



# SECURITY FOR A CIVIL SOCIETY

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## THE EVOLUTION OF SECURITY MORES

O'Hare Airport, Chicago, October 17, 2004. As the line slowly crawls towards the metal detectors, I note that everyone is placidly removing their shoes and placing them in plastic bins. Although, by now, I know this is a common security measure, I am puzzled—a security guard just instructed us to remove our coats, empty our pockets and turn off our electronic equipment, but I am positive he did *not* mention shoes. “Do we really need to take off our shoes?” I ask the passenger ahead of me. He shrugs and gives me a sheepish grin. “I don’t think they said anything about shoes. I just assumed they had to come off.”

To me, the moment crystallized what many of us have come to think of as “security.” Measures that, 10 years ago, would have been considered deeply invasive or somewhat ridiculous (“you want me to remove *what?*”), have become so habitual that we now consider them necessary inconveniences. Travelers to the United States are routinely photographed and fingerprinted, an act once reserved only for suspected criminals. Parents in Japan are enthusiastically endorsing the use of microchips to track their children’s movements at school.<sup>2</sup> In Canada, biometric data is gradually being introduced in passports, with nary a voice raised in protest. Democratic governments the world over have passed legislation allowing them to secretly monitor their citizens’ movements, e-mail exchanges and reading habits, all in the name of greater safety—it is, after all, *for our own good*.

<sup>1</sup> Paper prepared for the Carold Institute project “Building Local and Global Democracy” (2004-2006), [www.carold.ca](http://www.carold.ca).

<sup>2</sup> “Microchip makes students think twice about skipping,” *The Globe and Mail*, Tuesday, September 28, 2004.

There is little doubt that we are currently witnessing profound changes in how security is defined, managed and defended. Indeed, the rapid spread of globalization means that traditional approaches to governance, including security governance, are being challenged. While, on one hand, globalization has led to greater awareness and thus greater citizen engagement in many parts of the globe, it is also challenging existing power structures, including the sovereignty capacity of the Nation State.<sup>3</sup> Multilateral governance bodies such as the UN and NATO are gradually losing their relevance to mediate conflicts and shape international policy. Armed conflicts are increasingly difficult to predict or contain, routinely spilling across borders and causing large civilian casualties and mass population displacements. The growing emergence of terrorism as a form of warfare, where the “enemy” has no known face or territory and whose main purpose is to destabilize existing power structures, has also forced a re-examination of the traditional security framework.

In response, and under increasing pressure from the United States as well as their own citizens, many nations, including Canada, have undertaken a swift reform of their national security policies and laws. However, in many cases, these reforms have come at a great cost and are now threatening to undermine the very democratic principles they were designed to protect. These changes are also triggering a deep re-examination of our beliefs and values about security: What is security? Who is responsible for it? What or whom is it designed to protect? From what threats? And, perhaps most importantly, at what cost?

The present article proposes to explore these questions, drawing from the Canadian experience as well as global trends. We will first examine how global concepts of security have evolved in the last few decades, in order to demonstrate how recent changes in security approaches have resulted in a narrowing definition of human security, one that often fails to address the security needs of ordinary citizens, while threatening to erode many of the fundamental values and principles on which democracy is built. We will also propose a return to a broader vision of human security, one based on the fulfilment of needs and freedoms for all individuals and geared towards achieving long-term peace, both domestically and abroad.

## **DEFINING SECURITY**

The Webster’s Dictionary defines security as “the quality or state of being secure as a: freedom from danger; b: freedom from fear or anxiety; c: freedom from want

<sup>3</sup> Nigel Martin, Original Framing Paper for the Carold Institute’s project, “Building Local and Global Democracy”, June 2004.

or deprivation.”<sup>4</sup> It is interesting to note that at the very core of this definition lays the concept of *freedom*. Yet, until recently, security had traditionally been viewed as a function of *threats*, with the object of security, that which must be protected from threats, considerably shifting over the course of the 20<sup>th</sup> century.

In fact, until the end of the Cold War, responsibility for security rested squarely with the State and tended to involve protection from external, violent threats, usually in the form of foreign invasions. Under this view, the referent object of security was also the State (as opposed to the individual), the presumption being that if the State was kept secure, then so were its citizens. Security thus depended on maintaining absolute State-sovereignty through the protection of borders and on avoiding conflict through the preservation of a careful balance of power among States.<sup>5</sup>

In the early 1990s, a dramatic shift occurred. Factors such as the growing impact of violent conflicts on civilians, the spread of HIV/AIDS, and the widening gap between the North and the South contributed to the emergence of a new concept of “human” security, where the primary referent became the individual. Through its 1994 Human Development Report, the United Nations Development Program (UNDP) was instrumental in promoting this new approach, most notably by widening the definition of security “categories” to include economic, food, health, environmental, personal, community and political security.<sup>6</sup>

Despite this shift in referent to the individual, definitions of human security still tend to vary along a spectrum where, at the narrow end, human security is mostly concerned with protecting the individual from specific, violent threats such as armed conflict, ethnic discord, State failure, small arms trafficking, etc.<sup>7</sup> At the broader end of the spectrum, human security is concerned with addressing a wide array of human needs and *freedoms* designed to ensure the well-being of the individual, *as well as* protecting individuals from threats. This is the view espoused by the Commission on Human Security, an initiative of the Government of Japan, supported by the United Nations, which, in 2003, defined human security as the protection of the “vital core of all human lives in ways that enhance human freedoms and human fulfilment.”<sup>8</sup> For the Commission, the vital core of life is the set of rights and freedoms that people in a society consider to be “of essence to

<sup>4</sup> Webster's New Ninth Collegiate Dictionary, Thomas Allen & Son, Markham Ontario, 1988, p. 1062.

<sup>5</sup> Taylor Owen. “Challenges and opportunities for defining and measuring human security,” [www.unidir.org/pdf/articles/pdf-art2138.pdf](http://www.unidir.org/pdf/articles/pdf-art2138.pdf)

<sup>6</sup> UNDP. *Human Development Report 1994. New dimensions of human security*. New York: Oxford University Press, 24-25. ([hdr.undp.org/reports/global/1994/en/](http://hdr.undp.org/reports/global/1994/en/))

<sup>7</sup> Taylor Owen. “Challenges and opportunities for defining and measuring human security.”

