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MDS Research Paper

***Legal and Policy Responses to The Terrorist Threat to Canada –  
A “Soft” Approach***

By

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## **ABSTRACT**

A credible terrorist threat to Canada exists from nuclear, biological, chemical and conventional weapons, and from cyberterrorism. Obstacles exist to the use of any of these methods, but terrorists have expressed the will to attack Canada and some believe such an attack is inevitable.

Canada has acted on many fronts to counter this threat. In the legal domain Canada has used a combination of domestic criminal and immigration law, along with international law to foil terrorists' plans. Canada is also taking actions that are complementary to legal methods with an aggressive Anti-Terrorism Plan, active cooperation with the United States and significant participation in international cooperative activities.

These strategies and tools are important, but they form only part of the solution to the problem of terrorism. Military action is also required to stop terrorists before they reach the shores of Canada, as well as effective consequence management to deal with terrorists who penetrate the layers of defence. The Canadian Government must continue to focus on all of these areas in order to ensure the safety of its citizens.

## CHAPTER ONE – INTRODUCTION

The phenomenon of terrorism is not new. The first documented case dates back over 2000 years to the activities of Jewish terrorists against the Romans in Judea. Their goal was to incite an insurrection against Roman rule.<sup>1</sup> The first use of the term “terror” can be traced to the French Republic in the late 18<sup>th</sup> century. It was used to describe the new republic’s method of using public tribunals to ensure that the fate of prisoners was well known, thus discouraging potential counterrevolutionaries.<sup>2</sup>

Fast forwarding to the modern era, it is obvious that the concepts of terror and terrorism are still very much alive. Canada has not been immune to the dangers of terrorism, as was made clear by the 1985 bombing of the *Air India* flight that resulted in 329 deaths, over half of whom were Canadians.<sup>3</sup> More recently, the bold terrorist attacks of 11 September 2001 against the United States have demonstrated that the West is not invulnerable, especially to suicide attacks.<sup>4</sup>

What does this mean for Canada and the security of Canadians? While some would like to think that Canada would be immune to such an attack, Canada was specifically named as a target by Osama bin-Laden, the leader of the terrorist group al-Qaeda, which was

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<sup>1</sup> Audrey Kurth Cronin, "Behind the Curve: Globalization and International Terrorism," In *Dimensions of Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 403.

<sup>2</sup> *Ibid.*

<sup>3</sup> John C. Thompson, "Serpents in the Garden: The Threat of Terrorism in Canada" In *Fortress North America? what "Continental Security" Means for Canada*, eds. David Rudd and Nicholas Furneaux (Toronto: The Canadian Institute of Strategic Studies, 2002), 7.

<sup>4</sup> Philip B. Heymann, "Dealing with Terrorism: An Overview," *International Security* 26, no. 3 (Winter, 2001), 25, <http://www.jstor.org>; Internet; accessed 18 December 2007.

responsible for the attacks on the United States in 2001.<sup>5</sup> This fact, along with the publicly advertised belief of the Canadian Security and Intelligence Service that a major terrorist attack on Canada is inevitable, makes it difficult to ignore the potential danger that terrorism poses to Canadians.<sup>6</sup>

Canada has been very involved in the military campaign in Afghanistan, as well as participating in the wider War on Terrorism.<sup>7</sup> Significant efforts have also been taken to improve the effectiveness of consequence management, an area that would be particularly critical in the case of a terrorist attack with a nuclear, biological or chemical weapon.<sup>8</sup> While both of these strategies for countering the terrorist threat are of immense importance, they are beyond the scope of this work. Instead, the focus of this study will be on non-military or “soft” efforts to fight terrorism.

This paper will focus on preventing a terrorist attack on Canada by examining three main areas. The first area will be the nature of the terrorist threat to Canada. It will consider how the terrorist threat has evolved from the actions of rational actors to the radical extremists that more often characterize terrorists today. The remainder of the chapter will consider the various terrorist threats posed to Canada, specifically the dangers of nuclear,

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<sup>5</sup> Commission for Public Complaints Against the RCMP, *Submissions of the Commission for Public Complaints Against the RCMP regarding the Policy Review of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*, 2005, [http://www.epc-cpp.gc.ca/DefaultSite/Reppub/index\\_e.aspx?articleid=669#1](http://www.epc-cpp.gc.ca/DefaultSite/Reppub/index_e.aspx?articleid=669#1); Internet; accessed 7 March 2008.

<sup>6</sup> Canadian Security Intelligence Service, *Report no, 2000/02: Chemical, Biological, Radiological and Nuclear (CBRN) Terrorism* (Ottawa: Canadian Security Intelligence Service - Requirements, Analysis and Production Branch,[2000]), <http://www.csis-scrs.gc.ca/en/publications/perspectives/200002.asp>; Internet; accessed 5 February 2008.

<sup>7</sup> Joel J. Sokolsky and Philippe Lagasse, "Suspenders and a Belt: Perimeter and Border Security in Canada-US Relations," *Canadian Foreign Policy* 12, no. 3 (Winter, 2005-2006), 17.

<sup>8</sup> Richard A. Falkenrath, "Confronting Nuclear, Biological and Chemical Terrorism" In *Weapons of Mass Destruction and Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 108.

biological, chemical, and conventional weapons, as well as the relatively new area of cyber attack.

The second area of this study will be an exploration of the various legal means that are being used to fight terrorism. The first two sections will focus on Canadian legal instruments, especially Canadian criminal law, the Anti-Terrorist Act and the use of Canadian immigration law. The final section will cover the significant international legal instruments that have been created to combat the threat of terrorism.

The third and final focus of this paper will be on other measures that exist for fighting terrorism that are complementary to legal endeavours. This chapter is broken down into three main areas. First will be an examination of Canadian domestic policy, particularly the Anti-Terrorism Plan, the *Public Safety Act* and the National Security Policy. The second section will look at the high profile issue of cooperation between Canada and the United States, and will focus on the topics of balancing border and perimeter security with the needs of Canadian sovereignty. The final section of this chapter will concentrate on cooperative efforts at the international level, especially the various nonproliferation treaties, the Global Partnership Program and the Proliferation Security Initiative.

The overall aim of this paper is to examine Canada's non-military actions to fight terrorism, and to assess whether these efforts are sufficient. It will demonstrate that many measures, besides the use of force, are being taken domestically and internationally to prevent a terrorist attack on Canadian soil. However, it will expose the fact that no matter how well intentioned these efforts are, they are imperfect and are incapable of neutralizing the terrorist threat alone. It is only through the activities described in this paper, in conjunction with the timely and appropriate application of military force, along with the

insurance policy of a solid consequence management strategy, that Canadians will ultimately be kept safe from the threat of terrorism.

## CHAPTER TWO – THE NATURE OF THE THREAT

### INTRODUCTION

According to a Canadian Security Intelligence Service report, Canada has been infiltrated by a wide assortment of international terrorist groups.<sup>9</sup> To date, these groups have not carried out attacks on Canadian soil, but have used Canada as a logistical, funding and recruiting base to help carry out their terrorist missions.<sup>10</sup> Included in their numbers are many individuals who have not only had extensive training in terrorist methods, but who are also experienced veterans of terrorist and insurgent campaigns.<sup>11</sup> There can be no question that, as a minimum, the potential exists for terrorists to conduct actual operations in Canada itself.

The aim of this chapter is to examine the nature of the terrorist threat to Canada, and to determine the likelihood of an attack occurring. The context for this discussion will be set by briefly considering the nature of modern terrorists and how real a threat they pose to Canada. The next section will examine the nightmare scenarios posed by the threat of nuclear, biological and chemical weapons of mass destruction (WMD). The third section will be concerned with the threat from conventional weapons. This chapter will conclude with an examination of cyberterrorism.

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<sup>9</sup> Canadian Security Intelligence Service, *Report no, 2000/01: Trends in Terrorism* (Ottawa: Canadian Security Intelligence Service - Requirements, Analysis and Production Branch,[2000]), <http://www.csis-scrs.gc.ca/en/publications/perspectives/200001.asp>; Internet; accessed 5 February 2008.

<sup>10</sup> *Ibid.*

<sup>11</sup> Canadian Security Intelligence Service., *Canadian Security Intelligence Service: Public Report 2004-2005* (Ottawa: Public Works and Government Services Canada,[2006]), [http://www.csis-scrs.gc.ca/en/publications/annual\\_report/2004/report2004\\_e.pdf](http://www.csis-scrs.gc.ca/en/publications/annual_report/2004/report2004_e.pdf); Internet; accessed 22 January 2008.

## THE NATURE OF MODERN TERRORISM

There has been much discussion recently about the changing nature of terrorism. While their means have always been violent, terrorist groups have traditionally considered themselves to be an integral part of the political process. The paradigm, now known as “old” terrorism, held that violent acts that were excessive or overly indiscriminate would undermine the groups’ legitimacy and impede the achievement of their ultimate goals.<sup>12</sup> As Andrew O’Neil, Senior Lecturer on Political and International Studies at Flinders University writes: “In eschewing mass casualty attacks..., old-style terrorist groups sought to preserve their eligibility for a seat at the post-conflict negotiating table.”<sup>13</sup>

These groups usually had motivations such as attaining publicity and achieving limited political or monetary objectives, or were driven by a desire to expose a government’s weakness or manipulate a government into a use of force that would harm its domestic and international legitimacy.<sup>14</sup> Sometimes, these terrorists were only interested in their own personal notoriety.<sup>15</sup> As a result, the types of targets chosen were often very specific, including people such as diplomats, politicians or athletes, whose murder or kidnapping

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<sup>12</sup> Andrew O’Neil, “Terrorist use of Weapons of Mass Destruction: How Serious is the Threat?” In *Weapons of Mass Destruction and Terrorism*, ed. Alan O’Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 9.

<sup>13</sup> *Ibid.*

<sup>14</sup> David Krieger, “What Happens if...? Terrorists, Revolutionaries, and Nuclear Weapons,” *Annals of the American Academy of Political and Social Science* 430, no. Nuclear Proliferation: Prospects, Problems, and Proposals (Mar., 1977), 45-46; <http://www.jstor.org>; Internet; accessed 18 December 2007.

<sup>15</sup> *Ibid.*, 46.

would serve the aims of the terrorists. At times, more indiscriminate groups such as airline passengers were also targeted, particularly to serve as hostages.<sup>16</sup>

Recently, there has been recognition of a phenomenon known as “new” terrorism, in which the groups are more radical in their beliefs, less motivated by political considerations, and more willing to inflict mass casualties.<sup>17</sup> A Canadian Security Intelligence Service report on terrorism sums up the threat well:

Of particular concern is the emergence of groups-such as apocalyptic religious cults, right-wing extremists, and ad-hoc extremist Islamic groups-whose aim is not to bargain with governments nor to win over public opinion to their point of view, but rather to cause the maximum possible amount of damage and disruption to a people or a system that they consider especially abhorrent.<sup>18</sup>

The methods used by these new groups are much more indiscriminate and potentially far more lethal than those of the “old” terrorists.<sup>19</sup> When one adds to this motivation the belief by religious extremists that they are following the will of God, and are guaranteed a place in heaven because of their sacrifice, it is easy to understand why there is significant concern that such groups could resort to the use of weapons of mass destruction.<sup>20</sup>

Further complicating the issue is the fact that these “new” terrorists are displaying a great deal of sophistication in fund raising, planning, recruiting, and in the coordination and

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<sup>16</sup> *Ibid.*, 45.

<sup>17</sup> Jane Boulden and Thomas G. Weiss, "Whither Terrorism and the United Nations?" In *Terrorism and the UN: Before and After September 11*, eds. Jane Boulden and Thomas G. Weiss (Bloomington, Indiana: Indiana University Press, 2004), 6.

<sup>18</sup> Canadian Security Intelligence Service, *Report no, 2000/02: Chemical, Biological, Radiological and Nuclear (CBRN) Terrorism* (Ottawa: Canadian Security Intelligence Service - Requirements, Analysis and Production Branch,[2000]), <http://www.csis-scrs.gc.ca/en/publications/perspectives/200002.asp>; Internet; accessed 5 February 2008.

<sup>19</sup> O'Neil, "Terrorist use of Weapons of Mass Destruction: How Serious is the Threat?" 9.

<sup>20</sup> Walter Laqueur, "Postmodern Terrorism," *Foreign Affairs* 75, no. 5 (Sep/Oct, 1996), 32.

execution of their operations. Al Qaeda and similar terrorist groups operate in a loosely organized, mostly autonomous cell structure, which is extremely difficult for security agencies to locate and neutralize.<sup>21</sup>

The terrorist threat is not new to Canada. The Front de Libération du Québec challenged domestic security in the 1960's and 1970's, precipitating a major crisis in 1970, and the group Direct Action was responsible for bombing Litton Industries and BC Hydro in 1982.<sup>22</sup> In 1985 the destruction of Air India Flight 182 was the largest terrorist attack in Canadian history, and 24 Canadians lost their lives in the attacks of 11 September 2001. However, what is new is the breed of terrorists that is potentially willing to cause a level of

Another major impact would be the contamination of a large amount of real estate. The effects in the local area could be long lasting, and the fallout from a nuclear detonation could spread far and wide depending on environmental conditions.<sup>24</sup> In the case of a biological attack, an epidemic could quickly spread, inflicting an extremely high number of casualties.<sup>25</sup> Given the invisible nature of the threat, particularly the spectre of fear raised in the public by all things nuclear, the disaster would most likely be compounded and amplified by mass panic in the civilian population, perhaps out of proportion to the actual damage caused by the attack.<sup>26</sup>

The capability of the local authorities to respond to these first order effects would be made more difficult due to the likely degradation of local response capabilities. Typical first responders such as police and firefighters could quickly become casualties in the hazardous environment. Hospitals would rapidly find themselves overwhelmed with wounded, and the exodus of survivors fleeing the victim city would impede the much-needed assistance arriving from outside the local scene.<sup>27</sup>

In the longer term, a WMD attack would certainly result in serious economic damage to the victim city, and would most likely have a significant negative effect on the national economy.<sup>28</sup> A tragic event like this could easily influence strategic decisions of the government in foreign policy, such as the decision of whether or not to continue participating

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<sup>24</sup> Richard A. Falkenrath, "Confronting Nuclear, Biological and Chemical Terrorism" In *Weapons of Mass Destruction and Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 97.

<sup>25</sup> Charles L. Mercier Jr., "Terrorists, WMD, and the US Army Reserve" In *Weapons of Mass Destruction and Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 64.

<sup>26</sup> Falkenrath, "Confronting Nuclear, Biological and Chemical Terrorism," 97.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

in an international military coalition.<sup>29</sup> It would also have a major psychological impact on how Canadians viewed themselves and their place in the world, and could easily influence many aspects of life in Canada including domestic law, public policy and the willingness of Canadians to sacrifice civil liberties in the search for greater security.<sup>30</sup> The US responses after the 11 September 2001 attacks in New York and Washington, and especially the debates that have raged in the media over civil liberty issues in that country, are indicative of the kinds of issues that Canada would face after a WMD attack.

While it is true that the above consequences may only occur in a worst-case scenario, it is certain that the consequences of a WMD attack would be grave for Canada. This is particularly so since the Standing Senate Committee on National Security and Defence has pointed out that Canada's Office of Critical Infrastructure and Emergency Preparedness is not ready to handle emergencies caused by terrorists.<sup>31</sup> Furthermore, most populations are equally unprepared. As the Senate Committee points out:

... of the eight large municipal respondents to a Committee emergency preparedness questionnaire, only four – Vancouver, Montreal, Ottawa and Winnipeg – felt confident that they were prepared to deal with major emergencies, while the remainder – Toronto, Edmonton, Calgary and Hamilton – stated that their cities were “somewhat” prepared. None of the respondents in medium, small, or very small municipalities said that they were prepared to deal with major emergencies.<sup>32</sup>

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<sup>29</sup> *Ibid.*, 98.

<sup>30</sup> *Ibid.*

<sup>31</sup> Standing Senate Committee on National Security and Defence, *National Emergencies: Canada's Fragile Front Lines*, March 2004; <http://www.parl.gc.ca/37/3/parlbus/commbus/senate/com-e/defe-e/rep-e/rep03voll1-e.htm#An%20Unready%20Nation>; Internet; accessed 7 April 2008.

<sup>32</sup> *Ibid.*

Given that assertion, it is critical to understand the exact nature of these threats and how likely are they to occur. The three types of weapons that make up the threat of WMD are nuclear, biological and chemical and commonly are referred to in the literature as NBC. They will each be examined in that order.

