation of Operation Cordon leading to the new mission, Operation Deliverance, with its accompanying changes to location, manpower, and unit structure, further tested the logistics planning capabilities of the CF.

Operation Deliverance was a complex mission, made more so by a change in the location of the deployment, to Belet Huen, which required that Canadian planners coordinate with U.S. logistics activities. Once the projected area of operations had changed, there was little time to make the necessary alterations to the logistics/materiel planning already in place. Once the main body of Canadian troops began arriving in Belet Huen, it appeared that there was little opportunity to make adjustments to supplies, most of which were already en route to Somalia at the time the mission was changed.

Once supplies had been brought ashore, the task of transporting them to the CARBG in Belet Huen was far greater than the expected arrangement had been for Operation Cordon in Bossasso, where the troop's base camp was only three kilometres inland. Operation Deliverance logistics planners initially had to

contemplate transporting supplies from the resupply ship (offshore from Mogadishu) to Baledogle, almost 100 kilometres inland. When the Battle Group was given the responsibility for the Belet Huen Humanitarian Relief Sector, the logistics demands were even greater, because there was only one supply route, an insecure and unsurfaced road linking Mogadishu to Belet Huen, which was approximately 350 kilometres inland.

Developing the Rules of Engagement (ROE)

Because Operation Cordon was part of UNOSOM, the development of the mission's Rules of Engagement (ROE) was generally understood to be the responsibility of the UN force commander. Once approved by the UN Secretariat, ROE are sent to contingent commanders for implementation. Any objections or need for clarification would require contingent commanders to refer the matter to the UN force commander or to seek guidance from their national authorities as appropriate.

Canada's responsibility regarding the development of acceptable ROE lies with NDHQ. Any UN rules of engagement issued to Canadian troops must first receive approval from the CDS, a process that would be initiated by the Canadian contingent commander. Current Canadian doctrine defines rules of engagement as "directions and orders regarding the use of force by Canadian forces in domestic and international operations in peacetime, periods of tension and armed conflict. They constitute lawful command... Rules of Engagement confine themselves to when force is allowable or authorized, and to what extent it is to be used." To put it succinctly, ROE are orders about the use of force.

Based on evidence before us, the Canadian officers (one of whom was LCol Morneault) who attended a planning meeting in New York in September 1992 received a UN document entitled "UNOSOM and the Use of Force", and by December 1, 1992 there were UNOSOM rules of engagement in existence, which, in accordance with the Chapter VI peacekeeping nature of the mission, allowed firing only in self-defence. However, based on reliable testimony, it also appears that the UN rules of engagement for UNOSOM were never issued to the CAR.

On September 13, 1992, the operations officer of the CAR was given the task of developing standing operating procedures on arrest and detention and on the use of force and the rules of engagement. The following day, BGen Beno wrote to the regiment's CO, LCol Morneault, asking that standing operating procedures and drills be developed and practised for rules of engagement and procedures for arrest and detention. He pointed out in the same letter that one of the rules governing any peacekeeping operation is that minimum force is to be used.

Chapter 5 of the standing operating procedures for Operation Cordon contained guidance on the use of force and rules of engagement. Generally, it was understood that infiltrators, looters, thieves, etc. were to be detained until arrangements could be made to turn them over to Somali authorities. According to documentary evidence and testimony before us, these standing operating procedures remained in effect when Operation Cordon was changed to Operation Deliverance.

However, when the Security Council adopted Resolution 794 in early December 1992, Canadian Joint Force Somalia (that is, the CARBG and headquarters staff) became part of the U.S.-led coalition force, and UN rules of engagement were no longer applicable. According to international practice, it therefore became necessary for Canadian troops to adopt Canadian rules of engagement, which necessarily would have to be compatible with the rules of engagement of other nations participating in UNITAF in particular with the United States as the force commander.

Canadian rules of engagement had to be developed in such a way as to be "defensible under Canadian domestic law and the Canadian interpretation of international law". The Warning Order for Operation Deliverance, issued on December 5, 1992 by the CDS, mentioned that members of the Canadian force to be deployed to Somalia would be informed about the ROE "after liaison with the US".

At that time a team was organized at NDHQ to coordinate drafting the Canadian ROE. When a draft was "sufficiently developed", it was reviewed by senior officers, including the Vice Chief of the Defence Staff; Adm Anderson, the Judge Advocate General, Cmdre Partner, and the Deputy Minister, Robert Fowler. The recently appointed chief of staff of CJFS, LCol Young, asked joint staff officers at NDHQ to prepare a soldier's card (called an aide-mémoire) but he was told that such a task was the prerogative of Col Labbé. Col Labbé later stated that he received a copy of the draft ROE from NDHQ, that he then requested Capt

(N) McMillan to produce a soldier's card as soon as possible, and that Capt (N) McMillan had agreed to do so.

Gen de Chastelain received the completed ROE on December 11, 1992 while on a trip to Brussels, having been informed in a fax from the office of the VCDS that the enclosed document was "effective for planning and operation on receipt". The letter also indicated that Capt (N) McMillan was preparing a document for Col Labbé's subordinate officers, mentioning as well that a shorter version would have to be prepared so that the soldiers could understand them, and that a French-language translation would be issued as soon as possible.

The same document containing the seven-page rules of engagement, but still marked as a draft, was also sent to LCol Mathieu on December 11th. He testified at the de Faye Board of Inquiry that he had passed on this version for training purposes to his Officers Commanding but that most personnel had gone on leave the same day. On December 12, 1992, Col Labbé issued his Operation Deliverance Operation Order #1, which included the Rules of Engagement approved by the CDS and a document produced by NDHQ called "Guidance to Subordinate Commanders" on the Rules of Engagement.

Officers later testified that there were problems with interpreting the Rules of Engagement from the beginning. Part of the problem appeared to stem from the definition of "hostile intent", which applied to the situation to be covered under the Chapter VII peace enforcement mission. However, Maj MacKay, the Deputy Commanding Officer of the CARBG, testified during one of the later courts-martial that the seven-page rules of engagement document was "quite complicated" for the soldiers and that it was unsuitable for general use because it was designated "secret". LCol Young testified before the de Faye Board of Inquiry that the document consisted of "legal definitions". He added: "what we were looking for was a set of rules of engagement that we could issue to soldiers."

On December 24, 1992, the CDS forwarded to Col Labbé in Somalia approved Rules of Engagement (in both French and English) for Operation Deliverance, along with Col Labbé's terms of reference as Commander CJFS. This document contained a directive that only the CDS could make changes to the Rules of Engagement and that "recommended changes or additions must be submitted through Commander CJFS to CDS clearly supporting the request with substantiation".

Capt (N) McMillan later testified that these ROE were identical to the ones sent by fax to Col Labbé on December 11th. The terms of reference contained a statement interpreting the rules as follows: "These ROE allow proportional response, up to and including deadly force, in reaction to any hostile act or demonstration of hostile intent which will impede the accomplishment of the CJFS humanitarian mission."

On December 13, 1992, the operations officer of 1st Canadian Division, LCol Davidson, sent a two-page aide-mémoire to NDHQ for approval. This version was developed by three CARBG officers: the CO, LCol Mathieu, the deputy CO, Maj MacKay, and Capt Kyle, CARBG's operations officer. Although military doctrine requires that summary cards and other amplifying directions should also be approved by the CDS before dissemination to subordinate commanders and CF members, this aide-mémoire was hurriedly prepared and issued at the last minute (without the required authorization of the CDS) to the CARBG advance party, which departed for Somalia on December 13th. Cmdre Cogdon, chief of the J3 staff at NDHQ, testified before us that he had no knowledge of this card.

This process was further complicated by the issuance of a second aide-mémoire on December 16, 1992, which had been prepared at NDHQ under the direction of Capt (N) McMillan. In English only, it was sent to the Chief of Staff, 1st Canadian Division, Kingston, to replace the first version produced by the three CARBG officers. It was substantially different from that first version and was forwarded to Col Labbé in Somalia with an accompanying letter from Capt (N) McMillan, stating that the document was a recommendation only.

NDHQ was informed on December 17th that Col Labbé had approved the new aide-mémoire and that he wanted it translated and produced "as soon as practicable". The cards were produced on December 23rd, and members of CARBG's main party were given copies as they left CFB Petawawa for their flights to Somalia between December 28, 1992 and January 1, 1993.

The first aides-mémoire were to be replaced by the second version as the main party arrived in Somalia. Evidence indicates that there was confusion about replacement cards and whether the old ones were actually destroyed as they should have been. Witnesses before us indicated that the emphasis in the first aide-mémoire (prepared by CARBG officers) was on the use of force and aggressiveness, while the second version (prepared at NDHQ) stressed self-defence, minimum force, and restraint. (Adding to the confusion, a third card was sent to NDHQ by 1st Canadian Division, Kingston, in mid-February, stating that the proposed guide had been developed in Somalia and requesting that it be reproduced in pocket size for soldiers.)

Declaring the CAR Operationally Ready

The NDHQ operation order for Operation Cordon asked for a specific declaration of readiness from commanders. In November 1992, officers at NDHQ had been concerned about the CAR's state of readiness following reports of disciplinary and training problems and the dismissal of the Regiment's Commanding Officer. However, their concerns about the Airborne were not apparent by December as Operation Deliverance was being planned. The operation order from NDHQ for Operation Deliverance did not require the issuance of a declaration of operational readiness, and no senior officer inquired as to the state of the unit until just before the deployment of the advance party in mid-December 1992.

During the pre-deployment period there appeared to be a serious breakdown of command in the CF and the LFC with respect to an assessment of the preparedness of the troops and declaration of operational readiness of the CARBG for its operational duty in Somalia. Evidence before us indicates that the CDS and commanders did not establish clear standards of operational readiness for the CF, for LFC, for the UN standby peacekeeping unit or, in particular, for units assigned to Operation Deliverance, and that there was no established agreement among the responsible officers as to the meaning of the term 'operational readiness'. This lack rendered the assessment exercise, when it occurred, a purely subjective evaluation; that is, it came to mean what it suited the officers to mean at the time.

Although it had been recognized that the CAR had failed to act as a regiment during the Operation Cordon evaluation exercise, Stalwart Providence, no substantive effort appears to have been made to correct problems exposed during the exercise, or to retest the unit after the very limited remedial training that did take place. Additionally, evidence shows that no tactical evaluation was made for Operation Deliverance, even though most important aspects of the peace enforcement mission and unit organization were different from Operation Cordon. At the de Faye Board of Inquiry, NDHQ staff officer Cmdre Cogdon testified that we were reacting to a political imperative to make [Operation Deliverance] happen as quickly as we can, to jump on a political bandwagon and to get in there...to get in there almost at the same time as the Americans could."

The CARBG left for Somalia with serious internal problems of organization, leadership, and discipline. It had not trained effectively as a battle group and it had not had time to train on an important and central element of its mission's concept of operations -- the Rules of Engagement. Significant changes to the mission -- that is, to the U.S.-led peace enforcement mission, Operation Deliverance, and to the composition and size of the force to be deployed to Somalia -- should have alerted senior officers to the need to reassess the readiness of the Airborne for the more complex operation in Somalia.

There were enough significant differences to require a separate and complete assessment, even given the tight time frame for deployment, and officers at SSF and LFC understood the need to do so. LGen Gervais ordered MGen MacKenzie "to identify, assemble and prepare the Operation Deliverance battle group and declare them ready for deployment". Nevertheless, no effective action was taken by any commander in the chain of command to make such an assessment or to respond to orders to do so. The fundamental military principles of operational readiness were disregarded by the chain of command.

THE SOMALIA MISSION: IN THEATRE

'GOOD WORKS': CJFS IN SOMALIA

The 'Hearts and Minds' Approach

Operation Deliverance, as interpreted by Col Labbé, had two main focuses: its official mission was to establish a secure environment for the delivery of humanitarian aid by non-governmental organizations (NGOs); and, simultaneously, it was to assist in the rebuilding of essential civilian infrastructure to ensure that progress could be sustained by the Somali population once the Unified Task Force (UNITAF) forces departed. This second goal was often referred to as a 'hearts and minds' program.

'Hearts and minds' is a concept that has been used in military doctrine for many decades. The United States pursued a 'hearts and minds' campaign in Vietnam, as did the British in Malaysia in the 1950s. Civil-military co-operation (CIMIC) is the official term generally used in the Canadian Forces (CF) today.

Col Labbé testified that "we...felt that one does not endear oneself to a local population by doing cordon and search operations, by establishing roadblocks and seizing weapons from individuals, by conducting strictly military operations in direct support of the non-governmental organizations, and win the hearts and minds of the local population." A longer-term approach required that the CF simultaneously pursue a public relations and rebuilding campaign to gain the confidence of the local population.

Having gained their confidence and having convinced the local elders and warlords that they could benefit as well from the newly secured environment, the troops worked to revitalize institutions, to establish essential community services (involving the creation of security, reconstruction, relief, and political committees), and to attempt to restore some of the functions of the local society that had existed before the civil war. Col Labbé stated,

We felt that if, during our time, our six-month period...we could get those committees to demonstrate to the local population of people they served, in principle, that they were capable of making positive decisions, having a positive impact on the lives of residents of the Belet Huen area, not just Belet Huen but the entire humanitarian relief sector for which we were responsible, 33,000 square miles of desert. We felt we might then have, upon our departure, established the seeds for further development of those institutions and put that region of Somalia back on the path to a normal lifestyle.

Since CF members were not in Somalia to provide relief but to secure a safe environment so that the NGOs could do so, all their humanitarian work was done in partnership with NGOs and the local population. CIMIC efforts in Mogadishu were co-ordinated by Maj LeLièvre from Canadian Joint Force Somalia headquarters. This team dealt with over 40 NGOs and relief agencies, such as the International Committee of the Red Cross, International Medical Corps, and the World Food Program. In Mogadishu, the NGOs held morning meetings that were attended by CF officers, who then co-ordinated a range of humanitarian activities.

For example, the engineers and technicians from HMCS Preserver provided services to NGOs, including repairing radios, computers, air conditioners, generators, and other equipment. Members of the Canadian Airborne Regiment Battle Group (CARBG) also worked with NGOs and the local leadership to co-ordinate a variety of tasks, such as escorts for relief convoys, arms registration, provision of water, reconstruction, and repair of infrastructure. To avoid any appearance of favouritism, CARBG members met with the local Somalis only when all clans were represented, and ensured that all clans had representation on CIMIC committees. During the mission, CF members responded to approximately 200 requests from NGOs in the Belet Huen Humanitarian Relief Sector.

Humanitarian Activities

During public hearings, we heard testimony regarding the humanitarian activities of CJFS, which evolved out of this 'hearts and minds' approach. The witnesses included LCdr Heather McKinnon, the physician on board HMCS Preserver; Lt (N) Rebecca Patterson (formerly Gowthorpe), a nurse stationed with CARBG in

Belet Huen; Maj Richard Moreau, WO Steven Lehman, and Sgt Donald Hobbs of the Royal Canadian Dragoons (RCD); WO Robert Labrie of 1 Commando; Sgt Ian MacAuley of 2 Commando; and Sgt Mark Godfrey of 3 Commando. These witnesses all testified that they were proud of the work performed by CF members in Somalia, believed that the mission had been worthwhile, and were impressed with the professionalism and dedication of other CF personnel who had worked with them.

Sgt Donald Hobbs of RCD was the supervisor for the maintenance troop. In the Belet Huen area, one of RCD's first tasks was to rebuild the bridge on the Chinese Highway (the road between Belet Huen and Matabaan). The bridge had been blown up, and the only way around it was through a minefield. Although the engineers spent two days clearing the minefield, it was crucial to rebuild the bridge, since there was still the danger that some mines might remain. After the bridge was rebuilt, a guard was placed at the bridge for a short time to deter theft. A footwalk was also donated and installed by Canadian engineers on the Bailey bridge in the centre of Belet Huen.

The RCD maintenance troop attended to local vehicle accidents, assisted with medical evacuations, and provided safe escort for food convoys. The police station, hospital, and the school in Matabaan were rebuilt, and school supplies were delivered. A school in Balem Balle, full of unexploded mines, mortar artillery and tank rounds, was cleared and re-opened. When the town and surrounding area were secured, medics visited the hospital in Matabaan daily treating gunshot wounds and tending to children whose fingers had been blown off by military fuses. When the RCD first arrived in Matabaan, there was little or no market activity, but by the time they left, the market had re-opened.

WO Steven Lehman, of RCD, A Squadron, arrived in Belet Huen in January 1993. His troop was assigned to vehicle patrols, to create and maintain a secure environment in which NGOs could carry out their humanitarian work. During their deployment, they provided escort to supply convoys and made necessary repairs to supply trucks. Minefields planted along the major road were cleared, making it possible for people to travel and for goods to be moved safely. Mine-awareness teams were formed by A Squadron to train the local population, especially the children, about the hazards of unexploded ordnance.

Sgt Ian MacAuley was the section commander with 5 Platoon of 2 Commando. When 2 Commando arrived in Belet Huen, it worked with the local security committee to re-establish the local police force. CARBG personnel staffed the local police station 24 hours a day for a time and assisted in training the local police, teaching basic drill, riot control, and first aid. They established a local judicial system using clan elders, local judges, and local lawyers. The jail was repaired by the engineers with assistance from 2 Commando. Wells, a windmill, and a large generator were also repaired. 6 Platoon cleaned a slaughter yard several times and attempted to educate the local people regarding the health benefits of burying these waste products.

As did the Royal Canadian Dragoons, personnel from 1, 2 and 3 Commandos provided escorts to humanitarian relief convoys: in total, CF troops escorted about 60 convoys (averaging 12 vehicles per convoy) which brought vital supplies to 96 villages.

In Belet Huen, CARBG members discovered that there were funds available from the World Food Program, USAID and the Canadian International Development Agency Canada Fund for work programs. A work program was started first to repair roads, then schools and other buildings. This program employed Somalis and poured considerable funds into the local economy.

School reconstruction began with the assistance of the local education committee. The first school was cleaned and reconstructed with materials provided by the CARBG. The work was done by Somali workers, under the protection and direction of CARBG personnel. Subsequently, this program was expanded to include the reconstruction of schools in four other towns and three additional schools in Belet Huen.

The CARBG provided technical assistance to the NGOs in Belet Huen by repairing a variety of machinery. Canadian field engineers assisted with road repair, allowing relief supplies that arrived by sea at Mogadishu and Kismayu to be distributed by truck convoys throughout the country. The CARBG also provided armed escorts for these supply convoys.

In addition to these humanitarian activities, CF members contributed in a number of other ways. They trained 272 local teachers; provided potable water to refugees in the area; repaired approximately 20 wells

and many generators in a number of villages in the Canadian area of responsibility; repaired over 200 kilometres of roads; and destroyed ammunition, mines, and explosives scattered around local villages and the town of Belet Huen.

Medical teams from both HMCS *Preserver* and the CARBG also made special efforts to provide assistance to the Somali population. For the first two months of the UNITAF mission, Canadians took the lead in medical work. Doctors and nurses from the CARBG surgical team and personnel from the Medical Platoon provided assistance to the staff at the International Medical Corps (IMC) hospital in Belet Huen. The involvement of the unit medical station (UMS) in humanitarian aid was initiated by Maj Russell Brown. The IMC accepted the help of the UMS, provided they agreed to follow the NGO guidelines, which included treating the Somalis in ways that they would be able to sustain; not providing treatment that could not be understood or followed up by the Somalis; and respecting local cultural needs.

With these guidelines in mind, the UMS worked in partnership with the NGOs and visited the IMC hospital three times a week, working side by side with the Somalis, making hospital rounds, examining patients on the wards and in the emergency department, assessing patients with regard to possible surgery, providing surgical and anaesthesia services, working in a consulting capacity, and assisting in providing post-operative care. They also provided teaching and training to both nurses and doctors at the hospital in Belet Huen.

Lt (N) Patterson testified that she believed that when they left, the local medical staff had improved nursing and surgical skills. They had also improved the standard of hygiene within the hospital, standards that were subsequently supported by the Somali staff. (For example, when CARBG personnel arrived, needles discarded in the hospital courtyard posed a major danger as a source of infections. After being taught by the UMS, local Somali medical staff allowed the newly taught procedures by burning used dressings and disposing appropriately of hazardous waste.)

IMC had been asked by the local school governors to set up a basic first aid program for its teachers. Ordinary Seaman Nearing, a medic in the holding section, volunteered to do this. He designed a basic first aid program to deal with types of injuries that the local population would encounter. The aid agencies were interested in this project for their own staff, and OS Nearing later also taught a session for IMC's Somali guards. When he was redeployed, all his work was made available for use in the local school system.

CARBG medical personnel also provided blood and blood products and other medical supplies. X-ray and laboratory technicians repaired what they could of local medical equipment, and other non-medical technicians, electricians, and engineers repaired equipment in the hospital, provided a generator and fuel, and assisted with emergency medical treatment for Somalis around the camp.

Capt Setter, CARBG's pharmacy officer, initiated the donation of approximately \$225,000 worth of medical supplies to IMC from the people of Canada. Trenton Memorial Hospital donated a number of hospital beds, bedside tables, and physiotherapy equipment to the Belet Huen hospital. This equipment was flown by the CF from Trenton, Ontario, to Belet Huen, where it was checked over by CF personnel before delivery to the local hospital.

LCdr MacKinnon, the physician on board HMCS *Preserver*, testified that she and other members of the crew, both medical and technical personnel, visited Medina Hospital in Mogadishu as often as three times a week. The technical personnel repaired hospital equipment, including air conditioners, sterilizers, and generators; made mattresses for cribs; and fixed the pump for the hospital well. Canadian medical team members saw patients in the hospital wards and held out-patient clinics. They treated fresh wounds, dysentery, malaria, tuberculosis, syphilis, and skin diseases. The ship's dentist provided dental services and teaching clinics and performed extractions.

Honours and Awards

Individual members of Operation Deliverance received special recognition for their contributions to the humanitarian work of the CJFS. They were Capt (N) Allen and the crew of HMCS *Preserver*, who took the lead in an orphanage project in Mogadishu (members of the crew volunteered to build tables, chairs, shelves, storage boxes, and a complete kitchen for the orphanage, where the 600 children had been eating

on the floor; and delivered three truckloads of goods); Maj Brown and Maj Armstrong, who were instrumental in organizing medical volunteer work in Belet Huen; Capt Mansfield and the Engineers Squadron group, who were responsible for much of the school rebuilding; MWO Mills, who played an important role in the organization and training of the local Belet Huen police force; and Maj Rod MacKay, who was responsible, along with a small staff, for co-ordinating with very limited resources all the humanitarian efforts of the CF in Somalia.