<sup>8</sup> Commission on Human Security (2003). “Human Security Now.” New York, p. 4.

life” and “crucially important.” As these may vary across individuals and societies, ensuring human security means “creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity.”<sup>9</sup> Consequently, human security fundamentally involves empowering people and communities to make informed choices and to fulfil their potential. While under this approach, the State remains the principal purveyor of security, people must be “the most active participants in determining their well-being.”<sup>10</sup>

Yet, as the Commission noted in its 2003 report, this broad vision of security now appears to be losing ground to the “war on terror,” “[...] as States may revert to a narrower understanding of State security—rather than foster human security” and where “under the guise of waging a war against terrorism, human rights and humanitarian law are being violated.”<sup>11</sup> The Commission concludes that “[...] the “war on terrorism” has stalled [the considerable progress accomplished during the 1990s] by focusing on short-term coercive responses rather than also addressing the underlying causes related to inequality, exclusion and marginalization, and oppression by States as well as people.”<sup>12</sup> The World Watch Institute confirmed this in its *State of the World 2005* report by concluding that the war on terrorism has diverted the world’s attention from the true sources of global insecurity, namely poverty, infectious diseases, environmental degradation, and rising competition over natural resources.<sup>13</sup> According to the Institute, failing to address these causes will inevitably lead to more instability and frustration among certain populations, thus sowing the seeds for more radical action, including terrorism.

As such, it could be argued that the current trend towards an increasingly narrow, State-centered security approach threatens to erode the very core of democratic governance. Canada is no exception to the rule. In the next section, we will demonstrate how recent changes in Canadian security laws and measures have contributed to the overall erosion of peace building, human rights, civil liberties and global human security.

## CANADA AND THE “WAR ON TERROR”

While many factors may have contributed to the growing unease about global security in the late 1990s and early 2000s, the events of September 11, 2001 ce-

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid., p. 5.

<sup>12</sup> Ibid., p. 24.

<sup>13</sup> *La Presse*, “La lutte antiterroriste se trompe de cible,” February 24, 2005.

mented the perception that the world was under siege and that no one was safe from violent attacks. Strongly influenced by the United States' swift reaction to the terrorist attacks, several countries, including Canada, modified existing legislation or adopted new laws designed to secure the safety of their institutions and citizens. Canada's efforts included adopting the *Anti-Terrorist Act*, developing its first national security policy, and changing how it manages international aid programmes.

### ANTI-TERRORISM LEGISLATION

In late 2001, Canada passed the *Anti-Terrorism Act* (ATA, also known as *Bill C-36*), which is designed to provide new, broad and far-reaching investigative tools and measures to law enforcement and national security agencies, including the use of preventive detention and the right to compel testimony from reluctant witnesses. For the first time, the Bill also defined terrorism as “an action that takes place either within or outside Canada that is taken or threatened for political, religious or ideological purposes and threatens the public or national security by killing, seriously harming or endangering a person, causing substantial property damage that is likely to seriously harm people or by interfering with or disrupting an essential service, facility or system.”<sup>14</sup>

Other laws and measures currently used in Canada to fight terrorism include:

- The *Immigration and Refugee Protection Act*, which allows the issuance of “security certificates” against foreign visitors or permanent residents suspected of being a threat to national security.<sup>15</sup> Evidence may be presented in secret to the court, in the absence of the accused and his lawyer, and need not meet ordinary evidentiary rules. The accused may be detained indefinitely pending the examination of his case, and is subject to deportation if the certificate is upheld.
- The *Charities Registration (Security Information) Act*, which allows the use of secret information to revoke or deny charity status to an organization on the basis that it supports or will support terrorism. Security certificates may also be issued against charity organizations, under the same conditions as outlined in the *Immigration and Refugee Protection Act*.
- The *Passenger Information (Customs) Regulations*, which allows the Canada Customs and Revenue Agency (CCRA) to access all information relating to a person registered in an airline or travel agent reservation system. The informa-

<sup>14</sup> Government of Canada, Department of Justice, Backgrounder: “Highlights of Anti-Terrorism Act,” [www.justice.gc.ca/en/news/nr/2001/doc\\_28217.html](http://www.justice.gc.ca/en/news/nr/2001/doc_28217.html).

<sup>15</sup> Note that legislation allowing the use of security certificates has been in place since 1978.

tion may be stored for up to 6 years and can be shared with domestic and foreign law enforcement agencies.<sup>16</sup>

- The *Public Safety Act*, which allows law enforcement officials to search airline passenger lists to ensure “transportation safety” and counter “threats to the security of Canada.”

As an additional protection measure, Canada signed the *Safe Third Country Agreement* with the United States in December 2002. The Agreement, which came into effect on December 29, 2004, makes it mandatory for asylum seekers in Canada and the United States to present their claim in the country where they were last present. As such, refugee claimants arriving in Canada at the land border from the United States are no longer eligible to have their claim determined in Canada. They must await the decision in the U.S, where they are subject to detention pending the examination of their status, a measure that does not currently exist in Canada.

## NATIONAL SECURITY

In April 2004, as part of its efforts to bolster national security, Canada also introduced *Securing an Open Society*, the country’s first-ever comprehensive statement of national security policy. The policy aims to provide “an integrated strategy for addressing current and future *threats* to our country,”<sup>17</sup> by focusing on “core national security interests,” which are identified as protecting Canada and Canadians at home and abroad, ensuring that Canada is not a base for threats to its allies, and contributing to international security. The policy also identifies specific threats to Canada, namely, terrorism; the proliferation of weapons of mass destruction; failed and failing States; foreign espionage; natural disasters; critical infrastructure vulnerability; organized crime; and pandemics. It should be noted that, in a separate instance, the government of Canada has identified terrorism as the most significant threat to Canadians.<sup>18</sup>

In order to protect Canadians, *Securing an Open Society* proposes a strategy based on a greater integration of the work performed by selected government departments and agencies in six key areas: intelligence collection and assessment; emergency planning and management; public health; transport security; border security; and international security. The policy also announces the creation of several new departments and committees, to better integrate and monitor security meas-

<sup>16</sup> Information can be shared for up to two years in cases of ordinary law enforcement, and after two years if the information is for security purposes.

