

**Sécurité et stratégie antiterrorisme :  
Répercussions sur les droits, les libertés et la démocratie**

Rapport et recommandations en matière politique d'un Forum public organisé par  
la Coalition pour la surveillance internationale des libertés civiles

**Ottawa, le 17 février 2004**

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## À PROPOS DE LA COALITION POUR LA SURVEILLANCE INTERNATIONALE DES LIBERTÉS CIVILES

La CSILC est une coalition pancanadienne d'organisations de la société civile préoccupées par les répercussions de la législation antiterroriste et des autres mesures connexes sur les libertés civiles, les droits de la personne, la protection des réfugiés, le racisme, la dissidence politique, l'administration des organismes de bienfaisance, la coopération internationale et l'assistance humanitaire. La CSILC a vu le jour au lendemain de l'adoption de la Loi antiterroriste (C-36) et réunit plus de 30 ONG, des syndicats, des associations professionnelles, des groupes confessionnels, des organisations écologistes, des défenseurs des droits de la personnes et des libertés civiles, ainsi que des groupes représentant les collectivités d'immigrants et de réfugiés au Canada (*Se reporter à l'Annexe I pour une liste complète des membres*).

## CONTEXTE

La Coalition pour la surveillance internationale des libertés civiles a organisé une réunion internationale des organisations de la société civile consacrée à la sécurité et la stratégie antiterrorisme : répercussions sur les droits, les libertés et la démocratie, à Ottawa, du 16 au 18 février 2004.

Cette réunion devait atteindre les objectifs suivants :

- parvenir à une meilleure compréhension et une analyse commune des enjeux liés à la sécurité et à l'antiterrorisme;
- créer des liens et établir la confiance parmi les organisations de la société civile pouvant partager des préoccupations de même nature, mais dont la priorité, le domaine d'intérêt ou le champ d'intervention peut varier;
- étudier l'opportunité d'élaborer des stratégies et des actions communes, et engager le processus au niveau international;
- sensibiliser le public, susciter l'intérêt des médias et informer les décideurs au Canada.

Deux demi-journées – les 16 et 18 février 2004 – ont été consacrées au partage des analyses ainsi qu'à des discussions stratégiques exploratoires entre les organisations participantes, sur le potentiel de réseautage et de coopération internationale.

Le 17 février 2004, la Coalition pour la surveillance internationale des libertés civiles a tenu un Forum public au Centre canadien des conférences, à Ottawa, pour débattre *la sécurité et la stratégie antiterrorisme*, et formuler des recommandations d'action ayant trait aux répercussions qu'entraînent ces mesures sur les droits et les libertés civiles, dans le but d'informer et de guider la société civile, de même que le gouvernement canadien.

Les orateurs comprenaient : Warren Allmand (ex-président, Droits et Démocratie), Khalid Baksh (Muslim Lawyers Association), Walden Bello (Focus on the Global South), Janet Dench (Conseil canadien pour les réfugiés), Arnoldo Garcia (National Network for Immigrant and Refugee Rights), Ben Hayes (Statewatch), Jeanne Herrick-Stare (Friends Committee on National Legislation), Jameel Jaffer (American Civil Liberties Union), Raja Khouri (Fédération canado-arabe), Yap Swee Seng (SUARAM et the Asian People's Security Network), Roch Tassé (Coalition pour la surveillance internationale des libertés civiles) et Steven Watt (Center for Constitutional Rights).

## SOMMAIRE

Les termes « preuves secrètes », « procès secrets », « enquête furtive », « remise extraordinaire », « détention administrative », « combattants ennemis » et « détention indéfinie » font désormais partie du lexique employé dans le nouvel ordre mondial.

Sous la pression et l'influence des États-Unis, de nombreux pays, dont le Canada, ont adopté ou rétabli des lois et des mesures destinées à renforcer la surveillance de la conduite licite de leurs citoyens. Les droits fondamentaux et les libertés civiles de base sont mis à mal sous le couvert de la « guerre contre le terrorisme », qui vise surtout les membres des communautés arabes et musulmanes, et menace de plus en plus les immigrants et ceux et celles qui réclament une protection contre la persécution et les conflits politiques.

Au Canada, la Loi antiterroriste (le projet C-36), tout comme la Patriot Act aux États-Unis et la Anti-Terrorism and Security Act (ATSA – Loi sur l'antiterrorisme et la sécurité) au Royaume-Uni, a été rapidement adoptée à la suite des attentats du 11 septembre 2001. La loi C-36 a accordé à la police des pouvoirs extraordinaires d'arrestation préventive qui sont maintenant utilisés pour menacer les membres des minorités visibles et les contraindre à « coopérer » avec les autorités. Cette nouvelle loi omnibus étend et institutionnalise l'usage des « preuves secrètes » devant être utilisées dans des « procès secrets » déjà autorisés par les dispositions de la Loi sur l'immigration et la protection des réfugiés. Ce texte octroie à un seul ministre du Cabinet le pouvoir de délivrer des « certificats de sécurité » qui peuvent servir à détenir indéfiniment des non-citoyens ou à les déporter.

Dans le monde entier, la législation antiterroriste, ainsi que les lois et les règlements déjà adoptés en matière d'immigration, ont contribué à un renforcement du profilage racial et du racisme institutionnalisé. La culpabilité par association a provoqué un effet négatif sur les droits fondamentaux tels que la liberté d'expression, la liberté d'association et la liberté de circulation, de même que sur les droits démocratiques de base, que ce soit le protester ou simplement faire valoir ses droits.

Le Canada, qui s'est toujours enorgueilli de sa politique en matière de multiculturalisme officiel et de sécurité humaine, a suivi l'exemple des États-Unis et du Royaume-Uni en reproduisant et en élargissant les parties les plus controversées de leurs lois visant à combattre le terrorisme.

Ces mesures sévères, notamment le revirement du fardeau de la preuve, contreviennent à la Charte canadienne des droits et libertés et au *Pacte international relatifs aux droits civils et politiques* (PIDCP) que le Canada a ratifié, affirme Warren Allmand.

Et contrairement à la tristement célèbre Loi sur les mesures de guerre de 1970, la loi C-36 et les autres lois n'ont pas une durée de vie limitée. La guerre contre le terrorisme n'a pas de véritable clause crépusculaire. La tendance qui se manifeste dans la stratégie antiterroriste pourrait modifier irrémédiablement la justice et le système judiciaire du

Canada. Elle forme un écheveau complexe de vastes mesures qui changent à jamais la relation entre l'État et les citoyens.

### *Droits des immigrants et des réfugiés / Profilage racial*

Le Muslim Lawyers Association a mené l'année dernière un sondage informel mais très révélateur sur l'utilisation et l'abus de la Loi antiterroriste du Canada. Des bénévoles ont contacté 40 avocats canadiens et leur ont demandé s'ils étaient au courant de cas d'abus ou de cas où la police avait outrepassé ses pouvoirs : 10 des 40 avocats ont signalé 35 incidents et parmi ces derniers, seuls sept ont donné lieu à une plainte officielle. La crainte et la méfiance à l'égard du système sont les principales raisons pour lesquelles tant de plaintes ne sont pas enregistrées, laisse entendre Khalid Baksh : « Pourquoi se plaindre contre le SCRS (Service canadien du renseignement de sécurité) alors qu'il n'y aura aucun suivi? »

La Fédération canado-arabe dit que la communauté qu'elle représente souffre d'« aliénation, de marginalisation et ... d'un sentiment d'internement psychologique comparable à celui qu'ont éprouvé nos compatriotes japonais pendant la Seconde Guerre mondiale ». Le cas de Maher Arar, qui fera l'objet d'une enquête publique dans le courant de l'année, résume un grand nombre des mesures abusives de la stratégie de sécurité, notamment : le profilage racial; le dangereux partage d'informations avec des organismes étrangers; le manque de respect par les autorités américaines du passeport canadien et l'incapacité croissante du Canada à aider ses citoyens à l'étranger.

Au Royaume-Uni, on craint que la législation antiterroriste ne porte atteinte aux tentatives méritoires d'améliorer les fragiles relations entre la police et les communautés ethniques minoritaires, alors que les deux millions de musulmans font figure de « communauté suspecte », au titre de l'ATSA.

Une récente étude britannique révèle que les Noirs et les Asiatiques courent en moyenne huit fois plus de risques d'être interpellés et fouillés, (stop and search) en vertu des nouveaux pouvoirs conférés à la police par l'ATSA. Dans certaines régions, le chiffre était 27 fois plus élevé. Aux termes de la Police and Criminal Evidence Act (Loi sur la police et la preuve criminelle), il y a eu 900 000 interpellations avec fouille en 2003, dont 13 % ont abouti à une arrestation. On dénombre en outre 150 000 interpellations avec fouille au titre de l'ATSA, assorties d'un taux d'arrestation légèrement supérieur à 2 %.

Aux États-Unis, l'Immigration and Nationality Act (Loi sur l'immigration et la nationalité) de 1996 actuellement en vigueur facilitait la déportation des résidents permanents en situation légale et des citoyens naturalisés, mais cette loi a depuis lors été appliquée plus rigoureusement et a été renforcée par le système controversé du registre des entrées et sorties (National Security Entry Exit Registry System - NSEERS) et par l'Aviation and Transportation Security Act (Loi sur l'aviation et la sécurité des transports).

Ces mesures ont eu un effet dévastateur sur les communautés d'immigrants et de réfugiés, menant à la dislocation de familles, à l'abandon d'enfants et à la disparition de quartiers entiers. Qui plus est, ces mesures ont provoqué une recrudescence des attaques pour motif racial perpétrées contre des communautés, des entreprises et des familles musulmanes.

Il est clair que le climat de peur généralisé, associé à une méfiance envers les forces de l'ordre et le non-respect des garanties prévues par la loi, entraîne de très graves conséquences pour les institutions démocratiques du monde entier. La nature insidieuse de ces mesures ainsi que les méthodes utilisées pour les adopter et les appliquer créent aussi des répercussions néfastes sur l'ensemble de la société.

Le discours officiel des États-Unis conforte une perspective opposant « nous » et « eux » : il est facile de supposer que « nous » sommes respectueux de la loi, tandis qu'« eux » sont dangereux. Néanmoins, trop souvent, le message sous-jacent révèle que « nous » désigne la majorité raciale et culturelle, le groupe doté du pouvoir financier, éducatif et politique. Du même coup « eux » renvoie aux personnes de couleur, aux immigrants, à ceux et celles qui ne parlent pas couramment l'anglais, aux musulmans, aux personnes originaires du Moyen-Orient ou d'Asie du Sud-Est.

Il importe de se souvenir que nous vivons une période de troubles sans précédent. À l'heure actuelle, une personne sur 30 dans le monde – 180 millions – se trouve en voie de migration, par rapport à 60 millions pendant la Seconde Guerre mondiale, et ce nombre ne comprend pas les personnes déplacées à l'intérieur de leur pays, ni les réfugiés.

Pour Arnaldo Garcia du NNIR, ce ne sont pas les droits des immigrants qui sont en jeu, mais plutôt ceux de chaque être humain. Tous les individus doivent disposer des mêmes droits, quelle que soit leur situation au regard de l'immigration. « Une fois qu'on a créé deux normes, on a créé un État policier où les autorités peuvent agir impunément », avance-t-il.

### *Perte de souveraineté*

Dans sa tentative de maintenir la frontière canado-américaine ouverte à des fins commerciales, le Canada a aussi créé les conditions d'une nouvelle érosion de sa souveraineté en cédant aux dures exigences antiterroristes de son voisin du Sud. La Déclaration sur la frontière intelligente entre le Canada et les États-Unis, signée en décembre 2001, prévoit un renforcement du partage des bases de données policières et aériennes, ainsi que l'harmonisation des politiques relatives aux réfugiés, à l'immigration et à la sécurité.

Bien que la Loi sur la sécurité publique (projet de loi C-17) n'ait pas encore été adoptée, les mesures déjà convenues dans le cadre du Plan d'action pour une frontière intelligente sont appliquées, ou sur le point de l'être, parfois avec grande discrétion. Citons à ce titre le plan de plusieurs millions de dollars conçu par l'Agence canadienne des douanes et du

revenu pour établir un système d'évaluation des risques. Ce programme est mis en place avec les autorités américaines pour contrôler les individus susceptibles de menacer la sécurité nationale, d'être des terroristes, ou de se livrer à des activités criminelles ou suspectes.

La souveraineté d'autres nations est également menacée par la « stratégie de sécurité » déterminée par les États-Unis.

Aux Philippines et dans toute l'Asie, les gouvernements subissent des pressions afin qu'ils modifient leurs lois conformément à la nouvelle législation britannique et américaine. « Les pressions relèvent de la coercition », déclare Walden Bello dans son discours liminaire. Des troupes américaines ont aussi été stationnées à nouveau aux Philippines, en vue de participer à l'action de la police locale qui recherche les terroristes soupçonnés, portant ainsi atteinte au principe de souveraineté nationale.

L'Asie du Sud-Ouest a été identifiée par les États-Unis comme le « deuxième front » contre le terrorisme, tandis que la chasse à Osama bin Laden et à son réseau Al-Qaeda a immédiatement braqué les feux de l'actualité internationale sur la Malaisie.

Yap Swee Seng du Asian Peoples' Security Network (Réseau de sécurité du peuple d'Asie) souligne que les autorités sud-asiatiques, en particulier aux Philippines, à Singapour, en Thaïlande, en Malaisie et en Indonésie, ont étroitement coopéré avec les États-Unis dans leur campagne mondiale contre le terrorisme. Cette collaboration comporte l'arrestation de terroristes présumés, sur la foi de renseignements partagés, l'autorisation donnée au Federal Bureau of Investigation (FBI) d'interroger des détenus sous leur garde, la facilitation de l'extradition de détenus vers les États-Unis et l'adoption de lois antiterroristes au service de la campagne antiterroriste menée par les États-Unis.

L'année dernière, les États-Unis ont établi un centre régional antiterroriste de l'Asie du Sud-Est, le Southeast Asia Regional Counter-Terrorism Center (SEARCCT), à Kuala Lumpur. Il se concentre sur le renforcement des capacités, la mise en valeur des ressources humaines et l'échange de renseignements pour combattre le terrorisme dans la région. Comme on ne connaît guère le fonctionnement de ce centre et que les mécanismes de poids et contrepoids sont relativement faibles au sein du système politique des pays d'Asie du Sud-Est, la stratégie de sécurité risque de contribuer à une nouvelle détérioration de la situation des droits de la personne et des libertés civiles dans la région, avec le consentement silencieux, voire le soutien des États-Unis et de leurs alliés occidentaux traditionnels.

Pendant ce temps, le Département américain de la sécurité nationale a établi une mission permanente à Bruxelles et les représentants des États-Unis participent régulièrement aux réunions de travail de l'Union européenne (UE). On peut avancer sans exagération que dans ce domaine d'intervention, les États-Unis constituent le 16<sup>ème</sup> État membre de l'UE, déclare Ben Hayes, un représentant de Statewatch. Il fait ressortir que ces réunions sont entourées d'une sécurité de haut niveau et que le Parlement européen n'est même pas appelé à se

prononcer sur la plupart des mesures de sécurité prises par l'UE, et dispose encore moins d'un siège à la table de négociation.

Cinq semaines après les attentats de New York, le président George Bush a écrit au président de la Commission européenne pour lui présenter une liste de 47 demandes de coopération dans la « guerre contre le terrorisme » et en décembre 2001, un accord « informel » entre Europol et les États-Unis a été conclu à Bruxelles.

Selon M. Hayes, la Grande-Bretagne a cédé sa souveraineté aux États-Unis. Il cite le cas le plus récent où en mars 2003, le Royaume-Uni a signé avec les États-Unis un traité secret rétroactif d'extradition à sens unique. Lors de sa publication qui n'est intervenue que deux mois plus tard, il est apparu clairement que dans le cadre de ce nouveau traité, les États-Unis ne seraient plus tenus de fournir une preuve *prima facie* lorsqu'ils adressent une demande d'extradition au Royaume-Uni, tandis que la Grande-Bretagne se contentera d'allégations de la part des États-Unis.

### ***Droits de la personne***

Le recul des libertés civiles au niveau mondial s'est produit à une vitesse extraordinaire depuis le 11 septembre 2001. « Aux États-Unis, les lois et les ordonnances restreignant les libertés civiles, le droit à la vie privée et la liberté de circulation ont été adoptées avec une rapidité qui aurait rendu Joe McCarthy vert de jalousie », affirme M. Bello.

Pour sa part, le Center for Constitutional Rights dénonce le fait que l'exécutif s'attaque systématiquement à la primauté du droit aux États-Unis. Les mesures les plus troublantes et les plus controversées adoptées au nom de la stratégie de sécurité ont été la détention indéfinie de 700 ressortissants étrangers à Guantánamo Bay, Cuba; la création d'un nouveau statut juridique des détenus – les combattants ennemis – ; le recours à la torture pendant les interrogatoires, et la « sous-traitance internationale » de la torture qualifiée par euphémisme de « remise extraordinaire ».

Ainsi que le relève Steven Watt, les quatre *Conventions de Genève de 1949* et leurs protocoles, qui donnent des directives précises relatives au traitement des prisonniers de guerre, sont violées et réinterprétées pour satisfaire aux priorités de l'administration Bush.

L'administration Bush a défini la « guerre contre le terrorisme » comme un conflit armé international et ses activités antiterroristes comme une opération militaire (plutôt qu'une opération d'application du droit criminel). Non seulement l'exécutif interprète les lois de la guerre de façon très large, mais il les a aussi adaptées à ses fins en choisissant les aspects qui correspondent à ses objectifs, tout en mettant de côté ceux qu'il juge trop lourds ou trop contraignants. Les conséquences sur les droits civils et les droits de la personne sont considérables.

L'Administration prétend que les États-Unis sont en guerre avec le monde entier – même sur leur propre sol et avec leurs propres citoyens – et n'ont pas précisé quand cette

« guerre » prendrait fin, si tant est qu'elle se termine.

La stratégie antiterroriste en Asie du Sud-Est s'est révélée « catastrophique » pour la démocratie et les droits de la personne dans la région. Elle s'est soldée par la détention arbitraire de terroristes présumés; a fait renaître la justification des vieilles lois répressives; a provoqué une augmentation des atteintes aux droits de la personne et a criminalisé la dissidence légitime.

Bien que la détention indéfinie sans procès ne soit pas un problème nouveau ni une expérience inhabituelle dans la plupart des pays du Sud-Est asiatique, l'adoption de telles mesures par des démocraties traditionnellement libérales et respectueuses des droits de la personne, telles que le Canada, a constitué un revers pour le mouvement des droits de la personne dans la région.

Les organisations de la société civile en Asie du Sud-Est luttent vigoureusement depuis des décennies contre la détention sans procès dans chacun de leurs pays, avec un succès considérable en Thaïlande, en Indonésie et aux Philippines, où le droit à un procès a été inscrit dans leurs constitutions respectives, adoptées par suite du renversement de leurs régimes autoritaires. Ces progrès sont maintenant en voie d'être renversés.

Les États-Unis portent non seulement atteinte à leur crédibilité au niveau national et international en faisant fi des normes de base quant aux droits de la personne, mais leurs agissements sont aussi imités par des pays moins démocratiques, ce qui expose tout le monde à un risque accru, y compris les Américains.

L'article 4 du PIDCP stipule que le respect des droits de la personne ne souffre aucune exception en aucune circonstance, mais prévoit aussi des régimes strictement limités de dérogation temporaire à ce principe en situation d'urgence. Pour M. Allmand, ce critère n'a pas été observé par le projet C-36 du Canada, dont la clause crépusculaire est trop restrictive. D'autres instruments internationaux importants sont aussi érodés, ou pis encore, ignorés.

La *Convention de 1951 relative au statut des réfugiés* accorde des droits essentiels aux demandeurs d'asile, notamment le droit de « non-refoulement ». Il était paradoxal de voir des États se réunir aux Nations Unies à Genève en décembre 2001 pour célébrer le 50<sup>ème</sup> anniversaire de la Convention, tandis que ces mêmes États compromettaient l'observation de leurs obligations envers les réfugiés en adoptant de dures mesures antiterroristes à l'encontre de ces mêmes personnes.

Depuis le 11 septembre 2001, même si le fait d'envoyer des terroristes soupçonnés dans des pays amis qui pratiquent la torture contrevient au droit national et aux obligations internationales des États-Unis en matière de droits de la personne, conformément à la *Convention contre la torture* (CCT), traité qu'ils ont signé et ratifié, ils recourent de plus en plus à cette pratique. La CCT comprend des dispositions expresses interdisant

d'envoyer des personnes dans des pays où il est fort probable qu'elles seront soumises à la torture.

Le cas de Maher Arar représente la première contestation judiciaire de la politique américaine de « remise extraordinaire ».

### *Surveillance et érosion des droits à la protection de la vie privée*

Partout dans le monde, on constate une recrudescence de la surveillance de la conduite licite des citoyens, facilitée par l'arrivée de nouvelles technologies et l'adoption de nouvelles mesures : « enquêtes furtives » (sneak and peek) aux États-Unis, « interpellations avec fouille » (stop and search) au Royaume-Uni, « détention préventive » au Canada et « détention indéfinie sans procès » dans le monde entier.

Jameel Jaffer de l'American Civil Liberties Union, faisant ressortir les modifications touchant à la fois le droit criminel et le renseignement de surveillance à l'étranger, affirme que les dispositions relatives à la surveillance prévues par la Patriot Act élargissent énormément le pouvoir dont dispose l'État fédéral pour contrôler les activités des personnes vivant aux États-Unis. Ces mesures sont très préoccupantes, déclare-t-il, car « nous avons vu comment le FBI s'est servi de pouvoirs semblables par le passé. »

Et alors que le gouvernement américain se montre chaque jour plus secret et refuse de divulguer l'information qui était auparavant accessible, l'État s'immisce de plus en plus dans la vie privée des particuliers. Plusieurs agences cherchent déjà à exploiter des bases de données commerciales. Le système informatisé de contrôle préalable des passagers CAPPS II (Computer-Assisted Passenger Pre-Screening System), la deuxième version d'une base de données et d'un système de classification des risques par couleur est actuellement renforcé.

Le programme américain VISIT stocke les empreintes digitales et une photo, et crée un fichier qui sera conservé pendant cinquante ans, pour chacun des visiteurs (à l'exception des Canadiens) entrant aux États-Unis. Il est proposé de créer une carte d'identité nationale ou un permis de conduire national enrichi de données biométriques. « Le danger qui pèse sur la préservation des droits garantis par le Premier Amendement est vraiment inquiétant », déclare Jeanne Herrick-Stare.

Dans leur ensemble, la surveillance et la restriction systématiques de la liberté de circulation, la conservation obligatoire de toutes les données de télécommunications et d'autres intrusions considérables dans la vie privée atteignent un niveau qui aurait été impensable pour les nations occidentales pendant la guerre froide. Le CAPPS II et le programme US VISIT s'inscrivent dans un projet plus vaste destiné à recueillir et à conserver des données personnelles sur tous les citoyens de la planète. Ces dispositions constituent en outre le fondement de la création d'une infrastructure internationale permettant de surveiller totalement les déplacements.

La Grande-Bretagne envisage d'instaurer une carte d'identité contenant des données biométriques. Du fait que cette carte a été interdite à la fin de la guerre, la Grande-Bretagne l'a cette fois présentée comme une carte donnant droit à des services (de santé, par exemple) qui comporterait une identité biométrique – très probablement des empreintes digitales – et une puce de stockage électronique renfermant des niveaux multiples d'information sur le détenteur.

Statewatch estime que ce n'est pas l'élément sur l'identité qui intéresse les autorités de la Grande-Bretagne, mais plutôt la création d'une base de données détaillée sur la population nationale, liée à d'autres organisations et bases de données des secteurs public et privé.

Peu de Canadiens auraient pu imaginer que le Canada envisagerait un jour d'introduire une carte d'identité ou un passeport contenant des données biométriques et même des éléments de reconnaissance du visage, et qu'il consentirait, comme il l'a fait dans le cadre de l'Accord sur la frontière intelligente conclu avec les États-Unis, à partager de l'information préalable sur les voyageurs (IPV) et des dossiers passagers (DP), sur les vols entre le Canada et les États-Unis. L'accord prévoit en outre la mise en place d'une base de données compatible et automatisée sur l'immigration, comme le système canadien de soutien du renseignement. « Tout cela concerne la collecte de données et l'intégration de bases de données, le partage de renseignements et l'évaluation des risques à partir de profils établis par ordinateur », déclare Roch Tassé.

