



Security and Human Rights in Canadian Foreign Policy

Group of 78 Annual Policy Conference
September 24-26, 2010



Photo credit: Zorlah (zorlah.com), 2006

The Group of 78 is grateful for sponsorship from the:



CANADIAN COMMISSION FOR UNESCO
COMMISSION CANADIENNE POUR L'UNESCO
www.unesco.ca

Conference Organizing Committee

Richard Harmston, Chair, Group of 78
Gerald Ohlsen, Vice-Chair, Group of 78
Nadia Abu-Zahra, Executive Member, Group of 78
Joan Broughton, Treasurer, Group of 78
Peggy Mason, Executive Member, Group of 78
Michael Byers, Board Member, Group of 78
Mary Edwards, Executive Secretary, Group of 78
Susan Shenstone, Executive Member, Group of 78

Rapporteurs

Coordinator: Nadia Abu-Zahra, Assistant Professor, School of International Development and Global Studies, Faculty of Social Sciences, University of Ottawa

Rapporteurs:

Keyvan Abedi, MA Student, Norman Paterson School for International Affairs, Carleton University
Savannah Ashton, MA Student, Conflict Studies, St. Paul's University
Erin Chreptyk, MA Student, Conflict Studies, St. Paul's University
Anna Golubova, MA Student, Norman Paterson School for International Affairs, Carleton University
Heather Sheppard, MA Student, Conflict Studies, St. Paul's University
Nathaniel Hartmann, MA Student, Department of Laws, Carleton University

Contact

Mary Edwards, Executive Secretary
Group of 78
206 - 145 Spruce St.
Ottawa, ON K1R 6P1
Tel. +1 613 230 0860
Fax +1 613 563-0017
Email: group78@web.ca
Web: www.group78.org
Registered charity: 13056 2085 RR0001



The Group of 78
Le Groupe des 78

Contents

Acknowledgements	1
The Group of 78.....	2
Conference Themes.....	4
Position Statements.....	8
Keynote Address.....	11
National Security and Human Rights – A Fine Balance (<i>Reid Morden, Former Director of the Canadian Security Intelligence Service, Deputy Minister of Foreign Affairs</i>).....	11
Panel 1: International Interventions, Canada in Action Overseas.....	21
International Interventions, Canada in Action Overseas (<i>Carolyn McAskie, Former Assistant Secretary General for Peacebuilding, and Former Special Representative of the Secretary General and Head of the UN Peacekeeping Operation in Burundi</i>)	25
Lessons from the Field for Ottawa Policy Makers (<i>Eileen Olexiuk, Former diplomat with Department of Foreign Affairs and International Trade</i>)	29
Panel 2: Treatment of Canadians under “National Security”.....	34
Necessary Changes to Canadian Foreign and Security Policies (<i>Gar Pardy, Former Canadian Ambassador and Director General of the Consular Affairs Bureau, Canadian Department of Foreign Affairs</i>)	34
Treatment of Canadians under “National Security” (<i>Monia Mazigh, Human rights activist and Author, Hope and Despair</i>)	37
A Legal Perspective on the Treatment of Canadians Overseas (<i>Amir Attaran, Canada Research Chair, Population Health and Global Development Policy Institute of Population Health, Faculties of Law and Medicine, University of Ottawa</i>).....	40
Lunchtime Speaker	42
The Economic Roots of Political Instability (<i>Manfred Bienefeld, Professor, School of Public Policy and Administration and the Institute of Political Economy, Carleton University</i>).....	42
Panel 3: Security and Human Rights in the Law, Parliament, and Government Institutions	47
”Who’s Watching the Watchdog? Strengthening the Role of Parliaments in Overseeing National Security and Protecting Human Rights (<i>Robert Miller, Former President and CEO of the Parliamentary Centres. Senior Fellow and Lecturer at the Norman Paterson School of International Affairs at Carleton University</i>).....	47
Security and Human Rights in the Law, Parliament, and Government Institutions (<i>Jean-Jacques Blais, Former Solicitor General, M.P.</i>)	50
Conference Program.....	55
Conference Participants.....	56

Acknowledgements

Our thanks must go first to the Speakers and Panelists who contributed their knowledge, experience, and vision for the future of security and human rights in Canadian foreign policy:

Reid Morden, Former Director of the Canadian Security Intelligence Service, Deputy Minister of Foreign Affairs

Carolyn McAskie, Former Assistant Secretary General for Peacebuilding, and Former Special Representative of the Secretary General and Head of the UN Peacekeeping Operation in Burundi

Eileen Olexiuk, Former diplomat with Department of Foreign Affairs and International Trade

Gar Pardy, Former Canadian Ambassador and Director General of the Consular Affairs Bureau, Canadian Department of Foreign Affairs

Monia Mazigh, Human rights activist and Author, *Hope and Despair*

Amir Attaran, Canada Research Chair, Population Health and Global Development Policy Institute of Population Health, Faculties of Law and Medicine, University of Ottawa

Manfred Bienefeld, Professor, School of Public Policy and Administration and the Institute of Political Economy, Carleton University

Robert Miller, Former President and CEO of the Parliamentary Centre, now member of the Board of Directors. Senior Fellow and Lecturer at the Norman Paterson School of International Affairs at Carleton University

Jean-Jacques Blais, Former Solicitor General, M.P.

Thanks also to the Panel Moderators:

Gerald Ohlsen, Vice-Chair, Group of 78, and Chair, International Steering Committee, AFGHANISTAN: Pathways to Peace

Michael Byers, Professor, Canada Research Chair in International Law & Politics, University of British Columbia

Peggy Mason, Chair, Peacebuild

We also extend our appreciation to our sponsor, the Canadian Commission for UNESCO.

Most of all, thanks to the 95 participants who made the Conference possible, who collectively developed the Position Statements, and who continue to work toward security, human rights, and sound foreign policy.

The Group of 78

The Group of 78 is an association of Canadians committed to leadership in the promotion of global stewardship: a Canadian foreign policy based on the pursuit of peace, justice and global survival.

The Group began in 1980 when several concerned and distinguished Canadians crafted a statement on how Canada could contribute to the building of a peaceful, secure world. In November 1981 that statement, *Canadian Foreign Policy in the 80s*, was sent to Prime Minister Trudeau. It was signed by 78 Canadians – a group of 78. The statement set out three inter-related objectives.

In summary:

- removal of the threat of nuclear war
- mobilization of resources to achieve a more equitable international order
- strengthening and reform of the United Nations and other global institutions

That began a dialogue between the Group of 78 and the Canadian government. Members of the Group made their views known about new issues in international relations and their implications for these central and universal objectives. While these objectives remain valid, the world to which they apply has changed. As a result, after celebrating its twenty-fifth anniversary in 2005, the Group decided to re-examine its core statement of principles, its objectives and its operations. Two major conferences in 2007 lead to the adoption of a new statement of principles of Canadian foreign policy: *Global Stewardship: Awakening Canada's Commitment to the World*. A call was issued to Canadians and their government:

We call on Canadians to commit to the world with moral integrity, energy, enthusiasm and investment unparalleled in our history. We call on Canadians to demand that these principles guide our policies, at home and abroad: Justice, Peace, Survival.

Further, it identified concrete core objectives for Canadian foreign policy:

- Renew multilateralism
- Eliminate weapons of mass destruction
- Make a reality of human security
- Prevent armed conflict
- Protect the environment
- Promote and protect human rights
- Create a fair, democratically accountable international trading system
- Ensure effective development assistance
- Support and strengthen responsive and accountable governments.

Activities

The Group holds an annual foreign policy conference each September to deliberate on key issues and to formulate recommendations to government. In 2009, the Group addressed the Middle East in the framework of international law. In 2010, the theme was security and human rights in Canadian foreign policy.

The Group also holds monthly luncheon talks, open to the public, on a wide range of topics. Recent speakers have addressed aid effectiveness, peace initiatives for Afghanistan, guerilla diplomacy, blood diamonds, how Iran sees the world, waging peace, climate change, and the treatment of Omar Khadr. These sessions provide background and insight for participants and underscore the Group's public engagement and advocacy work.

Periodically the Group convenes other special events, often in cooperation with other civil society organizations.

Thematic panels, or working groups, with the organization track key themes of Canada's role in the world community towards greater understanding of the issues, recommending positions and actions by the government and civil society, and suggesting other program initiatives for the Group.

Through its Board of Directors, the Group produces positions on topical issues and recommends policy and actions for the Government of Canada to consider in its conduct of foreign policy.

The Group invites all like-minded Canadians to join it in pursuing these objectives.

Membership

The Group of 78 is open to individuals who identify with and are committed to the principles of the Group.

Contact Details

To join the Group of 78, or to learn more about its ongoing activities and aims, please contact:

Mary Edwards, Executive Secretary
Group of 78
206 - 145 Spruce St.
Ottawa, ON K1R 6P1
Tel.: (613) 230-0860
Fax: (613) 563-0017
Email: group78@web.ca

For more information, please also visit our website at: www.group78.org

Conference Summary

Nadia Abu-Zahra, Conference Rapporteur & Assistant Professor, School of International Development and Global Studies, Faculty of Social Sciences, University of Ottawa

Building on the knowledge learned and position statements adopted in the 2002 Group of 78 Annual Conference – also in part on security and human rights in Canadian foreign policy – this year’s conference included some of Canada’s foremost experts on the issue.

Taking stock of the developments in the fields of security, human rights, and foreign policy since 2002, speakers and conference participants discussed where to go from here. The themes below, highlighted in bold, correspond to the 19 position statements developed as the conclusion to the Conference.

Safeguards, Security and Civil Liberties, and Legislation

The keynote address, by Reid Morden, previously Deputy Deputy Minister of Foreign Affairs and International Trade and Director of the Canadian Security Intelligence Service (CSIS), stressed the need to narrow our current definition of “terrorism” and to revisit the legislation rushed through Parliament in recent years. Mr. Morden’s tremendous experience in the area peppered his speech with anecdotes and lessons for those who wish to listen. The strength of his words will be with us for decades to come, as Canada continues to struggle with external pressures – political as well as economic – to dismantle our human rights standards and practices.

Principles, United Nations, Inclusion, and Justice

The first panel, comprised of long-time diplomats and government leaders Carolyn McAskie and Eileen Olexiuk, emphasized Canada’s foreign policy and its repercussions today. Ms. McAskie, former UN Assistant Secretary General for Peacebuilding, spoke at length about our own failures and how we could address them:

The massive security response is not necessarily making us more secure in the long term. Other approaches are being proven to be effective in ways we can learn from. Whether we like it or not, the United Nations is the only global mechanism within which we can address the issue of global security, while respecting human rights and dignity, with an approach that brings social peace and economic security to all.

Aid volume does count, not just how much but *how* and *where*. Dialogue between governments is important. The Canadian Paradox is that while our bureaucrats are working away in Paris, New York and Geneva on all of this, our political masters are taking us in an opposite direction.

Eileen Olexiuk concurred. Speaking of her experience across multiple continents, she began with Colombia in the 1980s, moved to Russia and then the former Yugoslavia in the 1990s. She described how economic policies in Colombia and Russia failed to regulate profits for collective benefit, and contributed to a climate of corruption and intimidation. In the former Yugoslavia, Ms. Olexiuk described how Canada's transition from a UN-focus to a NATO-focus had deleterious effects on fundamental infrastructure, and deeply undermined international trust in Canadian interventions.

Yet Ms. Olexiuk's greatest contributions today lie in her profound understanding of Afghanistan. As Advisor to Canada's Commander in Afghanistan, and former Political Counselor, Deputy Head of Mission, and Senior Policy Advisor to the Stabilization and Reconstruction Task Force, Ms. Olexiuk knows more than most Canadians about the country to which we have sent the most troops in recent history. Her conclusion is that "Canadian foreign policy has become removed from a human rights and human security agenda". Discussion then turned to the increasing role of the military, the security of humanitarian aid workers, the relationship between Canada and the UN, and the role of the media in Afghanistan and elsewhere.

No Torture, the Media, Consular Services, Canadian Courts, and an End to Blacklisting

Panel 2 began with long-time diplomat Gar Parady. Despite his 36 years of service, Gar spoke most eloquently of the seven years since his official "retirement". Through a gentle, reasoned analysis, he came to the shocking conclusion that discrimination now permeates our system of consular assistance, such that "Brenda is up, Suaad is down". This passing reference to two landmark cases in recent Canadian history describes how Canada fought for the return of an incarcerated and convicted Canadian in Mexico, while simultaneously catapulting another Canadian into statelessness and prison in Kenya.

Dr. Monia Mazigh took up the comparison to illustrate the potency of the media, and the way in which it can act as judge, jury and prosecutor for Canadians stranded overseas. Dr. Mazigh also recommended that Canada re-institute a Parliamentary position (linked to the Minister of Foreign Affairs) to ensure the safety and well-being of Canadians abroad. Lastly, she warned against evoking national security to the detriment of human rights, and urged that an oversight body be present to ensure transparency and judicious application of such justifications.

Dr. Amir Attaran continued a theme begun by Gar Parady, that Canada is reverting to "royal prerogative" in its selection of whom to protect, rather than establishing a legal mandate to provide non-discriminatory treatment, subject to judicial oversight. Citing the example of Abousfian Abdelrazik – a Canadian detained and tortured in the Sudan until Canadian courts ordered our government to allow his return – Dr. Attaran explained, "There is a relationship of power in this situation where the citizen has no power, and the government has it all." More alarmingly, both the Canadian government and the United Nations Security Council are complicit in reversing the fundamental principle of justice into today's "guilt until proven innocent," through Resolution 1267, passed in 1999.

Discussion turned to the case of Omar Khadr, with the prediction that the case would mark a significant downturn in human rights – “one of Canada’s most shameful records”. In response, a new Bill is in progress to address inequities in protection and “to prove that a Canadian is a Canadian”.

Social Security, Regulation, and Equality

Over lunch, Prof. Manfred Bienefeld reviewed the current state of affairs regarding the global financial system. Recalling optimistic predictions for “trickle-down” capitalism and pessimistic visions of decreasing social protections and human rights, Prof. Bienefeld considered the latter to have proven truer. He compared today’s world to the “Golden Age” between the late 1940s and early 1970s, when, he explained, state and international systems set environmental and social standards to promote equality. By contrast, Prof. Bienefeld described how today’s situation is a consequence of privatization and “the intrusion into national jurisdictions of many corporate-inspired international rules and laws made by effectively unaccountable international agencies”.

Discussion linked these economic debates with human rights, revealing how reductions in state investments in public welfare are not only harmful to citizens, but even more so to non-citizens who are retained only as “migrant labourers”. Meanwhile a return to a rights-based society is decreasingly likely, given the state’s surrender of natural resources and political authority to external corporate interests. A final caution was given on the role of non-governmental organizations and private philanthropists, as neither are held accountable to an electorate, nor in some cases may be held accountable to state or international judicial systems.

Oversight, Diplomacy and Aid, Detainees, and Parliamentarians

Panel 3, presided over by former Canadian Ambassador for Disarmament Peggy Mason, began with an examination of the potential for Parliament to watch over security agencies in Canada. Former President and CEO of the Parliamentary Centre, Robert Miller presented a circumspect viewpoint, arguing that too often Parliament has been either weak or unwilling to take up responsibility for oversight of security agencies. Giving tangible examples like the G-20 Summit in Toronto, Mr. Miller observed a “lack of qualitative debate”. Raising one of the most important landmark cases in Canada’s history in Afghanistan, Mr. Miller pointed to the Afghan detainee issue as a striking example of our inability to defend human rights and to question immoral or illegal conduct.

Moving quickly to the government’s recent debacle in the parastatal organization, Rights and Democracy, Mr. Miller explained that the organization’s vulnerability was inherent in its creation and funding as a quasi-governmental agency. This sparked a comment that certain areas within Parliament, such as the Senate, take more interest in human rights than is publicly acknowledged. The subsequent speaker, Jean-Jacques Blais, who served as Solicitor-General from 1978 to 1979, and as part of the Security Intelligence Review Committee from 1984 to 1991, took up this comment in his talk on Canada’s parliamentary democracy and its emulation overseas. Significant agreement was found on the idea that parliamentarians – and backbenchers especially – could hear more from the

public, and from organizations like the Group of 78, on security, human rights, and foreign policy issues.

