

The Justification of Anti-Terrorism Legislation
In Australia and Canada
Between September 17, 2001 and March 31, 2003

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Declaration

I certify that except where due acknowledgement has been made, the work is that of the author alone; the work has not been submitted previously, in whole or in part, to qualify for any other academic award; the content of the thesis is the result of work which has been carried out since the official commencement date of the approved research program; any editorial work, paid or unpaid, carried out by a third party is acknowledged; and, ethics procedures and guidelines have been followed.

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Abstract

The Justification of Anti-Terrorism Legislation in Australia and Canada Between September 17, 2001 and March 31, 2003

Few countries had seen the necessity for anti-terrorism legislation prior to 11 September 2001 (9/11) but that worldwide shock resulted in the United Nations Security Council Resolution 1373 calling for measures to combat international terrorism on 28 September 2001. Australia and Canada, middle powers at the United Nations, and close allies with the United States, were among the first to react in support of counter-terrorism action, Australia invoking the ANZUS Security Treaty between Australia, New Zealand, and the United States of America, and Canada supporting the response to 9/11 through the North Atlantic Treaty Organization. Both countries were quick to begin drafting anti-terrorism legislation that would fulfil the United Nations requirements under Resolution 1373 targeting the financing of terrorism and other actions. Canada introduced its anti-terrorism legislation on 15 October 2001 and Australia, having had an election in November 2001, began debating its anti-terrorism legislation on 13 February 2002.

This dissertation investigates the legislative discourse on anti-terrorism laws as the elected Members of Parliament in Australia and Canada debated the proposed new measures between 17 September 2001 and 31 March 2003, the period covering the passage of most of the early anti-terrorism legislation. The research aims to determine how the new laws, necessary at the time because of an increased awareness of the international character of terrorism, would be justified considering the increased law enforcement powers proposed in parts of the new legislation. There was a perceived lack of capacity to deal with terrorism in existing criminal laws. Terrorist acts were identifiable as crimes but were regarded differently and prevention was one aspect of this difference. Terrorism seemed to call for differentiation in the law but a major difficulty was in clarifying inherent characteristics of terrorism.

The verbatim records of parliamentary debates in both countries, documented in Hansard, provided an authoritative source of the views expressed by politicians, on the government side introducing and supporting the reasoning for the new legislation, and on the opposition side by the several political factions represented, each with a party policy and purpose to uphold. Forty-five themes were identified as topics through which anti-terrorism legislation was debated. Every time a Member of Parliament spoke on a topic related to a theme an instance was recorded, creating a database of over 5,000 instances. The qualitative discourse recorded, when sorted into tables, provided quantitative data on themes and political party stances on the legislation. Twenty-two themes generated much discourse and were designated as noteworthy. The 45 themes were grouped into Super-themes of related topics rendering grounds for subsequent discussion. Quotations drawn from the data exemplifying the themes provided supporting evidence to illustrate justification for the legislation. The four Super-themes summarizing the key topics forming the basis for the new legislation were *the Terrorism Event, National Security, Criminal Justice and Anti-Terrorism Legislation*. Statistical comparison of the discourse quantities produced in relation to each theme did not support the hypothesis that the introduction of Anti-Terrorism legislation was predominantly discussed as a national security issue in Australia and a criminal justice issue in Canada.

The *9/11 Terrorism Event* itself drew members of the legislatures together in both countries, providing the core justification for considering strong new laws and opening the door to cooperation by opposing political parties, at least at the beginning of the period under study. Assurances that other countries were viewing terrorism laws in the same vein mollified the severe nature of the *Anti-Terrorism Legislation* and the incorporation of sunset clauses provided relief where the continuity of strong measures was questioned. The infusion of *National Security* concerns into the sphere of policing and judicial enforcement of both countries, and the expansion of the role of intelligence agencies improved measures justified to protect public safety. Overarching all, the expansion of *Criminal Justice* laws to embrace the new challenges of terrorism criminality was justified by continuing to preserve the democratic rights and freedoms of innocent people.

List of Acronyms

ACT – Australian Capital Territory

AD – Australian Democrats Party

AEDPA – Anti-Terrorism and Effective Death Penalty Act

AFP – Australian Federal Police

ALP – Australian Labor Party

AG – Australian Greens Party

AMCRAN – Australian Muslim Civil Rights Advocacy Network

AML/CFT – Australian Anti-Money Laundering and Counter-Terrorism Financing Act

ANZUS – Australia, New Zealand, United States Security Treaty

APEC – Asia-Pacific Economic Cooperation

APEC 1st STAR – Secure Trade in the APEC Region

ARF – ASEAN Regional Forum

ASEAN – Association of Southeast Asian Nations

ASIO – Australian Security Intelligence Organisation

ASIS – Australian Secret Intelligence Service

ATCSA – Anti-Terrorism, Crime and Security Act

BQ – Bloc Quebecois Party

BTWC – Biological and Toxin Weapons Convention

CA – Canadian Alliance Party

CAD – Canadian Dollars

CDA – Critical Discourse Analysis

CFT – Combating the Financing of Terrorism

CHOGM – Commonwealth Heads of Government Meeting

CHOGRM – Commonwealth Heads of Government Regional Meeting

CICTE – The Inter-American Committee on Terrorism

CSIS – Canadian Security Intelligence Services

CTAG – Counter-Terrorism Action Group

CTTF – Counter Terrorism Task Force

DEFAT – Department of Foreign Affairs and Trade

DSD – Defence Signals Directorate

EOKA - Ethniki Organosis Kyprion Agoniston or National Organization of Cypriot Fighters

EU – European Union

FATF – Financial Action Task Force

FCCC – Framework Convention on Climate Change

FINTRAC – Financial Transactions Reports Analysis Centre of Canada

FISA – Foreign Intelligence Surveillance Act

FLQ – Front de Liberation du Quebec

FRSC – Forum Regional Security Committee

G20 – Group of Twenty Finance Ministers and Central Bank Governors

G8 – Group of Eight

ICC – International Criminal Court

IGO – International Government Organisation

IMO – International Maritime Organization

IRA – Irish Republican Army

IRB – Irish Republican Brotherhood

IZL – Irgun Zvai Leumi

LECP – Law Enforcement Cooperation Program

Lib – Liberal Party (Canada)

LP – Liberal Party (Australia)

NATO – North Atlantic Treaty Organization

NDP – New Democratic Party of Canada

NGO – Non-governmental Organisation

NORAD – North American Aerospace Defence Command

NP – National Party (Australia)

NSL – National Security Letter

OAS – Organization of American States

OCO – Oceania Customs Organisation

OSCE – Organisation for Security and Cooperation in Europe

PC – Progressive Conservative Party of Canada

PC/DR – Progressive Conservative Democratic Representative Caucus

PCN – Political Criminal Nexus

PIDC – Pacific Immigration Directors Conference

PIF – Pacific Islands Forum

PHON – Pauline Hanson’s One Nation (Party, Australia)

PILOM – Pacific Islands Law Officers’ Meeting

PIRA – Provisional Irish Republican Army

RCMP – Royal Canadian Mounted Police

RIC – Royal Irish Constabulary

SAC-PAN – Standing Advisory Committee on Commonwealth State Cooperation for Protection Against Violence

SDS – Students for a Democratic Society

SIAC – Special Immigration Appeals Commission

SN-UN – Security Council of the United Nations

SPCPC – South Pacific Chiefs of Police Conference

TA – Terrorism Act (United Kingdom)

UK – United Kingdom

UN – United Nations

UNC – United Nations Charter

UNGOMAP – United Nations Good Offices Mission in Afghanistan and Pakistan

UNIFL – United Nations Interim Force in Lebanon

UNSC – United Nations Security Council

UNSCR – United Nations Security Council Resolution

US – United States

U.S.A. – United States of America

U.S.S.R. – Union of Soviet Socialist Republics

WMD – Weapons of Mass Destruction

WTO – World Trade Organisation

Chapter 1 Introduction

The need for anti-terrorism legislation was thrust upon the parliaments of Australia and Canada by the United Nations (UN) on 28 September 2001 with UN Security Council Resolution (UNSCR) 1373. Terrorism itself was nothing new to the world until 11 September 2001 brought it to have a unique new meaning, establishing '9/11' as the turning point for countries concerned about their inability to deal effectively with the international character of violent crimes against innocent people, perpetrated by individuals and their organisations that are warlike in nature, stateless in the traditional sense of war, powerful through their ability to establish financial, propaganda and operational resources, yet cloaked in loose quasi-political and quasi-religious alliances that were terroristic in outlook and methods of operation. There is yet to be a formally accepted definition for terrorism or terrorist organisations although Stephens (2004) suggests an indirect definition can be found in Article 2(1) of the 1999 UN Convention for the Suppression of the Financing of Terrorism. Following 9/11, the United Nations was quick to establish the Counter-Terrorism Committee and called for all member states to take action and implement laws to fight terrorism through UNSCR 1373, 2001. Annual country reports were required to be submitted to the Counter-Terrorism Committee.

The strengthened legislation required by the Resolution was challenging to all countries because tough new rules were required to be introduced and democratic countries like Australia and Canada needed to draft and debate the legislation necessary before the UN requirements could be addressed by laws in their countries. The challenge for the Members of Parliament in Australia and Canada was to produce strong new legislation, out of necessity bordering on restricting democratic freedoms but necessary to deal with considerations and possibilities that could bring harm to their people. For guidance and reference they had the USA Patriot Act, produced quickly following 9/11, and the United Kingdom's anti-terrorism legislation, the Terrorism Act 2000 that had been updated in February 2001, and the Anti-terrorism, Crime and Security Act 2001, produced in November. The content of this legislation, as well as that of Australia and Canada, has been thoroughly discussed in scholarly writings but how the legislation for Australia and Canada was justified in their parliamentary debates has not been addressed until now.

The decision to study legislative debates in Australia and Canada arose from the political and governmental history and development of the two countries. Both are middle powers and former British colonies with comparable multicultural demographics and strong ties to the United States of America (US). The shared colonial past has produced similar governance. Both are Western Democratic countries with a Westminster system of government having political parties making up a House and a Senate with a Governor-General representing the Queen. The basis of law generation, debate and passage are effectively the same. While there are differences in the system used for each country, the similarities are more numerous and thus facilitate an examination of parliamentary process.

There are further links between Australia and Canada that add credibility to this study of how new anti-terrorism laws were legitimised by their legislatures. Those are their historical relationship with the United Kingdom, and more importantly their relationship with the United States of America. Both nations for many years, from their colonial birth to their conception as countries relied on Britain, economically, politically and for security. The end of the Second World War and a declining British Empire effectively brought a shift towards reliance upon the United States (US). Canada's geographic position placed it in a strong position to achieve a working relationship with the United States;

furthermore the country was also in a position to become a founding member in the North Atlantic Treaty Organisation, effectively gaining a much coveted security alliance with not only the UK and Europe but also the United States. Australia's geographic position put it at a disadvantage with the withdrawal of the UK from Asia. The emerging American presence in the region made a security relationship with the US a top priority for Australia. Thus, through continuous effort, Australia would eventually achieve the ANZUS Security Treaty between Australia, New Zealand, and the US, and as Siracusa and Coleman (2006) state, Australia's constant effort to achieve a strong security relationship with the US would see the country referred to as America's southern anchor in the Pacific, with Japan occupying its northern anchor.

As a result of UNSCR 1373 legislators in Australia and Canada were charged with the task of introducing amendments and additions to laws that had previously circumscribed criminal activity within the realm of precedent established by the legal system but were now to be expanded, encompassing new concepts and realities. The concepts included the need to establish law that could reach out or apply beyond the country's borders and the realities included proactive measures that could prevent terrorist acts from occurring. The issues proposed by the new legislation were difficult for politicians to confront. Australia and Canada both responded quickly to the call of the United Nations and the actions of the US, firstly as strong middle powers supportive of the UN and secondly because of the important relationships they had with the United States of America. Canada went about developing its legislation immediately and had its own version of new anti-terrorism laws ready by early December 2001, only three months after 9/11. Australia used the need for anti-terrorism legislation as the basis to call an early election and had its first pieces of anti-terrorism laws ready for debate early in the first quarter of 2002

This dissertation will examine how the governments of Australia and Canada justified the need for new anti-terrorism legislation in their parliaments in response to the immediate international demand for anti-terrorism legislation following 9/11. Debates on the early anti-terrorism legislation of both countries will be reviewed from September 2001 until the end of March 2003 following the invasion of Iraq. This period of time covers the discourse and passage of most of the early anti-terrorism legislation examined by this thesis and ends when the interests of the two countries take different paths, Australia siding with the United States in the Iraq invasion and Canada following the position taken by the United Nations. An examination of the actual discourse recorded from the debates presented the opportunity to identify how each speaking Member of Parliament phrased and presented their position on the proposed anti-terrorism legislation. The words spoken justifying or opposing the legislation echo common themes that could be identified and then categorised. Compiling the usage of the repeated themes in the parliamentary debates will present an indication of how the anti-terrorism legislation debates unfolded leading to an understanding of how the anti-terrorism laws were legitimised.

This dissertation will describe how Australia and Canada justified the stringent new legislation called for by the United Nations in the parliamentary discourse recorded in the Hansard debates over the first eighteen months following 9/11 and identify the issues of concern expressed about national security and criminal justice, the two fields having overlapping interests in domestic and international crimes of terrorism. It will also show the blurring that is occurring between Criminal Justice and National Security matters and note that it was evident in the discourse investigated for both countries.

For the most part terrorism within a country is addressed by existing criminal law but terrorism from abroad involves national security issues. Investigating, regulating, policing and combating terrorist

activities were seen in a different light following 9/11 and changes to the law were necessary. Australian Prime Minister Howard was in Washington DC when the terrorism of 9/11 occurred and was particularly mindful of the US reaction to a breach of national security. On his return, Australia invoked the ANZUS Treaty and shortly after Prime Minister Howard campaigned for re-election with National Security as a major platform issue.

The events of 11 September 2001 resulted in UNSCR 1373 calling for countries to establish new criminal laws dealing with terrorism. The first hypothesis for this dissertation was that national security matters would supersede criminal justice matters as justification for anti-terrorism legislation in Australia. The second and related hypothesis was that in Canada the justification for anti-terrorism legislation would be centred on criminal justice matters.

1.1 Preview of the dissertation organisation:

This dissertation begins Chapter 2 with a background review of the literature discussing governments and violence and how violence can be legitimised by both states and insurgency groups, then moves on to provide commentary on terrorism and national security and criminal justice considerations ending with brief references to international law, international relations and international crime. Experiences with terrorism before 9/11 are traced for the United Kingdom, including the long-lasting IRA confrontations, the insurgency in Cyprus, the Middle East experiences following the fall of the Ottoman Empire and the early terrorism in Palestine. This is followed by commentary on the early domestic experiences with and effects of terrorism in the United States. Canada's difficulties with hard-core Quebec nationalists, the FLQ, are documented as is the 1985 bombing of Air India Flight 182 from Vancouver. The 1978 Hilton Hotel bombing in Sydney Australia is also recalled and the literature review ends with commentary about the recent anti-western violence of Osama Bin Laden. Familiarity with all of these occurrences was not a prerequisite to winning elections in Australia and Canada but these were historical issues that coloured the debates in parliament whether expressed or not.

More familiar to politicians were the workings of the UN and the participation of both Australia and Canada in multilateralism and international security cooperation, the next chapter in the background section of the dissertation, Chapter 3. Material is presented about International Government Organisations, particularly the UN following 9/11 and its focus on international terrorism. Commentary is related about UNSCR 1373 and terrorism financing, and a section is presented on the issues of counter-terrorism versus human rights followed by observations on the impact of Security Council Resolutions. This background segment ends with a discussion of the roles of Australia and Canada as middle powers at the UN and reviews the early world security alliances of the two countries.

Chapter 4 presents an examination of scholarly writing about the anti-terrorism legislation relevant to the dissertation, with commentary highlighting opinions on parts of the USA Patriot Act, the United Kingdom anti-terrorism legislation, the Australian anti-terrorism legislation and the Canadian anti-terrorism legislation. The chapter ends with reviews of the country reports, embracing the study period for the dissertation, submitted by Australia and Canada to the UN as required by Resolution 1373.

The Research Methodology is set out in Chapter 5 outlining the purpose of the research and leading to a restatement of the hypothesis. Literature related to discourse analysis, political discourse and

institutional texts is referenced reflecting the guidance considered in undertaking the examination of discourse selected for the dissertation. The research setting for the review of Hansard transcripts is described with a supporting list of parliamentary sittings provided in Appendix 1. Additional reference material is noted including the Country Reports detailed in Chapter 4 and Flow Charts, prepared to document the sequence of counter-terrorism actions by International Organisations, which are included for reference in Appendix 2. The Methodology goes on to explain the design and method for conducting the research and the data collection process, then ends by identifying 45 recurring themes of discourse.

Chapter 6 outlines the Results of the Research Study, first describing the political parties making up the legislatures in both countries and then proceeding to describe the data included in the findings and presented in the first five tables. Table 6-1 quantifies the number of instances of the 45 themes that were identified for Australia and Canada. Tables 6-2, 6-3, 6-4 and 6-5 display the stances taken by the legislators in commenting on the 45 themes. The discussions about the tables include descriptions of the progress of Bills through the parliamentary process and explanations of the difficulties the legislation incurred. Twenty-two of the 45 themes emerged as noteworthy because of their high reoccurrence. These are presented in a synopsis outlining their characteristics. The 45 themes were subsequently categorised into four groupings of related topics or Super-themes presented in Table 6-6. Each of the Super-themes is then addressed in a dedicated section of the Chapter with the statistical significance and implications of the supporting themes noted.

The Discussion argues the reasons for justification of the legislation in Chapter 7. The four major Super-themes identifying the themes validating the actions of the legislators are each addressed, the 9/11 terrorism event itself, the necessity of having new legislation, issues of National Security, and the necessary permissions to act under the authority of Criminal Justice.

In the Concluding Chapter 8 the dissertation study and findings are reprised, the four major Super-themes revisited and the research findings and results of the Hypothesis concluded. This is followed by Implications of the Research, Limitations of the Study and finally Considerations for Future Study.

Appendix 1 lists Parliamentary Sittings and Dates, and *Appendix 2* charts a sequencing of International Government Organisations Actions to Combat Terrorism.

Chapter 2 Literature Review

2.1 Introduction

Governments are not strangers to violence. They have reacted to violence from outside their borders with military action, they have used violence to attack other states, and they have used violence in policing actions against their own people. This literature review begins with a reminder that democracies have always had difficulty accepting violence, inevitable as it seems to be, and look to the rules and shortcomings of law in an effort to cope with the necessary response. That response, in democratic societies must be justifiable and several academic positions on this issue are considered before this review turns to views on terrorism as criminal acts while being, at the same time, a concern for national security. In the academic world the fields of national security and criminal justice can both lay claim to the subject of terrorism and it is suggested that a ‘blurring’ has occurred between the two fields. Some observations follow on ‘national security and terrorism’ and then ‘criminal justice and terrorism’ before academic discussions are examined concerning international law, international relations, and international crime and their impact in relation to countries’ domestic and international policy decisions. Before the shock of 9/11, the Western world was familiar with the shaping experiences of terrorism for the United Kingdom and the United States, growing from the actions of the ‘Irish Republican Army’ and offshoot organisations, and early anarchists followed by ‘urban terrorists’ in the US. Of particular background interest for this dissertation are the summaries of Canada’s October 1970 FLQ Crisis and Australia’s 1978 Hilton Hotel bombing in Sydney, the early experiences with terrorism for the two countries. This is followed by a review of the 1985 bombing of Air India Flight 182 from Vancouver, Canada, the deadliest terrorist attack to happen in the West prior to 9/11. The literature review ends with a brief reflection on the violence of terrorism espoused against the West by Osama Bin Laden and Al Qaeda.

2.2 Governments and Violence

Throughout history, governments have both resorted to violence and responded to violence. It would seem that when responding governments are seen as aggrieved and when aggressive the violence is considered state terrorism if it is within their own population or war if it is against outsiders. Typically, the majority of people living in a democratic country tend to be wary of violence. As Keane (2004) states people who are living in democracies want to avoid violence; however because violence still occurs there are efforts to democratise or acknowledge reasons for violence to lessen its negative effects. Keane is recognizing the fact that a democracy does not function well if it is in a state of violence. According to Arendt (1970), violence is an indicator that something is wrong within the society. Furthermore, Arendt stipulates, “... violence appears where power is in jeopardy, but left to its own course it ends in power’s disappearance” (p.56). Arendt’s view is as valid for democracies as it is for other forms of society; therefore when violence does occur it does so for a reason, and that reason for Arendt is a sign that something is amiss within the society in which the violent action took place.

Once an attack or act of violence has occurred against a democratic society the question that arises is how will that government react? Does an act of aggression automatically beget a response equal to or exceeding the initial aggression? The answer was yes following 9/11. Leaders elected by the voting population govern democracies and those in power reflect the attitudes and governmental style the public wants. Essentially the government of democratic societies reflects the will of the majority of

people who exercise their right to vote. When there are attacks from abroad on democratic governments it is not only the lives of the people, that are threatened, but also the very values and morals of that society. Walzer (1977) sums up this point best saying, “When states are attacked, it is their members who are challenged, not only in their lives, but also in the sum of things they value most, including the political association they have made” (p.53). Walzer’s point was echoed by President Bush’s comments after the 11 September 2001 catastrophe stating to the American public and the world that America’s very freedom and way of life had been attacked (The White House, 2001a).

Dramatic as the events of 9/11 were, their subsequent effect on global security is undeniable; however, terrorism as a threat to democracy existed long before the 11 September 2001 attacks on the United States. Terrorism has been, while not necessarily widespread, a constant threat to democratic countries for decades (Laqueur, 1987; Chomsky, 1989; Crenshaw, 1995; Juergensmeyer, 2003; Hocking, 2004; Bjorgo, 2005 and Lynch & Williams, 2006). Crucial to democracy as a governmental system are the effects new security measures and tough responses to terrorism have on the democratic society. One of the most pressing issues to develop in the aftermath of 9/11 was the recognition of the need for new laws strengthening legislation to combat the perceived new global threat of terrorism. While there was no question of the need for some action, the problem was what, and how would democratic governments proceed? As Ignatieff (2004) declared:

The first challenge that a terrorist emergency poses to democracy is to this system of adversarial justification. The machinery of legislative deliberation and judicial review grinds slowly. Emergencies demand rapid action. Hence they require the exercise of prerogative. Presidents and prime ministers have to take action first and submit to questions later. But too much prerogative can be bad for democracy itself. (p. 2)

Ignatieff is saying that governments, in this case the United States, need to respond quickly to a terrorist attack. He points out that the way democratic governments are structured makes them incapable of rendering quick decisions. His view is that government leaders therefore must react; as long as they recognise that their powers in an emergency do not give them a blank cheque. Action is required, but action in a manner that relates to the emergency until the democratic process is able to catch up and implement a properly debated government plan.

2.2.1 Justifying the Legitimacy of Violence

Nations such as the United States, which experienced the trauma and full weight of the 11 September 2001 events, must avoid becoming trapped in a continuous circle of violence. Coady (2008) reiterates this warning when he identifies the problem states must avoid, saying, “It may be possible to argue that those who begin by treating war or terror as means inevitably finish up treating them as ends” (Coady, 2008, p. 157). Coady’s (2008) statement applies to both nations and terrorist groups. The idea is simple enough, those whose reasons to start an action beginning with violence, be it terrorism, revolution or war, usually end up retaining violence as the only viable solution to their cause.

Arendt (1970) has followed along a similar path when she says, “Violence can always destroy power; out of the barrel of a gun grows the most effective command, resulting in the most instant and perfect obedience. What never can grow out of it is power” (p.53). Initial and subsequent acts of violence to

further an objective are complete by themselves and therefore while effective when they occur there is no lasting continuity to achieve a particular final desired result, only a continuum of violence.

Validating Coady's (2008) statement and perhaps Arendt's (1970) as well, is the violence used as a means by terrorist groups like the Irish Republican Army (IRA), Red Faction and Al Qaeda. Violence, which started as the means has become the ends for these groups. Even for Western nation-states, the United States, United Kingdom, Australia and Canada, the terrorist attack on 11 September 2001 led to a violent response and the declaration of a 'war on terror' (The White House, 2001b). The means to fight this terrorism became global military action, which led to the invasion of Afghanistan and then later Iraq. Violence through military action, war, became the solution. Arendt (1970) stated, "Violence can be justifiable, but it never will be legitimate/ no one questions violence in self defence because the end justifying the means is immediate" (p.52). Despite Arendt's (1970) view, after 9/11 a violent response to the terrorist attack was justified as legitimate and necessary by Western powers to combat terrorism. Ignatieff (2004) argues that governments cannot spend too much time deliberating on the actions needed; it is the responsibility of those in power to react quickly as the situation dictates. Furthermore, to counter Arendt's argument that violence can never be legitimised, Keane (2004) has stated that violence can in fact be legitimised when the violence is democratised. Essentially Keane (2004) is arguing that once violence has been rationalised to the public, i.e. 'democratised', violence can be legitimate.

The International Independent Commission of Inquiry on the Kosovo war addressed the question of the legitimacy or illegitimacy of violence during the aftermath of the 1999 NATO bombing campaign in Serbia. It found that the decision to bomb targets in Serbia was in fact illegal, "... because it did not receive approval from the UN Security Council" (Chomsky, 2006, p. 96). At the same time, it found, "... it was legitimate because all diplomatic avenues had been exhausted and there was no other way to stop the killings and atrocities in Kosovo" (Goldstone, 2000, p. 1). In this, we see how violence was legitimised even if it is argued as illegal. Perhaps this poses a counterargument to Arendt (1970) in that if violence can be justified, how could it not be legitimate. If it were not justifiable that would be the end of the argument, just as if it was not legitimate there would be no point in arguing that it was justifiable.

A further twist to the question of legitimizing violence is identified by Coady (2008) in claiming while violence can be legitimised in a democracy, the use of terrorism is as easily rationalised by its perpetrators in that, "... terror is a form of violence, and violence is primarily a means" (p.157). Just as violence is legitimised for the good of democracy, terrorists can legitimise their own acts of violence as being needed for their respective causes. The matter essentially comes down to who can spin their position better or more effectively.

While violence may be seen as unavoidable, the perpetrator must not become totally dependent upon it. Gunaratna (2002) offers, "As Islamist groups have repeatedly demonstrated in the recent past, a military solution is only one part of a wider strategy of implementing socio-economic and political reforms. Otherwise the threat will diminish in the short term but re-emerge in the midterm" (p. 233). Gunaratna's words seem to reflect Coady's (2008) caution to be careful that the initial acts of violence, in this case military action, do not become the end-all solution. Gunaratna argues that in order to be effective in battling terrorist groups such as Al Qaeda, military action should only be a short-term action, followed up with non-military action, to avoid finding the end game being nothing but more violence.

Gunaratna's (2002) writings on short, mid and long-term strategies for dealing with terrorist organisations are also relevant to how democratic governments treat the terrorist issue on the home front. For example, Ignatieff (2004) argues that, "Democratic constitutions do allow some suspensions of rights in states of emergency Even in times of real danger, political authorities have to prove the case that abridgements of rights are justified" (p. 2). Most important is the eventual return to normalcy and the lifting of suspension of rights, otherwise the democracy is in danger of transforming into something more like a dictatorship (Ignatieff).

Justifying the legitimacy of state terrorism is another matter. It is important for people to realise that governments around the world whether democratic or not have engaged in behaviour that could be seen as state terrorism. Stohl (2005) draws attention to this involvement by states in their own terrorist action:

What is clear is that state terrorism has been practiced by states which are rich and poor, revolutionary and reactionary, expansionist and reclusive, secular and religious, east and west, north and south. In short virtually all types of state have at some time engaged in or promoted behaviors which many would characterise as terrorism either within their borders or in the wider international system. (p. 199)

Stohl (2005) goes on to say:

When it is the state that is the perpetrator of the terrorist act, few even pause to label the action as such. States and proponents of their action shrink from labelling what they themselves or those they support do as 'terror', preferring more 'neutral' designations such as 'coercive diplomacy', 'assistance' to a friendly state in its pursuit of internal security or 'aid' to freedom fighters or wars of national liberation. (p. 212)

An example of this is the Reagan Doctrine during the early 1980s and the use of mercenary forces in Nicaragua and the US support of tyrannical regimes in El Salvador and Central America (Chomsky, 1989). As Stohl (2005) points out, during this period of American involvement in and around Central America, defending America from Communism was the reason frequently quoted, thereby giving legitimacy to aggressive American action. Prior to this American interest and aggression toward suspected communist nations in Central America Nicaragua, for example, had limited trade connections with the Soviet Union, in the range of similar trade statistics the United States had with the former USSR (Chomsky). With the benefit of hindsight, these actions show the gaps in American logic in branding such countries as security concerns. This exemplifies that states do and have engaged in actions of violence that could be interpreted as terrorism and as Stohl points out this will most likely continue as it is the nature of the state to do so.