Par ailleurs, le projet C-44, qui a reçu la sanction royale en décembre 2001, a modifié la Loi sur l'aéronautique et les lois canadiennes sur la protection de la vie privée, pour autoriser les transporteurs aériens canadiens à fournir des renseignements sur les passagers aux autorités compétentes d'États étrangers. Bien qu'une telle législation n'ait guère attiré l'attention du public au Canada, des accords semblables conclus entre les États-Unis et l'Union européenne sont actuellement au cœur d'une grande controverse au Parlement européen. On craint que les données sur les passagers européens communiquées aux États-Unis ne reçoivent qu'une protection minimale ou inexistante et que cela ne porte atteinte aux droits à la vie privée des citoyens européens.

### ***Définition du « terrorisme »***

Le « terrorisme » n'est défini dans aucune autre loi canadienne, la Cour Suprême du Canada a refusé de le définir et il n'existe pas non plus de définition du concept dans aucun instrument international important tel que le *Statut de Rome de la Cour pénale internationale*.

Néanmoins, la Loi antiterroriste du Canada donne une définition vague, imprécise et trop large du « terrorisme » et de l'« activité terroriste », qui menace les libertés civiles et le droit à la dissidence politique légitime.

Elle définit le « terrorisme » comme un acte ou une omission commise au Canada ou à l'étranger au nom d'un but ou d'une cause de nature politique, religieuse ou idéologique, soit en vue d'intimider la population quant à sa sécurité, y compris sa sécurité économique, ou de contraindre une personne, un gouvernement ou une organisation nationale ou internationale à accomplir un acte ou à s'en abstenir, dans l'un des buts suivants :

- Causer la mort ou des blessures graves;
- Mettre en danger la vie;
- Compromettre gravement la santé ou la sécurité de la population;
- Causer des dommages matériels considérables à des biens publics ou privés, dans des circonstances telles qu'il est probable qu'elles perturbent des services, installations ou systèmes essentiels, ou qu'elles perturbent des services essentiels dans le but de compromettre gravement la santé ou la sécurité de la population, ou
- Perturber gravement ou paralyser des services, installations ou systèmes essentiels, sauf dans le cadre d'activités licites de revendication, de protestation ou de manifestation d'un désaccord, ou d'un arrêt de travail licite n'ayant pas pour but de mettre en danger la vie d'une personne ni de compromettre gravement la santé ou la sécurité de la population.

Comme le constate M. Allmand, il est très difficile de définir le terrorisme ou de distinguer les militants pour la liberté des terroristes. Certains des pays qui ont rejoint la coalition contre le terrorisme menée par les États-Unis pratiquent en fait un terrorisme d'État contre leur propre population.

Le terrorisme n'est pas un phénomène nouveau et les États l'ont abordé comme un problème d'application du droit national ou international. Le « terrorisme » est un moyen employé pour tuer des êtres humains, et non pas le nom d'un ennemi.

La définition de l'« activité terroriste » et des « groupes terroristes » est aussi épineuse : parfois, les organisations qui utilisent la méthode du terrorisme sont aussi des groupes qui assurent ou contrôlent la distribution d'aide humanitaire. Cet exemple de l'aide humanitaire peut être étendu à d'autres actions des ONG, qu'il s'agisse de la prestation de services juridiques aux personnes accusées de terrorisme, ou de la fourniture d'autres conseils ou services non gouvernementaux bénéfiques.

Khalid Baksh laisse entendre que la définition des entités ou groupes terroristes figurant dans le projet C-36 peut aussi être interprétée comme une attaque envers l'islam, puisque l'un des préceptes fondamentaux de cette religion invite les musulmans à donner du soutien chaque fois qu'il est nécessaire, ce qui signifie l'apport d'une aide à la population en Somalie, au Cachemire, en Tchétchénie ou en Palestine. La définition des groupes terroristes établie par le gouvernement est si vaste que tout citoyen respectueux de la loi qui souhaite envoyer de l'argent à des membres de sa famille dans des pays comme le Liban, où le Hezbollah est actif, pourrait être accusé de financer le terrorisme, déclare M. Baksh.

Aux États-Unis, les envois de fonds des immigrés ont été visés par la police et un certain nombre de personnes ont été accusées de soutien au terrorisme et de blanchiment d'argent lié au terrorisme.

Au Royaume-Uni, la législation antiterroriste a été utilisée dans le maintien de l'ordre à l'occasion de manifestations et invoquée pendant toute la durée d'une récente protestation contre un salon des armes dans le quartier des Docklands de Londres et au cours de manifestations contre la guerre en Iraq.

L'ampleur de la définition du « terrorisme » figurant dans la Décision-cadre de l'UE relative à la lutte contre le terrorisme est aussi fort controversée. Toute une série d'actes criminels peuvent être considérés comme terroristes s'ils sont commis dans l'intention de :

- Gravement intimider une population;
- Contraindre indûment des pouvoirs publics ou une organisation internationale à accomplir ou à s'abstenir d'accomplir une tâche, ou
- Détruire les structures fondamentales politiques, constitutionnelles, économiques ou sociales d'un pays ou d'une organisation internationale.

Statewatch signale que des millions et des millions de personnes souhaitent que des gouvernements ou des organisations internationales telles que l'Organisation mondiale du commerce (OMC) ou l'OTAN (Organisation du Traité de l'Atlantique Nord) exécutent ou s'abstiennent d'exécuter de nombreux actes.

La liste des terroristes de l'UE interdit le soutien actif ou passif d'individus ou de groupes soupçonnés d'implication dans des activités terroristes, et interdit les transactions financières avec ces derniers. Cette liste, qui ressemble beaucoup à celle des États-Unis, a été adoptée en toute hâte par le Parlement, sans débat, et comporte des groupes des Philippines, de la Palestine, du Sri Lanka et de l'ex-Kurdistan. Elle a été largement contestée, car de nombreux Européens estiment que ces activités sont des combats légitimes pour la libération menés contre des occupations illégales ou des régimes répressifs. La liste adoptée par le Canada comprend grosso modo les mêmes groupes et rappelle aussi celle des États-Unis.

La Malaisie, qui possède déjà l'une des lois les plus strictes sur la sécurité intérieure, a incorporé un chapitre sur la lutte contre le terrorisme lorsqu'elle a rapidement adopté des modifications au Code pénal et à la Loi contre le blanchiment d'argent, à la fin de 2003. Ces révisions donnent une définition vague et globale des « actes terroristes », entre autres les préjudices portés à la sécurité nationale et à la sûreté de l'État, les perturbations d'infrastructures, la désorganisation de services essentiels, etc. Dans le cadre de ces définitions imprécises, la société civile redoute que les actes de désobéissance civile ou les actions des travailleurs ne soient facilement traités comme des « actes terroristes ». Ces modifications confèrent par ailleurs de vastes pouvoirs à l'État, qui peut notamment sanctionner ceux qui fournissent des services et des moyens aux terroristes, entre autres par de longues peines de prison ou par la peine de mort. La loi cite explicitement les

avocats et les comptables, ce qui amène à craindre que ce texte ne réduise leur capacité d'offrir des services à leurs clients.

### ***Mobilisation***

Dans cette sombre évaluation de la stratégie antiterroriste, il existe une lueur d'espoir, un aspect positif. Dans le monde entier, la société civile s'est mobilisée pour s'opposer à ces mesures et défendre les droits fondamentaux.

Au Canada, l'attitude de la population à l'égard de la législation antiterroriste semble évoluer, très probablement à la suite du cas de Maher Arar, qui a été largement médiatisé. Un sondage récent indiquait que la moitié des Canadiens estiment que la police est allée trop loin dans l'utilisation des pouvoirs antiterroristes et 52 % conviennent que les Canadiens arabes sont injustement ciblés du fait de leur race.

L'adoption du projet C-36 et son réexamen imminent ont aussi contraint les communautés arabes et musulmanes à s'organiser, à se mobiliser et à participer à la vie politique.

Aux États-Unis, un mouvement national de la base s'est fait le champion des résolutions locales, revendiquant le droit des autorités locales de protéger les libertés civiles, même face à des lois fédérales, des ordonnances administratives et des règlements d'organismes. Jusqu'à présent, près de 250 localités, villes et comtés, ainsi que trois États, ont adopté ces résolutions, et de nouvelles collectivités s'ajoutent chaque semaine à la liste. Bien que la plupart du temps, ces résolutions n'aient aucun pouvoir légal d'application, elles deviennent une voix nationale publique, unifiée et organisée, qui commence à attirer l'attention de l'Administration. Selon M<sup>me</sup> Herrick-Stare, la population est résolue, elle ne se laissera pas réduire au silence et le mouvement des résolutions communautaires restera l'un des éléments les plus décisifs et spectaculaires de cette période post-11 septembre.

La société civile mondiale, ce réseau transfrontalier en pleine expansion qui embrasse le Nord et le Sud, constitue la principale force pour la paix, la démocratie, le commerce équitable, la justice, les droits de la personne et le développement durable, affirme M. Bello, rappelant à l'auditoire que le *New York Times* l'a qualifié de « deuxième superpuissance mondiale après les États-Unis ».

Pour MM. Bello et Allmand, et même pour tous les conférenciers au forum public, c'est la société civile mondiale qui fera reculer l'attaque dirigée contre les libertés nationales et la réunion internationale qui s'est déroulée le 17 février 2004 témoigne une fois encore de cette résistance coordonnée qui s'élève contre une nouvelle érosion de nos droits civils et politiques.

## RECOMMANDATIONS EN MATIÈRE DE POLITIQUES

Les recommandations en matière de politiques suivantes se sont dégagées des exposés présentés le 17 février 2004, au Forum public, ainsi que des discussions entre les participants, dans le cadre des réunions stratégiques qui se sont tenues les 16 et 18 février 2004.

- 1) La Loi antiterroriste du Canada (C-36) doit faire l'objet d'un examen public accéléré et global par le nouveau Comité parlementaire permanent de la sécurité nationale, pour s'assurer qu'elle respecte la Charte canadienne des droits et libertés, dans le but de rétablir l'application des règlements de la loi.
- 2) Simultanément, il convient de soumettre la Loi antiterroriste à la Cour Suprême du Canada, pour que celle-ci se prononce sur sa constitutionnalité.
- 3) Aucune nouvelle législation, y compris la Loi sur la sécurité publique (le projet C-17) actuellement étudiée par le Sénat, ne saurait être adoptée avant qu'ait été complété un examen exhaustif de la Loi antiterroriste (C-36) et que les conclusions de l'enquête publique sur le cas de Maher Arar ne soient rendues publiques.
- 4) Le Canada doit résister aux pressions en vue de déposer et d'adopter une législation sur l'« accès légal » envisagée par le ministère de la Justice du Canada.
- 5) Il convient que les États tiennent compte des conséquences sur les droits à la protection de la vie privée de leurs citoyens avant de conclure des accords de partage de l'information et qu'ils s'assurent que ces ententes respectent les droits garantis par leurs constitutions respectives et par les instruments internationaux dont ils sont signataires.
- 6) Il faut que le Parlement du Canada examine tous les accords de partage de renseignements en vigueur qu'a signés le Canada avec les États-Unis pour s'assurer que les droits de ses citoyens ne sont pas menacés, qu'il s'agisse de la liberté d'association, de la liberté de circulation ou du droit à la protection de la vie privée. Le Parlement doit aussi exercer un contrôle sur tous les accords et dispositifs futurs portant sur le partage de renseignements devant être appliqués dans le cadre du Plan d'action pour une frontière intelligente.
- 7) Il convient que le Canada révise la Loi sur l'immigration et la protection des réfugiés pour répondre aux préoccupations relatives aux « certificats de sécurité », dans le but de rétablir les droits de la défense et la transparence, et de se conformer à la Charte canadienne des droits et libertés ainsi qu'aux normes internationales en matière de droits de la personne.
- 8) Il y a lieu que le Canada annule l'Accord sur les pays tiers sûrs conclu avec les États-Unis, qui doit entrer en vigueur au printemps 2004, jusqu'à ce que ces derniers offrent le même niveau de protection aux demandeurs du statut de réfugié que le Canada.

Celui-ci doit aussi mettre immédiatement un terme à la pratique des « renvois directs » instaurée en janvier 2003.

9) Le respect de la justice et des droits de la personne doit être le principe qui régit systématiquement la réaction des pouvoirs publics à l'insécurité et aux violations des droits humains. Dans ce contexte, il y a lieu que le Canada renforce son attachement au système international des droits de la personne. Pour manifester concrètement cette volonté, il serait souhaitable qu'il appuie, dans le cadre de l'ONU, la proposition de création d'un Mécanisme international de surveillance de la situation des droits de la personne et du contre-terrorisme, déposée à la Commission des droits de l'homme des Nations Unies, afin de s'assurer que la stratégie de sécurité ne provoque pas de recul en matière des droits de la personne.

10) Il convient que le Canada réaffirme son respect de la *Convention contre la torture*. À cette fin, il doit examiner d'un œil critique ses propres pratiques et le rôle de ses organismes de sécurité et de renseignement quant à la détention, la déportation et la torture à l'étranger.

11) Le Canada et les autres pays occidentaux doivent reconnaître que l'adoption d'une législation antiterroriste entraîne des effets néfastes non seulement sur leurs propres citoyens, mais également sur ceux des pays en développement confrontés à des gouvernements répressifs et non démocratiques. De tels régimes invoquent maintenant le fait que les démocraties occidentales ont adopté des dispositions sur la sécurité pour justifier le maintien ou le rétablissement d'une législation sur la sécurité intérieure dans le but de réprimer la dissidence, de faire échec au progrès social et de porter atteinte aux droits de la personne.

12) Il y a lieu que le Canada résiste à la tentation de reproduire la politique des États-Unis et de l'UE, qui subordonne l'octroi d'une aide extérieure aux pays en développement à l'adoption d'une législation antiterroriste rigoureuse, ou de pénaliser les pays qui ne coopèrent pas dans la prétendue lutte contre le terrorisme.

13) L'objectif de réduction de la pauvreté assigné à l'APD (aide publique au développement) canadienne ne doit pas être compromis par l'allocation de ressources au titre de l'APD à des fins contre-terroristes.

14) Le Canada et les autres pays donateurs doivent se pencher de toute urgence sur la question du développement et accroître les ressources à cette fin, de manière à prévenir le terrorisme et les conflits.

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## NOTE EXPLICATIVE

Les textes qui suivent sont les exposés des conférenciers invités qui se sont tous exprimés en anglais lors du forum. La CSILC regrette, faute de moyens financiers, de ne pouvoir traduire en français ces textes d'une grande qualité. Nous avons choisi de les reproduire dans leur langue d'origine vu l'intérêt que suscite la question.

## PROCEEDINGS

The following texts represent the transcripts of the presentations made by all the speakers at the public forum. Please note that Ben Hayes' full text is included although time constraints forced him to shorten his concluding remarks.

## OPENING REMARKS

By Hilary Homes, Co-chair of the International Civil Liberties Monitoring Group\*

Friends, colleagues and guests...welcome to our Public Forum on "Anti-Terrorism and the Security Agenda: Impacts on Rights, Freedoms and Democracy." My name is Hilary Homes. I am a campaigner with Amnesty International and co-chair of the International Civil Liberties Monitoring Group (ICLMG).

Following the events of Sept. 11, 2001 in the US, governments around the world responded by creating and implementing new laws or reinvigorating existing powers to address "terrorism". Security, primarily in the form of national security, rapidly rose to the top of the agenda on domestic and multilateral fora.

Amid much of the ensuing discourse about unprecedented violence, threats and instability, and the call to give up some freedoms or strike a balance between security and human rights, the historical roots of the current international human rights system were forgotten. Those developing the Universal Declaration of Human Rights in the late 1940s were well aware of the catastrophic events, human cost and threats to world security which had played out on so many fronts during the Second World War.

And they anticipated future horrors.

It is exactly when things fall apart that we need a framework in which we are all equal in dignity and rights, and all take responsibility for the creation of an equitable social order.

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\* Ms. Homes has worked with Amnesty International for the past 15 years. She is presently a campaigner with Amnesty International Canada (English section) focusing on Anti-Impunity, Identity-based violations and Military, Security & Police transfers. She has spent the past two years coordinating AI Canada's work on "security and human rights" which has included work Afghanistan and Iraq as well as the Democratic Republic of the Congo and Côte d'Ivoire. Ms. Homes has also worked and volunteered with a number of other NGOs, including the Red Cross, the United Nations Association of Canada and War Child Canada.

Just over two years after 9-11, we are seeing increasing use and justification of torture, secret and indefinite detention, lowered standards of evidence and other legal protections, and the manipulation of ODA, including the mixing of military and civilian roles. These are just some of the consequences of compromising human rights in the name of security, instead of placing human rights at the centre of state responses and pursuing the genuine security of everyone.

For while we consider the past few years here in Canada, it is important to remember that the vast majority of our fellow human beings have never enjoyed safety and security in any sense. We must ask ourselves: Exactly whose security is being sought? In what form? At what costs? And, whose security just doesn't seem to matter?

These issues clearly transcend national borders. Throughout our packed agenda today, we will take a whirlwind tour of national and regional contexts, issues, challenges and alternative views of security. Later this afternoon, we will focus on two particular themes: the impact on Muslim and Arab communities and the impacts on citizenship, immigration and refugee rights. These groups and communities have been perhaps the most dramatically affected by both formal security measures and societal attitudes fuelled by fear of attack or instability.

Most of the presentations will be followed by question-answer sessions and we anticipate that the lively debate on the floor will continue into the breaks and into lunch. But before we get to the presentations, I would like to say a few words about the ICLMG, the group that organized and is hosting this event.

The ICLMG is a relatively new coalition and this is our first public event. We are quite thrilled about that. The monitoring group was formed in May 2002 out of the concerns at the heart of today's forum: The impact of security measures and legislation on civil liberties, human rights, refugee protection, racism, political dissent, governance of charities and international cooperation and humanitarian assistance.

The ICLMG brings together possibly the most diverse collection of Canadian civil society including human rights organizations, human rights organizations, development organizations, unions and the labour movement, faith-based organizations, multicultural organizations, environmental, academic and professional organizations and many others. The monitoring group serves as a roundtable for discussion and exchange, including international and North-South exchange among organizations and communities likely to be affected by the application of anti-terror laws. It also provides a point of reflection and cooperative action in response to the laws and their effects.

In the spirit of that dialogue and that reflection, Walden Bello will start us off with an overview of the global context.

## KEYNOTE SPEECH

### WASHINGTON'S GLOBAL SECURITY AGENDA: A STATUS REPORT

By Walden Bello\*

We are assembled here today to discuss the impact of the US-led “war against terror” on civil liberties and political rights the world over.

I think that the rollback of civil liberties globally has proceeded at an extraordinarily rapid rate since Sept. 11, 2001. In the US, laws and executive orders restricting civil liberties, the right to privacy, and free movement have been passed with a speed and in a manner that would have turned Joe McCarthy green with envy. The US was scarcely three months into the so-called “war” when legislation had already been adopted and executive orders signed that established secret military tribunals to try non-US citizens; imposed guilt by association on immigrants; launched a massive effort to track down 8,000 young Muslim men; authorized the attorney general to lock up aliens indefinitely on mere suspicion; expanded the use of wiretaps and secret searches; allowed the use of secret evidence in immigration proceedings that aliens cannot confront or rebut; gave the Justice Department the authority to overrule immigration judges; destroyed the secrecy of the client-lawyer relationship by allowing the government to listen in; and institutionalized racial and ethnic profiling.

In Great Britain, the new Anti-Terrorism, Crime, and Security Act allows the Home Secretary to detain suspected international terrorists without trial. Moreover, Article 5 of this new legislation allows indefinite internment, usually only undertaken in wartime, under the pretext that current conditions approximate that of war.

In the Philippines and throughout Asia, governments are being pressured to change their laws along the lines of new British and US legislation. The pressure amounts to coercion. For instance, unless the Philippines passed an Anti-Money Laundering Act that the US said was necessary to track down the financial operations of terrorists, monetary movements to and from the Philippines would be subject to severe restrictions by international banks. Moreover, in the Philippines, US troops have been introduced to participate in local police work tracking down suspected terrorists, violating the principle of national sovereignty.

I mention these trends by way of linking our concerns about the erosion of domestic liberties to the topic of my speech today: the status of the global security agenda of the US.

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\* Walden Bello is professor of sociology and public administration at the University of the Philippines and executive director of the Bangkok-based research and advocacy institute Focus on the Global South. He is one of the recipients of the Right Livelihood Award—better known as the Alternative Nobel Prize—for 2003.

When George W. Bush landed on the aircraft carrier USS Abraham Lincoln off the California coast on May 1<sup>st</sup> last year to mark the end of the war in Iraq, Washington seemed to be at the zenith of its power, with many commentators calling it, with a mixture of awe and disgust, the “New Rome.” The carrier landing, as Canadian scholar Anthony Hall points out, was a celebration of power, a spectacle that was masterfully choreographed along the lines of the American sci-fi thriller *Independence Day* and Leni Riefenstahl’s *Triumph of the Will*.

*In the opening scene of Triumph, Adolf Hitler is pictured approaching from the air the Nazi Party rally at Nuremberg in 1934. President Bush began his big spectacle on board the Abraham Lincoln by touching down on the vessel’s deck in a S-3B Viking jet. Emblazoned on the windshield of the aircraft were the words “Commander in Chief.” The US President then emerged in full fighter garb, invoking the imagery of the dramatic concluding scenes in Independence Day. In those scenes, an American president leads a global coalition from the cockpit of a small jet fighter. The aim of this US-led operation is to defend the planet from the attack of outer-space aliens.*

But fortune is fickle, particularly in wartime.

Less than six months later, in mid-Sept., the US, along with the European Union, lost the “Battle of Cancún,” as fifth Ministerial Meeting of the World Trade Organization collapsed in that Mexican tourist town. A key architect of the successful effort to thwart Washington and Brussels’ plan to impose their agenda on the developing world was the newly formed Group of 20, led by Brazil, India, South Africa, and China.

That the G-20 dared to challenge Washington was not unrelated to the fact that by Sept., the legitimacy of the invasion of was in tatters internationally owing to the collapse of the weapons-of-mass-destruction rationale for waging the war; Bush’s loyal ally, Tony Blair, was fighting for his political life; and US forces in Iraq were being subjected to something akin to the ancient torture known as “Death by a Thousand Cuts.

Power is partly a function of perception, and the inflation of US power right after the Iraq invasion was followed by an even more rapid deflation in the next few months. With its image transformed into that of a flailing Gulliver lashing out ineffectively at unseen Lilliputians in Baghdad and other cities in central Iraq, other candidates for “regime change” such as Pyongyang, Damascus, and Teheran saw Washington’s missives as increasingly hollow. Washington was not unaware of the rapid erosion of its capacity to coerce in the eyes of the world: by late October, in fact, George W. Bush was talking, Bill Clinton-like, about giving a “security pledge” to North Korea, the aggressive isolation of which had been one of the hallmarks of this first year in office.

Unable to call for a higher troop commitment without triggering the perception of being trapped in a war without a foreseeable ending, Washington was desperate. By the time of the Cancún ministerial, the message coming out of Washington was: “We want to get out of Iraq, but not with our tail between our legs. We need UN cover, some semblance of a multinational security force to leave behind, and some semblance of a functioning government.”

US authorities hailed the passing on Oct. 17 of a watered-down UN Security Council resolution authorizing a multinational force under US leadership, but most observers saw few non-US occupation troops and little non-US funding for reconstruction resulting from its vague provisions. To many governments, it was all too reminiscent of “peace with honour”, Richard Nixon’s exit strategy from Vietnam, and few were willing to become ensnared in a lost cause. When Washington announced an accelerated withdrawal plan a few weeks later in response to increasingly effective guerrilla attacks, the impression stuck that, indeed, the Bush administration was after a Vietnam-style exit.

By the third week of October, 104 US occupation soldiers had been killed, since Bush’s May 1<sup>st</sup> declaration ending the war, with the average death rate hitting one a day in the first three weeks of the month. In November, also known as Washington’s cruelest month, some 74 US combatants were killed in action, over 30 of them while riding three helicopters brought down by Iraqi fire. By the end of 2003, some 325 US troops had been killed in combat since the invasion of Iraq in March, 210 of them since Bush’s Nuremberg-style descent from the skies.

The capture of Saddam Hussein in mid-December simply served to confirm that Saddam was not in control of what was clearly a people’s resistance since guerrilla attacks continued unabated. And as we move further into 2004, the question is no longer whether the Iraqi resistance would stage their equivalent of a Tet Offensive but when.

### *The Dynamics of Overextension*

The Iraq quagmire and the collapse of the Cancún ministerial of the WTO were just two manifestations of that fatal disease of empires: over-extension. There were other critical indicators, among them:

- The failure to consolidate a dependent regime in Afghanistan where the writ of the Karzai government only extends to the outskirts of Kabul;
- The utter failure to stabilize the Palestine situation, with Washington increasingly held hostage by the Sharon government’s lack of any interest in serious negotiations to bring out a viable Palestinian state;
- The paradoxical boost given to Islamic extremism not only in its Middle Eastern birthplace but in South Asia and Southeast Asia by US-led invasions, that of Iraq and Afghanistan, that had been justified to snuff out terrorism;
- The unraveling of the Atlantic Alliance that won the Cold War;
- The emergence in Washington’s own backyard of anti-US, anti-free-market regimes exemplified by those led by Luis Inacio Lula da Silva in Brazil and Hugo Chavez in Venezuela while the US was focused on the Middle East;
- The rise of a massive trans-border civil society movement that has led the increasingly successful drive to delegitimize the US presence in Iraq and contributed decisively to the collapse of the WTO ministerials in Seattle and Cancún.

