

**Commission of Inquiry into the Actions of
Canadian Officials in Relation to Maher Arar**

OPENING SUBMISSION

Of the International Civil Liberties Monitoring Group

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September 11 marked a decisive break in respect for human rights. In the name of a “just war” against terrorism, many infringements were suddenly permitted–. The defenders of civil liberties have good reason to be worried. The general trend of our society towards increasing respect for the individual and individual freedoms has been brought to a brutal halt. And there is every indication that we are now drifting towards what appears like more and more of a paranoid police state–.

- Ignacio Ramonet, *Le Monde diplomatique*

The following is the opening submission of the *International Civil Liberties Monitoring Group (ICLMG)*.

The ICLMG is a pan-Canadian coalition of civil society organizations that was established in the aftermath of the September 11, 2001 terrorist attack in the United States. The coalition brings together over thirty NGOs, unions, professional associations, faith groups, environmental organizations, human rights and civil liberties advocates. These organizations are active in the promotion and defense of rights within their own respective sector of Canadian society. We share concerns about the impact of new anti-terrorism legislation and other counter terror measures with regards to civil liberties, human rights, refugee protection, racism, political dissent, governance of charities, international cooperation and humanitarian assistance.

Like many human rights organizations throughout the world, we are deeply concerned about the erosion of fundamental rights since September 11, 2001. There are many recent examples, and the case of Maher Arar is one of the most flagrant.

I.- Our main concerns

For us, it is important that the inquiry clarify the following concerns :

- The respect and concern for fundamental rights by all actors involved in the Arar case: respect for the constitutional rights of Maher Arar, respect for federal and provincial human rights legislation (including privacy rights), and respect for international instruments with regards to human rights.
- The obligation of responsible agencies to ensure that Mr. Arar's fundamental rights be respected, as well as the degree of knowledge and exercise of this obligation.
- The precise role of each of the various branches of the Canadian government and the real motives for action or inaction.
- The sharing of information between States, particularly among "surveillance" and "intelligence" agencies, and their genuine concern about the impacts of information sharing.
- The level of real accountability on the part of all governmental actors.
- The effectiveness and efficiency of intervention mechanisms, by Canadian authorities, when a Canadian citizen experiences a situation like that of Maher Arar, the impact and limitations of these mechanisms, as well as the capacity to benefit from the expertise of NGOs in such matters and to involve them in the search for solutions.

II.- Concrete questions

The following are some concrete questions that should be addressed by the Commission:

- What role, if any, was played by Canadian security agencies in the U.S. decision to arrest and deport Maher Arar, and what information may have influenced this decision?
- To what extent was Canada complicit or negligent in the decision to deport Mr. Arar, and if so, on the basis of which laws, policies or operational guidelines?
- Several interventions were made by the ICLMG and/or some of its members (most prominently Amnesty International) to the Canadian government seeking action toward the return to Canada of Mr. Arar, especially in light of reports by internationally respected human rights organizations that he was being tortured while in detention in Syria. How do responsible authorities (DFAIT, Public Safety and Emergency Preparedness Canada, RCMP, etc.) treat such interventions by organizations with an expertise in the area of human rights?
- What was the “chain of decision-making” and the “chain of follow-up” at every stage in the saga of Maher Arar?
- Did an erroneous conception of the “protection of international relations” serve as a basis for the transfer of information on Maher Arar to U.S. and Syrian authorities?

- During the decision to transfer information to a foreign country, to what extent did Canadian authorities consider the risk and grave consequences of such a decision on the fundamental rights and the physical integrity of the individual concerned?
- If there was collaboration among Canada, the U.S. and Syria in the case of Mr. Arar, was such collaboration a “way around” to obtain information from him?
- If information supplied to foreign governments was juxtaposed with information held by these governments (U.S. and Syria), was such information made available to Canadian authorities? Do Canadian authorities have the means to correct such information, if necessary, within a short period of time to mitigate the negative impacts of possible errors?
- Did Canadian authorities have any assurance whatsoever that the fundamental rights of Mr. Arar would not be systematically violated: detention and imprisonment without accusations, deportation to Jordan and Syria, mistreatment, torture? If so, what were these assurances?
- Do all Canadian citizens run the risk of being victims of systematic violation of their physical integrity and fundamental human rights following the sharing of information involving the participation of Canadian authorities?
- If information provided by Canadian authorities to U.S. authorities served as the basis for the “extraordinary rendition” of Mr. Arar to Syria, without safeguard on how the U.S. uses such information, how can Canada protect rights associated with Canadian citizenship? In that regard, to what extent is Canada’s sovereignty

compromised as it moves toward further agreements and arrangements with the U.S. related to information sharing and the integration of databases?

- If information is shared with foreign governments without genuine safeguards, to what extent does it place Canada in a position of complicity with regards to the practice of “extraordinary rendition”?
- To what extent did the fact that the RCMP could not guarantee Mr. Arar’s arrest in Canada, by virtue of the Canadian Charter of Rights and Freedom, influence the U.S. decision to deport Mr. Arar to Syria? Was Canada’s respect for human rights and civil liberties a problem for U.S. agencies?
- Do Canadian security agencies feel more affinity and obligation toward their U.S. counterparts than they do toward their political masters in Canada? Is the culture of secrecy and lack of political accountability inherent to or a condition for U.S. collaboration in matters of national security?
- Did Canadian security agencies follow operational guidelines? If so, are such guidelines or procedures in conformity with the Canadian Charter of Rights, federal and provincial laws, and international human rights standards?
- Did the government of Canada assure from its first knowledge of this case that all steps taken by Canadian, foreign and international agencies were in accordance with the Canadian Constitution, domestic and foreign laws, and international human rights standards?

