

## Notes For an Address

Bill GRAHAM\*

I would like to express my appreciation to the Canadian Institute for the Administration of Justice for organizing this conference and for including me as your guest today. It is an honour to be here, amid so many friends and such a host of distinguished guests.

As a former professor of international law, I feel as if I am on home turf. This, I appreciate, may be a dangerous assumption, but I certainly feel privileged to have this opportunity to address you as Canada's Minister of Foreign Affairs to offer an international affairs perspective on this timely subject, "Terrorism, Law and Democracy".

The attractive dimension that this conference offers for me is its invitation to reflect on the need to ensure that the protection of public security does not undermine respect for human rights. The assembly of panelists who are with us should inspire vigorous debate on how to keep these two fundamental priorities from coming into conflict and I note the presence particularly of CSIS [Canadian Security Intelligence Service] Director Ward Elcock; my colleague in Parliament and Special Adviser on the International Criminal Court Irwin Cotler; and former Ontario premier Bob Rae.

On September 11 the global community stood together, witnesses to a crime against humanity. Today, more than six months later, we stand united and are resolute in our vow that such heinous acts must not be allowed to happen again. The outrage we felt on September 11 has not diminished, but outrage alone will not defeat terrorism. We must translate our sentiments into commitment and our commitment into action.

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Our challenge in responding to terrorists is to not lose sight of the values and norms we cherish, including respect for the rule of law and fundamental human rights. In our international actions—just as we have done domestically—Canada is promoting the recognition that public security can only be effectively assured in an environment where human rights are respected. Our message and approach are consistent, whether responding to terrorists, promoting the International Criminal Court [ICC] or working in the Human Rights Commission in Geneva.

### **FIGHT AGAINST TERRORISM**

The attacks on September 11 gave new meaning to the concept of a global threat. They painfully demonstrated that terrorism respects no boundaries and threatens the political, social and economic stability of all countries and people, including those of us in North America who, at least until then, had generally been spared the pain of humanity's violence that is all too prevalent in many other parts of the globe. For there to be a truly effective global response to this threat then, all nations must act domestically and in concert with each other.

The international campaign against terrorism is multidimensional. It involves complementary action on the political, military, diplomatic and humanitarian fronts.

We have played our role in all of these areas. On the military front, we have deployed naval ships and 2,000 armed forces personnel to the antiterrorism coalition. They have been joined by 850 ground troops who are part of the US-led military operation in Afghanistan and are now actively engaged with the enemy in battle conditions not experienced since the Korean war.

On both the political and diplomatic fronts, Canada remains engaged in the stabilization of Afghanistan, in parallel with our military support for this objective. Canada re-established diplomatic relations with Afghanistan in late January of this year, signaling our own commitment to working with the new Afghan authorities and our confidence in the Afghan political process that has begun. Among many other initiatives, Canadian officials are now working with their Afghan counterparts to facilitate Afghanistan's accession to the Ottawa Convention on anti-personnel mines. In Afghanistan, they are all too familiar with the damage that landmines can do: there are millions of anti-personnel mines and other unexploded ordnance strewn throughout the country, constantly

killing and maiming non-combatants who cannot return to normal life until they are removed.

On the humanitarian front, since September 11 Canada has contributed an additional \$16 million to meet the humanitarian needs of Afghan civilians, bringing our total contribution since 1990 to around \$160 million. My colleague, the Minister for International Cooperation, Susan Whelan, recently announced that Canada would provide an additional \$100 million in humanitarian and reconstruction assistance to Afghanistan over this year and the next.

I am particularly pleased that when I was in Geneva at the Human Rights Commission last week, Canada announced that we have made available \$1 million to the High Commissioner for Human Rights for her office in Afghanistan, mainly in support of her work with Afghan women. We have also supported Dr. Sima Samar, Afghan Deputy Prime Minister and Minister for Women's Affairs, for we strongly believe that women must be integrated into decision making in Afghan society if it is to avoid problems of the past.

The global community's response to terrorism, of course, did not begin with the attacks of September 11. An extensive legal framework already existed within the United Nations comprising 12 counterterrorism conventions. These conventions aim at eliminating refuge for terrorists any place in the world and implementing a strong "extradite or prosecute" regime for those who commit terrorist crimes.

Canada's record with respect to these conventions is excellent—we are a signatory to all 12. I recently deposited the instrument of ratification for the Terrorist Financing Convention,<sup>1</sup> bringing to 11 the number of counterterrorism conventions to which Canada is a party. Canada's implementation of this Convention demonstrates that we are committed to curbing the financing of terrorism by criminalizing it. Our legislation to do so does not target any particular ethnic or religious group, but rather focuses on individuals and organizations involved in terrorist acts and emphasizes that these cannot be justified by any political or religious consideration.

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<sup>1</sup> *International Convention for the Suppression of the Financing of Terrorism*, GA Res. 54/109, UN GAOR, 54th Sess., UN Doc. A/RES/54/109 (1999).

