

**Context is Everything: The Air India Bombing,
9/11 and the Limits of Analogy**
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Introduction

In the field of strategic analysis, it is often said that context is everything. We can be guided by this axiom when assessing the actions of governments executing their national security responsibilities, specifically when considering the context of the particular terrorist incident which gave rise to this inquiry: the bombing of Air India Flight 182 in 1985, and the Government of Canada's response to it. It is important to examine the extent to which any analysis of this context can be considered relevant to the security environment of more than a quarter of a century later. What are the defining features of the security environment that form the context from which present-day policies, practices and legislation are derived, and which are linked to Canada's security circumstances and needs? What can be said of the future? We need to be able to predict and assess future threats to national security, in order to tailor our ability to respond accordingly.

National security policies and practices are not developed in a vacuum, nor do they remain static. At any given time, governments are simultaneously assessing emerging threats, crafting strategies to address them, and enacting policies designed to ensure the defence and security of the nation. National security demands a variety of capabilities, substantial resources and a legal system that provides for extraordinary powers alongside systematic checks and balances (oversight), all of which must be integrated not only with other elements of government, but also with comparable systems in neighbouring and allied countries and our various security partners around the world. Thus, while the inspiration for the Inquiry and its principal areas of emphasis lie with the bombing of Air India Flight 182 in 1985, its recommendations will be oriented toward current and future considerations of how Canada copes, and will cope, with terrorism as a significant and growing threat to Canada's national security. This paper presents no new evidence to the Inquiry; rather, it examines the context of the evidence and proposes a conceptual framework within which the Commissioner can assess the evidence presented to him in regard to specific points contained in the Terms of Reference.² In so doing, it is suggested that the significance of terrorism within today's security environment is fundamentally different from that of the mid-1980s and, consequently, while there are many valuable lessons to be learned – and that have been learned -- from the Air India bombing, they should be viewed with this different context in mind.

² See Appendix A.

Placing the Event: Then and Now

Telling the story of the Air India bombing and the subsequent investigation and trial is important in and of itself, not only for the families of the victims who for years have pressed for answers, but also for those engaged in studying the evils of terrorism – in all its myriad forms – and working to counter its usually devastating impact. However, the mandate of this Inquiry extends beyond establishing the facts related to the incident itself. There are expectations that lessons that may be identified and applied in the future. Speaking in Toronto at the unveiling of a memorial to the Air India victims in June 2007, Prime Minister Stephen Harper (who struck the Inquiry in May 2006) noted that one important step has already been taken in that regard: the country recognizes the “tragedy as a Canadian event.” Harper went further, stating that the “real contribution of Justice Major’s ultimate report [will be] advising the government and government agencies on what needs to be done to ensure that this kind of event is never repeated.”³

This entirely appropriate and welcome guidance does raise some perplexing questions, especially for the purposes of this Inquiry.

- i. What “kind” of event was it? It was certainly a terrorist event. It was certainly a violent event. It was certainly a devastating event. It most certainly was a Canadian event: the attacks were planned and executed in Canada, and most of the victims were Canadian. However, are these commonplace characterizations sufficient to allow policy-makers to draw useful conclusions about the “kind” of event the Air India bombing represents? For that matter, can anyone really guarantee that such a tragically successful attack will never again occur?
- ii. Furthermore, by “event” do we mean the planning of the bombing, the bombing itself or the failure to convict its perpetrators? If so, surely it is impossible to guarantee convictions in a criminal trial.
- iii. Finally, and most importantly, how informative is the Air India narrative in helping us to understand the threat of terrorism today as characterized by the attacks of 9/11?

³ Kim Bolan, “9/11 ‘Gave Life’ to Scope of Air India Tragedy”, June 23, 2007 (Electronic Edition – *National Post*)

In many ways, Air India exemplified the so-called “new terrorism” of increased lethality as differentiated from the traditional type of terrorism associated with left-wing or separatist movements. At the operational level, Air India/Narita and 9/11 were similar, in the sense that they both featured a complex attack, the targeting of civilians and the use of aircraft to carry out the plots.

In hindsight, it is also easy to argue that both were examples of an “intelligence failure.” Much has been made of the 9/11 Commission’s characterizations of the warnings leading up to 9/11, namely that “the system was blinking red,” and it may be plausible to suggest that the same situation faced Canadian officials before June 1985. Furthermore, it may be tempting to echo the 9/11 Commission’s judgement that, in failing to stop the attacks, the US intelligence community’s “most important failure was one of imagination.” Presumably, more imagination would have allowed analysts to conceive of terrorists using aircraft, and perhaps even to guard better against a surprise attack. The Commission suggested that the “institutionalization” of imagination would have helped the “unwieldy” US government to understand and appreciate the looming threat.⁴

It could be argued that the same hindrances affected the ability of Canadian officials to understand and appreciate the threat posed by Sikh terrorists in the early to mid-1980s. This point has been made in the Canadian media, with some journalists claiming, for instance, “...the worst terrorist attack in Canadian history might have been averted if clear warnings, repeated over several months, had been heeded.”⁵ In terms of thinking about the attacks themselves, and our ability after the fact to construct a narrative leading to them that might run like a slow-motion video, it might be tempting to interpret these arguments in such a way as to conclude that the Air India bombing was “Canada’s 9/11.” As tempting as it might be, that would be a false analogy.

It is not the purpose of this paper to recount or question the facts about the pre-bombing period, the bombing itself, or the investigation and criminal trial as brought forward during the Commission’s hearings. It is, however, important to warn against the temptation to interpret the innumerable steps taken and decisions made, both by the perpetrators and government officials, as having been linear and unambiguous at

⁴ U.S. *The 9/11 Commission Report*. 585 pages. National Commission on Terrorist Attack Upon the U.S., 2004 pp. 344-348.

⁵ Macqueen, Ken and Geddes, John. “Air India: After 22 Years, Now’s the Time for Truth,” *Macleans*, May 28, 2007. pp. 1-7.

every step of the way. It should also be borne in mind that attributing successful terrorist attacks to failures of imagination and intelligence is also of questionable value. There is no way to anticipate or prepare to counter every conceivable threat, and overdoing this type of analysis tends to shift the responsibility for terrorist attacks away from the terrorists themselves.

Take, for instance, the bungled car bomb attacks in Glasgow and London in June 2007. Mass casualties seem only to have been avoided through a mix of good fortune on the part of the authorities, and incompetence on the part of the terrorists.⁶ But the perpetrators were still the cause of the event, bungled or not. Is there still any use to attributing the events to intelligence failure or lack of investigative imagination? Would there not have been a much louder outcry to this effect if the attacks had been fully successful? While good intelligence is essential in staying one step ahead of terrorists and avoiding both strategic and tactical surprise, no intelligence agency is omniscient.⁷ And the task is enormous. Consider, for instance, that in London in November 2006, only eight months before these incidents took place, the Director General of the Security Service (MI5) gave a public speech in London outlining the breadth of the terrorist threat facing that country: "... my officers and the police are working to contend with some 200 groupings or networks, totalling over 1600 identified individuals (and there will be many we don't know) who are actively engaged in plotting, or facilitating, terrorist acts here and overseas."⁸

It is wise to look at lessons learned from past mistakes, and public airings of those mistakes are a vital part of the democratic process. Democracies that value freedoms as well as the rule of law are constantly engaged in striking a balance between the two, but, in spite of this, permanent security and safety will always be illusive.

