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BILL C-36
CANADA'S NATIONAL SECURITY RESPONSE
TO THE
TERRORIST ATTACKS OF 11 SEPTEMBER 2001

LOI C-36
SECURITE NATIONALE CANADIENNE:
REACTION SUITE A L'ATTAQUE TERRORISTE
DU 11 SEPTEMBRE

A Thesis Submitted
To the Faculty of Royal Military College of Canada

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Major

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CHAPTER ONE

SETTING THE STAGE

1.1 INTRODUCTION AND THESIS

O Canada!
Our home and native land!
True patriot love in all thy sons command.

With glowing hearts we see thee rise,
The true north **strong and free!**

From far and wide,
O Canada, **we stand on guard for thee.**

God keep our land **glorious and free!**
O Canada, **we stand on guard for thee.**

O Canada, **we stand on guard for thee.**

Canada's National Anthem

The highlighted portions of our National Anthem above provide insights into our resolve as a nation to guard our freedom and way of life against any and all adversaries. Canada is a nation founded and built by immigrants. For the early European settlers who ventured the Trans-Atlantic voyage, Canada was viewed as a new land of opportunity, one that presented both challenges and rewards. The immigration of skilled individuals and families remains one of Canada's top priorities as the nation continues to grow and prosper. People from all around the world today continue to view Canada as a leading democracy and a land of opportunity – a country that respects individual rights and freedoms, allows for cultural diversity, and promotes an equal opportunity for wealth and prosperity.

The terrorist attacks on the World Trade Centre buildings in New York, and on the Pentagon in Washington DC, on 11 September 2001, were both a tragedy and a wake-

up call for the US and Canada. Canada's rather liberal immigration policies have come under scrutiny. Reports indicated that the terrorists, who plotted the actions against the World Trade Centre buildings and the Pentagon, did so from within the United States. News reports revealed that many of the terrorists were present in North America illegally for quite some time prior to the actual attacks.

An unwanted immigrant, or illegal immigration, is a challenging legal, administrative and security problem in both Canada and the US. Natalie Oswin indicates that:

[D]uring the Cold War years the United States was primarily concerned with using refugees as a strategic weapon against its communist adversaries without undermining domestic xenophobia. As a result of the broader, more holistic meaning that the concept of security has taken on during the post-Cold War era, humanitarian issues now enjoy a central place in global security discourse. However, the military and strategic value of refugee populations has currently diminished in the West. Thus the recent perception of international migration as an increasingly important element of security exists alongside a mounting concern among Western countries regarding costs of providing indefinite protection and assistance to displaced persons as well as a growing unwillingness to admit displaced people and grant asylum.¹

Our relatively open multicultural societies and historical willingness to welcome immigrants and visitors from around the world could play right into the terrorists' hands. The Canadian Security Intelligence Service indicated that, "proximity to the United States, a common border, large expatriated communities and a healthy economy draws

¹ Natalie Oswin, "Refugee/Forced Displacement Discourse: Security For Which Humans?", *International Insights*, Vol 1, Number 1, Spring 2000, pp. 98-99.

representatives of virtually every terrorist group in the world to this country”.² The terrorist actions have prompted Canada and the US to review their national security priorities and homeland defensive posture. The US is aggressively reviewing all potential avenues of further terrorist attack. Given that the US was on the receiving end of the 11 September 2001 terrorist attacks and suffered the most consequences, it is understandable that it would adopt an aggressive approach in order to ensure that similar events would not happen again. Besides tightening its own homeland security, it is also looking across its borders. Canada, the US’s closest neighbour with the longest relatively unprotected common border, is one of US’s obvious and lingering concerns. The Americans are concerned that Canada may be used as a terrorist staging ground for future attacks on their country.³ Canadians are equally concerned about their national security and the potential threat that certain groups of immigrants might pose, if allowed to obtain refugee status or illegal immigration into Canada.

National security is a rather difficult term to define. Charles Schultze argues that:

The concept of national security does not lend itself to neat and precise formulation. It deals with a wide variety of risks about whose probabilities we have little knowledge and of contingencies whose nature we can only dimly perceive.⁴

² Canadian Security Intelligence Service, Operational Program Counter Terrorism, 01 November 2001, http://www.csis-scrc.gc.ca/eng/operat_e.html

³ Audrey Macklin, “Borderline Security”, The Security of Freedom, Essays on Canada’s Anti-Terrorism Bill, edited by Ronald J. Daniels, Patrick Macklem and Kent Roach, (University of Toronto Press, Toronto, 2001), pp. 383-399. Audrey Macklin is a member of the Faculty of Law, University of Toronto. In this article she talks about the cases of Ressam and al-Marabh.

⁴ Charles L. Schultze, “The Economic Content of National Security Policy”, *Foreign Affairs*, 51:3 (1973) pp. 529-30.

Adding to the existing definitions and interpretations of national security, the National Defence College of Canada offered its interpretation:

[N]ational security is the preservation of a way of life acceptable to the ... people and compatible with the needs and legitimate aspirations of others. It includes freedom from military attack or coercion, freedom from internal subversion and freedom from the erosion of the political, economic and social values which are essential to the quality of life.⁵

The terrorists did not directly target Canadian institutions on 11 September 2001, but the assault on the US can be seen as an attack on western civilization, its culture and societal values. Caleb Carr states that,

Over the last twenty years the United States has become particularly identified, with much justification, as the most powerful force behind the propagation throughout the world of Western values, the Western economic system, and Western popular culture.⁶

Canada is a middle-sized Western power that espouses Western values. Canada actively promotes democracy worldwide and, on a much smaller scale than the US, promotes similar Western values through an active diplomacy. On September 11, the terrorists did not target Canada directly; however, if they did, it would, not only cause some death and destruction, but more importantly, it would threaten the freedoms that our founders and forefathers worked hard to establish and protect.

Terrorism is not a new phenomenon in the world.⁷ A The Canadian Intelligence and Security Service indicates.

⁵ Barry Buzan, *People States & Fear*, 2nd ed. (Boulder, Colorado: Lynne Rienner Publishers, Inc., 1991), p.17.

⁶ Caleb Carr, *The Lessons of Terror*, 1st ed., (Random House, New York, 2002), p. 222.

⁷ David C. Rapoport, 'the Fourth Wave: September 11 in the History of Terrorism', *Current History*, December 2001, p. 224.

International terrorist networks, a primary source of terrorism today, continue to present important global security implications. The advent of modern communications methods, combined with the ease of international travel, exponentially expands terrorism's scope of operations. One of the prime motivators of contemporary terrorism is Islamic religious extremism, at the forefront of which are Sunni extremists.⁸

David C. Rapoport suggests that the world has entered the fourth wave in the history of terrorism. He indicates that modern terrorist cells are sophisticated, well hidden and financed, and politically involved in developing nations. They have well established training systems that prepare individuals to satisfy the needs of an organization, like al-Qaeda.⁹ Global terrorism is not easy to defeat because of inherent unpredictability with respect to its intent, location of operation and, more importantly, because of unconventional methods of warfare it uses to inflict terror. Until recently, the North America continent, with large oceans on both sides, has been isolated from effects of much of the world's terrorism. Perhaps, because of our isolation, we became somewhat complacent, naïve and over-confident about our national security.

The Cold War over, the US is the only remaining credible superpower and its influence is felt globally. Some countries see its global influence in world politics as threatening and intrusive. Many people, particularly in the Middle East, consider the US policies as exploitive, often supporting conservative and repressive regimes.¹⁰ This

⁸ Canadian Security Intelligence Service 2000 Public Report, 12 June 2001, http://www.csis-scrc.gc.ca/eng/publicrp/pub2000_e.html#3

⁹ David C. Rapoport, "The Fourth Wave: September 11 in the History of Terrorism", *Current History*, December 2001, pp. 223-224.

¹⁰ Tibi Bissam, *Conflict and War in the Middle East*, London: MacMillan Press, 1993 Also Stephen M. Walt, "Beyond Bin Laden: Reshaping the US Foreign Policy", *International Security*, Vol 26. No.3. Winter 2001-2, pp56-78

perception has given rise to the creation of militants and fundamentalist groups determined to strike back against US dominance and influence in world affairs. Given the overwhelming military force of the US, dissidents have turned to less conventional or traditional means of warfare to inflict terror in order to cause political and economic instability.¹¹

The fact that the terrorist attacks of 11 September 2001 were launched from within the US is of grave concern to the US government, because the country has a relatively open multicultural society. The implication is that once would-be terrorists (somehow) enter the US, authorities have a challenging time tracking them down. James Finan indicates that, “societies like ours [US and Canada] are incredibly open and therefore, very vulnerable to all sorts of potential threats from all sorts of areas”.¹² The tracking of potential terrorists is particularly difficult in a large country with a multicultural society because the terrorists can blend in easily. In that environment, the challenge for authorities is to, somehow distinguish between legitimate and illegitimate persons living inside the borders or attempting to come into the country.

Canada has a similar multicultural and open society; in fact, many would argue that Canada, compared to the US, is even more receptive to the people from outside who wish to make Canada their home. Marc Leman indicates, that Canada is a multicultural society with a rich racial and ethnic diversity that will continue to flourish well into the

¹¹ See Steven Simon and Daniel Benjamin, “The Terror”, *Survival*, Vol 43 No. 4, Winter 2001-2, pp5-8. for an overview of global terrorism.

¹² James Finan, a professor at Royal Military College Kingston, quoted in Laura Eggerton, “Protecting our Communities”, *Forum: Canada’s National Municipal Affairs Magazine*, Mar/Apr 2002, pp. 16-17.

twenty-first century.¹³ Canada's Charter of Rights and Freedoms provides a safe sanctuary that allows individuals their freedom of expression, irrespective of their ideology, religion and race. Canada allows new immigrants, like its other citizens, to continue the pursuit of their faith, culture and social practices, as long as such activities do not impact on the rights and freedoms of others.

Geographically, Canada and the US share the longest undefended border in the world. Economically, Canada is inextricably linked to the US. The trade between the two nations is significant and of paramount importance to Canada's financial prosperity and economic stability. Together, the two countries must defend against this terrorist aggression and ultimately deny victory to the enemy. We must protect our freedoms and way of life, to include our liberties, values, and culture, in the broader interest of national security.

Canada's Anti-Terrorism Bill C-36 is the Canadian government's political response to meet the emergent threats to national security. Its objective, among others, is to control the entry of illegal immigrants who pose a potential threat to North America. Bill C-36 is of vital importance to Canada. It was enacted, not only to offer protection for all Canadians, but also to demonstrate our resolve to the US and our other allies that Canada is committed and united in its efforts to reduce the threats of terrorism. The US leadership has displayed its resolve in its campaign against terrorism and it has issued harsh warnings to the countries that play a part in facilitating terrorist activities. Bill C-36 is directed at 'would-be' or 'known' terrorists and likely terrorist activities. It addresses many of the loopholes in the Canadian Immigration Act, which terrorists have

¹³ Marc Leman, "Canadian Multiculturalism: Political and Social Affairs Division", *The Library of Parliament of Canada, Research Division*, 1997. p. 1.

exploited or could exploit to stage terrorist acts either in Canada or across the border in the US. The legislation defines terrorist activity; makes provisions for law enforcement agencies to gather information, and track and, if required, detain suspected individuals; prevents terrorist fundraising activities and freezes their finances; and identifies provisions to ensure that the legislation is not abused to harass innocent people.

Did the government act adequately through this Bill to reduce the threat of terrorism, or should the government have gone further and make stiffer regulations? Is Bill C-36 a balanced approach to address our national security concerns? Externally, does it assuage the concerns of our neighbours and allies? Internally, does the Bill provide for the protection of our people and society without substantially infringing on the rights and freedoms of individuals? Is it too watered down to provide the sufficient security measures to protect individuals and their assets? Additionally, does the Bill provide assurances that the rights and freedoms of legitimate, law abiding Canadians are not violated?

Anti Terrorism Bill C-36 is a balanced political and economic approach, adopted by the Canadian Government, to address the threat of terrorism to its national security. The measures, provisioned in the Bill, do not impair the essence of Canada's Charter of Rights and Freedoms. The implementation of this Bill has, however, some problems, which may necessitate some amendments or modifications to the Bill.

A balanced approach connotes measures that take into account various options, which could often be in conflict - over insurance or inadequate, too biased towards the US or too little for the US, transgressing rights and freedoms or supporting rights and

freedoms - and, thereafter formulating an approach that follows a middle-course that remains largely at harmony with the spirit of the Constitution.

Obviously a balanced approach is one that addresses the threat in such a manner that most measures are transparent to the people at large. If designed appropriately, the potential troublemakers, not the peace-loving people, should be the focus and target of the legislation. It is important that the government does not overreact, or react in such a way that the rights and freedoms the Bill is attempting to protect become hostage to the legislation. In a democratic society, any new legislation, in its evolution and development, will inevitably face debates and challenges. This process of debates and challenges further adds to the balance and potency of the legislation.

