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25th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Sofia (9-10 October 2003)

- **INTERNATIONAL CO-OPERATION IN THE
FIGHT AGAINST INTERNATIONAL
TERRORISM AND IMPLEMENTATION OF
THE RELEVANT INSTRUMENTS OF THE
COUNCIL OF EUROPE**

- **THE RESPONSE OF THE JUSTICE SYSTEM
- CIVIL AND CRIMINAL - TO TERRORISM**

Report presented by the Minister of Justice of

CANADA

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1. Introduction: The Context of International Cooperation and Justice Measures Against Terrorism

Any discussion of international legal cooperation in the fight against terrorism, and of the response of the justice system of individual countries as part of this fight, must consider the context of efforts against terrorism.

The unforgettable events of September 11, 2001 are frequently and correctly put forward as providing a compelling reason for efforts against terrorism. However, as significant as were the shocking and terrible events of that day, and while those particular events did provide an impetus for legislative change in many countries, a longer-term context to legal provisions against terrorism must be acknowledged. In particular, advances that have been made in international cooperation in the fight against terrorism, and changes to domestic laws of Canada and of other countries, should not be seen simply as a short-term response to a single event. They are part of a fundamental shift in attitude toward terrorism and toward the appropriate legal response to this problem.

Canada's experience provides an illustration. When the significant proposed changes to the law that became Canada's *Anti-terrorism Act* were before Parliament in the autumn of 2001, the Canadian government made it clear that it did not consider the changes to be emergency legislation. Rather the legislation was put forward as part of a commitment to international conventions and resolutions on terrorism, combined with a fundamental realization that governments must do more to prevent acts of terrorism – potential acts on a scale that the events of September 11, 2001 provided a clear illustration. As such, the Canadian legislation was intended to deal with an ongoing and heightened threat of terrorism. This threat clearly existed prior to September 11, 2001, and it can be expected that the threat will continue into the future. While the global community would like the threat to disappear it must be prepared if it does not: what must remain is vigilance.

This context – one of a realization for a need for continued vigilance and for the international cooperation and the domestic legal provisions that will support this vigilance – underlies Canada's efforts against terrorism.

2. International Legal Cooperation in the Fight Against Terrorism: the Canadian Perspective

Canada, as a member of the United Nations, the G8, NATO (North Atlantic Treaty Organization), the Commonwealth, La Francophonie, the Organization of American States, among other International Organizations, and as an official observer at the Council of Europe, has played a key role in advancing international cooperation against terrorism. At the United Nations, Canada has supported the development of the 12 international conventions against terrorism and has now ratified all of them. Further, in the aftermath of the events of September 11, 2001 it welcomed the adoption of United Nations Security Council Resolution 1373 that required states to take action against terrorist financing, as well as to take numerous other legal measures against terrorism. Within days of the adoption of the resolution in late September 2001, Canada had regulations in place to permit the freezing of any terrorist assets found in this country.

It is important to emphasize the ongoing relevance of Resolution 1373. Not only does this Resolution call upon all members of the United Nations to adopt and fully implement specific anti-terrorism measures, it also requires member countries to report annually on

their progress in achieving this goal. Resolution 1373 remains an important impetus to achieving a cooperative approach to addressing terrorist offences and the financing of terrorist acts, and it provides a standard against which progress appropriately can be measured.

Canada has also been active within the G8 to advance international anti-terrorism efforts. As part of its key work, the G8 has defined a series of principles that provide guidance on strengthening the capacities of nations to combat terrorism. These principles were recently revised and updated in an initiative conducted by the G8 Counter-Terrorism Experts Group (Roma Group), and coordinated under the Canadian Presidency of the G8 in 2002. These principles are worthy of close examination by all countries.

Among its other actions against terrorism, the G8 has recognized the need to build international will to fight terrorism and to provide capacity building assistance to other countries to help them advance their anti-terrorism measures. The areas for capacity building assistance include, for example, assistance in developing anti-terrorism legislation for domestic implementation of conventions, protocols and resolutions in relation to terrorist activity and in the drafting and enforcing of legislation and regulations on the financing of terrorism. The G8 has adopted an Action Plan to further these efforts, including the creation of a Counter-Terrorism Action Group that will coordinate capacity building actions.

Canada has taken particular action in international capacity building through the sharing of its own experience in the creation of domestic anti-terrorism legislation. In particular, Canada's *Anti-terrorism Act* is being used as a model for other states. Canada, for example, has participated in a number of workshops within the Commonwealth to assist members in this regard. The model anti-terrorism law developed by the Commonwealth Secretariat through these efforts is proving useful to smaller Commonwealth nations in developing appropriate domestic anti-terrorism statutes.