## THE NUCLEAR THREAT

Fears of a terrorist nuclear attack have been growing since the end of the Cold War amid concerns over the security of the large inventory of nuclear weapons in the world, particularly in the former Soviet Union,<sup>33</sup> and there is significant evidence that terrorist groups have been actively attempting to acquire nuclear material.<sup>34</sup> Doubts that terrorists would resort to nuclear weapons were largely erased when it was reported that Al Qaeda had received a *fatwa*, a religious justification, from a Saudi cleric in 2003 approving the concept of using a nuclear weapon against “infidels.”<sup>35</sup> It is therefore not surprising that the United Nations High-Level Panel on Threats, Challenges, and Change reported in 2004 that the threat of nuclear proliferation, and particularly nuclear terrorism, was the most significant issue facing the world.<sup>36</sup> Many members of the academic community and policy elites feel that a nuclear terrorist attack is inevitable.<sup>37</sup>

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<sup>33</sup> O'Neil, "Terrorist use of Weapons of Mass Destruction: How Serious is the Threat?" 2.

<sup>34</sup> *Ibid.*, 3.

<sup>35</sup> Graham Allison, "Is Nuclear Terrorism a Threat to Canada's National Security?" *International Journal* 60, no. 3 (Summer, 2005), 715.

<sup>36</sup> *Ibid.*, 714.

<sup>37</sup> O'Neil, "Terrorist use of Weapons of Mass Destruction: How Serious is the Threat?" 3.

The easiest way for terrorists to acquire a nuclear weapon would be to either buy or steal a complete device from a country possessing such weapons.<sup>38</sup> Probably the most often cited source for a complete nuclear device is a rogue nuclear state. North Korea in particular has been considered a possible provider of a nuclear device to anyone with the means to pay.<sup>39</sup> It has even been suggested that a terrorist group might be able to blackmail an emerging nuclear state by threatening to reveal the nation's secret program unless it provided a nuclear weapon to the terrorists.<sup>40</sup>

While there has been much discussion of this threat, such action faces several serious obstacles. The most obvious is the risk of retaliation, conventionally or in kind, if the origins of the device are discovered.<sup>41</sup> Another lesser but still significant concern would be the fear of international condemnation, along with trade and other sanctions, which could hurt the country and the ruling regime.<sup>42</sup> Finally, it is unlikely that a nation that has gone through the expense, time and effort to develop a nuclear weapons capability would surrender a device to an organization over which it had absolutely no control.<sup>43</sup> Aaron Weiss, a contingency analyst for the United States Marine Corps, sums it up: "Risking retaliation and global

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<sup>38</sup> *Ibid.*, 6.

<sup>39</sup> Allison, "Is Nuclear Terrorism a Threat to Canada's National Security?" 716.

<sup>40</sup> Joseph W. Foxell Jr, "The Prospect of Nuclear and Biological Terrorism" In *Weapons of Mass Destruction and Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 137.

<sup>41</sup> O'Neil, "Terrorist use of Weapons of Mass Destruction: How Serious is the Threat?" 7.

<sup>42</sup> Peter Gizewski and Alexander C. Geddes, *Catastrophic Terrorism: Challenges and Responses* (Ottawa: Department of Foreign Affairs and International Trade,[2002]), [http://www.international.gc.ca/arms/isrop/research/gizewski\\_geddes\\_2002/menu-en.asp](http://www.international.gc.ca/arms/isrop/research/gizewski_geddes_2002/menu-en.asp); Internet; accessed 9 February 2008.

<sup>43</sup> Daniel S. Gressang IV., "Audience and Message: Assessing Terrorist WMD Potential" In *Weapons of Mass Destruction and Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 175.

condemnation would make even the most marginalized nation reluctant to cross the threshold from conventional explosives to weapons of mass destruction.”<sup>44</sup>

Perhaps of greater concern is the risk of terrorists either stealing a nuclear weapon or acquiring nuclear material to build a device on their own. It is alarming to note that according to the US Central Intelligence Agency, approximately three percent of the nuclear land mines and artillery rounds in Russia’s tactical nuclear arsenal cannot be accounted for.<sup>45</sup> Another concern is the use of the so called “suitcase nuke.” This is a small nuclear device with a single critical mass of plutonium (approximately 10.5 kilograms), capable of fitting in a bag the size of a suitcase, which would be easy for a terrorist to carry and leave at the site of a target.<sup>46</sup> It was reported in 1997 that Russia was missing up to eighty “atomic demolition munitions” that could be used in a suitcase nuclear weapon.<sup>47</sup> The location of these devices remains unknown.<sup>48</sup>

Another threat that has received much attention is the possibility of a terrorist group building its own nuclear weapon. It has been claimed that it would not be complicated to build a crude uranium nuclear bomb that would produce an explosion equivalent to between ten and twenty thousand tons of TNT.<sup>49</sup> Furthermore, the instructions on how to build such a

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<sup>44</sup> Aaron Weiss, "When Terror Strikes, Who Should Respond?" In *Weapons of Mass Destruction and Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 335.

<sup>45</sup> Foxell, "The Prospect of Nuclear and Biological Terrorism," 135.

<sup>46</sup> Gilbert King, *Dirty Bomb: Weapon of Mass Disruption* (New York: Penguin Group, 2004), 59-60.

<sup>47</sup> *Ibid.*, 61.

<sup>48</sup> *Ibid.*

<sup>49</sup> Jack Harris, "The Threat of Nuclear Terrorism" In *Weapons of Mass Destruction and Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 278.

weapon are available on the Internet.<sup>50</sup> This situation is further compounded by the fear that many former Soviet nuclear scientists, now suffering economic hardship due to their state's collapse, would be willing to sell their skills to the highest bidder.<sup>51</sup>

The plentiful supply of nuclear material available in the world makes this threat even more daunting. The vast majority of the material is in areas that made up the former Soviet Union (FSU). It has been estimated that there are over 950 sites in the FSU where there is enriched uranium and plutonium.<sup>52</sup> Of particular concern is the massive amount of spent nuclear fuel from submarines in Russia. This material poses a great danger to proliferation since most of it is enriched to a higher level than is required to build a simple nuclear bomb.<sup>53</sup> The material is not only of high quality, but there is also a great deal of it. While 66 fuel assemblies are needed to build a basic nuclear bomb, there are 44,000 spent fuel assemblies in Northwest Russia alone.<sup>54</sup>

This might be less worrisome if the sites had a high level of security. The reality, however, is quite the opposite. It was assessed by the US National Intelligence Council that the state of security at Russian nuclear material storage facilities was poor. To quote their 2002 report to Congress: "Russian facilities housing weapons-usable nuclear material...

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<sup>50</sup> An Internet *Google* search for "build a nuclear bomb" by the author on 12 February 2008 yielded 214,000 hits.

<sup>51</sup> Anthony Lake, *6 Nightmares: Real Threats in a Dangerous World and how America can Meet them* (Boston: Little, Brown and Company, 2000), 27.

<sup>52</sup> A. Robitaille Dr. and R. Purver, *Commentary no. 57: Smuggling Special Nuclear Materials* (Ottawa: Canadian Security Intelligence Service - Requirements, Analysis and Production Branch, [1995]), <http://www.csis-scrs.gc.ca/en/publications/commentary/com57.asp>; Internet; accessed 8 February 2008.

<sup>53</sup> Cristina Hansell Chuen, "Russian Nuclear-Powered Submarine Dismantlement and Related Activities: A Critique," James Martin Center for Nonproliferation Studies, <http://cns.miis.edu> (accessed 22 November, 2007).

<sup>54</sup> *Ibid.*

typically receive low funding, lack trained security personnel, and do not have sufficient equipment for securely storing such material.”<sup>55</sup> Paradoxically, the reduction of the number of nuclear weapons in Russia has only made the problem worse, as nuclear material is removed from weapons in more secure locations and transported to less secure nuclear material storage facilities.<sup>56</sup> Adding to this dilemma is the fact that the majority of the workforce at these sites is poorly paid, and spouses often cannot find employment due to the remote locations – two factors that contribute to the potential for corruption.<sup>57</sup>

The risk posed by these conditions is very real, and there are many documented cases of the theft and smuggling of nuclear material from Russia.<sup>58</sup> Police in Europe have intercepted smuggled nuclear material, including highly enriched plutonium.<sup>59</sup> It has also been estimated that as much as one third of stolen nuclear material is never recovered.<sup>60</sup> The US Central Intelligence Agency claimed in 2005 that there was sufficient nuclear material missing for someone with the appropriate knowledge and skills to create a nuclear weapon.<sup>61</sup>

The above paragraphs seem to paint a dismal picture of the state of nuclear material security, and the consequent threat of terrorists acquiring the capability to create a nuclear

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<sup>55</sup> National Intelligence Council, *Annual Report to Congress on the Safety and Security of Russian Nuclear Facilities and Military Forces*, [February 2002], [http://nunturnerinitiative.org/e\\_research/official\\_docs/cia/2-02CIA.pdf](http://nunturnerinitiative.org/e_research/official_docs/cia/2-02CIA.pdf); Internet; accessed 14 February 2008.

<sup>56</sup> Jon B. Wolfsthal and Tom Z. Collina, "Nuclear Terrorism and Warhead Control in Russia" In *Weapons of Mass Destruction and Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 297.

<sup>57</sup> *Ibid.*, 294-295.

<sup>58</sup> *Ibid.*, 291.

<sup>59</sup> Foxell, "The Prospect of Nuclear and Biological Terrorism," 138.

<sup>60</sup> *Ibid.*, 139.

<sup>61</sup> Allison, "Is Nuclear Terrorism a Threat to Canada's National Security?" 715.

weapon. In response, some would argue that the threat of a terrorist nuclear attack has been exaggerated.<sup>62</sup> There are serious complications to terrorists using or building a nuclear weapon.

First, while instructions for building a nuclear device may be available on the Internet, a significant amount of technology, skill, and scientific knowledge is required to build all but the very simplest bomb.<sup>63</sup> Of course, the greater the quantity of highly enriched uranium or plutonium a group could acquire, the easier it would be to build a simple fission-type nuclear weapon.<sup>64</sup> However, it would be virtually impossible for a terrorist group to clandestinely test the device, so the attackers could not be confident that it would work as planned.<sup>65</sup> Would they risk undertaking an operation if they were not certain the bomb would even detonate?

Additionally, the difficulties associated with storing, transporting and planting the device without being detected may have been underestimated.<sup>66</sup> Furthermore, significant financial resources would be required to acquire the material and the expertise to build a nuclear bomb, greatly limiting the number of terrorist organizations that would be able to afford such an endeavour.<sup>67</sup>

For these reasons, most experts consider it much more likely that a terrorist group would conduct an attack with a radiological dispersal device (RDD), better known as a “dirty

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<sup>62</sup> O'Neil, "Terrorist use of Weapons of Mass Destruction: How Serious is the Threat?" 1.

<sup>63</sup> Mercier, "Terrorists, WMD, and the US Army Reserve," 60.

<sup>64</sup> Falkenrath, "Confronting Nuclear, Biological and Chemical Terrorism," 93.

<sup>65</sup> Mercier, "Terrorists, WMD, and the US Army Reserve," 60.

<sup>66</sup> O'Neil, "Terrorist use of Weapons of Mass Destruction: How Serious is the Threat?" 4.

<sup>67</sup> King, *Dirty Bomb: Weapon of Mass Disruption*, 29.

bomb.”<sup>68</sup> A dirty bomb is nothing more than a device made of conventional explosives mixed with some kind of radioactive material. It eliminates the requirement for sophisticated nuclear knowledge or skills since it could be fabricated by anyone possessing conventional bomb making expertise and a quantity of radioactive material.<sup>69</sup>

As the description of its construction suggests, the result of the detonation of a “dirty bomb” is not a nuclear explosion. Instead, the gas expansion caused by the explosion spreads radioactive material over a wide area, depending on the size of the explosion, location of placement, and environmental conditions.<sup>70</sup> The immediate effect on a target would be much less than with a nuclear weapon, in terms of both casualties and physical destruction.<sup>71</sup> However, of more significance would be the psychological impact on the population of a radiological attack, and the economic disruption that would be caused by the evacuation and decontamination.<sup>72</sup> Of course, the long-term health effects of the exposure to radiation could take many years to recognize.<sup>73</sup>

## THE BIOLOGICAL AND CHEMICAL THREAT

While the results of a nuclear attack would be truly devastating, it is believed that a

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<sup>68</sup> Canadian Security Intelligence Service, *Report no, 2000/02: Chemical, Biological, Radiological and Nuclear (CBRN) Terrorism*.

<sup>69</sup> King, *Dirty Bomb: Weapon of Mass Disruption*, 20.

<sup>70</sup> *Ibid.*, 20.

<sup>71</sup> Gizewski and Geddes, *Catastrophic Terrorism: Challenges and Responses*.

<sup>72</sup> Krieger, "What Happens if...? Terrorists, Revolutionaries, and Nuclear Weapons," 52.

<sup>73</sup> King, *Dirty Bomb: Weapon of Mass Disruption*, 35.

biological or chemical weapon terrorist attack is a more likely scenario.<sup>74</sup> There are several reasons for this. First, much less technical expertise is needed to create a biological or chemical weapon.<sup>75</sup> Second, the materials and technology needed to create these devices are much easier to acquire, especially when one considers the large number of dual use technologies in existence. Such material is typically used for legitimate reasons, but could easily be converted for use in making a weapon.<sup>76</sup> Third, the nature of today's population dense cities, combined with the increasing lethality of modern biological and chemical agents, creates the potential to inflict significant casualties with a relatively small amount of weaponized material.<sup>77</sup>

The final reason for believing that a biological or chemical terrorist attack is more likely is that several such attacks have already occurred.<sup>78</sup> The most famous incident is the chemical agent attack using sarin gas by the Aum Shinrikyo cult in the Tokyo subway in 1995 that killed 12 people and injured 5,500.<sup>79</sup> The death toll would have been much higher had the terrorists not erred while preparing the sarin and reduced its lethality, and had they disseminated the gas more effectively to maximize the dosage the victims received.<sup>80</sup> This same group also conducted four biological agent attacks in Tokyo during June and July 1993

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<sup>74</sup> Henry w. Fischer III., "Dimensions of Biological Terrorism: To what must we Mitigate and Respond?" In *Weapons of Mass Destruction and Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 247.

<sup>75</sup> Weiss, "When Terror Strikes, Who should Respond?" 327.

<sup>76</sup> Gideon Rose, "It could Happen here," *Foreign Affairs* 78, no. 2 (Mar/Apr, 1999), 134.

<sup>77</sup> Weiss, "When Terror Strikes, Who should Respond?" 327.

<sup>78</sup> *Ibid.*, 334.

<sup>79</sup> Canadian Security Intelligence Service, *Report no. 2000/02: Chemical, Biological, Radiological and Nuclear (CBRN) Terrorism*.

<sup>80</sup> Mercier, "Terrorists, WMD, and the US Army Reserve," 62.

using the *Bacillus anthracis* bacteria that causes anthrax.<sup>81</sup> The anthrax was dispersed from the top of a building and from a vehicle driving around the city. There were no recorded deaths only because Aum Shinrikyo terrorists cultured the wrong strain of anthrax and did not aerosolize it properly to enable it to cause casualties.<sup>82</sup> It is not difficult to imagine how both these attacks could have turned out much differently.

Of the two threats posed by biological and chemical weapons, the former appears to be the more significant danger. Biological weapons combine the attributes of great destructive potential and relative ease of acquisition.<sup>83</sup> While chemical weapons may also be relatively easy to acquire, they are not nearly as lethal. A study by the US Office of Technology Assessment in 1993 estimated that an aerial release of 100 kilograms of anthrax over the city of Washington on a calm and clear night could kill between one and three million people, while an attack with the same amount of the chemical agent sarin would result in 300 times fewer casualties.<sup>84</sup>

Biological agents are more lethal for a number of reasons. They may be highly contagious and thus easily spread among the target population.<sup>85</sup> The incubation period could be from days to weeks depending on the agent used, facilitating the spread of the disease amongst a highly mobile population.<sup>86</sup> It is also likely that the onset of symptoms would be

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<sup>81</sup> Christopher F. Chyba, "Biological Terrorism and Public Health" In *Weapons of Mass Destruction and Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 116.

<sup>82</sup> *Ibid.*

<sup>83</sup> Richard K. Betts, "The New Threat of Mass Destruction," *Foreign Affairs* 77, no. 1 (Jan/Feb, 1998), 32.

<sup>84</sup> *Ibid.*

<sup>85</sup> Mercier, "Terrorists, WMD, and the US Army Reserve," 64.