### *Imperial Dilemma*

Against such challenges to its hegemony, the US's absolute superiority in nuclear and conventional warfare capability counts for little, in much the same way that a sledgehammer is useless in swatting flies. To intervene, invade, and enforce an occupation, ground forces will continue to be the decisive element, but there is no way the US public, most of whom no longer see the Iraq invasion as worth its price in US casualties, will tolerate a significant expansion in ground troop commitments beyond the 168,000 serving in Iraq and the Gulf states and some 47,000 deployed to Afghanistan, South Korea, the Philippines, and the Balkans.

One option is to return to the gunboat diplomacy of the Clinton era, to what Boston University's Andrew Bacevich describes as the calibrated application of airpower without ground force commitments "to punish, draw lines, signal, and negotiate." The Bush people, however, rail against such an option, and for good reason: whether it was Bill Clinton's fusillade of cruise missiles against Osama bin Laden's reported hideouts in Afghanistan and the Sudan or President Lyndon Baines Johnson's Operation Rolling Thunder against North Vietnam in 1964, air strikes are very limited in their impact against a determined foe. But then neither does the ground troop option fare any better, leading to the question: Is the US in a no-win situation?

The problem is that the Bush people have unlearned a vital lesson of imperial management: That, as Bacevich puts it, "Governing any empire is a political, economic, and military undertaking; but it is a moral one as well." If the Roman Empire lasted 700 years, says UCLA's Michael Mann, it is because the Romans figured out that the solution to the problem of overextension was not the deployment of more and more legions but the extension of citizenship first to local elites, then to all free men.

For much of the post-World War II period, in fact, the dominant bipartisan faction of the US political elite exhibited the Roman realization that a "moral vision" was central to imperial management. That was a world forged mainly by alliance-building, under-girded by multilateral mechanisms such as the UN, World Bank, and the International Monetary Fund, and resting on the belief that, as Frances Fitzgerald put it, "electoral democracy combined with private ownership and civil liberties, was what the United States had to offer the Third World."

National Security Memorandum 68, the defining document of the Cold War, was not simply a national security strategy; it was an ideological vision that spoke of a "long twilight struggle" against communism for the loyalties of the peoples and countries throughout the world. This cannot be said of the current administration's National Security Strategy document which speaks in narrow terms of the American mission mainly as one of defending the American way of life from its enemies abroad and arrogates the right to strike against even potential threats in pursuit of American interests. Even when the reigning neoconservatives speak about extending democracy to the Middle East, they cannot dispel the impression that they see democracy in the light of

*realpolitik* –as a mechanism to destroy Arab unity in order to assure the existence of Israel and guarantee US access to oil.

### ***A Return to Multilateralism?***

Can a more sophisticated administration undo the damage to US imperial management wrought by the Bush presidency by bringing back multilateralism and a “moral” dimension to empire?

Perhaps, but even this approach may be anachronistic. For history does not stand still. It will be difficult for a reinvigorated US-led coalition politics to douse the wildfire of Islamic fundamentalist reaction that will eventually bring down or seriously erode the staying power of US allies like the Saudi and Gulf elites. Going back to the Cold War era promise of extending democracy is unlikely to work with disenchanted people who have seen US-supported elite-controlled democracies in places like Pakistan and the Philippines become obstacles to economic and social equality. To revert to the Clinton era of promising prosperity via accelerated globalization won't work either since the overwhelming evidence is that, as even the World Bank admits, poverty and inequality increased globally in the 1990's, a decade of accelerated globalization.

As for economic multilateralism, financier George Soros' appeal for a reform of the IMF, World Bank, and WTO to promote a more equitable form of globalization may seem sound, but it is unlikely to draw the support of the dominant US business interests which, after all, torpedoed the WTO talks with their aggressive protectionist posture on agriculture, intellectual property rights, and steel tariffs, and their gangbuster attitudes towards other economies in the areas of investment rights, capital mobility, and the export of genetically modified products. Armed with the ideological smokescreen of free trade, the US corporate establishment is, in fact, likely to become even more protectionist and mercantilist in the era of global stagnation, deflation, and diminishing profits that the world has entered.

### ***Challenges***

And the future?

Militarily, there is no doubt that Washington will retain absolute superiority in gross indices of military might such as nuclear warheads, conventional weaponry, and aircraft carriers, but the ability to transform military power into effective intervention will decline as the “Iraq syndrome” takes hold

The break-up of the Atlantic Alliance is irreversible, with the conflict over Iraq merely accelerating the disruptive dynamics of differences building since the 1990's in practically all dimensions of international relations. Europe will most likely move towards creating a European Defense Force independent of NATO, though it will not challenge US strategic superiority. Politically, however, Europe will increasingly slip out

of the US orbit and present an alternative pole, pursuing regional self-interest via a liberal, diplomacy-oriented, and multilateral approach.

In terms of economic strength, the US will remain the dominant power over the next two decades, but it is likely to slip as the source of its hegemony, the global framework for transnational capitalist cooperation to which the WTO is central, is eroded. Bilateral or regional trade arrangements are likely to proliferate, but the most dynamic ones may not be those integrating weak economies with one superpower like the US or EU but regional economic arrangements among developing countries, or, in the parlance of development economics, “South-South cooperation.” Such formations as Mercosur in Latin America, the Association of Southeast Asian Nations (ASEAN), and the Group of 21, will increasingly reflect the key lessons that developing countries have learned over the last 25 years of destabilizing globalization: That trade policy must be subordinated to development, that technology must be liberated from stringent intellectual property rules, that capital controls are necessary, that development demands not less but more state intervention. And, above all, that the weak must hang together or they will hang separately.

Among the developing countries, China is, of course, in a category by itself. Indeed, China is one of the winners of the Bush era. It has managed to be on the side of everybody on key economic and political conflicts and thus on the side of nobody but China. As the US has become ensnared in wars without end, China has deftly maneuvered to stay free of entangling commitments to pursue rapid economic growth, technological deepening, and political stability. Democratization, of course, remains an urgent need, but the unraveling of China owing to its slow progress, which many China watchers love to predict to sell their books, is not likely to happen.

The other big winner of the last few years is what the *New York Times* called the world’s second superpower after the US. This is global civil society, a force whose most dynamic expression was the recent World Social Forum in Mumbai in mid-January. This rapidly expanding trans-border network that spans the North and the South is the main force for peace, democracy, fair trade, justice, human rights, and sustainable development. Governments as disparate as Beijing and Washington deride its claims. Corporations hate it. And multilateral agencies find themselves compelled to adopt its language of “rights.” But its increasing ability to delegitimize power and cut into corporate bottom lines is a fact of international relations that they will have to live with.

It is also global civil society that will roll back the assault on domestic liberties, and the international meeting taking place here is one manifestation of a rising coordinated resistance to further erosion of our civil and political rights.

A decreased US capacity to control global events, the rise of regional economic blocks as the multilateral system declines, rising assertiveness among developing countries, and the emergence of global civil society as an increasingly powerful check on states and corporations—these trends are likely to accelerate in the next few years.

History is cunning and mischievous, often playing an outrageous game of bringing about precisely the opposite than what its actors intend. “Full spectrum dominance” by the US in the 21<sup>st</sup> century has been the avowed objective of the neoconservatives that came to power with George Bush. Paradoxically, pursuit of this panacea by the current administration has accelerated the erosion of US hegemony. Of course, the US continues to be a mortal threat to global peace and justice, and it will for a long time. But like most past empires, it has committed the fatal act of overextending its reach. Its current leadership has failed to see that decline is inevitable and that the challenge is not to resist the process but to manage it deftly.

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## THE CANADIAN SECURITY AGENDA

By Roch Tassé, Coordinator of the ICLMG\*

Canada's anti-terrorism agenda, since Sept. 2001, is primarily driven by our government's obsession with keeping the Canada-US border open for business. This objective is rooted in the logic of what some academics now refer to as "deep integration" not only of our countries' economies, but also increasingly our policies and legislative framework.

And, as is the case in all uneven power relations, the agenda is imposed by the stronger player. Last May for instance, a report released by the US State Department deplored the fact that Canada places too much importance on civil liberties, which hinders the war against terrorism.

I would also like to quote here from a report from the Federal Research Division of the Library of Congress released this month that provides an overview of security threats in various countries and regions of the world.

On page 145: *"First, as a modern liberal democracy Canada possesses a number of features that make it hospitable to terrorists and international criminals. The Canadian Constitution guarantees rights such as the right to life, liberty, freedom of movement, freedom of speech, protection against unreasonable search and seizure, and protection against arbitrary detention or imprisonment that make it easier for terrorists and international criminals to operate."*

On page 147: *"Perhaps until recently, there has also not been widespread concern that Canada could be the victim of a terrorist attack. Sensitivity to civil liberties combined with this low threat perception has made both the adoption and the enforcement of tougher immigration laws and strong counter terrorism measures more difficult. The fact that the 2002 bill designed to make Canada's immigration laws less favorable to terrorists and international criminals is entitled 'Immigration and Refugee Protection Act' serves as an indication of the prevailing concern for or priority placed upon civil liberties in Canada."*

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\* Roch Tassé is National Coordinator of the International Civil Liberties Monitoring Group, a coalition of Canadian civil society organizations created to monitor the application of Canada's anti-terrorism agenda. Following his studies in political science at the University of Ottawa, he worked as a social worker and a journalist before joining the Ottawa-based NGO Inter Pares in 1985. For more than 15 years, he was responsible for the organization's programs in Central America and Mexico, with a special focus on peacebuilding, refugee and human rights protection, and democratic development.

According to sources quoted in the *Ottawa Citizen* article at the origin of the RCMP (Royal Canadian Mounted Police) raid at journalist Juliet O’Neil’s house and office, a few weeks ago, it is the same logic that would have prompted the US decision to deport Canadian citizen Maher Arar to Syria, where he was allegedly tortured. By virtue of the Canadian Charter of Rights and Freedoms, Canadian security services were not able to reassure their American counterparts that they would detain Mr. Arar if he were deported to Canada.

This is a good illustration of the type of blackmail that guides the incremental development of Canada’s anti-terrorism agenda. It has also contributed to the adoption of a disturbing policy discourse. One that promotes the idea that “security” will only be achieved at the expense of sovereignty and the civil liberties that Canadians have always regarded as fundamental.

A second driving factor behind the rapid adoption and the ongoing expansion of anti-terrorism measures is the eagerness of security and government agencies to use the “war on terror” as a convenient paradigm to promote their own agenda:

- Increasing the investigative and surveillance powers of security and police forces while diminishing the obligation for civilian scrutiny and public accountability;
- Tapping into the possibilities of new information technology for purposes of surveillance, data gathering, information sharing and profiling.

And all of this for purposes that are not limited to terrorism, but rather to also facilitate regular police work in anti-criminal operations as well as in the surveillance and intelligence gathering of political dissenters.

There are two components to Canada’s anti-terrorism agenda. The more visible one consists of legislation adopted or still being considered by Parliament. It includes, among other legislation, the Anti-Terrorism Act (C-36) adopted in haste in Dec. 2001, and Bill C-17 (Public Safety Act) which has been revived in Parliament last week and will now resume its course for review and adoption by the Senate over the next few weeks.

Less visible – and perhaps more worrisome – is the rapid and insidious harmonization of security measures negotiated in the context of non-legislated bilateral agreements and Memorandum of Understanding (MOU) with the US, such as the Smart Border Agreement.

Considered as a whole, these measures confer to the police and security agencies investigative powers, law enforcement tools and a level of discretion never imagined before in Canada outside the War Measures Act. The War Measures Act of 1970 severely compromised civil liberties, and precisely because of that, it contained a sunset clause and was put in place for a restrictive and pre-determined period of time. We then returned to normality.

This is not the case with the “war on terror”. The trend embodied in the anti-terrorism agenda could modify our justice and judicial system permanently. It forms a complex web of far reaching measures that are changing forever the relationship between the State and its citizens. It is part of an irreversible and incremental process that will alter forever the fundamental values, civil liberties and constitutional guarantees that Canadians have until now viewed as the pillars of Canadian democracy, particularly with regards to due process, the right to privacy and legitimate political dissent.

### *Review of C-36 and its implementation*

To begin to appreciate the impact of this agenda, let’s examine more closely some of its components. I shall not dwell too much on it because it is the measure that has received most media exposure and public attention, but reviewing quickly Bill C-36 is inescapable.

The Anti-Terrorism Act (Bill C-36) was adopted in a flurry and without much debate in Dec. 2001. It reflects similar legislation adopted around the same time by a score of governments, both in the industrialized world and in the South, in response to US pressures.

C-36 amended 20 other laws, including the Criminal Code, the Canada Evidence Act, the Security of Information Act and enacted the Charities Registration Act.

- C-36 grants police expanded investigative and surveillance powers;
- It allows for preventative detention and investigative hearings;
- It undermines the principle of due process by guarding certain information of “national interest” from disclosure during courtroom or other judicial proceedings;
- It allows individuals and organizations suspected of terrorist links to be placed on a list, and then subjected to very severe measures as a consequence;
- It calls for de-registration of charities accused of links with terrorist organizations.

All of these changes occur on the basis of a vague, imprecise and overly expansive definition of terrorist activity.

It is also noteworthy that C-36 contains several provisions for the issuance of security certificates and secret trials, a feature borrowed from the Citizenship and Immigration Act which very few Canadians knew existed until now.

Civil society organizations have expressed fears that it could be used to discourage legitimate political dissent, and provide fertile ground for discrimination against certain minorities.

But how has been implemented? What impacts has it had?

Although the Anti-Terrorism Act has not been used for preventative arrests, we know it has been invoked to obtain search warrants against domestic political activists and the media.

I am referring here to the case of a raid carried out by the Integrated National Security Enforcement Team (INSET) at the homes of two native activists in Port Alberni, B.C. on Sept. 21, 2002. The purpose of the raid was supposedly to search for weapons. No weapons were found, but the entire neighbourhood was evacuated for hours as a “safety precaution”.

And there is of course the high profile case of journalist Juliet O’Neil, of the *Ottawa Citizen*, whose home and office were raided by the RCMP just a few weeks ago. The police invoked Section 4 of the Security of Information Act (as amended by C-36) in an attempt to identify the source of leaked information quoted in O’Neil’s article that I referred to, earlier.

The incident provoked public outrage at the implications of C-36 on freedom of the press in Canada. It even prompted members of Parliament, from all parties, to call for a review of the legislation. It also probably was the last in a series of embarrassments that motivated Prime Minister Paul Martin to finally announce a public inquiry in the Arar case, a measure the government had resisted for months.

C-36 has also served other purposes, without even being formally invoked. According to Muslim and Arab community leaders, it has served on a wide scale to intimidate members of Arab and Muslim communities into granting “voluntary interviews” to RCMP and CSIS (Canadian Security and Intelligence Service). We will hear more on this topic in another panel this afternoon.

It has also served to intimidate political dissent. In its 2001 annual report CSIS identifies certain violent fringes of the anti-globalization movement, and animal rights activists as an ongoing security concern for Canada. Activists have reported being visited by CSIS agents (for instance in Quebec City Jan. 8, 2004), seeking information on other activists and allegedly trying to recruit informers.

Finally, we have no means of knowing to what extent C-36 has been used to increase or facilitate police surveillance because there is no obligation to account publicly when invoking its provisions.

None of these police interventions seem to have much to do with what most of us in this room would commonly view as international terrorism. However, the definition of terrorism, or at least its interpretation by security agencies, is already having a chilling effect on freedom of association and the right to political dissent.

While public attention focused on C-36, security agencies have relied primarily on the Immigration Act to support their more serious efforts against individuals they have publicly portrayed as a risk to national security: namely refugees and immigrants. This should not come as a surprise. After all, “preventative arrests” provisions in the Immigration Act are more draconian than the 72-hour limit of the Anti-Terrorism Act. Not to mention the lack of transparency and public scrutiny offered by the procedure of security certificates and secret trials contained in the Act. This theme will be developed by Janet Dench later this afternoon.

### ***Examination of Bill C-17 and the Smart Border Agreement***

Now let’s take a look at Bill C-17 and the Smart Border Agreement, since they are so intimately related in purpose.

C-17 (Public Safety Act), which is to be examined in the Senate over the next few weeks is another complex omnibus bill that will amend over 20 other laws. It contains provisions for the collection and sharing of personal information between airlines, CSIS, RCMP, other police forces and various government agencies, as well as with foreign governments, for purposes that go beyond air safety and national security. These provisions aim to facilitate the regular work of police forces and government agencies by harnessing the potential offered by new information technologies.

When examined in juxtaposition with the 32-point Smart Border Action Plan, it is obvious that the provisions for personal data collection and information sharing contained in Bill C-17 will be implemented at the expense of Canadian constitutional protections, especially in regards to the right to privacy.

In many aspects, C-17 is a piece of legislation that deals with the nuts and bolts of implementing the 32 point Smart Border Agreement which calls for increased coordination and information sharing between Canadian and U.S. police and intelligence services. It also calls for the harmonization of our refugee, immigration and security policies.

Let me read some of the highlights of the Smart Border Action Plan:

- Share Advance Passenger Information (API) and Passenger Name Records (PNR) on flights between Canada and the US;
- Establish joint passenger analysis units at key airports in both countries;
- Develop jointly a compatible and automated immigration databases, such as Canada’s Support System for Intelligence, as a platform for information exchange, and enhance sharing of intelligence and trend analysis;
- Establish joint teams to analyze and disseminate information and intelligence, and produce threat and intelligence assessments.

It is all about data gathering and integration of databases, information sharing and risk assessment by computer generated profiling. Under the Customs Act enacted by the

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passage of Bill S-23 in Nov. 2001, Canada Customs currently has access to all information in airline or travel agent reservations systems relating to travelers arriving in Canada, and can share the information widely.

Furthermore, Bill C-44, which received royal assent in Dec. 2001, amended the Aeronautics Act and Canada's privacy laws to authorize Canadian air carriers to provide information on passengers to competent authorities in foreign states.

While such legislation received little public notice in Canada, similar agreements between the EU and the US are at the heart of major controversy in the European Parliament at the moment. Parliamentarians are concerned that European passenger data shared with the US will receive little or no protection and is likely in violation of the privacy rights of European citizens.

However, Anne McLellan, head of the newly created Department of National Security, wants Canada to collect information on all outgoing air travelers and domestic air travelers as well. She says this is why Bill C-17 must be passed: it will give the government legal authority to go further.

The creation of this "Big Brother" database –API/PNR – represents a deeply troubling move towards what can only be viewed as a cornerstone for a parallel system to the draconian US security regime.

Even though Bill C-17 has not yet been adopted, measures already agreed upon under the Smart Action Plan are being implemented, or about to be implemented, with much discretion. A case in point is Canada Customs and Revenue Agency's multi-million dollar plan for an air-scoring system. That program is secretly being set up with American authorities to screen individuals who could pose a risk to national security, be it for terrorist or other criminal or suspicious activity. A new National Risk Assessment Centre opened in Ottawa in mid-January to implement the program. It will receive all passenger information, analyze it, and share it with US counterparts. Information will flow south of the border where it will be stocked, managed and used by US agencies as they please.

It will be fed into the US program known as CAPPS II (Computer Assisted Passenger Program, version 2), a computer-generated program that will profile all airline travelers using a massive data base and secret criteria to assign threat levels. The information will be matched against both government and corporate sector databases. Travelers will then be rated as "red", "yellow" or "green" risks. A "red" rating will prevent you from flying. "Yellow" will allow for interrogation and detention. The criteria used by Canada for arriving at risk ratings will be the same as those used in the US.

The US Transport Security Administration has been running a similar program known as the "No Fly List" for some time. It has prevented American peace and environmental activists from flying, and hundreds of others have missed flights while being detained for interrogation.

The Bush administration is seeking similar bilateral agreements with other countries to have them collect and share the same kind of air traveler information. It will serve not only to feed into the CAPPs risk assessment program, but also in the US VISIT program. The goal of the US VISIT scheme is to eventually create a lifetime history of all travelers. Since a few weeks ago, foreign visitors are now being welcomed by being fingerprinted, photographed and catalogued in a database.

Both CAPPs II and the US VISIT program are part of a broader scheme to collect and retain personal data on all citizens of the planet. They also provide the foundation towards the establishment of an international infrastructure for total surveillance of movement.

Over the last two years, the US government has acquired access to data on hundreds of millions of residents of 10 Latin American countries through a private company called Choice Point. These include for example the entire voter registry of Mexico, as well as Colombia's entire citizen-ID database. Choice Point's subsidiary, Database Technologies, is the company who was responsible for the reorganization of electoral list in Florida that led to George Bush's victory in 2000.

Under this grandiose scheme of Orwellian proportions, the presumption of innocence is reversed and everyone becomes a suspect. Why else maintain a database of people who are presumably innocent?

The ICLMG regards this initiative as leading toward information mining, monitoring and pattern analysis equivalent to or worse than practices of the most reprehensible of security forces in dictatorships. It is antithetical to a free and democratic society.

The Arar case really encapsulates all the dangers of more information sharing and integration of personal databases with the US. And cases like Arar will become more common as the US continues to pressure countries around the world to share information on their own citizens.

Once the information is in the hands of American agencies, there is no control whatsoever on how it will be used. The problem is that foreigners traveling through the US have no rights, become vulnerable to extra-judicial proceedings and can be deported on mere suspicion to countries with no regard to human rights.

And there is no single Canadian agency, department or constitutional rights that can protect you. We are giving all this data to the US and they will do as they please with it.

If Canada continues along this path, we will *de facto* be trading the civil liberties and human rights of Canadians to accommodate the demands of "deep integration" with our Southern neighbour. We will hear more from our American colleagues on this during the next panel.

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### *Conclusion*

Since the Anti-Terrorism Act appears to have proven not that useful, or necessary, in the fight against international terrorists, but has served instead to intimidate domestic political dissent and members of racial and religious minorities, it should be the object of an accelerated and exhaustive review.

The third year anniversary review of C-36, which in principle one would expect to occur at the end of this year, if carried out seriously, could provide a unique opportunity to undertake a critical and public review of the whole anti-terrorism agenda. This would be a perfect mandate for the new House of Commons Standing Committee on National Security. The review should not be limited to C-36, but also include a thorough re-examination of information sharing agreements with the US.

It should aim to reinstate due process and ensure that Canada's response to terrorism is proportional to the apparent risks in any given situation, and is sharply focused on the goal of fighting terrorism.

The anti-terrorism measures should also be reviewed within the framework of an honest and genuine risk assessment. It is noteworthy that our Canadian Charter of Rights and Freedoms guarantees that those rights can only be subjected to reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The key here is "demonstrably". This has led some analysts to comment that Bill C-36, C-35, and the pending draconian C-17 might violate Section 1 of the Constitution because the need for the constraints they impose on a free and democratic society was never demonstrated.

Consequently, no new legislation should be adopted, especially not Bill C-17 about to be examined in the Senate, until such a review has taken place, until the results of the public inquiry in the Arar case are made public, and until the implications of information sharing and integration of personal databases with the US are fully understood by parliamentarians, policy makers and Canadians at large. The shift in Canadian public opinion over recent months would appear to likely support such a balance and more moderate approach.

## PERSPECTIVES FROM “AMERICA”

### IMPACT OF US SECURITY MEASURES ON CIVIL LIBERTIES AND DEMOCRACY

By Jeanne Herrick-Stare, Friends Committee on National Legislation\*

Good morning! Although the weather outside is very cold, I have received a warm Canadian welcome here in Ottawa. Many thanks to our hosts and the organizers of this forum.

I have three main points that I'd like to cover today:

- Government surveillance of lawful conduct;
- Concerns about diminishing public information and diminishing individual privacy;
- The erosion of the balance of power between the three branches of government in the US – the legislature, the courts, and the administration.

Before I discuss those three main points, I have a quick preface about my own personal bedrock: freedom of expression. Freedom of expression includes and is interwoven with the freedom to read, the freedom to pursue research, the freedom to explore ideas, to write, to publish, to e-mail. It includes the freedom to talk without constraint, to discuss, to debate, to inquire, to lobby, to petition, to assemble without fear, to protest. It is by pursuing these activities that we can achieve the real security we so long for, because it is through the process of exploration, consideration, and discussion that communities can achieve creative solutions to the new problems that confront us in the modern world. Now, getting back to the three main points of my remarks today.

