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REASSESSING NORTH AMERICAN COUNTER-NARCOTICS POLICES

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I would like to thank the organizers for the opportunity to address you today. The topic is quite broad and one could very quickly get mired in a recitation of new legislative initiatives or figures on recent drug seizures. Although I will provide you with some numbers, I do not propose to inundate you with micro data.

Illicit drug use and drug trafficking constitute probably one of the most complex and intractable problems facing the world today. Its negative effects are observable at the individual level as manifested by addiction, poor health, increased criminality, lost economic productivity, and a reduced lifespan. At the national level, we see increased “social costs” in the tens of billions of dollars as societies try to address the myriad consequences of addiction in their general populations. Internationally, there is a phenomenon of failed and failing states which, unable or unwilling to contain the excesses of their social problems, export these problems to the larger global community.

What makes drug use and drug trafficking such a challenging problem is that their essential driving forces are found in human nature. As rational people, we see the ultimate destructive nature of substance abuse. The addict clearly does not see this or, for that crucial scintilla of time before addiction takes hold, allows the desire for pleasure to usurp cold rationality. One other driving force is greed, the unreasonable and excessive pursuit of riches. It is inevitable that if you drop into a globalized world community of some 6.5 billion people a series of highly addictive wants together with a no-holds-barred pursuit of unlimited riches, you will have the making of a significant social problem.

The challenge posed by these behavioral and economic drivers is compounded by the reality that each generation must relearn the lessons of its predecessors. For example, cocaine abuse, which presents such a problem today, was prevalent around the end of the 19th century. More recently, for those of us who reached early adulthood in the late 1960s and early 1970s, we knew that the expression “speed kills” was a reference to the dangers posed by methamphetamine, not a fast car.

The cold reality is that due to human weakness, coupled with economic forces and aggravated by frail or venal government institutions, substance abuse and illicit trafficking will be with us until the lamb lies down with the lion, that is, other than as the most recent addition to the contents of the lion’s stomach.

Accordingly, our approach to the drug problem is, and should be, different than our efforts to eradicate diseases such as polio or malaria. You may launch a war to eradicate a virus; however, there can be no war on drugs anymore than there can be a war on lying, stealing, greed, or the other innumerable weaknesses that people have manifested since the beginning of time. What we can and must do, however, is take concrete action to control the worst manifestations of the drug problem so that individual citizens, nations, and the global community can continue to function and prosper.

At the outset, I would like to suggest that the title of our session is too narrowly focused. When one thinks of “narcotics” in their non-technical sense, one thinks of illicit drugs such as marijuana, cocaine,

heroin, methamphetamine, and ecstasy. Such a list is too narrow. The real issue is those substances that lend themselves to abuse. That term would include drugs, whether licit or illicit, which create physical and mental addiction and which, when abused, create negative consequences for the user and society more generally.

Framing the discussion as one of substance abuse will allow you to better appreciate the implications flowing from some of the various proposals advanced to address the drug problem such as decriminalization. By way of simple illustration, alcohol prohibition was replaced by government regulation. Regulation did not stop the illegal production and sale of alcohol; more importantly, it did not stop alcoholism nor did it eliminate underage alcohol consumption. In fact, government involvement led to market saturation.

In a report issued in March 2006, the Canadian Centre on Substance Abuse found that the overall cost of substance abuse in Canada was 40 billion dollars. Of that figure, 8.2 billion was attributed to illicit drug use—up from 1.4 billion in 1992. By contrast the cost associated with alcohol abuse has risen to 14.6 billion from 7.5 billion dollars. Direct health care costs related to substance abuse (8.8 billion) surpass costs for cardiovascular disease (7.3 billion) and cancer (2.7 billion). A note of caution, however, when dealing with these multi-year comparisons—cost estimation methods have evolved and health costs, in particular, have far outstripped inflation.

In 1908 with the passage of the Opium Act, Canada made its first effort to proscribe an illicit substance. That effort was followed in subsequent years by similar legislation such as the Narcotic Control Act and the Controlled Drugs and Substances Act of 1997. Legislation has evolved to include a wide variety of substances including, but not limited to, heroin, cocaine, methamphetamine, ecstasy, and cannabis to name but a few. The use of and trafficking in these substances has the potential to attract penal consequences.

In 1987 Canada launched its first National Drug Strategy, which was expanded to include tobacco, alcohol, inhalants, and prescription drugs in addition to the drugs previously mentioned. The Strategy, which has been renewed by successive governments, has the four traditional pillars of prevention, treatment, harm reduction, and enforcement.