Michel Wieviorka (1995), writing about non-state terrorism offers:

In effect, terrorist actors do not just intend to threaten a certain category of people or menace the 'other side'. They also try to deliver a message to their own side, to political allies, or to the governments that might support, even sponsor their actions. (p. 599)

This statement could serve as a good example of state terrorism as well. Furthermore, as a point of interest, this excerpt, understood in a different context could easily be political strategizing by replacing the word 'terrorist' by 'political'. The similarities are worth noting.

Religion is often presented as a legitimizing influence justifying violence. For Juergensmeyer (2009), religion is not the cause of violence, but has appeared to give legitimacy to violence when other factors are more at the heart of the cause:

The acts of militant Muslim extremists in the Middle East, Christian militia in the United States, Jewish nationalists in Israel, Hindu activists in India, and angry Buddhist monks in Sri Lanka are seldom motivated by religion The anger of many of these groups is propelled by economic or cultural or political issues ... being displaced from, or denied, a homeland. (p. 1)

The rise of secular nationalism from the 18th century to the present saw a parting with, or the pushing to one side of, religion over secular nationalism; however by the 21st century the pendulum was swinging back with religion often taking precedence. This is why Juergensmeyer (2009) argues that viewing a separation between secularism and religion is problematic because the two are so similar in their actions:

Secular nationalism often evokes an almost religious response and it frequently appears as a kind of 'cultural nationalism' It not only encompasses the shared cultural values of people within existing, or potentially existing, national boundaries but also evokes a cultural response of its own. (p. 13)

Effectively the secular state validates its control by the use of its power to regulate and maintain public life. This power can take the form of violence and this violence can be legitimised as necessary by the state to maintain order:

In the modern world the secular state, and the state alone, has been given the power to kill legitimately, albeit for limited purposes: military defense, police protection, and capital punishment In challenging the state, today's religious activists, wherever they assert themselves around the world, reclaim the traditional right of religious authorities to say when violence is moral and when it is not. (Juergensmeyer, 2009, p. 11)

Rejection of the state's authority is more often than not a violent occurrence, because as Juergensmeyer (2009) identifies those who oppose the state's authority usually would like to institute their own authority, which itself would consist of violence to legitimise its own power. From this, it would appear that religious activists are attempting to claim and emulate an equal right to authority through violence to assert power over the state and maintain order. This positioning for control over public life signifies that the distinction between secular nationalism and religion is semantics. Both secular and religious states can rationalise the morality of violence as a means to preserve order and serve the greater good.

2.2.2 Terrorism: Criminal Acts and National Security Concerns

Addressing Terrorism has been a consuming academic exercise for many in the academic disciplines of political science, international affairs, international law and other areas of social studies. Studying

terrorism and terrorist action has failed to gain much traction in the field of criminology (Hamm, 2005). The lack of serious interest in terrorism by criminologists has led to this failure to take up research and study with the resulting dominance of research in the field by other disciplines (Hamm, 2005). “The post-9/11 verdict on criminology’s contribution to terrorism research is, therefore, quite dreadful. Because they have either failed to produce any terrorism research, or because their existing studies are useless, it is time for criminologists to begin anew” (Hamm, 2005, p. 238). One thing is undeniable though and that is that 9/11 sparked an increase in interest in a field of study once considered isolated (Bennett, 2004). A possible cause for the lack of interest by criminologists in terrorism is the perception that it is a national security issue and therefore separate from criminal justice. At the same time, some academics in the criminal justice field consider the study of national security issues by other disciplines to be encroaching on areas once traditionally viewed as criminal justice. For instance, McCullough and Pickering (2009) claim that: “The accelerated and continuing integration of national security and criminal justice under counter-terrorism frameworks consolidates a tendency away from traditional criminal justice concerns” (p. 628). Additionally McCullough (2004) argues that such a blurring between national security and criminal justice has been occurring for some time, steadily meshing since the Cold War. What troubles McCullough (2004) is the “...major shift in the nature of state power and global conflict and politics the ‘war on terror’ has illuminated is the progressive erosion of the boundaries between military and police action” (p. 310).

The apparent merging between fields of study where terrorism is concerned, as noted frequently in the literature, confirms that terrorism is not a topic easily classified into either national security or criminology. The importance is the impact terrorism is having on both fields. As Bennett (2004) points out: “The important question for our discipline now is whether the current interest will level out, decline, or become the seed-crystal for the institutionalization of comparative research as a mainstream field in criminology and criminal justice” (p. 2).

2.2.3 National Security and Terrorism

The government websites of Australia and Canada outline their policies and concerns for National Security and frame the responsibilities of the various government agencies charged with monitoring, managing and policing the many activities involved. The bare bones of what constitutes National Security for both countries encompasses the protection of the civilian population along with the nation’s infrastructure and interests, both at home and internationally.

A brief examination of the Australian Government’s National Security concerns as noted on its website include challenges from a range of sources that might involve, “... espionage, foreign interference, terrorism, politically motivated violence, border violations, cyber attack, organised crime, natural disasters and biosecurity events”. Australia’s national security is focused on its “... institutions of state, people, economic assets and technology ...” that may be at risk and is treated as a partnership between state, territory and federal governments, their departments and agencies and Australia’s international partners; furthermore the website makes it clear that the principal objectives of national security are centred on responding to terrorism (Australian National Security, 2012).

The Canadian Government’s internet information pages about National Security take a slightly different approach although there are similar concerns with protecting the nation’s citizens and civilian population along with “... contributing to international security.” One major difference is the inclusion of a specific reference to “... ensuring Canada is not a base for threats to our allies” as one of three

core interests stated in the policy. Canada's proximity to the United States has always demanded a close working relationship on matters of mutual concern and this unique core interest emphasises the importance placed on the assurance to its neighbour that the country will guard against the possibility of becoming a staging area for malicious activity against any friendly nation. Canada's policy, first released in 2004, describes an action plan to "... prepare for and respond to a range of security threats, including terrorist attacks, outbreaks of infectious diseases, natural disasters, cyber attacks on critical infrastructure and domestic extremism". It identifies six key areas: "intelligence, emergency planning and management, public health emergencies, transportation security, border security, and international security" (Privy Council Office, 2004, p. 13). One common element for both countries is the indication that National Security is now seen to encompass territory formerly dealt with under the aegis of the criminal justice field. The shared attribute is unquestionably the recognition since 9/11 of the kinds of threats newly posed by terrorism (and perhaps preceded by the rise of cross-border criminal activities) which can be either international in scope or just as easily an internal domestic affair. Both National Security policies, conceived after 9/11, speak clearly to domestic issues or concerns as well as to the international side of security concerns, reinforcing the noticeable blurring (or coming together) between the criminal justice field and National Security (McCullough and Pickering, 2009; Hogg, 2007; McCullough, 2004). According to the argument put forth by McCullough and Pickering (2009), in the aftermath of 9/11 matters of national security, specifically those related to terrorism are increasingly occupying the efforts of those in the criminal justice field. Where once security was the primary motive, now national security has become just as important:

In the post-9/11 context, it is not simply security that is being pursued through criminal justice measures, but *national* security. National security is a concept that extends beyond sovereign territory to target external threats and embrace international relations. National security embraces and extends the temporal shift to pre-crime along the same axis as security. Beyond this, however, national security, more than security generally, also champions and advances an additional shift, blurring the boundary between foreign and domestic and between law enforcement and military action. (McCullough and Pickering, 2009, p. 631)

McCullough and Pickering (2009) convey that the role of those in the criminal justice field from police officers to others within the legal system working with the police to prosecute crimes are now often enforcing matters of national security. Terrorism encompasses many classifications of crime requiring the involvement of parties concerned with national security as well as those engaged in traditional safety and security matters. Hogg (2007) approaches the impact of 9/11 and terrorism in a similar manner, supporting arguments by McCullough and Pickering (2009) that the post-9/11 efforts to fight terrorism have been handled in such a way that there has been a mixing between national security policies and those of the criminal justice field. However, Hogg (2007) is quick to point out that this blurring between the criminal justice system and national security has the potential for dire consequences and long standing established safeguards of the system may be compromised. Hogg (2007) warns of a possible loss of individual rights and freedoms by the expansion of strengthening national security.

Terrorism is not a new phenomenon; however, the way in which it has been treated post-9/11 is being reassessed. According to Findlay (2008) the global threat of terrorism is labelled as the new organised crime. This is a result of globalisation in that the global effort to shrink trade restrictions, ease border controls and foster new economic global growth provides new opportunities for those with either respectable or unscrupulous intentions. In 2008, Choo noted that the current global financial system

essentially permitted any individual to complete anonymous fiscal transactions from anywhere in the world to anywhere in the world.

As Findlay (2008) points out the way to stop global terrorism from achieving its aims is to deny it the financial resources present in the globalised economy. The depiction of global terrorism as organised crime has further ramifications. When viewed in the same light as organised crime there is a merging of interests between domestic law enforcement and the national security community. Additionally, classifying global terrorism as organised crime and thereby focusing on the financial capabilities of terrorist organisations denotes that terrorists are profit driven, which is not a rational perception to hold (Findlay, 2008). Even so, that targeting of terrorism's financial capabilities may shed light on why there is a perceived blurring between the interests of national security and criminal justice. Indeed one of the first major actions taken globally following 9/11 was United Nations Security Council (UNSC) Resolution 1373, primarily concerned with combating the financing of terrorism (UNSCR 1373, 2001). Choo (2008) also points out that financial actions undertaken by terrorists can be seen as similar to financial actions carried out by organised crime, for example the strict use of cash and money laundering techniques. Therefore, when viewing the targeting of terrorist financing as an effective approach in countering terrorism it is understandable that an overlapping occurs between criminal justice and national security matters.

2.2.4 Criminal Justice and Terrorism

The same difficulties in finding a universally accepted definition for terrorism plague the understanding of how crime is viewed in the Criminal Justice field. What exactly is a crime? Mark Israel (2006) provides three different conceptualizations of what constitutes a crime; as seen from a legal standpoint, as viewed from a human rights perspective and finally when seen as a result of a social process. A basic legal understanding of a crime would involve any action that violates established criminal law, however detractors point to the fact that this requires following an established list issued by a ruling authority to determine what is and what is not a crime (Israel, 2006). A drawback therefore is if something is seen as a criminal act but is not listed as a crime or no authority has named it as such, then it is not a crime (Israel, 2006). The concern for human rights according to Israel, "... widens the definition of crime by looking at all activities that violate a code of human rights" (Israel, 2006, p. 9). The problem with this human rights focus on crime is that it reaches into areas that the criminal justice system has difficulty addressing. Finally, Israel characterises his third interpretation of a crime as something that impacts society as the outcome of a social process: "Specifically, crime is the outcome of a process ... someone committed an act, but it was not what he or she did that made it a crime. Instead, [it is] the way an act is perceived and reacted to by others..." (Israel, 2006, p. 10). Israel's (2006) three examples of what defines a crime highlight the fact that all-encompassing definitions are difficult to find on complex issues.

Mythen and Walklate (2005) expand on the difficulties in defining criminal acts claiming it is easy enough to understand crimes established under criminal law but to define terrorism poses a tougher challenge under criminal law. "In many cases, it is not so much the specific mode of violence as the underlying motivation that may lead to a crime being categorized as terrorism" (Mythen and Walklate, 2005, p. 381). With terrorism gaining new-found attention post-9/11 it is now being classified by some as 'new terrorism' under the guise that the world has changed for the worse thereby justifying new approaches to security and strengthening the security deficiencies of the world.

According to Mythen and Walklate (2005) the newness of New Terrorism is a term that would be disputed in criminology because:

...criminologists have argued that what is to be understood as crime, a victim of crime and/or criminal is broad in its scope and includes an understanding of responses to and the work of what might be considered to be the coercive and/or the terroristic state.... In the United Kingdom, this kind of criminology has included a focal concern with the activities of the IRA. (Mythen and Walklate, 2005, p. 382)

Essentially the argument put forward by Mythen and Walklate (2005) is that there is nothing 'new' about terrorism. In order to classify an act as terrorism it would have to break established laws. If terrorists are law-breakers then there must be some commonality between a terrorist and a criminal.

First, classical criminology and contemporary rational choice approaches argue that actors are more likely to commit crimes if perceived benefits outweigh perceived costs. Perceived costs and benefits regarding chances of arrest and the likelihood and potential severity of penalties obviously constitute a kind of knowledge, as do assumptions about benefits that might be gained from crime. Importantly, such knowledge varies with an actor's position in society. (Savelsberg, 2006, p. 37)

Savelsberg (2006) argues that criminology is a multi-disciplinary field and as such can benefit from existing work in other fields. An interpretation of Savelsberg's understanding of why and how people commit and justify crimes can be applied to terrorists. Undertaking a terrorist action is done when the individual or individuals see the benefits in relation to the costs of carrying out the terrorist action. Terrorists or criminals will find ways to rationalise their action. Savelsberg provides an example of this type of justification in Osama bin Laden's interpretation of Islamic history that allowed him to rationalise the use of terrorism to correct what he deemed to be wrongs in society (Savelsberg, 2006, p. 40).

2.2.5 International Issues

An examination of academic discussion concerning international law, international relations, and international crime and their impact in relation to countries' domestic and international policy decisions will provide some background to the processes and interrelationships that affected Australian and Canadian anti-terrorism legislation. The sudden call internationally for domestic anti-terrorism legislation was implemented via the United Nations and is perhaps one of the rare times where international law had the strength behind it to foster wide spread compliance.

In the post-9/11 world, terrorism-afflicted countries looked to international bodies, particularly the UN, to promote their agendas calling for worldwide anti-terrorism laws. Terrorism became the focal point for crimes against humanity. The United States as the target of 9/11 began using its strength in international relations to encourage the adoption of anti-terrorism laws and turned to international law to legalise its call for military action against its aggressors and those who supported and protected its assailants.

2.2.5.1 *International Law*

UN Resolutions are effectively versions of international law because they are multinational agreements. These were arguably the first tools used to introduce the international community to the need for anti-terrorism/counter-terrorism policy. Byers (2005), argues:

There are two principle sources of international law, the first of which is customary international law, an informal, unwritten body of rules deriving from a combination of 'state practice' and *opinio juris*. State practice is what governments do and say; *opinio juris* is a belief, on the part of governments, that their conduct is obligated by international law. (p. 3-4)

For Byers (2005) the second form of international law comprises treaties. "Treaties may be referred to by any number of different names, including 'charter', 'convention', 'covenant', 'exchange of notes' or 'protocol'" (Byers, 2005, p. 4). Byers mentions that the United Nations is most often the instrumental body involved in international treaties. Byers' 'customary international law' is also referred to as 'soft law'. Soft law as discussed by Guzman (2002) fits into Byers' informal or unwritten laws that are effectively unenforceable and more like-an agreement or implied agreement that has no solid base, and can be frustrating being a legal non-factor. (Guzman, 2002)

Jana von Stein (2008) has looked at what Guzman (2002) and Byers (2005) discuss regarding 'soft law'. Essentially von Stein argues one of the major drawbacks with international agreements is while soft law does attract a country to participate that is about all it really does, foster participation. Traditional law, or 'hard law', just as with soft law, has its problems with international acceptance and enforcement. With hard law, the notion of a solid internationally agreed upon law scares countries away with their fear of commitment to a binding enforceable agreement.

As for the enforcement of international law Taulbee (2009) argues, "The international context seemingly lacks all of the features that we associate with the rule of law at the domestic level" (p. 12). Furthermore, "the international context lacks a legislature that can pass rules binding on all, lacks an international police force, and lacks courts that have appropriate jurisdiction over all states" (Taulbee, 2009, p. 12). Von Stein (2008) superbly highlights problems concerning international law, both soft and hard agreements, where she discusses issues involving international concern over climate change with the United Nations Framework Convention on Climate Change (FCCC) and the Kyoto Protocol:

The FCCC can be classified as relatively soft for all parties. For the non-industrialized countries, the Kyoto Protocol introduces no new commitments and so can be categorized as relatively soft. For the industrialized countries, in contrast, the Kyoto Protocol constitutes relatively hard law (p. 246).

This example, while not related to terrorism, does however highlight the problems with international agreements, and is relevant in that it is a grounded contemporary example of the issues and pitfalls that await all attempts at international law.

While it appears that states see the validity of international law, an important topic of discussion revolves around how and why certain nations comply with a mandate while others refuse (Guzman 2002). Taulbee (2009) adds to what Guzman touched upon concerning the problems nations have in recognising the validity of international law and therefore stop short of complying. Taulbee writes, "... international law does not specify forms of government or principles that govern the relationship

between a government and its citizens” (p. 2). This need for compliance is where international law fails according to Guzman:

Compliance is central to international law’s role in regulating the interaction of nations. Absent an incentive toward compliance, resources devoted to the creation and maintenance of international legal structures are wasted, and the study of international law is a futile endeavor. (p. 1830)

It is not difficult to appreciate where Guzman (2002) is coming from with this argument. International law is only viable if it applies internationally. As both Guzman and Taulbee (2009) show through their writings, validity of law is not the problem it is conformity that remains the biggest issue. Therefore international law that is not binding is effectively not worthy of the word law but instead should be accompanied with the term proposal, thereby becoming an international law proposal because without international conformity that is all it is. However to say that without conformity the study of law is pointless as Guzman does is not necessarily correct. The very fact that international law is studied regardless of whether there is conformity exposes the issue and allows for debate. Simply stated the question becomes is it better to be seen and not heard, as the situation may be with aspects of current international law, or not be seen or heard at all?

2.2.5.2 International Relations

International Relations and International Law are two areas of study that are closely allied. When looking at how International Law affects national policy, specifically anti/counter-terrorism policy, an important consideration is the basis of countries’ International Relations whether reflecting an authoritative outlook or one of reason and compromise.

Goodman and Jinks (2004) clarify that for the past twenty years there have been two main camps in discussions concerning international law and international relations, the rationalists and the constructivists. For Goodman and Jinks the rationalists view the world through military and economic power whereas the constructivists are more interested in, “... norms and global ideational structure” (p. 631). Goodman and Jinks go on to say: “According to conventional wisdom, there are two ways in which international law and international regimes change state behaviour (if at all): coercion and persuasion” (p. 630). Coercion and persuasion most assuredly played a role throughout the international community in the aftermath of 9/11. The very fact that the UN urged member countries to ratify the existing Security Council Resolutions and reminded them about the agreed counter-terrorism mandate was an indication that coercion and persuasion were at play.

Coercion for Goodman and Jinks (2004) effectively entails one state pressuring another state to introduce conformity through incentives or the threat of punishment. “This perspective is typically, though not exclusively, associated with ‘rationalist’ or rational choice approaches to international relations” (Goodman and Jinks, 2004, p. 634). Persuasion encourages states more through social learning and the sharing of information. “Persuasion is not simply a process of manipulating exogenous incentives to elicit desired behavior from the other side, but rather requires argument and deliberation in an effort to change the minds of others” (p. 635). However, this is not enough for Goodman and Jinks and they go on to explain further how coercion and persuasion affects other countries. For them acculturation helps bring about changes in attitude towards international relations

and international law. “By acculturation, we mean the general process of adopting the beliefs and behavioural patterns of the surrounding culture” (p. 638).

Similar to the Goodman and Jinks’ (2004) view of the rationalist position on International Relations, Pollins (2008) without differentiating between rationalists and constructivists, notes that realists,

... viewed international insecurity as resulting from the clash of nations with competing interests and varying capabilities in an environment of essential anarchy (given that there was no higher authority or effective means of enforcing peace between sovereign nations). (p. 18)

Pollins’ (2008) statement is relevant to the topic of counter-terrorism policy in a post-9/11 world. With the absence of means to enforce peace effectively between nations, any nation’s policies of coercion and persuasion as identified by Goodman and Jinks (2004) take on greater importance in International Relations. However, there is no denying that countries are still independent entities and as such have their own interests and priorities to consider in the balance. As Keohane (2002) points out:

Despite the wide consensus against terrorism, it is wise to remind ourselves that world politics is a competitive activity in which conflicts of interest are rife; hence the construction of a norm against terrorism is only the beginning of a political process, not the end. (p. 192)

Furthermore, when dealing with terrorism at the international level countries must not be misled by the notion that terrorism is limited to something that is an international phenomenon. The UN did not overlook this, as it was the driving force for the implementation of anti-terrorism laws to encompass both domestic and international aspects of terrorism. “Not all terrorism operates transnationally, with either sponsorship by states or their acquiescence” (Keohane. 2002, p. 142). Keohane reminds us that two well-known terrorist figures in Timothy McVeigh of the US and Shoko Asahara, leader of the Japanese Aum Shinrikyo sect, were both examples of homegrown terrorists. To add more complexity to both domestic and international relations Juergensmeyer (2003) argues, “It is also not clear that there is such a thing as a ‘terrorist’ before someone conspires to perpetrate a terrorist act.... I know of no study that suggests that people are terrorist by nature” (p. 8). This statement highlights an area that will continue to be unclear until there is international agreement on what constitutes being a terrorist.

Johansen (1998) writing before 9/11 about international relations offers, “Policymakers in many capitals seem snared in perhaps the oldest and most widely honoured maxim of international relations: ‘If you want peace, prepare for war’” (as cited in Klare and Chandrani, 1998, p.387). This is still relevant in international relations for the post-9/11 world. Where once it was war, now it is terrorism; the one has captured attention from the other, or more importantly, terrorism has become a new form of war. Furthermore, there is an argument that this new notion of war is asymmetrical war. As stated by Keohane (2002), “The key distinctive attribute of terrorism as a form of organized informal violence – as contrasted with criminal action, guerrilla warfare or assassination – is that terrorism seeks to intimidate an audience rather than to eliminate an enemy” (p. 142). Essentially what Keohane (2002) refers to as terrorism in the previous statement is a kind of asymmetrical warfare. Therefore, a post-9/11 reading of Johansen’s (1998) quote might be if you want peace, prepare for terrorism. This is exactly what was transpiring globally post-9/11. The international community working through the United Nations set about preparing to counter terrorism and it was the United Nations Security

Council (UNSC) Resolutions that set the stage. The reality is that the actions taken by the UN are similar to those Goodman and Jinks (2004) discuss concerning coercion and persuasion in international relations and international law to bring about a desired change.

2.2.5.3 *International Crime*

Iris Young (2007) offers two different viewpoints on 9/11 as an international crime in a post-9/11 world. Young writes:

The attacks on the World Trade Center and the Pentagon in September 2001 can appear within two frames of interpretation. The first see them as attacks on the United States as a state and its people. The second views them as crimes against humanity (p. 105).

It would appear that international crime is multidimensional and some understanding about what constitutes international crime will be helpful for this dissertation.

As Taulbee (2009) states, “The term ‘international crime’ does not appear in any current international treaty, though the phrase ‘crime under international law’ does” (p. 5). Furthermore, “A comprehensive international criminal code does not exist. Hence, definitions of what should be included in the category of international criminal law vary” (p. 5). Clearly, difficulties exist with the notion of international crime. As there is no agreed-upon, all-encompassing definition or code to work with the arguments surrounding international crime cannot be black and white but take place in an international grey zone including theories, ideas and suggestions.

Gaspar (2008) argues that there are four basic core groups of crime: spontaneous unplanned, opportunistic crime, planned recidivist crime by repeat offenders, organised crime at a local level, and organised crime at a higher level involving expansive networks and continuity (p. 9). In short, his argument is that the world does not need to add another group to the four already existing as international crime is essentially covered.

Crime shares the characteristic of law in that it is ever evolving, or it might be more accurate to say that crime in itself is not evolving in that crime is crime, but the nature of crime, dealing with it and policing it is evolving. Gaspar (2008) suggests that we are essentially moving into the third era of policing crime. The first era was patrolling and the second was patrolling combined with reactive investigation (p. 15). As Gaspar points out policing is still recent in terms of human history. “Most modern national policing arrangements are less than 200 years old” (p.15). The third era of policing, brought on by new advances in technology, the growing integrated markets, open movement of people internationally and globalization, is the movement away from reactive patrolling policing towards “... proactive techniques to investigate and detect resourceful and persistent offenders” (p.17).

A new transnational criminal threat that has emerged is the political criminal nexus (PCN). Godson (2003) clarifies that the PCN threat is the merger of traditional crime with the realities of the modern world or more bluntly the merger or co-operation of organised crime with government institutions. The political criminal nexus has not gone unnoticed by the international community, and this may be because of the very real threat of terrorism exploiting all openings within the international community. Godson writes, “Actors from the global level -- the UN, the G8, and the World Bank -- to the regional

-- the EU and OAS -- to national and sub-national elites have begun to grapple with the PCN problem” (p. 259). The solutions offered are coming in the form of treaties or other international agreements (Godson, 2003).

International criminal law is no less complex than other international law when some sort of international consensus or agreement is required. Morgan (2009), using drug trafficking as an example, notes that while the issue is agreed as an international problem attempts at establishing what is an international indictable offense seem to come up short and countries can only agree to more discussion on the subject. Morgan suggests the attitude of the international community seems to be one of nationality rules, meaning jurisdiction over citizens remains with their respective country:

...the classical perception of individuals by international lawyers has been that the citizenry is a medium for, not a restraint on, state power. Thus for example, the extra-territorial protection of one's own citizens has been considered within a sovereign's jurisdictional capacity rather than an incursion into a foreign state. (p. 381)

Although Morgan (2009) is writing about the problems the international community is having in coming to a consensus on international crime and the drug trade, in the post-9/11 world the international community did not seem to have the same problem with suspected terrorists. Morgan states, “... through nationality, states define and enforce their collective differences; and these differences effectively restrain the acts of other states” (p. 382-383). Does this attitude extend towards terrorists? Post-9/11 and even pre-9/11 with the US extraordinary rendition program this does not appear to be the case. Some could argue the two, international drug crime and terrorism should not be compared to one another, as they are separate issues. Perhaps the problem is that they are not separate issues but, instead, both examples of international crime with one, terrorism, being treated as an immediate threat to be reckoned with, a threat to national security that is rightly or wrongly viewed as more important than international drug trafficking.

As Aradau and van Munster (2009) point out, “... the ‘war on terror’ has given renewed relevance to theories of exceptionalism, as Guantanamo Bay, Abu Ghraib, extraordinary rendition, migration camps or surveillance practices were all increasingly defined as states of exception ...” (p. 688). This could explain why in the case identified by Morgan (2009) an international consensus on drug trafficking is still lacking, but in the case of post-9/11 terrorism nations are pressured into adopting anti/counter terrorism policies with international attributes. To be fair Aradau and van Munster were making their point with a focus on international relations; however, it seems to fit perfectly when applied to the area of international crime. The idea of terrorism as an exception is reflected in the literature for it has caused the international community to reveal a level of cooperation perhaps not seen outside of a war scenario, and indeed, it has been viewed as a type of war. One thing that is clear and reflected in the literature is that the post-9/11 world is full of exceptions and exceptionalism.

2.3 Experiences with Terrorism before 9/11

Some of the shaping experiences of terrorism over the past century troubled the United Kingdom and provoked the United States until the shock of 9/11 galvanised the Western world into action. These occurrences came about from different causes in the British and American experiences and did not go unnoticed by Australia and Canada because of the historical relationships between the four countries. Legislation for the fledgling countries that grew to become middle powers had its origins in British

law and both Australia and Canada followed closely the development of law making there and equivalent legislation in the United States.

This section will look first at the terrorist groups that operated against Great Britain in the early twentieth century including the creation of the Irish Republican Army (IRA) and other Irish resistance groups, and other IRA inspired terrorist groups such as the National Organisation of Cypriot Fighters (EOKA) in Cyprus. It will also review British involvement in the Middle East, the evolution of British foreign policy there, and the creation of Israel, the results still affecting the UK and the world to this day. Secondly, a brief review of early terrorism experienced in the US will be presented, followed by important Canadian and Australian experiences, the October 1970 FLQ crisis in Canada, the 1978 Hilton Hotel bombing in Sydney, Australia, and the 1985 bombing of Air India Flight 182 that had originated in Vancouver, Canada. The section closes with a brief review of the motivation behind the anti-Western violence demonstrated by Osama Bin Laden and Al Qaeda.