<sup>17</sup> Government of Canada, “Securing an Open Society: Canada’s National Security Policy,” April 8, 2004, [www.pco-bcp.gc.ca/docs/Publications/NatSecurnat/natsecurnat\\_e.pdf](http://www.pco-bcp.gc.ca/docs/Publications/NatSecurnat/natsecurnat_e.pdf) (italics added).

<sup>18</sup> Government of Canada, Department of Justice, “FAQ: The Anti-terrorism Act,” [www.justice.gc.ca/en/anti\\_terr/faq.html](http://www.justice.gc.ca/en/anti_terr/faq.html) .

ures. By our gross estimate, the government has thus created at least ten such new agencies or departments since the events of 9/11.

### THE POLITICS OF AID

As for many other countries, Canada's increased concern for global and State security has also affected its Overseas Development Assistance (ODA) policies, with increased levels of aid being directed to fund reconstruction in countries directly targeted by the "war on terror," often at the expense of other development goals. The Canadian Council for International Cooperation (CCIC), a coalition of voluntary sector and international development organizations, reports that, since 2002, Canada's commitment to poverty reduction in Africa has been undermined by its pledge of C\$916 million for humanitarian and reconstruction programs in Afghanistan and Iraq. This amount is only slightly less than Canada's annual aid commitment to the whole of Sub-Saharan Africa (about C\$1.2 billion).<sup>19</sup>

There is also deep concern among Canadian civil society organizations (CSOs) that an increasing number of countries are relying on ODA to further their own security agenda, tying aid commitments to military involvement. As part of such efforts, Canada is presently considering (as of late 2004) support for a joint military/aid Provincial Reconstruction Team (PTR) in Afghanistan, which, according to Canadian CSOs, may "increase insecurity for the population, CSOs and government personnel, in part because the lines between military and humanitarian mandates are blurred."<sup>20</sup>

Not surprisingly, the greater integration among government agencies advocated by Canada's National Security Policy also extends to ODA management. For one, Canada's policy on Afghanistan is being closely coordinated between the Department of Defence, Foreign Affairs and the Canadian International Development Agency (CIDA). Should such integration become the norm, it may greatly diminish resources devoted to long-term poverty reduction in the poorest countries, in favour of other more immediate Canadian foreign policy interests.<sup>21</sup>

### TOWARDS A NARROW DEFINITION OF HUMAN SECURITY

Taken together, Canada's anti-terrorism legislation, new national security policy and changing ODA orientations signal that, like many other nations, it is in-

<sup>19</sup> Tomlinson, B. "Doubling the budget is just one of the challenges." Canadian Coalition for International Cooperation. Appendix to "Whose Security? Whose Rights? Governance and Human Rights in International Cooperation." Conference Report, CCIC, May 28-29, 2004.

<sup>20</sup> *Ibid.*, p. 4.

<sup>21</sup> *Idem.*

creasingly reverting to a narrow human security approach, one based on protecting Canadians from violent threats through coercive means, rather than through measures that “enhance human freedoms and human fulfilment,” as advocated by the Commission on Human Security. Furthermore, we also note that the referent for security is gradually shifting away from the protection of the individual and back to that of the State, where the protection of borders and national security interests is increasingly taking precedence over individual needs and freedoms. This is in stark contrast to Canada’s previous human security agenda where, in 1999, the Honourable Lloyd Axworthy, then Minister of Foreign Affairs, noted that the new threats of the 21<sup>st</sup> century “require that we see security increasingly in terms of human, rather than state needs,”<sup>22</sup> and argued in favour of a broad human-security centred approach focused on, among others: engagement, not isolationism; advancing fundamental standards of humanity; promoting peace building; and using soft power concepts.

While Canada’s current security policies measures do not explicitly disavow these principles, the recent shift is a deep cause for concern. Indeed, as the next section will demonstrate, the narrowing concern for security already appears to take precedence over the protection of human rights, the rule of law and democratic governance. This may in turn lead to more global insecurity, as neither the root causes of terrorism nor the fundamental needs and freedoms of individuals worldwide are addressed.

## **IS CANADA TRULY A SAFER PLACE?**

To most Canadians, the security measures described in the previous section may appear not only justifiable, but necessary in light of the growing number and severity of violent threats the world appears to be facing. Yet, it is important to assess the impact that the new laws and policies have had on civil society and ordinary citizens, both in terms of their application and of their impact on the day-to-day reality of Canadian residents and CSOs.

### **EFFECTS ON THE GROUND**

As of March 2005, the Canadian Government reports that under the Anti-terrorism Act<sup>23</sup>

<sup>22</sup> Government of Canada. Notes for an address by the Honourable Lloyd Axworthy, Minister of Foreign Affairs, to the Instituto Tecnológico Autónomo de México (ITAM): “Canada’s human security agenda for the Hemisphere.” January 11, 1999, [w01.international.gc.ca/minpub/Publication.asp?publication\\_id=374915&Language=E](http://w01.international.gc.ca/minpub/Publication.asp?publication_id=374915&Language=E).

<sup>23</sup> Government of Canada, Department of Justice, [www.justice.gc.ca/en/anti\\_terr/faq.html#Q4](http://www.justice.gc.ca/en/anti_terr/faq.html#Q4).

- It has established a list of 35 entities *believed* (emphasis added) to have knowingly participated in or facilitated a terrorist activity. As a result of the first mandatory two-year review of the list, all 35 entities remain on it.
- One individual has been charged with participating in the activities of a terrorist group under the *Criminal Code*.
- One investigative hearing order was issued, in relation to the Air India case.
- No orders for preventive arrests have been issued.
- 69 disclosures of information related to suspected terrorist financing or threats to national security have been made to law enforcement and intelligence agencies.