It is important to provide a few conceptual definitions of some key terms used in the paper. The Oxford Dictionary defines an immigrant as, “a person who immigrates”¹⁴, or, “[a person who has] come as a permanent resident to a country other than one’s native land”.¹⁵ Traditionally, both the US and Canada have accepted a large number of immigrants from various places in the world. Our multicultural societies are a direct reflection of our immigration policies of the past. The Ministry of Immigration and Citizenship states that:

An illegal resident is a person who has no legal status in Canada. This may be someone who entered Canada as a visitor and has remained in Canada beyond the expiration of his or her temporary status. The illegal resident has been in Canada for such a long time, and is so established [sic] that he or she has in fact, if not in law, established residence in Canada and not abroad. These individuals are

¹⁴ H.W. Fowler and F.G. Fowler, *The Concise Oxford Dictionary of Current English*, 8th ed, edited by R.E. Allen, (Oxford, Clarendon Press, 1990), p. 589.

¹⁵ *Ibid.*, p. 589.

self-supporting, and have severed ties with their home country, and would suffer hardship if required to leave Canada.¹⁶

National security has already been defined; however, it is also important to define what is meant by a threat to national security. Richard Ullman maintains that,

[A] threat to national security is an action or sequence of events that (1) threatens drastically, and over a relatively brief span of time, to degrade the quality of life for the inhabitants of a state, or (2) threatens significantly to narrow the range of policy choices available to the government of a state or to private, non governmental entities (persons, groups, corporations) within the state.¹⁷

This definition underlines the impact of the threat on the quality of lives of the people and complexities around choices and decision-making by the government. Battling an asymmetric terrorist threat is indeed a challenging task, and one, that could perhaps consume a disproportionate amount of energy and resources of both Canada and the US, as well as the rest of the civilized world. There is, hence, a need to exercise discretion and to respond to these threats cautiously with all the appropriate tools.

1.2 CHAPTER OVERVIEW

To support my thesis, this expanded essay is divided into five chapters. Chapter One provides a broad introduction, including the thesis statement and organization of the paper. Chapter Two addresses different aspects of our national security. The importance of immigration to Canada will be briefly explored and security issues relating to illegal immigrants will be scrutinized. The paper will not get into the details of the Immigration Act, nor will it recommend changes to the Act itself; rather, the focus will be on the

¹⁶ "Minister's Permit," Online, Canada's Immigration Law, No date: <http://www.canadaimmigrationlaw.net/Library/minister-permit.htm>.

¹⁷ Richard H. Ullman, "Redefining Security", *International Security*, 8:1 (1983), p.133.

loopholes in the current procedures and methods relating to immigration that have helped spark the interest in the formulation of, and debate around Bill C-36.

In Chapter Three, I will provide a brief historical overview of the key events surrounding 11 September 2001. The chapter will examine the threat and investigate whether there exists possibilities for organized acts of terror in Canada and in the US, hence, a rationale for Bill C-36. Canada and the US share a unique relationship in the North American continent. This chapter will underline some of the political, economic and geographic realities that exist between our two countries. It would raise the question as to why it is important for Canada to act, even though the terrorist activities of 11 September 2001 were primarily targeted against the US establishments.

Chapter Four will introduce the Anti-Terrorism Bill C-36. The paper will only address those parts of the Bill that pertain to the protection of national security and the prevention of unwanted or illegal immigrants, who could pose threats to Canada. The Bill itself encompasses more than these two elements, which falls beyond the scope of this thesis. This chapter will also provide an analysis of public reaction to the legislation and identify its deficiencies and challenges. The final section of this chapter will be an analysis of the Bill, which will serve to demonstrate the importance of the legislation.

Chapter Five is a review of two recent case studies relating to the implementation of Bill C-36. The case studies will help to illustrate the challenges that the Bill would encounter in implementation of the spirit of the legislation. It will serve to illustrate the Bill's effectiveness in achieving its objective. Bill C-36 is new and both the case studies involve ongoing legal wrangling around the interpretation of the Bill. Court verdict in

each of the cases has not yet been reached; only an authentic status of each case has been provided. The last chapter offers findings conclusions of the paper.

1.3 RELEVANCE AND IMPORTANCE OF THE WORK

The broad focus of the paper is the emergent threats to our national security, as we continue to live as the closest neighbour of the US, in a post-September 11 environment. The discussions on Bill C-36 are relevant and useful as much to the scholars on national security as it is to the common Canadians. It is our well-considered response to the threats that Canada faces today. The paper will hopefully, reveal the complexities associated with different aspects of our national security and need for caution and balance in responding to the new forms of security threats.

1.4 APPROACH TO PAPER

The subject of this paper is recent in origin and still public debate and opinion on the issues are evolving; hence, many of the references will be drawn from the newspapers, articles, journals and papers recently written on the subject. Textbooks and published literature will be used to provide background information and conceptual definitions, where appropriate. I have used modern technology extensively, including the internet, to source government documents and historical information pertaining to the subject.

CHAPTER TWO

SECURITY

A nation is secure to the extent to which it is not in danger of having to sacrifice core values if it wishes to avoid war, and is able, if challenged, to maintain them by victory in such war.

Walter Lippman¹⁸

2.1 INTRODUCTION

Security is one of the key concerns addressed by the Anti-Terrorism Bill C-36. By definition, security relates to “a secure condition or feeling; a thing that guards or guarantees the safety of a state or company against espionage, theft or other danger”.¹⁹ Buzan suggests that being protected from danger is objective security, the effect of feeling safe is subjective security, and the freedom from doubt refers to the confidence in one’s knowledge about security.²⁰ He also states that, “the referent threats (danger and doubts) are very vague, and the subjective feeling of safety or confidence has no necessary connections with actually being safe or right”²¹. Buzan follows by indicating that some elements of security can be insured and replaced, if lost or stolen, while others, such as life, health, status, and freedom, are far more difficult, if not impossible, to replace.²² Bill C-36 was enacted to help protect the more ‘difficult items to replace’ and

¹⁸ Terry L. Deibel, “National Security Dimension Core Curriculum,” *International Military and Defence Encyclopaedia*, Online, TN Dupuy ed, pp 2577-2578.
<http://www.isn.ethz.ch/wgcd/curricula/SecPol-AAMS.pdf>

¹⁹ H.W. Fowler and F.G. Fowler, *The Concise Oxford Dictionary of Current English*, 8th ed, edited by R.E. Allen, (Oxford, Clarendon Press, 1990), p. 1093.

²⁰ Barry Buzan, *People, States and Fear*, 2nd ed. (Boulder, CO: Lynne Rienner, 1991), p. 36.

²¹ *Ibid.*, 36.

provide, among others, for the physical detention of unwanted migrants prior to their entering Canada. These provisions of the Bill are very important in the fight or campaign against terrorism.

To begin the discussion requires an exploration of national, political, and economic security, with emphasis on the relevance and impact that each has had on the formation of Bill C-36. Then the importance of immigration to Canada, and the potential impact that illegal immigrants and refugees have on national security will be discussed. Finally, this chapter will discuss the political and economic realities that Canadian government must consider, as it attempts to strike a balance between the related internal laws and the expectation of the US about the Canadian government's resolve to take action against terrorism and support for the North American continental security.

2.2 NATIONAL SECURITY

Buzan indicates that, “[t]he state is central to the whole concept of security”.²³ He also notes, “[f]or a state, survival is about sovereignty, and for a nation it is about identity”.²⁴ There are many potential referent objects of security, some of which could include society, nation, economy or environment. Buzan indicates that, “[s]ecurity action is usually taken on behalf of, and with reference to, a collectivity. The referent object is that which one can point and say, “[I]t has to survive, therefore it is necessary to...”²⁵ defend. Since the state is composed of individuals bound together in a collective unit, the

²² *Ibid.*, 36.

²³ *Ibid.*, 57.

²⁴ Barry Buzan, Ole Waever, Jaap de Wilde, *Security: A New Framework For Analysis*, (Boulder, Lynne Rienner Publishers, 1998), p.36.

²⁵ *Ibid.*, p. 36

inference is that the state or government is responsible for national security. If we relate security to national security, then the safeguarding of identity, sovereignty, independence and territorial integrity is imperative. In the creation of a nation state, one of the first mechanisms to emerge was the formation of a political organization and a structure to administer and control the human communities that had decided to join the nation state. Generally, in order to protect and preserve the nation state, a series of national security policies are created that safeguard the national interests and values of the people.²⁶

The safeguarding of interests and values can be done in two ways, each supportive of the other. First, states have the need to protect their homeland through the establishment of defence policies in conjunction with foreign policies. Quite often this is traditionally achieved through building of security structures to protect key or essential areas of interest and then, reinforced, if possible, through military alliances. Second, internal legal framework, usually based on the constitution of the country, defines the legitimacy and the authority of the state to maintain social order and protect societal core values. The development of foreign policies helps establish the relationship that the government will maintain with the rest of the world and outlines the nation's goals and objectives with respect to global, regional, bilateral and multilateral norms and agreements. National security begins with a national strategy, encompassing economic measures, politic-diplomatic initiatives and military preparations to protect and promote nation's goals and objectives. A military strategy would proceed logically across the

²⁶ Terry L. Deibel, "National Security Dimension Core Curriculum," *International Military and Defence Encyclopaedia*, Online, TN Dupuy ed, pp 2577-2578.
<http://www.isn.ethz.ch/wgcd/curricula/SecPol-AAMS.pdf>

spectrum of conflict and study specific region and campaign to identify risks, deficiencies, problems, and alternative options.

As was briefly discussed in Chapter One, there are many definitions and, hence, a varying emphasis on the components of national security. According to Terry L. Deibel, national security encompasses, “the nation’s plan for the coordinated use of all the instruments of state power - non-military as well as military - to pursue objectives that defend and advance its national interest”.²⁷ Robert Mandel provides a more concrete concept about national security. For him:

[N]ational security entails the pursuit of psychological and physical safety, which is largely the responsibility of national governments, to prevent direct threats primarily from abroad from endangering the survival of these regimes, their citizenry, or their ways of life.²⁸

The second definition better illustrates the thrust of this thesis. National security is of vital importance to a nation, because it provides the protection necessary for a nation’s growth and development.

When a nation is occupied, conquered, or finds itself in a situation when it is not given the opportunity to exercise its freedoms and pursue the characteristic way of life, then obviously the nation’s security is considered to have failed. For all intents and purposes, the nation no longer exists as a sovereign entity. This was the case in the Napoleonic era, when a nation was conquered; the victor was afforded the right to freely reign over the conquered state in whatever manner it deemed appropriate. Although I do not believe that the terrorists had any intention of taking over the leadership of the US,

²⁷ *Ibid.*, pp 2577-2578

²⁸ Robert Mandel, *The Changing Face Of National Security*, (Greenwood Press, Westport, 1994), p. 21.

they did, have the desire to cripple the country and force it to re-evaluate its foreign policy, and thereby, curtail its influence in the world affairs.

In the case of the US and Canada, both nations maintain their national independence, yet jointly, perhaps because of their proximity, they have chosen to enter into several collective economic and defence related agreements. Buzan introduces the concept of a security complex that is defined as, “a set of states whose major security perceptions and concerns are so interlinked that their national security problems cannot reasonably be analyzed or resolved apart from one another”.²⁹ He goes on to say that, “[b]ecause they are formed by local groupings of states, classical security complexes not only play a central role in relations among their members; they also crucially condition how and whether stronger outside powers penetrate the region”.³⁰ The US and Canada form a part of the same security complex.

The North American Aerospace Defence (NORAD) Command is an agreement that concerns itself with the aerospace defence of North America (Canada and the US). Military personnel and assets from both nations cooperate together to collectively ensure that the North American continent is safe from outside air and missile attack. Since the end of the Cold War, NORAD tasked units have experienced reduced readiness postures because of the diminished threat from the former Soviet Union.

The events of 11 September 2001 clearly illustrated that these forces were not prepared to address the emerging new threat. Since the terrorist attacks, both the US and Canada have embarked on an aggressive review of the NORAD mission and the status,

²⁹ Barry Buzan, Ole Waever, Jaap de Wilde, *Security: A New Framework For Analysis*, (Boulder, Lynne Rienner Publishers, 1998), p.12.

³⁰ *Ibid.*, p.12.

and readiness of the assigned forces. For the past 40 plus years, NORAD has served both governments in the aerospace defence of the continent. To address the terrorist threat, the US is planning to create an integrated air, land and sea Northern Command, based on the Fortress America concept.³¹ There is indication that the US plans to replace the existing NORAD Command with this new group formation.³² Additionally, a new secretariat of Homeland Defence has been established in Washington to address the interagency coordination requirements for national security.

To address the immediate aerial threat, NORAD has activated steps to increase surveillance of pertinent points of interest in each country. For Canada, the persistent application of this effort will have a direct impact on the defence budget and asset availability due to the increased wear and tear of aircraft and personnel. Persistent US pressure on Canada to sustain continued operations of this nature for an extended period of time is a fiscally challenging task. The Americans are also forging ahead with their plans to develop a National Missile Defence (NMD) capability to protect their homeland. On many of these bilateral issues, Canada has not yet signed in as an active participant.