2.3.1 United Kingdom Experiences with Terrorism

Acts of terrorism have been a regular occurrence in the UK in large part due to issues involving Northern Ireland, the Irish Republican Army and its offshoot terrorist groups. This terrorist activity that troubled Britain throughout the twentieth century led to the development and evolution of anti-terrorism legislation over a number of years and this had undergone extensive revision in 2000 based upon a new version of the UK's anti-terrorism policy, one year before 9/11. (Home Office, 2011). Anti-terrorism legislation for both Australia and Canada was developed based upon the 2000 UK Terrorism Act (Roach, 2007) and the catalyst was the 9/11 terrorist attack that inspired the 'War on Terrorism' of the United States government. Mulcahy (2005) has suggested the terrorist activity by the IRA and its related groups provided the testing ground for the UK's anti-terrorism act.

2.3.1.1 The Irish Experience

The establishment of the Irish Republican Army in the early part of the twentieth century and its subsequent military repression would eventually lead to a wave of nationalist/separatist terrorist activity that reached a new height with the formation of the Provisional Irish Republican Army (PIRA) in 1969 (White, 1993). The creation of the Irish Republican Army (IRA) from the remnants of the Irish Republican Brotherhood (IRB) came about after the failed military uprising against British rule in 1916. The year 1920 saw the first act of IRA violence with the ambush of a Royal Irish Constabulary (RIC) unit. Essentially the RIC British auxiliary forces, the majority of which were farmers of Catholic background, were volunteers (Sinclair, 2003). From this moment on the guerrilla-style, military campaign against British forces began.

A principal figure in the IRA in the 1920's Michael Collins believed the first step towards victory was the destruction of the RIC. In his view Ireland's countryside could be taken away from the RIC and controlled by IRA through a brutal campaign of violence and intimidation of the RIC, their families and anyone who supported them (Sinclair, 2003). "Northern Ireland was carved out of guerrilla warfare, sectarian riots, and the determination of the Protestant leaders ... to maintain the link with Great Britain" (White, 1993, p. 22).

A treaty was signed in December 1921 to give the southern counties the status of a dominion and in 1922 they became the Irish Free State. Ulster was excluded

however, for the Irish guerrilla army had not established its control in the north of the island. (Sinclair, 2003, p. 184)

After Irish independence in 1922, the IRA remained sporadically active. It orchestrated a number of bombing campaigns and guerrilla raids against British targets and along the Northern Ireland border in attempts to end the partition of Ireland. New attempts by the IRA to stir up conflict with the British took place in 1939, 1944 and 1956 but none of these bombing campaigns was successful (White, 1993). By 1969, there was a split within the IRA that saw the creation of the Provisional Irish Republican Army, or PIRA (White, 1993).

The lasting power of the IRA and its branches is truly remarkable, a consistent organisation that can trace its origins to 1916. One of the reasons for this according to Reinares (2005) is that it consistently recruited members from the lower strata of society, particularly youths of the lower working class. Reinares also argues that the IRA was able to capitalise on the religious aspect of the conflict, the struggle between Catholics and Protestants. However as Juergensmeyer (2003) points out, while religion was a part of the IRA's struggle, it was not a major issue. In fact, religion was of greater concern to the Protestant militant/terrorist groups than it was to the IRA, especially when it came to church and religious leaders. Despite Protestant accusations of Rome's involvement, the Catholic Church in Ireland has not been accommodating or supportive of violent action (Juergensmeyer, 2003).

2.3.1.2 The Cyprus Experience

Cyprus, a British colony, became an independent republic in 1960. From 1955 to 1959, insurgent action took place against British occupying forces in an attempt to gain Cyprus's independence from British occupation. One of the main groups that resorted to terrorist action against British targets was the National Organisation of Cypriot Fighters (EOKA), a Greek nationalistic resistance movement. The campaign of terrorism lasted approximately four years and Turkish interests combined with the Turkish ethnic population of Cyprus were attacked as well as the British. Despite the targeting of British and Turkish interests there were just as many Greek Cypriot casualties in the conflict (GlobalSecurity.org, 2011).

There were connections between EOKA and the IRA, and other Irish terrorist groups in the 1950s (Rolston, 2007). Both EOKA and the IRA were engaged in similar struggles with the same opponent, Britain. The IRA, having established its credentials as a terrorist organisation was in a position to help other goal-oriented groups particularly those who were fighting the same enemy, the British:

In the late 1950s, there was cooperation between Irish republicans and EOKA in Cyprus. In February 1959, a small Irish republican group called Saor Uladh collaborated with EOKA on a joint prison escape bid from Wakefield prison A similar collaboration with the IRA for a joint prison break from Wormwood Scrubs fell through when EOKA prisoners were transferred. (Bowyer Bell, 1989, p. 317 & p. 320)

As Gordon (1987) states, the violent action led by the EOKA ended in defeat, but ruling power over Cyprus was handed to Archbishop Makarios when the British left. It was later discovered that Archbishop Makarios was linked to the leadership of the EOKA. The Journal of Cyprus Studies stated that information recovered drew connections between the Archbishop and EOKA leader Grivas with the Archbishop controlling, or at least influencing, the actions of the EOKA (Journal of Cyprus

Studies, 2007). EOKA was defeated militarily at the same time the British interest in the region was dwindling and this presented a convenient opportunity for the British forces to leave Cyprus (Laqueur (1987).

2.3.1.3 The Middle East Experience

In addition to the United Kingdom's domestic terrorist concerns and its troubles in Cyprus, late nineteenth and early twentieth century British foreign policy and actions in the Middle East contributed to its international security concerns of the present day. As the power of the British Empire slipped into decline, the Middle East as we know it today emerged at the end of the First World War in 1919.

An old ally of the Ottoman Empire the British began to become tired of the tricks perpetrated by the Ottoman Sultan at the end of the nineteenth century. Atrocities committed against Christian minorities had created a desire for Britain to distance itself from the Ottomans (Fromkin, 1989). It was during this period in history that the Armenian terrorist movement was at its peak:

There is evidence to the effect that the methods of the Armenian revolutionaries of the late 1880s and 1890s were largely borrowed from the Narodnaya Volya. Their first leader in Turkey was Avetis Nazarbeck, who was converted to socialism by his fiancée. She reportedly only spoke Russian and had taken part in the Russian revolutionary movement. (Laqueur, 1987, p. 43)

Inspired by the outcome of Bulgarian success two decades before, those in the Armenian terrorist movement anticipated that increased violent activity would result in mass repression of their people, thereby radicalizing the majority while attracting European sympathy and involvement. This had occurred with the Bulgarians in encouraging other ethnic minority groups within the Ottoman Empire to join the revolt (Laqueur, 1987). The Ottoman Empire had been in rapid decline and many within Europe expected its eventual collapse. The only purpose for British involvement in the Middle East was to counter Russian activity in the region. As the Russian threat began to subside so too did the value of supporting the Ottoman Empire for the British who allowed Germany to take over its supporting role (Fromkin, 1989).

The end of the war in 1919 established the point in time where the Ottoman Empire ceased to exist; with the vast majority of its territory divided among the victorious European allied powers primarily England and France while the rest of the old Ottoman Empire was reborn as the country of Turkey. It was in this time-period-academics argue, that tensions increased between the Arab world and the West. Britain's view of the Middle East had reversed itself by the peace settlement talks of 1919. The importance of the discovery of oil in Iran and the possibility of more oil in the Suez and the fertile lands along the Tigris and Euphrates rivers, made the Middle East attractive territory to hold. As MacMillan (2001) states, the temptation was too high for then British Prime Minister Lloyd George:

Like Napoleon, he was intoxicated by the possibilities of the Middle East: a restored Hellenic world in Asia Minor; a new Jewish civilization in Palestine; Suez and all the links to India safe from threat; loyal and obedient Arab states along the Fertile Crescent and valleys of the Tigris and Euphrates; protection for British oil supplies from Persia and the possibility of new sources under direct British control (p. 393)

The people of the Middle East thought differently. The fall of the Ottoman Empire was a chance for the creation by Arab powers of new independent countries throughout the Middle East. “For the Arab Middle East the peace settlements were the old nineteenth-century imperialism again” (MacMillan, 2001, p. 392). From the Arab point of view, this was once again another great betrayal by the European powers as both France and England reneged on previous promises of independence and established new territories of control for themselves (Fromkin, 1989; MacMillan, 2001).

Even though France and Britain held high hopes for their territories acquired in the Middle East after the First World War, the situation soon ended in complete disaster resulting from the entrenching of anti-Western-imperialism and a complete lack of trust of the West by the Arabic Middle East. European expansion into the Middle East was short lived with both France and Britain eventually withdrawing from the region. MacMillan (2001) relates it was unfortunate for the British who remained trapped in Palestine until after the end of the Second World War and the creation of Israel:

The Arab world as a whole never forgot its betrayal and Arab hostility came to focus on the example of Western perfidy nearest at hand, the Zionist presence in Palestine. Arabs also remembered the brief hope of Arab unity at the end of the war. After 1945 the resentments and hope continued to shape the Middle East. (p. 420)

2.3.1.4 Irgun Zvai Leumi & Lehi

Irgun Zvai Leumi (National Military Organization) was a terrorist group comprised of Jewish settlers in the British mandate of Palestine. The goal of Irgun Zvai Leumi (IZL) was the creation of a Jewish state, today’s Israel. IZL originated from another Zionist organisation called Haganah B, which had split from the group Haganah. IZL came into existence in 1936 when Haganah B turned into Irgun Zvai Leumi. IZL “... adopted an aggressive policy of severe reprisals against the Arab population and of violent resistance against the British” (Lustick, 1995, p. 524).

When examining IZL it becomes apparent that there are links between the IZL and the IRA. IZL leader Menachem Begin was a self-professed admirer of IRA founder Michael Collins and therefore styled the operations of the IZL on that of the IRA:

Menachem Begin, leader of Irgun Zvai Leumi, identified with the Irish struggle for independence and claimed to model his guerrilla war party on the model provided by Michael Collins, leader of the IRA during the War of Independence. (Sofer, 1988, p. 109)

By 1939 with the outbreak of World War Two IZL stopped its aggression against the British as they were at war with Nazi Germany, a great enemy of the Jewish people; however, this did not lead to a stop of all Jewish extremist terrorist actions against the British in Palestine. IZL’s decision to cease violent actions against the British caused a splinter group to break off. In 1939 Lehi, Freedom Fighters for Israel, also known as the Stern Group and under the leadership of Yitzak Shamir came into existence and continued the attacks against the British (Laqueur, 1987). The tactics of the IRA also guided Yitzak Shamir who “... used the nom de guerre ‘Michael’ in tribute to Michael Collins” (O’Dwyer, 1979 p. 155).

The British occupation of Palestine led to its exposure to Jewish terrorism in the course of the creation of Israel. This was the most outstanding increase in terrorist activity within former British colonies and protectorates that accompanied the decline of the British Empire. Radical groups with prospects of independence saw violence and military action directed at British assets as an effective tool to inspire nationalism, draw international attention to their plight and weaken British resolve to hold onto territories that were no longer strategically important for Britain:

Thus Britain gave up Ireland after the First World War, and the Palestine mandate and Cyprus after the Second World War; the terrorism of the IRA, the Irgun and LEHI, and EOKA certainly played a part in these decisions. But terrorism was not the decisive factor in any of these countries, where the British retreat was, after all, part of a general historical process. (Laqueur, 1987, p. 139)

2.3.2 U.S.A. Experiences with Terrorism

Unlike the United Kingdom the United States has not had as extensive a history involving terrorism, either domestically or internationally; however by the 1990s America began to bear the brunt of anti-Western terrorist activity which climaxed in the September 11 attacks. Although not free of terrorist activity through the past 100 years, the United States level of coping with domestic terrorism was not considered paramount as terrorist action in the US was relatively minor (Levitt & Jacobson, 2008). The beginning of the twentieth century in the United States saw the assassination of US President McKinley, carried out by an anarchist organisation heavily influenced by the anarchist movement in Russia; however, the future implications following from this were negligible (Miller, 1995). Terrorism did not really become an issue in the United States until the 1960s. According to Bolechow (2005), “Since the end of the 1960s, when modern international terrorism was born, American citizens as well as American property and interests have been the most frequent aim of international terrorist attacks” (p. 3). Supporting this, Laqueur (1987) states, “The post-war wave of urban terrorism began in the late 1960s ... urban terrorism in North America ... grew out of the New Left or, to be precise, the failure of the new left...” (p. 203). Known groups that emerged in this period were the Weathermen, a factional split from the Students for a Democratic Society (SDS), the Black Panthers and the Symbionese Liberation Army. Groups like the Weathermen, who later changed their name to Weather People, then the Weather Underground stood for highly ideological values with desires to change the world through violence if needed, or as Chipman (1991) states, “... romantic and even infantile fantasy ...” (p. 2). “The Weathermen, even more than the Black Panthers, remained a marginal phenomenon; whatever they did in the underground, it did not affect American life” (Laqueur, 1987, p. 245).

1979 appears to be the date where terrorism begins to take on a more menacing tone for the United States, a watershed in that terrorism began moving away from action with limited casualties, hijackings and hostage-taking to actions with increasing casualty rates; as Enders and Sandler (2000) put it, more bang for the terrorists buck. Up until the 1980s, the United States took a hard-line stance with the distinction between terrorism and criminal activity. According to Damphousse & Shields (2007) it was the view of the US Government that no distinction existed between terrorists and criminals. Albini (2001), perhaps thinking only of international terrorism, offers a different view on the beginning of terrorism against the US stating that it became a threat for the United States in 1990:

Government intelligence agencies found that they had, without realizing it, lost track of the leaders of terrorist groups, while the ... members; so too, group affiliations changed dramatically, the ideological beliefs and principals of many groups were

abandoned and the 'mercenary terrorist' –trained specialists who would sell their services for a fee-made their appearance. (p. 2)

Despite Enders and Sandler's (2000) position and that of Albini (2001), Damphousse & Shields (2007) state that the watershed moments for terrorism in American history came in two places, the 1995 Oklahoma City bombing and the 2001 attacks on September 11. Writing before 9/11, Worrall (1999) suggests the two important terrorist events for the United States in the 1990s were the 1993 World Trade Centre Bombing and the 1995 Oklahoma Federal Building bombing. It was following these two events that the United States instituted the Antiterrorism and Effective Death Penalty Act (AEDPA), in 1996 (Worrall). Originally proposed after the 1993 World Trade Centre bombing, the act was not passed by the United States Government until after Oklahoma City (Worrall). It is important to note that the events of 2001 do not take away from the arguments posed by Worrall and Enders and Sandler. Worrall draws attention to events that led to the proposal and eventual passing of the AEDPA in 1996, and Enders and Sandler claim that the events of 1979 factored into the growth of international terrorist attention directed at the United States.

The AEDPA of 1996 expanded federal powers to new heights, made it easier to remove and ban from the country non-US citizens with suspected links to terrorism and stop any financial support they might be receiving. The new statute made it easier for courts to detain and convict suspected terrorists, while easing and speeding up the process for those sentenced to the death penalty (Steiker, 2001).

The AEDPA was hailed as a get-tough-on-terrorism policy change that purported to make it easier for the courts to impose, and for correctional facilities to carry out, the death penalty in some capital crimes by limiting habeas corpus applications. (Damphousse & Shields, 2007, p. 192)

Damphousse & Shields (2007) also point out that the USA PATRIOT Act was adopted in December 2001, under a similar set of circumstances as in the case of the AEDPA in 1996 because the government was under immense pressure to act in the wake of 9/11.

Worrall (1999) is of the opinion that the United States Government was slow to act in responding to terrorism but he was writing about American experiences before 9/11. The bombing of the World Trade Centre in 1993 gave the American Government all the incentive it needed to act. The result was the development of the AEDPA; however, the failure of the United States Government was its inability to implement this statute until after another act of terrorism occurred namely the bombing of the Oklahoma City Federal Building in 1995:

Accordingly, Congress is the primary forum for early efforts to ameliorate the terrorism 'problem.' Debates over anti-terrorism proposals should have been prevalent following the World Trade Center. Terrorism prevention should have been a salient issue, but it never was - until Oklahoma. Put another way, terrorism was not an agenda item of any consequence in Congress prior to the Oklahoma bombing. (Worrall, 1999, p. 16)

In order to highlight the problems government faces when it comes to addressing an issue, Worrall (1999) points to the three-step model presented by Kingdon (1995); recognition of the problem, the formation and refinement of policy and finally the satisfaction of political differences within the

government. This is not an explanation to excuse government inaction but merely a recognition of how democratic governments work, in this case the American Government.

By 2000, Enders and Sandler (2000) argued that while terrorism, particularly transnational terrorism was in straight decline during the Post-Cold War period the threat of terrorism was still a constant issue and fear. The rationale behind this was that although terrorism was in decline, acts of terrorism with higher casualties rates were becoming more common than the hijackings, hostage-takings and threats of the Cold War days.

There is a clear perception by the media and others that transnational terrorism poses an even greater threat to lives and property despite its recent drop, thus suggesting that casualties are more associated with current terrorist events. (Ender & Sandler, 2000, p. 308)

Indridason (2008) argues, “There is a small but growing literature that suggests that terrorism influences electoral outcomes” (p. 246). To back up this claim Indridason (2008) refers to the Spanish election that occurred soon after the Madrid bombings concluding that, “... the terrorist attack had a substantial effect on the outcome of the election” (p. 246). Indridason (2008) links this to the United States by referring to the 2004 election where President Bush won by a much larger popular vote than he did in the 2000 election:

Jacobson (2003) and Langer & Cohen (2005) point out that voters in, retrospectively, the 2002 mid-term election and the 2004 presidential election in the United States listed terrorism among the most important issues determining their vote choice. (Jacobson (2003) and Langer & Cohen (2005) as cited in Indridason, 2008, p. 245)

Whereas Jacobson (2003) claims the terrorist attack of 2001 did have influence, favouring the Republican vote, Langer and Cohen (2005) state that terrorism was number three in voter issue ranking in the 2004 presidential election, below moral values and the economy. This suggests that by 2004 the terrorism issue was not as strong a factor as it had been and as number three on the issue list may not have been a crucial factor as Indridason (2008) suggests it was.

2.3.3 Canada’s October 1970 FLQ Crisis and the Charter of Rights

Nationalist terrorism operated in Quebec Canada through most of the 1960s and into the early 1970s. The main group responsible for this terrorist/nationalist violence was the Front de Liberation du Quebec, commonly referred to as the FLQ. The FLQ was formed by hard-core Quebec nationalists who became discontented with the Parti Quebecois, the existing nationalist political party who were seen as becoming too moderate (de Mesquita, 2003).

By 1963, the FLQ was responsible for conducting 22 separate incidents of terrorist actions. Low-key terrorist related activities continued to grow throughout Quebec until the mid 1960s when the nationalist political party and the federal government began to agree upon compromises. Not only did these compromises anger hard-core nationalists, they also increased reciprocation by the FLQ resulting in their adoption of more serious terrorist actions. The result was the October Crisis of 1970, in which high-ranking political people were kidnapped (de Mesquita, 2003).

Monday, 5 October 1970, seven members of the self proclaimed Liberation Cell of the FLQ kidnapped the British consul in Montreal, James Cross. On 10 October 1970, the crisis escalated when another FLQ cell called the Chenier Cell kidnapped the Quebec minister of Labour and Immigration and Deputy Premier, Pierre Laporte. The motives of the second kidnapping seem to be to ensure the demands issued in the first kidnapping of British consul Cross be met. On 17 October 1970, members of the Chenier Cell killed Pierre Laporte during an escape attempt (Cohen-Almagor, 2000).

Prime Minister Pierre Trudeau enacted the War Measures Act the day before minister Laporte was killed. The War Measures Act remained in force until November 1972. During this period, around five hundred people were rounded up by security forces and detained under suspicion of FLQ involvement. Of those five hundred detainments, approximately twenty people, including the kidnapers of minister Laporte were found guilty and given prison sentences. By the end of 1972, all of the FLQ cells had been infiltrated or destroyed and the Front de Liberation du Quebec ceased to exist (de Mesquita, 2003).

While effective for its purpose, implementing the War Measures Act had an impact on the people of Quebec. The Federal government's action was seen as draconian and excessive. Canada is lucky to have escaped any further escalation in terrorist activities after resorting to such drastic measures. Between 1974 and 1981, there were numerous security concerns in Canada and in the United States about the potential for terrorism, including 'IRA' type attacks perpetrated by extremist First Nations groups. Ross and Gur (1989) note the concern was that if a reawakening of First Nations nationalism was to develop and take hold this could lead to terrorism related activity. They record there had been an escalation of terrorist violence rather than a decrease in the previous two decades, including in Cyprus and Algeria where the response had been the suspension of civil liberties and the declaration of martial law (Ross and Gur, 1989).

The events surrounding the 1970 October Crisis and the enactment of the War Measures Act could have influenced the Prime Minister that too much government power was dangerous and that constitutionally there needed to be a check on the government's power. In 1982, the introduction of the Canadian Charter of Rights and Freedoms as part of the Canadian Constitution Act was one of Prime Minister Pierre Trudeau's greatest acknowledged political accomplishments. This was corroborated three months after 11 September 2001 with the introduction of the Canadian anti-terrorism legislation, when a major issue for the legality of the Canadian Anti-terrorism Bill, C-36, was that it must satisfy the Charter of Rights and Freedoms (Panitch, 2002).

2.3.4 Australia's 1978 Hilton Hotel bombing in Sydney

The events unfolding after the 1978 Hilton Hotel bombing in Sydney culminated with the Australian Federal government strengthening national and domestic security policies. Before the Hilton bombing the Australian Security Intelligence Organisation (ASIO) had been a topic of much political discussion resulting in heightened tension between the Liberal coalition government and the opposition Labor party (Hocking, 2004). The Hilton bombing is significant in Australian security history because it led to the creation of the Australian Federal Police (AFP), in 1979.

On Monday 13 February 1978, the Hilton hotel in Sydney was home to the Commonwealth Heads of Government Regional Meeting (CHOGRM) attended by 11 heads of government. An explosion early

that Monday morning killed two council workers as they emptied a garbage bin and a nearby police officer; seven other bystanders were also injured (Cahill, 2005).

Immediately after the bombing, Prime Minister Fraser and New South Wales Premier Wran jointly agreed to call out the military. Two thousand Australian troops were deployed to Sydney and to the small town of Bowral where the Commonwealth ministers were to be having further meetings. Both the Federal government and the media announced that the age of terrorism had arrived in Australia with the Hilton bombing (Head, 2001).

Although Australia did have a few minor terrorist incidents before the Hilton bombing, none of them managed to catch the Federal governments attention as the Hilton bombing did. In 1963, a Croatian extremist group, the Ustashi, reportedly operated and trained in Australia for operations in the former Yugoslavia. In 1972, 19 members of the Ustashi were apprehended in Yugoslavia, nine of which had previously lived in Australia (Hocking, 2004).

Between 1972 and 1973, there were reportedly 26 acts of terrorism-related violence consisting of bombings and threats of arson. In 1972, there were two separate bombings involving Yugoslavian travel agencies in Sydney, one of which injured 16 people (Hocking, 2004). However, the Australian Federal government did not view these terrorist events as particularly threatening to Australian security. In fact the 1973 Murphy 'raid' on ASIO headquarters provided information that suggested security and intelligence officials were well aware of these events, and that their actions were seen as tolerable (Hocking, 2004).

Throughout this period of the '60s and '70s there were many questions being raised about the roles and powers granted ASIO as the country's internal security intelligence agency. After the Hilton bombing, Justice Robert Hope's protective security report clearly stated that although he firmly believed an increase of powers and responsibilities was warranted for Australian intelligence, police and military forces, he did not see a need for the creation of laws specifically relating to terrorism. Justice Hope argued that all acts of terrorism were already covered under criminal law and that there was no usefulness in doubling up the same laws (Head, 2002).

Following the Hilton bombing the Australian government asked Sir Robert Mark, former commissioner of police in London to conduct his own independent review of the Australian security system in 1978 (Hocking, 2004 p. 105). From this, it is clear that in a time of a national security crisis the Australian government looked towards Britain for guidance. It was Sir Robert Mark's report that led to the creation of the Australian Federal Police (AFP) through the merger of the Australian Capital Territory (ACT) Police and the Commonwealth Police (Hocking, 2004 p. 107). After the Australian Federal Police Act was passed in 1979, Sir Collin Woods was appointed as the AFP's first police commissioner. Sir Collin Woods' previous position was in the United Kingdom as Her Majesty's Chief Inspector, Constabulary for England and Wales (The AFP History Project, 2009).

The late 1990s saw the Australian federal government refer back to the 1978 Hilton bombing in Sydney when making security plans for the 2000 Olympic Games in Sydney. The Federal government developed new legislation that would increase the military's power if it were ever called up in an emergency, such as the Hilton bombing. The Federal government rational for this was that the Sydney Olympics would be a potential magnet for terrorism because the 1978 bombing had 'brought' terrorism into Australia; hence the need for stricter security measures (Head, 2001).

2.3.5 The 1985 bombing of Air India Flight 182 from Vancouver, Canada

Prior to the terrorist attack of 11 September 2001 the deadliest terrorist attack was the bombing of Air India flight 182 off the coast of Ireland in 1985 (Economist, 2007). Sikh extremists residing in Canada were linked to the terrorist attack. Blame was centred on the Canadian government, the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS) for failing to prevent the bombing (Smith, 2010). It later became apparent that CSIS was well aware for a number of weeks before the incident that there was information indicating a terrorist attack was highly probable due to events in India where Indian forces had stormed a Sikh holy site, the Golden Temple of Amritsar (Economist, 2007). Canada's intelligence agency CSIS was still in its infancy having only recently split from the RCMP the year before. Between 1983 and 1986, the India High Commission had been sending reports to Canadian security agencies warning of possible terrorist activity; however, such information was either ignored or passed over (MacQueen & Geddes, 2007). On 22 June 1985, Air India Flight 182 crashed into the ocean off the coast of Ireland, a result of an explosion in the luggage compartment, most likely a suitcase bomb. That same day in Narita Japan, another explosion killed two luggage handlers unloading bags from another Air India flight that had originated from Vancouver, Canada. Later testimony would find that Air India had sent security notices to authorities stating their concern about possible terrorist action; however, the authorities ignored this advice considering it an attempt to gain increased security without paying for it (MacQueen & Geddes, 2007).

While this event transpired in 1985, sixteen years before the 9/11 attacks, it does reveal the lack of lessons learned from the experience. The deficiencies in intelligence sharing between agencies as well as in analysis of that intelligence in advance of the Air India bombing for Canada was to be unfortunately repeated later by US agencies in connection with the September 11 attacks. The bombing of Air India flight 182 was, as noted above, the largest terrorist attack on civilians until 9/11. Three hundred and thirty-one people lost their lives, the majority of them Canadian, and the result of the inquiries have been most unsatisfactory. Twenty years later the matter was still in the courts over the handling of the criminal investigation (MacQueen, 2005). The importance of the Air India bombing for this dissertation is that it shows the lack of attention to, if not concern for, acts of terrorism by Canada and the world in the years before 9/11. It is as if this incident was treated simply as a major aircraft accident rather than as a terrorist attack. The investigation and handling of the Air India bombing was and still is a sore spot for the RCMP and CSIS. The question this leads to is whether lessons were learned or actions put in place after the 1985 terrorist attack. The Canadian reaction after the events of 9/11 was different. Canada was one of the first countries to establish new anti-terrorism legislation. 'September eleven' was an American event and while there were Canadian fatalities associated with the 2001 terrorist attacks these were very different from the number of Canadians who died in the 1985 terrorist bombing.

Canada reacted much more strongly to terrorism following 9/11 than it did in response to the Air India terrorist tragedy. Canada was one of many countries to implement new anti-terrorism legislation following 9/11; the phenomenon was global. Dugan, LaFree and Piquero (2005) showed how changes to airline security introduced prior to 1986 had a major impact on the frequency of plane hijackings around the world but the Air India tragedy was the result of a suitcase bomb, not a hijacking. Despite this horrific event, terrorism, apart from hijacking, was not considered detrimental to global travel security until after 9/11. This underscores the point that there was widespread recognition and acceptance of the need for new security measures and anti-terrorism policies post-9/11.

