A CITIZEN AMONG NATIONS

Recommendations on Future Directions for Canadian Foreign Policy

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Standing Committee on Foreign Affairs and International Trade

in anticipation of the

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Members of the 2004 Foreign Policy Practicum:

Amy Awad (Trade Policy)
Nadia Campion (Canada-U.S. Relations)
Amy Groothuis (Human Security)
Rachel Hird (Weapons Proliferation)
Maya Khakhamovitch (Multilateral Institutions)
Margot MacPherson Brewer (Aid and Development)
Heather Watts (Corporate Social Responsibility)

under the supervision of

Craig Forcese
Assistant Professor
Faculty of Law
University of Ottawa
57 Louis Pasteur
Ottawa, On K1N 6N5
Tel: 613-562-5800 ext 2524
Fax: 613-562-5124
cforcese@uottawa.ca

About the uOttawa Faculty of Law Common Law Section
Foreign Policy Practicum

In this independent study project supervised by law school faculty members, a team of LL.B. candidates completes a comprehensive review of a topic in Canadian foreign policy, with a focus on international legal issues. The finished product is a detailed policy brief, submitted and presented to governmental and non-governmental groups.

Copies of this report are posted at http://aix1.uottawa.ca/~cforcese/fp/

The views expressed in this brief are those of the Foreign Policy Practicum Members and not of the University of Ottawa.
EXECUTIVE SUMMARY

This brief analyzes issues and makes recommendations in seven priority areas for Canadian foreign policy: Human Security; Weapons Proliferation; Trade Policy; Aid and Development; Corporate Social Responsibility; Multilateral Institutions; and Canada-U.S. Relations.

Chapter 1: Strengthening Human Security and Canada’s Armed Forces: Why New Focus is Needed

Public perception of the capabilities of the Canadian Forces does not match reality, and there are insufficient resources to meet these high public expectations. In addressing the disparity between expectations and resources, Chapter 1 will define the current scope and definition of human security and the responsibility to protect, and how Canada’s foreign policy regarding prevention, peacekeeping and peace-building is influenced by the current status quo.

The recommendations expressed in this chapter emphasize the need to ensure that acceptance of the responsibility to protect doctrine continues to be strongly advocated within the international community. Broader acceptance of these norms is required before a new framework for international conflict resolution can be adopted. In addition, Canada should re-examine its defence and military capabilities, and consider different methods of contributing to international peacekeeping missions. In doing so, Canada should concentrate on reaching Rapid Deployment Level (RDL) status within the United Nations, and on encouraging other countries to do the same. Such an undertaking would greatly decrease the planning and execution stage of initiating an international peacekeeping operation. Furthermore, Canada should continue with its current policy regarding peace-building initiatives, including funding established international projects of regional organizations and offering the help of experts in post-conflict situations.

The recommendations in this Chapter focus on regaining the international influence that Canada once held as a middle-power state. The current situation, marked by an inability to participate meaningfully in international operations, does little to bolster our standing within the international community. While the basic principles are already in place, modifications to current foreign policy are required. Accepting these recommendations will help Canada regain its influence in the world, and hopefully, a greater acceptance by the international community of important conflict-resolving norms and principles.

RECOMMENDATION 1.1: Canada should continue to employ its middle power status to advance the acceptance of a new framework as regards human security and the responsibility to protect.

RECOMMENDATION 1.2: We urge the Government to take full advantage of the chairmanship of the Human Security Network by seeking to add other countries to the twelve countries currently part of the Network.

RECOMMENDATION 1.3: The Canadian Government must continue referencing the Responsibility to Protect document as the international community discusses what action to take in future conflict situations.
RECOMMENDATION 1.4: The Government must stop adhering to the traditional notion of Canada as the world’s peacekeeping force as it is simply no longer true.

RECOMMENDATION 1.5: Though the Canadian Forces should continue receiving additional funds in order to address the severe shortages and problems they currently face, Canada must recognize that funding is not the only issue that needs to be addressed.

RECOMMENDATION 1.6: Canada must achieve RDL status by contributing where our capabilities are best suited, such as small scale troop contributions and information technology capabilities.

RECOMMENDATION 1.7: Canada must pressure states to achieve RDL status.

RECOMMENDATION 1.8: Canada must examine exactly when peacekeeping merges into peace-building, and what changes in mandate should be given to any Canadian force posted overseas.

RECOMMENDATION 1.9: Canada should be at the forefront in ensuring that when the United Nations is planning a peacekeeping or peace building operation, the considerations in the Brahimi Report are respected and adhered to.

RECOMMENDATION 1.10: Canada must put our knowledge and background to the best use by sharing it with other countries and assisting them in establishing peacekeeping and peace-building forces.

RECOMMENDATION 1.11: Canada should continue providing financial and information assistance to regional organizations when it is requested.

RECOMMENDATION 1.12: We should employ our capabilities when asked and as resources dictate, for peace-building initiatives in other states.

Chapter 2: Weapons Proliferation - Increased Integration of Policies Between Countries

When considering weapons proliferation there needs to be a greater integration of domestic and international policies for weapons demarcation and tracking across the globe. In order to secure this, Canada needs to encourage the United Nations to play a major role in creating and moderating marking and tracking methods, and in designing more robust treaties that provide for remedies against countries that renege on their obligations. One step that can be taken in furtherance of this objective is by having the UN Register of Conventional Arms demand frequent and repeated reporting by UN member states in order to remain informed about weapons holdings and trade.
New Small and Light Weapons (SALW) technologies need to be adequately marked and monitored before they become widespread, as is the case with man-portable air defence systems (MANPADS). In addition, existing SALW stockpiles must be reported. The Program of Action (PoA) on SALW needs to be bolstered and countries need to integrate their policies to close loopholes in illicit arms brokering. Canada should also start actively pursuing ways to increase participation in the Missile Technology Control Regime (MTCR) and the International Code of Conduct (ICOC) to coordinate export controls on missiles and missile systems, as well as the reporting of missile capabilities. Weapons of Mass Destruction (WMD) require increased policy continuity between governments regarding source materials along with better tracking mechanisms for WMD components that are easily proliferated. Canada should push for both the International Atomic Energy Agency (IAEA) and the Australia Group to adopt a course of action that can be taken against states that do not comply with export and trade controls on WMD materials.

In situations where a country reneges on its non-proliferation obligations and refuses to accede to non-proliferation agreements, Canada should fully capitalize on its diplomatic skills to encourage cooperation. Such skills may be used as an effective tool to enforce potential remedies against disagreeable countries throughout the international community. The forthcoming Non-Proliferation Treaty (NPT) review in May 2005 will present an opportunity to strengthen the treaty by incorporating new countries and designing a remedy policy for treaty deserters that cannot be passed over. Weapons proliferation must be curbed and this can only be achieved by creating stronger multilateral regimes.

RECOMMENDATION 2.1: With the upcoming Small and Light Weapons (SALW) Program of Action meetings, Canada needs to actively push the UN to play a major role in assuring weapons marking, destruction and trade monitoring.

RECOMMENDATION 2.2: Canada needs to push for states to integrate domestic policy and international policy to close loopholes allowing arms brokers to operate without penalties.

RECOMMENDATION 2.3: Canada needs to bolster support for SALW registry systems and accurate reporting by states when acquiring and storing these weapons.

RECOMMENDATION 2.4: Canada should work to immediately have strict regulations placed on man-portable air defence systems (MANPADS) trade and tracking at future meetings through the Program of Action framework.

RECOMMENDATION 2.5: Canada should create a task force to look at issues surrounding national gun registry systems and encourage states to collaborate on implementing these systems.

RECOMMENDATION 2.6: Canada must encourage countries to accurately report their large conventional weapon holdings and bolster support for export and trade controls through the UN.
RECOMMENDATION 2.7: Canada needs to play a role in strengthening diplomatic channels regarding missile technology and it must strengthen these channels to promote country respect and cooperation with weapons inspectors and tracking programs.

RECOMMENDATION 2.8: Canada needs to start actively pursuing ways to make participation in the Missile Technology Control Regime (MTCR) more global and give attention towards creating penalties through the MTCR for countries that renege on their obligations.

RECOMMENDATION 2.9: Canada can actively work towards furthering non-proliferation by supporting the MTCR International Code of Conduct, encouraging its adoption and enforcement and shaping its course of action.

RECOMMENDATION 2.10: Canada should promote a merging between the MTCR and the UN to bolster the MTCR and create consistency between International Code of Conduct objectives and MTCR objectives under one common organization.

RECOMMENDATION 2.11: Canada should actively pursue a campaign to ensure that treaties banning space-based weapons are robust and work towards gaining support for those treaties.

RECOMMENDATION 2.12: Canada should prioritize the non-proliferation of weapons and ensure that any Ballistic Missile Development efforts do not include the weaponization of outer space and that they are technically accurate and reliable before implementation.

RECOMMENDATION 2.13: Canada should work toward increasing state participation beyond the current 39 states in the Australia Group and look into the addition of legally binding instruments to its operating powers.

RECOMMENDATION 2.14: Canada should use its position within the International Atomic Energy Agency to push for more substantial monitoring and tracking reforms that will have a robust and lasting effect.

RECOMMENDATION 2.15: The Non-Proliferation Treaty (NPT) review is coming at a crucial time and Canada needs to utilize all of its diplomatic efforts to ensure that some sort of enforcement mechanism is placed on the table and that membership in the NPT is increased.

RECOMMENDATION 2.16: Canada should continue to be fully involved with the Proliferation Security Initiative (PSI) and should continue its efforts in the UN Security Council to gain legitimacy for the regime.

RECOMMENDATION 2.17: The International Atomic Energy Agency and the UN are the best organizations to deal with accounting for Iran’s current
weapons capabilities and it is up to Canada to support the efforts of inspectors.

RECOMMENDATION 2.18: Canada should increase efforts to work with both India and the Non-Proliferation Treaty members to bring India into the regime and continue diplomatic efforts to involve India in weapons monitoring and control regimes.

RECOMMENDATION 2.19: Canada needs to use its unique position in the world to encourage diplomatic efforts with the Democratic People's Republic of Korea (DPRK) and to encourage the US not to halt diplomacy. Canada also needs to continually reach out and try to work with the DPRK and international organizations to persuade compliance with export controls.

RECOMMENDATION 2.20: As a state with a history of non-compliance, and given Libya's recent move towards compliance, it is necessary to keep diplomatic pressure on the state to continue to keep its borders open for inspections.

RECOMMENDATION 2.21: Canada should become further involved in the UN Department for Disarmament Affairs and promote its strengthening as an already established institution that is able to become more prevalent in the fight against proliferation.

Chapter 3: Trade Policy Reform - Thinking Outside the “Trade Box”

Canada has actively pursued the liberalization of trade as the cornerstone of its trade policy. The time has come to review that policy. How does Canada’s move toward ‘freer trade’ fit within the larger normative objectives of Canadian economic and social policy? In particular, how have Canadian policies with respect to the World Trade Organization (WTO) and its related agreements helped advance Canada’s normative objectives in the areas of international development, democratic accountability, and environmental cooperation? What steps are required to ensure fair, consistent, efficient and effective interactions among Canadian policies?

Canada need not cease its pursuit of open markets but rather it needs to restructure its approach to trade liberalization to ensure real benefits for Canadians and the world. In this Chapter, it is first recommended that Canada aggressively pursue meaningful reforms at the WTO. The WTO is frequently criticized for unfairly favouring certain countries in the elaboration of the trade agreements and, more generally, for limiting the ability of democratic peoples to control their national and social economic policies. Canada must pursue the structural changes required to ensure that the world’s most important economic decisions are not made at the expense of most of the world’s population.

Second, it is recommended that Canada can engage in ‘fair’ trade liberalization. Unfortunately, trade liberalization has been of primary benefit to developed countries, large corporations and powerful industry lobby groups and much less useful to those in most need of the benefits of
trade. Canada must restructure its approach to trade liberalization so as to ensure that the benefits of trade are realized for developing countries and lower income Canadians.

Third, it is recommended that Canada pursue ambitious environmental goals consistent with a long-term vision of meaningful global environmental and trade governance. In addition to adopting an ambitious position in relation to environmental issues in the current round of WTO negotiations, Canada must articulate a clear policy on the role of environmental protection in the pursuit of trade liberalization and the development of a rules-based international system for trade regulation. It must do this in a manner mindful of the imposition of unattainable environmental standards on the developing world.

**RECOMMENDATION 3.1:** Canada should support the creation of a WTO standing body of member parliamentarians.

**RECOMMENDATION 3.2:** In the short-term, Canada should (1) continue to participate and, where possible, lead initiatives to setup informal meetings of Parliamentarians coincident with WTO Ministerial conferences; (2) encourage its trading partners, including the United States, to participate in these initiatives; (3) ensure the costs of participation in these initiatives are not prohibitive for developing countries; and (4) publicize nationally and internationally all meetings of Parliamentarians that do take place and the issues that are discussed.

**RECOMMENDATION 3.3:** In the long-term, Canada should propose that an assembly of Parliamentarians be added to the official structure of the WTO, when it determines such a proposal is likely to be accepted.

**RECOMMENDATION 3.4:** Canada should immediately propose the creation of a representative steering committee made up of approximately 20 nations charged with building consensus and communicating at key junctures in WTO negotiations.

**RECOMMENDATION 3.5:** Canada should immediately provide full market access to both developing and least-developed countries in areas such as agriculture and textiles.

**RECOMMENDATION 3.6:** Canada should implement a process for assessing the effect of its trade-related negotiating position on the poor in the developing world and in Canada.

**RECOMMENDATION 3.7:** Canada should formulate and adopt a strategy for opening developed world markets to developing countries.

**RECOMMENDATION 3.8:** In the Doha Round, Canada should (1) support an interpretation of the GATT that deems specific environmental obligations taken under Multilateral Environmental Agreements presumptively compatible with Article XX; (2) advocate the imposition of transparency requirements in relation to the management of national fisheries; (3) support the introduction of Environment and Development Reviews; and (4) support
the accelerated liberalization of trade in environmental goods and services including “environmentally friendly” goods and services.

RECOMMENDATION 3.9: In the long-term, Canada should work toward the centralization of the administration of environmental initiatives and disputes in one powerful and well-funded international organization.

Chapter 4: Canada’s Role in International Aid and Development

The world is at a critical juncture and Canada is poised to reclaim a leadership position on the global stage. Once universally admired as a world leader in brokering peace and keeping it, there has been slippage in Canada’s status in the world in recent years.

Today’s complex international issues call for a focused and collaborative approach. To this end, this Chapter supports concrete recommendations to focus and strengthen Canada’s foreign policy in innovative ways. First, Canada must restore its Official Development Assistance and ideally to the level recommended in the Millennium Development Goals. Second, the Minister of International Cooperation should be elevated from a junior to senior Cabinet role. A standing committee on international cooperation should be formed to coordinate and oversee international cooperation programs across government, as well as, exploration of ways and means to coordinate trade, diplomacy, development and defence initiatives on Canada’s behalf overseas. Finally, Canada needs to inform its citizens about the goals and objectives of its international role and obligations in the international arena.

RECOMMENDATION 4.1: Canada must focus its development efforts on achieving the Millennium Development Goals by directing CIDA to work with other donor countries to create an action plan with timelines. Canada must also increase its Official Development Assistance (ODA) to the recommended levels in the eighth Millennium Development Goal.

RECOMMENDATION 4.2: Elevate the status of the Minister of International Cooperation from a junior to senior Cabinet role.

RECOMMENDATION 4.3: Canada needs to coordinate international programs and mandates in development, diplomacy, trade and defence so they can work together effectively to represent Canada’s interests in the international arena.

RECOMMENDATION 4.4: Create a mechanism to increase efficiencies and counter redundancies in international cooperation efforts both within Canada and with international partners. New technologies make this feasible and existing models, such as CIDA’s Partner’s Forum extranet, indicate the level of interest in using such tools.

RECOMMENDATION 4.5: Support an increasing role for Canada in transferring the “rule of law” model to countries seeking peace, order and good Government and increase Canada’s contribution to global peace.
initiatives, such as those recommended in *The Responsibility to Protect* doctrine.

**RECOMMENDATION 4.6:** Canada needs to better inform its citizens about the role of its international development assistance, the Millennium Development Goals and Canada’s role vis-à-vis changing international realities. It needs to develop a campaign targeted at all levels to convey clear messages about Canada’s changing role and obligations in the international arena.

**Chapter 5: Mandatory Corporate Social Responsibility - Filling the Gap of Voluntary Measures**

The current Canadian approach to Corporate Social Responsibility (CSR) is based upon voluntary initiatives. This approach to CSR is insufficient because voluntary codes of conduct are inconsistent and lack of implementation and accountability standards have resulted in a governance gap. Voluntary codes of conduct are not sufficient to ensure that human rights are respected by businesses; there must be some consequence to non-compliance. Canada needs to work on the promotion of a domestic and international legal framework to ensure compliance. Any domestic initiative must include normative prescriptions, monitoring mechanisms and consequences for non-compliance. The Government of Canada should pass a Code of Conduct for Canadian corporations and amend existing Canadian legislation to eliminate government benefits for companies who fail to comply. To this end, the Government should amend the *Income Tax Act* to deny corporations the benefit of crediting against their Canadian taxes those taxes paid to foreign jurisdictions where the government is committing serious human rights violations. The *Special Economic Measures Act* should also be amended to allow sanctions on Canadian corporations complicit to human rights violations, even absent an international war. Countries such as France and the Netherlands already have legislation regulating the extraterritorial activities of their corporations, so Canada would not be alone in adopting such an approach.

Canada has an obligation in international law to protect people from the actions of private parties and can be found liable for the actions of corporations who commit human rights violations for failing to exercise due diligence to prevent their occurrence. International law can place direct legal obligations on corporations. The existing Organization for Economic Cooperation and Development *Guidelines for Multinational Enterprises* and United Nations Global Compact suffer from the same lack of compliance mechanisms as the existing voluntary codes. Canada should embrace and provide support for the United Nations *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* as they are the leading international initiative in relation to corporate respect for human rights. Otherwise, Canada’s reputation in the area of international human rights may be undermined.

It is through the adoption of a domestic and international approach that Canada can fulfill the objective of the promotion of Canadian culture and values, by ensuring that those companies that represent Canada overseas do so in a way that is consistent with core Canadian human rights principles.
RECOMMENDATION 5.1: Given the weaknesses of voluntary codes of conduct, the Government of Canada must move away from a voluntary approach to corporate social responsibility and instead adopt a mandatory rules-based model.

RECOMMENDATION 5.2: Canada should take steps to ensure we are living up to our obligations under international human rights law. This includes holding Canadian corporations responsible for human rights abuses overseas through mechanisms that include consequences for non-compliance.

RECOMMENDATION 5.3: The Government of Canada should draft and bring into force regulations for Canadian corporations operating overseas outlining minimum corporate responsibilities in the area of human rights, labour standards and the environment.

RECOMMENDATION 5.4: The federal government should change its policies to require that the awarding of government contracts and benefits be contingent on corporate compliance with the proposed legislation for Canadian corporate activity overseas.

RECOMMENDATION 5.5: The Income Tax Act should be amended to prevent companies from crediting foreign taxes paid to foreign jurisdictions in which governments are engaged in human rights abuses.

RECOMMENDATION 5.6: The government should amend the Special Economic Measures Act to allow Cabinet to act when “grave breaches of human rights and human security have occurred in the foreign state and continue, or are likely to continue.”

RECOMMENDATION 5.7: Canada must support the development of the UN Norms as a binding legal instrument. This includes taking steps to develop the necessary legal framework to implement the Norms.

RECOMMENDATION 5.8: Canada must continue its support of the International Criminal Court to allow criminal prosecution for those responsible for crimes against humanity, including gross human rights violations.

Chapter 6: Canada and Multilateralism: Building the Framework for Effective Multilateral Reform

Since the end of the Second World War, multilateral diplomacy has been the cornerstone of Canada's foreign and trade policy. In the face of the upcoming United Nations (UN) Reform review, Prime Minister’s Paul Martin’s commitment to the “Responsibility to Protect” Doctrine (R2P), and reflections on previous multilateral successes (such as the coalition of like-minded states during negotiation of the treaty creating the International Criminal Court), as well as, controversies (such as the U.S. “Coalition of the Willing”), the time is ripe for Canada to review its multilateral commitments and pursue change. This Chapter makes recommendations on
multilateral reforms and opportunities Canada should pursue to meet its goals. The recommendations reflect a two-tier strategy to multilateralism: (1) to make the UN a more effective organization, and (2) to pursue other alternatives to achieve Canada’s international goals.

Canada has continuously communicated its commitment to reform the UN into an effective multilateral institution that is well represented and that carries out the agenda of its members effectively and efficiently. Furthermore, Canada has advocated improved transparency and accountability in all of the UN’s organizational bodies.

RECOMMENDATION 6.1: Canada should pursue UN reform that encourages accountability and transparency, and makes the body, its organizations and its decision making process more efficient and democratically representative.

RECOMMENDATION 6.2: Canada should support the reform of Security Council election procedures that is based on inclusive geographic representation of all UN Members and that ensures that no member serves on the Security Council unless its domestic and foreign policy reflect the principles of the UN Charter.

RECOMMENDATION 6.3: In the long-term, Canada should promote a UN Reform strategy that proposes to abolish the veto power and permanent status of any members of the Security Council.

RECOMMENDATION 6.4: In the immediate term, Canada should pursue ICISS recommendation to restrict the P5 Veto in cases of gross humanitarian abuses.

RECOMMENDATION 6.5: In going forward, Canada should oppose Security Council reform that increases the number of permanent members.

RECOMMENDATION 6.6: If absolutely necessary, Canada should pursue Security Council Reform that would allow regional rotations of semi-permanent members.

RECOMMENDATION 6.7: Canada needs to pursue UN reform that significantly improves the decision making authority of the General Assembly through Amendment of the UN Charter.

RECOMMENDATION 6.8: Canada should pursue ECOSOC reform at the UN by promoting the Charter reform to empower ECOSOC with similar authority as that of the Security Council for issues of economic development

RECOMMENDATION 6.9: Canada should pursue integration of ECOSOC with the Bretton Woods Institutions (BWI) that would improve both accountability and the transparency of the BWI and remove conflicting agenda issues.
RECOMMENDATION 6.10: Canada should utilize its membership in other existing and new multilateral organizations to achieve its foreign policy objectives.

RECOMMENDATION 6.11: Where multilateral organizations or institutions are ineffective means of pursuing foreign policy goals or implementing political progress Canada should focus on building pacesetter coalitions of like-minded governments.

RECOMMENDATION 6.12: Prime Minister Paul Martin should continue to pursue his commitment to the “Leaders G-20” initiative.

Chapter 7: Canada-U.S. Harmonization and Canadian Sovereignty - Achieving a Balance in Canadian Foreign Policy

The Canada-U.S. bilateral relationship represents one of the most important bilateral relationships in Canadian foreign policy. As such, the effective management of this relationship must be a constant priority for Canadian foreign policy-makers. In managing this relationship, such policy-makers should strive to achieve a balance between increasing continental harmonization and Canadian sovereignty. Achieving a strong relationship with the United States is dependent upon reconciling American and Canadian security and economic interests.

This Chapter makes recommendations on three aspects of the Canada-U.S. relationship: (1) trade, (2) border security and (3) ballistic missile defence (BMD). First, in the Canada-U.S. energy trade relationship, Canada should leverage its strategic position in the energy sector to strengthen its bargaining position vis-à-vis the United States and promote harmonization of continental energy policies. In response to the softwood lumber trade dispute with the United States, Canada should undertake a foreign policy directed toward dispute prevention initiatives, rather than simply reacting to U.S. policy implementation. Second, with respect to border security, Canada should endeavor to rebuild confidence in Canadian border management so as to protect its economic interests in the free movement of people, goods and services across borders. Third, in regards to continental missile defence, should Canada choose to support U.S. ballistic missile defence (“BMD”), it should secure an international treaty against the weaponization of space and obtain a commitment from the U.S. that it shall continue to adhere to the principles of the current Anti-Ballistic Missile Treaty in order to ensure that such support does not undermine Canada’s commitment to multilateralism and opposition to the weaponization of space.

Continued cooperation and collaboration on these issues are essential to ensuring continental economic and political stability so that future generations of Canadians and Americans may live in a secure, healthy and prosperous environment.

RECOMMENDATION 7.1: Canada should impress upon the United States that coherence between the national energy policies of both countries is vital to the stability of the continental energy industry.

RECOMMENDATION 7.2: Canada should review current trade remedy laws to determine whether they accommodate the reality that Canadian and
American softwood lumber firms are competing in a single integrated market and where such laws are lacking, should adopt a more comprehensive rules-based system to replace any remaining quotas in the softwood lumber industry and which accurately mirror full and fair free trade. In order to achieve this, Canada should insist that any dispute settlement proposal from the U.S. be designed with a permanent solution and credible mechanisms to prevent future disputes.

RECOMMENDATION 7.3: In order to continue its efforts in implementing the _Smart Border Declaration_, Canada and the United States should increase infrastructure investment and coordination of bureaucratic agencies.

RECOMMENDATION 7.4: Canada should continue to study the possibility of deepening the current NAFTA trading relationship to complement the objectives of the _Smart Border Declaration_. In doing so, Canada should ensure that any such expansion of the NAFTA relationship does not undermine development oriented trade policy.

RECOMMENDATION 7.5: Canada should leverage its sovereignty and the knowledge that a secure America is unworkable without Canadian support to advance its economic interests. Canada should support bi-national security measures in return for favourable U.S. economic policies.

RECOMMENDATION 7.6: Should Canada support BMD, it should secure an international treaty against the weaponization of space and obtain a commitment from the U.S. that it shall continue to adhere to the principles of the current Anti-Ballistic Missile Treaty in order to ensure that such support does not undermine Canada’s commitment to multilateralism and opposition to the weaponization of space.
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CHAPTER 1: STRENGTHENING HUMAN SECURITY AND CANADA’S ARMY ARMED FORCES - WHY NEW FOCUS IS NEEDED

Part I. Introduction

This portion of the brief examines Canada’s foreign policy as it relates to human security, the responsibility to protect and peacekeeping. It is submitted that there is a disconnect between Canada’s current capabilities and contributions to human security and peacekeeping operations, and what Canadians believe our capabilities and contributions to be. Further, Canada’s current contributions to international conflicts are less than what they can and should be. There needs to be change on both fronts. Indeed, the Government must recognize this disconnect and address it by refocusing its energies in times of conflict and through increased communication with Canadians. This change in policy does not equal the status quo plus an infusion of additional funds. While more money is needed for the Canadian Forces, this brief argues that by refocusing energy on more attainable, though equally important goals, than simply reenergizing the Canadian Forces, Canada will reclaim its proper seat among the international community.

Canadian foreign policy makers should focus on niche areas where Canada can exert influence by taking a leadership role that does not necessarily strain Canadian resources to the same extent that employing fully equipped armed forces does.¹ This portion of the brief will address shortcomings of Canada’s current foreign policy regarding human security, and then put forward suggestions for change in three areas: duty to protect (prevention), peacekeeping (reaction), and peace-building (rebuilding).
Part II. Background: Canada’s Current Capabilities

A. The Decline of our Military Has Had Serious Ramifications

The current state of the Canadian Forces can be traced to the end of the Cold War. In the Department of National Defence 1994 White Paper, policy emphasis shifted to extending the life of existing equipment instead of purchasing replacements. Consecutive budgets in the 1990s saw progressive cuts to the armed forces which has resulted in a smaller Canadian Forces and outdated equipment. While many Canadians still believe our forces should be participating in missions around the world, a force of only 2000 troops sent to Afghanistan in 2001 significantly stretched the Canadian Forces’ remaining capabilities. This was Canada’s largest and most recognized military effort of the past few years, and was in line with its traditional view towards multilateral military operations. Since then, Canada has substantially scaled back its involvement in Afghanistan by reason of a serious lack of resources. As a further example of our military decline, Canada ranks second to last among NATO countries (in front of Luxembourg) in terms of defence expenditures as a percentage of GDP.

B. Canada Can No Longer Partake in Military Operations to the Same Extent as it Once Did

By cutting defence capabilities while still attempting to wield some viable level of international clout, some argue the Canadian government is in effect exposing “a significant disconnect between the government's foreign policy interests and the military's ability to back up those interests.” The final result is that Canada “can take part in future international military operations only with difficulty, and it risks losing its voice in other international matters.” Our current foreign policy in this area sorely lacks direction. If Canada is no longer the traditional
arbiter and peacekeeping country that it purports to have once been, what are the options for the future?

Before continuing, it must be noted that although the brief has been set up in three distinct parts, the lines between prevention, reaction and rebuilding are constantly blurred. They must not be examined in a vacuum.

Part III. Duty to Protect: Prevention

The concept of prevention entails taking concrete action in an escalating conflict situation before circumstances deteriorate further. It can also include providing aid to areas of the world where various problems have resulted in a humanitarian crisis. The former is examined here, and the latter in the Aid and Development section of this brief.

A. The Concepts of Human Security and Responsibility to Protect are Separate and Distinct

Human security generally includes the right to shelter, food, water and other such aspects of basic survival. It can also be conceptualized as follows: it “entails taking preventive measures to reduce vulnerability and minimize risk, and taking remedial action where prevention fails.”

In comparison, ‘The Responsibility to Protect’ doctrine can be characterized as:

the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe - from mass murder and rape, from starvation - but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.

Thus, human security stands in front of the responsibility to protect; it is when the former is not respected that the latter must be employed. While some authors and reports define the responsibility to protect as encompassing human security issues, for the sake of clarity the two issues are kept separate in this brief.
B. Canada’s Role as a Middle Power Is Ideal for Advocating Continued Support for Human Security and Responsibility to Protect

A main criticism surrounding human security and the responsibility to protect is the preeminence of state sovereignty as the fundamental tenet of international law. Human security and the responsibility to protect are two controversial ideas that have not been accepted by all states, though it can be argued that the concept of human security has gained more acceptance over the past decade than the responsibility to protect. However, Canada is taking a leading role in advocating the notions of human security and the responsibility to protect. Here, Canada is well served by its middle power status. Canada is in a unique position to push for establishing a new and different framework. It does not have the military responsibilities of a superpower such as the United States. Canada also enjoys the respect of many other middle power states. Thus, it should be able to speak to the ideas of human security and responsibility to protect without the appearance of ulterior (economic) motives.

There is a large gap between human security and the duty to protect. That is, where human security issues are present in a given state, the responsibility to protect does not automatically mean deployment of forces. Indeed, there are many things that Canada has done, and needs to continue to do, in order to assist with conflict prevention. The two issues will be looked at separately.

**RECOMMENDATION 1.1:** Canada should continue to employ its middle power status to advance the acceptance of a new framework as regards human security and the responsibility to protect.
C. Canada Should Build on its Focus on Human Security

Just as Canada was at the forefront of both the campaign to end use of landmines and the establishment of the International Criminal Court (ICC) – two examples of how Canada has furthered the human security agenda – it is now in a position to continue to push for similar initiatives in order to gain legitimacy for other human security issues. The Human Security website run by the Department of Foreign Affairs notes that Canada has undertaken a campaign which “encourages ratification and implementation of the Rome Statute of the ICC”\textsuperscript{11} and has produced instruction manuals for other states interested in becoming a member of the ICC. Here is a prime opportunity for Canada to take a principled stand and continue to work for further acceptance of the ICC by providing well reasoned arguments to non-signatories in an effort to have states rethink their positions.