<sup>86</sup> *Ibid.*

slow and could easily be mistaken for a natural occurrence until mass numbers of people fell ill.<sup>87</sup> All these factors could hinder the realization that an attack had occurred, and would therefore delay the taking of decisive actions such as administering vaccinations, commencing aggressive anti-biotic treat

challenges to terrorists bent on using a biological or chemical weapon is that environmental conditions such as heat, moisture, sunlight and wind can all have a severely negative impact on the effectiveness of an attack.<sup>94</sup>

It is difficult to quantify the likelihood of terrorists using a weapon of mass destruction, whether it be nuclear, biological or chemical. It is certain, however, that the potential exists for a terrorist group with enough funding, the appropriate materials and skills, and the will to act, to pose a credible threat to Canada. Unfortunately, as with most western population centres, Canadian cities are not prepared to deal with a mass chemical or biological weapon attack.<sup>95</sup> The consequences of a successful attack on a Canadian city could therefore be severe.

## CONVENTIONAL WEAPONS

While weapons of mass destruction tend to capture the attention of the media, and strike fear into the hearts of people, the threat posed by conventional weapons may not receive the attention it deserves. Conventional weapons do not pose the same level of risk of loss of life, destruction of property and infrastructure, and economic impact that a nuclear bomb or biological or chemical weapon attack would have. However, the materials required for conventional weapons are much cheaper and more readily available, and terrorists already have much experience and skill in their use.<sup>96</sup>

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<sup>94</sup> Gizewski and Geddes, *Catastrophic Terrorism: Challenges and Responses*.

<sup>95</sup> Rick Fawn, "Reluctant Moral Middle Power: Canada," In *Global Responses to Terrorism: 9/11, Afghanistan and Beyond*, edited by Mary Buckley and Rick Fawn. New York: Routledge, 2003, 83.

<sup>96</sup> Canadian Security Intelligence Service, *Report no, 2000/01: Trends in Terrorism*.

One of the great dangers of conventional explosives is that there are so many substances from which they can be made. Well known explosives include TNT (trinitrotoluene), which is stable to handle; dynamite, which is commonly used in blasting operations; and C4 (Composition 4), whose stability and explosive force is excellent and therefore is the mainstay of modern militaries.<sup>97</sup> While it is not impossible to acquire some of these explosives, particularly the first two, control mechanisms such as licensing and the requirement for permits exist to limit their sale and track the purchase of significant amounts.<sup>98</sup>

Unfortunately, a number of more innocent compounds can also be combined to make potent explosives. For example, ammonpolver, an explosive made from a mixture of ammonium nitrate and charcoal, is popular with terrorists as a filler in pipe bombs because it is not sensitive to friction, and at thirty to forty cents a pound, is inexpensive.<sup>99</sup> A less commonly known explosive is the “animal blood bomb,” which was invented by the U.S. Army in the 1960s. As the name implies, it is made from animal blood, gasoline and other easily acquired materials such as Epsom salts and sugar. This mixture is basically a homemade version of napalm, as the blood acts as a gelling agent causing the burning compound to stick to its target.<sup>100</sup>

Perhaps of greater concern, especially because of the ease with which large quantities can be acquired from agricultural suppliers, are explosives made from the fertilizer

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<sup>97</sup> King, *Dirty Bomb: Weapon of Mass Disruption*, 43-45, 48.

<sup>98</sup> *Enforcement and Compliance Policy for the Canada Explosives Act and Explosive Regulations*, (2001): 3,5, [http://www.nrcan.gc.ca/mms/explosif/pdf/enforce\\_e.pdf](http://www.nrcan.gc.ca/mms/explosif/pdf/enforce_e.pdf); Internet; accessed 19 February 2008.

<sup>99</sup> King, *Dirty Bomb: Weapon of Mass Disruption*, 46.

<sup>100</sup> *Ibid.*, 47.

ammonium nitrate. The bombs used by terrorists in the 1993 attack on the World Trade Center, and by Timothy McVeigh in the 1995 Oklahoma City attack, were both made from a mixture of ammonium nitrate and diesel fuel.<sup>101</sup> Canada has had direct exposure to this threat. Among the evidence used in arresting 17 suspected terrorists in Toronto in 2006 was the fact that the group had ordered three tonnes of ammonium nitrate.<sup>102</sup> Terrorists can also be creative when devising methods of attack, as the use of commercial airliners demonstrated on 11 September 2001.

It is easy to think that the effect of an attack with a conventional weapon would be much less destructive than an attack using a weapon of mass destruction. Even the terrible loss of life and destruction that occurred with the crashing of the airliners into the two World Trade Center towers and the Pentagon pale in comparison with the devastation that would have been wrought by the explosion of a nuclear device at those same locations.

However, this might not be the case if the target attacked is a nuclear power plant. This type of target could be a particularly attractive option for terrorists, as these power plants could essentially be turned into large “dirty bombs” by sabotaging them, crashing a large aircraft into one, or attacking one with a conventional explosive – spreading radiological material far downwind.<sup>103</sup> This is especially dangerous in the case of nuclear power plants that are located not far from major population centres, such as the Pickering Nuclear Power Plant which is located very close to Toronto - Canada’s largest city. A related threat would be the danger of part of the nuclear fuel cycle itself being targeted, where

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<sup>101</sup> *Ibid.*, 45.

<sup>102</sup> Steward Bell, Adrian Humphreys and Chris Wattie, "Terror Suspects Plotted Two Separate Attacks," *National Post* Tuesday, June 06, 2006, <http://www.nationalpost.com/story.html?id=c8008ad3-54e2-4155-98d1-6687c5649db3&k=1929&p=2>; Internet; accessed 19 February 2008.

<sup>103</sup> Krieger, "What Happens if...? Terrorists, Revolutionaries, and Nuclear Weapons," 48.

attacks could be carried out on a vehicle transporting spent nuclear fuel, or on sites where such materials are stored.<sup>104</sup>

Terrorists have many tools available to them to conduct attacks on Canada, and while weapons of mass destruction get the most press, the danger of a conventional weapon attack certainly must rank as one of the more likely eventualities.

## CYBERTERRORISM

The final section of this chapter will consider a threat that has been arising recently in the minds of both the public and governments – cyberterrorism. One of the most cited experts in this field, Dorothy Denning, defined cyberterrorism in a May 2000 briefing to the U.S.

House of Representatives:

Cyberterrorism is the convergence of terrorism and cyberspace. It is generally understood to mean unlawful attacks and threats of attack against computers, networks, and the information stored therein when done to intimidate or coerce a government or its people in furtherance of political or social objectives.<sup>105</sup>

In order for a cyber attack to qualify as cyberterrorism it would also have to result in violence and/or the causing of widespread fear. Attacks that did not have a major impact on essential services, or that only caused a nuisance effect, would not be considered cyberterrorism.<sup>106</sup>

The threat of cyber attack is credible. The U.S. Director of National Intelligence testified to the U.S. Senate in February 2008 that America was being targeted for such an

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<sup>104</sup> *Ibid.*, 55.

<sup>105</sup> Special Oversight Panel on Terrorism Committee on Armed Services U.S. House of Representatives, *Cyberterrorism*, 2000, , <http://www.cs.georgetown.edu/~denning/infosec/cyberterror.html>; Internet; accessed 21 February 2008.

<sup>106</sup> *Ibid.*

attack: “Our information infrastructure... the Internet, telecommunications networks, computer systems, and embedded processors and controllers in critical infrastructure – increasingly is being targeted... for disruption or destruction...”<sup>107</sup> The Canadian Intelligence and Security Service echoed the very same concerns for the threat of cyberterrorism in Canada.<sup>108</sup>

The reason for the high level of concern among security experts is the extreme degree to which the functioning and economic wellbeing of modern nations is dependent on technology. This includes the healthcare system, the finance and manufacturing sectors, transportation and government. The fear is that a significant disruption would cause a crisis, or at worst a collapse, of society.<sup>109</sup> A second, and potentially more catastrophic scenario, is that somehow terrorists would be able to affect a system, such as water supply plants or natural gas distribution systems, to cause significant casualties.<sup>110</sup>

Using cyber means to attack targets would be attractive to terrorists for several reasons. First, the attacker would not be exposed to any physical danger. Second, since the attack could originate from virtually anywhere, it would be difficult to identify the culprit. It would also pose a challenge to even track down the location from which the attack took place as it is easy for cyber attackers to conceal their true locations by working through sites in

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<sup>107</sup> Senate Select Committee on Intelligence, *Annual Threat Assessment of the Director of National Intelligence for the Senate Select Committee on Intelligence*, 2008, 16, [http://www.tsa.gov/assets/pdf/02052008\\_dni\\_testimony.pdf](http://www.tsa.gov/assets/pdf/02052008_dni_testimony.pdf); Internet; accessed 14 February 2008.

<sup>108</sup> Canadian Security Intelligence Service, *Canadian Security Intelligence Service: Public Report 2004-2005*, 6.

<sup>109</sup> S. M. Furnell and M. J. Warren, "Computer Hacking and Cyber Terrorism: The Real Threats in the New Millennium?" In *Cyberterrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 111.

<sup>110</sup> Fred Cohen, "Cyber-Risks and Critical Infrastructure" In *Cyberterrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 3-4.

many countries.<sup>111</sup> Additionally, the cyber approach would more easily enable simultaneous attacks to be conducted against several critical infrastructure targets, multiplying the potential damage and chaos that could be caused.<sup>112</sup> These factors make cyber attack an attractive option for someone with the right skills and motivation.

The threat of cyber attack is real. However, there is significant reason to believe that the danger posed by cyberterrorism has been overstated. Fred Cohen, one of the world's leading authorities in information protection, has been extremely eloquent in debunking the seriousness of the cyberterrorist threat.<sup>113</sup> For example, one of the scenarios often discussed is a cyber attack on the North American electrical distribution system, causing a long-term power outage and widespread chaos. However, what this fails to take into account is the myriad of backup systems and manual overrides that exist in the distribution system. It would certainly be possible to cause some short term inconvenience, but it would not be possible to cause a blackout with enough coverage or duration to cause severe or long lasting damage to society.<sup>114</sup>

Perhaps the cyberterrorist threat that has received the most publicity is the damage that could be caused by a major cyber attack on the financial system. Imagine the confusion and panic that would result if all banking and brokerage account information suddenly disappeared. However, the reality is that the world financial system is so complicated, monitored, redundant and overlapping that it would be impossible to cause a long-lasting

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<sup>111</sup> Lake, *6 Nightmares: Real Threats in a Dangerous World and how America can Meet them*, 40.

<sup>112</sup> *Ibid.*, 41.

<sup>113</sup> Cohen, "Cyber-Risks and Critical Infrastructure," 1-2.

<sup>114</sup> *Ibid.*, 2-3.

massive collapse.<sup>115</sup> As Cohen writes; "...in order for so many things to simultaneously be affected in so many different ways as to produce a massive collapse requires a threat that does not exist."<sup>116</sup> Significant damage could indeed be done, but even though it might be able to cause financial hardship for some, it would not have a widespread impact.

The real cyber threat is that the Internet has provided terrorists with an excellent tool to gather information on targets, spread propaganda, attract recruits, raise funds, communicate and coordinate planning.<sup>117</sup> Since it is occurring in "cyberspace," the activities are conducted in safety and are virtually impossible to interrupt or influence.<sup>118</sup>

The bottom line is that there is a threat from cyberterrorism, but except for its use as an information tool by terrorists, the damage to Canada that could actually be caused by a cyber attack pales to the havoc that could be caused by terrorist use of a weapon of mass destruction or a well placed attack using conventional methods.

## CONCLUSION

The aim of this chapter was to examine the nature of the terrorist threat to Canada and to provide some kind of assessment about the likelihood of an attack occurring. This has been accomplished by looking at several main areas. The first issue discussed was the phenomenon of "new" terrorism, and how this emerging breed of terrorists are more

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<sup>115</sup> *Ibid.*, 5-6.

<sup>116</sup> *Ibid.*

<sup>117</sup> Timothy L. Thomas, "Al Qaeda and the Internet: The Danger of "Cyberplanning"" In *Cyberterrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 155-159.

<sup>118</sup> Kathy Crilley, "Information Warfare: New Battlefields - Terrorists, Propaganda and the Internet" In *Cyberterrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 69.

fanatical, sophisticated and willing to cause mass casualties than previous iterations of the terrorists have been.

The analysis then turned to a brief assessment of the impact that the use of a weapon of mass destruction would have on Canada. The effects were seen to include not only a potential large number of casualties, but also could involve long term effects on Canada's economy, civil liberties and execution of foreign policy.

This section then delved deeper into details of the various threats. This commenced with a review of the threat posed by nuclear weapons. Issues addressed included the willingness of terrorists to use this terrible weapon, the methods by which terrorists could acquire a nuclear device, and the great quantity of nuclear materiel that exists in the world. It was also noted that serious obstacles do exist to the terrorist use of nuclear weapons, particularly the high level of technology and skills required to build such a device. The conclusion was that the most likely threat was from a "dirty bomb," which combined radioactive material with a more conventional explosive.

The threat posed by biological and chemical weapons was then examined. It was revealed that this threat was more credible than the nuclear threat, and that a biological attack was more dangerous than a chemical one. Attacks using these agents have already happened in other countries, but as these incidents demonstrated, using biological and chemical agents as effective weapons may not be as difficult as creating a nuclear weapon, but it is still complicated.

The next area that was examined, one that is often overshadowed by the fear of weapons of mass destruction, was the threat posed by conventional weapons. These types of weapons are the easiest to acquire or build and there is a very strong history of their use by

terrorists. It was also noted that careful target selection, especially in the case of nuclear power plants, could significantly increase the impact of the use of these weapons.

Finally, the relatively new area of cyberterrorism was examined. This section discussed the fact that although the threat of cyber attack is real and credible, the danger to society from these attacks has been exaggerated. However, it was also seen that the Internet has become a tool that terrorists are effectively exploiting to further their aims.

In conclusion, the end result of this chapter's analysis is that the terrorist threat to Canada is credible and real. While it is impossible to give an exact assessment of the likelihood of attack occurring, it has been demonstrated that terrorists have the means, opportunity and will to execute an attack on Canada. The following sections of this paper will address how this attack can be prevented.

## **CHAPTER THREE – LEGAL FRAMEWORK**

### INTRODUCTION

Now that the nature of the terrorist threat to Canada has been examined, this paper will focus on the strategies that have been developed to address this threat, starting with the use of legal systems. There have been many attempts throughout the years, both domestically and internationally, to create a legal framework to deal with the phenomenon of terrorism. That terrorism has not yet suffered its final defeat speaks to the complexity of the problem and the difficulty of dealing with it through legal means.

This chapter will examine the challenge of addressing terrorism within domestic and international legal frameworks, and will look at the strengths and weaknesses of the various approaches. Three main areas will be studied: Canadian domestic criminal law and the Anti-Terrorism Act; how Canadian immigration law is being used as an anti-terrorist tool; and finally, the significant international legal efforts underway to fight terrorism.

The aim of this chapter is to provide a better understanding of how Canada and the international community are attempting to counter the terrorist threat in the legal arena, and how that fight fits into the overall effort against terrorism.

### DOMESTIC CRIMINAL LAW AND THE ANTI-TERRORISM ACT

The idea of using domestic laws to counter terrorism is not new to Canada. It was noted in chapter one that Canada has experienced its own brand of domestic terrorism. As a

consequence, it has also had previous experience in using the law to attempt to deal with this threat. When the Canadian government invoked the *War Measures Act* in 1970 after the Front de Liberation du Quebec conducted several kidnappings and a murder, it was in response to a terrorist threat to public safety. The organization was declared illegal and suspected supporters were detained under the authority of the emergency powers.<sup>119</sup>

While the *War Measures Act* went beyond the scope of everyday criminal law, Canada has also used domestic criminal law to combat terrorism. Probably the best example of this is the prosecution of two men for participating in the 1995 bombing of an *Air India* aircraft that resulted in the loss of 329 lives – Canada’s deadliest terrorist attack.<sup>120</sup> While the men were eventually acquitted of all charges, including first degree murder and conspiracy, there was definitely a concerted effort to use criminal law to punish a terrorist act.<sup>121</sup>

As the above example illustrates, many laws currently exist on the books that can be used to combat terrorism. The criminal offenses of murder and conspiracy to commit a crime are but two of the legal tools available. Some of the other major ones are offenses relating to: hijacking and carrying weapons on aircraft; administering poisons or noxious substances; possessing explosives and nuclear materials; intimidation and threats; sabotage; and forged and false documents.<sup>122</sup>

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<sup>119</sup> Kent Roach, "Canada's Response to Terrorism" In *Global Anti-Terrorism Law and Policy*, eds. Victor V. Ramraj, Michael Hor and Kent Roach (Cambridge, UK: Cambridge University Press, 2005), 511-512.