2.3.6 Recent Anti-Western Violence: Osama Bin Laden

Osama Bin Laden harboured anti-American views for a considerable amount of time, particularly following the American occupation of Saudi Arabia and the 1991 Gulf War (Atwan, 2006). It would be a mistake to believe that the anti-American hatred portrayed by radical Islamist extremists is a new occurrence. Gold (2003) takes note of this misconception:

... some think that the rage underpinning the September 11 attacks as well as the bombing of the USS Cole, ... and more must be tied to something in recent history between the United States and Saudi Arabia. (p. 220)

Such beliefs would be incorrect as the extreme form of Islam, Wahhabism, practiced by Bin Laden, Al Qaeda and the Taliban has been in existence for centuries and has preached jihad against what it views as foreign occupiers (Gold, 2003).

Bin Laden, the leader or figurehead of Al Qaeda had used violence through terrorism to express anti-American and anti-Western views. His motives, and those of Al Qaeda, were to radically change the opinion of the American people and the American Government's allies to instead view the United States as the enemy that needs to be brought down and 'changed' (Atwan, 2006).

A general public that faces being bombed on the way to work is unlikely to approve of a government that not only fails to protect them but has brought terrorism to their doorstep. The lingering sense of unease, mistrust and insecurity such attacks leave in their wake can further alienate the people from their leaders. (p. 225-226)

Al Qaeda's thinking appeared to be to drive the population away from its elected government, to implement change by creating fear that their leaders through their policies and action have failed them and brought terrorism to their very lives, something that the destruction of the twin towers spectacularly represented. This may reflect Arednt's (1970) argument that violence in society is an indication that something is wrong, that 'wrong' from Bin Laden's and Al Qaeda's standpoint being American foreign policy in the world society. However, as Walzer (1997) has identified, and Bin Laden and friends may not have anticipated, when a democratic country is physically attacked it is not just the policies of the leaders that are challenged; it is the people of that country, their values, their way of life that become the target. The leaders and governments in democracies are a reflection of the people and reacting to violence with violence becomes understandable when the democracy has been threatened. This agrees with what Keane (2004) argues about the democratization of violence. While the people do not like violence, it is easier for them to accept when it becomes democratised, in a sense explained to be for the greater good, and for the good of the society.

While the terrorist's attacks of 9/11 were against the United States, their supporting message was broadcast to the world and America's allies and supporters (Atwan, 2006). Stevenson (2003) expands upon the Al Qaeda intention writing about "Bin Laden's taped warning of November 2002 – which specifically named France, Germany, Italy and the UK as well as Canada and Australia as potential secondary targets" (p. 222). This shows Al Qaeda's desire to reach beyond the United States and as Stevenson stated, "cherry pick soft-targets" (p. 222). Therefore, the naming of other countries as secondary targets to the United States effectively transfers the notion of aggression and violence onto those countries as well, questioning their global role and their elected leaders' policies, in a sense putting their societies' values on trial with those of the United States.

2.4 Conclusion

The literature review has focussed on some key concepts relative to the study of violence and its more contemporary representation as terrorism for countries in the post-9/11 world. A vast amount of literature exists in relation to violence and terrorism and the objective has been to provide some background references to provide a base upon which the thesis will develop. The research for this paper will focus on the justification of anti-terrorism legislation and this literature review attempts to heighten awareness of the challenges leading to the world-wide consternation following 9/11 and the subsequent parliamentary actions by Australia and Canada. Academic writings addressing violence and terrorism and the literature recording how governments reacted to insurgencies and terroristic acts prior to 9/11 provide perspective on the evolution of the terrorism recognized in the world today. The intent was to show that terrorism is not a new phenomenon and has roots that extend back for Australia and Canada as well as for their closest allies the United Kingdom and the United States. The shocking attack of 9/11 was not new in forcing governments to take notice of and respond to terrorism. There is a long history of deadly terrorist atrocities combined with an equally long list of government responses to terrorism.

In the following chapter, the survey of terrorism presented in the literature review is examined further by looking at the actions of the United Nations and multinational cooperation in addressing terrorism. Terrorism was universally accepted as a global problem as demonstrated by the immense effort put forth by the United Nations to counter terrorism starting well before 9/11. However, the event of 9/11 provided a turning point and, with support on all sides, the United Nations demonstrated its capacity for generating compliance through the passage of Security Council Resolutions directed specifically at responding to terrorism internationally. Chapter 3 will also review and discuss international security concerns of Australia and Canada and delve into their involvement with the United Nations as middle powers.

Chapter 3 UN and International Security Issues

3.1 Introduction

A look at the United Nations role in relevant world security issues and the role of Australia and Canada as middle powers will be useful as background information for this dissertation. With the shock of 9/11, terrorism was thrust upon the international community as a global issue demanding attention. International cooperation through International Governmental Organisations (IGOs) had grown in importance following the end of the Cold War providing forums and mechanisms to address matters of mutual interest to member countries including Australia and Canada. They facilitated cooperative responses to crises and joint initiatives seeking consensus on economic and health matters, trade and defence interests. The foremost IGO is the United Nations (UN) and its long-standing efforts to address terrorism issues received welcomed attention, particularly by the United States following 9/11. The background information that follows outlines the change of focus for the UN, which acted quickly after 9/11 with UNSC Resolution 1373 issued on 28 September 2001. Some brief commentary on the UN involvement to help restrain terrorism is noted, along with reference to the ambivalent relationship of the United States with the UN, followed by a discussion of Resolution 1373 that deals with constraining terrorism financing. Some discussion follows on the confliction between combating terrorism and upholding human rights, challenges that are real issues discussed in the parliaments of democratic countries like Australia and Canada. This is succeeded by a sub-section commenting on the impact of Security Council Resolutions against terrorism. The chapter ends with a review of the role that Australia and Canada assumed in the international community as their place as middle powers became established along with their reputation as consensus-seekers. A brief look is taken at the early world security alliances for the two countries before turning to the conclusion of the Chapter.

3.2 International Multilateral Cooperation and International Security

The Post-Cold War era has seen a significant change in the global community because of the absence of competing superpowers and the emergence of more international cooperation (Wilson, 2009). International Government Organisations (IGOs) made possible forums in which countries such as Australia and Canada could speak out in the global environment. “IGOs have assumed a growing role not only in responding to crises but also in orchestrating efforts by other international actors -- namely, the military and NGOs” (Aall et al, 2003, p. 1).

... growing interdependence among states – especially in the economic sphere – as part of broader globalization processes has enmeshed many states in a web of diverse obligations covering an ever-flourishing range of activity. Thus, today, as a result of its membership on various international organisations, a state may find itself simultaneously obliged by a European Union directive to change its own domestic social legislation, prevailed upon by NATO to provide military assistance to a peacekeeping mission, the subject of a trade ruling by the WTO and under pressure to comply with a ruling of the UN Human Rights Committee – to name but a few examples. (Wilson, 2009, p. 1)

Wilson’s (2009) statement successfully captures the environment nation-states find themselves in today. If anything, what Wilson has revealed is the power existing today with International

Governmental Organisations. The notion that the international environment is one of international cooperation brought on through the lack of competition between superpowers is also an intriguing argument. Although it might be argued there are still superpowers in place today, China for example, it is clear that the international confrontational environment that existed during the Cold War period is noticeably absent in the Post-Cold War era thereby perhaps validating Wilson's argument about an increase in international cooperation, especially with matters of security. No longer are there two massive powers for nation-states to align with for security matters. The result, the lack of two opposing superpowers, forces nation-states to search out alliances with others thereby creating the need for more international cooperation.

In support of Wilson's (2009) position, Tams (2009) writes that from the end of World War II right up until the 1990s the UN Security Council was never able to use its full authority. The reason for the Security Council's inability to act was that the superpower blocks nullified any possible authority the UNSC might have had. In Tams' view:

...block confrontation paralyzed the collective security system of Chapter VII during the first four decades of the UN's existence. In no instance had the Security Council qualified a specific act of terrorism as a threat to, or breach of, the peace in the sense of Article 39 UNC ... it did not take any enforcement action against terrorists. (p. 366)

This reflects Wilson's (2009) position that the absence of confrontation between world superpowers created the need for multilateral cooperation.

The most widely known IGO is the United Nations. While many people throughout the general global population know something about the United Nations there is much people do not know about it as well as some misconceptions. "For one thing, it is not a form of 'world government,' as some may think. It is an organization of 192 sovereign nations" (Fasulo, 2009, p.5). Another misconception about the UN and perhaps with many other IGO's is the amounts of true power they possess or can bring to bear to force action on an issue. IGO's are only as strong as their members allow them to be, according to Fasulo (2009), and, "... the UN can impose its will on nations only in rare and unusual circumstances, when great powers like the United States are prepared to back up the UN's actions with their own military and political might" (p. 5). Young (2007) appears to disagree about what should happen when the issue concerns terrorism, arguing, "Actions and policies that treat terrorism and threats of terrorism as involving all the world's peoples within a rule of law should utilise international organizations and legal instruments" (p. 109). Furthermore, Young states outright that the best IGO set up to do this is the UN.

The involvement of IGOs in most of the world's major international disasters and wars adds to the impression held by many in the general population that they have more power and capability than is really the case. IGOs are extremely visible and this extreme visibility is as much a hindrance as it is a boon:

UN and UN-authorized peace operations have been in the vanguard, and most have had humanitarian dimensions and consequences. Inevitably, perhaps, their higher profile and the greater responsibilities entrusted to them in complex emergencies have made IGOs the targets of substantial criticism. Sometimes, however the critics fail to recognize that, ultimately, the faults of the IGO are mainly the faults of its member-states. (Aall et al, 2003, p. 1)

'September eleven' gave the United Nations a dramatic boost to its importance as an international organisation. This is not to undermine the significance of the UN before 9/11, but instead to underscore how much stronger the United Nations became internationally after 11 September 2001. "The United Nations, as the only universal global body empowered by its 191 member states to maintain international peace and security, has been at the forefront of this renewed effort to combat the scourge of terrorism" (Dhanapala, 2005, p. 17). The tone of the United Nations was certainly becoming stronger:

Whether or not states were parties to other anti-terrorism conventions, they were required not only to freeze assets and deny terrorists safe haven, but also to 'update laws and to bring terrorists to justice, improve border security and control traffic in arms, cooperate and exchange information with other states concerning terrorists, and provide judicial assistance to other states in criminal proceedings related to terrorism. (Foot, 2007, p. 494)

Furthermore, as Dhanapala (2005) argues, the involvement of the United Nations greatly increased the legitimacy of the 'war on terror'. Further actions undertaken by the UN, legitimizing its role as the international leader against terrorism, were evident in the way in which the UN developed its resolutions and recommendations. Experience with international matters, previous resolutions, recommendations and agreements worked in the UN's favor and allowed it to frame the threat of terrorism as an international matter of concern to all countries (Dhanapala, 2005).

This approach ensured that the UN reaction was not one of revenge or retribution but based, as to be expected in a norm-based organisation, on legal concepts and values. It also placed the action to be taken in the context of the antiterrorism conventions already adopted within the UN framework (Dhanapala, 2005, p.18).

3.2.1 The UN Change of Focus Following 9/11

The United Nations began to change the way it conducted business following 9/11. As Alvarez (2003) argues where once the United Nations' main goal was 'self-determination' for countries in support of its actions, now it was becoming more forceful with its resolutions, pressuring countries to sign on and implement them:

In its post 9/11 counter-terrorism efforts, the Security Council has redefined the scope of its legitimate activity. The Council is apparently no longer content with seeing itself as the enforcement arm of norms that are legislated elsewhere by the international community. It is increasingly acting itself as legislator and executor of new rules for the international community. (p. 241)

UNSC Resolution 1368, adopted the day after 9/11, condemned acts of international terrorism, stating they were a threat to international peace and stability and effectively allowed for the enactment of Chapter VII of the United Nations Charter (Subedi, 2002). In Phillips (2004) view, "By using its Chapter VII powers to require all member states to adopt specific measures in circumstances broader than disciplining of a particular rogue state, the Security Council was effectively acting as a legislator" (p. 91).

The UN had a new lease on life. Fasulo (2009) identifies that 9/11, "... places the United States at the top of the list of terror-afflicted nations and helped raise international awareness about the urgency of the threat" (p. 122). Fasulo goes on to highlight that the United States and its allies, along with the UN, began, "... to treat international terrorism as a form of criminal activity" and therefore in order to combat terrorism internationally anti-terrorism laws were needed on both the national and international levels, the perfect instrument for the latter being the United Nations (p. 122).

Supporting Fasulo (2009), Weiss et al (2007) show that immediately post-9/11 the United States went to the UN to obtain endorsement of its international anti-terrorism agenda. As a result, the United States paid its long overdue membership dues, which totalled some 862 million dollars according to Weiss et al. Furthermore, they state:

The United States sought and received the Security Council's blessing for several of its security objectives, such as military attacks on the Taliban government in Afghanistan that was sheltering Al Qaeda.... A year later, the United States returned to the UN for legitimacy in invading Iraq. Washington was successful in securing from the UN a renewed inspections regime for weapons of mass destruction (WMD). (Weiss et al, 2007, p. 3)

Hosein (2004) suggests that we should not be surprised that international policy has a bearing on national policy creation. "Governments are in a position to play at both the national and international levels. It was inevitable that international policy dynamics would affect domestic policy discourse" (p. 195). Hosein offers the creation of the G8's Counter-Terrorism Action Group as an example of the merging of international and national policy development. "The Group of 8 industrial countries (G8) summit of heads of government convened in Evian in June 2003 to found the Counter-Terrorism Action Group..." (p. 195). This was a United States led initiative, but one that highlighted the fact that one country's goal became the foundation for an action group designed to create or improve existing laws related to countering the financing of terrorism. Furthermore, this counter-terrorism action did not stop at the G8, it was apparent with other IGO's as well.

Hosein (2004) shows the Commonwealth Secretariat was also working hard post-9/11 to promote counter-terrorism activities. "In 2002, the secretariat developed 'Implementation Kits for international Counter-Terrorism Conventions,' a form of 'do-it-yourself' manual for governments, covering twelve multilateral treaties drawn up between 1963 and 1999 by the UN and other intergovernmental forums" (p. 195). This shows quite clearly how indeed, as Hosein had argued previously, the world today is one where international policy and national policy can be intertwined. First, the United States was the clear initiator in regards to the G8 and its Counter-Terrorism Action Group, then the Commonwealth took action to spread the counter-terrorism policy message and in addition, the Commonwealth was urging the implementation of multilateral treaties, through the UN and other IGO's. This is a kind of trickledown effect that shows how international policy does in fact factor into national policy. There is a terrorist action in the United States, the US goes to the UN asking support for international legislation against terrorism, UN Resolutions are passed, and to follow through and see that these resolutions are acted upon and implemented the US takes action with other influential IGO's such as the Group of Eight. Then the G8 creates a group to promote counter-terrorism policy, initially specific to the financing of terrorism. Subsequently the Commonwealth, whose more powerful members, the UK, Australia and Canada are all strong US allies, joins the counter-terrorism agenda and creates support infrastructure to help member nations meet the proposed international mandate to oppose terrorism as urged by the UN. Terrorism and the push for counter-terrorism actions present a good

example of how international policy and national policy can work together. However, Hosein would probably argue it is not always that simple and there are other factors to be considered such as international trade and globalization, all solid reasons why international policy has an effect upon national policy.

3.2.2 The UN and International Terrorism

The continuing threat of international terrorism has received much attention at the UN since 9/11. According to Stephens (2004), while the threat of terrorism is not imagined, it must not be exaggerated. "... the available statistics suggest that this phenomenon presents a less significant challenge to world order and wellbeing than is often supposed, and must therefore be kept in perspective alongside countless other global challenges to human security" (p. 454). Stephens goes on to say that ninety percent of terrorist attacks are global in nature thereby validating the need for international action such as the United Nations responses to terrorism. The process for taking action is described by Tappeiner (2005):

The start of the chain of measures is usually a binding Resolution by the Security Council of the United Nations (SC-UN) adopted under Chapter VII of the UN Charter (UNC). States are obliged to implement these Resolutions on the grounds of Articles 25 and 48 and, moreover, on the basis of Article 103 UNC, with priority over other international obligations not based on the UNC. (p. 97)

The chain of events that led to 9/11 would be the growth of radical terrorism through the 1990s orchestrated through Bin Laden with support from the Taliban, which led to UNSC Resolution 1267 in October 1999, tasking all States with freezing the assets of the Taliban. This culminated in the dramatic terrorist attack of 9/11, which led to UNSC Resolution 1373; the freezing of assets and economic resources of terrorists and those associated with or supporting terrorism (Tappeiner, 2005).

In studying anti-terrorism legislation post-9/11, it is important to understand the role played by the United Nations as the 'war on terror' and the resulting anti-terrorism legislation developed. The United Nations provided the vehicle for the extensive international anti-terrorism legislation post-9/11 (Alvarez, 2003). One of the outcomes of 9/11 was the United States rediscovery of and need for the United Nations. As noted previously the United States had been refusing to pay the annual assessment levied by the UN for a considerable amount of time, a reflection of the importance the US had assigned the United Nations by the end of the Twentieth Century; however directly after 9/11 the United States quickly paid up its debt to the UN (Alvarez, 2003). Terrorism became the number one issue for the United States and the US realised it needed the UN in order to have any hope of combating global terrorism (Alvarez, 2003). The involvement of the United Nations in the global 'war on terror' gave it instant legitimacy (Alvarez, 2003; Dhanapala, 2005; Foot, 2007). Furthermore, according to Alvarez (2003), America's insistence the United Nations react to the then prevalent issue of terrorism highlighted its need for the UN and resulted in the UNSC Resolutions 1368 adopted 12 September 2001 (condemning the 9/11 terrorist attacks), and 1378 adopted 14 November 2001 (on the situation in Afghanistan).

Despite the United States earlier sense of need for the United Nations, by 2003 the US was once again seeing the UN as an obstacle and hindrance in its 'war on terror'. The looming war in Iraq and the Weapons of Mass Destruction (WMDs) farce had led to mounting tension between the United Nations

and the United States (Sunhaussen, 2004). The growing tension hit a peak when "... Bush responded by warning the UN that the USA may come to regard the body as irrelevant" (Sunhaussen, 2004, p. 22). This illuminates the difficulty the US has with the UN. Where immediately post-9/11 the United States' sudden renewed interest in the UN led to the creation of numerous UNSC resolution on terrorism, three years later the threat of US aggression against Iraq had the United Nations reacting coolly to new reasons for military action. The UN was questioning the validity of US WMD intelligence and the majority of the international community, including some of America's strongest allies were just as sceptical (Sunhaussen, 2004).

3.2.3 UNSC Resolution 1373: Constraining Terrorism Financing

The declaration of Resolution 1373 on 28 September 2001 focused on international efforts to combat international terrorism by targeting the financing of terrorism. Resolution 1373, as noted by Subedi (2002):

...stated that there was the need to combat 'by all means' threats to international peace and security caused by terrorist acts. The operative paragraphs of the resolution required all states, inter alia, to prevent and suppress the financing of terrorism, and freeze funds and other assets belonging to terrorists and terrorist organisations (p. 160).

The insistence of UNSC Resolution 1373 that all states must comply with targeting financiers of terrorism also reinforces the position argued by Alvarez (2003) that the UN was becoming more forceful in its actions rather than letting countries be more self-deterministic.

For Phillips (2004) UNSC Resolution 1373 only adds to the United Nations previous efforts in attempting to combat the financing of terrorism. Resolution 1373 is very similar to the 1999 UN Convention for the Suppression of the Financing of Terrorism, in fact both contain the same four main objectives:

Criminalise the provision or collection of funds for terrorists; Prohibit the provision of fund, assets or financial services to terrorists; Freeze without delay terrorist funds or other assets; and establish adequate identification and reporting procedures for financial institutions. (Phillips, 2004, p. 84)

According to Phillips (2004) both the Convention and Resolution 1373 fail to offer a unified definition of terrorism. Furthermore Phillips specifies the Convention for the Suppression of the Financing of Terrorism was based on, "... existing anti-money laundering techniques" (p.88). To Phillips this was problematic in part because money laundering was a separate issue and therefore anti-money laundering techniques would be ineffective against stopping the financing of terrorism (Phillips, 2004).

Whereas Phillips (2004) regarded UNSCR 1373 and the 1999 Convention for the Suppression of the Financing of Terrorism as ineffective, Stephens (2004) saw them as important steps in the fight against terrorism. For Stephens, "The treaty represents an important attempt at curbing transnational terrorism by denying financial support for terrorist activities" (p.461). One of the reasons Phillips saw the UN Convention for the Suppression of the Financing of Terrorism as ineffective was the lack of a

consensus on the definition of terrorism. Stephens on the other hand sees an indirect definition in Article 2(1) of the Convention offering this reasoning:

An intention only to kill or injure civilians would not distinguish terrorism from violence already criminalized under national legal systems. Hence art. 2(1) adds an additional intention element, designed to incorporate the 'terror' dimension of terrorism, via the condition that the act must be revealed by its nature or context to be aimed to 'intimidate a population' or 'compel a government'. (p. 462)

3.2.4 Counter-terrorism vs. Human Rights

One drawback to the United Nations' newfound focus on terrorism was the fact that human rights were seen to be negatively affected. For Foot (2007) the UNSC Resolutions 1267 and 1373 are largely suspect for furthering counter-terrorism action while weakening international human rights. Stated differently, Foot suggests the new anti-terrorism legislation and counter-terrorism polices proposed by the UN through its Security Council resolutions target terrorism at the expense of human rights. Foot argues, "... not only do terrorists violate the lives of innocents, but state authorities, too, stand accused of acting indiscriminately, opportunistically, and illegally in their motives to counter terrorism" (p. 490). Giving strength to Foot's (2007)¹ criticism of the UN-led wave of anti-terrorism legislation was the fact that former Secretary General of the UN, Kofi Annan, validated concerns about the trumping of human rights by counter-terrorism actions saying, "... international human rights experts, including those of the UN system, are unanimous in finding that many measures which States are currently adopting to counter terrorism infringe on human rights and fundamental freedoms" (Annan, 2005). This again highlights a consistent movement by the UN to a more hard line approach on international matters.

A clear example of human rights infringement in the post-9/11 world was the use of extraordinary rendition by the United States in the targeting of suspected terrorists (Cush, 2009). The extraordinary rendition program is one good example of the slackening of human rights that Foot (2007) described previously. "US, UK and Canada – countries that are the most vocal in condemning human rights abuses around the world – initiated and 'facilitated extraordinary renditions (kidnappings) in various ways,' according to a report released by the United Nations" (Cush, 2009, p. 39). Cush further tackled the United States on its alleged human rights abuses stating that: "... the US has maintained its global system of kidnapping and torture by working with the governments of Canada and Great Britain. Other governments that collaborated with the US include Croatia, Indonesia, Kenya, Georgia, Macedonia and Bosnia/Herzegovina" (p. 39).

3.2.5 The Impact of Security Council Resolutions

Prior to 9/11 terrorism issues were predominantly matters for the General Assembly and not left to the UNSC (Phillips, 2004). According to Evans (2004) the United Nations Resolutions are only as valuable as the paper they are printed on unless there is a united effort by member nations to see the Resolutions enacted into their respective country's legislation. The United Nations does not have the power to force countries to enact any of its recommendations or Resolutions (Evans, 2004). Even

¹ Stated by Foot (2007) in the article The United Nations, Counter Terrorism, and Human Rights: Institutional Adaptation and Embedded Ideas (p.490).

after the UNSC passed Resolution 1269 in October 1999, urging stronger efforts and coordination to combat terrorism in the maintenance of international peace and security, terrorist activity continued unabated. Examples included the foiled Millennium bombing plot targeting an airport in California, along with the successful bombing of the USS Cole in 2000.

Post 9/11, despite all the talk of a new era of multilateral co-operation, intergovernmental institutions like the United Nations continue to limp along with no more and no less power to change the world than their member states will allow; with the member states being overwhelmingly driven, in turn, by the same old perceptions of national interest and the same old power relativities. (Evans, 2004, p. 35)

It would be hard to find support for the belief that the United Nations had the power to force countries to adopt resolutions and act as the Security Council saw fit. What Evans (2004) highlights is the true lack of power the United Nations has among its members; therefore it is notable that such a concerted effort against terrorism arose in the wake of 9/11 with the mass acceptance of and compliance with anti-terrorism-specific Security Council Resolutions. The renewed interest by the United States in the coordinating ability of the UN may have contributed to the anti-terrorism support from member nations.

The Association of Southeast Asian Nations (ASEAN), a cooperative and community-building body, is representative of the many other government organisations that moved to address the UN anti-terrorism Resolutions. As stated by Wright-Neville (2004):

...ASEAN leaders issued a 'Declaration on Joint Action to Counter Terrorism'. Key elements of the declaration included a joint commitment to, 'counter, prevent and suppress all forms of terrorist acts in accordance with the Charter of the United Nations and other international law, especially taking into account the importance of all United Nations resolutions'. (p. 61-62)

The 2001 Declaration condemned the 9/11 attacks as, "... an attack against humanity and an assault on all of us" and pledged ASEAN members to work against transnational crime and strengthen counter terrorism efforts recognizing the United Nations should play a major role at the international level (Association of South East Asian Nations, 2009). Perhaps it is not a misconception that the United States pressured allied countries into adopting anti-terrorism legislation but the role of the UN made this possible. While it is true that the 9/11 attacks were carried out against the United States, Western Nations adopted the view that this was an attack against the West and Democracy. While President George Bush, in a speech days after the attack, made the statement, "You are either with us or against us"(Lynch and Williams, 2006, p. 70), the anti-terrorism legislation adopted by the majority of countries, including Australia and Canada was held to coincide not with this admonishment but with United Nations Resolution 1373 and the anti-terrorism rhetoric coming from all member nations.

It might be concluded that while the US role was an integral part of the United Nations actions in fighting international terrorism, the sympathy and support of the global community for the US immediately following 9/11 might have had much to do with anti-terrorism activity urged by the United Nations.

3.3 Australia and Canada, Middle Powers at the UN

Australia and Canada found their relationships changing with the United States and the United Nations at the end of the 20th Century and following 9/11. Both middle power allies to the United States have grown from being strong colonial entities and then British Commonwealth participants into powers in their own right, still with close ties to the UK but no longer subservient. Australia and Canada have both adjusted their international position over the years as their early dependence on the UK waned.

Cooper et al (1993) describe Australia and Canada as two countries that act in very similar ways and are worthy of comparison on foreign policy issues. "Australia and Canada have much in common and faced many of the same problems in the international political and economic system in the last quarter of the twentieth century" (Cooper, et al. 1993, p. 3). For example, both countries were drawn into similar military alliances, North Atlantic Treaty Organization (NATO) and North American Aerospace Defense Command (NORAD) for Canada and the Security Treaty between Australia, New Zealand, and the United States of America (ANZUS) for Australia. "In pursuit of their foreign policies, both were typically 'first followers' of their major ally, the United States, in the decades following the Second World War" (Cooper, et al. 1993, p. 3).

Cooper et al (1993) argue that both Australia and Canada were aware of the need for strong alliances:

... both States came to the recognition that the vulnerability of the system's middle-sized states dramatically increases when there is an absence of leadership from a hegemonic power on the one hand or a general agreement to share leadership responsibilities between the major economic powers (the United States, the European Community, and Japan) on the other. (p. 4)

This fits the pattern that both countries have followed in relation to counter-terrorism in a post- 9/11 world. Although the individual actions undertaken by Australia and Canada may differ, particularly with the war in Iraq, the fact is both countries continued to believe in the need for action through international cooperation. Cooper et al. (1993) argue that Australia and Canada began to become stronger proponents for international cooperation by the late 1980s. Although Cooper et al. stated this was due to economic factors and economic hardships of the 1980s, another factor would be the collapse of the Soviet Union and the ending of the Cold War. No longer was the world divided clearly into two camps, East with the Soviets and communism and West behind the Americans and democracy. By 1987, the Soviet Union, now Russia, began paying its overdue membership dues to the United Nations a clear example that by the end of the 1980s the United Nations and therefore multilateral alliances had emerged, or re-emerged internationally (Weiss et al. 2007). "Changes in the Soviet Union's attitude toward the UN influenced the international climate and more particularly the US approach to the world organisation" (Weiss et al. 2007, p. 45).

This change in Post-Cold War international cooperation is also seen in the 1990s new world order vision of President George Bush Senior. According to Slaughter (2004) the term world order refers to, "... a system of global governance that institutionalizes cooperation and sufficiently contains conflict such that all nations and their people may achieve greater peace and prosperity, improve their stewardship of the earth, and reach minimum standards of human dignity" (p. 15). This is again showing that there was a fundamental change in regards to global relations. No longer was the world in a state of two focal points for global power. Instead, the world was developing a need for greater alliances and working agreements between countries.