Letters

Mary Lightfine, hospital co-ordinator for IMC in Belet Huen, sent a letter of appreciation to Col Labbé, dated March 15, 1993, which specifically thanked the medical team of Maj Lee Jewer, Maj Russell Brown, Maj Barry Armstrong, Lt Diane MacIntyre, Lt (N) Rebecca Gowthorpe, Capt Cal Dejessus, Sgt Alan Anderson, Sgt André Boisclair, Sgt Craig Smith, MCpl Dwayne Atkinson and Sgt Guy Roy. The letter stated:

You and your troops were always available to us, anticipating our needs and providing support in every way possible, from security to victim care. For your assistance, we are eternally grateful, and I hope the Somali are as well. A special thank you is due to the many members of your medical team who arrived at the hospital ready to tackle the many problems awaiting us all from generator loans, equipment repair, and laboratory assessment to patient care and teaching.... There is no doubt that the community service you have given is far beyond the call of duty and your country will be proud of your efforts.

The program co-ordinator for IMC in Belet Huen wrote to CJFS Commander Col Labbé, stating:

On behalf of the IMC team...we would like to commend the outstanding work of Captain Jette in his role of administrator of civilian/military affairs...for the school rehabilitation project. I believe Captain Jette's participation in the evolution of this project had a good deal to do with the positive outcome.... Working collaboratively with tribal kings, educational leaders, business people or labourers is not an easy task given the local conditions of a society in anarchy and plagued with clan bias. However, his straightforward manner combined with a sense of compassion enabled him to make progress in a matter of days that in my experience could have dragged on for weeks.... Captain Jette is but one of many individuals in the CF who has impressed us with their high professionalism standards. We do feel compelled to single out and comment on such a remarkable soldier.

Robert Oakley, the U.S. President's Special Envoy to Somalia, stated in a letter to the Hon. Kim Campbell, Minister of National Defence, dated May 11, 1993:

[My] personal assessment of the performance of the Canadian Airborne Regiment Battle Group in Somalia during the period December 13, 1992... until March 8, 1993...is that it was truly outstanding.... In community relations and humanitarian activities, the Canadian Battle Group worked very closely with my civilian staff and myself.... Without help, the Canadian unit was able to bring about the establishment of a regional council involving some fourteen different sub-clans-- who had absolutely refused to meet together, much less co-operate prior to the Canadian arrival... Canada has every reason to be extremely pleased and proud of its military forces in Somalia. Certainly, the United States military and civilian authorities and Somali people hold them in highest esteem.

On May 1, 1993, the day UNITAF turned operations in Somalia over to United Nations Operations in Somalia (UNOSOM II), the Commander of UNITAF, LGen Johnston, wrote to Canada's CDS, Adm Anderson, on the performance of the CJFS in Somalia. On the work of the troops he wrote:

I must express my high praise for the performance of the Canadian forces under my command....

Clearly, our primary mission was to provide open and free passage for humanitarian relief to literally thousands of Somalis who were dying of starvation everyday and to provide security for relief convoys from the many humanitarian relief organizations operating in our area of

responsibility. It should be no surprise that the Canadian Airborne Regiment worked most effectively with relief workers and, in fact, delivered several thousand metric tons of relief supplies on behalf of the relief agencies. Most significant is that the Canadian forces took the initiative to provide security for a number of large convoys that were for Dhusa Mareb, several hundred kilometres outside the Canadian HRS. The bottom line was that there was no mission the Canadians were not willing to handle. The devastating effect of the famine was quickly reversed in the Belet [H]uen HRS and I can attribute that to the aggressive convoy operations that were conducted.

One of the very striking successes of the Canadian Airborne Regiment has been the regiment's focus on civic programs designed to improve conditions for the Somali communities within the Belet [H]uen HRS. I...simply relied on the commanders to take the initiative and pursue programs within their capabilities. The Airborne Regiment took on the most ambitious program of any of the HRSs with respect to school reconstruction... [A]bout week ago the UN Special Envoy Admiral Jonathan Howe presided at the official opening of Belet [H]uen schools. It was a most significant event and a testimony to the humanitarian focus of the Canadian troops. It has earned them enormous good will and they have properly portrayed themselves as having come to Somalia for noble purpose.... While the operations of the Airborne Regiment have been most visible to me, I am keenly aware of the vital contributions of HMCS *Preserver*.... The Canadian Airborne Regiment has performed with great distinction and the Canadian people should view its role in this historic humanitarian mission with enormous pride.

The good works of the CF in Somalia have often been overlooked as attention on their return to Canada shifted to a series of courts-martial, the report of the de Faye Board of Inquiry and the eventual creation of this Commission of Inquiry.

ARRIVAL IN SOMALIA

Appointment of the Commander CJFS

The CJFS Headquarters was established to exercise national command over the CF within the U.S.-led UNITAF coalition. Based in Mogadishu, CJFS consisted of 55 personnel charged with a number of tasks, including the co-ordination of national logistical support operations. (This establishment of a national headquarters was a departure from past UN missions where national commanders traditionally played the role of UN staff officers. This new approach reflected the nature of the intervention in Somalia, the growing complexity of UN missions, and the need to ensure that Canadian interests were being considered within the coalition.)

Col Serge Labbé received his appointment as Commander of the CJFS on December 5, 1992. He was directed by the Chief of the Defence Staff, Gen de Chastelain, to seek a worthwhile role for Canadian forces in the U.S.-led peace enforcement operation; he himself was anxious to raise the profile of Canadian participation in Somalia.

Col Labbé had only a very short time in which to prepare himself, his staff, and the Canadian troops under his command for this new mission. By the time he landed in Mogadishu, Somalia's capital city, on December 11, 1992, preliminary discussions with military planners at a U.S. base in Florida had determined that the Canadian contingent would be responsible initially for maintaining security at Baledogle airport.

Four days after arriving in Somalia, in the course of talks with LGen R.B. Johnston, the commander of the U.S. -led multi-national coalition, the Canadians arranged to be responsible for securing and maintaining security in the Belet Huen Humanitarian Relief Sector. Col Labbé learned as well that Canadian forces would share this task with elements of 10th (U.S.) Mountain Division, even though initially he had tried to have the task assigned solely to his troops.

Plans advanced rapidly at this stage, partly because UNITAF had met with less resistance on arrival than anticipated, and also because there was an atmosphere of urgency created by media attention to the crisis in Somalia. In asserting Canada's capabilities during the talks in Mogadishu, Col Labbé underlined the Canadian force's strength as a highly mobile, mechanized infantry battle group.

The Arrival of the CARBG Advance Party

When the Canadian unit led by LCol Mathieu left Canada for Somalia, it understood that its intended mission, at least initially, was to maintain security at the airport at Baledogle. However, according to later reports, the airport had already been secured by the U.S. marines on December 10, 1992. When the Canadian unit's advance party reached Baledogle, the threat against them was found to be non-existent.

The 200-member advance party of the CARBG had flown from Canada to Baledogle and began to arrive on December 15, 1992, with more Canadian troops arriving every day after that for a period of ten days. The activity in Baledogle was followed by the seizure of the town of Baidoa on December 16th. At this stage, operations were already ahead of schedule; the lack of serious Somali resistance had not been anticipated by American military planners.

The advance body of CARBG landed at the Belet Huen airstrip on board eight Canadian Hercules C-130 aircraft on December 28, 1992. The CARBG arrived in Belet Huen together with the 10th Mountain Division, and the joint Canada-U.S. air assault on December 28, 1992, Operation Belet Huen Provider, was unopposed by the local Somali militia, which moved its equipment some 30 kilometres to the north of the town. The Canadian and U.S. troops were met with welcoming crowds after having arrived prepared for a high-level security threat.

While Col Labbé and UNITAF leaders were in the early stages of planning for the Belet Huen operation, additional Canadian troops landed in Baledogle. By December 28, 1992, negotiations had been completed in Mogadishu between the Canadian Commander, Col Labbé, and the senior officers of the U.S.-led UNITAF coalition. Canada undertook responsibility for the Belet Huen Humanitarian Relief Sector, an area of approximately 30,000 square miles in the north-east region of Somalia. The town of Belet Huen was 350 kilometres from Mogadishu, accessible via the neglected Italian Imperial Highway built in 1935. By road, trucks usually took two days to travel from Mogadishu to Belet Huen.

The other UNITAF sectors included those of the Italians, in Gialalassi, and the French, in Oddur, on either side of the Canadian area of responsibility. The remaining six HRSs were assigned to other national contingents: the U.S. Marines were based in Mogadishu and Bardhere HRS; the U.S. Army was sent to Merca and Baledogle HRS, assisted by the Moroccan forces, and to Kismayu, assisted by Belgian paratroopers; and the Australian force was given the responsibility for Baidoa HRS.

Over the next several days, the main body of Canadian personnel reached Belet Huen. The CARBG vehicles, which had been transported by sea from Canada to Somalia, arrived via road from Mogadishu by January 15, 1993. The men of 2 Commando were among the first Canadians to arrive in the town of Belet Huen. To establish a secure environment as quickly as possible, members of 2 Commando began 24-hour-a-day foot patrols through the town, and the Canadians soon became known to the local population as "the clan that never sleeps". As well, the two other commandos and the Royal Canadian Dragoons (all part of the CARBG) patrolled large areas of the surrounding countryside in Canadian army vehicles.

The Climate and Living Conditions

The CARBG landed by airlift in Somalia at the hottest time of the year. Daytime temperatures averaged in the high 40°C range throughout the months of December to April. Virtually all water was unsafe for drinking, even when boiled, but to prevent potentially lethal, heat-related medical conditions, each Canadian soldier would have to consume more than 10 litres of water each day.

These conditions were exacerbated by the potential for diseases such as malaria, typhoid, hepatitis, dysentery, and HIV infection; by other medical conditions such as gangrene; and by natural hazards, including scorpions, snakes, and parasites. In the area where they eventually set up camp, members of the CF expected to face not only natural dangers, but well-armed, unpredictable, rival Somali factions as well.

The tight time frame meant that the first Canadian troops arrived in theatre without knowing where they were to be based or what they would be doing. Supplies had been shipped to Somalia according to plans for Operation Cordon, part of the earlier Canadian commitment to the cancelled UNOSOM peacekeeping mission. Belet Huen, in the fractious southern sector of Somalia, was a long way from Bossasso, the intended Operation Cordon destination, which was located in the relatively stable northern part of the country.

By late December 1992, Canadian soldiers of the Operation Deliverance contingent were deeply involved in the peace enforcement operation, at first in a relatively hostile environment around the port of Mogadishu, later in a significantly less threatening situation further inland around Baledogle, and then at Belet Huen. The troops of UNITAF, including the Canadians, were authorized to use deadly force if necessary to disarm the factions, militia, and bandits vying for power in Somalia, sometimes by blocking or attacking aid convoys and otherwise inflicting considerable damage on Somali citizenry and infrastructure.

Setting Up Camp at Belet Huen

The temporary camp set up by the CARBG at the Belet Huen airfield was placed on high alert from the moment the soldiers arrived. As the Canadian troops continued to establish their presence and expand the security surrounding the point of their initial foothold, the CARBG moved south-west across the Shebelle River to make its permanent camp on both sides of the main Belet Huen/Mogadishu supply route, the old Italian Imperial Highway. This location was considered of strategic importance because of CARBG's mission to ensure the safe delivery of humanitarian aid.

The Canadian base consisted of compounds along the north and south sides of the road. The compounds eventually housed the troops of CARBG, the helicopter detachment (of 427 Tactical Helicopter Squadron), a hospital, and the Canadians' headquarters and communications centre. It was a considerable improvement over the initial camp set up on their arrival at the airfield just before New Year's Day.

For those first few weeks, the troops had slept in crudely constructed trenches in the sand. They had no electricity, little water, no fresh food, and no washing facilities. They were exposed each day to the hot Somali sun, dust, snakes, insects, isolation, and a range of unfamiliar illnesses. There was also a pervasive sense of danger from the armed Somali 'technicals', many of whom had gone into hiding when the UNITAF force arrived.

The perimeters of the more permanent compounds eventually were surrounded by barbed wire, with slit trenches and watch towers intended to provide security for the troops and their equipment and supplies. Bunkers were built, and electric generators were brought in to power lights, provide refrigeration, and allow for some forms of light entertainment. Water systems were assembled to provide for drinking and washing. Food rations improved to some extent, beer was available, and telephone satellite communications allowed the Canadians to call home.

The choice of location and layout for the CARBG campsite in the Belet Huen HRS was the responsibility of LCol Mathieu, the most senior Canadian officer on the ground there. Recommendations for a unified camp based on the reconnaissance mission to Bossasso during planning for Operation Cordon were not considered by LCol Mathieu as applicable to the needs of the CARBG and Operation Deliverance.

The plan for the separate campsites in Belet Huen, according to LCol Mathieu, was based on the military principle of *ilots de défense* (islands of defence) which would be applied to an operation conducted in a desert. He decided that the use of the camp design originally proposed for Bossasso would have complicated the movements of vehicles necessary for the conduct of operations at the Belet Huen base.

LCol Mathieu told us that there were a number of factors which he had to consider, including abandoned buildings and concrete pads for vehicles and services; sites of cemeteries; the location of the Save the Children compound; the presence of some Muslim fundamentalists in the area; property of local landowners; and a nearby hill that could be used for observation and communications purposes, close to the headquarters compound. Other important considerations were access to roads for heavy military transport vehicles, because it was expected that the area would be flooded during the rainy seasons (from May to June and September to December), and the requirement to minimize disruption of the local population.

However, as more equipment was brought in, the Canadian compound increasingly became a target for infiltration and thievery, often by teenagers and children during the day and by young men at night. The attraction of the camps for thieves was mainly the presence of food, fuel, water and other supplies and equipment. However, a number of CARBG members also testified that the scattered layout left the camps more vulnerable, both to friendly fire and to attack by hostile forces. They stated that there had been no decision-making process to determine the layout for the camp, and evidence also indicated that the advice of senior non-commissioned officers concerning camp layout was disregarded.

Requirements for the CARBG at Belet Huen were significantly different from what they would have been in Bossasso. Because of the distance from Mogadishu, supplies had to be stored and guarded at the base, and far more stores were needed than were loaded on the HMCS Preserver. Plans for the Operation Cordon camp at Bossasso had required defensive supplies for one large camp rather than a series of small ones. These supplies included perimeter wire, sand bags, and timber. The separate camps at Belet Huen presented a different security situation, and supplies and manpower were both in shorter supply than anticipated because of the layout of the camps and the changed mission.

THE EARLY STAGES OF IN-THEATRE OPERATIONS

January/February 1993

During the first few weeks in Belet Huen, members of the CARBG had to deal with physical deprivations and discomfort while more permanent facilities were being set up. They worked, slept, and ate in hot, extremely dusty, desert-like conditions. Field rations were non-fresh, prepackaged MRE (meals, ready-to-eat), used first during the Gulf War to mixed reviews. The MRE remained the predominant Canadian fare throughout the deployment. Gradually, provision was made for sanitary facilities, but work gear issued for the mission did not seem to suit the tropical environment, and underwear was in short supply.

Nevertheless, members of the Battle Group conducted mounted patrols daily, met with local leaders, seized weapons from local militias, and appeared to be meeting mission objectives within a few weeks of their arrival in Somalia. Some of the success of the Canadian force was due to the attention given to a wide range of tasks, including humanitarian activities, handled by the troops at all levels. The first few weeks passed with only a few hostile encounters, but evidence indicates that some members of the Battle Group still assessed the security threat level in the Belet Huen HRS as high. (By the end of the deployment, however, no Canadian soldier had been killed or wounded by enemy fire in Somalia.)

Threat Assessment

In testimony before the de Faye Board of Inquiry officers commanding 1 Commando and 3 Commando stated that the threat to CARBG personnel in Belet Huen was low after the first few weeks of the deployment. Maj Magee, OC 3 Commando, testified that "the biggest danger was being hit with a Somali truck". And Maj Pommet, OC 1 Commando, said that, based on his experience, "the simple fact to cock the weapon, the [noise] that it produces is simple enough to make anybody freeze and not attempt to go any further in his intent".

Witnesses who spoke about the potential risks for CARBG members testified that the Canadian camp at Belet Huen was generally the target of young, impoverished Somalis and that items stolen from the camp were personal items, staples (food and water), and other marketable commodities. Although some strategic equipment and materiel was reported missing, reports and testimony indicate that it was later found that these had simply been "overlooked" by Canadian troops.

Although there was little evidence of intelligence having been gathered in the area by Canadian intelligence officers, neither was there any indication that senior commanders thought there was much danger during in-theatre operations, that might necessitate preparations to prevent sabotage or armed incursions. Nor was

there any evidence that Canadian officers in Somalia had alerted officers and officials at NDHQ of possible threats to CF in theatre from armed or organized groups or from sabotage.

As well, final reports indicated that no Canadian personnel were killed or wounded by Somalis; but, that five Somalis and two Canadians were killed or wounded by Canadian fire. These were an unidentified, unarmed Somali killed on February 17, 1993 during an encounter with the Mortar Platoon; Mr. Aruush, killed during an encounter with the Reconnaissance Platoon on March 4, 1993; Mr. Arone, tortured and murdered by CF members on March 16, 1993; an unidentified person killed during a confrontation at the International Committee of the Red Cross compound in Belet Huen on March 17, 1993; Cpl Abel, killed by an accidental weapon discharge by another CARBG member on May 2, 1993; Mr. Abdi, wounded during an encounter with members of the Reconnaissance Platoon on March 4, 1993; and Lt Jarrett, wounded by a negligent discharge of his own weapon. In all, 20 charges for negligent discharges of Canadian weapons were recorded between January 1993 and April 19, 1993 while CF members were in Somalia. (It is probable that there were additional such discharges that were not reported.)

Sub-Unit and Commando Assignments

CARBG sub-units were given a variety of tasks to cover the full range of Operation Deliverance objectives. The Royal Canadian Dragoons A Squadron at first was given the responsibility for route reconnaissance and traffic control operations from Mogadishu to Belet Huen. By mid-January, A Squadron was deployed to the north-east area of Somalia as a deterrent force, following a warning from Mohammed Ali Mahdi's United Somali Congress of an impending attack by the pro-Aideed Somali National Front against the village of Matabaan.

The three commandos were located in separate compounds at Belet Huen and each was given a different mission. In the early days of the deployment, before ships arrived bringing the military vehicles and equipment needed by the CARBG, most of the patrol duty in the Belet Huen area (except for A Squadron) was done on foot. The first task for the three commandos was to conduct security operations in the town and immediate area of Belet Huen.

The Officer Commanding 1 Commando, Maj Pommet, stated in his evidence before us that the threat level was low in contrast to that in Mogadishu. His commando was involved in only two minor incidents during initial patrols, neither of which required the Canadians to fire their weapons. After their armoured personnel carriers arrived, 1 Commando's main task was to expand security operations into the sector west of the Shebelle River. This required the commando to patrol the largest of the areas in the Belet Huen HRS; it was reported that 1 Commando was one of the first units to reach areas of Somalia that had been cut off from humanitarian aid for months. Its patrol area was remote and sparsely populated, but by the end of March 1993, Maj Pommet described the military threat to his commando as non-existent.

3 Commando under Maj Magee first shared the responsibility of patrolling the town of Belet Huen with 2 Commando. As vehicles arrived in theatre, 3 Commando was assigned the task of security in a large area east of the Shebelle River, where the threat level was reported to be similar to that facing 1 Commando and A Squadron. A number of minor incidents were logged by the commando, but only one of them resulted in warning shots being fired. As more weapons and mines were confiscated during their regular security operations, the threat level was estimated by the Officer Commanding 3 Commando as low and eventually "nonexistent".

The task assigned to 2 Commando was to provide security in the town of Belet Huen and surrounding area. Because the CARBG did not have enough military vehicles for all three commandos, 2 Commando used trucks to patrol the town, considered to be somewhat more dangerous than other parts of the HRS. By the end of January, the supplies and equipment shipped from Canada in December, after the mission was changed, had finally arrived. The work of 2 Commando during their patrols through Belet Huen brought them into contact with the local population, and they experienced both friendly responses and hostility from the Somalis.

However, there were signs that 2 Commando was having difficulties related to training and discipline. During the physically arduous preparations for its arrival in Belet Huen from Baledogle, the commando had

had two incidents of accidental weapons discharge, fortunately without injury. But there were at least five other accidental discharges in the first few weeks of operations, a number significantly higher than for the other commandos.

On January 10, 1993, Maj Seward wrote to Col Gray at his home regiment in Canada about the possibility of being replaced as the Officer Commanding 2 Commando. He was concerned because his unit had already reported five accidental discharges and he himself had been found guilty of accidentally discharging his own weapon, for which he had been fined \$2,400. Col Gray responded in mid-March that Maj Seward had the regiment's full confidence and encouraged him to carry on with his duties in Somalia.

On January 11, 1993, a CARBG soldier had surgery to repair a wound in his forearm caused when he shot himself while cleaning his pistol. (By the end of the mission, there had been 20 charges for accidental weapons discharge incidents, resulting in fines up to \$2,400.)

Incidents and Disciplinary Measures

Other problems were also emerging. On January 3, 1993, soldiers from 3 Commando shot a Somali man who was challenging them with a machete. Reports indicated that the Somali was upset at the Canadian troops for seizing his AK-47 weapon the previous day. According to documents we examined, the shot that injured the Somali was not aimed but was intended as a warning shot. It apparently ricocheted and struck the victim in the foot. First aid was offered by the Canadians, but was declined by the injured Somali.

The Significant Incident Report (SIR) on this incident stated that the rules of engagement were understood and followed and that no further action was required. The matter was not formally investigated, and the only documentation of it is the SIR. There was no recorded clarification by senior officers of the policy for use of warning shots, nor any comment about the decision to fire a warning shot under such circumstances.

