

Bridging human rights and security

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The acts, methods and practices of terrorism in all its forms and manifestations as well as linkage in some countries to drug trafficking are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments. The international community should take the necessary steps to enhance cooperation to prevent and combat terrorism.

- Article 17, Vienna Declaration and Programme of Action (World Conference on Human Rights, June 14-25, 1993)

Introduction: Bridging Human Rights and Security

La question centrale qui nous rassemble aujourd'hui concerne « l'équilibre souhaitée » entre sécurité et droits humains comme s'il agissait d'entités distinctes et séparées.

Pour ma part, je récusé cette vision et m'inquiète profondément de ses effets conceptuels et politiques à long terme.

Premièrement, cette vision pervertit le droit international des droits humains et le droit humanitaire à un point tel qu'ils sont aujourd'hui perçus par un grand nombre comme contraires aux efforts visant la sécurité alors qu'ils en constituent une composante intégrale.

Deuxièmement, cette vision divise les responsables des politiques de sécurité et les défenseurs des droits humains dans un temps où leurs efforts conjugués sont essentiels pour assurer le maintien intégral de l'État de droit, renforcer la démocratie et éradiquer le terrorisme.

Cette vision manichéenne opposant sécurité et droits humains est archaïque et troublante, contraire à la doctrine des droits et contraire à l'essence même de la démocratie. C'est bien pour libérer les hommes et les femmes de la crainte que cette doctrine a été élaborée et déployée dans des systèmes démocratiques lui assurant sa forme achevée.

By allowing human rights and security to be opposed and divided, we run the peril that both will be conquered. We may find ourselves with no security and no rights.

In policy circles, we currently hear that the struggle against terrorism is a calculus of lesser evils in which human rights can be abrogated and even sacrificed. Certainly, tough choices must be made and resolute action must be sustained in the name of security. In temporary and limited cases, derogation from rights may be justifiable; but nonetheless there is a core of human rights with which no government can traffic and still hold itself out as democratic.

While democratic societies and international human rights law can uphold temporary and exceptional departures from the paradigm of full respect for rights and freedoms, we must vehemently resist the slippery logic of the endless emergency in which the universality of rights, measured against the criteria of expedience, becomes meaningless.

We must reflect carefully about how we are inverting our legal and analytic framework from one where human rights are at the foundation to one where they have disappeared.

Ceux qui placent les droits humains à la périphérie de la politique ont, en ce moment, d'amples sujets de réflexion. En effet, c'est la mise au rancart de la Convention de Genève, dans sa lettre et dans son esprit, qui explique l'immense drame qui, depuis les prisons iraqiennes et afghanes, depuis Guantanamo et la Caroline du sud, occupe aujourd'hui la conscience universelle.

Cette auto positionnement au-delà des lois, ce rejet de tout mécanisme judiciaire de supervision, cette arrogante utilisation de catégories de combattants et cette prétention à l'immunité ont produit insultes et humiliations, extrêmes contraintes

physiques et psychologiques, systèmes dégradants pouvant être assimilés, dans certains cas, à la torture.

Tels sont les effets d'une supposé *realpolitik*, pensé et déployé hors toutes normes du droit et des droits.

Ce qui est perdu dans ce drame, outre la dignité des personnes ainsi dégradées, c'est l'immense travail qui, dans la durée, a produit un système de protection juridique des droits de tous y compris ceux des ennemis.

Ce qui est perdu, c'est l'illustration concrète et vérifiable de l'exigence du droit et des droits dans le grand débat qui oppose, au sein de l'Islam, les partisans du libéralisme et les fondamentalistes.

Ce qui est perdu dans ce drame, c'est l'honneur d'un grand pays et l'honneur de tous ceux qui ont succombé à la tentation de séparer les exigences de la sécurité et les exigences des droits humains.

Dans l'histoire moderne, on a justement condamné ces régimes, durant la seconde guerre mondiale, durant les guerres coloniales et notamment en Algérie et en Indochine, en Afrique du sud et dans l'Union soviétique.

Those who believe that *realpolitik* and human rights are opposed, must explain how human rights have been used as a rallying cry and lever of change against tyranny and oppression.