First, the government surveillance of lawful conduct has escalated since the Sept. 2001 attacks. Most of us have read media reports about so-called “sneak and peek” secret searches in homes and businesses (as opposed to the recognized standard of “knock and announce,” during which the agent can delay notification and has wide latitude in the scope and location of the search); “John Doe” wiretaps in which the wiretap warrant is issued without location or identity of the target; Internet usage monitoring; and secret warrants for surveillance of business records, including library and banking records.

This conduct by government agents and employees is clouded over by the use of sound-bite language in a way that confuses rather than clarifies the problem, the authority for government action, and the rights of the individual. In addition, unclear definition of

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\* Jeanne Herrick-Stare serves as Senior Analyst on Civil Liberties with the Friends Committee on National Legislation (FCNL), a Quaker lobby in the public interest. Jeanne's focus is on the erosion of civil liberties in the US during the post-9-11 era, with concentration on protecting freedom of expression, resisting government surveillance of lawful conduct, restoring a free flow of public government information, and reversing the growing imbalance of power between the branches of the federal US government.

language can contribute to “mission creep”, so that what was yesterday’s criminal act becomes today’s act of terrorism. A few examples:

- “Terrorism”: Terrorism is a technique for killing people, not the name of an enemy. It has been used throughout history, and has, in the past, been dealt with as a national or international law enforcement problem.
- “Terrorist groups”: Organizations that use the technique of terrorism are also sometimes groups that provide for the distribution of humanitarian aid. The government should, but doesn’t, attempt to sort out a group’s functions and actions – to encourage the beneficial outcomes while sending law enforcement after the criminal activities. In addition, groups that have been labeled as terrorist groups by the US have been described by others as freedom fighters, seeking relief from brutally oppressive rulers.
- “Material aid to terrorist groups”: My mom used to tell me that if I wasn’t doing anything wrong, I didn’t need to worry about getting in trouble. I didn’t need to be afraid of the teacher, the principal, the policeman. But, that comfortable state of affairs depends on everyone having the same definition of what constitutes “wrongful” conduct. Material aid to terrorist groups, named by the US State Department without any challenge available except from the group itself, is “wrong” to the Administration. But, what if my focus is on the hungry, for whom I will provide food; the cold, for whom I will provide blankets; or the sick or injured, for whom I will provide care and medical supplies? For me, “wrong” is not caring for those in need. When providing humanitarian aid becomes an act viewed as “wrong”, I have a serious problem with my Mom’s advice. The example of humanitarian aid can be extrapolated to other actions, for example, providing legal services to those accused of terrorism, or providing other benign non-governmental advice or service.
- “War on terrorism”: The “war” that the US Administration uses as a basis for its broad use of military activities, including the right to name individuals as “enemy combatants,” is the armed conflict in Afghanistan. The US Congress approved the use of military force to avenge the 9-11 attack on the US, and the Administration has continued to rely on that vote, even after a new government was established in Kabul. The Administration claims that we are at war all over the world – even on our own soil and with our own citizens, much less with the al-Qaeda and Taliban personnel our military forces encountered in Afghanistan. And, the Administration has not given any indication of when, or whether, this “war” will ever come to a conclusion.
- “Security”: What constitutes security for me? My physical safety? The safety of my home? The safety of US national boundaries? No. For me, security means having the right to freedom of expression. Remember? Freedom to read, research, explore ideas, write, publish, e-mail, talk, assemble, discuss, debate, inquire, lobby, petition, and protest. That is my security.
- “Us” and “them”: It is easy to assume that “we” are law-abiding, while “they” are dangerous. However, too often the silent subscript reveals that the “us” is the racial and cultural majority, the group with financial, educational, and political power. Meanwhile, the “them” is people of colour, people of minority religions, immigrants, people who are not fluent in English, Muslims, those from the

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### Middle-East or South Asia.

The second main topic I want to mention is the contrast of government secrecy and individual privacy. We are experiencing an unprecedented degree of government secrecy about public information, at the same time that the Administration is reverting to policies of the mid-20<sup>th</sup> century to intrude into individuals' personal privacy, using the techniques of the digital age. These trends are alarming in a democracy grounded in individual autonomy and governmental transparency.

Astounding reams of previously public information have been removed in the past two and half years from public access from government archives, publications, and postings on agency websites. The standard for granting Freedom of Information Act requests for specific agency information has been changed to make access to government information more difficult. The Administration refuses to provide congressional committees with information unless pressed repeatedly, and then only grudgingly complies as narrowly as possible. The amount of information being re-classified to some category of secret status is increasing at a rate that alarms seasoned government-watchers, all this in the name of "national security."

And yet, as a curtain of secrecy draws over the life of the government, individuals' private lives are increasingly opened to government access. Data mining of commercial databases is being pursued by several agencies, even in the wake of closure of the "Total Information Awareness" program. The CAPPS II (Computer-Assisted Passenger Pre-Screening System, version 2) information database and colour risk-ranking is being ramped up. Plans for a national identity card or biometrically-enhanced national driver's license are being floated. The surveillance techniques I mentioned earlier are opening closed doors without probable cause of criminal conduct. The danger to preservation of our First Amendment Rights (reading, researching, exploring ideas ... you remember the list) is ominous indeed.

And, for my last topic this morning, let's look a bit at the growing imbalance of power between the branches of US federal government. The US federal government system provides that each of the three arms of government curb the other two in a hydraulic-type mechanism, each keeping the power of the other two branches at a minimum while still allowing provision of government services.

The Administration has usurped power through its exploitation of the "war" scenario and the President's military commander-in-chief status. It has created "enemy combatant" status with indefinite, *incommunicado* detention under intensive interrogation efforts, outside the bounds of US criminal law, international human rights law, and the international laws of war, outside of all law. It established the Guantánamo Bay, Cuba, prison facility for non-citizen "enemy combatants" as well as prisons in Bagram, Afghanistan; Diego Garcia in the Indian Ocean; and elsewhere in the world – complete with "torture lite" stress-and-duress interrogation and rendition to nations that practice torture in anyone's book. It also created the deficient "military tribunal" system for

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consideration of charges it brings against its “enemy combatant” prisoners, if indeed they are ever charged.

Is Congress slumbering? We have a situation now where the same party controls both houses of Congress and the Administration, and the effect is complete domination of congressional discourse by the President. Majority power, especially in the House of Representatives, is being wielded ruthlessly – woe be unto the moderate Republican who strays from the reservation. Because the majority party, by congressional rule, holds the chairmanship of the various congressional committees, even relatively modest legislative attempts to rectify post-9-11 civil liberties excesses die a quiet death in committee.

The Administration has used the federal courts’ deferential standard toward military and national security matters to avoid judicial oversight of both domestic and international Administration actions. As we move farther in time from the Sept. 11, 2001, attacks, the federal US courts may be warming to more independent review of various Administration actions: time will tell.

The only bright spot in this otherwise bleak landscape is the nationwide grassroots movement to pass local resolutions claiming the right of the local jurisdiction to protect civil liberties even in the face of the federal statutes, Executive Orders, and agency regulations. To date, nearly 250 towns, cities, and counties, and three states (Hawai’i, Alaska, and Vermont) have passed these resolutions, with more communities added to the list each week. Although for the most part they do not have the teeth of legal enforcement power, they are becoming a unified and organized national public voice that is beginning to warrant the Administration’s wary eye. Attorney General John Ashcroft even conducted a tour last August, speaking to private law-enforcement audiences across the US, to attempt to counteract the impact that local resolutions are having. The people are determined. They will not be silenced. The community resolutions movement will remain one of the most definitive and dramatic elements of this post-9-11 period.

## CIVIL LIBERTIES IMPLICATIONS OF THE USA PATRIOT ACT

By Jameel Jaffer, American Civil Liberties Union\*

I have been asked to speak today about the Patriot Act. The topic is far too broad for me to be able to treat it comprehensively so I am going to focus on how it was passed, what it says and what legal challenges have been filed and what challenges are likely to be filed to it in the next few months.

Before I begin, I would like to define some American terms with which you may not be familiar. In the United States, the First Amendment protects freedom of expression, freedom of religion and freedom of association. The Fourth Amendment protects privacy: protects citizens against search and seizures and generally requires the government to show probable cause before it engages in an intrusive search of person's home or office or wiretaps his or her phone.

The Patriot Act was passed in the wake of the Sept. 11, 2001 attacks and signed into law by the president on Oct. 26, 2001. The Act is hundreds of pages long and includes dozens of provisions pertaining to, amongst other things, immigration, banking and transportation. The Act's most pernicious, or at any rate most controversial, provisions have to do with surveillance.

The surveillance provisions dramatically expand the authority of the federal government to monitor the activities of people living in the US. The surveillance provisions fall into two categories: Those applying to changed criminal law, those changing the Foreign Surveillance Intelligence Act (FISA).

### *Expansion of Surveillance*

To understand these changes you need to understand a bit of the history of surveillance, particularly political surveillance in the US.

In the 50s, 60s, and 70s, the FBI routinely monitored the communications of the NAACP (National Association for the Advancement of Colored People) and student democracy organizations, which the FBI regarded as dangerous and vaguely communist. The FBI did not rely on any statutory authority to engage in this surveillance: It did not seek approval of any court, rather it relied on what it regarded as its inherent authority to engage in executive surveillance to protect the nation against internal and external threats.

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\* Jammal Jaffer is staff attorney for the National Legal Department of the American Civil Liberties Union. His practice has focused on 9-11-related issues and in particular on government surveillance and secrecy. He currently represents a diverse coalition of civil-rights, immigrants' rights, and religious organizations that together have filed the first constitutional challenge to the Patriot Act.

In 1976, the Senate conducted an inquiry into the FBI's activity and it showed that it had conducted clandestine searches in offices of political organizations, it showed that the FBI had harassed Martin Luther King, it showed that the FBI was essentially out of control.

In 1978, following the Church Report, the US Congress adopted the FISA. It is not by any stretch of the imagination a pro-civil liberties piece of legislation but it is much better than what existed before which was a blank check for the FBI.

FISA created two surveillance systems: One for law enforcement surveillance and the other for foreign intelligence surveillance. The law enforcement system is surveillance that the FBI engages in when its primary purpose is to gather evidence of criminal activity. Foreign intelligence surveillance is what FBI engages in when gathering foreign threats to the country.

The FBI was required to go to an ordinary federal judge, seek an ordinary search warrant based on probable cause, when its main purpose was law enforcement. When its primary purpose was foreign intelligence under FISA, the FBI went to a secret intelligence court, called the FISA Court, and showed something less than probable cause and got something that looked like a warrant. We call it a court order because it's not based on probable cause. Of course it is not a pro-civil liberties statute but it's a lot better than we had before.

That is where we stood before the Patriot Act.

### ***Material Support***

The Patriot Act added "predicate offences" to the wiretap statutes. Under domestic law as it existed before the Patriot Act, the FBI could not get a wiretap order except in the investigation of a particular serious crime. The Patriot Act expanded the list of crimes. Although most of the expansion is relatively unobjectionable, it did lead to the addition of "material support" to the list of predicate offences, material support to terrorist groups. The material support provision is quite broad and the FBI has read an already broad provision even more broadly.

Allow me to give you two examples:

- The Lynn Stewart case. Ms. Stewart is a The New York lawyer being prosecuted for providing "communications equipment" to a terrorist organization. In this case, the "communications equipment" is her telephone. She made a number of phone calls that the FBI says, were intended to pass messages from her client, to her client's co-conspirators. The FBI says that constitutes "material support" to terrorist organizations
- Sami al-Hussayn moderated a listserv for an organization in Boise, Idaho, on which other people posted messages that the FBI regards as "material support" to

terrorists. Mr. al-Hussayn has been indicted for conspiracy to provide material support.

You see how broadly the FBI is reading that statute and “material support” is now a predicate offence under the new provision of the Patriot Act. The CCR has successfully challenged one aspect of the material support statute and the ACLU is involved in another aspect in the Sami al-Hussayn case.

### *Sneak and Peek*

Another major amendment made to the criminal laws by the Patriot Act is known as the “sneak and peek” provision. This section 213 of the Act allows the FBI to conduct a search in a criminal investigation without telling the person who is the subject of that search until later. Until the adoption of the Patriot Act, if the government searched your home in a criminal investigation, it had to tell you about it right away.

There is a constitutional principle in the US known as the “knock and announce” principle that requires the FBI to notify a person before his or her home is searched. It also applies in wiretaps. The FBI does not obviously tell you right away but they are required to tell you within a reasonable amount of time, that they wire-tapped your phone or that they intercepted your e-mails. This “sneak and peek” allows notification delay. The FBI can then search a journalist’s home without telling her until later.

The provision is not limited to terrorism cases. It is available to the FBI in any criminal case and the FBI has used it quite extensively already. We know from FOIA requests that FBI used it almost 100 times in the first year. It has been used quite liberally.

Section 215 of the Patriot Act (which amends FISA), which many regard as the most invasive of all surveillance powers, essentially allows the FBI to order any organization to turn its records over to the government. There was a similar provision even before, but it was limited to certain kinds of organizations. The FBI could go to vehicle rental agencies or to hotels and get their records if they had reason to believe that the records pertained to person who was a foreign agent, a spy.

The spy requirement is gone under the new law so the FBI can get anyone’s records and there is no more limit to the kinds of organizations. It is not longer just vehicle rentals and hotels, but it can go to a library and demand all of its circulation records, or to a hospital and demand all of its medical records without meeting probable cause, that is, without demonstrating any reason to believe that the surveillance target is engaged in criminal activity or espionage.

One of the reasons we are worried about these provisions is because we have seen the way the FBI has used similar powers in the past. In 60s, state governments routinely demanded the membership of the NAACP chapters all over the US. Their argument was that they believed it was connected to communist activities but they didn’t actually think the members of the NAACP were connected to communists. They were demanding the

list because they thought that by demanding them they could discourage association with the NAACP.

This is something that came out of the Church Report in 1976 and that is the way we fear the FBI will use this provision now to discourage association with disfavoured organizations.

The US Attorney General John Ashcroft was questioned in Congress about this a year ago and he boasted that the provision could be used to get membership lists, computer records, and genetic information. It's a very broad provision and the ACLU has challenged it on behalf of a number of religious and immigration organizations in Michigan and that challenge is still before the District Court in Michigan.

When I participate in these kinds of panels, someone always says: "Doesn't the FBI have to go to court to get one of those orders? What's the problem?" The answer is that it does have to go to the FISA Court to get approval for a section 215 order. However this court has been around since 1978 and has heard about 15,000 applications for surveillance court orders. In all that time it has not even turned down one application.

You can see what kind of meaningful check the FISA Court has been on FBI surveillance. The FBI's answer to that of course, is that they are really diligent about checking their facts before submitting an application.

### *National Security Letters*

There are FISA powers for which the FBI does not have to go to court at all. Section 505 of the Act expands the FBI's authority to issue "National Security Letters" (NSL) which allows the attorney general to unilaterally write a letter to any organization – that is involved in certain kinds of activities (that limitation was a real limitation until recently) and demand their records, without applying to a court either before or after.

I expect someone will challenge that law. But there is presently a gag that prevents anyone who has been served with an NSL from telling anyone else about it. The same gag is found in section 215. It is worded so broadly that many people believe, when they receive this kind of NSL, that they can't even talk to their lawyer. If you can't talk to your lawyer it is unlikely you are going to bring on a legal challenge. But thankfully there are people in the country who are willing to place themselves in jeopardy by talking to lawyers, so we know that certain people have been served with these orders. I'd be surprised if somebody would not file a challenge soon.

## EXECUTIVE DETENTION AND “EXTRAORDINARY RENDITION” AS COUNTER-TERRORISM TOOLS IN THE UNITED STATES POST 9-11

By Steven Watt, Center for Constitutional Rights\*

Since the terrorist attacks of Sept. 11, 2001, the US Executive, in the name of counter-terrorism, has mounted a wholesale attack on the rule of law. Perhaps the most troubling and controversial of these measures have been the indefinite detention of some 700 foreign nationals at Guantánamo Bay, Cuba; its creation of a new legal status of detainee, the “enemy combatant”; the use of torture during interrogations and the farming out of torture, or as it has been euphemistically described, “extraordinary rendition.” Rather than taking place within a framework of legality, these detentions and practices, are taking place within a grey area and fall outside of accepted notions of the rule of law.

Executive detentions in the US for counter-terrorism purposes have by and large taken place under a number of different legal mechanisms in existence prior to Sept. 11, 2001 and, not the USA Patriot Act or the President’s Military Order. The President approved a military order on November 13, 2001, which not only established military commissions for trials of al-Qaeda suspects but also authorized the indefinite detention of terrorist suspects. Rather, the Executive has resorted to the Material Witness Act and Immigration Acts 1996 and their regulations, in addition to the President’s amorphous powers as Commander-in-Chief and laws of war.

### *Adapting the Laws of War to Facilitate Executive Detention*

In the post Sept. 11, 2001 era, the US government has adopted an expansive interpretation of the laws of war to justify the arrest and detention of an estimated 3,000 individuals worldwide, as explained in President George Bush’s State of the Union Address on Jan. 28, 2003.

Historically, the laws of war are applicable only in time of war and they include the Geneva Conventions. However, the US Government asserts the right to apply them to the present situation by conceptualizing the “war against terrorism” as an international armed conflict and its counter-terrorism operations as a military operation rather than a criminal law enforcement operation.

The consequences of this interpretation are far-reaching for civil and human rights. Under the laws of war, opposing forces, in this case, the US and al-Qaeda can take one another out and detain one another in circumstances that criminal law would absolutely prohibit.

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\* A fellow with the Center for Constitutional Rights, New York (CCR), Steven has been responsible since Nov. 2001, for the coordination of CCR’s litigation efforts in relation to government measures adopted post Sept. 11, including cases before both domestic courts and the Inter-American Commission on Human Rights concerned with the detention of immigrants by US Immigration authorities, and, US and non-US citizens as “enemy combatants” in the US and Guantánamo Bay, Cuba. Most the CCR filed suit against the US government for Maher Arar’s unlawful removal to torture in Syria.

Not content with applying these very broad laws of war as they have been traditionally interpreted, the Executive has adapted them for its own purposes and by choosing those aspects of the laws of war which suit its purposes for the moment while disregarding those that it considers unduly burdensome or inconvenient.

Although the Guantánamo detainees have been picked-up on a battlefield proper the US government has unilaterally decided that the Geneva Conventions do not apply.

Using this novel approach to the laws of war, the Executive has created a new legal status of detainee, the “enemy combatant.” This term as used by the Executive has no set meaning under either domestic or international law; it is entirely a creation of the Executive. As defined by the Executive “enemy combatant” status is a Presidential designation which once assigned, is subject to little if any judicial scrutiny, and strips the designee of all constitutional, humanitarian and human rights protections. The individual once designated can be detained for the duration of the “war against terrorism” and during this period, coercively interrogated and denied all access to counsel or family members.

The largest number of these so-called “enemy combatants” is detained at Guantánamo Bay, Cuba. Guantánamo Bay is held by the US on an indefinite lease signed between US and Cuba, in 1903. By virtue of this lease, jurisdiction and control vests in the US but ultimately sovereignty vests in Cuba. The US military first began transfers to Guantánamo Bay in January 2002 and there has been a steady influx since that date.

Shortly after the first detentions at Guantánamo, the CCR filed a *habeas corpus* suit on behalf of two British and two Australians nationals challenging their detention under both, the Constitution and international law, including the Geneva Conventions.

### ***Detention of Non-US Citizens as “Enemy Combatants” at Guantánamo Bay***

Both the district court and D.C. Circuit court of appeals found that, as foreign nationals detained outside the sovereign territory of the US, these individuals had no constitutional or international law rights recognizable in US law courts. As a result they could not challenge the legality or the conditions of their detentions by *habeas corpus* or otherwise in US federal courts.

It is quite an extraordinary principle that the courts have carved out in these rulings because it means these “enemy combatants” can be indefinitely detained. These individuals could be subjected to torture, they could be put against to the wall and shot and yet, American courts would be unable to oversee what the Executive is doing in Guantánamo Bay. Essentially, the Executive is telling the American people and the international community: “Trust us.”

Theoretically, under this principle, the US military could fly tomorrow to Ottawa: Pluck Canadian citizens off the streets; spirit them off to Guantánamo Bay and hold them indefinitely, and the courts would be unable to do anything to address their detention. There's little known about the conditions of detention at Guantánamo Bay. We do know they are held virtually *incommunicado*. Some letters do get out through the International Committee of the Red Cross (ICRC) but they're periodic. Some of our clients' families have not heard from their sons for four or five months, and the letters are heavily-censored.

None of the Guantánamo detainees have been charged. About 84 have been released on the basis that they pose no further security threat to the US or are of no further intelligence value. Not all those detained in Cuba were plucked off from the Afghan battlefields. Many were taken far from there: From Pakistan, some from Africa, and six, from Bosnia, in Europe.

As a result of the international outcry related to these detentions and due to a number of influential *amicus* briefs filed in support of our (CCR) petition, the Supreme Court in November 2003 decided to review these lower court rulings. It will look at the narrow issue of whether the US courts lacked jurisdiction to consider challenges to the legality of detention of foreign nationals captured abroad and held in Guantánamo Bay.

The oral hearing is due in April 2004 and we are cautiously optimistic that the court will reassert the rule of law and find that there is jurisdiction. If it rules in favour of the CCR's petition, our clients will not be released but it will allow them, and all approximately 660 other detainees, the right to appear before the courts in the US to challenge the legality of their detention.

### ***Detaining US Citizens as "Enemy Combatants"***

Not only are foreign nationals detained as "enemy combatants" but there are also two US citizens presently detained in mainland United States in the same conditions as Guantánamo. A third man, a Qatari national and US resident, is also detained as an "enemy combatant." Two of the men were arrested in the US while the third, Yasser Esam Hamdi, was allegedly arrested in Afghanistan.

One of the CCR's clients, Jose Padilla was entering the US, via Chicago International Airport, when he was arrested under the criminal justice system. Subsequently designated "enemy combatant", he was transferred to the military system of justice. He has been held *incommunicado* for close to two years with no access to his family and only, just in the last couple of weeks, has the government afforded him a limited right of access to counsel.

The case of Hamdi is now before the Supreme Court for review and I believe it is inevitable that Padillo's case will also be reviewed. We can expect a final Supreme Court decision on the legality of these detentions.

### *Use of Torture and “Extraordinary Rendition” as Counter-Terrorism Tools*

The US government has resorted to arbitrary detentions in the case of “enemy combatants”, but it has gone further by using “stress and duress” techniques, to obtain information from detainees.

“Stress and duress” techniques, as the government calls them, consist in interrogations where the detainees are deprived of sleep, subjected to extremes of heat and cold or forced to stand in awkward positions for extended periods of time. These methods are in use at the Bagram Air Force Base (Afghanistan), Diego Garcia (in the Indian Ocean), and most probably in Guantánamo Bay too since the same agencies are involved in all three camps.

“Stress and duress” techniques are also used as an alternative to another practice of the US of sending or “rendering” persons whom it suspects of terrorism to so-called “friendly” third countries which have a long and well-documented history of interrogating suspects under torture, such as Morocco, Syria, Egypt and Jordan.

The practice of rendition was in existence prior to Sept. 11. States resorted to this practice where they either lacked formal extradition relations with a requesting state, or where they sought to circumvent the legal constraints imposed by extradition proceedings.

Following Sept. 11, 2001, reports suggest the US increased the instances it will resort to rendition of terrorist suspects it even if it violates its own domestic law and international human rights obligations under the *Convention Against Torture (CAT)* a treaty which it has signed and ratified. The CAT includes express provisions prohibiting the sending of individuals to countries where there is substantial likelihood that they will be subjected to torture.

There are five recognizable categories of “rendition” that I have identified from newspaper reports:

- Battlefield seizures of Taliban combatants and Afghans and rendition to Guantánamo;
- Seizure and transfer of persons suspected of involvement in the Afghan conflict and transfer to Guantánamo, one of which is a British national who was picked up in Zambia and taken to Guantánamo;
- Seizure and transfer of persons arrested and detained in connection with the “war against terrorism” among those would be the six men picked up in Bosnia and sent to Guantánamo and two British residents picked up in Gambia, taken to Bagram Air Force base and subsequently to Guantánamo;
- Irregular rendition from the US of persons suspected of terrorism among them Maher Arar;
- Conventional extradition between democratic governments to the US, which are subject to full judicial process.

The case of Maher Arar represents the first legal challenge to the US policy of “extraordinary rendition.” Aside from the fact that government departments involved – the Departments of Justice and Immigration as opposed to Central Intelligence Agency (CIA) – this case bears all the hallmarks of “extraordinary rendition.”

Late last month, the CCR filed suit on behalf of Mr. Arar against officials involved in his removal. The suit alleges that the US and these officials were responsible for aiding and abetting his torture, because they knew that Mr. Arar would be subjected to interrogation under torture in Syria. They were as responsible as the Syrian officials who beat him with a rubber rod.