While investigating another incident -- a suspected bandit's roadblock in the area around Belet Huen on January 29, 1993 -- a Canadian patrol came upon some armed Somalis. Warning shots were fired into the air when the Somalis began to flee; one fired back on the patrol, with the patrol returning fire. Later, the Canadians recovered an AK-47 and a bloody shirt. The Somalis were tracked to a point where they had apparently met a vehicle. It was reported that the injured Somali later went to the Italian hospital for treatment, and afterward was turned over to the civilian police. This incident does not appear to have been investigated, although a number of unanswered questions remain, including the identity of the Canadian troops. The suggestion was that the Canadians fired in self-defence, but records do not provide enough information to assess the reasonableness of the action. No summary investigation was undertaken.

LCol Mathieu noted that 2 Commando in particular was being overly aggressive, and on January 16, 1993 a record of reproof was issued to Maj Seward, its officer Commanding. This formal disciplinary measure was used rarely, and procedure required that it be filed immediately with NDHQ. LCol Mathieu explained the action in the following manner: "Despite repeated direction by the Commanding Officer to reduce the level of aggressiveness exhibited by his command, while conducting patrols in Belet Huen, Major Seward continued to permit his commando to act aggressively toward the population. This was in complete contradiction to the policy being implemented by the unit." Maj Seward recorded his reaction to the reproof in his diary, writing "If I hear any more [of Mathieu's] hearts and minds bullshit, I'm going to fucking barf."

Evidence indicates that Maj Seward chose to ignore this reproof. On January 27, 1993 he wrote to his wife:

Just now I am in the Command post. Five Somali teenagers have been caught stealing from Service Commando. They have been passed to me for security and transfer to the Somali police. The troops are, however, taking advantage of the situation to put on a demonstration. They're pretending that their intentions are to cut off the hands of these kids with machetes. It sounds awful, but if you were sitting here, you'd be laughing too. Soldier humour is infectious.

Alcohol Policy

In Somalia, the policy for the consumption of alcohol authorized by Col Labbé allowed each member to consume two beers a day. It was then the responsibility of the officers commanding to put in place mechanisms to implement this policy. However, while several witnesses testified before us that this policy was enunciated clearly, the evidence does not indicate that it was followed strictly or consistently.

For example, Capt Mansfield, OC of the Engineer Squadron, testified that he had developed his own variation of the policy on alcohol. He allowed beer and occasionally wine to be consumed in the messes between 6:00 p. m. and 11:00 p. m., but no limit was placed on the amount. He testified that while he was aware of the alcohol policy of two beers a day, he believed that the engineers worked hard and deserved to be able to drink after work without imposed limits.

Maj Seward also changed the policy on alcohol consumption for 2 Commando in the early stages of the deployment. We heard testimony that the two-beers-a-day policy was enforced in January 1993, but MWO Amaral, who was in charge of selling beer, testified that by the end of the month he was told by Maj Seward that the policy did not have to be enforced. The restriction was that the soldiers were not allowed to drink while on duty or within eight hours of commencing duty.

On the other hand, testimony indicated that the two-beers-a-day rule was enforced in 1 Commando. Maj Pommet stated that although he had put control measures in place, at one point soldiers were ignoring the policy. He testified that the problem was brought under control by enforcing a policy of total abstinence in 1 Commando until the soldiers got the message. Testimony on the enforcement of the formal policy within CJFS headquarters indicated that some officers considered that it was followed and others stated that it was not.

The Canadian Forces policy on the consumption of alcohol and other intoxicants, contained in article 19.04 of the Queen's Regulations and Orders, states that an officer or senior non-commissioned member can only "introduce, possess or consume an intoxicant in an area occupied by the CF in a non-public property organization (such as a mess or sporting club) that has been granted a general authority with respect to the consumption of alcohol during specific times, or in places and times that have been approved by the commanding officer. This order is amplified by an administrative order that calls for each base or unit commander to establish policies regarding the consumption, service, and provision of alcohol on the premises.

These and other policies are to promote responsible practices in order reduce or avoid problems arising from the misuse of alcohol and to establish systems to limit or prevent alcohol-related injury and death at CF facilities or functions. There are also policies addressing the provision, serving, and consumption of alcohol while CF members are deployed on operations.

Camp Security

We heard testimony indicating that mixed messages were being given CARBG troops in Belet Huen about the ROE and the appropriate use force in dealing with the local population. Although the overall military threat declined rapidly in the HRS assigned to Canadian Forces, one of the most aggravating problems facing the CARBG was theft. Security for the Canadian base in the layout used in Belet Huen was hindered by insufficient wire for the perimeter of the compound.

By the end of January, the troops were dealing routinely with individual and small groups of Somalis trying to steal Canadian equipment, supplies and personal property. Sometimes only scrap and other minor items such as water cans were taken; however, other things were also stolen, including food, water, gear, radios and parachute equipment.

At first, any Somali captured in the Canadian compound was bound, held overnight, and released the next day, either to local clan leaders, or to the local police after the Belet Huen force had been re-established. Some Canadian soldiers used questionable judgement in the handling of detainees and took photographs of groups of bound and blindfolded prisoners wearing signs labelling them as thieves.

On several days in January 1993, Somali detainees were kept in an open area visible from the road, blindfolded, and handcuffed with signs over their heads, despite Col Labbé's earlier orders. These incidents occurred in the view of many witnesses, including the regimental military police.

Racism

Several incidents demonstrated that CF personnel, including officers, did not have a clear understanding of what activities should be considered racism or racist behaviour. Testimony indicated that once CARBG members were in Somalia, derogatory terms were used to refer to the local Population. A number of terms, including "Somali", "smufty" and "nignog", were reported by witnesses, although many, in reporting them, said they did not think of them as racist epithets.

Before the Canadian Airborne Regiment's deployment to Somalia in late 1992, the CF had no policy specifically addressing the issues of racism, racist behaviour, or right-wing extremist activity by soldiers. Prohibitions against racist conduct existed only as part of general policy statements and orders for dealing with disciplinary matters or harassment among members. However, the CF were subject to the Code of Service Discipline and federal legislation prohibiting discrimination, including discrimination on the basis of race.

During pre-deployment preparations at CFB Petawawa, racist symbols, including Nazi swastikas, and Ku Klux Klan and Confederate or 'Rebel' flags, had been reported. Racist epithets such as 'nigger' were known to be used, and neo-Nazis and other varieties of white supremacists were known to be present among CAR members. The reaction of CAR's leadership at the time was to deal with incidents or inappropriate symbols as matters of discipline. At CFB Petawawa, then, when Col Morneau banned the 'Rebel' flag as 2 Commando's rallying symbol, he did so because it was seen to interfere with the discipline of the troops, and possibly because it threatened the cohesion of the regiment itself, not because it was considered racist.

The most flagrant example of racist behaviour was a Canadian Airborne hazing in August 1992, videotaped and later broadcast on national television, during which the only black soldier in the group appeared with the letters KKK written on his shoulder. He was also called "nigger" or "nègre" by fellow CAR members during the initiation activity depicted on the video.

In-Theatre Training

Although planning for Operation Cordon, the UN mission that was cancelled in favour of the U.S.-led UNITAF, had included a one-month acclimatization for members of the CF in Somalia, testimony at the de Faye Board of Inquiry indicated that operations for Operation Deliverance began within 24 hours of the troops' arrival at Belet Huen. The OC of the Royal Canadian Dragoons, Maj Kampman, testified that he had received no pre-deployment direction as to training in theatre, with the exception of training on the ROE.

We also heard evidence that only minimal training was provided while CARBG was in Belet Huen -- some weapons and range training, some refresher training in combat drills, driver and desert survival skills training, and some special training on the use of cayenne pepper spray. Training on the ROE was left to the personal initiative of the officers commanding. There were no directions issued and no co-ordination exercised. Nor was much attention given to appropriate procedures for the handling and treatment of detainees or crowd control.

January 28, 1993 Morning Orders Group and the Rules of Engagement

Frustration increased as infiltrations by thieves persisted. These circumstances led to an orders group meeting on January 28, 1993 at which LCol Mathieu reviewed the ROE. He stated that deadly force was permitted against Somalis found inside the compounds or running away with Canadian kit, whether or not they were armed. He also elaborated on the concepts of a "hostile act" and "hostile intent", indicating that touching the perimeter wire could be interpreted as a hostile act, meaning that soldiers then could initiate the escalation process leading to the use of deadly force.

After LCol Mathieu finished his discussion of the ROE, a number of the officers (Maj Pommet, Maj Magee, and others) immediately objected to or expressed reservations about his interpretation of the ROE. However, LCol Mathieu was insistent that if a Somali touched the compound wire, soldiers could initiate the process of escalation to deadly force. He had also suggested that another level of escalation, cocking the rifle, could be used. These instructions were explained by LCol Mathieu at a meeting with clan elders in Belet Huen on January 30, 1993. Eventually the CO's instructions were amended, and the troops were told to "shoot between the skirt and the flip flops", that is, at the legs, in order to apprehend thieves and deter incursions into the Canadian compound. According to some evidence we heard, the authorization to shoot at fleeing Somalis was supposed to have been rescinded on March 8, 1993. However, evidence from the de Faye Board of Inquiry and an investigation into May 1993 incident at Matabaan indicates that the change was not communicated and implemented throughout the CARBG.

The Incident at the Bailey Bridge

On February 17, 1993, while a few Canadian soldiers were working to secure the Bailey bridge in Belet Huen, a crowd of Somalis approached and started throwing rocks at them. After rushing the crowd and firing two warning shots, the Canadians aimed and directed two shotgun blasts at two of the rock throwers. A Somali was killed and two were wounded in the incident. The next day, the officer in charge of the platoon provided the OC with statements from some of the soldiers involved.

This matter was not investigated further until the arrival of the military police from Canada in May. Some questionable circumstances were noted in their report. For example, pertinent pages from the hospital admission book were torn out, and the estimate of the size of the crowd threatening the Canadian troops varied significantly from information provided in the official situation report. The situation report and the briefs to the Chief of the Defence Staff and the Deputy Minister put the size of the crowd at approximately 300. The investigation report suggested that it was in the range of 50 to 70. The MP investigation concluded that the actions taken by the Canadians were justified.

Security at the Engineers Compound

The compound of the Field Squadron of Engineers was on the south side of the road leading to Belet Huen, across from the Service Commando compound. It had been set up there because of an existing walled area and buildings which could be used for vehicle repair and equipment storage. The helicopter compound was alongside the road immediately to the west of the Engineers compound; the fuel bladders (containing fuel for the helicopters) were in an adjacent area. Apart from that, the west side of the Engineers compound bordered a largely unused area, which was taken over by a detachment of 427 Tactical Squadron shortly after the March 4th incident.

The primary duty of the Engineer Squadron was to provide support to the CARBG. Security (i.e., sentry duty) for the Engineers compound was also considered to be its responsibility. The Officer Commanding, Capt Mansfield, hired local Somalis for front-guard duty until LCol Mathieu discontinued the practice. The theft of a fuel pump heightened concern about security around the Engineers and helicopter compounds, although the pump had been taken from an unenclosed and unguarded area.

THE INCIDENT OF MARCH 4, 1993

The Engineers compound was a regular target for infiltration and thievery because of the stores kept there. Among the many items reported stolen were wood, water, food, fuel, jerrycans, a walkman, and a geotech. Early on March 4, 1993, Capt Mansfield, the OC of the Engineers, was told that there had been a number of incursions into the Engineers compound during the night of March 3rd and that normal security precautions were failing to prevent Somalis from entering the compound. That same morning, WO Marsh of the Engineers was touring the proposed location for the Helicopter compound, when he discovered that a fuel recirculation pump was missing from the unenclosed area.

WO Marsh reported this theft to Capt Mansfield and suggested that further security precautions should be taken in the area of the Engineers compound. Testimony of some witnesses also suggested that they had become more aware of their vulnerability after hearing of the death the day before of a U.S. soldier, killed when he had driven over a land mine. (This incident had occurred over 40 kilometres north of Matabaan, itself some 80 kilometres from the Canadian camp at Belet Huen.)

The Morning Orders Group

On the morning of March 4, 1993 Capt Mansfield discussed the problem of security for the compound at his own orders group. Among suggestions for improving security were the installation of lights around the perimeter of the compound and erecting a surveillance tower. That same morning, Capt Mansfield raised the issue of security of his compound with Capt Kyle, the operations officer of CARBG, at the headquarters orders group.

During the discussion, Capt Rainville, the Reconnaissance Platoon leader, volunteered his platoon to augment security for the Engineers compound. At the time, the only ongoing task of the Recce Platoon was to man the hilltop observation post, north-west of the Canadian camp. Accordingly at the request of Capt Mansfield, LCol Mathieu ordered Capt Rainville to provide additional security to the Engineers compound.

Planning the Recce Platoon Mission

Capt Rainville contacted Capt Mansfield, who indicated that he should deal with WO Marsh to make the necessary arrangements. Capt Rainville and some members of the Recce Platoon (Sgt Plante, MCpl Countway, and Cpl Klick) met later in the day with WO Marsh to conduct a reconnaissance of the compound as part of the planning for the night operation. Sgt Groves of the Engineers Squadron later testified before us that after observing preparations for the mission that night, he had told his men that "someone is going to die out there tonight".

WO Marsh told Capt Rainville that he could provide a light tower, which had been transferred for this purpose from the airfield to the Engineers compound, and that he could also erect a raised surveillance platform to assist the Recce Platoon. Capt Rainville refused this offer, ostensibly on the basis that the lights would interfere with his plan by hampering the use of night vision goggles (NVGs).

Instead, Capt Rainville directed WO Marsh to place ration boxes and jerrycans of water in the back of a trailer at the south end of the Engineers compound, in a place visible from a path used daily by the Somalis to go to the river to get water. While Capt Rainville described the placing of these supplies as a "military deception plan", several witnesses, including Capt Mansfield, WO Marsh, and members of the Recce Platoon, referred to this part of the plan as setting out "bait". Capt Rainville later defended his action by explaining that this material would attract thieves but not saboteurs, enabling his men to distinguish between the two.

Capt Rainville divided the duties for the night of March 4th between members of the Recce Platoon and Sgt Groves and his men, who were designated the Quick Reaction Force. The Recce Platoon was to assume responsibility for the southern part of the compound, and Sgt Groves and his men were to remain in the northern part of the compound, serving as a mobile reserve in case they were needed.

To complete the mission plan, Capt Rainville conducted a walking tour inside the perimeter of the compound, from the southern edge of "Fort Holdfast" (the walled section at the northern end of the Engineers compound) to the halfway point of the compound. They did not conduct any part of the reconnaissance outside the Engineers compound or around the helicopter compound, reportedly so as not to reveal the plan or the intended locations of Recce Platoon's three detachments.

Recce Platoon's Afternoon Orders Group

At his afternoon orders group, Capt Rainville explained the purpose of the mission and the location of the detachments, as follows:

- Detachment 69, consisting of Capt Rainville and his sniper, Cpl Klick, was to set up in the back of a truck roughly in the centre of the Engineers compound, in line with the "bait" (at the south end of the compound) and a temporary gate in the west side of the perimeter;
- Detachment 63, consisting of Sgt Plante, Cpl King, and Cpl Favasoli, was to take up a position about 100 to 150 metres south and west of the south-west corner of the perimeter;
- Detachment 64A, consisting of MCpl Countway, Cpl Roch Leclerc, and Cpl Smetaniuk, would take up a position roughly 100 to 150 metres south and east of the south-east corner of the perimeter.

Each of the detachments was assigned an area of responsibility defined by interlocking and overlapping arcs of observation and fire. The detachments were set up to maintain a 360-degree arc of observation, but their primary focus was on the southern approaches to the Engineers compound. To help distinguish friendly forces from 'enemy' forces, the position of each of the detachments and some key points were to be marked by infrared chemical markers called 'glow sticks', invisible to the naked eye but visible to soldiers using night vision goggles.

These glow sticks were also to be used to delimit the arcs of fire of the designated sniper, Cpl Klick, who would be able to provide covering fire, according to Capt Rainville's plan. Outside the compound, responsibilities were divided so that Detachment 63 would cover the area at the south-west corner of the Engineers compound, and Detachment 64A would cover the south-east corner.

Capt Rainville also gave directions on the equipment to be used during the patrol. Each of the detachments would carry one set of night vision goggles, one Starlight Scope, and their routine-issue C7 rifles. As the sniper, Cpl Klick would carry both his C7 and a C3A1 bolt-action, single shot sniper rifle equipped with a night vision scope. Sgt Plante brought a 12-gauge shotgun instead of a C7 rifle.

Communications were another element of the planned mission, and each detachment had its own call sign (C/S). C/S 69, referring to Capt Rainville and Cpl Klick, carried two radios with them, one to maintain contact with Sgt Groves and his Quick Reaction Force, as well as with the Engineers headquarters, and the other to maintain communications with the other two detachments. Sgt Plante carried one radio on the platoon net for C/S 63, and Cpl Roch Leclerc carried the same type of radio, also on the platoon net, for C/S 64A.

In testimony before us, there were significant discrepancies as to the actual purpose of the mission, as it was communicated down the chain of command from LCol Mathieu through Capt Rainville to his patrol. The mission assigned to Capt Rainville was to augment security of the Engineers compound, a mission which he reinterpreted and communicated to his platoon as being to capture Somali infiltrators.

The Mission Gets Under Way

At 1800 hours (6:00 p.m.), Capt Rainville gathered members of the patrol inside the Engineers compound to review their orders before going to their assigned locations. Shortly afterward, Capt Rainville and Cpl Klick moved to their position in the back of the truck, which was located about 25 to 45 metres east of the gate in the western perimeter of the Engineers compound, and between 100 to 125 metres from the south perimeter. Once they were in position, the other two detachments moved out.

Detachment 63, led by Sgt Plante, headed out along the main supply route, passing the west side of the 2 Commando compound. From there the men turned south toward the southern perimeter of the compound, moving east at that point toward the Engineers compound lines. While the mission plan called for Detachment 63 to station itself 100 to 150 metres from the south-west corner, Sgt Plante exercised his discretion as detachment commander and instead decided that they should move to a position behind a small cement well or cistern. The well was located 50 to 100 metres west of the gate in the west side of the Engineers compound, and 50 to 150 metres south of the helicopter compound. However, it would appear that Sgt Plante did not inform Capt Rainville of the revised location of his detachment.

Detachment 64A (led by MCpl Countway) headed east along the main supply route to the west side of the 1 Commando compound, where it checked in with the sentry before turning south along the 1 Commando

compound wire. Then the three soldiers moved south along the 1 Commando compound wire before heading west to their designated position. (Again, testimony indicated some discrepancies as to their exact location, but they were probably situated about 30 to 150 metres off the south-east corner of the Engineers Compound, slightly to the east of the actual corner of the perimeter.)

Each of the three detachments was more or less in place by approximately 1950 hours. At that time, Cpl Lalancette, from his sentry post in the 1 Commando observation tower, and using a thermal imaging device called a night observation device long range (NODLR), saw two Somalis walking casually south along the eastern perimeter of the Engineers compound. He passed this information to Cpl Noonan, 1 Commando's radio operator, who then radioed to headquarters in the Engineers compound. This information was passed on to Capt Rainville's detachment, which then informed the other two detachments.

As the two Somalis approached the south-east corner of the Engineers compound perimeter, they were observed by Detachment 64A. Cpl Smetaniuk had spotted them first and alerted the other members of his detachment. Detachment 64A's radio was used to inform Capt Rainville that they had the Somalis under observation. According to evidence we heard, the Somalis were reported to have approached the wire, looked inside at various areas of the compound, and pointed in various directions while talking to each other. The Somalis then moved toward the southeast corner of the perimeter, finally passing out of Detachment 64A's vision.

Detachment 63 sighted the Somalis as they approached the south-west corner of the perimeter and from there proceeded north in the general direction of the helicopter compound. At this point, because the Somalis were moving closer to their position at the well, Detachment 63 requested radio silence so that its position would not be compromised. As they moved northward, the Somalis were kept under observation by both Detachment 63 and Detachment 69, but there is serious disagreement about their exact movements. Not all members of the two detachments watched both Somalis continuously.

At a certain point, the Somalis became frightened and ran south. Capt Rainville called to them to stop, and he also called Out to Detachment 63 to "get them". Members of Detachment 63 issued warnings to the fleeing Somalis in English, French, and Somali. Sgt Plante shone a flashlight attached to his shotgun in the faces of the two Somalis, but they continued to run away. Detachment 63 then fired two warning shots: Sgt Plante fired one with his shotgun, and Cpl King the other with his C7 rifle. As the two Somalis continued to flee, Detachment 63 members fired aimed shots.

Both Sgt Plante and Cpl King fired, but only Sgt Plante hit one of the Somalis. The injured man, Mr. Abdi Hunde Bei Sabrie, was wounded in the buttocks and legs by the shotgun blast. Once down, he was apprehended and restrained by members of Detachment 63. By that time, they had been joined by Capt Rainville, who indicated that he would stay with Mr. Abdi while the others pursued the other man. Plastic cuffs were then placed on Mr. Abdi.

The second Somali, Mr. Ahmed Afraraho Aruush, had continued to flee, but stopped when he got to the south-west corner of the perimeter. At this point, Cpl Klick had him in his gun sight from inside the compound and was waiting to see what he would do. Cpl Klick did not fire because, according to his testimony, he saw no threat to any of the patrol members. Mr. Aruush was also spotted at approximately the same time by Cpl Favasoli, who was using night vision goggles. He monitored the second Somali's movements and directed Sgt Plante and Cpl King as they ran in pursuit. The second Somali began to run again to the south-east.

Members of Detachment 63 chased Mr. Aruush until he reached the mid-point of the southern end of the perimeter, then abandoned the chase because they had entered the arc of fire of Detachment 64A and the Somali was heading toward the members of 64A. Sgt Plante, Cpl King, and Cpl Favasoli returned to where they had left Capt Rainville with Mr. Abdi, who was struggling to free himself. After cuffing him again, Cpl Favasoli removed a knife from a sheath on Mr. Abdi's belt.

As Mr. Aruush approached Detachment 64A, Cpl Smetaniuk allegedly gave a warning to halt, causing the man to veer away. Having been designated as the "chase man" within the detachment, Cpl Smetaniuk then ran unarmed after the fleeing Somali. When it appeared to the other two members of Detachment 64A that Cpl Smetaniuk would not be able to catch him, they shouted a warning to Cpl Smetaniuk, and Cpl Roch Leclerc fired a warning shot with his C7.