As previously stated by Cooper et al. (1993) Australian and Canadian concerns in dealing with international matters involved the need for hegemonic power along with shared leadership, such as multilateral alliances, and both the United Nations and the United States filled this requirement in the aftermath of the Cold War. “The UN also enabled the United States to proceed as a hegemonic rather than dominant power, allowing it to act through the UN on the basis of cooperation rather than having to coerce other states into compliance” (Weiss et al. 2007, p. 45). Nevertheless, following 9/11, as suggested above, coercion by the US appears to have been a supporting influence on States that quickly proceeded to ratify Resolution 1373.

Mark Neufeld (1995) states that, “In terms of the international level, middlepowermanship directed the Canadian state to play a prominent role in multilateral fora, particularly in terms of international organisations associated with the North Atlantic community, and the Bretton Woods and UN systems” (p. 16). The United States being in control of the global hegemonic order allowed middle power countries such as Australia and Canada to play supportive roles. For Neufeld (1995) the supportive role had two key components. With the first key component countries such as Canada became mediators among the international community in order to help stabilise the global order in times of conflict. Secondly, actions undertaken by middle power countries to promote the common interest of all over the short term interests of the individual state show that while the hegemonic order may be American-dominated, it was not an American Order. John Holmes (1984) sums up the role of the middle power countries, “The early successes of Canada as a middle power were attributable to our skill in producing sound ideas for the general rather than just the Canadian interest. That is the way to be listened to” (p. 381).

According to Cooper et al. (1993), “A distinctive characteristic of the foreign policy behaviour of middle powers, it is commonly said, is their embrace of multilateralism as the preferred means of advancing their foreign policy interests” (p. 116). What we can see looking back at history is that security has always been a major issue for middle powers such as Australia and Canada. Following World War II the United Nations became an important factor for international order. The Cold War had the world divided into two power camps with those backing the United States and the Soviet Union (Weiss et al. 2007).

In the years immediately following the end of the Second World War, this multilateral impulse could be seen at work most clearly in the security issues area, when middle powers such as Australia and Canada sought not only to increase their own security by encouraging the development of multilateral alliances but sought to encourage world order by strengthening international institutions such as the United Nations and the United States led alliance systems that were created in the late 1940s and early 1950s (Cooper et al. 1993, p. 116).

A period between the late 1960s and early 1980s, embracing the peak of the Cold War, along with the Vietnam War, saw the power balance change to the extent that middle power countries such as Canada found the unique position middle power countries play in the international community had eroded away (Neufeld, 1995). No longer were middle power countries the voice of reason and compromise. The rough economic times of the early 1980s had global ramifications as did the economic recovery of the late 1980s, the burgeoning start of free trade agreements, the end of the Cold War, and the loss of two competing super powers, ushering in a new era of multilateral cooperation. Middle power countries were back, and while perhaps in the past middle power nations had a romanticised view of their role in the world, Post-Cold War middle powers adopted more of a limited cautious view of what

they could accomplish internationally. Security issues, such as peacekeeping missions supporting the UN were a way in which middle power countries could contribute internationally while serving their own foreign policy objectives (Cooper et al. 1993; Neufeld, 1995).

After the breakup of the Soviet Union there was an immediate change in international security. As Weiss et al. (2007) shows there was a ten-year gap in UN-led military peacekeeping operations. In 1978, there was a United Nations Interim Force in Lebanon (UNIFL) but then nothing until 1988 following the end of the Cold War with the United Nations participation in the United Nations Good Offices Mission in Afghanistan and Pakistan (UNGOMAP). Following 1988 there was a tremendous increase in UN military activity with peacekeeping missions occurring almost every year up to the present time. Participating in UN led military operations became for some a status symbol in that it allowed countries to boast internationally that they are taking part in protecting and stabilizing the international community. "One of the boasts most frequently uttered by Canadian politicians of all persuasions is that Canada has participated in virtually every single peacekeeping operation ever mounted by the United Nations" (Delvoie, 2000, p. 13). Speaking specifically about Canada Delvoie states there are three possible reasons for Canada's gung-ho commitment to UN peacekeeping operations. First, it provides "... Canadian governments with an opportunity to put the functional principle into practice and to exercise leadership at the international level" (p. 13). Second, peacekeeping has become central to Canada's national identity gaining Canada international recognition for its actions and finally it provides independence from the United States.

Jockel and Sokolsky (1996) have argued that the closer Canada and the United States become economically the weaker the military relationship becomes. This argument may go a long way in trying to understand Canada's reluctance to join American-led military operations such as the one against Iraq in 2003. Jockel and Sokolsky (1996) state, "the Canada-US defense relationship, just like the 50-year struggle that necessitated and sustained it, is over" (p. 1). What they mean by the 50-year struggle is the threat of nuclear attack emanating from the Cold War. With the Soviet Union no longer a certain threat to North America, the need for a close partnership over land, sea and air space was not as it once was. By the mid-1990s the North American Aerospace Defense Command was witness to numerous budget cuts as both American and Canadian governments scaled down their operations. Although NORAD was still seen necessary and therefore kept in existence the looming threat of the past was gone (Jockel and Sokolsky, 1996).

While Cooper et al. (1993) argues about the strong similarities between Australian and Canadian foreign policies there are some noticeable differences that are due to geography and economy. Canada for example, being next door to the US, is not in the isolated position of Australia, a Western nation in Asia (Garran, 2004). That being said Australia as a middle power increasingly has to play the international game of mediator and global activist, the same tactics that Neufeld (1995) stated that Canada would use. An example was Australia's role with East Timor in 1999.

Acting not necessarily in Australia's own specific interest, but as a country compelled to act, Australia used its voice as a middle power to rally world attention in a noble effort to ease East Timor's transition to independence from Indonesia in 1999 (Garran, 2004). The Howard Government, newly elected in 1996, called upon the international community for support, drawing attention to the worsening situation in East Timor working through international organisations such as the United Nations and APEC. It was the same Howard government that was in power at the time of the terrorist attacks of 11 September 2001 (Garran). As well, according to Garran Australia was trying to get the

United States involved in some sort of peacekeeping capacity, and, after some reluctance the Americans agreed to become involved in a support capacity. The East Timor situation saw Australia act like the middle power described by Cooper et al. (1993).

There are many arguments to be made about Australia's role with the fledgling democracy in East Timor and Indonesia, but the relevance to be noted is the example of how Australia acted as a middle power with the international community, making use of multilateral organisations such as the UN and APEC as well as its special relationship with the United States. Both Australia and Canada operate in this consensus-seeking manner with their middle power status. Clearly, the intent for both countries is based on multilateral action as neither country is strong enough to act on its own. For Australia and Canada, the best way to be taken seriously in the international community is to be both supporters of multilateralism and willing participants in joint actions by contributing workers or other assistance for peacekeeping missions and not just offering words alone.

3.3.1 Early World Security Alliances

World War Two (WWII) saw Britain's superpower status in decline and that affected strategic security relations between the UK and its former colonies of Australia and Canada. Subsequently this decline led to stronger relations with the United States for both Australia and Canada.

As WWII progressed the Australian government began to develop the view that UK security commitments towards the defence of Australia from potential Japanese invasion were merely political positioning on the part of British Prime Minister Winston Churchill. While Australia had committed troops to the war raging in Europe this was under the clear condition that if Australia were to come under Japanese invasion the troops would be pulled immediately from their duties as they were in Europe for the defence of Australia. In this sense, according to Gooch (2003), Australia's relationship with Britain had evolved into more of an economic style of military relationship, in that so long as it was beneficial for both sides the relationship would continue; potential trouble on Australia's home front would lead to a quick end of the agreement and the withdrawal of Australian forces from Europe.

By the end of WWII there was still unrest in the Pacific region particularly in European colonial territories, the Dutch in Indonesia and New Guinea and the British in Malaya, where Australian and New Zealand military forces played a role preventing the communist forces from bringing about independence (Fraser, 2005). With British colonial interests dissolving after WWII, the UK's commitment to security in the Pacific was not where Australia would have liked it to be.

A security agreement like the one created for the North Atlantic would have been greatly valued by Australia for the Pacific; however, as Fraser (2005) states the British were not keen on committing to a security agreement in the Pacific. Australia's concerns over security led the government away from its historical security relations with Britain and towards the United States (Fraser, 2005).

Canada's security alliances evolved differently from that of Australia. Canada's geographical position placed it in an advantageous spot to become part of the newly formed NATO. While only a middle power, geographically Canada's territory is strategically significant because it solidifies the entire northern border of the United States mainland and lies in close proximity to the arctic region of the Soviet Union.

The next great military action to occur after WWII was the Korean conflict. On 25 June 1950, North Korea advanced a military force into South Korea determined to unify the Korean peninsula under communist rule. Communism had emerged as the number one threat to the Western powers, headed by the United States. The US went to the United Nations Security Council to push for military intervention against this aggression and pressured the United Nations into an agreement to sanction the deployment of a multi-national military force, under the command of the United States, to stop Communist aggression in Korea. Among the largest military contributors were the UK, Australia and Canada. The outbreak of the Korean War actually appears to have helped Australia get the security alliance it so desperately wanted. American military power in the Pacific had been the saving factor that avoided a possible Japanese invasion of Australia. The US wanted to finalise its WWII peace treaty with Japan because of the new crisis with the Korean Communists but Australia would never agree to a final peace treaty with Japan without first securing some assurances for its own protection. This led to the establishment of a security agreement between the US, Australia and New Zealand, the ANZUS treaty (Fraser, 2005). While Australia could no longer look to the UK for the protection it had enjoyed before WWII, the ANZUS alliance with the United States filled the pressing need for a regional security alliance.

The UN saw the Korean War as a challenge to maintaining a balance in world security and it acted accordingly. Later wars that did not appear vital to world security did not receive UN sanction and therefore did not involve the kind of military co-operation and global response that occurred in Korea.

Australia, Canada and the UK, members of the Commonwealth, were America's strongest military allies in the Korea conflict. For the first time Australia and Canada were not subordinated to the UK and the three were unified in a single Commonwealth division, an historical first (Veterans Affairs Canada, 2011). With the Korean War, it became evident that both Australia and Canada respected their strong historical ties with the UK but now stood as equals to the UK rather than as former colonies in the British Commonwealth. The United Nations had sanctioned military action in Korea with the United States in command; Australia, Canada and the UK were there in support of the UN military response and all three countries were demonstrating their individual strategic interests in national security while supporting the United States.

3.4 Conclusion: Australia, Canada and World Security

This chapter has presented information about the United Nations and international security issues that shaped the Australian and Canadian responses to the terrorism of 9/11. The change of focus for the UN was described, as it acted quickly after 9/11 with UNSC Resolution 1373 issued on 28 September 2001. UNSCR 1373 called for countries to take legislative action to create new laws to combat the scourge of terrorism internationally and nationally. Brief commentary followed on the UN involvement to help restrain terrorism, along with reference to the ambivalent relationship of the United States with the UN. This was followed by a discussion of Resolution 1373 that deals with constraining terrorism financing. The confliction between combating terrorism and upholding human rights was then addressed. This is a challenge for democratic countries like Australia and Canada, leading to the real issues that are discussed in their parliaments. This was followed by a sub-section commenting on the impact of Security Council Resolutions against terrorism. The chapter ends with a review of the role that Australia and Canada assumed in the international community as their place as middle powers became established along with their reputation as consensus-seekers. Australia and Canada had an honourable record of active participation in international security efforts through

multilateral agreements, UN peacekeeping missions and participating in UN military action. In response to 1373 Australia and Canada had to produce new criminal legislation with a national and world security focus and justify their actions to their populations at the same time. The research goals of this dissertation are to examine how both governments, Australia and Canada, justified the need for new anti-terrorism legislation in their parliaments in response to the immediate international demand for anti-terrorism legislation following 9/11. How the new laws required by the United Nations were to be rationalised by legislators in Australia and Canada was worthy of scrutiny. The elected politicians had to consider their country's obligations to the UN and to their earlier world security alliances. National Security issues now had to be examined in terms of criminal justice solutions. Targeting the financing of terrorism was only one of many issues that had to be considered as the two countries explored how to respond to 1373 with new anti-terrorism legislation that would contribute to world security, reinforcing their status as middle powers. The legislators had the examples of anti-terrorism legislation, presented in the next chapter, developed by the United Kingdom and the United States to provide guidance (or not) for developing their own new laws and this served as reference material as Members of Parliament in Australia and Canada developed and justified the strong new legislation to satisfy Resolution 1373.

Chapter 4 Examination of Relevant Anti-Terrorism Legislation

4.1 Introduction

This dissertation is examining parliamentary discourse in Australia and Canada during the introduction of new anti-terrorism legislation over an eighteen-month period following 11 September 2001. This period covered the initial anti-terrorism legislation seen necessary by both countries, some of which did not achieve Royal Assent and become law until after the end of the study period. Since that time both countries have introduced further legislation addressing terrorism-related issues. As further background material, this section presents an examination of scholarly writing about relevant anti-terrorism legislation, beginning with referencing the USA Patriot Act, the American Government response to the September 11 terrorist attack, and the United Kingdom's Terrorism Act 2000 and Anti-terrorism, Crime and Security Act 2001, because they were seen as the principal references in the adaptation of anti-terrorism legislation by many countries, including Australia and Canada. Commentary follows about the legislation produced in Australia and Canada, some of which is referencing legislation that was introduced or amended in the intervening years since the end of the dissertation study period. Nevertheless the issues and commentary are relevant and differ little from the concerns existing when the early anti-terrorism legislation was first introduced. The section ends with summaries of the Australian and Canadian Country Reports to the UN on counter-terrorism action taken as required under UNSCR 1373. The reports were required to be submitted to the UN annually, and the details of plans and accomplishments included in the reports covering the period studied are referenced. These reports provide additional background on how governments were implementing their laws and policies to fight terrorism. In some cases, statements made were overly optimistic about the acceptance of legislation introduced in parliament. The Country Reports were particularly useful in providing authoritative information about actions taken by Australia and Canada in freezing terrorist funds and working to support counter-terrorism initiatives in the international community.

4.2 Four Legislative Responses to the Terrorism of 9/11

Following 9/11, the global climate was one of heightened security, with references made to a state of war and the readiness of countries to react to terrorist aggression. While 9/11 awakened the US, many EU countries including the UK, France, Italy, Germany, and Spain, already had legislation and procedures in place to deal with domestic terrorism (Levi & Wall, 2004, p. 196). "Basic principles had already been agreed upon in October 1999" (Giorgetti, 2005, p. 250). The response to 9/11 for EU countries involved, "...strengthening of existing anti-terrorism legislation and/or the hardening of security measures" (Levi & Wall, 2004).

Following the lead of the American adoption of the USA PATRIOT Act, a chain reaction of anti-terrorism legislation occurred. "In the aftermath of the attacks on 11 September 2001, the UK, Australia, Canada, France, Germany and Japan, among others, enacted their own anti-terrorism laws, prompting familiar arguments about the proper balance between human rights and security" (Whittaker, 2007, p. 1018).

The legislative approaches taken by the United States, the United Kingdom, Australia and Canada are referenced in the following four sections.

4.2.1 USA PATRIOT Act 2001

The 9/11 terrorist attacks upon the United States were viewed as an act of war. Writing about American President George W. Bush, David Owen (2007) states:

He was a 'wartime President' and he saw his main priority as mobilizing America for military action. In doing so his adoption of the phrase 'war on terror' was imprecise, even misleading, but it was understandable in the immediate circumstances, in which he needed to rally his country to face the foe which al-Qaeda presented. (p.35)

In fact the British government had never approved of President Bush's terminology of 'war on terror', a fact that did not come out until years after 9/11 and the rhetoric surrounding the terrorist attacks had been replaced with the war weariness developing from Iraq. Foreign Secretary David Miliband was quoted in an early 2009 interview as stating that the American rallying call 'war on terror' was a mistake and in actual fact had caused more harm than good (Borger, 2009). By 2006 even the American government had begun to avoid the phrase 'war on terror' (Borger, 2009).

The view that war had touched American soil is crucial when looking at how the United States developed its anti-terrorism obsession, an obsession not just with its own security, but also of the 'globes' and its global interests. Owen (2007) points out:

From the moment Bush seized the bullhorn or portable loudhailer in the devastation and rubble on 15 September and said 'The people who knocked these buildings down will hear all of us soon', he came to refer to himself as the 'decider'. (p. 35)

Addressing not only the emergency workers at ground zero, but the entire nation and furthermore the world population, President Bush made it abundantly clear vengeance would be sought on those who carried out the attack. These were the moments, the realization of the destruction and impact of the terrorist attacks, in which the world began its transformation into the new world order of the ever security-obsessed 'War on Terror'.

The American Government response to the September 11 terrorist attacks was the creation and implementation of the USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act) in December of 2001. An emphasis on security led to concerns about personal liberties and how the new measures would affect the public. Areas of unease described by Whittaker (2007) were, "... the law's provisions for enhanced surveillance, information sharing and indefinite detention" (p. 1018). However while academics like Whittaker (2007) draw attention to the threats the new security legislation posed to individual freedoms, there are academics like Kerr (2003) that argue the new security laws, such as the new powers concerned with surveillance, are in fact minor as well as being needed, nor is the act the Orwellian Big Brother threat that some make it out to be. Kerr's argument is that consideration of the Act moved with such speed that not many people had time to fully understand what it entailed. It might be assumed that was a worry in itself when the government would rush through such an important piece of legislation, but Kerr (2003) does raise the issue, although perhaps in a controversial

way, that just because the government passes legislation quickly it does not necessarily mean it is full of violations of civil liberties and human rights.

While Kerr (2003) might argue that the hype surrounding the USA PATRIOT Act was mostly unfounded, there were serious concerns particularly from the workplace sector that the new security laws might drive attention away from privacy related issues to focus on security. Despite these initial reservations, Sproule (2003) reported that while business after 9/11 was primarily concerned with security and therefore let privacy issues lapse, the majority of those polled claimed they would be in favor of such new security measures as National Identity Cards. A year later, the result was the opposite, with the majority in favour of privacy rather than security. This may be an indication that after 9/11 the majority of people were focused on security, which is hardly surprising given the events that had transpired. Then, as soon as enough time had passed, people began to ease away from calls for tighter security, in a sense reverting back to their old ways, or perhaps to the ways of less imposing security requirements.

Essentially the critical points of the USA PATRIOT Act gave the US federal agents stronger powers to combat terrorism including tracing and intercepting suspect communications (Doyle, 2002). According to Section 215 of the Act, governments can get a secret warrant that allows them to, "... obtain business records, including records from libraries and databases" (Pike, 2007, p. 18). The Act similarly addressed concerns over both domestic and overseas transaction control measures that strengthened federal anti-money-laundering laws; while at the same time it strengthened American immigration laws by acting to deny entry to and expel suspected terrorists from US soil. It also created new federal crimes related to terrorist activity and attacks, and where old laws were still applicable it created tougher penalties for convictions as well as expanding the statute of limitations when dealing with terrorist related crimes (Doyle, 2002).

One of the principal matters the USA PATRIOT Act looked to address was the issue of the financing of terrorism (Doyle, 2002). Indeed, targeting terrorism's ability to finance itself was a major weapon against international terrorism. Stop the flow of money and moneymaking abilities and terrorist organisations are effectively crippled. This may be a somewhat simplistic way of looking at combating terrorism, but it is essentially correct. Action against terrorist organisations' abilities to raise funds internationally was a global concern and the Financial Action Task Force (FATF) created in 1989 had no means to enforce action. It was UNSC Resolution 1373 issued on 28 September 2001 that called for the international community to do its part in ensuring that terrorist organisations were not able to raise financial support within their respective countries. What is important to note is that the United States did not take the threat posed by international terrorist organisations' financing abilities seriously prior to the USA PATRIOT Act. "Until the September 11, 2001 attacks, combating the financing of terrorism (CFT) was not a strategic priority for the U.S. government" (Levitt and Jacobson, 2008, p. 67). Only after 9/11 did this become a major concern.

The USA PATRIOT Act built upon older security related powers that were given more strength and less hindrance. An example is the National Security Letter (NSL) that had been in existence approximately fifteen years before the enactment of the USA PATRIOT Act. The expanded powers now applied to the NSL broadened its reach. Previously the NSL:

...had to focus on a specific foreign power or foreign agent who was a suspect in a terrorism or counterintelligence investigation. An NSL can now be issued if the

information sought is simply 'relevant' to an investigation and can target U.S. citizens as well as noncitizens. (Pike, 2007, p. 18)

Also affected and altered by the USA PATRIOT Act were the Foreign Intelligence Surveillance Act (FISA) along with the Antiterrorism and Effective Death Penalty Act, the International Emergency Powers Act, and the Trade Sanctions Reform and Export Enhancement Act. Due to the USA PATRIOT Act's information policy other government statutes had to be altered including the Communications Act of 1934, the Computer Fraud and Abuse Act, the Electronic Communications Privacy Act, the Fair Credit Reporting Act, the Family Education Rights and Privacy Act, and the Federal Wiretap Act (Jaeger et al, 2003).

It is the USA PATRIOT Act according to Whittaker (2007) that served as a guide for the rest of the Western world, those countries that quickly followed America's example to implement anti-terrorism legislation. The view that the United States was behind the anti-terrorism movement in late 2001 is opposed with the argument that anti-terrorism laws and policies were a consistent topic of the United Nations Resolutions before 9/11. United Nations General Assembly Resolution 49/60 in 1994 was concerned with anti-terrorism as was Resolution 46/51 in 1991 and others, every few years, dating back to Resolution 3034 in December of 1972 (United Nations A/RES/49/60, 1994; United Nations A/RES/46/51, 1991). The US might have sponsored or been an active participant in drawing up some or all these resolutions but the point is that the UN was the vehicle used to promulgate the resolutions. In addition, the United Kingdom had much more experience dealing with anti-terrorism legislation starting in the 1970s due in part to its domestic terrorism problems with Northern Ireland. In fact, the UK had just released a new version of its anti-terrorism policy in 2000, one year before 9/11 (Home Office, 2011). However, Whittaker (2007) presents a strong argument that the USA PATRIOT Act was the driving force for the widespread adoption of anti-terrorism legislation given that there was no great rush by countries to act upon the United Nations Resolutions concerning terrorism before, nor had other countries, many other countries, taken actions to protect themselves from terrorism despite the UK's terrorist experiences and the availability and guidance of what the UK had created with its anti-terrorism legislation.

4.2.2 The UK Anti-Terrorism Legislation

A thorough updating of UK terrorism legislation, the Terrorism Act 2000, (TA 2000) came into force in February 2001. Following 9/11 and the UN Security Council's Resolution 1373 it was argued that the UK needed to make changes to its TA 2000 (Fenwick, 2002). The British government found itself again strengthening legislation to address new issues and in November 2001 passed the Anti-terrorism, Crime and Security Act 2001 (ATCSA), built upon the framework of TA 2000. The introductory paragraph to ATCSA clearly highlights the views that new anti-terrorism measures were required:

... an Act to amend the Terrorism Act 2000; to make further provision about terrorism and security; to provide for the freezing of assets; to make provision about immigration and asylum; to amend or extend the criminal law and powers for preventing crime and enforcing that law; to make provision about the control of pathogens and toxins; to provide for the retention of communications data; to provide for implementation of Title VI of the Treaty on European Union; and for connected purposes. (Anti-terrorism, Crime and Security Act, 2001)

While the TA 2000 was considered overly strict and draconian by many the new ATCSA would expand powers even further (Fenwick, 2002). TA 2000 created a number of new criminal offences regarding the banning of terrorist organisations from the country along with criminalizing individuals or groups engaged in or seeking and or providing terrorist training. The Act also increased police powers associated with stopping, searching and detaining individuals suspected of terrorism dealings and called for all terrorist groups to be listed and outlawed, effectively making membership in terrorist groups a crime (Gearty, 2007).

There were similarities to the USA PATRIOT Act in the actual powers granted for new ways to combat terrorism, not just with ATCSA for the UK but also with new legislation in many other Western nations. As with the USA PATRIOT Act, the new UK legislation was quickly rushed into law with many criticising the lack of thorough debate on the Act's content itself (Weimann, 2006). Gearty (2007) comments that the ATCSA poses a conundrum for the balancing of powers, in what he calls the secret service track between the police and intelligence services.

Similar to the USA PATRIOT Act, a primary concern of the ATCSA was the targeting of terrorist financing. New powers were created that allowed freezing of assets and bank accounts connected to terrorist suspects. In addition, new home secretary powers were granted that allowed the indefinite detention without charge of foreign nationals with suspected links to terrorism (Gearty, 2007, p. 35). Fenwick (2002) makes the point that to read some of the provisions in the ATCSA familiarity with the TA 2000 is necessary because they are clearly related. The ability for authorities to detain foreigners suspected of terrorism relates back to the TA 2000, in that the applicable explanation of terrorism is provided in Section 1(1) of the TA 2000 in combination with section 21(1) of the ATSCA which states:

... the Home Secretary can issue a certificate in respect of a person on the basis of (a) a reasonable belief that the person's presence in the UK is a 'risk to national security' and (b) reasonable suspicion that he or she is a terrorist. (Fenwick, 2002)

The part of the ATCSA that drew the most criticism was Part 4 allowing the Secretary of State to order the indefinite detention of foreigners without charge (Giorgetti, 2005). Additionally police powers were increased such as the ability to fingerprint and photograph without the need for consent those in detention and suspected of terrorist activities. The rationale for this was that it helped police to identify those taken into custody. The extent of the new powers granted allowed authorities to detain foreigners in the UK suspected of having any association with terrorism of any kind (Ensum, 2002). The only way in which to counter the order to detain a foreign national suspected of terrorism under the ATCSA is through the Special Immigration Appeals Commission (SIAC). The SIAC has the power to overturn a detention certificate issued under section 21 of the ATCSA if:

... it finds that there were no reasonable grounds for a belief or suspicion of the kind referred to in s. 21(1)(a) or (b), or that for 'some other reason' the certificate should not have been issued. (Fenwick, 2002, p. 93)

Furthermore, the SIAC is charged with reviewing the detention certificate six months after it was initiated, pending an appeal, which could delay the review process beyond the six month review mark. The SIAC is also tasked with conducting follow-up reviews on the certificate

every three months after the first six-month review (Fenwick, 2002). What is important to note is that these increased powers share a similarity to the anti-terrorism powers enacted in the United States after 9/11 (Ensum, 2002).

An immediate consequence of the new ATSCA was its infringement on civil liberties. While the UK wished to show its support for its American ally it also had to balance its new security legislation with regard to its European commitments. The new ATSCA brought the UK in direct violation of section 5 (1) of the European Council's Convention for the Protection of Human Rights and Fundamental Freedoms. In a temporary attempt to rectify the situation, the UK government declared a state of emergency thereby allowing it to opt out of the European Councils Convention on Human Rights (Henning, 2002; Ensum, 2002; Fenwick, 2002). Giorgetti (2005) argues:

... traditionally the closest ally to the United States, Britain immediately felt threatened and was the only country in Europe to adopt emergency legislation. Because of its extensive domestic experience with the IRA, the United Kingdom had already implemented detailed legislation against terrorism. (p. 252)

While Giorgetti (2005) goes on to say that the UK acted as it did because it was a close US supporter it could be that 9/11 perhaps validated Britain's own struggle with IRA terrorism. It is true, as Giorgetti has identified that Europe has had more experience with terrorism than the United States. A reason for the willingness of the UK to support the US and enact tough anti-terrorism legislation despite the potential for conflict with its European Union neighbours might be that the UK has endured a lasting violent terrorist campaign over Northern Ireland.

Potential victims of the ATSCA include asylum seekers. The Act enabled the British government to reject asylum claims on the grounds that the individuals requesting asylum have been deemed a national security threat. This is comparable to the legislation enacted by the US under the USA PATRIOT Act that grants the government the ability to deny entry into the US to people who are members of a listed terrorist organisation or suspected of having terrorist links. As well, the USA PATRIOT Act is similar to the ATSCA, in allowing the detention of foreigners on suspicion of terrorism for up to seven days without charge (Gibney, 2002). This new power of detention was used immediately by British authorities and often over the following years: "Eight foreigners were detained under ATSCA by the end of 2001, eleven by the end of 2002, and fourteen by February 2004" (Giorgetti, 2005, p. 252).