As well, under the *Immigration and Refugee Protection Act*, four men, all Muslims, are currently being detained under security certificates, allegedly for having ties to terrorist groups or activities. No formal charges have been brought against them. In a recent federal court decision, a fifth detainee, Adil Chirkhaoui, was released on February 18, 2005, after spending 21 months in jail. He must now wear a monitoring device pending the review of his case and faces deportation to Morocco, where an arrest warrant against him has been issued, seemingly on the basis of Canada's evidence. The Canadian evidence has not been made public, nor has it been shared with Mr. Chirkhaoui or his lawyer.

The new national security measures are also having an impact on the volume of asylum seekers applying to Canada. A recent report by the United Nations High Commissioner for Refugees estimates that, since the events of 9/11, there has been a 20% decline in the number of refugee status claims presented in Canada. According to Richard Goldman, of the Montreal-based Comité d'aide aux réfugiés, the drop in claims can be directly attributed to Canada's increased efforts abroad to prevent travelers with doubtful identity documents from boarding aircrafts to Canada, regardless of whether they may have a legitimate refugee claim. As well, according to the Canadian Council for Refugees, the number of refugee claimants may decline further now that Third Safe Country Agreement has taken effect.<sup>24</sup> Taken together, these measures may thus be preventing legitimate refugee claimants from seeking protection in Canada.

The above results clearly demonstrate that the new legislation and policies are being used to profile and prosecute individuals, or to prevent their entry into Canada, often in the absence of clear intentional wrongdoing—the mere belief that someone might pose a threat to national security is enough to initiate proceedings against them. This is why critics of Canada's Anti-terrorism policies, while fully supportive of the need for legitimate and reasonable means to fight terror-

<sup>24</sup> *La Presse*, "Les demandes d'asile à leur plus bas en 16 ans," p. A21, March 5, 2005.

ism, argue that the current legislation is flawed and deeply challenges Canada's fundamental democratic principles and values. According to Wesley Pue, Professor of Law at the University of British Columbia, "[...] the War on Terror threatens a fundamental transformation of state-citizen relations in Canada. The inventory of abusive state action includes criminalization of political dissent, racial profiling, unnecessarily harsh treatment of refugees, a chilling of humanitarian work, and violation of privacy rights."<sup>25</sup>

### THE BIG CHILL

Much more pervasive, perhaps, than the very real effects described above is the deep chill that has settled among CSOs and individuals involved in advocacy work, as well as within immigrant and refugee communities across the country. For one, the definition of terrorism introduced in *Bill C-36* "is so wide that it could easily include behaviour that doesn't remotely resemble terrorism,"<sup>26</sup> such as protests. Thus, critics argue, "the statute threatens to chill the activities of entirely legitimate protest groups that are accepted as more or less part of our natural and cultural landscape and whose activities—however inconvenient—we cherish as the mark of our liberty."<sup>27</sup>

There is also deep concern about the evident discriminatory impact of the new security policies.<sup>28</sup> According to the International Civil Liberties Monitoring Group (ICLMG), members of Arab Muslim communities have been repeatedly targeted for investigation and/or coerced into cooperating with police authorities, resulting in deep "alienation, marginalization and... a sense of psychological internment akin to what our Japanese compatriots felt during World War II in Canada."<sup>29</sup> Furthermore, Canada's security policies have "contributed to an increase in racial profiling and institutionalized racism. Guilt by association has had a chilling effect on the fundamental rights of freedom of expression, freedom of association and freedom of movement as well as on the basic democratic rights to protest and to simply assert one's rights."<sup>30</sup>

<sup>25</sup> W. W. Pue, "War on Terror: Constitutional Governance in a State of Permanent Warfare?" *Osgoode Hall Law Journal*, 41, Nos. 2, 3, Summer/Fall 2003:288-289.

<sup>26</sup> Canadian Bar Association. "Submission on Bill C-36: Anti-terrorism Act," October 2001.

<sup>27</sup> W.W. Pue, p. 274.

<sup>28</sup> Canadian Council on American-Islamic Relations, "Brief on the Review of the *Anti-terrorism Act*," to the Special Senate Committee on the *Anti-terrorism Act* in June 2005. See [www.caircan.ca/downloads/SS-ATA-06132005.pdf](http://www.caircan.ca/downloads/SS-ATA-06132005.pdf), p. 4-6, for the findings of a survey conducted by the organization on security visitations, which show a disproportionate number of visits of young Arab males by security officials.

<sup>29</sup> Canadian Arab Federation, cited in "Anti-Terrorism and the Security Agenda: Impacts on Rights, Freedoms and Democracy." Report and Recommendations for Policy Direction on a Public Forum organized by the International Civil Liberties Monitoring Group. Ottawa, February 17, 2004.

<sup>30</sup> "Anti-Terrorism and the Security Agenda: Impacts on Rights, Freedoms and Democracy," p. 4.

The nation's preoccupation with security has also had a severe impact on academic freedom and on higher education's essential role in furthering the free flow of ideas and critical thought. According to the Canadian Association of University Teachers (CAUT), "(...) the government's national security agenda has created pressure for self-censorship of scholarly publications, has contributed to limitation of campus discussion of controversial issues and has led to barriers to international travel by academics, particularly to and from the United States."<sup>31</sup> Institutions themselves have fallen victim to the trend. In late fall 2004, both Concordia University and Université du Québec à Montréal (UQAM) cancelled appearances by controversial speakers (former Israeli Prime Minister Ehud Barak and US Ambassador Paul Cellucci, respectively), citing security concerns.<sup>32</sup> Both cases hint at a growing pressure for conformity and fear of dissent within universities, thus endangering the university's role as a space for open debate, free exchanges and the exploration of new ideas.