### *Conclusion*

Deprivation of liberty (without any form of review or process) and torture, however it occurs, whether it be with a rubber rod or rendering to countries that practice torture, violate some of the most fundamental principles under US and international law.

The US is directly undermining its credibility at home and overseas by disregarding these standards. It is increasingly more difficult for it to build the international coalitions that are now of fundamental importance to the world’s security. How is the US going to fight its war against terrorism if it doesn’t have the support of the international community?

Also it is setting a dangerous precedent in denying to persons within its control these protections. These practices are already being emulated by less powerful and less democratic countries resulting in risks for everyone, including Americans. Finally, by acting in such a manner, there is a very real danger that more, not less terrorists will emerge, making us all, a lot less safe, not safer.

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## THE VIEW FROM EUROPE

By Ben Hayes, Statewatch\*

### *Introduction*

Before Sept. 11, 2001, the UK already had some of the most developed anti-terrorism legislation in the world. Since the first terrorism act in 1972 to combat the Republican movement in Northern Ireland, this legislation consisted of “emergency” powers which had to be renewed by Parliament every year.

These emergency provisions were made permanent in the UK Terrorism Act 2000, despite the significant steps toward resolution of the conflict in Northern Ireland and the Good Friday Agreement.

Then came the horrific events of Sept. 11, 2001 and the onset of what many believe to be a “permanent state of emergency”. The most controversial piece of UK legislation to follow Sept. 11, 2001 was the Anti-Terrorism and Security Act (ATSA) 2001. This allows the Home Secretary to detain indefinitely without charge or trial, any foreign national suspected of links with terrorism.

Fourteen men, all refugees, have so far been detained under the ATSA: Two have exercised the only right they are accorded, which is to leave Britain never to return. This begs the question that if these men are so dangerous so as to need to be interned without trial, should the British authorities be quite so comfortable letting them go in the context of a global war on terror? Or perhaps they are not so dangerous after all?

Those who remain in detention are the subject of annual hearings of a Special Immigration Appeals Committee which decides whether detention should continue on the basis of secret evidence provided by the security services. Their legal representatives – if it possible to represent someone without knowing the evidence against them – are reduced to guessing the allegations before trying to refute them.

Most of the men have now been detained without explanation for more than two years. Two of them are seriously disabled. The mental health of one North African man in his thirties, who has suffered from polio since childhood, has so deteriorated that he can no longer communicate with fellow inmates. Another, a Palestinian, has been transferred to Broadmoor, a high-security psychiatric institution.

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\* Since 1995, Ben Hayes has been a researcher with Statewatch, a UK-based non-profit voluntary organization which “encourages the publication of investigative journalism and critical research in Europe the fields of the state, justice and home affairs, civil liberties, accountability and openness”. Comprised mainly of lawyers, academics, journalists, researchers and community activists, it aims “to provide a service for civil society to encourage informed discussion and debate - through the provision of news, features and analyses backed up by full-text documentation so that people can access for themselves primary sources and come to their own conclusions.”

The London Belmarsh high security prison, where the remaining detainees are held, has rightly been described as Britain's "Guantánamo Bay" and recently a parliamentary committee of Privy councillors recently recommended its closure.

The Home Secretary is having none of it, and believes the alternative is "a world which is airy-fairy, libertarian, where everyone does precisely what they like and we believe the best of everybody and then they destroy us."

This is the same justification used in his proposal last month to extend the principles of ATSA to British citizens. He wants to allow trials based on secret evidence, secret hearings, the abolition of juries, and a reversal of the burden of proof so that suspicion is enough to convict.

Defence lawyers who represent members of Muslim refugee communities in the UK are now certain, on the basis of almost daily reports, that the security services in the regimes they have fled have been pressing for information from Britain through methods likely to produce unreliable testimony – offering regularized immigration status as the carrot, and return to the countries from which those individuals have fled as the stick. There is now two way traffic between our intelligence services and theirs.

And while the government publicly sheds crocodile tears for the British detainees in Guantánamo Bay, it has emerged only recently that, British intelligence officials have been there, and also to Afghanistan's Bagram airbase, interrogating those detainees. Then, very deliberately, this "evidence" has been put to use in our own secret hearings.

Solicitor Gareth Peirce, who worked to uncover many of the miscarriages of justice in the policing of Irish Republican terrorism, and represents some of the men interned without trial, believes that we are witnessing a covert experiment aimed at pooling international access to condemned and outlawed methods of investigation.

Some of you may be familiar with the name Lofti Raissi. Mr. Raissi was an Algerian pilot living in Britain. Shortly after Sept. 11, he became the first person to be linked to the attacks when the American authorities very publicly accused him of training four of the hijackers to fly the planes.

Mr. Raissi was also held in Belmarsh, on the basis of the US extradition request until five and a half months later when he was freed by a judge who publicly criticized the American government for failing to provide a shred of evidence that would stand up in court. As I understand it, all the Americans provided, was a photo of Mr. Raissi with his cousins in Islamic dress.

The US, however, has refused to withdraw the international warrant for Raissi's arrest and he no longer works as a pilot since no airline will employ him. His lawyers have now filed suit to sue the FBI and the US Department of Justice for \$20 million on grounds of

false imprisonment, false arrest, malicious prosecution, abuse of process, intentional infliction of emotional distress and negligence.

Cases are also being prepared against the UK Crown Prosecution Service and the police.

However, the ordeal may not end there for Mr. Raissi, because last March, the UK and US agreed a new, retrospective, extradition treaty.

It wasn't published until two months later, at which point it became clear that the new treaty would remove the requirement for the US to provide *prima facie* evidence when seeking the extradition of people from the UK, while maintaining the "probable cause" requirement in the US Constitution. The US will require evidence from Britain: we will make do with allegations.

Using a complicated combination of arcane parliamentary procedures and delegated powers exercised on behalf the monarch, the UK government has now been able to sign and ratify this treaty with only a few hours of debate and no vote in Parliament. On Dec.18, 2003, the government laid a "statutory instrument" before Parliament and this automatically became law two weeks later, on Jan. 1<sup>st</sup> 2004 and the extradition treaty with the US was implemented at a stroke.

Had 90 MPs intervened and passed a "negative resolution" the treaty might have been subject to proper debate. Lawyers and NGOs were preparing to lobby MPs, but obviously it is quite difficult to get 90 MPs to support anything while Parliament is closed for Christmas. On the US side the treaty has not yet been approved by the Senate Committee and will then require a two-thirds majority vote.

The Institute of Race Relations in the UK counts Lofti Raissi among more than 300 people arrested under anti-terrorism legislation since Sept. 11. 2001. Only 40 of these arrests have led to any charges being brought – the majority for immigration offences. There have only been only three convictions for terrorist activity – since Sept 11, 2001 and none for involvement in Islamic terror groups.

Read the mainstream UK media, however, and you may be under the impression that the police have dismantled several al-Qaeda sleeper cells and foiled two poison gas attacks on London's underground.

Encouraged by the authorities, journalists hype up the arrests; few can later be bothered to follow up and report charges unconnected with terrorism, releases or acquittals.

New anti-terrorism legislation has also extended the length of time terrorist suspects can be held without charge and given the police new powers to stop-and-search people. The use of stop-and-search has been particular controversial in the UK since research demonstrated that Blacks and Asians were more than eight times more likely on average

to be stopped-and-searched than white people. In some areas this figure was as high as 27 times.

This led to a positive and much needed debate over institutional racism in the police has led to a rethink on the use of stop-and-search (the Stephen Lawrence Inquiry). Last year the Home Office statistics suggest that of about 900,000 stop-and-searches in 2003, 13 % in arrest. This is successful, intelligence-led policing, they say.

However, these figures only refer to searches under the Police and Criminal evidence Act. Anti-terrorism legislation was used for stop and search in a further 150,000 cases, with an arrest rate of just over 2 % - our obvious concern is that anti-terrorism legislation will undermine the worthy attempts to improve fragile police and ethnic minority community relations. We are concerned it will instead recast the two million Muslims living in Britain as a “suspect community”.

As we will hear this afternoon when we are told about the impact on Muslim and Arab communities, racism has been one of the hidden costs of Sept. 11, 2001.

Anti-terrorist legislation has also been used in the policing of demonstrations. It was invoked for the entire duration of a recent protest against an arms fair held in London’s Docklands, and also used during protests against the Iraq war and at airbases used by the US.

Two final issues before I turn to EU policy. Like here in Canada, identification cards have been proposed as a crucial counter-terrorism measure. The UK ID card has in fact been cast as “entitlement card” which we are told will also be useful also to combat benefit fraud, illegal immigration and health tourism. Anyone who has used the National Health Service will be very surprised to hear of such a phenomenon.

It is questionable, as a Canadian parliamentary committee has reported, that an ID card will counter terrorism: We are not so sure.

The card would include biometric ID – most likely fingerprints – and an electronic storage chip containing multiple levels of information about the holder. It is our belief that it is not the ID element that our government is interested in, but rather the creation of a detailed national population database linked to other government and private sector organizations and databases.

Because of significant opposition to the proposals – ID cards were banned in Britain at the end of the Second World War – the entitlement card will first be issued to immigrants, refugees and third country nationals.

Last month also saw the publication of the Civil Contingencies Bill – which ostensibly is concerned with how the government will react in the face of a terrorist attack – in fact this law will give unprecedented and draconian powers to the government and state in any emergency – not just a terrorist attack – but a range of potential disruptions to the

essentials of life, the state or financial institutions. It will certainly not be restricted to terrorism.

### *The European Union's "War on Terrorism"*

In the EU the "war on terrorism" has also had a dramatic effect, mainly in terms of accelerating EU decision-making that were already planned. Before Sept. 11, 2001, only seven of the 15 EU member states had any counter-terrorism legislation in their statutes.

A special Council of Justice and Home Affairs ministers was convened on Sept. 20<sup>th</sup>, 2001 and a program of draft measures was agreed. This included pending proposals from the EU Commission for framework decisions on combating terrorism and a European Arrest Warrant.

These were agreed by the EU justice ministers of the member States in just nine weeks, while it took them four years to agree the 1996 EU Convention on Extradition, which the Arrest Warrant replaces.

It has since rightly been described by Amnesty International as both a lapse in justice and a solution ahead of its time, reflected by the fact that only half the member states were able to meet the Jan. 1<sup>st</sup> 2004 implementation deadline. It must be said that the Arrest Warrant has nothing to do with combating terrorism *per se*. The idea is that we are supposed to believe that there are hundreds of suspected terrorists in Europe who are otherwise untouchable was barely raised.

The breadth of the definition of "terrorism" in the other EU Framework Decision was also highly controversial. A range of criminal acts may be considered terrorist if they are committed with the intention of:

- Seriously intimidating a population;
- Unduly compelling a government or international organization to perform or abstain from performing any act, or
- Destabilizing the fundamental political, constitutional, economic or social structures of a country or an international organization.

We pointed out that there are millions and millions of people who quite rightly want governments or international organizations such as the WTO or NATO to perform or abstain from many acts – this, said the airy-fairy civil libertarians, was an airy-fairy definition.

The EU's response was to make a declaration, when it adopted the framework decision, saying that the definition would not apply to demonstrations, trade unions or legitimate political activities. However declarations have no force in international law and it remains to be seen whether this commitment stands the test of time.

During its recent presidency of the EU, the Spanish government described: "a gradual increase, at various EU summits and other events, in violence and criminal damage

orchestrated by radical extremist groups, clearly terrorizing society... These acts are the work of a loose network, hiding behind various social fronts, by which we mean organizations taking advantage of their lawful status to aid and abet the achievement of terrorist groups' aims."

There is absolutely no evidence to support this outrageous claim and nothing to link the so-called anti-globalization protests with terrorism, yet there is clear intent on the part of certain EU governments to promote such a link.

### *EU-US Cooperation*

Five weeks after the attacks, US President George Bush wrote to European Commission president Romano Prodi with a list of 47 requests for cooperation in the war on terrorism. These included requests for the EU to (for example):

- Consider data protection issues in the context of law enforcement and counterterrorism;
- Revise draft privacy directives that call for mandatory destruction to permit the retention of critical (telecommunications traffic) data for a reasonable period;
- Make available to the US all information, including information on individuals, that Europol (the EU's developing FBI) that may have on relevant terrorist cases, and subsequently broaden such cooperation to other criminal cases.

In Dec. 2001, an "informal" cooperation agreement between Europol and the US was signed in Brussels. Because of the absence of an adequate data protection regime in the US, as required under Europol's constitution, this treaty excluded the exchange of personal data. However two months later an FBI counter-terrorism officer was stationed at Europol.

The US then said it would be unable to extend its privacy laws to cover data on non-nationals and as such could not fulfill the EU's requirements. Civil society groups pointed out that it had found plenty of time in its legislative agenda to adopt the Patriot and Homeland Security Acts.

By the time negotiations on the full cooperation treaty were finalized towards the end of 2002, Europol had admitted that it had been supplying personal information to the US on an "emergency basis" anyway.

The final Europol-US agreement, signed in Dec. 2002, continued to ignore the lack of an adequate data protection framework the US and this has set the tone for subsequent EU-US cooperation.

The next EU-US agreements covered extradition and mutual legal assistance, issues like the exchange of personal data, interception of telecommunications, joint investigation teams, the death penalty and the ICC. All the negotiations were conducted in secret, and like the Europol-US agreements the only place the drafts were published was on the Statewatch website.

The European Parliament was not consulted at all on the Europol agreement and could only offer its opinion on the extradition and mutual legal assistance treaties : It could not amend or reject the treaties.

In Feb. 2003 came a new demand for EU airlines to provide in advance extensive data on all passengers heading to the US – this is the so-called PNR (passenger name record) data.

It was suggested that this data related to booking details only and was uncontroversial. The US merely wanted it in advance, rather than upon arrival, to enable the screening of potential terrorists.

In fact, the US wants 54 separate categories of PNR data. Why, we ask does the US Department of Homeland Security, for this is where the data is heading, need our e-mail addresses, our home and mobile phone numbers, our meal preference, our credit card details and other financial data?

The European Commission agreed almost immediately that the US could have this data, in clear breach of our data protection act. It should be pointed out that this by no means precludes the exchange of data with the US. It just says that the US must take steps to offer an equivalent level of protection.

The ongoing transfer of PNR data is illegal : This is the unanimous view of the 15 EU Data Protection Commissioners : “It does not seem acceptable that a unilateral decision taken by a third country for reasons of its own public interest should lead to the routine and wholesale transfer of data protected under the directive,” they stated.

The commissioners are so appalled that they have refused to offer an opinion on subsequent PNR agreements even though EU Directives require they be consulted.

In March 2003, the European Parliament, who again had not been consulted on the interim agreement, passed a resolution opposing the deal with the US by 414 votes to 44. But, by now, the EU had proposed its own PNR scheme based for all passengers coming.

The Chair of the House of Lords select committee on the EU has described the scheme as a “half-baked idea” that : “would certainly cause massive disruption to millions of passengers traveling into and around the EU and create substantial extra costs for air and sea carriers.” The US meanwhile, had proposed CAPPS II screening system.

The purpose of PNR has been succinctly described by one British journalist in an article entitled “Got a ticket? Get a record”. That is what we are talking about. The logic is we have to compile records on people who are innocent, otherwise how can we confirm their innocence. If you are innocent you have nothing to hide. Well soon you won't have.

Two months ago a number of Air France and British Airways flights to the US were cancelled. US authorities cited a credible terrorist threat based on screening procedures. A subsequent report in the *Wall Street Journal* said that one of the “suspects” turned out to be a five-year-old child with a similar name to that of a wanted Tunisian, another a Welsh insurance salesperson, another an elderly Chinese woman, and another a prominent Egyptian scientist.

“A check was carried out in each case and in each case it turned out to be negative,” said a spokesman for the French Interior Ministry, “the FBI worked with family names and some family names sound alike.” This apparent ineptitude has not, however, resulted in questions over the utility of the system instead it is now used as a justification for the provision of more personal data so that these mistakes can be avoided in the future.

I would like to mention a further the EU terrorist list which forbids the active or passive support and prohibits financial transactions with individuals and groups suspected of involvement with terrorism. The first EU list mirrored more or less, group for group, name for name, the US list and was adopted by written procedure on Dec. 27, 2001 – this is a legislative procedure reserved for uncontroversial measures. In fact the it was simply faxed to the 15 foreign ministries and agreed on the nod without opposition, again it is no coincidence that governments and parliaments were on their Christmas holidays.

The inclusion of groups from the Philippines, Palestine, Sri Lanka and former Kurdistan has been particularly controversial, given the belief held by many Europeans that these are legitimate liberation struggles against illegal occupations or repressive regimes.

The list has since been amended eight times and there has been no parliamentary involvement or democratic debate whatsoever.

### ***Conclusion***

In summing up, how can we try to explain the influence that the US led “war on terrorism” has had on policy making in the EU.

Firstly, I think it is important to distinguish between the war on terrorism and the war on so-called rogue states like Iraq.

While there is much disagreement between Western governments over the Iraq war and more so, over any potential extension, there are few disputes regarding security, intelligence and law enforcement cooperation in the war on terror.

So even if there is a regime change in the US, there is no reason to suspect that the issues I have been discussing will be significantly affected. The war on terror has fulfilled an ideological void left by the end of the Cold War.

In respect to the US influence over UK foreign and domestic policy we can look to the so-called “special relationship” between the two countries, this has developed not least out of military, security and intelligence cooperation.

The one-sided UK-US extradition treaty is just the latest in a long line of policy issues where Britain has in fact conceded sovereignty to the US, though the first to so overtly affect our criminal justice system.

Britain cannot, for example, fire its cruise missiles without US permission. The same is true of its nuclear weapons. Nor do we have any control over US activities in British bases on the mainland or sovereign territories in the Commonwealth.

The US also exercises significant control over the UK spy satellites and eavesdropping systems – exemplified by the recent exposure of the use of British facilities to spy on the members of the Security Council during negotiations over the resolutions on Iraq – an outrageous breach of the UN treaty and international law.

It hardly needs stating that Britain can no longer fight a war without US permission, or perhaps even avoid going to war where the special relationship demands it.

In the EU things are slightly different. Primarily the US exercises an unseen and unaccountable influence on EU policy making through a lack of opposition and democratic scrutiny.

The Department of Homeland Security has set-up a permanent mission in Brussels and US representatives regularly participate in EU working party meetings.

The European Parliament on the other hand, does not even get a vote on most EU security measures, let alone a seat at the negotiating table. National parliaments are even further removed from EU decision-making.

This exclusion of civil society, a lack of media interest and a high level of secrecy, mean that the US influence goes largely unchallenged. It is not an exaggeration to suggest, that in this policy field, the US is the 16<sup>th</sup> member state of the EU.

The influence of the US does not stop there. The prosecution of a global war on terror requires global law enforcement cooperation. Thus the US, usually with the support and assistance of the UK, wields the same influence over these policy areas in the G8, UN, ICAO (International Civil Aviation Organization) WCO (World Customs Organization) and other international fora most of us have never heard of.

On issues like the mandatory retention of communications traffic data and biometrics, the decisions were taken first in the G8, filtered through these other fora and then handed down to the nation-states. By the time they arrive the key political decisions have already

been taken and the job of the domestic executive and legislature is simply to implement it.

I'll leave you with some final thought : Taken together, the wholesale surveillance and restriction of movement, the mandatory retention of all telecommunications data and other sweeping intrusions into personal privacy – for this is where new laws and proposals are heading – would have been unthinkable for Western nations during the Cold War.

Why? Because liberal democracy and freedom had to have some tangible meaning in opposition to Soviet-style communism. With the fall of the Berlin Wall, it has been suggested, it was not just the USSR that disappeared but much of the content of liberal democracy's political culture.

What do we have in its place? Globalization has set-up a monolithic economic system. Sept. 11 now threatens to engender a monolithic political culture; this is a culture of "monoculturalism" rather than multiculturalism; and a culture in which civil society has to find a new voice.

So what is to be done? Most people realize you cannot defend freedom and democracy by destroying it. However, there is active collusion from governments, ministers, officials and state agents, and passive collusion from an uncritical media and people who do not care as long as things do not affect them.

If we are to protect and restore democracy and liberties, each of us has to find our own forms of resistance.

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## IMPACTS ON THE SOUTH : THE CASE OF MALAYSIA

By Yap Swee Seng, SUARAM and the Asian People's Security Network\*

### *Introduction*

After the Sept. 11, 2001 terror attacks on the United States, the world witnessed a rush of new anti-terror laws making their quick passage in parliaments of many countries, including traditional democracies in the West. While many of these laws have been criticized for their various human rights violations and encroachments on civil liberties, it is alarming to see that indefinite detention without trial, a form of gross human rights violation that had been outlawed by many democratic nations, has made a comeback in new laws, such as the US Patriot Act 2001 and the United Kingdom's Anti-Terrorism, Crime and Security Act 2001, under the pretext of fighting terrorism.

Indefinite detention without trial is certainly not a new issue nor is it a new experience for most of the South-East Asian countries. While indefinite detention without trial was rampant in Indonesia and the Philippines during the dictatorship of President Suharto and President Marcos, it remains a powerful weapon for the governments of Malaysia and Singapore to impose authoritarian rule on their people with legislation such as the Internal Security Act (ISA).

Civil society organizations in Southeast Asia have fought hard against detention without trial in their respective countries for decades, with considerable success in Thailand, Indonesia and the Philippines, which enshrined the principle of the right to a trial in their constitution adopted following the overthrow of their authoritarian regimes. Civil society and the international community have been lobbying to revoke Malaysia's ISA because it has led to human rights abuse against political dissidents and civil society activists. However, all these encouraging developments and hard fought democratic rights in the region have suffered a devastating setback since the Sept. 11, 2001 terror attacks in the US.

### *The Jemaah Islamiyah (JI) witch hunt*

In December, immediately after the 9-11 terror attacks, Yazid Sufaat, a businessman was arrested under Malaysia's ISA. He was accused of having hosted Zacarias Moussaoui who was arrested in France for allegedly being involved in the 9-11 attacks. Yazid was also alleged to have allowed his condominium to be used in early 2000 by two hijackers, Khalid al-Midhar and Nawaf al-Hazmi, who were on the plane, that crashed into the Pentagon.

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\* Yap Swee Seng is currently working as campaign coordinator of Suara Rakyat Malaysia (Suaram)- which means Voice of the Malaysian people - a leading human rights organization in Malaysia. In 2002, he helped found the Asia People's Security Network (APSN), a network of civil society organizations campaigning against anti-terrorism and national security laws that violate human rights in the Asian region. Yap Swee Seng also writes a human rights column in a Malaysian Chinese newspaper, *Oriental Daily*.

The hunt for Osama bin Laden and its al-Qaeda network in the US-led global anti-terror campaign immediately put Malaysia in the international spotlight. Southeast Asia has been identified by the US as the “second front” against terrorism, a hotbed and launching pad of terrorism, with the JI, an alleged regional terrorist network linked to al-Qaeda, accused of having actively provided material and logistic support to its operatives. The Bali tragic bomb blast in October 2002 and the bombing of the J.W. Marriot Hotel in Jakarta in August 2003 have further reinforced the fear of terror activities in the region.

### ***The Impact of the US-Led Anti-Terror Campaign***

The al-Qaeda and JI witch hunt in Southeast Asia has proven to be catastrophic for democracy and human rights in the region.

At least 31 alleged JI terrorists have been arrested and indefinitely detained without trial under the ISA in Singapore after the 9-11 attacks. In Malaysia, alleged terrorists detained without trial under the ISA have reached more than 90, while police have been quoted as saying they have more than 200 people on their wanted list. In the initial stage, the Indonesian government of President Megawati has been criticized especially by the US, for not seriously cracking down on terrorists in her country. This attitude changed quickly after the tragic Bali bombings: The Indonesian police moved swiftly to nab the alleged JI spiritual leader, Abu Bakar Bashir and more than 90 other alleged Islamic terrorists. Thailand has also beefed up its security and arrested the alleged on-the-run JI top leader, Riduan Isamuddin (Hambali) in Aug. 2003.

In Malaysian and Singapore, all the alleged terrorists are arrested and detained under the ISA, which provides for indefinite detention without trial. Detainees are held *incommunicado* in the first 60 days with no guaranteed access to legal counsel or members of their family. The detainees are also deprived of the right to be tried in an open court, to defend themselves against accusations and to be presumed innocent until proven guilty. After the first 60 days, the Home Minister can extend the detention without trial to a further two years, which is again renewable indefinitely.

Beyond the denial of the right to trial, the non-accountable process and the secrecy of detention, the Act provides a perfect “environment” for all forms of torture, inhumane and degrading treatment to be inflicted on detainees with absolute impunity. This has drawn much criticism against the ISA in the past from civil society, as well as governments in the West. With many western governments themselves legislating anti-terror laws which now legitimize detention without trial, repressive laws, such as the ISA has regained fresh justification under the pretext of counter-terrorism. The world is now witnessing a return of the Cold War doctrine, where gross human rights violations committed by allies of the US in the campaign against terror will be condoned; repressive laws will be supported and legitimized as long as it is framed within the premise of fighting terrorism.

