

Address by the

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Yesterday Canada launched a significant – even historic – initiative: the first-ever comprehensive and integrated National Security Policy.

The National Security Policy includes:

1. a threat assessment of the escalating and multi-layered threat environment including the increasingly sophisticated threats from trans-national terrorism, cyber-crime, and health pandemics;
2. an articulation of our national security interests as including not only the security of Canada and Canadians, but the protection of the security of our allies and ensuring that Canada is not used as a base to threaten our allies;
3. a comprehensive blueprint for action to address threats in six major strategic areas with corresponding structural initiatives including:
 - Intelligence (involving the establishment of an Integrated Threat Assessment Centre);
 - Emergency Planning and Management (involving a Government Operations Centre);
 - Public Health (including the establishment of Health Emergency Response Teams);
 - Transport Security (including marine and aviation security);
 - Border Security (including facial recognition biometric technology); and
 - International Security.

I will now discuss countering trans-national crime - including terrorism and organized crime - and share some underlying principles using counter-terrorism law and policy as a case study. However, before I proceed, there is one caveat: counter-terrorism law and policy tends to be mischaracterized in terms of national security versus human rights, when what is really involved is human rights legislation that seeks to protect both national security and civil liberties. Therefore, a central theme of my remarks is that counter-terrorism law and policy – or countering organized crime or drug trafficking – is not an either/or proposition. We do not need to choose between security and rights. If we are thoughtful and principled – as in the principles underpinning the Inter-American Convention on Terrorism – we can enact legislation that promotes and protects both security and human rights.

I will now share some basic principles regarding counter-terrorism law and policy as a case study respecting the relationship between security and rights.

Principle 1: Counter-terrorism law and policy as the promotion and protection of both security and human rights

Terrorism constitutes a fundamental assault both on the security of a democracy – indeed, on the peace and security of our hemisphere – as well as an assault on the most fundamental of rights – the rights to life, liberty and the security of the person. Accordingly, counter-terrorism involves the protection of both the security of a democracy – including the protection of international peace and security – and the protection of the most fundamental of our rights.

Principle 2: The Contextual Principle

Counter-terrorism law and policy – or the countering of organized crime – must not take place in the abstract; it must take into account the specific nature and dimensions of the trans-national terrorist

threat – or that of organized crime or the manifestations of cyber-crime - and which, as the Secretary-General himself stated, “cannot be fought by one country alone.”

What is required is a hemispheric and global coordinated response involving, *inter alia*, mutual legal assistance, the development of -and application of - international humanitarian and criminal law, information sharing, and fair and efficient domestic criminal justice systems.

Principle 3: The Proportionality Principle

Indeed, that the juridical response to terrorism – or trans-national crime – must be proportional to the threat requires that we have an appreciation of the dynamics that characterize the increasingly lethal face of contemporary transnational terrorism, or any of the transnational crimes that we seek to combat.

Principle 4: The International Criminal Justice Model as the promotion and protection for counter-terrorism

In brief, we are not dealing here with the “ordinary” or domestic criminal, but with the transnational super-terrorist; not with ordinary criminality, but with crimes against humanity; not with your conventional threat of criminal violence, but with an existential threat to the whole human family.

Accordingly, the domestic criminal/due process model – standing alone – is inadequate and inappropriate. The juridical war on terrorism cannot be fought – or won – by any country alone. Rather, one has to think outside the box and invoke an international criminal justice model – a Nuremberg model – having regard to both the nature of the threat and the proportionality of the response.

Principle 5: The Domestication of International Law

At the core of anti-terrorism law and policy - or combatting corruption or organized crime – is the domestic implementation of international law. In particular, the implementation of the 12 international anti-terrorism treaties and international conventions against organized crime; the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons*; the *Convention Against Corruption*, as well as the regional counterparts.

It is not enough that these international treaties be ratified, for governments must also enact domestic legislation to give effect to these treaties for prosecutorial and juridical purposes.

Principle 6: The Comparativist Principle

In determining the justificatory basis for counter-terrorism legislation, resort should be had to the values and principles of democratic society, to the legislative experience of other democratic societies, and to international conventions. We thus test our domestic initiatives against the values of other free and democratic societies.

Principle 7: The Prevention Principle

One of the *raison d'être* for anti-terrorism law – having regard to the character of the transnational terrorist – must be organized around a culture of prevention and pre-emption, as distinct from reactive, after-the-fact law enforcement.

Such preventive measures include:

- terrorist offences pursuant to international treaties so as to establish a global justice network;
- offences that seek to disable and dismantle terrorist networks;
- investigative mechanisms that seek to detect and deter, rather than just prosecute and punish;
- provisions for international co-operation respecting law enforcement and information-gathering which seek to counteract the super-terrorist utilization of transnational technologies;
- communications and transportation networks; and
- the spectrum of provisions prohibiting the financing of terrorism as well as those related to money-laundering and organized crime.

Principle 8: The Importance of Criminal Due Process

The need for important safeguards - as set forth by the Inter-American Conventions Against Terrorism and Human Rights – include the principles respecting equal access to justice, an independent judiciary, the rule of law, and the right to an independent and fair trial.

Principle 9: The Minority Rights Principle

This principle is organized around the rights of visible minorities to protection against differential and discriminatory treatment in the application and enforcement of counter-terrorism legislation.

Principle 10: The Anti-Hate Principle

One of the enduring lessons of Nazism – and the lessons of Rwanda – is that the genocide succeeded not only because of the industry of death, but because of the state-sanctioned culture of hate. This teaching of contempt – this demonizing of the other – this is where it all begins. Therefore, we need a zero-tolerance policy regarding hate in addition to a zero-tolerance policy regarding terrorism.

Principle 11: The Chartering of Rights

Counter-terrorism legislation should be pre-tested by a country's fundamental human rights laws – in Canada's case, by the *Canadian Charter of Rights and Freedoms*.

Principle 12: The Oversight Principle

An appropriate oversight framework is germane to the integrity and efficacy of anti-terrorism legislation. It is imperative that the proper instruments and mechanisms are in place for monitor, review and redress.

In conclusion, these principles must form the foundation of our legislative approach to fighting terror and protecting our most fundamental rights: the right to life, liberty, the security of the person, as well as the collective right to peace.

The ultimate goal is to protect both national security and civil liberties.

Terrorism is a horrific violation of human rights and a pressing threat to international peace and security. Counter-terrorism laws will be with us until this scourge is eradicated; it is imperative that we get them right.