Levi and Wall (2004) state: "... none of the EU countries have yet gone as far as introducing an equivalent of the PATRIOT Act which has diluted judicial oversight" (p. 196). Many scholars would refute this argument. Fenwick (2002) has already clearly linked the ATSCA along with its predecessor TA 2000 as being draconian. Therefore, Fenwick would probably see the ATSCA as being close to the USA PATRIOT Act. Gibney (2002) drew similarities between the ATSCA and the USA PATRIOT Act in the detention of suspects without charge. Gibney also points out that Canadian anti-terrorism legislation was similar to that of the UK and U.S.A. in its treatment of asylum seekers and foreigners suspected of terrorism connections. So while Levi & Wall (2004) state that no EU country has introduced a version of the USA PATRIOT Act, perhaps this sidesteps the issue. A better question to ask might be why is anti-terrorism legislation introduced by countries since 9/11 so similar to that of the USA PATRIOT Act.

Among other legislative changes spurred by the ATCSA were changes to the processing of data. Three major amendments were: to require all internet service providers or ISP's, telecommunications operators and any other communication service providers in the UK to keep a record of all communication event data for one year; to allow Inland Revenue or Customs and Excise offices to provide financial information on an individual or organisation to authorities involved with a terrorism investigation; and to allow public authorities who have the power to investigate or audit to provide any police authority with discovered information deemed suspicious (Pounder, 2002; Westmacott, 2002).

A common theme with new anti-terrorism legislation was the targeting of cyberspace with the monitoring of web-based communications. "Civil libertarians and civil rights activists have been particularly worried about the act's green light to the government to eavesdrop on the Web browsers of innocent people" (Weimann, 2006, p. 175). The internet poses a conundrum for governments trying to tackle the anti-terrorism issue. The internet is truly one of the last bastions of free speech in that the web provides users with almost total anonymity; however, such anonymity does not bode well for those trying to track down people that use the internet for terrorist activity. The ATCSA included, "...measures to enable telecommunication providers to retain personal data, including emails and mobile phone logs" (Giorgetti, 2005, p. 252). The requirement makes clear that authorities need to be able to monitor the internet for terrorism related activities and thus has become a controversial part of the USA PATRIOT Act as well as the ATCSA among others (Weimann, 2006).

One of the more controversial measures adopted by Western countries was the legislative authority granted to governments and anti-terrorism authorities to eavesdrop on internet communication. Despite the controversy, this power allowed security agencies to identify a terrorist plot in 2004. What makes this more significant is that it resulted from a joint investigation by the UK and Canada because the suspected participants in the terrorist group were collaborating from both countries, nine members in the UK and one in Canada. This is an example of the cooperation between countries in the fight against terrorism, as well as an example of like-minded government action through the adoption by both countries of internet communication monitoring legislation for anti-terrorism purposes. This was a security measure influenced perhaps by the US PATRIOT Act, but seen as a necessity by Western governments (Weimann, 2006).

Gearty (2007), writing about the UK, questions why there were so many terrorism-related laws after 2000 and wonders what the impact has been on society. Gearty's answer is that there has been a definite bias for legal activism in the UK and the government has acted in a way to strengthen security because the people would hold the government accountable for any type of catastrophe that might occur; therefore it is in the governments interest to address matters of security because it is what the people would expect. The ATCSA was a reaction not to a UK incident, but to an American tragedy. Had the United States not reacted in the manner it did with the creation of the USA PATRIOT Act, would the UK have felt the need to rework the Terrorism Act 2000? Gearty's view is relevant because of the political concern that similar attacks could follow in the UK, but had 9/11 not occurred or had the devastation been less catastrophic there may not have been as many subsequent changes to the law in the UK. This perhaps is supporting Whittaker's (2007) argument about the USA PATRIOT Act guiding the specific considerations to be addressed by other countries.

4.2.3 Australian Anti-Terrorism Legislation

What makes 9/11 such a significant date is not just the tragedy that unfolded that day with 3000 lives lost from a terrorist attack, but the recognition that terrorism was a new threat with global consequences. Australia had escaped from large scale acts of terrorism within its borders and anti-terrorism laws were nonexistent up until 11 September 2001 (Hocking, 2004; Lynch and Williams, 2006). Rowe (2002) expresses an Australian view on the sympathy and support felt for the United States following 9/11:

The world was divided into two camps: those with us with both Western and non-Western powers scrambling to be on the right side of the war. Australia was enthusiastic in America's call to arms and was one of the first countries to provide assistance and complete support to the United States foreign policy. (p. 7)

According to Shawcross (2004) in matters of foreign policy, it was in Australia's interest to continue fostering good relations with the United States, as the US had the power to lead the democratic world through the dark times cast by the shadow of terrorism. "Australia's strategic reality is a partnership and alliance with the United States" (p. 145). This reflects the view shared by the Liberal-led Australian government at the time although it may not have represented the views of all Australians.

Rowe (2002) cautions that although it is consistently agreed that the world has changed as a result of the events of 9/11 it is how the world has changed, that may be most concerning. Consequential attacks on populations have occurred throughout history; it is in a sense one reality of human civilised existence. Therefore Rowe puts forth that it is not the terrorist attack or the threat to security that is new, what is a threat to modern society is the "... justification for the suspension of traditional liberal democratic rights" (p. 8) that has developed from the push for new tougher anti-terrorism legislation.

After 9/11, Australia found itself confronted with the terrorism threat along with the rest of the world. 'September eleven' effectively led to an explosion in the need for new anti-terrorism legislation and countries that had no such thing prior to 9/11 now found themselves scrambling to construct new or strengthen previous legislation. Describing Australia's actions, MacDonald and Williams (2007) explain, "Since that time, the federal parliament has passed 44 new anti-terrorism statutes, many of which impact on traditional notions of criminal justice" (p. 27). Offering a justification, MacDonald and Williams go on to explain, "Other Countries, such as the United States, the United Kingdom, Canada, New Zealand and South Africa, have also developed extensive new counter-terrorism laws since September 11" (p. 28).

Australia has taken a different path in enacting anti-terrorism legislation compared to countries such as Canada. Days after 9/11 the Australian government quickly compiled a list of terrorist organisations, from which all property and finances were seized, showing swift and determined action against terrorism (Hocking, 2004); however Australia's own specific anti-terrorism legislation did not enter into law until March 2002, when a wave of anti-terrorism acts were introduced. Seven months later saw the October 2002, Bali Bombings which resulted in the death of eighty-eight Australian tourists. Two years after that the Australian embassy was bombed in Jakarta (Roach, 2007). This might explain why Australia passed over 44 new terrorism statutes since 2001 (MacDonald and Williams, 2007) as compared to another Western country, Canada, that passed only two specific pieces of anti-terrorism legislation (Roach, 2007).

The government of Australia introduced five anti-terrorism bills together on 12 March 2002 as the Security Legislation Amendment (Terrorism) Bill 2002, referred to as the Terrorism Bill 2002. It actually consisted of several anti-terrorism specific bills: the Terrorism Bill; Suppression of the Financing of Terrorism Bill 2002; Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002; Border Security Legislation Amendment Bill 2002; and the Telecommunications Interception Legislation Amendment Bill 2002 (Williams, 2002; Syrota, 2007). On 21 March 2002 Australia introduced more significant anti-terrorism legislation with the ASIO Bill 2002 (Williams, 2002). Later, in 2004, the government introduced the Australian Anti-terrorism Act but found it was having to be repeatedly amended to maximise its effectiveness and so it has not remained. (Australian National Security, 2008)

When first introduced the proposed ASIO Bill caused controversy with the significant new powers it granted:

In a highly critical report, the Joint Committee on ASIO, ASIS and DSD described the Bill as ‘one of the most controversial pieces of legislation considered by the Parliament in recent times’. The Committee’s report, tabled on 5 June 2002, determined that the ‘Bill, in its original form, would undermine key legal rights and erode the civil liberties that make Australia a leading democracy’. (Hocking, 2004, p. 218-219)

The original ASIO Bill became stalled in parliament but following passage of the multiple anti-terrorism related acts of 2002 the Australian Government passed the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003 (ASIO Act 2003) (Hocking, 2004a). The significance of the ASIO Act 2003 was that the intelligence agency ASIO obtained the authorization to hold those suspected to have information on terrorism related activities for up to seven days. Furthermore, those individuals being detained could be subjected to up to 24 hours of interrogation over that seven-day period. The key aspect of this new power was that a detained person did not have to be charged with any crime and simply could be detained on suspicion that they may have knowledge of terrorist activities (Hocking, 2004a). Detention and questioning could be authorised by a judge and interrogation was to be done in front of a retired judge. Subsequent amendments to the ASIO Bill 2003 now extend the interrogation time from twenty-four to forty-eight hours in situations where an interpreter is involved (Lynch and Williams, 2006).

In 2005 the Anti-Terrorism Act (No. 2) was introduced into Australian law. It contained new amendments to the Criminal Code adding control orders, an extension of the definition of a terrorist organisation, preventative detention of 48 hours up to fourteen days without charge, revised seditious offences, increased ‘stop and seizure’ powers, an extension to financing of terrorism offences, and more ASIO powers increasing warrant periods and the non-return of seized items that could affect national security (Jaggers, 2008).

The main issue Joseph (2004) has with the new definition of terrorism is that it is very broad, so broad in fact that it can be used in cases where terrorism is not a part of the problem for example in possible future labour disputes where striking workers on the picket line could potentially come into conflict with replacement workers. Joseph’s point is that the new terrorism criminal offense has come into play and, “... criminalises actions that fall far short of the catastrophic attacks that motivated the legislative changes” (p. 432). McCulloch (2006) agrees with Joseph’s concerns about the broad definition of terrorism. “A person can be convicted of a terrorist offense without engaging in conduct

that is harmful or violent, or even planning or intending to engage in a harmful or violent conduct” (p. 358). Writing about the Thomas trial of the first person to be tried under the new Australian anti-terrorism laws, McCulloch identifies how Thomas was acquitted on the charges of intentionally providing resources to a terrorist organisation yet was found guilty on the charges of possessing a falsified passport and receiving funds from a terrorist organisation. Therefore, under the Australian legal system, Thomas was innocent of supporting a terrorist organisation, yet guilty of receiving funds from a terrorist organisation he was deemed not to be supporting. McCulloch points out that the conviction left Thomas branded as a terrorist even though he was found innocent of supporting terrorism.

Not surprisingly, upon Thomas’s acquittal of not providing resources to a terrorist organisation the AFP had a control order placed on him. He was the first Australian placed under the new anti-terrorism power of the control order (Jaggers, 2008). For the AFP, regardless of the court’s decision, Jack Thomas was still considered a security threat, one whose actions needed to be monitored. This seemingly confirms McCulloch’s (2006) concern that suspects can be unfairly branded as a terrorist even though the evidence indicates that they are not. The control order on Thomas lasted for approximately twelve months and limited his personal freedom by placing him under a curfew and dictating whom he could and could not associate with (Jaggers, 2008). Roach (2007) comments that authorities must be made aware of the environment their actions create even if such action is warranted:

The focus in Australia has been on the ability of the political and religious motive to restrict crimes of terrorism rather than on the discriminatory effects that such requirements may have on accused persons and those who may share political or religious beliefs with terrorists. (p. 58)

Following on the heels of the ATA #2 Australia next introduced legislation dealing with terrorist financing, the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 or AML/CFT Act 2006 (Jensen, 2008). According to Jensen an estimated 4.5 billion dollars annually is involved with “money laundering and terrorism financing” (p. 95) in Australia. “One academic has gone so far as to argue that the War on terrorism will not be fought on the battlefield.... (It will be) fought in the halls of our financial institutions” (Ayers, 2002, p. 449, 458 as cited in Tham, 2007, p. 138). The AML/CFT Act 2006 adds support to Ayers (2002, as cited in Tham, 2007, p. 138) prophetic academic quote in that the battlefield against terrorism is moving further into exploring the dealings of financial institutions. For Jensen (2008) the cost of combating terrorist-related money laundering is well worth the costs associated with the AML/CTF Act 2006:

While the effects of terrorism financing are often difficult to directly calculate, it is clear that such activities undermine and impose substantial costs that may have devastating effects on nation states or the global economy. It is also clear that the social and economic costs of an act of terrorism are significantly higher than the cost of Australia’s AML/CTF program. (p. 95)

Controversy was quick to follow the introduction of all the related anti-terrorism bills. Many opponents felt the legislation was too excessive and far-reaching, granting too many and unnecessary powers to law enforcement and other security authorities (Williams, 2002; Hocking 2004; Lynch and Williams, 2006; Syrota, 2007):

Few laws enacted by the Commonwealth Parliament over the past 10 years have been as controversial as the five interrelated anti-terrorist laws that received the royal assent in July 2002. The Police, on the one hand, have hailed them as indispensable to the war on terrorism. Civil liberties groups, on the other hand, have condemned them as unnecessary, oppressive and unjust. (Syrota, 2007, p. 308)

Aly (2008) highlights some of the concerns developing from the Australian Government's push to create anti-terrorism legislation rapidly and the resulting effect it could have on the civilian population, particularly the Australian Muslim population. Writing about the Australian Muslim Civil Rights Advocacy Network (AMCRAN), Aly (2008) highlights concerns that, "... warned startlingly that expanded police and intelligence powers were being used coercively, to intimidate people into cooperating with authorities where they had no legal obligation to do so" (p. 21). According to AMCRAN this new wave of aggressive anti-terrorism was impacting the Australian Muslim community in that it, "... identified a clear pattern of behavior from ASIO's officers, where people who demonstrated some reluctance to talk informally to them were threatened with questioning or detention warrants, and the possible suspension of their passports, unless cooperation was forthcoming" (Aly, 2008, p. 21).

Syrota (2007) summed up nicely the effect of these new anti-terrorism associated bills. The legislation expanded pre-existing security powers and provided new powers for surveillance, search and seizure for the AFP. Groups or organisations suspected of and/or connected to terrorism activity could now be labelled as such by the Attorney General. Association, membership, support or the giving of assistance to any group or organisation labelled terrorist was criminalised. The new anti-terrorism legislation saw the previous offense of treason redefined to bring it in line with the threat of terrorism and subsequently replaced the old penalty of death with life imprisonment. Finally terrorism was brought into the Australian Criminal Code 1995 which created new terrorism offenses and, "...it establishes a new regime of control orders and preventative detention orders for use against suspected terrorists" (p. 309).

As Lynch and Williams (2006) point out, after 9/11 the United Nations passed Security Council Resolution 1373 that called for member countries to take serious action to prevent further acts of terrorism or its support, financially or physically. Therefore, a driving factor behind the urgent call for tough new anti-terrorism legislation stemmed from the UN, which as Lynch and Williams (2006) stated was not a bad thing. Australia needed anti-terrorism laws; however not at any cost and certainly not at the cost of civil liberties. Governments must resist the trend to reactive law making, because it is through such quick non-debated action that serious harm can be caused to rights and freedoms of the people (Williams, 2002; Hocking 2004; Lynch and Williams, 2006; MacDonald and Williams, 2007; Syrota, 2007).

It is not surprising that our political leaders, as members of parliament and lawmakers, have turned to new laws as a first response to terrorism. After each attack, the political pressures to act can be immense, and the political gains from being seen as 'tough' on terrorism significant...new legislation is at least within their control and is symbolic and potentially practical response. (Lynch and Williams, 2006, p. 86-87)

The United Nations alone did not guide Australia's anti-terrorism legislation; it was also heavily influenced by the British anti-terrorism legislation (Roach, 2007). The British Anti-terrorism Act

2000 served to help the Australian government tailor terrorism offenses for criminal law. Hocking (2004) declares,

... the government proposed the creation of new categories of 'terrorist' offenses, drawing on the British Terrorism Act 2000, these were included in the criminal code with the passage of Australia's Security Legislation Amendments (Terrorism) Act 2002. (p. 195)

In fact Hocking (2004) would argue that this drive for counter-terrorism and anti-terrorism legislation was nothing new for Australia. To Hocking the actions of 2002 with the Australian Government rushing in new tougher security related legislation mirrors what happened previously in 1979. As Hocking states:

Yet despite the many post-September 11 treatises on terrorism and counter-terrorism from scholars, and action from governments, there is nothing 'new' in the development of either aspect. In this sense we are witnessing what might be called a 'second wave' of counter-terrorism in Australia. (p. 193)

The attention focused on terrorism since 9/11 has led to the creation of many new anti-terrorism laws. What countries and governments have to be mindful of is the validity placed on the threat of terrorism. As Joseph (2004) points out, some academics question the sudden emergence and threat of international terrorism. "...Australia and all states must tread a fine line between overreaction and failure in their duty to protect their populations" (p. 429). Within months of 9/11, the Australian government was moving to create anti-terrorism specific legislation. As Waleed Aly (2008) states, "Thus began the most dramatic era in Australia's counter-terrorism history; one characterized by frenetic legislative activity, heightened investigation and prosecution" (p.20). Joseph highlights such frenetic activity:

The Security Legislation Amendment (Terrorism) Act 2002 (Cth) inserted new provisions into the Criminal Code 1995 (Cth), which were again amended by the Criminal Code Amendment (Terrorism) Act 2003 (Cth) and the Criminal Code (Terrorist Organisations) Act 2004 (Cth). The Criminal Code now prescribes a new offense of terrorism and a number of derivative offenses. (p. 431)

4.2.4 Canadian Anti-Terrorism Legislation

Just as the United States had quickly implemented new security legislation via the USA PATRIOT Act, Canada was quick to follow in passing their anti-terrorism legislation called Bill C-36. In December 2001, three months after the tragedy of 9/11 the Canadian Anti-terrorism Act (Bill C-36) was introduced into law granting the government, security agencies and police an increase in powers to combat terrorism (Coutu & Giroux, 2006). What Bill C-36 brought about was the amendment or the establishment of federal statutes "... including the Security of Information Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, the Charities Registration Act and the National Defence Act" (Straw, 2005, p. 6).

The nearby events of 9/11 were a traumatic experience for Canada as well as the United States and set the groundwork for Bill C-36. As Canada and the United States have a special robust economic relationship the immediate closure of the US borders and heightened levels of security were perhaps as

alarming to Canada as the 9/11 terrorist attacks themselves. As Clarkson (2003) states “Because the 8,900 kilometre border constitutes the United States’ longest frontier with another state, Canada presents a special internal security concern to Washington” (p. 78). It is not just the length of the border that is so important, but what it represents: “... there are 425 border crossings, and over 500,000 people cross the Canada-US border each day” (p. 78). Combined with the almost two billion dollars of cross-border trade each day this reveals the immense significance of an open hassle-free border; therefore when calls are heard for tightening security and enacting fortress America, Canada cannot idly stand by and wait to see how events unfold. Swift decisive action must be taken, not only for security’s sake, but also for the country’s economic security (Clarkson, 2003).

This special situation with the American-Canadian border is a factor that cannot be underestimated as having an impact on the Canadian government reasoning for wanting tough anti-terrorism legislation. There has always been concern on the part of the United States that the Canadian border is too lax in its approach to security, thereby making the US vulnerable to crime and now terrorism (Andreas, 2003):

Since 9-11, Canada has been receiving a heavy dose of the harsh scrutiny the U.S. usually reserves for Mexico on border-related law enforcement issues. Canada has suddenly found itself in the highly uncomfortable and unfamiliar position of being perceived and treated as a security risk. Barely policed -- only 334 agents police the northern border compared to over 9,000 agents assigned to police the U.S.-Mexico border -- the U.S-Canada border is an easy and convenient political target for those who blame lax border controls for the country’s vulnerability to terrorism. (p. 6)

It is understandable then that the Canadian government would be wary of giving the United States an excuse to alter dramatically the US Canadian border situation and this became a further justification for the development of Bill C-36. This is perhaps why Roach (2007) identifies:

... the Canadian legislation is also supported by the inclusion of the concept of ‘economic security’ in the definition of terrorist activities, something that points to Canada’s extreme reliance on trade with the United States and Canadian concerns that a repeat of 9/11 would again result in a temporary closing of the Canadian-American border. (p. 58)

Prior to Bill C-36, Canada did not have a legal definition of terrorism in the Criminal Code (Wispiński, 2006). This may shed light on why the Bill was enacted so quickly, as the events of 9/11 exposing the vulnerability of the United States to terrorist attack would have most certainly initiated deep concerns for Western nations, such as Canada, about the increased possibility for an anti-Western terrorist attack. Before 9/11 terrorism was neither a serious issue for Canada nor a major concern for legislation by the Canadian Government. The Criminal Code was seen as sufficient:

... the approach that Canada had taken over the past thirty years in response to the growth of terrorism had been to rely, for the most part, on the criminal law of general application and to support collective international efforts to address the problem. (Mosley, 2002, p. 148)

The lack of anti-terrorism laws or related legal definitions was not limited to Canada. There were numerous countries like Canada that did not have specific terrorism legislation and were content to rely upon their respective domestic law to provide an adequate base to try and punish terrorism related crimes; however this radically changed after 9/11 (Mosley, 2002):

The consensus that emerged in the Security Council and in most nations after September 11 is that the nature of terrorism requires a different approach to disrupt and disable the terrorist network before it can carry out its design. (p. 152)

As a result, it was vital to change countries' criminal codes to incorporate a definition of terrorism if one did not exist already. The purpose of Bill C-36 was not only to show the Canadian people that the government was taking the threat of terrorism seriously, but also to show the international community that Canada was proactive in amending and creating legislation to combat the envisioned rise in global terrorism (Shaffer, 2001):

Internationally, Bill C-36 attempts to show the U.S. and other western nations that Canada will not be the weak link in an international effort to stop global terrorism and will not allow Canada to become a 'haven' for terrorist activities. (p. 196)

The issue that Shaffer (2001) takes with the Bill was whether such dramatic legislation and law making was necessary, and he questions whether it would truly make the country safer from terrorism. Shaffer suggests that better implementation and execution of the current laws would be more of a benefit to the country. The hijackers of 9/11 were very highly motivated to carry out their devastating plan. Who is to say that future terrorists would not be as highly motivated? Individuals who see themselves as champions or defenders of a cause, such as religion, can become isolated in their views and believe their actions just, no matter the destructive cost (Juergensmeyer, 2003). Therefore, Shaffer's concerns are not unwarranted that no matter the restrictive legislation terrorism can find a way to inflict itself upon society.

A challenge that faced the designers of Bill C-36 was the Canadian Charter of Rights and Freedoms. In order for the Bill to be acceptable legislation, it would have to survive any legal challenges under the Charter. If it failed to hold up to the Charter, the legislation would be essentially useless. Much was made by the Government that Bill C-36 was effectively Charter proof, meaning that the government was confident it would survive any legal challenge (Trotter, 2001). Roach (2007) writes that the Supreme Court upheld the anti-terrorism legislation under the Charter in investigative hearings, "... but ruled that any evidence derived from them cannot be used in any subsequent proceedings and that they are to be subject to a rebuttable open court presumption" (p. 53-54). Trotter's (2001) criticism of the Bill is that as it stands it does not make Canada or Canadians any safer from terrorism than it was before. Shaffer (2001) was concerned that the new legislation was potentially ineffective at preventing terrorism whereas Trotter (2001) makes the argument that not only are Canadians not any safer, the laws that are there to protect have become muddled with what he describes as triage style legislation, the adding of new provisions to old ones. This, Trotter (2001) argues, is how the Bill achieved the Charter proofing previously mentioned.

The immediate reaction to 9/11 had the Canadian Government feeling that the country's legal system needed a definition of what constitutes terrorism; therefore the Bill included a broad definition of terrorist activity as well as defining a terrorist group (Mosley, 2002).

A terrorist group is defined in section 83.01(1) of the Canadian Criminal Code as, "(a) an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity, or (b) a listed entity" (R.S., 1985, c. C-46).

Terrorist activity is defined in section 83.01(1) to include any act or omission committed inside or outside of Canada that, if committed in Canada, is one of the terrorist offenses referred to in ten anti-terrorist international conventions into which Canada has entered. (Wisniewski, 2006, p. 2)

One of the early criticisms of Bill C-36 was that its definition of a terrorist group was both flawed and too broad. The Bill's definition was criticised as being too difficult to prove in that section 83.01 called for proof of motive. Stuart (2002) asks, "Why should a violent terrorist with unfathomable motives not be included?" (p. 177). Furthermore the initial definition cast its net too wide when trying to ensnare terrorists. For example, the Bill originally had the wording *lawful protests* as being absolved of terrorist activity, but as Stuart (2002) argued how many protests are in fact lawful and how often are protesters charged with crimes? Under the Bill's definition of what constitutes terrorist activity an unlawful protester could be charged under the Bill. This was later amended with the word lawful being removed (Stuart, 2002).

The powers of Federal Ministers were also given a boost in regards to matters concerning terrorism. The Bill gave the Minister of Defence the ability to request electronic surveillance on international communications stemming from Canada. While the Minister must be satisfied beyond a doubt to give such an order the power is there to be had, and without the previously required authorization from a judicial authority. Furthermore the Bill, "...expanded the ability of Canadian intelligence agencies to monitor communications that potentially give rise to security risks". (Cockfield, 2004, p. 329)

Bill C-36, while introduced in rapid consecution with the USA PATRIOT Act drew much of its legal construction from outside the United States. Both the British ATCSA and the United Nations Security Council Resolution 1373 played large roles in the development of Bill C-36 (Roach, 2007). As Roach (2007) argues the Canadian Anti-terrorism Act definition of terrorist activities is very similar to that of the UK Terrorism Act 2000 in that C-36 follows, "... the broad definition of terrorist activities in s 1 of Britain's Terrorism Act 2000 (UK) by including various forms of politically or religiously motivated property damage and interferences with essential public and private services" (Roach, 2007, p. 55).

The Canadian Anti-Terrorism Act is argued by some to be, in effect, emergency legislation. It was a quick reaction by government to address a grave security concern highlighted by the tragedy of the 9/11 attacks; however as Coutu and Giroux (2006) claim, Bill C-36 does not limit civil liberty in the way the USA PATRIOT Act does:

As far as human rights and freedoms are concerned, the Anti-Terrorism Act is a far cry from the draconian measures of the American Patriot Act, with its military tribunal, incommunicado confinement, preventive detention without charge, and potentially expeditious application of the death penalty (p. 314).

Stuart (2002) might take exception to this view. Stuart's main issues with Bill C-36 were that it was rushed, that it granted authorities excessive powers and that the legislation was quickly written. He points out that the excessive powers entrusted to the Government now allow them to designate which groups represent a terrorist organisation and which do not (Stuart, 2002).

The targeting of potential terrorist organisations and terrorist funding has led to another casualty of the Bill. Charitable organisations now find their funding under intense scrutiny to ensure that terrorism is not supported by their donations:

The co-ordinated attack on terrorist financing and activities has revealed that in many cases, charitable activities that were previously thought to be commonplace and uneventful may now lead to a charity becoming susceptible to criminal charges for having facilitated ‘terrorist activities’ or for supporting a ‘terrorist group’. (Carter et al, 2007, p. 1)

Due to this crackdown charities have become, as Carter et al. (2007) state, ‘silent victims’, not only in Canada but across the world.

To enhance police powers to combat terrorism Bill C-36 made it easier to use electronic surveillance for investigative purposes. Previously electronic surveillance and wiretapping were viewed as last resort methods to battle crime but now security authorities wanting to monitor suspected terrorists have had the surveillance limit expanded from sixty days to one year. The Bill also allows authorities the luxury of investigative silence. Previously persons who were wiretapped were informed immediately whereas now such admissions can be delayed for up to three years after the investigation, because the effectiveness of the investigation could potentially be destroyed if the terrorist suspect was informed of a wiretap and passed on that information (Cockfield, 2004).

Bill C-36’s greatest impact is with its far-reaching provisions to combat terrorism in combination with minor changes to standing legislation to facilitate these aspirations (Trotter, 2001). Murphy (2007) expresses the purpose of these new laws by saying, “When things are deemed to be a threat to state security, this threat enables governments to rationalize, suspend, challenge and change long-established orders, conventions, rules, norms and laws” (p. 3). He goes on to quote Williams’ view, “Security is not an objective condition, but the outcome of a specific social and political process” (Williams, as cited in Murphy, 2007, p. 3). However, the reasoning for the dramatic changes to strengthen anti-terrorism legislation according to Murphy resonates with a threat against the state, not just a threat of terrorism, but of being depicted as too weak on terrorism (Murphy, 2007).

While Bill C-36 was the major piece of anti-terrorism legislation passed in Canada, two further Bills were introduced to deal with particular issues to satisfy UNSCR 1373. On 22 November 2001, Bill C-42, The Public Safety Act 2001, was tabled as an omnibus bill to amend 19 existing acts and enact a new statute to implement the UN Biological and Toxin Weapons Convention. The Bill amended the Aeronautics Act to increase aviation security and allow the federal government to provide a safe and secure aviation environment, and extended the powers of several ministers to issue interim orders where immediate action was required. It also addressed hoaxes relating to lethal substances or explosive devices and broadened the application of the Explosives Act. In addition, the Export and Import Act was extended to establish an Export Control List and include weapons, munitions and other strategic goods that might be used to thwart Canadian security. Changes were also made to the Immigration Act and the National Defence Act wherein it was considered necessary to add “armed conflict” to the emergencies to be addressed by the Canadian Forces, and to authorise ‘military security zones’ when necessary for the protection of international relations, national defence, or security. The National Energy Board Act was expanded to include security measures for pipelines and international power lines, and information sharing and housekeeping matters to do with the Money Laundering Act were introduced, as well as other measures.