As Mr. Aruush continued to flee, Cpl Leclerc and MCpl Countway each fired one aimed shot, and the Somali fell. The evidence we heard indicated, however, that he then tried to get up, at which point Cpl Leclerc and MCpl Countway each fired a second shot. Mr. Aruush went down again and did not get up. Although testimony varied as to the exact location of Mr. Aruush at the time of the second shots, generally evidence suggests that he fell in the vicinity of Detachment 64A.

The Mission's Aftermath

When Detachment 64A members determined that Mr. Aruush, was dead, they reported the shootings to Detachment 69. At approximately 2015 hours, Capt Rainville radioed Service Commando for an ambulance to take the wounded Somali, Mr. Abdi, to the base hospital and to remove the body of Mr. Aruush. Within a few minutes, MCpl Petersen, Cpl Mountain, and Trp Leach arrived in an ambulance, examined Mr. Abdi, determined that his injuries were not serious, and took him to the CF hospital, accompanied by Sgt Plante and Cpl King.

The medics radioed to C/S 64A to request that Mr. Aruush's body be brought to where they were examining Mr. Abdi. When informed by C/S 64A that the body could not be moved without it falling apart, they proceeded to the location of the body to examine it. MCpl Petersen, according to his testimony, observed that the dead Somali's neck was blown out, his head was gaping open at the back of the skull and his face was sagging to one side. MCpl Petersen, Cpl Mountain, Trp Leach, and Capt Rainville subsequently accompanied the body to the hospital in the Service Commando compound.

The ambulance bearing Mr. Abdi arrived at the hospital at around 2040 hours, where he was examined by Maj Armstrong in the presence of Maj Brown, MCpl Butler and Cpl Briggins. Mr. Abdi had suffered multiple shotgun pellet wounds to his lower back, buttocks, and lower legs, although none of the wounds was life-threatening. The ambulance returned with the body of Mr. Aruush at approximately 2050 hours. Maj Armstrong conducted a partial examination of the body at about 2100-2115 hours to determine the cause of death in the presence of Maj Brown, Capt Gibson, Lt (N) Gowthorpe, Sgt Ashman, MCpl Butler, Pte Perriman, Pte Cameron, and Pte McLeod.

According to the report of Maj Armstrong, the deceased had been first shot in the back and subsequently "dispatched" with a pair of shots to the head and neck area. Maj Armstrong considered that the wounds were consistent with the Somali being shot as he lay wounded on the ground. On the direction of Maj Vanderveer, the Officer Commanding Service Commando, the body of Mr. Aruush was transferred to the local Belet Huen hospital without an autopsy at approximately 2245 hours. A hospital admissions register recorded the receipt of Mr. Aruush's body, and a Somali physician, Dr. Xalen, released the body to the deceased's family the same evening.

While Mr. Abdi was being examined at the hospital, CWO Jackson of the U.S. Special Forces A Team was informed of the shootings, came to the hospital, and interviewed Mr. Abdi with the help of a U.S. interpreter. Afterward, he spoke with Capt Rainville about the mission. He also met with Maj Armstrong, reportedly to discuss the wounds on the dead man. CWO Jackson apparently decided that he needed more information about the incident to report up his own chain of command, and he asked Capt Rainville to arrange an interview with Detachment 64A.

The Debriefings

When Capt Kyle, the Operations Officer, was informed of the shootings, he reported immediately to LCol Mathieu and Col Labbé. (Col Labbé had arrived in Belet Huen that afternoon along with Col O'Brien, Col White and Col McLeod, who were visiting from NDHQ in preparation for the visit of the CDS, Adm Anderson, to Somalia scheduled for the following week.)

Capt Rainville was ordered to go from the Service Commando compound to the Headquarters compound to meet with LCol Mathieu and Capt Kyle. Col Labbé was also present. During the debriefing, according to testimony before us, an "excited" Capt Rainville drew a diagram as he described the events of the night, explaining as well that the patrol members had followed the rules of engagement regarding the use of force.

Capt Rainville reportedly stated that the two Somalis had been shot in the back after attempting to penetrate the Canadian wire. Evidence is conflicting as to whether he mentioned the "bait".

The assembled officers asked questions throughout the 60-minute debriefing, at the end of which Col Labbé asked Capt Rainville to write a description of the events for Col Labbé to use when he briefed the media the next morning. Testimony indicates that LCol Mathieu then told Capt Rainville, "Good job, Michel" as he was sent back to his patrol. Capt Rainville returned to the Engineers compound and at approximately 11:00 he called in the members of Detachment 64A so that they could debrief CWO Jackson. After the approximately half-hour debriefing on the shootings, the men headed back out to resume their patrol position. Capt Rainville remained on duty until dawn, and then he called the other detachments in for a debriefing. Once Capt Rainville had left Headquarters, Col Labbé briefly discussed the incident with LCol Mathieu.

Early in the morning of March 5th, Capt Rainville gathered his men to conduct a patrol debriefing. During the course of the meeting, each of the platoon members gave their version of what had occurred during the night's mission. In testimony before us, none of the members of the patrol could recall the details of this debriefing concerning the shootings. However, they all reported that Capt Rainville told them not to speak to the media about the incident. Capt Rainville apparently indicated during this debriefing that it was standard procedure that some form of investigation would be conducted, but he also told the patrol members that it had been a good mission and that they had performed well.

No measures were taken by the CO to protect the scene of the shootings, as both he and Col Labbé were satisfied with the explanation of the events given by Capt Rainville. Nevertheless, in view of the serious concerns expressed by officers in Ottawa about the circumstances of the shootings and the fact that the two Somalis were shot in the back while running away, it was determined that a CO's investigation would be conducted into the events.

The CARBG's intelligence officer, Capt Hope, who had returned from leave on the afternoon of March 5th, was ordered by LCol Mathieu to conduct the CO's investigation. Capt Hope testified at our hearings that he had never conducted a CO's investigation before and had to search through CF procedural manuals for guidance. Unable to find the details he needed, Capt Hope received LCol Mathieu's permission to conduct a summary investigation (a form of investigation he was more familiar with), to meet the deadline for a oral or written report by 1600 hours on March 6th.

The terms of reference for Capt Hope's investigation were drawn up late in the afternoon of March 5th, and he began by collecting situation reports and other pertinent documents from both Belet Huen and Mogadishu. The deadline was extended to 1400 hours on March 7th, giving Capt Hope sufficient time to collect the statements of the patrol members, the medical report of Maj Armstrong, and the report prepared by CWO Jackson. Having submitted the first version of his report on March 7th, Capt Hope was subsequently instructed to delete parts of it and to include some additional material concerning the circumstances of the incident. A final version of the report was submitted to Col Labbé on March 13th. It served as the basis for Col Labbé's own report to NDHQ, which he submitted on March 23rd.

THE ALLEGED COVER-UP

Passage of Information About the March 4th Incident

Communications regarding the March 4th incident began very soon after the shootings took place. The incident and resulting communications occurred at a time that had been determined by senior officers and officials in Ottawa to be "politically sensitive". Due to the expected leadership candidacy of the Minister of National Defence, the Hon. Kim Campbell, the Deputy Minister, Robert Fowler, had reminded members of DND and the CF who attended the daily executive meeting (DEM) on March 1, 1993 that it was necessary to exercise "extreme sensitivity in all matters relating to public statements, speeches, press releases." He had already told those in attendance at the DEM of January 22, 1993, that the Minister enjoyed excellent relations with the media and that she did not want this relationship jeopardized.

At 2045 hours on March 5th, CARBG headquarters in Belet Huen informed CJFS headquarters in Mogadishu that the Recce Platoon had shot two Somalis during a security patrol at the Engineers

compound. The message indicated that the Somalis had been trying to get into the compound, that one Somali was dead and one was wounded (condition unknown), and that a Significant Incident Report (SIR) had been sent. CJFS headquarters subsequently passed on the SIR to NDHQ in Ottawa at 2126 hours. No other information was available to members of the CJFS staff in Mogadishu at that time.

Officers at NDHQ soon became very concerned following the reports which stated that the Somalis had been shot in the back while fleeing. They urged Maj Moffat, the Operations Officer at CJFS headquarters in Mogadishu, to provide more information. Maj Moffat sent word to Belet Huen of NDHQ's concern over the wording of the incident report, which had been communicated by the CJFS public affairs officer to his people in Ottawa, stating that two Somalis had been shot in the back. Maj Moffat noted as well that Ottawa was "extremely excited" over the incident, and requested an updated SIR with additional information on the entry and exit wounds of the two Somalis. He indicated that it was necessary to "calm Ottawa" and conduct "damage control".

Maj Moffat also attempted to get in touch with Maj Armstrong regarding his medical report. Maj Armstrong was approached by a soldier sent by Capt Kyle, who asked him to phone Maj Moffat in Mogadishu. Testimony before us suggests that Maj Armstrong at first refused because he had already provided a report to his own superior officer, Maj Jewer. He indicated that he would make a written report the following day, but he finally agreed to telephone CJFS in Mogadishu. According to Maj Armstrong's testimony, it was at this point that he made direct allegations of murder to the duty officer, Maj Parsons (at 0210 hours on March 5th). Evidence also indicates that Maj Parsons then made a log entry that recorded Maj Armstrong's assessment of the March 4th death, but he did not explicitly record either the word "murder" or the word "homicide".

Through the SIRs, Ottawa also became aware that Col Labbé was planning to brief the media on the morning of March 5th. It was Capt Poitras, CAR's public affairs officer, who had phoned Cdr Keenlside at NDHQ to pass on these details. From this information, Ottawa, through Maj Parsons at CJFS in Mogadishu, sent an urgent hand-delivered message to Belet Huen, exclusively for Col Labbé, expressing concern over the holding of a media briefing that morning, and indicating that Ottawa was "excited" over the information about the entry and exit wounds of the dead Somali. The message contained questions from Cdr Keenlside that Ottawa wanted answered and instructions from the DCDS, VAdm Murray, at NDHQ. According to Col Labbé, he did not see this hand-delivered message until some time after he left Belet Huen on March 5th to return to HMCS *Preserver*. Col Labbé acknowledged that he had received this urgent message, but said that he simply tossed it into his satchel to be read once he was on board the ship.

A message was also sent to LCol Mathieu from Ottawa, which he received at 0625 hours on March 5th. That message requested answers to questions about the shootings and referred to the media briefing and the telephone conversation between Maj Armstrong and Maj Parsons at Mogadishu. LCol Mathieu sent his response to Ottawa's queries to Mogadishu with the comment that "Due to the avail[ability] of grenades, mines and explosives to the locals and the threat of entering the compound and stealing the weapons and/or ammo, any Somali attempt to breach the wire and enter the compound must be considered a hostile act. Soldiers under my command have been dir[ected] to apply the ROE accordingly...".

Communications activity took on a sense of urgency as officers at NDHQ became more interested in the shooting incident. Frequent messages were passed back and forth between Somalia and Ottawa. A day-by-day chronology follows. It should be noted, however, that we also determined that there is a large gap in the documentary record relating to the flow and content of communications between Somalia and Ottawa, as recorded in the National Defence Operations Centre logs reviewed by Inquiry staff.

Friday, March 5, 1993: Somalia

On March 5th at 0715 hours, Col Labbé authorized a call by WO Haines in Belet Huen to Mogadishu requesting information from Col Peck, U.S. UNITAF public affairs officer, about similar types of incidents involving other national forces, in order to put the March 4th shooting in context. The requested information was received in Belet Huen from Col Peck at 0730 hours. (CJFS communications logs recorded that Col Peck responded that it was quite common at other UNITAF installations to shoot at intruders and that they did not record all incidents that occurred.)

Col Labbé held separate media briefings with the Canadian Press, CBC Newsworld, and Standard Broadcast News by telephone on March 5th at 0800 hours to discuss the shootings. For the media briefing, Col Labbé referred to Capt Rainville's diagram and written statement, the updated March 4th SIR, and possibly some other papers gathered by Capt Kyle. He told reporters that the two Somalis might have been "possible saboteurs".

In Mogadishu, Maj Moffat prepared the March 5th situation report, which was then sent to NDHQ. In it, he discussed the March 4th incident and conveyed interpretations of the rules of engagement, apparently taken from LCol Mathieu's answers to NDHQ's questions sent to him earlier that day. In both LCol Mathieu's reply and Maj Moffat's report, there is a discussion of a "hostile act possibly to conduct sabotage" and the statement that "any Somali attempt to breach the wire must be considered a hostile act and dealt with according to the ROEs". (Col Labbé would later speak with Maj Moffat directly to tell him that he would personally draft the commander's evaluation for the March 6 situation report to correct the information that was sent by Maj Moffat on the previous day.) At that time, Maj Moffat briefed Col Labbé about Maj Armstrong's telephone conversation with Maj Parsons concerning the nature of the wounds on Mr. Aruush.

LCol Mathieu's duty officer phoned Mogadishu to confirm that the medical information had been received and to ask whether Mogadishu required a written report. Originally, he had been told that the written report could be included with LCol Mathieu's daily situation report. However, Mogadishu later asked that a written medical report be provided as soon as possible. The request was changed because Ottawa had made a specific request to CJFS in Mogadishu to get the medical report right away.

Shortly after noon on March 5th, Col Labbé left Belet Huen and went straight to HMCS *Preserver*. He took with him Capt Rainville's handwritten statement and diagram, along with the unopened package of messages which included the urgent message from the DCDS. (Later that afternoon, at Capt Hope's request, Capt Rainville's statement was faxed back to Belet Huen to assist Capt Hope in his investigation.)

Sometime in the afternoon of March 5th, Col Labbé spoke with Cmdr Cogdon and VAdm Murray at NDHQ. Evidence before us indicates that they both expressed a sense of urgency about the circumstances of the March 4th shooting, and that they wanted more details from Col Labbé. VAdm Murray talked to Col Labbé specifically about the interpretation of the ROE and about his contact with the media. Apparently, it was only after this telephone conversation that Col Labbé opened the package he had carried from Belet Huen and read that Ottawa was concerned about his plan to hold a media briefing.

According to the documentary evidence, VAdm Murray indicated to Col Labbé that he should be sensitive to the Minister's concerns about negative media attention which had followed the February 17th shooting incident. Col Labbé then spoke with Cdr Keenlside and LCdr Bastien to clarify details of the shootings. Col Labbé also advised VAdm Murray and other officers at NDHQ that a CO's investigation was under way, and that he personally was satisfied with the application of the ROE, basing his assessment on Capt Rainville's information.

At 1442 hours on March 5th, log entries indicate that a message was sent from Mogadishu to Belet Huen by Maj Moffat, directing that statements should be taken from all members of the Recce Platoon who had been involved in the incident. A further log entry indicates that at 1625 hours on March 5th, a message was sent from Mogadishu by Maj Moffat to Belet Huen, using Col Labbé's log identification name, ordering LCol Mathieu to forward the results of the CO's investigation within 24 hours.

Later that evening on board HMCS *Preserver*, Col Labbé spoke to Col O'Brien about his concerns about the ROE and the fact that the Somalis had been shot in the back. At that time, Col Labbé first mentioned the possibility of asking personnel from the U.S. Criminal Investigation Division to investigate the shootings, but Col O'Brien suggested that it might not be the most appropriate way to handle the matter.

Friday, March 5, 1993: Ottawa

In the early hours of March 5th, NDHQ received the first SIR and the updated SIR from Mogadishu concerning the shootings. Neither made any mention of the possibility that "bait" had been set out, but they made it clear that two unarmed men had been shot in the back outside the Engineers compound while attempting to flee. Although evidence indicates that by this time Maj Armstrong's medical assessment of the

nature of the shots had been communicated to Mogadishu, NDHQ sent messages to Col Labbé and LCol Mathieu simply requesting additional information and instructing Col Labbé regarding his plan to conduct a media session on the morning of March 5th. The reports of the shooting incident were the first item of discussion at the daily executive meeting, chaired by the Deputy Minister and attended by the most senior officers and civilian staff at NDHQ.

Col Wells, Director General of Security at NDHQ, first heard of the shootings on Friday, March 5th, at NDHQ, when he was briefed by the Director Police Operations, Col MacLaren. Col Wells was told that one Somali had been killed and another wounded, and that the possibility existed that there had been excessive use of force and possible violations of the ROE. Col MacLaren recommended that this was a matter for the Military Police. An investigation decision was expected by the DCDS, but not before Monday, March 8th, after there had been an opportunity to review the CO's investigation report.

Col Wells was not aware of any objections on the part of the DCDS, VAdm Murray, to preparing the Military Police for possible deployment on March 6th or 7th, and on March 5th, Col Wells had a team of Military Police investigators in Ottawa inoculated and prepared to head to Somalia. Col Wells sensed that NDHQ knew from the outset that the March 4th shootings had the potential to be a criminal matter as well as a disciplinary matter. Col Wells could not send in the Military Police without approval from the Commander in theatre, Col Labbé, or from the DCDS.

VAdm Murray was briefed shortly after the March 4th incident. He decided against sending in the Military Police immediately because he wanted to wait for a report on the incident from Col Labbé, but he believed initially that a Military Police investigation was probable. According to his testimony, VAdm Murray was not told that "bait" had been put out or that the mission was designed to capture Somali intruders. As well, he claimed that he was not told until later about the allegations of Maj Armstrong. VAdm Murray did not immediately assume criminality when he first heard of the March 4th shootings, but he was concerned about the application and interpretation of the ROE.

Saturday, March 6, 1993: Somalia

Col Labbé arrived in Mogadishu on the morning of March 6th. He and Maj Moffat were debriefed regarding the March 5th situation report and Maj Moffat's information about Maj Armstrong's concerns over the incident. Col Labbé wrote the March 6th situation report "commander's evaluation", using Capt Rainville's statement, the March 5th situation report, the updated SIR of March 5th, and his discussions with NDHQ. Col Labbé indicated in the March 6th situation report that there were errors in the March 5th report and he corrected what he described as the erroneous interpretation of the ROE. After Col Labbé wrote his commander's evaluation for the March 6th situation report, he flew to Nairobi to greet the CDS, Adm Anderson, who was arriving there on March 7th en route to Somalia to inspect the Canadian troops in Belet Huen and to observe the CARBG operations.

Sunday, March 7, 1993: Somalia

On March 7th, Adm Anderson was met by Col Labbé in Nairobi and later arrived in Somalia for a four-day visit. Col Labbé had discussed the March 4th incident briefly with him in Nairobi. When he arrived in Belet Huen, he was again met by Col Labbé, along with LCol Mathieu and Col O'Brien. Adm Anderson had been en route from Ottawa when the original SIR was sent to NDHQ, but they quickly brought him up to date, allegedly without getting into the details of the events or of the investigation.

Capt Hope's first draft of his investigation report was delivered to both LCol Mathieu and Col Labbé in Nairobi late on March 7th, complete with all attached statements, including CWO Jackson's and Maj Armstrong's statements. Col Labbé read the report and the attached statements of Maj Armstrong and CWO Jackson, but did not remark on CWO Jackson's statement or the "dispatched" comment in Maj Armstrong's statement.

Monday, March 8, 1993: Somalia

Adm Anderson spoke to the officers in Belet Huen on March 8th and mentioned the upcoming election in his speech. He is said to have told the officers that he did not want "to make any waves because our Minister is running for the leadership".

At his orders group on March 8th, LCol Mathieu discussed ROE interpretations and explained the concept of disengagement. This was perceived as a significant change from the previous interpretation.

Monday, March 8, 1993: Ottawa

Col Wells met VAdm Murray at NDHQ on March 8th to discuss whether the Military Police should be sent to Somalia. VAdm Murray told him that he was still waiting for Col Labbé's report which would be the decisive document as to whether a Military Police investigation would be necessary. Maj Buonamici was ordered to stand down his Military Police investigative team until further notice.

Tuesday, March 9, 1993: Somalia

On March 9th, Adm Anderson and Col Labbé visited the CF hospital in Belet Huen. Maj Armstrong was present. Col Labbé later briefly discussed the March 4th incident again with Adm Anderson on his way to the airport. After Adm Anderson left, Col Labbé discussed Capt Hope's report with LCol Mathieu and pointed to areas which he thought were incomplete or incorrect. Col Labbé and LCol Mathieu discussed the ROE, and LCol Mathieu said that they had been clarified during the March 8th orders group.

On March 8th or 9th, Col Labbé was told by Col O'Brien that "the pressure was off" and that there was less urgency with respect to getting his report to Ottawa. It was after this message from Col O'Brien that communications concerning the March 4th incident slowed down considerably between NDHQ and Somalia.

Tuesday, March 9, 1993: Ottawa

In a meeting concerning the March 4th incident, VAdm Murray brought up the idea of using the U.S. CID to investigate. Col Wells did not dismiss the idea immediately because he had a Canadian MP, Maj Klassen, attached to UNOSOM in Nairobi. However, he did not view it as the best available option. Col Wells suggested that if there was to be a Military Police investigation, they should put Maj Klassen in charge and use the U.S. CID only to assist, but that the best scenario would be to send Military Police investigators from Canada. There was, however, no decision made as VAdm Murray was still waiting for Col Labbé's report.

Wednesday, March 10, 1993: Somalia

Col Labbé communicated to Ottawa in a situation report that, "I have received Cdn AB Regt BG CO's investigation dealing with the shootings of March 4th. With the return of my J1 legal-in-theatre I have dispatched the UNITAF U.S. criminal investigation detachment (CID) to Belet Huen to conduct a detailed police investigation of the incident. Once I have received the police report I will be in a position to complete my report to the CDS with recommendations for subsequent action, if any."

The CID, however, never actually arrived in Belet Huen. Col Labbé's J1 Legal, Capt Philippe, also was not in favour of this investigative option and upon his return from leave in Canada, recommended against using the CID.

In Belet Huen, LCol Mathieu instructed Capt Hope as to how to revise his report, with the understanding that the information was required by Col Labbé. Capt Hope would re-submit his report on March 13th.

Thursday, March 11, 1993: Ottawa

Col Wells met once again with VAdm Murray concerning the issue of whether to send Military Police investigators to Somalia to look into the March 4th shootings, but VAdm Murray indicated that he had not received Col Labbé's report yet and would not make a decision before he had this document in hand.

Saturday, March 13, 1993: Somalia

Capt Hope submitted the second draft of his report to LCol Mathieu, who attached a cover letter and submitted it to Col Labbé. Col Labbé then passed it to Capt Philippe for review. Capt Philippe was greatly concerned by Capt Hope's report because he thought it possible that the Somalis might have been enticed to approach the camp and then entrapped. Capt Philippe also had some concern over the use of the word "dispatched" in Maj Armstrong's statement.