Beginning in May 2004, Canada took over chairmanship of the Human Security Network. This position will be held until May 2005. There are two main priorities that will be examined during that time: established human security issues (such as landmines and human rights) and emerging human security issues (such as the responsibility to protect).\textsuperscript{12} This is an ideal opportunity for the Minister of Foreign Affairs to establish concrete plans of action for advancement of the notion that sovereignty includes responsibilities.

**RECOMMENDATION 1.2:** We urge the Government to take full advantage of the chairmanship of the Human Security Network by seeking to add other countries to the twelve countries currently part of the Network.
D. Canada Should Build on its Focus on the Principles of The Responsibility to Protect

1. There has Been a Paradigm Shift in the Previous Few Years

The decade following the end of the Cold War witnessed an increase in intra-state conflicts. When action was taken in early 1990s conflicts, it was generally termed ‘humanitarian intervention’, whether the action was undertaken with UN Security Council authorization or not. There has been a paradigm shift in the past five years, with more emphasis placed on a responsibility to protect instead of humanitarian intervention. In fact, many developing countries felt the term humanitarian intervention “would give the permanent five countries of the UN Security Council (P-5) wide discretion to intervene when they saw fit, especially the US with what many in the south perceive to be a tendency toward unilateral action and inconsistent responses.”

2. Canada has Already Taken Steps to Define the Scope and Definition of the Responsibility to Protect

Canada’s role in producing The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty is a prime example of how Canada can assist in bringing this new concept to the attention of other states, have the ideas debated, and make headway in ensuring that human security issues are respected. As noted in the Responsibility to Protect report, the UN is the primary agency where these international crises should be discussed and decided upon. As stated in the section of the brief on Multilateralism, Canada’s foreign policy has consistently held that participation in the UN system to our fullest capabilities is the best option. Since there is recognition that the current task is to determine how to make the UN system function better, this is where our priorities should be.
3. Canada Must Recognize it May Take Time and Effort Before the Responsibility to Protect Doctrine is Fully Accepted by States

It must be recognized that not all states are in agreement with this notion. In order to address this issue, Canada must continue to explain to the international community that the responsibility to protect will not result in a full loss of sovereignty, but will respect the human rights of citizens through balancing rights and responsibilities. As stated above, the main criticism of the responsibility to protect is the implication it holds for state sovereignty. The Responsibility to Protect report addresses this concern, noting “[i]t is strongly arguable that effective and legitimate states remain the best way to ensure that the benefits of the internationalization of trade, investment, technology and communication will be equitably shared.” That belief is not contradictory to the responsibility to protect doctrine. Instead, the doctrine asserts that state sovereignty is balanced with a responsibility incumbent on all states to ensure stability through respecting human rights of its citizens. The Government of Canada has acted in a manner consistent with this recommendation, and it is important that this policy continues to be adhered to.

RECOMMENDATION 1.3: The Canadian Government must continue referencing the Responsibility to Protect document as the international community discusses what action to take in future conflict situations.

Part IV. Duty to Protect: Reaction

The term reaction is used here to describe state action undertaken when a conflict situation escalates to the point that outside forces are required to make or keep peace. The traditional notion of ‘peacekeeping’ is not the same as the idea of ‘reaction’, as the latter term also includes situations where peace has not yet been achieved in the conflict area. Both terms necessarily imply the used of armed forces. The Government is taking some concrete steps to
address the severe problems currently facing the Canadian Armed Forces. But as stated above, Canada should focus on niche building within peacekeeping.

A. It is No Longer Feasible to Suggest that Canada is at the Forefront of Peacekeeping Activities.

The fact that Canada is not one of the world’s primary contributors to peacekeeping activities is contrary to what the general population currently believes. In fact, the most recent statistics provided by the United Nations Department of Peacekeeping Operations states that Canada ranks 36th among troop contributors, with only 284 military personnel and civilian police participating in peacekeeping operations out of a total of over 62,000 people posted. This means Canada’s contribution to UN peacekeeping operations is less than 1% of total peacekeeping forces in action around the world.

1. Regardless of Whether the Inquiry Examines United Nations Peacekeeping Operations, or Wider Contributions, Canada is not Assisting to a very Large Degree.

In terms of total contributions, there are currently 1,612 Canadian troops posted overseas, with the largest group (931) posted in Afghanistan. These figures demonstrate the level of peacekeeping operations Canada has participated in during the previous few years. These operations coupled with the decline in military capabilities have resulted in severe military overstretch. This is a serious problem for our troops, who cannot be expected to continue operating within the system we have provided for them.

RECOMMENDATION 1.4: The Government must stop adhering to the traditional notion of Canada as the world’s peacekeeping force as it is simply no longer true.
The Canadian public has a right to know the difference between the rhetoric and the reality of our current capabilities. This does not mean there is nothing to be done. Indeed, the government must focus on new solutions in order to maintain our voice and influence within the international community.

We simply do not currently have the capabilities to send large contributions of troops overseas. A large infusion of funds into the Canadian Armed Forces will not solve this problem. This was recognized by the November 2002 report of the Standing Senate Committee on National Security and Defence, which identified poor morale, lack of functioning equipment, irregular training and poor leave opportunities, personnel shortages and increased expectations, among other factors as current problems within the Canadian Armed Forces. Recent budgets have seen increases in Defence spending. Even with the infusion of funds, however great, the problems facing our military will not be solved in the immediate future. The Senate Committee Report recognizes “[i]t is likely to take the better part of a decade to bring the military back to the shape it was in when the Berlin Wall fell in 1989. Atrophied capacity cannot be restored over a few months.”

RECOMMENDATION 1.5: Though the Canadian Forces should continue receiving additional funds in order to address the severe shortages and problems they currently face, Canada must recognize that funding is not the only issue that needs to be addressed.

B. Canada Should be Looking at Various Options for Retaining an International Voice in the Area of Peacekeeping.

The 2004 Speech from the Throne addresses this problem, stating, “We have to earn our way in the world. But ours will never be the biggest military force, so it must be smart, strategic and focused.” This recognition is a good start. Canada will only further lose influence among
the international community if our policy does not change. This fact must be shared with Canadians, in order to fully engage the support of the population.

1. Canada Should Focus on Rapid Deployment Level

An ideal option is to focus attention on establishing a Rapid Deployment Level (RDL) force at the United Nations. Establishing an RDL force would see countries undertake to provide specific designated contributions, available at all times and available to be deployed within either thirty or ninety days. It is markedly different from the current structure, which demands that states contribute on an ad hoc basis as conflict situations arise. Establishing an RDL would ideally greatly decrease the amount of time it takes to organize and deploy troops for a mission. This option has been discussed for nearly a decade, but appears to finally have some state support, judging from the number of countries who have signed on to one of the four parts in reaching RDL.

Where there is action taken by the UN Security Council, either because two (or more) belligerents have decided to work on instituting peace, or the ‘just cause’ threshold discussed under the notion of responsibility to protect has been met, Canada should assist to the best of its capabilities. This is in line with our traditional views of peacekeeping and assisting during humanitarian crises.

C. The Canadian Armed Forces Are Well-Suited to Adapting to the RDL Force

The current ‘early-in, early-out’ approach discussed by the Department of National Defence would fit well within the idea of niche peacekeeper. This approach entails being involved in a mission at the beginning, and deploying troops or support immediately after a political decision to become involved has been made. It also means that once other international forces are available and have deployed, Canadian troops leave as soon as possible. The result is
that Canadian troops are only deployed for short, designated periods of time, consistent with our current military capabilities.\textsuperscript{26} The Report of the Panel on United Nations Peacekeeping Operations (the \textit{Brahimi Report}) recognizes that the first three months following a ceasefire or break in hostilities is the best opportunity for ensuring lasting peace.\textsuperscript{27} Among the many recommendations listed, the report advises “that the United Nations define ‘rapid and effective deployment capacity’ as the ability, from an operational perspective, to fully deploy traditional peacekeeping operations within 30 days of the adoption of a Security Council resolution, and within 90 days in the case of complex peacekeeping operations.”\textsuperscript{28} Canada can play a primary role, and indeed, not necessarily a new one in this area. It has been previously noted that options such as limiting our traditional military involvement in peace operations is a good response to military overstretch.\textsuperscript{29} By achieving RDL status, Canada would be required to state exactly what the armed forces’ current capabilities are. This means only that a section of the armed forces would be prepared to deploy within thirty or ninety days time. Canada would determine the extent (however small in numbers) of available involvement and commit itself to constant preparedness. In this way, the suggestion of limiting military involvement is consistent with reaching RDL status.

\textbf{1. Canada has Already Taken Some Necessary Steps Towards Reaching RDL Capabilities}

Canada has signed a Memorandum of Understanding with the UN Department of Peacekeeping Operations (DPKO), though we have not reached RDL. There are two things that Canada should focus on here; first, achieving RDL status. This will entail examining realistically what our defence capabilities are, in conjunction with the standards set by the UN DPKO. This will only be a useful exercise if we pragmatically adopt standards and criteria within the capabilities of Canada’s Armed Forces. Humanitarian emergencies by definition
require quick action. If Canada cannot ensure a designated number of troops are prepared to deploy within 30 days, another way to be involved in peace operations should be sought. One possible alternative is investing in more information technology and communications operations, which are also needed at the beginning of any large-scale deployment. The 1990s saw an increase in the amount of countries that were available to commit troops to peacekeeping missions. Many of these are developing nations that do not always possess full capabilities, including information technology and support systems. The latter is, therefore, an ideal area in which Canada can contribute. Since there is a policy of ‘early-in, early-out’, Canada should employ it – these do not need to be large scale contributions, but the contributions should still be made. A greater focus on information technology fits well within this policy, provided that other states are capable of taking over operations after a short period of time, or a small number of Canadian troops are available to remain in a conflict zone for a longer period of time.

**RECOMMENDATION 1.6: Canada must achieve RDL status by contributing where our capabilities are best suited, such as small scale troop contributions and information technology capabilities.**

Second, Canada must push other states to reach RDL. Actually reaching RDL will grant Canada the moral authority to pressure other states to do the same. The message is muted if Canada does not take the same steps that it is encouraging other states to take.

To date, only Jordan and Uganda have reached RDL capabilities. However, eighty states have reached one of the three levels leading up to full RDL capabilities. Our respected past as peacekeepers should lend credibility to our continued support for this idea. Canada should continue to explain to other countries why this option will produce meaningful change in responding to international humanitarian crises. Without significant support from other states, it
will not matter whether Canada has reached RDL capabilities, as the standby arrangements system project will never be fully accomplished.

**RECOMMENDATION 1.7: Canada must pressure states to achieve RDL status.**

**Part V. Duty to Protect: Rebuild**

Human security and the responsibility to protect also incorporate a duty to rebuild once the conflict or intervention concludes. This third part of the brief on Human Security examines what role Canada should play after vulnerable people have been assisted, either through peacekeeping or other means. Peace-building may be defined as follows:

By post-conflict peace-building, I mean actions undertaken at the end of a conflict to consolidate peace and prevent a recurrence of armed confrontation….Peace building may involve the creation or strengthening of national institutions, monitoring elections, promoting human rights, providing for reintegration and rehabilitation programmes, as well as creating conditions for resumed development.  

Two main aspects of peace-building are examined here. First, after peacekeepers are no longer needed, and second, in situations where Canada has not previously provided peacekeepers in a conflict, but assistance is still required to rebuild. Again, while there may be situations that fall outside these two categories, the recommendations listed are also applicable on a larger scale.

**A. Canada Should Assist in Post Conflict Peace-Building**

In recent years there has been a blurring between the goals of peacekeeping and peace-building. For military personnel in the field, this has often resulted in mandate confusion and difficulty in understanding exactly what their role is. If the ‘early-in, early-out’ policy is adhered to, this should not be a large issue for Canadian troops. However, Canada should still
ensure that standards are set up and consistently met for all international troop deployments. Doing so will only assist in ensuring that peace building operations are clear and attainable.

**RECOMMENDATION 1.8:** Canada must examine exactly when peacekeeping merges into peace-building, and what changes in mandate should be given to any Canadian force posted oversees.

1. **Canada Must Ensure Mandates for Peacekeeping Operations are Attainable, so Transferring to a Peace-Building Operation will be Smooth**

   In order to avoid situations such as that which occurred in Somalia in 1993, where mandate problems resulted in the removal of international forces before peace had been achieved, there needs to be greater demarcation between peacekeeping and peace-building. There are numerous aspects to this, including determining when rules of engagement change, and which troop contributing countries will be staying to assist in peace-building or whether more help will be needed. The concepts have become blurred, in part, because there is not enough planning being carried out before forces are deployed, or while a UN mission is underway. This issue is recognized and discussed in the *Brahimi Report*, which outlines the factors that need to be addressed and understood *before* peacekeepers are deployed. The report recognizes the importance of robust rules of engagement, as a means of protecting troops and the mission, from those who seek to destroy peace-building measures. As a further example, the report demands “clear, credible and achievable mandates”, setting out exactly when that standard will be met.

**RECOMMENDATION 1.9:** Canada should be at the forefront in ensuring that when the United Nations is planning a peacekeeping or peace building operation, the considerations in the Brahimi Report are respected and adhered to.
Further, it is conceivable that if RDL is reached by enough states to make the idea viable, more time and resources will be available to determine exactly when a situation no longer requires peacekeepers, and instead demands peace-builders. This is true because having a RDL force in a constant state of readiness would mean that much less time and energy would need to be spent on planning and preparing for deployment of an international force. This is another example of why Canada should put pressure on other states in order to get as many countries as possible to agree to reach RDL. While Canada may not have the capabilities for long-term involvement in international conflicts, constant contributions through RDL for example will assure continued influence when mandates and missions are being discussed.

2. A Further Issue that Needs Better Execution is Establishing and Sticking to a Clear and Effective Post-Intervention Strategy.

The process for determining a post-intervention strategy must address the fact that a poorly planned mandate will often result in further problems. That is, it is critical to have not only a plan for when the operation will no longer be considered peacekeeping, but understanding what further action is required. This is not something Canada can do on its own, but it must be part of the solution. Our foreign policy should be predicated on the understanding that if we are going to become involved (as we should) in peace-building in post-conflict situations, we should do so only when a cohesive plan can realistically be executed. This does not mean that Canada should use this as an excuse for not becoming involved, but that Canada should demand better planning strategies from the international community.

3. Canada Should Assist with Instituting Guidelines for Peace-building Activities

Although some work has been completed on instituting guidelines for peace-building activities, there is still considerable work to be done, due to a lack of follow up from the previous
recommendations of the *Brahimi Report*. Here again, Canada can assist. We have numerous experts, both within the public service and the academic community, who have an interest in this area. There is a discourse available to the government that suggests ways to go about gathering more strength and momentum for these recommendations. We should be putting pressure on other Member States to recognize the incentives to well planned and executed missions. The 1990s demonstrated to the UN system that poor planning nearly always results in a failed mission. These examples need to be reiterated for as long as it takes other Member States to agree and assist with instituting these recommendations. We only need to look at what Canada has been doing in Afghanistan, registering voters, helping run the Kabul airport and rebuilding the Afghan national army, to know what can be accomplished when there are realistic mandates and expectations. Even though problems still exist, one can also see the good that is being achieved.

**B. Canada Should Assist With Peace-Building Outside Immediate Post-Conflict Situations**

Canada must recognize that we will become involved in situations where we have not previously provided peacekeepers, especially if the above recommendation, to focus more on niche peacekeeping rather than on providing large scale numbers of troops, is accepted. In these situations, other factors prevail as well.

While Canada no longer has the right to call itself the “world’s peacekeepers,” there is enough of a peacekeeping tradition to remain firmly involved. Further, we possess knowledge of what does and does not work, and have invaluable information to share with other peacekeeping countries.
RECOMMENDATION 1.10: Canada must put our knowledge and background to the best use by sharing it with other countries and assisting them in establishing peacekeeping and peace-building forces.

1. Canada Should Provide Financial Assistance To Regional Organizations or Countries for Peace-building Activities

One aspect that has been a large part of the Government’s foreign policy to date has been to give financial assistance to regional organizations to help with various peace-building initiatives. This is a solid policy because it recognizes that Canada does not always have the people (either troops or civilian specialists) and resources available to send to a country that requires assistance. Further, in some situations the country requiring assistance has requested that a regional organization act as the primary source for help. This has been the case for the African Union, which may not always have the funds to provide what is being asked of them. Canada’s recent contribution of money to the African Union to assist in its work in the Sudan is a prime example of this policy.

RECOMMENDATION 1.11: Canada should continue providing financial and information assistance to regional organizations when it is requested.

2. Canada Should Prioritize Where we can Best Provide Assistance

There will also be situations where we should send either troops or civilian specialists to a country that requests specific help. One recent example is sending police from Canada to Haiti to assist with training their own police force. The Brahim Report recognized that “a doctrinal shift is required in how the Organization [the UN] conceives of and utilizes civilian police in peace operations”38 This doctrinal shift encompasses many aspects of human security, in which Canada has been at the forefront of for the past decade. We have the resources to assist in multiple situations, such as sending police forces. In conjunction with CIDA, these programs are run with the goal of sustainable development particularly within currently fractured societies.
There is a continued need to assert human security within our foreign policy. Peace-building is another example of how to put human security into action. We have the capabilities – strong police force, good foreign service, experts in numerous fields – to send people overseas to build infrastructure such as implementing the rule of law. One only needs to look at what CANADEM\textsuperscript{39} offers to see the contributions Canada can make. This organization encompasses experts in various fields, all committed and prepared to go to any country that needs their specific expertise on short notice. By definition, peace-building requires strong political will. The Canadian government has previously recognized that “to see an intervention through means as well that the intervening side has to be prepared to remain engaged during the post-intervention phase as long as necessary in order to achieve self-sustained stability.”\textsuperscript{40} We should not engage if we are not prepared to finish the job. Canada should examine its own considerable capabilities, and apply them using human security considerations.

**RECOMMENDATION 1.12: We should employ our capabilities when asked and as resources dictate, for peace-building initiatives in other states.**

**Part VI. Conclusions**

The recommendations in this portion of the brief are focused on human security factors. These human security factors already play an integral role in Canadian foreign policy, but there is still more that Canada should and can do. Outlined above are recommendations that deal with the responsibility to protect. This is a relatively new concept that has not yet received overwhelming support from the international community. Canada is in a position to take a leadership role, and once again assert our place within the international community. To do so, we need to recognize that we are not in the same position militarily as we were two decades ago, and that we likely will not be again in the near future. Additionally, there needs to be more
communication with the Canadian public about our military capabilities. We are doing a disservice to our troops when we continuously reduce their equipment and support and at the same time expect the same outstanding level of service they have always provided. There must be an acceptance by the government that our international military contribution in conflict needs to change. There must be a thorough examination of what exactly our current (and future) capabilities are. Only when we are honest with ourselves and the international community will we be able to contribute properly. We will still be involved, to a large degree, and when we contribute meaningfully, we have the opportunity to regain Canada’s previously high level of influence. Our foreign policy must be predicated on human security and the responsibility to protect. Within that, our foreign policy must be based on truthfulness and recognition of how we can best partake in solving the world’s conflicts.

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1 Duane Bratt, “Niche Making and Canadian Peacekeeping” (1999) 6:3 Canadian Foreign Policy 73 at 73. For a discussion and overview on the idea of niche peacekeeping and other authors who have written on the subject. [Niche Making]

22 Canada, Department of National Defence, 1994 White Paper on Defence (Ottawa: Department of National Defence, 1994) at paras. 57-58, online: <http://www.forces.gc.ca/site/Minister/eng/94wpaper/white_paper_94_e.html>.

3 Rebecca Myers, “Canada’s Thin Red Line” Time Magazine 163:10 (March 2004) 42 at 43 [Canada’s Thin Red Line].


5 Canada’s Thin Red Line, supra note 3 at 42.


9 The Responsibility to Protect, ibid, defines the term as including three separate aspects: the responsibilities to prevent, to react and to rebuild. This paper is set up to examine all three aspects, with the belief that human security initiatives apply to all three aspects as well as a larger duty of increasing the standard of living for all humans,
outside of specific conflict situations. This would include the right to shelter, food, water and other such aspects of basic survival.


11 Canada, Department of Foreign Affairs, Governance and Accountability: The International Criminal Court, online: Human Security <http://www.humansecurity.gc.ca/govaccount_icc-en.asp>. The Rome Statute is the legislation that established the International Criminal Court.


14 The Responsibility to Protect, supra note 8 at 7.

15 Ibid. at 7-8.

16 Sean Maloney, “We’re not Peacekeepers” Maclean’s (21 October 2002) 51.


18 See generally, < http://www.un.org/Depts/dpko/dpko/contributors/>. If there are 284 Canadian troops deployed out of a total of 62,307, Canada is supplying .005% of troops.


21 Ibid at 33.


28 Ibid at 16.

29 Niche Making, supra note 1 at 79.


31 Brahimi Report, supra note 28 at 10.

32 Ibid, see Summary of Recommendations at 54.
33 Ibid at 10.

34 Ibid at 11-12.

35 Responsibility to Protect, supra note 8 at 39.


37 Canada’s Thin Red Line, supra note 3 at 42.

38 Brahimi Report, supra note 27 at 23.

39 CANADEM’s Mission is noted as follows: “CANADEM is a non-profit agency dedicated to advancing international peace and security through the recruitment, screening, promotion and rapid mobilization of Canadian expertise”, online: <http://www.canadem.ca/>.

40 The Responsibility to Protect, supra note 8 at 64.
CHAPTER 2: WEAPONS PROLIFERATION - INTERNATIONAL AND DOMESTIC SECURITY

Part I. Overview and Introduction

Domestic and international policies have become inseparable; “…time and distance have lost their isolating effect”.¹ Threats of weapons proliferation to international and domestic security come from terrorism, failed and failing states, a lack of diplomacy and a lack of international enforcement. All of these elements are linked. Failed and failing countries provide a haven for terrorist activities and a precursor to those situations is a lack of democracy. The Government of Canada, in the October 2004 Speech from the Throne, recognized that defence, diplomacy, development and trade must work together in the future.² In his Response to the Speech from the Throne, Prime Minister Paul Martin reiterated that it is necessary to:

…be active beyond our borders to protect our values and our interests – security in the face of terrorism, the increasing threat of nuclear proliferation…But we must also seek to advance the concerns of embattled peoples who seek freedom, stability, democracy and above all, a better life.³

When it comes to weapons proliferation and Canadian security, Canada’s future rests in a greater integration of domestic and international policy. What is required is increased policy continuity, active strengthening and promoting of multilateral institutions to deal with proliferation and an advancement of transparency in state practice. Canada should further these goals in both existing non-proliferation and monitoring regimes and in new avenues that will counter proliferation and increase security. These new areas are the role and control of arms brokers and fully capitalizing on multilateral institutions in both creating monitoring schemes and remedies against reneging countries.
A differentiation also needs to be made between proliferation amongst countries, proliferation amongst individuals, and the crossover between countries and individuals. Methods designed to counter weapons proliferation need to acknowledge that different systems of monitoring and regulation are required for each of these three situations. The Privy Council Office in *Securing an Open Society: Canada’s National Security Policy*\(^4\) recognized that “[t]oday, individuals have the power to undermine our security in a way that only hostile countries were once able to accomplish”.\(^5\) Unmonitored and uncontrolled proliferation by either countries or individuals is not desirable and both require action.

**Part II. Small and Light Weapons Deserve Special and Different Attention from Large Conventional Weapons**

Small and light weapons (SALW) are different from large conventional weapons. Each weapon group is used for a different purpose and poses different threats to security. While large conventional weapons pose the largest security threat to Canada by virtue of our location, in many countries of the world small and light weapons are a main threat.\(^6\) To secure the world abroad, particularly Africa, and prevent further atrocities, it is necessary to dedicate energy to SALW reduction and monitoring. SALW are the driving force in the use of child soldiers, they are the weapons of choice for guerrilla attacks and they are the armaments commonly used in war crimes.\(^7\)

**A. It Is Necessary To Dedicate Energy To Small And Light Weapons Reduction And Monitoring**

In the last ten years the world has taken great strides forward in acknowledging the problems caused by proliferation of SALW. United Nations General Assembly Resolution A/RES/50/70B\(^8\) in 1995 recognized the problem of SALW proliferation. In 2001 there was the
United Nations Conference on the Illicit Traffic in Small Arms and Light Weapons in All Its Aspects, the United Nations Department for Disarmament Affairs (DDA) recently took up the task of implementing a Program of Action as a result of that 2001 conference, and some SALW have been added to the United Nations Register of Conventional Arms. Forty-seven of the forty-nine major conflicts that took place in the world in the 1990’s were fought primarily with SALW. As of 2002, “[s]mall arms are responsible for over half a million deaths per year, including at least 300 000 in armed conflict and 200 000 more from homicides and suicides.” Unlike other types of weapons, SALW technology is relatively uncomplicated; even a moderately industrialized country can produce assault rifles, machine guns and rocket propelled grenade (RPG) launchers. There are currently seventy known SALW producing countries.

1. The People Who Use SALW, And The Policies Permitting SALW Proliferation, Threaten Human Security And Human Rights Around The Globe

The UN Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) that resulted from the 2001 conference was a large accomplishment in raising SALW awareness. The second biennial meeting of countries to consider the implementation of the PoA is scheduled for 2005 with a review conference in 2006. Both are opportunities for Canada to exercise an important role in controlling and reducing SALW proliferation, just as Canada was able to lead efforts in the Ottawa Process regarding anti-personnel landmines. Some of the questions at the PoA meetings relate to how international cooperation can work towards preventing and eradicating the illicit trade in SALW, how the United Nations (UN) can aid international cooperation and whether there are structures at the international level that are sufficient to ensure adequate cooperation.

RECOMMENDATION 2.1: With the upcoming Small and Light Weapons (SALW) Program of Action meetings, Canada needs to actively push the UN
to play a major role in assuring weapons marking, destruction and trade monitoring.

Through the PoA framework, the UN is the best organization at the international level to oversee SALW. National, regional and international integration are needed to combat proliferation. While the overall number of countries producing SALW is slightly lower than previously thought, the number of SALW producing companies has grown to roughly 1,249 worldwide.\textsuperscript{18} This makes it more difficult to institute strict production control mechanisms for countries. The PoA should focus on implementing marking and tracking methods through consistent regulation at national, regional and international levels. In turn, the United Nations should be available to enforce cooperation with the PoA and as a body that can institute remedies against non-complying or violating countries.

Furthermore, strong support for the PoA would make it possible to institute measures for tracking weapons transfers to countries that have a history of using children in armed conflict. It is indicated in paragraph 32 that one goal of the PoA is to “…ensure the effective implementation of arms embargoes decided by the United Nations Security Council in accordance with the Charter of the United Nations”.\textsuperscript{19} The practice of using children in combat has been denounced both by Canada and the United Nations.\textsuperscript{20} Given the direct link between SALW and the use of child soldiers the ability of the UN Security Council to place embargoes on violating countries is advantageous.\textsuperscript{21} By encouraging greater worldwide export controls, specifically on SALW transfers to these countries, it would be possible to further two goals: denouncing and curtailing the use of children in armed combat and reducing the over 300,000 deaths a year\textsuperscript{22} caused by SALW in combat.
B. There Are Loopholes Between National, Regional And International Policy That Allow For Illegal and Poorly Monitored SALW Trade Through Arms Brokers

It is currently too easy for illicit arms brokers to circumvent rules and evade suspicion by varying their location and taking full advantage of the lack of consistency in laws and regulations.\textsuperscript{23} There are only 25 countries that specifically address brokering activities in national regulations. Increased monitoring and clear regulations on licit brokering activities are necessary for illicit brokering to be curbed.\textsuperscript{24} Guidelines are needed to separate proper procedure from improper so that illicit brokering can be stamped out. The UN can be an important instrument in creating regulations for closely monitoring the actions of known and rising weapons brokers and providing penalties for individuals and countries that renege on these obligations. It is also capable of exuding pressure on states that do not comply with regulations on weapons brokering as proposed in the PoA.

**RECOMMENDATION 2.2:** Canada needs to push for states to integrate domestic policy and international policy to close loopholes allowing arms brokers to operate without penalties.

C. Existing SALW Stockpiles Are Poorly Documented By States

Following the US invasion of Iraq citizens stole an estimated seven to eight million pieces of SALW equipment from storage facilities.\textsuperscript{25} Documentation would work to ensure that over time stockpiles are not abandoned or forgotten allowing for proper disposal. Most of these weapons have fairly long shelf lives. For example the most popular RPG models can still be used after twenty years. In addition, as the production and trade in weapons cause an increase in actual numbers, there needs to be a system in place to amass and properly dispose of older
equipment. Within the PoA framework there are paragraphs on requirements for weapons demarcation and stockpiling.

**RECOMMENDATION 2.3:** Canada needs to bolster support for SALW registry systems and accurate reporting by states when acquiring and storing these weapons.

**D. New and Sophisticated SALW Technology must be Controlled before becoming Widespread**

A pressing primary need regarding SALW is to ensure the more destructive technologies stay out of terrorist hands. This is specifically geared towards RPG and man-portable air defence systems (MANPADS). Each of these can cause significant numbers of casualties and halt urban activities. Special attention needs to be given towards monitoring trade in RPG’s due to their popularity. Keeping SALW away from violent non-state actors also requires a system to dispose of old weapons stockpiles.

**RECOMMENDATION 2.4:** Canada should work to immediately have strict regulations placed on man-portable air defence systems (MANPADS) trade and tracking at future meetings through the Program of Action framework.

MANPADS are the most sophisticated SALW to date. These small missile launchers are designed to be carried and used by an individual against aircraft.\textsuperscript{26} Originally intended for military use, there are a few non-state groups that have acquired MANPADS and have indicated a desire to use them against commercial aircraft.\textsuperscript{27} Given the unique technology and skill required to shoot and hit an aircraft, the level of knowledge required to use MANPADS is significantly higher than for most SALW. The G8 has agreed to take steps to prevent terrorist groups from obtaining MANPADS\textsuperscript{28} and these weapons were recently added to the UN Register of Conventional Arms.\textsuperscript{29} Since MANPADS have not reached widespread popularity in
acquisition or in use, preventative action is necessary. Stringent tracking methods should not be delayed until MANPADS use is common.

E. State Actors Should Consider Invoking National Gun And SALW Registries

It is necessary to keep SALW out of the hands of paramilitary and terrorist groups. It is also, however, equally important to ensure that legally acquired SALW by civilians are monitored. Canada’s actions in 2003 have been cited in SALW reports as commendable in that our gun registry is one of the first of its kind among developed countries. To suggest that a similar system for gun registration is feasible for all other countries at this time would be nonsensical. However, national gun registration systems are quite possibly the way of the future especially considering that the PoA in paragraph 3 pushes for national laws on SALW possession. Therefore Canada should encourage a task force to look at the issue. The task force would survey national gun registration systems and work in conjunction with countries. Initially this would be done on a voluntary basis to look into implementing national tracking and registration systems for weapons privately obtained by civilians.