Throughout this discussion, I would like to advance the idea that human rights and security are interdependent and interrelated. We therefore should be thinking in terms of a new synthesis; not of a balancing act, but of concrete and practical ways to **bridge** human rights and security in the 21st century.

In our search for a new synthesis between security and rights, I would suggest that we be guided by the overarching concept of the rule of law—that finds its expression in strong democratic institutions—and that gives us both theoretical and practical guidance for our domestic and foreign policy choices in these challenging times.

The rule of law is not an idle concept, a soft luxury that we can forsake lightly. We must always remember how much has been sacrificed over the past centuries—how many have struggled and fought and died; and how many who continue to struggle and fight and die—in order to be ruled by the law and not by the whims of a master.

Part One: Situating Ourselves in the 21st Century: The Expansion of Democracy or the Expansion of Terror?

I would like to situate the current challenges for human rights and security in a historical context, whose central feature is the global expansion of democracy and the rule of law. This long-term understanding is important for us lest we lose all perspective and descend into an interminable war against terrorism in which terrorists succeed in defining our political agenda. Ultimately, we should understand our national and foreign policy choices—including those related to security—as part of the on-going struggle for a global culture of human rights, democratic values and the rule of law, against which there are many threats.

It is important for us to situate ourselves in terms of the long-term geopolitical and ethical evolution of the rule of law, as a cornerstone of the global rise of democracy in the 20th century. Although we may trace the origins of democracy back to ancient Greece and the Magna Carta, it is only in the 20th century that the

idea of democracy became established as the “normal” form of government to which any nation is entitled, whether in Europe, the Americas, Asia or Africa.¹

Before we convince ourselves that September 11th is the defining moment of recent history, let us remember the great winds of change that swept through Latin America in the 1980s; through Central and Eastern Europe and Africa in the 1990s; that are sweeping through Asia; and, that are now whispering in the Middle East.

The powerful ideas of democracy, of rights and freedoms, of open societies, that unified half the world during the Cold War, have seen incredible expansion between 1980 and 2000. It is this expansion of democracy that terrorists want to halt.

The ideas of Karl Popper and Raymond Aaron triumphed in the minds and hearts of succeeding generations; but we may ask whether they will be abandoned or perverted in the next?

The events of September 11th were so shocking—especially in their televised brutality—that there is a danger that we come to see our world through the lens of terrorism, drawing a bright line in history in terms of a pre- and post-9/11 world. This is terrorism’s first victory.

This is why I ask that we reflect carefully about how we pose our questions and frame our debate, about how we maintain a legal and analytic framework in which human rights remain at the foundation.

We cannot forget that crime and political violence are age-old phenomena. We cannot forget that the propulsion of democracy was accompanied by terrorist activities in all regions of the world: in Italy, in Spain, in France, in Germany, in

¹ See: Amyarta Sen, “Democracy as a Universal Value” in (1999) 10.3 *Journal of Democracy* 3 at page 4.

Colombia, in Peru, in Algeria, in South Africa, in Sri-Lanka, in Japan, in the Middle-East, even in Canada.

States are not strangers to the problem of terrorism. Prior to September 11th, every State was equipped with intelligence, police and military tools, as well as the national security and emergency measures legislation, to confront public emergencies, organized crime and political violence. Their cumulative expertise and resources were unable to prevent 9/11.

At the multilateral level, States had collaborated in the negotiation and drafting of 19 international and regional conventions covering different facets of terrorism and had created numerous international organizations to study and take action against terrorism. This large montage was unable to prevent 9/11.

The extent to which these national, regional and international measures were inadequate is an important question that we will discuss later, but the main point to be emphasized is that we should situate our efforts to counter terrorism as part of our historical understanding of the expansion of democracy. Instead of playing into the logic and tactics of a small and radical minority, our security efforts must be firmly rooted in the reinforcement of democratic institutions and values, including pluralism, dialogue, respect for civil, political, economic, social and cultural rights, freedoms and the rule law.

We must be resolute in our condemnation of terrorism and determined in our attempts to bring terrorists to justice; however, this must be accomplished within the framework of national and international law lest we accept terrorism and violence as a lever of social change.