The final discussion brought forward two distinct but vital points: Canada's Joint Task Force Two, which is empowered with lethal capacities, is insufficiently subject to oversight; and parliamentary debate on Canada's non-military role in Afghanistan never took place. Succinct comments reflective of the conference themes included: "to reconstruct a country by waging war is impossible," and "the discussion about being open while we kick down the doors is nonsense."

Thus the Conference came full circle, from an opening about security in Canada, and the need for oversight of security agencies, to a discussion by high-profile diplomats about Canada's waning support for international (United Nations) governance, through to a harrowing view of human rights violations in which Canada is complicit, and finally back to the need for oversight and multilateral diplomacy.

Bringing the Conference to a close, and with hopes to share its findings and conclusions with a wider audience, the participants and the Group of 78 adopted the position statements outlined on the following pages. Should you wish to express support or constructive criticism for any of these statements, the Group of 78 would welcome your feedback and future participation. We extend our heartfelt thanks again to all who attended and gave of their knowledge and experience, and we look forward to hearing from you and many others in the future.

Position Statements

The following 19 position statements were adopted by the participants of the Conference and the Group of 78, as conclusions arising from the conference proceedings, and as items requiring action in future.

1. **Safeguards.** The definition of terrorism should be narrowed, so as to exclude democratic opposition. Safeguards must be in place to prevent the label of terrorism from being used when evidence is sparse.
2. **Inclusion.** The promotion of fear for political ends is inherently destructive. It places both civil liberties and civil public discourse at risk. It creates an atmosphere that may encourage the attribution of collective rather than individual responsibility for criminal acts.
3. **Security and civil liberties.** Our personal security depends on the universal enforcement of traditional civil liberties such as freedom of speech and expression, *habeus corpus*, and judicial due process, including a rejection of the use of secret evidence.
4. **Oversight.** Parliamentary and judicial oversight of the security services is needed; they prevent abuse of secrecy. A revitalized Security and Intelligence Review Committee is one form of such oversight.
5. **Principles.** Canada should uphold human rights even if international pressure dictates otherwise; economic interests can be pursued without compromising principles.
6. **No torture.** Canada should not use material gained from torture. Statements by officials – that we would use such material – must be addressed.
7. **Media** can be urged to create public pressure for upholding human rights. This must avoid compromising the security of the abductee (or other vulnerable person) or the integrity of the process.

8. **Consular services.** Differential and discriminatory treatment of Canadians is a growing problem and it must stop. Canada must implement legislation to ensure all Canadians in trouble abroad get equal and effective access to consular services, regardless of their situation, reputation, dual citizenship, or identity.
9. **Detainees.** Canadians overseas – military and others – must be accountable for their actions, and subject to Canadian and international law. This needs effective oversight mechanisms and transparency.
10. **Canadian courts** need to build their capacity to deal with security issues, and not shirk their responsibility for competency. As a specific example, the Supreme Court has ruled Omar Khadr’s rights under the Charter have been violated, but has failed to order a remedy. This must be rectified.
11. **Legislation** must be revisited, especially elements that contradict the Charter of Rights and Freedoms, and/or international law.
12. **Justice.** Canadian and international law needs to be upheld to avoid a culture of impunity and repeated violations of such law. Canadians are concerned that the government is undermining the rule of law in Canada by ignoring the House of Commons’ rulings (e.g. Afghan detainees) and failing to implement Supreme Court decisions (e.g. Omar Khadr).
13. **End blacklisting.** Canada was involved in passing United Nations Security Council Resolution 1267 (creating a list of “designated terrorists”), which violates fundamental principles of justice. Canada should be involved in repealing the Resolution.
14. **Social security.** In Canada and abroad, social and economic security should be priorities, as basic rights (without the justification that ‘preventing poverty is preventing terrorism’, because such statements further marginalize vulnerable groups).
15. **Regulation.** Canada and the world are on course to another economic crisis, so financial markets must be regulated. Markets must be re-rooted in the real economy and away from dangerously speculative finance.

- 16. Equality.** Canada needs a stable, sustainable economy that distributes wealth fairly, rather than the unequal and unjust economic model we have now. Canada's foreign policy should support such a model abroad.
- 17. United Nations.** Canada should bring NATO countries back into UN peacekeeping. Military operations should return to a supporting role, under clearly outlined civilian control within a political framework and defined objectives. Internationally, the UN should direct these operations.
- 18. Diplomacy and aid.** Canadian foreign policy should focus on prevention of conflict, rather than conflict intervention, through better funded and more vigorous diplomacy and development programs.
- 19. Parliamentarians** – the Senate, MPs, and especially backbenchers – can be better informed on and engaged in foreign policy, human rights, and security debates. Canadian citizens and civil society can contribute to this engagement, demonstrating the presence of a constituency for action.

The Conference and Group of 78 also adopted the following Resolution:

Resolution: Recognizing the importance of protecting and securing human rights in the face of national security concerns, we recommend that Canada give a high priority in its foreign policy to strengthening parliaments, civil society and other vital democratic institutions in their capacity to oversee and hold governments to account for their national security policies.

Keynote Address

National Security and Human Rights – A Fine Balance

Reid Morden, *Former Director of the Canadian Security Intelligence Service, Deputy Minister of Foreign Affairs*



Reid Morden, president of Reid Morden & Associates, advises on intelligence, security, and public policy issues. He has held a number of senior positions in the Canadian Public Service, notably as Director of the Canadian Security Intelligence Service, Deputy Minister of Foreign Affairs, and President and CEO of Atomic Energy of Canada Ltd. Following these appointments, he worked in the private sector with such firms as Kroll and KPMG Forensic Inc. He was appointed and served from 2004-06 as Executive Director of the Independent Inquiry Committee into the United Nations Iraq Oil-For-Food Program (Volcker Inquiry). Mr. Morden also served as an advisor to Justice O'Connor during the Arar Inquiry.

Mr. Morden graduated from Dalhousie University and has received an honorary LL.D. from the University. From 2002-08, he chaired the Board of Governors of Trent University and, during that time has also been Chair of the Council of Chairs of Ontario Universities (2004-2006). As well, he has been a member of the Board of Directors of the National Association of University Board Chairs. Mr. Morden has sat on the Board of Advisors of the Homeland Security Leadership Alliance as well as the Institute for the Study of International Terrorism and Violence. He has written extensively in journals, newspapers and other publications and he appears frequently on national and international radio and television.

Mr. Morden is a Member of the Order of Canada, a Grand Officer of the Order of the Southern Cross (Brazil) and a holder of the Ian L. MacRae Award from the Canadian nuclear industry.

The topic this evening presents us with a very wide canvas indeed. So wide, in fact, that I can really sketch only a few of the considerations we need to have in mind when finding that sometime elusive balance between the freedoms of the individual and the security of the state and its citizens.

Let me take you back 104 years.

After a three-month international conference, the final Act of Algeciras in 1906 marks the end of the First Moroccan Crisis. The powers recognize that France has special interests in Morocco. Germany's aggressive diplomacy has backfired and Britain now sees Germany as a real threat and has become firmly aligned with France, although it refuses to conclude a formal alliance. Russia, Italy, and the US are also becoming increasingly wary of Germany. European armies are beginning to make serious preparations for a general war while the naval rivalry between Britain and Germany is already over a decade old. With a little simple arithmetic and reading the newspapers everybody in this room could

have predicted with Lord Esher that “Within measurable distance there looms a titanic struggle between Germany and Europe for mastery”.

The point is that a hundred years ago, one could have predicted the First World War but no one could have looked ahead and seen the Bolshevik Revolution and the consequences of the “peace to end all peace” which concluded the “war to end all wars”. Equally, no one could have seen the worldwide depression, WW II, the cold war and its aftermath, the transition from which brings us into this 21st century. And are we likely to be better at predictions now than we were one hundred years ago? In my view, not by very much.

However, as with fields such as finance, trade and economics, governments see a responsibility to their citizens to gauge future threats which may bring them harm. In the shadowy world of terrorism, this often means virtually unprecedented burrowing into the lives and doings of citizens.

Off the top, perhaps the most fundamental shift is in the definition of national security itself. Historically, going back to Elizabeth I’s spymaster, Sir Francis Walsingham and beyond, the state was the traditional focus of foreign, defence and security policies; national security was about the protection of the state and its vital interests from attack by other states. Now, the concept has broadened to cover the responsibility of government to tackle a range of threats to individual citizens, families and businesses; governments have to manage the risks to them “so that people can go about their daily lives freely and with confidence, in a more secure, stable, just and prosperous world,” to quote the United Kingdom’s National Security Strategy.

So, traditional dividing lines blur: for example between domestic and overseas theatres of operations; and between the worlds of intelligence and law enforcement. There are, however, public expectations to be met that government will be able to provide threat warnings and advice on how risks to individuals and businesses can be minimized. And when things happen to affect the citizen anywhere in the world, such as the tragic terrorist bombing of a tourist bar in Bali, where so many Australians were killed or injured, we should not be surprised that public opinion demands inquiries by oversight committees into the intelligence community, into what they knew and what they might have been expected to know that could have allowed the attack to be anticipated. Equally, governments have redoubled efforts to advance knowledge into the attack.

Tucked away in this assessment of the world, is a very important category of information of interest in addition to traditional secret intelligence collection and the growing availability of open source information. Modern intelligence systems have to be able to access in a timely, accurate, proportionate and legal way, information about individuals and their movements and activities that resides in data bases subject to Data Protection or Privacy legislation, or which may be held by other Governments or global commercial organizations such as airlines or banks.

I am not just referring to traditional police inquiries after the fact to examine the records of an individual identified as a suspect. Effective pre-emptive intelligence may, for example, depend upon data mining techniques applied to records in bulk form. Such techniques inevitably involve trawling through the records of the innocent as well as the suspect to identify patterns of interest for further investigation. Obtaining international agreement on the sharing of such data also becomes very important to ensure future access to these vital sources.

In short, much of the information needed to track terrorist groups, including their financing, resides in these data-bases within our own societies, where the barriers to entry for the intelligence authorities are of a very different order and call for access expertise of a different kind.

The 'mission management' of planning intelligence access to these pools of information in a complementary way becomes correspondingly more complex, especially taking into account the domestic and legal considerations that come into play, particularly if the result is ever to be adduced as evidence in Court. In this area we are long way from traditional intelligence collection activity.

Let me go back to my founding premise on the balance in any country of the safety of the citizen and the security of the state. First, Canada is a nation of laws with respect, by and large, for the rule of law. Those laws by creating powers and safeguarding rights and freedoms try to find the balance as well.

Clearly there is often a dynamic tension and sometimes quite anomalous behaviour as we try to find our way through the maze to achieve the right kind of solution. For example Prime Minister Trudeau resorted to a decades-old blunt instrument of legislation, The War Measures Act in 1970 when he essentially enunciated the right of the state to carry out its functions without hindrance. And yet this is the same Prime Minister some years later who championed and encouraged some of the best minds in the country to craft what has become the seminal Canadian legislation protecting an individual's rights – The Canadian Charter of Rights and Freedoms.

Legitimate advocacy, protest and dissent are fundamental to the health of our democracy. When does such advocacy, protest and dissent cross the line from legitimacy to violence and incitement to violence? Where should the lines be drawn where matters of state or international questions are being debated, as we have seen in the protests and marches and criticisms in Seattle, in Quebec City, in Genoa and in Toronto?

To find this balance there has to be an understanding on both sides of the fence so to speak. Unfortunately, the dialogue needed to define this particular balance is largely absent, in part because at the back of the minds of those representing the state there lies a rather dark but nevertheless tangible suspicion. That suspicion is that those with legitimate concerns or relatively little understanding of the issues at play are stampeded by radicals and their particularly divisive and potentially violent course of action. Governments often feel that making concessions over the matter of peaceful protests would simply be the beginning of a slippery slope because the radicals have very little interest in dialogue and a lot of interest in simply taking one concession, putting in their pocket and then asking for more.

As a nation of laws, we must look at whether the anti-terrorism legislation brought forward by our government in the wake of 9/11 has materially altered the balance between the rights and freedoms of individuals to protest and to advocate and the safety and security of the nation and its population. At the time these issues were debated extensively across the country. Views ranged from a ringing affirmative that this legislation did pose dangers to our democratic rights to advocate and protest and dissent, to a rather muted call for improvements to the legislation by restricting some of its more

sweeping clauses, to some who say that parts of the proposed legislation did not go far enough. In other words, a healthy spectrum of differing views, intellectually yet passionately argued.

Significantly, there was a recurring concern that the new powers given to the police will not be effectively monitored and overseen to ensure that these provisions are rigorously restricted to matters which dwell directly on potential or actual terrorist activities or acts. In short there was uneasiness that, willfully, inadvertently, or through inexperience, the police will deploy these new powers in areas simply of criminality or in human rights issues. That is one the one of the most dangerous possibilities that exists in the legislation today. It is far too easy, hypothetically, that police in a municipality somewhere close to putting their hands on a drug dealer may resort to terrorism legislation when the evidence at hand does not meet the needs of criminal law.

The question is not whether Canada needed additional legislative heft in its efforts to counteract terrorism. It did. The question is whether the hastily drafted legislation, which exists today, has accomplished its essential purposes without unacceptably moving the line of balance between legitimate advocacy, protest and dissent and the security of the state and its inhabitants, thereby unacceptably chilling the very practice of legitimate advocacy, protest, and dissent.

States have the inherent right in international law to take action individually and collectively to deal with terrorist attacks and to safeguard peace and security of their populations. Article 51 of the UN Charter codifies this right. It says that nothing in the Charter “shall impair the *inherent right* of individual or collective self defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”.

In addition, supporting direct action is the legal doctrine of self-help in times of necessity, reflected in numerous decisions by the International Court of Justice and its predecessor, the Permanent Court of International Justice. In the case of “Nicaragua versus the United States” in 1986 for example the ICJ recognized this right. That doctrine, part of the inherent right of state security, allows states to take actions to protect themselves, individually and collectively, in terms of immediate and grave threats to international peace and security and to their own safety.

Financial Assets

9/11 and subsequent terrorist attacks raised questions about the adequacy of Canada’s existing laws on economic sanctions and embargos as well as its laws permitting the freezing of financial and other assets belonging to or forming part of the activities of any international terrorist organization. The present Canadian regime is divided among at least 3 different statutes and separate enforcement regimes. Sanctions are enforced mainly through the provisions of the United Nations Act and the Export and Import Permits Act. The Special Economic Measures Act has been little used up until now but is also relevant.

There are also limitations under the United Nations Act. The most critical limitation being that it can be used only to implement Canada’s obligations under binding resolutions of the United Nations Security Council adopted under Article 41 of the UN Charter. There is no authority for the federal cabinet to make orders beyond the scope of such resolutions. Therefore if the Security Council does

not act under Article 41, no cabinet orders can be issued under the UN Act whatever the crisis or whatever the urgency to protect Canadian interests.

With these limitations in view the federal government has filled some gaps by its issuance of a series of suppression of terrorism regulations. These regulations implement UN Security Council Resolution 1373 and for the first time include a list of terrorist organizations in addition to the Taliban and bin Laden and his circle. They make it an offence to knowingly raise funds for or deal in the assets of any such listed organizations. In addition these regulations impose significant new reporting and disclosure obligations with the onus placed on Canadian financial institutions to determine “on a continuing basis” if they are in possession or control of terrorist property.

These regulations were designed as the government’s reaction to the new situation and often relied on the United Nations Act and the UN Security Council’s resolutions to deal with:

- Freezing terrorist finances;
- Impeding terrorist fund raising;
- New funding for various security measures;
- Enhancing its monitoring and assessment of Canada’s critical infrastructure, such as communications centres and its nuclear power plants;
- Enhancing the integrity of the passport system (more screening of applicants, new technology); and;
- Creating new ID for landed immigrants which should be harder to falsify.

