

**IN THE MATTER OF THE
COMMISSION OF INQUIRY INTO THE ACTIONS OF
CANADIAN OFFICIALS IN RELATION TO MAHER ARAR**

**OPENING ARGUMENT ON BEHALF OF:
THE COUNCIL OF CANADIANS
THE POLARIS INSTITUTE
THE CANADIAN LABOUR CONGRESS**

June 14, 2004

Whether it is the events of the sponsorship scandal or the abuses at the Abu Ghraib prison, when government plans go awry there is a consistent tendency on the part of the architects of the scheme to shift responsibility to those responsible for carrying it out. This is particularly true when problems arise that should have been foreseen, and could have been averted.

By pre-judging the need to establish a new arms-length review mechanism for the RCMP's activities with respect to national security, the government's mandate for this Commission raises an apprehension that it has adopted a strategy to divert attention from the causes to the symptoms of a government plan that would predictably lead to the types of abuses that Mr. Arar has suffered.

It may be that Canada's role in the shameful treatment of Mr. Arar can be attributed to a few "rogue" RCMP officers, as the former Solicitor General has suggested¹, but there is a great deal of evidence to suggest that, contrary to this speculation, members of the RCMP and other Canadian officials involved with the Arar case were simply carrying out, rather than trying to subvert, government policy.

It is essential, we submit, for this Commission to resist any temptation to examine the conduct of Canadian officials, whether employed by the RCMP or elsewhere, and including those elected to office, in isolation from the government policies, programs and institutions that provided direction and established the context within which these officials operate. The Canadian officials referred to in the Commission's mandate must be taken to include those responsible for fashioning Canada's security agenda, not just those charged with carrying it out. We identify some of these key individuals below.

¹ Solicitor General Wayne Easter was quoted on July 30, 2003 in the National Post and the Ottawa Citizen that he "did not discount the possibility...that rogue elements within the RCMP passed intelligence to American authorities that led to the arrest and deportation" of Maher Arar.

Issues of national security were important features of Canada-US relations prior to the terrorist attacks that occurred in New York, Washington and Pennsylvania on September 11, 2001 (hereinafter “9/11”). But those attacks created a great sense of urgency which galvanized the United States and Canada to action.

Within weeks, the Liberal government tabled Bill C-36, the *Anti-Terrorism Act*, and committed \$7.7 billion to enhance security, emergency preparedness, and border infrastructure. Canada and the US also negotiated the *Canada-U.S. Smart Border Declaration* and the accompanying *30-Point Action Plan* (hereafter the “Smart Border Action Plan”).

For Canada, it is very clear that the incentive to move quickly and dramatically came as much from the need to keep the US border open to business as it did from a concern about potential terrorist attacks. Canadian business groups, including those which had been lobbying for greater integration for Canada with US economic and defence policies, exerted considerable pressure on the government to ensure that cross-border trade was uninterrupted. Canadian politicians and public officials repeatedly stressed that the objectives of public and economic security were mutually supportive.²

However, it is also clear that the Government’s definition of “public security” was a narrow one which focussed on such matters as strengthening police powers and deepening the integration of Canadian with US policies on immigration, but ignored the impacts of those initiatives on Canadian sovereignty, the Constitution, and both domestic and international human rights protections. Yet these institutions and values are absolutely fundamental to public security in a democratic state.

Canada’s response to the events of 9/11 was fashioned in a crisis atmosphere³ which created a culture in which concern for sovereignty, the constitution, civil liberties and human rights was virtually absent. In fact, there is no evidence that these issues were even considered as Canada negotiated far reaching international agreements, tabled sweeping legislative reforms, and committed \$billions to implement the measures called for by those agreements and legislation.

² Robert Fonberg, Deputy Secretary to the Cabinet, Plans and Consultation, Privy Council Office, The Standing Senate Committee on Banking, Trade and Commerce, Evidence, Feb. 20, 2002. He told the committee: “We did not view public and economic security as competing objectives but as mutually reinforcing objectives and goals.” Deputy Prime Minister John Manley has made the same point, see footnote #10 below.

³ Ronald Bilodeau, Subcommittee on National Security of the Standing Committee (House of Commons) on Justice and Human Rights, Feb. 25, 2003: “Following September 11 there was a need to close some gaps. There were some real security gaps in many of the departments and agencies I mentioned, and as a priority, those legal and policy gaps had to be closed, and additional resources have been thrown in. It would have been difficult at that time to change the rules of management and organization, as it was a crisis period. The crisis period, hopefully, will abate and we’ll move forward.”