In some instances, security concerns have even restricted access to education. One particular case involved a young student of Algerian descent, Yasmine Behlouli, who was forced to postpone her CEGEP (college) studies, due to a two-year delay in obtaining a federal security clearance that would grant her permanent residency. Despite the fact that she had been recognized as a Québec resident and had received all of her primary and secondary education in Québec, Ms. Behlouli was required to pay foreign-student fees, which she could not afford, until her Canadian residency status was resolved.<sup>33</sup>

Lastly, it could also be argued that the "war on terror" is gradually shifting the burden of responsibility for security to individuals, private corporations and civil society organizations, despite the fact that these groups' concerns over the new laws and policies were virtually ignored. Ordinary citizens are now subject to increased surveillance and incursions into their private lives, with the government having the power to monitor air travel, financial transactions, and communications. Not only is this an infringement of Canadians' right to privacy, it also creates the assumption that a citizen is suspect until proven innocent, a clear violation of the fundamental principles of law in a free democracy.

Private sector companies have also been asked to participate in implementing the new security measures. For instance, airlines and Internet service providers have had to adjust their information collection methods and to store client informa-

<sup>31</sup> Canadian Association of University Teachers. "Brief to the House of Commons Legislative Committee on Bill C-17: The Public Safety Act, 2002." March 20, 2003, p. 5.

<sup>32</sup> Gil Troy, *The Globe and Mail*, "Who'll save our campuses from mob rule?" December 6, 2004. To its credit, Concordia University offered to host the event off-campus.

<sup>33</sup> The situation has since been resolved, when, under increasing media pressure, the Québec Ministry of Education granted a derogation allowing Ms. Behlouli to attend CEGEP under the same conditions as other Québec residents.

tion for longer periods, potentially at a high cost to themselves. In other cases, freedom of expression and access to information have been threatened, as evidenced by a 2004 Canadian Radio and Television Commission (CRTC) ruling, which allows broadcasting of the al-Jazeera network in Canada, but requires cable distributors to monitor its programming and to alter or delete “abusive comments.”<sup>34</sup> Needless to say, this type of ruling sets a dangerous censorship precedent.

In the next section, Peter Broder discusses the role played by civil society organizations, with a focus on charitable organizations, and how they are being affected by the new anti-terrorism measures.

### CIVIL SOCIETY ORGANIZATIONS AND THE ACT

Civil society organizations take an approach to security that focuses not on violent threats, but on fulfillment of human needs. They provide opportunities for civic engagement and democratic expression. In providing such means for people to express their views and address needs outside official political or government structures, they can encourage participation in formal democratic processes by otherwise alienated groups. In addition, over the past two decades or so, with many governments privileging lower taxes and spending reductions over social investment, civil society groups have often become vehicles for the cheap delivery of public services.

Although many organizations effectively subsidize government-funded activities with revenue from other sources,<sup>35</sup> they now face more intense scrutiny and calls for accountability than ever before.

This is apparent in changes to legislation governing the legal status of civil society groups in Canada. For example, the recent reform of federal regulations governing Canadian registered charities provided for increased disclosure of information both by the regulator and by sector organizations, in the belief that greater transparency would enhance public confidence and increase regulatory compliance.<sup>36</sup> Disclosure of more extensive organizational and financial information is also contemplated as part of the reform of federal legislation respecting not-for-profit corporations.<sup>37</sup> Generally, this increased disclosure has been supported by

<sup>34</sup> D. Brown, *Washington Post*, “In Canada, exceptions are rules for Al-Jazeera.” July 26, 2004.

<sup>35</sup> L. Eakin, “The Policy and Practice Gap: Federal Government Practices Regarding Administrative Costs When Funding Voluntary Sector Organizations” at [www.voluntary-sector.ca/eng/publications/index.cfm](http://www.voluntary-sector.ca/eng/publications/index.cfm).

<sup>36</sup> Chapter 4, “Voluntary Sector Initiative Joint Regulatory Table Final Report,” *Strengthening Canada’s Charitable Sector*, Ottawa: Government of Canada, March 2003.

<sup>37</sup> Bill C-21, *Canada Not-for-profit Corporations Act*, 1<sup>st</sup> Sess., 38<sup>th</sup> Parl., Canada, 2005.

charities and non-profit organizations as a necessary element in maintaining the support of their stakeholders and the public.

However, the provisions of the *Anti-terrorism Act* signal a marked shift in attitude toward civil society organizations by government, posing an enormous threat to their ability to contribute to the economic, cultural, social and environmental well-being of society. The *Anti-terrorism Act* disregards the public benefit of work done by them and casts them entirely as a locus for potential terrorist activity or funding. Under the *Act*, accountability is absolute and there is no concern whatsoever for organizational efficacy. Accountability to government is paramount, and trumps any accountability to the public or donors.

Charitable organizations are required under the *Act* to screen for terrorist activity, since they are liable for any assistance they might provide to terrorist organizations. Since “charities lack the intelligence capabilities required to ensure that none of their resources would assist someone who could be considered an insurgent or a terrorist,”<sup>38</sup> this places an undue burden on them and undermines their ability to fulfill their mission.

It is impossible to reconcile this standard of accountability with other pressures on civil society organizations. They rely on public goodwill to a much greater extent than corporations or even governments. Being mission-driven, rather than profit-driven, their ability to generate resources is closely tied to the confidence they enjoy from their constituents. Leading contemporary civil society organizations recognize that public trust is fragile and acknowledge that transparency and accountability are essential to maintaining the support of their contributors and volunteers. Organizations such as One World Trust<sup>39</sup> are at the forefront of setting transparency and accountability standards for civil society organizations.

Legislation that casts civil society organizations as untrustworthy and needing close oversight places them in a highly negative light despite such efforts. Over time, it could undermine their ability to play their accustomed role as a bridge between disenfranchised groups and broader society by eroding public confidence and support for their work. In addition, low levels of public confidence will have direct impacts on their ability to raise funds, affecting their capacity to deliver their programs.

Research shows that modern donors often decide in advance which organizations they will donate to, that they want to see tangible results from them, and that they are less likely to give repeatedly to the same organization year after year.

<sup>38</sup> W.W Pue, p. 279.