At the same time the government has also carried out a review of existing and pending legislation to ensure that it does not leave gaps in what must be a seamless security related web. This review culminated in the introduction of an omnibus anti-terrorism bill, Bill C-36. That bill had four objectives:

- Stop terrorists from getting into Canada and protect Canadians from terrorist acts;
- Bring forward tools to identify, prosecute, convict and punish terrorists;
- Prevent the Canada-US border from being held hostage by terrorists and impacting on the Canadian economy, and if we think of the two billion dollars that go over the border, we can see the significance of this point; and
- Work with the international community to bring terrorists to justice and address the root causes of such hatred.

Despite serious reservations from respected legal quarters as to the breadth of Bill C-36, the *Anti-Terrorism Act*, it was rammed through Parliament by the government very quickly, partly because it was seen as part of the effort to counter Canada’s allegedly soft image on terrorism. This is an image particularly alive and well to this day in our neighbor to the south. At the time, the Minister of Justice defended this legislation as constituting a balance between the protection of society and the safeguarding of Canadian rights and freedoms. She said that it was necessary to give the justice system the tools it needs to shut down terrorism, first, by identifying by definition the unique attributes of terrorist activity that distinguishes it from other forms of criminal activity; second, the

legislation purports to create a criminal law structure around the terrorist problem including creating distinct offences of facilitating, financing and otherwise participating in terrorist activity.

Bill C-36 exists largely in the form it was originally passed and its inherent problems were both conceptual and specific. Conceptually, the Act diminishes due process protections as it seeks to introduce counter-terrorist measures, allegedly in conformity with the Charter. The specific problem with the Bill is the very definition of terrorism. The definition of “terrorism” is so wide that it could easily catch behavior that does not remotely resemble terrorism. Once the “terrorist” label is fastened on an individual, organization or a suspect, then the rules of procedural justice are more easily suspended.

The Act’s definition of “terrorist activity” also targets “political, religious or ideological beliefs”. In response to objections, the Justice Minister brought in a last minute interpretative amendment purporting to provide assurance that basic rights of the Charter would be respected. The amendment says that an expression of political, religious or ideological beliefs is not *alone* a terrorist activity unless it is part of a *larger conduct* that meets the other requirements of the definition. Some legal experts have suggested the amended definition will still invite law enforcement authorities to engage in “ideological profiling” which can be just as invidious as racial profiling. In this sense the Act permits individuals and organizations to be marked for the beliefs they hold and espouse, which is something quite inconsistent with traditional Canadian values. In fact, this approach was rejected as a result of Parliamentary debate over similar provisions in the draft of the CSIS Act in the early eighties.

The Act also gives the Minister of Public Safety the virtually unreviewable power to act on the advice of CSIS or the police in branding activities and organizations as “terrorist”. It is no secret that the communities most vulnerable to being listed are those who are visibly identifiable as racial, ethnic or political minorities, recently arrived in Canada as immigrants and refugees. Yet these are the communities most dependent on their organizations for language and relocation services as well as to that vital link to their homeland. The diminution of reviewability or due process in these situations is very worrying.

Two other original provisions in the Act that are worrying are the preventative arrest and investigative hearings. The Minister of Justice at the last minute tried to soften the extreme nature of these powers by providing a sunset clause under which the Bill would be reviewed after five years. In my view the sunset clause is simply an excuse for intellectual and political laziness, failing to come to grips with the fact that these provisions, in an unprecedented way, override fundamental religious, expressive and associational freedoms that are at the core of section 2 of the Charter. In resuscitating these provisions, the current government has renewed the debate as to whether they meet the “demonstrably justifiable” test of the Charter.

One must never forget that the existing criminal law in Canada already prohibits a broad range of terrorist activities, including agreements, attempts, assistance and counseling of crimes. But, in playing catch-up after 9/11, the Canadian government went beyond the British and American legislation defining terrorist activities to include legal, political, religious and ideological protests that intentionally disrupt essential services. The broader Canadian definition then becomes the lynch-pin for other new offences such as facilitating and instructing terrorist activities and participating in the

activities of or harbouring those who commit terrorist activities. The overall effect is to lengthen the long reach of the criminal law in a manner that is complex, unclear and unrestrained.

What are some examples of activities that can be caught under the legislation's definition of "terrorism" that do not remotely resemble terrorism? Consider these:

- Protest activities by Aboriginal people which disrupt an essential service or block a road as a protest against development activities on Aboriginal lands;
- Workers involved in recent nurses or truckers strikes or the protestors of the Quebec City Summit of the APEC Conference in Vancouver;
- Political activists who may have appeared as "terrorists" to those in power at a given time but who are ultimately remembered as champions of freedom such as Louis Riel or Nelson Mandela, or;
- Community groups who sponsor Muslim immigration into Canada where an immigrant is alleged to be involved in terrorists' activities in the country of origin, even if this was sometime in the past.

Over time, many of the misgivings will be addressed by the courts and, ultimately, by the Supreme Court under the Charter. This should not be regarded as a bad thing. The court can and will act as an effective institutional brake on the inherent excess contained in the law as drafted. This will not in any way diminish Canada's anti-terrorist efforts militarily or in terms of intelligence and policing measures, screening of entrants to Canada, border measures and air security.

Some of the more controversial parts of Canada's anti-terrorism legal framework have not been actioned, and those that have, have been given a rough ride either in the courts or in judicial inquiries such as those conducted by Justices O'Connor and Iacobucci. That said, I do not think it has been demonstrated that the limits placed on fundamental religious, expressive and associational freedoms guaranteed to Canadians by the Charter are demonstrably justifiable in a free and democratic society.

A Sense of Danger

In Toronto, less than a month after 9/11 I spoke to the Canadian Council of Chief Executives – which comprises the CEOs of Canada's 150 largest companies – on the threat and what Canada needed in updating and upgrading its security. Walking back to our offices after the event, the Chair and CEO of one of our major banks said to me: "That was very interesting, Reid, but, of course, it will not happen here". The task of intelligence and early warning providers is to persuade the public of a real and realistic sense of danger. This, in turn, goes to the credibility of the provider, who must ensure that the products meet the real needs of the public. Concepts and messages should be straightforward, and strong analytical backup must be apparent and available.

This task is harder or easier depending on how accustomed the public or policy-maker is to utilizing and assessing intelligence. In Canada, the task is harder because policy-makers, senior bureaucrats or politicians, outside of a small community, are not aggressive users of intelligence in their day-to-day decision-making and in communicating this information in a measured way. The task is further complicated by the need to temper the sense of danger with a solid dose of pragmatism. The crystal ball will often not yield much beyond a hazy picture of possibilities and probabilities. Quality of

analysis is key and above all, avoidance of the temptation to overstate – a flaw found in all governments and notably in the military and the security establishments. Never was the old story of “the boy who cried wolf” more apt.

Let’s return to the problem of persuading the public to take warnings seriously. The first challenge for intelligence providers is to get their products out of the hands of the security professionals and into the hands of those senior enough to be able to communicate or act on the substance of the information provided.

Now, let me now take you back to July 2005. Two deadly bombings in London, one in Sharm el-Sheikh, and kidnappings and killings continued in Iraq. An apparently innocent man shot dead by police in the London subway. The Canadian reaction was interesting. Media comment trivialized the threat to our country. Criticism of the Minister of Public Safety who had acknowledged in public that Canadians should at least be psychologically prepared for an attack, and was reaching out to affected communities to address it. There was a very much belated condemnation of violence against innocents by the Canadian Islamic clergy, and a call to his community from one prominent Muslim cleric not to cooperate with Canada’s security services.

Why would he do that? For a variety of reasons, including our own foreign policy which leads us into areas of ideological and religious conflict, where violence is often seen as the means of resolution. What has changed is that we are no longer simply a refuge for those seeking escape from hatred and strife in their homelands or a parking spot for those few who abuse Canada’s hospitality and bring those homeland problems to our door. Now our own policies and actions motivate those who disagree with them to retaliate on Canadian soil.

And we do not need to look to foreign policy to sense what has changed in our comfortable world here in Canada. Our own country’s human landscape is dramatically changing, as is our increasingly urban geography. This is a demographic which, within a decade, will see 25% of Canada’s population comprised of citizens and residents originating from Asia, Africa, and Latin America.

A publication by the Institute for Research into Public Policy (IRPP), *Belonging? Diversity, Recognition and Shared Citizenship in Canada*, edited by Keith Banting, Thomas J. Courchene and F. Leslie Seidle, suggests that Canadians have done a reasonable job to date in managing diversity. However, the same study warns that we have unfinished business both in recognizing and respecting difference and in strengthening social integration.

Across the country there has been considerable reflection about how Canada accommodates its growing diversity. While dialogue, such as that provided by the Bouchard-Taylor Commission in Quebec, offers an opportunity for people to share their concerns, the IRPP publication argues that we must keep a balanced perspective. Overreaction and drastic changes to policies would be as bad as inaction. And the book concludes that Canada does not need to make a U-turn in its approach to multiculturalism and diversity.

It nevertheless warns that problems could result from rising levels of immigrant unemployment, roughly double that of the Canadian-born population, lower income levels for recent arrivals, greater instances of perceived discrimination felt by newcomers, and slower social integration of visible

minority immigrants. Most worrying, in my view, is the evidence that the sense of discrimination is higher among immigrants who have been in the country longer and among the children of immigrants.

Out of these dissatisfactions emerges the home-grown or second generation terrorist, some of whom have already been tried in Toronto and more will be tried given the recent arrests in Ottawa.

In all this complex and potentially explosive mix, what is needed is recognition from the Canadian public that there is a threat and that it is every citizen's responsibility to help minimize that danger. We also need sustained government leadership which levels with Canadians on the dangers and deals firmly with elements of any community supporting or advocating violent acts, no matter the cause.

The Judiciary

Finally, a few words on the role of the judiciary. The challenges of the security situation places a heavy onus on the courts, an onus that cannot be unloaded or ignored, to ensure that security legislation and police and security powers fit within Canada's constitution and play an important role in identifying that crucial balance between the rights of citizens and the security of the state.

It is crucial that Canadian judges do not shy away from a potentially dangerous dimension which may be increasingly added to their daily workload.

There are a number of dimensions at play here, not least the physical security of our courtrooms. The elaborate security measures taken in the Air India trial perhaps give some indication of what may become *de rigueur* in courtroom architecture and processes when trying cases where violence is never far from the door.

Jurisdiction and venue may well also be considerations. We are just at the opening act of this drama and may not have determined what provides the most effective means to deal with these issues. Perhaps there should be a tribunal to hear security/terrorism cases, or, conceivably, designated judges (as happens now in the Federal Court) in different jurisdictions who will gain the necessary expertise. Whatever the solution, it must also obviate, to the extent possible, the ability of either side of the case to go "forum-shopping".

Canadian judges would be less than human if they did not at least reflect on what has become a distressing trend on the US Federal bench. In essence, judges there, when faced with security or terrorist issues, have often said – "that's above my pay grade and anyway, surely the Federal government is in the best position to judge". We have seen this not so long ago, when a Federal judge dismissed Maher Arar's civil suit as the issues of national security and foreign policy it raised were seen as special factors beyond the competence of that particular court. In Canada, particularly in the light of recent Supreme Court decisions, there may well be a similar propensity on certain benches, -- particularly with respect to the will to detain foreign terrorist suspects.

These types of issues will increasingly come before the courts and they will bring with them unfamiliar issues and unfamiliar contexts as the amalgam of intelligence, criminal behaviour and terrorism comes together.

The most proximate links are the operations of organized crime which essentially cut across both criminal and terrorist activity. Organized crime is often defined as activities driven by the desire for financial gain while terrorism constitutes activities driven by political or social goals. Perhaps, but increasingly organized crime and terrorism are not far apart. Certainly there are many parallels, aims and objectives, lines of business (e.g. money-laundering, drug running, etc.) that often overlap and intersect. Given these interactions, there should be a concern about the presence of organized crime in our ports and, increasingly we are told, at our airports.

Complicated as all this may sound, and unfamiliar as many of the factors which lead to security/terrorism cases before the bench will be, I urge that judges meet this new set of challenges directly. One important reason is in the court's role in protecting the rights of individuals. This is a role both prophylactic and remedial. It is also one, and I say this with some emphasis, which cannot be left solely to the discretion and disposal of the executive branch or legislative arms of government.

This becomes a matter of some complexity as the state begins most security cases with a substantial advantage, claiming the need for secrecy because of possible damage to the country's foreign policy interests and the dangers if intelligence methods are disclosed. This is a minefield, but one which must be traversed if the balance is to be struck between the interests of the state and the rights of the individual. Various aspects of this issue are dealt with in some detail in Professor Forcese's book on Security Law. I noticed, particularly, his comment that the Federal Court has indicated that, in finding that balance, government claims of national security already have a finger on the scale. I also thought important his citation of one of the Johannesburg Principles that national security claims to restrict disclosure are not legitimate if the underlying purpose of the claim is to shield government from embarrassment or exposure of wrongdoing.

Delving behind the government's cloak of secrecy may in fact be one of the most complex tasks judges will face. Otherwise, our intelligence organs (CSIS – CSE – RCMP) are bound by our laws which are quite transparent and those charged will often be brought to court under provisions of the Criminal Code, territory generally familiar to the judiciary. Even here, however, security issues may bring dimensions to criminal cases that go beyond the familiarity of judges, and beyond precedent, at least in Canada.

Conclusions

The real test of our values as Canadians is in how they guide us in times of crisis, whether through military, intelligence, policing, administrative or legal responses. In the past, we did not always measure up, for example, when we interned Japanese Canadians in the early forties or jailed hundreds of innocent Canadians in Quebec in 1970. But we have made progress. The 1988 Emergencies Act, which replaced the discredited War Measures Act of 1914, is a good example of this. And since September 11th, our national government for the most part has been more sensitive to the need for balance, for a coordinated response reflecting modern realities, for effectiveness in terms of deploying government resources and ensuring that we continue to have a Charter of Rights and Freedoms against which legislative or administrative excess may be tested before a competent judiciary.

The fact that Canadians are willing to debate these issues remains an important part of our freedoms, and part of the creative tension that exists in a free and democratic society.

Discussion

Q:

Is there an appropriate balance between rights and security and is there a difference when talking about restrictions on Canadian officials and agents abroad as compared to at home? This is not just extra-territorial occupation in the Charter, but more generally how we as Canadians should feel about the international dimension of our government's actions?

Reid Morden:

Canadians abroad operate by way of organizations bound by Canadian laws, and that is your starting point. The grey area is if CSIS would use material gained through the use of torture, and a CSIS officer recently stated that they would. This is not a matter of evidence or going to the courts. I do not think the judiciary is prepared to deal with these kinds of issues.

Judges have a rich experience dealing with various aspect of criminal law or civil law, but very few of them, including Justice Major, have knowledge of security law. Just as when the Charter was young, there were a lot of crazy decisions, and these get ironed out as the appeals go through the court system to the Supreme Court.

We will experience a similar process in Canada in developing a body of reasonable and respectable judicial approaches to the use of Canadian law applied to security situations. If we stop relying on the courts to help find the balance for us, we're walking away from an important tradition in this country.

Q:

With respect to the role of Parliament in all this, the keynote address does not draw a very flattering picture. On the one hand, Parliament did not play a good role in Bill C-36, but then also Parliament managed to play a good role in the CSIS act. Where do you see the role of Parliament, whether you see the need for a greater role for Parliament?

Reid Morden:

Given the current makeup of Parliament, no. As far back as when I was CSIS director, Members of Parliament on the Solicitor General's committee would suggest that we need oversight where they can really get into these things, similar to special oversight committees in the US Congress.

I was horrified then, and am horrified now that it may happen, and doubt that Members of Parliament would be able to keep a secret because of partisanship.