Sunday, March 14, 1993: Somalia

Capt Philippe met Col Labbé to express his concerns about Capt Hope's report. He recommended that a more thorough investigation be conducted into the possible criminal nature of the events of March 4th. Col Labbé indicated that he shared some concern over the possible use of excessive force, but that he saw no criminal intent in what had been done. They discussed Capt Rainville's plan for the mission, which Capt Philippe thought might have been set up as a trap or an "ambush", and Col Labbé explained that it was not improper to capture infiltrators and that he did not feel a Military Police investigation was necessary. However, Col Labbé still felt that more information was needed. Following the meeting, Col Labbé drew up six supplementary questions to be put to the patrol members.

Following his briefing of Col Labbé, Capt Philippe informed his superior in the office of the Judge Advocate General (JAG) in Ottawa, LCol Watkin, of Maj Armstrong's allegations. There is some discrepancy as to whether this conversation took place on March 14th or 17th, but it is clear that they did speak of the shootings subsequent to Capt Philippe's review of Capt Hope's report, and there is some indication that they discussed how to deal with the incident.

Tuesday, March 16, 1993: Somalia

The beating death of Shidane Arone while in the custody of 2 Commando occurred on this date in Belet Huen. Sometime between March 16th and March 22nd, Col Labbé's six supplementary questions relating to the March 4th incident arrived in Belet Huen. They appear to have been designed to establish that the two Somalis presented a potential threat to Canadian troops and/or installations. Members of the Recce Platoon met with Capt Hope over a 60- to 90-minute period to answer them. Capt Hope instructed the men not to discuss their answers with each other, and to address the appropriate ROE issues in their answers. During the administration of the questions, LCol Mathieu briefly addressed the troops and told them not to worry too much about the questions, that they had done nothing wrong.

Tuesday, March 16, 1993: Ottawa

The Military Police investigators who had been on standby following the March 4th shootings were sent to Somalia to investigate the death of Shidane Arone on March 16th.

Monday, March 22, 1993: Somalia

Col Labbé spoke with LCol Mathieu regarding the supplementary questions because he was waiting for the answers of the members of the Recce Platoon before finalizing his own report to VAdm Murray. There is some contradiction as to the substance of the conversation, but Col Labbé evidently received the

information he believed he required, as he was able to complete his report on the shootings.

Tuesday, March 23, 1993: Ottawa

Col Labbé faxed his report to VAdm Murray without attaching Capt Hope's report, or the statements of Maj Armstrong and CWO Jackson. After reading the report, VAdm Murray felt that it addressed all the necessary issues with regard to the March 4th incident, but before making any decisions, he instructed Col O'Brien to pass it to the JAG for a legal review. VAdm Murray then left for a conference in Cambodia on March 24th, to return a week later.

Thursday, March 25, 1993: Ottawa

Capt (N) Blair, the Acting Judge Advocate General, ordered LCol Watkin to perform a legal review of Col Labbé's report concerning the March 4th incident. LCol Watkin discussed the necessity of reviewing the CO's investigation report, and in particular, the statements of patrol members who had fired their weapons, to ensure a thorough legal review. Capt (N) Blair contacted Cmdr Cogdon, VAdm Murray's Chief of Staff, to ask for the CO's investigation report and supporting documents. LCol Watkin subsequently dealt with Col O'Brien on this issue and appears to have had some difficulty getting access to the required documents. LCol Watkin did not receive them until Col Labbé hand-delivered them on his arrival in Ottawa on April 2nd.

Monday, March 29, 1993: Somalia

Col Labbé received the written answers of the members of Recce Platoon to the supplementary questions from LCol Mathieu. These confirmed his impressions from their phone conversation of March 22nd and further buttressed the conclusions of his report of March 23rd.

Friday, April 2, 1993: Ottawa

Col Labbé arrived in Ottawa, bringing with him the CO's investigation report and supporting documents, including the statements of Maj Armstrong and CWO Jackson, which he then submitted to LCol Watkin at the JAG so that the legal review of his report could be completed.

Wednesday, April 14, 1993: Somalia

While on leave in Nairobi, Kenya, Maj Armstrong slipped a note under the door of LCol Tinsley, a JAG legal officer who had accompanied the Military Police investigators sent to investigate the March 16th incident. At 2004 hours local time, Maj Armstrong was interviewed by MWO Dowd of the Military Police investigation team. During the interview he clearly and unequivocally alleged murder in relation to the March 4th shootings. MWO Dowd then called the Director of Police Operations, Col MacLaren, to report the allegation and inform him that an investigation had begun into the March 4th incident.

Wednesday, April 14, 1993: Ottawa

Immediately following the events in Nairobi, an "excited" Capt (N) Blair, a colleague of LCol Tinsley who had received Maj Armstrong's allegation, informed VAdm Murray in the presence of Cmdr Cogdon about that allegation. VAdm Murray also received the results of the legal review of Col Labbé's report, which expressed grave concerns about the shootings, specifically LCol Watkins view of Maj Armstrong's statement alleging murder, and that a Military Police investigation was required immediately. VAdm Murray then informed Col Wells that it would be necessary for him to send a team of investigators to look into the March 4th incident, a message that came shortly after Col Wells had been informed by Col

MacLaren of MWO Dowd's interview with Maj Armstrong. According to the chain of command in Ottawa, it was "pure coincidence" that the investigation into the March 4th incident began in Nairobi and was ordered almost simultaneously in Ottawa.

Thursday, April 15, 1993: Ottawa

Col Wells issued an order for a team of Military Police investigators to go to Somalia to look into the March 4th incident; they departed that day, arriving in Nairobi on April 21, 1993.

Sunday, May 2, 1993: Somalia

A team of experts from Canada conducted a forensic autopsy and ballistics tests to address the allegations made by Maj Armstrong with regard to an execution-style killing. Dr. James Ferris, a forensic pathologist from Vancouver General Hospital, performed an autopsy on the remains of Mr. Aruush, which by that time, almost two months after the shooting, were almost entirely skeletonized. Dr. Ferris concluded that the cause of death was generally consistent with the statements of the soldiers. He conceded that he could not draw conclusions with regard to the internal organs, specifically the protruding omentum (abdominal tissue), which Maj Armstrong had seen as significant. Dr. Ferris commented on the omentum only to state, "Although this opinion [Maj Armstrong's] may be correct, it is possible for abdominal contents to be extruded from a gunshot wound during the dying process and even after death." In general, his autopsy report did not conclusively end the controversy generated by Maj Armstrong.

From this point onward, the Military Police investigation ran its course. The soldiers were interviewed on May 8, 1993, search warrants were exercised on LCol Mathieu's and Capt Rainville's premises on August 5, 1993, and the investigation was completed on August 13, 1993. The Military Police investigative team issued its final report on August 24, 1993, and indicated that the police investigation was "inexplicably delayed for five weeks causing the irretrievable loss of physical evidence, faded recollections, increased opportunities for collusion and command influence".

Prepared by MWO Bernier and Maj Buonamici, the investigation report drew a number of conclusions, which seriously called into question the accountability of the chain of command, both in Somalia and at NDHQ in Ottawa. Some of the significant investigative findings were as follows:

- Substantial evidence was found that, on January 28, 1993, LCol Mathieu issued oral directions which were inconsistent with the ROE in effect on March 4, 1993.
- Evidence was found that patrol members believed that deadly force was permitted, following a graduated response, to prevent the escape of Somalis who had attempted to penetrate the perimeter.
- Substantial evidence was found that Col Labbé became aware, January 28, 1993 and January 30, 1993, that LCol Mathieu had directed the use of deadly force against Somalis who had entered the perimeter or were running away with Canadian kit.
- Evidence was found that Capt Rainville directed, and the patrol members understood, that persons attempting to penetrate the perimeter, or escape, were to be captured using whatever force was necessary including deadly force.
- The deployment [of the March 4th patrol led by Capt Rainville] was not consistent with a preventative approach to security.
- The force used would not have been permitted by the ROE if the perceived situation had actually existed.
- The summary investigation was not conducted in accordance with Canadian standards and practices relating to the investigation of suspicious death.
- Col Labbé's messages and report to NDHQ contain the following significant error, omission, and distortion.

- (a) Error -- Col Labbé stated in situation report 82 that neither he nor LCol Mathieu had ever considered the breaching of the perimeter as a "hostile act". This remark is contrary to LCol Mathieu's comments in a message to CJFS HQ.
- (b) Omission -- No evidence was found that Col Labbé advised NDHQ that he was aware that LCol Mathieu had incorrectly instructed his subordinates to shoot at thieves who entered the perimeter or were running away with Canadian kit.
- (c) Distortion -- Col Labbé's March 23, 1993 report to the DC contained so much irrelevant and speculative information that it seriously distorted what the patrol members actually reported their written statements, which were not included with the report.

THE DEATH OF SHIDANE ARONE

Continuing Frustration Regarding Security at the Canadian Camps

As the Operation Deliverance deployment extended into mid-March, the CARBG continued to try to contain incidents of attempted incursion children and young men into the Canadian compound at Belet Huen. Even after the shootings of March 4th, security problems were still a source frustration for the Canadians. For example, documentary evidence reveals alleged severe beatings of suspected thieves by members of 2 Commando on March 14th and 15th.

Many of the troops had been in Somalia for almost three months. Some were discouraged about the mission and its seeming futility, and many were feeling the effects of hard rations, illness, and the limited opportunities for communication with their families. Repeated incursions into the Canadian compounds and nuisance thefts of equipment and supplies added to the troops' resentment of the local population.

On March 13, 1993, an operation reportedly authorized by Maj Seward raided an illegal Somali roadblock. According to the investigation, which occurred only long after the actual event, Capt Sox was dressed in Somali civilian clothes, operating a Somali vehicle, with a Somali civilian in the front of the vehicle, and other Canadian soldiers hidden in the back. Many of the personnel involved were the same individuals who were later involved the events of March 16th.

Treatment of Detainees

Guards dealt with intruders by tying them up and holding them overnight in a bunker (originally intended to be used as a machine gun position an known as "the pit") near the entrance to the 2 Commando compound. The bunker consisted of a frame placed around a floor dug in the sand, with corrugated iron roof on top. Sandbags were placed around the sides to support the roof, which was approximately 30 centimetres above the sandbag walls.

In the morning, the established routine was to turn over the captured thief to the authorities (local clan leaders and later the police when the force was re-established) in Belet Huen, in spite of the knowledge that the individual would be released almost immediately. The captured Somali thieves were not technically considered prisoners of war, but instructions had been given to CARBG forces to treat them as such while in Canadian custody. However, no provision had been made for food for the prisoners, nor were there proper facilities to hold them for any period of time beyond the overnight arrangement which, by then, had become routine.

2 Commando's Mission

This account of the torture and death of a young Somali on March 16, 1993 has been taken from a number of courts martial proceedings that followed the deployment. This Inquiry did not hear any evidence on this incident.

On the morning of March 16, 1993, Maj Seward, Officer Commanding 2 Commando, held a routine orders group with his platoon commanders. The general responsibility of 2 Commando was to maintain security in

the town of Belet Huen and surrounding area and to provide guard duty for any individuals taken into custody. The commando was housed in a separate compound surrounded by wire, with one entrance that served as a sentry post.

At Maj Seward's court-martial, Capt Sox, Commander of 4 Platoon, testified that he was told by Maj Seward at this orders group, with respect to infiltrators, "to capture and abuse the prisoners". He stated that he was surprised by this directive and had asked for clarification. He was told, according to his testimony, that "it meant to rough up and there was something to the effect of 'teach them a lesson'".

Maj Seward testified that he said "I don't care if you abuse them but I want those infiltrators captured.... Abuse them if you have to. I do not want weapons used. I do not want gun fire." The apparent purpose of this instruction was to deter any person captured, and others, from such incursions in the future. Maj Seward admitted in his testimony at his court martial that nothing during his "training as an infantry officer or [in] Canadian doctrine...would permit the use of the word 'abuse' during the giving of orders."

Shortly afterward, Capt Sox conducted an orders group for the section commanders reporting to him. These were WO Murphy, second in command of 4 Platoon, and Sgts Hillier, Lloyd, Skipton, and Boland. At this briefing, apparently seeking to repeat what he understood Maj Seward to have ordered, Capt Sox told the group that "we have been tasked to capture and abuse prisoners", referring to any prisoners captured while attempting to penetrate the perimeter of the compound.

Sgt Boland was commander of 3 Rifle Section (consisting of MCpl Haines, Cpl MacKay and Pte Brown), which had been assigned responsibility for gate security from 1800 to 2400 hours on the night of March 16th. This duty included the responsibility for guarding any prisoners that might be apprehended. Prisoners were to be put in the unoccupied machine-gun bunker near the compound gate. After the meeting, Sgt Boland discussed the instruction to "abuse" prisoners with Sgt Lloyd, another section commander, and they both decided that they were not going to pass on that information to their respective sections. However, later that evening, after Shidane Arone had been captured and was being guarded by Sgt Boland's section, Sgt Boland reportedly told MCpl Matchee, a member of his section, "that Capt Sox had given orders that the prisoners were to be abused". According to Sgt Boland, MCpl Matchee's response to this was to say "Oh, yeah!"

Sgt Lloyd testified at Maj Seward's court-martial that not only did he not pass on the "abuse" order to his troops, but he expressly told them that he would throw in jail any of his troops who touched a prisoner. He stated that he had taken this added precaution because he knew that word of the "abuse" order would get around the camp.

Sgt Hillier testified at Pte Brocklebank's court martial that when asked for clarification of the "abuse" order, Capt Sox had said that if a prisoner resisted, "you could beat the shit out of him". Sgt Hillier stated that he took this to mean during apprehension, although he did not actually use those words. He believed that the next prisoner to be caught would be abused and made an example of, and he hoped that no one would be caught that night. MCpl Skipton testified at Maj Seward's court martial that Sgt Hillier had told his troops not to abuse anybody.

Shidane Arone's Capture

At approximately 2045 hours on March 16, 1993, an unarmed 16-year-old Somali youth, Shidane Abukar Arone, was captured in an abandoned U.S. Seabees compound, located beside the 2 Commando compound. Mr. Arone was captured by Sgt Hillier, Tpr MacGillvray and Capt Sox. (Capt Sox had replaced Sgt Skipton on patrol for a short period of time because Sgt Skipton had a scheduled phone call to make.) Mr. Arone was fully dressed and did not offer any resistance. When Sgt Skip ton returned, he saw that the captured Somali was in good physical shape.

After the capture, Capt Sox ordered Pte Brown, who had been assigned to guard the 2 Commando gate from 2000 to 2300 hours, to locate the person in charge of front gate security to tell him to come back to where the prisoner was being held. Pte Brown found MCpl Matchee, who was the second in command to Sgt Boland (and Pte Brown's and Pte Brocklebank's immediate superior) and returned with him to Capt Sox. Capt Sox then assigned MCpl Matchee to guard the prisoner.

By this time Mr. Arone was bound by his ankles and wrists and had a baton stuck between his arms and his body behind his back. Over the course of the next two and a half to three hours, Mr. Arone was severely and brutally beaten and burned with cigarettes by MCpl Matchee, with the acquiescence and perhaps the help of Pte Brown. Mr Arone was rendered unconscious from time to time by the beatings. When conscious, he reportedly was required to yell "Canada, Canada".

Sgt Boland arrived shortly before 2100 hours to relieve MCpl Matchee. At that point, Maj Seward, Capt Sox, MWO Mills, and WO Murphy were in or around the bunker. They left shortly after Sgt Boland arrived. At about 2130 hours, Sgt Boland and Sgt Skipton cut off the plastic cuffs binding Mr. Arone's ankles and arranged for looser wrist bindings. While Sgt Boland was present, Sgt Skipton secured the baton by pulling a sash cord over one end of it, pulling the cord over a beam in the roof of the bunker and tying it to the other end of the baton.

The Torture of Shidane Arone

While Sgt Boland was present, MCpl Matchee retied Mr. Arone's ankles. He also removed one of Mr. Arone's garments and tied it around the young Somali's head. MCpl Matchee then proceeded to pour water over Mr Arone's head. Sgt Boland told him to stop or the prisoner would suffocate. (Sgt Boland's testimony suggested that MCpl Matchee may have been trying to give the Somali prisoner a drink by pouring water on his cheek.) MCpl Matchee remained for some time during Sgt Boland's guard duty, which lasted from 2100 to 2200 hours. MCpl Matchee then left the bunker and returned later with Pte Brown, who was to relieve Sgt Boland.

In Sgt Boland's presence, Pte Brown punched Mr Arone in the jaw (although in Sgt Boland's court martial testimony he referred only to Pte Brown having said something to the prisoner). As Sgt Boland went off duty, he said to Pte Brown and MCpl Matchee, "I don't care what you do, just don't kill the guy." (According to Sgt Boland, he had remarked "don't kill him", and he described this as having been said "in a facetious sort of way, sarcastic".)

MCpl Matchee stayed in the bunker with Pte Brown after 2200 hours, during which time both men hit and kicked the prisoner in his ribs and legs. MCpl Matchee also kicked Mr. Arone in his face. MCpl Matchee said to Pte Brown, "I want to kill this fucker, I want to kill this guy", and continued to beat the young Somali until his mouth bled. MCpl Matchee left to go to the tent of Cpl McKay, where he drank some beer. Sgt Boland arrived at the tent and had a beer with MCpl Matchee and Cpl McKay.

MCpl Matchee said that Pte Brown had been hitting Mr. Arone and that he, Matchee, intended to burn the soles of the Somali's feet with a cigarette. Sgt Boland reportedly said, "Don't do that, it would leave too many marks. Use a phone book on him." (During the courts martial, Sgt Boland confirmed that this discussion took place, but he said he did not believe MCpl Matchee and thought he was just trying to get a reaction. He said that his own reply was sarcastic and that the discussion of the phone book was "flip, banter", there being no phone books available.) After this conversation, Sgt Boland went to bed without returning to the bunker. MCpl Matchee returned to the bunker at about 2245 hours and proceeded, with the acquiescence or assistance of Pte Brown, to beat Mr. Arone to death.

Sgt Boland testified at the courts martial that he believed Pte Brown to be a weak soldier from whom he would not have expected aggressive treatment of a prisoner. He also claimed that he was not aware of the aggressive tendencies of MCpl Matchee, who had just been assigned to his section. However, there was other evidence that Sgt Boland knew what MCpl Matchee was like and that MCpl Matchee's reputation as a bully was well known within 4 Platoon.

Pte Brocklebank had gone to bed early on the night of March 16th, suffering from dysentery, without any knowledge that he would be assigned to guard duty later that night. From the time he went to bed until he was awakened by MCpl Matchee he did not get up, and he had no knowledge of the capture of Shidane Arone. However, at about 2300 hours, MCpl Matchee awakened Pte Brocklebank, saying "You're on shift. I got a surprise for you." As Pte Brocklebank was on his way to his sentry post at the 2 Commando gate, he was ordered by MCpl Matchee to come to the bunker. Pte Brown testified at the courts-martial that Pte Brocklebank arrived at the bunker at about 2308 hours to relieve him from guard duty.

At the bunker, MCpl Matchee told Pte Brocklebank to give him his pistol. Pte Brown testified at the courts martial that Pte Brocklebank seemed puzzled by this and told MCpl Matchee, "but it's loaded". Responding to an order from MCpl Matchee, Pte Brocklebank handed over his weapon, which was then held to the head of the prisoner by MCpl Matchee. According to evidence at the courts martial, MCpl Matchee held the pistol to Mr. Arone's head and told Pte Brown to take his picture. Existing photographs leave no room for doubt that Mr. Arone had, at that time, suffered a very severe beating. After this, MCpl Matchee returned Pte Brocklebank's weapon to him and Pte Brown left the bunker.

Pte Brocklebank remained outside the bunker while MCpl Matchee continued torturing the prisoner. While he was urinating at the north-west corner of the compound, Pte Brown heard Mr. Arone screaming. At one point, MCpl Matchee left to get a cigarette, leaving Pte Brocklebank alone with the prisoner. Pte Brocklebank provided a written statement on March 29, 1993, in which he stated that at the end of his shift "I was leaving to get the next sentry up. I told the CP [command post] to watch the bunker and I left to make my rounds." At his court martial, Pte Brocklebank testified that he had meant to say in his statement, "watch the front gate" and not "watch the bunker". However, when Pte Brocklebank left the bunker, he did not try to stop Mr. Arone's ordeal by reporting the matter to any of MCpl Matchee's superiors.

At about 11:45 p. m., Pte Brocklebank woke Cpl Glass, who was to take the next gate sentry duty. Pte Brocklebank also woke Cpl McKay so that he could make his telephone call home. While waiting to use the phone, Pte Brocklebank told Cpl McKay that MCpl Matchee had beaten the prisoner, and that he thought that what was going on was wrong.

A number of Canadian soldiers passed the bunker where Mr. Arone was being held, but no one made any attempt to stop the beating. Cpl McDonald saw Pte Brown and MCpl Matchee beating Mr. Arone before the arrival of Pte Brocklebank. He returned to the command post where he told his superior officer, Sgt Gresty, that "the Somali prisoner is getting a good shit kicking". Sgt Gresty took no action to go out and stop MCpl Matchee.

MCpl Giasson was on sentry duty within 427 Squadron lines from 2000 to 2400 hours on March 16th. During the course of his rounds, at about 2315 hours, MCpl Giasson stopped at the bunker where the prisoner was held and witnessed some of the beating. At that time, he testified at the courts martial, Mr. Arone was bleeding from the lip and looked in rough shape.

MCpl Matchee remarked to MCpl Giasson that in Somalia, the police would shoot the prisoner, and that "in Canada we can't do it but here they let us do it, and the NCO are aware of it". He stated that MCpl Matchee then took a two- to three-foot hollow aluminum pipe that he, MCpl Giasson, carried with him on his rounds. He testified at the courts martial that he did not intervene because he feared for his own safety. The next morning, he and his partner, MCpl Alaire, reported the incident to the CO.