The response to substance abuse in Canada is shared amongst the three levels of governments, i.e., federal, provincial, and municipal. A large number of NGOs also have an active interest in this area. The engagement of so many actors is reflected in the four different schools of thought that have evolved to address the challenge of substance abuse: prohibition with penal sanctions, legalization which assumes prohibition causes more problems than it solves, medicalization which treats it as an illness, and harm reduction which is a value-neutral approach whose focus is the desire to stop the spread of diseases such as hepatitis-C and human immunodeficiency virus (HIV).

Elements of each of these approaches can be found in Canada's Drug Strategy of today. There is also a substantial outreach to youth and communities at risk, such as the First Nations communities, to raise awareness of the dangers of substance abuse. Recent studies reflect the fact that while most youth are aware that drugs such as ecstasy are dangerous, there is a lessening of their appreciation of the dangers of marijuana. The percentage of individuals who have used drugs at least once rose from 28.5% in 1994 to 45% in 2004, and by 2004 some 44.5% of Canadians said they had used cannabis at least once in their lives. The average age of first use of alcohol, tobacco, or cannabis was 13.1 for boys and 13.7 for girls in 2004.

The ten provincial governments have the lead in respect of education and prevention as well as treatment and rehabilitation. They are supported by federal funding in these areas. By way of illustration, there are

some 1,000 addiction treatment programs in Canada and 2,400 organizations involved in the addiction field.

As would be expected, activities undertaken in respect of the harm reduction model remain controversial. Harm reduction efforts in the early days focused on injectable drugs but have since been expanded to alcohol and tobacco. Harm reduction activities would include the following: needle exchange programs, methadone maintenance for heroin users, supervised prescription of heroin, and medically supervised injection sites.

Harm reduction, which is value neutral and whose goal is to stop the spread of disease associated with substance abuse, has many critics. It has sustained setbacks recently with a number of municipalities either stopping or refusing to implement programs to distribute safe crack-cocaine user kits and the recent decision of the federal government to close down inmate-run tattoo parlors in federal corrections institutions. A medically supervised pilot injection site in Vancouver, British Columbia which has been operating since 2003 will shortly be coming up for a reconsideration. The discussions surrounding its continuance will provide an interesting test of the merits of the harm reduction approach. The harsh reality is that 41% of persons who inject drugs have shared needles. At least 70% of all new hepatitis-C cases are associated with injectable drug use. For such users, what are the alternatives to the harm reduction approach?

There has been some softening of the use of the criminal law sanction in respect of the users of drugs, particularly soft drugs such as marijuana, throughout the decades. There is, I believe, recognition that early recourse to the criminal justice system may actually be counterproductive for some individuals.

I would venture to say that in 50% of cases where police seize small quantities of cannabis, no charges are laid; and in the vast majority of instances where charges are laid, an absolute or conditional discharge is imposed by the court in lieu of a criminal conviction. The introduction of specialized drug diversion courts, modeled upon the U.S. experience in this regard, seeks to use the criminal law process as an adjunct to rehabilitation of the addict user and low-level addict trafficker. I fully expect Canada to continue to use a mixture of these traditional approaches to address substance addiction at the user level.

With respect to drug traffickers, Canada has adopted a firm and aggressive approach throughout the decades. Specific legislation that focuses upon drug trafficking such as the Controlled Drugs and Substances Act has been buttressed by an array of criminal law provisions that target directly and indirectly the other actors who facilitate this particular criminal enterprise. This enhanced legal framework has been further supported by evolutions in police investigative techniques and practices as well as enhanced collaboration domestically and internationally. There is, I would suggest, a much more sophisticated and focused effort to target serious criminal actors, to objectively track police impact on criminality, and to modernize practices and laws in response to an ever mutating criminal enforcement challenge.

Significant legislation includes special organized crime legislation, proceeds of crime and money laundering offenses, the creation of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to monitor suspected money laundering activities, and a more user-friendly Extradition Act. This legislative activity was accompanied by some 33 treaties to facilitate the sharing of investigative information under the Mutual Legal Assistance in Criminal Matters Act as well as treaties that provided for the recognition and enforcement of foreign forfeiture orders in respect of the proceeds of crime.

Canada, as is evident in the 2007 report of Criminal Intelligence Service Canada, is aware that the illicit drug trade engenders more criminal activity than any other criminal market. There is recognition that it accounts for assaults, homicides, and property crimes driven by violence between traffickers over control

of territory, individuals seeking money to purchase drugs, and from individuals under the influence of illicit drugs; and that it generates a series of adverse effects that run the gamut from infectious diseases to corruption. The illicit drug market continues to be the primary criminal market in Canada in terms of estimated generated illicit revenue, the number of participating organized crime groups, and the number of consumers.