Given the perceived new threat to the US and the termination of the Cold War, NORAD, with its dominant aerospace focus, may now be obsolete. Will Canada be asked to join the new Northern Command and, if so, in what capacity? If Canada refuses

³¹ Fortress America is a US initiative to draw Canada and Mexico into a defence agreement that would facilitate the protection of North America. This collective arrangement would standardize security issues and defensive postures to be prepared for any threat to the continent. The concept envisages that the border between our two nations would, for all intents and purposes, disappear and there would be a harmonization of import and export policies and procedures to include standardization (compatibility) in immigration and refugees legislation.

³² Richard Hart Sinnreich, "For Real Homeland Defence," *Washington Post* Online, 12 December 2001, p. A 35, <http://www.washingtonpost.com/ac2/wp-dyn/pagename=article&node=&contentId=A28784-2001Dec11>

to participate in the Homeland Defence initiative or National Missile Defence (NMD), will the US push forward unilaterally to defend its sovereignty? While these questions may be valid, Canada has had little exposure to the US plans for either one of these two initiatives; hence, a Canadian political decision to participate in the activities has not yet been made.

Canada's territory has not been invaded militarily since 1815. For a long time, Canada relied on the United Kingdom's assistance for its defence needs.³³ Following WWII, Canada sought to loosen its military ties with the United Kingdom, in favour of a North American continental alliance with the US. Canada is a country that has, historically placed its trust for security in its alliances. In light of the terrorist activities of 11 September 2001, and the increased pressure from the US to bolster defence spending and related security activity, the Government of Canada appears to have reached a crossroad. It could see either the continuation of the alliance, bearing all the costs it imposes, or renegotiate the terms with the US. Historically, however, Canada has worked hard to reach a mutual understanding with its allies particularly, the US; the solution is often a compromise between what is requested and what can be provided. Denis Stairs highlights Canada's position in the following:

...[C]an Canada realistically hope to accomplish very much alone. It will have to work, as always, in coalition with others. ... There are some in Canada, although happily not very many, who feel that we have recently become a 'great' power, or a 'principal' power, or some other kind of power capable of exercising a significant measure of unilateral will. But reality is that the opportunities for doing so are

³³ Desmond Morton, *A Short History of Canada*, 5th ed. (McClelland and Stewart Ltd., Toronto, 2001) pp. 68-75.

extremely limited, and we usually do things best when we do them in the company of others.³⁴

There are several ways that US would influence Canada to make changes and support the US effort against terrorism. President George W. Bush ordered his senior officials to work with Canada and Mexico to ensure, “maximum possible compatibility of immigration, customs and visa policies”.³⁵ Additionally, an Integrated Border Enforcement Team (IBET) is being formulated to, “protect Canada and the US from potential terrorist threats, and to impede smuggling of drugs, humans, contraband cigarettes, or other illegal substances”.³⁶ With respect to defence, the US is making changes to its strategy and organization, and re-structuring several military Commands to optimize performance. Canada is yet to commit to these new initiatives; however, given our relationship with the US, it may be difficult to refuse some form of collaboration and participation. Canada is likely to strike a political balance with the US that addresses the security requirements of North America, bearing in mind the resources that Canada can make available to implement a strong defensive strategy to combat the terrorist threat.

The Anti-Terrorism Bill C-36 is designed to address the threat of terrorism by closing the loopholes in the Immigration Act with respect to refugee and illegal immigrants. If the Bill proves insufficient or is not administered properly, it could have a serious impact on national security and the defensive measures put in place to keep the unwanted immigrants out of Canada and North America. Canada needs to show a

³⁴ Denis Stairs, “Canada and the Security Problem”, *International Journal*, Vol 3 Summer 1999, pp. 401-402.

³⁵ Anon, “Politics of a Secure Border”, *The Globe and Mail*, 31 October, 2001, p. A16.

³⁶ Royal Canadian Mounted Police, [Canada/US Integrated Border Enforcement Teams](http://www.rcmp-grc.gc.ca/news/nr-02-05.htm), <http://www.rcmp-grc.gc.ca/news/nr-02-05.htm> 01 April 2002

determined effort to help protect North America in the interest of both national security and its alliance commitments.

2.3 POLITICAL SECURITY

Mandel infers that political security is, “[t]he least tightly encapsulated dimension of national security. ...[defined] in terms of two yardsticks: (1) the degree of authority of states, their governments, and their political ideologies; and (2) the degree of sustainability, cohesion, and peaceful coexistence of traditional cultural identities within nations”.³⁷ Ole Waever supports this premise by suggesting that the measurement of national security relates to a society’s ability to maintain its political and cultural character in the face of changing conditions that result from a possible or actual threat.³⁸ At present, the Americans are actively addressing the terrorist threat to their national security. If the US sees Canada as the weakest link in the North American security equation, then it is very likely that it will politically pressure Canada to take measured steps to provide an acceptable level of security to ensure that the threats do not emanate from north of the US border. Sovereignty is about a nations ability to make necessary choices.³⁹ The Canadian government has chosen to react and respond with the creation of Bill C-36 and they have allocated the requisite budget to implement the national strategy against terrorism. Some of the US initiatives will have a direct impact on

³⁷ Robert Mandel, *The Changing Face Of National Security*, (Greenwood Press, Westport, 1994), p. 89.

³⁸ Ole Waever, *Societal Security the Concept*, Ole Waever, Barry Buzan, Morten Kelstrup, and Pierre Lemaitre, *Identity, Migration and the New Security Agenda in Europe*, (New York, St. Martin Press, 1993), 23.

³⁹ Canadian Deputy Prime Minister John Manley, “A Question of Sovereignty,” *CBC News World Debate/Question Period*, Live aired 03February 2002: 12:00 PM.

Canada and the government will have to decide either to cooperate fully with those initiatives or to find a compromise acceptable to both parties.

Given that the terrorist attacks were on American soil, and that the US has a large area and sizable population to protect, it is understandable that the US must address its own security needs and take immediate actions. Canada traditionally has accepted the US position of dominance in the defence of North America and, in the event of disagreement, has found an acceptable balance to somehow remain engaged in defensive issues. The influence the US exerts over Canada is one of overwhelming superiority in almost every aspect. The danger from terrorism is “not that democracies would fail to defend themselves, but rather that they would do so, far too well and, in so doing [become] less democratic”.⁴⁰ To maintain our sovereignty, we must make choices, and we must be prepared both financially and politically to back any balanced approach that does not undermine either our national security or our sovereignty. This implies that we need to balance all the external consequences of our actions and decisions so as not to jeopardize our sovereignty, economic well-being, and, political existence as a nation.

2.4 ECONOMIC SECURITY

To understand Canada’s position and reliance on the US, one has only to look at the economic aspects of Canadian security. Buzan states that, “[i]n the West, governments are called upon to provide it [economic security] for their citizens and to pursue it [economic security] for the state as a whole”.⁴¹ Statistics Canada records

⁴⁰ Oren Gross, “Cutting Down Trees: Law-Making Under The Shadow of Great Calamities”, *The Security of Freedom, Essays on Canada’s Anti-Terrorism Bill*, edited by Ronald J. Daniels, Patrick Macklem and Kent Roach, (University of Toronto Press, Toronto, 2001), p. 42.

⁴¹ Barry Buzan, 1991, op.cit, p. 234.

Canada's exports to the US as a percentage of Canada's total exports since 1886 in the following table:

EXPORTS TO THE US

1886-----	43%
1896-----	34%
1906-----	36%
1916-----	27%
1926-----	36%
1936-----	36%
1946-----	39%
1956-----	59%
1966-----	60%
1975-----	65%
1985-----	79%
1995-----	78%
2000-----	85%

Source: Statistics Canada⁴²

Following WWII, a crippled and, for the most part, a disintegrating British Empire forced Canada to rethink its then existing economic ties. The obvious choice was the US, and from the graph above, it is evident that since 1946 there has been a steadily progressive rise in Canada's exports to, and, hence, reliance on the US. The Canada-United States Automotive Products Agreement of 1965, the Canada – US Free Trade agreement in 1989, and the 1994 North American Free Trade Agreement (NAFTA) sought to deepen economic integration with the US. As trade between Canada and the US increased and big business started employing the concept of 'just-in-time' delivery of consumables, supplies, and parts, the border transit between the countries became an important choke points. Previously, factories stored large quantities of spare parts in

⁴² Statistics Canada 2000 Report, "Canada's Exports to the US As A Percentage Of Canada's Total Exports," Online, Updated 05 March 2002: <http://www.statcan.ca/english/Pgdb/>.

warehouses to facilitate the production process. These warehouses were costly to build, stock and administer. In the interest of cutting costs, the 'just-in-time' inventory scheme became a practical and important step toward corporate financial profitability.

In light of the terrorist attacks of 11 September 2001, if the US were to impose greater restrictions and control on traffic from Canada, the measures would have devastating impact on the Canadian economy. In 1995, it was estimated that close to ten million trucks and 78 million automobiles transited one of the 130 North-South border crossings that year. It can be extrapolated that, from 1995 until today, moving from 78 to 85 percent in exports from Canada to the US, the volume of traffic between the borders has significantly increased.

We have already witnessed the economic impact of a border-closing and drastic slow-down, as a result of 11 September 2001. Immediately after the attacks, the US closed its border crossings, leaving thousands of trucks stranded with their payloads on the highways leading to the border. Because of a lack of parts for the assembly line, the automobile industry in Canada was threatening layoffs. Likewise, other consumer-based companies were threatening layoffs because the lack of products to stock their shelves. The 'just-in-time' manufacturing and distribution concept requires a continuous flow of products and materials. When an event, such as a border-closing or slow-down of the border-crossing happens, it challenges the system, with potentially devastating results. For comparative purposes the US Statistics department indicates that the US exports only 20 percent of its goods to Canada.⁴³ This implies that any border slow-down or closing would affect the Canadian economy more than the US economy.

⁴³ US Statistics, "US Exports", Online, Updated 02 January 2002: <http://www.census.gov/foreign-trade/Press-Release/2000pr/aip/rp00-exh-2.pdf>

The deliberations on security, must take into account economic security and the economic prosperity of the nation. Bill C-36 is Canada's approach to striking a balance between our needs and the stipulated US requirement to protect their national security. Canada must ensure that it is not perceived to be the 'weakest link' in the security of North America, because the US is not likely to stand-by idly and accept the risk of future terrorist attacks, potentially being launched from Canada. The US is more likely to tighten the borders between our nations - a move that would have devastating consequences for Canada.

2.5 IMMIGRATION: ILLEGAL IMMIGRANTS AND REFUGEES

Canada is a country of immigrants. Their contribution to Canadian society reaches far beyond the visible and recorded cultural richness and economic prosperity. In the 1990s, on average, there were approximately two hundred thousand immigrants entering Canada every year. In a recent announcement from the Immigration Minister, it was revealed that Canada is interested in attracting between 200,000 and 225,000 newcomers in each of the coming years.⁴⁴ How well these immigrants settle in Canada has a definite impact on all sectors of society and overall security.

⁴⁴ Citizenship and Immigration Canada, "Immigration Statistics, Statistics At A Glance," Online, Updated 11 February 2002: <http://www.cic.gc.ca/english/about/stats-e.html>.

Looking at a Statistics Canada report for 1996, one can see the flow of Canadian Immigrants from different parts of the world.

<u>Definitions and notes</u>	Total – Immigrant Population	Period of immigration				
		Before 1961	1961-1970	1971-1980	1981-1990	1991-1996 ¹
	Number					
Total – Place of birth	4,971,070	1,054,930	788,580	996,160	1,092,400	1,038,990
US	244,695	45,050	50,200	74,015	46,405	29,025
Central and South America	273,820	6,370	17,410	67,470	106,230	76,335
Caribbean and Bermuda	279,405	8,390	45,270	96,025	72,405	57,315
United Kingdom	655,540	265,580	168,140	132,950	63,445	25,420
Other Northern and Western Europe	514,310	284,205	90,465	59,850	48,095	31,705
Eastern Europe	447,830	175,430	40,855	32,280	111,370	87,900
Southern Europe	714,380	228,145	244,380	131,620	57,785	52,455
Africa	229,300	4,945	25,685	58,150	64,265	76,260
West-central Asia and the Middle East	210,850	4,975	15,165	30,980	77,685	82,050
Eastern Asia	589,420	20,555	38,865	104,940	172,715	252,340
South-east Asia	408,985	2,485	14,040	111,700	162,490	118,265
Southern Asia	353,515	4,565	28,875	80,755	99,270	140,055
Oceania and Other ²	49,025	4,250	9,240	15,420	10,240	9,875
Source: Statistics Canada, 1996 Census Nation tables.						