Comment:

There is a good question as to how we define terrorism. I think that many people, including Canadians, feel possibly the greatest terrorist in the world was US President George W. Bush who not only engaged in a war which many people feel on false pretences.

We need an understanding of the threat to humanity at large from the threat of war, and we need to better define what terrorism is. Many people, including Canadians, feel the threats to them do not come from the terrorists as usually defined, including in the keynote address.

Q:

How can the process of appointing competent judges be improved in the future?

Reid Morden:

I agree that we have to get the very best people on the bench. There is a lot of imperfection in any human system, but I take comfort that the best in senior benches are very capable people, and believe this will counter any excesses in lower benches.

The federal court, especially in the trial division, was composed largely of cabinet ministers, and in great measure still is. Is that a good idea? I will leave that to you.

Q:

I have a question on the word blowback, and on how we define terrorism. I am against individual terrorism, as well as state terrorism. Since 9/11, there has been a shift in how counter-terrorism is carried out, to the detriment of the Muslim community. How are we behaving in terms of Special Forces, assassinations, tortures, etc? What kind of effect does that have on the community here who originate from that part of the world where we carry out or support such acts? Not to justify terrorism, but could you comment on blowback?

Reid Morden:

With regard to the case of Maher Arar, the government spent millions to get to the bottom of that, and I think Justice O'Connor's set of recommendations indicate that that the system is working. There was a wrong, and it was fixed.

With respect to the intimidation of the Islamic community, I want to address this directly. In 2005, the religious leaders of the community came out very belatedly against violence against innocents. The community has a responsibility to indicate that they are a part of the kind of society that we want here, and that means a repudiation of violence against the innocent, and until that voice is heard louder from that community at large in Canada then I'm not very sympathetic.

Comment:

I have quite a bit of contact with Muslims and the opinion of many in the community is that CSIS is part of the problem. They feel that they are observed as guilty no matter what they do.

With regard to the Imam in Toronto who does not wish to cooperate, he follows the symptom of the targeted American Imam who was only radicalized after being in solitary confinement for 18 months. The Muslims' fear of CSIS and RCMP is very real and it's something that will lead to a self-fulfilling prophecy.

Q:

Radio-Canada had coverage on the FLQ and the failure of the police at that time to recognize the dangers because the transfer of information from one organization to another was not taking place. I hope we have fixed these issues since.

With respect to your comment on intelligence and the British using intelligence more in government decision making, do you have any comments?

Reid Morden:

Society has come to grips that it's a more ruthless world, and the security services have to get over their paranoia. When it comes to sharing, the security services do not like to reveal what the weather is to their neighbor, let alone substantive intelligence. We have some strides in that, but we're not perfect, and they have to continue to get a lot better.

Various nasty things have been said about George Bush, and I have to say that if you do not like your neighbours in your individual lives, you can move, but as a country you cannot change the neighbourhood, and you cannot change the facts about the amount of trade that we do that goes to the United States. I'm not here to defend free trade, but any interruption on our trading relations with the US has a big impact on Canadians' well-being to care for their families and so on.

You do not have to roll over and agree on everything with the Americans, but that said, they are who they are and we have to live accordingly.

Q:

I was very disappointed with the answer on Muslim clerics. As a Muslim who is very secular living here for 40 years, and for you to expect Imams to rise in unison and condemn what happened is unfair and should not be asked of them any more than asking the Irish population in the US to condemn McVeigh or asking all Sikhs in Canada to condemn the Air India terrorist act. I do not think Muslims have anything to apologize for. There are always bad apples, among all of us, and those bad apples have to face of law.

Reid Morden:

I regret you feel that way. Equally, in disagreement you should respect the words that I use. The community should not have to rise up. However, absence of a stronger voice in the community regarding the use of violent means is irresponsible in itself.

Comment:

I would like to follow along on this discussion. The recent arrest in our midst in Ottawa of labeled terrorists did evoke considerable public apologies among Muslim community to the point of presumption of guilt. I would say that is equally dangerous. I would ask why a group would come out to distance themselves to that degree that they would let others in the community believe they think them guilty before they are tried.

Panel 1: *International Interventions: Canada in Action Overseas*

Moderator: Gerald Ohlsen, Vice-Chair, Group of 78, and Chair, International Steering Committee, AFGHANISTAN: Pathways to Peace.

Gerald Ohlsen is a retired Canadian diplomat. As a consultant and commentator, he has focused on peacebuilding and conflict-prevention issues and has been active in a variety of civil society organizations, including Peacebuild-The Canadian Peacebuilding Network, The Group of 78 and the Ken Saro Wiwa Foundation. For the past three years, he has led the development of AFGHANISTAN: Pathways to Peace, an international civil society initiative to promote and support Afghan civil society engagement in an eventual comprehensive peace process and is presently Chair of its International Steering Committee.



Mr. Ohlsen's 35-year diplomatic career focused on African affairs and the promotion of human rights and democratization, particularly as tools for the prevention of internal conflict. He was head of the Canadian mission in Nigeria in the early 1990s and in Rwanda subsequent to the genocide. Mr. Ohlsen worked closely with Nigerian human rights and pro-democracy organizations and helped lead international opposition to the human rights abuses of the military government. Earlier, in Zambia, he actively supported the democratic transition in both that country and Malawi, and was the officer responsible for Canada's relations with the headquarters of the African National Congress of South Africa. In Ottawa, he served most recently as Senior Advisor to both the Secretary of State for Africa and the Director General of the Africa Bureau. His early career involved assignments in Madagascar and Ethiopia (with the United Nations Development Program) as well as in Guyana, Sri Lanka and Indonesia (with Foreign Affairs). During the 1970s, he was a member of the Canadian delegation to the diplomatic conference to update the Geneva Conventions.

International Interventions, Canada in Action Overseas

Carolyn McAskie, Former Assistant Secretary General for Peacebuilding, and Former Special Representative of the Secretary General and Head of the UN Peacekeeping Operation in Burundi

Carolyn McAskie served as Assistant Secretary General for Peacebuilding, Special Representative of the Secretary General and Head of the UN Peacekeeping Operation in Burundi. Her previous appointment was Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator at the UN Secretariat in New York, serving as Emergency Relief Coordinator. Prior to her appointment with the



Photo credit University of Ottawa

United Nations, Carolyn McAskie had a career with the Canadian International Development Agency (CIDA). She served as Vice-President for Africa and the Middle East Programs and Vice-President of CIDA's Multilateral Programmes Branch, holding the rank of Assistant Deputy Minister. Throughout her career, Carolyn McAskie has played a prominent role in multilateral negotiations as a Canadian delegate to the UN Funds and Programs and in the Governing Councils of the International Financial Institutions, including the African Development Bank, the Asian Development Bank, the Inter-American Development Bank, and the Global Environmental Facility. Carolyn McAskie is an Officer of the Order of Canada and a Director of Canadem and the Pearson Peacekeeping Centre.

“Peace starts with ourselves and in our hearts.”

In regards to international interventions, Canada in action overseas pre-supposes that Canada will intervene. Is that still a valid assumption? Why would we assume that Canada will intervene: in what; on what grounds; by what means; and to what ends? Are there historic and current reasons which drive decisions on intervening? Or are there new imperatives and new understandings?

Due to globalisation, all of us, North or South, richer or poorer, have a broader understanding of what is happening in the world and where the injustices are, and due to development in the fields of security, development and human rights, we are gaining a better understanding of what can be done to address the problems which exist not only on our doorstep, but far away. We know how people live in countries where there is poor governance, poverty or no respect for human rights. And people who live in those countries know how we live. There is no “far away” any longer. The law of unintended consequences has brought it to our doorstep, whether dramatically, on 9/11, or gradually, through refugee migration. In the first decade of the 21st century, we have managed to prove that there is more than one way to respond, but only one way to succeed. The massive security response is not necessarily making us more secure in the long term. Other approaches are being proven to be effective in ways we can learn from.

Research is now showing that societies which invest in closing the equality gap between rich and poor (rather than going dramatically in the opposite direction like our neighbour to the south) have less crime, less violence, less drug abuse, less child abuse and are actually being more productive. Cutting social services, as well as creating injustices, is not a good economic response.

An approach centred only on a political and security agenda will fail. The human rights agenda, humanitarian and development approaches must inform the political and military agenda. Advancing the human condition is a global good. Canada has intervened in the modern era for reasons of global responsibility. For many years, we intervened through UN Peacekeeping, which we see as our own brainchild. But it is a child we have abandoned. After serving in every UN mission for three and a half decades, Canada abandoned the UN just as it most needed our help and as it turned the corner. We left, to play with the other team, NATO.

Our leaders seem to misunderstand our role in the UN as a responsible member state; they are re-writing our aid interventions in a way which ignores decades of painful learning; and they show no understanding of the need to commit for the long term when we intervene in failed or fragile states.

Growing Understanding of “Fragile States”

One of the most important global and national imperatives is to deal with inequality and exclusion, both for reasons of human rights and justice and for reasons of national and international security. There is a growing awareness of the link between security and development and the need to get the balance right. There has been an imbalanced emphasis on a security response, necessary as that is, to which everything else has to bend. The world may have been better off in many situations, from Sri Lanka to Rwanda to Afghanistan with a balance in which human rights, humanitarian principles and development needs were the drivers rather than the followers of the political and security agenda. However, we left it too late in all cases and were left with no choice but the security response.

There is a growing awareness of fragility around the world. Still being in a learning mode on all fronts, we need be modest about getting it right. The problem is that the longer we get it “wrong” the more dangerous it becomes, and the more urgent it becomes to make it right.

It is not believed that Canada can separate our security from the questions of Global Security. The tragedy of 9/11 was a triple tragedy: the event itself, the terribly misguided response, and the years of neglect which led up to it. 9/11 had brought Global Security up close and personal.

Setting the Stage

For Canadians, Afghanistan is the big global problem, although we are also active in Haiti and a few other hot spots. However, there are many other parts of the world where state-building is going on, particularly in Africa. Peacebuilding is the new buzz word, but why should it matter? Firstly, we must ask whether we are expecting too much or too little. The concept of an effective nation state is a fairly recent one – the Westphalian model may be 350 years old – but the concept of a “war free” Europe is only 60 years old. Why, therefore, do we expect short term military intervention and meagre aid efforts to effect peace, security, human rights and development in states which did not exist 50 years ago? The problem of course is the terrorist threat which has put us all on fast forward.

The 1990s was a decade of at first hope and then despair. The end of the Cold War brought great possibilities of cooperation on the Security Council, and a more complex form of peacekeeping brought results in countries such as Namibia, Angola, El Salvador and Cambodia – but the tragedies of Somalia, Rwanda and Srebrenica put early successes in the shade. The paradox of the Canadian role was that while Canada was playing an important role on the Security Council in improving UN Peacekeeping (1999-2000), Canada walked away from UN Peacekeeping and shifted to NATO. Humanitarian coordination and response improved dramatically after the first Gulf War, but as the peacekeepers pulled out the humanitarians became the ones dying in foreign wars. Canada was an important donor and a player in improving coordination. Mediation became more often the order of the day with a greater sense of collective responsibility, but many intractable situations kept recurring: Liberia, Haiti and Burundi. Canada was involved in some of these exercises, particularly Haiti.

In an age where we have the knowledge and understanding of what the important global problems are and what tools are needed to address them, the question is whether we have the *heart* (do we care enough?), the *mind* (do we understand enough?) or the *will* (will we put the resources in?) to pull it all together. What is needed is a better sense of a global agenda, and the responsibility of all nations to address it. Whether we like it or not, the United Nations is the only global mechanism within which we can address the issue of global security, while respecting human rights and dignity, with an approach that brings social peace and economic security to all.

Security and Development Balance

We do need robust military responses, but not alone. Human rights concerns, humanitarian response, and laying the ground for development must inform the security agenda, not vice-versa. Looking for and supporting decent leaders is important, but do not expect perfection. More resources are needed for the UN and African Union peacekeeping for Somalia, Sudan, and the DRC.

Aid Volume

Aid volume does count, not just how much but *how* and *where*. There is a need for “appropriate” aid for fragile states early on before they fail. By focussing on project aid, Canada has recently dealt itself out of aid to fragile states. What will be our follow-on strategy in Afghanistan? It is not the sovereignty of the developing countries that is being served, but the sovereignty of the donors.

“On the Ground” Joint Programming & Increased Global Coordination

Canada needs to support common and joint strategies on the ground. Peacebuilding priorities need to be designed to keep countries on the road to peace and improve peoples’ lives and livelihoods. Dialogue between governments is important. The Canadian Paradox is that while our bureaucrats are working away in Paris, New York and Geneva on all of this, our political masters are taking us in an opposite direction.

The tragedy is that collectively we understand these issues so much better than even a short decade ago: the need for the right kind of intervention at the right time; the need to bring all the players to work together in a collective way; the need to listen to affected peoples as well as their governments, or whatever type of authority might be in place; the need to stay for the long haul; the need to put appropriate funding into the development effort for prevention and for post-conflict recovery.

Lessons from the Field for Ottawa Policy Makers

Eileen Olexiuk, Former diplomat with Department of Foreign Affairs and International Trade

Eileen Olexiuk currently works under contract to advise the Commander and headquarters staff destined for Kandahar. A career diplomat, she retired from the Foreign Service in 2007. Her last assignment was as Senior Policy Advisor to the newly established Stabilization and Reconstruction Task Force (START) in DFAIT. Ms Olexiuk was the first Canadian diplomat assigned full time to Afghanistan as Political Counsellor in 2002. When the Canadian Embassy was established in August 2003, she served as Deputy Head of Mission until August 2005. She was responsible for political themes, including good governance and democracy building; security sector reform which included de-militarization, police, and justice; and supporting Afghanistan's adherence to international human rights norms.



Ms Olexiuk has also been posted to Canadian Embassies in Colombia and Greece. Other assignments with DFAIT included responsibility for Canadian assistance for Reconstruction in the Former Yugoslavia and for the Economic and Political Transformation of Russia. While with the Canadian International Development Agency in the 1970's she managed development assistance to Bangladesh and the South East Asia region. Ms Olexiuk has also worked in Germany and Jamaica.

The erosion of Canadian foreign policy image in the world has been the subject of much writing and discussion. Foreign policy has lost its humanistic and forward-looking vision of Canada at home and abroad. Individuals' humanity has been lost through an economy-related vision in which countries are markets and people are classified as producers or consumers.

I would like to offer some examples from my time delivering Canada's foreign policy abroad where, for the most part, I was proud to be a diplomatic representative for Canada.

Canada's world lead in a human rights and human security based foreign policy was undisputed for decades even as hairline cracks began to appear. However, the introduction of structural adjustment changed this. Structural adjustment, espoused by the international financial institutions in the 1980s promoted privatization, the downsizing of the public service and creation of an enabling foreign investment climate.

The consequences of structural adjustment were not well thought out and we still fail to connect the dots in the current "war on terrorism". In general, without a viable social safety net, people become susceptible to the calls of criminal networks or guerrilla groups. Licit or illicit arms sales soar, wealth and income gaps widen, the middle class shrinks, and the population becomes alienated from their government. Local industries profit from a favourable foreign investment climate but state institutions do not function to ensure more than a trickle down to the poor.

The influence and consequences of structural adjustment, endorsed by Canada, were evident in Colombia and Russia. In Colombia in the 1980s little attention was paid to the human dimension; instead the focus was on infrastructure projects to push for economic development. The drug trade and anti-government armed forces grew in tandem with increasing poverty. In the early 1990s, Canada worked to bring Russia into the western capitalist system. Russia was to be developed as a market and Canadian enterprises interested in a stake in that market were to be provided a foothold. The livelihoods of millions of people were threatened as there was no regulatory system developed to accompany the privatization of state-run enterprises. There were no social safety nets. State structures for education and health broke down. The consequences were not terrible for all though. Oligarchs and some western companies profited beyond measure. As in other societies where “rule of law” is “in transition”, criminality took strong hold, and of course continues to this day, as do a variety of insurgencies – or “terrorists”, as the Russians call them.