RECOMMENDATION 2.5: Canada should create a task force to look at issues surrounding national gun registry systems and encourage states to collaborate on implementing these systems.

Part III. Large Conventional Weapons Regulations Need To Differentiate Between Missiles/Missile Systems and Other Weapons

For the most part large conventional weapons are easier to monitor. This category consists of traditional weapons, such as tanks, aircraft and warships, along with missile systems. Given today’s international system, when it comes to large conventional weapons the focus is predominantly on missile systems. Missiles and missile launchers can be easily hidden in urban
or rural areas and parts are relatively easy to transport. Large calibre artillery systems are more
difficult to transport making them of lesser concern vis-à-vis subversive groups. The United
Nations Register of Conventional Arms\textsuperscript{33} (UNCAR) has identified seven categories within large
conventional weapons: battle tanks, armoured combat vehicles, large calibre artillery systems,
combat aircraft, attack helicopters, missiles and missile launchers, and warships.\textsuperscript{34} Canada has
consistently supported non-proliferation regimes regarding large arms such as the UNCAR but it
must increase efforts in attaining greater global participation and cooperation with these regimes.

Large conventional arms proliferation involves mostly countries, and arms production is
escalating.\textsuperscript{35} With other large conventional weapons, as previously stated, there are benefits in
that their technology and parts are more difficult to smuggle. For the most part these weapons
are concentrated in the hand of militaries and government authorities, which can make matters of
identification and control easier. There are, however, issues of compliance with monitoring
mechanisms such as the UNCAR.\textsuperscript{36} The UNCAR was re-examined in 2003 resulting in
recommendations for increasing its international relevance.\textsuperscript{37} It is still too soon to examine these
recommendations for their effectiveness. The recommendations will, however, require help in
being implemented.

\textbf{RECOMMENDATION 2.6:} Canada must encourage countries to accurately
report their large conventional weapon holdings and bolster support for
export and trade controls through the UN.

\textbf{A. Greater Controls are Needed for Missiles and Missile Technology}

Unlike SALW, missile technology and missiles are more complicated. Regardless, the
technology is spreading. In the last few years, there has been an increase in development
programs and exporters.\textsuperscript{38} Both cruise missiles and ballistic missiles\textsuperscript{39} pose threats though
ballistic missiles are the more serious due to their range potential. A sea or land base near a
desired target is becoming increasingly unnecessary as technology increases both missile range and accuracy. While it is relatively difficult to hide actual missile development programs, it is easy for countries to obscure their exact missile capabilities.

Current regimes to monitor proliferation and work towards destroying stockpiles are largely voluntary and bilateral in nature. Multinational regimes are needed and Canada needs to bolster diplomatic efforts to encourage support for regimes that are more thorough. There are three facets to missiles that need to be looked at in multinational agreements: production and the spread of technology, tracking and marking once weapons are produced and lastly the destruction of excess weapons in stockpiles. Canada has typically been more focused on decreasing demand for missile technology. It also needs to start looking at methods to restrict supply and track these weapons once produced.

RECOMMENDATION 2.7: Canada needs to play a role in strengthening diplomatic channels regarding missile technology and it must strengthen these channels to promote country respect and cooperation with weapons inspectors and tracking programs.

B. Increased Transparency Among Countries Is Necessary In Order To Control Missile Proliferation

The Missile Technology Control Regime (MTCR) has monitored missiles and missile technologies since 1987. The MTCR is “…an informal and voluntary association of countries which share the goals of non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction…” It is a multilateral export control regime. The primary means of the MTCR to control proliferation is through organizing export licensing among member countries. Several countries have their own export control regulations and the strength in the MTCR is that it seeks to coordinate these efforts so that countries present a unified front against proliferation. It has been recognized that differing transfer controls between countries is a
precursor for countering proliferation.\textsuperscript{44} Currently the MTCR is only a norm-building institution and is not global in terms of country participation.\textsuperscript{45} It has done great work in improving capabilities and garnering some export guideline controls. The MTCR has 34 members to date including four of the major nuclear powers: the United States, the United Kingdom, France and the Russian Federation.\textsuperscript{46} There is significant room for growth in membership; especially since there are several states with missile capabilities that are not involved in the MTCR and when there are countries that are abiding by MTCR guidelines yet not officially seeking membership.

\textbf{RECOMMENDATION 2.8: Canada needs to start actively pursuing ways to make participation in the Missile Technology Control Regime (MTCR) more global and give attention towards creating penalties through the MTCR for countries that renege on their obligations.}

Penalties that are put into force should take the form of trade sanctions or specialized trade deals and not consist of ending diplomatic discussions on the issue.\textsuperscript{47} A break down in diplomacy will only lead to further miscommunication and will not foster a situation conducive toward arms inspections and discussions. As already stated the MTCR does not have a system in place to deal with states that violate obligations nor does it have a system where MTCR members as a group take action against non-members that actively proliferate missiles and missile technologies. In looking into creating penalties Canada should examine systems that would do the above through the MTCR.

\textbf{1. Obtaining New Members For The International Code Of Conduct And Promoting Its Application Will Increase Transparency}

The MTCR International Code of Conduct (ICOC) regarding missile proliferation was formally launched in 2002.\textsuperscript{48} Within the ICOC, there are statements that affirm both the United Nations and previous UN resolutions regarding non-proliferation of ballistic missiles.\textsuperscript{49} To date
there are over one hundred subscribers, far more than the MTCR itself. The ICOC, or the Hague Code of Conduct\textsuperscript{50}, has great potential in fostering transparency and non-proliferation among countries. Article 3(e) calls for members to not transfer ballistic missile technology to states believed to be acquiring WMD for illicit purposes and article 4(a)(i) calls for transparency in program scope and development through annual reporting. These are just a sampling of provisions that can work towards combating proliferation.

**RECOMMENDATION 2.9**: Canada can actively work towards furthering non-proliferation by supporting the MTCR International Code of Conduct, encouraging its adoption and enforcement and shaping its course of action.

**2. A Merging Of The MTCR With The UN Would Bolster Support For The MTCR And Strengthen Remedies Against Reneging Countries**

Since the MTCR framework has already been established, and is supported by its current members, Canada should look into a possible merging of the MTCR and the UN. By either promoting the MTCR through the UN General Assembly or finding a way to allow the MTCR to function similar to the International Atomic Energy Agency (IAEA) under the rubric of the UN but with some independence, the missile control regime will be augmented. A benefit to incorporating the MTCR into the UN family is that the MTCR could be added to the list of Organs and Specialized Agencies of the United Nations authorized to request an advisory opinion of the International Court of Justice (ICJ). Opinions of the ICJ would not be binding, but they would increase global pressure to encourage countries to allow inspections, maintain accurate reports of missile transfers and advise on penalties should there be a violation of the MTCR. This is preferable to just promoting the MTCR but there is the risk that countries currently like the MTCR because of its independent international status. The ICOC is currently under the UN and given the complementary structure of the ICOC and the MTCR, the former in
weapons monitoring and the latter in strengthening export controls, it would be beneficial to have both within the same overarching organization.

**RECOMMENDATION 2.10:** Canada should promote a merging between the MTCR and the UN to bolster the MTCR and create consistency between International Code of Conduct objectives and MTCR objectives under one common organization.

**C. Treaties That Would Ban The Use Of Space-Based Weapons Are Necessary Before The Technology Becomes Widespread**

Outer space has not yet seen mass proliferation of weapons systems. It has, however, seen significant developments in information systems, telecommunications and scientific equipment. Canada has continually affirmed its commitment to maintaining a weapons-free zone in outer space. Currently there are very few countries that have the technological capabilities to create and utilize space-based weapons systems. For this reason it is necessary to take pre-emptive action; to promote regulations and remedies against states purporting to implement space-based weapons.\(^{51}\) The exact form that space-based weapons would take is controversial and speculative but the United States has indicated a desire to develop satellite weapons systems.\(^{52}\) The ICOC calls for an affirmation and commitment of member states towards four UN instruments regarding the peaceful use of outer space.\(^{53}\) Through these articles and the already wide support of the ICOC it is one instrument that can help counter weapons use in outer space.
RECOMMENDATION 2.11: Canada should actively pursue a campaign to ensure that treaties\(^5^4\) banning space-based weapons are robust and work towards gaining support for those treaties.

D. Ballistic Missile Defence Has The Potential To Increase Weapons Proliferation

The American-led Ballistic Missile Defence (BMD) initiative can be seen to run perpendicular to non-proliferation methods.\(^5^5\) Two items are important regarding Canada’s potential involvement: refraining from the weaponization of space and ensuring that the missiles and systems produced under the program are placed under the strictest tracking and marking programs. The Canadian government should also ensure that before land, sea or air interceptors are put into action, the technology is sound. A BMD program will require amassing long-range missiles and Canada should be confident that there will not be accidental firings, that the technology is sufficiently accurate in missile firing and that the missiles are clearly marked and recorded to avoid accidents.\(^5^6\) Latest BMD estimates place the implementation of testing for a space-based missile defence system in 2008.\(^5^7\) In avoiding the weaponization of space this is a very short timeframe to work towards implementing adequate treaty and regulation structures preventing space-based weapons use. For Canada, it would be more beneficial financially to invest in non-proliferation and weapons destruction schemes rather than a program seeking to increase the number of weapons in the world that does not target the source of weapon use and spread.

RECOMMENDATION 2.12: Canada should prioritize the non-proliferation of weapons and ensure that any Ballistic Missile Development efforts do not include the weaponization of outer space and that they are technically accurate and reliable before implementation.

For a further discussion of the policy implications of BMD on Canada-US relations please see Chapter 7, Part III.
Part IV. Weapons of Mass Destruction And Their Components Require Extensive Monitoring and Tracking

A third category of weapons consists of weapons of mass destruction (WMD), which are nuclear, biological and chemical weapons. These also require unique approaches to combat their proliferation. Due to their nature, WMD inevitably require a delivery system. Nuclear, biological and chemical weapons can be self-contained, as in the case of a nuclear bomb, but there is always an issue of how to get the weapon to its target. Discussions about the spread of WMD have historically included missile technology on the hypothesis that the most effective way to launch an attack using WMD is through the use of some form of ballistic missile.\(^58\) The current world situation is vastly different than it was twenty years ago in that there are no longer two main sides in a Cold War but several actors each with differing relationships and distances. WMD technology has advanced and, with the exception of nuclear weapons, the thought that only missiles can be used for WMD delivery is outdated. The Sarin Gas Attacks in Tokyo in 1995 and in Matsumoto in 1994 demonstrate that non-traditional delivery methods, in this case bottled drink-like packages, are not only possible but also plausible.\(^59\) Since protection from this threat is not simply a matter of tracking large and bulky warheads, effort must be invested in greater monitoring of materials and agents. Not only should agents be monitored once they are produced, effort should also be focused on their actual production and ensuing distribution, especially in the case of biological and chemical weapons.

The IAEA\(^60\) and the Australia Group\(^61\) are two groups that monitor nuclear and biological/chemical weapons (BCW) respectively. The IAEA was created by the IAEA Statute\(^62\) in 1956 and currently functions within the United Nations family. Its mandate is to “…promote safe, secure and peaceful nuclear technologies.”\(^63\) By comparison the Australia Group is an independent multinational export control regime that focuses on biological and chemical agents.
As such, it seeks to regulate BCW through unifying the export controls on chemical and biological agents and technologies between member states.\textsuperscript{64}

\textbf{A. Several Components Of Biological and Chemical Weapons Are Used For Peaceful Purposes}

The Australia Group is an organization that assists countries in transporting biological and chemical agents without promoting weapons proliferation. The Group imposes very strict guidelines through national export licences and other measures\textsuperscript{65} to ensure transported products are being used only for research and peaceful purposes.\textsuperscript{66} Given the highly scientific nature of BCW, it is necessary to employ methods that clearly differentiate between the creation of technologies for weapons purposes and technologies that have a peaceful purpose. The Group does not take on legally binding obligations between member states and doing so could increase its significance in countering proliferation.

\textbf{RECOMMENDATION 2.13:} Canada should work toward increasing state participation beyond the current 39 states in the Australia Group and look into the addition of legally binding instruments to its operating powers.

\textbf{B. The International Atomic Energy Agency (IAEA) Is Important In Actively Curbing Nuclear Proliferation}

Canada is the Chair of the Board of Governors for the International Atomic Energy Agency for the 2004-2005 year.\textsuperscript{67} The next meeting of the Board will be in December 2005 and Canada should fully utilize its position within the IAEA to further non-proliferation objectives. IAEA Director General Mohamed ElBaradei recently recognized that “…inspections - while requiring time and patience - can be effective even when the country under inspection is providing less than active cooperation.”\textsuperscript{68} IAEA policies on inspections work in tandem with Canadian objectives for increased transparency and diplomacy. Recent efforts of the IAEA to
focus and impose controls on parts of the nuclear fuel cycle that are proliferation sensitive should be endorsed by Canada.69

**RECOMMENDATION 2.14:** Canada should use its position within the International Atomic Energy Agency to push for more substantial monitoring and tracking reforms that will have a robust and lasting effect.

**C. The 2005 Non-Proliferation Treaty Review Is An Excellent Opportunity To Strengthen Available Remedies And Increase Country Participation In Non-Proliferation Regimes**

Canada also needs to direct attention in 2005 towards the review of the Nuclear Non-Proliferation Treaty (NPT)70 that will be taking place. The NPT is to date the only multilateral treaty that carries a binding commitment for nuclear disarmament. The review will be taking place in New York in May 2005.71 When the Democratic People’s Republic of Korea (DPRK) withdrew from the NPT, the international community was left with no recourse.72 This incident has been a defining moment for indicating that the NPT needs strengthening. Three goals were outlined by the Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-proliferation of Nuclear Weapons. In combination the goals aim to increase the reaction capabilities of countries when a party to the NPT goes back on its word or chooses to exit altogether.73

The G8, at the 2002 Kananaskis Summit, created the Global Partnership Program Against the Spread of Weapons and Materials of Mass Destruction.74 This is an organization of principles and guidelines that will work towards non-proliferation and the safe destruction of weapons stockpiles. The Global Partnership cites strengthening the NPT as instrumental in preventing WMD proliferation. The six principles, developed by Canada, and the eight additional guidelines that were all unanimously agreed upon by the G8 represent a huge success in multilateralism.75 These items, however, will mainly be implemented in Russia to help the
Russian Federation destroy its stockpiles and control its vast reserves of weapons. In the upcoming year, Canada should push for increased adherence to the principles and also look towards expanding the focus of the Global Partnership towards other regions that pose a threat.

**RECOMMENDATION 2.15:** The Non-Proliferation Treaty (NPT) review is coming at a crucial time and Canada needs to utilize all of its diplomatic efforts to ensure that some sort of enforcement mechanism is placed on the table and that membership in the NPT is increased.

**D. The Proliferation Security Initiative Has Potential In Curbing Both Weapons of Mass Destruction (WMD) and WMD Delivery System Proliferation**

The Proliferation Security Initiative (PSI) released its first Statement of Interdiction Principles\(^76\) in Fall 2003. PSI is designed as a statement of purpose to eradicate proliferation of WMD and their delivery systems. It is not an organization unto itself, but a cooperative regime between states regarding the Principles. This is an enterprise with a large potential to minimize the actual trafficking of weapons between countries.\(^77\) It has potential in controlling exports through monitoring actual transport and delivery of weapons through land, air and sea. Through promoting transparency in information sharing and communication between governments it will increase diplomacy between governments regarding WMD. Ensured communication is one large step in countering proliferation of weapons that are easy to disguise and subversive by nature.

**RECOMMENDATION 2.16:** Canada should continue to be fully involved with the Proliferation Security Initiative (PSI) and should continue its efforts in the UN Security Council to gain legitimacy for the regime.

**Part V. There Are Five Countries In The World That Require Specific Attention From Canada To Help Curb Proliferation**

Despite the important initiatives that Canada and the world have led regarding weapons proliferation, there are still regions and issues that pose a threat to international stability. The
causes of terrorist activities and country failure demand as much attention as do the activities by these countries. The following countries have been cited for either reneging on international agreements regarding weapons proliferation, refusing to comply with weapons inspectors or for suspicious reports of underground weapons development systems: Iran\textsuperscript{78}, India\textsuperscript{79}, the Democratic People’s Republic of Korea\textsuperscript{80} and Libya.\textsuperscript{81}

A. Iran as a Special Region

Iran is an example of a country that was able to evade and undermine the non-proliferation regimes to which it was a party. The announcement of its previously undeclared program of nuclear activities last year caused an international stir.\textsuperscript{82} Since then, Iran has allowed inspectors inside its borders, but there remains concern as to the validity of reports regarding the nature and purpose of its nuclear program.\textsuperscript{83} The European Union has offered technologies to Iran if the country agrees to abandon its program for military purposes yet there are obvious problems in validating such an agreement given Iran’s past issues with transparency. More recently, Iran has voluntarily agreed to halt its enriching uranium however it is not known how long it will be before Iran begins its program again.\textsuperscript{84}

RECOMMENDATION 2.17: The International Atomic Energy Agency and the UN are the best organizations to deal with accounting for Iran’s current weapons capabilities and it is up to Canada to support the efforts of inspectors.

B. India as a Special Region

India recently stated it will not be a party to the NPT because of obvious gaps in the system that the treaty lays out.\textsuperscript{85} The widespread ability of the A. Q. Khan proliferation network,\textsuperscript{86} in India’s view, was left largely unchecked by the NPT regime. The upcoming NPT review conferences are the perfect opportunity to work with India and the international
community. Furthermore, in over the past four years India has been one of the top five recipients of conventional arms transfers from other states.\textsuperscript{87}

RECOMMENDATION 2.18: Canada should increase efforts to work with both India and the Non-Proliferation Treaty members to bring India into the regime and continue diplomatic efforts to involve India in weapons monitoring and control regimes.

C. The Democratic People’s Republic of Korea (DPRK) as a Special Region

The DPRK is arguably one of the most challenging countries with regard to non-proliferation measures. The country has remained highly secretive about both its WMD and missile capabilities. Canada must maintain a steady course and continue to promote diplomatic transparency. By increasing non-proliferation regimes throughout the world as well, pressure on DPRK will be increased. Furthermore Canada is in a unique position regarding the United States and other countries to exert diplomatic efforts and encourage communicating with the DPRK. Lately DPRK has become a large exporter of missiles and ballistic missile technologies.\textsuperscript{88} Rampant exports will only add to instability if some method to work with the DPRK cannot be reached.

RECOMMENDATION 2.19: Canada needs to use its unique position in the world to encourage diplomatic efforts with the Democratic People's Republic of Korea (DPRK) and to encourage the US not to halt diplomacy. Canada also needs to continually reach out and try to work with the DPRK and international organizations to persuade compliance with export controls.

D. Libya as a Special Region

Libya recently abandoned its plans to amass nuclear weapons.\textsuperscript{89} By newly ratifying several non-proliferation treaties and by letting in MTCR inspectors, it is a model for how diplomacy can work in weapons proliferation issues.\textsuperscript{90} As a region, monitoring needs to continue and the international community should fully capitalize the positive nature of Libya’s
change in policy. Libya’s recent decisions demonstrate that there is a place for states wishing to exercise diplomatic efforts on selected issues and that diplomatic efforts can be effect change.

**RECOMMENDATION 2.20:** As a state with a history of non-compliance, and given Libya’s recent move towards compliance, it is necessary to keep diplomatic pressure on the state to continue to keep its borders open for inspections.

**E. The United Nations Department for Disarmament Affairs is an Organization with the Capabilities to Monitor Special Regions and Proliferation**

The Department for Disarmament Affairs (DDA) currently promotes the strengthening of disarmament regimes for all types of weapons and monitors proper disarmament after a conflict situation. The DDA also “…fosters preventive disarmament measures, such as dialogue, transparency and confidence building on military matters, and encourages regional disarmament efforts…” including the UNCAR. The DDA has a strong working base and can play a more active role in these issues. When countries open their borders to inspectors and agencies after years of non-transparency, the DDA could oversee the implementation of all weapons safeguards in the country. Furthermore the DDA is in the best position to monitor proliferation activities that take place during conflict and during regime failure within a country. It already has working groups established to look at regions of concern and just needs to move one step further from moderating to actively shaping.
RECOMMENDATION 2.21: Canada should become further involved in the UN Department for Disarmament Affairs and promote its strengthening as an already established institution that is able to become more prevalent in the fight against proliferation.

Part VI. Conclusion

Canada is in a position to work towards curbing weapons proliferation. Efforts will require increased diplomacy while working towards creating more robust international regimes and in incorporating those regimes into organizations that can actively implement remedies against non-complying countries. There is room for increased action in all three weapons areas and creating global support for reporting of production, monitoring of trade and the safe destruction of stockpiles of both weapons and weapons systems will increase Canadian domestic and international security in the face of proliferation.

1 Canada, Office of the Prime Minister, *Speech From the Throne* (Ottawa: Prime Minister’s Office, 2004), online: Prime Minister of Canada: Complete Text of the Speech from the Throne (October 5, 2004) <http://pm.gc.ca/eng/sft-ddt.asp>.
2 Ibid.
3 Canada, Office of the Prime Minister, *Address by the Prime Minister in Response to the Speech from the Throne* (Ottawa: Prime Minister’s Office, 2004), online: Prime Minister of Canada: Complete Text of the Speech from the Throne (October 5, 2004) <http://pm.gc.ca/eng/sft-ddt.asp?id=2>.
5 Ibid at 12.
7 Ibid.


30 This is evidenced by the previously cited 200,000 deaths a year in International Action Network on Small Arms, Child Soldiers, supra, note 22.


32 United Nations, Department for Disarmament Affairs, Conventional Arms: Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, supra, note 10.


34 Canada, Department of Foreign Affairs and International Trade, The UN Conventional Arms Register (Ottawa: Department of Foreign Affairs and International Trade, 2003), online: Non-Proliferation, Arms Control & Disarmament Division <http://www.dfait-maeci.gc.ca/arms/convweap2-en.asp>.


39 Examples are the INF and the START treaties.


42 Ibid.

43 Ibid.


45 Missile Technology Control Regime, The Missile Technology Control Regime, supra, note 42.

46 Missile Technology Control Regime, MTCR Partners (Ottawa: Missile Technology Control Regime, 2004), online: Missile Technology Control Regime <http://www.mtcr.info/english/partners.html>.


Ibid.


Netherlands Ministry of Foreign Affairs, Foreign Policy, *The Code, supra*, note 49 articles 2(e) and 3(a).

Some examples are: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967), the Convention on International Liability for Damage Caused by Space Objects (1972) and the Convention on Registration of Objects Launched into Outer Space (1975).


Ibid.


82 Canada, Department of Foreign Affairs and International Trade, Notes for an Address by the Honourable Bill Graham, Minister of Foreign Affairs, at The United Nations Conference on Disarmament, supra, note 51.


88 Ibid. at 21.

89 Canada, Department of Foreign Affairs and International Trade, Notes for an Address by the Honourable Bill Graham, Minister of Foreign Affairs, at The United Nations Conference on Disarmament, supra, note 51.


92 Ibid.
Part I. Introduction

Canada is a trading nation. It has long been accepted that international markets present enormous opportunities for Canada’s products. In its efforts to get access for Canadian goods and services abroad, Canada has focused on (1) the creation of an open, fair and predictable set of rules governing international trade and investment; and (2) means to ensure that Canadian firms are able to take advantage of promising foreign market opportunities. The government has also articulated a general desire to reinforce global prosperity.

Since its last International Policy Review in 1995, Canada has actively pursued the liberalization of trade as the cornerstone of its trade policy. It has done this primarily through its involvement with regional and international treaty bodies such as the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA).

In considering the future direction of Canada’s trade policy, it is necessary to review both Canada’s general policy of liberalization and the implementation of that policy over the past nine years. It is important to determine how Canada’s move toward ‘freer trade’ fits with the larger normative objectives of Canadian international and domestic economic and social policy. This requires an analysis of the interaction between trade policy (including the process of trade liberalization) and, inter alia, global prosperity, living standards in Canada and abroad, wealth distribution, environmental sanity, health, national sovereignty, democratic and political accountability, and development.

This section will examine the somewhat narrower interaction of Canadian international trade policy with international development, democratic accountability, and environmental
cooperation. In particular, we will examine how Canadian policies with respect to the WTO and its related agreements help advance Canada’s normative objectives in these areas and what steps are required to ensure fair, consistent, efficient and effective interactions among Canadian policies.

It will not be argued that Canada ought to cease its continued pursuit of open markets but rather that Canada needs to restructure the way it pursues liberalization to ensure real benefits for Canadians and the world. In particular, we will recommend that Canada aggressively pursue (i) meaningful reforms at the WTO, (ii) ‘fair’ trade liberalization supportive of international development and (iii) ambitious environmental goals consistent with a long-term vision of effective global environmental and trade governance.

Part II. Canada Should Aggressively Pursue Meaningful Reform of the WTO

Canada is heavily invested in pursuing its agenda of trade liberalization through involvement in the WTO\(^4\). Events have unfolded such that the WTO is simultaneously one of the most important and one of the most despised international organizations\(^5\). Canada’s continued reliance on the WTO as a forum that both drives Canadian trade policy and allows for its effective implementation requires that outstanding issues surrounding the WTO’s legitimacy be resolved.

As an organization, the WTO is criticized for a lack of legitimacy at two levels. First, primarily developing and least-developed countries argue that the practical operation of the WTO’s internal decision-making process, despite being consensus-driven, does not allow them to exert sufficient influence (“internal legitimacy”). Second, NGOs and other sectors of civil society argue “the WTO is a closed, non-democratic, bureaucratic/autocratic supranational
In order for Canada to continue principled engagement with the WTO, both aspects of legitimacy need to be addressed.

A. Canada Has Already Made Some Efforts to Address Persistent Problems at the WTO

Fortunately, the Canadian government already supports a number of initiatives that aim to address these continuing problems. At the dispute settlement level, Canada supports a series of reforms / clarifications to the Dispute Settlement Understanding (DSU). These reforms aim primarily to protect third-party interests engaged in the dispute settlement process and to ensure effective and predictable methods of enforcement. In regard to transparency, Canada has a series of short-term objectives meant to provide easier access to information about WTO deliberations, decision-making and implementation. Over the long-term, Canada supports the organization of informal meetings of Parliamentarians from member countries to discuss the social and economic impacts of WTO policy making. It also recommends the creation of advisory boards to the WTO on specific issues made up of experts and NGOs following the models of Asia-Pacific Economic Co-operation (APEC) process, the World Intellectual Property Organization (WIPO) and the Organization for Economic Co-operation and Development (OECD).

B. The Operation of the WTO has Generally Resulted in a “Democratic Deficit” and the Under-Inclusion of Some Developing Countries in the Crafting of Agreements

The WTO continues to suffer from what could be referred to informally as a ‘democratic deficit’. It is the product of the globalization of politics. As a result of this form of globalization, decisions with important domestic social and economic impacts are shifted to the international level and, therefore, from the legislative to the executive branch of government.
Such a process can potentially lead to a deficit in transparency, democracy and accountability if not compensated for by appropriate checks and balances that would otherwise be applied to domestic decision-making.\textsuperscript{11} The issue of globalization of politics is particularly relevant to the WTO because its agreements tend to create obligations for member countries in areas that have significant impact on national economic and social policy such as the regulation of domestic industry, and intellectual property.

C. Discussion by National Parliamentarians of WTO-Related Issues is Critical

The most obvious and frequently discussed solution to the problem of the globalization of politics is to address the disconnect that exists between WTO actors (the executive branch of member governments) and others democratically responsible for setting social and economic policy (the legislative branch of member governments). The WTO cannot be maintained in the long term by a group of professional elite.\textsuperscript{12} Its continued legitimacy will be a function of the citizens of member countries realizing they have a stake in the liberalization of trade and being prepared to accept short-term negative consequences for long-term gains, where appropriate.\textsuperscript{13} This means legislators need to be able to articulate WTO policies to their constituents and assess the impact of trade agreements and disputes on their constituents over the short and long term.\textsuperscript{14}

Some argue that the legitimacy of the WTO is purely a function of the mandate provided by democratic peoples to their government. They say the only way to address the problem of disconnect between the legislative and executive branches of governments is through national reforms that would provide for more legislative oversight to the negotiating mandate given to the executive branch.\textsuperscript{15} In particular, they would point to the United States Constitution as a model for legislative oversight of international trade action.\textsuperscript{16} They will generally resist any notion of a
WTO meeting of parliamentarians. This latter position is not surprising as those who support such views generally come from countries with very strong negotiating positions at the WTO; they fear the attention attracted by the discussion of parliamentarians could undermine their government’s negotiating position.\textsuperscript{17}

The Government of Canada should reject the view that domestic reform to legislative oversight will provide sufficient legitimacy to the WTO.

\textbf{RECOMMENDATION 3.1: Canada should support the creation of a WTO standing body of member parliamentarians.}

First and foremost, any solution to the problem of external legitimacy should be assessed, at least in part, according to how it addresses what is arguably the central problem faced by WTO decision-making: the difficulty faced by many developing countries in effectively participating in the WTO’s judicial and political processes\textsuperscript{18}. A parliamentary body will help developing countries exert more control over the agenda at the WTO’s ministerial conferences. This was well illustrated by the inter-parliamentarian meeting that took place in Cancun at the same time as the WTO Ministerial meeting. The main issues discussed were general concerns of developing countries such as “intellectual property protections and public health” and “agricultural subsidies”. Although these deliberations may have no direct bearing on the simultaneous negotiations, they can certainly be used (in conjunction with appropriate international media coverage) to drive changes in national negotiating positions.

Second, despite the supposedly ‘ideal’ oversight process in the United States, the United States faces the same level of internal opposition to the WTO as other counties in the world. Certainly, simple Congressional approval of trade treaties has not allowed for adequate public discussion and understanding of trade policy. In addition, domestic discussion of international
trade issues will never allow lawmakers from one jurisdiction to hear from and potentially sympathize with those from other jurisdictions. The WTO dynamic is primarily one of competition and cooperation. Without observing this dynamic at play, domestic politicians will not acquire the understanding necessary to ensure the continued legitimacy of the organization on the international stage.

**RECOMMENDATION 3.2:** In the short-term, Canada should (1) continue to participate and, where possible, lead initiatives to setup informal meetings of Parliamentarians coincident with WTO Ministerial conferences; (2) encourage its trading partners, including the United States, to participate in these initiatives; (3) ensure the costs of participation in these initiatives are not prohibitive for developing countries; and (4) publicize nationally and internationally all meetings of Parliamentarians that do take place and the issues that are discussed.

**RECOMMENDATION 3.3:** In the long-term, Canada should propose that an assembly of Parliamentarians be added to the official structure of the WTO, when it determines such a proposal is likely to be accepted.