Source: Statistics Canada⁴⁵

Canada’s immigration system is based upon an understanding that individuals in Canada must have legal status. Without legal status, an individual is considered to be in the country illegally. The three legal status categories are visitor, permanent resident, and citizen. A legal immigrant status can be applied to many situations that range from the

⁴⁵ Statistics Canada, “Immigrant Population By Place of Birth and Period of Immigration, 1996 Census,” Online, No date: <http://www.statcan.ca/english/Pgdb/People/Population/demo25a.htm>

application for entry of a family member of a Canadian resident, the marriage of a Canadian citizen to a foreigner, or specific business necessities, to reasons associated with compassion. Immigrants from other countries can provide a source of trained qualified labour such as medical staff, doctors, specialists, nurses, engineers and technicians.

The other status to consider is that of the refugee. Refugees are involuntary immigrants. Many flee their native countries for a multitude of reasons, which may include escape from economic poverty or dislocation due to internal conflict. They do this to seek temporary shelter until it is safe to return to their country of origin. In many cases these individuals apply for permanent status while in Canada and never return to their original place of birth. A “Convention” refugee, as defined by the United Nations 1951 Convention, and its 1967 Protocol, and incorporated in the Canadian *Immigration Act*, means any person who:

1. By reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
 - a. Is outside the country of the person’s nationality and is unable or, by reason of that fear, is unwilling to avail himself of the protection of that country, or
 - b. Not having a country of nationality, is outside the country of the person’s former habitual residence and is unable or, by reason of that fear, is unwilling to return to that country, and
2. Has not ceased to be Convention refugee by virtue of subsection (2) [of the Act].

...A person ceases to be a Convention refugee when:

- (1.) The person voluntarily avails himself of the protection of the country of the person’s nationality
- (2.) The person voluntarily reacquires his nationality

- (3.) The person acquires a new nationality and enjoys the protection of the country of that new nationality
- (4.) The person voluntarily re-establishes himself in the country that the person left, or outside of which the person remained, by reason of fear of persecution; or
- (5.) The reasons for the person's fear of persecution in the country that the person left, or outside of which the person remained, ceased to exist.⁴⁶

There are several exemptions under which a person does not cease to be a Convention refugee. Specifically, if there is evidence that the individual will be persecuted upon their return to their native land then the individual can continue to be a Convention refugee.⁴⁷ Those who flee their native land because of war, economic or environmental deprivation will not necessarily get accepted into Canada as a refugee. Under Canadian law, all the criteria of the Convention refugee definition must be satisfied to stay in Canada. If an individual is determined to be a Convention refugee, he has a qualified right to remain in Canada, and a right to apply for permanent residency status.⁴⁸ The individual cannot be deported back to their home country except under the following conditions:

1. Refugee is a threat to Canadian National Security;
2. Refugee has committed a criminal offence with liability of up to 10 years;

⁴⁶ Citizenship and Immigration Canada, "Immigration and Refugee Protection Act," Online, Updated 09 March 2002: <http://www.cic.gc.ca/english/about/policy/imm-act.html>

⁴⁷ Web Immigration, "Convention Refugee Program," Online, No date *webImmigration.com*: <http://www.webimmigration.com/refugee.html>

⁴⁸ Audrey Macklin, "Borderline Security", The Security of Freedom, Essays on Canada's Anti-Terrorism Bill, edited by Ronald J. Daniels, Patrick Macklem and Kent Roach, (University of Toronto Press, Toronto, 2001), pp. 383-399. Audrey Macklin is a member of the Faculty of Law, University of Toronto.

3. The Minister has certified that the individual is a danger to the public.⁴⁹

Under the provisions of the Canadian refugee system,

With a long-standing humanitarian tradition, Canada is committed to the resettlement and protection of refugees. Refugees are chosen for resettlement from abroad with government assistance or through private sponsorship. Those seeking refugee status in Canada are entitled to a fair and independent assessment of their claim.⁵⁰

The provision for ‘fair and independent assessment’ is mired in controversies and misuse. There are many reported cases, prior to 11 September 2001, where individuals purposely destroyed their paperwork *en route* to Canada, so that they could claim refugee status upon arrival on Canadian soil. It was a well-known fact that Canadian law provided protection to all individuals with a genuine refugee claim. Under the provisions of the Canadian Charter of Rights and Freedoms, as long as the individual is not an identified threat, a refugee is allowed free access to the country, while awaiting his hearing or claim for refugee status.⁵¹ This provision, which according to many constitutes a loophole, gave individuals an opportunity to get into Canada. As will be seen in Chapter Five, the case study two of this paper, there is an inherent danger in such provisions in the immigration act, which, until 11 September 2001, was not considered as sensitive as it is now. Obviously, there may be other loopholes in the Immigration Act.

⁴⁹ Web Immigration, “Convention Refugee Program,” Online, No date *webImmigration.com*: <http://www.webimmigration.com/refugee.html>

⁵⁰ “The Canadian Refugee System,” Citizenship and Immigration Canada Online, Updated 29 June 2000: <http://www.cic.gc.ca/english/refugee/>.

⁵¹ Audrey Macklin, “Borderline Security”, *The Security of Freedom, Essays on Canada’s Anti-Terrorism Bill*, edited by Ronald J. Daniels, Patrick Macklem and Kent Roach, (University of Toronto Press, Toronto, 2001), p. 386-387. Audrey Macklin is a member of the Faculty of Law, University of Toronto.

Most of the provisions of Bill C-36 are tailored to address the above-mentioned loophole by making it more difficult for potential terrorists to get into the country without the proper paperwork and requisite background checks. This will be further elaborated in Chapter Four.

2.6 CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Canada's Charter of Rights and Freedoms plays a key role in the creation of Bill C-36. "Human rights law establishes that basic civil, political, economic, social and cultural rights are for all persons within a state, whether or not they are citizens of that state".⁵² These rights were established to normalize and legitimize the protection of human beings and improve the treatment of immigrants in a host country. While the terrorist acts are a direct assault on human rights and human dignity, Colter, indicates that our reaction to the assault can threaten the very values it is attempting to protect.⁵³ David Schneiderman maintains that:

If our primary responses tend to rely on management techniques and expanded legislative authority, we might consider it our task to counteract these tendencies by democratizing knowledge about risk while checking the likelihood of legislative overreach.⁵⁴

The role of the human right organizations is especially important in countries that have not ratified the 1951 United Nations Convention relating to the status of Refugees or

⁵² Rosemarie Rogers and Emily Copeland, "Forced Migrat

the subsequent 1967 protocol, because these are the countries where the most violations occur. Canada has ratified the UN convention and is considered one of the leading advocates of human rights. Canada's effort to develop a balanced and effective Bill C-36, is influenced by the Charter of Rights and Freedoms, which plays an important and influential role in the final selection of the wording and legal implications of the Bill. In other words, the Bill would be ineffective if it conflicted with existing legislative policies that covered the same functional area and, if legally challenged, would not stand up or be effective against potential terrorists.

2.7 BALANCING ALL ASPECTS OF SECURITY

So far in this chapter, I have discussed national, political, and economic security as well the significance of the provision in the immigration act that entertains illegal refugees. All these subjects played a role in the development of Bill C-36, as did Canada's existing laws and the Charter of Rights and Freedoms. All these factors needed to be considered in the development of a response (Bill C-36) to the terrorist threat that Canada and North America face.

The 'balance' the government must achieve is rather complex and involves both internal and external dimensions. A related question for the government to consider is: At what point does the cost of security become too high for a nation? While there is a broad range of opinion on this issue, certain parameters are obvious. It is self-defeating if the country puts into place measures that restrict the very liberties it is attempting to protect. Likewise, allocating a disproportionate chunk of the budget to defence related measures, while ignoring the other important areas will also create unacceptable economic consequences. The ability of a nation to express its freedom and enjoy rights

depends on overall security. No denying that individuals or groups that threaten our security must be dealt with in a swift and effective manner. So far as immigration is concerned, at issue is the expeditious disposal of the refugee claimants in a manner that doubtful people are denied the right of entry, or the permission to stay, without violating international conventions of human rights.

Bill C-36, needs to be in conformity with both the Canadian laws and the international conventions. Bill C-36 provides a refined definition of undesirable refugee claimants and the provisions of the Bill are specifically directed at the potential terrorists. Given the current terrorist threats to North America, the enactment of the Bill is appropriate and timely. Canada is not alone in this process; the US is vigorously reviewing and amending its policies and constitutional provisions to strike a similar balance that ensures the protection of its people and their way of life. In this environment of change, revision, and heightened in security, it is likely that some civil rights and freedoms may be curtailed until new or revised measures can eliminate the threat or reduce it substantially.

As Canada attempts to address the terrorist threats, and Canadians come to terms with their own emotions over the tragedy of 11 September 2001, it is time to take a hard look at what can go wrong. Civil liberties and our freedoms are in greater danger from a 'business as usual' attitude than they are from minor changes proposed by the Anti-Terrorism Bill C-36. Imagine what would happen if the US war on terrorism failed. The US would undoubtedly be vulnerable to new attacks, which would create turmoil and panic within the government and among the people. The economy could take a nose-dive and to protect the population, the government could impose stricter controls on people

and their civil liberties and rights. If portions of the US were exposed to nuclear, biological or chemical weapon attacks, Canada most likely would not be immune from the effects and fallout of such events. A sick US economy would weaken the Canadian economy and deprive us of the prosperity that we enjoy today.

To prevent this, we must act quickly and decisively in order to protect our rights and freedoms in the future. Canada must be responsive to the needs and aspirations of its population in order to protect its security. Canadians are not likely to be safe as long as terrorists threaten our homeland. It would be ironic, indeed, if the fear of losing some peripheral rights was enough to deny the nation the tools it needed to stop the very thing that could doom the Charter of Rights and Freedoms and the nationhood that we are trying to protect.

Canada's economic ties to the US are so important that not only does the Canadian government have to be concerned with internal debate on this issue, but also with implementing a policy that will strengthen the relationship with the US. Canada is in a tough position that requires a balance among all the elements of security and the protection of the Canadian Charter of Rights and Freedoms. Importantly, Bill C-36 has to ensure that the wrong people do not get to live or stay in our great nation and destroy the freedom, peace, harmony and prosperity that we enjoy.

The challenge of striking an appropriate balance internally and externally is not an easy one. Internally, the government's Anti-Terrorism Bill C-36 must integrate and fine-tune a number of potentially competing laws. It must directly address the threat and the associated factors that make the threat valid and potent. In doing so, the Bill must attempt to limit its impact on the freedom and liberties of legitimate Canadians. A Bill

that is relatively transparent, in its methods and procedures, and yet effective in protecting the population would be most appropriate. Externally, Bill C-36 must be seen to address the threat viewed in the international community. Of paramount importance, is how the US perceives the effects of the Bill as a reflection of the government's resolve to address the terrorist threat to North America.

CHAPTER THREE

THE THREAT

Insurgent terrorism is purposeful, rather than mindless, violence because terrorists seek to achieve specific long-term, intermediate, and short-term goals. The long-term goal is, of course, to change the political community, political system, authorities, or policies. The intermediate goal of terrorism is not so much the desire to deplete the government's physical resources, as it is to erode its psychological support by instilling fear into officials and their domestic and international supporters.⁵⁵

3.1 INTRODUCTION

For the US and Canada the world has changed in the wake of the terrorist attacks of 11 September 2001. Both countries have embarked on a renewed campaign to bolster national security and protect their sovereign interests. "When determined terrorists using commercial airliners can do as much damage as any convention bomber, and the US mail becomes a weapon, oceans no longer seem a reliable military buffer".⁵⁶ Economically, Canada favours the US for the bulk of its foreign trade. We are common members of the North American Free Trade Association (NAFTA) and, the Organization of American States (OAS). It would be inappropriate for us, as Canadians, to have exploited and accepted the generosity of the US during the Cold War years and turn our backs on the US in their time of need when they require support for the campaign against terrorism. The US has sought to enlist world support in the fight to rid the globe of terrorism. In President George W. Bush's address to Congress he stated, "[e]ither you are with us, or

⁵⁵ Bard E. O'Neil, *Insurgency and Terrorism: Inside Modern Revolutionary Warfare*, (Herndon, Virginia, Brassey's (US) Inc, 1990) pp. 24-25.

⁵⁶ Richard Hart Sinnreich, "For a Real Homeland Defense," *The Washington Post*, Online, Updated 12 December 2001, p. A 35: <http://www.washingtonpost.com/ac2/wp-vn/pagename=article&node=&contentId=A28784-2001Dec11>

you are with the terrorists”.⁵⁷ President Bush has referred to terrorists as ‘evil doers’ who seek to destroy Western civilization.⁵⁸ In other statements he has referred to Canada as “family” and a “brother”. We are compelled to lend assistance to the US, not only because we are close neighbours, but also because it is the right thing to do. The world will not be a safe place as long as terrorist groups or individuals are allowed to exercise their evil intentions and inflict terror on the population and humanity.