<sup>120</sup> *Ibid.*, 512.

<sup>121</sup> "2 Acquitted in Air India Bombings," *CBC News* Thursday, 17 March, 2005, [Http://www.cbc.ca/story/canada/national/2005/03/16/air-india-advance050316.html](http://www.cbc.ca/story/canada/national/2005/03/16/air-india-advance050316.html) (accessed 17 March 2008).

<sup>122</sup> Kent Roach, "The New Terrorism Offences and the Criminal Law" In *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, eds. Ronald J. Daniels, Patrick Macklem and Kent Roach (Toronto: University of Toronto Press, 2001), 152.



It was a primary aim of Canada's Bill C-36, better known as the Anti-Terrorism Act (ATA), passed in the wake of the 9/11, to remedy this situation by creating more tools for authorities to use to foil terrorist plots before they can be enacted.<sup>128</sup> As the Canadian government stated in October 2002: "The *Anti-Terrorism Act* takes aim at terrorist organizations and strengthens our ability to investigate, prosecute and prevent terrorist activities at home and abroad."<sup>129</sup>

One of the important features of the ATA is that it provides a fairly broad definition of terrorist activity. Patrick Macklem in the Faculty of Law at the University of Toronto summarizes the definition well:

...[any] act or omission that is committed at home and abroad..., for a political, religious, or ideological purpose, with the intention of intimidating the public and with the intention of causing death, serious bodily harm, a serious risk to public health or safety, or a serious interference with an essential service.<sup>130</sup>

There are significant differences between the ATA and normal criminal law. One of the most obvious ones is the requirement for a motivation. Motive is irrelevant in ordinary criminal law, but under the ATA it is required to prove that the act was committed for political, religious or ideological reasons. The intent of this was to ensure the ATA was applied to true terrorist activities, and not against threats such as organized crime. As a result,

<sup>128</sup> Martha Shaffer, "Effectiveness of Anti-Terrorism Legislation: Does Bill C-36 Give Us what we Need?" In *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, eds. Ronald J. Daniels, Patrick Macklem and Kent Roach (Toronto: University of Toronto Press, 2001), 200.

<sup>129</sup> Canada, *Canadian Security and Military Preparedness: The Government's Response to the Report of the Standing Senate Committee on National Security and Defence* (Ottawa: Government of Canada, [2002]), <http://www.dnd.ca/site/Newsroom/files/KennyE.pdf> (accessed 7 March 2008).

<sup>130</sup> Patrick Macklem, "Canada's Obligations at International Criminal Law" In *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, eds. Ronald J. Daniels, Patrick Macklem and Kent Roach (Toronto: University of Toronto Press, 2001), 355.

investigations into the politics and religious beliefs of suspected terrorists must now be a central feature of police investigations.<sup>131</sup>

A second critical feature of the ATA is that it is intended to prevent terrorist attacks. Normal criminal law is more likely to punish terrorists after an attack has occurred.<sup>132</sup> The ATA does this by making certain activities a crime before a terrorist act is committed. These activities include, "...the provision of finances, property and other forms of assistance to terrorist groups, participation in the activities of a terrorist group, and instructing the carrying out of activities for terrorist groups."<sup>133</sup> The criminalization of terrorist financing legislation is particularly thorough and has two main themes: prosecuting people who provide financial support and property to terrorists; and freezing and seizing property that has been or might be used to support terrorism.<sup>134</sup> The ATA has come under criticism because the powers of this provision are broad and in some cases go beyond the requirements of the United Nation's *Financing of Terrorism Convention* that it supports.<sup>135</sup> As Kevin Davies, another University of Toronto law professor writes, the ATA:

...is broad enough to be used to force Canadians to sever all economic ties with known terrorists, regardless of how uncertain it is whether creating or maintaining those ties will serve to facilitate terrorist activity, or how remote the resulting connection to terrorist activity might be.<sup>136</sup>

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<sup>131</sup> Roach, "Canada's Response to Terrorism," 514.

<sup>132</sup> Irwin Cotler, "Thinking Outside the Box: Foundational Principles for a Counter-Terrorism Law and Policy" In *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, eds. Ronald J. Daniels, Patrick Macklem and Kent Roach (Toronto: University of Toronto Press, 2001), 118.

<sup>133</sup> Roach, "Canada's Response to Terrorism," 514.

<sup>134</sup> Kevin E. Davis, "Cutting Off the Flow of Funds to Terrorists: Whose Funds? Which Funds? Who Decides?" In *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, eds. Ronald J. Daniels, Patrick Macklem and Kent Roach (Toronto: University of Toronto Press, 2001), 299.

<sup>135</sup> *Ibid.*, 301.

<sup>136</sup> *Ibid.*, 315.

The concern is not only that civil liberties will be curtailed, but also that the ATA will have a disproportionate effect on particular minority groups.<sup>137</sup>

Unlike normal criminal law, under which offences must be committed in Canada in order for Canadian police and courts to have jurisdiction, the ATA gives Canada jurisdiction to try terrorist acts committed anywhere in the world.<sup>138</sup> The ATA further globalizes the legal fight against terrorism by making acts in contravention of the United Nations conventions against terrorism offences under Canadian criminal law.<sup>139</sup>

A further feature of the ATA, which is similar to powers that have been enacted in other nations and by the United Nations, is that it gives cabinet ministers the power to designate specific individuals or groups as terrorists.<sup>140</sup> This aspect of the legislation has caused concern because being placed on the terrorist list is considered proof in a criminal trial that one is a member of a terrorist organization, and therefore inhibits the courts' ability to decide on a case-by-case basis who is in fact a terrorist.<sup>141</sup> The closed nature of the judicial review of these decisions, along with the fact that the accused can be denied access to the evidence against him or her if it was provided by other governments or international organizations, has been an additional cause for concern.<sup>142</sup>

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<sup>137</sup> *Ibid.*

<sup>138</sup> Jutta Brunnee, "Terrorism and Legal Change: An International Law Lesson" In *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, eds. Ronald J. Daniels, Patrick Macklem and Kent Roach (Toronto: University of Toronto Press, 2001), 341.

<sup>139</sup> *Bill C-36 - Anti-Terrorism Act*, (2001): , <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2330950&Language=e&Mode=1>; Internet; accessed 11 March 2008.

<sup>140</sup> Roach, "Canada's Response to Terrorism," 516.

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*, 517.

The impact of being listed as a terrorist or terrorist organization is serious. Anyone involved with the listed individual or group would be guilty of the offense of supporting or assisting a terrorist group, and would be subject to having all of their property frozen, seized or forfeited.<sup>143</sup> There is a right to appeal being listed as a terrorist. However, that is possible only after the determination has been made. At least one person in Canada has been wrongly listed as a terrorist, and it took six months to have the decision reversed.<sup>144</sup>

Perhaps one of the most controversial aspects of the ATA is the expansion of police powers that it permits. One of these powers is known as preventive arrest, which gives the police the authority to arrest someone if they have a reasonable suspicion that the arrest is required in order to prevent terrorist activity.<sup>145</sup> What makes this aspect of the ATA different from normal criminal law is that there is no requirement for the threat of terrorist activity to be imminent, just the belief that future terrorist activity will be stopped.<sup>146</sup>

Another controversial part of the ATA is the creation of investigative hearings. These proceedings give authorities the power to order a person to appear before a judge to give evidence, and that person can be arrested if he or she fails to comply.<sup>147</sup> Unlike ordinary criminal law, a person cannot refuse to answer a question because it might be self-incriminating, but the testimony that is forced from a witness cannot then be used against that

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<sup>143</sup> Cotler, "Thinking Outside the Box: Foundational Principles for a Counter-Terrorism Law and Policy," 124.

<sup>144</sup> Roach, "Canada's Response to Terrorism," 516.

<sup>145</sup> Gary T. Trotter, "The Anti-Terrorism Bill and Preventative Restraints on Liberty" In *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, eds. Ronald J. Daniels, Patrick Macklem and Kent Roach (Toronto: University of Toronto Press, 2001), 242.

<sup>146</sup> *Ibid.*, 243.

<sup>147</sup> Martin L. Friedland, "Police Powers in Bill C-36" In *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, eds. Ronald J. Daniels, Patrick Macklem and Kent Roach (Toronto: University of Toronto Press, 2001), 276.

person in later proceedings.<sup>148</sup> Investigative hearings also differ from normal criminal law in two other important aspects. First, they are used for offences that have already been committed but for which criminal proceedings have not yet commenced; and second, they can be applied to terrorist acts that have not yet actually occurred.<sup>149</sup> These differences should not be surprising, as the primary focus of ATA is on the prevention of terrorism.

Keeping with the theme of measures to prevent terrorist acts, the ATA also has two important provisions that aim to discover terrorist intentions before an actual attack occurs. The first of these is expanded wiretapping powers.<sup>150</sup> Under ordinary criminal law, with the exception of organized crime, a wiretap can only be authorized once police authorities have demonstrated that other investigative means have been exhausted, and then are only approved for sixty days at a time. The ATA removes the requirement for attempting other investigative procedures first, and extends the validity period to one year.<sup>151</sup>

The second measure is an extension of the mandate of the Communications Security Establishment (CSE).<sup>152</sup> Before the ATA, the CSE was not permitted to monitor transmissions inside Canada. Now, the Minister of National Defence can authorize the CSE to intercept communications between Canadians and “foreign entities.”<sup>153</sup>

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<sup>148</sup> Roach, "Canada's Response to Terrorism," 517.

<sup>149</sup> Friedland, "Police Powers in Bill C-36," 277.

<sup>150</sup> *Ibid.*, 274.

<sup>151</sup> *Ibid.*

<sup>152</sup> David Schneiderman, "Terrorism and the Risk Society" In *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, eds. Ronald J. Daniels, Patrick Macklem and Kent Roach (Toronto: University of Toronto Press, 2001), 68.

<sup>153</sup> *Ibid.*

Among the concerns that have been voiced about the powers of the ATA is that the new law has the potential to place dissent that might be illegal, such as wildcat strikes, in the same category as terrorism.<sup>154</sup> Kent Roach points out that the law may go too far when he writes:

It is overbroad and dangerous because it could catch young people engaged in illegal environmental, land claims or anti-globalization protests within the bill's web of unprecedented investigative powers, broad offenses and harsh punishment.<sup>155</sup>

There is also a fear that the ATA will have an adverse effect on free speech. Since motivation is a key ingredient in the law, what people have said in the past could be used against them if they expressed support for a group, belief or ideology, in whose name a terrorist act later occurred.<sup>156</sup> To take the idea one step further, people who express controversial opinions may feel they are putting themselves at risk of being prosecuted under the ATA, and will therefore be less likely to say or write things in support of unpopular views.<sup>157</sup>

From an effectiveness point of view, the fact that the police powers under the ATA come under the supervision of provincial attorneys general, instead of the Security Intelligence Review Committee that supervises the Canadian Security Intelligence Service, has raised concerns that there will poor coordination between federal and provincial agencies.

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<sup>154</sup> Cotler, "Thinking Outside the Box: Foundational Principles for a Counter-Terrorism Law and Policy," 122.

<sup>155</sup> Roach, "The New Terrorism Offences and the Criminal Law," 152.

<sup>156</sup> Davis, "Cutting Off the Flow of Funds to Terrorists: Whose Funds? Which Funds? Who Decides?" 305.

<sup>157</sup> *Ibid.*, 305-306.

Another criticism is that the majority of the law is not needed because it is already covered by criminal law, and the effect that the further powers will have in the fight on terrorism is negligible. Gary Trotter of Queen's University Law Faculty expresses the belief that the ATA will provide a false sense of security. The ATA he writes, "...will not make us safer from terrorists...., Bill C-36 merely makes the criminal law more labyrinthine and more invasive."<sup>158</sup>

A further extension of this argument is the often expressed opinion that the only true value of the ATA is to appease the United States, so it sees Canada is taking the issue of terrorism seriously. As Roach writes, "Canada has drafted broad new anti-terrorism laws... with an eye to American perceptions that Canada might provide a safe haven for terrorists."<sup>159</sup>

Supporters of the ATA present two major counter arguments. The most significant of these is that the powers of the ATA must be evaluated in the context of the nature of the threat.<sup>160</sup> The case has been made that the potential threats posed by terrorists, especially that from weapons of mass destruction, calls for extreme measures to protect open and vulnerable societies like Canada.<sup>161</sup> The threat comes not from normal criminals, and the crimes being contemplated are not normal crimes, and therefore extra-ordinary laws are required. As Irwin Cotler, a former MP and now of the McGill University Faculty of Law, writes: "...we are dealing with Nuremberg crimes and Nuremberg criminals...the enemies of humankind..., the

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<sup>158</sup> Trotter, "The Anti-Terrorism Bill and Preventative Restraints on Liberty," 247.

<sup>159</sup> Roach, "Canada's Response to Terrorism," 511.

<sup>160</sup> Cotler, "Thinking Outside the Box: Foundational Principles for a Counter-Terrorism Law and Policy," 114.

<sup>161</sup> *Ibid.*

domestic criminal law/due process model standing alone is inadequate, if not inappropriate.”<sup>162</sup>

The second argument is that there has been a distinct lack of will at the international level to deal with terrorism, which by its very nature is a global threat. It is argued that by claiming jurisdiction over terrorism both inside and outside its borders, Canada is making a firm commitment to fight international terrorism.<sup>163</sup>

## IMMIGRATION LAW

For all the commotion that has been caused by the ATA, to date only one person has been charged under the act. Mohammad Momin Khawaja was charged in 2004 with “...knowingly participating in the activities of a terrorist group and facilitating a terrorist activity...” in both Ottawa and London, England. His arrest was linked to arrest of nine men in England and the discovery of a large quantity of explosives near Heathrow Airport.<sup>164</sup>

With the exception of this single case, Canadian authorities have preferred to use the Immigration and Refugee Protection Act (IRPA) to deal with suspected international terrorists.<sup>165</sup> While the ATA does go beyond the powers of normal criminal law, it still has “limitations” such as “...proof beyond a reasonable doubt of a prohibited act with fault...” and the ability of judges to throw a case out if they believe that secret evidence would cause

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<sup>162</sup> *Ibid.*, 115-116.

<sup>163</sup> Macklem, "Canada's Obligations at International Criminal Law," 362.

<sup>164</sup> Roach, "Canada's Response to Terrorism," 515-516.

<sup>165</sup> *Ibid.*, 512.

the trial to be unfair.<sup>166</sup> As this section will explain, the IRPA is much more powerful and useful for dealing with suspected terrorists since it permits procedural shortcuts and an amount of secrecy that even the ATA does not allow.<sup>167</sup>

Under the IRPA a non-citizen can be deemed inadmissible to Canada if there are reasonable grounds to believe he or she is a member of a group that is committing, has committed, or will commit acts of terrorism.<sup>168</sup> The complicating factor is that the IRPA does not actually provide a definition of what constitutes terrorism. For the purposes of immigration law the Supreme Court of Canada has rejected the broad ATA definition of terrorism and instead has defined it as any:

...act intended to cause death or serious injury to a civilian, or to any person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such attack by its nature or context is to intimidate a population or to compel a government or an international organization to do or abstain from doing any act.<sup>169</sup>

The IRPA's definition of terrorism is more narrow than the one found in the ATA, but that has not greatly impacted on the immigration laws' usefulness against terrorism. This is because the IRPA can also prevent admission into Canada if it is judged the person is a security threat.<sup>170</sup> The threat to security has been broadly interpreted by the courts to include threats to countries other than Canada.<sup>171</sup>

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<sup>166</sup> *Ibid.*

<sup>167</sup> *Ibid.*, 521.

<sup>168</sup> Department of Justice, *Immigration and Refugee Protection Act*, s. 34, [http://laws.justice.gc.ca/en/showdoc/cs/I-2.5/bo-ga:l\\_1-gb:l\\_6/en#anchorbo-ga:l\\_1-gb:l\\_6](http://laws.justice.gc.ca/en/showdoc/cs/I-2.5/bo-ga:l_1-gb:l_6/en#anchorbo-ga:l_1-gb:l_6); Internet; accessed 12 April 2008.

<sup>169</sup> *Suresh v. Canada*, 1 S.C.R. 3, <http://csc.lexum.umontreal.ca/en/2002/2002scc1/2002scc1.pdf>; Internet; accessed 21 March 2008.