Since the events of 9/11, Canadian officials representing several government departments and agencies have made numerous appearances before several Parliamentary Committees to describe the government's security agenda.⁴ While it was not exhaustive, our review of their testimony revealed no references to the Charter of Rights and Freedoms, the Constitution, international human rights agreements, Canadian sovereignty, or the rule of law. While there is passing reference to privacy concerns, if the broader constitutional implications of the post-9/11 project was on the minds of these officials they certainly didn't mention it.⁵

If this is, in fact the case, it would be a remarkable failure of public policy development that dramatic and far reaching reforms could have been implemented for the purposes of enhancing the security of Canadians with so little apparent regard for the adverse effects of these measures on the very bullwarks of our democratic society. It is not surprising, then, that there would be casualties of an agenda so hastily and ill-conceived.

Moreover, given the history and culture of Canada's security and intelligence institutions, it is hardly surprising that in light of the clear policy direction accorded by these government initiatives, concerns for civil liberties and human rights might go by the boards.

Key Issues:

Was Canada's response to 9/11, including the negotiation of the *Smart Border Declaration* and *Associated 30 Point Action Plan*, developed in a manner that was informed by and consistent with Canadian constitutional values, including those of the Charter and the Rule of Law?

Were those policies and programs necessary and/or proportionate to either of Canada's objectives, namely to protect and enhance public security and economic security?

Could the adverse consequences of this agenda, including those visited on Mr. Arar, have been averted if the architects of Canada's post 9/11 agenda had been concerned with the preservation of Canadian constitutional norms and respect for the Rule of Law?

⁴ The following parliamentary committees heard testimony from federal officials concerning the government's post 9/11 strategy: The Standing Senate Committee on Banking, Trade and Commerce, Feb. 20, 2002; Subcommittee on National Security of the Standing Committee (House of Commons) on Justice and Human Rights, Feb. 25, 2003; Standing Committee on Foreign Affairs and International Trade, Nov. 20, 2001; Standing Committee on Foreign Affairs and International Trade, June 5, 2003.

⁵ There is some acknowledgement of potential conflicts between information sharing and privacy see Ron Bilodeau's evidence before the Subcommittee on National Security of the Standing Committee (House of Commons) on Justice and Human Rights, Feb. 25, 2003, but Mr. Bilodeau does not mention the Charter, or other constitutional norms as being of concern.

SMART BORDER ACTION PLAN

For the reasons noted, we submit that the Commission's first task must be to identify the policy and institutional framework within which Canadian officials involved in the Arar case operated. A thorough examination of this context is essential if the actions of Canadian officials are to be properly understood and assessed. While the Commission intends to begin its hearings by calling several contextual witnesses, it is not clear that it has allowed enough scope for this essential aspect of its Inquiry.

As the events in question involve Canada's relationship with both the United States and Syria, the place to begin is with the policies and agreements that comprise these international relationships, and with the government bodies that have responsibility for their implementation.

Prior to 9/11, a number of bilateral initiatives with the US were underway that concerned such matters as border security, immigration policy, information exchange, public safety and terrorism.⁶ ⁷ As noted, the events of 9/11 galvanized Canada and the US to consolidate these somewhat disparate efforts, and establish new institutional capacities to deal with the challenges presented by those events.⁸ In the US, the Department of Homeland Security was created. In Canada the job of managing the post-9/11 agenda was assigned to an ad hoc group working under the auspices of the Privy Council Office.

As described by Mr. Ronald Bilodeau, Associate Secretary to the Cabinet, Deputy Minister to the Deputy Prime Minister, and Security and Intelligence Coordinator, Privy Council Office:

. . . the Government of Canada quickly established a solid foundation of security measures immediately after the events of September 11, which included the following: strong new legislation in Bill C-36, the Anti-Terrorism Act, which includes significant measures designed to identify, prosecute, convict, and punish terrorists; the investment of \$7.7 billion over five years to enhance security, emergency preparedness, and border infrastructure; the Canada-U.S. smart border declaration and the accompanying 30-

⁶ Proceedings of the Senate Committee on Trade and Commerce, Feb. 20, 2002, evidence of Ms. Joan Atkinson, ADM Policy and Program Development Department of Citizenship and Immigration.