3.2 GEOGRAPHIC PERSPECTIVE

In terms of total landmass, Canada is the second largest country in the world. Canada occupies a significant portion of North America, north of 49-north latitude. It has an area of 9,970,610 square kilometres, of which 7.6 percent or 755,180 kilometres is fresh water and rivers⁵⁹. The Canada - US border stretches 6,415 kilometres from the Atlantic to the Pacific Oceans, and an additional 2,475 kilometres bordering Alaska. Most of the Canadian population lives within approximately 320 kilometres (200 miles) of the Canada – US border.⁶⁰ For the most part, throughout the history, the border with the US has remained practically undefended, allowing for the movement of people with little interference. This began to change in the 1960s and 1970s with the Vietnam War and the implementation of the “Draft” in the US. Canadians no longer sought good

⁵⁷ President George W. Bush, Address to Congress 20September 2001, “President tries to give Americans some answers”, *Star News*, Online, Updated 21 September 2001: <http://www.starnews.com/library/factfiles/crime/national/2001/sept11/transcripts/0921bush.html>

⁵⁸ Janice Gross Stein, “Network Wars”, *The Security of Freedom, Essays on Canada’s Anti-Terrorism Bill*, edited by Ronald J. Daniels, Patrick Macklem and Ken04 Tc -0.0041 Tw 10.02001 47.51894 166.320539 Tc -0.00

American jobs and quite a few Americans sought refuge in Canada to avoid the US military draft during the Vietnam War.⁶¹ Over time, differing political opinions and economic strains forced tighter controls at the border. This has been further aggravated through globalization, increased immigration and refugee claims, as well as the war on drugs and terrorism towards the later part of the 20th Century. Despite the increased control on the movement of people and materials across the borders, for the most part, the border between the two countries has remained relatively undefended.

3.3 THE TERRORISTS: A HISTORICAL PERSPECTIVE

The al Qaeda terrorist group and its leader, Osama Bin Laden, masterminded the 11 September 2001 terrorist attacks. Osama Bin Laden has a definite hatred and desire to cripple the US. To understand why requires a brief explanation of the history of the man himself and the events that led to the attacks. Bin Laden was born in 1957. He was the 17th of 52 children of Saudi Arabia's most successful construction company owner. His family was part of the Saudi Arabian elite, yet he is considered one of its harshest critics. As a young man, he became a popular figure within that elite because of his prominent role in the American-backed effort to succour the rebels who were battling Soviet forces in Afghanistan.⁶² For the past eleven years, following the arrival of American troops on Saudi Arabian soil to retake control of Kuwait from the Iraqis, he has regarded the US presence inside the holy land of Islam as unacceptable. The continued American presence and influence in the Middle East have angered and frustrated Bin Laden, and

⁶¹ The Toronto Star, "Rethinking the Border; Bridge or Boundary", *The Toronto Star Newspaper*, 22 September 2001, K2.

⁶² Branett Rubin "Who Are The Taliban", *Current History*, February 1999 and Ahmed Rashid, "The Taliban", Yale Universities Press, 2000.

have bolstered his hatred of America and the West. His al Qaeda network⁶³ of Islamic fundamentalists spans 40 to 50 countries and his power of influence is truly global in nature.⁶⁴

The road to 11 September 2001 began 5 November 1990, when a member of the international *jihad* (holy war) walked into a Marriott Hotel in New York and killed Meir Kahane (a Jewish Rabbi who wrote about the challenges facing the State of Israel).⁶⁵ This was followed by the bombing of the underground garage of the World Trade Centre building in 1993. In 1996, Bin Laden set up a terror organization called al Qaeda (the Base) consisting of spiritual, financial and logistical support elements. He also went public, telling every Muslim that it was their duty to kill Americans (at first the call was limited to US soldiers, then it broadened in 1998 to all Americans).⁶⁶ Bin Laden was also linked to the bombing of the US Army in Riyadh and the US embassy bombings in Kenya and Tanzania in 1998. In October 2000, the *USS Cole* was attacked while it was making a refuelling stop at the Yemeni port of Aden. The 11 September 2001 attacks represent Bin Laden's most recent attempt to cripple the US political and economic infrastructure. It must be noted here that while the anthrax mailing events followed the attacks on the World Trade Centre and the Pentagon, there has, been no evidence to-date,

⁶³ See Janice Gross Stein, she is the Harrowston Professor of Conflict Management and the Director of the Munk Centre for International studies at the University of Toronto; "Network Wars", *The Security of Freedom, Essays on Canada's Anti-Terrorism Bill*, edited by Ronald J. Daniels, Patrick Macklem and Kent Roach, (University of Toronto Press, Toronto, 2001), pp. 73-81. This article provides an excellent overview of the terrorist network.

⁶⁴ Judith Miller, "An Umbrella for Mallicias", *New York Times*, Online News Hours, 25 September 2001: http://www.pbs.org/newshour/bb/terrorism/july-dec01/al_qaeda.html

⁶⁵ Rabbi Mier Kahane, "Biography," Online, No date: <http://www.geocities.com/Athens/Delphi/3141/bio.htm>

⁶⁶ Evan Thomas, "Special Report; Trail Of Terror Inside the 10-Year Hunt for Osama Bin Laden," *Newsweek Magazine*, 01 October 2001, pp.40-49.

to suggest the al Qaeda network is responsible for the anthrax mailings. In the campaign against terrorism in Afghanistan, the US has been unable to locate and capture Osama Bin Laden and, therefore, the speculations about what might come next in the form of further terrorist attacks, remains uncertain.

What has driven the need to review national security initiatives and implement new Anti-Terrorism legislation is the fact that these terrorist attacks were launched from within the US border. Many of the terrorists had been in North America for quite some time, blending into the common population. While many were here on temporary visas, it has become obvious that Canadian and US screening mechanisms and security background checks were not extensive enough to warn us of the coming threat. Of all the countries in the world, Australia, New Zealand, Canada and the US are the leading countries with liberal immigration policies that encourage people all over the world to relocate themselves to these countries.⁶⁷ Unfortunately, our free, liberal, and multicultural societies make it hard to identify and track the would-be terrorists and prevent them from infiltrating into the societies. It is often even harder to identify them once they are integrated into a society until they commit an act of terror.

3.4 THE SIGNIFICANCE OF THE TERRORIST ATTACKS TO CANADA

Since 11 September 2001, the US has been looking for allies in its campaign against terrorism. Morally, Canada feels compelled to help the Americans defeat the elusive and difficult threat of terrorism. Canadians nourish a strong bond with the Americans and there is little doubt that most of our citizens are empathetic to the pain that America endured. Several Canadians were in the World Trade Centre buildings on

⁶⁷ Thomas Bauer, Magnus Lefstrom and Klaus F. Zimmermann, *Immigration Policy, Assimilation of Immigrants and Natives Towards Immigrants: Evidence From 12 OCED-Countries*, March 2000, Online: http://www.nottingham.ac.uk/economics/iea/bauer_and_zimmerman.pdf

the day of the tragic attack. On Friday 14 September 2001, with the Maple Leaf and Old Glory waving together in the shadow of the Peace Tower, over 100,000 people gathered on the Parliament Hill to offer prayer and condolences to their American neighbours in the US. In the months that followed the tragic events, a large number of Canadians travelled to New York City to offer assistance and support. Additionally, Canadians, through their financial generosity, sent millions of dollars to help the victims and their families. Given our strong economic, geographical and emotional ties to, and shared values with the US, our compassion was natural and willingness to help spontaneous. Every nation has the right to defend itself against aggression, and a strong country like the US will employ every means available to do so. There will be times in the coming months, and over the next few years, where decisions south of the border will have a dramatic impact on economic and political ramifications for Canada. We may be asked to participate in a variety of US driven initiatives that are primarily focused on their needs.

3.5 IS THERE STILL A THREAT ?

Since 11 September 2001, the US has been actively contemplating potential threat scenarios. They are highly concerned about the likely use of biological and chemical weapons by the terrorists. One such scenario involves three al-Qaeda operatives who take off from Windsor, Ontario, on a helicopter sightseeing tour. Immediately after take-off, the terrorists slash the pilot's throat and then proceed to toss 115 kilograms of weapons-grade anthrax out the window. Within 24 hours, according to the scenario in a report by a conservative US think tank, more than one million people are dead in Detroit,

Windsor and the surrounding area. The winds spread the spores to the Toronto area and, as far as Sudbury, Barrie and North Bay.⁶⁸

We have already mentioned that world terrorism is difficult to defeat. Until world terrorism is extinguished, most certainly there will continue to be threats to North America, and its Allies. “Canada has never been a target for international terrorism, but there is concern that Canada not be used [sic] as a giant aircraft carrier for terrorists targeting Americans”.⁶⁹ While a violent terrorist act on Canadian soil has not yet occurred, there has been a rising trend in terrorist support activity within Canada that would justify the allegations that Canada is being used as a staging ground to reach the US. In 1999, a special Senate Committee on Security and Intelligence reported that the following terrorist activities had been identified in Canada:

1. The planning and logistical support of terrorist operations in Canada and abroad;
2. Fraudulent use of travel documentation and illegal entry into Canada;
3. Procuring weapons and materials for terrorist operations;
4. Recruiting members and supporters;
5. Manipulating members of émigré communities in Canada;
6. Providing safe haven; and
7. The use of Canada as a staging ground for terrorist acts abroad, in particular, the US.⁷⁰

⁶⁸ Barrie McKenna, “US Vulnerable to Attack from Canada. Report Warns,” *Globe and Mail*, Online, 09 January 2002, p. A7: <http://www.theglobeandmail.com/servlet/ArticleNews/printarticle/gam/20020109/UBORDM>

⁶⁹ William Orme, “In Canada, a Sea Change Follows Wave of Terrorism”, *Times Staff Writer*, Online, 28 January 2002: <http://www.latimes.com/templates/misc/printstory.jsp?slug=la%D012802ottawa>

⁷⁰ Canadian Security Intelligence Service “The Canadian Security Intelligence 1999 Public Report”, Online, Published June 15, 2000, Ottawa, Updated 01 November 2000: http://www.csis-sers.gc.ca/eng/publicrp/pub1999_e.html#3b

Given these recognized terrorist activities in Canada and the stated American determination to win the campaign against terrorism, there is no doubt that there will be American political pressure and influence put on Canadian Anti-Terrorism polices in the agenda for debates and bilateral talks on mutual security issues.

The problem with terrorism is that it can strike at anytime, from any location, with an array of potential weapons. It has already been demonstrated that achieving a specific terrorist objective does not require the use of sophisticated weapons. In fact, as was seen September 11, the terrorist exploited simplicity in their choice of weapons. The Canadian Security Intelligence Service (CSIS) is increasingly worried and challenged by the emerging threats of nuclear, chemical, biological and/or radiological weapons.⁷¹

Given our historic acceptance of immigrants and refugees, our diverse population and our previous liberal laws with respect to human and civil rights, there is evidence that several terrorist groups have already established a firm base in this country. Alister Hensler, a former CSIS assistant director added, “there may be people here who are sympathetic to (al Qaeda), and indeed in the future, they may cause some difficulty”.⁷² According to David Harris, the former Chief of Strategic Planning for the CSIS,

[N]othing could be more obvious than al Qaeda is operating here, we’re inadvertently playing in the big leagues of global terrorism. This is going on in our backyard, and it means we’re vulnerable to the whims of these people and their command structure. Canada’s

⁷¹ Canadian Security Intelligence Service, Ibid. Also see Micheal T. Klarke, *Current History*, November 2001 for a discussion on non traditional threats.

⁷² Alister Hensler, “Al Qaeda Operates Here: Ex-CSIS Officer”, *The Toronto Star.com Report*, Online, Updated 12 December 2001:
http://www.torontostar.com/NASApp/cs/ContentServer?pagename=thestar/Layout/Article_PrintFriendly&c=Article&cid=1008198119952

uncontrolled immigration and refugee situation poses the greatest future threat.⁷³

3.6 **UNITED WE STAND DIVIDED WE FALL**

According to a recent CSIS report:

Terrorism in the years ahead is expected to become more violent, indiscriminate, and unpredictable than in recent years. The use of advanced explosive materials, in combination with highly sophisticated timers and detonators, will produce increasingly higher numbers of casualties. There will likely be terrorist attacks whose sole aim would be to incite terror itself. A hardening attitude and a willingness on the part of certain terrorist organizations to directly support terrorist operations in North America reinforce the belief that Canadians, now more than ever, are potential victims and Canada a potential venue for terrorist attacks.⁷⁴

Drawing on the recent estimates, it is reasonable to conclude that there exists a threat to Canada. Consequently, Canada will need to decide whether it will embrace or disregard the American strategy, or whether it will attempt to enter discussion and negotiate a balanced approach to the US demands. One interesting debate centres on the Fortress North America concept. Canada and the US would work together cooperatively to ensure the security of the North American continent. Whereas this has some positive attributes and reinforces our already cooperative efforts in defence, the scale and impact of such an integrative process is far-reaching. The economic benefit, due to the elimination of the border, would be positive; however, the US would certainly demand changes to Canadian laws on drugs, immigration, refugees, terrorism and perhaps, in the course of time, amendments to the Canadian Constitution and the Charter of Rights and Freedoms.