Part Two: Assessing the tools at our disposal to bridge security and human rights

As we confront the question of how to **bridge** security and human rights, we must assess the tools at our disposal, both for the preservation of security as well as for the promotion and protection of human rights. These tools can be found at the national, continental, regional and international levels. Of central importance is an analysis of the accountability mechanisms at each of these levels that can serve to ensure that human rights are integral to security policies.

It seems that we may be entering a new phase in the “war on terrorism,” in which Governments will be forced to take more seriously the mechanisms of democratic accountability and protection of human rights in order to enhance the credibility and effectiveness of their security policies and apparatus.

However, despite the comforting rhetoric about balancing security and human rights, up until this point our investments in new, improved and effective security measures (to meet the current threats to security) far outweigh our investments in new, improved and effective human rights mechanisms (to meet the current threats to human rights).

When there is such an asymmetry in these investments, we must ask ourselves: are human rights truly valued?

Since September 11th, all Governments and intergovernmental institutions have been under significant pressure to review, revise and reform their security policies and apparatus. This pressure has come from a variety of sources such as the series of UN Security Council resolutions on enhancing international cooperation to combat terrorism; the United States’ administration’s determination to create an international coalition and launch a counter-offensive against Al-Qaida and other enemies; not to mention the fears and demands of

citizens around the world who witnessed the terrorist attacks in New York, Washington, Bali, Istanbul, Casablanca and Madrid.

In this context, Governments have scrambled to make security systems more integrated, comprehensive and robust—often implying that the domestic and international security systems in place prior to September 11th were non-performant and, therefore, inadequate.

While the horrific and dramatic events of September 11th certainly demand serious responses and revisions, we should nonetheless ask ourselves whether the policies we are pursuing and the systems we are creating truly responsive to future threats?

The following comment, from the New York Times of April 19th, 2004, should give us pause to reflect:

“The attacks of September 11th seemed to come in a stunning burst from nowhere. But now ... the lengthy documentary records make it clear that prediction of an attack by Al Qaida had been communicated directly to the highest level of government.”

It would appear, then, that the human factor, a certain bureaucratic blindness and territoriality and a lack of political control may be as much responsible for September 11th as the fundamental inadequacy of the security measures in place.

We cannot ignore the fact that even the best systems are not foolproof and that the most impressive technological wizardry is no substitute for human vigilance. Therefore, not only must we consider the human rights effects of security measures in terms of proportionality and necessity, but we also must weigh their effectiveness against their cost.

At the end of the day, does all this structural change amount to anything? It is nothing but sound and fury unless it succeeds in contributing to the basic requirement for national and international security—which is the improvement of the quality of analysis about threats.

In Canada, we have fortunately not been subject to terrorist attacks in recent years. Nonetheless, we have taken a hard look at our national security apparatus and found it wanting. The inadequacy of our national security systems have been underscored by recent governmental reports, including those of the Auditor-General and the Senate Standing Committee on National Security and Defence.

We have committed \$7.7 billion to improving our security after September 11th. In addition, the Prime Minister recently announced \$690 million in new national and international initiatives that form part of Canada's National Security Policy.

As you know, the key focus is on greater coordination between the numerous agencies and departments whose activities are involved in our national and international security, especially through the creation of a new Department of Public Safety and Emergency Preparedness; a Cabinet Committee on Security, Public Health and Emergencies; a National Security Advisor to the Prime Minister; an expert National Security Advisory Council; and, an Integrated Threat Assessment Centre.

Moreover, new agencies and investments have been announced to improve intelligence; emergency planning and management; public health; transport security; border security; and, international security.

These measures are important. They demonstrate the seriousness of our Government to provide for the safety and security of Canadians; to ensure that

Canada is not a base for threats to our allies;² and to contribute to international security.