<sup>170</sup> Roach, "Canada's Response to Terrorism," 522.

<sup>171</sup> *Ibid.*

Furthermore, there is no need to prove “beyond a reasonable doubt” that the person has actually committed a crime. All that is required is: “...a bona fide belief in a serious possibility based on credible evidence.”<sup>172</sup> This is a less than onerous burden of proof requirement.

The detention procedures allowed under the IRPA are also much more severe than those under the ATA. Under the IRPA, any non-citizen who is declared a danger to the public and inadmissible to Canada can be detained for an unlimited period of time.<sup>173</sup> This decision must be reviewed within forty-eight hours, but by an Immigration official instead of a judge. The detention decision must be subsequently reviewed every thirty days, and can be continued as long as an investigation is continuing into the suspicions.<sup>174</sup>

A well publicized example of the use of the above procedures was the August 2003 detention of twenty-one Pakistani immigrants who were accused of having used a fraudulent school to get entrance student visas, along with exhibiting other “suspicious” behaviour such as having the schematics of airplanes posted on some of their walls.<sup>175</sup> Many of the suspects were subsequently released when further investigation revealed they were not security threats. Ten of those who were ordered deported are applying for refugee status in Canada, claiming that the case’s publicity

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<sup>172</sup> *Chiau v. Canada* [2001] 2 F. C. 207 (C.A.), quoted in *Ibid.*, 522.

<sup>173</sup> Roach, "Canada's Response to Terrorism," 523.

<sup>174</sup> Department of Justice, *Immigration and Refugee Protection Act*, s. 57(2).

<sup>175</sup> Roach, "Canada's Response to Terrorism," 523.

makes it possible that they will be imprisoned under their home country's harsh anti-terrorism laws.<sup>176</sup>

Another important tool of immigration law is the security certificate. These certificates date from the early 1990's and are used to declare a foreigner or permanent resident inadmissible to Canada for security reasons.<sup>177</sup> The powers of security certificates are significant. While they are subject to Federal Court review to ensure they are reasonable, they prevent someone from applying for refugee status. Additionally, the judicial review is held without the accused or counsel present if the judge believes there would be a risk to someone's safety or national security.<sup>178</sup> If a judge agrees that the issuance of the security certificate was reasonable, the accused can be deported with no appeal, no ability to seek refugee status, and possibly without even knowing all the evidence used in making the decision.<sup>179</sup>

An example of the use of a security certificate has been in the media recently as Adil Charkaoui, a landed immigrant from Morocco, fights the efforts of the federal government to have him deported. He was arrested in Montreal in 2003 under the accusation of being an al-Qaeda sleeper agent. He has declared his innocence and is asking for, "...a meaningful opportunity to clear his name of precise and defined

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<sup>176</sup> The home country is Pakistan. *Ibid.*, 524.

<sup>177</sup> Department of Justice, *Immigration and Refugee Protection Act*, s. 83(c).

<sup>178</sup> Roach, "Canada's Response to Terrorism," 524.

<sup>179</sup> *Ibid.*, 525.

charges in the context of a fair and open trial.”<sup>180</sup> As of the writing of the paper, the case is still unresolved.

A final aspect of immigration law that is used to keep out “undesirables” is the *Safe Third Country Agreement*. It was signed in December 2001 as part of the Canada-United States *Smart Border Agreement*. This bilateral arrangement will prevent refugees who arrive in one country from making an application in the other one.<sup>181</sup> It is mainly aimed at defusing an American perception that Canadian immigration law is too lax and that Canada’s emphasis on refugee protection shows too much concern for civil liberties, vice security.<sup>182</sup>

One strategy of the Canadian government that has been successful is the forward positioning of “Migration Integrity Officers” in 39 locations around the world to pre-screen potential immigrants before they arrive in Canada. This move has stopped ten of thousands of people with improper documents from arriving in Canada since 2001, and has led to the United States’ adoption of a similar program.<sup>183</sup>

These procedures have endured much criticism in Canada. Using immigration law to treat non-citizens differently than citizens raises concerns about due process, fairness and civil liberties.<sup>184</sup> While the Supreme Court has recognized that immigrants are a minority that could be vulnerable to discrimination, it has also said

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<sup>180</sup> “Charkaoui Denies Latest CSIS Terror Allegations,” *CBC News* Saturday, 23 February, 2008, <http://www.cbc.ca/canada/story/2008/02/23/charkaoui.html?ref=rss>; Internet; accessed 25 February 2008.

<sup>181</sup> Roach, “Canada’s Response to Terrorism,” 527.

<sup>182</sup> Library of Congress Research Division, *Nations Hospitable to Organized Crime and Terrorism*, October 2003, p. 147, 152-153, quoted in *Ibid.*, 527.

<sup>183</sup> Joel J. Sokolsky and Philippe Lagasse, “Suspenders and a Belt: Perimeter and Border Security in Canada-US Relations,” *Canadian Foreign Policy* 12, no. 3 (Winter, 2005-2006), 17.

<sup>184</sup> Roach, “Canada’s Response to Terrorism,” 527.

that in the eyes of the law they are not equal: "...it has also accepted that non-citizens do not have a right to remain in Canada and can be treated more harshly under immigration law than under criminal law."<sup>185</sup>

Legal arguments aside, there is a fear that the procedures allowed under immigration law will result in harm to innocent people who are mistakenly labeled as terrorists. There is also concern that entry into Canada will be refused to many more legitimate immigrants than terrorists.<sup>186</sup> One cannot deny these allegations, but the potential cost to Canadian security could be high if terrorists were allowed in because of a fear of preventing legitimate immigrants from entering Canada.

It is more difficult to counter the criticism that deporting suspected terrorists from Canada may just move the problem elsewhere, and may not actually increase security.<sup>187</sup> This is also a valid criticism, but at least two things are accomplished using the IRPA. First, the immediate threat is removed from Canada (even if it places the burden elsewhere); and secondly, the identities of those deported will be known to international authorities, perhaps making it more difficult for them to secretly engage in terrorist activity.

One undeniable weakness of using immigration law to fight terrorism is that it is useless against Canadian citizens.<sup>188</sup> That is why it is only one of the tools available to the government to combat terrorism, and must be combined with a more holistic legal approach including criminal law and the ATA. The next section will

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<sup>185</sup> *Canada v. Chiarelli*, [1002] 1 S.C.R. 711, quoted in *Ibid.*, 528.

<sup>186</sup> Roach, "Canada's Response to Terrorism," 528.

<sup>187</sup> *Ibid.*

<sup>188</sup> *Ibid.*, 529.

consider some of the attempts to address the problem of terrorism using international legal regimes.

## INTERNATIONAL LEGAL FRAMEWORKS

The first real attempt to pass an international law to deal with terrorism was motivated by the assassination of the Yugoslavian King Alexander I in 1934. He was murdered by two Yugoslavians who were subsequently granted refuge by Hungary.<sup>189</sup> As a result of this incident, the League of Nations created the first international law against terrorism entitled the Convention for the Prevention and Punishment of Terrorism (CPPT).<sup>190</sup> The convention defined terrorism as "...criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons, or a groups of persons or the general public."<sup>191</sup> However, the CPPT never entered into force.<sup>192</sup>

The next attempts at coming to grips with the threat of terrorism through international law were the enacting of ten United Nations conventions and two protocols in the later decades of the twentieth century.<sup>193</sup> The first was the Convention on Offenses and Certain

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<sup>189</sup> Robert Kupperman and Darrell Trent, *Terrorism: Threat, Reality, Response* (Stanford, California: Hoover Institution Press, 1979), 142.

<sup>190</sup> Jackson Nyamuya Maogoto, *Battling Terrorism: Legal Perspectives on the use of Force and the War on Terror* (Aldershot, UK: Ashgate Publishing Limited, 2005), 57.

<sup>191</sup> *Convention for the Prevention and Punishment of Terrorism* (1938) 19 *League of Nations Official Journal* 23 (CPPT), quoted in *Ibid.*, 57.

<sup>192</sup> *Ibid.*

<sup>193</sup> Michael Newton, "International Criminal Law Aspects of the War Against Terrorism" In *International Law Studies - International Law and the War on Terror*, eds. Fred L. Borch and Paul S. Wilson, Vol. 79 (Newport, Rhode Island: Naval War College, 2003), 344-345.

other Acts Committed on Board Aircraft (1963),<sup>194</sup> which made it illegal to endanger the safety or “good order and discipline” onboard an aircraft.<sup>195</sup> The second was the Convention for the Suppression of Unlawful Seizure of Aircraft (1970),<sup>196</sup> which made hijacking an aircraft an international criminal offence.<sup>197</sup>

The third was the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971).<sup>198</sup> This convention covered violence endangering flight safety, putting explosives on an aircraft, damaging aircraft on the ground, interference or damage to air navigation facilities and false communications that endangers aircraft safety.<sup>199</sup> The next was the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973).<sup>200</sup> The aim of this convention was to protect heads of state or other officials who are entitled to diplomatic immunity outside their country from attack or kidnapping, including their accommodations or means of travel.<sup>201</sup>

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<sup>194</sup> Also known as The Tokyo Convention, 1963. *Ibid.*, 344.

<sup>195</sup> *Convention on Offenses and Certain other Acts Committed on Board Aircraft*, Sep 14, 1963, 20 U.S.T. 2941, 704 U.N.T.S. 219 reprinted in 2 I.L.M. 1042 (1963), quoted in M. J. Peterson, "Using the General Assembly" In *Terrorism and the UN: Before and After September 11*, eds. Jane Boulden and Thomas G. Weiss (Bloomington, Indiana: Indiana University Press, 2004), 185.

<sup>196</sup> Also known as the Hague Hijacking Convention, 1970. Newton, "International Criminal Law Aspects of the War Against Terrorism," 344.

<sup>197</sup> *Convention for the Suppression of Unlawful Seizure of Aircraft*, Dec 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105, reprinted in 10 I.L.M. 1333 (1971), quoted in Peterson, "Using the General Assembly," 185.

<sup>198</sup> Also known as the Montreal Convention, 1971. Newton, "International Criminal Law Aspects of the War Against Terrorism," 344.

<sup>199</sup> *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, Sep 23, 1971, 24 U.S.T. 564, 974 U.N.T.S. 177, reprinted in 10 I.L.M. 1151 (1971), quoted in Peterson, "Using the General Assembly," 185.

<sup>200</sup> Newton, "International Criminal Law Aspects of the War Against Terrorism," 344.

<sup>201</sup> *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, Dec 14, 1973, 28 U.S.T. 1975, 1035 U.N.T.S. 167, reprinted in 13 I.L.M. 41 (1974), quoted in Peterson, "Using the General Assembly," 185.

The fifth was the International Convention against the Taking of Hostages (1979),<sup>202</sup> which made it illegal to kidnap anyone with the intention of forcing a government, organization or person/s to take or not take any particular action.<sup>203</sup> Next came the Convention on the Physical Protection of Nuclear Material (1979),<sup>204</sup> which dealt with the illegal handling of uranium and plutonium isotopes that could be used in the manufacture of a nuclear weapon.<sup>205</sup> The seventh was the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988).<sup>206</sup> This instrument covered attacks against the personnel, infrastructure and aircraft of international airports that causes casualties and/or damage that disrupts airport operations.<sup>207</sup>

The subsequent convention, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988),<sup>208</sup> made it illegal to forcibly take control of a vessel in international waters.<sup>209</sup> The ninth legal instrument was the Protocol for the

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<sup>202</sup> Newton, "International Criminal Law Aspects of the War Against Terrorism," 344-345.

<sup>203</sup> *International Convention against the Taking of Hostages*, Dec 17, 1979, T.I.A.S. 11081, 1316 U.N.T.S. 205, reprinted in 18 I.L.M. 1456 (1980), quoted in Peterson, "Using the General Assembly," 185.

<sup>204</sup> Newton, "International Criminal Law Aspects of the War Against Terrorism," 345.

<sup>205</sup> *Convention on the Physical Protection of Nuclear Material*, Mar 3, 1980, T.I.A.S. 11080, 1456 U.N.T.S. 101 reprinted in 18 I.L.M. 1419 (1980), quoted in Peterson, "Using the General Assembly," 185.

<sup>206</sup> Also known as the Montreal Protocol 1988. Newton, "International Criminal Law Aspects of the War Against Terrorism," 345.

<sup>207</sup> *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, Feb 24, 1988, 974 U.N.T.S. 178, reprinted in 27 I.L.M. 627 (1988), quoted in Peterson, "Using the General Assembly," 185.

<sup>208</sup> Newton, "International Criminal Law Aspects of the War Against Terrorism," 345.

<sup>209</sup> *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, Mar 10, 1988, 1678 U.N.T.S. 221, reprinted in 27 I.L.M. 668 (1988), quoted in Peterson, "Using the General Assembly," 185.

Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988),<sup>210</sup> which made it an international crime to attack and damage an offshore platform.<sup>211</sup> The next convention was the Convention on the Marking of Plastic Explosives for the Purposes of Detection (1991),<sup>212</sup> which required governments to force producers to add particular detectable chemicals to their plastic explosives.<sup>213</sup>

The eleventh was the International Convention for the Suppression of Terrorist Bombing (1997),<sup>214</sup> which made it an international crime to attack public spaces or buildings open to the public with the intent on harming its occupants.<sup>215</sup> The final legal device passed by the United Nations was the International Convention for the Suppression of the Financing of Terrorism (1999).<sup>216</sup> This convention made it illegal to knowingly fund or engage in money-laundering for terrorists or terrorist groups.<sup>217</sup>

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<sup>210</sup> Newton, "International Criminal Law Aspects of the War Against Terrorism," 345.

<sup>211</sup> *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, Mar 10, 1988, 1678 U.N.T.S. 304, reprinted in 27 I.L.M. 685 (1988), quoted in Peterson, "Using the General Assembly," 185.

<sup>212</sup> Newton, "International Criminal Law Aspects of the War Against Terrorism," 345.

<sup>213</sup> *Convention on the Marking of Plastic Explosives for the Purposes of Detection*, Mar 1, 1991, U.N. Doc. s/22393/corr. 1, reprinted in 30 I.L.M. 721 (1991), quoted in Peterson, "Using the General Assembly," 186.

<sup>214</sup> Newton, "International Criminal Law Aspects of the War Against Terrorism," 345.

<sup>215</sup> *International Convention for the Suppression of Terrorist Bombing*, G.A. Res. 52/164, U.N. GOAR, 52d Sess., U.N. Doc A/RES/52/164, Annex (1997) <http://www.un.org/documents/ga/res/52/a52r164.htm> (Jan 30, 2003) quoted in Peterson, "Using the General Assembly," 185.

<sup>216</sup> Newton, "International Criminal Law Aspects of the War Against Terrorism," 345.

<sup>217</sup> *International Convention for the Suppression of the Financing of Terrorism*, G.A. Res. 54/109, 54<sup>th</sup> Sess., U.N. Doc A/RES/54/109, Annex (2000), <http://www.un.org/documents/ga/res/54/a54r109.pdf> (Jan 30 2003), quoted in Peterson, "Using the General Assembly," 185.

As one can see from the extensive list above, the international approach is based upon outlawing the specific activities that constitute terrorism.<sup>218</sup> The international community has been forced to take this approach since there has been great difficulty in agreeing upon a universal definition of terrorism.<sup>219</sup> This disagreement is based upon differing interpretations about what constitutes terrorism, and reluctance by certain countries to restrict their freedom of action with respect to acting against or supporting various groups and interests.<sup>220</sup> As the old adage goes, “One person’s terrorist is another’s freedom fighter.”<sup>221</sup>

This lack of an agreed upon definition is one of the major reasons why terrorism was not included as one of the crimes over which the International Criminal Court (ICC) would have jurisdiction.<sup>222</sup> However, Crimes Against Humanity do fall under the jurisdiction of the ICC, and as more states acknowledge the crime of terrorism itself as a crime against humanity, there may be an opportunity for it to fall under ICC jurisdiction in the future.<sup>223</sup>

As the situation exists today, international crimes under the conventions and protocols against terrorism must be enforced by individual states using their domestic laws.<sup>224</sup> This is made possible by the international legal principle of Universal Jurisdiction that gives states the right to prosecute and punish perpetrators of international crimes, even if there is no

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<sup>218</sup> Maogoto, *Battling Terrorism: Legal Perspectives on the use of Force and the War on Terror*, 58.

<sup>219</sup> Monica Serrano, "The Political Economy of Terrorism" In *Terrorism and the UN: Before and After September 11*, eds. Jane Boulden and Thomas G. Weiss (Bloomington, Indiana: Indiana University Press, 2004), 198.