Yet, the concept of "intelligence failure" implies the opposite – that a system short of perfection is blameworthy. This view is flawed in that it fails to account for some stark facts based on a simple premise: "the enemy always has a vote." Those defending against terrorists try to avoid

⁶ Neil Ellis, "Failed Terrorist Attacks Are Still Terrorist Attacks," Royal United Services Institute for Defence and Security Studies, *Commentary*, July 2007.

⁷ Stephen Marrin, "Preventing Intelligence Failures by Learning From the Past," in *International Journal of Intelligence and CounterIntelligence*, vol. 17, 2004.

⁸ Speech by the Director General of the Security Service, Dame Eliza Manningham-Buller, given at Queen Mary's College, London, 9 November 2006 (<http://www.mi5.gov.uk/output/Page374.htm>) accessed 5 June 2007.

being surprised, while terrorists are doing everything in their power to achieve surprise. Terrorists are adversaries with objectives of their own, and it is foolhardy and condescending to assume that we will always have the upper hand and the advantage. One of the better-known adages of the decades-old police battle against terrorists is that governments have to be lucky all of the time, while terrorists only have to be lucky once. A more complete formulation of this principle might recognize that an “intelligence failure” at our end is equally an “operational success” for the enemy. That is not to suggest that “failures” never occur, or that hindsight has no value. The fact that the July 2005 London Bombings (“7/7”) occurred just two months after that country’s Joint Terrorism Assessment Centre (JTAC) had lowered the threat level seems to welcome charges of “intelligence failure,” but how do we differentiate between failures of intelligence and failures of policy, such as allocation of resources to the intelligence agency? If, as some have argued, MI5’s strained resources contributed to its inability to effectively track and deter the 7/7 perpetrators, is that indicative of an “intelligence failure,” “policy failure” or a combination of both?⁹ Or, as we remember that the enemy always has a vote, should we think of 7/7 as another Al Qaeda success in their war against the West?¹⁰

So, in the sense that they were both terrorist “successes” the Air India bombing and 9/11 -- the latter occurring almost four years before the London bombings -- and in that respect similar. However, we should not extend that similarity and confuse the strategic significance of Al 182/Narita with that of 9/11 within their respective strategic contexts. The political goals were in vastly different, as was the impact on Canada. Sikh terrorists might have had as their objective to do harm to India and destroy Government of India assets in furtherance of their cause, but there is no indication that they were deliberately targeting Canada or its domestic or international policies. The Air India bombing was not aimed at Ottawa; it was part of the reaction to the battle of Amritsar in 1984. Sikh militancy was and remains rooted in Indian politics and the quest for a future Sikh homeland.¹¹ This is akin to the roots of “traditional” terrorist groups, such as the Irish Republican Army (IRA), the Basque separatists (ETA), or the Kurdish Workers’ Party (PKK), for whom terrorism is aimed

9 Mark Phythian, “Intelligence, Policy-Making and the 7 July 2005 London Bombings,” *Crime, Law and Social Change* (2005) 44: pp. 361-385.

10 The term “Al Qaedaists” is used herein to refer both to Al Qaeda and those who adhere to the ideological movements it has inspired, which may act autonomously of Al Qaeda command and control.

11 While terrorists might not have targeted Canada *per se*, its citizens were treated as pawns in their fight against India.

at achieving limited, irredentist objectives, even though funding and logistical support might come from abroad.

At the time of the Air India bombing in 1985, the strategic enemy we faced was the nuclear-armed Soviet Union. Understandably, in the Cold War context of 1985, Canadian officials did not consider terrorism to be as significant as they do today, largely because the potential consequences differed so greatly. Canada, like its Western allies, saw Soviet policies and capabilities as an existential threat to the survival of the western democracies, and high-level policymaking was focussed on devising strategies and developing capabilities to deter and defeat it. Ultimately, this focus was borne out; the Western allies won the long Cold War.

But that war was not just about power, it was about ideology. The Soviet Union and the United States, along with the former's satellites (Warsaw Pact) and the latter's allies (NATO), represented two distinct and fundamentally incompatible world views – one collectivist and authoritarian, and the other free and democratic. For Canada, the Soviet Union was the enemy and communism was an implacable, proselytizing ideology to be resisted. The enemy had proven both its capability and its intent, through aggressive action taken soon after the victory over the Axis in 1945. The Soviet subjugation of Eastern Europe, the “Iron Curtain”, the Berlin blockade, the Soviet nuclear test, Korea – these events could be, and were, taken as *prima facie* evidence of Moscow's hostile intent. Western governments faced the task of framing and countering that state-based threat to their own security and that of their allies. The challenge of doing so was made easier, of course, by the context: the Second World War clearly exhibited the hazards posed by aggressive totalitarian regimes possessing highly capable armed forces.

We have little background and context to prepare us for the long struggle embarked upon after 9/11 but, in many ways, that day marked a new type of threat, in a new kind of security environment. In many ways, the threat is like that posed by the Soviet Union: ideological and long-term. It is important to set it within our new security environment to demonstrate the limited relevance of the Air India narrative to today's context.

Threats and Challenges: The Politics of Focus

Since the fall of the Berlin Wall, no peer competitor to the United States has emerged, and the Manichaean struggle of the Cold War no longer

provides the context in which threats are framed. As a result, it has become commonplace to argue that thinking about security should expand beyond “traditional” state-based military assessments. From this perspective, those who work in the security and defence fields should focus not just on existential threats posed by enemies, but also on an ever-expanding array of trends and challenges that might affect international security, but that pose no direct threat to the countries for whose governments they work. Inherent in this approach is the assumption that the “national security state” is increasingly irrelevant and is gradually giving way to globalization and (at least) three general changes in the international security environment that diminish the effectiveness of individual states.

- i. First, the likelihood of high intensity warfare between capable states has given way to low intensity conflict within states and between less capable states.
- ii. Second, more powerful states face the spectre of “post-industrial warfare,” wherein individuals and small groups, driven by ideological fury, can hack computer networks, disrupt economies, commit acts of terrorism or harass professional militaries engaged in operations; and
- iii. Third, transnational threats, such as environmental degradation, climate change, drug trafficking, poverty and the spread of infectious disease may be beyond the capability of individual states to handle.