Regional cooperation is also important. For Canada, this includes cooperation among members of the Organization of American States (OAS). To this end, the *Inter-American Convention against Terrorism* was adopted in June 2002 and Canada became the first country to ratify the Convention in December 2002. This Convention complements domestic and international efforts and strengthens cooperation in the Americas in combating terrorism.

Canada has also actively supported the key work of the Council of Europe in examining particular issues relating to terrorism. Canada, for example, answered in detail the questionnaires sent to it by the *Committee of Experts on the Protection of Witnesses and Pentiti in relation to Acts of Terrorism* (PC-PW) and the *Committee of Experts on Special Investigative Techniques in relation to Acts of Terrorism* (PC-TI). Canada has received the final reports of these two Committees and looks forward to the continuing work of the Council against terrorism.

3. Canadian Justice Measures Against Terrorism

The centerpiece of recent Canadian justice measures against terrorism is the *Anti-terrorism Act*, which was passed and signed into law on December 18, 2001.

Prior to the legislative initiative that became the *Anti-terrorism Act*, Canada already had many provisions of law that responded to terrorism. The *Criminal Code* and other statutes prohibited many acts that are methods of terrorism, such as hijackings, sabotage, homicide, the use of explosives, hostage-taking, and threats against internationally-protected persons, to name just a few. Although Canada did *not* have in place criminal law measures that referred directly to terrorism, the laws that were in place had allowed Canada to ratify 10 of 12 international conventions relevant to terrorism.

However, the Canadian government very quickly realized that, although Canada's existing laws could be and were being used against terrorism, they were not adequate. In particular, Canada needed to be able to address terrorism head on, through measures directly aimed at the threat. Further Canada needed a fundamental new philosophy in its approach: that of prevention, rather than just the traditional criminal law approach of deterrence and punishment. Also Canada wished to be in compliance with the two international conventions on terrorism that it had not yet ratified – the *International Convention on the Suppression of Terrorist Bombings* and the *International Convention on the Suppression of Terrorist Financing*. Relevant as well was the need to comply fully with United Nations Security Council Resolution 1373.

The following are some of the key measures of the Canada's *Anti-terrorism Act* that responded to the need to enhance Canada's justice measures:

- ? The *Act* provides *Criminal Code* definitions of “terrorist activity” and of “terrorist group”. These definitions are employed in numerous of the other provisions created by the *Act*. Also, fundamentally, the definitions serve to describe the essential nature of the threat that the *Anti-terrorism Act* seeks to address.
- ? With respect to terrorist groups, the *Act* allows for a list of these groups to be made by Cabinet Order on the recommendation of the Solicitor General of Canada.
- ? Under the *Act*, new provisions are created under the *Criminal Code* on the financing of terrorism, including provisions dealing with the freezing, seizure, restraint and forfeiture of terrorist property. New *Criminal Code* offences are also provided with respect to terrorist financing. These legislative measures build on the United Nations Suppression of Terrorism Regulations that Canada had already enacted on October 2, 2001.
- ? Additional offences are created under the *Criminal Code* to deal with a full range of other acts related to terrorism. These include offences of participating in, facilitating, and instructing terrorist activity and of harbouring others who carry out terrorist activity.
- ? The *Act* provides new specific *Criminal Code* offences in respect to the use of explosive or other lethal devices against public or infrastructure facilities and in respect of attacks on the premises, private accommodation or transport of United Nations personnel.
- ? With respect to sentencing and parole for terrorism offences, the *Act* provides for an aggressive regime, including a maximum of life imprisonment for many offences and restricted parole eligibility.

- ? The *Act* has new procedural powers to assist with the investigation and prevention of terrorism. Notably, the *Act* provides for investigative hearings before a judge, under the *Criminal Code*, to assist in the gathering of information for investigations into terrorism offences that it is reasonably believed have been committed or will be committed.
- ? The *Act* provides for preventive arrest under the *Criminal Code* as a way of temporarily detaining and imposing conditions on the release of persons in order to prevent terrorist activity.
- ? The *Act* amends the *Proceeds of Crime (Money Laundering) Act* to expand the mandate of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to include the gathering, analyzing and disclosure of information on terrorist financing.
- ? The *Anti-terrorism Act* creates the *Charities Registration (Security Information) Act* to prevent those who support terrorist activities from enjoying the tax privileges granted to registered charities.
- ? Amendments to the *Canada Evidence Act* improve the way in which sensitive or potentially injurious information can be protected during legal proceedings.
- ? Also, the *Official Secrets Act* is updated and refined – and renamed as the *Security of Information Act* – to better address national security concerns, including threats of terrorist espionage and unauthorized communication of special information.
- ? Another group of measures under the *Anti-terrorism Act* deals with hatred and discrimination, including a new *Criminal Code* offence of causing damage to places of religious worship, a new judicial power to order the deletion of hate propaganda made available to the public through computer systems, such as the Internet, and an amendment to the *Canadian Human Rights Act* to clarify that the communication of hate messages using new technologies, such as the Internet, is a discriminatory practice.

