



JURISDICTION AND SECURITY

Date: June 16, 2022

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KEY EVENTS

On June 16, 2022, the Canadian Association for Security and Intelligence Studies (CASIS)-Vancouver hosted a Digital Roundtable titled *Jurisdiction and Security*, conducted by Dr. Erin Gibbs Van Brunschot, a Professor of Sociology and the Director of the Centre for Military, Security and Strategic Studies (CMSS) at the University of Calgary. The presentation was followed by a question-and-answer period with questions from the audience and CASIS-Vancouver executives. The discussion topics centred around the jurisdictional challenges that limit security responses to Canadian national security threats and how security networks must be established to tackle these evolving threats.

NATURE OF DISCUSSION

Presentation

Dr. Gibbs Van Brunschot discussed how jurisdiction impacts security issues by discussing administrative territory, purview, and scope. The importance of jurisdictional boundaries in maintaining security against threats were explored through two cases—the “Freedom Convoy” occupation in Ottawa and sexual assault in the Canadian Armed Forces (CAF).

Question & Answer Period

During the question-and-answer period, Dr. Gibbs Van Brunschot explored how the notion of legitimacy in jurisdiction is central to maintaining state security, and how businesses, states, and security networks must exercise their jurisdictional powers to ensure security.

BACKGROUND

Presentation

Dr. Gibbs Van Brunschot began by discussing how the 21st century has provided a plethora of security threats that have contributed to a pluralized security landscape consisting of, often, decentralised security networks composed of private and public institutions that define, delineate, and resolve security threats under their jurisdiction. This decentralised security apparatus, according to Dr. Gibbs Van Brunschot, requires negotiation between organisations to reach a consensus on jurisdictional boundaries and the responsibilities of each constituent organisation. Dr. Gibbs Van Brunschot noted that the cases of the Freedom Convoy occupation of Ottawa and sexual assaults within the CAF represent two different types of jurisdictional challenges found in the 21st century security landscape.

Law enforcement responses to the Freedom Convoy occupation in Ottawa seem to have been hampered by jurisdictional problems, as law enforcement lacked the purview to cease the movement's crowdfunding. The organisers of the Freedom Convoy raised more than \$10 million through GoFundMe before their accounts were frozen in response to the movement being declared unlawful. The Freedom Convoy organisers then used the alternative, US-based, "Christian" fundraising platform GiveSendGo, which has allegedly held previous fundraising campaigns for the Proud Boys. Dr. Gibbs Van Brunschot stated that law enforcement's inability to prevent the Freedom Convoy from engaging in fundraising illustrates jurisdictional challenges, as the attempt to de-platform the Freedom Convoy fundraising shifted its efforts outside of the geographical jurisdiction of Canadian law enforcement.

Dr. Gibbs Van Brunschot pointed out that the Ontario Provincial Police (OPP), the Ottawa Police Service (OPS), the Royal Canadian Mounted Police (RCMP), and the Parliamentary Protection Service (PPS) were tasked with maintaining law and order throughout the protests; however, varying threat assessment and jurisdictional authority created uncertainty in response, prolonging the protests for weeks and allowing the Freedom Convoy organisers to exploit jurisdictional ambiguities to operate throughout areas of Ottawa that were not clearly delineated between the different agencies. Law enforcement responses were also confounded as the various policing bodies responded to protestors based on different ideas of threat definition—which were further complicated by media reports of, for instance, OPP officers allegedly befriending protestors at the beginning of the protest. The province of Ontario volunteered to handle the

protests and declared a state of emergency as it perceived that local police authorities were unable to adequately cope with the protests and were limited in delineating and executing responsibilities, governance, and resources.

Dr. Gibbs Van Brunschot noted that the declaration of a state of emergency, coupled with the invocation of the Emergencies Act by Prime Minister Justin Trudeau, resulted in a severe curtailing of the resources and mobility of the Freedom Convoy as police were empowered with greater jurisdiction. Dr. Gibbs Van Brunschot stated that a lesson learned from this problem is that law enforcement organisations are accountable for their decisions and must be clear on their jurisdictional scope and resources available to meet their mandates.