⁷³ *Ibid*

⁷⁴ Canadian Security Intelligence Service 2000 Public Report, 12 June 2000, http://www.csis-sers.gc.ca/eng/publicrp/pub2000_e.html#3

Many Canadians are of the opinion that if we accept the Fortress North America concept, it would be the beginning of the end of Canada. Canada and its politicians, nonetheless, endeavour to strike a compromise with the US - one that maintains our national security and sovereignty while reassuring the US, that we are doing everything possible to protect them from any Canadian posture that might increase the threat of terrorism. Canada must stand, given its geography and economic compulsions, united with the US on security issues. Bill C-36 is the Canadian response to the threat, and it is hoped that our closest neighbour, the US, and other Allies, will see it as a positive step towards the campaign against terrorism.

CHAPTER FOUR

BILL C-36: CANADA'S ANTI-TERRORISM BILL

The horrific events of September 11, remind us that we must continue to work with other nations to confront terrorism and ensure the full force of Canadian law is brought to bear against those who support, plan and carry out acts to terror – we will cut off their money, find them and punish them.

Minister Anne McLellan⁷⁵

4.1 INTRODUCTION

Prior to 11 September 2001, Canadian law seriously lacked a comprehensive definition of terrorist offences and matching legislative punch. Amidst increased internal debate in the House of Commons and external political pressure from the US, and call from the United Nations, the Canadian government took actions to address the dilemma. In the US, President George W. Bush was committed to defeating global terrorism and he conveyed a very strong message to demonstrate his resolve:

We will starve terrorists of funding, turn them one against another, drive them from place to place until there is no refuge or no rest. We will pursue nations that provide aid or safe haven to terrorism. Every nation in every region now has a decision to make!⁷⁶

Bill C-36 is Canada's political response in the form of a legislation that will facilitate the prosecution of individuals who intend to commit terror. The aim of this legislation is threefold: to bolster national security; to demonstrate our worthiness and

⁷⁵ Canadian Justice Department, "Government of Canada introduces Anti-Terrorism Act", Online, Update 29 October 2001, p. 1: http://canada.justice.gc.ca/en/news/nr/2001/doc_27785.html

⁷⁶ President George W. Bush, Address to Congress 20September 2001, "President tries to give Americans some answers", *Star News*, Online, Updated 21 September 2001: <http://www.starnews.com/library/factfiles/crime/national/2001/sept11/transcripts/0921bush.html>

commitment, as an ally; and support the international community in meeting the demands of the United Nations Security Council Resolution 1373, dated 28 September 2001. This resolution called for member countries to adopt the necessary measures to prevent any one country from becoming a haven for terrorists.

4.2 BILL C-36, THE ANTI-TERRORISM ACT

On 18 December 2001, the Government of Canada signed into law Bill C-36, the Anti-Terrorism Act.⁷⁷ This historical Act puts into place, determined measures to combat terrorism and terrorist activity at home and abroad. According to the Department of Justice of Canada:

Tough new anti-terrorism measures strike an appropriate balance between respecting Canadian values of fairness and respect for human rights, while helping to ensure that Canadians and the global community are better protected.⁷⁸

The focus of the Act was on creating measures that would allow the government to identify, prosecute, convict and punish the would-be terrorist groups.⁷⁹ The Act authorizes a new set of investigative tools for law enforcement and national security agencies. The four primary objectives of the legislation are to:

1. Stop terrorism from getting into Canada and protect Canadians from terrorist acts;
2. Bring forward tools to identify, prosecute, convict and punish terrorists;

⁷⁷ Once a Bill is passed by Parliament into law it becomes an Act. In this case Bill C-36 became the Anti-Terrorism Act on 18 December 2001.

⁷⁸ Department of Justice Canada, “Highlights of Anti-Terrorism Act”, Online, Updated 25 September 2001: http://canada.justice.gc.ca/en/news.nr/2001/doc_27787.html

⁷⁹ Canadian Bar Association, “Submission on Bill C-36 Anti-Terrorism Act”, October 2001, Online, p. 41: <http://www.cba.org/pdf/reccs.pdf>

3. Prevent the Canada – US border from being held hostage by terrorists and impacting on the Canadian economy; and
4. Work with the international community to bring terrorists to justice and address the root causes of such hatred.⁸⁰

While the Canadian Anti-Terrorism Act is less intrusive than the Anti-Terrorism laws passed by the US and British legislations⁸¹, it, nonetheless, shows the continued commitment of the Canadian government to address the issue of terrorism within the confines of Canadian law, and the Charter of Rights and Freedoms.

4.3 HIGHLIGHTS OF THE BILL C-36

Bill C-36 is a comprehensive document that addresses the key aspects that the Canadian government has deemed important in its efforts to defeat or neutralize terrorism in this country. It strives to strike at the very heart of terrorist organizations with a *modus operandi* to identify, prosecute, convict and punish those who attack the state. To start with, the government needed to define terrorism and terrorist activity. It needed to do this in such a way that its provisions did not overly infringe on an individual's right of legal protests and expression. The definition of terrorist activity is of key importance, because it sets the threshold for the application of all expanded powers and penalties in

⁸⁰ Citizenship and Immigration, "Strengthened Immigration Measures To Counter Terrorism", Citizenship and Immigration news release, 04 February 2001, Online, No date: <http://www.cic.gc.ca/english/press/01/0119-pre.html>

⁸¹ On 14 December the House of Lords in England gave royal assent to the provisions of the Anti-Terrorism Act. Discussion of the provisions can be seen at, http://image.guardian.co.uk/sys-files/Politics/documents/2001/11/20/Antiterrorism_bill.pdf. The challenges with the Act as well as a brief overview of what is planned can be found in a article by Chris Marsden and Julie Hyland 23 November 2001, <http://www.wsws.org/articles/2001/nov2001/bill-n23.shtml>

the sequential chapters and sections of the Bill.⁸² Specifically, terrorist activity has been defined as follows:

1. Is an offence under one of ten UN anti-terrorism conventions and protocols;
2. Is taken for political, religious or ideological purposes and intimidates the public concerning its security, or compels a government to do something, by intentionally killing, seriously harming or endangering a person, causing substantial property damage that is likely to seriously harm people or by seriously interfering with or disrupting an essential service, facility or system.⁸³

As a result of debates, legal interpretations, and cultural sensitivities, a clause was added to the Bill to indicate that an expression of political, religious or ideological beliefs alone is not a “terrorist activity”, unless it is part of a larger contingent that meets the remaining requirements of the definition and intent. Specifically, the clause suggests that disrupting an essential service, e.g., stopping a bus during a legal protest, would not meet the intent of “terrorist activity”.

The second portion of the Bill deals with terrorism offences and includes provisions for a terrorist list, financing of terrorism, participating, facilitating, instructing and harbouring of terrorists, and the sentencing of the accused. The terrorist list (which might be a group or an individual), is prepared by the Solicitor General through the Governor in Council, and identifies all known terrorist groups and individuals in

⁸² Kent Roach, “The New Terrorism Offences and the Criminal Law”, *The Security of Freedom, Essays on Canada’s Anti-Terrorism Bill*, edited by Ronald J. Daniels, Patrick Macklem and Kent Roach, (University of Toronto Press, Toronto, 2001), p. 154. Kent Roach is a member of the Faculty of Law, University of Toronto.

⁸³ The Canadian Government Document, House of Commons Bill C-36, 15 October 2001, *The Minister of Justice Document*. Criminal Code 83.01(1)

Canada.⁸⁴ Any criminal involvement including, support to terrorists, funding, etc., under the provisions of the Bill would allow the government to freeze property and award the assets to the . In January 2000, Federal Court of Appeals Judge J.A. Robertson stated, “those who freely choose to raise funds to sustain terrorist organizations bear the same guilt and responsibility as those who actually carry out the terrorist acts”.⁸⁵ Obviously, those who help finance terrorism facilitate the movement of terrorist or terrorist groups, harbour them, etc., are subject to the same punishment under the provisions of the Bill. With respect to sentencing, the courts have a significant amount of leniency depending on the crime committed. A proposal for the initial Bill allowed the courts the power for cumulative sentencing; however, for the final Bill, the Canadian Bar Association argued that it would be more practical for the legal system to impose sentences based on the severity of the situation. This afforded judges the flexibility to implement the intent of the legislation.⁸⁶

The third major section of Bill C-36 addresses the Terrorist Property. Specifically, it deals with the freezing of property, disclosure and audit; the Solicitor – Client confidentiality and privilege; financial institutions; forfeiture of property; and Proceeds of Crime and the Money Laundering Act. This section is complicated because

⁸⁴ The Canadian Government Document, House of Commons Bill C-36, 15 October 2001, The Minister of Justice Document. Criminal Code 490(1.1). Also seen in Lisa Austin, “Is Privacy a casualty of the War on Terrorism”, The Security of Freedom. Essays on Canada’s Anti-Terrorism Bill, edited by Ronald J. Daniels, Patrick Macklem and Kent Roach, (University of Toronto Press, Toronto, 2001), pp. 251-263. Lisa Austin is a member of the Faculty of Law, University of Toronto

⁸⁵ Canadian Security Intelligence Service, “International Terrorism: The Threat to Canada”, in *Perspectives*.

⁸⁶ Canadian Bar Association, “Submission on Bill C-36 Anti-Terrorism Act,” October 2001, Online, p. 41, <http://www.cba.org/pdf/reccs.pdf>

it refers to other documents such as the Criminal Code and Money Laundering Act.⁸⁷ Additionally, it addresses the requirement to access accounts in various institutions both in Canada as well as outside the country, necessitating consideration of international law and host nation regulations. The bottom line is that the Bill does not contradict any procedure or rule of law that is currently implemented. The challenge will be to ensure that proper procedure is followed to avoid any allegation of improper application that would hurt the Crown's efforts to seize the assets in a court of law.

The fourth major section involves Investigative Techniques, which include preventive arrests, investigative hearings, and non-disclosure of security information under the Canada Evidence Act. "The new investigative techniques provided by Bill C-36 are substantial departures from what has so far been considered acceptable in Canada".⁸⁸ This section has received a significant amount of press attention since its publication and the Human Right organizations have branded this section as too intrusive. Bill C-36 gives police officers the right to detain individuals when there are reasonable grounds to do so. Many activists believe that the Bill targets certain populations on discriminatory grounds, which could lead to racial profiling. This portion of the C-36 affords an officer the authority to detain individuals based on their suspicions. While it might seem intrusive, there are no easy alternatives. If the provision is not in place, the potential suspect will be allowed to go free; the challenge then, will be to find the person again in Canada's population of 31 million. The Bill allows Canada to be proactive. The

⁸⁷ The Canadian Government Document, House of Commons Bill C-36, 15 October 01, The Minister of Justice Document. Criminal Code 83.1

⁸⁸ Canadian Bar Association, "Submission on Bill C-36 Anti-Terrorism Act," October 2001, Online, p. 35, <http://www.cba.org/pdf/reccs.pdf>

Bill mandates that a review of arrests and detentions will be made on a regular basis to ensure that racial profiling and unwarranted detentions are minimized.⁸⁹

The fifth major section deals with Racial and Religious Intolerance. “The promotion of hatred against identifiable groups continues to be a problem in Canada. Indeed, incidents of hatred appear to have increased remarkably since September 11”.⁹⁰ Canada is a mosaic of racial and ethnic diversity; hence, the provisions of this section are significant. Racial and religious hatred is something that Canada will not accept and will prosecute to the full extent of the law. The law includes provisions for hatred transmitted via telephone, radio or television, the mail and, with this new Bill, cyberspace as well.

The sixth provision of Bill C-36 deals with Privacy, which includes access to information, the interception of foreign communications, and the ban on certain court publications. Under the provisions of this legislation, the Attorney General of Canada may decide to issue a certificate prohibiting disclosure of certain information in order to protect the interests of Canada’s international relations or national defence and security.⁹¹ This issue would challenge the right of Canadians to obtain information, but would also ensure that their private and personal information is not disclosed to others. It also could prevent the disclosure of information to the public, which would potentially be inconsistent with our right to demand open and fair government. Some information pertaining to a case may not be made available to the people. To address this issue, the

⁸⁹ Martin L. Friedland, *op cit*, pp. 269-281. Martin Friedman is a member of the Faculty of Law, University of Toronto.