**D. Problems in the Internal Decision-Making of the WTO Must be Addressed**

A common criticism of WTO negotiations is that certain developing countries do not make real contributions to the process, rather they are simply asked to “rubber stamp” agreements. In its 2002 report on *Building an Effective New Round of WTO Negotiations: Key Issues for Canada*, the Standing Committee on Foreign Affairs and International Trade (“SCFAIT”) recommended the creation of an informal steering committee made up of a representative cross-section of participating nations charged with building consensus on key trade issues at critical times in the deliberations as a possible solution to the problem.\(^{19}\) SCFAIT’s recommendation should be acted upon immediately. It is not enough that Canada claim negotiations were inclusive. It will also need to help put in place a mechanism to address the persistent problem of internal legitimacy.
RECOMMENDATION 3.4: Canada should immediately propose the creation of a representative steering committee made up of approximately 20 nations charged with building consensus and communicating at key junctures in WTO negotiations.

Part III. Canada Should Pursue ‘Fair’ Trade Liberalization

Canada has acknowledged that its continued and increased prosperity depends upon the continuing liberalization of trade and investment\(^{20}\). Canada has almost unconditionally accepted ‘the case for open trade’. It sees the liberalization of trade as offering important benefits not only to Canadians and citizens of the developed world, but also to those of the developing world. The basic economic theory that explains and predicts these positive effects is that trade liberalization allows the free market to operate at the international level unhindered by trade distorting duties and subsidies\(^{21}\). Essentially, it ensures the more efficient producer is able to provide useful products to the largest number of people at the better price. From Canada’s perspective, this means relatively easy access for its products to the economies of the world and access for consumers to more efficient producers. In terms of living standards, Canadians should have higher living standards because they can make more money by selling more things and will need less money if they can buy products at a lower price.

This understanding of the push for trade liberalization is consistent with the purposes of the WTO, which, according to the *WTO Charter* include “raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources”.\(^{22}\) Unfortunately, it is far from clear that the positive effects of trade liberalization have been completely realized – especially for developing countries.
A. Canada Has Already Recognized That Not All People Are Equally Served By Trade Liberalization

Generally, Canada has adopted an agenda of trade liberalization that seeks liberalization in areas where domestic industry is competitive and resists complete liberalization in areas where domestic industry is heavily subsidized or otherwise regulated, such as food and clothing. It has coupled this generally aggressive pursuit of self-interest with some measures to assist countries that may not be as well placed to benefit from the process of liberalization because of pre-existing economic factors. Canada has adopted three major policies to assist developing countries benefit from trade liberalization: special and differential treatment, smaller economies and capacity building. In addition to these programs, Canada also has a ‘Least Developed Country Initiative’, which “extends duty-free and quota-free access to Canada's imports from 48 Least Developed Countries, with the exception of supply-managed agricultural products” such as dairy, poultry, eggs, wheat, barley and cattle.

B. Developing Countries and Low Income Canadians Have Not Adequately Benefited from International Trade Liberalization

The process of liberalization should provide benefits to all participants regardless of their pre-existent economic advantage since economic theory tells us that specialized domestic industries will always be in a position to benefit from improved market access. We have no reason to doubt the accuracy of the theory but it has become apparent that the process by which liberalization is pursued puts certain countries at a significant relative disadvantage. This idea is well illustrated when we examine the state of the world’s Least Developed Countries (LDCs). The average annual per capita income in the world’s LDCs is less than US$1 per day.
Canada’s imports from LDCs are 0.1% of our total imports, half of what they were ten years ago.28

Naturally, inequality in the distribution of wealth between states cannot be blamed on international trade liberalization per se. It is “a basic, yet troublesome, aspect of social life which theorists have struggled with since the beginning of political thought… Within even quite wealthy states, the problem of distributive justice remains as pressing now as it ever was, with a continuing, pronounced gap between rich and poor persons”.29 That said, “[e]conomic inequality among states continues to be a challenge for international trade law”.30 The impact of international trade on existing inequalities is not neutral. International trade exacerbates existing problems since “the smaller economies characteristic of developing countries are uniquely vulnerable in trade.”31 The reasons for this can be seen in the process of liberalization itself. Participants, including Canada, each aggressively pursue liberalization in areas where benefits to these parties are clear and immediate, and attempt to preserve protectionist practices in other areas.

In a completely egalitarian environment, each country would be forced to make equally valued concessions in areas where it prefers protectionism in order to achieve liberalization in desired areas. Unfortunately, this has not happened in international trade deliberations held at the WTO. On the contrary, there is an apparent imbalance of power in WTO negotiations. Since a handful of countries represent over 90% of the world economy (free-market), it is understandable that these countries can extract greater degrees of liberalization from smaller countries while making relatively small concessions in relation to their own protectionist practices. They simply have more to leverage since any access to their market is automatically more valuable.32
In addition, “[m]any developing countries also face the problem that they are unable to avail themselves of the ‘self-help’ mechanisms of enforcement in the case of ‘unfair’ trade practices”. This, in part, is because the implementation of a full-fledged system of anti-dumping has high costs and requires significant expertise. Even “finding the resources to participate in the day-to-day activities of the WTO” can be challenging for some developing countries.

The consequences of these problems are clear. Trade liberalization has proceeded aggressively in areas of interest to developed countries but slowly, if at all, in areas of potentially great benefit to developing countries. Arguably, developing countries are in most need of the benefits of trade. The President of International Trade Policy Consultants Inc. raised this issue in the SCFAIT hearings. She explained that the global trading system is threatened by the discrepancies in trade barriers between developed and developing country members. Poor countries point to the persistently high tariffs in developed countries on specific labour-intensive industries, including textiles, clothing, food products and footwear. She further explains that tariff levels often increase with the degree of processing, thus discouraging value-added work on basic commodities. To put this in perspective, she explained that according to World Bank estimates, liberalizing global markets and removing subsidies in the sensitive industries mentioned above could add $1.5 trillion to income levels in the developing world, a figure significantly higher than the about $50 billion that is currently provided annually to developing countries through various aid programs.

C. Canada Must Immediately Restructure Its Approach to Liberalization to Account for the Important Needs of Developing Countries

These concerns have continually been brought forward but never properly addressed. They are sufficiently pressing that Canada should be taking swift and decisive action. The
procedural aspect of some of these concerns can be addressed, in part, through reforms at the WTO (See section on WTO Reform above). They can also be addressed, in part, by continued commitment to capacity building and trade-related technical assistance. That said, the most meaningful solution is to address the existing trade imbalance.

**RECOMMENDATION 3.5:** Canada should immediately provide full market access to both developing and least-developed countries in areas such as agriculture and textiles.

This would include removing any penalties currently existing for ‘value-added’ work on these products. These measures would initially be unilateral and subject to review after a fixed period of time or when a country’s economic position changes. At that time, Canada could seek a more multilateral arrangement.

**RECOMMENDATION 3.6:** Canada should implement a process for assessing the effect of its trade-related negotiating position on the poor in the developing world and in Canada.

This process could be modeled on the “Strategic Environmental Assessment Program,” which requires a similar analysis with regard to environmental impact.

**RECOMMENDATION 3.7:** Canada should formulate and adopt a strategy for opening developed world markets to developing countries.

This could include adopting negotiating positions that might not seem consistent with Canada’s short-term economic interests.

At first glance, these recommendations may seem disruptive to the idea that Canada should make trade decisions in its own self-interest. On the contrary, Canada already decided that the liberalization of trade brings benefits to the countries involved. Any step toward liberalization brings some of those benefits. Accelerating the process in areas of interest to
developing countries is not only a meaningful expression of Canadian values but also consistent with our general approach to trade.

Among the benefits to Canadians in providing full access to the textile and agricultural products of other countries are lower-costs for Canadians. The lower cost of these products will be of particular benefit to lower income Canadians who spend more of their income on food and clothing. It will also benefit Canadian industry to the extent that it will allow them to make the required structural adjustments in preparation of full-liberalization (with the developed world) in these areas.\(^{38}\)

Some will argue that making these kinds of changes will have a devastating effect on Canadian industry. It is inevitable that there will be consequences but this should not stop Canada from acting. First, the effect of market access provided to developing countries will be limited. Given their limited resources and Canada’s distinct advantage in terms of natural resources, developing countries are unlikely to be able to overtake many domestic producers. Second, it is possible for Canadian industry to adjust. New Zealand, for example, completely eliminated its agricultural subsidy programs and is still very much competitive. Third, the Canadian government can provide transitional assistance enabling domestic industries to re-structure to meet demands of new competition, where required. Naturally, caution would need to be exercised to ensure that this assistance itself not be considered a countervailing duty.

There will be challenges to be overcome especially where implementation of these recommendations runs afoul of supply-management programs. These programs often involve the distribution of quota for various activities (production, import, export, marketing of agricultural products). These allocations of quota now have tangible value\(^ {39}\) and cannot be easily withdrawn or rendered valueless. We offer no solution to this problem except to say that
dismantling these programs is almost inevitable (a question of ‘when’ and not ‘if’), given their condemnation by the WTO Appellate Body, and the longer we wait the more we simply postpone the pain of adjustment. To the extent that buy back programs are feasible, these should be preferred but, even if buy back is not possible, the government will still need to dismantle these programs. After all, Canada will need to balance competing interests including the interests of the developing world in achieving some measure of distributive equality by claiming the usual and expected benefits from “fair and open trade.”

Part IV. Canada Should Pursue Ambitious Environmental Goals Consistent with a Long-term Vision of Meaningful Global Environmental and Trade Governance

The WTO report on Trade and the Environment ultimately concluded that trade was neither the problem nor the solution to continued environmental degradation. In fact, the solution rested in international environmental cooperation. Although this is a sound conclusion, there are certainly areas where Canada can simultaneously pursue its strategic and principled interests in the areas of trade, the environment and development.

A. Canada has Set Modest Goals In Pursuit of Trade Consistent With Sustainable Development

Canada generally takes the view that “liberalized trade and protection of the environment are key components of sustainable development” and coordination is required to ensure “[t]rade and environmental policies and rules [are] mutually supportive.” To that end, the Government of Canada requires that a ‘Strategic Environmental Assessment’ be performed to ensure that both domestic and foreign policy are consistent with the goal of achieving sustainable development. It adopts the position that each trade-related negotiating group should consider environmental issues to ensure desired trade measures are both “consistent with and supportive
of the achievement of sustainable development” and that members should share information on how such assessments are performed.\textsuperscript{44} Canada also believes it should be working to help developing countries capture synergies among increased trade (liberalization), development, and enhanced environmental protection.

In the current round of WTO negotiations, Canada is focusing on (1) the relationship between Multilateral Environmental Agreement (MEA) obligations and WTO trade rules; (2) multilateral trade disciplines, in particular, the ‘ecolabelling’ initiative; (3) reduction of environmentally damaging subsidies; and (4) the liberalization in the trade of environmental goods and services.\textsuperscript{45}

\textbf{B. Canada Lacks a Long-term Vision for the Coordinated Pursuit of Trade, Environmental and Development Goals}

Canada has adopted a modest yet realistic negotiating position in the current round of negotiations. Unfortunately, it is not clear that Canada is pursuing a long-term plan that will actually result in the achievement of its laudable goal of sustainable development.

In constructing its vision on the proper interaction of trade rules, environmental initiatives and development goals, Canada will need to be mindful of two recurring concerns. First, economic growth is not sufficient to turn environmental degradation around; political will is required.\textsuperscript{46} Second, the “greening of trade policy” can become another form of protectionism used primarily by the developed countries to restrict access to their markets.\textsuperscript{47}

In addition to the concerns cited above, there is a persistent and overarching problem in the area of global environmental governance (or lack thereof). The current “international environmental regime is weak, fragmented, lacking in resources and political support, and handicapped by a narrow mandate”.\textsuperscript{48} Despite hundreds of multilateral environmental treaties,
global environmental conditions continue to deteriorate. Responsibility for the environment is shared among numerous international organizations often with little coordination among them. The UN Environment Programme (UNEP) occupies the field with more than ten other bodies. By way of example, the “UNEP, CSD, UNDP, WMO, as well as the Organization for Economic Cooperation and Development (OECD) and the World Bank all have climate change programs underway with little coordination or strategic division of labour”. There are also dozens of treaty secretariats that compete for limited government attention and resources with no rationalized budgets and few coordinated strategic priorities. Consequently, it will continue to be difficult to incorporate international environmental considerations into the highly technical area of trade rules until they can be supported by an equally elaborate global system of environmental cooperation.

C. In The Short Term, Canada Should Make the Most of the Environmental Mandate of the Doha Round.

To address the concerns above, Canada will need to make changes both to its current position on trade and environmental issues but it will also have to articulate a long-term vision for environmental governance that can be pursued in international trade and international environmental forums. In respect of the Doha Agenda, Canada should pursue the following solutions not already articulated in its approach:

1. Canada should support an interpretation of Article XX(b) and (g) of the General Agreement on Tariffs and Trade (“GATT”) stating specific trade obligations taken under an MEA will be deemed compatible with paragraphs (b) and (g). A complaining government bears the burden of proving that such a trade measure is a violation of the GATT Article XX chapeau with an analogous accommodation in the General Agreement on Trade in Services (“GATS”). In
addition, no WTO enforcement mechanism can be invoked until the dispute settlement mechanism in the MEA has been exhausted. Finally, if the dispute goes further panels should be required to have expertise in environmental law and should be able to seek advice of the parties to the MEA where requested.\textsuperscript{51}

2. Canada should seek enhanced WTO “transparency requirements on governments of their fishery subsidies and … cooperation between the WTO and intergovernmental organizations with responsibility for fishing.”\textsuperscript{52}

3. Canada should support the introduction of \textit{Environment and Development Reviews} for each round of WTO negotiations. The reviews would look at a few of the most likely outcomes and publish their results. The function ought not be assigned to the WTO Committees on Environment and Development but rather assigned to small group of governments that would operate transparently, accept public submissions and could, in part, contract out to scientific organizations better suited to analyze the global impact of a particular agreement.\textsuperscript{53}

4. Canada should support the aggressive liberalization of environmental goods and services. In particular, Canada should lobby that “environmentally friendly” goods and services be included in current efforts to accelerate the liberalization of trade in environmental goods and services used for pollution abatement.\textsuperscript{54}
RECOMMENDATION 3.8: In the Doha Round, Canada should (1) support an interpretation of the GATT that deems specific environmental obligations taken under MEAs presumptively compatible with Article XX; (2) advocate the imposition of transparency requirements in relation to the management of national fisheries; (3) support the introduction of Environment and Development Reviews; and (4) support the accelerated liberalization of trade in environmental goods and services including “environmentally friendly” goods and services.

D. Canada Needs to Articulate a Vision for an International Legal Framework mindful of the Environment, Trade and Development

As explained in the previous sections, there is a persistent and overarching problem in the area of global environmental governance (or lack thereof). There are numerous international organizations charged with overlapping environmental mandates competing for limited government resources and attention. The operation of international trade rules supportive of the Environment is dependent, in the long-term, on the articulation of world’s environmental goals.

RECOMMENDATION 3.9: In the long-term, Canada should work toward the centralization of the administration of environmental initiatives and disputes in one powerful and well-funded international organization.

The central administration of environmental initiatives will help ensure effective (1) international data collection and scientific analysis of most important environmental problems and discussion of their relative intensities and risks; (2) negotiation and discussion of all environmental rules; and (3) implementation mechanisms including mandatory provision of appropriate development assistance to developing countries. One centralized international organization will also be in a better position to explore the interaction between trade rules and the extensive network of existing and future environmental obligations. It will also be able to adopt a far reaching policy of considering development concerns in the implementation of environmental initiatives. Without such a policy tied to the interpretation of Multilateral Environmental Agreements, the use of specific environmental obligations under these treaties
as a justification for protectionist practices at the WTO can be substantively unfair to developing countries. Such an organization and the WTO may also be able to efficiently work with the International Law Commission toward the codification of the rules applicable to disputes that relate both to trade and environmental obligations\textsuperscript{58}.

**Part V. Conclusion**

Canada’s international trade policy is far from simple. It requires a balanced approach cognizant of both environmental and development concerns. In each of these areas, Canada has already set meaningful policy goals but must renew its efforts to achieve them. This will require a stronger commitment to addressing the persistent problems faced by developing countries and by giving priority to the concerns of the poor in Canada. It will also require both aggressive short-term action on trade and environmental issues and a long-term vision for appropriate global environmental cooperation. Finally, Canada will need to continue working towards addressing issues surrounding the legitimacy of the WTO in the eyes of Canadians and the world population. These efforts will need to be measured, at least in part, by their effect on both development and environmental issues.

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\textsuperscript{1} Canada’s combined value of exports and imports accounts for more than two-thirds of the country’s GDP. See for e.g. online: Canada Is A Trading Nation <http://www.2ontario.com/welcome/coca_401.asp> [Trading Nation].


\textsuperscript{3} According to Canada and the World: Canadian International Policy Review 1995, supra the following benefits would follow from increased global prosperity: (1) international stability; (2) progress towards sustainable development; (3) mutually beneficial economic partnerships and (4) openness to Canadian values and partners in building the international system.

\textsuperscript{4} The World Trade Organization is the ‘global’ international organization that deals with rules of trade between nations. Its goal is to help producers of goods and services, exporters, and importers conduct their business. At the heart of the WTO is trade related agreements negotiated and signed by the 148 member states of the organization which constitute the bulk of the World’s trading nations. The WTO is run by its member governments and the major decisions are made generally by consensus of the membership as a whole, either by ministers (who meet at least
The day-to-day work of the WTO is done by the General Council and other trade area-specific bodies. Very little work is actually done at the Ministerial conferences since decisions require consensus. Mostly, deals are worked out through informal meetings including the heads of all the delegations or the chair of a negotiating group and delegations individually or larger groups in an attempt to secure compromise on a particular issue. There are two aspects of the operation of the WTO that invite discussion of structural reform: (1) the member-driven consensus based decision-making process by which agreements are negotiated; and (2) the dispute settlement processes involving initial diplomacy, dispute settlement arbitration panels and the Appellate Body.

5 For some the WTO has come to represent many of injustices in the world – in particular, it is seen to favour rich countries and multinational corporation, to plunder the resources of the developing world, to disregard environmental, social justice and human rights issues. It is suggested this is not because of the core mandate of the WTO (liberalization of trade) but rather its failure to do away with unfair subsidies, its increasing involvement in areas beyond its competence and a general lack of transparency in its internal decision-making.


7 The Dispute Settlement Understanding is an agreement on how the dispute settlement rules in specific WTO agreements will be applied. It also includes understanding on related procedural issues.

8 In Government of Canada, “Contribution of Canada to the Improvement of the WTO Dispute Settlement Understanding (January 2003)”, online: Canada and the WTO, <http://www.dfait-maeci.gc.ca/tna-nac/wo dispute-en.asp> [Improvement of the WTO Dispute Settlement Understanding], the government has the following proposals regarding improvement to the dispute settlement understanding: (1) the inclusion of rules protecting confidential business information; (2) enhanced panel professionalism through the creation of a panel roster; and (3) public access to submissions and meetings. Canada also sees potential gains by having the following issues addressed: sequencing, transparency, enhanced third party rights including rules and procedures governing participation by amicus curiae, improvements targeted to greater efficiency in the dispute settlement process, enhanced surveillance of implementation by the DSB and effective and viable alternatives to retaliation.

9 These reforms include (a) opening trade policy reviews to NGOs and the public including the use of webcasts; (b) providing better access to WTO Secretariat documents and more quickly declassifying documents; (c) hot linking the WTO website to the websites of important trade-related NGOs; (d) making submissions and background documents regarding specific trade-related disputes available online; and (e) requiring the WTO to engage in ‘outreach’ initiatives such as symposia and conferences involving non-governmental actors such as NGOs and academics. A trade policy review is a WTO enforcement mechanism whereby certain countries are required to review the trade policies and compliance with WTO agreements of another member and publish their results to all members. This policy position taken generally from Government of Canada, “WTO External Transparency - Informal Paper by Canada”, online: Consultations on FTAA and WTO Negotiations <http://www.dfait-maeci.gc.ca/tna-nac/Transparency2-en.asp> [WTO External Transparency].

10 See generally WTO External Transparency, supra.


12 The liberalization of trade generally requires short-term economic sacrifices to achieve long-term efficiencies. In order for the process to continue, it is necessary for the citizens of member democracies to understand the rationale for liberalization – if they do not they will continue to block the implementation of the domestic component of liberalization initiatives.

13 The most significant short-term consequence is the loss of jobs in certain sectors of the economy.


16 Under the United States Constitution, the executive branch of the United States government has certain treaty-making and authority to conduct foreign policy. The legislative branch of the United States government has constitutional authority “to regulate commerce with foreign nations”.

17 A Few Thoughts on Legitimacy, Democracy, and the WTO, supra at 671; Parliamentary Oversight of the WTO Rule-Making, supra at 630.

18 Parliamentary Oversight of the WTO Rule-Making, supra at 631.

19 Building an Effective New Round of Negotiations: Key Issues for Canada, supra. In particular, it was said that “[a]lthough decisions are made by consensus, many countries complain that they often find themselves asked to endorse a text they had no input in creating. The use of a rotating group of less than 20 members representative of the broader membership to drive consensus and communicate information should at least assist in rectifying this situation.”

20 Canada and the World: Canadian Foreign Policy Review 1995 provides that Canada “will initiate the careful groundwork needed to establish the next round of trade and investment liberalization upon which Canadian prosperity depends.”

21 The basic theory is called “comparative advantage”. For a brief description of both absolute and comparative advantage see WTO, “Understanding WTO Basics: The Case for Open Trade,” online: World Trade Organization <http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact3_e.htm> [The Case for Open Trade].


23 These factors will be discussed in the next subsection.

24 Canada has adopted the following programs: (1) Special and Differential Treatment: Special and Differential Treatment refers to provisions in WTO agreements giving developing countries special rights including longer timelines for implementing trade commitments or measures to increase their trade opportunities. Canada is committed, in theory, to the principle of special and differential treatment, which allows developing countries more time to comply with WTO obligations. Canada has, however, argued against “proposals that would require amending existing agreements, that prejudice current negotiations … or that allow self-granted automatic extensions of S&D provisions.” See Government of Canada, “Development - Special and Differential Treatment: Canada’s Position in WTO and FTAA Negotiations,” online: Development and Society <http://www.dfait-maeci.gc.ca/tna-nac/DS/special-en.asp> [Special and Differential Treatment: Canada’s Position]. (2) Smaller Economies: Smaller economies are of particular interest since they are often not large enough to achieve the benefits of economies of scale which are required by the theory of comparative advantage to properly benefit from trade liberalization. With respect to smaller economies, Canada supports the Working Program currently in place but does not feel smaller economies should be made subject to special and differential treatment. Canada supports the flexible application of existing WTO rules in a manner sensitive to the needs of smaller economies. See Government of Canada, “Development – Smaller Economies: Canada’s Position in WTO and FTAA Negotiations,” online: Development and Society <http://www.dfait-maeci.gc.ca/tna-nac/DS/small-en.asp> [Smaller Economies: Canada’s Position]. (3) Capacity Building and Trade-Related Technical Assistance: Capacity Building and Trade-Related Technical Assistance are programs that assist developing countries in building their capacity to engage in trade or to participate in WTO negotiations and formulate and advocate beneficial trade policies. Canada contributes to capacity-building and technical assistance programs being coordinated through the WTO Technical Cooperation Division, regional development banks, the Integrated Framework for Trade-Related Technical Assistance to Least-Developed Countries, the Joint Integrated Technical Assistance Program and multilateral organizations, including the World Bank. Canada has called for trade to be integrated into national development strategies, and is pursuing this objective through the World Bank, regional development organizations and UN agencies. It also strongly backs the Technical Capacity Building Database. See Government of Canada, “Development – Trade-Related Technical Assistance and Capacity Building: Canada’s Position in WTO and FTAA Negotiations,” online: Development and

26 Imagine 148 countries delegations forming groups and horse-trading liberalization in areas of interest.

27 The definition of LDC taken from the United Nations has been adopted by the WTO. There is no fixed definition of a developing country at the WTO except in a few agreements.

28 See generally Least Developed Countries: Market Access Initiative, supra.


30 Trade and Inequality: Economic Justice and the Developing World, supra at 979.

31 Trade and Inequality: Economic Justice and the Developing World, supra at 980.


35 Building an Effective New Round of Negotiations: Key Issues for Canada, supra. Specifically, the relevant section of her testimony was summarized as follows:

… the global trading system was [is] threatened by the discrepancies in trade barriers between developed and developing country members. … countries in the South are losing patience with what they perceive as hypocritical trade policies in the North. Poor countries believe that rich nations are protective of domestic industries in which the former group have a distinct competitive advantage. They point to the fact that tariffs in developed countries remain particularly high on specific labour-intensive industries, including textiles, clothing, food products and footwear. Furthermore, tariff levels often increase with the degree of processing, thus discouraging value-added work on basic commodities.

… developing countries are of the view that even when the North does improve market access, the exercise is selective in that it targets only least-developed countries. According to World Bank estimates, liberalizing global markets and removing subsidies in the sensitive industries mentioned above could add $1.5 trillion to income levels in the developing world. By comparison, Ms. Macmillan (sp?) reminded the Sub-Committee that about $50 billion is currently provided annually to developing countries through various aid programs.

where the author notes that “two of the most important trade sectors for developing and many other nations -
agriculture and textiles and clothing - had been major black spots of GATT.” See also Trade and Inequality:
Economic Justice and the Developing World, supra at 976-977 where author explains that “[r]epresentatives of the
developing world voiced the sense that their concerns and participation were being marginalized, and that those
already holding an unequal share of the world's natural and social resources continue to receive an unequal share of
the gains from trade.  Such opposition should have come as no surprise. Since the Uruguay Round was concluded in
1994, commentators have been evaluating the effects on developing countries of the Round and its progeny, the
World Trade Organization (WTO), with mixed conclusions. Some argue that the WTO's dispute resolution system
reflects a victory for the developing world because the system more fully subjects powerful developed countries to
the rule of law in their international economic relations. Unfortunately, other aspects of the WTO agreements reveal
costly concessions by developing countries, in areas such as agriculture, intellectual property and investment, in the
hopes of securing compensating benefits in other areas. It is not clear that the gamble has paid off.”

37 See Trade and Inequality: Economic Justice and the Developing World, supra for a discussion of the moral
imperative.

38 See Building an Effective New Round of Negotiations: Key Issues for Canada, supra where “William Miner noted
that regarding the future of supply management, quota values in the dairy and poultry sectors have gone up
dramatically. However, this affects one’s competitive position as the country begins to open up to competition (a
continental market in the supply-managed sector is beginning to emerge). One will have to anticipate tariffs of these
supply-managed products coming down somewhat, so there will be a challenge to lower costs.” See for e.g. Building
an Effective New Round of Negotiations: Key Issues for Canada, supra where Bill Dymond explained to the
Committee that “tariffs in the dairy and poultry sectors in the order of 200-300% represent a massive transfer of
income from consumers to producers, and from taxpayers to producers. [It is] a crazy system when the value of the
quota to produce exceeds the value of other capital assets necessary to produce.”

39 For example, quota is used to secure bank loans.

40 WTO, Hakan Nordstrom & Scott Vaughan, Trade and Environment (Geneva: 1999) online: World Trade
Organization <http://www.wto.org/english/tratop_e/envir_e/envir_e.htm> [Trade and Environment: WTO Special
Study].

41 The following are the most often cited environmental benefits stemming from trade: (1) market forces promote
increased efficiency in energy and materials use; (2) economic growth creates the wealth and technological
resources necessary to produce environmental improvement; and (3) pollution problems decline in severity as per
capita income rises. For more information on potential environmental benefits from trade see James M. Sheehan,
“The Greening Of Trade Policy: ‘Sustainable Development’ and Global Trade,” online: Competitive Enterprise
Environment Programme and the International Institute for Sustainable Development, Environment and Trade: A
Handbook by the International Institute for Sustainable Development, online: International Institute for Sustainable
of Mr. David Runnalls (President, International Institute for Sustainable Development) summarized in Building an
Effective New Round of Negotiations: Key Issues for Canada, supra.

42 Sustainable development is “development that meets the needs of the present without compromising the ability
of future generations to meet their own needs”. World Commission on Environment and Development, the Brundtland

nac/env/env_wto-en.asp> [Canada on Trade & Environment at the WTO].

44 Canada’s Approach To Trade and The Environment ( WTO, Canada’s Approach To Trade and The Environment,
Doc# WT/GC/W/358, Preparations for the 1999 Ministerial Conference, online: DFAIT <http://www.dfait-
maeci.gc.ca/tna-nac/documents/W3581.pdf> [Canada’s Approach To Trade and The Environment].

45 See Canada’s Approach To Trade and The Environment, supra. According to the Doha Ministerial declaration,
which sets out the issues for the Doha round, the following environmental issues are to be negotiated:
a) The relationship between WTO rules and the specific trade obligations in multilateral environmental agreements, and procedures for information exchange and observer status with MEA Secretariats (para. 31).

b) The reduction or elimination of tariff and non-tariff barriers to environmental goods and services (para. 31).

c) WTO disciplines on fishery subsidies, and the need for clarification and improvement (para. 28).

d) The effect of environmental measures that impede market access, and those situations in which the elimination of restrictions and distortions would benefit trade, environment, and development (para. 32).

e) Labeling requirements for environmental purposes (para. 32).

f) The relationship between the TRIPS Agreement and the Convention on Biological Diversity (paras. 19, 32).

g) Reviewing the environmental and development aspects of the negotiations with the objective of having sustainable development appropriately reflected (para. 51).

h) Cooperation between the WTO and relevant international environmental / development organizations (para. 6).

i) Agriculture negotiations where so-called non-trade concerns will be taken into account (para. 13).

46 Trade and Environment: WTO Special Study, supra.

47 See for e.g. Greening of Trade Policy, supra.


49 Strengthening Global Environmental Governance, supra at 3.

50 The chapeau provides that the exceptions provided in article XX are subject to “the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.”


52 See WTO and the Doha Agenda, supra for more detailed recommendations.

53 See WTO and the Doha Agenda, supra for more detailed recommendations.


55 Strengthening Global Environmental Governance, supra.

56 The organization could look to commitments made at the 1992 United Nations Conference on Environment and Development (UNCED) and possibly tie those commitments to reliance on specific environmental obligations in trade disputes.

57 Specific obligations are environmental obligations specifically related to trade. They are provided for in a number of MEAs. See for e.g. WTO, Committee on Trade and the Environment, Discussion Paper on the Concept of Specific Trade Obligations submitted by Canada, Doc# TN/TE/W/22 (2003), online: DFAIT <http://www.dfait-maeci.gc.ca/tna-nac/documents/W221.pdf> [Concept of Specific Trade Obligations].
The codification of this international legal conclusion could be done by the International Law Commission rather than the WTO which naturally has a vested interest and which can arguably not create rules affecting non-MEA members absent a cogent international legal justification. See *for e.g.* Steve Charnovitz, “Expanding the MEA Mandate in the Doha Agenda” (Global Environment and Trade Study: 2003), online: Achieving Harmony in Trade and Environment <http://www.gets.org/pages/harmony/> [Expanding the MEA Mandate in the Doha Agenda].
CHAPTER 4:  CANADA’S ROLE IN INTERNATIONAL AID AND DEVELOPMENT

Part I. Introduction

A casual observer of the current world situation might be forgiven for concluding that, collectively, we have learned little about living together in peace, harmony and prosperity on the planet in spite of two World Wars “to end all wars” in the last century. The same might be said about the efficacy of Canada’s international development and aid efforts since the end of the Second World War.