The immediate implication of this “globalized” approach to threat assessment, released from the constraint of identifying threats to national interests, is that it makes for a very long list of things to worry about. Reporting in 2004, the UN High Level Panel on Threats, Challenges and Change insisted that this entire list of changes in the international security environment actually consists of “threats,” which it defined thus: “Any event or process that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system is a threat to international security.” Under this definition, the Panel argued that there are “six clusters of threats with which the world must be concerned now and in the decades ahead:

- i. Economic and social threats, including poverty, infectious diseases and environmental degradation;
- ii. Inter-State conflict;
- iii. Internal conflict, including civil war, genocide and other large-scale atrocities;
- iv. Nuclear, radiological, chemical and biological weapons;
- v. Terrorism; and
- vi. Transnational organized crime.¹²

Most lists purporting to address the nature of the “threats” pervading the international security environment reflect this master list, and it is difficult to deny it contains a number of things that will probably pose a problem for someone, somewhere, at some point in time. But such lists are little more than a grab-bag of beliefs and tactics (terrorism); capabilities (WMDs and ballistic missiles); interpretation of political conditions (failed states, or the current descriptor, “fragile” states); and broad trends (e.g., in demographics, the prevalence of infectious disease, and growing resource scarcity). In their generic approach, these lists fail to answer the question that ought to be the starting point for any threat assessment: who is threatening whom, and why?

By this definition, people threaten people; states threaten states. The means involved are nothing more than a way of carrying out the threat. Threats to national security are also target-dependent; they are conceived in the “eye of the beholder,” in this case the individual nation-state, and depend upon a threat relationship with the originator of the threat – a “threatener,” for lack of a better term, possessed of both the capability to carry out a threat, and the desire to do so. If security environment analysis is decoupled from the discipline imposed by the requirement to relate threats to the “national security state,” however, it becomes more difficult for decision-makers to differentiate between threats, risks, trends and challenges. The resulting lack of clarity is best illustrated by the epistemic confusion evident in contemporary security analysis, where the threat posed by, for example, al Qaedaism has proven resistant to definitive

¹² *A More Secure World: Our Shared Responsibility* (Report of the Secretary General’s High Level Panel on Threats, Challenges and Change), p. 23. (<http://www.un.org/secureworld/>) Accessed 4 July, 2007.

characterization, whereas the “threat” of climate change is increasingly accepted as dogma.

Consider, for instance, the July 2007 National Intelligence Estimate on the terrorist threat to the US homeland. Declassified key judgments state that the “US Homeland will face a persistent and evolving terrorist threat over the next three years. The main threat comes from Islamic terrorist groups and cells, especially Al Qaeda, driven by their undiminished intent to attack the Homeland and a continued effort by these terrorist groups to adapt and improve their capabilities.” Noting that counterterrorism measures “have helped disrupt known plots against the United States since 9/11,” the NIE warns, “this level of international cooperation may wane as 9/11 becomes a more distant memory and perceptions of the threat diverge.”¹³

Why should they diverge, especially among Western allies? Much has been made of the different perceptions that Americans and Europeans (and perhaps Canadians) have of the terrorist threat, and what to do about it. Many commentators cling to the belief that the United States has overreached by advocating and implementing a military response to 9/11; they argue that the Bush Doctrine has mistakenly drawn connections between disparate terrorist groups and rogue states such as Iran, Libya and Saddam’s Iraq. Europeans, it is suggested, put more effort into trying to counter the “root causes” of terrorism, arguing that military responses only make matters worse. Whether these different perceptions are formed by America’s “Hobbesian Chaos” view of the world as opposed to Europe’s Kantian “Perpetual Peace” view is a subject of some debate, but it certainly affects how the terrorist threat is perceived in relation to other “threats.”¹⁴

In fact, this divergence is a superficial characterization because, on closer examination, identifying “root causes” turns out to be an inherently subjective exercise. For example, the European Counter-Terrorism Strategy, adopted by the European Council in November 2005, calls for action against “root causes” of “radicalization and recruitment.” The Strategy states, “There is a range of conditions in society which may

13 The NIE can be accessed at (<http://www.whitehouse.gov/news/releases/2007/07/20070717-2.html>) Accessed 1 September 2007.

14 Robert Kagan focussed on the different perceptions of the role of power in today’s international system in *Of Paradise and Power: America and Europe in the New World Order* (New York: Alfred A. Knopf, 2003).

create an environment in which individuals can become more easily radicalised. These conditions include poor or autocratic governance; rapid but unmanaged modernisation; lack of political or economic prospects and of educational opportunities.”¹⁵ However, the EU is not alone, as the United States National Strategy for Combatting Terrorism also identifies four “root causes:”

- i. Political alienation;
- ii. Grievances That Can be Blamed on Others;
- iii. Subcultures of Conspiracy and Misinformation and;
- iv. An Ideology That Justifies Murder.

The US Strategy also articulates a response: “The long-term solution for winning the War on Terror is the advancement of freedom and human dignity through effective democracy.”¹⁶

These long-term appreciations of the threat’s “root causes” are necessary to drive high-level strategic direction and international cooperation with respect to counter-terrorism. Differences in focus mean that a coherent high-level international focus on the terror threat is proving difficult to sustain, even among Western allies that have suffered civilian casualties in terror attacks.¹⁷ However, while there are differences between the European tendency to emphasize “conditions” and the American tendency to emphasize ideology at the strategic level, there is evidence

¹⁵ Council of the European Union, *The European Union Counter-Terrorism Strategy*, 30 November 2005. The Strategy states the following as “key priorities” in the prevention of recruitment and radicalization:

- Develop common approaches to spot and tackle problem behaviour, in particular the misuse of the internet;
- Address incitement and recruitment in particular in key environments, for example prisons, places of religious training or worship, notably by implementing legislation making these behaviours offences;
- Develop a media and communication strategy to explain better EU policies;
- Promote good governance, democracy, education and economic prosperity through Community and Member State assistance programmes;
- Develop inter-cultural dialogue within and outside the Union;
- Develop a non-emotive lexicon for discussing the issues;
- Continue research, share analysis and experiences in order to further our understanding of the issues and develop policy responses.

¹⁶ *United States National Strategy for Combatting Terrorism*, September 2006 (<http://www.whitehouse.gov/nsc/nsct/2006/>), pp. 9-10.

¹⁷ David Omand, “Countering International Terrorism: The Use of Strategy,” *Survival*, Vol. 47, No. 4, Winter 2005-2006, pp. 107-116.

of considerable agreement among western allies that 9/11 demonstrated the existence of a new type of threat, at least in terms of scale and potential for destruction.¹⁸ As a result, governments on both sides of the Atlantic continue to adjust their national security policies, legislation and practices in order to provide for earlier and more efficient cooperation between intelligence and law enforcement in terrorism cases. European and American views may differ, but their respective approaches to terrorism, while perhaps rhetorically divergent, have much in common.¹⁹