This development has not only setback whatever effort and democratic space built by civil society in the region based on the principle of right to trial. It is giving a green light now to all repressive regimes in the world to continue their authoritarian rule.

Under the pressure of the US, a range of new anti-terror laws and measures were introduced in addition to the old repressive laws in place in the Southeast Asian countries.

In Malaysia, despite the claim by the government that the ISA is the best weapon to fight terrorism, amendments to the Penal Code and Anti-Money Laundering Act to include a chapter on anti-terrorism, were rushed through in Parliament at the end of 2003. The amendments define terrorist acts in a vague and broad manner, such as being prejudicial to national security and public safety, disruption of infrastructure, interference with essential services, etc. Under these loosely framed definitions, civil society fears that acts of civil disobedience or industrial actions will be easily construed as “terrorist acts”. The amendments also give vast powers to the government to punish those providing services and facilities to terrorists including, long jail sentences and the death penalty, in cases that cause death. More alarmingly, lawyers and public accountants are explicitly mentioned in this clause, prompting concerns that this will have a chilling effect on those two groups of professionals and their ability to serve their clients.

The Malaysian government also intends to introduce another amendment to the Criminal Procedure Code in the next parliamentary session. These amendments will grant additional powers to the police to arrest a person without warrant on “reasonable grounds” that an act of terrorism may be committed. It will also provide authorization powers to the Public Prosecutor’s Office to install devices to intercept all forms of communication without judicial consent or review. Undoubtedly, this bill will encroach into the right to privacy of the citizen if it is passed.

In countries that do not have laws such as the ISA, tough anti-terror laws have been introduced. In Indonesia, a new anti-terrorism law was passed in 2003, which set sentences of long jail terms and the death penalty. More alarmingly, this new anti-terrorism law was used retroactively to charge the alleged terrorists in the Bali bombing. Three of the Bali bombers were sentenced to death, while one was sentenced to life imprisonment. In Thailand, an anti-terrorism executive decree was issued in 2003 as well, giving vast powers to the government. There is no clear definition of terrorism in the decree, although demonstrations are explicitly excluded. In the Philippines, a new anti-terrorism bill is currently pending for debate in the Congress of the Philippines.

These newly added anti-terror laws are not only legitimizing human rights violations that have plagued the region for decades, they are now institutionalizing encroachment into civil liberties in a more comprehensive manner. These new laws will inevitably contribute to the global derogation of international human rights standards, thanks to the technical advice provided by the US in its war against terrorism.

### *Criminalization of Legitimate Dissent*

Another serious implication of the anti-terrorism campaign is the criminalization of self-determination movements and legitimate dissent in the region. In the Philippines, the Moro Islamic Liberation Front (MILF) in Mindanao, which is fighting for self-determination, was labeled a terrorist group by the Philippines government after Sept. 11, 2001. The New Peoples Army of the underground Communist Party of the Philippines (CPP) was listed as a terrorist group by the US State Department at the request of the Philippines government. In the name of curbing the financing of terrorism activities, the Philippines government requested that the Dutch government freeze the assets of Jose Maria Sison, the exiled leader of the CPP, now residing in the Netherlands.

Similarly, the Indonesian government has lobbied for the Free Aceh Movement (GAM) in Aceh province of Indonesia to be included in the UN's list of terrorist entities. Although the Indonesian government has failed in this attempt, foreign aid and weapons that are supposed to be used in the fight against terrorism have been used by the military in its war in Aceh.

As in many conflict situations, civilians are the biggest casualty in the witch hunt against separatist or rebels in the name of combating terrorism. Large numbers of civilians are subject to arbitrary arrest, raids without warrant and harassment from government security forces in the search of genuine rebels and separatists. Abuse of power in this process is rampant.

### *Conclusion*

It is clear that the US-led global war against terror is not going to solve the problems of terrorism or provide a more secure environment in the region. The Bali bombings and the J.W. Marriot Hotel bombing in 2002 and 2003 are cases in point.

On the contrary, with tougher anti-terror laws at the disposal of governments in the South-East Asian region, human rights violations, now legalized under the pretext of fighting terrorism, are expected to accelerate and fuel even more resentment among the citizens in the region.

Thus, civil society has expressed serious concerns following the setting up of the Southeast Asia Regional Counter-Terrorism Center (SEARCCT) in 2003 in Kuala Lumpur. US State Secretary Colin Powell first raised the idea of this centre in 2002 when he visited Malaysia. The SEARCCT is designed to focus on capacity building, human resources development and exchange of information to combat terrorism in the region, in partnership with the US

Southeast Asian governments, especially the Philippines, Singapore, Thailand, Malaysia and Indonesia have cooperated with the US closely in its global campaign against terrorism. The collaboration ranges from arresting alleged terrorists based on shared intelligence, allowing the FBI to interview detainees in their custody, facilitating the extradition of detainees to the US, and legislating anti-terror laws to serve the US-led anti-terrorism campaign.

This cooperation is further concretized and institutionalized after the setting up of the Regional Counter Terrorism Center. As little is known about the operation of the center, and given the fact that the check and balance mechanism in the political system of the South-East Asian countries are relatively weak, it is worrying that the global anti-terror agenda will further deteriorate human rights and civil liberties in Southeast Asia with silent consent and even support from the US and its traditional Western allies.

## IMPACTS ON THE SOUTH : THE CASE OF THE PHILIPPINES

By Walden Bello

My comments will be mainly of a supplementary nature to what has been so well-detailed already. My focus has been on the military and foreign policy aspects, especially with respect to the US, but I would like to make comments on the internal security impacts in the Philippines. The Philippines was formerly an American colony –some people contend of course that it still is – and that this legacy has largely determined the nation’s response to US’s anti-terrorism campaign. After Sept. 11, 2001, the Arroyo administration in the Philippines was enlisted as one of the first very vocal allies in the so-called war on terrorism, which then extended to being one of the allies in the war against Iraq.

Filipino compliance, like that of many other Southern nations, was based on the expectation of monetary assistance and aid, which has not been forthcoming. We have had a relationship in which the military alliance component has been very prominent. In 1998, the Philippines adopted the Visiting Forces Agreement (VFA), which legitimized the re-entry of American troops in the country, after having been ejected with the cancellation of the US military bases agreement in 1992.

After Sept. 11, 2001, the US took advantage of the VFA and introduced more troops to the Philippines, especially Special Forces deployed in the South, for the purpose of participating in internal security activities. A detachment was assigned to the island of Basilan, to assist in tracking down members of Abu Sayyaf (a fundamentalist group that engaged in kidnapping as a means of fundraising and largely suspected of being a creation of the Filipino military in its beginnings), designed to counter the rise of the Moro Islamic Liberation Front (MILF) and the Moro National Liberation Front (MNLF), national liberation groups engaged in fighting the government.

What was supposed to be a defense agreement, to be used only against “external enemies”, has been used to legitimize internal police investigations conducted by the US. There has been a deliberate blurring of what is military and police action, and external and internal defense type operations.

In March 2002, an investigation conducted by Focus on the Global South at the US Special Forces camp in Basilan revealed the Americans believed they were engaged in an internal law and order operation. They told us that under the rules of engagements with the Filipino government, troops were not supposed to fire or fire back. Nevertheless, our investigation showed that they were operationally integrated, and in fact, commanding the Filipino police forces involved in tracking down Abu Sayyaf.

The campaign against Abu Sayyaf in Basilan was followed-up early last year, with a proposal for an even greater deployment of Special Forces, this time to the island of Sulu,

Because it was said that Abu Sayyaf was there. They were determined once and for all to get rid of it.

With this announcement came the news that this time the rules of engagement would be changed so that troops would be allowed to fire and also be able to conduct operations independently of the Filipino police and military. This latest development was heavily criticized by Filipino civil society. The outcry led to the freezing of the deployment of further Special Forces because it was leading to total American control of internal security operations in the South. Resistance was so great, that the US and Philippines decided not to press the issue of and froze the deployment to Sulu.

Nevertheless, the deployment of American troops continues to be highly non-transparent. There are now several facilities and bases where they are stationed on a permanent basis and there is still an alarming level of cooperation between Filipino internal security services and the US.

The Philippines has no Internal Security Act (ISA), a tool that has been tremendously effective in Malaysia and Singapore to repress dissidence. In the Philippines, the question of civil liberties is still quite sensitive in light of 24 years experience under the Marcos regime. However, the US continues to put tremendous pressure on the Filipino government to “get its act together” and pass a comprehensive anti-terror legislation akin to the Patriot Act. This legislation is still making its way through the two houses of the Parliament. I am worried though in the end we will get legislation with the same features found in the Patriot Act and in the recent British legislation.

The other area where the US has really pushed has been the Anti-Money Laundering Act, mirroring the law adopted by Malaysia. Although it was not an important agenda item for any of the parties in the Philippines but it became one and was steamrolled in 2002-03.

An act was passed but upon international review, it was rejected by the US. The Filipino government was instructed to change provisions on privacy, particularly with respect to benchmark asset amounts which determined who would be subject to, or spared from, scrutiny, and it complied. The US got what it wanted.

Since the early 1990s, since the first bombing of the World Trade Center occurred, there has been increasing close cooperation between the US and Filipino police forces but the Congress has been largely unaware of it. Moreover, there also has been increasing information and data sharing between the two countries, but with total lack of transparency, which is quite disturbing. This situation has attracted little scrutiny from the media.

The way police deal with “terrorists” or “suspected terrorists” is also quite disturbing. I’ll cite one case : A top operative of the JI (Jemaah Islamiyah) was caught last year and in highly suspicious circumstances was able to escape from the most highly-guarded prison in the Philippines. Three weeks later we are told by police that he had died in an

encounter in the Southern Philippines. This had all the marks of a police operation. Under current legislation, it would have been difficult to extradite this person. Many suspect the police did what it did expertly under martial law, what is called “salvaging” that is “you deal with it” with extra-judicial measures. You make the person disappear. It appears there is an operative code within the police in the Philippines to use this method to deal with suspected terrorists. Muslims are a minority in the Philippines and there is not much outcry within the larger Christian community when members of Islamic groups are targeted for such extra-judicial measures. It is very a problematic area that our press must do more to expose.

The definition of who is a “terrorist” has been systematically expanded by the Filipino government as a result of its cooperation with the US and the EU. This definition accommodates the security needs of the Filipino government, as witnessed by the outlawing of the National People’s Army which was classified by Europol and the FBI as a terrorist entity.

To sum up I believe :

- The Philippines will end up with draconian, comprehensive internal security laws;
- The participation of the US in internal security activities and police will increase;
- The Philippines will bow to US pressure and adopt similar foreign policy positions as in the case of Iraq;
- Restrictive internal and external security provisions will be pushed through under the promise of foreign investment and aid from the US and the Filipino government, whoever is elected, will be under severe pressure to take advantage of such incentives.

Based on the events of the recent past, I believe that the Filipino government will comply but there will not be the corresponding increases in the level of investments or aid. Despite the promises of increased aid following the Arroyo government’s decision to support the war against Iraq, it has been documented that the US provide only about \$100 million, mainly in the form of weaponry.

These past years and the Sept. 11, 2001 events have been a tremendous setback for Filipino civil society groups for whom it was a matter of pride to have been able to get the US Military bases out of the country in 1992 thus serving as an example for other countries and had been moving towards a more independent foreign policy.

Nevertheless Filipino civil society continues to struggle in cooperation with groups throughout the world that oppose US foreign policy and its impact on American domestic policy. I believe that we need this new reality of global civil society in order to get our house in order.

## IMPACTS ON MUSLIM AND ARAB COMMUNITY IN CANADA

By Raja Khouri, Canadian Arab Federation\*

There are many parallels between what is occurring in the South and here, in the land of the free. As Canadians, we pride ourselves and rightly so, on our multiculturalism : We are the only country in the world with an official policy on multiculturalism.

But it turns out that when push comes to shove – or should I say when Bush comes to shove – that multiculturalism does not go much further than *hummus*, *tabbouleh* or *baba ghanoush*.

For our community it has been an interesting time. It has meant : alienation, marginalization and, I would even say, a sense of psychological internment akin to what our Japanese compatriots felt during World War II in Canada.

Let me tell you about a series of our experiences, from civil rights abuses, institutional racism and acts of public discrimination to marginalization. I'd like to end it all with a silver lining.

We have heard about detentions all day. Certainly Canada has not been exempt. Immediately following the events of Sept. 11, 2001, hundreds of Arabs and Muslims were detained, some for days, others for weeks. To our knowledge none of these people were ever charged, they were all let go.

The more offensive type of detention was the result of security certificates now issued by one minister (initially it was two) which allows for the indefinite detention and deportation of a person who is deemed to be a threat to national security. Initially, the security certificates applied only to refugee claimants but after 9-11, it was expanded to apply to landed immigrants as well.

Bill C-18, which was introduced last year – but which might still be revived – would have expanded the use of security certificates to naturalized Canadian citizens so I, as an Arab Canadian born abroad, could be deported at the request of a Canadian minister, for reasons never made known to me.

It's not the case today yet, but it might if Bill C-18 is revived and adopted. There has been an expanding scope of the security certificate which is a huge insult to Canadians as a whole, because it does not allow for any due process enabling the accused to question or defend themselves against the charges laid on them.

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\* Raja G. Khouri is President of the Canadian Arab Federation (CAF), a national umbrella organization representing Canadians of Arab origin since 1967. Under his leadership, CAF has played a key role in fighting hate, racism and the erosion of civil liberties post 9-11. In 2001, he directed a national community and organizational study and authored the report *Arabs in Canada: Proudly Canadian and Marginalized*. Mr. Khouri has worked for more than 20 years as a consultant in organization and community development for the corporate and non-profit sectors in three continents.

There are five people today in detention on the basis of a security certificate. All of them are Arabs : two are refugee claimants and three are landed immigrants. Some of them have been in detention for more than two years in solitary confinement with no end in sight. The wife of one of the detainees is with us here today.

### *Institutional Racism*

An example of institutional racism is the treatment of Arab and Muslim Canadians at the Canada-US border where anyone of us can be subjected to fingerprinting, photographing, to interrogation by mere accident of birth. An example of how this situation manifests itself is the case of an Iranian-born Canadian woman attempting to spend Christmas with her family in the US. She was deemed to be a security threat and put through the process of fingerprinting, photographing. A single mother with two children, she was told she could not return to Canada using the same route entering the US because the interrogations can only be done at certain ports of exit. She had to purchase new tickets and spend more than \$ 1,500 for her family to return to Canada on a different route. It was a significant hardship, aside from the humiliation of going through this experience.

Another example is the case of a Syrian-born professional engineer who works for a major American corporation with offices in Canada who travels to the US on an almost weekly basis to meet with his boss. On one occasion, the US border officials decided he should be fingerprinted and interrogated. He refused to be treated in this way and was told he could not enter the US and thus go to work on that day. His employer said he would have to comply with the US treatment if he wished to continue working and holding the same position. His choice was between humiliation and his career and, in the end, he chose humiliation. He did not want to lose his livelihood.

These are the kinds of impacts on peoples' lives.

Last summer, 18 Pakistanis and one Indian Muslim, all on student visas, were arrested in Toronto. The arrests made the news as the rounding up of a big cell deemed to be a national security threat. The circumstances of their arrest were unreasonable. For example, one of the students was arrested because he was taking flying lessons and his flight path was close to a nuclear reactor. Another two, were arrested because they were walking on the beach close to the nuclear reactor. They were all known to be from Punjab in Pakistan, reputed to be an area of fanaticism. The investigators were honest in saying that was the reason of their arrests. It was a clear case of racial profiling. At the end of the investigation none were found to be a threat to national security. They all had to face humiliation in their home countries. Their only offence was minor immigration violations such as overstaying their visas and there were some problems with the school they had attended.

In the weeks following 9-11, the Canadian Museum of Civilization cancelled an art exhibit by Canadian-Arab artists. The issue was brought up in the House of Commons by the New Democratic Party, which challenged the Prime Minister. He intervened and the

exhibit went ahead. However, last year the whole Middle East program at the Museum was cancelled. This is an example of a Crown corporation openly discriminating against a group of people.

### *Listing of Entities*

I am not going to debate whether Hezbollah engages in terrorism or not, but rather address how banning it in Canada impacts on the lives of people here. Hezbollah is a political party in Lebanon with a constituency of almost 30 % of the Lebanese population, mostly in the South. By banning Hezbollah, Canada is linking 30 % of the Lebanese population to terrorism. Any humanitarian organization operating in South Lebanon cannot function without working with the social wing of the Hezbollah as they are the only providers of social services in the region.

There are also questions on how the Canadian government came to ban this organization as two weeks before it announced its decision, it was still insisting that it had no links to terrorism. There was pressure from the American government and the B'nai Brith in Canada. The latter threatened to sue the Canadian government and published a full-page advertisement in the *Ottawa Citizen* depicting a man with a terrorism manual under one arm, holding a machine gun and a Canadian passport in the other. There were also mosques in the background and the words : "Hezbollah teacher". That essentially implicated over a million Canadian Arabs and Muslims in terrorism.

Anyone wanting to send money to their relatives in Lebanon can be charged with financing terrorism. If I have a cousin who teaches at a school administered by Hezbollah and I send him money in Lebanon I could be accused of sponsoring terrorism.

Another example : Air Canada decided to cancel its planned route to Beirut. It was set to start in June 2003. Air Canada and the Department of Transportation sent security teams to Lebanon to determine if the airport was secure. It was and the route was licensed to operate. However three days before the inaugural flight, the route was abruptly cancelled by the Canadian government supposedly for security concerns. Meanwhile, all European airlines continue to fly to Lebanon.

Another example relates to the situation of Palestinian refugee claimants. Prior to 9-11, they received a fairly sympathetic hearing from the Immigration Refugee Board (IRB). Fewer of them are now being recognized as refugees, although they are coming from refugee camps in Lebanon or from the Palestinian Territories, the West Bank and the Gaza strip. Some IRB adjudicators have actually used the argument that Palestinians are not oppressed by Israel because Israel is defending itself against terrorism.

The last example is the most high profile case of institutional racism towards the Arab community and it is related to Maher Arar. This case encapsulates many of the wrongdoings of the security agenda including racial profiling, the reckless sharing of information with foreign agencies, the lack of respect by US authorities of the Canadian passport and Canada's inability to help its citizens abroad.

## *Media*

The biggest danger of institutional racism is that it sends a message to of society and this message has been heard. Exactly a year after the events of Sept. 11, 2001, the firm EKOS published a poll stating that a third of Canadians viewed Muslims negatively and one in two believed that Canadian Arabs should receive special security treatment. It has become permissible to display racism towards Muslims and Arabs. We have seen it in the mainstream media with writers in the *Globe & Mail* who have condoned racial profiling and lumped Muslims and Arabs together as a negative monolith.

The *Toronto Star*, although it tends to be more sympathetic and fair in its coverage, once had a full-page article entitled : *The Threat from Within*, displaying 21 pictures of supposed terrorist suspects.

There have been incidents in schools and workplaces of the Arab community. Children want to change their names from Osama to John, from Mohammed to something else.

Numbers speak louder than words. Our national study of Arab Canadians post 9-11 showed that 85 % of respondents felt that Canadians consider Muslims violent, 92 % felt that what Canadians know about Arab culture stems from myths and stereotypes 91 % felt that the Canadian media negatively stereotypes Arabs; one in four families surveyed have experienced racism first hand; and only 14 % felt the federal government was concerned with their needs.

These numbers are significant and represent a very large majority of our communities. It is ironic that 72 % of the respondents said they chose Canada because of its recognition of human rights and civil liberties while 92 % said they support Canadian multiculturalism.

An important aspect of our experience has been the total disinterest of the Canadian government in the events we have been subjected to post 9-11. There was a meeting with the Department of Justice to discuss the impact of the security agenda on our communities. The meeting lasted four hours and 11 points were identified for follow-up. The department agreed to pursue these points but that was the end of it: It stopped returning our calls after this initial meeting.

We met with the former solicitor general Wayne Easter, spent an hour explaining the repercussions of the security agenda on our communities, but we came out of the meeting with nothing.

Derek Lee, the former chairperson of parliamentary sub-committee on security and intelligence has stated that Canada does not engage in racial profiling but only does ethnic profiling.

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The former Ontario public safety minister, Robert Runciman, condoned the racial profiling of Canadian Arabs and the US border.

The former Ontario government hired a security consultant, Retired General Lewis McKenzie who openly condoned racial profiling.

### *Silver lining*

Two positive things have occurred as a result of 9-11 and the security agenda.

An IPSO-Reid poll published approximately 10 days ago showed that Canadian attitudes are finally shifting. Because of the high profile of the Maher Arar case, polls shows half of Canadians believe that police have gone too far in using anti-terrorism powers; four out of 10 of Canadians believe that if they were wrongly detained they would not get a fair hearing or process; 52 % agree that Arab Canadians are being unfairly targeted because of their race. We can see some shift from the previous EKOS poll I mentioned earlier.

Secondly the Arab and Muslim communities have been mobilizing and, organizing faster than they ever thought possible. Self-preservation has kicked in and organizations are much stronger. There has been a greater and more effective involvement of the Arab community in Canadian politics (at the riding level, in the selection of candidates) and lobbying efforts have multiplied. Last May marked the first Canadian Arab Federation Parliament Days. More than 30 volunteers from across Canada went to Parliament Hill to visit MPs and ministers to tell them our story and describe the impact of the security agenda on our communities.

## THE CANADIAN MUSLIM EXPERIENCE

By Khalid Baksh, Muslim Lawyers Association\*

In Canada, an accused can now, under the Anti-Terrorism legislation, be detained without charge; without any access to counsel; the counsel may not even know what his clients are charged with or what is the evidence against them and so, cannot challenge their accusations.

The accused may not be allowed to be present in the courtroom nor may their lawyer be in the courtroom. The judge will make a decision on a charge the accused ignores, on evidence he does not know, that cannot be challenged and yet, it is his life on the line. That is Canada and that is what we, the Muslim community, are living right now.

### *Background*

The Muslim community has been in Canada for a long time is mentioned in the 1870 census. From then to the post-war era, Muslim communities grew in mainly urban centres across Canada. In the 1960s, as the doors to Canada opened-up under former prime ministers Lester B. Pearson and Pierre Elliott Trudeau, there was a boom in immigration : South Asian immigrants, Arab, immigrants from Europe, Africa, China, from all over the world.

The Muslim population in Canada is multicultural and consequently, essentially Canadian. We are diverse in our economic status, professions, ability to speak English and ability to speak French. We are diverse in our faith because Islam is huge.

When one discusses the Muslim community, one is talking about many small communities. But, in many respects, particularly in response to the anti-terrorism legislation, we are also talking about Islam in Canada. We are dealing with a community under attack. Sept. 11, 2001 is certainly a watershed date. Since then we have been feeling under total siege.

### *Anti-Terrorism Act*

While the Anti-Terrorism Act itself is generic, there is absolutely no doubt that it targets Arabs, South Asians and Muslims. Why? Because the Muslim male, aged between 25 and 40, with a beard and, wearing a *keffiyeh* or some kind of head covering, is the “Poster Boy” for terrorism. If I had not shaved this morning, I might look a little more like that.

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\* Khalid Baksh is a lawyer with the Toronto firm of Baksh and Kutty. A civil litigator, he was a founding member of the Muslim Lawyers Association in 1992, which represents Muslim individuals of all backgrounds who are in the legal profession in Ontario. It focuses on professional advocacy, education, networking and peer support. Since Sept. 11, 2001 it has been involved in monitoring application of antiterrorism legislation and has appeared before parliamentary committees.

The chill in our community is the result of 9-11 and the Canadian government's decision to adopt the anti-terrorism legislation, while ignoring its impact on a significant part of the Canadian population.

The Muslim community has dealt with hate crimes, CSIS and RCMP invasions in our communities, detentions at the border, incursions in our private lives, and impacts on our cultural organizations and charities.

There are five pillars in Islam, one of which is charity. Charity lies at the root of our religion : Here, in Canada, we are rich, we are the first world and our obligation is to give aid where it is needed, whether in Somalia, Kashmir, Chechnya or Palestine. Giving to charity is at the root of our religion : The Anti-Terrorism Act attacks this fundamental principle of Islam.

The use of Immigration Act provisions does much of the dirty work for the security agenda. The poor chaps – the 19 Pakistanis and one South-Asian gentleman – were smeared by the government using the Immigration Act. We have seen this through many high profile cases, the five security certificate cases, the terrorist cell of the South-Asian gentleman, the Arar case and the case of Iman Sheikh Ahmad Kutty, who was detained in Florida.

A while ago, Iman Kutty went missing. He is my law partner's father. We had to phone everywhere, the FBI, the INS (Internal Naturalization Services) and Canada's External Affairs, in an effort to find him. He had been detained in the US.