The return on billions invested by the West in developing nations over the past fifty years has not created a universally just and equitable world nor come close to eliminating global poverty. In a set of stark statistics, the Canadian Council on International Cooperation (CCIC) underscores the urgent ongoing need for aid:

The scope and impact of global poverty are staggering. Globally, 1.2 billion people live in absolute poverty. Nearly half the world’s population lives on less than US$2 a day. Every day, 50,000 people die from poverty-related causes – one-third of all deaths. As Canada redefines its role on the international stage, addressing global poverty must be at the centre of Canada’s foreign policy. Poverty is a mark of political dysfunction and its remedy includes the promotion of human rights.¹

Increasingly, world leaders - including Paul Martin - recognize that sustained, decisive and collaborative action across many sectors is required to address issues of poverty and inequality if global peace and stability is to be realized.

A question that looms large is whether Canada’s traditional foreign policies still effectively address the most pressing global issues. The degree to which international initiatives
of trade, defence, diplomacy and development do, and should, work together must be examined, in order to better decide which aspects should be modified.

What are the benefits and what are the risks? Might a melding of resources be the first step on a slippery slope toward a melding of mandates? What is the appropriate balance to strike among competing policy priorities? What has changed significantly in the ten years since the last foreign policy review that must be taken into account?

This portion of the brief will raise several issues pertaining to Canada’s international aid and development policies. It will recommend, challenge and support potential directions for the Canadian Government. In doing so, it will

(1) recommend the vigorous pursuit of the Millennium Development Goals, including the eighth recommendation to increase Canada’s International Aid Envelope to 0.7% of GNI from its current 0.28% by the year 2015;

(2) support a recommendation to elevate the status of the Minister of International Cooperation from junior to senior minister;

(3) recommend the creation of a permanent Standing Committee on International Cooperation to provide direction and encourage more effective collaboration among international programs across Government;

(4) create a mechanism to increase efficiencies and counter redundancies in international cooperation efforts both within Canada and with international partners. New technologies make this feasible and existing models, such as CIDA’s Partner’s Forum extranet, indicate an existing level of interest in using such tools.
(5) support an increasing role for Canada in transferring “the rule of law” model to countries seeking peace, order and good Government and increase Canada’s contribution to global peace initiatives, such as those recommended in *The Responsibility to Protect* doctrine.²

(6) encourage a strategy to ensure stronger public engagement by Canadians in international aid and related issues, and finally, in acting on these recommendations, resurrect and reinforce the unique leadership role Canada can play within the international arena.

**Part II. WELL BEYOND Y2K: THE MILLENNIUM DEVELOPMENT GOALS**

A. Canada can achieve pre-eminence on the world stage by exercising selectivity in the scope and number of international problems it chooses to tackle, such as the Millennium Development Goals (MDGs).

1. The Millennium Development Goals are designed to create a more level playing field for all world citizens, without which the global balance could tip further into chaos.

   In September 2000, 147 leaders gathered in New York and issued the Millennium Declaration, outlining their collective commitment to sustainable development and poverty reduction…. They [the MDGs] are becoming a measure of the commitment of donor countries to sustained development financing, and of developing countries to eradicating extreme poverty and hunger, investing in health and education, promoting gender equality and achieving environmental sustainability. ³

   The Millennium Development Goals are laudable for the collaborative approach by the West to address the most pressing issues of human survival and dignity on the planet. Distilled from lessons learned from more than fifty years of international development cooperation and reflecting the urgency of the current global situation, the MDGs address the most pressing
development challenges in health, education and poverty reduction with the goal of bringing about measurable advances in human well-being by the year 2015.

Collectively, the eight Millennium Development Goals - with their 18 targets and 48 indicators - reflect universal concern and a collective response by the Western world to address world crises that threaten future stability for us all. The downside is – nearly five years in - the MDGs are already falling short of interim targets and global crises are increasing in scope and severity. More focused attention on achieving the MDGs is required. To accomplish this, the Canadian Government must raise the political will to achieve them.

The MDGs are a clarion call to get back to the basics of development to stabilize more of the world’s population. Collectively, there is more shared understanding that what happens elsewhere in the world affects us all. As much survival strategy as humanitarian objective, it is understood – put simplistically - that terrorism and conflicts fester in societies where basic survival needs go unmet and there is no hope for a future among the population. Economic development and political stability have no chance to take root in countries where hunger and illness plague the vast majority of its citizens. The late Margaret Hassan of Care International described it this way.

When you are poor, every day is a crisis, and we forget that, I think. You know, we think there's a crisis when there's a war, there's a crisis when there's an earthquake, but if you've got no money, then every single day that you wake up is a crisis for you. You don’t have time to think about anything else.

American economist Jeffrey Sachs, a special adviser to UN Secretary General Kofi Annan, says the world must get back to basics. Development institutions like the World Bank, says Sachs, perpetuate a model where issues are studied extensively without making the transition on the ground that combats the underlying causes of poverty. In other words, poverty’s
causes and solutions have been well studied and are well understood, but it has often been
difficult to translate theory into action.

The overall successes of development in recent decades have been
remarkable people live longer; fewer mothers die in childbirth; fewer
infants die from preventable diseases. But the numbers living in poverty
are continuing to grow…. to succeed we need to mobilise greater political
will across the international community. 7

Canada can play an important role as a leader and gatekeeper in the fight against global
poverty. By mustering the political will to achieve the Millennium Development Goals, it can act
as a role model for other developing nations to follow. Canada can also play a leading role in the
international community by ensuring the world maintains its focus on achieving the objectives of
the MDGs.

It will require considerable focus and determined leadership in the current global climate.
Certainly overwhelming distractions underlie and contribute to these changing attitudes.
Terrorism, the events of September 11, 2001, the HIV/AIDS pandemic, and ongoing conflicts in
many countries have severely hampered global progress in recent years and co-opt the world’s
attention and resources.

Despite existing policies assuring international aid organizations the aid envelope would
not be affected by security issues, global crises have siphoned off portions of existing
development budgets already.

Between 2001 and 2008, Canada will devote at least $900 million in aid to
Afghanistan and Iraq (not to mention an expected $50 million for Haiti); this total nearly equals the amount to be added to our aid for the whole of
Africa in the same period. 8

A recent recommendation from the Organization for Economic Cooperation and
Development’s (OECD) Development Assistance Committee (DAC) 9 suggests a portion of
member countries’ ODA budget be transferred to military efforts to combat terrorism “when and as needed.” This raises the concern that development budgets already squeezed by fiscal constraint will be further eroded if funds originally designated for development are redirected to achieve security objectives.

A coordinated effort to achieve the MDGs should be mounted within the Canadian Government. The CCIC feels CIDA is most effectively positioned to play this role. We agree. CIDA has the most experience of any Government entity in managing complex development strategies across many sectors and countries with the required expertise and experience to spearhead this effort. We recommend CIDA be directed to work with other donor countries to undertake the creation of an action plan to meet the objectives of the MDGs. Also, the International Aid Envelope must be increased to meet the minimum targets set for Official Development Assistance (ODA) as a portion of Gross National Income (GNI). Meeting Canada’s global obligations will require a commitment over and above the current 8% earmarked for aid increases and should meet the eighth Millennium Goal: to provide 0.7% of Canada’s GNI to combat global poverty.

As former Liberal Cabinet Minister John Manley colloquially phrased it …

You can’t just sit at the G8 table and then, when the bill comes, go to the washroom. If you want to play a role in the world, even as a small member of the G8, there’s a cost to doing that.\textsuperscript{10}
RECOMMENDATION 4.1: Canada must focus its development efforts on achieving the Millennium Development Goals by directing CIDA to work with other donor countries to create an action plan with timelines. Canada must also increase its Official Development Assistance (ODA) to the recommended levels in the eighth Millennium Development Goal.

B. Use Political Solutions To Combat World Poverty

1. Make the Minister of International Cooperation a senior Cabinet position to give the appropriate emphasis and political clout to achieve the Millennium Development Goals.

To achieve the ambitious objectives of the Millennium Development Goals, the CCIC believes the Canadian Government must take significant action and make a stronger commitment to Canada’s leadership role in the international arena.

As part of its prescription to acknowledge the increasingly important role of international development to Canadian interests, the CCIC calls for the elevation of the Minister for International Cooperation from a junior to senior Cabinet role. It also recommends the creation of a new parliamentary Standing Committee on International Development that would oversee and permit greater coordination among the international development activities of various Government departments as well as the revitalization and reorganization of CIDA.

Raising the profile of this portfolio would provide the necessary senior level coordination of international development activities across Government at a crucial juncture in Canada’s history. Some critics contend Canada’s international leadership role is already filled by the Minister of Foreign Affairs who liaises with our international partners at all levels, maintaining a clear – but equal - distinction between the mandates of development and diplomacy. A senior Cabinet Minister for International Cooperation, however, would be more effective in speaking for, and to, issues in the international development arena.
Specifically, if the MDGs are to be achieved as a key Canadian objective, then senior level leadership and direction will be required that can only be accomplished by a minister who has the seniority and mandate to implement that order of change. The current Government must support its commitment to the MDGs with concrete action if international development goals to reduce global poverty are to be realized.

Asserting that “a new deal for developing countries will be central to the Prime Minister’s commitment to renew Canadian leadership on the international stage,” CCIC says new resources and focus are required in Canadian long-term assistance for poverty reduction to “demonstrate… Canada is prepared to back up its aspirations for leadership with action.”

What is required to achieve the MDGs is political will and leadership at the highest level of Government to keep Canada focused on meeting these goals. The expertise to create an executable action plan exists within CIDA and, as such, should be led by a senior Cabinet minister who can effectively coordinate a whole-of-government approach to the MDGs on Canada’s behalf.

**RECOMMENDATION 4.2: Elevate the status of the Minister of International Cooperation from a junior to senior Cabinet role.**

**C. Canada must bring coherence to its current international outreach and cooperation programs across Government**

1. **Canada can stay the present course or change direction and make a significant difference in the world**

   People speak of Canada’s glory days on the world stage in the past tense. The talk often goes to the slippage in Canada’s international status since Prime Minister Pearson’s diplomatic efforts garnered the world’s respect and a Nobel Peace Prize in the 1950s. But the world was a much different place in the post-War years when Canada’s international aid and development
infrastructure was established. The context of that time cannot be fairly compared to Canada today nor can the mindset of its population. The current period of turmoil offers an opportunity for Canada to assess how to make a difference on the international stage relative to its size and expertise.

In a world of diverse priorities, stringent analysis needs to be applied to Canada’s current international aid structure and strategic decisions will have to be made. The Government will want to determine “...where we can make a difference and excel, what issues, what sectors and with what niche capacities?”

This International Policy Review provides an opportunity to review Canada’s current position vis-à-vis the world and set a new course. The world has changed so dramatically in the ten years since the last review that validation and consolidation of perceptions and programs that currently exist within our own borders is a recommended starting point.

The Canadian government has indicated new directions must be set and there is a need to rank priorities in the way Canada engages in the international arena. In the most recent *Speech from the Throne*, the current Liberal government indicates a melding of resources may be indicated.

In today’s world, effective international engagement is needed to advance national aspirations. Now that time and distance have lost their isolating effect, it is no longer possible to separate domestic and international polices…. Just as Canada’s domestic and international policies must work in concert, so too must our defence, diplomacy, development and trade efforts work in concert…. We know that Canadians are among the best in the world in meeting the challenge of being soldiers to make the peace, diplomats to negotiate the peace and aid workers to nurture the peace.

As Canada considers how these traditionally distinct areas can work together, analysts will need to consider the shifting landscape in humanitarian interventions. Ian Smillie, an
Ottawa-based international development consultant, suggests “the moral necessity of humanitarian action is no longer self-evident and has become a matter of debate.” Arguing they are motivated less to help global neighbours in need exclusively because it is “the right thing to do,” aid organizations, increasingly, frame development assistance for donors as support to national security.

And an uneven response by aid organizations to humanitarian crises, questionable outcomes in many of those interventions and the increasing commercialization in this sector all underlie this debate.

This shift in the humanitarian assistance landscape is mirrored by an evolving change of direction and attitudes that progressively link aid to trade and economic imperatives.

Since Canada’s last foreign policy review there have been sometimes controversial development policies arising from the Canadian International Development Agency (CIDA), such as the Private Sector Development Strategy. The Private Sector Development Strategy is aimed at strengthening private enterprise in developing countries and, at its launch, reignited a long simmering debate over the appropriate assignment of development assistance dollars between “aid and trade.”

The release of this strategy, however, also signified changing attitudes toward the appropriate allocation of development dollars. There is growing – if not universal - acceptance in the aid community that wealth-building is the means by which people in developing countries can eventually acquire the wherewithal to effectively overcome the ravages of extreme poverty.

The coalescence of diverse players from the aid, defence and diplomatic sectors that act in Canada’s interests overseas is fact. The creation of a Standing Committee on International
Cooperation with a mandate to oversee their activities and to define operational boundaries would lead to greater coordination and efficiencies.

RECOMMENDATION 4.3: Canada needs to coordinate international programs and mandates in development, diplomacy, trade and defence so they can work together effectively to represent Canada’s interests in the international arena.

D. Collaboration In-Action?

1. Canada needs to work collaboratively with other donor countries to coordinate investment in development programs and initiatives

Global inter-connectedness and an increasing need to work collaboratively with other donor countries on international development efforts arise as a key issue. The challenges are too big and the threats too menacing to tolerate scattershot approaches over the long term.

Charles Bassett, current executive director of the Inter-American Development Bank based in Washington, DC and former senior vice-president of CIDA, says he has seen a pattern over more than thirty years in the development sector:

The history of international development is littered with stories about the small amount of money that was required and not available to stave off an enormous humanitarian crisis for which the money to clean up always somehow appeared. 20

This pattern was understandable – even expected - in the early days of development assistance as players were learning their way. Global problems now require greater sophistication and increased collaboration as well as diplomatic skill and flexibility. With that sophistication, however, has been some loss of the innovative solutions that might have been available to early practitioners. Cooperation with the political leadership in developing countries and matching dollars to development agendas in the South instead of the reverse is more and more the norm.
Cooperation with country donors of similar size such as Norway, Britain and the Netherlands will offer advantages to Canada by partnering strategically in the effective delivery of aid. A concurrent need to work more collaboratively within the infrastructure of our own borders to effectively address international issues is also becoming obvious. Canadian aid workers and soldiers regularly collaborate officially and unofficially overseas. More positive results can be achieved by combining the strengths of different organizations in aid of development objectives in the field.

For example, soldiers do not have the expertise to manage development projects and aid workers do not always have ready access to the supply chain. There is potential for the two sectors to help each other if the will and mandate to combine resources is there. Numerous Canadian government departments have programs with an international element but there is relatively little coordination or cooperation among them.

In recent years, CIDA has increased its knowledge-sharing capacity with a knowledge management strategy designed to share development lessons learned in the field and elsewhere. A similar initiative to share information across government departments involved in international programs could gather and disseminate important information that could serve as a baseline for research and future policy development exercises.

With the growing list of international challenges Canada faces in common with other nations both at home and abroad, there is less tolerance for inefficiency in the bureaucracy. Departmental “silos” where knowledge is shared hierarchically within divisions and departments but not horizontally across divisions or departments are inefficient. The word “intermestic” captures the new response required for social and economic issues that affect Canada both domestically and overseas.
A cultural shift of such a magnitude requires comprehensive change in traditional management practices and is a process that could take years. Once the direction is set, however, technology can assist. Given the potential to make Canada’s efforts abroad more effective, it makes this proposal for creating a knowledge strategy worth pursuing.

**RECOMMENDATION 4.4:** Create a mechanism to increase efficiencies and counter redundancies in international cooperation efforts both within Canada and with international partners. New technologies make this feasible and existing models, such as CIDA’s *Partner’s Forum* extranet, indicate the level of interest in using such tools.

E. Exporting Security and Justice: Contributing Canada’s Expertise to Nation-Building

1. Canada has legal expertise and experience in human rights, peacekeeping and governance that can be exported as a model for nation-building throughout the world

In CIDA’s *Sustainable Development Strategy: 2004-2006*, 21 CIDA indicates it will emphasize and measure the results of its aid investments in key areas through four development indicators over the next three years. They are:

1. Economic well-being

2. Social development

3. Conflict prevention, post-conflict reconciliation, peace-building and security

4. Integration of gender equality and environmental dimensions

Conflict prevention, in particular, has achieved a reputation of positive regard for Canada’s peacekeeping forces in post-conflict situations such as Bosnia. However, the downside of “so-called humanitarian interventions” has oftentimes been controversial. Certainly the most
glaring recent example has been the US invasion of Iraq that was carried out for reasons many have determined were not solely in the best interests of the Iraqi people.

As mentioned earlier, examples exist where humanitarian crises receive a disproportionate amount of resources and attention, such as Afghanistan, while others, such as Darfur, careen out of control.

Political choices - as opposed to moral choices - are increasingly seen as key drivers in humanitarian response.

Humanitarian action is widely viewed as an optional, voluntary undertaking rather than a rights-based activity integral to a civilized, law-abiding, and peaceful world. There is at present no humanitarian regime - that is, no set of standards, enforcement sanctions, and accountabilities - as there is in the refugee, trade or nuclear non-proliferation spheres. The prevailing animus in the humanitarian sector is to try hard and do the best possible job with limited available resources, not to acquit oneself of certain specific obligations. 22

The Responsibility to Protect doctrine emerged as the response of an international commission charged - in the wake of atrocities like Rwanda - to answer the question

…if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to gross and systematic violations of human rights that offend every precept of our common humanity? 23

The Responsibility to Protect doctrine – the report of the International Commission on Intervention and State Sovereignty - concluded that state sovereignty implies not only rights but responsibilities, such as the responsibility to protect its citizenry. Recourse to principles and punishment have been most successful in establishing the infrastructure countries need to enforce and uphold these objectives.
Human rights and humanitarianism enjoy a status in international law that political and religious ideologies have never been able to claim. Humanitarian law, human rights law and refugee law have evolved steadily in the scope and precision over the last century and are now endorsed by most of the world’s nations; that are not fictions of the overwrought do-gooder’s imagination. In fact, as one authority puts it, “the effectiveness and efficiency of humanitarian and human rights activities [are] enhanced by how much those principles are upheld.”

The Canadian Bar Association’s International Development Committee has been active in international programs exporting the Canadian “rule of law” and “peace, order and good government” framework to post-conflict countries that need essential infrastructure upon which to build external and internal development programs.

Canada’s success in achieving its foreign policy interests depends highly on respect for international rule of law, as well as international norms of justice, equality and human rights, both within and between states.

The successful exportation of Canada’s governance models through programming such as the World University Service to post-conflict countries in the Balkan states is a strong reflection of Canada’s reputation internationally and underscore its potential for reclaiming its formerly leading international leadership role.
RECOMMENDATION 4.5: Support an increasing role for Canada in transferring the “rule of law” model to countries seeking peace, order and good Government and increase Canada’s contribution to global peace initiatives, such as those recommended in *The Responsibility to Protect* doctrine.\(^{28}\)

F. Canadians Make A Difference in the World

1. Create a sustainable communications campaign to educate and not only raise awareness about Canada’s place in the world for its citizens, but that helps Canadians make a direct relationship between international and their own domestic issues

While motives for humanitarian assistance may be changing in the aid community, Canadians have long believed that extending financial and other tangible support to our struggling global neighbours - even more than enhancing our collective quality of life by promoting international security and stability - is fundamentally the “right thing” to do. This is, in fact, the primary motivation behind Canadians support for international aid. According to the most recent Environics poll on Canadian attitudes toward development assistance

Values-based motivations underlie support for the aid program. For six in ten Canadians, helping people in need, the moral obligation to help and the duty of a rich country are seen as the main reasons for Canada to have an aid program. \(^{29}\)

Most Canadians say they lack details about our development assistance contribution and Canada’s impact overseas. Canadians report that they have little information about international development activities generally; the survey showed they had even less knowledge about the Millennium Development Goals, in particular. So the issue of public engagement looms large as a requirement for strengthening Canada’s international relations.

Youth – in particular – must be engaged to generate support and understanding for Canada’s foreign policy direction and Canadian citizens generally must be brought to a higher level of understanding about Canada’s role and relationship to global issues.
Through their choices as consumers, activists, donors, volunteers or through the work they choose, people can make important contributions to ending poverty and improving the environment.  

CIDA has undertaken a communications program called *Canadians Making A Difference in the World* to capture the stories and successes of Canadian development impact abroad. The more individual Canadians relate to people, like themselves, who experience first-hand the challenges and issues facing people in developing countries, the better global citizens they can become.

In an address to the 2003 World University Service of Canada Annual General Assembly, Beverley McLachlin, Chief Justice of the Supreme Court of Canada, recalled the impact an overseas experience during the 1964 World University Service of Canada International Seminar to Algeria had on her world-view and future career.

> The realization that we were in a world that cared nothing for niceties of search warrants and legal process, when police walked in on our lunch a day or so later, demanded that we produce our cameras and emptied them while we stood helplessly by.  

Chief Justice McLachlin stressed individuals can make an impact by striving to better the world around them. Since Chief Justice McLachlin’s initial international foray some forty years ago, the pressures on and attitudes of young people have changed significantly. This is not a generation forged by war and want but one that is competitive, ambitious and raised in a multi-cultural society that sees globalization as a fact of life.

Young Canadians report they are still motivated to travel internationally and experience new cultures, but they want their experience tied to meaningful activity that enriches them personally or enhances their career prospects. They need to be drawn into the issues and
meaningful discussion in the international arena and, ideally, can use that awareness to shape Canada’s future international agenda.

Through technology, the media and travel, the world is shrinking and awareness about Canada’s requirement to be a strong international player is growing. Canadians need to hear more about the international linkages Canada maintains and the role aid and development contribute to maintaining global stability. Canadians are sophisticated; television brings them images that demonstrate the impact of instability on people’s lives.

Canada should encourage international awareness in all Canadians by seeding their passion and curiosity about the world through programs and activities at home and abroad that will enrich their international experience and vocabulary. Programs such as the proposed Canada Corps

will harness the energy and experience of Canadian experts, volunteers and young professionals to deliver international assistance in the areas of governance and institution building.  

Such a program would create a cadre of professionals and others who are eager for the challenge of taking on and shaping the required changes in these challenging global times.

RECOMMENDATION 4.6: Canada needs to better inform its citizens about the role of its international development assistance, the Millennium Development Goals and Canada’s role vis-à-vis changing international realities. It needs to develop a campaign targeted at all levels to convey clear messages about Canada’s changing role and obligations in the international arena.

Part III. Conclusion

If recent international events have underscored one fundamental reality, it is our interconnectedness. What happens elsewhere in the world affects us all, psychologically, emotionally and materially. And in recent years, international events have painted a troubling
picture of where the world is heading. There have not been a great number of good news stories lately.

Certainly there is a strong belief in some quarters that the example Canada sets in “peace, order and good government” and the “rule of law” are among the most important skills Canadians can export internationally. Establishing a viable governance framework is an important first step toward establishing a democratic frame of reference in a country.

The Standing Committee on Foreign Affairs and International Trade must take into consideration the competing interests for the international aid envelope, and make the hard choices. It should encourage and support collaboration among its own domestic players but with careful attention and strategies to address the potential rivalries that may accompany that change. Canada has a considerable distance to go to meet even the minimum targets set for the Millennium Development Goals and live up to its commitments on the financial front. Canada has an opportunity to take a leadership role in strengthening collaboration among other donor countries of similar size to increase individual and collective effectiveness in addressing global challenges and make serious advances in eliminating world poverty. These are daunting challenges and daunting times.

The Standing Committee on Foreign Affairs and International Trade is strongly encouraged to bring focused attention and direction to an analysis of the far-ranging issues involved in the international cooperation arena. It is not too dramatic a statement to suggest that bungling this responsibility has life and death consequences for millions around the world. Given full consideration and properly managed, Canada has the potential to make a real and lasting contribution to international “peace, order and good government” in meaningful and sustainable ways.
The Millennium Development Goals (MDGs) set quantitative targets for poverty reduction and improvements in health, education, gender equality, the environmental and other aspects of human welfare. At existing rates of progress many countries will fall short of these goals. However, if developing countries take steps to improve their policies and increased financial resources are made available, significant additional progress towards the goals is possible. online: http://www.developmentgoals.org/Achieving_the_Goals.htm

Dr. Jeffrey Sachs spoke at the opening plenary at CIDA’s International Cooperation Days in Ottawa. November 1, 2004

While Canada Slept: How We Lost Our Place in the World. (McClelland & Stewart: Toronto, 2003) 1

In his 2000 Millennium Report to the UN General Assembly, Secretary-General Kofi Annan challenged the international community: “… if humanitarian intervention is, indeed, an unacceptable assault on the sovereignty, how should we respond to gross and systematic violations of human rights that offend every precept of our common humanity?”

Speech from the Throne, October 5, 2004  online: http://pm.gc.ca/eng/sft-ddt.asp

22 supra, Smillie, Introduction


24 supra, Smillie, Introduction

25 Canadian Bar Association, International Development Committee online: http://www.cba.org/CBA/IDP/Committee/


27 WUSC, The Balkans Civilian Deployment Project online: http://www.wusc.ca/expertise/projects/balkans/


29 Environics Research Group, Canadian Attitudes Towards Development Assistance, January 2004


31 World University Service of Canada (WUSC) online: www.wusc.ca

32 Young Adults: Priorities and Interests in International Trade online: http://www.dfait-maeci.gc.ca/youth/surveys-en.asp#priorit

33 “Prime Minister announces co-chairs of Canada Corps and major contribution towards initiative to combat aids.” online: http://pm.gc.ca/eng/news.asp?category=1&id=202
CHAPTER 5: MANDATORY CORPORATE SOCIAL RESPONSIBILITY:
FILLING THE GAP OF VOLUNTARY MEASURES

Part I. Current Canadian Policy

In the 1995 foreign policy document, *Canada in the World*, the federal government highlighted three key objectives for its international activities: 1) the promotion of prosperity and employment; 2) the protection of Canadians’ security, within a stable global framework; and 3) the projection of Canadian values and culture. In particular, the promotion of Canadian values and culture abroad was seen as key to the achievement of prosperity within Canada and the protection of global security. The document also stated “[t]he Government regards respect for human rights not only as a fundamental value, but also as a crucial element in the development of stable, democratic and prosperous societies at peace with each other.”

In this policy document, the government committed itself to making “effective use of all of the influence that our economic, trading and development assistance relationships give us to promote respect for human rights.” Canada also stated its intention to remain in the forefront of expanding the rule of law internationally.

In the years following the 1995 foreign policy review, the Department of Foreign Affairs and International Trade (DFAIT) developed its Human Security Program. One of the cornerstones of this program is Governance and Accountability. Included under this umbrella is Corporate Social Responsibility (CSR).

The government’s CSR policy has focused to date on the adoption of a voluntary approach for businesses operating overseas. DFAIT has worked on the development of multilateral and bilateral non-binding standards and norms in core CSR areas such as labour rights of employees, protecting the environment, eliminating corruption and bribery, and human
rights. While there has been some success with this approach, such as the Kimberley Process Certification Scheme (KPCS)\(^4\) for the certification and regulation of conflict diamonds, there has also been failure as in the cases of Talisman Energy Inc. in the Sudan and Canadian mining interests in Burma. Voluntary initiatives are insufficient to achieve meaningful and consistent respect for human rights. For this reason, the Government of Canada must move away from a voluntary to a codified and mandatory approach to corporate social responsibility.

**Part II. The Voluntary Approach to Corporate Social Responsibility is Insufficient**

**A. Voluntary codes are inconsistent**

There are several reasons why the voluntary approach alone is insufficient. The content of these voluntary codes of conduct varies greatly between corporations and among industries. A comparison of voluntary codes and practices of four internationally active oil companies demonstrated lack of clear obligations on the part of the companies to be bound by international human rights standards.\(^5\) In fact, even though multinational corporations (MNCs) may sign onto or endorse voluntary international instruments, this practice does not necessarily improve accountability. Many of the international instruments do not contain mandatory language or impose direct obligations on MNCs to respect international human rights standards.\(^6\) As well, when external standards are involved, it becomes difficult for participating companies to understand their obligations.\(^7\) This lack of consistency means that corporations operating overseas are not bound by a core set of standards which can be objectively determined and monitored.
B. Voluntary Instruments Lack Implementation and Accountability

A further weakness of voluntary instruments is that many do not contain implementation or accountability standards, and often do not provide for independent monitoring. They “do not specify any compliance mechanisms at all, whether in terms of benchmarks, internal monitoring, internal or external reporting, or internal or third party verifying.”8 Without clear benchmarks or monitoring standards it is hard to know when a company is in compliance with, or in violation of, its own policies. “There is no reliable way to distinguish firms that pay lip service to CSR from those genuinely seeking to promote responsible practices.”9 Many MNCs who do prepare accountability reports hire large private consulting or auditing firms to verify their accuracy. These firms lack the expertise or the requisite public interest to be effective monitors. As well, these private firms are often not arm’s length enough to be able to objectively monitor and critique the actions of the corporation.

C. Voluntary Codes Rely on Good Faith and Lack Compensatory Measures

Voluntary codes are also problematic because they rely on the good faith of the companies who have adopted them. A company might design and approve a code of conduct for a variety of reasons, either because of a genuine concern for human rights or perhaps as the result of a ‘naming and shaming’ campaign by non-governmental organizations. Even where an MNC has a genuine interest and commitment, voluntary codes may not be respected when they clash with “more powerful commercial interests.”10 Furthermore, reliance on good faith is problematic because compensation for victims of corporate wrongdoing depends on the good intentions of the company involved. “A regime that emphasises legal accountability of companies for human rights abuses will enable victims to claim redress, including compensation, restitution and rehabilitation for damage caused.”11
Despite the above weaknesses, voluntary codes should not be discouraged. They can lead to binding regulations on core rights and responsibilities through consensus-building. However, in order to be effective in promoting human rights, the agreed upon provisions must create “specific, well-defined, mandatory human rights obligations applicable to corporate activity and must address reporting of compliance and independent verification and monitoring of corporate conduct.”

Part III. Uniform Standards Benefit Canadian Business

Setting a uniform standard with compulsory sanctions has several benefits for both individuals and corporations. Legal regulation establishes a level playing field for all private actors and helps companies mitigate economic losses which may result from a competitor whose cost of business is lower due to irresponsible labour or environmental practices. As well, when international bodies endorse certain practices, “they will provide legitimacy to what are now hotly contested (because not fully transparent, inclusive or enforceable) voluntary firm-based measures,” and when standards of accountability are clearly defined and transparent, there is “a better basis for consistent, transparent and fair judgment.”

RECOMMENDATION 5.1: Given the weaknesses of voluntary codes of conduct, the Government of Canada must move away from a voluntary approach to corporate social responsibility and instead adopt a mandatory rules-based model.