<sup>39</sup> One World Trust seeks to make “global organisations more responsive to the people they affect,” for more information see: [www.oneworldtrust.org/](http://www.oneworldtrust.org/). The Canadian Council for International Cooperation also has a Code of Ethics to which its members must adhere, see [www.ccic.ca/e/001/ethics.shtml](http://www.ccic.ca/e/001/ethics.shtml) for further information about this code.

Contributions are easily lost to competing causes or to donor or volunteer disaffection. To maintain donor support, organizations need to keep them informed about their needs and the work they do, and build on-going relationships.<sup>40</sup>

Canadian charities and other civil society organizations still enjoy high levels of public trust. A 2004 Ipsos-Reid public opinion survey found that the Canadian charitable sector as a whole is generally held in high esteem. The survey, commissioned by the Muttart Foundation (a Canadian leader in research into attitudes toward charities), found that 79% of respondents reported having “a lot” or “some” trust in charities.<sup>41</sup> The survey found that respondents ranked their trust in charity leaders ahead of business leaders and politicians.

But current high levels of trust are unlikely to be sustainable. Factors such as demographics and public perceptions that charities are not as forthcoming with information as they might be, could lead to falling levels of trust in the future. The fact that the broad powers of the *Act* can be used to paint the sector in a negative light serves to magnify public worries about these groups.

There is troubling evidence that international development charities now face particularly low levels of trust.<sup>42</sup> This may stem from public perceptions associating such organizations with security concerns, through media reports and government allegations of charities financing or otherwise supporting terrorism. Media coverage has repeatedly drawn a link between charities and terrorist financing, although in Canada no charity has ever been deregistered based on evidence that it had funded terrorist activity.<sup>43</sup>

The lack of transparency associated with the secrecy provisions that underpin the charity deregistration provisions of the *Act* could lead to fear and suspicion of charitable groups.

Given the secrecy contemplated in the *Act's* provisions, the public is left with almost no opportunity to assess a group's integrity or conduct for themselves. If an allegation against an organization is unfounded, there is little if any chance for the group to recover its reputation. The 2003 report of the International Civil

<sup>40</sup> This has prompted donor accountability standards to be set by Imagine Canada, the Association of Fundraising Professionals, United Way of Canada/Centraide Canada, the Canadian Council of Christian Charities and numerous other umbrella groups.

<sup>41</sup> Muttart Foundation, “Talking About Charities, 2004.” p. 16.

<sup>42</sup> “Talking About Charities, 2004.” p. 21.

<sup>43</sup> See, for example, *National Post*, “Quebec charity linked to terror,” p. A6, Oct. 16, 2003; *Globe and Mail*, “Politicians may join usual suspects—Ottawa seeking to toughen laws against money laundering and terrorist funding,” p. B1, Jul. 7, 2005. Although charities were identified as the “weak point” in dealing with terrorist financing by the Financial Action Task Force on Money Laundering (“Combating the Abuse of Non-profit Organizations: International Best Practices,” Oct. 11, 2002), Canada Revenue Agency officials indicated in May 18, 2005 testimony before the House of Commons’ Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness’ Subcommittee on Public Safety and National Security, that no charity had yet been refused registration or had their registration revoked through the *Act's* Part 6 procedures.”

Source: [cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=116416](http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=116416) using the provisions of the *Anti-terrorism Act*.

Liberties Monitoring Group, *In the Shadow of the Law*,<sup>44</sup> describes the impact of the *Act*'s provisions on public perceptions of civil society organizations and its potential chill effect on their activities.

A registered charity can face summary de-registration based on a single transaction, even when it had no knowledge that its resources were being used to support terrorism. The extent of the impugned activity has no bearing, because de-registration can be based on use of any resources finding their way into terrorist hands.

The penalty of deregistration is more severe than the types of penalties applied to other entities. For example, illicit transactions through financial institutions are subject to monetary and other penalties, but a financial institution's regulatory status is not put at risk through transactions for which it is not culpable.

The practical difficulty the *Anti-terrorism Act* poses to charities was thrown into sharp relief after the tsunami struck several countries in Asia and the Pacific in late 2004 and early 2005. In both Sri Lanka and Indonesia, entities that are viewed as terrorist organizations operated in, and in some cases controlled, parts of those countries requiring relief. Under the *Act*, registered charities providing assistance in these areas would be potentially subject to security certificates and deregistration if any part of the supplies provided by them ended up being used by terrorist groups in the vicinity. Notwithstanding that the government endorsed these relief efforts through matching funds donated by Canadians, the *Act* was a major legal hurdle to be overcome in order to provide humanitarian assistance in some locations.

This telling example of how counter-productive the *Anti-terrorism Act* can be may foreshadow the legislation's undermining of the work of Canadian civil society organizations over the longer term. Such an outcome has profound implications for the capacity of civil society organizations to assist in advancing a human security agenda, rather than a security agenda based on responding to threats of violence.

### **SECURITY, AT WHAT COST?**

Given the above, the cost of the new security measures is clearly high for Canadians. Actual or potential results of these measures include the erosion of our right to be secure against unreasonable search and seizure and not to be arbitrarily detained; our right to silence; our right to a fair trial and to equal protection under the law; and our right to privacy. It has also resulted in reduced access to asylum for refugees, a right guaranteed by the Geneva conventions, as well as increased

<sup>44</sup> International Civil Liberties Monitoring Group, *In the Shadow of the Law*, May 2003.

discrimination, and racial and ethnic profiling. Lastly, it has placed a chill on our rights to freedom of expression and association, and on our democratic right to protest.