On a first reading of the National Security Policy, it is worth noting that a significant attempt has been made to define Canada's approach to national security in relation to our most deeply-held values such as democracy, rule of law, respect for human rights and pluralism.³

Moreover, there is an attempt to provide for democratic oversight of the evolution of the National Security Policy, through new mechanisms like the Cross-Cultural Roundtable on Security; the National Security Committee of Parliamentarians; and a restated commitment to the legislative review of the *Anti-Terrorism Act* at the end of this year.⁴

The National Security Policy also mentions the mandate given to the Honourable Justice Dennis O'Connor to advise the Government about creating an arm's-length review mechanism for the RCMP's activities relating to national security. While the eventual creation of such a mechanism is surely desirable, the broader mandate of Justice O'Connor—to investigate the serious allegations of racial profiling, deportation and torture of Mr. Maher Arar—underscores the importance of integrating checks and balances within our security policies from the outset and not as an afterthought.

² In this regard, it is interesting to note that the U.S. Department of State, in its recently published "Patterns of Global Terrorism" report, states that: "The Government of Canada remained steadfast in its condemnation of international and domestic terror and has been a helpful and strong supporter of the United States in the fight against international terror. Though there have been differences, overall antiterrorism cooperation with Canada remains excellent and serves as a model for bilateral cooperation."

³ It is also important to note that threats to our security have been defined quite broadly, in relation to terrorism, proliferation of weapons of mass destruction, failed and failing states, foreign espionage, natural disasters, critical infrastructure vulnerability, organized crime and pandemics. On the one hand, this could be seen positively in terms of an understanding of the concept of human security. On the other hand, it raises concerns about ensuring the proportionality of our reactions to vastly different types of situations.

⁴ Although much ink has been spilled and passionate debates have been waged about the various anti-terrorism bills and laws, this has taken place largely in the hypothetical domain. The true test of any legislation occurs when it is interpreted by the Courts in relation to a concrete case. At present, the first test of the *Anti-Terrorism Act* is taking place in the case of Mohammad Momin Khawaja. Unfortunately for those of us interested in the human rights implications of Canada's national security legislation, the preliminary hearings in this case have been subjected to a publication ban.

The National Security Policy contains reassuring statements, such as “we also need to ensure that there are effective mechanisms for oversight and review so that, in protecting an open society, we do not inadvertently erode the very liberties and values we are determined to uphold.”

But will these review and oversight mechanisms be effective?

This raises a series of questions about which we must think carefully as we pass into the implementation stage of the National Security Policy.

How close to the secret centres of the new consolidated security structures will these review and oversight mechanisms be located? Or will they be on the periphery?

Will they have full access to information? To whom will they report, how often and in how much detail?⁵

Will they be given a proactive role in the design and implementation process in order to prevent violations of our rights and freedoms? Or will they function as an afterthought and address violations after they have occurred?

How well will they be funded? How well will they be staffed?

These are not idle concerns.

Take, for examples, the issues raised in January 2004 by the Chair of the Commission for Public Complaints against the RCMP, Shirley Heafey, about the lack of an oversight mechanism for the RCMP in the post-September 11th

⁵ In this regard, the Report of the International Civil Liberties Monitoring Group (ICLMG), “*In the Shadow of the Law*,” (May 14, 2003), raises a series of concerns about the adequacy of the scope of Justice Canada’s 1st annual report on the application of the *Anti-Terrorism Act*.

security legislation. The Government promised to rectify this problem and has given the mandate to the Honourable Justice Dennis O'Connor in the context of the Arar inquiry. However, public inquiries take a significant amount of time—perhaps years—during which we should be concerned about the relatively unsupervised conduct of the RCMP.

These are the sorts of gaps that occur when we do not integrate concern for human rights into national security measures at the outset. All too often, we strengthen checks and balances after the violations have occurred and after the damage to individuals and our society has been done.

This may help us think about investing in prevention by creating substantive and integrated oversight mechanisms now, as we begin to design our new security agencies and implement our anti-terrorist and “public safety” legislation.

For instance, we believe that it would be useful to have high-level positions created for human rights experts within all the new security-related agencies, including the Department of Public Safety and Emergency Preparedness and alongside the National Security Advisor to the Prime Minister.

We believe that there should be substantial provisions to ensure that human rights training is given to the intelligence, police and military officers—as well as the sub-contractors—who will enforce the National Security Policy. In this regard, we believe that the expertise of existing human rights institutions with a mandate for human rights education, such as our provincial and Canadian human rights commissions, should be validated and their role in our society reinforced.