Part IV. Canada has an Obligation under International Law to Protect People from the Actions of Private Parties

International law can play a role in holding companies accountable under human rights law both directly and indirectly. International law holds companies indirectly accountable by imposing duties on states to ensure that domestic laws effectively enforce international standards.
in relation to companies.\textsuperscript{14} Under international law a state has three types of obligations related to human rights standards. States must: 1) respect rights, which means ensuring that state officials do not do anything to violate people’s rights; 2) fulfill rights, which means taking positive action; and 3) protect rights.\textsuperscript{15} Under this obligation to protect rights, Canada has a duty to protect people from the actions of both states and private parties. Many of the human rights treaties to which Canada is a party require Canada to regulate the behaviour of non-state actors to stop or prevent human rights abuses. For example, the UN \textit{Convention on Elimination of Discrimination Against Women}\textsuperscript{16} (CEDAW) requires in Article 2(e) that states “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.” This places an obligation on Canada under international law to take steps to ensure that rights are respected and people are protected from actions by enterprises. To fail to live up to this obligation would mean that Canada is in violation of its obligations under international law.

\textbf{A. Canada’s Direct Liability through the Due Diligence Test}

The responsibility of states for human rights abuses committed in the private sphere has been recognized by both the Inter-American Court of Human Rights (IACHR) and the European Court of Human Rights.\textsuperscript{17} While the law in this area is continuing to develop, some criteria are beginning to emerge which suggest when a state is liable under human rights law for the actions of non-state actors and what steps states must take to ensure these actors respect human rights. In the \textit{Velásquez Rodríguez} case,\textsuperscript{18} the IACHR found the Honduran government liable in the forcible disappearance of the plaintiff’s husband, even though it could not be sure whether the attack was attributable to the army or private individuals. In its decision the court articulated the due diligence test as
[a]n illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violations or to respond to it as required by the Convention.\textsuperscript{19}

This due diligence test was subsequently endorsed by the UN Committee on the Elimination of Discrimination Against Women.\textsuperscript{20} The evolution of the due diligence test means that the Government of Canada not only has obligations under international law to protect and promote human rights, but that a failure to take necessary steps to prevent human rights abuses can result in legal liability. In the \textit{Velásquez Rodríguez} case the Honduran government was ordered to pay compensation to the victim’s family.\textsuperscript{21}

For this reason, the Government of Canada has an interest in exercising the due diligence required to ensure that Canadian companies operating abroad are not involved or complicit in human rights abuses. There is a moral and a legal imperative on Canada to act in accordance with its human rights obligations under multilateral treaties signed at the UN or the Organization of American States (OAS). These obligations on Canada and the due diligence test provide the opportunity to extend international human rights law to companies.

\textbf{B. Canadian Credibility on Human Rights Issues is at Stake}

If one of the objectives of Canada’s foreign policy is to promote Canadian values and culture abroad, then surely respect for human rights is central. If Canada intends to have credibility on the international stage it must not ignore human rights abuses committed by Canadian companies operating extraterritorially. As well, one of the priorities of the government’s foreign policy has been the \textit{Responsibility to Protect} doctrine. Under this doctrine, Canada has affirmed its commitment to “address both the root causes and direct causes of internal
conflict and other man-made crises putting populations at risk.”

The goal of human security includes respect for, and promotion of human rights. Given that increasingly people’s human rights are violated not just by states, but by non-state actors, such as corporations, Canada has a responsibility to protect human rights regardless of who is committing the violation. Corporations should not be permitted to engage in or be complicit with human rights violations simply because they are not traditional subjects of international law.

**RECOMMENDATION 5.2**: Canada should take steps to ensure we are living up to our obligations under international human rights law. This includes holding Canadian corporations responsible for human rights abuses overseas through mechanisms that include consequences for non-compliance.

Part V. Canada Must Move Away from the Voluntary Approach

A. Domestic Initiatives

The issue of corporate social responsibility and human rights must be addressed through both domestic and international legal initiatives. Because states are the primary subjects of international law, they have primary responsibility for the protection of human rights in the international context. The home states of corporations should not be allowed to relinquish their responsibility simply because the violations occur outside their territorial jurisdiction.

1. Other States Regulate the Overseas Activities of Corporations through Domestic Legislation

Canada should use its domestic legal framework to regulate the conduct of Canadian corporations abroad. There is no rule of international law preventing states from regulating such conduct. Prescriptive jurisdiction is the power of a state to pass laws. International law has defined a number of circumstances in which states may regulate extraterritorially. Under the nationality principle, a state may pass a law regulating the overseas conduct of its own nationals.
For example, under the *Corruption of Foreign Public Officials Act* it is already illegal for Canadians to bribe foreign public officials. In the case of corporations, nationality is determined based on where the company is incorporated or where its head office is located. This principle means that Canada has prescriptive jurisdiction to regulate the conduct of MNC abroad. There are several existing precedents for this type of legislation that Canada may look to for guidance. For example, Denmark, Holland, and France all have regulations which require mandatory disclosure of social and environmental issues relating to extraterritorial business activity. France’s *Nouvelles Regulations Economique* requires all French corporations listed on the ‘*premiere marche*’ (stock exchange) to annually report on the social and environmental impact of their activities. The Dutch parliament has endorsed a measure linking compliance with the Organization for Economic Cooperation and Development (OECD) *Guidelines for Multinational Enterprises* to the availability of subsidies the government provides for international trade promotion, investment and export credit insurance.

**RECOMMENDATION 5.3:** The Government of Canada should draft and bring into force regulations for Canadian corporations operating overseas outlining minimum corporate responsibilities in the area of human rights, labour standards and the environment.

**2. Three Necessary Elements to any Domestic Initiative**

As outlined in the report *Deconstructing Engagement: Corporate Self Regulation in Conflict Zones – Implications for Human Rights and Canadian Public Policy,* any domestic policy response to the issue of corporate social responsibility requires three elements: 1) normative prescriptions; 2) a monitoring mechanism; and 3) consequences for non-compliance. Any government legislation must outline mandatory obligations for Canadian MNCs abroad to respect human rights, environmental and labour standards. These regulations should clearly define what obligations are to be met as well as what constitutes corporate complicity in human
rights abuses. Existing Canadian legislation may provide a useful starting point for the definition of the latter concept. For example, the Criminal Code provides a useful definition of aiding and abetting which could be adapted to the corporate context.

a) Normative Prescriptions Should Be Drawn from Existing Legally Recognized Standards in International Law

The standards and principles laid out in this domestic law should be derived from a variety of existing sources including multilateral organizations, civil society, and existing voluntary codes devised by corporations. The rights laid out in the UN Declaration on Human Rights are a good starting point given their universal acceptance and the erga omnes status which many of those rights have received. When a right has achieved erga omnes status, it becomes an obligation of the state to the entire international community. “If all states have a legal interest in protecting erga omnes obligations, they also have a legal interest in preventing and punishing violations of these norms. Given the plethora of voluntary corporate codes of conduct which already exist, there should be some consensus around core values and obligations. This means that Canada would not be creating new obligations but simply codifying existing prescriptive norms.

b) A Canadian Law Must Include Monitoring Mechanisms

Unlike existing voluntary codes, this new legislation must include provisions for monitoring mechanisms. Monitoring would allow corporations to track their progress in achieving social responsibility targets and would make the process more transparent to the public. There are several options the government could pursue to ensure that effective monitoring takes place. One option would be to require that MNCs prepare yearly progress and monitoring reports outlining their efforts in the area of corporate social responsibility. These reports could be included in their annual reporting to shareholders and placed on the corporation’s website. The
legislation should also require that these reports be verified using independent auditors, similar to the auditing requirements in existing securities legislation. These requirements should be included in the *Canada Business Corporations Act* (CBCA)\textsuperscript{30} for federally incorporated businesses. The provinces should be encouraged to introduce similar mechanisms in their corporate and securities laws.

Another monitoring mechanism which has been suggested is the establishment of a Corporate Social Responsibility Working Group/Agency\textsuperscript{31} to deal with Canadian MNCs operating in conflict zones. The agency would be at arm’s length from the federal government and funded jointly by MNCs and the government. Representatives on the working group would be from industry, government and national non-governmental organizations, and would be engaged in pre-investment risk assessment\textsuperscript{32} and continuous monitoring of the human rights and humanitarian impacts of a corporation's presence in given countries and in particular situations.\textsuperscript{33}

c) Consequences for Non-Compliance

i) Eliminate Government Benefits for Companies Who Fail to Comply

The main difference between the existing codes of conduct and new domestic legislation would be the inclusion of consequences for non-compliance. As stated earlier, even if an MNC adopts a corporate code of conduct pledging to respect human rights and the environment, when these policies clash with profit making concerns they are often ignored. The only way to ensure that corporations live up to their responsibilities is to impose consequences for non-compliance. These consequences could take the form of incentive-based or coercive legal mechanisms. One way for the government to encourage compliance is through the use of government benefits extended to companies, such as making conditional certain government benefits on adherence to a minimum standard of human rights conduct. For example, the government could introduce
legislation conditioning government procurement and financial and investment support contributions by government agencies, including Export Development Corporation (EDC) on adherence by firms to human rights and human security country guidelines by their overseas operations.\textsuperscript{34} Although EDC policy requires that a risk assessment be undertaken before approval of a transaction, this assessment only covers country and transaction risks, meaning that “transactions in countries with poor human rights situations (broadly defined) are implicitly discriminated against.”\textsuperscript{35} This approach, while attempting to be proactive, does not deal with situations of subsequent deterioration of the human rights situation in a given country, or at worst, corporate complicity or contribution to such abuses. Political risk assessments do not assess the impact of projects on communities, but rather insure project financiers against financial risk. Current EDC policies help to shield companies against the risks that human rights violations might pose to their investments, but do not assess the potential human rights effects of these investments.\textsuperscript{36} There are several models the Government of Canada could adopt. For example, the Norwegian Agency for Development (NORAD) has developed a human rights screening mechanism for development projects, and the UN High Commission for Human Rights is developing a human rights impact assessment for trade policies.\textsuperscript{37} As well, the British Export Credit Guarantee Department (ECGD), asks companies to respect International Labour Organization core labour standards, has also been prohibited by Parliament from supporting projects that involve forced or child labour.\textsuperscript{38}

**RECOMMENDATION 5.4:** The federal government should change its policies to require that the awarding of government contracts and benefits be contingent on corporate compliance with the proposed legislation for Canadian corporate activity overseas.

\begin{itemize}
  \item \textbf{ii) Amend the Income Tax Act to Remove Foreign Tax Deductions}
\end{itemize}
Another available legislative mechanism is an amendment to the *Income Tax Act*\(^3\) to deny corporations the benefit of crediting taxes paid to foreign jurisdictions in which governments are engaged in human rights abuses.\(^4\) Companies should not receive a tax credit for monies paid to a repressive regime, especially where Canada has no tax treaty obligations to that state. Here, the government of Canada is providing an indirect tax subsidy to an abusive government.

The advantage of using tax law to achieve corporate compliance is two-fold: income tax regulations are changed and revised yearly, allowing for quick response to emerging situations, and second, eliminating tax subsidies to businesses affects their bottom line. It sends a clear message that the Canadian government will not subsidize or endorse operations which have an adverse affect on the human rights of citizens in foreign jurisdictions.

**RECOMMENATION 5.5:** The *Income Tax Act* should be amended to prevent companies from crediting foreign taxes paid to foreign jurisdictions in which governments are engaged in human rights abuses.

iii) **Allow the Special Economic Measures Act to Impose Sanctions on Canadian Corporations Complicit in Human Rights Violations**

It has been proposed previously that the government consider amendments to the *Special Economic Measure Act* (SEMA)\(^5\) as a means of ensuring compliance with corporate social responsibility norms.\(^6\) As written, section 4 of the Act says that Cabinet may impose a broad range of sanctions in one of two circumstances. The first is in response to a recommendation or resolution of an international organization of states, which calls for member states to take economic measures against a foreign state. The second is where “Cabinet is of the opinion that a grave breach of international peace and security has occurred that has resulted, or is likely to result, in a serious international crisis.” The current debate focuses on when this second power is
triggered. The Department of Foreign Affairs “takes the view that ‘grave breaches of international peace and security’ was intended by Parliament to accord with the ill-defined international construction of this language.”

Given that the international community has difficulties coming to consensus regarding what constitutes a “grave breach of international peace and security,” it is most expeditious for the government to amend the Act. The amendment would allow Cabinet to take action when “grave breaches of human rights and human security have occurred in the foreign state and continue, or are likely to continue.” In order to resolve potential ambiguity regarding what actions amount to ‘grave breaches of human rights and human security’ reference should be made to existing legislation. It has been proposed that the amendment include the following statement: “For greater certainty, ‘grave breaches of human rights and human security’ mean ‘crimes against humanity’, ‘genocide’ or ‘war crimes’, as defined by the Crimes Against Humanity Act.” This amendment to SEMA is advantageous because it allows Cabinet to respond quickly and effectively to deteriorating human rights situations without having to wait on a resolution by an international body or consensus on what amounts to a grave breach of ‘international peace and security’.

**RECOMMENDATION 5.6:** The government should amend the *Special Economic Measures Act* to allow Cabinet to act when “grave breaches of human rights and human security have occurred in the foreign state and continue, or are likely to continue.”

**Part VI. International Initiatives**

The Government of Canada clearly has a number of domestic legal options available to promote Canadian values and human rights abroad, particularly in relation to MNCs. Given the complex structure of MNCs and the increasing power they represent, there is an additional need
for Canada to engage the international community to ensure widespread respect for human rights. This is especially relevant when MNCs are operating in countries which lack adequate legislation or administrative capacity to deal effectively with human rights abuses and/or corporate complicity. As well, host governments may be involved in the conflict and unable to separate the needs of the population from their own interests. The adoption of an international approach will also eliminate the current situation in which there is a double-standard in the behaviour of MNCs. For example, the corporation may have one set of human rights and environmental standards in their home state, while not holding themselves to the same standard in a developing nation.

A. Corporations as Subjects of International Law

While traditionally states have been subject to international law, it is appropriate to apply international legal obligations to companies. “After all, multinational corporations have benefited from the development of international law, and have lobbied to ensure that it protects their rights and interests.” For example, companies may seek compensation in international commercial disputes by bringing claims before panels such as those provided for in the North American Free Trade Agreement (NAFTA). If corporations are to receive rights through international law they should also have responsibilities that go along with those rights. “No theoretical obstacle...prevents commercial enterprises from ‘participating’ in international law...nothing prevents states from creating further obligations.”

B. International Human Rights Law as the Framework

The international human rights framework sets out a clear and common benchmark for corporate behaviour. As discussed previously, voluntary codes of conduct tend to be inconsistent with regard to what human rights should be guaranteed. The development of an international
legal framework is advantageous to MNCs for several reasons. As the International Council on Human Rights Policy has pointed out “[s]ome business leaders acknowledge that they would prefer obligation and clarity to voluntarism and confusion. When the scope of duties is doubtful, companies cannot easily defend themselves or prevent criticism.” An international standard of corporate behaviour benefits those companies that do more than the minimum required because it allows them to promote themselves as socially responsible. This is an increasing advantage in an age when consumers are becoming increasingly concerned about issues such as sweat-free, fair-trade and ethical investments.

C. Corporations Can Be Directly Accountable Under International Law

1. Direct Obligations on Corporations at International Law

Currently several multilateral initiatives impose voluntary codes of conduct on MNCs. Three of these will be discussed here: the OECD Guidelines for Multinational Enterprise, and UN Global Compact, and the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

a) OECD Guidelines for Multinational Enterprises

The OECD Guidelines were first adopted in 1976 and set out a comprehensive list of guidelines for good corporate behaviour. In June 2000, revised Guidelines were adopted which set standards of practice for multinationals on such issues as workers’ rights, environmental protection, bribery and disclosure of information. The most significant change was a general statement that multinationals should respect human rights. This paragraph states that companies should “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.” Though the Guidelines expressly state that they are voluntary, they are accompanied by an implementation procedure that is
binding on OECD member states, though not on multinational enterprises.\textsuperscript{51} This procedure is
designed to include reporting through a national contact point (NCP) with the intention that
governments should respond to concerns raised about specific companies. This NCP mechanism
has been criticized as quite weak and ineffective.\textsuperscript{52} For example, although a 2002 UN panel
named over 50 OECD companies as being in breach of the Guidelines because of their
involvement in the Congo, no investigation was ever mounted to assess the charges and no action
taken against an OECD national or company for their actions in the Congo.\textsuperscript{53} Given the weak
investigatory powers of the NCPs and the lack of corporate compliance monitoring, the
Guidelines are insufficient.

\textbf{b) The UN Global Compact}

The UN Global Compact was established by the United Nations in 1999 and brings
together NGOs, the private sector, and UN agencies. The Compact is based on ten core
principles in the areas of labour, human rights, the environment and anti-corruption. Companies
which sign onto the Compact are required to state their commitment to the Global Compact and
its principles, and are expected to include in its annual report a description of the ways it is
expressing this support. The principles contained in the Compact are drawn from existing
documents such as the Universal Declaration of Human Rights and the United Nations
Convention Against Corruption. The main weakness of the Global Compact is that it is a
voluntary initiative and does not have an enforcement mechanism to oversee the behaviour or
actions of companies. There are no conditions for membership other than stating a commitment
to the principles of the Compact and being a business with at least ten direct employees. There is
also no system for dealing with complaints made against specific companies. The Compact is
“designed to stimulate change and to promote good corporate citizenship and encourage
innovative solutions and partnerships.” Accordingly, the Compact lacks any independent monitoring or compliance mechanisms. While the Compact may be effective in drawing attention to issues of corporate responsibility, its ultimate impact will be minimal since it brings together already like-minded corporations as opposed to those who have little or no regard for corporate social responsibility.

c) The United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights

i) The First Non-Voluntary Approach at the International Level

In addition to the Global Compact initiative, in August 2003 the United Nations Commission on Human Rights approved the “Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights.” The working group is now set to receive information from governments, NGOs and businesses before the Norms come up for consideration and further action in March 2005. The Norms are a milestone because they are the first non-voluntary initiative to be accepted at the international level. The Norms are essentially a restatement of international legal principles applicable to businesses with regard to human rights, international labour law, environmental law and anti-corruption law. The preamble states that “transnational corporations….., their officers and persons working for them are also obligated to respect generally recognized responsibilities and norms contained in United Nations treaties and other international instruments.”

ii) States Retain Primary Responsibility for Protecting Human Rights

The first provision of the norms recognizes that states have primary responsibility to promote and respect human rights, including ensuring that multinational corporations respect
human rights. The provision goes on to say that “[w]ithin their respective spheres of activity and influence, transnational corporations…have the obligation to promote, secure the fulfillment of, respect…and protect human rights recognized in international as well as national law.”57 The commentary to the Norms states that the obligations on transnational corporations apply equally to activities occurring in the home country, as well as any other country in which the business operates. This makes clear that international law is able to regulate the conduct of corporations at home and abroad. The commentary goes on to say that “[t]he Norms may not be used by States as an excuse for failing to take action to protect human rights, for example, through the enforcement of existing laws.”58

iii) Norms Imposed on Corporations

The Norms begin by setting out a series of rights and how they can be implemented by the businesses themselves. They then move on to how multilateral bodies such as the UN, states, and others can play a role in implementation. The Norms specifically state in section 16 that businesses shall be subject to periodic monitoring by the United Nations or other national or international mechanisms and that the monitoring shall be “transparent and independent…and as a result of complaints of violations of these Norms”. The provisions also call on MNCs to conduct periodic evaluations of the impact of their activities on human rights. The requirement for independent and transparent monitoring and evaluation is an improvement from existing voluntary codes which suffer from lack of effective monitoring. By setting out procedures for complaint investigation and monitoring, the Norms provide businesses with clear standards of conduct. This clarity can only serve to improve compliance, since as previously discussed, voluntary codes suffer from inconsistency and lack of clarity.

iv) The Role of States in Implementing the Norms
The Norms also place obligations on states. Section 17 states that “States should establish and reinforce the necessary legal and administrative framework for ensuring that the Norms and other relevant national and international laws are implemented by transnational corporations and other business enterprises.” In order to meet this obligation, Canada needs to set up proper legislative and administrative mechanisms to ensure compliance. The types of domestic legislation previously discussed (the establishment of legislation governing the overseas activities of companies, the amendment of SEMA and the Income Tax Act), serve to fulfill this requirement. In this way Canada’s domestic legislation is influenced by, and is part of, an international scheme to ensure corporate social responsibility. Even if Canada was averse to regulating corporate behaviour for domestic political reasons, our foreign obligations will increasingly compel action by the Canadian government.

RECOMMENDATION 5.7: Canada must support the development of the UN Norms as a binding legal instrument. This includes taking steps to develop the necessary legal framework to implement the Norms.

v) The Norms Fill Gaps in Voluntary Codes through Prescriptive, Monitoring and Compliance Mechanisms

In addition to meeting the first two criteria of any regulation scheme, prescriptive norms and a monitoring mechanism, the UN Norms contain provisions for compliance. Section 18 of the Norms says that corporations are to provide “prompt, effective, and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with these Norms.” The section also encourages the application of the Norms by national courts in connection with the determination of damages and criminal sanctions. One of the main weaknesses of the Norms is that while they conceive of multiple monitoring and verification mechanisms, they still lack a definite framework to implement them.59 Before being fully
adopted, an enforcement mechanism should be defined and expanded in the Norms themselves or in the commentary which accompanies the Norms.

**Part VII. Canada Should Continue to Support the International Criminal Court in Prosecuting Individuals**

In addition to the Norms, Canada should continue its full support of the International Criminal Court. The use of international criminal law to sanction those individuals who commit crimes against humanity (including human rights violations) is an important step in achieving human security. The use of the ICC also means that when host countries fail to act, either because of apathy or lack of capacity, those individuals involved in breaches of international law are held accountable. This includes individuals who run corporations.

**RECOMMENDATION 5.8:** Canada must continue its support of the International Criminal Court to allow criminal prosecution for those responsible for crimes against humanity, including gross human rights violations.

**Part VIII. The Voluntary Approach is Insufficient, Canada Must Embrace Binding Domestic and International Initiatives**

In sum, in order to enhance the international rule of law Canada needs to move away from strictly voluntary codes of conduct, which suffer from a governance gap, and move toward standards and codes that are enforceable. Voluntary codes of conduct are not sufficient to ensure that human rights are respected by businesses; there must be some benefit or detriment to non-compliance.

Canada needs to work on the promotion of both a domestic and international legal framework to enforce compliance. This may include the adoption of new laws or amending existing Canadian legislation. The objective of these measures will be requiring Canadian companies to undertake specific measures to ensure that their operations are in keeping with
universally accepted human rights norms. Legislation could be introduced or amended to lay out a framework for compliance with socially responsible corporate practices and assign penalties for non-compliance. The development of these norms and legal framework should be engaged at a multinational level to ensure that Canadian businesses are not at a competitive disadvantage in relation to those companies who engage in unethical business practices. Canada can play a lead role in the development of an international framework by embracing the UN Norms and ensuring that our own legislation is consistent with our international obligations.

It is through the adoption of a domestic and international approach that Canada can fulfill the objective of the promotion of Canadian culture and values, by ensuring that those companies that represent Canada overseas do so in a way that is consistent with core Canadian human rights principles.

2 Ibid.
3 Ibid.
4 The KPCS imposes stringent requirements on participating countries to guard against conflict diamonds entering the legitimate trade. Participants are required to implement internal controls, and all shipments of rough diamonds must be accompanied by a Kimberley Process certificate. Today KPCS has evolved into an effective mechanism for stopping the trade in conflict diamonds, online: The Kimberley Process http://www.kimberleyprocess.com.
5 Gagnon, Georgette, Macklin, Audrey & Simons, Penelope, Deconstructing Engagement: Corporate Self-Regulation in Conflict Zones – Implications for Human Rights and Canadian Public Policy, (Social Sciences and Humanities Research Council, 2003), at 76, online: Eldis <http://www.eldis.org>
6 Ibid at 79.
8 Natural Heritage Institute et al, Beyond Good Deeds: Case Studies and a New Policy Agenda For Corporate Accountability, (California: Natural Heritage Institute, 2002) at 9, online: Natural Heritage Institute <http://www.n-h-i.org>
11 Ibid at 10.
12 Gagnon, supra note 3 at 100.
14 ICHR, supra note 10 at 45. See Article 2(1)(d) of the International Covenant on the Elimination of All Forms of Racial Discrimination 660 U.N.T.S. 195 obliges states to “prohibit and bring to an end…racial discrimination by any persons, group or organization”. See also, UN Committee on Economic, Social and Cultural Rights, General Comment 12 UN Doc: E/C 12/1999/5/CESR, para 27, where the committee said under the International Covenant on Economic, Social and Cultural Rights, the monitoring committee has said: “State Parties should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food.”
15 Ibid at 46.
17 ICHR, supra, note 10 at 50.
19 Ibid. at para 172.
20 The committee has said “Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights” General Recommendation 19, ‘Violence Against Women’, 30 January 1992, UN Doc: A/47/38 para 9.
23 Gagnon, supra note 3 at 101.
24 Ibid. at 103.
25 R.S.C., 1998, c.34.
27 Susan Ariel Aarons and James Reeves, “The European Response to Public Demands for Global Corporate Responsibility, National Policy Association (February 5, 2002) at 32, online: Eldis <www.eldis.org>
28 Gagnon, supra note 3.
29 R.S.C. 1985, c. C-46
30 R.S.C. 1985, c. C-44.
31 Gagnon, supra note 3 at 132.
32 Ibid.
33 Ibid at 134.
Gagnon, supra note 3 at 147; CLAIHR, “Backgrounder”, supra note 24 at 11 “Canadian tax law allows Canadian companies to deduct a portion of their foreign business income from their Canadian taxes, even in the absence of a formal tax treaty...even where Canada has annulled double taxation treaties on human rights grounds in the past, this unilateral tax relief has remained.”


See Canadian Lawyer’s Association for International Human Rights, “Legislative Proposal: Ensuring that the Special Economic Measures Act is a tool that may be used in responding to Canadian corporate complicity with ‘grave breaches of human rights and human security’, (2000) online: [http://www.claihr.org/publications_docs/project_documents/business/2semaprop.pdf] [CLAIHR, “SEMA”]; CLAIHR, Backgrounder supra note 24; Gagnon, supra note iii.

CLAIHR, Backgrounder supra, note 24 at 19.

See CLAIHR, Backgrounder supra note 24 at 19; CLAIHR “SEMA” supra note 27 at 4.

CLAIHR, “SEMA” supra note 27 at 11.

Ibid.

ICHRP, supra, note 10 at 12.

Ibid. at 58.

Ibid. at 19.

Guidelines para 11.2

ICHRP, supra, note 10 at 67.


Mepham, ibid.

UN Global Compact, Frequently Asked Questions, online: UN Global Compact <http://www.unglobalcompact.org>

E/CN.4/Sub.2/2003/12/Rev.2


Supra, note 42.

Commission on Human Rights, Commentary on the norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, E/CN.4/Sub.2/2003/38./Rev.1

Since the end of the Second World War, multilateral diplomacy has been the cornerstone of Canada’s foreign and trade policy. In recent years, however, multilateralist approaches to international problems have taken a back seat in international affairs. The United States’ policy of unilateralism on major international issues has undermined the effectiveness of multilateral institutions and multilateral solutions to international quandaries. At the same time, the United States experience in post-invasion Iraq and the calls for action in regions such as Darfur, demonstrate the necessity of a united international community. The time is therefore ripe for reform of Canada’s foreign policy on multilateralism. The new policy needs to reflect Canada’s goals for multilateralism, as well as the calls for transparency and accountability in multilateral institutions by developing countries and civil society.

As the only multilateral organization whose membership approaches universality, and whose agenda encompasses all areas of human activities worldwide, the United Nations (UN) remains central to Canadian foreign policy. On September 22, 2004 Prime Minister Paul Martin, addressed the UN on Canada’s vision for the institution. The Prime Minister’s recommendations for UN’ reform were based primarily on a report prepared by the International Commission on Intervention and State Sovereignty (ICISS). The report, entitled “The Responsibility to Protect” (R2P), addressed shortcomings of the UN’s rapid reaction force, the Security Council, and proposed the reforms necessary to meet the goals and objectives of both Canada and the international community, in particular on issues of human rights and humanitarian intervention. In addition to the R2P the Prime Minister made reform
recommendations on matters of human rights and dignity, weapons proliferation, and health and the environment. Recommendations in this section of the brief will centre on issues of human rights, security and social and economic development, but will inevitably affect all areas of foreign policy.

This brief will evaluate the UN’s existing structure for providing aid and military intervention from a structural and legal perspective. It will then evaluate the effectiveness of alternative multilateral institutions in carrying out Canada’s commitments.

**Part II. In Evaluating Canada’s Position on Multilateralism, Parliament Should Work on Strengthening its Ties with UN**

In response to continuous calls for UN reform, on November 4, 2003, Secretary General of the UN Kofi Annan appointed a 16 member “High Level Panel on Threats, Challenges and Change”. The mandate of the panel closely resembles that advocated by Prime Minister Paul Martin and primarily reflects recommendations regarding human security and how to improve the effectiveness of collective action. The panel’s report was released in December 2004, as this brief was being finalized. This brief will not address the reform recommendations but will instead focus on the UN’s existing structure and its effectiveness as a multilateral organization in achieving Canada’s foreign policy goals. In particular, this brief will focus on a two tier strategy to multilateralism: the first is to make the UN a more effective organization and the second is to pursue other alternatives to achieve Canada’s international goals.

**RECOMMENDATION 6.1: Canada should pursue UN reform that encourages accountability and transparency, and makes the body, its organizations and its decision making process more efficient and democratically representative.**

During the UN address, Paul Martin called for UN reform that “will make the Security Council more effective, and will permit those countries which actively support UN
peacekeeping, development and other activities, to continue to have a meaningful opportunity to serve. That goal will be the focus of the recommendations in this section of the brief. Before making recommendations, it will be necessary to analyze the UN existing structure.

A. United Nations Existing Structure is not Effective in Accommodating the Notion of Multilateralism

The UN is founded on the principle of state sovereignty. This principle was established as a cornerstone of the UN Charter and is spelled out in Article 2(1) of the Charter. The principle of state sovereignty dictates that in time of domestic crisis or human rights abuses the primary responsibility for resolution of the problem lies with the state concerned. Furthermore, Article 2(4) of the UN Charter explicitly prohibits use of force against the “territorial integrity or political independence of any state”. As such, there is no recognized international law allowing military intervention or use of force against other states, unless the rationale for use of force qualifies for exception under the Charter.

The Charter provides for two exceptions to prohibitions against use of force. The first is prescribed under Article 51 and allows states to take necessary self-defence action in case of armed attack. This brief, however, will not address the right of states to self-defence. Chapter VII of the Charter provides the second exception to the rule against the use of force. This Chapter places the responsibility for maintenance of “international peace and security” on the Security Council. Article 24(2) specifies that: “in discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the UN”. Since state sovereignty is one of the key principles of the UN, any action taken by the Security Council must result from the inability of the state or states concerned to effectively resolve the problems. Using a case of humanitarian crisis as an example, external intervention should be sought only if the
government of the state is unable or unwilling to protect its citizens. Articles 39 to 50 outline the actions available to the Security Council with respect to “threats to the peace, breaches of the peace and acts of aggression”.11 These measures range from economic and diplomatic sanctions to use of force.