Has it been worth it? Are we truly a more secure society? Unfortunately, recent reports indicate that “while there have been violations of essential liberties there has been no obvious gain in security.”<sup>45</sup> Furthermore, little effort has been made to address the root causes of the threats our government is so anxious to protect us from. Thus, “we are left with the unfortunate conclusion that Canada’s new laws violate the very constitutional values that render our society “civil,” while simultaneously failing to protect us from terrorism.”<sup>46</sup>

## **SECURITY FOR A CIVIL SOCIETY: FOR A BROADER VISION OF HUMAN SECURITY**

### **HUMAN SECURITY VS. STATE SECURITY**

The above discussion supports the Commission on Human Security’s claim that “the international community urgently needs a new paradigm on security.”<sup>47</sup> Such a paradigm involves moving away from narrow and coercive security policies towards “creating political, social, environmental, economic, military and cultural systems that *together* give people the building blocks of survival, livelihood and dignity.”<sup>48</sup> As the Commission notes, this broader vision of human security is not incompatible with ensuring State security, as the latter need not exclude the enhancement of individuals’ well-being and the protection of their rights and freedom. Rather, human security complements State security through focusing on the individual, rather than the State; focusing on conditions that have not necessarily been classified as threats to national security; expanding the range of actors involved; and empowering people to enhance their own well-being.<sup>49</sup> At its very centre, it will thus focus on protecting the “vital core of life,” those values that the people of society consider “essential” and “crucial” to their well-being.

### **A RETURN TO CORE VALUES**

Given the above, any human security policy should, first and foremost, respect the democratic principles of the society it is designed to protect, as well as the

<sup>45</sup> Ibid., p. 289.

<sup>46</sup> Ibid., p. 291.

<sup>47</sup> Commission on Human Security, p. 2.

<sup>48</sup> Ibid, p. 4. (Italics added)

<sup>49</sup> Ibid, p. 4.

fundamental rights of its citizens. In Canada, this means that government measures to enhance security must, at a minimum, respect the rule of law and the Charter of Rights and Freedoms. As we have seen in the previous section, this is currently not the case. In addition, according to W.W. Pue, Canada's traditional and constitutional "morality of aspiration" suggests five principles that should guide law making:

- All laws should seek to attain minimal infringement of civil liberties.
- There should be maximum clarity of definition regarding powers conferred, restrictions imposed and offences created.
- There should be clear and effective channels of political and legal accountability.
- Secrecy should only be tolerated in the smallest possible zone, only as absolutely essential and only for a limited duration.
- Where extraordinary powers are invoked in times of perceived crisis, they should be of limited duration, renewable only by full reconsideration and re-enactment by Parliament.<sup>50</sup>

Pue believes that current Canadian anti-terrorism legislation fails on all counts.<sup>51</sup>

According to Louise Arbour, UN High Commissioner for Human Rights, Canada is also failing to meet the human security needs of its citizens in other ways. The country currently ranks 12<sup>th</sup> out of 17 OECD countries on the 2003 UNDP Human Poverty Index and, according to several international indicators, is not fulfilling the basic economic, social, civil, political and cultural rights of several of its constituents, including First Nations, single-parent families headed by women, and people with disabilities. Arbour argues that while Canadian values clearly embrace the equitable distribution of resources and equal access to social services, in reality, Canada is entrenched in a culture of "charity," where the distribution of wealth tends to be controlled by a powerful few, thus perpetuating a cycle of dependence for the disenfranchised segments of society. Arbour concludes that in order to fulfill its obligations, Canada needs to move away from a culture of charity towards a culture of justice where fundamental social rights are translated into constitutional and legal rights, enforceable by the courts.<sup>52</sup>

<sup>50</sup> W. W. Pue.

<sup>51</sup> In fairness, we should add that the *Anti-terrorism Act* does contain a provision which requires Parliament to effect a comprehensive review of its content and application within three years of its adoption. This review was undertaken in December 2004 and should be completed within one year. However, it should also be pointed out that the Canadian Bar Association, in its initial submission brief on Bill C-36 (which became the *ATA*), argued that "the review mechanism proposed [...] is insufficient and a true sunset provision is required."

<sup>52</sup> Louise Arbour, *La Presse*, "De la charité à la justice," p. A24, March 5, 2004.

A recent public consultation led by Canadian Foreign Affairs reveals that, in addition to socio-economic justice, Canadians strongly value human rights, sharing with those in need, environmental stewardship, sustainable development, democratic pluralism, peace-building, and cultural diversity.<sup>53</sup> On the topic of human security, many respondents believed that it can only be achieved by addressing “the underlying socio-economic, cultural, environmental and other conditions associated with serious rights violations and violent instability in some regions of the world” and by identifying and remedying the root causes of war and terrorism, namely poverty, ignorance, inequity, and injustice. In that context, Canadian citizens tend to be critical of Canada’s international aid policies, which are increasingly tied to domestic economic considerations and structural adjustment conditions. Rather, they believe that ODA priorities should be human-centred and determined jointly with developing countries and civil society partners.<sup>54</sup> These recommendations echo the concerns voiced by the CCIC and the ICLMG,<sup>55</sup> which caution against using development and humanitarian aid as a means to further the national security agenda.

Clearly, Canadians’ view of human security falls on the broad end of the spectrum. In the words of one contributor to the Foreign Affairs consultation: “Human security and peace must be defined in much broader terms than the absence of violence and war. Security includes meeting the goals of equality, health, education, employment and democracy. The cornerstone of security is inextricably linked to meeting the social, political and economic needs of people and their environment.” Unfortunately, as shown earlier, this view is not reflected in Canada’s current policies and legislation on security. This is not to say that Canadians’ core values are not addressed by the Canadian Government in other ways; however, any human security policy designed to enhance and promote the interests of Canadians must ensure that these central values are upheld, both within and outside of Canada.

### **ENHANCING HUMAN SECURITY THROUGH PARTICIPATORY GOVERNANCE**

According to the Commission on Human Security, developing a human security approach that truly respects the needs and values of the population, involves “re-thinking security in ways that place people and their participation at the centre”

<sup>53</sup> Government of Canada. “A Dialogue on Foreign Policy: Report to Canadians.” Department of Foreign Affairs, 2003, ([www.foreign-policy-dialogue.ca](http://www.foreign-policy-dialogue.ca)).

<sup>54</sup> *Ibid.*, p. 16.