These are elements of the exemplary national security practice that Canada should implement.

It is important that we invest in preventing abuses. Not only is this right in principle, it will save Canadian taxpayers from costly inquiries and court proceedings.

However, as is frequently the case, when we start to compare the budgetary and staff allocations for the technical “security” components and the “human rights” or “oversight” components of national security programmes, we see that there is very little weight to the notion of balance.

In the National Security Policy, new agencies with security agendas have been attributed specific and significant budgets, whereas the new oversight mechanisms are not attributed any dollars or cents. Existing security agencies such as CSIS have seen dramatic budget increases (+30%) while existing human rights mechanisms that could play a useful educational and watchdog role—such as our human rights commissions⁶—struggle with frozen or cut budgets.

And this phenomenon repeats itself at the continental, regional and international levels.

At the continental level, we need further safeguards that are more effective and transparent for the implementation of the Smart Border and Safe Third Country Agreements.

Similarly, Canada needs to ensure further safeguards at the regional level. Although Canada was the first country to ratify the *Inter-American Convention against Terrorism*, it has not ratified the decades old *American Convention of Human Rights*. Obviously, there is no balancing, let alone bridging of security

⁶ In this regard, an interesting example is the Ontario Human Rights Commission that recently completed an Inquiry Report on racial profiling entitled, “*Paying the Price: the Human Cost of Racial Profiling*” that outlines the serious consequences of this practice, including its alienating effect on individuals, its divisive effect on communities and the creation of mistrust in our institutions.

and human rights, when Canada has precluded itself from active participation in the regional human rights mechanisms—namely the Inter-American Commission of Human Rights and Inter-American Court of Human Rights—that fulfill the democratic oversight and adjudication functions within our hemisphere.⁷

At the international level, we witness the same phenomenon. The Counter-Terrorism Committee of the Security Council is coordinating the individual and multilateral efforts of States to respond to terrorism in accordance with the various Security Council resolutions passed since September 11th. During this time, despite the active engagement of the Office of the High Commissioner for Human Rights on the issue of terrorism, the Counter-Terrorism Committee has been seemingly uninterested in addressing issues of human rights.

Although there have recently been some tentative exchanges between the two bodies, the CTC basically rejected the personal pleas of Mary Robinson, Sergio Vieira de Mello and Bertrand Ramcharan and their offers to provide technical assistance in the international effort against terrorism.⁸

For Canadians, if we are serious about bridging human rights and security, perhaps we can imagine new possibilities for institutional collaboration between the Counter-Terrorism Committee and the Office of the High Commissioner for Human Rights, especially when the Honourable Madam Justice Louise Arbour takes the post.

In the same vein, we should consider what linkages—both conceptual and operational—that we have with the International Criminal Court.

⁷ Incidentally, the Inter-American Commission on Human Rights has published one of the most serious and well-reasoned assessments of human rights and terrorism

⁸ In this regard, the OHCHR has compiled a digest of jurisprudence that can help States in their drafting and implementation of human rights practices.

At the conceptual level, it is critical that we re-focus our campaign against terrorism in terms of international criminal law and be extremely wary of perpetuating the endless emergency mentality in which military and police forces become inseparably intertwined. Ultimately, an important democratic principle is at stake. This principle, which is closely related to the rule of law, is the civilian control over the State's capacity to use force.

The *Rome Statute* for the establishment of the International Criminal Court contains no specific jurisdiction over the crime of terrorism—although this was advanced in its *travaux préparatoires*. Nonetheless, international criminal jurisprudence has evolved in such a manner that serious terrorist acts, such as those that took place on September 11th, should be considered as “crimes against humanity.” In such a light, the ICC and international criminal law can be enlisted in the campaign against terrorism and for the rule of law.

At the operational level, we may ask the question about whether we are more comfortable with prosecuting terrorist suspects in accordance with the rules of the ICC or with processing them in a legal and ethical black-hole such as Guantanamo Bay?

In an excellent example of collaboration between the Government, other like-minded States and the NGO sector, Canada exercised a leadership role in the creation of the ICC. It should now exercise this leadership role in asserting the continued relevance of international criminal law to the preservation of peace and security in the world.