Canadian foreign policy moved further away from being based in human security and human rights during the 1990s as military engagement increased. In Bosnia Herzegovina, Canada supported NATO’s effort. Beyond this, there was no clear articulation of Canadian foreign policy and no formula for post-conflict settings where peacekeepers were being deployed. CIDA had yet to grasp the realities of post-conflict settings and the need to intervene with financial support for strengthening the rule of law and the political process. Due to this, CIDA was reluctant to provide funds to the Balkans mission. Canadian military engagement continued in Kosovo where Canada was a NATO player and went lock-step with the U.S. who wanted “no body bags”, therefore no boots on the ground. Fighter pilots interviewed for TV after one of the air raids stated that at last they had had some real bombing experience. The resulting devastation after over 70 straight days of bombing brought the issue of humanitarian intervention versus state sovereignty to a head. Canada led this charge by announcing the establishment of an international commission to tackle the dilemma.

During the “Axworthy years”, human rights and human security once again found their way into the Canadian foreign policy agenda with the Anti-Personnel Land Mines Treaty and the establishment of the International Criminal Court. Foreign Minister Lloyd Axworthy was genuinely concerned with “protecting civilians in armed conflict” which led to the “Responsibility to Protect” policy. Canada and Norway also established the Human Security Network of like-minded Foreign Ministers.

In 2002 the first full time Canadian diplomat was deployed to Afghanistan with assurances that Canada would not be establishing an embassy in Kabul. It seemed that no foreign policy was linked to Afghanistan at the time, other than supporting the G8. The assignment was to report the views of “the man on the street”.

CIDA provided support for de-mining and humanitarian assistance through UN agencies. CIDA’s Peacebuilding Program funded a mission of Justice, RCMP and Corrections Canada officials to identify how Canada might intervene in furthering the rule of law. This supported the “no peace without justice” maxim which had human rights at its core. Unfortunately the G8 *ad hoc* working group on Security Sector Reform chaired by Canada had already divided up responsibilities to reform the army, police, and the justice sector. The other two Security Sector Reform stovepipes were Disarmament Demobilization and Reintegration (DDR) led by Japan, and Counter-Narcotics led by the UK. There were no linkages between the Security Sector Reform stovepipes, and even less with Democratic

Development and Reconstruction. The U.S. was clearly in charge of the political agenda designed to support the “war on terrorism”.

The United Nations Assistance Mission to Afghanistan (UNAMA) had its own problems with its insistence on a “light footprint”. The political pillar of UNAMA was seriously understaffed and made little effort to coordinate the political and diplomatic interventions of the international community. The humanitarian, reconstruction and development pillar, although considerably stronger, was still without focused attention on supporting the human dimension of the government’s articulation of its national development plans.

Canada’s foreign policy had not been articulated when the decision was announced in February 2003 to send some 1600 troops to ISAF as a two-year commitment and to open an embassy in Kabul. A “3D” approach was adopted which entailed united defence, diplomacy, and development efforts. Although this approach suits a post-conflict situation, there were only four people on the ground at the time in the embassy to deliver that approach. The unity of 3D in the field was not mirrored in Ottawa. Wrangling between Ottawa’s military, political, and development arms posed an impediment to implementing the 3D approach. The oft-repeated mantra was “to ensure Afghanistan never again becomes a haven for terrorism.”

In a 2007 analysis of Canada’s 3D approach, a Canadian PhD candidate at Oxford wrote: “The initial Canadian team in Kabul was acclaimed for their collaborative work. They benefited from their small size and the presence of an active ambassador; personal connections and joint experience in the field allowed them to overcome bureaucratic cultures. But with increased deployment to Kandahar the advantage of scale was lost. As the Taliban grew in strength, new security restrictions emerged, and the military took the lead.”¹

Although security and prosperity for the Afghan people as well as a stable, self-sustaining and democratic Afghanistan were at different times given as a reason for being in the country, actions taken did not always support such objectives; at least not in a humanistic sense. An example of this is when a combat mission was added to the Provincial Reconstruction Team in Kandahar. This took most Canadians by surprise to learn that our soldiers would not be “reconstructing” but rather “combating terrorism in the birthplace of the Taliban”.

The security situation in Kandahar continued to deteriorate and many Canadians began questioning the government’s intent. The three-year combat mission was scheduled to end in February 2009 – what next? The Independent Panel on Canada’s Future in Afghanistan, commonly called the “Manley Commission” was launched and reported to Parliament in 2007. One of the opening paragraphs stated, “In 2005 Canada chose, **for whatever reason**, to assume leadership of a Provincial Reconstruction Team (PRT) in Kandahar City and the security obligations that went with it.” The report recommendations failed to mention Afghans, instead highlighting how Canadian interests could be met in Afghanistan. The proposal stated, among other things, that a new and more comprehensive strategy should serve Canadian interests and give expression to Canadian values. One assumes this is coming.

¹ Taylor Owen and Patrick Travers, “3D Vision,” *The Walrus*, July/August 2007.

In closing, it is essential to bring together the two key ideas discussed earlier. The first being that Canadian foreign policy has become removed from a human rights and human security agenda. The second being that a lack of viable social safety nets, poverty, and marginalization can create susceptibility to the calls of criminal networks or guerrilla groups. The connection between these ideas raises questions about foreign policy. The political will of major actors must be of one mind, led by a revitalized United Nations, and adhered to by the development banks, sometimes the worst culprits in widening the poverty gap. We must hold ourselves and the international institutions we support so generously accountable equally with the Afghan government. More importantly, we must be ever vigilant in putting humanity foremost in all of our efforts, and prepare Canada for the long haul.

The following quote made by Daisaku Ikeda, in his 2008 Peace Proposal to the United Nations is taken from the presentation, “A People-Orientated Approach to Peace”, succinctly articulates the ideas of this paper:

The unhinged march of finance-centered globalization has produced a world riven by disparities of an unprecedented scale, the unabashed worship of material wealth on the one hand, and a corresponding sense of frustration at the absence of economic justice on the other. This structural inequity is a key factor – perhaps the key factor – underlying the forms of terrorism now proliferating throughout the world.

He then stated, “History teaches us that any attempt to suppress terrorism and similar crimes through the unilateral application of force without a careful analysis of and response to the structural factors involved will only make things worse.” Ikeda goes on to express concern about a “slide toward fundamentalism”, saying:

This is not limited to religious fundamentalism that has been the subject of so much debate, but includes a dogmatic adherence to various ideologies including those of the market. What is common to all of them is that abstract principles and ideas take precedence over living human beings who in turn are forced into a subservient role.

We also need to be mindful of security in Canada. What are the risks associated with high levels of unemployment among immigrants, and perceived discrimination of visible minorities?

Discussion

Increasing Role of Military

In Canada and internationally, the military has traditionally been subordinated to other institutions of governance. Yet lines have now been blurred, with the military gaining the upper hand. Military action must be informed by the more comprehensive issues at play, and not be considered as a separate entity. In Burundi there were clear marching orders and opportune learning from Rwanda. There was a clear line of reporting; decisions were made together; the military objective was subject to the overarching UN humanitarian directive. The goal is not to abolish security intervention, but to

be informed by the overarching human security or human rights objective, and the military should be subservient to these things.

Security of Humanitarian Aid Workers

The accompaniment of humanitarian aid workers by military protection units often puts the workers and their clients at risk. It may identify them with the army and does not always help. Armed soldiers are not always needed; often an NGO can provide security and advice to others. It is a question of what you do and where you do it.

The threat is not only from Taliban and other armed factions. As in Columbia, when there is a failed state with no power and with alienation from society, there is cause for insurgency. Similar to Afghanistan, criminal groups grow and illicit arms multiply. Poverty grows as insurgency grows. To blame the Taliban for all attacks on aid workers is completely false; they are not responsible for all violence. There are more complexities and actors involved.

Relationships – Canada and the UN

If Canada elected a government that was devoted and willing, we could really change the face of the UN and put power back into it. The UN has a really strong coordinating role and ensures that we are all moving in the right and same direction. However, the UN is not an entity in and of itself – it is the sum of its parts. The focus needs to be directed towards the UN, and our government needs to be supporting this focus. There are two obstacles: (1) the willingness of member states to create a UN entity on the ground with credibility and leadership; and (2) getting the Canadian government to propose that leadership and power focus shift to the UN. Canadians think Afghanistan is our role in the world. Canada must find the right person to deal with the Afghan government and work with the international community.

Role of Media

Journalists have become “experts” on Afghanistan, although we do not have experts on Afghanistan – certainly not in the media. Journalists only go out with the military convoys, therefore what framework do they get? Whose opinions and filters do they see through? What is their lens to the Afghan world? They cite each other as being experts as sources of information, when this is misleading as there are other stories that can be told that can be presented to Canadians.

Panel 2: Treatment of Canadians under “National Security”

Moderator: Michael Byers, Professor, Canada Research Chair in International Law & Politics, University of British Columbia

Michael Byers holds a Canada Research Chair (Tier 1) in Global Politics and International Law. Prior to 2004, he was a Professor of Law and Director of Canadian Studies at Duke University; from 1996-1999, he was a Research Fellow at Jesus College, Oxford University.



Dr. Byers' work focuses on the interaction of international law and politics, particularly with respect to human rights, international organizations, the use of military force, the Arctic, and Canada-United States relations. He has published six books, dozens of academic papers and more than 100 op-ed articles in international newspapers, the Globe and Mail, National Post, Toronto Star and Ottawa Citizen.

Necessary Changes to Canadian Foreign and Security Policies

Gar Pardy, *Former Canadian Ambassador and Director General of the Consular Affairs Bureau, Canadian Department of Foreign Affairs*

Mr. Pardy earned an honours degree from Acadia University and a Master's from McMaster, and then joined the Canadian Foreign Service in 1967. He served in India, Kenya, the United States and Central America where he was Ambassador to Costa Rica, El Salvador, Honduras, Nicaragua and Panama.



In the late 1980s he was Director of the Asia Pacific Division in headquarters and became a noted expert in Asian affairs. From 1992 to 2003 he was head of the Canadian Consular Service, during which time he computerized telecommunications within Canada's consular service; this system has been the envy of and copied by many other Governments, for use by their Foreign Services. He also created a crisis management centre in Ottawa that has been adopted by governments around the world.

He retired in 2003 and since has been a commentator and writer on issues of Canadian foreign and public policy. He lives in Ottawa.

9/11 was and is one of those dates when things changed. Before there was one set of assumptions and beliefs on which the world operated. After 9/11 there was another. The feathers of the American eagle were ruffled and plucked. The city on the hill, the bastion of rights and freedoms, the protector for many, came down from the hill and wallowed in the mud of injustice and torture.

In the world of foreign travel 9/11 represented a deep chasm and we are all making new assumptions or more specifically new arrangements under which we can order our lives. Equally important are the changes that have occurred since Mr. Harper became Prime Minister in 2006. For many Canadians the changes wrought by Mr. Harper concerning protection for Canadians abroad have been one of the more troublesome aspects of his many ill-conceived ideas.

Before 9/11 there was a consensus in Canada on the principles underlying the protection of Canadians abroad. There were few if any cases in which fundamental principles were undermined. There were many cases in which the effort of governments of the day did not deliver the results desired by many.

Cases such as those of Lamont and Spencer imprisoned in Brazil did not obtain the required effort in an acceptable time frame. But in the end, once there was a clearer understanding of the facts, Canadians came to understand that what was seen as obduracy on the part of the Brazilian authorities was not without reason. And the case of Stan Faulder on death row in Texas exercised the dismay of many Canadians, and even with its tragic end, there was an acceptance that Canada did everything possible, including support for an appeal to the US Supreme Court to assist Mr. Faulder.

In these cases and others it is fair to say that there was an informal consensus on the issues involved. This consensus, which for the most part was shared by politicians and officials and the public, was for all Canadians in difficulty abroad to be treated the same. Religion, political views and activities, nature and location of crime, were always overridden by the one fact of Canadian citizenship.

This consensus was eroded by the events of 9/11 and the ensuing anti-terrorism legislation of December of that year. In a very direct sense, these events created a new paradigm, suggesting some Canadians were less worthy of support from their government than others when they were in difficulty abroad. This change of course coincided with the increased powers given to Canadian Security Intelligence Service (CSIS), and the re-introduction of the Royal Canadian Mounted Police (RCMP) into national security.

Not only did this change erode the consensus within government, it equally encouraged a change in the public, supported by some in the media, who now were prepared to accept a differential in the protection that Canada should offer its citizens in difficulty abroad.

In the post-9/11 days, both CSIS and the RCMP became major players in the policies that surrounded decisions concerning Canadians in difficulty abroad. No longer were such issues simply a matter for those of us in Foreign Affairs to dispose of, knowing that what was done would be supported by our political masters. From the waning days of 2001 when Ahmad El Maati left Canada for Damascus and there were indications that the RCMP had him in their sights, the new paradigm began its march into Canadian consciousness, and with the consequences of which we are all too familiar today.

Two Commissions of Inquiry have already reported on the events of these years. It is evident that there was a war inside government on these issues. Equally for the most part it is fair to say, again based on what the two Commissioners had to write, external factors had more to do with the

resolution of the several cases that dominated our lives from 2001 to 2003. As I was one of the main actors during that period I expect that my judgment on that period will be challenged.

As I mentioned earlier, the election of Mr. Harper in 2006 was equally a significant factor in the changing consensus on the protection of Canadians in difficulty in foreign countries. Unlike the 9/11-wrought changes, changes by the present government are more fundamental and push us into the quirky world of royal or executive prerogatives. These prerogatives have been the backdrop for consular protection since time immemorial and in some measure supported Henry VIII's desires for new matrimonial arrangements. However, prior to 9/11, royal prerogatives – while legally real – were considered a quaint historical sidebar to those of us involved in assisting Canadians abroad.

As we now are aware, that has changed. Our governmental lawyers have all become historians and our Supreme Court Justices willing compliers. As already noted, the last decision involving Omar Khadr resulted in the decision that while his rights under the Charter were violated, there was no judicial remedy, as crown prerogative over foreign affairs took precedence. So now we have judicial sanction for differentials in the standards under which Canadians in difficulty abroad are to be assisted. And as we all know, such differentials are a fertile field in which discrimination can grow and flourish.

So today as many of the recent cases illustrate, the Canadian government itself is the source of differentials in the treatment of Canadians. Brenda is up and Suaad is down.² Another important element in this balance of forces is, of course, the actions of foreign governments in such matters. In many cases, if not most, the actions of the government of Canada are the sounds of one hand clapping. Equally important are those of foreign governments. There the fields of battle are as war worn and scarred as any of the fields of northern Europe during the years of the First World War.

There are few and I would argue no international standards that constrain or guide governments in their treatment of foreigners within their jurisdictions. The Vienna Convention on Consular Relations largely provides guidance to governments on how to establish consular offices with only one clause that establishes a standard of behaviour. This relates to the requirement for detaining governments to notify the detainee that s/he has the right to contact his government of citizenship. As experience has shown and continues to show, this is more honoured in the breach than in reality. However, governments like this loose arrangement, and there is little or no effort to effect change.

Another element in this world of protection is the growth of the number of persons with dual or more citizenship. Nearly all of the recent cases which have exercised Canadians on consular protection involved persons with a second citizenship. While in many cases the second citizenship may be

² Brenda Martin, convicted by the Mexican government of fraud, was returned to Canada after significant effort by the Canadian government. She was later arrested in Canada for public intoxication.

Suaad Hagi Mohamud was stripped of her passport, declared an imposter, and recommended for prosecution in Kenya by the High Commission of Canada in Nairobi, despite Mohamud producing her Canadian driver's licence, fingerprints and other documents. When her identity was confirmed through DNA testing of herself and two family members, and when significant efforts had been exerted by lawyers in Kenya and Canada, then she was eventually allowed to return home in August 2009.

inadvertent or nearly impossible to shed, it is and remains one of the more vexing issues surrounding consular protection.

In this it can be convincingly stated that there are no international standards. As with international consular standards, there is little likelihood that this will change. While international law experts have been discussing the matter (using the concept of “dominant citizenship”), there is no international consensus on the matter, and that is not going to change in our lifetimes.