- What representations and communications, if any, were made by the Canadian government to all Canadian, foreign and international agencies with respect to the laws and standards that should have applied in this matter?

III.- Secrecy

It is obvious that significant amount of the evidence , if not the crucial evidence, in the Arar affair was the product of information sharing between States. We reiterate our call to the Commission to consider the need for openness and transparency as a major principle when deciding on public access to the information and hearing of this Public Inquiry.

As the Law Union emphasises in their Opening Submissions, many Canadians have been victims of the culture of secrecy of governmental agencies.

The general public and civil society must be involved in order to ensure that all factual issues are dealt with, in particular the questions and related matters set out above. Because there has been so little transparency in this affair which has outraged Canadians, it is essential that the public receive full answers.

IV- Context

The Maher Arar inquiry must consider the national and international context in which the events took place. Regarding the security measures recently imposed by States, the *Ligue des droits et libertés*, wrote ¹:

In a news release on September 11, 2003, the *International Federation of Human Rights* (FIDH) wrote that the anti-terrorist freedom-limiting measures adopted throughout the world had changed the global context : force now prevails over law.

Analysing the anti-terrorist provisions [...in Canadian Bill C-36], a group of lawyers in Québec emphasized that “*at a time in the globalization process when many observers are noting a trend to broader powers for the executive branch of government, particularly at the expense of the legislative branch, it is disquieting that the bill perpetuates this trend.*”² Enhanced powers for the executive branch constitute a disturbing challenge to the democratic process. For instance, unusual monitoring and surveillance measures, such as the mega-data base on travellers, are instituted through administrative directives. Similarly, government employees enjoy new immunity allowing them to commit most criminal offences, including certain terrorist-related financial operations.

A very thorough report by the *Lanymers Committee For Human Rights* ³ shows that in the United States, the expansion of executive power and the relinquishment of legal guarantees is not just a temporary response to an emergency situation, but is becoming the “new normal” of life in America.

[...]

Security and freedom are not opposites. Respect for fundamental rights is an inescapable condition, a vital component of security. The measures taken by Canada do not make us safe; they make us less free. If we react to terrorism by collectively relinquishing our rights and freedoms, then terrorism and the discourse of “total security” will have won a major battle.

¹ *We are not any safer; we are less free*, Ligue des droits et libertés, January 2004

² *Projet de loi c-36 (loi antiterroriste)*, Document d'analyse juridique, November 2001, *Legal opinion presented to la Ligue des droits et libertés*.

³ *Erosion of Civil Liberties Reflects a “New Normal” in America – not Temporary Sacrifices – since 9/ 11.* http://www.lchr.org/media/2003_alerts/0918.htm

In a document entitled “*In the shadow of the law*”, the *International Civil Liberties Monitoring Group* (ICLMG) stressed Canada’s overbroad investigative powers.

Many of those analyzing these recent initiatives have concluded that existing *Criminal Code* and the *Canadian Security Intelligence Act* provisions, along with powers conferred by existing international conventions and international instruments, already provide sufficient powers to allow police to effectively combat terrorism. However, even those who argue that the fight against terrorism justifies wider powers of surveillance and detention, including infringements on civil liberties and individual freedoms, must adhere to basic constitutional principles and *Charter* values.

On the subject of racial profiling, the ICLMG wrote :

The difficulties in narrowly and accurately defining “terrorism” and “terrorists” are compounded by the likelihood of insidious discriminatory attitudes and beliefs affecting that task.

In a communiqué released on March 10, 2003, the Canadian Islamic Congress (CIC) indicated that hate crimes against Canadian Muslims have increased by more than 1,600% since September 2001. CIC also reported that despite such an increase, most local police services are not keeping proper data on the religion of hate crime victims, making it virtually impossible to link such crimes to hatred against Muslims.

Community leaders of Arab and/or Muslim origin have reported numerous cases of people being visited for interviews by security forces without warrants, and taken away for interrogation. Although the full extent of Bill C-36 was not implemented in these cases, it has been used as a threat to “encourage” voluntary interviews by citing the risk of preventative detention allowed under the Act. Victims of such police conduct have been afraid to come forward publicly for fear of further retaliation, but community leaders report that hundreds of such interviews have taken place.

The ICMLG thus concluded its report:

We deplore the fact that many within Canada’s policy elite bow to persistent U.S. pressure – direct and indirect - to bring our laws and practices into conformity with theirs. Many Americans also consider that their essential liberties and

constitutional guarantees are being threatened. Last year for instance, surveillance requests by the U.S. federal government under the *Foreign Intelligence Surveillance Act* – intended to hunt down foreign spies- outnumbered all requests under domestic law for the first time in U.S. history. The *Homeland Security Project*, the *Total Information Awareness System*, the *National Security Entry-Exit Registration System*, the profiling and registering of residents based on country of origin, religious background and/or gender, and many other related initiatives, threaten to undermine Canadian values and constitutional guarantees, as well as national and international human rights. There is an alarming tendency to bring our laws, administrative practices and regulations into greater “harmony” (sic) with those of the U.S. without adequate public or Parliamentary debate.

We believe that Parliament and the government of Canada must reassert a commitment to the essential rights and protections of Canadians as embodied in Canada’s *Constitution* and *Charter of Rights and Freedoms*. All proposed legislation dealing with security and concerns like international terrorism must be tested in the light of these prior and fundamental claims.

Maher Arar was a victim of so-called “security measures”, information sharing between States, racial profiling and lack of concern or disregard by the State agents for fundamental rights.

Conclusion

All efforts should be made to expose the truth around this deplorable saga and inform the public what really took place. Only by means of a thorough public inquiry can we hope that what happened to Maher Arar will never happen again.

Sincerely,

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