We heard about this case and other high profile cases, however, there are even more incidents that go unreported.

### ***Survey of 40 Lawyers***

Earlier this year the MLA conducted a survey –not scientific – in which a group of volunteers contacted 40 Canadian lawyers and asked them if they had a story about abuse or about an over-reach and over-stepping of powers.

The criteria was an allegation of abuse of power or allegations of discrimination, and allegations of acts by Canadian police or government officials linked to the anti-terrorism legislation. (This survey did not include American officials or border issues, as there are literally hundreds if not thousands of stories about border problems.)

The lawyers were asked to briefly outline on a non-identifiable basis only, cases s/he had handled or had been contacted about personally. Out of 40 lawyers, 10 reported 35 incidents. These were broken down into categories and cross-referenced to ensure the same story was not repeated. There were six cases related to wrongful dismissal; 16 cases of security forces coming into the workplace to question a client and harassment by

officials, seven cases of hostility or inaction by the police and six immigration-related incidents.

The wrongful dismissal cases came about as a result of security officials questioning clients at their workplace. Why didn't they question them at home? Don't go to their workplace where people risk being fired. Immigration-related issues were cases where immigration officials abused their discretionary powers to detain individuals based on insufficient evidence or clearly unreasonable grounds.

The lawyers also reported stories they had heard from refugee claimants of their interviews with security officials. The stories included security officials interviewing refugee claimants and CSIS suggesting to potential refugee claimants that, if they cooperated, their access to Canadian immigration would be easier. We have unfortunately heard of several incidents of that nature.

### ***Hostility and Inaction of Police in the Face of Private Discrimination***

When Bill C-36 was introduced in Oct. 2001, a background paper prepared by the Department of Justice said that the Anti-Terrorism Act will “address the root causes of hatred, re-affirm Canadian values and ensure that Canada’s renowned respect for justice and diversity are reinforced.” At that time, there were promises to improve the hate crime provisions. But we have received reports about inaction of the police and their refusal to lay hate crime charges. There is one incident in which a clearly identifiable Muslim family was run off the road by someone shouting : “Terrorist! Terrorist”. The police refused to lay a hate crime charge. In another situation, there were clearly displayed posters encouraging violence against Arabs. Only after Muslim civil liberties groups intervened did police do something about it and ultimately lay charges. There is a big gap between the spirit of the act and the reality.

The most serious issue discovered through our survey is the interrogations and corresponding threats made by security officials. One lawyer reported a trend of more than a dozen of cases where clients have told him about enforcement authorities threatening them if they did not agree to meet them. Another trend is that enforcement authorities are pressuring individuals to meet them without legal counsel present. Citizens, landed immigrants, and people in this country have been told : “You should talk to us because there are things we can do to you” and : “I can ruin your life unless you cooperate with us. We can arrest you and bring you in.” This is the preventative arrest mechanism contained in the Act. In its first year whitewash report, the government said that this measure was not used once. Of course, there is no need to use it, since it is there as a threat.

The ICLMG published last year its report, *In the Shadow of the Law*. These practices cast a big shadow – a big a chill – over the entire community. Another reported case involved an individual who had been prohibited from leaving the country. CSIS agents

threatened that he would not be able to travel freely unless he acted an informant for the agency.

Other equally disturbing trends were reported after 9-11 such as the questioning of individuals associated in an official capacity with Muslim organizations. Some were pressured to break ties with their organizations. Another lawyer reported long delays in the application of young male clients from predominantly Muslim organizations.

The most worrying trend is the under-reporting and lack of willingness to deal with these issues. I do not think that it comes as a surprise to anyone that there may be abuses out there. There may be some security officers that are over-stepping their bounds; there may be a lot of this going on.

From our small survey, we don't know the full extent but we know that from the 35 cases, only seven resulted in complaints being laid. The reason for this low reporting rate is because individuals, the aggrieved parties themselves, are too fearful and so do not want to come forward. Why should someone complain about RCMP actions since there are no effective oversight mechanisms. Why should someone complain about CSIS when there will be no follow-up? And, people do not want CSIS agents coming back to speak to them again, so they feel it is better not to pursue the matter.

I personally dealt with one doctor (not part of this survey) who received a visit from CSIS in her office. She did not want to proceed with a charge because she said it was not worth her while. You know that one of the first questions a client asks of his lawyer is: "What could happen?" not "What will happen?" So as a good lawyer, you tell them and it scares them.

We have a serious problem with under-reporting. Also you must remember that we all came to Canada from different places. Some of us grew up in repressive places (I come from Winnipeg), places such as South Africa, Pakistan, Malaysia, or Bosnia. You have to think what it means to these people when a security officer comes knocking on their doors, at 3 a.m.; to have a security officer talk to all your neighbours before even talking to you. The questions asked by the security officers are based on whom do you associate with? What is your religion? Where do you travel to? And what do you talk about? This violates values that are fundamental to our Charter of Rights and Freedoms : freedom of association, freedom of religion; freedom of movement; and freedom of expression. The chill is there. Luckily it is starting to come off. But who is next? Is it going to happen to our community? To others? To anti-poverty activists, trade union activists? Who is out there and what are we going to do to stop it?

The three-year review of the Anti-Terrorism Act is coming up and it is necessary to ensure that our parliamentarians know what is going on and how this is affecting us as Canadians. The Arar inquiry is also coming up and it is another opportunity for people to talk and find out what is going on with regards to our security forces.

## IMPACTS ON CITIZENSHIP, IMMIGRANT AND REFUGEE RIGHTS : THE CASE OF THE UNITED STATES

By Arnolando Garcia, National Network for Immigrant and Refugee Rights\*

We have been painted a very homogenous picture of what is going on, of political cultures. It looks more and more like most of us will become migrants in the eyes of our own governments : it is the future of citizenship. This is worrying. The ironies of empire building of the US should not go unnoticed.

In other words, people who are disenfranchised have less and less voice in the affairs and decision-making of our countries.

I want to present two quick snapshots : one a global view and the view from the national and local levels.

Before I continue, I would like to thank the ICLMG for allowing us to come here and explore ideas. I also want to thank the communities and organizations that I work with because they are the ones who give me the power to come here and to speak to you all. I made a point to speak to some of our members in the North-West in Oregon, in the border region, in Florida and in New York City before I left home. I'll share those stories later on.

### *Global View*

Out of every 30 people in the world, one is in some type of migration. This number does not include internally displaced persons (IDP) or refugees which would significantly increase the total. It means that 180 million people are in some type of international migration, most of it involuntary. If you compare it to a previous period of upheaval, only 60 million people were displaced in World War II. This displacement is an indication of the very deep economic restructuring that has taken place in terms of trade liberalization programs so-called free trade.

There is a very big nexus between migration and trade or capitalist development that displaces people for different reasons, whether ecological disasters, different types of social instability, or different types of economic restructuring that reorganizes labour pools across international boundaries.

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\* Arnolando Garcia is a senior program associate at the National Network for Immigrant and Refugee Rights, based in Oakland, California. Mr. Garcia is the editor of *Network News*, the organization's magazine and heads the enforcement and justice project that works to stop immigration law enforcement abuses and human rights violations. He edited the NNIRR's recent report, *Human Rights & Human Security at Risk: The Consequences of Placing Immigration Enforcement and Services in the Department of Homeland Security*. He is a long-time cultural worker and poet who recently co-authored the book *XicKorea – poems rants words together*.

It is having a very major impact on all countries across the world and literally is changing the pigmentation of societies. For example, 85 % of all migrants in the US are considered people of colour and it indicates what the majority population of the world looks like. In the US we represent less than 5 % of the world population, yet we consume 40 % of its energy resources. So there is a very real imbalance in terms of what is causing displacement, what is causing people to flee their countries, what is causing unstable communities and it comes back to us, to people in the North.

Migrant remittances are a very important key to international development. For example, migrant remittances reached more than \$88 billion in 2002. Migrants sent over \$88 billion back home and that was 54 % more than ODA which was only \$57 billion.

International organizations such as the International Monetary Fund (IMF), the World Bank and other transnational actors are trying to figure out how they can control these remittances. This explains why so many money-laundering legislations have been enacted to ostensibly stop money-laundering, but with the aim to counteract the huge sums of migrant remittances.

In the US, a family was sending money to its family in Jordan. Because the writing on the envelope was in Arabic, it was turned over to the FBI; the money was confiscated and the family was accused of supporting terrorism.

Nationally, in 26 different states, South Asian kiosks in malls which sell money orders and help people wire money home were also investigated and charged with money-laundering linked to terrorism. They were only sending these migrant remittances home.

The war on terrorism is really a war on the rights of migrants in the US.

In Dec. 2001 a summit was held in Geneva and countries came together to celebrate the 50<sup>th</sup> anniversary of the 1951 *Convention Relating to the Status of Refugees*. But at the same time, these same countries were adopting anti-terrorism laws and measures which were undermining their own obligations to international refugee laws. That's the irony of the period we are living in.

On July 1<sup>st</sup>, 2003, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* finally came into force when the 20<sup>th</sup> country ratified it. Presently 24 countries have signed and ratified the Convention which is only applicable in the signatory countries. Of course, the US has said that it will never sign it. It took 13 years to get 20 countries to sign it since the Convention was adopted by the UN General Assembly on Dec.18, 1990.

### ***Situation in the US***

What is happening now in the US is a political and economic restructuring of citizenship, in terms of who has the franchise, who has authority to speak, who has the assumed

privilege of movement, or the freedom of association. What is happening is that the condition of what is called an “immigrant” really fits in the Reaganomics program which has been in existence in the US for some 20 years. There is an attack on civil liberties, civil rights, labour protection, environmental regulations all the while de-regulating how capital and investments and profits are made and at the same time rolling-back public benefits or privatizing them. The only way you can make this kind of program work is by rolling back what citizenship is.

People think that the war on terrorism is a war on terrorists. It is not. The war on terrorism is an attack on the framework of citizenship and how we are able to intervene in decision making that affect our families, our future and also, our relationship with other countries.

For the NNIR, it is not the rights of immigrants that are at stake but rather the rights of every individual. We have to argue that all individuals have the same rights regardless of their immigration status. Once you have created two standards you have created a police state where the government can act with impunity based on racial or gender profiling. If people are considered dispensable, then, they can be disappeared.

### *Post 9-11*

Now what happened after Sept 11 on the ground? Literally as the Twin Towers were falling, a gang of five men began assaulting a Sikh man in New York City. They called him an Arab terrorist and beat him with bats. It was very well documented. More than 200 incidents of hate violence occurred within the first week of the tragedy. Then, 600; then, several thousands, including murders, firebombed mosques, defacing of small businesses belonging to Muslims. And it has not really stopped. The intensity changes with what happens at the international level.

From Sept. 11, 2001 to March 1<sup>st</sup> 2003, there was a lot of experimenting with how much the US people would take in terms of disappearances of Muslim men, or new secret agreements to deport refugees between Cambodia and the US and other pending new secret agreements. The 1996 Immigration and Nationality Act made it easier to deport legal permanent residents and naturalized citizens. For example, if they committed any minor violations or infractions, this was considered an aggravated felony and that is considered a deportable offence, and due process rights are short-circuited.

Between 1996 and 2001, hundreds of thousands of families were losing their family members because of this law. And after Sept. 11, it was implemented with much more vigour and there was not only the Patriot Act, but also two other laws: the National Security Entry Exit Registration System (the border law) and the Aviation and Transportation Security Act laws were applied to our communities.

Under the Immigration and Nationality Act, when someone is arrested or detained, he or she is told that if he or she does not sign away his or her rights, that person might end up in jail and then be deported anyway. So people sign away their rights, get deported

immediately. Children are left behind, neighbourhoods are abandoned and, communities are devastated. This is not a post- Sept.11 phenomenon. It's simply been extended to others beyond traditionally targeted communities. Sept 11 has made it easier to get around due process rights.

### *Conclusion*

There are a series of new laws being debated. Some have to do with the regularization of the status of undocumented immigrant, while others have to do with curtailing even more the rights of citizens and non-citizens. One proposed law now before Congress is the Clear Law Enforcement for Criminal Alien Removal Act (CLEAR). It will give state and local police the authority to act as local immigration enforcers, although they are already doing it informally.

What happens is that immigrants or people who fear detention/deportation will not report crimes.

This is what it means in everyday life: A Pakistani family in New York City tries to put out a fire in their apartment because they don't want to call the Fire Department, thus endangering the whole building.

A man witnesses a murder. He is a good citizen. He comes forward. He is a star witness in a year-long murder trial but, unbeknownst to him, the state attorney for Rhode Island knows he is undocumented and turns him over to the Department of Homeland Security. But he is not arrested until the trial is over, a conviction is secured, and then, two days later, without a charge, without a trial, he is simply arrested. Authorities put him in the same correctional institute as the person he helped convict. Because there are problems there, he is transferred to a maximum security prison although he has never been charged, tried or anything. He was just an undocumented immigrant and now he has been deported. He was an outstanding citizen. He was employed. He had a family. When asked about this experience he said: "I would tell people, do not come forward, do not report crimes, because you will be arrested, your rights will be abused; you will not be protected."

This is the problem with the CLEAR Act. The Department of Homeland Security not only has the largest standing armed forces right now but wants to extend and magnify its powers by tapping into 650,000 law enforcement officers in the country.

This problem is quite serious. If you compare the boundaries and the border – a border is what exists between US-Mexico and a boundary refers to Canada. But because of the Smart Border Agreement, you will soon have a border too.

You can put one border patrol agent every 1,000 yards, the length and breadth of the US-Mexico border. Now, in Canada, you can put one every 16 miles.

How many Canadian immigrants die each year trying to enter the US to get a low-wage 72-hour a week job? Zero.

Between Sept. 30, 2002 and Oct. 1<sup>st</sup> 2003, 300 bodies of mainly Mexican and Latin American migrants were found near the US-Mexico border.

That is the kind of relationship the US wants with the displacement it is causing abroad, with the people who are arriving on its shores, in its airports, in its factories or in its sweatshops. If you want these jobs, then you have to risk your life to get them. That is what is being offered. It is not being offered to immigrants. It is being offered to us. Do we want that kind of relationship where people are not in the shadow of the law, but living in each other's shadow not knowing who is causing this shadow to appear?

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## CONSEQUENCES ON CITIZENSHIP, IMMIGRATION AND REFUGEE POLICIES IN CANADA

By Janet Dench, Canadian Council for Refugees\*

Since Sept. 2001, governments have given priority to the security agenda. A number of factors that existed prior to Sept. 11, 2001 affected how this agenda influenced policies relating to immigrants and refugees.

- There has historically been a low regard for the basic rights of non-citizens in the immigration process. For example, immigration detention is not treated as a serious breach of the right to liberty. Lawyers familiar with the rules relating to the detention of persons accused under criminal law are often shocked to see how few protections the law offers to those facing immigration detention. The principle that non-citizens have rights is in itself controversial: consider the persistent criticism of the Supreme Court decision in *Singh*, rendered in 1985, recognizing that non-citizens are protected by the Charter of Rights and Freedoms and thus have the right to life, liberty and security of the person.
- There have long been frequent attacks on the refugee determination system, usually based on distorted information which by repetition creates tenacious myths: that the system is too long, too expensive, too generous, ineffective and easy to abuse. Facts do not have much to do with the attacks, or at most changes in fact simply alter the nature of the argument against the system. For example, when the acceptance rate was high, it was argued that Canada was absurdly generous. When the acceptance rate goes down, we are told that obviously most claimants do not need protection.
- The Canadian government has for several years pursued a policy of deporting “undesirables” rather than bringing them to justice. Part of the reason for this policy lies in the difficulties that the government encountered in prosecuting Nazi-era war criminals, and for these individuals, deportation may be the best that the government can do. However, in the case of modern war criminals or others responsible for mass violence, this policy often will do little to achieve any measure of justice. It also shows a failure to engage with global issues: the government is basically saying that it doesn’t care what happens – to the suspected perpetrator or the victims – as long as the person is out of Canada.
- Refugees and immigrants enjoyed particularly limited rights when security issues were raised. Some people were held on security certificates, although little attention was paid to their situation. Many more people were labelled a security

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\* Janet Dench is the Executive Director of the Canadian Council for Refugees, where she has worked since 1990. Through this organization and through others for which she has volunteered, she works for policies and programs that respect refugee rights and welcome refugees and immigrants to Canada. Her main interests lie in international and Canadian refugee and immigration policy, with an emphasis on international human rights, gender sensitivity and antiracism, and in NGO networking and advocacy.

- concern, but without a security certificate. The CCR has been particularly interested in the plight of refugees denied permanent residence on security grounds. Among these are Palestinians, Kurds, Iranians with an association with the MEK (Mujahedin-e Khalq Organization) and a Chilean (for being part of anti-Pinochet group). The law does not require that they represent any kind of a security threat to be found inadmissible on security grounds.<sup>1</sup>
- Canadian society is afflicted with racism and xenophobia, which affect how immigrants and refugees are perceived and treated.

### *After Sept. 11, 2001*

The impact of the attacks on refugees and immigrants in Canada was affected by a number of factors :

- In the days following Sept. 11, 2001, accusations were made in the US against Canada. It was reported that some of the terrorists might have come from Canada. The fact that it quickly became clear that they had not, did not stop the continuing allegations that Canada's immigration policies make the US vulnerable to terrorism. Memories were re-awakened of the case of Ahmed Ressam, caught crossing the border in Dec. 1999 with the intention of making an attack.
- Anti-refugee lobbyists quickly retooled their arguments against the refugee system into security related arguments. Many of the arguments presented had nothing to do with enhancing security, but this did not prevent them from being given a lot of airtime in the media.
- There was debate over whether to re-open Bill C-11 (the Immigration and Refugee Protection Bill) in order to introduce tougher security-related measures. The bill had already passed the House of Commons in June 2001. The government decided not to re-open the bill, no doubt largely because it had been sold as a "get tough" bill.

### *Consequences*

Concretely, the following changes were experienced by refugees and immigrants :

- **Front-end security reviews**

In Oct. 2001, Citizenship and Immigration Canada introduced "front-end" security reviews for refugee claimants. This change in procedures had in fact been in the pipeline for years, but its introduction was delayed until after Sept. 11, because money was not approved. Front-end security reviews mean that basic data about all refugee claimants transferred to the CSIS immediately after they make their claims. If in reviewing the data,

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<sup>1</sup> See CCR, *Refugees and Security*, Revised February 2003, available at [www.web.ca/~ccr](http://www.web.ca/~ccr)

CSIS has any concerns about an individual they will investigate further.<sup>2</sup> The change in procedures does not appear to have resulted in the detection of an increased number of people representing a threat to security. In 2003, 31,837 claims were made. During the same year, only two claims were found ineligible on the basis of security. Claimants found ineligible on security grounds do not necessarily represent a threat to security, since, as mentioned above, it is possible to be inadmissible on security grounds without representing any kind of threat.

- **Increased budget for immigration detention**

New budget allocations made by the federal government in Dec. 2001 as part of the security response included increased amounts for immigration detention. Most of the money, however, is not being used to detain security-related cases. The big increase is in detention on identity grounds. From June to Dec. 2003, 56% of detentions were on grounds of flight risk, 10 % because of a lack of satisfactory identity documents, and only 1% on security grounds (or an average of 9 people). This does represent an increase : in 2002 there were on average five people detained on security grounds.<sup>3</sup>

- **Safe Third Country Agreement**

In Dec. 2001 the US and Canadian governments signed the Smart Border Declaration. One of the 30 action items committed to was the negotiation of a safe third country agreement. A year later in Dec. 2002 the agreement was signed.<sup>4</sup> It is not about security : it got put on the agenda because Canada wanted it there. A similar agreement was being negotiated in the mid-1990s, but was dropped because the US did not see that it offered them any advantage. It is hotly contested by refugee advocates on both sides of the border, because its main effect would be to prevent claimants at the US-Canada border from making a claim in Canada (with some exceptions). The implementation of the agreement, which has not yet occurred, is in fact likely to increase insecurity at the border with a rise in irregular crossing of the border by claimants who are seeking Canada's protection and who are forced to use the back door, because the front door has been closed to them.<sup>5</sup>

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<sup>2</sup> Prior to the introduction of front-end security reviews, CIC officials did their own assessment of potential security risks and alerted CSIS if they felt that an individual raised any concerns, but there was no systematic transfer of all cases.

<sup>3</sup> The CCR has only had access to statistics on detention specifying the ground of detention since November 2001. However, at that date there were 3 detainees who had been in detention on security grounds since before Sept. 11, 2001.

<sup>4</sup> The full name of the agreement is the *Agreement between the Government of Canada and the Government of the United States of America Regarding Asylum Claims Made at Land Borders*. Reference to the signing of the agreement is included in the *Smart Border Action Plan: Status Report*, Oct. 3, 2003, available on the DFAIT website.

<sup>5</sup> In its report on the safe third country regulations in Dec. 2002, the House of Commons Standing Committee on Citizenship and Immigration raised a number of serious concerns about the border insecurity that might be caused by the agreement.

- **Direct backs**

On Jan.27, 2003 Citizenship and Immigration Canada introduced a new policy on “direct backs” at the US-Canada border. The signing of the safe third country agreement was used as a rationale. The precipitating factor was the arrival at the border of hundreds of Pakistani and others fleeing the Special Registration Program.<sup>6</sup> The “direct back” policy allows Canadian officials to send claimants back into the US with an appointment to return at a later date that is more convenient to the Canadian government. This is done without Canada seeking any assurance from the US that the claimants will in fact be able to return for the appointment. Many claimants directed back were detained by American authorities. This was especially the case for men and, at the beginning at least, Muslim men (later it seemed that the US, in the interests of non-discrimination, detained virtually all men without status). The border point south of Montreal (Lacolle-Champlain) was the worst affected.<sup>7</sup> Most of those detained were able to get released, but only after paying huge sums in bonds, much of it not recoverable.<sup>8</sup> The operation can be seen as a kind of program of extortion from the Pakistani community. Some were not successful in getting released and were instead deported from the US. Direct backs are still continuing, although the numbers are down, partly because the pressures of people fleeing Special Registration have subsided and partly because people have been warned off going to the border without an appointment.<sup>9</sup>

- **Security certificates**

Security certificates are a rarely used provision of the immigration legislation, but there have been increased numbers of certificates issued in the last three years.<sup>10</sup> The provision allows the government to deport a permanent resident or other non-citizen without showing them (or their lawyer) the evidence against them. The certificate must be signed by two ministers, although changes introduced by Prime Minister Paul Martin on Dec.

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<sup>6</sup> 3,943 Pakistanis made claims in 2003, representing 12 % of total claims. By no means were all of these people who had been living in the U.S. However, 77 % of the claims were made at the US-Canada border.

<sup>7</sup> This was because the other major border points used by claimants already had in place an appointment system, meaning that fewer claimants presented themselves spontaneously.

<sup>8</sup> The CCR calculated that by early March 2003 (i.e. in just over one month), the U.S. authorities had seized over \$100,000 in bonds from claimants, many of them Pakistani, directed back by Canada.

<sup>9</sup> One of the effects has been to funnel claimants to Ontario, where an appointment system exists. This contributes to a serious imbalance in the geographic distribution of claimants, which the refugee determination system is not equipped to respond to. Seventy per cent of claimants are now referred to the Toronto office of the Immigration and Refugee Board, which does not have an equivalent proportion of Board members. As a result, some refugee claimants in Toronto are forced to have their refugee hearings by videoconference, with a Board member in another city, a practice the CCR opposes as unfair and insensitive.

<sup>10</sup> The provisions relating to security certificates are found in sections 76-84 of the *Immigration and Refugee Protection Act*.

12, 2003 combined the two so that a single signature is required. The certificate is referred to a Federal Court judge, who prepares a summary of the evidence for the person to see. There are of course provisions for detention of the person; in fact, detention is mandatory in the case of a person who is not a permanent resident. At least six people are currently being held on security certificates, all men, five of them Muslim and Arab.<sup>11</sup>

- **Proposed New Citizenship Bill C-18**

Bill C-18 was introduced in Oct. 2002. This was the third time the government tried to get this piece of legislation through Parliament, but C-18 had an important new element compared to the two previous versions : a security certificate provision was included. The bill would have given the government the power to use secret evidence to strip a Canadian of citizenship and deport them. This caused quite a controversy (although it was not widely discussed in the media) and several Liberal MPs were known to be opposed to this and other elements of the bill. The bill died on the order paper in the fall of 2003. One may imagine that the bill is likely to be re-introduced, in one form or another, in the next Parliament.