I expect that we will soon ratify the twelfth convention—that dealing with terrorist bombing. When we do ratify it, we will join the United Kingdom as the only other G8 member who is a party to all UN counterterrorism conventions.

The international legal framework is still a work in progress. Negotiations are underway for an omnibus instrument, the *Comprehensive Convention on International Terrorism*. Unlike the existing 12 conventions, this convention would address all terrorist acts, rather than specific terrorist crimes. Canada has urged UN member states to support the early conclusion of these negotiations. Perhaps 13 global conventions will prove inauspicious for the perpetrators of terrorist acts and those who harbour, finance and assist them.

Earlier antiterrorist conventions have focused on specific types of terrorist activity, such as hijacking. The negotiation of a global convention covering all terrorist acts has brought to the fore a difficult discussion relating to whether there are any circumstances where such acts are justifiable. Or, as some have said, “one person’s terrorist is another person’s freedom fighter.” Canada does not believe that the fight against terrorism is well served by discussing such exceptions. Whatever the moniker used, there is a fundamental precept: the intentional killing of innocent civilians is contrary to international law.

The UN has been the forum within which the global community has negotiated these counterterrorism conventions. The UN, itself, has also shown that it can play an important role in the fight against terrorism—most importantly with the passage of Security Council Resolution 1373 last September.<sup>2</sup> That landmark resolution requires member states to take specific steps to freeze the assets of individuals and entities associated with terrorism. Canada acted swiftly in support of *Resolution 1373* by enacting the *United Nations Suppression of Terrorism Regulations*<sup>3</sup> to freeze the assets of those who commit or facilitate terrorist acts and to prohibit the provision and collection of funds for terrorist activities. As of March 11, 2002, we have named 323 individuals and groups who are subject to the Regulations.

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<sup>2</sup> *Threats to international peace and security caused by terrorist acts*, SC Res. 1373, UN SCOR, 2001, UN Doc. S/RES/1373 (2001) [hereinafter *Resolution 1373*].

<sup>3</sup> S.O.R./2001-360.

As required by *Resolution 1373*, Canada has reported to the Security Council, via the Counter-Terrorism Committee, on the measures we have taken to implement the resolution. The Committee has reviewed our report and their reaction was positive.

The global community has the makings for an international counter terrorist legal framework, but we cannot afford to be complacent. A legal prohibition is only effective to the degree that all subscribe to it and it is enforced. Countries without the capacity—be it technical, legislative, judicial or enforcement—to fight terrorism, need our help. As Prime Minister Jean Chrétien has announced, Canada stands ready to provide experts to assist other states for whom implementation of their international legal obligations may pose a challenge.

As Chairman of the G8 Foreign Ministers process this year, I will be engaged in harnessing the unique assets of this group in support of capacity building on counterterrorism measures in other countries. The G8 has a proven track record of tackling tough global issues and Canada has been at the forefront of the G8 effort to curb and eliminate terrorist actions. There is G8 consensus on what is necessary in the fight against terrorism. We need to deny support and sanctuary for terrorists, strengthen the international legal framework through universal adherence to the global counterterrorism conventions, and cooperate and coordinate at the policy and operational levels. Canada will use the occasion of our G8 presidency to pursue other innovative ways to support the campaign against terrorism and wider global stability.

## **TERRORISM/HUMAN RIGHTS**

As I noted earlier, our challenge in responding to terrorism is not to lose sight of the values we cherish. Respect for the rule of law underpins Canadian society and is fundamental to Canadian values and identity. Canadians believe in the rule of law and in legal institutions to remedy injustice. Throughout our history, the rule of law has been our strength and the foundation upon which we have built this country. It is a fundamental part of our democratic tradition and is a principle that Canada promotes internationally.

I had the privilege earlier this month to address the 58th UN Commission on Human Rights in Geneva. As I stated there, echoing the words of the High Commissioner, Mary Robinson, “the war on terrorism must not be used as a pretext for repression. It is a misconception that greater security can only be assured by compromising on our respect for

fundamental values and human rights. In the wake of September 11, it is more important than ever to challenge this mistaken assumption.”

This message, which Canada is delivering internationally, is consistent with what we have done domestically. The Preamble to *Bill C-36*<sup>4</sup> acknowledges these precepts, declaring that “Canadians and people everywhere are entitled to live their lives in peace, freedom and security.” It goes on:

“[...] the Parliament of Canada, recognizing that terrorism is a matter of national concern that affects the security of the nation, is committed to taking comprehensive measures to protect Canadians against terrorist activity while continuing to respect and promote the values reflected in, and the rights and freedoms guaranteed by, the Canadian Charter of Rights and Freedoms.”

The creation of the norms that are reflected in *Bill C-36* and other measures we have adopted to ensure our collective national security were accompanied by vigorous debate in Parliament and in the caucuses of all our parties, ensuing legislation reflects our Canadian values: respect for individual rights in a state that provides security for its citizens.