Canada's *Anti-terrorism Act* thus includes significant criminal law amendments, as well as amendments to other areas of law. Further amendments have been made or are being proposed in other recent legislative initiatives.

For example, Canada's new *Immigration and Refugee Protection Act*, which came in effect in 2002, provides for stringent action against those who pose a threat to Canadian security, but at the same time maintains Canada's humanitarian tradition. Among its measures, this new *Act* allows for termination of claims for refugee protection for persons found to be inadmissible on security grounds and allows for the earlier removal of persons entering Canada who pose a security threat. As well, the *Aeronautics Act* was amended in 2001 to allow for the disclosure of aircraft passenger information to foreign states for national security, public safety, or defence purposes. Significant further amendments to the *Aeronautics Act*, as well as amendments to other Acts, including the *Explosives Act*, the *Export and Import Permits Act*, the *Criminal Code* and provisions to enact the new *Biological and Toxin Weapons Convention Implementation Act* are currently before the Canadian Parliament. These provisions, referred to collectively as the *Public Safety Act, 2002*, are intended, among other purposes, to clarify and further

strengthen aviation security authorities, establish tighter controls over explosives, provide improved control over the export and transfer of sensitive technology, provide a new *Criminal Code* offence to deter irresponsible hoaxes with respect to terrorist activity, and deter the proliferation of biological weapons.

The question of the potential impact on human rights of legislative measures related to terrorism and public security has been of fundamental concern to the Government of Canada. In Canadian Parliamentary debates on these measures, a key point has been noted with respect to human rights. In essence, it is important *not to view* anti-terrorism measures simply as addressing national security concerns and further *not to view* security concerns as somehow standing opposed to democratic values, including respect for human rights. Anti-terrorism provisions do not stand opposed to human rights. Rather, they serve to promote them. Human rights include human security. The measures of the *Anti-terrorism Act* and other Canadian legislation serve to promote this vital human security dimension of human rights, a dimension without which human rights themselves would arguably cease to have any real meaning.

The possibility for anti-terrorism measures to have a negative effect on certain rights and freedoms nevertheless must be recognized. However, in the context of the development of the Canadian legislation these human rights concerns were incorporated front and centre in the policy development process. This fact is reflected in the nature of the legislative measures that were put forward, including: strictly defined limits on the new powers themselves; special authorization and designation requirements incorporating, in many cases, direct political accountability; judicial supervision of the exercise of certain powers; requirements for public annual reports; specific provisions for Parliamentary review of the legislation; and statutory sunseting of certain provisions.

Nothing in the new Canadian provisions is intended to change the expectation that Canada's laws should respect human rights. The *Canadian Charter of Rights and Freedoms* includes a clause – the “*Notwithstanding*” clause – by which a specific statute can provide that it is overriding rights guaranteed under the *Charter*. This clause is not invoked with respect to the new Canadian legislation and it is the perspective of the Canadian government that these measures comply with *Charter* principles.

4. Final Observations: Other Contexts of the Fight Against Terrorism

Although the focus of this Report is on legislative measures, these measures are only one part of the picture. Implementation of practical steps against terrorist threats is also required. The fight against terrorism also includes, for example, taking steps to improve border, immigration, and transportation security while maintaining international travel and trade. It also includes taking steps to ensure that intelligence gathering, information sharing and law enforcement capacities are adequate in order to obtain knowledge of, and take action against, specific terrorist threats. It also includes measures to ensure that public safety plans and capacities are in place to respond to potential emergencies caused if terrorists strike. Canada and many other countries have taken concrete actions in this regard, including the investment of significant money to support these efforts.

There is, nevertheless, another fundamental dimension that must also be considered. As Canadian Prime Minister Jean Chrétien underlined at the September 2003 *Fighting Terrorism for Humanity Conference* in New York, nations must also fight against the roots of terrorism by fighting *for* a global community united in safety and security,

prosperity and opportunity, openness and respect, as well as dialogue and democracy. Recognizing this fundamental principle does not mean, in any way, excusing terrorism. Nor does it mean that strong measures against terrorism – referred to elsewhere in this Report – are not needed. It does mean, however, that eliminating terrorism must also include far-reaching and diverse policies to promote democracy and good governance, including policies that allow political and social debate and the expression of dissent in legitimate, non-violent ways.

Therefore, while justice and other related measures are important, the global community must take the fight against terrorism much further. It must also be kept in mind that this underlying fundamental principle must not be viewed as separate from justice measures that are put in place against terrorism. Indeed, consideration of the principle only serves to illustrate the importance of ensuring that justice measures against terrorism are consistent with democratic values and human rights. It is the responsibility of those who create and administer justice measures against terrorism to ensure that they are carefully designed and properly implemented so as to promote, not derogate from, fundamental human rights and democratic values.