Bill C-44, An Act to Amend the Aeronautics Act, primarily dealing with identity fraud and the sharing and handling of passenger information, was introduced on 28 November 2001. Bills C-36 and C-44 received Royal Assent on 18 December 2001. Bill C-42 contained several contentious issues and was withdrawn and replaced with Bill C-55, The Public Safety Act 2002, in early 2002. It contained:

... essentially the same provisions with regard to the furnishing of advance passenger information to law enforcement and security intelligence agencies, tighter controls on explosives and firearms and on technology exports, and the implementation of The Biological and Toxin Weapons Convention. (Canada UN Country Report S/2002/667, p. 3)

A variant of Bill C-42 and Bill C-55 was again introduced, renamed as Bill C-17, The Public Safety Act 2002, but it had only received first reading in the Senate and was abandoned when the session of parliament ended in November 2003. The difficulties the government had with this legislation may be related to Canada's involvement and embarrassment over the Maher Arar rendition case. As later documents in the investigation involving Arar, a Canadian citizen, would show, flight passenger information was provided to the United States allowing them to detain then render Mr. Arar to Syria in the Middle East for interrogation as a suspected al Qaeda accomplice. Bill C-17 (C-42 and C-55), among other matters, entailed allowing the passing of information as was done in the Arar case and it is not surprising that the Bill was left to die.

4.3 What did they do? -- UNSCR 1373 Country Reports for Australia and Canada

UN Security Council Resolution 1373 compelled all member nations of the UN to adopt or improve anti-terrorism legislation. All countries were required to report to the UN annually outlining their activities and progress in complying with the UN requirement to develop and implement anti-terrorism measures.

The Australian and Canadian Country Reports on legislative and other actions taken each year in order to meet the United Nations requirements under 1373 provide an authoritative and informative record of the steps taken in a cooperative and coordinated manner to thwart terrorism and contribute to international peace and security. These reports cast the anti-terrorism activities of the two countries in a realistic framework demonstrating the results of both governments' efforts to address the respective needs and concerns of their country while complying with the UN initiative. It would appear both governments recognised their policing powers needed strengthening because terrorism was no longer seen as happening solely within the countries boundaries and therefore the purview of traditional criminal law had to be expanded. Enforcement beyond a country's borders necessarily involved matters of external affairs and national security and the means of addressing international issues required the introduction of new considerations in legislation. As such, the reports are immensely valuable in that they summarise the results of the legislative deliberations that are the focus of this dissertation.

The following two subsections will examine the reports for both countries from the initial reports that were due in 2001 through subsequent reports submitted up to 2004. While the time frame covered by this dissertation reaches its end at the time of the 2003 Iraq invasion, the 2004 country report by Canada includes data pertaining to 2003 and even earlier. The reports for Australia and Canada will

be examined separately as each nation had its own approach in reporting and responding to queries about UNSCR 1373.

The Country Reports referenced in the following sections will use these UN codes:

Australia [S/2001/1247](#) [S/2002/776](#) [S/2003/513](#) [S/2003/1204](#)

Canada [S/2001/1209](#) [S/2002/667](#) [S/2003/403](#) [S/2004/132](#)

4.3.1 UNSCR 1373 Country Reports – Australia

The Howard government's election call for 10 November 2001, delayed Australia's creation of anti-terrorism legislation following 9/11. Despite this Australia was active in planning for its legislative actions to meet the UN requirement for anti-terrorism laws. In its first report to the UN, submitted on 21 December 2001, Australia pointed out that they already had established legislation in anticipation of terrorist activity during the 2000 Olympic Games and they were already party to nine of the eleven existing UN counter-terrorism conventions and would ratify the two outstanding conventions in short order (Australia UN Country Report S/2001/1247).

One of the key themes from the UNSCR 1373 was the need to curb the ability of terrorist organisations to finance their operations through international means. In order to meet the United Nations demands Australia created three separate initiatives to combat the financing of terrorism. It reported, "The Australian Government has established a Working Group on Australian Financial Controls on Terrorists and Sponsors of Terrorism to coordinate and implement the Commonwealth Government's financial control initiatives in relation to the blocking of terrorist funds" (S/2001/1247, p. 4). Furthermore the Australian Government used the Banking (Foreign Exchange) Regulations through the Reserve Bank of Australia to stop any and all payments to banned terrorist organisations identified by the United States through its Executive Order 13224. As well the Australia Government, through the Financial Transactions Report Act 1988, warned all cash dealers, such as but not limited to financial institutions and corporations, insurers, securities dealers future brokers and so forth, to be cautious in their business dealings so as not to deal with terrorists organisations named in the US Executive Order 13224 (S/2001/1247).

Australia's initial steps show it was eager to do what it could as soon as possible to comply with UNSCR 1373. Following the Liberal Government's re-election further action was taken on the financing of terrorism with the introduction of an amendment to the criminal code making financing terrorism an arrestable offense (S/2001/1247, p. 6).

Much of what is contained in the 2001 UN Country Report is what the government was planning to do. New powers to ASIO were promised including the ability to detain suspects for up to 48 hours without legal representation. Updating amendments to the Telecommunications (Interception) Act 1979 introduced specific terrorism related offences. The Australian Federal Police (AFP) created Operation Drava in order to combat and investigate terrorism activities operating within Australia (S/2001/1247). Operation Drava was also set up to work in conjunction with other police agencies around the world notably the Federal Bureau of Investigation in the US as well as Interpol and others (Australian Government Department of Foreign Affairs and Trade [DEFAT] International Coalition against Terrorism). Also included in the planned changes was another amendment to the Criminal Code Act 1995 to bring terrorist offences into law as directed by the UN. In addition an Anti-

Terrorism Taskforce was to be created through the Department of Foreign Affairs and Trade with the purpose of ensuring, "... that all government agencies and organisations with an anti-terrorist role are undertaking their duties in accordance with Australia's responsibilities under Resolution 1373" (S/2001/1247, p. 21).

The Australian Government was also quick to point out that it had taken a position in the international community through its various memberships and participation in international forums to promote the counter-terrorism initiative. "At the regional level, Australia participated in a sub-committee of the South Pacific Forum, the South Pacific Chiefs of Police Conference, which developed a common regional approach to weapons control" (S/2001/1247, p. 21). Furthermore Australia stated that it would use its position in the Commonwealth of Nations to promote Commonwealth efforts to combat terrorism in addition to giving its assistance to members to help them, "...to become parties to and implement the UN anti-terrorism Conventions, to enhance law enforcement cooperation and exchange of information" (S/2001/1247, p. 22). The Australian Government promised to work with its regional and Commonwealth of Nations partners and stated that as a member of the Financial Action Task Force on Money Laundering it will work towards, "...and is participating in developing, implementing and promoting new international standards to combat terrorist financing designed to deny terrorists and their supporters access to the international financial system" (S/2001/1247, p. 22).

The first Australian Country Report ended with a listing of all of the counter-terrorism conventions to which it was a party:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963)
- Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 1970)
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971)
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal, 1988)
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (Rome, 1988)
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988)
- Convention on the Physical Protection of Nuclear material (Vienna, 1980)
- International Convention against the Taking of Hostages (New York, 1979)
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 1999)

The two conventions remaining to be ratified were:

- International Convention for the Suppression of the Financing of Terrorism (New York, 1999)
- International Convention for the Suppression of Terrorist Bombings (New York, 1997)

June 2002, saw Australia submit its second country report (S/2002/776). When asked by the United Nations how Australia has gone about its commitments to UNSCR 1373 Australia responded by documenting its national, regional and international actions. At the time of submission, Australia's major terrorism-related Acts had not been fully developed into law and were still going through the legislative process. This second report to the UN was primarily to address questions the UN had raised regarding Australia's progress and clarifications concerning the 2001 country report. One matter of importance was Australia's response to the UN concerns with respect to the connections between terrorism and organised crime as expressed in paragraph four of UNSCR 1373 which dealt with:

...the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, sub regional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security. (UNSCR 1373, 2001, p. 3)

At the regional level, Australia was extremely active in championing the cause for tighter terrorism laws and increasing security. Australian Federal Police were active in the Law Enforcement Cooperation Program (LECP) which is a program designed to hasten communication and foster cooperation between police departments on an international level (S/2002/776). Australia was active in the Pacific Islands Forum (PIF), sitting on the Forum Regional Security Committee (FRSC) and in the Pacific Islands Law Officers' Meeting (PILOM). Through the various levels of the PIF Australia was using its position to promote anti-terrorism initiatives brought about through UNSCR 1373.

Furthermore, Australia was a participant in the South Pacific Chiefs of Police Conference (SPCPC), Oceania Customs Organisation (OCO), the Pacific Immigration Directors Conference (PIDC), and the ASEAN Regional Forum (ARF). Through the PIDC Australia was working with member nations to develop a framework to comply with UNSCR 1373 immigration issues along with developing means to comply with the UN Convention Against Transnational Organised Crime. Through the ASEAN Regional Forum Australia participated in an American-led workshop that was focused on countering the financial issues of terrorism (S/2002/776).

Turning to the international sphere, the Report noted Australia was active with the Commonwealth of Nations. The 2002 Commonwealth Heads of Government Meeting (CHOGM), held in Coolom, Australia, put forth the Coolom Communiqué where the members agreed to the Commonwealth Plan of Action against terrorism. The agreement was to pool resources in order to allow all member nations to fully comply with UNSCR 1373 and ratify all UN counter-terrorism conventions (S/2002/776).

Nationally, the Australian Government arranged the 2002 Summit on Terrorism and Transnational Crime. This summit was attended by all State Premiers and relevant State government ministers and their staff. Those in attendance at the summit, "...agreed on 20 initiatives to enhance the framework for dealing with Terrorism and Transnational Crime at the national level under Australia's federal system" (S/2002/776, p. 10). The important points concerning terrorism were: i) the decision that it was the Federal Government responsibility to deal with terrorism at the national level; ii) that States would make sure terrorists could be prosecuted under their respective State law; iii) that all States would make sure that existing State legislation would be able to deal with the new terrorist environment, and iv) the old Standing Advisory Committee on Commonwealth/State Cooperation for

Protection against Violence (SAC-PAV) would be adapted to become the new National Counter-Terrorism Committee (S/2002/776). Australia's second UN Country Report also advised it would report on the prescribed pieces of anti-terrorism legislation called for by UNSCR 1373 as soon as they were ratified into law.

The third report, (S/2003/513), in April 2003, confirmed the Royal Assent and passage into law of the promised anti-terrorism legislation. Six specific pieces of legislation were involved in what was referred to as a package of anti-terrorism legislation because multiple pieces of legislation were put through at roughly the same time, the majority of which received Royal Assent by early July, 2002. Australia's anti-terrorism legislation was as follows:

- Security Legislation Amendment (Terrorism) Act 2002
- Suppression of the Financing of Terrorism Act 2002
- Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002
- Telecommunications Interception Legislation Amendment Act 2002
- Border Security Legislation Amendment Act 2002
- Criminal Code Amendment (Anti-Hoax and Other Measures) Act 2002

Key aspects of the new legislation needed to comply with 1373 were summarised as:

i) The defining of a terrorist act (but with supporting qualifications),

...as an act, or threat of action, that is done or made with the intention of advancing a political, ideological or religious cause; and done or made with the intention of either coercing or influencing by intimidation an Australian government or the government of another country; or intimidating the public or a section of the public (S/2003/513, p. 4).

ii) the creation of laws specifically addressing directing activities, being a member, recruiting or being involved in training, receiving or making available funds or otherwise providing support or resources to a terrorist organisation listed by the United Nations Security Council (S/2003/513).

iii) Making it illegal to, "...provide or collect funds, regardless as to whether those funds will be used to facilitate or engage in terrorist activity" (S/2003/513, p. 5).

iv) Allowing Australia to freeze the assets of those involved or suspected of being involved in any manner with terrorism.

The Report ended by noting a requirement for review provisions for the new anti-terrorism legislation to be undertaken and reported to Parliament soon after mid-July 2005.

In December 2003, Australia submitted its fourth report, (S/2003/1204), responding to questions from the UN on the implementation of a range of counter-terrorism measures taken pursuant to resolution 1373. Some of the issues raised had to do with the recognition of, and controls implemented to deal with, suspicious financial transactions (of which 135 had been referred to the AFP), aspects of the freezing of terrorism funds, controls over the manufacture and trafficking of firearms, security controls over the transfer of sensitive technologies, and aspects of the granting of citizenship.

4.3.2 UNSCR 1373 Country Reports – Canada

Canada's first country report to the United Nations in response to UNSCR 1373, issued on 12 December 2001, noted it, "... had substantial anti-terrorist measures already in place, ..." and "... recognized that further legislation was needed to deal more effectively with the global threat of terrorism" (S/2001/1209). At the time Canada's report was submitted to the UN its major piece of anti-terrorism legislation, Bill C-36, had not been passed into law (that happened the following week), and the 2001 report stated the next report, due for 2002, would provide more detail about the specifics of Bill C-36 thereby meeting the requirement to inform the UN of its actions within ninety days of UNSCR 1373 being passed. It is clear from the outset of the report that the government was hard at work quickly developing anti-terrorism legislation intended to bring Canada into compliance with the UN anti-terrorism requirements. The report referenced three pieces of draft legislation, Bill C-36, Bill C-42 and Bill C-44 discussing some of the content in detail that revealed the acts were close to fruition. This reflected a government confident in its ability to pass the legislation (It was mistaken with Bill C-42!) and clearly shows Canada understood the seriousness of developing anti-terrorism legislation immediately in the post-9/11 world.

Although Canada had only ratified ten of the twelve UN terrorism-related conventions all twelve had been signed and agreed to in principal by the Canadian Government. The 2001 report noted that the last remaining conventions, the Convention against Terrorist Bombings and the Convention for the Suppression of the Financing of Terrorism, would be ratified as soon as Bill C-36 became law (S/2001/1209). The format of this first report lists the sections and subsections of Resolution 1373 and matches them with descriptions of the measures taken or planned by the Government of Canada. In October, the *United Nations Suppression of Terrorism Regulations* were implemented under the United Nations Act and Bill C-36 was introduced in the legislature. The report details how these two measures responded to the call in paragraphs 1 (a), (b), (c), and (d) of Resolution 1373 to address the financing of terrorism.

Bill C-36, the most important of the three bills under debate at the time of the report included a definition of terrorist activity explained in the report as follows:

Bill C-36 defines terrorist activity so as to include any act or omission that is committed with the intention of intimidating the public or compelling a person, government or international organization to do or refrain from doing anything, whether the person, government or organization is inside or outside Canada. Thus anyone financing, planning, facilitating or committing terrorist activities on Canadian territory with a view to acting against another state or its citizens would be committing an offence in Canada. (S/2001/1209, p. 8)

Bill C-36 brought in amendments to the Canadian Criminal Code creating new offences related to the financing of terrorism thereby ensuring the ratification process for the UN's Convention on the Suppression of the Financing of terrorism. Amendments were also made to the existing Proceeds of Crime (Money Laundering) Act to specifically include the financing of terrorism. Bill C-36 made it a crime, adding section 83.02 to the Criminal Code, punishable by up to ten years imprisonment and an unlimited fine for anyone knowingly collecting funds for terrorism purposes. In addition, newly added sections 83.03 and 83.04 made it an offence to use property or services for terrorism activities. As well, Bill C-36 made it an offence for registered charities to use funds collected for terrorism purposes, directly or indirectly.

One of the main objectives of UNSCR 1373 was the immediate freezing of terrorist funds. Canada acted swiftly. “As of November 16, 2001, CAD \$344,000 in 28 accounts had been frozen by Canadian financial institutions as assets covered by Regulations implemented under the United Nations Act” (S/2001/1209, p. 5). On top of this Bill C-36 was to allow, “...for the immediate freezing of property that is owned or controlled by terrorist groups by adding a new section 83.08 to the Criminal Code, as well as new sections 83.1 and 83.11 which establish reporting requirements similar to the Regulations” (S/2001/1209, p. 5). The scope of the government’s power was not limited to freezing assets; seizure, forfeiture were also possible actions that could be undertaken (S/2001/1209).

The Report also noted that Bill C-36 had included expanding the mandate of the recently created financial intelligence unit, Financial Transactions and Report Analysis Centre of Canada (FINTRAC), giving the government organisation powers to address suspected terrorist-related financial activity. Under Bill C-36: a) it became a requirement for individuals and organisations to report suspicions of terrorism financing and/or money laundering; b) FINTRAC’s analysis abilities were broadened and it was allowed to share information with law enforcement and intelligence agencies; and c) Finally FINTRAC would now have the ability to share terrorism financing information with other allied international agencies.

Countering the financial capabilities of terrorism was only one part of Bill C-36. It contained an amendment to the Criminal Code to make membership, participation, and recruitment into a terrorist group as well as conducting any terrorism related training an offence (S/2001/1209). Not only would Bill C-36 make it an offence to be part of a terrorist group it would also target those who “...harbour or conceal anyone who has carried out a terrorist act or for the purpose of enabling a person to facilitate or carry out a terrorist activity” (S/2001/1209, p. 7). The Bill also extended Canada’s jurisdiction to encompass Canadian citizens living abroad or a stateless person residing in Canada. Another crucial aspect of Bill C-36 was to give the government the legislation it needed to implement the United Nations Convention on the Suppression of Terrorist Bombing thereby enabling Canada to complete its ratifications of the UN terrorism conventions (S/2001/1209).

The report noted that two smaller pieces of legislation, Bills C-42 and C-44 respectively, were introduced to respond to paragraphs 2 (a), (b), (c), and (g), and paragraph 3 (a) of Resolution 1373. Bill C-42, tabled on 22 November 2001, introduced amendments to both the Immigration Act and the Aeronautics Act and proposed to tighten controls and regulations on exporting civilian explosives. It also introduced powers to deal with technology transfer. New provisions in both Acts addressed the provision of advanced passenger information to prevent fraud in connection with identity requirements and travel papers.

Bill C-44, introduced on 28 November 2001, was proposed to amend the Aeronautics Act by extending provisions for requiring and handling advance passenger information, introduced in Bill C-42, to permit airlines to share this information when required to do so by the laws of other states (S/2001/1209, p. 11).

Paragraph 4 of UNSCR 1373 calls upon the international community to cooperate with one another on a multitude of levels, regional, sub regional, national or international, in order to combat successfully the broad range of international crime and terrorism that is a serious international security threat.

Paragraph 4 is worth repeating:

4. *Notes* with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal armstrafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly

materials, and in this regard *emphasizes* the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security. (UNSCR 1373)

Canada's 2001 report responded to this concern by summarizing its activities relating to the issues identified, without specifically noting existing or proposed legislation. It stated, in part:

Canada is committed to strengthening cooperation with its partners in various ways in the global campaign against terrorism. Canada is ... a member of a number of international and regional organizations such as the G8, the G20, the United Nations, the Organization for Security and Cooperation in Europe (OSCE), the Organization of American States (OAS), la Francophonie, and the Commonwealth.... ...Bilaterally, Canada works closely with the United States on the whole range of issues related to international terrorism. (S/2001/1209, p. 13)

Canada's second UN Country Report, submitted on 7 June 2002, was not as lengthy as the 2001 report because it was primarily responding to questions arising from the 2001 report, posed by the UN Counter-Terrorism Committee. The report began with an update of information contained in the first report. Two of the three pieces of anti-terrorism legislation had passed into law at this point. Bills C-36 and C-44 received Royal Assent on 18 December 2001, as The Anti-Terrorism Act and An Act to amend the Aeronautics Act respectively. Bill C-42 had been withdrawn and replaced with a newer almost identical version, now called Bill C-55.

The remaining two terrorism-related UN Conventions that Canada had not fully ratified were finalised following the passing of Bill C-36. The International Convention for the Suppression of the Financing of Terrorism was ratified on 15 February 2002 and the International Convention for the Suppression of Terrorist Bombings was ratified on 3 April 2002. The final information update noted in the report indicated that Canada, "...had frozen CAD \$360,000 in 20 accounts as of 17 April 2002" (S/2002/667, p. 3).

The third Country Report, submitted to the UN 18 February 2003, was brief, responding to a question from the Counter-Terrorism Committee about entities representing themselves as 'charitable'. Canada advised that such entities, whether registered or not are fully subject to Canadian legislation and regulations and are prohibited from fund-raising on behalf of terrorism or dealing in terrorist assets.

Canada's fourth Country report, submitted 12 February 2004, was the most extensive to that date. It reported that Bill C-55, formerly Bill C-42, had been renamed again as Bill C-17, an indication of the trouble it was having being passed into law. The end of Bill C-17 and its earlier variants came on 12 November 2003, 'left on the table in the Senate' when Parliament prorogued. The key points of the bill were: a) Authorizing air carriers and the aviation reservation system to provide information to the relevant authorities detailing who was travelling where; b) Issuing interim orders in emergency situations; and c) implementing The Biological and Toxin Weapons Convention (BTWC). According to the government it had yet to be determined whether or not it would try to put through the legislation for a fourth time.

Canada also explained in the fourth Country Report that terrorism events prior to 9/11 were treated as criminal matters with the action tied to a specific crime such as murder. In the case of the 1985 Air India flight 182 bombing, where 329 people aboard the plane lost their lives, the event was classified

as an act of murder and that was considered sufficient to prosecute the case (S/2004/132). Following the introduction of anti-terrorism legislation, this kind of act would in the future have additional grounds on which to prosecute the perpetrators.

Roughly two years after 9/11 the Canadian Government was still pressing forward with new initiatives to combat terrorism. The government initiated a five-year plan on 22 January 2003, investing approximately 172 million dollars to strengthen the maritime borders and marine transport system. What follows is the report's description of some of the specific projects to emerge with the new funding:

Specific projects include: increased surveillance and tracking of marine traffic, including 'near real-time' identification and tracking of vessels in Canadian waters; screening of passengers and crew on board vessels; installing new detection equipment in ports to screen containers for radiation; new funding for the enhancement of the RCMP Emergency Response Teams and establishment of permanent investigator positions at major ports; making further improvements to port security by establishing restricted areas and requiring people working within these areas to undergo thorough background checks; counter-terrorism training exercises; visas for seafarers joining ships in Canada; and developing and implementing new security requirements in line with recent recommendations of the International Maritime Organization (IMO). (S/2004/132, p. 36)

4.4 Conclusion

This Chapter has explored aspects of the relevant legislative responses to 9/11 taken by the United States, the United Kingdom, Australia and Canada and the early reports to the United Nations by Australia and Canada as required by UNSC 1373. The anti-terrorism laws of the United Kingdom and the United States were seen as the principal references in the adaptation of anti-terrorism legislation by many countries, including Australia and Canada. Scholarly writings were examined in connection with the USA Patriot Act, the United Kingdom anti-terrorism legislation, the Australian anti-terrorism legislation and the Canadian anti-terrorism legislation. The purpose of the research is to examine how the governments of Australia and Canada developed and reasoned the necessary anti-terrorism legislation in their parliaments by studying the discourse by politicians as the legislation was debated. The literature examined laid bare many of the issues to be discovered as the parliamentary discourse was studied. As well, the summaries of the Australian and Canadian Country Reports to the UN on counter-terrorism action taken as required under UNSCR 1373 offered guidance to government intentions and arguments that could be expected to occur in the parliamentary debates. In some cases statements made in the reports were overly optimistic about the acceptance of legislation introduced in parliament. The Country Reports were particularly useful in providing authoritative information about actions taken by Australia and Canada in freezing terrorist funds as required by the UN and working to support counter-terrorism initiatives in the international community. The review of the legislation and country reports presented in this chapter provides a launching point for the research to follow as the dissertation examines parliamentary discourse in Australia and Canada during the introduction of new anti-terrorism legislation that balances new needs for national security with exacting new criminal justice matters.

Chapter 5 Research Methodology

5.1 Introduction

The World changed again on 12 September 2001 when the United Nations Security Council enacted Resolution 1368 calling for countries, "... to redouble their efforts to prevent and suppress terrorist acts..." (UNSCR 1368 2001 p. 1). Sixteen days later the Security Council, acting under Chapter VII of the Charter of the United Nations unanimously passed Resolution 1373 reaffirming that terrorism is a threat to international peace and security and calling for all member States to prevent and suppress the financing of terrorist acts and implement a broad range of counter-terrorism measures.

The impact of 9/11 on Western Society set the scene for the development of tough new laws and an increase in attention to terrorism. Terrorism, while not new, was now determined to be a major threat and 9/11 had created a crisis. This threat encompassed both domestic and international matters and the result was the need for new or strengthened anti-terrorism laws. In Australia and Canada, not surprisingly, the reaction by politicians on both sides of the house immediately following 9/11 was the same: deepest sympathy for the US and the people that had lost their lives in the 9/11 attack and anger combined with determination to seek out and deal with the terrorist organisation and the threat it posed.

Australia and Canada, as well as every other member State of the United Nations, found it imperative to take steps to comply with the UN resolution. Both countries, shocked by the tragedy of 9/11, awakened to the possibility that organised terrorism could strike anywhere and at any time.

The aim of this dissertation is to examine how the governments of Australia and Canada advanced and justified the need for new anti-terrorism legislation in their parliaments in response to the immediate international demand for anti-terrorism legislation following 9/11.

Parliamentary debates are the formative stages of legislation in the Westminster system of government. These processes will be examined. Discourse in the legislatures reflects the opinions of the elected representatives and through them of their constituents to whom they are ultimately responsible in the democratic system. The parliamentary debates will provide the data to be analysed using quantitative methods in order to assess empirically the development of themes in the discourse.

5.1.1 Purpose of the Research

Politicians in both countries had the responsibility of introducing the stringent new laws called for by the UN to fight terrorism. This dissertation investigates the politicians' reasoning and arguments expressed in legislative debates on the need for stronger anti-terrorism laws. The research will examine qualitative commentary by legislators in Australia and Canada expressed in their debates on anti-terrorism measures proposed by their governments to determine the important issues leading to the justification for the new legislation. The research will identify, quantifiably, topics that surfaced as the governments advanced the need for new legislation in their parliaments and proceeded to legitimise and introduce anti-terrorism laws. Hansard transcripts, the authoritative source of what was said in the parliaments of both countries, will be researched to provide the data for the study. Hansard is a verbatim record of parliamentary debates, providing a comprehensive text-based data source of the political positioning that takes place in the process of debating legislation. The research will review

the arguments presented and debated in the parliaments of each country to legitimise the proposed new legislation as it was presented then passed into law. The focus of the research will be on themes representing different topics through which anti-terrorism legislation was discussed.

5.2 Hypothesis

Australia and Canada moved quickly to develop strong anti-terrorism legislation following UNSCR 1373 to support the global fight against terrorism, protect the people of Australia and Canada and demonstrate support to the United States of America. With the worrisome threat of repeated incidents of terrorism, Australia was determined to solidify the continuing relationship with the US in matters of national security. As a measure of support, the ANZUS treaty was invoked by Australia shortly after 9/11. Canada was mindful of the importance of its billion-and-a-half dollar daily cross-border trade with the US and saw the necessity for working with the US to fight terrorism. These appeared to be the major concerns for the two countries immediately following 9/11 when the heightened revulsion at what terrorism could accomplish was paramount. Legislation to establish new criminal laws dealing with terrorism was important for Australia, Canada and other countries required to respond to the challenge of United Nation Security Council Resolution 1373.

The first hypothesis for this dissertation was that national security matters would supersede criminal justice matters as justification for anti-terrorism legislation in Australia. The second and related hypothesis was that in Canada the justification for anti-terrorism legislation would be centred on criminal justice matters.

5.3 Review of Related Literature

As this dissertation is concerned with uncovering the justification for the development of new anti-terrorism legislation by Australia and Canada, discourse analysis appears to be an appropriate investigative tool when delving through Hansard parliamentary debates. Discourse analysis permits the identification of key issues determined by the government that led to the need for the new anti-terrorism legislation proposed as well as the parallel concerns of the opposition members in the legislature and their contrary positions. Content analysis was considered but discarded because it would not be as effective a tool to answer research questions as discourse analysis. What differentiates discourse analysis from content analysis is the way in which the analysis is approached. While content analysis looks predominately at specific words and their use in texts, discourse analysis looks at the message delivered, and where content analysis is used more often in quantitative studies, discourse analysis is more qualitative. It is also about trying to uncover meanings, strategies used, pressures and attitudes, as well as how things materialise, what they imply and how they can be understood (van Dijk, 1983).