⁹⁰ Canadian Bar Association, “Submission on Bill C-36 Anti-Terrorism Act,” October 2001, Online, p. 41, <http://www.cba.org/pdf/reccs.pdf>

⁹¹ Patrick Macklem, *op cit*, pp. 353-364. Patrick Macklem is a member of the Faculty of Law, University of Toronto.

government is considering a time clause on the protection of information (potentially five years), as well as other checks and balances to ensure the protection of personal information about Canadians. Access to information on other sensitive matters would also be available after this period. Under the provisions of interception of foreign communications, Canada may listen to all communication entering or leaving the country. This applies to any and all forms of communications. In the submission of the initial Bill, the Minister of National Defence was to have exclusive authority. However, as a result of debate and deliberations, the Minister now requires the approval of the judicial system and must have just cause to intensify the listening.⁹² With respect to protected court documents, individuals may still request access to the information and requests for access, which then will be addressed on a case-by-case basis. The access to these documents will depend on the degree of sensitivity of the material.⁹³

The seventh major section is that of Charities Registration (Security Information). This section includes: a discussion of the differences between Bill C-36 and Bill C-16⁹⁴; the duty of procedural fairness; a broad definition of terrorist activity and terrorism offences; limited defence; and public perception and liability issues. This portion of the Bill includes most of the C-16 information and provisions that were introduced in March 2001, yet withdrawn, with the introduction of Bill C-36. The focus of this section is to

⁹² Wesley K. Wark, "Intelligence Requirements and Anti-Terrorism Legislation", *The Security of Freedom, Essays on Canada's Anti-Terrorism Bill*, edited by Ronald J. Daniels, Patrick Macklem and Kent Roach, (University of Toronto Press, Toronto, 2001), pp. 287-296. Wesley K. Wark is a member of the University of Toronto, Munk Centre for International Studies.

⁹³ The Canadian Government Document, House of Commons Bill C-36, 15 Oct 01, *The Minister of Justice Document*. Section 273.65 National Defence act and clause 87,102,103 and 104 of Bill.

⁹⁴ Bill C-16 is the Citizenship Act of Canada. It deals with all issue pertaining to the respect of Canadian Citizenship. There is an obvious link between C-36 and C-16 when it pertains to immigrants and application for citizenship.

protect legitimate charities and attack those that raise money to support terrorist activities. It will make it harder for an illegitimate organization to exist in Canada. However, it will be up to consumers to be vigilant in their selection of appropriate and established charities. In the words of David G. Duff,

The purpose of this Act is to demonstrate Canada's commitment to participating in concerted international efforts to deny support to those who engage in terrorism, to protect the integrity of the registration system for charities under the *Income Tax Act* and maintain the confidence of Canadian taxpayers that the benefits of charitable registration are made available only to organizations that operate exclusively for charitable purpose.⁹⁵

The final provision of the legislation is that of the Sunset Clause. This clause establishes a time-frame that states that, in addition to the three-year Parliamentary review of the Act, the provisions of preventive arrests and investigative hearing will expire five years from the date the Bill is brought into law. The sunset clause allows the Canadian government to make adjustments to the law based on the threat. The Canadian Bar Association membership summed up the split of the Bill as:

The Government must strike a delicate balance between collective security and individual liberties. The Charter requires governments to demonstrate that limitations on guaranteed rights and freedoms are necessary and properly tailored to provide minimum impairment of those rights and freedoms.⁹⁶

4.4

⁹⁵ David G. Duff, "Charitable Status and Terrorist Financing: Rethinking the Proposed Charities Registration (Security Information) Act", *The Security of Freedom, Essays on Canada's Anti-Terrorism Bill*, edited by Ronald J. Daniels, Patrick Macklem and Kent Roach, (University of Toronto Press, Toronto, 2001), pp. 322-333. David Duff is a member of the Faculty of Law, University of Toronto.

⁹⁶ Canadian Bar Association, *Submission on Bill C-36 Anti-Terrorism Act*, October 2001, Online, Executive Summary, p.5: <http://www.cba.org/pdf/reccs.pdf>

REACTION TO THE ACT

As with any new legislation, there would be some people who would think it has gone too far, while many others who would feel that it has not gone far enough.

Individual opinion is welcome in a democratic society, and it is good to have an open debate that helps balance the end product. A Globe and Mail poll conducted between 18-20 December 2001, of 1000 Canadian respondents is quite revealing:

Question One: Do you think that the federal government has done too much, not enough, or enough with respect to its efforts to protect your civil rights while providing new police powers to fight terrorism?

<u>Results:</u>	Too much	11%
	Not enough	30%
	Enough	57%
	Don't know	3%

Question Two: Do you think the federal government has done too much, not enough, or enough with respect to its efforts to ensure that police have the tools to fight terrorism in Canada?

<u>Results:</u>	Too much	9%
	Not enough	46%
	Enough	41%
	Don't know	4%

Source: Globe and Mail Poll Online⁹⁷

In this Globe and Mail poll, only nine percent of Canadians indicated that they believed the government had gone too far in giving police extra powers. The survey also indicated that 46 percent of people polled suggested that Ottawa should have gone

⁹⁷ Ingrid Peritz, "Anti-Terrorist Laws win Favour," *Globe and Mail*, Online, Updated 29 December 2001:
<http://www.globeandmail.ca/servlet/GIS.Servlets.HTMLtemplate?tf=tgam/search/tgam/SearchF1/16/02>

further. Forty-one percent of the people indicated that enough had been done.⁹⁸ For most the part, however, Canadians are concerned with the impact the Bill will have on civil liberties. Notwithstanding this concern, the threat of potential future terrorist attacks makes some restriction of freedom more palatable to most Canadians. The government rushed this Bill through the legislature and, so far, has been quite receptive to comments, especially from the Canadian Bar Association, which provided by some perceptive analysis to improve the final draft of the Anti-Terrorism Act.

4.5 CHALLENGES WITH BILL C-36

The objective of Bill C-36 was to develop a document that would be acceptable to most Canadians, satisfy the international community, especially the US, and balance new security measures with the freedom and rights of individuals.⁹⁹ Rather than a lengthy list of minor deficiencies, this section will address some of the major limitations. One of the challenges will be in the administration of the Bill, and in the potential conflict that might arise between the political entity (government leadership) and judicial application of the intent of the law. In the event of a conflict, there is no process in place for conflict resolution between the legislative and judicial entities.

A second concern, lies within the definition of terrorism and terrorist activity. The definitions are satisfactory, but the application of the rule by police leaves room for interpretation, which creates a possibility that racial profiling will occur. Unless the Bill has been in place for six months or so, there is little evidence to show any trend towards

⁹⁸ Ingrid Peritz, "Anti-Terrorist Laws win Favour," *Globe and Mail*, Online, Updated 29 December 2001: <http://www.globeandmail.ca/servlet/GIS.Servlets.HTMLtemplate?tf=tgam/search/tgam/SearchF1/16/02>

⁹⁹ Martha Shaffer, *op cit*, pp. 195-204. Martha Shaffer is a member of the Faculty of Law, University of Toronto.

racial profiling. The government and the courts will have to act swiftly to address any cases of impropriety. Another concern centres on the power given to the various Ministers with respect to the new laws. Again, we will have to wait for some empirical data to identify any abuse of the powers.

The final concern is one of finances and workload. To implement the government's plan, money will have to be made available to train extra customs and immigration staff. It will take time to train these people; in the interim period, there will be stress on the system. The same is true for those whose job it is to check out each and every potential refugee. More work will have to be done on background checks and clearances, which traditionally has taken extended periods of time. Creating a viable terrorist database that includes information from around the world is absolutely necessary, if Canada is to protect its borders. The detention of large numbers of people either seeking refugee status, or suspected of connection with terrorism will put strains on the already crowded holding cells and prison establishment around the country. The legal system may also be stretched, as more and more cases are brought to the courts for resolution.

Bill C-36, as it stands today, is a balanced and acceptable legislation that should serve the country well in its campaign to address terrorism. A sensitive Bill like C-36, will be subject to constant scrutiny. In a democratic society, change is inevitable and over time the government may be required to amend the legislation to address the changing security environment and popular perception.

4.6 ANALYSIS OF BILL C-36

Central to the argument of this paper is the discussion as to whether or not Bill C-36 represents a balanced approach necessary to address the threat of terrorism. The balance as discussed earlier, is one that addresses both the internal and external environments. Internally, the Bill must address the protection of Canadian citizens without imposing too severely on an individual's rights and freedoms. The Bill must take into account Canada's existing laws to ensure that the legislation is complementary. Given the extensive debate and consultation the Canadian government has had with the principal participants involved in the formation and implementation of this Bill, which includes the members of parliament, the legislative branch, the bureaucracy, the media, and popular public opinion, it is a rational conclusion that the Bill represents a balanced approach in our campaign against terrorism.

Bill C-36 enhances security by seeking out terrorists, freezing their funds and stopping their fundraising initiatives. The Bill sensitizes all concerned to the issue of illegal immigration and refugee claims. These avenues are the conduits used by terrorists to seek immigration or to mobilize resources for conducting terror. The new, clear definition of terrorist activity combined with the provisions to detain suspected terrorists provides law enforcement agencies with the tools they need to help and protect the Canadian population. To safeguard against potential abuses of power, the legislation has several checks and balances where the government reviews the activities associated with the Bill. In the event of questionable application of the intent of the Bill, there is an established mechanism for judicial and legislative review.

The Bill accurately targets potential or known terrorists and terrorist activity. The average Canadian should not fear the fallouts from the implementation of the Bill. In fact, the polls quoted in the paper show that most Canadians are pleased with the Bill and are comfortable that the government is doing everything possible to protect their interests. The Bill has not greatly infringed on individual rights and freedoms because it is focussed on those who intend to inflict terror or conduct illegal activity, as defined in part one of Bill C-36. The Bill does not compromise our sovereignty, nor our independent Canadian way of life. In fact, the security that the Bill provides will help feel more safe and protected because we are now taking concrete actions against those who could potentially perform acts of terror.

The Bill has made our borders more secure as it imposes heavy penalties for cross-border crimes. Our cooperation with our American allies, including the sharing of intelligence information and customs personnel at the borders, will help protect the entire North American continent.¹⁰⁰ The willingness of the Canadian government to share information and work cooperatively with the US will demonstrate Canada's resolve to address the threat imposed by terrorism. The terrorist will no longer be able to seek refugee status in Canada, and the country cannot be labelled as a launching ground for terror against the US. This should assuage our American neighbours and mitigate any concern that Canada is not pulling its fair weight in the campaign against terrorism. Cooperation with the US does not mean that our sovereignty is in jeopardy. If sovereignty is about choices, as the Deputy Prime Minister Manley suggested, and as long as Canada makes its own choices, then we will continue to remain a sovereign

¹⁰⁰ Audrey Macklin, *op cit*, pp. 383-399. Audrey Macklin is a member of the Faculty of Law, University of Toronto.

nation. As with any new legislation there are some growing pains and challenges that must be addressed. This does not indicate that Bill C-36 is inappropriate or irrelevant; it highlights the process of growth and maturity of the Act, rather than its weaknesses.

CHAPTER FIVE

ACT IN ACTION: THE CASE STUDIES

5.1 INTRODUCTION

One of the best ways to illustrate the success or identify the challenges of Bill C-36 is to find and review court cases and examples that reveal the effectiveness, or otherwise, of the legislation. The ultimate measure of success will be seen in the Bill's ability to protect the state's national security by meeting the intended objectives of the Bill. The Bill was signed into law only recently, on 18 December 2001. The case studies record and analyze court proceeding where the provisions of Anti-Terrorism Act have been used and subsequent opinions and interpretations by the courts in each of the cases. The case studies take into consideration the latest information available because most of the cases are still transiting through the legal system. Thus, discussions on the final outcome of the cases and the conclusive analysis of the legal process and political responses to each situation have not been possible. Notwithstanding this limitation, two cases will be reviewed. These examples provide insights into how the new Act is working. It also will help to illustrate the challenges and the legal complications associated with the implementation of the new policies and laws.