Pte Glass testified at the courts martial that Sgt Lloyd had previously told him that there was a prisoner in the bunker who had to be guarded as part of his gate security shift. Pte Glass told Sgt Skipton that MCpl Matchee was beating the Somali prisoner shortly after he entered the area of the bunker. At about 2400 hours, Pte Glass asked Sgt Hillier to come and look at the prisoner. After seeing Mr. Arone, Sgt Hillier went to the command post and informed the duty officer, WO Reese, about Mr. Arone's condition. While Sgt Hillier was at the command post, Sgt Skipton entered the bunker, removed the cuffs which had been placed on the young Somali's wrists and checked for a pulse. When he could not find one, Sgt Skipton went to the command post to inform Sgt Hillier, who went to awaken Capt Sox to inform him of the prisoner's condition.

The Death of Shidane Arone

During the time that Mr. Arone was being tortured and beaten to death, there were a number of Canadian soldiers in both the command and sentry posts. The distance from the command post to the bunker was 84 feet; from the sentry post to the bunker, 59 feet; from the bunker to the observation tower in Service Commando (across the road from the 2 Commando compound), 214 feet. At about 2200 hours, Cpl MacDonald, Sgt Gresty, Mohammed (the interpreter), Maj Seward, MWO Mills, and Capt Sox were in the command post. Cpl MacDonald reported hearing a "yelp" from the bunker. Cpl MacDonald testified at Sgt

Gresty's court martial: "I recall everybody kind of looking in the direction of the bunker, and then just kind of went back to what they were doing." There was also evidence that soldiers in the observation tower heard screaming (at a distance of 214 feet).

Shortly after midnight, Mr. Arone was dead. Most of the beating was administered by MCpl Matchee. Pte Brown was present during much but not all of the beating. Pte Brown admitted that at an early stage of the prisoner's ordeal he had punched him once in the jaw and kicked him twice in the leg. There was evidence from other soldiers who visited the bunker that Pte Brown appeared calm or bored, or as if "he didn't want to be there", or was "upset" or "shocked". MCpl Matchee, on the other hand, according to witnesses at the courts-martial, appeared "pumped up", and spoke frequently and expressed satisfaction at what was happening. Evidence was also heard at the courts-martial that Pte Brown did not like MCpl Matchee and was scared of him. MCpl Matchee was described as a violent person with a quick temper, and he had apparently been drinking that night.

The exact cause of Mr. Arone's death was never determined, because no autopsy was performed. Medical evidence based on photographs and the description of the beating was that the death was probably caused by brain swelling resulting from the cumulative effects of blows to the head. Lacerations on the deceased's face were probably caused by blows with a fist, and such blows may have had a concussive effect, contributing to Mr. Arone's death. Death was preceded, however, by prolonged and severe pain and suffering.

THE ATTEMPTED SUICIDE OF MCPL MATCHEE

Arrest and Detention

Maj Anthony Seward, OC of 2 Commando, ordered MWO Mills to arrest MCpl Clayton Matchee on March 18, 1993, on suspicion of the murder of a Somali prisoner. He was taken to a detention facility and turned over to guards from 1 Commando. The detention bunker, which was located in the headquarters compound, was approximately five feet six inches in height with open air "windows" all around the six by ten foot interior. There was no door on the structure.

MWO Mills ordered that a cot and water be brought for MCpl Matchee, and a guard, MCpl Godin, searched the kit of his prisoner and completed a record of the personal property in it. He also searched MCpl Matchee but removed nothing (a knife had been taken from MCpl Matchee at some time before this search). Guard duty was turned over routinely as shifts changed. Just before lunch on March 19th, the prisoner was visited by Sgt Martin for about two minutes to make sure he understood his right to legal counsel and to give him a number to call for duty counsel.

Sgt Guay and Cpl Blais took over guard duty from MCpl Godin at noon on March 19th. Sgt Guay, a friend of MCpl Matchee, helped take some photos with the camera MCpl Matchee still had with him. Following his shift, Sgt Guay also carried a letter, which MCpl Matchee had written to his wife, to Cpl Matt Mackay to be mailed. It has been reported that MCpl Matchee mentioned in the letter that he would be able to see his daughter soon, as he was being flown back to Canada to stand trial. Another shift change occurred, but at that time the two new guards did not actually check on the prisoner.

Emergency Treatment for the Prisoner

An hour later, one of the guards, Cpl Petit, entered the detention bunker to conduct the hourly check. He found MCpl Matchee hanging from one of the beams in the roof by a bootlace, his arms free and his feet barely touching the ground. He was about one metre from the camp cot, the only piece of furniture in the bunker. Cpl Petit immediately called for help and cut the bootlace to lower the prisoner to the ground. Reportedly, first aid, including CPR, was administered immediately.

The headquarters log indicates that Maj Armstrong and Cpl Adkins arrived within minutes, along with an ambulance. Maj Armstrong and a U.S. medic who was in the vicinity began resuscitation. (A DND photographer who was visiting the base took photographs while this was happening.) MCpl Matchee was

transported to the Canadian medical facility in the Service Commando compound within 10 to 12 minutes of the time he was found. There he was further resuscitated by the emergency room staff and placed in intensive care. The next day, MCpl Matchee was evacuated via Hercules aircraft to the U.S. 86th Evac Hospital in Mogadishu.

Communications to NDHQ

A Significant Incident Report (SIR) was sent from Belet Huen to CJFS headquarters in Mogadishu to report that MCpl Matchee had apparently attempted to hang himself. The report indicated that the media already knew of the incident, that Col Labbé had already made a statement to the press, and that the next of kin had not yet been notified. CJFS communicated its own SIR to Ottawa, reporting the apparent attempted suicide, and also sent an exclusive message to the DCDS at NDHQ requesting military police and legal support.

On March 19, 1993, the DCDS, VAdm Murray, sent a memo to the Minister's office (as well as to the Deputy Minister, the CDS and other senior officers and officials) on the incident. It stated that: (a) a Military Police investigation was ordered; (b) MCpl Matchee had been placed under close custody; (c) MCpl Matchee had attempted suicide; (d) whatever role he may have had with respect to the incident involving the Somali death was unknown; and (e) that members of the media were present near the scene of the attempted suicide and that a media report was therefore expected. By the end of that day, the military investigators had been given their orders to travel to Somalia, and the DCDS, VAdm Murray, had advised the Minister's staff officer, Richard Clair (in the presence of Robert Fowler, the Deputy Minister) of the apparent attempted suicide and of the decision to order a Military Police investigation, under the direction of MWO Paul Dowd, because of the probable death by foul play of a Somali in CF custody.

Just before the military police investigators arrived from Canada, Maj Seward indicated in his diary that he was "anticipating a difficult forthcoming week of questioning followed almost inevitably by a court martial". He wrote to his wife on March 22, 1993 that he had ordered Capt Sox to take the initiative to apprehend Somalis who were repeatedly penetrating the wire surrounding the Canadian compound, but that he had explained his intention clearly and he had not wanted a killing such as had occurred on March 4th.

On March 23rd, Maj Seward's diary entry stated:

My thoughts are for my well being while I dread the forthcoming investigations. It is, however, my intention to openly and readily state that I did order Somali intruders to be abused during the conduct of apprehension and arrest. To what extent this order caused MCpl Matchee and Tpr Brown to beat to death a Somali intruder will be a matter for litigation. I may not be found criminally responsible but my military career is certainly finished. I expect to be relieved of my [appointment]; possibly before a seemingly pending redeployment.

On March 24th, MCpl Matchee was evacuated to a U.S. military hospital in Germany. When examined by physicians in Germany on March 25th, it was determined that there was a 70 per cent chance that he would remain in a reduced-capacity state. MCpl Matchee was flown back to Ottawa on March 26, 1993.

MP Investigations

Documents indicate that there were two investigations containing contradictory information about the apparent attempted suicide of MCpl Matchee. In a June 1994 Land Force Command (LFC) memo concerning release of information under the Access to Information Act, two versions of the investigation report are mentioned. The memo recommended that only the second version be considered for disclosure for two reasons: first, because the first report had been prepared soon after the incident and was incomplete, and therefore had the "potential of reflecting badly upon the Canadian Forces"; and second, the first report contained information about the boot lace used by MCpl Matchee to hang himself.

The LFC memo also stated that the CO had explained that for operational reasons the decision was made to leave the prisoner with his boots and laces, but the memo also stated that this could be misinterpreted to mean that MCpl Matchee had hanged himself with his own boot laces, which, it noted, was not the case. The memo referred to a number of statements indicating that no one could explain where the black boot lace

used in the hanging had come from, and it also stated that MCpl Matchee was found wearing boots complete with laces.

On March 23rd, military police investigators arrived in Nairobi en route to Belet Huen, and by April 1st, four other arrests had taken place: those of Pte Brocklebank, Pte Brown, Sgt Boland, and Sgt Gresty.

IN-THEATRE INCIDENTS

Investigation of Incidents

There were 50 documented incidents, including mistreatment of detainees, killing of Somalis, theft of public property, and self-inflicted gunshot wounds, that occurred between the start of deployment and March 16, 1993, the date that Shidane Arone was killed. Summary investigations had been called promptly in eight of these incidents, but none was investigated by Military Police until after Mr. Arone's death, despite several incidents involving potentially serious criminal or disciplinary matters or Crown liability.

Thirteen of these cases were eventually investigated, but investigations into eight of them were begun only over a year later. In 23 incidents, there were charges laid, and convictions and sentencing of offenders followed. However, there is no record of any investigation of these 23 cases. (Once the Military Police unit arrived in Mogadishu in June 1993, during the time of the redeployment of the CF almost every incident was investigated by the Military Police.)

CF Death Caused by Accidental Weapon Discharge

One of the last serious incidents while the CARBG was still in Somalia occurred on May 3, 1993. A Significant Incident Report reported that a member of 3 Commando, MCpl Smith, had accidentally discharged his C7 rifle, resulting in the death of another 3 Commando member, Cpl Abel. It was first reported that the accidental discharge occurred while the soldier was cleaning his rifle. Later, it was reported to Maj Buonamici that MCpl Smith had been dry-firing his weapon without the magazine when it fired unexpectedly.

A summary investigation found that MCpl Smith had placed the magazine into his weapon while incorrectly holding the loaded weapon. The summary investigation concluded that he should not be charged until after the findings of a military police investigation, which eventually concluded that it was an accidental death. Nevertheless, he was later charged with negligent performance of duty and criminal negligence causing death, and a court martial was ordered for December 15, 1993.

Mishandling of Prisoners

It was also reported on May 3, 1993 that the Royal Canadian Dragoons had mishandled a number of prisoners at Matabaan. Following an investigation, evidence disclosed that under an Acting Officer Commanding (Maj Kampman, OC of the RCD, was away) a unit arrested three children between the ages of 9 and 14 and detained them for 48 hours in a sandbag bunker. They also permitted a Somali interpreter to hang a sign which said "thief" at the bunker. The responsible officers were counselled by Maj Kampman when he learned of the incident. This incident was reopened in September 1994, to determine whether Col Labbé's January 1993 order to LCol Mathieu to prevent the public humiliation of Somali prisoners had been communicated to the RCD. In his statement to the military police, Maj Kampman did not recall receiving any such direction from LCol Mathieu.

Incidents Involving Alcohol

A number of incidents involved alcohol. One occurred on HMCS *Preserver*, during which an intoxicated CARBG member tried to take over the ship during Christmas dinner. Another incident involved a female

corporal, who acted in a discreditable fashion while drunk in Mombasa on April 2, 1993. And on the night of May 25, 1993, two unarmed CF soldiers dressed in civilian clothing were apprehended attempting to enter 1 Commando lines in Mogadishu through a barrier of concertina wire. Both men smelled strongly of alcohol and appeared drunk. They admitted to having been in a prohibited area, a brothel in the Italian zone, allegedly to locate other members of their platoon. Both soldiers were later fined \$500.

Thefts Involving CF Members

Early in January 1993, a shipment of 2,000 Tilley hats sent from CFB Petawawa arrived in Somalia. In total, 148 Tilley hats valued at approximately \$5,180, were discovered missing. The report of the investigation stated that "due to the passage of time and initial poor control and accounting procedures", it was impossible to establish how the thefts occurred, and the investigation was suspended.

On February 13, 1993, a CF soldier seized a .38-calibre revolver from a Somali employed on a food convoy by the International Red Cross. When the Somali asked for it to be returned, he was informed by the officer responsible for the soldier that the weapon had already been returned. An anonymous caller reported that the soldier had mailed the revolver to his wife, and the soldier later confessed. During the investigation, the soldier told the regimental Military Police that when he tried to return the weapon to the Red Cross they did not want it. The investigation was reopened when the Military Police platoon arrived in May, and it was found that the weapon seizure had been lawful. However, it was concluded that the weapon had not been turned over to the chain of command in accordance with CARBG policy. The revolver was never recovered, and the Canadian soldier was repatriated to Petawawa.

On the night of February 15, 1993, CF personnel allegedly entered the residence of a Somali and stole a ceremonial sword. A complaint was eventually relayed to 2 Commando, because the owner had recognized one of the individuals in the group as the interpreter for that commando. On investigating the complaint, Capt Reinelt reported that patrol logs did not place 2 Commando soldiers in the vicinity when the theft occurred. However; the regimental Military Police made further inquiries and learned that soldiers from 2 Commando and Combat Engineers Regiment had, in fact, been in the residence of the victim on the day of the theft to remove some explosives and that one of the soldiers had wanted to buy the sword.

The regimental Military Police interviewed some of the personnel involved but was not able to obtain corroboration of the allegation that, following the owner's refusal to sell his sword, some of the same soldiers had returned and taken it at gunpoint. When the military police platoon arrived in Somalia in May, they reopened the investigation and found that the interpreter had been employed on the date of the theft and that 2 Commando logs confirmed the victim's claim that soldiers had been in his residence that day. The primary suspect was MCpl Matchee, but he could not be interviewed after his suicide attempt, and the file was closed. Damages of \$200 were paid to the Somali complainant.

During the month of February 1993, Col Labbé participated in a house-clearing operation during which a Somali vehicle was searched. Approximately 5,000 Somali shillings were improperly seized from the vehicle (valued at \$1 Cdn). Col Labbé gave some of the shillings to HMCS Preserver personnel who were travelling with him at the time, and he also distributed a quantity to personnel at CJFS headquarters in Mogadishu. This incident was investigated by the Military Police, and Col Labbé acknowledged that he had taken the funds as souvenirs.

At the beginning of June 1993, an alleged shortage of funds in the canteen of 1 Commando was reported to the Military Police by the OC. The military police concluded that it would not be possible to prove who was responsible and suggested that the honour system at the canteen was resulting in pilfering. The amount of the operating deficit which could be attributed to theft was approximately \$1,400.

Orders Given by Officers

A number of CARBG members testified about hearing rumours that Col Labbé had promised a case of champagne to the first soldier who shot a Somali, but no investigation of these rumours took place. In another reported incident, on February 26, 1993 at an orders group, LCol Mathieu allegedly stated in response to a concern about thieves "...[K]ill the bastards and I'll cover for you...". This remark did not

come to light until after the return of the CARBG to Canada. It was then investigated as an aspect of the March 4th shooting incident.

Military Police Investigations

Although a number of individuals involved in the incidents on March 4 and 16, 1993 were identified and charged, an analysis of the Military Police reports indicates that there were some problems in the investigations. Military Police faced a number of obstacles during the actual investigations. These included a lack of co-operation from soldiers and officers, difficulty in investigating their superiors (Military Police are a part of the chain of command and thus may be placed in the position of investigating their immediate superiors), limits imposed by the COs on investigations (which they may also, at least in part, be the focus of), and frustration of their investigations because of previous disciplinary investigations by the CO. Even when investigators identified misconduct, military leaders sometimes responded inappropriately.

Throughout the deployment to Somalia, there appears to have been a reluctance among senior officers to involve Military Police. In two particular cases, there was a clear indication of possible criminal intent - the incident involving the theft of a revolver and the death of Shidane Arone - and in both cases, Military Police were not called in until after a confession had been made. In the death of Shidane Arone, the 2 Commando CC, Maj Seward, knew shortly after midnight on March 17th that the Somali's injuries were suspicious, but Military Police were not called to investigate until March 19th after Pte Brown had reported his involvement in the death.

Assuming there would be an investigation into the shooting incident on March 4th, Military Police prepared to deploy immediately. However, their departure was delayed for five weeks. The reason for the delay was that the DCDS, VAdm Murray, and Col Labbé had discussed the incident and agreed that the Military Police should not be involved until the results of the in-theatre CO's investigation ordered by Col Labbé were available.

Although Col Labbé had initially ordered that the CO's investigation of the March 4th incident be completed within 24 hours, the first report of the incident was not received by NDHQ until March 23, 1993. Military Police were assigned to investigate the March 4th incident only after MP investigating the death of Shidane Arone had obtained information that there had been a questionable shooting on March 4th, and after the JAG, dissatisfied with the report received from Col Labbé, had requested further investigation.

REDEPLOYMENT:

RETURN OF THE CARBG TO CANADA

Transition to UNOSOM II

When the UN opted to postpone the original UNOSOM peacekeeping mission to allow time for the U.S.-led peace enforcement mission to stabilize the country, it was expected that, once the delivery of relief supplies had resumed and violence between factions had been brought under control, another phase of the multi-national intervention would begin, under the name UNOSOM II. This plan, adopted at the UN on March 25, 1993, involved the reinforcement of a UNOSOM II headquarters with some of the UNITAF personnel and components that would remain in Somalia following the withdrawal of the main body of U.S. and other UNITAF forces.

The planned UNOSOM II operation consisted of two interrelated activities. The first phase was the maintenance of a secure environment, within which the second phase, "national reconciliation" would take place. The secure environment had been established by the U.S.-led UNITAF coalition. Responsibility for maintenance of that security was assumed by UN forces under the UNOSOM II mandate. National reconciliation had begun with the meeting of various factions in Addis Ababa, Ethiopia, in early January 1993. Agreements were reached on a process for implementation of a cease-fire and disarmament and for the formation of an ad hoc committee to oversee the process. A second meeting took place in mid-March 1993 to continue planning for the transition.

Redeployment of Canadian Forces

The first stage of the redeployment of Canadian Forces occurred early in the in-theatre phase, with the departure of HMCS Preserver from Somalia on March 7, 1993. Canada's original plan for withdrawal of its troops from Somalia called for a "thinning out" beginning in mid-May 1993, repatriating the main body of troops in the last week of June, and completing the close-out by the end of July.

Subsequent discussions between senior Canadian officers and UNOSOM military staff indicated, however, that the transition was progressing at a faster rate than had been anticipated, and that UNOSOM would be able to take over from UNITAF on or before May 15, 1993. Because of the high degree of stability in the Belet Huen sector, it was also evident that the transfer of operational responsibility for the Canadian area of responsibility could occur by June 1, 1993.

Redeployment planning and close-out administration of the CJFS in Somalia was a large and complicated undertaking. Return of equipment and materiel to Canada required the loading of approximately 300 sea containers, and vehicles had to be cleaned to meet Agriculture Canada inspection standards, a task that took a day for each vehicle. The bulk of this materiel had to be moved by road convoy from Belet Huen to Mogadishu, and accounting procedures had to be put in place.

In-Theatre Security During Redeployment

CF personnel were scheduled to return to Canada under control of NDHQ on weekly flights beginning in mid-May, with the main movement occurring about June 11th, approximately 10 days after the Belet Huen sector had been turned over to UN forces. On May 1, 1993, UNITAF turned over operations in Somalia to UNOSOM II forces, and security at the airport and seaport in Mogadishu was no longer the responsibility of U.S. troops.

Intelligence reports indicated that increased violence was possible, and extra vigilance and caution were advised. As CF troops left Belet Huen in stages to travel to Mogadishu for departure from Somalia, security precautions were increased. In addition to their routine tasks in preparation for re-deployment, Canadian troops were also given responsibility for providing security in designated areas during the redeployment. Members of 1 Commando were assigned to assist the National Support Element in securing the old port area of Mogadishu.

In spite of some minor incidents, redeployment activities continued, and Canadian operations in Somalia gradually drew to a close. With the exception of a small number of CF members assigned to UNOSOM II, all Canadian troops had left Somalia by June 26, 1993. The movement of CF personnel was completed using military and civilian flights as well as civilian sea lift. USAF aircraft were required to transfer heavy equipment and machinery back to North America.

Arrival of CF Personnel Back in Canada

Because of the media attention following the murder of Shidane Arone, it was expected that the return of CJFS to Canada would be widely covered. A public relations strategy was developed to counteract negative media stories; it included emphasis on the positive accomplishments of CF personnel in Somalia. Because of the staggered return flights of CJFS personnel, it was determined that a major welcome home ceremony would not be feasible.

Returning personnel were provided with advice and instructions in a redeployment communications plan issued by Col Labbé. In it he stated:

[T]he vast majority of thinking Canadians, the Department of National Defence and your families are proud of your accomplishments... You must remember that negative, irresponsible journalism generated, for the most part by the misinformed who have never been to Somalia, was propagated for reasons beyond our control and will very quickly [lose] the public interest... The international community recognizes your accomplishments [and] when the dust has settled, even the few who have been [misled] by sensationalist journalism will realize and acknowledge the truly valiant mission you have accomplished in Somalia.

Redeployment of CARBG personnel to CFB Petawawa was completed on June 17,1993. The de Faye board of inquiry, which had convened on April 28,1993 while CF were still deployed in Somalia, was suspended when Adm Anderson decided to divide its proceedings into two phases. The de Faye Board's Phase I report was released in July 1993. A series of Somalia related courts martial followed as well.

THE SOMALIA MISSION: POST-DEPLOYMENT THE COURTS MARTIAL Investigations and Charges

Following the arrest and attempted suicide of MCpl Matchee, a special Military Police (MP) investigation team from NDHQ arrived in Belet Huen on March 23, 1993 to investigate the torture and death of the Somali youth, Shidane Arone. On March 29th, Pte Brocklebank was arrested for aiding and abetting the torture of Shidane Arone. On March 30th, Pte Brown was arrested for murder and torture, and Sgt Boland was arrested for aiding and abetting the torture and for negligent performance of duty. On April 1st Sgt Gresty was arrested for negligent performance of duty.