⁷ Standing Committee on Foreign Affairs and International Trade, November 20, 2001. Mr. Jon Allen (Director General, North America Bureau, Department of Foreign Affairs and International Trade): *Before September 11, the border was already a priority in Canada-U.S. relations. For over six years, Canadian and U.S. border agencies were cooperating on a wide range of new and innovative measures aimed at helping to move legitimate trade and traffic across the border in the most efficient way possible, while at the same time meeting threats to our common security.*

⁸ Bill C-36, the Anti-terrorism Act, was introduced and passed. Shortly afterwards, Bill C-42, the Public Safety Act, was tabled. Budget 2001 in December included \$7.7 billion for enhanced security, for emergency preparedness, and improving the border infrastructure. A Canada-U.S. Smart Border Declaration with a 30-point action plan was signed, also in December.

*point action plan, which outlines shared commitments to develop a border that securely facilitates the free flow of people and commerce between Canada and the United States.*⁹

Thus, in December 2001, Governor Tom Ridge and Deputy Prime Minister John Manley signed the *Smart Border Declaration* and associated *30-Point Action Plan*. As described by DFAIT, the Declaration and Plan stood on “Four Pillars” which were: the “Sure Flow of People, the Secure Flow Of Goods, Secure Infrastructure, and Information Sharing and Coordination in the Enforcement of these Objectives.”¹⁰

In several ways the Declaration and the Plan to implement it can be regarded as providing a template of the actions of Canadian officials as they concerned Mr. Arar. Consider for example the following elements of the plan:¹¹

#8 ADVANCE PASSENGER INFORMATION / PASSENGER NAME RECORD:

The United States and Canada have agreed to share Advance Passenger Information and Passenger Name Records (API/PNR) on high-risk travellers destined to either country. Canada implemented its Passenger Information System (PAXIS) at Canadian airports on October 8, 2002 to collect Advance Passenger Information. The automated U.S. -Canada API/PNR data-sharing program will be in place by Spring 2003.

⁹ See the testimony of Ronald Bilodeau before the Subcommittee on National Security of the Standing Committee on Justice and Human Rights, February 25, 2003.

¹⁰ Canadian deputy prime minister John Manley and U.S. Secretary of Homeland Security Tom Ridge issued in Oct. 2003 a joint report on the Dec. 2001 Smart Border Declaration. Manley made the following statement at the time:

On December 12, 2001, Governor Tom Ridge and I signed the Smart Border Declaration. Governor Ridge is the new director of the Office of Homeland Security, appointed by President Bush last fall. The plan we signed outlines a 30-point action plan arranged in four pillars: secure flow of people, secure flow of goods, secure infrastructure, coordination and information sharing.

The governor and I agreed to review regularly the progress in implementing this plan and to encourage officials in both capitals to advance individual files as quickly as possible. We most recently met on March 8.

Our actions are supported by numerous bilateral contacts between ministers and senior officials and their U.S. counterparts. These are a part of very active, ongoing bilateral challenges necessary to build on cooperation.

The guiding principle of the Smart Border Declaration is that public and economic security are mutually reinforcing. Our security is enhanced when we adopt a risk management approach that expedites the flow of low-risk goods and people, allowing us to concentrate our resources on higher-risk flows.

¹¹ These excerpts are taken from a joint statement on progress with the implementation of the U.S. - Canada Smart Border/30 Point Action Plan Update which was released on Dec. 6, 2002.

#9 JOINT PASSENGER ANALYSIS UNITS: The United States and Canada have agreed to a co-location of customs and immigration officers in Joint Passenger Analysis Units to more intensively cooperate in identifying potentially high-risk travelers. Pilot joint passenger analysis units became operational at the Vancouver and Miami international airports on September 30, 2002, staffed with U.S. and Canadian officials. The pilot sites will be evaluated at the end of six months to determine the feasibility of expanding the units to other locations.

#23 INTEGRATED BORDER AND MARINE ENFORCEMENT TEAMS: The United States and Canada have identified 14 geographical areas for the deployment or enhancement of Integrated Border Enforcement Teams (IBETS). IBETs are currently operational in 10 of the 14 geographic areas, and will be operational in all 14 geographical areas by December 2003. IBETs will focus on criminals and terrorists that may attempt to cross the United States-Canada border. The two countries have also begun comprehensive training programs for IBET personnel, from both the United States and Canada, to enhance their awareness and understanding of one another's laws and regulations. Two joint training sessions have been held with additional sessions planned in the near future. These initial training sessions will form the foundation of a long-term integrated training plan.