- **Operation Thread**

In August 2003, Canadian newspapers were full of the stories of a group of Muslim men who had been arrested and detained as suspected terrorists under Operation Thread. Eventually there were 22 Pakistani and one Indian. They were supposedly an al-Qaeda cell. Incriminating details included a student pilot with a flight course over a nuclear plant, several young men living together in sparsely furnished apartments, the setting off of the smoke alarm in the kitchen (supposedly a sign of baking bombs) and one man who knew someone who had an al-Qaeda connection. It soon became clear that the suspicions were unfounded, with the RCMP backing away from the accusations first and immigration officials later acknowledging that there was nothing to it. But by then the damage was done : the detainees had been publicly labelled “terrorist suspects.” A *Toronto Star* article of Feb. 8, 2004, entitled “Our dreams are now dust”, reported on the fate of some of those deported back to Pakistan: they faced harassment and unemployment as terrorist suspects.

- **Creation of the Canada Border Services Agency**

On Dec. 12, 2003, Prime Minister Paul Martin split Citizenship and Immigration Canada, On sending enforcement functions over to the newly-created Canada Border Services Agency, which reports to the Minister of Public Safety and Emergency Preparedness. Among the functions transferred is the Pre-Removal Risk Assessment, which, far from being an enforcement function, is actually a mechanism to protect individuals who may

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<sup>11</sup> As of Feb. 2004, the following people were detained under a security certificate, as reported in the media: Mohammad Mahjoub, detained since June 2000, from Egypt; Mahmoud Jaballah, detained since Aug. 2001, from Egypt; Hassan Almrei, detained since Oct. 2001, from Syria; Mohamed Harkat, detained since Dec. 2002, from Algeria; Adil Charkoui, detained since May 2003, from Morocco; Ernst Zündel, detained since May 2003, from Germany.

face death, torture or other forms of persecution if removed. Final decisions have not yet been announced about other transfers, but part of entry functions, which include the initial interview and eligibility decision for refugee claimants, are also likely to be moved to the Canada Border Services Agency. The CCR has raised serious concerns about having refugee claimants processed by an enforcement agency, since protecting refugees will likely not be a priority within such a structure. In addition, it sends the damaging message to the public that the government considers refugee claimants a threat to public safety.

## CONCLUDING REMARKS

By Warren Allmand\*

I was asked to wrap-up and make concluding comments. It is difficult to add much to the very excellent testimony that was given all through the day, but I'll try to briefly emphasize a few points.

Following the tragedy of Sept. 11, 2001, many countries led by the US initiated legislation and other measures to deal with terrorism and other security threats. In Canada, as was mentioned, the government passed C-36, the Anti-Terrorism Act; there was C-17, in three different forms – it's not yet passed; C-18 to amend the Citizenship Act – not yet passed – the “lawful access” proposals to deal with interceptions of e-mail and cell telephones – no bill yet, thank goodness – proposals for national identity cards – again no bill yet – and the recently established Department of Public Safety and Emergency Preparedness, a new large department to deal with many of these issues.

These laws and policies include measures that, in my view, contravene our Charter of Rights and Freedoms and the *International Covenant on Civil and Political Rights* (ICCPR) which Canada has ratified : measures such as preventive detention, arbitrary arrests, invasion of privacy, limitation on freedom of expression and access to information, the freezing of property, investigative hearings, the suspension of the rule that you are innocent until proven guilty, the provision of a list of terrorists where you have no hearing when you're put on it but you can have a hearing after you are on. But there have been no tests before the courts yet. Whether all these provisions in C-36 and so on meet the test of Article 1 in the Canadian Charter of Rights and Freedoms, which stipulates that the rights and freedoms set out in it are subject only to such reasonable limits prescribed by law as can be demonstrated justifiably in a free and democratic society, is questionable. Anne McLellan, who by the way was Minister of Justice when Bill C-36 was introduced and adopted, made a statement before the parliamentary committee saying that they had tested C-36 on constitutional grounds and it had passed. Of course the Department of Justice always says things like that.

Also, under Article 4 of the ICCPR, derogations are permitted but very strictly limited and subject to a time limit. As you know there is no overall sunset clause in C-36, but only a very small one that applies to only one part of that bill. Today we have heard about similar measures in the United States, Europe and Asia and the very specific and shameful impacts of such laws on Arabs and Muslims.

Some of the results of these policies and legislation have been the Maher Arar case, the raid on journalist Juliet O'Neil's home and office, problems at the Canada-US border,

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\* Warren Allmand is a former solicitor general of Canada and the immediate past president of the International Centre for Human Rights and Democratic Development (Rights & Democracy). He was a Member of Parliament for more than 30 years. He has campaigned against the death penalty worldwide, and is known for his defense and promotion and human rights.

security certificates, the increase in racial profiling especially against Arab and Muslims, and increased restrictions on freedom of information and privacy.

Most of us would support measures to deter and combat the massive killings of innocent citizens. After all, Article 3 of the Universal Declaration on Human Rights and Article 6 of the International Covenant talk about the right to life and it is the obligation of governments to protect this right. This must be done in a way that does not suppress other human rights set forth in the Universal Declaration or in the International Covenant.

One of the major statements in the 1993 Vienna Declaration and Program of Action was that you cannot pick and choose, you cannot use one set of rights to suppress and do away with other rights. In other words, you don't provide for greater security by a hasty, ill-conceived suppression of human rights.

Part of the problem in all of this is that these laws are for the most part administered by persons who are not always properly recruited and trained in human rights and security. A few years ago in 2000, it was revealed that the RCMP put together a threat assessment list which included the Council of Canadians, Amnesty International Canada, Rights & Democracy – my former organization – certain trade unions, Greenpeace Canada and so on. One has to question how they came to these conclusions.

I always like to tell the story how when I was solicitor general, I was bugged by an undercover agent for the RCMP, one of my employees more or less, who described me as “a Communist son of a bitch.” All this came out of the McDonald inquiry. One has to ask what sort of training and judgment do these people have to decide who should go on such a list and who shouldn't. The administration of such laws without oversight and proper checks and balances can lead to very serious abuse and injustice.

Also, as many of the panellists have pointed out, it is very difficult to define terrorism or to distinguish freedom fighters from terrorists. Some of the countries that have joined the US-led coalition against terrorism are in fact practicing state terrorism against their own people. The war on terrorism campaign has given them additional justification to suppress dissent. This is another serious flaw in this whole approach.

Regretfully, none of these laws to which I have referred – C-36, C-18, C-17 –, none of them, nor the Patriot Act, nor the laws in the UK and in Europe have attempted to address the causes which give rise to terrorism. If Canada is truly concerned about security, if Americans are truly concerned with security, then surely they should be re-examining their foreign policy, their policies on overseas development assistance and their policies on international trade. Terrorism builds on exploitation, builds on injustice, builds on international greed and all the Patriot Acts and all the Bill C-36s alone will not solve those problems. If you really want security you really must address those problems.

For all these reasons, in 2002, NGOs, trade unions, the churches and others came together to form the ICLMG to monitor, analyze, and report on antiterrorism measures; to lobby against the most distasteful provisions; to conduct public education; and to make the

public aware of abuses of human rights and constitutional rights. Finally, this work led to this conference. We decided that since many other countries and NGOs in other countries were faced with similar laws, and similar issues, it would be beneficial to meet to sharing information, to share experiences and strategies, but also to discuss how we might better cooperate and how we might work together to accomplish our common goals with respect to such legislation. Tomorrow the steering committee of the ICLMG will meet with our visiting experts to consider what was said today, map out areas of cooperation and explore how to strategize together.

There are great opportunities coming up. In Canada, we have the Maher Arar inquiry where witnesses will be called. It will be a great opportunity to focus on these issues in a case which has shocked and alarmed Canadians.

Finally we have the three year review of Bill C-36, which is another opportunity to focus on these issues.

Canada will come up for review this year before the United Nations Human Rights Committee, a review of how we deal with the ICCPR and as you know, NGOs can furnish information to the UNHRC with respect to these laws we have been discussing today.

Walden Bello also referred to the model of the World Social Forum, where this January, more than 100,000 people met in India to follow-up on the two previous summits. The first two were held in Porto Alegre, in Brazil. It was a fantastic coming together of people from around the world to counter-balance the opposing forces as was pointed out today.

This kind of movement encourages us and gives us hope. I have been telling my students –I am teaching international human rights now at McGill – that if you get involved in human rights, you have to be very patient, you have to do a lot of work and you have to be committed for years and years.

I point out that it took hundreds of years to abolish slavery, and hundreds of years to abolish the death penalty. We win some victories. We got the ICC with thousands of NGOs cooperating around the world; thousands of NGOs around the world cooperating on land mines, thousands of NGOs around the world cooperating on the optional protocol against the use of child soldiers.

So we can win. I believe when your cause is just and right you will eventually win.

Let's keep up this strong and good work.

## ANNEXES

## **ANNEXE 1**

### **LES MEMBRES DE LA CSILC**

La Coalition pour la surveillance internationale des libertés civiles est un regroupement pancanadien d'organisations de la société civile qui fait la promotion du respect des droits de la personne et des libertés civiles. Les prises de position de la Coalition reflètent les préoccupations communes de ses membres mais ne représentent pas nécessairement l'articulation de leurs politiques individuelles.

- Amnistie Internationale
- Association canadienne des professeures et professeurs d'université
- Association du Barreau canadien
- Association québécoise des organismes de coopération internationale
- B.C. Freedom of Information and Privacy Association
- Canadian Friends Service Committee
- CARE Canada
- Centre canadien pour la philanthropie
- Centre for Social Justice
- Congrès du travail du Canada
- Conseil canadien pour la coopération internationale
- Conseil canadien pour les réfugiés
- Conseil des Canadiens
- Conseil ethnoculturel canadien
- CUSO
- Développement et Paix
- Droits et Démocratie
- Fédération canado-arabe
- Fondation David Suzuki
- Greenpeace
- International Development and Relief Foundation
- Inter Pares
- KAIROS
- Ligue des droits et libertés du Québec
- Muslim Lawyers Association
- National Organization of Immigrant and Visible Minority Women of Canada.
- Ontario Council of Agencies Serving Immigrants
- Primate's World Relief and Development Fund
- Syndicat canadien des travailleurs de l'automobile
- Syndicat des métallos unis d'Amérique
- Vision mondiale Canada

### **Les amis de la Coalition**

L'honorable Warren Allmand; M. Allmand est un ancien solliciteur général du Canada et président sortant de Droits et Démocratie.

L'honorable Ed Broadbent; M. Broadbent est un ancien chef du Nouveau Parti Démocratique du Canada. Il fut le premier président du Centre international des droits de la personne et du développement démocratique (Droits et Démocratie).

L'honorable Gordon Fairweather; M. Fairweather fut le premier commissaire en chef de la Commission canadienne des droits de la personne. Il a également été procureur général du Nouveau-Brunswick et député à la Chambre des Communes.

L'honorable David MacDonald; M. MacDonald est un ancien secrétaire d'État et ancien ministre des communications du Canada. Il a été ambassadeur du Canada en Éthiopie.

L'honorable Flora MacDonald; Mme MacDonald est une ancienne ministre des affaires étrangères et ancienne ministre des communications.

La révérende Lois Wilson; Mme Wilson est une ex-modératrice de l'Église Unie du Canada, et ancienne membre Sénat canadien.

## ANNEXE 11

### FORUM PUBLIC

#### Sécurité et stratégie antiterrorisme : Répercussions sur les droits, les libertés et la démocratie

Le 17 février 2004

#### Ordre du jour

- 9 h Mot de bienvenue et présentations (Hilary Homes coprésidente de la Coalition de surveillance internationale des libertés civiles)
- 9 h 10 – 9 h 40 La stratégie mondiale des États-Unis en matière de sécurité : vue d'ensemble et solution de rechange (**Walden Bello** directeur général de *Focus on the Global South* et lauréat du prix *Right Livelihood 2003* – le Prix Nobel alternatif – ainsi que militant des droits humains et de la paix, défenseur de l'environnement, universitaire et journaliste)
- 9 h 40 – 10 h 30 La stratégie de sécurité au Canada  
  
Les mesures adoptées au Canada et leurs répercussions sur les lois du pays, la démocratie, la souveraineté et la sécurité. Les mesures antiterroristes et leurs répercussions concrètes sur la société canadienne (**Roch Tassé**, CSILC).
- 10 h 30 – 10 h 45 Pause
- 10 h 45 – midi Le point de vue de « l'Amérique »  
  
Effets et conséquences des mesures de sécurité américaines sur les libertés civiles, la démocratie et les frontières – particulièrement en ce qui a trait au droit à la vie privée, à la liberté d'expression, au droit d'association, à la non discrimination et à la suppression de la dissidence politique. (**Jeanne Herrick-Stare**, *Friends Committee on National Legislation*).  
  
La nouvelle société sous haute surveillance et la contestation judiciaire du Patriot Act (**Jameel Jaffer**, *American Civil Liberties Union*)  
  
Effets et conséquences sur les droits constitutionnels, la justice fondamentale particulièrement la détention préventive, les procès « secrets », les prisonniers de Guantanamo et la pratique visant à envoyer des détenus dans des pays qui pratiquent la torture pour leur arracher des aveux. (**Steven Watt**, *Center for Constitutional Rights*)

Midi – 13 h 15	Déjeuner
13 h 15 – 14 h	<p><u>Le point de vue de l'Europe</u></p> <p>Vue d'ensemble des lois de sécurité au Royaume-Uni et en Europe européenne et leurs effets – en particulier : l'érosion du droit à la vie privée comme résultat des ententes entre l'Union européenne et les États-Unis sur le partage des renseignements personnels; la criminalisation de la dissidence politique et les nouvelles contraintes à la liberté de mouvement et au droit à la vie privée (<b>Ben Hayes</b>, <i>Statewatch</i>).</p>
14 h – 14 h 50	<p><u>Le point de vue du Sud</u></p> <p>La situation en Malaisie (<b>Yap Sweee Seng</b>, SUARAM et le <i>Asian People's Security Network</i>)</p> <p>La situation aux Philippines (<b>Walden Bello</b>, <i>Focus on the Global South</i>)</p>
14 h 50 – 15 h 30	<p><u>Conséquences et effets sur les communautés musulmanes et arabes au Canada</u></p> <p><b>Raja Khouri</b>, Fédération canado-arabe  <b>Khalid Baksh</b>, <i>Muslim Lawyers Association</i></p>
15 h 30 – 15 h 45	Pause
15 h 45 – 16 h 35	<p><u>Conséquences et effets sur la citoyenneté et les droits des immigrants et des réfugiés</u></p> <p>La situation mondiale et aux États-Unis (<b>Arnoldo Garcia</b>, <i>National Network for Immigrant and Refugee Rights</i>)</p> <p>La situation au Canada (<b>Janet Dench</b>, Conseil canadien pour les réfugiés)</p>
16 h 35 – 16 h 55	Synthèse et mot de la fin ( <b>Warren Allmand</b> , ancien solliciteur général du Canada et ex-président de Droits et Démocratie)

## ANNEXE 111

### **CONFÉRENCIERS**

#### **AMERICAN CIVIL LIBERTIES UNION**

L'Union américaine pour les libertés civiles ou ACLU est l'organisme de protection des libertés aux États-Unis, qui intervient auprès des tribunaux, des assemblées législatives et les collectivités pour défendre et préserver les droits individuels et les libertés garantis par la Constitution et les lois du pays. Depuis sa fondation en 1920, cet organisme sans but lucratif et non partisan a grandi. D'une poignée de militants des libertés civiles des débuts il compte désormais près de 400,000 membres et de partisans et a installé des bureaux dans presque tous les états. Depuis toujours, l'ACLU soutient que les libertés civiles doivent être respectées même en période d'urgence nationale. Pour défendre cette position, elle est intervenue à de nombreuses reprises auprès de la Cour suprême des États-Unis et de nombreux autres tribunaux, soit directement ou encore en présentant des amicus curiae. La mission de l'ACLU est de combattre les violations des libertés civiles partout où elles se produisent.

#### **CENTER FOR CONSTITUTIONAL RIGHTS (E.U.)**

Le Centre pour les droits constitutionnels est un organisme sans but lucratif voué au droit et à l'éducation dont le mandat est de protéger et de faire avancer les droits garantis dans la constitution des États-Unis et la Déclaration universelle des droits de l'homme. Le Centre a recours aux interventions devant les tribunaux afin développer le droit d'une manière positive, de donner des pouvoirs aux communautés pauvres et aux minorités visibles. De plus, le Centre tente de garantir les droits de ceux et celles qui en ont le moins et qui ont le moins accès aux ressources juridiques tout en formant la prochaine génération d'avocats spécialisés dans les domaines du droit constitutionnel et des droits humains et en renforçant le mouvement en faveur des droits humains et constitutionnels.

#### **COALITION POUR LA SURVEILLANCE INTERNATIONALE DES LIBERTÉS CIVILES (CANADA)**

La CSILC réunit des ONG, des églises, des syndicats, des défenseurs de l'environnement, des défenseurs des libertés civiles, d'autres groupes confessionnels et des organismes représentant des collectivités d'immigrants et de réfugiés au Canada. La coalition a pour objectif de servir de table ronde pour animer les discussions et les échanges – y compris les échanges entre le Sud et le Nord – entre les organismes et les communautés les plus visés et touchés par l'application des lois antiterroristes, et de servir de point de réflexion et de coopération en réponse à ces lois et leurs conséquences.

## **CONSEIL CANADIEN POUR LES RÉFUGIÉS**

Le Conseil canadien pour les réfugiés est un organisme de regroupement sans but lucratif qui se voue à la défense des droits et à la protection des réfugiés au Canada et dans le monde, et à l'établissement des réfugiés et des immigrants au Canada. Ses membres sont des organismes impliqués dans l'établissement, le parrainage et la protection des réfugiés et des immigrants. Le Conseil est au service de ses membres pour leurs besoins en matière d'échange d'informations et d'expériences et de défense des droits.

## **FÉDÉRATION CANADO-ARABE**

La FCA est un organisme à but non lucratif qui a pour mandat d'identifier, articuler, défendre et les intérêts de la communauté canado-arabe. Depuis 1967, la FCA aide les Canadiens d'origine arabe à s'intégrer au sein de la société canadienne et leur donne une voix dans les affaires publiques du pays. Pour ce faire la FCA entretient des liens avec les médias, les trois niveaux de gouvernement, plusieurs organismes nationaux et les organismes non gouvernementaux. La FCA joue un rôle de premier plan dans la lutte contre la haine, le racisme et les stéréotypes, par le biais de la sensibilisation, de la recherche et de l'éducation.

## **FOCUS ON THE GLOBAL SOUTH (THAÏLANDE –PHILIPPINES)**

Focus on the Global South est un programme de recherche-action de l'Université Chulalongkorn à Bangkok. Créé en 1995, ses recherches portent principalement sur les questions reliées à la finance internationale et à la mondialisation. Il fait campagne contre la plus grande libéralisation du commerce. Voué à l'analyse politique régionale et mondiale ainsi qu'aux questions « micro-macro », le programme fait le lien entre la recherche et la sensibilisation. Ses programmes sont axés sur les questions de commerce et sur la question de la sécurité. Une équipe de recherche est également en poste aux Philippines.

## **FRIENDS COMMITTEE ON NATIONAL LEGISLATION (E.U.)**

Le Comité des amis sur la législation nationale est un groupe de pression d'intérêt public fondé en 1963 par la Société religieuse des amis (aussi connus sous le nom des Quakers). Le personnel et les bénévoles du Comité travaillent avec un réseau national de milliers de personnes en faveur de la justice sociale et économique ainsi que de la paix et du bon gouvernement. Sa démarche de sensibilisation sur plusieurs thèmes est en lien avec les témoignages historiques des Quakers en faveur de la paix, de la simplicité et de la vérité avec les questions de justice sociale et de paix qui sont à l'ordre du jour du gouvernement américain ou qui devraient l'être. Le Comité tente également d'identifier, d'articuler et de promouvoir des solutions pacifiques à « la guerre au terrorisme » notamment le respect par les États-Unis au droit international et sa participation aux efforts multilatéraux pour

prévenir et régler les conflits violents par le biais d'institutions telles que les Nations Unies et les tribunaux internationaux.

### **MUSLIM LAWYERS ASSOCIATION (CANADA)**

L'Association des avocats musulmans représente des personnes musulmanes de toutes origines qui sont membres de la profession légale en Ontario. Fondée en 1992, elle a pour mission d'aider les avocats musulmans, les étudiants en droit, la communauté musulmane et le grand public. L'Association axe son travail sur l'éducation, le réseautage et fournit un appui professionnel aux avocats. Depuis le 11 septembre 2001, elle surveille l'application des lois antiterroristes et a présenté des mémoires sur la question à de nombreux comités parlementaires.

### **NATIONAL NETWORK FOR IMMIGRANT AND REFUGEE RIGHTS (E.U.)**

Le Réseau national pour les droits des immigrants et des réfugiés est une organisation nationale qui réunit des coalitions locales d'immigrants, de réfugiés, des collectivités, des groupes religieux, des groupes de libertés civiles, des syndicats et des militants. Le réseau joue le rôle d'un forum pour le partage de l'information et de l'analyse afin de mieux renseigner ses groupes membres et le grand public et pour développer et coordonner d'importants plans d'action sur les questions touchant les immigrants et les réfugiés. Le réseau travaille à la promotion d'une politique américaine juste en faveur des immigrants et des réfugiés ainsi qu'à la défense et à l'élargissement des droits de tous les immigrants et réfugiés, quelque soit leur statut.

### **STATEWATCH (U.E.)**

Statewatch est un groupe à but non lucratif fondé en 1991 et établi au Royaume-Uni. Des avocats, des universitaires, des journalistes, des chercheurs et des militants communautaires en font partie. Il regroupe également des collaborateurs de 12 pays d'Europe. Statewatch soutient et encourage le journalisme d'enquête, la recherche critique dans les domaines des libertés civiles, la transparence et le rôle de l'État. L'organisme maintient également neuf « observatoires » sur les libertés civiles et la transparence au sein de l'Union européenne sur son site Internet et quatre autres « observatoires » sur le site de SEMDEC (le Centre de documentation et de surveillance européenne Statewatch). Ensemble, ces sites offrent des ressources documentaires parmi les plus complètes et sont largement diffusés à travers l'Europe.

### **SUARAM (MALAISIE)**

Suara Rakyat Malaysia (SUARAM) est un organisme des droits humains qui oeuvre en faveur d'une société juste, égalitaire et durable. Il défend et fait la promotion des libertés civiles telles qu'enchâssées dans la Charte des droits de la personne de la Malaisie ainsi que dans la Déclaration universelle des droits de l'homme. SUARAM surveille, documente, met en lumière et oppose les violations des droits humains par les autorités

malaisienne. L'organisme est membre du nouveau réseau, le Asian People's Security Network, qui a vu le jour en Thaïlande, en 2002.

### **WARREN ALLMAND**

Warren Allmand est un ancien solliciteur général du Canada et ex-président de Droits et Démocratie (Centre international des droits de la personne et du développement démocratique). Il a été député à la Chambre des communes pendant plus de 30 ans. Il fait campagne pour l'abolition de la peine de mort à travers le monde et est reconnu pour son travail en faveur des droits humains.

### **WALDEN BELLO**

Jumelant les rôles d'intellectuel et de militant Walden Bello est l'un des plus importants chefs de file du mouvement en faveur de la réforme du système de mondialisation économique. Il a joué un rôle de premier plan dans la lutte pour la restauration de la démocratie aux Philippines et fait l'objet de nombreuses arrestations. Au lendemain de la chute du gouvernement Marcos, M. Bello a joint les rangs de l'ONG Food First aux États-Unis où il est devenu un leader du mouvement de contestation des institutions de Bretton Woods et de l'Organisation mondiale du commerce. En 1995, il a cofondé le programme Focus on the Global South, et il y est toujours à titre de directeur général. Depuis de nombreuses années, M. Bello fait campagne en faveur du retrait des bases militaires américaines aux Philippines, à Okinawa et en Corée et il a contribué à la création de plusieurs coalitions régionales en faveur de la dénucléarisation et de la démilitarisation. Professeur de sociologie et d'administration publique à l'Université des Philippines, il est l'auteur de nombreux essais et ouvrages dont le plus récent : *The Future in the Balance: Essays on globalisation and resistance* (2001). Il vient de remporter le prix Right Livelihood 2003 aussi connu sous le nom de Prix Nobel alternatif, en reconnaissance « de ses efforts remarquables visant l'éducation de la société civile sur les effets de la mondialisation et sur ses solutions de rechange. »

### **HILARY HOMES**

Madame Homes travaille pour le compte d'Amnesty International depuis les 15 dernières années. Elle est présentement responsable des campagnes chez AI Canada (secteur de langue anglaise) et axe son travail sur la lutte à l'impunité, les violations basées sur l'identité ainsi que les questions touchant les services de sécurité, les militaires et la police. Depuis deux ans, elle coordonne le travail sur la « sécurité et les droits humains » plus particulièrement les interventions touchant l'Afghanistan, l'Irak, la République démocratique du Congo ainsi que la Côte d'Ivoire. Madame Homes a travaillé et effectué du bénévolat auprès de plusieurs autres ONG, notamment la Croix-Rouge, l'Association des Nations Unies au Canada et War Child Canada.