Some of that convergence began before 9/11, when Canada and its allies in the North Atlantic Treaty Organization began to reconsider what role collective defence measures have in the post-Cold War/pre-9/11 threat environment. NATO's 1999 Strategic Concept pointed to the growing threats of terrorism and the proliferation of weapons of mass destruction, and Article V of the Washington Treaty was invoked after 9/11, thereby declaring them "attacks against us all."²⁰ The significance of NATO's response lies in the acknowledgement that attacks of such scale and impact were not simply criminal acts: they were attacks on the West, and collective defence measures have been part of the response. 9/11, however, was the key trigger in the development of new Western security policies and strategies focussing on the new security environment. For the European Union, that meant adopting a counter-terrorism strategy that included the European Arrest Warrant, enhancement of police and judicial cooperation, measures to counter terrorist financing, a common definition of terrorism, and a Framework decision to punish terrorism offences with heavier sentences than common criminal offences. After the Madrid bombings in March 2004 (3/11), the European Union also created a position of Counter-Terrorism Coordinator to assist in intelligence sharing and coordination. While it must always be remembered that Europe-wide policies and strategies are subject to the interpretation and implementation of Member States, it was no mean feat for those states, traditionally wary of losing autonomy in Justice and Home Affairs, to recognize the need to act quickly in these areas after 9/11 and, subsequently, even more so after 3/11.²¹

¹⁸ For a view of how US and European approaches to terrorism and proliferation are tilting toward convergence more than divergence, see Anna I. Zakharchenko, "The E.U. and U.S. Strategies Against Terrorism and Proliferation of WMD: A Comparative Study (George C. Marshall European Center for Security Studies, Occasional Paper No. 6, January 2007)

¹⁹ A useful review of some of these developments is provided in Michael Jacobson, *The West at War: U.S. and European Counterterrorism Efforts, Post September 11* (Washington: The Washington Institute for Near East Policy, 2006)

²⁰ "NATO and the Fight Against Terrorism," (<http://www.nato.int/issues/terrorism/index.html>) Accessed 2 December 2007.

²¹ Oldrich Bures, "EU Counterterrorism Policy: A Paper Tiger," *Terrorism and Political Violence*, (2006) Vol. 18, pp. 71-73.

Returning to the “context is everything” axiom, no discussion of the security environment is complete without recognizing that different opinions exist about what constitutes a “threat” to Western security, and more specifically to Canada’s security. Nonetheless, all governments must sort out “threats” from “challenges” because of competition for “strategic” resources and focus. It may prove difficult to remain focused on the Al Qaedaist threat in the face of impassioned calls to mobilize state resources to meet challenges that are couched in the language of threats. For instance, in April 2007, a blue-ribbon panel of retired American senior military officers released a report examining how climate change poses a “serious threat” to America’s national security. The panel also found that “climate change, national security and energy dependence are a related set of global challenges.” It concluded that the United States should act quickly to “help stabilize climate changes at levels that will avoid significant disruption to global stability and security.”²²

Is it appropriate to frame climate change using the language normally reserved for enemies plotting our demise? Is climate change really a threat? If so, to whom? Can the United States really “stabilize climate change?”

Yet, action is what the military panel proposes, based on the assertion that climate change is at once a national security “threat” and a component of interdependent global “challenges” that includes the connection between energy dependence and national security. Again, though, should we frame potential climate changes as a threat, in the same way that we think of terrorists or rogue states?

Clearly, framing climate change as a threat has serious implications, since doing so may lead to political pressure to act on the basis of inconclusive or exaggerated evidence. Significantly, in the United States, the intelligence authorization act for 2008 includes the requirement for the Director of National Intelligence to produce a National Intelligence Estimate on the “geopolitical and security implications of climate change.”²³ The American intelligence community is now mandated to gaze into the future to consider the presumed effects (geopolitical and security implications) brought about by a presumed cause (climate change). Is this a good idea?

²² Walter Pincus, “Intelligence Chief Backs Intelligence Study,” *Washington Post*, 12 May 2007 (<http://www.washingtonpost.com/wp-dyn/content/article/2007/05/11/AR2007051102375.html>) Accessed 5 June 2007.

²³ *Ibid*

More importantly, is it a wise expenditure of national security resources? There are threats of a much more immediate, and far better understood, nature. These threats should not be confused with “dangers,” “risks,” or “challenges,” in part because threats imply an enemy, and thus are of such consequence that governments are obliged to respond. After all, if climate change is framed as a “threat,” how can action not be taken? For that matter, why was action not taken in response to warnings in the mid-1970s of an impending ice age? Might not it be easier and cheaper, as economist Bjorn Lomborg has suggested, to adapt to climate change, rather than attempt to reverse it?²⁴

These are important questions that analysts should pursue and investigate as they would any *challenge*. However, there are plenty of real national security *threats* (posed by real enemies, with strategic objectives and proven, lethal capabilities) to worry about for the foreseeable future – without the needless distraction of trying to design and take action against unsubstantiated, amorphous and non-sentient “threats.” It is essential to sort threats from challenges because, in a world of genuine and intentional threats to Western security, undifferentiated, all-encompassing lists of threats, challenges, risks and dangers are not useful. In fact, they make it more difficult to focus on core national security matters.

And, unlike climate change, there is no way to “adapt” to the threat posed by Al Qaedaists.

Understanding the Strategic Threat

At a time when the international community seems to be coalescing (at least rhetorically) around the inchoate “threat” of climate change, why is it so difficult to generate widespread agreement that al-Qaeda and its fellow travelers constitute a serious threat – particularly as they have already acted, and demonstrated intent, capability and a willingness to continue?

²⁴ Ray Suarez interview with Bjorn Lomborg, “Author Says Redirect Resources Against Climate Change,” PBS Online Newshour, 25 April 2007 (http://www.pbs.org/newshour/bb/environment/jan-june07/adaptation_04-25.html) Accessed 5 November 2007.

One reason is that, despite a series of attacks on western interests since the early 1990s, there remain those who assert that Al Qaeda, and the ideology it represents, pose merely a criminal law challenge rather than strategic threat to national security. It should come as no surprise that such a difference of opinion exists; terrorism is an inherently politicized subject. Even though the western allies have been involved in what has been variously termed the War on Terror, the Campaign Against Terrorism, the Fight Against Terror and the Long War since the attacks on the United States on September 11th, 2001 they have yet to reach agreement on the scope, dimensions or even the objectives of their counter-terrorism activities.

This disagreement is often related to the lack of an internationally accepted definition of terrorism. Why does defining terrorism pose such a chore? Is there any doubt that a deliberate, pre-planned act of flying airplanes into skyscrapers, with the obvious intent of inflicting as much damage and causing as much death as possible, could be anything but terrorism? There is no need to replicate the many definitions that exist -- the authors of one study published almost twenty years ago managed to scrape up 109 -- but it is useful to consider what are generally accepted as terrorism's main components.²⁵ Bruce Hoffman approaches the challenge of definition by examining what distinguishes terrorism from criminals and guerrillas or insurgents. In doing so, he settles on terrorism's characteristics as follows:

- ineluctably political in aims or motives;
- violent – or, equally important, threatens violence;
- designed to have far-reaching psychological repercussions beyond the immediate victim or target;
- conducted either by an organization with an identifiable chain of command or conspiratorial cell structure (whose members wear no uniform or identifying insignia) or by individuals or a small collection of individuals directly influenced, motivated or inspired by the ideological

²⁵ Alex P. Schmidt and Albert J. Jongman et al. *Political Terrorism* (SWIDOC, Amsterdam and Transaction Books, 1988), p. 5.

aims or example of some existent terrorist movement and/or its leaders; and

- perpetrated by a subnational group or nonstate entity.