The drug trafficking problem, however, is merely a subset of a larger globalized, transnational, organized crime phenomenon. Individually and collectively, we as nations stand or fall together. In recognition of that fact, Canada has participated in a number of fora wherein it has subjected itself to independent assessments as to its performance. Two such fora that are relevant to our discussion are the U.S.-Canada Cross Border Crime Forum and the Inter-American Drug Abuse Control Commission (CICAD).

The U.S.-Canada Cross Border Crime Forum was established in 1997. It prepared two drug threat assessments dealing with the flow of illegal substances across the borders of Canada and the United States. The first was produced in 2001 and the second in 2004. The assessments found, in part, that there was significantly enhanced bilateral cooperation on border security and that the cooperation between law enforcement communities in both countries is “excellent across all jurisdictions.” Furthermore, while there were sometimes different domestic approaches to managing drug issues, both countries shared the same objective, i.e., to reduce the supply and consumption of illicit drugs and the serious consequences that they pose to our societies, our citizens, and particularly our youth.

Specifically, it found that

- marijuana is the most widely produced, trafficked, and consumed illicit drug in the world;
- Canadian-produced marijuana constitutes 2% of overall U.S. seizures at its border;
- 25% of seized cocaine destined for Canadian markets either transits or is intended to transit the United States;
- 3% of the one to two tons of heroin smuggled into Canada yearly comes from South America via the United States;
- both Canada and the United States place a high priority on working with international partners to combat drug trafficking; and
- Canada and the U.S. enforcement agencies carried out a number of highly successful joint operations:
 - Mountain Express – 30 tons of pseudoephedrine (used to make methamphetamine) – 300 arrests and \$16 million seized;
 - Candy Box MDMA – 130 Individuals arrested in 19 cities 877,000 pills seized – 120 kilos – and \$6 million.

The 2004 report, I believe, is reflective of the current state of affairs with the possible additional twist in that Canadian-produced marijuana is being bartered in some cases for U.S.-transit cocaine and handguns.

Canada and the United States have enhanced border cooperation especially in the post-9/11 environment. The cooperation between Canada and the United States is in many cases an ideal model for national law enforcement cooperation. Its strength and success raise the question as to why other countries are not able to achieve similar levels of cooperation and success.

Just as individuals within a community are different in respect of their health, wealth, education, professionalism, and cooperative behavior, so too are nations. Some nations are in such a weakened state that it is beyond their capacity to deal with the drug problem. Others suffer from such individual and institutional corruption that they become willing partners in the commission of crime. Some, out of false

pride, nationalism, or a host of other reasons, refuse to cooperate in collective actions designed to address the drug problem. Other states that want to improve their situation frequently do not have the basic skills to formulate a realistic action plan, and any foreign aid received frequently lacks proper focus, adequacy, or sustainability. There are a number of diagnostic tools that one can look at to assess the health of the various state actors that we rely upon to address these social challenges.

Thirty of the 34 countries of the Americas participated with some 163 countries in Transparency International's 2006 report on global corruption. Only five of the 30 countries that participated were ranked amongst the 25% least corrupt. Five were amongst the 25% most corrupt, and one of the five was ranked last out of the 163 countries that participated. Of particular concern is the report's finding that bribes are most commonly paid to the police. As noted in the report:

“This result presents enormous concerns regarding corruption in processes of law enforcement, particularly when reviewed alongside the sector identified as their most common recipient of bribes: The legal system and judiciary.”

The fact of corruption is a major obstacle to state-to-state law enforcement cooperation especially when the lives of sources and agents may be put at risk.

Corruption requires secrecy to function. Transparency and accountability processes go a significant way to address the evils of corruption. The Organization of American States has recognized these realities and taken concrete steps to address them. I would invite you to read the hemispheric reports for 2003-2004 and 2005 based upon the Multilateral Evaluation Mechanism prepared by the Inter-American Drug Abuse Control Commission. Individual country reports are also available. The reports provide a candid assessment of the challenges that individual countries and the hemisphere must address.

For instance, there are some 34 member countries in the OAS, yet only seven countries have collected data on drug use within their general populations. If you don't know the nature and size of a problem, how successful will you be in addressing it? Although the report points out that demand drives production and trafficking, it notes that most programs are disjointed and fail to attack both facets of the problem. It notes as well that most countries recognize drug trafficking as a predicate offense for money laundering but not other serious offenses such as corruption, trafficking in human beings, fire arms, and terrorist activities as predicate offenses.