<sup>55</sup> Tomlinson, B. (CCIC) and ICLMG, “Anti-Terrorism and the Security Agenda.”

of the process.<sup>56</sup> As well, human security should be concerned with “developing the capabilities of individuals and communities to make informed choices and to act on behalf of causes and interests in many spheres of life.”<sup>57</sup>

Unfortunately, in times of crisis, these conditions are rarely met because the secrecy that surrounds national security effectively occludes healthy debate and citizens’ participation.<sup>58</sup> Yet, because responsibility for human security ultimately rests with the State, governments must remain mindful that human security can and should be enhanced by the active participation of civil society *at all times*.

In fact, community experiments around the globe suggest that local knowledge and capacity are the key to building better governance about security.<sup>59</sup> For example, a community experiment conducted in Toronto in the 1980s involved turning over a sizeable part of the security budget and decisions to the tenants of a public housing area. The aim was to encourage tenants to develop their own mechanisms for governing security, based on their knowledge and experience. The results indicate that the tenants devoted only a small portion of the budget to “traditional” safety measures, choosing to focus mainly on improving their immediate physical environment, as well as on developing programs for children, youth and the elderly. This resulted not only in increased physical safety, but also in greater community morale.<sup>60</sup>

The results of this experiment, as well as subsequent research conducted at the Centre of Criminology, University of Toronto, later served to develop a model to police South Africa’s first democratic general election in April 1994. The aim was to build on local capacity and knowledge by limiting the role of the police and encouraging demonstrators to police themselves, since “they were the people with the appropriate experience and the necessary legitimacy in the eyes of the demonstrators [...]”<sup>61</sup> Demonstrators developed plans to manage the demonstrations and trained marshals recruited from the ranks of the political parties. It is believed that this approach strongly contributed to the overall peaceful nature of the elections.

Since then, Peace Committees based on the same participatory model have been set up in several South African communities. Community members are encour-

<sup>56</sup> Commission on Human Security, p. 3.

<sup>57</sup> *Ibid.*, p. 4.

<sup>58</sup> Willem de Lint, Professor at the University of Windsor (England), cited in “Ideas: In Search of Security,” CBC Transcripts, 2004, CBC Idea Series..

<sup>59</sup> “Ideas: In Search of Security,” CBC Transcripts, 2004.

<sup>60</sup> J. Cartwright, M. Jenneker, and C. Shearing, “Local Capacity Governance in South Africa: a model for peaceful coexistence.” Paper originally presented at the “In Search of Security” Conference in Montréal, hosted by the Law Commission of Canada, February 2003, and updated in March 2004.

<sup>61</sup> *Ibid.*, p. 6.

aged to use and build on their existing capacities to mediate and resolve local disputes to the satisfaction of both parties. They are also oriented towards building a better future, by encouraging community actors to devise plans to prevent recurrences of the same problems. The assumption is that if the right conditions for security can emerge, “then we can decrease the level of force we need to maintain security, and we can rely a lot more on the people to establish themselves some of the mechanisms by which security will be maintained in a community.”<sup>62</sup> So far, results are promising. As of March 2004, 6000 peace gatherings had been held and over 40,000 individuals had participated in resolving disputes through them, ranging from money or property issues to rape or attempted rape.

### **HUMAN SECURITY FOR A CIVIL SOCIETY**

The previous examples demonstrate that human security can be enhanced through participatory governance, at both the local and global level. These experiments also point to some of the conditions that must be present to empower citizens and stimulate their engagement in defining new ways to govern human security.

- Because human security is concerned with protecting the “vital core of life,” that which is “essential” to the individuals in a society, it must be based, first and foremost, on the expressed needs of the actors concerned.
- This, in turn, requires giving these actors a voice, providing them with a public space that supports the free flow of information, stimulates conversation and tolerates opposition.
- Individuals must also have the means for engagement. Opportunities for local leadership must be provided, as well as models that can help guide active participation in democratic governance. Individuals should be encouraged to build on their existing knowledge and capacity in developing governance mechanisms to enhance their own security, as well as to develop concrete actions that will increase safety, both locally and globally.
- Education can play a key role in giving individuals the skills to express their needs, assert their rights, and actively participate in various forms of democratic engagement. Education is also instrumental in democratizing knowledge, facilitating the free flow of information and fostering critical thinking, an essential component of enlightened action. Through education, individuals can also learn to make sense of their own insecurities and understand how, under some circumstances, fears can be exploited for political or economic gain. In

<sup>62</sup> “Ideas: In Search of Security.”

turn, this will allow them to make more informed decisions and choices regarding their own security needs.

- Research is of course an essential component of education for engagement, since it offers a window into the security needs of various populations, as well as the different means available for democratic participation. Research also plays an important role in documenting emerging models of security governance, and in testing whether they can be replicated.
- Through education and citizen engagement, it also becomes possible to encourage dialogue between the various segments of society. This can lead to a better definition of the respective roles and responsibilities of the State, the private sector and civil society (or the “third” sector), so that their actions are complementary rather than adversarial, and truly focus on meeting the expressed needs of individuals in a society. It will also result in a fairer distribution of responsibilities, one based on the existing knowledge and capacities of these respective sectors.
- Through education, active engagement and a fair, agreed-upon distribution of responsibilities, individuals in a society will develop greater trust in governance mechanisms, which will in turn allow the emergence of sustainable and responsive efforts to both local and global changes.

Of course, civil society organizations can play an instrumental role in facilitating the emergence of the conditions described above:

- CSOs can participate in education, both at the formal and informal levels, in order to help individuals identify their needs and the means available to express them, build on their existing knowledge and capacity, and take an active role in creating participatory governance approaches.
- Relevant research will depend on CSO participation, in order to document existing participatory models of governance and test new ones. CSOs can also offer invaluable insight into the needs of constituents and the local and global trends that affect various segments of society at a particular point in time.
- Through their advocacy work, CSOs can also provide a voice for minorities or the disenfranchised, thus providing them with a channel to express their needs and participate in the decisions that affect them.
- CSOs can also facilitate citizenship engagement and debate, by providing and granting access to public space, and by developing concrete mechanisms and actions through which individuals can participate and govern.
- As full partners in society, CSOs can engage the private sector and government in dialogue, take an active part in shaping the security approaches that will affect their constituents, and encourage a clearer definition of respective roles and responsibilities.