#25 INTEGRATED INTELLIGENCE: The Government of Canada has established Integrated National Security Enforcement Teams (INSETs), which will include representatives from federal enforcement and intelligence agencies, as well as international law enforcement partners such as the U.S., on a case-by-case basis. Canada has also been participating since April 9, 2002, in the U.S. Foreign Terrorist Tracking Task Force (FTTTF) in Washington, to detect, interdict, and remove foreign terrorist threats.

#27 REMOVAL OF DEPORTEES: The United States and Canada are continuing cooperation in removing individuals to source countries. To date, the United States and Canada have conducted 5 joint operations resulting in 313 removals.

Responsibility for implementing the Declaration and Plan fell in Canada to the Borders Task Force, which was set up under the auspices of the Privy Council Office (PCO) with John Manley as the Minister in charge. Within the Civil Service, responsibility for overseeing the activities of the Borders Task Force was given to Robert Fonberg who was then Deputy Secretary of Cabinet, Operations Privy Council Office.

Mr. Fonberg was instrumental in not only seeing to the implementation of the Smart Border Action Plan, but to articulating the policy rationale for the integration of border measures, security systems, immigration policies and information collection that Canada and the US had agreed to.

Another senior official with direct responsibility for implementing the Smart Border Action Plan was Mr. Ronald Bilodeau. Until he retired in the spring of 2003, and as noted, Mr. Bilodeau served as the Security and Intelligence Coordinator in the Privy Council Office. On February 24, 2002, that is *7 months prior to Mr. Arar's apprehension*, Mr. Bilodeau described the progress that Canada and US had made in implementing measures called for by the Smart Border Action Plan this way:

*Under the 30-point Canada-U.S. border agreement, we have now integrated anti-terrorist teams with Canadian and American security agencies. We have them in 14 places now. Information is exchanged readily and locally at these border points. Information is exchanged between the Canada Customs and Revenue Agency and its American counterpart, between the immigration department and its American counterpart.*¹²

Key issues:

To what extent do the actions of Canadian officials in relation to Mr. Arar stem from policies and institutional arrangements which arose soon after 9/11 and which were given expression by the *Smart Border Declaration* and *Associated 30 Point Action Plan* and related initiatives?

THE LACK OF POLICY COHERENCE

In the wake of 9/11, Canada was under considerable pressure not only from the US to support and comply with its agenda for addressing the challenges presented by 9/11, but from domestic business lobby groups that demanded that Canada move quickly assuage US fears about border security in order to avoid a perceived threat to international trade.

In fact, much of the rationale for the Smart Border Action Plan came from the Coalition for Secure & Trade-Efficient Borders, which produced a report in December 2001, "Rethinking our Borders: A Plan for Action."¹³

The private sector spent little time in urging the government to take action to deal with US security concerns and to avoid future trade disruptions. The Canadian Manufacturers and Exporters told the House of Commons Standing Committee on Finance in October 31, 2001 that, "While it is impossible at this time to know with any precision the extent of the loss to the Canadian economy as a result of the events of September 11, it is clear that the figure is in the billions of dollars."¹⁴

¹² Proceedings of the Standing Senate Committee on National Security and Defense 11, Feb. 24, 2003.

¹³ www.cme-mec.ca/coalition/english/documents.html

¹⁴ <http://www.cme-mec.ca/shared/upload/national/2002prebudget.pdf>

Later, the Canadian Manufacturers and Exporters joined with the Canadian Chamber of Commerce, the Canadian Council of Chief Executives, and other business associations to create the Coalition on Secure and Trade Efficient Borders. The industry lobby group was formed on October 3, 2001 by over 40 business associations and individual companies to help the federal government successfully deal with border and security issues.

Indeed, some in the business community seized upon the events of 9/11 to promote their agenda for greater integration of Canadian policies with those of the United States.¹⁵ Moreover, their views that the events of 9/11 presented certain opportunities appears to have been shared by some within government. At a speech to Canadian business groups Deputy Prime Minister Manley put it this way:

*Most of you know the imperative - **and the opportunity** - that presented itself with the focus on our common border with the United States post-September 11th. You understand well the intrinsic linkage between our public and our economic security, and the critical underpinning to both which is represented by a secure and trade-efficient border.*¹⁶
[emphasis added]

It is clear from Mr. Manley's remarks and from the commentary of other Canadian officials, that the government's motivation for many of the measures implemented in the post 9/11 period had easily as much to do with ensuring the free flow of goods and materials across the Canada US border as it did with any concern about future terrorist attacks.