Therefore, the Security Council possesses the authority to grant either aid or military intervention in response to a humanitarian crisis, where the council is certain the action is warranted. Chapter VIII acknowledges the existence and security role of regional and sub-regional organizations, but expressly states that “no enforcement shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council”.12

It has been argued that the Security Council should be the only multilateral body to authorize state intervention with state sovereignty.13 The almost universal membership of the UN gives the organization authority in matters of international affairs that no state unilaterally or with limited cooperation can achieve. As such, even proponents of state intervention in times of humanitarian crisis promote the Security Council as the original source of granting authority for such intervention. The ICISS specified that “if international consensus is ever to be reached about when, where, how and by whom military intervention should happen, …the Security Council will have to be at the heart of that consensus”.14

Membership in the Security Council therefore is an important way for countries to participate in development and enforcement of UN agenda. While permanent members may possess more power than others at the voting table, any Security Council resolution requires a consensus of 9 out of its 15 members.15 With membership comes the power to wield international change and pursue both international and domestic agendas. It is because of this that all countries outside of the permanent members strive to gain a seat on the Security Council,
and most importantly why the Council needs to be a body that is representative of the International Community.

B. Security Council at its present state is a Roadblock to UN’s effectiveness.

The Security Council structure is hardly representative of the UN almost universal membership. Outside of the five permanent members (P5), Russia, China, United States, France and the UK who represent the superpowers of the post-WWII era, the ten available seats are rotated on a two-year term basis.\(^\text{16}\)

1. Security Council member selection process is prejudicial to the large and the wealthier nations.

The non-permanent members are selected by the General Assembly on two criteria: (1) member state contributions to “the maintenance of international peace and security and to the other purposes of the organization”\(^\text{17}\), and (2) to equitable geographical distribution.\(^\text{18}\) The General Assembly strives to elect the 10 non-permanent members according to the following pattern: five from African and Asian states; one from Eastern European states, two from Latin American and Caribbean states; and two from Western European and Other states.\(^\text{19}\) As such, Canada has to compete with Western European countries, as well as Australia and New Zealand, for an opportunity to serve on the Security Council. While the structure arose out of a General Assembly resolution, and is therefore not binding, it has become permanent practice for member selection. In the last 60 years, Canada has served as a temporary member of the council a total of six times. This is indicative of Canada’s extensive contributions to UN development, human rights and social, economic and environmental programs. “Canada is the 7\(^\text{th}\) largest contributor to the UN regular budget. While its contributions lack behind those of Germany and Japan (other non permanent members) it contributes more than China and Russia combined.\(^\text{20}\) By
comparison, other competing countries in the “Western Europe and other” group have not been privy to such frequent exposure to the Security Council. While Germany and Netherlands, both large UN contributors served 4 and 5 times consecutively, Greece has only served on the Security Council twice.\(^2\)

The two existing criteria for election of non-permanent SC members have the effect of undermining representation of small and developing countries on the Security Council. First, small or developing countries do not have the resources to make substantial monetary or military contributions to the UN. As such, they generally lose out to larger states during selection by their regions for representation. Approximately 1/3 of all member UN countries have never held a seat.\(^2\)

Those countries that do have a chance of becoming members of the Security Council at times have to lobby extensively to beat out other candidates. While some regions select only one representative country per term by acclamation\(^2\), others will present two or three candidates, which then have to compete for seats. While no formal lobbying process exists in some cases ambassadors, foreign ministers and even heads of state get involved in lobbying. \(^2\) In 1998 Canada, Netherlands and Greece were competing for the 2 coveted seats. To impress the delegates, the Netherlands presented a moonlight cruise in New York, while Canada offered tickets to see Cirque de Soleil in New York.\(^2\) Greece, while denying its lobbying efforts, invited UN delegates on a trip to the Olympic sites.\(^2\) In the end however, it appears that the contributions of three countries to the UN development paid off as Canada and the Netherlands were elected to serve that term. The year before, Japan lobbying for a seat, sponsored trips for officials from the Third World nations to Japan as well as a supply of Japanese watches.\(^2\) While the success rate of said lobbying practices is unclear, it does appear that they create further
roadblocks to the Security Council for those nations who lack both the resources to effectively contribute to UN development and to compete in lobbying efforts.

**RECOMMENDATION 6.2:** Canada should support the reform of Security Council election procedures that is based on inclusive geographic representation of all UN Members and that ensures that no member serves on the Security Council unless its domestic and foreign policy reflect the principles of the UN Charter.\(^{28}\)

As demonstrated in the analysis above, the current member selection process is lacking in effective representation. If Canada is committed to promoting diversity in the UN it needs to push for reform of Security Council member selection process. The Charter requirement, under Article 23(1), that the UN member selection must first be based on Members contributions to “the maintenance of international peace and security and to the other purposes of the Organization” should be amended as it favours larger countries with deeper pockets. Instead Canada should push for an election procedure that is (1) based on geographical representation and (2) allows for effective representation for those countries that have not had an opportunity to serve a term. This could be implemented through a rotation system, subject to the condition that the state complies with the core principles of the UN Charter. Furthermore, geographic groups have to be evaluated to ensure that all UN members are included in a specific geographic region. Finally, an official requirement must be made that any potential member state of the Security Council reflects the principles of UN and its commitment to human rights and development. This would require evaluation of the candidates political, economical and social policies and practices. All the proposed amendments once passed need to be imbedded in the UN Charter to ensure enforceability and proper adherence.
2. The Veto Power of the P5 Restricts the Effectiveness of the Security Council Decision Making Process Which Leads to Either Weak Resolutions, or to Failure to Make Resolutions When The Situation Calls for Rapid Decisive Action

Any decision made by the Security Council requires a 9/15 majority and a “concurring” vote from each of the five permanent members. While each member has the right to abstain, the requirement of the “concurring” vote of the five permanent states, effectively grants the P5 veto power where a P5 matter votes against a matter. The anarchy of this veto right represents an inherent flaw in the Security Council’s abilities to act as an effective decision-making body because it spends far too much time trying to avoid the veto. While the number of times the veto has been exercised has historically been reduced, the threat of veto still dominates the decision making process. This process tends to result in either weak resolutions, or in failure to make resolutions when the situation calls for rapid decisive action. The veto power of the P5, is therefore inherently contradictory to the UN’s principle of sovereign equality of states, rendering the P5 first among equals.

**RECOMMENDATION 6.3:** In the long-term, Canada should promote a UN Reform strategy that proposes to abolish the veto power and permanent status of any members of the Security Council.

An international community that undergoes continuous changes should require that its representative organization reflect that reality. Therefore, permanent status of any member state on the Security Council undermines UN’s key principle of equality among all members. The composition of the Security Council at the present time reflects the realities of the post WWII era and its victorious super powers. This reality, however, is no longer consistent with the modern international community. The Russian Federation, which replaced the Soviet Union, as a permanent member is presently a shell of the former superpower state. It is also difficult to justify the permanent status of France and the UK, who as midsize countries pale, both in
population size and in UN monetary contributions, in comparison to Japan. In light of the strong presence of the European Union it is anomalous to have two European countries with permanent status on the Security Council.

Abolition of the veto power for the P5 would remove the essential roadblock in the Security Council’s decision making process. Thus, if the opportunity arises, Canada should advocate for reform of Security Council that would place all Council member on equal footing of one vote per member.

The P5 veto power is unfortunately the reality of the Security Council and the UN. While proposed reforms may affect the structure of the Council as a whole, any reform must, in turn, be approved by the Council and the P5.\(^{31}\) Therefore, unless the P5 are willing to give up an extremely valuable political, economic and strategic tool, it is not likely to approve any reform that proposes to do away with its veto.

**RECOMMENDATION 6.4: In the immediate term, Canada should pursue ICISS recommendation to restrict the P5 Veto in cases of gross humanitarian abuses.**

The R2P report, which Prime Minister Paul Martin has committed to promoting, addresses Security Council reform for dealing with issues that require rapid reaction. The ICISS asks P5 to agree to a “code of conduct” for the use of the veto with respect to actions that are needed to stop or avert significant humanitarian crises.\(^{32}\) This means effectively means that the P5 agrees to give up their veto power, or refrain from threatening veto when the matter concerns gross human rights abuses. While it is uncertain if the Security Council will be willing to allow such limitations on their veto power, this recommendation’s success will likely depend on narrow interpretation of such limitations. The idea behind this recommendation is that the Council will be more effective in passing decisions by eliminating the threat of veto on decisions
that have the support of the Security Council majority. The logistics of this recommendation will be further evaluated in recommendations pertaining to the General Assembly.

**RECOMMENDATION 6.5: In going forward, Canada should oppose Security Council reform that increases the number of permanent members.**

The request for expansion of the Security Council membership has been on the UN Agenda for a number of years. Canada should pursue Security Council reform that results in an increase in the Council’s membership only if such reform promotes diversity on the Council and helps to improve the Council’s decision making process.

A number of large countries have been advocating and lobbying for increase in the number of Security Council’s permanent members. Brazil, Germany, India and Japan formed a group called the G4 to argue for their collective claim and also for a permanent seat for an African country. Each country has a good case for arguing for a permanent seat due to their sizeable populations and large contributions to the UN’s budget. At the present time there is currently no seat for any Latin American country, a void that Brazil would be well suited to fill. Furthermore, India and Japan, with the world’s largest populations, must compete with each other in the Asia group, while leaving the Muslim countries virtually unrepresented on the Council. Germany, as a large UN contributor has a strong claim for its inclusion as well. Furthermore, most of the G4 group is backed by the present P5. Japan’s claim is supported by the US, while British Prime Minister Tony Blair has expressed his support for giving India a seat among the permanent members.

While this reform would make the permanent membership of the Security Council more representative of the realities of the modern era, it is unlikely that the new permanent members would get the veto power of the original five. Therefore, while the reform would effect state
representation on the Security Council, it will not shift the balance of power, nor will it do anything to improve the representation of smaller developing nations that are excluded from the Council. While adding India and Brazil to the Council’s permanent member club would make it more representative of the international community, there is an underlying problem with permanency on the Council. As the original composition of the Security Council has taught us, international realities change and super powers of today are not likely to remain that way forever. Adding more permanent members to the Council would not resolve the problem of the Council’s stagnation, it would add to it. As such any successful reform Security Council reform should strive to make the body more flexible to change, which the addition of permanent members fails to do.

**RECOMMENDATION 6.6:** If absolutely necessary, Canada should pursue Security Council Reform that would allow regional rotations of semi-permanent members.

One of the more popular suggested reforms is a rotation system that creates a three-tier membership program. This reform realistically maintains the status quo on the P5 membership and veto status, since it is unlikely that the Security Council will approve any reform to the P5 status, while creating a rotation of 7-8 semi-permanent members with an increased five year term. The semi-permanent members are to be geographically represented. In addition the non-permanent seats would be expanded by 1-2, but their selection process would remain the same. This reform suggestion will have the effect of improving the representation of the international community at the Security Council first by increasing the size of the Council as a whole, and second by separating competing stronger and weaker competitive states into two categories, thereby providing for even-handed competition. Furthermore, a consideration should be given to creating a representative semi-permanent seat(s) for the European Union. While the permanent
members would retain their veto, other countries would have an opportunity to make their mark on Council’s decision-making process. If all else fails, it is this Security Council reform that Canada should pursue. The increased size of the Council and the semi-permanent status of the new members will have some effect of partially neutralizing the disproportionate power of the Permanent Five and improving the representation of the Security Council by adding more seats to each represented geographical region. The longer term of the semi-permanent members will provide these countries with better opportunities to successfully implement and represent the interests of their regions.

C. While the General Assembly is UN’s most representative body, its powers to act are limited.

The General Assembly (GA) is the main deliberative organ of the UN. Its membership includes all of the members of the UN. Each member is represented by one vote and all votes are weighed equally. The GA’s main function is to serve as a forum for discussion of topics and matters that come within the scope of the UN Charter and make recommendations. Article 10 of the UN Charter spells out this function and places restrictions on the GA recommendations:

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the UN or to the Security Council or to both on any such questions or matters.

General Assembly resolutions on “important” matters requires the support of 2/3 of its members. While the General Assembly can discuss any topic within the scope of the UN Charter and pass resolutions, these resolutions are not binding and as such have little enforcement value. This reality is unfortunate as the GA is a far better representative of the UN makeup than the exclusive Security Council.
RECOMMENDATION 6.7: Canada needs to pursue UN reform that significantly improves the decision making authority of the General Assembly through Amendment of the UN Charter.

Canada should support GA reform that would allow the assembly to pass binding resolutions in matters of extreme importance, such as cases of gross human rights intervention, where the Security Council is unable to respond effectively. An amendment of such magnitude is likely to face resistance of the Security Council, and the P5 in particular. It should be emphasized that such amendment is not meant to strip away the Security Council’s authority but it is meant to restrict it in a manner spelled out in Recommendation #6.4. Combining the two recommendations together, where the Security Council is incapable of providing rapid response to questions of gross human rights and security abuses, the proposed amendments would (a) ask the P5 to refrain from exercising their veto, or (b) to pass the decision to the GA, which can then vote accordingly on a resolution. This resolution would have the same legal authoritative effect as the decision of the Security Council.

These two recommendations are consistent with the solution advocated by ICISS in RP2. The application of these binding resolutions can be set up under the existing framework of the GA Emergency Special Sessions under the “Uniting for Peace” resolution. Under this resolution an emergency special session can be convened within 24 hours. It should be emphasized once again however, that this recommendation would apply in special extreme situations only, to avoid stripping the Security Council of all its authority.

D. ECOSOC is an ideal UN governing body to pursue issues of economic development, however its powers are limited by the UN Charter to those of an advisory body.

Sustainable economic development is the cornerstone of Canadian Foreign Policy. “Canada sees the UN and the UN funds, programs and specialized agencies as key instruments
for promoting economic and social development”. Under the authority of the GA, ECOSOC is the principal coordinating body for the economic and social activities carried out by the UN. It has 54 member states, each elected for a three-year term. Canada's current three year term on the Council began on January 1, 2004.

While both ECOSOC and the Security Council were set up to promote and carry out the agenda of the UN Charter and its members, unlike the Security Council, ECOSOC has an inherent structural flaw which prohibited the organization from becoming an effective UN body. While it may be defined as one a UN principle organ, unlike the Security Council, ECOSOC was placed under the authority of the General Assembly by Article 60 of the UN Charter:

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

RECOMMENDATION 6.8: Canada should pursue ECOSOC reform at the UN by promoting the Charter reform to empower ECOSOC with similar authority as that of the Security Council for issues of economic development.

The Charter grants ECOSOC the authority to make recommendations, but constricts its ability to take key decisions and implement measures. If ECOSOC is to become effective in pursuing UN’s economic and social development, the UN Charter needs to be amended to empower the council with decision making authority. Giving ECOSOC the power to pass binding resolutions would effectively place is on the same footing as the Security Council on issues of economic development. ECOSOC’s structure, its large membership base and its subsidiary bodies, make it a far more representative body than the Security Council to deal with the aforementioned issues, leaving the Security Council to deal with human security.
RECOMMENDATION 6.9: Canada should pursue integration of ECOSOC with the Bretton Woods Institutions (BWI) that would improve both accountability and the transparency of the BWI and remove conflicting agenda issues.

The Bretton Woods institutions (BWI) – International Monetary Fund (IMF) and World Bank – have dominated economic and development programs and strategies since the 1980s. These institutions were created by the post WWII allies who felt that a “multilateral framework was needed to overcome the destabilizing effects of the previous global economic depression and trade battles”.

Today these institutions have the resources and personnel that outstrip that of the ECOSOC and the UN and enjoy the backing of the US and other industrialized countries. As such, these institutions often pursue the interests of its backers in their economic development and structural adjustment programs. These can clash with UN’s welfare-oriented approach. If Canada is committed to making the UN the “instrumental tool” in pursuing its economic and social development policies, it needs to pursue integration and cooperation of BWI and ECOSOC.

The concept of furthering integration between the two institutions is not new. ECOSOC initiated in 1998 a tradition of meeting each April with finance ministers heading key committees of the BWI. These consultations initiated inter-institutional cooperation and “paved the way for the success of the International Conference on Financing for Development, held in March 2002 in Monterrey, Mexico”. Canada needs to encourage stronger integration of IMF and the World Bank in the UN system. An example of stronger integration and corporation can result from a political upgrade of the annual meetings giving them a more pronounced coordinative function.
Part III. Canada’s soft power lies in its goodwill and reputation in the International Community. As such, Canada is well positioned to pursue its foreign policy objectives through other multilateral organizations.

As a middle power country, Canada’s key strengths in the international community are its goodwill and reputation. With strong ties in both North America and Europe, Canada often serves as an intermediary between the European Union and the United States, while still maintaining its sovereignty. By refusing to participate in the invasion of Iraq, Canada asserted its independence from the United States and once again reinforced its position as a strong sovereign state. While Canada often reaffirmed its commitment to using the UN as the primary forum for affecting international change and implementing its foreign policy, the UN has inherent weaknesses that can render the organization ineffective. As such, where the UN is unable to address issues of importance Canada needs to unite with other likeminded countries through multilateral institutions to pursue its foreign policy goals.

**RECOMMENDATION 6.10: Canada should utilize its membership in other existing and new multilateral organizations to achieve its foreign policy objectives.**

Canada’s weak military system prevents it from taking a leadership role in any UN military campaigns. As such, if Canada is prepared to pursue a commitment to human rights agenda it will need to focus its strengths and energy on multilateralism in cooperation with other states and/or organizations. Canada has a strong reputation and varied experience in peacekeeping, conflict prevention, peace building and humanitarian assistance. In particular, we recommend that Canada focus on strengthening its input and influence with like minded coalitions and the G20.
RECOMMENDATION 6.11: Where multilateral organizations or institutions are ineffective means of pursuing foreign policy goals or implementing political progress Canada should focus on building pacesetter coalitions of like-minded governments.

Canada needs to strive to maintain its status as a model citizen, one that uses its soft power to lead the changes it wants implemented. The creation of new multilateral instruments such as the International Criminal Court and the Treaty to Ban Anti-Personnel Landmines demonstrate the ability of countries to bind together in the face of a shared, common threat and make significant changes in international law. Both new instruments bear the mark of Canadian leadership and commitment. In bringing these commitments about, Canada deployed its key strengths to ensure successful implementation of instruments that are closely linked to Canada’s domestic values.

Canada chaired the coalition of the “Like-Minded Group” in a push for a conference at which to adopt the Rome Statute. It also used persuasion and diplomacy through bilateral and multilateral diplomatic contacts and lobbying efforts. From a resource perspective, Canada contributed to a UN Trust fund that enabled poorer countries to participate in this process. Finally, Canada was one of the first countries to ratify the Rome Statute and implement it domestically. Therefore, while the US abstained from ratifying the ICC, an institution has been created and empowered to give structure that previous ad hoc judicial bodies lacked.

RECOMMENDATION 6.12: Prime Minister Paul Martin should continue to pursue his commitment to the “Leaders G-20” initiative.

Prime Minister Paul Martin, at the first meeting hosted by the Centre for International Governance Innovation (CIGI) and the Centre for Global Studies (CGS) proposed his recommendation that the G20 be transformed into a Summit of Leaders (Leaders G-20). This
informal “Leaders G-20” group that would bring together heads of state from developed, developing, and middle-income nations to address global issues. The idea for the new group is based on the G-20 finance ministers established by the Prime Minister when he was Minister of Finance. This new multilateral organization may be effective in creating a political forum for dialogue on global issues.

Existing multilateral organizations, such as the G8, have often been criticized for their exclusivity and failure to address the concerns of developing nations. The proposed Leaders G-20 could fill the gaps in existing multilateral organizations. Its scope of membership can “offer a balance between the exclusivity of the G8 and the difficulty in reaching consensus associated with many other larger organizations”, such as ECOSOC. Prime Minister’s goal for the Leaders G-20 to achieve non discriminatory geographic representation. The idea is to turn it into a forum of choice, “obviating the need for developing countries to establish competing groups”. The Leaders G-20 proposal arose from repeated calls for a Global Council to address the lack of an effective and representative decision-making body in the UN. This means that a successful Leaders G-20 group will need to carefully balance the interests and agendas of its member states with those of the UN, while still complying with the UN Charter.

To differentiate itself from existing multilateral organizations, the Leaders G-20 would have to provide effective representation to states in all stages of economic and social development. Members could include either of groups of individual states, UN groupings, and/or of other legitimate regional bodies such as the Organization of American States (OAS), the Africa Union and the Organization for Economic Co-operation and Development (OECD), who in turn could elect their own representatives to participate. Canada’s strong commitment
to the UN implies that the two organizations would have to work together on strengthening the UN’s political role.

The benefit of such a group to Canada’s foreign policy and goals are tremendous. Multilateral cooperation is important because it carries a legitimacy that no one country can assemble on its own. The more diverse and representative the organization, the more likely it is to be recognized and effective in the international community. The group can serve either as a bridging effort until appropriate UN reforms are put into place, or a permanent forum that complements the UN’s decision making authority. If effective, it can be crucial in helping Canada achieve its goals for human security and the responsibility to protect.

While the group itself is still an idea, as Canada’s various contributions discussed above demonstrate, we have the capacity to influence change. Prime Minister Paul Martin’s recent success in persuading leaders from ten other nations to endorse the R2P doctrine is a demonstration of Canada’s political influence and good will within the international community. Some countries have demonstrated acceptance of the Leaders G-20 idea in its early stages. “To ensure successful implementation Canada will have to lead by example with open consultation and parliamentary debate and review of Canada’s participation in the G20”.

Part IV. Conclusion

In an increasingly globalized and interdependent world, multilateral co-operation is essential. Ensuring prosperity, peace and well-being for Canadians is fundamentally connected to achieving these goals globally. Canada’s commitment to multilateralism in achieving our policies of human security, human rights and global economic development should be two-fold. First, Canada should continue to engage in reform initiatives at the UN. These initiatives should
include proposed reform of the Security Council’s structure and member selection process, reform to empower the General Assembly and ECOSOC and better integration between the UN and other multilateral institutions. But where the UN shortcomings prevent rapid reaction in times of crisis, or reform is unrealistic, Canada should focus its strengths on other multilateral bodies including ad-hoc coalitions of the like-minded states and the proposed Leader G-20.

1 Prime Minister, Paul Martin “Paul Martin at the UN, Speech by the Prime Minister”, United Nations, September 2004, [unpublished], online: Office of the Prime Minister <http://pm.gc.ca/eng/news.asp?id=266>.
3 UN Secretary-General Kofi Annan, “The Secretary-General Address to the General Assembly” (Address to the General Assembly), September 2003, online: <http://www.un.org/apps/sg/sgstats.asp?nid=1088>.
5 Supra note 1.
6 Charter of the United Nations, 26 June 1945, Can. T.S. 1945 No 7, Article 2(1)
7 Ibid. at Article 2(4)
8 Ibid. at Article 51
9 Ibid. at Article 24(1)
10 Ibid.
11 Ibid. at Article 39-50
12 Ibid. at Articles 52-54
13 Supra note 2 at XI
14 Ibid. at 49
15 Supra note 6 at Article 27
16 Supra note 6 at Article 23
17 Ibid.
18 GA res. 1991A (XVIII), UN GA, (1963)
19 Ibid.
20 In 2004, Canada contributed $40 Mil. USD, Germany and Japan contributed $124 and $280 Mil. USD, where as Russia and China contributed $16 and $29 Mil.USD. United Nnations, Payments to the UN Regular Budget, Office

21 Ibid.

22 Supra note 14.

23 In 1998 Asia, Africa and Latin America put forth 1 candidate for each available spot, while the Netherlands, Canada and Greece battled for the “Western Europe and other” spot on the Council.


24 Ibid.

25 Ibid.

26 Ibid.


28 UN Principles are spelled out in the Preamble and include: human rights; the dignity and worth of the human person; equal rights of men and women and of nations large and small; justice and respect for the obligations arising from treaties and other sources of international law. Supra note 6 at Preamble.

29 Supra note 6 at Article 27(3).

30 199 vetoes were cast between 1946 and 1989, between 1990 and 2004 only 17 vetoes were cast. Global Policy Forum, Subject of UN Security Council Veto, online: <http://www.globalpolicy.org/security/membership/veto/vetosubj.htm>

31 Supra note 6 at Article 108.

32 Supra note 2, p. XIII.


34 Ibid.

35 Maggie Farley, “The World; Calls to Expand Club Continue; The UN is mulling several approaches to adding seats to the Security Council to reflect the rise of regional powers” Los Angeles Times (22 September, 2004) A5.


37 Supra note 6 at Article 10.

38 Supra note 2 at XIII

39 Ibid.


41 Ibid.

42 ECOSOC is one of 6 Principle Organs of the UN. Others include, the General Assembly, the Security Council, the Trusteeship Council, the International Court of Justice (ICJ) and the UN Secretariat. Supra note 6 at Article 7.


44 Bretton Woods Project, What are Bretton Woods Institutions, online: <http://www.brettonwoodsproject.org/background/index.shtml#01>.
45 Supra note 37.
47 Ibid.
48 For detail on Canada’s military capacities refer to Chapter 1.
49 Canada, Department of Foreign Affairs, Canada and the International Criminal Court, online: <http://www.dfait-maeci.gc.ca/foreign_policy/icc/canada_icc-en.asp>.
51 Ibid. at 2.
52 Supra note xlvi.
53 Canada’s Coalition to End Global Poverty, Jumpstarting Multilateralism IPR Paper (CCIC/CCCI Ottawa, Ontario, October 2004), online: <http://www.ccic.ca/e/docs/002_ipr_g-20_paper_2004-05.pdf>, p.8
54 Prime Minister Paul Martin persuaded leaders from 10 other nations on October 15, 2004 to endorse a doctrine of R2P that would allow international military intervention in cases of gross human rights abuses. Mark Kennedy “Martin promotes “responsibility to protect” plan to world leaders” CanWest News (October 16, 2004)
CHAPTER 7: CANADA-U.S. HARMONIZATION AND CANADIAN
SOVEREIGNTY - ACHIEVING A BALANCE IN CANADIAN FOREIGN
POLICY

The Canada-U.S. bilateral relationship represents one of the most important relationships in Canadian foreign policy. The interconnectedness of Canada’s national security, political stability and economic development with that of the United States makes it incumbent on Canada to maintain good relations with our biggest customer to the south and major defender against outside hostilities. However, differences in national policies between Canada and the United States have created tensions in this relationship. While Canada is more concerned about the free movement of goods and services within North America, the United States is more focused on national security in light of the 9/11 terrorist attacks. These differing policies have weakened Canada-U.S. relations in recent years. As such, the effective management of this relationship must be a constant priority for Canadian foreign policy-makers. In managing this relationship, such policy-makers should strive to achieve a balance between increasing continental harmonization and Canadian sovereignty. Canada should not capitulate to every American initiative in foreign policy in order to maintain a strong relationship, but rather should use its sovereignty to leverage the advantages of its proximity to the world’s leading and largest economic and political power.

In the following paragraphs, this brief will detail Canada’s current foreign policy vis-à-vis the United States and provide recommendations on how to improve the current state of the Canada-U.S. relationship. Achieving a strong relationship with the United States is dependent upon reconciling American and Canadian military and economic interests. As such, this policy review will focus on (1) trade between the two countries, (2) border security and (3) continental ballistic missile defence. Continued cooperation and collaboration on these issues are essential
Part I. The Canada-U.S. Trade Relationship: Canada should Focus on The Interdependence of the Canada-U.S. Economy to Persuade the United States to Adopt Trade Policies More Favourable to Continental Economic Growth.

Canada and the United States are each other’s most important trading partners. The annual two-way trade in goods and services between Canada and the United States totals almost US $510 billion and supports over two million jobs in each country.\(^1\) Such economic interdependence is a vital component of the economic growth and security of our continent. Consequently, Canada has pursued a foreign policy directed at North American integration in key economic sectors and liberalized trade across the Canada-U.S. border. However, foreign policy initiatives undertaken by the Canadian Government continue to be undermined by inconsistencies in the economic policies of the United States and Canada, and the creation of policies driven primarily by national self-interest. Obstacles to Canada’s foreign policy are most evident in the energy and softwood lumber industries. These industries are among Canada’s most important trading commodities and therefore, require the ongoing and detailed attention of Canadian policy-makers.

A. The Energy Industry: Canada should leverage its strategic position in the energy sector to strengthen its bargaining position vis-à-vis the United States and encourage harmonization of continental energy policies.

Canada is the United States’ largest energy supplier. Its natural gas exports to the United States have more than quintupled since 1986 and now account for nearly 60 percent of Canadian production and 16 percent of U.S. domestic consumption.\(^2\) Similarly, Canada’s crude oil exports to the U.S. account for 65 percent of Canadian production and 8 percent of U.S. crude oil
According to the Energy Information Administration of Canada, both pipeline capacity, and the average flow of gas from Canada to the United States more than doubled between the years 1990 and 2000. Millions of citizens from both countries tap into these gas pipelines that cross borders from Western Canada to the northern United States and back to eastern Canada. In terms of electricity, Alberta and Saskatchewan are major importers of U.S. electricity. In recent years the National Energy Board has reported that Canada trades more electricity with the United States than across its own provincial borders. This statistical data not only confirms the interdependence and increasing integration of Canadian and American energy markets, but also illustrates the significant role that Canada plays in helping to meet U.S. energy demands.

Substantial integration of the North American energy market is the result of efforts undertaken by the Canadian and U.S. Governments to pursue parallel energy policies and intergovernmental cooperation on key energy issues. The creation of, and accession to, NAFTA has played an instrumental role in the pursuit of a progressive integrated continental energy market by limiting the use of import restrictions. The conclusion of the Smart Border Declaration and its accompanying action plan has further accelerated this integration. In addition to this, the recent establishment of the North American Energy Working Group in 2001 and the Alberta summit of national energy regulators in 2003 mark the continued intergovernmental collaboration between these two countries. Such efforts have led to many successes, including transferability of advancing energy technologies across borderlines and increased capital investment in energy resources and infrastructure.