The first MP investigation report was completed on May 12th and forwarded to LCol Mathieu. On May 19th, the acting Commanding Officer of the CAR, Maj MacKay, laid the following charges: second degree murder and torture against MCpl Matchee and Pte Brown; and torture and negligent performance of duty against Sgt Boland and Pte Brocklebank. In June, the charge sheets were signed by LCol Mathieu as Commanding Officer of the Canadian Airborne Regiment. A second MP report was submitted on July 19th. Subsequently, charge sheets were signed on September 9, 1993 for two counts of negligent performance of duty for Sgt Gresty, and unlawfully causing bodily harm and negligent performance of duty for Maj Seward.

Charges related to the March 4th incident were eventually laid against Capt Rainville. LCol Mathieu was later charged in relation to his interpretation of the rules of engagement, and one member of CARBG was court martialled for an accidental weapons discharge that killed another CF member. Some of these courts martial were delayed because of legal complications.

Legal Issues at the Initial Courts Martial

Proceedings in Pte Brown's court martial for his role in the death of Shidane Arone began in October 1993. The defence argued that his Commanding Officer, LCol Mathieu, had a conflict of interest when he laid charges while he himself was under investigation regarding his interpretation of the ROE and the use of force. The presiding Judge Advocate agreed that there was a reasonable apprehension of bias, terminated the proceedings, and sent the matter back to the convening authority.

Similarly, since LCol Mathieu had also laid charges against Pte Brocklebank, Sgt Boland, and MCpl Matchee, their courts martial were terminated and then reconvened for the same reason. Between December 1993 and April 1994, new charge sheets were signed by another officer, LCol Chupick, for Pte Brown, Pte Brocklebank, Sgt Boland, and MCpl Matchee.

Courts Martial Proceedings in the Torture and Death of Shidane Arone Private Brown

Pte Brown was charged with second degree murder and torture. At his court martial, the prosecution argued that Pte Brown had violated his duty to protect the victim from MCpl Matchee, or at least to report the incident to someone who could stop it. It was also argued that Pte Brown's own acts of assault constituted torture, that he knew that this sort of treatment was unlawful, and that the defence of superior orders is not

available on a charge of torture.

The defence admitted that Pte Brown was guilty of assault, but argued that the evidence did not establish that the assault perpetrated by Pte Brown actually contributed to the death of Mr. Arone, or that Pte Brown's acts or omissions were intended to assist MCpl Matchee in torturing the victim or in causing injuries that he should have known were likely to cause death. The defence also argued that Pte Brown had no stronger duty to intervene than others who knew what was going on and failed to act. If he did have a duty to report -- given the involvement of his superiors in the incident -- to whom was he to report?

On March 16, 1994, exactly one year after the death of Shidane Arone, the court martial panel found Pte Brown guilty of manslaughter and torture. Pte Brown was sentenced to five years' imprisonment and dismissal with disgrace from Her Majesty's service. Appeals were dismissed by the Court Martial Appeal Court on January 6, 1995, and leave to appeal to the Supreme Court of Canada was denied on June 1, 1995. Kyle Brown was released from the military on May 24, 1995 and was transferred to a civilian penitentiary. He was released on parole in November 1995.

Sergeant Gresty

In April 1994, Sgt Gresty was acquitted on both counts of negligent performance of duty for his role in the death of Shidane Arone. He was the duty officer in the Command Post, just over 80 feet from the bunker where the beating and torture took place, but had not responded when told of the treatment of the prisoner. There was no appeal.

Master Corporal Matchee

In April 1994, MCpl Matchee was found mentally unfit to stand trial on charges of second degree murder and torture. At that time he was detained in the National Defence Medical Centre in Ottawa. In June 1994, the Ontario Criminal Review Board issued an order that he be transferred to the Royal Ottawa Hospital, where a program was to be developed for his detention, custody, and rehabilitation, with a later transfer to a facility in Saskatchewan where his family resides. As of the publication of this report, the charges against MCPI Matchee remain, and he can be tried in the future if he is judged competent to stand trial.

Sergeant Boland

In April 1994, Sgt Boland pleaded guilty to the charge of negligent performance of duty for his role in the death of Shidane Arone and not guilty to torture. He was on guard duty in the bunker where MCpl Matchee reportedly assaulted the prisoner and, on leaving, allegedly said "just don't kill him". The court martial panel convicted him of negligent performance of duty and stayed the torture charge. He was sentenced to 90 days' detention, a penalty that includes automatic reduction in rank to private. The prosecution appealed the sentence which was then increased to one year's imprisonment.

Major Seward

Maj Seward was charged with unlawfully causing bodily harm and negligent performance of a military duty. At his court martial, which began in May 1994, the prosecution argued that he had given an order as the Officer Commanding 2 Commando to "abuse" intruders, an order that he realized, or should have realized, was contrary to the law and would cause soldiers under his command to harm prisoners; that Maj Seward's instruction to his subordinates could be interpreted only as calling for the abuse of Somalis who were apprehended; and that it was irrelevant that Maj Seward had not intended the treatment of the prisoner, Shidane Arone, that had occurred.

The defence argued that Maj Seward had instructed that infiltrators were to be captured with physical force, that witnesses had stated that they understood the "abuse" of intruders to relate only to capture, and that Maj Seward should not be liable for the criminal acts of Pte Brown and MCpl Matchee.

Maj Seward was acquitted of unlawfully causing bodily harm but was found guilty of negligent performance of duty for giving instructions to abuse detainees. He was sentenced to a severe reprimand. The Court Martial Appeal Court allowed the prosecution's appeal of the sentence and subsequently imposed a sentence of three months' imprisonment and dismissal from the CF. On December 5, 1996, the Supreme Court of Canada declined to hear the defence's appeal of the sentence. Maj Seward was released from prison in August 1996 and released from the CF in February 1997.

Private Brocklebank

Pte Brocklebank was charged with torture and negligent performance of duty. The prosecution argued at the court martial in October 1994 that Pte Brocklebank had a legal duty to protect civilians in his care from acts of violence, that a reasonable soldier would not have watched as a 16-year-old, unarmed youth was beaten and tortured, that he had assisted in the torture by handing MCpl Matchee his loaded pistol, that what MCpl Matchee was doing clearly contravened instructions in a DND publication on the Geneva Convention, that any order to "abuse" could not have intended the harm inflicted on the victim, and that if the order did intend to do so, it would clearly be unlawful and therefore any reasonable soldier would not comply with it. He was acquitted on both charges, and the Court Martial Appeal Court dismissed the prosecution's appeal.

Captain Sox

For passing along an instruction that infiltrators captured on the night of March 16, 1993 could be abused, Capt Sox was charged with unlawfully causing bodily harm, negligent performance of duty, and an act to the prejudice of good order and discipline for his role in the death of Shidane Arone. (He was the leader of 2 Commando's 4 Platoon and had planned the March 16, 1993 mission allegedly to entice and capture a Somali.) At his court martial in January 1995, the prosecution argued that Capt Sox's conveying of the abuse order to his subordinates was reckless, that he had failed to exercise control over his subordinates while they guarded prisoners, and that the instruction he passed on led to the harming of the prisoner.

The defence argued that Capt Sox had instructed that necessary force could be used to capture infiltrators and that the word "abuse" applied only to the capture, that he should not be held responsible for Sgt Boland's misstatement of his instructions, that MCpl Matchee had already formed the intent to harm the prisoner before Sgt Boland conveyed the instruction, and that there was no evidence that Capt Sox knew what MCpl Matchee was doing to the prisoner.

Capt Sox was acquitted of unlawfully causing bodily harm and convicted of negligent performance of duty. A stay of proceedings was entered on the charge of an act to the prejudice of good order and discipline. He was sentenced to a reduction in rank to lieutenant and a severe reprimand. The Court Martial Appeal Court dismissed appeals by both sides on the verdicts and also dismissed the Crown's appeal of the sentence.

Captain Rainville's Court Martial

On December 15, 1993, Capt Rainville, the officer leading the CARBG Reconnaissance Platoon in Somalia, was charged with unlawfully causing bodily harm and negligent performance of duty in connection with the March 4, 1993 incident in which one Somali national was killed and a second was wounded (see Volume 5, Chapter 38). (He was also charged with an act to the prejudice of good order and discipline and possession of a prohibited weapon for an August 1993 incident in Sherbrooke, Quebec.)

Following a defence motion, the Judge Advocate granted that the charges be dealt with separately. In the court martial dealing with the March 4th shootings, the prosecution argued that, in telling his subordinates that they could use deadly force and to "get them", referring to the fleeing Somalis, Capt Rainville was counselling his men to commit an illegal armed assault.

The defence argued that Capt Rainville had received instructions from LCol Mathieu that any attempt to breach the camp perimeter would be considered a hostile act and that soldiers could shoot to wound thieves, and that the Reconnaissance Platoon's mission, as understood by platoon members, was to apprehend anyone attempting to breach the perimeter wire. The defence also observed that after LCol Mathieu and Col Labbé had been debriefed after the shootings, they deployed Capt Rainville and his men the next night.

Capt Rainville was found not guilty of both charges related to the March 4, 1993 shootings. He pleaded guilty to the charges unrelated to Somalia and was sentenced to a reprimand and a \$3,000 fine.

LCol Mathieu's Courts Martial

On October 15, 1993, LCol Mathieu was charged, in connection with the March 4th incident, with negligent performance of duty as a result of orders allegedly given on the use of deadly force, contrary to the ROE. In the May 1994 court martial, the prosecution argued that LCol Mathieu's interpretations of and instructions on the ROE were negligent, in that they confused the criminal intent of looters with the hostile intent addressed by the ROE, that they authorized the use of deadly force against fleeing thieves, and that they seemed to ignore the concepts of proportionality and disengagement in responding to threats.

The defence submitted that Operation Deliverance had not been a peace-keeping mission and that LCol Mathieu's instructions, which attempted to restrict the application of deadly force by telling soldiers to aim for the legs, were reasonable. The defence also argued that LCol Mathieu had warned local elders that his soldiers would apply the ROE with regard to thieves and that these rules allowed the use of deadly force to deal with situations such as the protection of equipment and supplies. The defence stated that LCol Mathieu's precise wording was important, because it would not amount to ordering excessive force unless the soldiers' discretion was removed.

LCol Mathieu was acquitted. The Crown appealed on the ground that the Judge Advocate had confused the standard of negligence applicable to the charge during his instructions to the court martial panel. The Appeal Court agreed and ordered a new trial.

The second court martial of LCol Mathieu began in January 1996. The prosecution argued that the fact that some of the officers had questioned the order and, in some cases, had decided not to pass it down to their soldiers suggested that LCol Mathieu's instructions were a departure from the authorized ROE. The defence argued that it was not clear what LCol Mathieu's order was, or whether it was an order at all. The second general court martial panel acquitted LCol Mathieu.

The Accidental Shooting Death of a Canadian Soldier

MCpl Smith was charged with criminal negligence causing death and negligent performance of duty as a result of accidentally discharging his rifle and fatally wounding Cpl Abel on May 3, 1993 in Somalia. On April 11, 1994, MCpl Smith pleaded not guilty to criminal negligence causing death and guilty to negligent performance of duty.

The prosecution called a witness on the issue of the sentence, Capt Yuzichuk, the adjutant for the CAR. He testified on accidental discharges in Somalia and the unit's disciplinary response to these incidents. He stated that there had been numerous accidental discharges during the deployment and that the standard penalty set by LCol Mathieu was a fine of half a month's pay. The witness stated it was his opinion that the accidental discharges were attributable in part to the fact that, unlike other missions, in Somalia they were required to have their loaded weapons with them at all times.

In its submissions on sentence, the prosecution observed that the accused had not accidentally pulled the trigger, he had done it deliberately to "dry fire" the weapon, apparently having forgotten that the magazine was on it and that a round was in the chamber. The defence emphasized that only tragic luck separated this case from the other accidental discharges in Somalia, and asked that MCpl Smith be given a fine and a reprimand.

MCpl Smith was sentenced to four months' detention, a penalty that included automatic reduction in rank to private. The criminal negligence charge was stayed. On April 10, 1995, the Court Martial Appeal Court dismissed the defence's appeal.

THE DE FAYE BOARD OF INQUIRY

Terms of Reference and Mandate

While CF personnel were still conducting operations in Somalia, the Chief of the Defence Staff, Adm Anderson, convened a board of inquiry on April 28, 1993, to be conducted by MGen de Faye, Commander Land Force Western Area. The board's terms of reference were to investigate "the leadership, discipline, operations, actions and procedures of the Canadian Airborne Regiment Battle Group (CARBG)". To the extent necessary to conduct this review and determine these issues, the board was to investigate "the Battle Group's antecedents in Canada and higher headquarters in Somalia prior to and during its employment in Somalia".

The mandate of the de Faye board of inquiry excluded matters that were the subject of Military Police investigations. At the time it was convened, these matters included the March 4, 1993 shootings by members of the CARBG's Reconnaissance Platoon and the beating death of Shidane Arone by members of 2 Commando on March 16, 1993.

MGen de Faye asked the CDS to separate the proceedings of the board into two phases. Phase I would deal with matters under its mandate other than those that were the subject of investigations or other legal proceedings, and a report would be submitted to the CDS at the conclusion of this work. Phase II would then address remaining issues after the Judge Advocate General notified the board that all court proceedings or investigations by the Military Police had been completed. At that time, the board would be free to receive evidence on a wider range of issues. The terms of reference were amended on July 9, 1993 to reflect this approach.

The de Faye board of inquiry heard from 79 witnesses in all. In addition to CF personnel, the board also met with several representatives of non-governmental organizations. The proceedings of the board were held *in camera*. The board had the power to compel military witnesses to testify but it could only request the co-operation of civilians. Evidence was taken under oath but not subject to cross-examination; the board was not bound by rules of evidence; and it received evidence on any matter it considered relevant to its mandate (subject to the limitation on its legal jurisdiction).

Findings of the de Faye Board of Inquiry

The board of inquiry released its report on July 19, 1993. when the CDS, Adm Anderson, held a press conference in late August to present details of the report, he stated that he was "disturbed" by some of its findings. They dealt with issues such as the threat and environment in Somalia; the doctrinal aspects of the Somalia mission; humanitarian operations; support for the CARBG; command and control relationships; the state of discipline within the Battle Group; discipline and leadership in 2 Commando; training for the mission; selection of personnel for deployment to Somalia; the rules of engagement; composition and organization of the CARBG; cultural differences and racism; attitudes toward the lawful conduct of operations; professional values and attitudes in the Canadian Airborne Regiment; and initiation rituals and symbols.

On the issue of security, the de Faye board of inquiry found that the threat level varied in theatre. It found that the environment in which the CARBG operated was harsh and stressful owing to weather, health factors, and the limited facilities at the CARBG base, especially during the early weeks of the deployment. The camp itself was considered satisfactory, given that the Board saw it as an administrative, rather than a defensive, layout. On the doctrinal aspects of Operation Deliverance, the board found that the mission was conducted in accordance with existing CF doctrine, but noted that directions and procedures for handling detainees were neither clear nor appropriate to the situation in Somalia.

On humanitarian activities, the board of inquiry found that Canadian Joint Force Somalia did not have sufficient civilian-military co-operation personnel on its headquarters staff. On the issue of support for the CARBG in theatre, the board found that medical support was more than adequate; the quality of vehicles was sufficient; the availability of satellite links for family communications was acceptable; family support services were well organized; leave arrangements helped to maintain good morale; and that, generally the clothing provided was suitable for the area (while acknowledging that a lighter colour of uniform would have been more comfortable).

However, the report also noted that the troops had little confidence in the standard-issue plastic rifle magazine and that some had purchased their own metal magazines. Other areas that received criticism were the extended use of hard rations, poor mail delivery, and adverse press coverage. The board found as well that the apparently arbitrary imposition of a force manning level had disrupted the appropriate process for effective mission planning, but that the command and control procedures used for the CARBG were nevertheless in accordance with current practice.

In the view of the de Faye board of inquiry, the quality of individual leadership in the CARBG during the training period and during operations in Somalia was generally very high. The board found that with the exception of the incidents under investigation, discipline in Somalia was very good. At the same time, it commented on the unacceptable number of accidental weapons discharges, which it attributed to lack of discipline and leadership.

The de Faye board found, however, that discipline was flawed in 2 Commando. It stated that during training, 2 Commando was "slow to adjust its operational procedures for UN operations" and that it had quickly escalated the force of its responses during training exercises before deployment. The board noted that leadership problems, even before the deployment, had allowed an informal group of junior-ranked soldiers to pose a direct challenge to authority and that although administrative measures to deal with disciplinary problems were available before departure, only half-measures had been taken. It concluded that the leadership responsible for 2 Commando failed to take sufficient action to rid itself of a known challenge

to its authority.

The de Faye board of inquiry found that only refresher training had been required for Somalia, because the Canadian Airborne Regiment had already been trained from mid-summer 1991 for another mission on the African continent. However, it noted that the training of 2 Commando did not fully achieve the "specific to mission" standard of readiness before the final assessment. It concluded generally that the CARBG was well trained for its tasks in Belet Huen. On the rules of engagement, the de Faye board stated that the rules used were adequate for training purposes, but that it had been demonstrated during training that the use of minimum and graduated escalation of force was not well understood by all sub-units.

The de Faye board found on the issue of selection of personnel for Somalia that there was thorough screening of all personnel for deployment and that, on average, the members were more experienced, less averse to risk, and perhaps more physically fit than infantry members in other units. The board concluded that the commanders of the Special Service Force, the Canadian Airborne Regiment, and 2 Commando believed they had taken reasonable steps to screen out unfit and undesirable personnel.

In reviewing the development and promulgation of the rules of engagement for the mission, the board of inquiry stated that there were significant differences between the Somalia operation and previous peacekeeping activities of the CF, and that in-theatre commanders were called on to show a high degree of initiative, innovation, and judgement. Concerning the composition and organization of the CARBG, the board found that selection of the Canadian Airborne Regiment was appropriate and that the basic structure of the Battle Group was sound.

On the issue of cultural differences, the de Faye board stated that the CARBG was adequately prepared, had adapted very well to the cultural differences, and showed a remarkable degree of tolerance. The board did not believe that the use of nicknames (such as "gimmies", "smufties", and "nignogs") was racist, but that such terms were unprofessional and inappropriate. It did find that there may have been one or two white supremacists among the personnel selected for Somalia, but in the board's view, there was no systemic problem of racism in the CARBG.

Preliminary training of members of the CARBG was considered to have been adequate to ensure an appropriate attitude toward the lawful conduct of operations. The de Faye board found, on the issue of the professional values and attitudes of the Airborne, that the chances of the mission's success were enhanced by the choice of a unit with special training requirements to meet the needs of an operation conducted under spartan and demanding conditions in a difficult climate. It stated that the CARBG adjusted with exceptional speed and showed remarkable understanding of the requirements of the mission from the perspective of its humanitarian goals. In the board's opinion, the conduct of 2 Commando did not lead to any significant inappropriate behaviours or regrettable consequences in its area of responsibility in the town of Belet Huen.

On the practice of initiation rituals, the view of the de Faye board was that without an officially sanctioned and challenging indoctrination course, the informal leadership at the junior level would likely impose initiation procedures that might not reflect appropriate values, attitudes, and behaviours. Nevertheless, it concluded that, for the most part, the professional values and attitudes of the CARBG in Somalia were of the highest order, and that the alleged failures were not indicative of any systemic fault in the ethos, attitudes, or value system of the Airborne or of the CF as a whole.

Recommendations of the de Faye Board of Inquiry

The de Faye board made recommendations for action in the following areas: research on long-range communications and technologies to reduce risks for troops; clarification of orders on the custody and detention of military personnel and civilian individuals; development of a joint civilian-military relations capability for future UN operations; improvement of in-theatre rations; review of use of the plastic rifle magazine; improved public affairs approaches to support high-risk CF deployments; closer attention to command and control issues for commanders of Canadian contingents; review of the policy and practice on the use of warning shots and implementation of standardized incident reporting requirements; and a careful analysis of policies and structures necessary to support tactical commanders.

The board also noted that such issues as rites of passage and use of symbols should be examined, that cultural briefings should be improved during pre-deployment training, and that other government departments should be called on when necessary to provide support to future Canadian contingents. It supported the principle of general purpose training with supplemental specific training added to support the requirements of each mission.

Response of the CDS

The Chief of the Defence Staff, Adm Anderson, indicated that he agreed generally with the interim recommendations of the de Faye board of inquiry. Although the original plan was for the board to deal with certain issues during Phase II of its activities, other matters were seen by the CDS as requiring immediate action. One such issue was the structure and staffing of the Canadian Airborne Regiment, and Adm Anderson accordingly directed the Commander Land Force Command to review the organization and staffing, keeping in mind the de Faye board's recommendation that the CAR must have high-calibre and stable leadership. The Commander LFC was also ordered to take action to ensure that CAR training conformed to standard CF practice.

On the problems of discipline in the CAR, the CDS ordered that all disciplinary cases that had occurred in the Regiment between the beginning of 1992 and its deployment to Somalia be reviewed to ensure that they had been resolved and appropriate disciplinary action taken. Although the de Faye board had indicated that it did not find systemic racism in the CAR, Adm Anderson ordered a comprehensive review of all CF policies, orders, and regulations dealing with racism. A CF administrative order was issued to provide guidelines and procedures for handling racist activity by CF members, and instructions were given for awareness training regarding the policy. Directions were also issued on the inappropriate use of nicknames based on ethnic origin.

On the issue of screening of personnel for Operation Deliverance, which the de Faye board had found was based primarily on soldiering skills, with insufficient attention paid to individual attitudes, the CDS ordered that the screening of personnel for future missions include the assessment of attitudes. Because the de Faye board also identified shortcomings in the approach to training for contingency operations, Adm Anderson ordered a review by the Deputy Chief of the Defence Staff of training requirements for specific-needs missions, including the development of assessment guidelines for specific-to-mission training effectiveness.

Adm Anderson supported the views of the de Faye board on the need for increased use of civilian/military relations and other specialist staff, and he ordered an examination by the DCDS of such factors as the lack of a civilian infrastructure in relation to future operations. On the issue of detainees, the DCDS was ordered to review CF doctrine on the handling of field detainees and to ensure that future contingency planning

include arrangements for handling detainees.

The CDS supported the recommendations of the de Faye board on rules of engagement, with the exception of the one concerning use of an aide-mémoire by troops in the field. He ordered the DCDS to review all existing rules of engagement for Land Force Command operations and to develop a set of standing rules for LFC use. A review was ordered of the doctrine and policy for warning shots, to be assessed for each operation; the policy on the use of lethal and non-lethal force was also to be re-examined and incorporated into the planned 'joint operations' publication.