Hoffman then attempts to define terrorism as “the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change.”²⁶

This is a satisfactory definition of terrorism as a doctrine or system of belief and principles. It indicates that the complete picture of the terrorist is much different than that of the criminal. Motive should be central to any intellectually honest definition of terrorism, and it forms part of the definition of terrorism provided in Canada’s Anti-Terrorism Act of 2001.²⁷ Nonetheless, an Ontario Superior Court of Justice ruling in 2006 struck down the so-called “motive clause” in the Canadian legislation as being in breach of Section 2 of the *Canadian Charter of Rights and Freedoms*, which includes as fundamental freedoms those of conscience, religion, thought, belief, opinion, expression, peaceful assembly and association.²⁸ Lord Carlyle, in his 2007 independent review of British terrorism legislation, stated: “In relation to the components of terrorist activity, I agree with the view that the true and definable characteristics of terrorism are to be found in the combination of motive and means of perpetration.” He went on to recommend a change to the motive part of the definition in the UK’s Terrorism Act, so as to include philosophical, racial and ethnic motives to those already identified, namely political, religious and ideological.²⁹

It is in the confluence of motive and potential for violence directed either against the public, property or an essential service that makes terrorism a national security threat rather than just a crime. Strategic “threats” to

²⁶ Bruce Hoffman, *Inside Terrorism* (New York: Columbia University Press, 2006), p. 40.

²⁷ The so-called motive clause” is part of Canada’s Criminal Code definition of terrorist activity, which includes a number of offences, but also “an act or omission, in or outside Canada, (i) that is committed (A) in whole or in part for a political, religious or ideological purpose, objective or cause, and (B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada.” See Criminal Code (R.S., 1985, c. C-46), Part II. 1 “Terrorism”, Section 83.01(1)(b)(i)(A) (http://laws.justice.gc.ca/en/showdoc/cs/C-46/bo-ga:l_II_1/en#anchorbo-ga:l_II_1) accessed 24 June 2007).

²⁸ R. v. Khawaja (24 October 2006), 04-G30282 (Ontario Sup. Ct. of Justice).

²⁹ Carlile, Lord of Berriew. “The Definition of Terrorism.” A Report by Lord Carlile of Berriew Q. C. Independent Reviewer of Terrorism Legislation, Presented to Parliament by the Secretary of State for the Home Department, by Command of Her Majesty. March 2007, pp. 33-37.

national security require different responses than would be the case vis-à-vis “crimes” or “offences.” However, there is little likelihood of reaching consensus on the current and future threat of transnational terrorism if allies fail to grasp the nature of, and relationship between, terrorism’s criminal and strategic elements. The threat consists of both.

It is perhaps easier to think about terrorism as just another form of criminal deviancy; after all, we are dealing with actors at the sub-state level, and the actions they take in pursuit of their objectives necessarily **are** criminal. Terrorists may (and do) detonate explosives, attack railways, hijack airplanes and turn them into projectiles. These certainly are all criminal acts that may be prosecuted under the domestic criminal legislation of the states in which the acts take place. Ordinary criminals, however, who seek to profit from illegal acts, make mischief or cause havoc, have no discernible strategic objectives against the states within which they operate; this differentiates them from terrorists. Criminals may be motivated by goals other than greed or revenge, but while their behaviour contradicts our laws and values, it does not constitute a deliberate, organized challenge to the state per se, or to the legitimacy and standing of its government and laws. Crime and terror may ultimately share methods, but in terms of how individual acts affect the state, they differ greatly in their motivation, genesis and ultimate aims.

Although crime is most often an end in itself; terrorism is a means to an end, a method of effecting political change. In this sense, there are many types of “terrorisms.”³⁰ Terror and threats of terror are often a means of seizing the initiative and extorting concessions to demands, and as such, they are used preferentially by those who pursue limited goals – e.g., “single-issue” terrorists. The threat posed by such terrorists is akin to that posed by organized criminals, and there are cases where organized criminals and terrorists may converge in many important ways. They share many operational characteristics, and may even work together for mutual benefit, and as a result, terrorist groups and organized crime syndicates can in some respects become indistinguishable. One study shows how this process has formed ‘hybrid’ terrorist/organized crime groups in Chechnya, the Black Sea region and the Tri-Border area of Peru, Paraguay and Argentina.³¹ In these instances, individuals involved in enabling

³⁰ Laqueur, Walter. “Postmodern Terrorism- New Role for an Old Game.” *Foreign Affairs* Vol. 75, No. 5, p.25.

³¹ Shelley, Louise I. and Picarelli, John T. “Methods and Motives: Exploring Links Between Transnational Organized Crime and International Terrorism.” *Trends in Organized Crime*, Vol. 9, No. 2, winter 2005. pp. 52-68.

activities, such as fraud and extortion, take advantage of economic, social and political tumult to serve both terrorists and crime syndicates.

Conventional intelligence, legislation and law enforcement can generally manage these threats as routine business. It might even be appropriate, even preferable, to refer to such perpetrators as “modern-day pirates” instead of “terrorists” (let alone “militants” or “combatants”).

However, successful action against the single-issue terrorist does not diminish the threat posed by transnational or strategic terrorism (the hallmark of jihadist organizations like Al Qaeda), because this brand of terrorism poses an aggregate threat to all western states and their common and individual interests. Al Qaeda’s ideology of jihad seeks to use catastrophic violence – and the fear of it – to undermine, and ultimately supplant, the status quo. Whereas an act of violent crime or single-issue terrorism might result in devastating consequences either in terms of victims or damage to property, the scope and scale of the threat is usually limited. For “traditional” terrorist groups, such as the IRA, the ETA or the PKK, terror tactics and operations are conducted for limited, irredentist objectives (even though funding and logistical support might come from abroad). The Al Qaedaists’ objectives, by contrast, are not so limited.

Single-issue terrorists do not seek global strategic effects in the same way as might a bin Laden or a Zawahiri. Why? Unlike more modest “common” criminals and single-issue terrorists, al Qaedaists are strategic terrorists with large-scale objectives pursued as a generational goal. They conduct operations with a view of forcing the West in general, and the United States in particular, to abandon the Middle East. In his September 2002 “Letter to America,” Osama bin Laden even stated that Al Qaeda ultimately sought the Islamization of the United States which, in Martin Rudner’s words, “would bring all other countries, Western as well as Muslim, under the sacralized rule of a globalized, triumphant, militant Islam.”³² The first stage of Zawahiri’s global strategy seeks to restore the historic caliphates of Dar Al-Islam, replacing the “apostate” regimes of Saudi Arabia and Egypt with regimes that function according to an idiosyncratic and highly conservative interpretation (which is to say, their interpretation) of Islam. The second stage involves using the Caliphate as a base to “lead the Islamic world in a jihad against the West.” There are

³² Rudner, Martin. “Challenge and Response: Canada’s Intelligence Community and The War on Terrorism.” *Canadian Foreign Policy*, Vol. 11, No. 2 (Winter 2004). pp.17-39.