As is stated in a recent article in the *Harvard Human Rights Journal*:

If in the coming years the ICC acts with efficiency and transparency, there should be no doubt that this Court can be a powerful tool in the fight against terrorism. The important link between peace and prosecution by an

impartial court should not be underestimated. If procedural and substantive justice is advanced by the ICC in its early years, then the Court could have a significant deterrent effect on future acts of terrorism.⁹

There are other international possibilities for Canadian involvement in multilateral attempts to bridge human rights and human security, other allies who have adopted a comprehensive approach to security. For example, there is the Human Security Network, in which Canada has played a pioneering role. In Europe, there is the important work of the Council of Europe. There is the cooperation between the OSCE and its Office for Democratic Institutions and Human Rights (ODIHR) that a good example of an integrated and preventative approach to human rights and security.¹⁰

From the foregoing, what lessons can we learn?

The overarching objective of national and international policies in response to security threats is to reinforce the rule of law and promote democratic values. Consequently, all measures that aim to consolidate security must be accompanied by meaningful counterweights for the protection of human rights.

We must have effective and transparent mechanisms for civilian oversight of new security measures. These must be given teeth.

When we proceed to fight terrorism in a “war” mentality, it is much easier to think in terms of lesser evils, secrecy, expediency and endless emergencies in which our rights disappear.

⁹ Richard J. Goldstone and Janine Simpson, “Evaluating the Role of the International Criminal Court as a Legal Response to Terrorism” (Spring 2003) 16 HHRJ 13 at 26.

¹⁰ This work is conceptualized in terms of the participating States’ obligations to implement UN Security Council Resolution 1373, as stated in the Bucharest Plan of Action (2001) and the OSCE Charter on Preventing and Combating Terrorism (2002).

Part Three: Human rights and terrorism

As I have stated before, we must remember that human rights, though they may be temporarily suppressed, will always rebound. This is because of their link to the inherent dignity of each person, their resonance with the conscience of humanity and the fact that some mechanisms for oversight and justice still exist.

The Arar case, the situations in Guantanamo Bay and the Abu Ghraib prison—and now the terrorist reprisals—show us the limits of how far we can push the security agenda without respect for human rights.

This said, human rights should not be seen as inflexible obstacles to effective intelligence, police and military action. The doctrine and jurisprudence of human rights, as it relates to emergency and security measures, has always contained an allowance for restricting some rights and freedoms in order to protect society, to preserve its institutions and to overcome emergencies in the perspective of the long-term realization of rights and freedoms.

In international law, this concept can be traced back to Article 29(2) of the Universal Declaration of Human Rights;¹¹ but takes its specific form in Article 4 of the International Covenant on Civil and Political Rights.¹²

¹¹ Article 29(2) of the UDHR reads: “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” A similar provision is found in section 1 of the Canada *Charter of Rights and Freedoms* which “guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

¹² Article 4 of the ICCPR reads: (1) In times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

(2) No derogation from articles 6 (the right to life), 7 (freedom from torture), 8 (freedom from slavery or servitude), 11 (freedom from imprisonment for failure to pay a debt), 15 (freedom from retroactive penal laws), 16 (right to be recognized as a person before the law) and 18 (freedom of thought, conscience and religion) may be made under this provision.

This provision—along with other important international instruments¹³—helps us define the core of human rights, those rights upon which there are no compromise, no trades, because these define the essential fabric of our democratic societies.

Once we begin rationalizing small encroachments on the right to life—and its adjunct *habeus corpus*—and freedom from torture, then the credibility and justice of our cause crumble.

The universality of all human rights is our conviction. Non-derogation from human rights is the norm. Action against terrorism and protection of human rights and democracy are complementary responsibilities. As the Inter-American Commission on Human Rights has so clearly stated:

The very object and purpose of anti-terrorist initiatives in a democratic society is to protect democratic institutions, human rights and the rule of law, not to undermine them.¹⁴

But we recognize that derogation is permissible in emergency situations, within the context of the rule of law, within the parameters of legality, necessity, proportionality, temporality and non-discrimination.