As explained by Mr. Manley, "The guiding principle of the Smart Border Declaration is that public and economic security are mutually reinforcing." While this indeed may be true to some extent, for reasons elucidated below, insofar as Canada sought to ensure that public security would be enhanced through the Smart Border Action Plan, it largely failed. Moreover, conflicts between these distinct public policy objectives were apparent from the manner in which Canadian officials responded to the Arar case.

For example, media accounts of the events surrounding Mr. Arar's treatment indicate significant divisions within government concerning the appropriate course for Canada to take in securing Mr. Arar's release from a Syrian prison and return to Canada. Indeed, at least one senior Canadian official acknowledged these divisions.

¹⁵ Letter to The Honourable John Manley from Steering Committee for the Coalition for Secure and Trade Efficient Borders. www.acpa-ports.net/psecure/manleylt.doc

¹⁶ Speech by the Honourable John Manley, Deputy Prime Minister and Minister of Finance, to the Americas Society/Council of the Americas. 24 November 2003. http://www.fin.gc.ca/news03/03-058_4e.html

Thus, in an email to Mr. Arar's wife, Monia Mazigh, on April 12, 2003, Gar Pardy, Director General of the Consular Affairs Bureau of DFAIT, and who was actively involved on the Arar file, is reported to have said:

*.... a major part of the problem here is that **not everyone in the government of Canada agrees with what we are doing in support of Maher. The Syrians are well aware of that and that undoubtedly influences their willingness to be more cooperative.***¹⁷

On June 13, 2003, Ms. Mazigh met with Foreign Affairs Minister Bill Graham and emphasized the need for Canada to have a consistent position in order to pressure the US or Syria. She quotes from the email received from Gar Pardy on April 12, 2003.

Moreover, there are other reasons to believe that internal policy conflicts may have been at play in undermining efforts to secure Mr. Arar's release from Syrian prison. Thus, during the period of Mr. Arar's incarceration and torture, Canadian companies (including one in which Canada had a significant equity interest) were involved in two major resource deals with counterparts in Syria:

May 27, 2003 Vancouver-based Tanganyika Oil announces a new Production Sharing Agreement with the Syrian Petroleum Company and the Syrian government worth an estimated \$162 million. Tanganyika Oil President, Lukas Lundin, is quoted as saying the major deal "is indicative of the excellent Canadian-Syrian relationship"

June 30, 2003 The Syrian government authorizes an agreement with Royal Dutch/Shell and Canada's Petro-Canada oil companies to search for new oil wells and develop old ones. Petro-Canada, which has been involved in Syria for over 20 years, receives nearly one fifth of Syria's oil production, or 100,000 barrels per day.

It appears that in May 2003, at a time when Minister Graham appeared to have been actively involved in trying to secure Mr. Arar's release from prison in Syria, Deputy Foreign Minister Gaëtan Lavertu paid a visit to Syria but did not even raise the question of Mr. Arar's detention with his counterparts there. It would not be unreasonable to expect that Syrian officials might have taken a message from this failure about the importance that Canada was placing on securing Mr. Arar's release.

¹⁷ See chronology of events relating to Mr. Maher Arar's deportation and imprisonment which was compiled by the Solidarity Network

In fact, in an Op-ed published nearly a year after Mr. Arar's deportation to Syria, Irwin Cotler argued that "Canada must convey to Syria that its prejudicial conduct – including its refusal to discuss Mr. Arar's release – will impact adversely on the Canada-Syria bilateral relationship." It is a telling indictment of Canada's efforts to secure his release that a member of the government has to resort to public advocacy to persuade his colleagues to take such an obvious step.¹⁸

Questions/issues:

To what extent do the actions of Canadian officials in relation to Mr. Arar stem from policy conflicts within the federal government and lead to Mr. Arar's detention and/or frustrate efforts to gain his release?

To what extent then are these conflicts the product of competing priorities within government concerning various aspects of Canada US relations? To what extent do these tensions explain Canada's apparent lack of consistent purpose in securing Mr. Arar's release?