several theatres in this global insurgency, including the Middle East, East Africa, the Americas and Western Europe.³³

Alexander Downer, the former Australian Minister for Foreign Affairs, released a report in 2004 explaining to the public the nature and implications of the Al Qaedaist threat, describing it succinctly:

This form of transnational terrorism presents Australia with a challenge previously unknown. Its aims are global and uncompromising: to fight its enemies wherever it is able, and ultimately to establish a pan-Muslim super-state. Its battlefield is also global. And it strives, where it can, for large scale, maximum casualty impact. We saw this on 11 September 2001. We felt it a year later in Bali.³⁴

There is little uncertainty about Al Qaeda's goals and methods; innumerable texts have been written describing both. For example, Zawahiri's "Jihad, Martyrdom, and the Killing of Innocents," justifies the use of terrorist tactics such as suicide bombings in pursuit of war aims.³⁵ In 2007, Zawahiri called for the "holy war" in Iraq to be extended throughout the Middle East toward the creation of a "greater Syria."³⁶ Western governments may differ on how to frame the "war," "campaign" or "struggle" against terror and/or terrorists; bin Laden and his ideological fellow-travelers seem much more coherent about what they hope to achieve, and why.

There are, however, some commentators who insist that Al Qaedaists have no coherent strategy whatsoever. In this school of thought, 9/11 was not a rational Clausewitzian political act based on calculated assessments of cause and effect but rather the playing out of a fantasy ideology to be guided by the "will of God." This argument is based largely on the assumption that it is entirely unrealistic for a diminutive group such as Al Qaeda to expect to "defeat" a country like the United States.³⁷

³³ David J. Kilcullen, "Countering Global Insurgency," *The Journal of Strategic Studies*, Vol.28, No. 4 (August 2005), pp. 598-599.

³⁴ Government of Australia, *Transnational Terrorism: The Threat to Australia* (Canberra: Commonwealth of Australia, 2004) p. vii

³⁵ Raymond Ibrahim (Editor and Translator), *The Al Qaeda Reader* (New York: Doubleday, 2007), pp. 141-171.

³⁶ Uzi Mahnaimi, "Al-Qaeda Chief Urges Iraqis to Export Jihad," *Times Online* (www.timesonline.co.uk), 27 May, 2007.

³⁷ Harris, Lee. "Al Qaeda's Fantasy Ideology." *Policy Review*, Hoover Institution, Stanford University. August & September 2002, 14 pages.

But is the expectation so unrealistic? Given that Al Qaedaists could point triumphantly to the expulsion of the Soviet Red Army from Muslim lands in Afghanistan, why would they think it inconceivable that the United States and the West in general could not be worn down over time, and forced to leave the Middle East? Osama bin Laden apparently believed that the small and ineffective “Arab Afghan” presence in Afghanistan, not the relentless US-backed mujahideen, actually turned the tide against the Soviets.³⁸ Even if this “fantasy ideology” characterization of Al Qaeda is accepted, however, that makes the threat posed by Al Qaedaists no less dangerous.

While it may be inappropriate to speak of Al Qaedaists as “warriors,” they nonetheless often operate in a fashion consistent with military operational practices and discipline, and – at the strategic level, at least – they usually have more than piracy or crime-for-profit in mind. Their terrorist tactics are an integral part of a campaign aimed at attaining political and strategic objectives. They also inspire isolated, like-minded individuals and so-called “autonomous terror cells” to sympathetic acts of terror. While not necessarily organized and directed by a centralized command and control system, these groups and individuals are roused and motivated by Al Qaeda’s example to attack targets throughout the West. The individuals allegedly planning attacks on soldiers in Fort Dix, New Jersey and on John F. Kennedy International Airport in 2007 would fall into this category.³⁹ Commentators, who insist that the terrorist threat is “hyped,” and dismiss the risk of being killed by terrorists as statistically insignificant, appear not to understand the nature of a strategic threat: the “attack” is only part of the terrorist repertoire.⁴⁰

Consider, for instance, the Al Qaeda-inspired terrorists who carried out the Madrid train bombings in March 2004, and who succeeded in changing the outcome of the subsequent federal election, and the course of Spanish foreign policy. Al Qaeda’s offer of a truce thereafter to other European nations if they followed suit shows a degree of strategic

³⁸ Lawrence Wright, *The Looming Tower: Al-Qaeda and the Road to 9/11* (New York: Alfred A. Knopf, 2006), p. 145.

³⁹ Dale Russakoff and Dan Eggen, “Six Charged in Plot to Attack Fort Dix: Jihadists’ Said to Have no Ties to Al Qaeda,” *The Washington Post*, May 9, 2007, p. A1 (<http://www.washingtonpost.com/wp-dyn/content/article/2007/05/08/AR2007050800465.html>) Accessed 8 August 2007.

Anthony Faiola and Steven Mufson, “N.Y. Airport Target of Plot: Officials Say 3 Held in Alleged Plot to Bomb JFK,” *The Washington Post*, June 3, 2007, p. A1 (<http://www.washingtonpost.com/wp-dyn/content/article/2007/06/02/AR2007060200606.html>) Accessed 6 August 2007.

⁴⁰ John Mueller, “Is There a Terrorist Threat: The Myth of the Omnipresent Enemy,” *Foreign Affairs* (September/October 2006)

acumen,⁴¹ as does dividing the United States and its coalition allies in Afghanistan and Iraq might have little military impact, but it certainly eats into the perception of American legitimacy: Anti-Americanism and resentment of US power can potentially drive politics in many countries.

Even if such “remotely-inspired” terrorists are unsuccessful (either due to effective intelligence and law enforcement, or their own lack of capacity), there is no denying that they pose a violent immediate threat and that they also support the Al Qaedaist ideology. Successful attacks in this vein, in addition to achieving the terrorists’ immediate objective of sowing mayhem, can trigger economic chaos or induce governments to alter policies. They also have the objective to incite other like-minded individuals to violence, and further embolden sponsoring states that, like Iran, share their hatred of the US and the West. Clearly, these individuals and organizations possess both the capability and the intention to cause harm, and have a well-documented record of doing so – the key characteristics of a “threat.”

Framing the contemporary terrorist threat requires that we understand that while it displays many of the characteristics of criminal activity, its perpetrators seek grander goals – up to and including a fundamental restructure of the international status quo. As the United States is the main guarantor of international stability, it was logical for Osama bin Laden to select America for his February 1998 declaration of war, declaring it a religious obligation to attack Americans and their allies whenever and wherever possible (including through the use of weapons of mass destruction). His threat, and that posed by Al Qaedaists writ large, has proven to be a truly strategic menace to the security of the West, and therefore worthy of a strategic response.

It is imperative that the strategic nature of the contemporary terrorist threat be understood. The ideology of jihad is every bit as opposed to Western liberal democracy as communism was during the Cold War. In the western democracies, more citizens may indeed die in accidental falls than terrorist attacks, but such statistical equivocation misses the point: extremist enemies do not have to be numerous to cause peril, and every success emboldens their fellows, while garnering additional support for their cause. That is why it is no longer the case that only states can threaten other states with strategic intent.