Dual citizenship is an enormous problem. The only piece of international law that touches on this problem is the 1930 League of Nations Treaty, to which Canada was a signatory. Under that treaty Canada had no right to intervene if a Canadian citizen ran into trouble in France and was also a citizen of France. That piece of international law still exists. However, in 1996 Canada denounced this treaty – one of the few treaties that Canada ever denounced. We denounced it because we did not want to have our hands tied in terms of a Canadian who had a second citizenship. All countries of migration have this problem of dual citizenship.

There has not been a successful international effort to resolve the issue of dual citizenship. The International Law Commission (ILC) keeps talking about coming up with a set of rules that would determine a dominant citizenship. But in the end, it does not matter if there is an international agreement about dominant citizenship because if you end up in a Syrian jail the only thing that would matter is whether Syrian officials can make the case that you have Syrian citizenship. I cannot think of another issue (apart from domestic discrimination) that is more important to Canada and we must think of ways to deal with the problem of dual citizenship.

In addition, the use of media in these cases is a double-edged sword. What comes to mind is a case of Melissa Fung, who is a reporter with CBC, and who was kidnapped a year and a half ago in Afghanistan. In this case, CBC managed to organize a complete news blackout around her kidnapping. As a result, she spent just 28 days in a cave in Afghanistan.

Media speculation creates an environment that makes negotiations almost impossible, and at the end of the day you only increase the price that has to be paid. The higher the publicity that surrounds these cases, the higher the price ends up being. This has nothing to do with government; the media itself has to deal with it. Media has to impose a certain amount of discipline on their behalf.

Treatment of Canadians under “National Security”

Monia Mazigh, Human rights activist and Author, Hope and Despair

Monia Mazigh was born and raised in Tunisia and immigrated to Canada in 1991. She holds a Ph.D. in finance from McGill University and speaks Arabic, French, and English fluently. She has worked at the University of Ottawa and taught at Thompson Rivers University in Kamloops, British



Columbia. Mazigh was catapulted onto the public stage in 2002 when her husband, Maher Arar, was deported to Syria where he was tortured and held without charge for over a year. She campaigned tirelessly for his release during that time. In 2004, she ran in the federal election for the NDP, coming third but gaining the most votes for the riding the NDP had ever received. Dr. Mazigh lives in Ottawa with her husband and two children.

After 9/11 people did not realize that this event affected society in general; not just the tragic event and new fear, but our institutions started to reflect on their policies. Is this worse or better? Things are getting more difficult. When my husband was arrested and I tried to seek counsel or access I was not happy with the answers I got, however at least I had the opportunity to speak with Foreign Affairs. I had that opportunity. I do not think now, families still have those opportunities. Now DFAIT says, we do not have the ability to speak on the part of your husband. All they tell you is that they are trying to give your loved ones access to counsel. All the families can do is wait, or turn to legal action. This is hard, expensive, and sometimes without a basis to start from.

Different cases, different treatments

It is understandable to treat every case according to its urgency, the place of detention and the nature of the charges. The case of Robert Fowler, a long-time diplomat, was treated more discreetly than many other cases. The same applies to the case of Melissa Fung, the Canadian journalist who was captured in a war zone in Afghanistan. The danger surrounding her kept her case away from the media in fear of jeopardizing her release. It is difficult to understand the situation of your own government doing nothing to help you come back home, and even going to great lengths to try to prevent you from returning home.

The Role of Media

If you remember the case with Brenda Martin, she was arrested and accused of drug dealing and corruption. She served time in a Mexican prison, and only after a while did Canadians realize there was an issue at hand, due to the reporting of popular media on the case. It was after this that Ms. Martin was released, and able to return to Canada. The media has played a huge role in bringing these stories to the eyes of the public.

After 9/11 there was a lot of interest in specific arrest cases, but nine years later people were almost used to it. The media needs to be approached; if it is not something that everyone is talking about, the media will not bother. In the case of my husband, I was trying to create a reason to bring the media to the story. Even if the media comes, they may not report the story in the news. The media should be involved and not passive.

Dual Citizenship

Dual citizenship is an issue, but not the main issue. Dual citizenship is going to be a big problem when you are arrested in one of the countries where you maintain citizenship.

What to do

When it comes to action, educating people is easier said than done. The majority of people implicated in these cases are from a Muslim background or origin. There is still a misconception that “it will not affect us”. Educating people that these issues are Canadian problems is important. Maher Arar was only released due to Canadian public pressure. We have not yet reached that stage with Omar Khadr.

Over the years, Canada has built a good reputation internationally. This reputation can be used in forging stronger diplomatic ties and eventually leveraging these ties to helping Canadians detained abroad. Soft diplomacy, or what is known as the Axworthy doctrine, which promotes respect for human rights by influence rather than coercion, does work in many cases and we have evidence to prove it. The representation should be unambiguous, persistent, and very importantly, continuous.

What does not work is when citizens are left totally on their own to struggle with oppressive regimes, or fight unclear or politically motivated charges. Foreign Affairs bureaucrats will argue that they cannot help every Canadian detained abroad – on average estimated at over a thousand at any one time– by getting them out of prison and flying them home.

Canadian citizens should undoubtedly be responsible and abide by the law here and abroad. But when a citizen is in distress abroad because s/he was kidnapped or because of some unsubstantiated allegation, this person should be assisted in any way possible.

The same level of energy must be spent on all cases to persuade foreign governments to treat our citizens fairly and help them return home as soon as possible. This should be done regardless of this person's social status, family history or race. Public opinion should not be a factor in the fervor of the representation.

An advisor to the Prime Minister should be appointed permanently to advise on how to deal with each different situation. His/her role will be devoted to closely studying the cases and using any type of appropriate pressure (diplomatic, security, political) to obtain the release of the Canadian prisoners. Between 2003 and 2004 the Liberal government appointed Dan McTeague as Parliamentary Secretary to the Minister of Foreign Affairs with special emphasis on Canadians abroad. It was a good initiative. In keeping with this policy we should reflect on how to develop a similar position today.

National security should not be evoked to escape answering questions. This is why, when citizens suspect that such is the case, they should be able to complain to an oversight body that can make sure that all the governmental agencies involved in intelligence, policing, and diplomacy are accountable and behaving according to the "ethical rules". Transparency is key. At all times, the rule of law must always prevail.

A Legal Perspective on the Treatment of Canadians Overseas

Amir Attaran, Canada Research Chair, Population Health and Global Development Policy Institute of Population Health, Faculties of Law and Medicine, University of Ottawa)

Amir Attaran is an Associate Professor in the Faculties of Law and Medicine at the University of Ottawa, and holds the Canada Research Chair in Law, Population Health and Global Development Policy. Dr. Amir Attaran is by training both a lawyer (LL.B., Vancouver) and a biologist (D. Phil, Oxford; M.S., Caltech), whose research covers the gamut of both fields to explore different drivers of human well-being, particularly in the fields of human rights, health, and/or international development.



Current research interests include research into the financial and legal duties of international aid donors; evaluation of policy development in the UN's technical agencies; the role of intellectual property and trade law on access to medicines in less developed countries; and the engagement of the NATO militaries (particularly Canada's) in the armed conflict in Afghanistan and its implications in human rights law and the law of armed conflict.

Dr. Attaran has published widely in the leading journals of both the legal and biomedical professions, such as the Yale and Stanford Journals of International Law, The Lancet, and The Journal of the American Medical Association. He is also a frequent commentator in the press, having written for the Globe and Mail, New York Times, The Guardian, and the Literary Review of Canada, among others.

Dr. Attaran has advised and collaborated with numerous NGOs, UN agencies, governments and corporations on aspects of international development, primarily in the area of public health.

Canadian law on the protection of prisoners abroad is really quite expansive. Other nations, like the US, Germany, etc., do have legal mandates that oblige the government to extend assistance abroad. Canada treats all situations as being discretionary, and under the royal prerogative, which cannot be reviewed by the courts.

There is only one case where the courts will look into royal prerogatives; when one is faced with a Charter violation. Otherwise, it is not possible. For most of these cases, the government is ignoring people distressed abroad. This is the basis of Abousfian Abdelrazik, who was forced to live in the Canadian embassy in Sudan after the Canadian government deemed him to be a terrorist. There is a relationship of power in this situation where the citizen has no power, and the government has it all. Two hours before his flight, Abdelrazik he was told he could not come home, and was prevented from boarding his flight. Eventually in this case, the courts saw how contradictory his detainment was, and brought him home.

There is an assumption that all legislation that the United Nations passes is good, and that everything Canada has passed years ago was good. This is an unexamined point of view. It was a Security Council resolution that landed Abdelrazik in trouble. More specifically it was the United Nations Security Council (and co-sponsored by Canada) who passed the legislation 1267. It has a reverse onus stance of “guilt until proven innocent.”

Abdelrazik is now seeking damages from the Canadian government for his ordeal. Foreign Affairs Minister Lawrence Cannon is being charged and personally held accountable for these shenanigans. The prosecuting team in this case have every intention of receiving the two million dollars of reparation for Mr. Abdelrazik from Mr. Cannon himself, and not the Crown.

Discussion: Traditional Role of Canadian Government and Consular Affairs

Q:

This morning we heard that part of the problem is not intervening at the right time. There are many cases that are not well known abroad of Canadians. The way the Khadr case is going, it will be in front of the courts again. The Canadian government will not intervene until the trial is over. What can we do to ensure better intervention earlier? And once a person has been put in front of an unfair trial, what can be done? How could repatriation work?

Amir Attaran:

In regards to Omar Khadr - in history, this will be one of Canada’s most shameful records. The Khadr case has been before the Supreme Court twice already, and is not yet solved. Chief Justice Beverley McLachlin ruled that since his Section 7 Charter rights had been violated, the government had to do something to prevent evidence obtained from the use of force. However, Chief Justice McLachlin was too timid, and left the case without having issued an order. Now this case is very likely to come in front of the Supreme Court for the third time!

Comment:

One of the things that is important to underline is the coordinated approach. Including legal, media and Parliament resources is important when dealing with a case. One of the tactics at Committee that should be employed is to call up witnesses. It has happened before when time passes, and the government in power starts to believe that the case is theirs, attempting to fit it into their strategy. While the Khadr case was not originally a case of the Conservative party, they have taken on the responsibility for it. Why not play it smart and admit when wrong was done and provide justice to Mr. Khadr? We must change the law, and that is why I am working on the new bill to prove that a Canadian is a Canadian.

Comment:

Khadr was an abused child. First, he was abused by his father, then the United States of America, next by Prime Minister Stephen Harper and now by the Courts. It does not matter where he comes from. We must take action and write a letter to the Chief Justice.

Lunchtime Speaker

The Economic Roots of Political Instability

Manfred Bienefeld, Professor, School of Public Policy and Administration and the Institute of Political Economy, Carleton University

Professor Bienefeld's recent focus has been on development policy, the debt crisis, financial deregulation, protectionism, industrial policy, planning, privatization and the "newly industrializing countries". His research interests include wages/employment, commodity/capital markets, human capital, technology/industrialization, development and the environment, and development in a historical perspective. His areas of interest include Africa, the Pacific region, and East Asia.



The global financial system is where many of society's problems are rooted. To understand where we are today, we can look to the past; remembering the futures which were once imagined and expected with great certainty, but which have not materialized. In particular, we remember the predicted future in which capitalism would naturally – and automatically – share the benefits that it produced with labour and with other social interests, eventually leading to a "leisure society" in which individuals, increasingly affluent and freed from the burden of onerous labour would move towards less material-intensive ways of life focused on family and community. But, not only did this world not materialize, in many respects previous gains are being eroded in many, if not most, places in the world.

The human predicament envisioned by Karl Polanyi is relevant today. Polanyi warned that the dream of the self-regulating market, today entrenched in the public mind, can only end in disaster because land, labour, and money can never be pure commodities. As they become increasingly dominated by market forces, the costs to people, the environment and society will continue to increase and eventually the coherence of national and global economic systems will be threatened by ever less manageable imbalances and contradictions.

Historically, Polanyi suggested that periods of excessive market empowerment had therefore led to a "double movement," as deepening economic contradictions spawned social and political reactions that sought to re-impose social and political control over market forces. But in this struggle, societies would have to choose between essentially fascist or social democratic solutions. Unfortunately the fascist solutions are often more readily to hand since the rich and the powerful often prefer them; such solutions tend to preserve – or enhance – their powers and privileges. But those who understand that the democratic solution is the only one worth struggling for, and the only one that can promote human and social welfare, must face up to that struggle.

The so called self-regulating, unrestricted markets which are gradually coming into existence today have created massive problems – bringing us closer to the dystopia predicted by Polanyi. For the majority of people, life is becoming more uncertain and difficult. The industrialized world is experiencing a roll-back of labour rights and casualized employment (previously associated with the informal sectors of the developing world) is becoming more prevalent around the world. Global income inequality is rising, relative poverty is increasing, and working conditions are widely deteriorating, even as social protections and social networks are eroding.

Increased leisure time has not materialized – indeed for those who have jobs, employment hours have often increased (especially in North America) while insecurity and stress at work have reached epidemic proportions. It would seem that Polanyi’s vision of people being reduced to “labour power” in an unchecked market has come true, as manufacturing wages stagnate or fall, working hours and the intensity of labour increase, while job stability declines. Only with a more embedded market could these trends be reversed, though even then results would depend on the balance of political forces.

The environment is also facing destruction as a result of the prevailing neoliberal economic paradigm. It must be remembered that market forces generally take a short-term view, especially in periods of uncertainty. Economic duress means that decisions are generally based on particularly narrow, economic considerations which often leads to disastrous outcomes for the environment – as BP’s recent history would attest. Corporations increasingly dominate environmental policies and either capture states, or reduce their regulatory and enforcement capabilities, leaving the environment less protected as a result.

To make matters worse, the control of money has increasingly slipped out of the hands of public authorities, who are left to adjust to often chaotic and irrational movements of speculative finance around the world. Exchange rates are used as weapons of economic warfare, and debt accumulation is being used to ensure that demands for social improvement cannot be responded to, on the charge of fiscal irresponsibility. Growth rates are stagnating and imbalances of payments are becoming the norm. The result is growing political and social tension as individuals protest against the claim that there are no alternatives to this new reality.

This present day reality can be compared to the “Golden Age” of managed capitalism which prevailed after World War II and lasted into the early 1970s. During the Golden Age growth was faster and productive investment far higher. Alongside this, social and human progress was sustained as the benefits of rising productivity were more equally shared between labour, capital and other social interests. What this era teaches us is that the logic of capitalism can be reconciled with the human need for security and leisure and with the social need for stability and equity. Embedded markets can yield dramatically different social and human outcomes than relatively disembedded ones. And this does not mean that this period had solved all problems. There were many problems, but under conditions of relatively stable and shared prosperity, those problems could have been addressed more effectively over time.

The fundamental structural difference between the Golden Age and the present day is that in that earlier era capital had an address, meaning that it was forced to negotiate with labour and other social interests as represented, albeit imperfectly, by the state. This was the case because the early Bretton Woods agreement protected sovereignty and monetary autonomy through a system of

relatively fixed, managed exchange rates and the practical availability of national capital controls to curb short-term, speculative movements of capital. Nation-states at this time also developed risk-averse financial regulatory structures which were developed in response to the turmoil of the 1920s. And although other factors were naturally involved, this produced a period of stable shared growth in all of the industrial countries of the world, while allowing the developing world to embark on the task of laying the foundations for future prosperity, though not all took advantage of this.

By comparing the Golden Age to the present day, a valuable lesson can be learned. It has to be remembered that markets are amoral. They are a potentially positive force because they are capable of decentralizing power and of making relatively effective use of the imperfect information that is the only kind available in the real world. If we want a market-based economic system to promote social welfare, then we need to embed it within a framework that is capable of setting ethical, environmental and social limits to the otherwise important pursuit of efficiency. And for that we need to restore an international system that has many of the key features of that which presided over the Golden Age.