5.2 CASE ONE : MANICKAVASAGAM SURESH

Manickavasagam Suresh arrived from Sri Lanka and was granted refugee status in Canada, in 1990. In 1997, he was recommended for deportation from the country after the CSIS informed the government that Suresh was a key player and a fundraiser in the World Tamil Movement and the Federation of Associations of Canadian Tamils. In Sri

Lanka, Liberation Tigers of Tamil Eelam is a Tamil organization, which is involved in a guerrilla war of independence against the Sri Lankan government. For more than seven years, Suresh has been fighting deportation back to Sri Lanka. Suresh has contended that, if he is deported back to Sri Lanka, there is “credible anecdotal evidence that agents of that country’s [Sri Lanka’s] government have used torture against Tamil Tiger captive”¹⁰¹, and he would face a similar fate. Under Canadian law, the government is obligated to protect refugees from inhumane treatment abroad. Equally important is the government’s responsibility and mandate to protect Canadians from terrorism and terrorist acts as prescribed in the legislature. The government now has a difficult dilemma, one that requires it to balance the competing aspects of homeland security and counter terrorism measures against the humanitarian dimensions of immigration (refugee and illegal immigrants), the Charter of Freedoms and Rights, and the various civil liberties and international regulations. The Suresh case now falls under the provisions of the Anti-Terrorism Act. Prior to the enactment of this law, Suresh would not have faced trial, but now his fate will rest in the interpretation of the new law. The new provisions of the Anti-Terrorism Act are significantly tougher than the previous laws as the Act, reflects the concerns arising out of the events of 11 September 2001. The government is bound to act according to this law and the prosecution would bring the defaulters to the court of justice. In the case of legal problems, the government would need to reinforce the Act to instil credibility in the law against terrorism and to demonstrate the government’s resolve to fight the menace. The Supreme Court of Canada has already ruled on this case and the court has turned the matter over to the government and the Minister of Immigration and

¹⁰¹ “Staying Terrorists”, *The National Post*, Online, 12 January 2002: <http://www.nationalpost.com/>

Citizenship, Elinor Caplan, for resolution. The Supreme Court found in a unanimous vote:

The Federal Minister of Immigration possesses the constitutional authority to deport suspected terrorists, even if the terrorist in question faces possible torture in his homeland. ... They circumscribed the government's authority so thoroughly that the power to expel criminals was made to exist in theory, only. In practice, the justices said, principles of domestic and international law present a "virtually categorical" prohibition against deporting anyone who might be tortured at the other end of his flight. Barring extraordinary circumstances, they wrote, the Minister should generally decline to deport refugees where... there is substantial risk of torture. The court did leave Ottawa a little wriggle room. For instance, the justices ordered courts to give deference to the Minister's judgement on the question of whether a refugee poses a threat to national security, and whether he is at risk of torture once departed.¹⁰²

This is a typical case of a legal versus political tennis match, as sides volley control of the situation back and forth across the net. Given the high stakes of life or death of the accused, in many of these types of cases, neither the government nor the judiciary would like to bear the burden of moral responsibility. So far as the implementation of the Anti-Terrorism Act is concerned, the Minister must now decide the fate of Manickavasagam Suresh. It is most likely that this case will extend for quite sometime before a final decision is made. Given Canadian popular views on torture, human rights, and threats to human life, Suresh poses a most difficult choice for the Canadian Government. Its decision to deport him could potentially cost him his life. Yet, Canadian law is very specific in its interpretation of what is to be considered a serious threat and Suresh would perhaps fall in this category:

¹⁰² "Staying Terrorists", *The National Post*, Online, 12 January 2002: <http://www.nationalpost.com/>

The terms "danger to the security of Canada" and "terrorism" are not unconstitutionally vague. The term "danger to the security of Canada" in deportation legislation must be given a fair, large and liberal interpretation in accordance with international norms. A person constitutes a "danger to the security of Canada" if he or she poses a serious threat to the security of Canada, whether direct or indirect, bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be "serious", grounded on objectively reasonable suspicion based on evidence, and involving substantial threatened harm.¹⁰³

5.3 CASE TWO: MAHMOUD JABALLAH

The case of the Canadian government against Mahmoud Jaballah is being heralded as the test case for the government's new Anti-Terrorism Act. Officials from the CSIS are contending that Jaballah poses a significant national security threat to Canada and to the US, because of his link to a Toronto based Muslim group of "sleepers" with direct affiliation with al-Qaeda and Osama Bin Laden.¹⁰⁴ Jaballah, at the time of the report, was 39 years old, and the father of six children. He is the founder of the Muslim elementary school in Toronto. Mahmoud Jaballah proclaimed refugee status upon arriving in Canada in 1996; he was subjected to vigorous questioning by CSIS because of a link he had with Ayman Al-Zawahari (Osama Bin Laden's number two man) in 1995.¹⁰⁵ There were also charges that he was a member of *Al Jihad* (a radical terrorist group under the direction of Al-Zawahari). In 1999, the Canadian government sought to deport him back to Egypt. However, according to the court records, Jaballah

¹⁰³ The Minister of Citizenship and Immigration and the Attorney General of Canada *Suresh v. Canada* (Minister of Citizenship and Immigration) <http://www.lexum.umontreal.ca/csc-ssc/en/rec/html/suresh.en.html>

¹⁰⁴ Sarah Downey, "Terror Test Case", *Newsweek*, Online, 22 December 2001: <http://www.msnbc.com/news/676783.asp>

¹⁰⁵ *Ibid.*

officially stated that, “[t]he first time I heard of the name Osama bin Laden was when the embassies in Kenya and Tanzania were blown up” .¹⁰⁶ In 1999 Aly Hindy, an imam of Toronto’s Salaheddin Islamic Centre, supported Jaballah’s testimony and in the end the Government lost its case for deportation. In August 2001, just prior to the terrorist attacks on the World Trade Centre buildings and the Pentagon, the CSIS entered a motion to re-open the case against Jaballah with further evidence (finger prints) that suggested that the man had an alias (an assumed name), Mahmoud Said, an Egyptian member of *Al Jihad* wanted for document forging, bomb-making and a variety of other terrorist related activities.¹⁰⁷ The CSIS is presenting a case that the evidence against this individual is overwhelming and this is a matter of intense national security. The additional evidence is being held secretly and the defendant’s lawyer is having a difficult time gaining access to the information that implicates his client. On 10 January 2002, Justice Andrew MacKay agreed to hear the new CSIS allegations information behind closed doors to determine if there was sufficient evidence to overturn the 1999 ruling and re-open the case against Jaballah for his deportation.¹⁰⁸ The new case, if re-opened, would have to invoke the provisions of the Anti-Terrorist Act. In a previous statement to the Defence of Canadian Liberty Committee on Liberty and Security, Justice MacKay indicated that, “[i]f we give away our right to dissent, then terrorists have won in a different way -- destroying our political freedoms and free traditions”.¹⁰⁹ The judge has agreed to provide a decision as

¹⁰⁶ *Ibid.*

¹⁰⁷ Sarah Downey, “Terror Test Case”, *Newsweek*, Online, Updated 22 December 2001: <http://www.msnbc.com/news/676783.asp>

¹⁰⁸ San Pazzano, “Judge to Quiz CSIS Agents”, *Ottawa Sun*, Online, 09 January 2002: http://www.canoe.ca/CNEWSAttack0201/09_ottawa-sun.html

soon as he has had a chance to assess the additional information provided by the CSIS. A decision was not available prior to the completion of this paper. However, if the case is re-opened, the evidence will perhaps implicate Mahmoud Jaballah under the jurisdiction of the new Act, as an active participant in a known terrorist organization that poses a serious threat to Canada's national security.

5.4 ANALYSIS OF THE CASE STUDIES

These two cases have illustrated that, while there may still be a few challenges, the intent of the law is being applied appropriately for relevant cases. The new definitions of terrorist activities have helped to draw attention to these two would-be terrorists. Both these cases are before the courts and will be decided under the provisions of the Anti-Terrorism Act. The objective of the legislation was to identify would-be terrorists and terrorist activities within this nation and take action to reduce the threats of potential acts of terrorism. Clearly, these examples demonstrate the Canadian government's resolve to address the threat. The prosecution has now prove that the individuals charged with the terrorist offence pose a severe risk to Canada's national security. Based on the evidence received, the court would decide if Canada has the right to deport the individual, and that Canada, then will exercise that right giving due consideration to the fact that the individual in question, in some cases, might face persecution or death upon return to his/her homeland. "Canadian law and international norms reject deportation to torture. Canadian law views torture as inconsistent with

¹⁰⁹ Michael Valpy "Defence of Canadian Liberty Committee", *News Article*, Online, Updated No date: <http://www.canadianliberty.bc.ca/liberty-vs-security/burn-this-Bill.html>

fundamental justice”.¹¹⁰ It is obvious from the case studies that there is still a significant amount of debate and deliberation that needs to happen between the legal community and the government with respect to the implementation of the Anti-Terrorism Act. The fact that Suresh and Mahmoud Jaballah will remain behind the bar, without contacts and capacity to facilitate or wage terror is, by itself, an important achievement for national security. Change is an evolutionary process that takes time. There will perhaps be some changes to several rules and procedures, the Charter of Rights and Freedoms, and Anti-Terrorism Act itself to accommodate or facilitate the ease of legal application of the Act. Documents that compete against, rather than act in harmony with each other, are the ones that will need to be addressed and synthesized.

Law enforcement agencies have embraced this new goal to round-up would-be terrorists and the courts would hear, and after due deliberation, give verdict on each case presented. The government, as seen in the Suresh case, must now decide whether it will exercise the option to deport the individual, knowing that there is a possibility that he will be killed upon his return to his native land. To make this decision, the Canadian government will need to consider the nature and extent of threats that both Suresh and Jaballah pose to national security. There is no question that the US will be watching the deliberations and the Canadian government’s reaction to these cases. It is important that the Canadian government demonstrate its credibility and resolve to implement the full intent of the law, in the campaign against terrorism.

¹¹⁰ The Minister of Citizenship and Immigration and the Attorney General of Canada *Suresh v. Canada* (Minister of Citizenship and Immigration) <http://www.lexum.umontreal.ca/csc-scc/en/rec/html/suresh.en.html>

CHAPTER SIX

CONCLUSIONS

The sinister terrorist attacks of 11 September 2001 on the US forced our American neighbours to rethink the defence of their homeland and overall national security. In the campaign (war) against terrorism, the President of the United States has pledged that he would fight world terrorism to a point that it was no longer a threat. In the US's view, any state that is not playing its part to help defeat terrorism will be seen as a supporter of terrorism. Since the US is the dominant superpower, with an incredible military capability that has a global reach, the President's words are symbolic of his resolve.

The paper has discussed the importance of national, political and economic security of Canada to its safety and continued prosperity. It has illustrated, through specific examples, the close tie that Canada shares with the US, and has emphasized the many security issues that have common ramifications for both countries. The migration of people to Canada through legal means is critical to Canada's economic growth. Screening and stopping the would-be terrorists from entering Canada is equally important, both for domestic security as well for as the broader security of the US and the North American continent. The Anti-Terrorism Act (formally Bill C-36) meets this challenge by closing the loopholes in the existing immigration legislation and laws that the potential terrorists exploit to seek sanctuary in Canada. The Act is the Canadian government's balanced, well-considered response, aimed at addressing the terrorist threat to North America and to the world. It takes into account the broad security concerns of

Canadians, the concerns of the US about Canada and, the Canadian rights and freedoms, typical of its way of life.

There is no denying that the US is a powerful and influential neighbour and certainly, the US is exerting pressure on the Canadian government to join fully, in its campaign against terrorism. Canada is equally interested in combating world terrorism. It has a strong moral obligation to stand-by the US in its efforts to protect North America. After September 11, protection of Canada, its sovereignty, and its people's freedoms and rights, indeed, faces twin threats: first, from potential terrorists who may pose threats to Canadians and their assets – the terrorists could also use Canada as a launching ground for terror against the US; second, Canada could conform to the US dictates on security to an extent that Canada may lose its freedom to choose and, hence, its distinctive identity as a sovereign country.

Bill C-36 was introduced to rid Canada of terrorism and terrorist activities. The Bill provides the teeth for law enforcement and for the legal system to tackle the threat and make Canada more secure. An important outcome would be that the US, Canada's largest trading partner, feel safer and less threatened and that Canada might not be considered a weak link in the North American defensive posture. It is important that the Americans feel secure in the Canadian posture for homeland security and that we are doing everything we can to address the threats. The sooner Canada can assure the US that the Canada borders and its territory are safe from terrorist activities, the more secure the country will be economically. Bill C-36 in its intent, purpose, reach, and application, is a balanced approach that affords us the legal right to detain, deport, punish or refuse entry to any person or group that threatens our way of life and national security. Through

the implementation of these policies, we enhance our national security and guarantee protection to our citizens. Given the prevailing laws of this country and our concern for human rights, the Bill is a compromise solution, which takes into account the needs of Canadian security, humanitarian laws concerning refugees and illegal immigrants, and finally, the security concerns of the US. It would only apply to, or affect the people who intend to associate themselves with terrorist activities or are already involved with terrorist groups.

Internally, the Bill attempts to protect our citizens, without interfering with our people's rights and freedoms. Externally, the Bill addresses the threat sufficiently so that our bilateral relations with the US remains on a firm political and economic foundation. National security is a broad concept that not only covers physical security, but also the economic security, and the security of our rights, liberties and way of life. This Bill demonstrates our resolve to continue to be a pro-active democracy and emphasizes our sovereign identity. While there are still some challenges and contradictions within Bill C-36, the democratic process in Canada would allow for evolutionary changes and amendments that help to address the over-riding needs of national security.

The two case studies provide insights into the 'Bill or Act in action'. While the final deliberations on the court cases were not available at the time of the completion of this paper, the indication is that all concerned, are making a concerted effort to implement the intent of the legislation. The legal system is braced to address the legislation, and as was seen in the Suresh case, the government is now being challenged to implement (ie. deport) the individual involved. As with any new law or system, there is a likelihood of some amount of inconsistency in the legislation that the government will eventually need

to address. Change is evolutionary in nature and as time moves forward and new challenges are encountered, there is no doubt that the government, as the people's representative, will step forward to respond to these challenges and adjust the legislation to meet the needs of the country.

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