THE QUESTION OF SOVEREIGNTY and DEMOCRACY

The implications of the post 9/11 environment for Canadian sovereignty were certainly not lost on several members of the Canadian business community who began to speak of Canada's status as a sovereign state as anachronistic.¹⁹ Indeed, those in favour of deeper integration between Canada and the US seized on the anxieties of the post 9/11 environment to push their hobby horse of having Canada simply adopt the US dollar and tax, immigration, defence and security policies.²⁰

There is no doubt that many of the actions taken by Canada in the post 9/11 period represent a serious challenge to its sovereignty, including by:

1. diminishing its ability to control its borders and to determine who, and on what terms, individuals enter the country. Professor Drache makes the point that Canadian reforms to its immigration laws adopt the US view of certain immigrants, refugees and even certain foreign born citizens as being potential threats.²¹ Yet our Constitution guarantees every

¹⁸ *Six steps to freedom*, Sept. 2, 2003.

¹⁹ Kent Roach; *September 11: Consequences for Canada* quoting Canadian Pacific's CEO as saying that "Canada will have adopt US style immigration policies if it doesn't want the border between the two countries to become impossible to cross. We must make North America secure from the outside. We are going to lose increasingly our sovereignty, but necessarily so." p. 135. Also see pp. 163-64.

²⁰ *Idem*, pp. 125 - 126.

²¹ Daniel Drache, *Borders Matter: Homeland Security and the Search for North America*, Fernwood

citizen, whether born here or not, the right to enter, leave and remain in Canada. At the border there should be no difference between native-born Canadians and those who have chosen Canada as their new home;

2. eroding its ability to protect its own citizens. Yet this obligation is one of the most fundamental owed by every sovereign state to its nationals. But under the Smart Border Action Plan and Bill C-7, Canada has undertaken to share information it may gather about its citizens with the US. Once in US hands, there are no safeguards against the use and misuse of information about Canadians for whatever purpose the US may now or in the future devise. Given the alacrity with which Canada compromised its obligations to protect its citizens and their privacy, it is not surprising that US officials may have thought little about ignoring the fundamental protection that should have been accorded by a Canadian passport;
3. marginalizing the the role of Parliament. Many of the joint Canada US initiatives of the Smart Border came out of the earlier pre-9/11 Canada US Special Partnership discussions between Ottawa and Washington. The difference, says former DFAIT minister Lloyd Axworthy, is that CUSP was an “open process,” while the myriad of committees and activity under Smart Border lack sufficient parliamentary oversight process to guard against human rights abuses. The secretive nature of the Smart Border process and the impact that it might have had on the detention and torture of Maher Arar merits serious exploration, says Mr. Axworthy;²²
4. ignoring the need for oversight and accountability as it moved to dramatically increase the discretion and authority of police and security agencies that are notoriously reluctant to share information or conduct their activities with any degree of transparency. The same problem attends the establishment of bi-lateral enforcement groups which present considerable accountability challenges.²³

Not all intrusions on sovereignty are unwarranted - thus the protection of certain fundamental human rights binds all nations whether or not they consent to such a constraint. But, if it is to maintain its democratic character, a nation must jealously guard its sovereignty if it is to govern in accordance with its constitution and the will of its citizens - not the dictates of foreign governments.

Publishing, 2004 at p. 1-21. Drache is associate director of the Robarts Centre of Canadian Studies and Professor of Political Economy at York University.

²² Private interview with Mr. Axworthy, by Paul Weinberg on June 10, 2004. Mr. Weinberg has been retained by the interveners to conduct research to assist with their participation in these proceedings.

²³ Roach supra note 19 at pp. 193-95.

As noted, in the wake of 9/11 there were those who argued that sovereignty was a luxury that Canada could no longer afford.²⁴ What is unclear is whether this view was shared by some Canadian officials who were instrumental in fashioning and carrying out the post-9/11 agenda. It is telling, in our view, that the senior public official with responsibility for the precursor to the Smart Border Action Plan, the Canada U.S. Special Partnership, later after leaving government helped advise the Canadian Council of Chief Executives on its so-called North American Security and Prosperity initiative, which proposes to integrate Canada with the U.S. on a scale that surpasses the current free trade agreements.

The integration of economic, national security and other policies in the Canadian US context has often not been the product of an equal partnership in which both parties cede authority in a spirit of mutual cooperation, but rather a unilateral abandonment of Canadian priorities to those of the US. Canada's economic dependence on international trade with the US has given the US enormous leverage in Canada-US relations. These dynamics have in turn created a culture of Canadian governance in which sovereign authority is routinely abandoned or ignored.