<sup>220</sup> Roach, "Canada's Response to Terrorism," 149.

<sup>221</sup> H. H. A. Cooper, "Terrorism: The Problem of Definition Revisited" In *Dimensions of Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 3.

<sup>222</sup> Macklem, "Canada's Obligations at International Criminal Law," 357.

<sup>223</sup> *Ibid.*, 362.

<sup>224</sup> *Ibid.*, 354.

nationality or territorial link to the suspect or victim.<sup>225</sup> In fact, states are obliged under international law to prosecute and punish international criminals.<sup>226</sup> With respect to the specific conventions and protocols against terrorism, states are required to either prosecute suspects or extradite them to another state that is willing to do so, with the aim of ensuring no suspected terrorist is able to find a safe haven.<sup>227</sup>

The terrorist attacks on the United States of 11 September 2001, at least for a brief period, galvanized international opinion and action against terrorism, resulting in the United Nations Security Council (UNSCR) declaring unanimously that the terrorist acts of September 11 constituted, "...a threat to international peace and security."<sup>228</sup> United Nations Security Council Resolution (UNSCR) 1368, passed on 12 September 2001, stated that the attack invoked the inherent right of self-defence, thereby legitimizing the use of force in Afghanistan.<sup>229</sup>

UNSCR 1373, passed two weeks later, went even further when it listed a series of actions that states were required to undertake if they did not want to be vulnerable to United Nations sanctions.<sup>230</sup> The resolution addressed five specific areas. The first of these was the

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<sup>225</sup> *Ibid.*, 353.

<sup>226</sup> *Ibid.*

<sup>227</sup> Maogoto, *Battling Terrorism: Legal Perspectives on the use of Force and the War on Terror*, 62.

<sup>228</sup> Nico Schrijver, "September 11 and Challenges to International Law" In *Terrorism and the UN: Before and After September 11*, eds. Jane Boulden and Thomas G. Weiss (Bloomington, Indiana: Indiana University Press, 2004), 157.

<sup>229</sup> Jane Boulden and Thomas G. Weiss, "Whither Terrorism and the United Nations?" In *Terrorism and the UN: Before and After September 11*, eds. Jane Boulden and Thomas G. Weiss (Bloomington, Indiana: Indiana University Press, 2004), 11.

<sup>230</sup> Chantal de Jonge Oudraat, "The Role of the Security Council" In *Terrorism and the UN: Before and After September 11*, eds. Jane Boulden and Thomas G. Weiss (Bloomington, Indiana: Indiana University Press, 2004), 161.

curtailment of terrorist financing, using language similar to the International Convention for the Suppression of the Financing of Terrorism.<sup>231</sup> The second part of the resolution forbade states from allowing their territory from being used to support terrorist operations or recruiting.<sup>232</sup> The resolution also required states to prevent the supply of weapons to terrorists, and to install effective border security mechanisms to limit the movement of terrorists.<sup>233</sup> Finally, states were required to prosecute suspected terrorists and make a concerted effort to improve the cross-border exchange of intelligence on terrorist activities and plans.<sup>234</sup>

In addition to these measures, UNSCR 1373 also created the Counter Terrorism Committee (CTC). The CTC was composed of all members of the Security Council, and its role was to monitor states on the status of their compliance with the resolution.<sup>235</sup> UNSCR 1373 is particularly useful since it obliges states to comply with its provisions, unlike the conventions and protocols against terrorism, which not all states have ratified. As of 2004 the range of level of ratifications went from 178 states for the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation to only 43 states for the International Convention for the Suppression of the Financing of Terrorism.<sup>236</sup>

Prior to the 11 September 2001 attacks, Canada had met its obligations under Universal Jurisdiction by making many international crimes punishable in Canada regardless

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<sup>231</sup> Aaron Weiss, "When Terror Strikes, Who should Respond?" In *Weapons of Mass Destruction and Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 254.

<sup>232</sup> *Ibid.*

<sup>233</sup> *Ibid.*

<sup>234</sup> *Ibid.*, 252

<sup>235</sup> *Ibid.*, 255

<sup>236</sup> Peterson, "Using the General Assembly," 190-191.

of place of commission or location of victim.<sup>237</sup> With the passing of the ATA, Canada has now ratified all twelve of the conventions and protocols, and is fully able to prosecute international terrorism using domestic criminal law.<sup>238</sup>

## CONCLUSION

This chapter has examined the Canadian domestic and international legal response to the threat posed by global terrorism. The first section demonstrated that Canadian criminal law is useful for dealing with many aspects of the terrorist threat, but is often too focused on punishment after the fact. A detailed look at the new *Anti-Terrorism Act* was then conducted which highlighted many of the differences between the ATA and “ordinary” criminal law. The true aim of the ATA is to prevent terrorism, and consequently its powers are more far reaching and include a significant expansion of police powers. The ATA has been criticized that perhaps it goes too far, but it was also noted that the extreme nature of the terrorist threat must be taken into consideration when evaluating the merits of the ATA.

The next section examined the use of immigration law in the struggle against terrorism, and it was seen that it is potentially more effective than the ATA. The various instruments of the IRPA, such as the ability to deny admission to Canada due to a reasonable belief of posing a security threat, severe detention powers, and security certificates make the IRPA a powerful anti-terrorism tool. As with the ATA, it has come under criticism for its potential impact on due process and civil liberties, but in the end it was noted that non-

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<sup>237</sup> Macklem, "Canada's Obligations at International Criminal Law," 354.

<sup>238</sup> Brunnee, "Terrorism and Legal Change: An International Law Lesson," 341.

citizens do not have the inherent right to remain in Canada, and consequently are not afforded the same rights as Canadian citizens.

Finally, this chapter examined attempts to deal with terrorism using international law. Many international conventions and protocols have been passed making various types of terrorist activities illegal, yet the international community has still not been able to come to a consensus on a definition of terrorism. In the end, individual states must work through domestic legal processes to bring terrorists to justice. Canada has been diligent in doing everything it can to comply with the international laws against terrorism, and has integrated the international terrorist legal regime into domestic law.

In summary, there have been significant strides made in the legal domain to fight terrorism. Much international consensus has been gained and Canada's domestic legislation is well on track. The final chapter of this paper will look at some of the non-legal complementary approaches that are underway to meet the challenge of terrorism.

## **CHAPTER FOUR – COMPLEMENTARY APPROACHES**

### INTRODUCTION

So far this study has explored the nature of the terrorist threat to Canada and the various domestic and international legal responses that exist to deal with it. However, there are a host of other measures being taken domestically and internationally to counter terrorism that do not fall strictly within the purview of the law. This final chapter will examine the main Canadian policies, bilateral arrangements and international agreements that have been created as a complement to the legal means of defending against and deterring terrorism.

The first section of this chapter will examine domestic policy efforts in Canada to counter terrorism. This will involve a consideration of the role of security agencies as well as Canada's Anti-Terrorism Plan, which includes the Public Safety Act and the National Security Policy. Following this will be an overview of the often high profile issue of cooperation between Canada and the United States. The areas that deserve particular highlighting in this section are the efforts of both countries to agree upon arrangements for effective border security, and the sensitive issue of continental perimeter security. The final section of this chapter will look at wider international efforts to fight terrorism in which Canada is an active participant. The main areas that will be examined here are the various treaties to prevent the manufacture of and/or spreading of weapons of mass destruction, the Global Partnership Program (GPP) and the Proliferation Security Initiative (IPS).

As will be seen, there are a myriad of initiatives that have been undertaken in the name of fighting terrorism, and it would be impossible to delve into each one in great detail.

This chapter will therefore aim at achieving a broad overview of the scale of the efforts, with the overall goal of providing an appreciation of all the non-military efforts underway to counter terrorists, thereby arriving at a more holistic view of the complexities of the international fight against terrorism.

## DOMESTIC POLICY

Since 1984 the primary responsibility for dealing with threats to Canadian domestic security has rested with the Canadian Security Intelligence Service (CSIS).<sup>239</sup> It therefore has the mandate to investigate terrorist activity in Canada.<sup>240</sup> The CSIS Act defines this as:

...activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state...<sup>241</sup>

In order to accomplish this task, CSIS counter-terrorist activity follows two basic strategies. The first is to maintain surveillance on groups that are known to use violence or the threat of violence for political objectives internationally. The second is to attempt to identify those who are working with or supporting terrorist activities in Canada.<sup>242</sup>

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<sup>239</sup> Martin L. Friedland, "Police Powers in Bill C-36" In *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, eds. Ronald J. Daniels, Patrick Macklem and Kent Roach (Toronto: University of Toronto Press, 2001), 271.

<sup>240</sup> Canadian Security Intelligence Service, *Report no, 2000/04: International Terrorism: The Threat to Canada* (Ottawa: Canadian Security Intelligence Service - Requirements, Analysis and Production Branch,[2000]), <http://www.csis-scrs.gc.ca/en/publications/perspectives/200004.asp>; Internet; accessed 5 February 2008.

<sup>241</sup> *Canadian Security Intelligence Service Act, C-23*, R.S.C. 1985, c., (1984): article 2c), <http://www.canlii.org/ca/sta/c-23/whole.html>; Internet; accessed 25 March 2008.

<sup>242</sup> Canadian Security Intelligence Service, *Report no, 2000/04: International Terrorism: The Threat to Canada*.

The role of CSIS is critical, as accurate intelligence on terrorist plans and activities is the first line of defence against the threat to Canada, and is the key to successful counter-terrorism. As the terrorism expert Paul Wilkinson writes, it is only: "...through comprehensive and accurate intelligence data that the security authorities have any hope of locating the terrorists, uncovering their conspiracies and bringing them to justice."<sup>243</sup>

While Canadian efforts to thwart terrorism pre-date the attacks of 11 September 2001,<sup>244</sup> the use of commercial airliners as terrorist weapons significantly raised the profile of, and level of debate on, the terrorist threat to Canada.<sup>245</sup> This resulted in the creation of the Ad Hoc Cabinet Committee on Public Security and Anti-Terrorism under the Minister of Foreign Affairs, John Manley. It attempted to look holistically at the wide range of tools available to the government to wage a war against terrorism and improve public security.<sup>246</sup>

The Anti-Terrorism Plan that was subsequently decided upon had five major objectives. They were:

- [1] to prevent terrorists from getting into Canada;
- [2] to protect Canadians from terrorist acts;
- [3] to bring forward tools to identify, prosecute, convict and punish terrorists;
- [4] to keep the Canada-U.S. border secure and open to legitimate trade; and

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<sup>243</sup> Paul Wilkinson, *Terrorism Versus Democracy: The Liberal State Response*, Second ed. (New York: Routledge, 2006), 73.

<sup>244</sup> Frank J. Cilluffo, "Terrorism and the Canada - U.S. Border," *Isuma* 2, no. 4 (Winter, 2001), 3, [http://www.isuma.net/v02n04/cilluffo/cilluffo\\_e.shtml](http://www.isuma.net/v02n04/cilluffo/cilluffo_e.shtml); Internet; accessed 4 October 2007.

<sup>245</sup> Irwin Cotler, "Thinking Outside the Box: Foundational Principles for a Counter-Terrorism Law and Policy" In *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, eds. Ronald J. Daniels, Patrick Macklem and Kent Roach (Toronto: University of Toronto Press, 2001), 111.

<sup>246</sup> Kim Richard Nossal, "Canadian Foreign Policy After 9/11: Realignment, Reorientation Or Reinforcement?" In *Foreign Policy Realignment in the Age of Terror - Canadian Strategic Forecast 2003*, eds. Lenard Cohen, Brian Job and Alexander Moens (Toronto: The Canadian Institute of Strategic Studies, 2003), 24.

[5] to work with the international community to bring terrorists to justice and address the root causes of terrorism.<sup>247</sup>

The objective of stopping terrorists from entering Canada was to be achieved through a three-pronged approach. The first step was improving maritime security through better surveillance, better intelligence and more effective technology to screen cargo and track vessels at sea.<sup>248</sup> The second step was enhancing airport security by improving passenger and baggage screening, and placing armed undercover officers on higher risk flights.<sup>249</sup> The final step was placing immigration officials abroad to increase the effectiveness of pre-immigration screening, better use of intelligence to identify potential immigrants of concern, more efforts and resources allocated to removing unwanted immigrants, more difficult to forge documentation, and the new Immigration and Refugee Protection Act.<sup>250</sup>

The second objective of the Anti-Terrorism Plan was to protect Canadian citizens from acts of terrorism.<sup>251</sup> This was the major motivation behind the Public Safety Act (PSA), which amended over a dozen federal laws to work towards this goal.<sup>252</sup> The main features of the PSA include: improved security requirements for airport facilities and aircraft construction; better screening for entrance into restricted areas; making any behaviour that

<sup>247</sup> Foreign Affairs and International Trade Canada, *Background - Canada's Actions Against Terrorism since September 11* (Ottawa: Foreign Affairs and International Trade Canada, [2007]), <http://www.international.gc.ca/anti-terrorism/canadaactions-en.asp>; Internet; accessed 11 March 2008.

<sup>248</sup> Canada, *Canadian Security and Military Preparedness: The Government's Response to the Report of the Standing Senate Committee on National Security and Defence* (Ottawa: Government of Canada, [2002]), <http://www.dnd.ca/site/Newsroom/files/KennyE.pdf>; Internet; accessed 7 March 2008.

<sup>249</sup> *Ibid.*

<sup>250</sup> *Ibid.*

<sup>251</sup> Foreign Affairs and International Trade Canada, *Background - Canada's Actions Against Terrorism since September 11*.

<sup>252</sup> Parliamentary Research Branch, *Legislative Summary - Bill C-7: The Public Safety Act, 2002* (Ottawa: Library of Parliament, [2004]), <http://www.parl.gc.ca/37/3/parlbus/chambus/house/bills/summaries/c7-e.pdf>; Internet; accessed 11 March 2008.

endangers a flight or passenger a crime; requiring reservation systems to provide data on specific passengers; and finally, amending the Immigration Act to improve the effectiveness of the immigration system in preventing terrorists from entering Canada.<sup>253</sup>

Working towards the same objective, the National Security Policy (NSP) takes the task of protecting Canadians further by espousing a whole of government approach to fighting terrorism.<sup>254</sup> To do this the NSP focuses on three core national security interests: protecting Canadians and Canada; ensuring Canada is not used as a base from which terrorists can threaten allies; and finally, “contributing to international security.”<sup>255</sup>

The Government of Canada has focused on six key areas in the NSP in order to address these core national security interests. The first of these areas was intelligence, which saw the creation of an Integrated Threat Assessment Centre to handle intelligence in a more timely and effective manner, and increased investments to improve Canada’s intelligence gathering capability.<sup>256</sup> The second area was emergency planning, which included the creation of a Government Operations Centre to coordinate responses to national emergencies such as major terrorist attacks, and other measures to improve critical infrastructure protection and consequence management capability.<sup>257</sup> The next key area of focus, public health, resulted in the creation of a new Public Health Agency of Canada and a Chief Public Health Officer for Canada, and saw an emphasis put on improving the capability to respond

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<sup>253</sup> Foreign Affairs and International Trade Canada, *Backgrounder - Canada's Actions Against Terrorism since September 11*.

<sup>254</sup> Department of National Defence, *Backgrounder - Securing an Open Society: Canada's National Security Policy* (Ottawa: Department of National Defence, [2004]), [http://www.mdn.ca/site/newsroom/view\\_news\\_e.asp?id=1363](http://www.mdn.ca/site/newsroom/view_news_e.asp?id=1363); Internet; accessed 11 March 2008.

<sup>255</sup> *Ibid.*

<sup>256</sup> *Ibid.*

<sup>257</sup> *Ibid.*

to a major health threat such as a biological weapon attack.<sup>258</sup> The fourth area that was addressed was transport security. This resulted in the establishment of Maritime Security Operations Centres on both coasts and the Great Lakes, and greater efforts to improve surveillance, coordination and security of ports.<sup>259</sup> The fifth area to receive emphasis was border security, and the final area was international security.<sup>260</sup>

A final action the government took to protect Canadians from terrorism was the creation of the new Ministry of Public Safety and Emergency Preparedness. This ministry is responsible for the new Border Services Agency and the Office of Critical Infrastructure and Emergency Preparedness.<sup>261</sup> The aim of the new ministry is two fold. First, it is hoped it will enable a more holistic and rational approach to domestic security by combining the key elements of police and border security under one overall authority. And second, its mirroring of the American Department of Homeland Security should allow for better integration and coordination of cross border security efforts.<sup>262</sup>

The third objective of the Anti-Terrorism Plan, creating legal tools to deal with terrorists, was discussed at length in the previous chapter. The fourth objective of addressing Canada-U.S. border security is the subject of the following section. Finally, the fifth objective of working with the international community was examined from the legal point of view in the previous chapter, and will be looked at from a cooperation perspective in the final section of this chapter.