Looking at a different jurisdictional problem, one that focuses on exclusively dealing with all matters ‘in-house’, Dr. Gibbs Van Brunschot then discussed how the CAF’s wide jurisdiction over legal matters within its ranks seems to have resulted in its inability to adequately address allegations of sexual assault and misconduct. Such allegations first came to light in 1998 in a series of articles published by Macleans, stating that the investigations seemed to be punishing the victims and fostering inappropriate conduct. Dr. Gibbs Van Brunschot noted that the CAF has attempted to address sexual misconduct through reports, investigations, enforcement, and practices that have arguably enabled the misconduct. The most recent report by The Honourable Louise Arbour, C.C., G.O.Q. stated that the CAF’s structure has resulted in a failure to involve external institutions which are better able to address the problems the CAF faces. The Arbour Report recommends that civilian authorities have exclusive jurisdiction over criminal code sexual offences against CAF members and that the Canadian Human Rights Commission must have authority over cases of sexual misconduct.

According to Dr. Gibbs Van Brunschot, the CAF represents the complete absence of a security network and instead attempts to claim jurisdiction and address internal threats by relying on structures, processes, and procedures that arguably created the threat in the first place. Although failing to include external bodies to investigate sexual assault allegations might have contributed to the CAF’s problem, Dr. Gibbs Van Brunschot also acknowledged that involving external organizations is not straightforward and there may be conflicting demands on organizations which contribute to failing to involve external bodies.

To finalise, Dr. Gibbs Van Brunschot reiterated that building trust through communication, collaboration, and coordination is crucial when it comes to jurisdiction and security. In both cases, issues of trust seemed to have exacerbated the problems in these two cases. However, it is important to keep in mind that

security networks are often shaped politically: security threats are not necessarily similarly identified, politics play a role in how threats are identified, and political advantage can be lost or won through the identification of threats.

Question & Answer Period

Dr. Gibbs Van Brunschot discussed how legitimacy is a quality that must be earned for organisations that claim jurisdiction. Democratic processes can both weaken and bolster legitimacy as democracy encourages the exchange of views and information some of which may challenge jurisdictional claims.

Furthermore, Dr. Gibbs Van Brunschot explored the notion of fundraising platforms having jurisdictional responsibility to ensure that their clients are acting legally and not posing a threat to national security. Dr. Gibbs Van Brunschot noted that platform responsibility could mean monitoring their clients through criminal record checks and assessments of their clients' intentions by evaluating their content. However, fundraising platforms are commercial enterprises which may prioritise profit over due diligence.

According to Dr. Gibbs Van Brunschot, there is a fine line that states must walk to ensure that security is provided whilst ensuring that privacy of its citizens is maintained. Dr. Gibbs Van Brunschot also stated that citizens must be mindful of how much information they provide not only to states but to technology companies that consistently gather our information—another area that poses jurisdictional and security challenges.

Lastly, Dr. Gibbs Van Brunschot questioned the notion that Canada's jurisdictional legitimacy and reputation were damaged due to invoking the Emergencies Act. She stated that more research is needed to understand how the invocation of the Emergency Act impacted the legitimacy of the federal government's claim to jurisdiction in Ottawa's trucker convoy.

KEY POINTS OF DISCUSSION

Presentation

- Jurisdiction is foundational to establishing and maintaining security against a variety of threats in a variety of domains.
- Central to jurisdiction are trust, accountability, and responsibility. Agencies and organisations must ensure that they are open to scrutiny for their actions

to ensure that claims to jurisdiction do not hinder the ability to address security threats.

- Jurisdiction may involve contested authority and challenges to jurisdictional claims.
- Compliance with jurisdictional claims often rests on accountability, legitimacy, transparency, trust, and political compatibility.
- Politics play a role in how threats are identified, and political advantage can be lost or won through the identification of threats.

Question & Answer Period

- Legitimacy must be earned; democracies enable both the strengthening and weakening of legitimacy through free exchange of ideas and opinions.
- Businesses arguably have an obligation to investigate the character and intentions of those that they are providing a platform to, given that they exercise jurisdiction.
- States must ensure that they do not overstep their jurisdiction in order to provide security. They must ensure that security is provided because legitimacy in the state's jurisdiction is quickly lost if security is not deemed adequate.
- Creative thinking to imagine future events of crisis could benefit security networks, allowing them to address threat or crises swiftly with key considerations to jurisdictions.



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