⁴¹ Mark Burgess, “Explaining Religious Terrorism Part 2: Politics, Religion and the Suspension of the Ethical” (Center for Defence Information, 23 August 2004) (<http://www.cdi.org/friendlyversion/printversion.cfm?documentID=2384>)

The use of the adjective “strategic” in this way denotes the nature of the threat posed by Al Qaedaists. If we accept that their objective, or “policy,” is to establish regimes that either actively support, or at least do not oppose, their interpretation of Islam, with a view to eventually re-establishing the “Caliphate”, it follows that their “strategy” is the plan through which they seek to implement that goal. Their “strategy” might include trying to coerce governments into changing their foreign policies vis-a-vis Muslim countries in order to facilitate realization of the ends they seek.⁴² Attacks, or the threat thereof, are thus not ends in themselves but rather a means to an end. What appears to be their madness is, in point of fact, their method.

While counter-terrorism operations certainly have dealt a blow to Al Qaeda, the group and the ideology it has inspired is not receding. In fact, as terrorism expert Paul Wilkinson has argued, it will remain a threat for decades to come. “Even if the current leadership is removed from the scene, there are likely to be eager successors in the wings ready to pursue the same overall objectives and using terrorism as a weapon. Whoever assumes the leadership, it seems almost certain that they will retain the key elements of Al Qaeda’s ideology and combat doctrine, and hence will continue to wage their jihad within the front-line countries (Iraq, Afghanistan, Pakistan, Saudi Arabia), and by urging their networks within western countries to launch terrorist attacks on the homelands of the Coalition allies, including, of course, the US and UK.”

And, of course, Canada. It is beyond doubt that Canada is another Coalition ally being eyed by Al Qaeda. In a November 2002 message broadcast on al-Jazeera, Osama bin Laden mentioned Canada in a list of countries targeted for being involved in Operation Enduring Freedom. The threat of retaliation for supporting US foreign policy is a propaganda tool available to Al Qaeda: Australia was also mentioned in the above broadcast, with bin Laden stating that Australia “ignored the warning until it woke up to the sounds of explosions in Bali.”⁴³ Canada’s involvement in Afghanistan was of course only a pretext for him to issue such warnings as, even before 9/11, Sunni Islamic militant groups were threatening Canada.⁴⁴

⁴² Jessee, Devin D. “Tactical Means, Strategic Ends: Al Qaeda’s Use of Denial and Deception.” *Terrorism and Political Violence*, 2006, Vol. 18, pp. 367-388.

⁴³ BBC Monitoring, “Full Text: ‘Bin Laden’s Message,’” (http://news.bbc.co.uk/2/hi/middle_east/2455845.stm) Accessed 4 August 2007.

⁴⁴ Rudner, Martin. “Challenge and Response: Canada’s Intelligence Community and The War on Terrorism” *Canadian Foreign Policy*, ISSN 1192-6422, Vol. 11, No. 2 (winter 2004). pp.17-39.

The threat is not receding. In November 2007, the Chairman of Lloyd's of London, Lord Peter Levene, stated that "Canada's risk profile has changed in recent years and while no stranger to terrorism, intelligence suggests that its role is shifting from a hub for fundraising and planning attacks outside the nation – for example in the U.S. – to a credible target in its own right...."⁴⁵ There is other evidence that the threat to Canada is more pronounced.⁴⁶ Bin Laden's clever use of intimidation to have us change our foreign policy – including support for the NATO alliance in Afghanistan – demonstrates the practical implications of what Rohan Gunaratna identifies as Al Qaeda's strategic, as opposed to apocalyptic, perspective: "Contrary to popular belief... Al Qaeda has never sought an apocalyptic goal. Closer examination suggests that it is a very practical group, with clear aims and objectives, but one that is capable of chameleon-like manoeuvring."⁴⁷ Indeed, it is easy to see the Al Qaeda's list of grievances as endlessly mutable: bin Laden's ire over the presence of US troops in Saudi Arabia has now morphed into a peculiar obsession with a rather diverse array of provocations, ranging from the Crusades and the Reconquista, to globalization, class and capitalism.⁴⁸

Conclusion

Back to the "context is everything" axiom, it is not enough simply to differentiate between terrorism and crime as abstract entities; we must also differentiate between traditional "terrorism" and the international terrorism we now face. As Walter Lacquer points out, even 9/11 was only a step toward what could come to pass, "megaterrorism" characterized by the use of weapons of mass destruction.⁴⁹

It is crucial that we understand how terrorism fits into today's national security context, not that of 1985. Part of that context involves considering how Canada, as a country, sizes up the terrorist threat as a matter of strategic import alongside others worthy of national attention. As climate change seems easily cast in Manichaean terms akin to the Cold War struggle of good against evil (i.e., environmental activists versus those

⁴⁵ Tara Perkins, "Canada Coming into Terrorists' Crosshairs: Lloyd's," *Globe and Mail*, 28 November 2007 (<http://www.globeinvestor.com/servlet/story/RTGAM.20071128.wlloyds1128/GIStory/>) Accessed 29 November 2007.

⁴⁶ See, for instance, this year's global risk findings of Janusian Security Risk Management (<http://www.riskadvisory.net/news/62/81/>) Accessed 10 December 2007.

⁴⁷ Rohan Gunaratna, *Inside Al Qaeda: Global Network of Terror*, (New York: Columbia University Press, 2002), p. 94.

⁴⁸ Fawaz A. Gerges, "Bin Laden's New Image: Younger, More Marxist," *The Christian Science Monitor*, 13 September 2007 (<http://www.csmonitor.com/2007/0913/p09s01-coop.htm>) Accessed 14 September 2007.

⁴⁹ Walter Lacquer, "The Terrorism to Come," *Policy Review*, August and September 2004.

“contributing” to climate change), the public focus on this struggle seems to have affected the perception of many Canadians. This is reflected in a December 2007 poll, in which thirty six percent of respondents identified climate change as the world’s biggest threat, while only eleven percent said so of terrorism.⁵⁰ Based on this evidence, Canadians seem not to be deeply concerned about terrorism. In a poll conducted just four months earlier, however, fully 64 percent of Canadians claimed to believe that terrorists could try to gain access to weapons of mass destruction from Russia, with almost as many fearing that Russian weapons scientists could conceivably work their trade for terrorists groups.⁵¹ The contrast between these two polls may be explained as simply different cognitive approaches taken to grapple with abstract, as opposed to potential “real world” threats.

But it is also critical not to conflate all “real world” terrorist threats – historical and contemporary -- as equivalent in terms of how we should frame and respond to them. Historical analogies can have indisputable heuristic value for analysts and decision-makers alike, but, again, we must revert to the centrality of context. While Sikh terrorism was never a direct strategic threat to Canada, today’s Al Qaedaist threat is a very different beast.