However it is apparent the significant erosion of Canadian sovereignty that is either inherent to or explicitly arises from the post 9/11 agenda was not even alluded to, let alone considered and assessed, before Canada made far reaching international commitments were made to implement that agenda

Key Issues:

Did the actions of Canadian officials in relation to Mr. Arar reflect a due disregard for Canadian sovereignty?

Was Canada too quick to accede to pressures from the US and its domestic business community to link anti-terrorism efforts with other aspects of Canada-US relations, including immigration and foreign policy?

To what extent is the apparent disregard by US officials of Canadian sovereignty in the case of Mr. Arar a reflection of the erosion of Canadian sovereignty that has become a ubiquitous feature of Canada-US relations?

RULE OF LAW

Several of the events and initiatives that have arisen since 9/11 have demonstrated a significant erosion of the most fundamental notions concerning the rule of law, in both the international and domestic context. The decision by Canadian soldiers to turn over certain prisoners captured in Afghanistan to US forces no doubt represents a breach of the Geneva Convention.

²⁴ Idem pp. 163-64.

Several of the measures and actions called for by the Smart Border Action Plan lacked statutory foundation in Canadian law but were implemented nevertheless. One case in point was the sharing of passenger data with security and police forces in Canada and the U.S. This practice was underway for some time before it was provided a statutory foundation in Bill C-7 the *Public Safety Act*. Moreover, various features of Canada's new anti-terrorism laws represent unprecedented intrusions on civil liberties and fundamental justice.

The motif that has emerged in the post 9/11 period is one that has compromised the most fundamental values of our democratic society to address both real and perceived threats to Canada's public security and international trade. Moreover, those compromises have been made with little apparent reluctance or concern. The result created a culture in which the touchstones of the Charter of Rights and Freedoms, and even the rule of law itself, were casually abandoned in the cause of fighting terrorism. This is the context within which circumstances of Mr. Arar must be understood.

SUMMARY OF ISSUES

1. Was Canada's response to 9/11, including the negotiation of the *Smart Border Declaration* and *Associated 30 Point Action Plan*, developed in a manner that was informed by and consistent with Canadian constitutional values, including those of the Charter and the Rule of Law, or were they hastily conceived and implemented in order to address both real and perceived problems that threatened the Canada's economic and security interests?
2. Were those policies and programs necessary and/or proportionate to either of Canada's objectives, namely to protect and enhance public security and economic security?
3. Could the adverse consequences of this agenda, including those visited on Mr. Arar, have been averted had the architects of Canada's post 9/11 agenda been more determined to preserve Canadian constitutional norms and respect for the Rule of Law?
4. To what extent do the actions of Canadian officials in relation to Mr. Arar stem from policies and institutional arrangements which arose soon after 9/11 and which were given expression by the *Smart Border Declaration* and *Associated 30 Point Action Plan* and related initiatives?
5. To what extent do the actions of Canadian officials in relation to Mr. Arar stem from policy conflicts within the federal government which led to Mr. Arar's detention and/or frustrated efforts to gain his release?

6. To what extent then are these conflicts the product of competing priorities within government concerning various aspects of Canada US relations? To what extent do these tensions explain Canada's apparent lack of consistent purpose in securing Mr. Arar's release?
7. Did the actions of Canadian officials in relation to Mr. Arar reflect a due disregard for Canadian sovereignty?
8. Was Canada too quick to accede to pressures from the US and its domestic business community to link anti-terrorism efforts with other aspects of Canada US relations, including immigration and foreign policy?
9. To what extent is the apparent disregard by US officials of Canadian sovereignty in the case of Mr. Arar a reflection of the erosion of Canadian sovereignty that has become a ubiquitous feature of Canada-US relations?

PROPOSED WITNESSES

Former Deputy Prime Minister John Manley.

Former Foreign Affairs Minister Lloyd Axworthy.

Robert Fonberg, former Deputy Secretary to the Cabinet, Plans and Consultation, Privy Council Office, currently the Deputy Minister of the Department of International Trade.

Mr. Ronald Bilodeau, Associate Secretary to the Cabinet, Deputy Minister to the Deputy Prime Minister, and Security and Intelligence Coordinator, Privy Council Office.

Gar Pardy, former Director General of the Consular Affairs Bureau of DFAIT.