Although countries see the need for international cooperation, two countries did not have any laws dealing with extradition, and of those that did, six prohibited the extradition of nationals for drug trafficking, and eight had prohibitions in respect of extradition for money laundering offenses. It is fairly clear that such failures weaken overall enforcement efforts and create safe havens for criminals.

Steps can be taken to improve our collective ability to control the drug problem. We need better cooperation and integration among the various international bodies that concern themselves with the drug problem. The UN has an important strategic role in forging an international consensus. The reality, however, is that all problems are local and require local leadership, and engagement. CICAD, for instance, plays a useful role in holding the 34 countries of the OAS to account through the Mutual Evaluation Mechanism and its country and hemispheric reports. At the tactical level, it encourages problem identification and cooperation. Within the OAS community, there is a need for subregional leadership and ownership of the problem. A drug-reduction action plan for the Caribbean will be different than that of Canada or the United States. Regional plans must address the unique cultural and social realities of their respective environments. Each country and subregion should formulate its unique action plan, fashioned to its realities, and progress should be measured in terms of what it can realistically achieve and not that of a country that has been more economically endowed or which has enjoyed a more

stable public safety environment. We should abandon the shame-and-blame game and the labelling of countries as producers, in-transit facilitators, or consumers. We should eliminate from our discussions words such as the “war” on drugs which carries with it some degree of finality. We should recognize the fact that we are dealing with a human condition akin to lying, theft, or violence that will be with us forever, but which we seek to control so that societies and their citizens can function in a successful manner.

The public wants to know if the situation is under control or improving. In this regard, we must avoid measuring the unknown. We have found ourselves in the unusual situation wherein increased drug seizures are reported in the media as evidence of a growing drug problem as opposed to evidence of enhanced detection, enforcement, and cooperation. We need to find objective data that will demonstrate that progress is or is not being achieved. Bordering states and regional groupings of states should increase collaboration and the sharing of resources and experiences. Absent such cooperation, their sovereignty will be exploited by criminals.

We must distinguish between the consumer and the trafficker. Our goal in respect of the user is to break the addiction and return him to a healthy lifestyle. The trafficker merits the full attention of the criminal law, as it is the trafficker who has the potential, if left unchecked, to threaten the health of the host state and citizens of other countries.

States should be increasingly prepared for the movement from organically derived drugs to locally manufactured drugs. In terms of individual or social harm, there is no difference between cocaine or methamphetamine, heroin or oxycodone (hillbilly heroin). For traffickers, in many ways, manufactured drugs are ideal, as they can be produced locally in clandestine labs, thus avoiding the increased risk of border interdiction and seizure in the post-9/11 world.

Ownership of the drug problem belongs to all of us, yet it is frequently left at the doorstep of the national government. The reality is that governments at all levels share the problem and possess part of the solution.

For consumers, we have to break the cycle of addiction, and for drug traffickers and their enablers, we have to take away the profit or raise the risks sufficiently to make the unlawful activity unattractive. If we are not aggressively attacking their working capital by seizing proceeds of crime and instruments of criminality or eliminating the ability to launder money, then we are contributing by our omission to the problem. All countries have to cooperate to address this challenge. The failure of a state to pull its weight will cause problems in your country. Your self-interest means that you ought to be your brother’s keeper.

In summary, we collectively need to take these actions:

1. Define the problem better both in terms of its scope and its social and economic impact, and afford the substance abuse problem its proper priority within our domestic agenda.
2. Realize that success comes only from multi-country cooperation.
3. Acknowledge that it is in our self-interest to help another country because its failures will be manifested on our street corners; conversely, be willing to accept help from another country or to actively participate in joint enforcement activity.
4. Structure our foreign aid or assistance programs with a mind to enhancing public safety in the recipient country: one cannot build democratic institutions absent a foundation of security.
5. Require countries requesting assistance to formulate a realistic long-term comprehensive action plan together with associated costs: currently, many requests are not well conceived nor logically sequenced.

6. Look for tangible achievable success stories and identify those states that are sincere in their desire to confront the problem and have the basic elements present which combined with our assistance will move them from failure to success.
7. Urge donor countries and organizations to cooperate by sharing information on requests for assistance, prioritizing such requests, and assigning responsibility to the donor country or organization that is most likely to have the greatest influence and is committed to the long term: this does not mean that one or more donors cannot assist a given country, but our actions should be coordinated.
8. Be prepared to move from lead role to supporting role; since the best advocate for success is the country that has moved from failure to success, help that country show other regional partners that it can be done.
9. Recognize, accept, and communicate that this is an ongoing challenge, that it will have its successes and failures, and that the goal is to control the problem of substance abuse and its related challenges of violence and corruption so that societies can function and their citizens can benefit from a reasonable level of personal safety.

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