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<sup>258</sup> *Ibid.*

<sup>259</sup> *Ibid.*

<sup>260</sup> *Ibid.*

<sup>261</sup> Kent Roach, "Canada's Response to Terrorism," 531.

<sup>262</sup> *Ibid.*

Hurdles to effective inter-agency cooperation still exist, particularly in the realm of intelligence sharing.<sup>263</sup> It is perhaps inevitable that problems and inefficiencies will exist as any system adapts to cope with a new threat. However, Canada has taken dramatic steps to deal with the threat of terrorism on the domestic front. The following sections will explore how Canada's campaign against terrorism has been carried into the continental and international domains.

### CANADA-UNITED STATES COOPERATION

Canada and the United States cooperated on border security issues prior to the events of 11 September 2001. In 1988 a Bilateral Consultative Group (BCG) was established to help coordinate Canadian and American counter-terrorism policy.<sup>264</sup> The activities of this group included annual policy discussion meetings, joint terrorist response training and cooperative research and development projects.<sup>265</sup>

During the 1990s, three other significant continental cooperative endeavours took place. The first of these was the 1995 Canada-United States of America Accord on our Shared Border (SBA) that formally acknowledged that border security issues could not be handled in isolation.<sup>266</sup> Under the SBA, both governments agreed to improve cooperation

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<sup>263</sup> Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons*, [2004], <http://www.oag-bvg.gc.ca/internet/docs/20040300ce.pdf>; Internet; accessed 22 March 2008.

<sup>264</sup> Cilluffo, "Terrorism and the Canada - U.S. Border," 5.

<sup>265</sup> *Ibid.*

<sup>266</sup> Foreign Affairs and International Trade Canada, *Building a Border for the 21st Century - CUSP Forum Report* (Ottawa: Foreign Affairs and International Trade Canada, [2000]), <http://www.canadianembassy.org/border/cuspreport-en.asp>; Internet; accessed 27 March 2008.

and share best practices to prevent illegal cross border movement, with the aim of being able to better respond to future threats. Particular emphasis was put on the areas of “...communications, training, border integrity, intelligence sharing...and immigration as they apply to terrorism, criminality and contraband.”<sup>267</sup>

The second agreement was the 1997 Border Vision Initiative (BVI) that aimed to help officials from both countries arrive at a more common strategic approach to immigration issues.<sup>268</sup> One of the major objectives of the BVI was to improve cross-border information and intelligence sharing to ensure suspected terrorists could be detected early.<sup>269</sup> The final initiative was the 1999 Canada-United States Partnership (CUSP). The CUSP espoused three “guiding principles” for cooperation between the two countries. The three were: improving harmonization of border policies; enhancing the efficiency of customs, immigration, border policing and environmental protection; and cooperating on common threats from outside the continent.<sup>270</sup>

Regardless of these efforts the attacks on 11 September 2001 resulted in the immediate closure of the border.<sup>271</sup> The impact was significant, as 87 percent of Canada’s exports are destined for the United States.<sup>272</sup> Americans, particularly in the northern states, were also impacted as Canada is their largest trading partner, with the amount of goods

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<sup>267</sup> *Ibid.*

<sup>268</sup> Cilluffo, "Terrorism and the Canada - U.S. Border," 5.

<sup>269</sup> Foreign Affairs and International Trade Canada, *Building a Border for the 21st Century - CUSP Forum Report*.

<sup>270</sup> *Ibid.*

<sup>271</sup> Nossal, "Canadian Foreign Policy After 9/11: Realignment, Reorientation Or Reinforcement?" 24.

<sup>272</sup> Rick Fawn, "Reluctant Moral Middle Power: Canada" In *Global Responses to Terrorism: 9/11, Afghanistan and Beyond*, eds. Mary Buckley and Rick Fawn (New York: Routledge, 2003), 85.

heading north across the border valued at over \$300 billion (U.S.) in 2007.<sup>273</sup> The magnitude of this important trading relationship and its vulnerability to disruption causes much concern.

As Joel Sokolsky and Philippe Lagassé wrote in *Canadian Foreign Policy* in 2006:

The Canadian nightmare is not so much a terrorist attack on Canada,... Rather, the nightmare is what would happen to the bilateral relationship, and the Canada-US border, if a terrorist strike against America emanates from Canada.<sup>274</sup>

Given the importance of this trading relationship for both Canadian and American economic prosperity, Canada and the United States signed the Smart Border Accord in December 2001.<sup>275</sup> This agreement recognizes the critical role that economic prosperity plays in national security, and put into place new security measures to ease the passage of low-risk individuals and cargo across the border.<sup>276</sup> In order to accomplish this, the Smart Border Action Plan that was the result of this accord called for a series of measures including: biometric identification and improved Permanent Resident Cards, better coordination of refugee claims and visa policies, the sharing of passenger and immigration information and better integration of intelligence and enforcement efforts.<sup>277</sup>

Efforts to improve Canada-United States security coordination were further strengthened with the signing of the Security and Prosperity Partnership (SPP) in March

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<sup>273</sup> United States International Trade Commission. *U.S. Trade Balance, by Partner Country 2007*, [http://dataweb.usitc.gov/scripts/cy\\_m3\\_run.asp](http://dataweb.usitc.gov/scripts/cy_m3_run.asp); Internet; accessed 15 April 2008.

<sup>274</sup> Joel J. Sokolsky and Philippe Lagasse, "Suspenders and a Belt: Perimeter and Border Security in Canada-US Relations," *Canadian Foreign Policy* 12, no. 3 (Winter, 2005-2006), 18.

<sup>275</sup> *Ibid.*

<sup>276</sup> Canada, *Canadian Security and Military Preparedness: The Government's Response to the Report of the Standing Senate Committee on National Security and Defence*, 2-3.

<sup>277</sup> *Ibid.*

2005.<sup>278</sup> Taken to its fullest extent, the SPP would see the three nations of North America adopt similar policies and procedures for immigration, the tracking of travelers and goods, as well as the eventual expansion of NORAD's defence mandate to the sea and land environments.<sup>279</sup>

The supporters of a continental security perimeter believe it is an economic necessity that would make future drastic American unilateral action on the Canada-United States border less likely.<sup>280</sup> It is also believed that it would counter a view held by some Americans that Canada's security policy is soft and does not provide an effective deterrent or defence against terrorists.<sup>281</sup>

The Council of Canadians rejects this approach and has expressed serious concerns over the SPP.<sup>282</sup> They have raised issues ranging from the possibility of human rights abuses, to the difficulty Canada would have expressing its own foreign policy and the potential loss of national control over resources such as oil and water.<sup>283</sup> David Charters, Director of the Centre for Conflict Studies at the University of New Brunswick, has further argued that

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<sup>278</sup> "Security and Prosperity Partnership of North America," <http://www.spp-ppsp.gc.ca/menu-en.aspx>; Internet; accessed 23 March, 2008.

<sup>279</sup> Sokolsky and Lagasse, "Suspenders and a Belt: Perimeter and Border Security in Canada-US Relations," 19.

<sup>280</sup> *Ibid.*

<sup>281</sup> Cilluffo, "Terrorism and the Canada - U.S. Border," 1.

<sup>282</sup> Council of Canadians, *Five Things You should Know about the Security and Prosperity Partnership of North America* Canadian Perspectives, [2005], <http://www.canadians.org/publications/CP/2005/spring/SPP.html>; Internet; accessed 27 March 2008.

<sup>283</sup> *Ibid.*

regardless of how practical the SPP may be, it would be “unsellable” to the Canadian public because of perceptions of its negative impact on Canadian sovereignty.<sup>284</sup>

Likely because of this perceived impact, the Canadian Government has not wholeheartedly signed on to all aspects of the SPP. In particular, it has refused to endorse the concept of a continental security perimeter because of the likely backlash that would result from the electorate.<sup>285</sup> Similarly, there is little interest in copying American policies and legislation explicitly due to both sovereignty concerns and the fact that Canadian values, particularly with respect to immigration, are not identical to those in the United States.<sup>286</sup> Finally, there is a belief in Canada that no matter how many agreements or treaties are signed with the Americans, the United States would never surrender its right to close its borders if it deemed it necessary. The end result would therefore be a surrendering of sovereignty with no guarantee of economic protection in a crisis.<sup>287</sup>

For these reasons the Canadian government has preferred the approach of negotiating a series of bilateral agreements. In so doing the government has been able to agree to specific initiatives that improve security without sacrificing national sovereignty. The Smart Border Accord is an example of such an agreement.<sup>288</sup> An example of an initiative the Canadian Government did not agree to was the American proposal to expand the role of NORAD to

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<sup>284</sup> Francis Kofi Abiew, *Canadian Defence and the Canada-US Strategic Partnership - NPSIA Occasional Paper no. 29* (Ottawa: Centre for Security & Defence Studies, Carleton University, [November 2002]), [http://www.carleton.ca/csds/occasional\\_papers/NPSIA-29.pdf](http://www.carleton.ca/csds/occasional_papers/NPSIA-29.pdf); Internet; accessed 5 January 2008.

<sup>285</sup> Sokolsky and Lagasse, "Suspenders and a Belt: Perimeter and Border Security in Canada-US Relations," 20.

<sup>286</sup> Cilluffo, "Terrorism and the Canada - U.S. Border," 2.

<sup>287</sup> Sokolsky and Lagasse, "Suspenders and a Belt: Perimeter and Border Security in Canada-US Relations," 20-21.

<sup>288</sup> *Ibid.*, 21.

include the defence of all territory and waters in North America. This raised nationalistic fears of excessive United States influence on Canadian defence policy, with the added concern that American forces would be deployed on Canadian soil.<sup>289</sup> The compromise position was to agree to better cooperation and sharing of information in the maritime domain to complement cooperation in the air defence domain, with defence remaining a national responsibility.<sup>290</sup> Again, security was improved without compromising Canadian sovereignty.

It is certainly in Canada's best interests to cooperate with the United States on security matters, but the government has to be cautious in doing so if it desires to avoid the wrath of a population that tends to be sensitive to perceived impingements on its sovereignty from the south. The final section of this chapter will attempt to make the picture of non-legal approaches to countering terrorism more complete by looking at Canadian involvement in international cooperative efforts outside of the North American continent to address this threat.

## INTERNATIONAL COOPERATION

Chapter Three covered the international legal fight against terrorism, but other international cooperation regimes also exist that are not specifically targeted at the criminal acts of terrorism. As was discussed earlier in this paper, the most dangerous threat posed by today's terrorists is the use of weapons of mass destruction (WMD). As a result, this area has

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<sup>289</sup> *Ibid.*, 22.

<sup>290</sup> Canada, *Canada's International Policy Statement: A Role of Pride and Influence in the World. Defence* (Ottawa: Government of Canada,[2005]).

received particular attention internationally, and several significant international agreements have been concluded which attempt to reduce the opportunities for terrorist groups to acquire the material needed to construct a WMD device.

The first of these was the 1968 Nuclear Nonproliferation Treaty (NPT).<sup>291</sup> The goal of the NPT is to prevent the transfer of nuclear weapons material, technology and expertise to non-nuclear states and to ensure the security of radioactive material, while still permitting the use of nuclear energy for peaceful purposes.<sup>292</sup> Canada has been actively engaged in the nuclear non-proliferation regime and fully supports the goals of the NPT.<sup>293</sup>

The issue of biological weapons was addressed by the Biological Weapons Convention (BWC) of 1972.<sup>294</sup> This convention forbids the creation, storing or transfer of disease causing biological agents and toxins for the use as weapons.<sup>295</sup> The 1993 Chemical Weapons Convention (CWC) attempts to address the issue of chemical weapons by placing the same restrictions on chemical agents as the BWC does on biological agents.<sup>296</sup> A group of nations, known as the Australia Group, came together in 1985 to reinforce the efforts to prevent the proliferation of biological and chemical weapons. The 40 members of this

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<sup>291</sup> Richard K. Betts, "The New Threat of Mass Destruction," *Foreign Affairs* 77, no. 1 (Jan/Feb, 1998), 35.

<sup>292</sup> *The Treaty on the Non-Proliferation of Nuclear Weapons (NPT)*, (1 July, 1968): Arts I-IV, <http://www.un.org/events/npt2005/npttreaty.html>; Internet; accessed 11 March 2008.

<sup>293</sup> Canada, *Canada's International Policy Statement: A Role of Pride and Influence in the World. Overview* (Ottawa: Government of Canada,[2005]).

<sup>294</sup> Betts, "The New Threat of Mass Destruction," 30.

<sup>295</sup> Michael Barletta, Amy Sands and Jonathan B. Tucker, "Keeping Track of Anthrax: The Case for a Biosecurity Convention" In *Weapons of Mass Destruction and Terrorism*, ed. Alan O'Day (Aldershot, UK: Ashgate Publishing Limited, 2004), 88.

<sup>296</sup> *Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction*, (13 January, 1993): Art I, [http://www.opcw.org/docs/cwc\\_eng.pdf](http://www.opcw.org/docs/cwc_eng.pdf); Internet; accessed 28 March 2008.

organization, which includes Canada, cooperate actively to reinforce the aims of both the BWC and CWC. In June 2002 the Australia group took the extra step of formally targeting non-state actors, in particular terrorist groups, for non-proliferation efforts.<sup>297</sup> The weakness of these efforts is that not all states are signatories, and there are no formal punishment measures to enforce treaty compliance.<sup>298</sup>

International efforts to fight the threat of terrorism received a significant boost from the attacks of 11 September 2001. The French newspaper *Le Monde* went so far as to put a headline on the front page that read, "We are all Americans now."<sup>299</sup> This wave of support saw 160 countries join together to fight terrorist financing and 90 countries agree on measures for more effective police and intelligence cooperation.<sup>300</sup> This event also urged many multinational organizations, such as the European Union (EU), the Organization for Economic Cooperation and Development (OECD), and the International Monetary Fund (IMF), to embark on their own counter terrorist programs.<sup>301</sup>

One of the most significant international initiatives undertaken in the wake of the terrorist attacks in New York and Washington was the creation of the Global Partnership Program (GPP). The GPP was launched in Canada at the June 2002 G8 Kananaskis Summit, and the Canadian Government played an important role in supporting the initiative and

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<sup>297</sup> *Fact Sheet: The Australia Group at a Glance* Arms Control Association, [2007], <http://www.armscontrol.org/factsheets/australiagroup.asp>; Internet; accessed 28 March 2008.

<sup>298</sup> Barletta, "Keeping Track of Anthrax: The Case for a Biosecurity Convention," 88.

<sup>299</sup> Karin von Hippel, "Improving the International Response to the Transnational Terrorist Threat" In *Terrorism and the UN: Before and After September 11*, eds. Jane Boulden and Thomas G. Weiss (Bloomington, Indiana: Indiana University Press, 2004), 102.

<sup>300</sup> *Ibid.*

<sup>301</sup> *Ibid.*

developing many of the details of the partnership.<sup>302</sup> Since its inception, the membership has grown from the original G8 group to include 13 more countries.<sup>303</sup>

The primary goal of the GPP is to reduce the stockpile of Cold War WMD materials and associated expertise to ensure they do not end up in the hands of terrorists.<sup>304</sup> The initial financial commitment pledged to achieve this was a total of \$20 billion (US) over ten years.<sup>305</sup> Canada's pledge to meet its share was set at \$1 billion (US) over the decade of the initial commitment.<sup>306</sup>

At the launching of the GPP at Kananaskis six principles were developed to guide the group's efforts:

- [1] strengthen global non-proliferation efforts through the adoption and full implementation of relevant multilateral treaties and other international instruments;
- [2] develop and maintain appropriate measures to account for and secure WMD materials in use, storage and transport;
- [3] develop and maintain secure storage facilities for WMD materials;
- [4] strengthen border controls, law enforcement and international cooperation to deter, detect and interdict illicit trafficking of WMD;
- [5] strengthen national export and trans-shipment control systems over items that could be used in the development or production of WMD; and

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<sup>302</sup> Foreign Affairs and International Trade Canada, *Global Partnership Program 2005-2006 Annual Report: Making a Difference* (Ottawa: Foreign Affairs and International Trade Canada,[2006]), [http://geo.international.gc.ca/cip-pic/library/GlobalPartnership\\_FINAL\\_e%20\(3\).pdf](http://geo.international.gc.ca/cip-pic/library/GlobalPartnership_FINAL_e%20(3).pdf); Internet; accessed 1 March 2008.