The understanding that other worlds are possible needs to be kept alive even if those other worlds have slipped from our grasp for the moment. And, as history and theory will show, those other worlds could not only be more efficient, but also more humane, more predictable and more conducive to peaceful, fulfilling lives in stable, vibrant communities. The myth that history and evidence support the pursuit of ever more unregulated markets need to be exposed. The idea that there is no alternative to neoliberalism needs to be disputed and resisted, as this notion disempowers citizens and policymakers alike. Control of money needs to be placed back in the hands of public authorities. Neoliberalism has to be reversed on many fronts, including the ideologically driven and dysfunctional privatization of many public services, to curbing the intrusion into national jurisdictions of many corporate-inspired international rules and laws made by effectively unaccountable international agencies.

The human predicament envisioned by Karl Polanyi is not our destiny. The fact that capitalism was once harnessed in the public interest should be seen as evidence that we can turn in another direction.

Discussion

A number of issues were raised in the discussion period. The first concerned the disengagement of citizens from their societies. Prof. Bienefeld noted that coherent sovereign societies must be the building blocks of a stable, cooperative international system. But for that to be possible, citizens must have a sense of common identity that is strong enough to allow them to negotiate their differences peacefully and constructively as they engage to build diverse, humane societies.

Moreover, that sense of identity will in part depend on whether the societies that are thus created give material meaning to citizenship, as when citizens of a country have a right to health care, education, a fair, effective and humane legal and penal system and a stable harmonious society because they have chosen to invest in, and to build, such a world.

Unfortunately, neoliberalism is eroding all such rights and thereby undermining the very foundations on which a successful society must be built. Indeed, we appear to be moving towards a time in which citizenship will have little or no material meaning. If you are ill, or ignorant, you can always deal with that problem “if you have the money to do so.”

An uncomfortable corollary of this perspective is that the rights enjoyed by citizens cannot therefore be equally shared by anyone since that would spell the end of public policy based on investments in a society’s future. By this logic, the plight of the world’s increasingly desperate migrants must therefore be solved by re-creating the conditions in which their societies can ‘develop’ in ways that will allow them to create desirable social and economic spaces in which their citizens can live secure and increasingly prosperous and harmonious lives. Increasingly unrestricted migrant labour flows are not a solution for either the source or the destination countries.

The issue of Canada’s future economic prospects was raised. Prof. Bienefeld pointed out that this looks relatively bleak to him as we are in the process of selling off the natural resources and their associated resource rents, which were the foundations on which our past and current prosperity was – and is – built. Indeed, it was these rents that allowed us to live comfortably and successfully as a society, with an industrial sector that was not always fully internationally competitive.

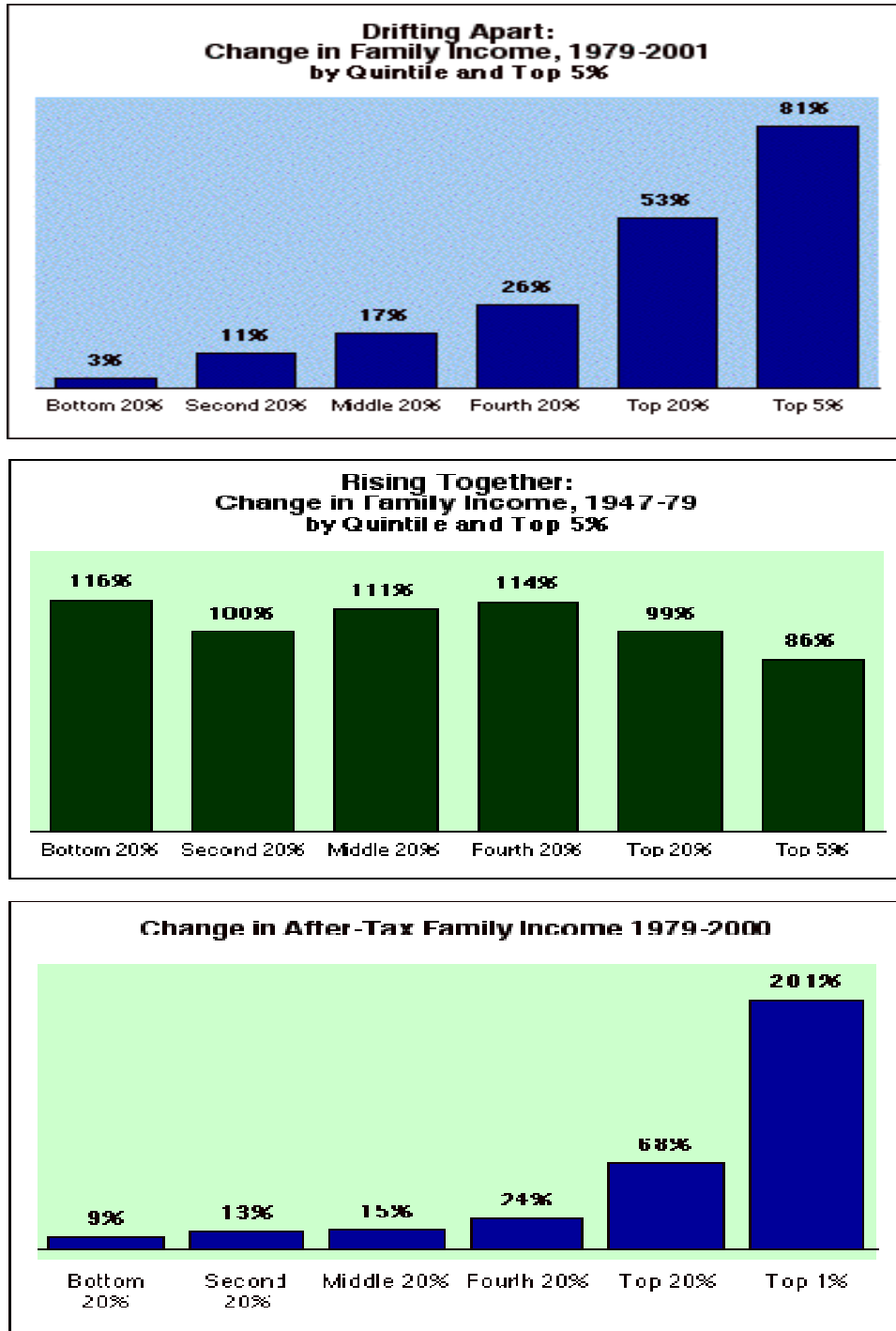
Unfortunately this is increasingly difficult as our resource rents are alienated and our industrial sectors atrophy, the dreams of the high tech salvation fading fast into an uncertain future. To make matters worse, state restructuring has opened the state increasingly to outside pressures. While this was ostensibly done to enhance democracy and the rights of civil society, there is every indication that its real effect has been to give massive corporations almost unfettered access to the state’s capacities – and that is a recipe for a very bleak future.

The issue of the growing international role and influence of philanthropists and non-governmental organisations (NGOs) was also raised. Prof. Bienefeld suggested that this was ultimately a highly destructive and indefensible trend, since it effectively undermined the capacity of individual societies to confront their social problems in a coherent and democratically meaningful manner. Aid cannot be dropped on societies – neither from cargo planes dropping “stuff” – nor from philanthropists usurping the policy process and pouring enormous sums into specific “problems” that they have chosen to address – today. This way lies a dysfunctional world.

And as for NGOs, they are potentially valuable, but only if they are integrated into a coherent policy process. The first thing to remember is that while there are many laudable NGOs, the Ku Klux Klan is also an NGO. In fact, NGOs have only one thing in common, namely they are “not government” and therefore, to celebrate them, one is merely joining the neoliberal denigration of government. And as one of Prof. Bienefeld’s students once remarked, speaking of her home country:

A world in which there are 3,500 unaccountable NGOs operating in one relatively poor developing country, is a world that cannot make sense, nor is it a world in which that society could hope to govern its affairs through some meaningful democratic process one day.

Figure 1 - US: Changes in Family Income 1947-79 and 1979-2001



Source: US Census Bureau and Congressional Budget Office Data³ – accessed at http://www.faireconomy.org/research/income_charts.html on 20 September 2004.

³ These graphs are produced by United for a Fair Economy, a national, independent, non-partisan, 501 (c) (3) non-profit organization to be found at <http://www.faireconomy.org/>. The first two graphs on Family Income 1947-1979 are based on an analysis of U.S. Census Bureau data in Economic Policy Institute, *The State of Working America 1994-95* (M.E. Sharpe: 1994) p. 37 and 1979-2001: [U.S. Census Bureau, Historical Income Tables, Table F-3](#). The third graph showing 1979-2000 after tax family income is from: Center on Budget and Policy Priorities, *The New, Definitive CBO Data on Income and Tax Trends, Sept. 23, 2003*, citing Congressional Budget Office data.

Panel 3: Security and Human Rights in the Law, Parliament, and Government Institutions

Moderator: Peggy Mason, Chair, Peacebuild

Peggy Mason's distinguished career highlights diplomatic and specialist expertise in the field of international peace and security, with a particular emphasis on the United Nations, where she served as Canada's Ambassador for Disarmament from 1989 through 1994. She served on the UN Secretary-General's Disarmament Advisory Board from 1993 to 1997.



Since 1996 Mason has brought the political/diplomatic perspective to a range of UN, European Union and NATO peace operations training activities. In 2001-02 she was an Advisor to the Canadian Foreign Ministry on the control of small arms and light weapons and she chaired the UN 2001 Group of Governmental Experts study on small arms regulation. At Carleton University's Norman Paterson School of International Relations (NPSIA), Mason is chair of the Advisory Board to the Canadian Centre for Treaty Compliance.

Ms. Mason is active with a number of non-governmental organizations. She is Chair of Peacebuild, a network of Canadian NGOs engaged in all aspects of peacebuilding, Vice-President of the Rideau Institute, and past Chair of the Group of 78. A graduate of the University of Ottawa Faculty of Common Law, Peggy Mason was inducted into its Honour Society in September, 2003.

“Who’s Watching the Watchdog? Strengthening the Role of Parliaments in Overseeing National Security and Protecting Human Rights

Robert Miller, Former President and CEO of the Parliamentary Centre

Robert Miller is the former President and CEO of the Parliamentary Centre, a not-for profit organization providing research, training and advisory services to strengthen parliaments around the world. Following his retirement in 2008, he became a member of their Board of Directors.



Beginning with his 1985 study, "Canada and Democratic Development", he has been a leader in advocating and establishing democratic development as an important objective in Canadian foreign policy and development assistance programming, frequently writing and speaking on Canadian foreign policy and democratic development. He is a senior Fellow and Lecturer at the Norman Paterson School of International Affairs at Carleton University where he teaches a graduate seminar in International Democracy Support.

I think we would all agree that parliaments should be institutions of accountability holding governments to account, especially in the defense of human rights.

Likewise, we would probably agree that parliaments are sometimes – perhaps often – less than vigorous defenders of human rights, especially in the face of the political pressures generated by national security concerns, real or imagined.

In addition, there are a number of issues associated with national security that require national debate. The single greatest disappointment people have with the current parliament is the lack of qualitative debate, an idea of putting a firewall where minds can be put together. However, today's committees are simply a continuation of partisanship.

There are a number of reasons why the parliamentary watchdog may be asleep in the night or sometimes even join attacks on human rights:

- the susceptibility of parliaments to being stampeded by national security fears (e.g. the FLQ crisis);
- the tendency of parliaments to cut government and security agencies too much slack (e.g. the 2010 G-20 Summit); or
- the weakness of parliamentary institutions in exercising oversight (e.g. the fate of the Parliamentary Budget Office).

On another note, and here I draw on Rory Stewart's analysis in his book on Afghanistan, *The Places in Between*, the West has an irresistible notion that it has the capacity and legitimacy to rebuild foreign societies. We use the military as our prime tool for doing so, which contradicts everything else we try to accomplish. However, we never had less capacity. If we contrast it with the colonial era, we see that then people spent their whole careers abroad (they spoke the language, etc.). Yet, military and civilian people today are there only for a few months, occasionally years. Now the agenda is discredited to something less that might be attainable.

Debate in this area is crucial. For example, the Afghan detainee-related documents that are being examined by MPs and judges: the system that has been put in place means that we have judges to babysit elected politicians of the country, and mind that they do not violate national security. What happens if judges and politicians disagree on what is national security? These are the kinds of things that need to be debated, and structures built to deal with them.

The role of the military – both local and foreign – in Afghanistan is off-limits to elected politicians. There have been some Afghan politicians who asked about NATO, but they have been discouraged from doing so. Afghan politicians are not to question NATO. This is why it is so difficult to have political policy guide military.

For the past 40 years the Parliamentary Centre has focused its attention on trying to strengthen the oversight and accountability role of parliaments in Canada and internationally (e.g. the budget role of the National Assembly of Pakistan). This is important work, whether done by the Parliamentary

Centre or other civil society organizations, and should be a high priority in the foreign policy of Canada.

Regarding the question of the subversion of Rights and Democracy (the International Centre for Human Rights and Democratic Development),⁴ there are some roots to this problem that go back to the 1988 legislation. It was decided to write a general law, a law that envisaged that Rights and Democracy would be an arm's-length instrument of foreign policy. However, it was not specified how those two things – arm's-length and government policy instrument – would be put together. Over the years, there was dialogue between Rights and Democracy and Ottawa, and there were times when it was unpopular. The roots of this partly came from the fact that there was no good understanding of the relationship of this arm's-length organization (funded by the government of Canada) and the government of Canada. Rhetorically it is a high priority but in fact CIDA has recently downgraded democracy and good governance to one of those slippery “cross cutting themes.”

It is important that the policy be reversed by this or a subsequent government. Accordingly, I would propose that the following be among the recommendations which the Group of 78 Policy Conference communicates to the government, parliament and people of Canada:

Recognizing the importance of protecting and securing human rights in the face of national security concerns, we recommend that Canada give a high priority in its foreign policy to strengthening parliaments, civil society and other vital democratic institutions in their capacity to oversee and hold governments to account for their national security policies.

Discussion

Comment: The Senate

The best discussions on these issues happened in the Senate. A lot of things are going on in terms of the role the parliamentarians play that do not get into the public domain. Part of the problem is with academics – not paying as much attention to certain things. If we do not deal with these issues such as areas where children are becoming soldiers and being exploited, we are creating a new generation of continued problems. I feel that role the parliamentarians do is undervalued, because I hate to think that they cannot be trusted. They are engaged and deserve our admiration.

⁴ Toronto Star Ottawa Bureau Chief Bruce Campion-Smith, writes, “The Conservatives have been accused of stacking the board of the agency, meant to be arm's-length and non-partisan, in a bid to bring a more pro-Israel focus to its work.

“But the agency has been in the headlines in recent weeks with news of bitter showdowns between staff and board members, a flare-up over grants to Middle East human rights groups and the death of the agency's popular president, Rémy Beaugard, who suffered a heart attack following his own stormy meeting with directors.

And as the Star revealed Wednesday, the board decided this week to close its office in Geneva, the hub of human rights work. Several directors had complained about the agency's ties with United Nations human rights arms working out of the Swiss city.” (Feb. 18, 2010, “MPs pile on ‘train wreck’ agency”)

Comment: Promoting democracy

I have never gone to a country to tell them how to solve their problems. There is just no way I know enough about it. I share my knowledge on how similar problems have been handled elsewhere and in the end I hope it will have a positive outcome. So when we go abroad to talk about parliamentary democracy we should not be selling it, but telling them how we deal with similar problems. More than one Father of the American Constitution said this form of government could never work unless certain preconditions are met: (a) income differentials must remain modest; and (b) people seeking public office and people voting for them must have high regard for public virtue.

In our system I would say I am desperately worried about the substance of our democratic process because those conditions are not being met. Government reforms are premised on the idea that the world has equal citizens. But this is not an equal world. It is a world of corporations getting various accesses. In particular post-conflict situations pushing democracy and elections could be a destructive thing, where it could deepen conflict. When we promote democracy we must be more aware of the specific situation on the ground, and build on existing institutions.