What we are now witnessing in many countries, and perhaps in Canada, is the enactment of normal legislation that seriously encroaches on human rights. These legislative measures—as well as the bureaucratic, military, intelligence and police apparatus that they create—are not necessarily non-discriminatory,

¹³ These instruments include the *Geneva Conventions on International Humanitarian Law*, the *Convention on the Status of Refugees*, the *Convention on Forced Labour*, the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *Convention on the Rights of the Child*, and the *Declaration on the Protection of Women and Children in Emergency and Armed Conflicts*

¹⁴ Inter-American Commission on Human Rights, “Report on Terrorism and Human Rights” (OEC/Ser.L/V/II.116, Doc. 5 rev. 1 corr.) of 22 October 2002 at para. 2.

temporary, proportional, necessary or in conformity with the relevant legal standards.

In such a context, human rights defenders often find themselves in opposition to their Governments as they decry the individual cases of rights violations and insist that effective and transparent oversight mechanisms be created to ensure that laws and systems integrate and respect human rights.

However, I repeat that human rights should not be opposed or balanced against security.

Human rights defenders have long recognized the terrible impact that terrorism has on human rights. As the Special Rapporteur on Terrorism stated prior to 9/11, “there is probably not a single human right exempt from the impact of terrorism.”¹⁵

Ever since the Vienna Declaration and Programme of Action of 1993, following the World Conference on Human Rights, the devastating impact of terrorism on human rights has been affirmed over and over, as well as its connection with other criminal organisations engaged in the traffic of human beings, arms and drugs.

Therefore, while human rights defenders could be allies in the international struggle against terrorism, far too often they are alienated from the work of States because of the lack of sensitivity to human rights.

This is because of the recurrent patterns in the ways that counter-terrorism efforts threaten our civil and political rights:

¹⁵ Kalliopi K. Koufa, “Human Rights and Terrorism: Preliminary Report,” (E/CN.4/Sub.2/1999/27) of 7 June 1999 at page 8. Broadly speaking, terrorism threatens the rights to life, liberty and human dignity; the rights protected by democratic societies; and the rights relating to social peace and public order.

- With vague, arbitrary and overly-broad definitions of terrorism in criminal law that allow political dissidents, non-governmental organizations and innocent civilians to be classified as terrorists.
- With arbitrary arrests, ill-treatment in detention and lack of fair trials that have undermined the Coalition's efforts in Afghanistan and Iraq.
- With inadequate safeguards in the use of financial measures to fight terrorism that has had a chilling effect on NGOs, perhaps discouraging them to embark on development and humanitarian activities in the most desperate areas.
- With asylum, immigration and border control policies that prevent the innocent victims of terrorists and tyrants to find safe haven.
- With extraditions, expulsions and deportations that are complicit in the practice of torture and the death penalty.
- With the right to privacy that is increasingly meaningless as our transactions and movements are recorded, profiled and stored.
- With the curtailment of freedom of expression and information that prevents the media and our institutional watchdogs from fulfilling their democratic functions.
- With sacrificed procedural safeguards that pervert the substance and appearance of justice.
- With discriminatory practices, such as racial profiling, that gives weight to the dangerous thesis of a clash of civilizations.

However, we must not forget that human rights include economic, social and cultural rights. These are the rights that require a certain degree of proactivity of the State, for example in terms of the right to health, the right to food, the right to education.

If we are going to escape the false dichotomy between security and human rights, it is imperative that we understand the **indivisibility** of human rights. In the west, our tendency is to emphasise human rights in terms of political rights and civil liberties, causing us to focus on the boundary between the State and the

individual. With such a focus, it is easy to fall into the balancing exercise that often reveals the weightlessness of our values.

However, once it is understood that human rights include civil, political, social, economic and cultural rights, the issue is no longer merely the limit of the State's coercive power vis-à-vis the individual, but also includes the State's responsibility for the realization of all human rights: the responsibility to bridge human rights and security; the responsibility for education and health; the responsibility for creating the conditions for international development, peace and security.

But governments do not bear this responsibility alone. All organs of society, including human rights defenders, must assume their share of responsibility as well.