<sup>303</sup> The member states in addition to the G8 are Finland, Netherlands, Norway, Poland, Sweden, Switzerland, Australia, Belgium, Czech Republic, Denmark, Ireland, New Zealand and the Republic of Korea. Foreign Affairs and International Trade Canada, *Global Partnership Program 2006-2007 Annual Report: A Tangible Canadian Contribution to Reducing the Threat of Weapons of Mass Destruction* (Ottawa: Foreign Affairs and International Trade Canada,[2007]), [http://geo.international.gc.ca/cip-pic/library/GPX\\_AnnualReport\\_07-en.pdf](http://geo.international.gc.ca/cip-pic/library/GPX_AnnualReport_07-en.pdf); Internet; accessed 7 March 2008.

<sup>304</sup> Foreign Affairs and International Trade Canada, *Global Partnership Program 2005-2006 Annual Report: Making a Difference*, 1.

<sup>305</sup> Graham Allison, "Is Nuclear Terrorism a Threat to Canada's National Security?" *International Journal* 60, no. 3 (Summer, 2005), 721.

<sup>306</sup> Brian D. Finlay, "Russian Roulette: Canada's Role in the Race to Secure Loose Nuclear, Biological, and Chemical Weapons," *International Journal* 61, no. 2 (Spring, 2006), 417-418.

[6] strengthen efforts to reduce stockpiles of WMD materials.<sup>307</sup>

Under these guiding principles, the GPP has focused on five priorities and Canada has been active in all of them. The first of these priorities is destroying chemical weapons. Canada has played a major role in eliminating nearly two million nerve agent filled artillery shells. It has done this by funding an 18 kilometre long railway to move the shells from their storage location at Shchuch'ye in Russia to a destruction facility, and by providing \$55 million to double the facility's destruction capacity.<sup>308</sup> The second priority is the dismantlement of decommissioned nuclear submarines. To date Canada has paid for dismantling six submarines, and will pay for six more as part of its initial commitment.<sup>309</sup> The third priority is ensuring the security of nuclear and radiological materials. To this end Canada has been involved in numerous projects ranging from facility and border security improvements to the decommissioning of nuclear generators.<sup>310</sup> Ensuring alternate employment for former weapon scientists is the fourth priority. So far, Canada has funded 125 projects that have involved 2,640 former weapon scientists.<sup>311</sup> The final priority, preventing the proliferation of biological agents, was elevated from an area whose "risks required addressing" to the fifth priority in 2006. Canada is currently determining where it

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<sup>307</sup> Foreign Affairs and International Trade Canada, *Global Partnership Program 2005-2006 Annual Report: Making a Difference*, 8.

<sup>308</sup> Foreign Affairs and International Trade Canada, *Global Partnership Program 2006-2007 Annual Report: A Tangible Canadian Contribution to Reducing the Threat of Weapons of Mass Destruction*, 4.

<sup>309</sup> *Ibid.*

<sup>310</sup> *Ibid.*

<sup>311</sup> *Ibid.*

can best help in this endeavour, and is considering funding the construction of modern storage facilities to properly house these dangerous materials.<sup>312</sup>

As the above list of activities indicates, Canada has been a strong supporter of the GPP, and has been more successful at meeting its GPP commitments than almost every other member of the group.<sup>313</sup> Michèle Flournoy, Senior Advisor for International Security at the Washington based Center for Strategic and International Studies, lauded Canada's accomplishments when he testified in front of the U.S. House of Representatives Subcommittee on International Terrorism and Nonproliferation in June of 2005:

The Canadians merit special praise: starting with an almost non-existent nonproliferation assistance program in 2002, the Canadians have in only three years completed a legal framework with Russia, stood up an internal bureaucracy, and disbursed funds in a number of project areas. This progress is an example to other donors of what is possible when national leadership and resources are harnessed to their fullest extent.<sup>314</sup>

While Canada has been doing its part, not every country can claim the same. One of the primary concerns of the GPP is that the amount of money pledged is still insufficient to meet requirements. Compared to annual gross domestic product some countries, such as the United Kingdom and Japan, have contributed much less than others, including Canada, the United States and Italy.<sup>315</sup> A further problem is that not enough of the money that has been pledged has actually been turned into projects. For example, while Italy and France have

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<sup>312</sup> *Ibid.*

<sup>313</sup> Finlay, "Russian Roulette: Canada's Role in the Race to Secure Loose Nuclear, Biological, and Chemical Weapons," 418.

<sup>314</sup> Subcommittee on International Terrorism and Nonproliferation United States House of Representatives, *The G-8 Global Partnership: Successes and Shortcomings*, 2005, 4, [http://www.globalsecurity.org/wmd/library/congress/2005\\_h/050630-flournoy.pdf](http://www.globalsecurity.org/wmd/library/congress/2005_h/050630-flournoy.pdf); Internet; accessed 4 January 2008.

<sup>315</sup> Canada's contribution amounts to .0087% of GDP, while the UK's and Japan's pledges are .0049% and .0006% of GDP respectively. *Ibid.* 4-5.

pledged significant funds, they have implemented few actual projects. Flourney blames the problems on poor national leadership, slow negotiations, and an inefficient national ratification process in both donor and recipient nations.<sup>316</sup>

A final complication is that there is a shortage of projects addressing core areas of security concern.<sup>317</sup> The primary reason for this is that Russian and GPP priorities do not always align. Russia's more immediate concerns are cleaning up materials that pose significant environmental hazards. The emphasis is therefore more on reducing stockpiles of chemical weapons and disposing of spent nuclear fuel from submarines than on the higher threat areas of ensuring the security of biological agents and tactical nuclear weapons.<sup>318</sup>

A final international cooperative activity that deserves mention is the Proliferation Security Initiative (PSI). The PSI was started by the United States in 2003 and to date over 70 nations, including Canada, have agreed to give their support.<sup>319</sup> The PSI is not a formal treaty or organization, but is a statement of common purpose between nations that share the goal of enhancing international security by preventing the proliferation of WMD and delivery systems.<sup>320</sup> The "Interdiction Principles" of the PSI call for states to cooperate in taking effective measures to stop WMD proliferation, to improve intelligence and information sharing, to strengthen domestic nonproliferation legal tools and, in accordance with international law, to board and search vessels suspected of engaging in WMD

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<sup>316</sup> *Ibid.*, 5.

<sup>317</sup> *Ibid.*, 4.

<sup>318</sup> *Ibid.*, 7-8.

<sup>319</sup> Department of National Defence, *Backgrounder - The Proliferation Security Initiative* (Ottawa: Department of National Defence, [2006]), [http://www.forces.gc.ca/site/Newsroom/view\\_news\\_e.asp?id=1329](http://www.forces.gc.ca/site/Newsroom/view_news_e.asp?id=1329); Internet; accessed 10 March 2008.

<sup>320</sup> *Ibid.*

proliferation.<sup>321</sup> While the principle of actively interdicting WMD at sea may have received the most media attention and associated controversy, the PSI is also another strong expression of the international community's desire to work together to keep WMD out of terrorist hands.

Internationally, Canada is in a unique position to take a leadership role in WMD and particularly nuclear nonproliferation. While Canada's lack of its own nuclear weapons may reduce its credibility among the nuclear club when it comes time to negotiate nuclear arms control, the same may not be true of nations that do not currently possess nuclear weapons, and who share Canada's goal of preventing the spread of this destructive technology. There are several reasons for this. First, Canada is the first technologically advanced state to make it a deliberate policy to not develop nuclear weapons or to develop uranium enrichment facilities – both of which are easily within Canadian technical capabilities.<sup>322</sup> Second, Canada is the world's biggest uranium producer and is a major player in the peaceful uses of nuclear technology. Both of these factors give Canada significant credibility when lobbying for more effective nonproliferation efforts.<sup>323</sup>

Additionally, the deterioration of US-Russian relations in recent years has had a negative impact on the bilateral threat reduction initiatives that began soon after the end of the Cold War. Canada has historically had a more consistent approach to disarmament,

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<sup>321</sup> Foreign Affairs and International Trade Canada, "Proliferation Security Initiative: Interdiction Principles for the Proliferation Security Initiative," Foreign Affairs and International Trade Canada, <http://www.dfait-maeci.gc.ca/arms/psi-en.asp>; Internet; accessed 11 March, 2008.

<sup>322</sup> Allison, "Is Nuclear Terrorism a Threat to Canada's National Security?" 721-722.

<sup>323</sup> *Ibid.*

always encouraging a deliberate and pragmatic process.<sup>324</sup> Also, Canada is perceived to be approaching the problem from the perspective of wanting to create a partnership to improve nonproliferation efforts, unlike the United States, whose approach is often more likened to foreign aid or defence spending to mitigate the threat from a near failing state.<sup>325</sup>

Canada is therefore seen by nations of the non-nuclear club as an honest broker in nonproliferation and disarmament issues.<sup>326</sup> This gives the Canadian Government the potential to play a significant role in the international efforts to stop the spread of WMD materials and technologies to terrorist organizations. These efforts would be of benefit to the international fight against terrorism, and would consequently play an important role in protecting Canadians at home.

## CONCLUSION

This chapter has demonstrated that significant efforts have been taken over the years at the domestic, continental and international levels to counter the threat posed by terrorism. The first section of this chapter showed that Canadian efforts at home have involved CSIS and an ambitious Anti-Terrorism Plan that aimed to improve the security of Canada through such tools as the Public Safety Act and the National Security Policy. While interagency coordination problems reduce the effectiveness of these domestic actions, such difficulties are to be expected in any new major undertaking.

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<sup>324</sup> Finlay, "Russian Roulette: Canada's Role in the Race to Secure Loose Nuclear, Biological, and Chemical Weapons," 426.

<sup>325</sup> *Ibid.*, 427.

<sup>326</sup> *Ibid.*, 426.

The second section dealt with the issue of cooperation between Canada and the United States. It was seen that although both countries have actively cooperated on border security issues and counter-terrorist efforts for sometime, 11 September 2001 demonstrated how vulnerable the economic link at the border is when Americans feel their security is threatened. As a result, many new initiatives were undertaken, such as the Smart Border Accord and the Security and Prosperity Partnership. Even though these arrangements are important for the security of both nations, and the continued free flow of trade, it was noted that Canada must be cautious about which American plans and policies it agrees to if it wants to prevent a perception that Canadian sovereignty is being eroded.

This chapter finished by examining the international cooperative endeavours that have been taken to fight terrorism, and in particular to keep WMD out of terrorist hands. Before the attacks of 11 September 2001 these were mainly the 1968 Non-Proliferation Treaty, the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention. International efforts were given new focus with the start of the Global Partnership Program in 2002, in which Canada has been playing a leading role, and the Proliferation Security Initiative of which Canada is also a participant.

A significant number of domestic, bilateral and international measures to fight terrorism were discussed in this chapter. While it has been impossible to analyze each in depth, the intent has been to provide an understanding of the scale of the efforts underway at all levels to diminish the threat posed by terrorism, and in particular how Canada has been actively engaged in many areas to keep Canadians safe from terrorist activities.

## **CHAPTER FIVE – CONCLUSION**

This paper has examined the terrorist threat to Canada, and the many domestic and international non-military measures that have been taken to protect Canadians at home and abroad. The first subject examined was the changing nature of terrorism. While they have always posed a danger to societies, the new brand of terrorists that are prevalent today are often more radical and less rational than in previous times, and are more willing to inflict mass casualties. Consequently, the challenges posed to modern nations by terrorists are more daunting than in the past.

The means by which terrorists can inflict serious damage are also growing. In particular, the effects of a terrorist attack with a weapon of mass destruction (WMD) would be devastating to a modern country such as Canada from the points of view of casualties, infrastructure destruction and economic disruption. Unfortunately, the materials and expertise to create a WMD weapons are more readily available than ever before. A major reason for this is the downfall of the Soviet Union, which has resulted in a large amount of WMD material being stored under poor security conditions, and has created a large pool of underemployed former weapon scientists. While terrorists face many complications acquiring and using a WMD, they have expressed the will to use them, and even a single successful attack would have disastrous consequences.

Other less complicated methods of attack are also well ensconced in the terrorist repertoire. Many forms of conventional explosives exist, they are relatively cheap and easy to manufacture, and terrorists have significant experience in their use. A conventional attack against a target such as a nuclear power plant could be particularly devastating, and would in

fact provide terrorist with a ready-made “dirty bomb.” A newer area of concern is cyberterrorism. Much fear has been generated over the damage that could be inflicted by terrorists hacking into various computer systems such as the electrical distribution system or the financial sector. The threat is real, but the potential for damage has been overstated. Terrorists are using the Internet for many activities, including recruiting, raising funds and coordinating planning, but the actual damage they could inflict through a cyber-attack is minimal.

After examining the threat, this paper then concentrated on two main themes. First, it looked at the legal frameworks that exist to stop terrorism, and then it examined other counter-terrorism measures that are complementary to the legal battle. The Canadian domestic legal fight against terrorism uses criminal law, the Anti-Terrorist Act (ATA) and immigration law. Criminal law can be used to fight terrorism, but its major weakness is its emphasis on punishment, vice prevention. The ATA includes more effective measures for preventing a terrorist attack, but relies heavily on tools that may weaken the freedoms they are intended to protect. Perhaps the most powerful weapon in the Canadian arsenal to fight terrorism exists within its immigration laws, but they are not applicable to Canadian citizens.

Significant international legal efforts have also been undertaken to fight terrorism. The United Nations has created ten conventions and two protocols that make various forms of terrorist activity punishable as international crimes. However, the international community has been unable to agree on a definition of terrorism, and it is left up to individual states to actually prosecute terrorists for the crimes they commit.

All of these legal efforts to counter the threat of terrorism are laudable, and show a true desire by Canada and the wider community of nations to stop terrorists. However, they

also share the fatal flaw that many modern terrorists may not be dissuaded from their actions by the threat of legal punishment, no matter how severe. It is certain that legal efforts will make the planning, financing and conduct of terrorist activities more difficult, and may even be effective in catching some groups before they are able to act, but it will be difficult to use purely legal means to stop determined terrorists who are willing to die for their cause.

The final theme of this work looked at other means of complementing the legal battle against terrorism. Much activity has been conducted on the Canadian domestic front. Canada's Anti-Terrorism Plan, the Public Safety Act and the National Security Policy all put in place measures to improve homeland defences. Difficulties have been encountered in inter-agency cooperation and information, but progress is being made.

Another area where Canada has made extensive efforts to counter the terrorist threat is in improving cooperation with the United States. Canada has been active in this domain for years, but the 2001 attacks and the temporary closure of the border demonstrated how critical the Canada-United States relationship has become for the economic prosperity of Canada. The two countries have improved their abilities to coordinate action and share information, but Canada is unable to fully integrate into American efforts at continental security without losing an element of national control over defence policy and being perceived as surrendering Canadian sovereignty to the United States.

Finally, Canada has been extensively engaged in international cooperative efforts to reduce the threat posed by terrorism, with particular emphasis on reducing the possibility of terrorists acquiring a WMD capability. Canada is a participant in the three major agreements to prevent the spread of WMD: the Nuclear Nonproliferation Treaty; the Biological Weapons Convention; and the Chemical Weapons Convention. It is also a member of the Australia

Group, which has specifically targeted its efforts at keeping WMD material out of the hands of non-state actors. As with the international legal conventions and protocols against terrorism, these efforts demonstrated the willingness of the world to take the terrorist threat seriously. Unfortunately, they also have weaknesses in that not all nations are signatories, and there are no mechanisms to punish those who do not comply with the treaties.

An initiative that has shown promise is the Global Partnership Program. Canada has played a key role in this partnership's efforts to reduce the stockpiles of available WMD material that could find their way into terrorist hands. Not every member country is living up to its commitments, and there are implementation complications, but real progress is being slowly made.

In conclusion, this paper has examined Canada's non-military efforts to fight terrorism, and they are insufficient to counter the terrorist threat. Many legal, policy and cooperative measures have been taken domestically and internationally to meet this danger. As a result the threat has been reduced, but it has not been eliminated. The "soft" strategies and tools examined in this paper form only part of the solution to the problem of terrorism. They also require the assistance of appropriate military action to stop terrorists before they reach the shores of Canada, and an effective consequence management organization to deal with terrorists who penetrate the military, legal, and other layers of defence. It is recommended that the Canadian Government continue to focus on all areas of this defence in order to arrive at an all-encompassing strategy to ensure the safety of its citizens.

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