However, despite these efforts and successes, significant challenges continue to face both Governments in the energy sector. At present, the North American energy market is confronted
by the emerging reduction in energy supplies and its resulting effect on energy prices. The consequences of this shortfall materialized in the August 2003 blackout of eastern North America, thereby drawing attention to the shortcomings in the current integration of the North American energy industry. In his recent testimony before the Joint Economic Committee of the United States Congress, Federal Reserve Chairman Alan Greenspan reviewed the current state of the energy sector, calling attention to the rising prices of energy in response to dropping supplies and increasing demand and consumption of natural gas.\(^\text{11}\)

These quandaries represent the consequential outcomes of outstanding conflicts in the national energy policies of Canada and the United States. For instance, where Canada ratified the Kyoto Protocol, the United States rejected the treaty on the grounds that it would injure economic production and industrial efficiency. Such differing national policies vis-à-vis global climate control have affected the energy market. Trade among the continent’s major energy producing and consuming companies is now faced with conflicting gas emissions controls across the continent\(^\text{12}\), which has had the effect of hampering energy production and trade across borders. In order to protect the North American energy supply, it is important that Canada and the United States achieve coherence in their environmental and land management laws and regulations. In terms of the Kyoto Protocol, achieving harmonization between Canada-U.S. environmental policies should not focus on whether the United States should sign the treaty; rather policy-makers should devote their efforts to fashioning a single North American approach to balancing the development of energy resources and protection of the environment.\(^\text{13}\)

The recent approval by the United States Senate of a tax credit guaranteeing a floor price for Alaskan gas represents another conflict between Canadian and American energy policy.\(^\text{14}\) From Canada’s perspective, this subsidy, would distort the North American natural gas markets.
and undermine their efficiency, further slowing energy resource development and production in both Canada and the United States. As noted by Canada’s Ambassador to the United States, Michael Kergin, Canada should urge the United States Congress to refrain from allowing such tax credits:

U.S. energy policy, like Canada’s, is founded on free markets and free trade, and on international relationships. We hope Congress shares this understanding so that it is the marketplace, not governmental regulation, which will ensure Americans receive secure, clean-burning gas at the lowest possible price.\(^\text{15}\)

While the United States and Canada must achieve harmony in their respective national energy policies, this does not mean the creation of a single continental policy.\(^\text{16}\) Harmonization of policies should not be undertaken at the expense of Canadian energy interests and dominion over energy resources. Rather Canada’s current strategic position in the North American energy industry\(^\text{17}\) and its significant role in meeting the U.S. energy demand strengthen its negotiating position vis-à-vis the United States.\(^\text{18}\)

In addition, since the 9/11 terrorist attacks, the United States has expressed concern over its vulnerability with regard to international energy supply.\(^\text{19}\) These concerns provide Canada with an opportunity to solicit increasingly favourable access to American energy markets and fairness in sharing the benefits and costs of energy market integration. In order to ensure a secure energy future, Canada and the United States must jointly address the problems that have caused uncertainty in the energy sector, namely unstable gas prices and unclear market rules. In addressing these problems, Canada should strive to create an energy-related foreign policy guided by three principal goals: (1) the affordability of energy sources, (2) adequacy and reliability of supply and, (3) protection of public health, safety and the environment. However,
these goals can only be achieved by impressing upon the United States the need for coherence between the national policies of both countries.

**RECOMMENDATION 7.1: Canada should impress upon the United States that coherence between the national energy policies of both countries is vital to the stability of the continental energy industry.**

**B. The Softwood Lumber Trade Disputes: In response to trade disputes with the United States, Canada should undertake a foreign policy directed toward dispute prevention initiatives, rather than simply reacting to U.S. policy implementation.**

Since the creation of NAFTA, Canada, the United States and Mexico have enjoyed the benefits of a North American economy built on principles of free trade. However, in recent years the success of NAFTA in creating a liberalized trading environment between Canada and the United States has been “sullied as a result of American perennial duties against Canadian softwood lumber.” These U.S. undertakings have not only encumbered the continued partnership between Canada and the United States in creating an integrated North American economy, but have also demonstrated the lack of commitment by policy-makers in Washington to the spirit of free trade as envisioned under NAFTA. In fact, the softwood lumber industry is currently the largest economic sector working outside the principles of free trade between Canada and the United States. U.S. protectionist policies have significantly harmed the Canadian lumber industry resulting in mill closures and thousands of job losses, including 15,000 forestry workers, and are a major source of tension between these two countries.

On September 10, 2004, the U.S. International Trade Commission concluded that Canadian softwood lumber exports to the United States do not threaten injury to the American lumber industry. This decision was on remand after a NAFTA panel had made a determination that there was no injury to the American softwood lumber industry. Such a decision supports
Canada’s long-held position that there is no justification for the United States’ imposition of countervailing duties on Canadian softwood lumber exports. This decision has not only prompted Canada to urge the United States to revoke such duties, but to refund the duties paid by Canadian softwood lumber exporters. Despite the Commission’s finding however, the United States continues to fight against Canadian lumber imports on behalf of its domestic producers. On October 13, 2004, the United States announced it was appealing the decision on the basis that the NAFTA panel overstepped its jurisdiction in ordering the U.S. International Trade Commission to find that Canadian lumber exports were not injurious to U.S. domestic producers. In addition, on November 15, 2004, Montana Senator Max Baucus proposed a bill in Congress that would allow U.S. lumber companies to maintain an estimated $3.6 billion in duties on Canadian softwood lumber.

In light of the United States’ relentless attempts to impose and justify tariffs and duties on Canadian softwood lumber, Canada must implement a foreign policy aimed at preventing future imposition of U.S. duties and tariffs on Canadian exports. In particular, Canada should undertake to review current trade remedy laws to determine whether they accommodate the reality that Canadian and American firms are competing in a single integrated market. Canada’s best defence against the winds of American protectionism is to have a comprehensive rules-based system that allows Canada to rely on the existence of clear, enforceable, and transparent trade rules not only in a bilateral context, but through a multilateral approach. In the past, there existed a quota-based system between the United States and Canada, which proved to be detrimental to Canadian economic interests because it allowed the United States to take matters into its own hands and place its own interests ahead of those of the rest of the continent. It is possible that such a system may reappear in light of the recent proposal by the U.S. Department
of Commerce to settle the current softwood lumber dispute in return for Canada accepting restrictive quotas. Such a proposal, if accepted, would undermine the principles of free trade, which form the cornerstone of Canadian foreign trade policy.

Softwood lumber trade between Canada and the United States should be influenced by the market and not by governmental officials who may be pressured by various outside interests. As stated by a former Premier of Ontario, “the whole purpose of creating rules, whether through NAFTA or the WTO, is to insist that the political system exercises restraint and that the policies created by the political system are not simply based on power and the changing vagaries of political and public opinion.” In this respect, it may be useful for top-level government officials in both countries to collaborate in the creation of coherent bi-national competition policies and anti-trust regimes based upon mutually agreed rules to ensure a level playing field in trade across borders.

**RECOMMENDATION 7.2:** Canada should review current trade remedy laws to determine whether they accommodate the reality that Canadian and American softwood lumber firms are competing in a single integrated market and where such laws are lacking, should adopt a more comprehensive rules-based system to replace any remaining quotas in the softwood lumber industry and which accurately mirror full and fair free trade. In order to achieve this, Canada should insist that any dispute settlement proposal from the U.S. be designed with a permanent solution and credible mechanisms to prevent future disputes.

**Part II. Canada-U.S. Border Security:** Canada’s foreign policy must be directed at rebuilding confidence in Canadian border management in order to protect economic Interests in the Free Movement of Goods and People across Borders.

For the past 15 years, Canada and the United States have benefited from various free trade agreements that have reduced the economic effects of national borders. However, the 9/11 terrorist attacks and their aftermath brought the security management of national borders under unprecedented scrutiny and caused prolonged border closures that resulted in harmful
consequences to the North American economy. This brought the interdependence of Canada and the United States and the vulnerability of Canada’s economic prosperity to border closings to the forefront of national consciousness.\textsuperscript{32}

The United States, while previously championing itself as the leader of globalization and free trade, now recognizes its susceptibility and openness towards future terrorist attacks.\textsuperscript{33} Consequently, homeland security has become America’s top priority. This shift in U.S. foreign policy has had an adverse impact on the Canadian economy because access to U.S. markets has been undermined and economic benefits of free trade are fading. In order to preserve the advantages of the free trade arrangements entered into by Canada and the United States, it is imperative that each country rebuild mutual confidence in their respective border security. In doing so, Canada should exercise its sovereignty to influence U.S. border policy by building a framework that links security and defence goals with economic interests.

A promising start has been made toward creating a framework that promotes Canada’s economic interests while ensuring that borders remain secure. Canada and the United States have signed The Smart Border Declaration, emphasizing the importance of creating a border that facilitates the free flow of people and goods while simultaneously guarding against threats to continental security. This declaration acknowledges the long-standing tradition of cooperative border management between Canada and the United States and recognizes that continued cooperation is essential to the future prosperity and security of North America.\textsuperscript{34} Accompanying The Smart Border Declaration is the 30-point Action Plan for Creating a Secure and Smart Border (“Action Plan”). The Action Plan is premised on a four-fold border strategy, which includes: (1) the secure flow of people, (2) the secure flow of goods, (3) a secure infrastructure, and (4) coordination and information sharing in the enforcement of a secure border. In carrying
out this strategy, the Free and Secure Trade Program ("FAST") has been established and is aimed at expediting trade through border crossings, while maintaining enhanced security levels. Under this program, qualified shipments of low-risk Canadian goods imported by U.S. firms are able to cross the border without additional security measures hindering such crossings.

In addition to the *Smart Border Declaration*, Prime Minister Paul Martin has created the new Ministry of Public Safety and Emergency Preparedness, which is linked to the U.S. Department of Homeland Security. These governmental bodies share cross-border information, including immigration and tax data, and collectively oversee intelligence and border security across North America. The two Governments have also established the bi-national planning group ("Planning Group") located at NORAD headquarters in Colorado Springs. The Planning Group is responsible for preparing contingency plans to respond to any threats, attacks or major emergencies in Canada or the United States. In doing so, the Planning Group has designed exercises and joint training programs, and established appropriate coordination mechanisms with relevant federal agencies.

While these efforts have proved successful in rebuilding a mutual zone of confidence along the Canada-U.S. border, impediments remain to increasing free movement across borders. First, despite the *Smart Border Declaration* and its accompanying Action Plan, border delays continue to persist as a result of various security measures undertaken at major border crossing points. These delays undermine the common Canada-U.S. objective of securing borders without significantly encumbering the free flow of low-risk persons and goods. In order to remedy this, Canada and the United States should move such security measures away from the border by implementing electronic registration and inspection of goods and persons at points of origin rather than at the border crossings. In addition, increased infrastructure investment and
coordination of bureaucratic agencies is required to handle increasing volumes of border crossings. For instance, there should be an increased number of lanes dedicated to commercial vehicles, as well as, personnel and customs officers facilitating commercial border crossings.

**RECOMMENDATION 7.3:** In order to continue its efforts in implementing the *Smart Border Declaration*, Canada and the United States should increase infrastructure investment and coordination of bureaucratic agencies.

More importantly, it is in Canada’s interest to build on and deepen NAFTA to provide a more comprehensive North American body of law. This would create agreed upon rules and procedures applying directly to the movement of people, goods and services across the border. Recently, senior business and political leaders from Canada, the United States and Mexico have joined forces to establish a blueprint for a North American trading bloc that would be shielded by a security perimeter. This ‘task force’, supported by the three North American Governments and co-chaired by former Liberal Deputy Prime Minister John Manley, has been charged with creating a road map for a continent-wide customs-free zone with a common approach to trade, energy, and security that would virtually eliminate existing national borders. In addition, the ‘task force’ is also expected to propose a continental energy accord.

**RECOMMENDATION 7.4:** Canada should continue to study the possibility of deepening the current NAFTA trading relationship to complement the objectives of the *Smart Border Declaration*. In doing so, Canada should ensure that any such expansion of the NAFTA relationship does not undermine development oriented trade policy.

In moving towards a “seamless” border, Canadian policy-makers should ensure that such initiatives do not undermine Canada’s traditional multilateralist approach to foreign policy and its protection of civil liberties and individual privacy. Former Prime Minister Jean Chrétien, who opposed the creation of a North American customs union, expressed concerns that the current trend towards increased integration may threaten Canadian sovereignty because security and
economic decisions would in some instances be made jointly with a partner, the United States, ten times the size of Canada. Thus, the challenge will be to implement a foreign policy that balances the economic benefits of a seamless border while maintaining Canadian sovereignty. Canada should leverage its sovereignty and the knowledge that a secure America is unworkable without Canadian support to advance its economic interests. In order to achieve this, Canada should support a broadening of bi-national defence arrangements to prevent terrorist threats and attacks on Canada and the United States and ensure quick, well-coordinated responses to such threats or attacks or any other major emergencies experienced by either country. Without assurances that border security issues are being addressed, Canada may be subjected to future arbitrary border closures by the United States Government. It is not suggested that a broadening of bi-national defence arrangements should compromise Canadian sovereignty and national identity. Rather, by supporting bi-national defence initiatives, Canada can leverage its sovereignty to formulate a continental defence policy that balances U.S. security concerns with Canada’s economic interests.

**RECOMMENDATION 7.5:** Canada should leverage its sovereignty and the knowledge that a secure America is unworkable without Canadian support to advance its economic interests. Canada should support bi-national security measures in return for favourable U.S. economic policies.

**Part III. Missile Defence:** Should Canada choose to support U.S. Ballistic Missile Defence, it should do so in a way that does not Undermine Canada’s Commitment to Multilateralism and its Policy against the Weaponization of Space.

Canada and the United States share mutual concerns over the continued proliferation of ballistic missiles and weapons of mass destruction. Together they face a multifaceted threat from rogue states and terrorist networks of such missiles landing on North American soil. The threat to Canada and Canadian forces was expressly recognized in the 1994 Defence White
Paper, which cited China and Russia as potential sources of missile threats. Since that time, Canada has held regular consultations on Ballistic Missile Defence (“BMD”) with the United States through which the two countries have established a BMD Bilateral Information Sharing Work Group, which meets twice annually. In addition, Canada has placed a Canadian Forces Liaison Officer with the US Missile Defence Agency for the purpose of supporting the ongoing consultation and information exchange process between the two countries.

These collaborative efforts paved the way for the recent exchange of Letters of Intent between the two countries. On January 15, 2004, Canada’s Minister of National Defence and the U.S. Secretary of Defense exchanged Letters of Intent, stating the interest of both nations in negotiating an agreement to cooperate in the ballistic missile defence of North America. These letters do not constitute an agreement, but rather represent a non-binding mechanism developed to facilitate further discussion on BMD. The Letters of Intent refer to an interim amendment to NORAD for the purpose of providing Canadian NORAD personnel with access to BMD planning information. Such initiatives indicate Canada’s current official foreign policy of information-gathering about BMD so as to ascertain whether participation in such a defence system could enhance Canadian security. These initiatives illustrate that Canada has moved from a policy of opposition to BMD to one of caution whereby Canada is seeking more information before making a final determination on the issue.

The issue of whether Canada should sign on to BMD has sparked a great deal of controversy among Canadian citizens, who have expressed both reasons in favour and in opposition to this continental defence initiative. Critics of BMD argue that such a defence system is “technologically impossible and strategically dubious since al-Qaeda terrorists do not typically use inter-continental ballistic missiles.” The potential failure of BMD would result in
national embarrassment and waste of economic resources. Furthermore, concerns have been expressed over the possibility that a new arms race could occur, particularly since China has already voiced its policy that it cannot allow the United States to unilaterally arm space.\textsuperscript{46} Consequently, such an initiative may undermine current international efforts promoting the non-proliferation of missiles and other nuclear weapons.

Supporters of BMD cite the fact that Canada and the United States have long pursued joint efforts in protecting the continent from external threats through NORAD. Military cooperation with the United States has provided Canada with many economic and military benefits. For instance, defence industrial trade, and research & development of military technology has resulted in two billion dollars trade annually, and over 600 Canadians participate in NORAD-related activities on American soil.\textsuperscript{47} In the event that Canada refuses to support BMD, it could potentially see its influence in NORAD diminish.\textsuperscript{48} BMD through NORAD would keep the Canada-U.S. partnership strong and show Canada's interest in maintaining its valuable association with the U.S. armed forces. BMD is a natural evolution in defending North American and Canadian interests in the world. Thus supporters of BMD urge that “Canada must seize the opportunity to expand the NORAD mission now, before the offer expires, or progress denies Canada’s influence.”\textsuperscript{49}

Furthermore, it is in Canada’s strategic interest to be involved in decisions concerning the security and defence of North America and therefore, to be engaged with the United States on BMD at an early stage when key operational and command decisions are being made. Canada’s support for such a defence system would increase its ability to have meaningful involvement in the development of BMD. Defence Minister Bill Graham remarked that “it would be extremely dangerous” for Canada to refuse its support for U.S. BMD and warned that Canada would suffer
grave consequences should such a stance be undertaken by the Canadian Government. Mr. Graham highlighted the fact that the Canadian Government has “a fundamental responsibility to protect Canadians [and] to contribute to the defence of the continent.” BMD may assist in carrying out this responsibility. The United States is determined to pursue BMD, and Canada needs to maintain a close working relationship with its southern neighbour in light of the interdependence of Canada’s and the United States’ national economies. [See Sections A and B].

However, Canada should be careful not to adopt a foreign policy on missile defence that is inconsistent with its political and cultural values, its role as international peace-keeper and supporter of non-proliferation, and its policy against the weaponization of space. To date, Canada has played a major role in national and continental defence by implementing a multi-faceted foreign policy based on diplomatic engagement with proliferators, strong national export controls on missile-related technology, membership in the Missile Technology Control Regime, support for the Hague Code of Conduct on ballistic missiles, the Anti-Ballistic Missile Treaty and the Nuclear Non-Proliferation Treaty, and examination of alternative potential defensive capabilities. This type of approach reflects Canada’s longstanding policies on arms control, disarmament and strategic stability.

Consistent with its tradition of multilateralism, Canada has devoted considerable resources to support for the G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction. Through this initiative, Canada works closely with G8 countries, including Russia, to assist in the destruction of chemical weapons, dismantlement of nuclear submarines, safe disposition of nuclear materials and location of alternate employment for former weapons scientists.
In order to ensure that support for BMD does not undermine Canada’s commitment to multilateralism, or run afoul of its policy against the weaponization of space, any Canadian participation in BMD should be conditioned on two important initiatives. First, Canada should secure an international treaty against the weaponization of space that includes the United States. Such an international treaty could be negotiated and concluded with the aid of the United Nations and other non-governmental institutions. With the recent reelection of George W. Bush, Prime Minister Paul Martin has announced that the federal Government wants to “impress upon Mr. Bush the need for a new multilateralism in Washington’s approach to global problems.”

Second, Canada should leverage the fact that the United States requires Canada’s support to create an effective continental missile defence system, and obtain a commitment from the United States that any such missile defence system will not contravene the current Anti-Ballistic Missile Treaty. By insisting on such requirements prior to signing on to BMD, Canada can successfully maintain its multilateralist perspective while supporting North American security cooperation.

**RECOMMENDATION 7.6:** Should Canada support BMD, it should secure an international treaty against the weaponization of space and obtain a commitment from the U.S. that it shall continue to adhere to the principles of the current Anti-Ballistic Missile Treaty in order to ensure that such support does not undermine Canada’s commitment to multilateralism and opposition to the weaponization of space.

**Part IV. CONCLUSION**

Canada and the United States possess a unique relationship founded on a long tradition of cooperation in defending the North American continent, a free and liberalized trading environment, interdependent economic markets, and shared cultural values and ideals. However, the recent 9/11 terrorist attacks highlighted the need to adjust Canada’s foreign policy vis-à-vis
the United States. It is clear that novel and important bilateral policy issues have emerged as a result of the new security environment in North America. Issues relating to trade and border security indicate that Canadian economic interests have been superseded by U.S. concerns for national security. Consequently, rifts in the Canada-U.S. relationship have emerged and unless Canada’s foreign policy-makers address the current tensions between the two neighbouring countries, such rifts may widen.

The challenge for Canadian policy-makers will be to formulate a foreign policy agenda capable of advancing Canadian interests while simultaneously soothing current tensions between the two countries. In order to meet this challenge, policy-makers must first recognize that Canada’s best assets are its sovereignty, the vastness of its natural resources, and its geographical proximity to the world’s leading economy. The combination of these features provides Canada with an opportunity to negotiate policies with the United States that are favourable to Canadian economic and national interests. Canada must undertake extraordinary efforts to demonstrate that the Canada-U.S. relationship is an asset, which the United States must take into consideration when making decisions affecting its own interests.55

Historically, Canada has taken the attitude that because of its close proximity to, and relationship with, the United States, Americans will generally favour Canada in trade and defence measures (with some notable exceptions – the softwood lumber issue being one). However the dramatic and emotional events of 9/11 have created a new playing field. Americans have become much more self-centred and isolationist both in foreign affairs and homeland security; this drift towards self-containment is bound to have an extended effect on Canada-U.S. trade issues. No longer can Canada expect to get special or favoured treatment in such a political atmosphere as has often been the case in the past. Therefore, the key is for
Canada to be proactive in finding solutions to the current problems in the Canada-U.S. relationship rather than simply reacting to U.S. policy initiatives. Canada should leverage its support for such initiatives, such as BMD, in return for favourable U.S. economic policies, including the increased free movement of goods and people across the border. The current divergence in policy perspectives between the United States and Canada can only be overcome by accommodating security concerns in pursuit of Canadian economic interests.

1 Statistical information available through the Department of Foreign Affairs of Canada at www.dfait-maeci.gc.ca.
3 Ibid.
4 Statistical information available at http://www.eia.doe.gov.
7 Paul G. Bradley and G. Campbell Watkins, Canada and the U.S.: A Seamless Energy Border? C.D. Howe Institute Commentary of the Border Papers, Issue No. 178 (April 2003). For instance, governments can only impose export restrictions on the grounds of (a) conservation of exhaustible resources, (b) supply shortages, (c) price stabilization, and (d) national security. In addition, no minimum export and import prices can be imposed and export taxes are prohibited. Each signatory country must also accord national treatment to imported goods.
9 Such technologies include the use of automatic welding for pipeline construction, the development of ‘smart pigs’, risk-based approaches for pipeline integrity management and high-strength steel for pipeline construction: Santa, supra note 2.
10 Recent relaxation in the regulatory infrastructure of both countries have accelerated capital investment across borders achieving a better balance between consumer protection and return on investment.
11 Testimony of Chairman Alan Greenspan before the Joint Economic Committee of the U.S. Congress, The Federal Reserve Board (May 2003).
12 Santa, supra note 2.
13 Id. In addition, there remains an absence of harmony in regimes governing resource exploitation. For instance, while the United States refuses to engage in any exploitation activity on selected tracts of land, namely the Alaskan National Wildlife Refuge, it expects Canada to exploit similar regions. This dichotomy is characteristic of U.S. reliance on Canada as a secure source of energy supply: Bradley and Campbell, supra note 7.
15 Ibid.
16 Dukert, supra note 5.
17 Canada’s strategic position is premised on the fact that Alberta enjoys some of the largest energy producing oil-sands, the interconnection of electricity grids spanning from British Columbia to Mexico, and Canada’s vast supply of natural gas.
18 Bradley and Campbell, supra note 7.
24 Ibid.
27 Burney, supra note 20.
28 Rae, supra note 21.
29 See generally, Policy Briefing 17 and 19: Canada poised to Triumph within NAFTA Process, The Hill Times, May 17-23, 2004, available at www.thehilltimes.ca/policybriefings.pdf. In 1995, the Government of Canada accepted to restrict Canadian access to the U.S. soft-wood lumber market by agreeing to a quota-based deal with the United States in return for a promise of peace in softwood lumber trade. However, as can be seen with the current state of the softwood lumber industry, this promise was never kept.
30 Ibid. The U.S. proposed a new agreement last December, which included restrictive quotas and a partial refund of duties paid by Canadian lumber firms, which amounted to over USD 2 billion or USD 90 million a month over the past two years.
31 Ibid.
34 The Smart Border Declaration, supra note 8, at Preamble.
36 Dobson, supra note 32.

Allan Gotlieb, former Canadian Ambassador to Washington, *Canada-U.S. Relations: In Search of a National Consensus*, Address to the Montreal Economic Institute (June 2004).


*Ibid*.


Recently, Paul Cellucci, the U.S. Ambassador to Canada, said that Washington will not put a time limit on Canada’s decision to support U.S. BMD. He stated that “It’s a decision for Canada to make and we continue to hope that Canada will make a positive one … [and that] Canadian participation in the controversial missile defence system would be welcome but is ‘not a deal-breaker’ in the future of NORAD, the joint Canada-U.S. air defence network.” Jeff Sallot, *Missile Defence not a “deal breaker”*, Cellucci says, Globe and Mail, Nov. 4, 2004, at A6.

Paul Cellucci was further quoted stating: “It doesn’t matter if on a significant thing - like war in Iraq, or even missile defence - that if we have a disagreement … That may cause a strain, but it doesn't take away the fact that we're interconnected, dependent on each other and it's in each of our national interests to work together.” Bruce Cheadle, *Terror Attack via Canada Feared*, available at [http://cnews.canoe.ca/CNEWS/Canada/2004/10/20/678129-cp.html](http://cnews.canoe.ca/CNEWS/Canada/2004/10/20/678129-cp.html).

Owen Woods and Justin Thompson, *Ka-Boom or Bust: The U.S. Missile Defence System*, CBC news online at [www.cbc.ca/news/background/us_missile_defence.ca](http://www.cbc.ca/news/background/us_missile_defence.ca). Defence Minister Bill Graham, for instance, opposed Canada’s participation in BMD while he was Chairman of the Foreign Affairs Committee. However, upon becoming the Minister of Foreign Affairs, the recent terrorist attacks and emergence of various rogue states raised concerns for national defence that changed his mind in favour of supporting such a missile defence system. See interview questions in Kate Mallory, *Extremely Dangerous not to sign on U.S. Missile Shield, says Graham*, The Hill Times, October 18, 2004.


It should be noted that the current NORAD agreement is set to expire in May, 2006.

Heath, *supra* note 46.

Kate Mallory, *Extremely Dangerous not to sign on U.S. Missile Shield, says Graham*, The Hill Times, October 18, 2004. Defence Minister Graham was also quoted stating that “If Canada did no sign on, it would mean that the United States would be in the business of determining what it was going to do about an [oncoming] missile without consulting or having anything to do with us and we would have absolutely no say in defending our own country and our sovereignty because Americans would make the decision whether they were going to shoot it down or not, with or without any input from Canada.”


*Ibid*.


56 Ibid.
BIBLIOGRAPHY

LEGISLATION

Canada Business Corporations Act, R.S.C. 1985, c. C-44.
Corruption of Foreign Public Officials Act, R.S.C., 1998, c.34.
Special Economic Measure Act, R.S.C. 1992, c. 17.

JURISPRUDENCE


SECONDARY MATERIALS: ARTICLES


SECONDARY MATERIALS: PERIODICALS AND PRESS


Farley, Maggie. “The World; Calls to Expand Club Continue; The UN is mulling several approaches to adding seats to the Security Council to reflect the rise of regional powers” The Los Angeles Times (22 September, 2004) A5.


Kennedy, Mark. “Martin promotes “responsibility to protect” plan to world leaders” *CanWest News* (16 October 2004)


Mallory, Kate. “Extremely Dangerous not to sign on U.S. Missile Shield, says Graham” *The Hill Times* (October 18, 2004).


Urquhart, Brian. “Giving the UN the power it needs” National Post (9 October 2004) A17.


SECONDARY MATERIALS: BOOKS


Chang, Ha-Joon, Kicking Away the Ladder: Development Strategy in Historical Perspective (London: Anthem Press, 2002)

Clarke, Robert and Richard Swift, Eds., Ties That Bind; Canada and the Third World (Toronto: Between the Lines, 1982)

Cohen, Andrew, While Canada Slept: How We Lost Our Place in the World (Toronto: McClelland and Stewart, 2003)

Currie, John H., Public International Law (Toronto: Irwin Law, 2001)


Hantel-Fraser, Christine, No Fixed Address: Life in the Foreign Service (Toronto: University of Toronto Press, 1993)


Leeson, P.F. and M.M. Minogue, Perspectives on Development: Cross-Disciplinary Themes in Development Studies (Manchester, UK: Manchester University Press, UK, 1988)


North-South Institute, North-South Encounter: The Third World and Canadian Performance (Ottawa: North-South Institute, 1977)

Perinbam, Lewis, North and South: Towards A New Interdependence of Nations (Ottawa: Centre for Development Projects, 1983)


Taylor, Scott and Brian Nolan, Tested Mettle: Canada’s Peacekeepers at War (Ottawa: Esprit de Corps Books, 1998)


Tomlin, Brian W., Ed., Canada’s Foreign Policy: Analysis and Trends (Toronto: Methuen, 1978)


GOVERNMENT MATERIALS


Canada, Department of Foreign Affairs and International Trade, *Notes for an Address by the Honourable Bill Graham, Minister of Foreign Affairs, at The United Nations Conference on Disarmament* (Ottawa: Department of Foreign Affairs and International Trade, 2004), online: Department of Foreign Affairs and International Trade <http://webapps.dfait-maeci.gc.ca/minpub/Publication.asp?publication_id=380961>.


Canada, Office of the Prime Minister, *Address by the Prime Minister in Response to the Speech from the Throne*, online: Prime Minister of Canada: Complete Text of the Speech from the Throne (October 5, 2004) <http://pm.gc.ca/eng/sft-ddt.asp?id=2>.


Canada, *Young Adults: Priorities and Interests in International Trade*, online: <http://www.dfait-maeci.gc.ca/youth/surveys-en.asp#priority>.


**ONLINE MATERIALS**


Bretton Woods Project, online: <http://www.brettonwoodsproject.org/background/index.shtml#01>.

Canadian Bar Association, International Development Committee, online: <http://www.cba.org/CBA/IDP/Committee/>. 


Canadian Lawyer’s Association for International Human Rights, Legislative Proposal: Ensuring that the Special Economic Measures Act is a tool that may be used in responding to Canadian corporate complicity with ‘grave breaches of human rights and human security’ (2000), online: <http://www.claihr.org/publications_docs/project_documents/business/2semaprop.pdf>.


Global Policy Forum, online: [Strengthening Global Environmental Governance](http://www.globalpolicy.org/security/membership/veto/vetosubj.htm).


The Smart Border Declaration: Building a Smart Border for the 21st Century on the Foundation of a North American Zone of Confidence (“The Smart Border Declaration”), online: <http://www.canadianembassy.org/border/declaration-en.asp>.


**OTHER MATERIALS**

Annan, Kofi, “The Secretary-General Address to the General Assembly” (Address to the General Assembly), September 2003, online: <http://www.un.org/apps/sg/sgstats.asp?nid=1088>

Canada Is A Trading Nation, online: <http://www.2ontario.com/welcome/coca_401.asp> [Trading Nation].


Environics Research Group, Canadian Attitudes Towards Development Assistance (Ottawa: January 2004).


Gotlieb, Allan (former Canadian Ambassador to Washington), Canada-U.S. Relations: In Search of a National Consensus, (Address to the Montreal Economic Institute, June 2004).

Halifax Initiative, Briefing Note: Export Development Canada and Human Rights, online: The Halifax Initiative <http://www.halifaxinitiative.org>.


Natural Heritage Institute, et. al., *Beyond Good Deeds: Case Studies and a New Policy Agenda For Corporate Accountability* (California: Natural Heritage Institute, 2002), online: Natural Heritage Institute <http://www.n-h-i.org>.


Prime Minister Paul Martin, “Paul Martin at the UN, Speech by the Prime Minister” United Nations, 22 September 2004 [unpublished], online: Office of the Prime Minister <http://pm.gc.ca/eng/news.asp?id=266>.


The Energy Information Administration of Canada, online: <http://www.eia.doe.gov>.


175


__________, Fifty Years of Seminars (WUSC, Ottawa, 1997)