Indeed, security and human rights are not mutually exclusive, but mutually reinforcing. The security of the state and the security of its people cannot be effectively assured by considering each in isolation. Respect for human rights actually underpins a stable security environment. Such an environment is fundamental: without it democracy cannot thrive; its absence encourages the conditions in which terrorism can flourish.

Promoting the rule of law internationally is important for Canada as an extension of our own beliefs. And it is important because, in an age of interdependence, the international system can only work if there is global adherence to shared laws and standards. As Prime Minister Pierre Trudeau once noted: “Interdependence is the dominant fact of life in our era—that we are all responsible for each other’s well-being, and that we must learn to live together or face the prospect of perishing together.” We Canadians, who live in one of the most open societies in the world, are also the first to recognize that the guarantee and development of our human rights at home depend, to a significant degree, on the creation and

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<sup>4</sup> *Anti-terrorism Act*, S.C. 2001, c. 41 [hereinafter *Bill C-36*].

enforcement of a vibrant framework of international norms that reflect our values.

The critical question is how can we make the international system work effectively?

For Canada, just systems of law and governance are essential guarantors of peace and security. Ensuring the safety and security of people implies the establishment of an international capacity to hold perpetrators of human rights violations accountable for their actions. It also requires renewed commitment to strengthening the transparency and accountability of public institutions, especially those responsible for providing security and accountability of justice.

Over the past 50 years, we have witnessed fundamental advances in the elimination of impunity and the acceptance of international accountability:

- in the aftermath of the Second World War, the establishment of the International Military Tribunals in Nuremberg and the Far East;
- the establishment of *ad hoc* international criminal tribunals for the Former Yugoslavia and Rwanda;
- the agreement, signed earlier this year, to create a hybrid international-domestic war crimes tribunal in Sierra Leone;
- the trial of former President Milosevic in The Hague;
- the decision of the British House of Lords in the Pinochet case, which found that the former head of state was subject to extradition for crimes of torture; and
- the increasing number of countries, including Canada, which have adopted legislation allowing them to try those who commit genocide, crimes against humanity and war crimes.

The culmination of these developments is the creation of the International Criminal Court—a Canadian foreign policy priority.

It has been increasingly clear that the global community of nations needs a permanent, impartial court to prosecute the most serious crimes committed by individuals around the world. A court that does not depend on the whims of states and international organizations. A court whose

credibility stems from the fact that it is the product of a broad international agreement and thus, in the rules that it applies and the way in which it applies them, it will be free from the criticism of providing “victors’ justice,” which accompanied some of the earlier examples I mentioned. The adoption of the Statute of the International Criminal Court by the Rome Conference in 1998<sup>5</sup> was a much belated response to the millions of civilians who lost their lives or their health, property, family and friends in conflicts and turmoil.

Canada is known as a world leader in the effort to establish the ICC. In September 2000, Canada launched its ICC Campaign, designed to provide the tools and knowledge to assist countries in ratifying the ICC Statute. As part of the campaign, Canada has provided funding and experts to workshops and conferences in Africa, Latin America, the Caribbean, the South Pacific, Asia and the Middle East.

Canadian efforts are bearing results. With 56 of the 60 ratifications required for the Court to become a reality, it is not a question of if the Court will exist, but when. By promoting the ICC, Canada is supporting the rule of law internationally. The creation of the ICC will ensure that those responsible for the most serious crimes known to humankind—genocide, war crimes and crimes against humanity—will be held responsible for their actions. The ICC will also ensure that those responsible are treated in accordance with fundamental judicial guarantees, reinforcing the rule of law and respect for human rights. One of the weaknesses of the international legal system is, as everyone in this room knows, the absence, in some areas, of an effective mechanism to ensure respect for the norms to which we all purport to subscribe. This Court will serve as an example for the way in which we can address this deficiency in our system of global governance. This is why I can say that it was one of my proudest moments as a parliamentarian when I stood in the House and delivered the Report of the Standing Committee approving the legislation that made the ICC a part of our law. And I also remember with pride the work that Irwin Cotler performed in the Committee that made that moment possible.

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<sup>5</sup> *Rome Statute of the International Criminal Court*, July 17, 1998, UN Doc. A/CONF.183/9.

## CONCLUSION

My message today then is threefold. First, September 11 demonstrated the necessity of a coordinated response to terrorism. Second, Canada is playing its role—militarily, politically and in building an effective legal framework—to fight terrorists internationally. Third, the campaign against terrorism can and must be conducted in accordance with the rule of law and respect for human rights. Canada has not just awoken to this reality: our counterterrorism activities complement Canada's long-standing support for the establishment a rules-based system of the enforceable international norms as reflected in the ICC and, as with the ICC, Canada is ready to assist states that have the will, but not the means, to combat terrorism and end impunity.

I thank the Canadian Institute for the Administration of Justice for giving me, and all of us here, the opportunity to gather here today for a free exchange of ideas—an affirmation of Canadian values.

Thank you.