The CDS ordered the Commander LFC to review the standard operating procedures regarding weapons safety for field operations and other measures, including attention to deficiencies in long-range communications, clothing, and rifle magazines. On the use of symbols, the CDS directed that the commanders of commands ensure that only symbols that reflect positive values and traditions of the CF be adopted by units and sub-units.

THE SOMALIA WORKING GROUP

Creation of the Somalia Working Group

The Somalia Working Group was formed at the end of September 1993. MGen Boyle, who held the position of Associate Assistant Deputy Minister (Policy and Communications), had already been appointed the DND point man for all Somalia-related issues, particularly as communicated by public affairs officers, when he assumed the leadership of this internal committee. The Somalia Working Group's mission, according to a report produced by MGen Boyle, was to "collate all ongoing departmental activities associated with the Somalia Affair with a view to (a) advising the MND, CDS and DM on future courses of action to be taken; (b) informing group principals of upcoming significant milestones facing the Department; and (c) co-ordinating the NDHQ staffing of Somalia-related activities to ensure accuracy and timeliness."

Members of the Somalia Working Group included MGen Boyle's deputy, staff of the Minister of National Defence, the Chief of the Defence Staff, and the Deputy Minister, the special assistants of the Deputy Chief of the Defence Staff and the ADM (Personnel), the directors general of Public Affairs and Security, the Director of Parliamentary Affairs, and a member of the office of the Judge Advocate General. Other officers, usually from public affairs, also attended the group's meetings on occasion. The Somalia Working Group maintained its own office, which provided the services of a special assistant for the group, a secretary, and a public affairs officer. This office handled the daily activities of the Somalia Working Group, including, at a later date, the processing of requests for Somalia-related information under the *Access to Information Act*.

The Somalia Working Group's Activities

According to testimony before us, the group's meetings were mainly information sessions; if necessary, important issues were brought to the attention of MGen Boyle in his office afterward to decide how best to follow up. However, weekly reports on the working group's activities were produced and signed by MGen Boyle. Three main headings recurred in these reports: support to the Minister (such as briefings and responses to ministerial inquiries); monitoring the courts martial and disciplinary proceedings arising from

the conduct of a number of CF members while in Somalia; and participation in Somalia-related public affairs activities (authorizing press releases, media advisories, and other material for public release). The weekly reports also indicated that the working group was involved in processing *Access to Information* requests.

Testimony suggested that once the Somalia Working Group was established, both the CDS and the Deputy Minister closely monitored the release of Somalia-related information. This included approval in advance of back-grounders, press releases, responses to queries (RTQs), and other information provided to the media. It was on one such occasion that the Deputy Minister made a note on an RTQ, tabled at this Inquiry, asking how to correct some misinformation on racism appearing in the media and asserting that there was a need to "control the agenda".

The group's weekly reports were distributed to the Minister's office and to senior officers and managers at NDHQ. MGen Boyle reported directly to the Chief of the Defence Staff, Adm Anderson, and to the Deputy Minister, Robert Fowler. Testimony also suggested that he reported to the Vice Chief of the Defence Staff (VCDS), LGen O'Donnell, on the group's day-to-day activities, including passing on to the VCDS any recommendations made by the group.

MGen Boyle's Analysis of the de Faye Board's Report

The Somalia Working Group produced an after-action report in July 1994, a year after the de Faye board of inquiry had submitted its report. Written by MGen Boyle, the purpose of the report was to highlight for the CDS a number of issues that remained unresolved and to recommend appropriate courses of action. The after-action report reviewed the work of the de Faye board of inquiry, acknowledging that its work had been limited by its terms of reference and time constraints. Nevertheless, the report pointed out that there were serious deficiencies and weaknesses in the de Faye board's analysis and recommendations.

MGen Boyle noted in his assessment that much of the confidential information that had been severed from the report before it was released to the public would eventually become publicly available through testimony at the courts martial of soldiers involved in incidents in Somalia. He pointed out that a close reading of the de Faye board's report, comparing it with information from courts martial testimony, would reveal that there were weaknesses and, more important, significant discrepancies in the de Faye board's findings and recommendations, on which the CDS was basing a number of reforms.

MGen Boyle also indicated that some of the de Faye board's conclusions (for example, that the CARBG was well trained for the Somalia mission) did not appear to be borne out by the testimony actually heard by the board. As well, he stated that there had been enough evidence before the de Faye board to suggest that leadership problems reached up the chain of command to Command CJFS. He referred to documents that indicated "direct attempts to cover up facts behind the 4 March incident, which will no doubt be brought to light during court proceedings. Also the March 16 incident reveals a blatant attempt at the officer level to 'cover up' this incident. This will probably become public knowledge during the 18 Oct proceedings [referring to one of the Somalia-related Courts Martial] and will seriously attack the credibility of the 'officer corps.'"

MGen Boyle reported to the CDS that the most pressing issue regarding the Canadian Airborne Regiment was leadership. He stated that this problem should be addressed by the Commander Land Force Command. He also recommended that the CDS proceed with Phase II of the de Faye board of inquiry, but that its terms of reference be limited to "an analysis of the *raison d'être*, development, understanding, interpretation and

application of rules of engagement".

MGen Boyle pointed out, however, that several issues remained unresolved, and he recommended that the Minister of National Defence, as advised by the CDS, establish an independent board of inquiry to evaluate the role of the "chain of command" in the preparation and dispatch of the CAR for its mission to Somalia, and to evaluate NDHQ's performance in the management of the Somalia events, with particular attention to its handling of five incidents (the incident at the Bailey bridge, the March 4th shootings, Mr. Arone's death, the incident at the Red Cross compound on March 17th, and the attempted suicide of MCpl Matchee).

MGen Boyle elaborated on concerns about decisions taken at NDHQ, which, he stated, "may have exacerbated the already tenuous situation in Somalia", and he noted that "doubts emerge from the following observations":

1. The SIR [significant incident report] for the 4 Mar 93 incident provided enough detail for NDHQ to realize that there may exist a potential problem with the interpretation of the ROE in Somalia;
2. [K]ey members of the NDHQ J-staff were in Belet [H]uen with Comd CJFS on 4 Mar 93. What was their role, if any, in assessing the causes of the incident, in interpreting how the [ROE] were being applied and what advice did they provide the Comd CJFS?
3. Adm Anderson visited the Somalia Theatre from 7-10 Mar 93 and was supposedly briefed by Comd CJFS on the 4 Mar 93 incident. What were the conclusions of this briefing?
4. Comd CJFS was allowed to deploy to Somalia without an MP cell despite DG Secur's advice. This shortcoming was finally resolved when senior management agreed to send MPs in early May 93. What was the rationale for not having MPs in Theatre at the start of the operation? and
5. Following the 4 Mar incident, DG Secur recommended to NDHQ authorities that MP Investigators should be dispatched to Somalia as per [standing operating procedures] to investigate the incident. Why wasn't the advice of the DG Secur acted upon?

The Conclusion of the Somalia Working Group

The Somalia Working Group appears to have concluded its work with the issuing of MGen Boyle's report. He stated that the most important work of the group was its analysis of the Phase I report of the de Faye board of inquiry and the comparison of its content to the evidence disclosed by the various Military Police investigations. He reiterated that this work had been done to identify for the Department all the potential issues it could be facing as a result of the "Somalia Affair".

New information about the mission and the activities of the Canadian Airborne Regiment continued to surface. In January 1995, CBC television aired a videotape showing members of the Airborne engaged in an initiation activity that involved human vomit, urine, and excrement. In response to the continuing disclosures, the Minister of National Defence, the Hon. David Collenette, announced the disbandment of the Canadian Airborne Regiment on January 24, 1995, against the advice of the Chief of the Defence Staff. The CAR was disbanded on March 5, 1995, only a few weeks before this Inquiry was established.

COMMISSION OF INQUIRY INTO THE DEPLOYMENT OF CANADIAN FORCES TO SOMALIA

Establishment of the Inquiry

On March 20, 1995, this Commission of Inquiry was established under the federal *Inquiries Act*. Mr. Collette told the House of Commons that the Inquiry's terms of reference were broad and that the three commissioners who had been appointed had excellent reputations and had his confidence. He repeated an earlier commitment that the Inquiry would look into all aspects of the Somalia mission.

In May 1995, Mr. Collette stated that the Government had created "a commission with the most wide-sweeping powers probably in Canadian history". He again emphasized that the Government had nothing to hide, stating that the Inquiry "would get to the bottom of all the allegations regarding our deployment to Somalia." Both the Minister and the Prime Minister, the Rt. Hon. Jean Chrétien, stated consistently that the Inquiry's mandate allowed it to examine all issues relating to the incidents in Somalia.

To encourage members of the Canadian Forces to bring forward information as the work of the Inquiry got under way, we travelled with our staff to several bases in Canada to visit, individually and in groups, many of the personnel who had served in Somalia. As our work progressed, the review of DND and CF documentation became a major focus.

Procedures for Document Production

The Chairman of the Inquiry issued an Order for Production of Documents to the Minister of National Defence on April 21, 1995, followed by similar orders to the Department of Foreign Affairs and International Trade and the Privy Council Office. To assist us in our work, DND created the Somalia Inquiry Liaison Team (SILT) in April 1995. Its mandate was specified as collating and cataloguing all documents, notes, electronic mail messages, etc., held by DND and the CF regarding Canada's participation in the Somalia mission; assisting us in obtaining relevant information from DND and the CF; responding to requests for information from the public and from witnesses who would be appearing before us; acting as the focal point for media inquiries; and co-ordinating the appearances of DND and CF witnesses during our public hearings.

SILT reported to the Associate ADM (Policy and Communications), who at the time was MGen Boyle. Its directive from the CDS included the order that "[no] documents, in whatever form they exist shall be withheld from the SILT", and SILT was given the authority to contact anyone necessary to fulfil its mandate. SILT initially estimated that it would handle about 7,000 documents. By the end of 1996, we had received some 150,000 documents from SILT, totalling more than 600,000 pages.

We also obtained and reviewed documents from other related proceedings. These documents included the report of the de Faye board of inquiry and transcripts of the courts martial proceedings arising from incidents that occurred in Somalia during the in-theatre phase of the mission. Overall, information was gathered from a wide variety of sources, with the bulk of material coming from DND. Inquiry staff and consultants collected authoritative materials from Canadian and foreign military sources. Numerous experts provided background information on relevant issues.

Public Hearings

On May 24, 1995 hearings were held to determine issues of standing before the Inquiry. When the hearings began, we released a document setting out the Inquiry's rules of procedure. We also issued orders for the production of documents, orders granting standing to various individuals, orders on the disclosure of documents, and rulings regarding individuals who would be served notices under section 13 (adverse findings) of the *Inquiries Act*. As well, a number of formal statements were provided to clarify particular issues that had been raised.

During the week of June 19, 1995, we conducted policy hearings on our mandate. During these hearings, we received an overview of the policies, regulations, rules and practices of the CF and had briefings on the structure and organization of the CF, DND, and Canada's military justice system.

On October 2, 1995, we began hearing evidence on the pre-deployment phase of the Somalia mission. Because of the continuing but drawn out flow of documents to us, we had determined that it was necessary to begin public hearings before all documents had been received, processed, and reviewed by our staff. This series of public hearings continued until February 22, 1996.

On January 1, 1996, Jean Boyle (who had become ADM (Personnel) with the rank of LGen) was promoted to Chief of the Defence Staff. On April 9, 1996, Gen Boyle issued a message to all Canadian Forces members to "stand down all but essential operations to conduct a thorough search of all their files, to identify and forward to NDHQ/SILT any Somalia-related document not previously forwarded...". As a result, SILT received an additional 39,000 documents totalling more than 200,000 pages. This Inquiry did not receive final delivery of these additional documents until September 27, 1996.

After a short period for preparation of witnesses, hearings on the in-theatre phase began on April 1, 1996, but after hearing only 12 witnesses, we suspended this phase. We had determined that it was necessary to hold public hearings into alleged document tampering and document destruction within the Directorate General of Public Affairs, as well as the alleged failure to comply with our orders for disclosure of essential Somalia-related documents. This phase of our hearings extended from April 15 to August 30, 1996.

The in-theatre phase of public hearings resumed on September 9, 1996, but was concluded abruptly on March 31, 1997, following the deadline imposed by the order in council of February 4, 1997.

Problems with the Production of Documents

As our investigations and research proceeded, Inquiry staff identified several areas in which work was being hampered by unsatisfactory document disclosure and/or production. The problems included discrepancies in the NDHQ logs and missing in-theatre operational logs, as well as possible alteration and destruction of response to query (RTQ) documents. Because of these serious difficulties, we were obliged to hold special hearings to address these issues.

A major problem for the Inquiry concerned National Defence Operations Centre (NDOC) computer logs. These logs were found to contain a number of anomalies, including entries that had no information in them, entries that were missing serial numbers, and entries that duplicated serial numbers. Our concern was that the logs might have been tampered with deliberately. The military investigation, launched in October 1995 following our communication of this concern, was unable to determine whether the inconsistencies in the logs were the result of poor operating procedures, insufficient training, a lack of system audits, or deliberate

tampering.

Research conducted by Inquiry staff into operational logs maintained by troops in Somalia revealed that a number of logs were missing. Of particular interest to us were logs from the commandos of the CAR. Our staff eventually located the Service Commando logs, which had been held by the Military Police. The logs of 2 Commando were discovered in a filing cabinet at CFB Petawawa. SILT eventually informed us that the 1 Commando logs had been destroyed by water while in Somalia or during redeployment to Canada. Many of the logs that remain missing are from critical time periods.

The Role of DGPA Regarding Altered Documents

In October 1993, Michael McAuliffe, a reporter for CBC Radio in Ottawa, made a verbal request for Responses to Queries prepared by DGPA. When the DGPA staff met in early October 1993 to consider how to respond to Mr. McAuliffe's informal request, they decided to give him altered RTQs, from which sensitive information had been deleted. Eventually the same altered RTQs were forwarded to Michael McAuliffe under the *Access to Information Act*.

After we issued our Order for Production of Documents in April 1995, it became obvious to DGPA staff that unaltered RTQs would likely become available to the public and also, therefore, to members of the media, including Mr. McAuliffe. This is what occurred. Ultimately, we determined that we were obliged to hold hearings on the issue of document tampering. This became known as the 'DGPA Phase' of our hearings. The issues we dealt with during this phase included questions about knowledge of the decision to release altered RTQs.

We heard evidence from Gen Boyle himself in relation to his responsibility for the Somalia Working Group, which had a mandate to manage public affairs activities surrounding the Somalia incidents. The hearings on documentation lasted for four months and prolonged the work of the Inquiry.

Government Comments on the Inquiry's Work

Throughout April and May 1996, Prime Minister Chrétien and the Minister of National Defence stated consistently that the mandate of the Inquiry allowed us to examine all issues relating to the incidents in Somalia and emphasized the importance of allowing us to do our job.

On April 17, 1996, Mr. Collenette stated: "The Inquiry is to look into cover-up. The Inquiry is to look into the destruction of documents. The Inquiry is to determine if there is wrongdoing...". He also spoke in the House on April 19, 1996, describing the Government's understanding of the intended scope of our investigations. At that time he affirmed the propriety and relevance of our investigation of cover-up and issues relating to documentation, stating: "this Minister and the government took its responsibility by setting up the Somalia commission specifically to deal with issues such as documentation." He added: "There were documents altered. There were documents destroyed. Was there a cover-up? These are matters on which the Inquiry will get to the bottom...".

By mid-September 1996, however, Mr. Chrétien stated that he would like to have our report, because reforms to the Canadian Forces and the Department of National Defence would be on hold as long as the

Inquiry continued, and the Government wanted to take appropriate remedial action. At the same time, Mr. Collette was describing the Inquiry as "an impartial setting to hear all of the evidence and have everyone dealt with fairly."

Requests for Extensions

During the course of the Inquiry, the Chairman made three requests for extensions to the original reporting deadline of December 22, 1995. The first request was sent two and a half months after the Inquiry was established and stated that the parties had underestimated the amount of time necessary "to prepare a report of this magnitude".

In the period leading up to this first request, government statements focused on the Inquiry as a vehicle for eliciting all the facts and answering all the questions concerning the deployment. In these statements, the Government explained that the Inquiry's terms of reference had been designed to ensure that all questions raised or allegations made about the deployment would be examined.

We made a second request for an extension in the spring of 1996, after we had an opportunity to review DND's handling of the order for the production of documents. At that time, we clearly advised the Government that a further delay could be expected because new issues had arisen that affected the pace of our work and therefore required our attention. The Government granted an extension, although it did not provide the amount of time we had indicated would be necessary. The Government did, however, state in that response that the Inquiry's deadline could be reassessed in the fall of 1996.

Around the time this extension was made, the Minister of National Defence again affirmed the propriety and relevance of our investigation of cover-up and issues related to documentation. In April 1996, the Minister told the House: "We have a terms of reference which has never been challenged, which talks in the language used by the hon. Member, 'cover-up, 'destruction of documents'. All of that is in the terms of reference to do the job, to get the answers."

On October 4, 1996, Mr. Collette resigned as Minister of National Defence. On October 8th, Gen Boyle resigned as Chief of the Defence Staff. The same day the Hon. Doug Young, the newly appointed Minister of National Defence, said that he was prepared, if he had the support of the House of Commons, to ask us to report by the end of March 1997, and that he would "encourage us to report as quickly as possible on what happened, why it happened and who was responsible for what happened in Somalia." On October 9, 1996 Mr. Young said that the Government wanted a "thorough investigation of everything that happened in connection with the situation in Somalia", and he wanted the Inquiry to "report as scheduled on March 31, 1997, so that everyone, all Canadians and all members of the Canadian Armed Forces and members of this House will have the information they need to make an informed decision if by any chance an election is called in 1997."

In November 1996, we provided the Government with various scheduling options, including a final extension of the Inquiry's reporting deadline to the end of December 1997. We indicated that the main work still to be completed in accordance with our terms of reference included the receipt of evidence relating to the March 16, 1993 torture and murder of Shidane Arone by Canadian Forces members, evidence relating to other in-theatre incidents, evidence relating to the actions and decisions of key figures at NDHQ (including the Chief of the Defence Staff, the Minister and the Deputy Minister of National Defence), and evidence relating to issues of alleged cover-up at the highest levels in the chain of command and within the civilian staff at NDHQ. We also drew the Government's attention to the fact that the number of documents

received by the Inquiry had grown to 150,000, totalling more than 600,000 pages.

On December 10, 1996 Mr. Young told the House of Commons that we had requested an extension of our mandate. Mr. Young asked that all members of the House express their views on whether the Inquiry should continue. He concluded: "I guess it is all a question of whether it happens in our lifetime or not."

The Inquiry's Reporting Deadline

The Government responded in January 1997, giving us until the end of March to terminate our hearings and until June 30, 1997 to submit our report.

On February 4, 1997, Mr. Young stated that if the Inquiry were allowed to go on until everyone was satisfied that it was complete, he would not live long enough to see the end of the affair. He stated that he had said right from the start, and repeated it numerous times, that he hoped the Somalia Inquiry would table its report on March 31, 1997. On February 13, 1997 Mr. Young told the House of Commons that "every Canadian...knows who pulled the trigger. Everybody in Canada knows exactly what happened on the ground in Somalia.... In response to a comment from a member of Parliament the next day in the House, Mr. Young stated: "[T]he hon. Member...should know, as do most Canadians who are interested in the matter, exactly what happened... What I have said and what I repeat is that Canadians...are fully aware of what took place with respect to the murders by shooting or by torture." (He corrected his reference to "murders" in the House on February 17, 1997, stating that it had been a mistake to link the incidents of March 4 and March 16, 1993.)

From February 5, 1997 on, responding to suggestions that the Government was hiding the truth and preventing witnesses from testifying by shutting down the Inquiry, Mr. Young and the Prime Minister stated that the Inquiry was free to call any witness and that we had until the end of March to do so.

The Effects of the Government's Decision to Truncate the Inquiry's Work

Between January and March 1997, evidence was heard to complete our investigation of the shootings of March 4, 1993. In April 1997, hearing time was scheduled for submissions from parties with standing before the Inquiry.

Following the imposition of the March 31st deadline to complete our public hearings, some witnesses, including senior officers, requested permission to call a number of supporting witnesses, knowing that we would have to refuse most of these requests because of the time limitation. Some of the parties brought motions in court, arguing that the Inquiry could not afford them the fundamental fairness required by law, and asking that the Inquiry be stopped from issuing a report.

We held a press conference on January 13, 1997 to respond to the government's decision to truncate the Inquiry's work, and another in mid-February to respond to Government comments that we could call as many witnesses as we wished before the end of March. We provided a statement to the media that said (in part):

We Commissioners are profoundly disappointed at this turn of events, inasmuch as the time frame that has been stipulated severely restricts our ability to delve into crucial aspects of the mandate that has been specifically assigned to us in our original terms of reference.

Moreover, this Inquiry was established in large measure to alleviate concerns that an imbalance had occurred in the official reaction to the events in Somalia. The feeling was that too much attention had been focused upon the activities of soldiers of lower rank and that not enough effort had gone into examining the role and responsibility of higher ranking officers, senior bureaucrats and government officials. The deadline that is now being imposed on us makes it impossible for us to comprehensively address the question of the accountability of the upper ranks.

The imposed time limitation precluded us from calling a number of important witnesses. One of them, John Edward Dixon, brought motions before the Federal Court Trial Division, one of them challenging the legality of the Government's actions. In a decision rendered on March 27, 1997 Madam Justice Sandra J. Simpson ruled that the Government's actions were *ultra vires* and unlawful, effectively leaving the Governor in Council with two choices: extend time sufficient to complete the mandated work in the terms of reference; or revise the original terms of reference and limit the extent of what our report should cover. On April 3, 1997 the Privy Council Office issued another order in council telling us to report on all items in our original terms of reference pertaining to the pre-deployment phase, and giving us discretion as to the other items on which we would report within the imposed deadline of June 30, 1997.

In this report we have something concrete to say about the issues in every paragraph of our original terms of reference. The curtailment of our mandate, however, left us unable to explore several important matters. Most notable among these are the torture death of Shidane Arone on March 16, 1993, the response of the upper echelons of NDHQ to the events of March 4 and March 16, 1993, and allegations of high-level cover-up pertaining to those events.