It is nonetheless worthwhile to discuss and understand why it is just as difficult today (as in 1985) to advance wider public appreciation of just how significant the threat is, and why dealing with it simply from a criminal justice point of view is not sufficient. The Inquiry’s Terms of Reference are geared toward achieving a better understanding of why the massive Air India criminal trial, which unfolded over many months and at great cost, ended without convictions. That part of the Inquiry’s work by necessity invites a focus on the underlying factors that govern the preparation and presentation of criminal cases dealing with terrorist incidents or allegations. However, counterterrorism strategy must take into account more than just how to mount and execute successful criminal prosecutions: it must also provide for the ability of the state to deter or prevent further hostile acts. That is why we must understand the strategic nature of the Al Qaedaist threat, and how it differs from events like the Air India bombing.

⁵⁰ Marcus Gee, “Poll Highlights Unease Over US Foreign Policy,” *Globe and Mail*, 11 December 2007 (<http://www.theglobeandmail.com/servlet/story/LAC.20071211.POLL11/TPStory/Business/columnists>) Accessed 11 December 2007.

⁵¹ Jack Aubry, “Canadians Fear Terrorist Access to Russian WMDs: Poll,” 23 August 2007 (www.canada.com) accessed 23 August 2007.

In retrospect, it is likely that the Air India bombing incidents fit better on the “criminal” end of a spectrum of threats to Canada; the Al Qaeda threat that we face today, and that will persist into the future, is much closer to the “war” end of the spectrum. Should the same rules apply to both ends of this spectrum?

How today’s threat is framed (i.e., either primarily as a strategic war-like threat or a criminal challenge) will determine what must be emphasized when making recommendations in regard to the Inquiry’s mandate, especially on the evidence/intelligence relationship. If it is accepted that Al Qaeda presents a strategic, and not just purely criminal, threat to Canada and its allies, then it is suggested that a simple question should be asked before making any recommendations affecting Canada’s national security system: In terrorist investigations, which of the following is more important: Securing convictions? Ensuring a fair trial? Or preventing further attacks? From a strategic point of view, the last consideration deserves most weight, because the terrorists we face are best understood as an adversary, over whom we must maintain tactical advantage. Winning the fight will require the use of many of the state’s instruments of power (i.e. military, political, economic, diplomatic, legal and financial), but we must guard against weaknesses in the system that terrorists can exploit. The necessity of maintaining tactical advantage over our adversaries should be kept in mind, especially when considering recommendations related to RCMP-CSIS relations and the critical issue of the relationship between evidence and intelligence. Recalling that national security is best understood as a complex system, we must guard against making changes to one part of the system that would compromise the effectiveness of another.

After all, as Judge Richard Posner observes:

As with so many legal dichotomies, that of “crime” versus “war” does not fit an emergent reality, in this case that of global terrorism. It is an occupational hazard of lawyers to stall in their consideration of issues at the semantic level. Rather than ask whether modern terrorism is more like crime or more like war and therefore which box it should be put in, one should ask why there are different legal regimes for crime and war and let the answer guide the design of a sensible

regime for fighting terrorism. It is not war as such but the dangers created by war that explain and justify a curtailment of civil liberties in the waging of war. A similar curtailment may be justified by the dangers posed by terrorists avid to acquire weapons of mass destruction.⁵²

Our ability either to deter an attack today, or to respond properly in the event of one occurring, will have an impact on a global insurgency rather than on a single nationalist/separatist campaign. As former British intelligence official David Omand has commented regarding the tensions inherent to the co-existence between secret intelligence and an adversarial court system in that country, "a global intelligence capability... would be severely hampered if all operational counter-terrorist intelligence had to be managed, recorded and transcribed according to our strict rules of evidence just in case it might one day be relevant to a prosecution."⁵³ This common sense reminder is worthy of our attention, especially as the stakes continue to grow in an age wherein individuals and small groups have the potential capability and motivation to cause so much destruction.

In other words, context is everything, and we must be aware of the insufficiency of making a direct comparison between what may or may not have worked to deter, investigate or prosecute the perpetrators of the 1985 attacks and what may be required today. As a result, while it may be tempting to describe the bombing of Air India Flight 182 as "Canada's 9/11," such a characterization is not warranted. It is a more judicious reading of history to state that Air India was Canada's Air India; 9/11 - as is the case for all Western nations who find themselves in Al Qaeda's sights - was also Canada's 9/11.

⁵² Richard A. Posner, *Not a Suicide Pact: The Constitution in a Time of National Emergency* (New York: Oxford University Press, 2006), pp. 72-73.

⁵³ David Omand, "Security Dilemmas," *Prospect Magazine*, Issue 129, December 2006. For a view of the international dimensions of international cooperation, see Stephane Lefebvre, "The Difficulties and Dilemmas of International Intelligence Cooperation," in *International Journal of Intelligence and CounterIntelligence*, vol. 16, 2003, pp 527-542.

Appendix A

Extract from the Terms of Reference for the Commission of Inquiry into the Bombing of Air India Flight 182

- i. if there were deficiencies in the assessment by Canadian government officials of the potential threat posed by Sikh terrorism before or after 1985, or in their response to that threat, whether any changes in practice or legislation are required to prevent the recurrence of similar deficiencies in the assessment of terrorist threats in the future,
- ii. if there were problems in the effective cooperation between government departments and agencies, including the Canadian Security Intelligence Service and the Royal Canadian Mounted Police, in the investigation of the bombing of Air India Flight 182, either before or after June 23, 1985, whether any changes in practice or legislation are required to prevent the recurrence of similar problems of cooperation in the investigation of terrorism offences in the future,
- iii. the manner in which the Canadian government should address the challenge, as revealed by the investigation and prosecutions in the Air India matter, of establishing a reliable and workable relationship between security intelligence and evidence that can be used in a criminal trial,
- iv. whether Canada's existing legal framework provides adequate constraints on terrorist financing in, from or through Canada, including constraints on the use or misuse of funds from charitable organizations,
- v. whether existing practices or legislation provide adequate protection for witnesses against intimidation in the course of the investigation or prosecution of terrorism cases,

- vi. whether the unique challenges presented by the prosecution of terrorism cases, as revealed by the prosecutions in the Air India matter, are adequately addressed by existing practices or legislation and, if not, the changes in practice or legislation that are required to address these challenges, including whether there is merit in having terrorism cases heard by a panel of three judges, and
- vii. whether further changes in practice or legislation are required to address the specific aviation security breaches associated with the Air India Flight 182 bombing, particularly those relating to the screening of passengers and their baggage.

Peter Archambault holds a BA and MA from the University of New Brunswick, and received his PhD in History from the University of Calgary in 1997. Between 1998 and 2002, he was Director of Research for the Minister's Monitoring Committee on Change in the Department of National Defence and the Canadian Forces (MMC). The MMC provided oversight and reported to the Minister and public on reforms to DND and the CF that arose from several inquiries in the 1990s into matters such as military justice, military education and operations. In addition to supporting the Chair and Committee members in the research, analysis and drafting of five public reports, he assisted the Chairman, the Honourable John A. Fraser, in his role as Special Advisor to the Minister on Land Force Reserve Restructure. In 2000, that advice was presented in the report *In Service of the Nation: Canada's Citizen Soldiers in the 21st Century*.

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