In the creation of security, human rights defenders and democratic governments have a common interest in the rule of law. We must work together, build bridges, for our shared values are at stake.

Partie Quatre: Un rôle pour le Canada

Ce qui précède définit pour nous les enjeux et défis pour notre pays, son devoir d'exemplarité, son obligation de proposer, de rassembler et de convaincre.

Affirmer dans chacune et toutes ses démarches et décisions visant la consolidation de la sécurité au plan national et international, la primauté de l'état de droit et celle des droits humains.

Après trois années du traumatisme créé par l'immense tragédie de l'onze septembre, le temps est peut-être venu de renverser la perspective d'ensemble, de reprendre l'initiative sur notre propre terrain et de nous extirper durablement de la terrible logique voulue par les terroristes.

Si la menace terroriste apparaît toujours majeure, le récent rapport du département d'État des États-Unis affirme que le volume des attaques terroristes internationales en 2003 n'a jamais été aussi bas depuis 1969.

Notre pays doit être à l'avant-garde de ce réalignement qui n'exclue en rien la plus exigeante politique de sécurité. Il dispose toujours d'un crédit géopolitique et géoéthique qui l'autorise de prendre des initiatives audacieuses, à les faire partager et à les faire aboutir.

L'enrichissement de la gouvernance mondiale par la création d'un G20 au niveau des Chefs d'État et des gouvernements appartient à ces perspectives.

Contrairement à certaines interprétations, ce nouveau forum n'entrerait pas en conflit avec les Nations Unies et le système multilatéral. Au contraire, ce nouveau forum renforcerait la représentation de l'ensemble des régions du monde et ainsi enrichirait la compréhension de leurs intérêts et besoins.

Il en va de même s'agissant de la mise en convergence des travaux du Comité contre le terrorisme du Conseil de sécurité et ceux de l'Haut commissariat des droits de l'homme, aussi de l'extension de la juridiction de la Cour pénale internationale pour les actes terroristes majeurs. Ceux qui portent la responsabilité pour ces actes doivent savoir que l'impunité dont ils ont pu jouir dans le passé est aujourd'hui impensable.

La réforme des institutions dédiées à la promotion et à la défense des droits humains appelle des initiatives majeures et leur financement des décisions immédiates et substantielles.

Enfin, puisqu'il faut choisir, notre pays a la capacité avec d'autres de refonder l'aide publique au développement, d'en accroître le volume et la coordination dans l'esprit de la récente conférence de Rome. Le Canada doit notamment

soutenir l'initiative de facilité financière lancée par le Chancelier britannique Gordon Brown, initiative visant le doublement de l'APD et l'atteinte des objectifs du millénaire.

Avec le règlement des dettes et la définition des règles équitables de commerce, cette initiative forme un triptyque que le Canada doit soutenir avec constance et confiance.

L'enjeu principal de notre temps ne saurait être réduit à la « guerre contre le terrorisme », même si cette objectif est majeur. L'enjeu principal de notre temps est de conforter et d'accélérer l'expansion de la démocratie, de l'état de droit et du plein respect des droits humains. Cet enjeu est aussi dans la lutte contre l'incivilité dominant de nombreuses sociétés et constituant une vraie menace à la sécurité et un vivier pour le terrorisme. Crise de légitimité, déficit démocratique, dénie des droits : tels sont les vrais défis si nous voulons vraiment consolider la sécurité là où elle existe, et l'implanter là où elle fait défaut. Seul la sécurité humaine peut aujourd'hui garantir la sécurité commune.

Ne laissons pas les adversaires de l'État de droit, les opposants aux valeurs démocratiques et aux droits humains pervertir nos choix nationaux. Pour chaque mesure arrêtée concernant la sécurité, il faut prévoir un contrepoids qui la dépasse et l'inclut dans l'état de droit.

Notre conception la plus profonde de la dignité humaine, notre conception la plus exigeante des rapports entre l'individu et l'État garantit l'égalité et la sécurité de chacun et de tous par un régime de droit. Ce dernier constitue le socle de notre civilisation. Notre conviction doit être inébranlable concernant la force et la pérennité de l'état de droit, la primauté et la nécessité d'une reconnaissance effective de tous les droits humains.