Security and Human Rights in the Law, Parliament, and Government Institutions

Jean-Jacques Blais, Former Solicitor General, M.P.

Jean-Jacques Blais is a lawyer, Queen's Counsel and Privy Councillor. He was a Member of Parliament for the riding of Nipissing in Northern Ontario from 1972 to 1984 and a Minister of the Federal Crown from 1976 to 1984.

Mr. Blais obtained his Bachelor of Arts degree from the University of Ottawa in 1961, and his LL.B. in 1964. He was called to the bar in 1966. In 2001, Mr. Blais obtained a Masters degree in International Law from the University of Ottawa. First elected to the House of Commons in October 1972, Mr. Blais was re-elected in 1974, 1979, and 1980.



He was appointed Parliamentary Secretary to the President of the Privy Council in 1975 by (then) Prime Minister Pierre Elliott Trudeau. Mr. Blais joined Pierre Trudeau's cabinet in Sept. of 1976 and served as Postmaster General (76 –78), Solicitor General for Canada (78-79), Minister of Supply and Services and Receiver General for Canada with responsibility for Defense Production and Statistics Canada, (80-83) and Minister of National Defense (83-84) From 1984 to 1991 Mr. Blais was a member of the Security Intelligence Review Committee.

Since 1991 Mr. Blais has served on some 12 democratization missions including 7 months in Bosnia in 1998 as Deputy Chairman of the Provisional Election Commission and 8 months in Afghanistan in 2003 as head of an advisory mission to the UN on elections readiness.

Mr. Blais is Chairman Emeritus of Pearson Peacekeeping Training Centre and a founding Director of the Canada-Israel Industrial Research Foundation. He is Chairman of the University of Ottawa Heart Institute Board of Directors and a director of the Canadian Parliamentary Centre. He is counsel to the firm and advises clients on government relations, public administration and governance. Mr. Blais is a member of the Law Society of Upper Canada and the Liberal Party of Canada.

The strengthening of human security and human rights can have a direct impact on international peace and security.⁵ Major conflicts that have caused the International Community (IC) to intervene have been internal to weak states or imploding polities and related to gross abuses of human rights. Bosnia comes to mind, as do East Timor, Kosovo and Afghanistan, among others.

There is an essential connection between human rights and democratic governance. Repressive, unaccountable regimes are anathema to human security, and international stability is tied to the respect for human rights. Furthermore, the poor performance of Canada in international assistance – both in its contribution and in the quality of its aid – indicate the need to improve its performance. A well planned approach to improving democratic governance abroad would greatly assist in accomplishing that aim. Competent governance is the answer to the threat to human security, and advancing human rights within sovereign states can strengthen international peace and security.

Canada has special expertise in democratic governance that is exportable. Canada has the single advantage of having inherited the Whitehall system of parliamentary democracy from Great Britain, at no cost to the Canadian taxpayer, who benefits from its exemplary application each day of the fiscal year.

The Canadian parliamentary democracy incorporates within its institutional framework the very essence of democracy, as reflected in Abraham Lincoln’s famous description of democracy in the Gettysburg Address: government of the people, by the people, for the people. In Canada, the term “the people” is an inclusive one that recognizes the equality of all before the constitution and seeks to guarantee that equality in its institutions and structures of governance.

The constitutional amendments that were forged in 1982 added to our institutional competence, by giving to human rights the constitutional protection of the Charter. The French language minority is guaranteed its equal rights centrally through the Charter as well as through federal power structure. Aboriginal rights are given constitutional recognition, legislative status and territorial dimensions, including the territory of Nunavut in northern Canada. Charter provisions reinforce public policy and statutory initiatives on Canada’s multicultural dimension, gender equality and other human rights that are the envy of the international community.

Canada’s parliamentary system has made that evolution possible. Of all the institutions of governance that exercise power in our country, Parliament is that closest to the “people” referred to in Lincoln’s description of democracy. Parliament is the microcosm of Canada’s “people” and the expression of its consent to be governed. Parliament ensures that the Executive, itself composed of Members of

⁵ This section represents speaking notes from Jean-Jacques Blais, which he used for his verbal presentation.

Parliament, serves the public good. In accomplishing its task, Parliament is assisted by a wide range of interveners, including the information media and “civil society” made up of various groups and organizations with wide-ranging interests, which Parliament in playing its role has made possible.

Parliament is the cornerstone of our democracy; without it our public administration could not function. Laws could not be adopted or consented to by Canadians, taxes could not be levied, the government could not be funded in its delivery of services to Canadians, Canadians could not air their grievances related to the exercise of power and, most importantly, the government of Canada – including both elected members of cabinet and their professional civil servants – could not be held to account. The essence of Parliament is it being a workable representative of the body politic, able on an ongoing basis to control the exercise of power so that it serves the public interest.

In Canada, we are most fortunate for the two essential values of competent governance, accountability and equality are deeply entrenched in our institutional architecture. Both have a parliamentary origin, accountability since it is the very function of parliament vis-à-vis the executive and equality because parliament, being the microcosm of the body politic, incorporates equality in its own makeup, each of its members insisting on his or her equality to every other member. Ultimately, the respect for equality is ensured by entrusting its protection to a power superior to that of parliament itself: the Constitution and its Charter of Rights and Freedoms. What results is that, of necessity, power, in its exercise, must eventually reflect the values of the body to which it reports accepting to render accounts and ensuring the application of its laws and measures to all equally.

It is those two values that are exportable and universally applicable no matter what traditional system of governance is to be found in the host country within which Canadians would be engaged. While the Canadian governance structures can provide useful models for effective governance, it is the values they reflect – accountability and the equal treatment of all – that resonate universally no matter where introduced. Any system of governance engages in the exercise of power whose purpose should be the advancement of the public good.

Corruption and abuse of power are very human phenomena found wherever power is exercised, as history reveals with plentiful examples. Those polities with the best governance are those with institutionalized effective control over power’s exercise. Some form of parliamentary institution characterizes their governance resulting in a vibrant accountable democracy able to enforce the values of the Universal Declaration on Human Rights.

The Parliamentary Centre was founded by Peter Dobell some 42 years ago to strengthen Canadian parliamentary institutions. Over the years the Centre has engaged in assisting the international community in providing Canadian expertise in various regions of the globe. The Centre is an ideal vehicle for the enhancement of Canada’s role in strengthening of democratic governance as part of a Canadian strategy for overseas development assistance.

The advantages to Canada of such a strategy cannot be overstated. Governance is at the centre of any state’s essential activity. It is the means through which the state expresses its sovereignty and serves the interests of its citizens. Canada, by engaging in the strengthening of any sovereign state, would not only serve that state’s interest but its own through the improvement of its relationship with that state.

We have so much to offer by transferring our democratic governance knowledge and expertise, centered on parliamentary democracy, to as many sovereign states as may wish to take advantage of it. And so much to gain in the process.

Discussion

Parliamentary debate

The debate over Afghanistan in the Canadian Parliament only deals with the military aspect of it; the Parliament does not deal with the fact that there are not many votes on foreign affairs. The parties avoid the debate. However, parliamentarians are not equipped to deal with those issues because there are no votes on these issues, and they have no information on these issues. As a parliamentarian in Cabinet, there was never very much time allotted on debates around foreign affairs issues. I initiated briefings on foreign affairs and on the first occasion only six individuals showed up. I was upset and at the next meeting, I was by myself. This was an informed, advised Cabinet, and we could not get people to pay attention to these issues. This is to highlight the opportunity for civil society to pay attention, and to lobby parliamentarians on foreign policy issues. In my experience as a parliamentarian, I was never lobbied on foreign policy issues. Although some parliamentarians, especially Senators, were lobbied on foreign affairs issues, on the whole, there is a role for the G78 in this area. Parliament can play its role; it has 150+ years of experience.

The role of Parliament in maintaining accountability over Canada's Special Forces

With respect to Joint Task Force Two [JTF 2, responsible within Canada for counterterrorism, surveillance, security advice, and close personal protection], how can anyone accept the absence of accountability of force in any democracy? It seems there is a need for the issue to be debated. As a former Solicitor General, my position was that Special Forces should be from the police, but the military disagreed because the police are not a lethal force. But then how can we have a lethal force with no accountability?

Parliament and accountability over security services

There is now a Security Intelligence Review Committee, SIRC, created under the Canadian Security Intelligence Service, CSIS, Act. It is given power and structure thanks to the debates that took place in Parliament. Working in the Review Committee prior to the SIRC, we dealt with complaints and had to parse through secrets, and most importantly, we all understood the importance of secrets.

There are often arguments about the lack of civility during Question Period. This is the House of "Commons". Even in 1972, students had to be told why partisan debate had to be advanced in Parliament. Where the debate has more animosity and not enough substance speaks to a need for making more information available to MPs. As a Minister, I was sitting in briefing after briefing by senior civil servants getting information about every little detail. However, as an elected backbencher, we were barely informed about caucus meetings. We simply were not informed.

Simply making a phone call to a civil servant was a problem, because you would not know whom to contact. The contrast between the backbencher with very little information and the Minister with vast amounts of information on a continual basis goes a long way in explaining the level of debate in Parliament. If backbenchers would be given more information, they would not fall back on partisan lines all the time, and would engage in actual debate.

The use of force in Canadian foreign policy

There is a need to build a strong relationship between the use of force and other institutions. In the case of Afghanistan, Canada got involved first, and then came up with the three Ds (Diplomacy, Democracy, Defence). That was a huge positive motivation, especially at a time when there was confrontation between the Western and Eastern elements. But that debate never took place in the Parliament; the debate in the House of Commons was solely focused on the military: getting the military in, and getting the military out. It is a bit late now to deal with other issues.

Canada's means for pursuing foreign policy

We should never go to a country to solve their problems or tell them how to solve their problems. It is to go and share our understanding on the kinds of problems they are dealing with, and what the experiences have been elsewhere, including in Canada. When we go abroad, we should not be selling our system abroad, but telling them of our awkward moments. To reconstruct a country by waging war is impossible. The discussion about being open while we kick down the doors is nonsense.

Canada's principles in foreign policy

Indeed, we should not be exporting our model, but rather indicating that it is based on certain values that are universal and these can be shared. In Afghanistan, it is disappointing to see the thrust of the constitutional review that sought to centralize, whereas power is actually decentralized and you cannot build political institutions that do not reflect that reality.

Our role in the world must be the pursuit of peace. Yet we do not live in a perfect world by any stretch, therefore we have to mind the realities and guide our actions by the principles that we stand for. Canada's territory was obtained at nearly no cost. No blood, just an Order in Council. We can dissent with no fear of repercussion, and these are based on real values – *there* is a real virtue that is essential for what we have.

Canada can benefit from strengthening democracies abroad. In September of this year the Parliamentary Centre had to cut short its program to strengthen the Parliament of China. Not at the request of China and its parliamentarians who wanted the Centre to carry on its program and were encouraged by the progress being made in strengthening China's parliamentary institution; it was because the government of Canada would not provide the funds to continue the program. Eventually China will evolve towards a democratic system of governance. Further, I am not being presumptuous in stating that it would have done so more effectively with Canadian assistance. We could have gathered an immense amount of good will as a result. It was not to be, to our chagrin and loss.

Security and Human Rights in Canadian Foreign Policy

Group of 78 Annual Policy Conference

September 24-26, 2010

Brittany Salon, Cartier Place Suite Hotel, 180 Cooper St, Ottawa ON

PROGRAM

Friday September 24

Evening **6:00 p.m.** **Reception – Cash Bar**
 7:00 p.m. **Dinner**

Keynote Address: National Security & Human Rights – A Fine Balance

- **Reid Morden**, Former Director of the Canadian Security Intelligence Service, Deputy Minister of Foreign Affairs

Saturday September 25

8:00 a.m. Registration and continental breakfast

9:00 a.m. Panel 1: International Interventions: Canada in Action Overseas

(Development, Military, Peace, Democracy)

- Moderator: **Gerald Ohlsen**, Vice-Chair, Group of 78, Chair, International Steering Committee, AFGHANISTAN: Pathways to Peace
- **Carolyn McAskie**, Former Assistant Secretary General for Peacebuilding, and Former Special Representative of the Secretary General and Head of the UN Peacekeeping Operation in Burundi.
- **Eileen Olexiuk**, *Lessons from the Field for Ottawa Policy Makers* former diplomat with Department of Foreign Affairs and International Trade

11:00 a.m. Panel 2: Treatment of Canadians under “National Security”

- Moderator: **Michael Byers**, Professor, Canada Research Chair in International Law & Politics, University of British Columbia
- **Gar Pardy**, *Necessary Changes to Canadian Foreign and Security Policies* Former Canadian Ambassador and Director General of the Consular Affairs Bureau, Canadian Department of Foreign Affairs
- **Monia Mazigh**, Human rights activist and Author, *Hope and Despair*
- **Amir Attaran**: Canada Research Chair, Population Health and Global Development Policy Institute of Population Health & Faculties of Law and Medicine; University of Ottawa

12:30 p.m. Luncheon

1:30 p.m. Speaker: The Economic Roots of Political Instability

- Professor **Manfred Bienefeld**, School of Public Policy and Administration and the Institute of Political Economy, Carleton University

3:00 p.m. Panel 3: Security and Human Rights in the Law, Parliament, and Government Institutions

- Moderator: **Peggy Mason**, Chair, Peacebuild
- **Jean-Jacques Blais**, former Solicitor General, M.P.
- **Robert Miller**, *How to strengthen parliament as a defender of human rights?* Former President and CEO of the Parliamentary Centre, now member of the Board of Directors. Senior Fellow and Lecturer at the Norman Paterson School of International Affairs at Carleton University

Sunday September 26

8:00 a.m. Continental breakfast

9:00 a.m. Concluding Plenary Session: Conclusions & Recommendations

11:00 a.m. Group of 78 Annual General Meeting

Conference Participants

Keyvan Abedi
Nadia Abu-Zahra
Doug Alton
Pinki Anand
Charmaine Anandarajah
John Argue
Savanah Ashton
Amir Attaran
Valerie Bah
Elisabeth Barot
Germaine Basita
Catherine Berg
Manfred Bienefeld
Sunanda Bijoor
Barbara Birkett
Jean-Jacques Blais
Jonathan Blais
Sandra Boisvert
Gordon Breedyk
René Brisebois
Karin Brothers
Joan Broughton
Michael Byers
Phil Chambers
Erin Chryeptyk
Eryl Court
Carolyn Creery
Janet Creery
Tim Creery
Lawrence Cumming
Paul Dewar
Ruby Dagher
Mark Edwards
Mary Edwards

Betsy Estevez
John Foster
John W. Foster
Ardath Francis
Ross Francis
Barbara Fulford
Maria Ghazoui
Qais Ghanem
Anna Golubova
Andrew Hamilton
Scott Hamilton
Gretel Harmston
Richard Harmston
Nathaniel Hartmann
Hilary Homes
Caroline Hyslop
Elizabeth Imrie
George Jacoby
Cynthia Lacasse
Marc Levesque
Arch MacKenzie
Isobel MacKenzie
Tudi MacLaine
Akbar Manoussi
Sahail Manoussi
Lee Marmon
Peggy Mason
Monia Mazigh
Carolyn McAskie
Don McDiarmid
Hunter McGill
Leslie McWhinnie
Peter Meincke
Robert Miller

Peter Moore
Reid Morden
Millie Morton
Margaret Moyston-
Cumming
Richard Nadeau
Katherine Nagelschmitz
George Neufelt
Gerry Ohlsen
Eileen Olexiuk
Gar Pardy
Ruth Pearce
Landon Pearson
Sonia Plourde
Sophie Rheault
Cam Robertson
Marjorie Robertson
Clyde Sanger
Penny Sanger
Marcel Sangsari
Bruce Sells
Michael Shenstone
Susan Shenstone
Heather Sheppard
John Siebert
Steve Staples
Tom Torrance
Barbara Van Haute
Andrew Woolnough