Scholarly discourse can be likened to a minefield of potential traps fraught with the possibility for confrontation, if not an explosion. Since the dawn of recording information for study and knowledge specific styles or views have evolved on how discourse in a related field should occur and progress. "Each discourse undergoes constant change as new utterances are added to it" (Burchell, et al, 1991, p. 54). This therefore allows an understanding of how information was obtained. Whether the information was right or wrong, or what it entailed is not the key issue. How information was reached and knowing the episteme enlightens the understanding of discourse (Burchell, et al, 1991). From discourse we see change through discussion and challenging of knowledge because established forms

of discourse continually produce information which in turn is debated and analysed leading towards new views or the reaffirming of old ones (Seidel, 1985). Furthermore, Jager and Maier (2002) argue that power has the ability to affect discourse in that the strong may encourage the weak to adopt preferred methods of discourse.

For Jager and Maier (2002), how discourse was achieved is just as relevant as any linguistic nuance. The methods used to analyse discourse are just as valid as what was said in that strategy plays an important part with discourse. In addition, when analysing discourse it is very important to keep in focus the element and point of discourse, in this case political hegemonic discourse, as there are possible specific factors that would apply to political themed discourse that would not be present or have a different meaning in other forms (Jager and Maier). When analysing discourse it is also important to take into account the historical and global aspects as both can be significantly important in its development (Jager and Maier).

Both Foucault (as cited in Burchell, et al, 1991), and van Dijk (1983), state that criteria play a role in discourse analysis. For Foucault (as cited in Burchell, et al, 1991) the criteria of: formation, transformation, and correlation exist to be considered. Van Dijk (1983) somewhat similarly puts forth criteria of functionality, meaningfulness, and goal-directedness. Regardless of the criteria to be used what is important according to van Dijk (1990) is that arguments be laid out in such a way that they present a logical reasoned argument rather than offering intuition or wandering blindly from subject to subject. Van Dijk is an early proponent of critical discourse analysis (CDA), which he describes as "...a type of discourse analytical research that primarily studies the way social power abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context" (van Dijk, 2001. p. 352). CDA research examines and questions social inequality that occurs in discourse structures used by differing levels of society, such as institutions and professionals, in their rules and routines to reinforce their status and power. The analysis of political discourse is an area of interest for CDA because the discourse involves law making and the legitimization of power within the national framework of an elected government and its opposition members, at least in the Westminster system, where power abuse can be challenged and social inequalities can be exposed and resisted in the parliamentary discourse. Writing further about CDA van Dijk has commented:

Whereas the customary designation of this line of research has been "Critical Discourse Analysis" (CDA), I have begun to advocate to broader [*sic*] this term to "Critical Discourse Studies" - e.g., so as to emphasize that critical study is not a ready made "method" of analysis, but also has theoretical and applied dimensions. (van Dijk, 2009)

5.3.1 Political Discourse

Wodak and Meyer (2009) credit the current study of political discourse to changing events in discourse after the Second World War. "Discourse is basically understood as the result of collusion: the conditions of the political, social and linguistic practice impose themselves practically behind the back of the subjects, while the actors do not understand the game" (Wodak and Meyer, 2009, p. 17). The goal of political discourse is not to focus on the words being said, but "... the aim is rather to record and analyse the spectrum of linguistic relations based on a number of texts dealing with various spheres of life" (Wodak and Meyer, 2009, p. 17).

For van Dijk the origins of political discourse can be credited to classical Greece and Rome. What is a defining aspect about political discourse is its flexibility:

Unlike most other discourse forms, political discourse may be relevant for all citizens. Its power derives both from this scope and from its various degrees of legitimacy. Few forms of oral discourse are as well known, routinely quoted, or distributed as widely through the mass media as that of top politicians, such as the president or prime minister. (van Dijk, 2008, p. 53)

A point van Dijk (2008) brings up is that in some academic writing much of what people call political discourse is in his opinion focused on political language. This is similar to what Wodak and Meyer (2009) have said in that political discourse should not simply focus on specific words but consider the pragmatic impact of the message on the audience. “It is interesting, however, to go beyond the study of single words and look into other discourse structures, of which some are even less in the control of the speaker, and therefore often more revealing of attitudes and ideologies” (van Dijk, 2008, p. 53).

While van Dijk (1997) has said, in defining political discourse, “The easiest, and not altogether misguided, answer is that political discourse is identified by its *actors* or *authors*, viz., *politicians*. Indeed, the vast bulk of studies of political discourse is about ... politicians or political institutions ...” (p. 12), Phillips and Jorgensen (2002) suggest that the term politics has a different usage in discourse theory and should not be understood narrowly as party politics but it should be understood in a broader concept.

Politics in discourse theory is not to be understood narrowly as, for example, party politics; on the contrary, it is a broad concept that refers to the manner in which we constantly constitute the social in ways that exclude other ways. Our actions are contingent articulations, that is, temporary fixations of meaning in an undecidable terrain which reproduce or change the existing discourses and thereby the organisation of society.... Politics, then, is not just a surface that reflects a deeper social reality; rather, it is the social organisation that is the outcome of continuous political processes. (Phillips and Jorgensen, 2002)

Furthermore, Marshall and Raabe (1993) argue:

...discourse analysis takes language as actively constructing versions of the social world. Given that there are a numbers of ways in which any issue or event can be described, and that participants select linguistic resources out of a pre-existing pool, discourse analysis examines the linguistic resources made use of by participants. (as cited in Burman and Parker p. 36)

Marshall and Raabe (1993) add that discourse analysis should not limit responses to small predefined categories but should be receptive to allowing much broader responses providing for more possible variations to be analysed. This is especially significant in political discourse analysis that must contend with inherent rhetoric and political spin during debates such as those recorded in Hansard on the Australian and Canadian anti-terrorism legislation.

5.3.2 Institutional Texts

Political discourse is a subset of institutional discourse. Institutional discourse can be spoken as well as written and the parliamentary discourse studied in this dissertation focuses its attention on the recorded version i.e. Hansard, of the spoken words in the political debate. Speaking and verbal

methods of discourse provide interesting bits of information worthy of study, but discourse that has been transcribed into text is just as strong if not stronger in that a written record in essence removes the wiggle room that exists for altering the meaning when recalling spoken words. “Whatever the power of directors, top politicians, corporate boards, professors, judges, or doctors in face-to-face discourse, their real power seems to have formal consequences only when somehow ‘fixed’ in writing or print” (p. 54). The recording of discourse “...in the form of minutes, protocols, or other official transcripts...” (p. 54) is the basis from which political power emanates, all future decisions and actions start and are subsequently confirmed by the official recorded dialogue (p. 54).

Furthermore van Dijk (2008) states,

Institutional dialogues are often accompanied by various types of text, which function as guidelines or reference for the accomplishment of the spoken discourse. Thus most formal meetings involve a written agenda as well as various kinds of documents. (p. 54)

Recorded official discourse can cause problems for those in politics in that, “...written discourse is, in principle, often public, and therefore its writers may be held accountable” (van Dijk, 2008, p. 54). To avoid this and distance political figures from being held entirely accountable for written laws, “...often authors of institutional texts are not identical with the public speakers, senders, or sources of such discourse” (van Dijk, 2008, p. 54). From this it could be argued that what is said politically and what is officially transcribed are intentionally divided in the political system through the recognition that the official recorded discourse has substantially more weight than the spoken word because being documented in writing gives it more authority.

5.4 Scope of the Research

The research was to seek out the justifications used to legitimise the new anti-terrorism legislation by reviewing the Hansard transcripts of both countries over the eighteen-month period from 17 September 2001 until the end of March 2003 following the invasion of Iraq. This was the period covered by the introduction and discussion in the legislatures of the main pieces of anti-terrorism legislation required to comply with Resolution 1373. In Australia, all of the Bills except the ASIO Bill had received Royal Assent by March 2003 and in Canada, the last of the anti-terrorism Bills in this research was awaiting final reading in the House and consideration by the Senate. The interests of the two countries were diverging by 30 March 2003, an appropriate date to conclude the research study with Australia joining with the US in the Iraq War and Canada siding with other countries in their interpretation of United Nations Resolution 1441 and the question of the existence of weapons of mass destruction.

The main pieces of Australian Anti-terrorism legislation began with a ‘Group of Five’ Anti-terrorism Bills including the *Security Legislation Amendment (Terrorism) Bill 2002*, the *Suppression of the Financing of Terrorism Bill 2002*, the *Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002*, the *Telecommunications Interception Legislation Amendment Bill 2002*, and the *Border Security Legislation Amendment Bill 2002*. Other early legislation discussed included: the *Criminal Code Amendment (Anti-Hoax and Other Measures) Bill 2002 (Anti-Hoax Bill)*, the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 (ASIO Bill)*, the *Criminal Code Amendment (Offences Against Australians) Bill 2002 (Offences Against Australians Bill)*, the *Criminal Code Amendment (Terrorist Organisations) Bill 2002 (Terrorist*

Organisations Bill), and the *Charter of the United Nations Amendment Bill 2002 (United Nations Bill)*.

In Canada the main piece of anti-terrorism legislation was an omnibus Bill introduced as *Bill C-36, The Anti-terrorism Act*. Other early legislation discussed included: *Bill C-42, The Public Safety Act 2001*, *Bill C-44, An Act to Amend the Aeronautics Act*, *Bill C-55, The Public Safety Act 2002*, and *Bill C-17, The Public Safety Act 2002*.

For Australia, the Hansard records for the House of Representatives and the Senate, both elected bodies, were examined. For Canada only debates in the elected House of Commons were covered and not those in the appointed Senate. The purpose was to evaluate discourse by elected parliamentarians, who are ultimately accountable to their constituents, and therefore the debates by Canada's appointed Senators could not be measured on the same basis. Furthermore, only the debates encompassing anti-terrorism legislation were to be included in the database.

The data collection period for Canada embraced 135 sittings of the House of Commons between 17 September 2001 and 21 June 2002 and 81 sittings between September 2002 and 31 March 2003 for a total of 216 sittings. For Australia's House of Representatives, eight sittings were involved in September 2001 (subsequently an election was called), followed by 87 sittings between 12 February 2002 and 27 March 2003 for a total of 95. The Australian Senate had eight sittings in September 2001 and 74 sittings between 12 February 2002 and 27 March 2003 totalling 82 sittings. In all, there were 393 sittings to be reviewed. A complete listing of the parliamentary sittings and dates appears in Appendix 1.

5.4.1 Supporting Reference Material

In addition to reviewing the Hansard transcripts of the legislative debates, the research examined additional text-based material reporting on action planned and taken in response to UNSCR 1373 as recorded in Country Reports to the UN from Australia and Canada. These Reports were a help in the determination of the legislation to be investigated. Country Reports were required to be filed by all member nations to inform the UNSC Counter-Terrorism committee about specific legislative actions taken against terrorism. These documents, filed regularly by Australia and Canada, provided information on the status and progress made by the two countries as their legislation developed, and reinforced identification of the issues that were debated and justified in the parliaments. Section 4.3 above describes the information presented in the Australian and Canadian Country Reports.

In the international arena, much was happening as a worldwide effort to counter terrorist activities got underway following 9/11. A reference chart was compiled by the researcher to reflect the counter-terrorism activities undertaken by International Government Organisations having Australia and/or Canada as members, as an example of the international cooperation that would not have gone unnoticed by legislators in the Australian and Canadian parliaments. This chart is presented in Appendix 2 to illustrate the involvement by both countries in international action to combat terrorism.

5.5 Design and Method

The investigation and compilation of discourse for this dissertation is based upon Critical Discourse Analysis (CDA) and draws upon a combination of both qualitative and quantitative methods for

collecting and presenting data. CDA is useful in deriving meaning from the use of language and the Hansard parliamentary records offer an authoritative source of political dialogue expressing issues of concern. Hansard reveals how members of parliament debated the new legislation, rationalizing its need or arguing against its inclusion in law.

The research looks for phrases, language, slogans, contrast, spin and metaphors in the discourse relating to terrorism, sensitivities about people and states impacted by terrorism, and specific reasons for or against the legislation needed or proposed to address the matters identified to be of major importance in the wake of 9/11. By examining the discourse recorded in Hansard it is possible to identify how the speaking Member of Parliament phrased and presented a position on the proposed anti-terrorism legislation. A list of the most anticipated themes was compiled at the beginning of the study. As each session of parliament is reviewed the words spoken relating to the themes in the debates on the anti-terrorism legislation were recorded as instances to create a database for further examination and analysis. An understanding of how the anti-terrorism laws were justified comes directly from the discourse recorded for each of the themes.

The qualitative aspect of the research method focused on analysis of the data that revealed key words or phrases identifying or referencing themes. The quantitative data emerged from the tabulation of the qualitative discourse findings. These qualitative findings were recorded in tables allowing the calculation of the number of instances of discourse on the themes addressed for each country. Data compiled for each instance included the legislation proposed, date and time, stance of the speaker, and speaker's political party. Quotations exemplifying the themes were then drawn from the database for use in the discussion chapter.

To address the main research question it was important to compare the rates of occurrence of the themes across the two countries. Percentages were calculated for assessing the relative importance of the themes in the discourse for each country and these were then evaluated using a test for statistical significance to identify whether or not the differences in percentage of total instances were significant. The data were tested for significance using a 2-prop t-test assuming equal variance with results of significance set for 90% and 95% (Wright, 2009).

5.6 Data Collection

The Hansard records for all 393 sitting dates within the period researched were first examined to determine whether anti-terrorism legislation was being discussed during the sessions. If so, the content of the discourse was reviewed. A list of anticipated themes was proposed at the beginning of the study. These included: 9/11 the Event; War on Terror; UN obligation; What other countries were doing; National Security; Criminal Justice; Military Alliances; Border Security; Financing of Terrorism; Economy; Geographic factors; Personal rights and freedoms; Good vs. Evil; Supporting U.S.A.; Support for anti-terrorism legislation; Immigration; Human Rights; and Increasing Police Powers. An objective of the qualitative analysis was to expand the themes if necessary as the data search proceeded in order to obtain greater precision in the topics listed.

Data collection began by identifying themes from speeches made by members of parliament as recorded in Hansard. Themes are the pieces of supporting evidence that justify the speaker's position on the legislation. The instances of discourse supporting or exemplifying the themes were recorded on a spreadsheet as they occurred in the parliamentary debates. Every time a member of parliament

spoke on a topic exemplifying a theme an instance would be recorded. For each instance descriptive information was noted in tabular form, first listing the theme number then the date, Hansard page number, time, speaker's name, party affiliation, legislation under discussion, country, stance on the legislation and any comments. In addition, a unique identifier number was assigned to each instance to serve as a reference number if needed. When a member spoke on multiple themes, each theme would be recorded separately with the additional instances identified as a, b, c, etc.

The schematic below presents an example of data entries completed for the spreadsheet. If (then) Australian Prime Minister Howard were to speak on multiple themes in a single address, it would be recorded as follows:

Table 5-1 Sample of coding sheet used in data collection of Hansard records

Instance	Theme	Date	Page	Time	Speaker	Party	Legislation	Country	Stance	Comment	ID #
1	1	07/17/2001	100	1315	Howard	Liberal	Anti-terror law	Australia	Support		1
1a	19	07/17/2001	101	1315	Howard	Liberal	Anti-terror law	Australia	Support		2

The Hansard recording process differed slightly in the two countries with respect to tracking time during debates. In Australia, the time when a member began speaking was recorded in Hansard and this was entered into the database as a reference point. For Canada, where Hansard routinely notes ten-minute intervals throughout each session of parliament, the time of the instance recorded could be referenced to the nearest ten-minute interval.

Using this method a comprehensive list of 45 themes was created that categorised each instance of talk relating to the debates on anti-terrorism legislation in the Hansard records examined. These themes were numbered consecutively as they were added to the list:

Forty-five Themes Determined as Instances Recorded:

1. 9/11 the Event
2. War on Terror
3. Speaking off topic
4. UN obligation
5. What other countries were doing
6. National Security matter
7. Criminal Justice matter
8. Military Alliances – modern
9. Border Security
10. Financing of Terrorism
11. Economy/Economic factors
12. Geographic factors
13. Protecting personal rights and freedoms
14. Impeding personal rights and freedoms
15. Good vs. Evil
16. Supporting U.S.A.
17. Criticising U.S.A.
18. Historical Military: Past Alliances
19. Support for anti-terrorism legislation
20. Negative talk on anti-terrorism legislation – too strong, too conflicting
21. Immigration
22. Working with U.S.A. to fight terrorism
23. Terrorism is a global problem
24. Work with other countries around the world
25. Criticising lack of anti-terrorism legislation
26. Public Safety
27. Defining terrorism
28. Human Rights
29. Increasing powers to intelligence agency/national police
30. Safe haven for terrorists
31. Not a Safe haven for terrorists
32. Respecting Charter of Rights (Canada), Constitution (Australia)
33. Not Respecting Charter of Rights, Constitution
34. Sunset Clause
35. Terrorist organisation/organised crime
36. Review period for bill
37. Anti-terrorism legislation rushed through parliament
38. Stopping hatred -- protecting minorities
39. Need for amendments
40. Acceptance of amendments
41. Mahar Arar
42. Tampa
43. ICC (International Criminal Court)
44. Extending PM's term using 9/11 to call election
45. Bill of Rights (Australia)

5.7 Conclusion

The aim of this dissertation is to examine how the governments of Australia and Canada advanced and justified the need for new anti-terrorism legislation in their parliaments in response to the immediate international demand for anti-terrorism legislation following 9/11. The research will identify, quantifiably, topics that surfaced as the governments advanced the need for new legislation in their parliaments and proceeded to legitimise and introduce anti-terrorism laws. Hansard transcripts, the authoritative source of discourse in the parliaments of both countries, were to provide the data for the research.

The first hypothesis for this dissertation was that national security matters would supersede criminal justice matters as justification for anti-terrorism legislation in Australia. The second and related hypothesis was that in Canada the justification for anti-terrorism legislation would be centred on criminal justice matters.

The research was to seek out the justifications used to legitimise the new anti-terrorism legislation by reviewing the Hansard transcripts of both countries over the eighteen-month period from September 17 2001 until the end of March 2003. Five pieces of legislation were debated in Australia during the study period including the 'Group of Five' main pieces of Australian Anti-terrorism legislation. In

Canada, five pieces of legislation were debated during the period including Bill C-36, an omnibus Bill covering the main anti-terrorism legislation. The primary focus of the research is placed on the dialogue itself as reported in Hansard. The qualitative aspect of the research method focused on analysis of the data that revealed key words or phrases identifying or referencing themes. The quantitative data emerged from the tabulation of the qualitative discourse findings. To address the main research question the rates of occurrence of the themes across the two countries were compared and their percentages calculated to assess their importance in the discourse for each country. These were then evaluated using a test for statistical significance, using a 2-prop t-test assuming equal variance.

Data collection began by identifying themes from speeches made by members of parliament as recorded in Hansard. Themes are the pieces of supporting evidence that justify the speaker's position on the legislation. The discourse from the debates in both countries was analysed to identify the themes that were used to justify the need for new anti-terrorism legislation as the governments and the political opposition parties grappled with balancing the need for strong new anti-terrorism laws with their perspectives on criminal justice and national security. As the discourse was examined, each time a theme was mentioned an instance was recorded in the database along with supporting data including the legislation under discussion, the name of the speaker, the political party represented, and the stance taken on the legislation. A measure of each theme's importance to the debate was determined by the proportional quantity of mention in the discourse for Australia and Canada. The stance taken on the legislation was also analysed to determine the support, criticism or opposition indicated for each of the Bills debated. This data was analysed further to break out the stance on Bills by political party.

The 45 themes presented an extensive list for analysing and discussing the findings. In order to prioritise the criminal justice or national security concerns that motivated speakers to support the anti-terrorism legislation the 45 themes were conflated into five Super-themes. Twelve topics prioritizing Criminal Justice matters as the motivation to support the legislation were gathered into the Criminal Justice Super-theme and seventeen topics prioritizing National Security concerns as the justification for the legislation were included in the National Security Super-theme. Nine topics dealing with creating the legislation were grouped under the Super-theme Anti-Terrorism Legislation. A significant amount of the discourse was on five topics related to the 9/11 trigger for the anti-terrorism legislation and they were gathered into the Terrorism Event Super-theme. Two themes were listed as the fifth Super Theme, Other. How the 45 themes – iterated through the topics of discourse synthesised into four principal Super-themes – were used to justify the new legislation is at the root of this dissertation research and will be discussed when the findings are reviewed. The conflation of the 45 themes into Super-themes validated the identification of criminal justice and national security as the principal topics argued to justify the anti-terrorism legislation.

Chapter 6 Results of the Research Study

6.1 Introduction

Discourse representing all the Hansard records of debates on anti-terrorism legislation in Australia and Canada was separated into individual instances and then coded according to 45 themes that emerged through the data gathering phase, as outlined in the Methodology. The words and phrases extracted from the political discourse as the instances were recorded supported and confirmed the validity of the issues represented by the themes and formed the basis for justifying the necessary new laws.

Legislators' expressions of determination to counter terrorism by instituting improvements in existing laws and creating new laws clearly conveyed a sense of outrage at the terrorism that had led to the need for new legislation. They debated the issues and justified their arguments with reason and circumspection. As these utterances were coded into the themes for the research, a picture emerged of dedicated and resolute politicians, on both sides of the houses, cognisant of their responsibilities to reflect views of their constituents and to explain to them and the world at large that the new challenges posed by terrorism required addressing in new ways.

Sometimes an utterance was coded as representing more than one theme. An utterance was usually only one part of the speaker's whole speech or turn at talk. Therefore, a speaker might speak for several minutes and produce five utterances touching on different topics. Each of these was coded as an instance of a theme.

The research data, compiled using a spreadsheet as described in the Methodology chapter, identified a total of 5,376 instances where anti-terrorism legislation themes or topics were raised in the Hansard debates recorded from the Australian and Canadian Parliaments between 17 September 2001 and 31 March 2003. A total of 216 sittings were examined for Canada and 177 for Australia. Fifty of those sittings in Canada and thirty in Australia involved debates on or references to anti-terrorism legislation issues.

The database included discourse referencing several pieces of anti-terrorism legislation for each country over the period researched. The Australia anti-terrorism legislation considered began with the Anti-Hoax Bill 2002, followed by the 'Group of Five' pieces of legislation introduced as a package, the ASIO Bill 2002, and then an additional three bills, the Criminal Code Amendment: Offences Against Australians Bill 2002, the Criminal Code Amendment: Terrorist Organisations Bill 2002, and the Charter of UN Amendment Bill 2002. The latter three Bills were occasioned by the Bali bombing in October 2002. It should be emphasised that the period covered by this research included the initial anti-terrorism legislation following 9/11 introduced in the parliaments of both Countries, some not receiving Assent until after 31 March 2003, the end date for this research, and some not becoming law at all. Both countries continued to introduce further amendments to legislation relating to anti-terrorism concerns over the years following the period surveyed in this dissertation.

In Canada, five bills were debated, Bill C-36, the major piece of anti-terrorism legislation, Bill C-42 proposing several contentious issues, Bill C-44 amending the Aeronautics Act, and Bills C-55 and C-17, both subsequent unsuccessful versions of Bill C-42.

The discourse recorded came from all sides of parliament, in both countries, from government and opposition party members, and referenced the themes identified as relevant to the anti-terrorism legislation being debated. For each recorded instance the stance taken and the political party of each parliamentary speaker was identified in the database.

6.2 Political Parties

Australia and Canada follow the Westminster Parliamentary system, and each country has adapted the system to address its specific needs. The principal difference between the two, for the purpose of this dissertation, stems from the balance of political parties that make up parliament. The government responsible for the creation of anti-terrorism legislation in Canada had been elected with a majority in 2000. In Australia, the situation was different. Whereas the Canadian federal government was firmly in place on 11 September 2001 only one year into a new four-year term, the Australian federal government was close to a new election, near enough that the Liberal-led Coalition government decided in October to hold an election in November 2001, running on a national security platform and giving the next government the time it needed to develop and implement the new anti-terrorism laws.

In the Australian House of Representatives, four parties had at least one seat following the November election: the Australian Labor Party, the Liberal Party of Australia, the National Party of Australia and the Country Liberal Party. In addition, there were three independent members of parliament. The Liberal, National and Country Liberal parties, which are conservative right-wing parties with similar political ideologies, work together in union and are referred to as the Coalition Government. The largest of the three is the Australian Liberal Party and the Liberal-led Coalition remained in control of the parliament. The opposition, the Australian Labor Party is considered to represent centre-left political ideology.

In the Australian Senate where an election was held in 2002, seven political parties held seats, the same three centre-right parties as in the House, the right-wing One Nation Party and three opposition parties, the Australian Labor Party, the Australian Democrats, and the Australian Greens. As well, there were two Independents. The Australian Democrats are viewed as a centre party and the Green party represents the green political ideology.

In Canada, six political parties were represented in the House of Commons: the Liberal Party (the majority government party), the Canadian Alliance, the Bloc Québécois, the New Democratic Party, the Progressive Conservative Party and the PC/Democratic Representative Caucus (PC/DR). In addition, there were six independent members of parliament. The Canadian Alliance, the Progressive Conservatives and the PC/DR were right-of-centre parties. Centre-left parties include the Liberals, New Democrat and the Bloc. The Bloc Québécois party is also a separatist party comprised solely of members from the province of Quebec. As mentioned in the methodology chapter, debates in the appointed Canadian Senate were excluded from the research because Senators in Canada do not have the same accountability as elected members in the House of Commons.

A distinction should be made concerning the leanings of two major parties with similar names, the Liberal Party of Australia and the Canadian Liberal Party. In Australian politics the Liberal Party is a right-wing, conservative party, whereas in Canadian politics the Liberal Party position is centre, if not centre-left. These parties are named alike but are on opposite sides of the political spectrum.

6.3 Examination of the Data

At the end of the data collection process, tables were developed to present the findings. Firstly, the 45 themes were quantified for Australia and Canada by the number of instances each theme had been referenced in the discourse. The proportional quantity of mention in the discourse for each theme

provided a measure of its importance to the debates and reflected the concerns of the members and the people they represented. The instance counts were compiled and presented in *Table 6-1, Themes and Instances Identified: Percentages for Australia and Canada* (see section 6.4 below).

Four additional tables were developed from the database to quantify the instances where speakers indicated a position on the legislation under discussion. As the subject matter of each instance of discourse was entered into the database and coded into a theme, as noted in the Methodology chapter, the stance of the speaker on the Bill was noted as supporting, defending, critical, neutral or opposed. Data on the stances taken by speakers as the proposed legislation was debated are presented in Table 6-2 for Australia (Sec. 6.5.2) and Table 6-3 for Canada (Sec. 6.5.3). Data showing measures of stance by political party are presented in Tables 6-4 for Australia (Sec. 6.5.4) and 6-5 for Canada (Sec. 6.5.5).

6.4 Table 6-1, Themes and Instances Identified: Percentages for Australia and Canada.

Table 6-1, Themes and Instances Identified: Percentages for Australia and Canada presents a breakdown by themes of the Hansard data coded into the database as a record of the instances of utterances mined from the Hansard record of debates on anti-terrorism legislation for Australia and Canada. The Table compares the number of instances of each theme for Australia and Canada, and also includes the total instances for each theme. In order to address the main research question, it was important that the rates of occurrence of the themes were compared across the two countries. This was achieved using the following method. First, percentages were calculated for assessing the relative importance of the themes in the discourse for each country. Thus, Theme 1, *9/11 the event*, was recorded as being present in 138 instances in the Australian data and 120 instances in the Canadian data. This represents 6.39% of the total number of instances of all themes in the Australian data (n=2,161) and 3.73% of the total number of instances in the Canadian data (n=3,215). These two percentages were then evaluated using a test for statistical significance to identify whether or not this difference in percentage of total instances was significant. The data were tested for significance using a 2-prop t-test assuming equal variance. The test used identified statistical differences to 95% accuracy (p = 0.05) or 90% (p = 0.1) for two of the themes. This test was repeated for each of the 45 themes and in the case of 29 themes, there was a statistically significant difference identified in the percentage of instances where the themes occurred in the Australian data compared with the Canadian data. The 29 themes that show significantly different rates of occurrence are marked with a dagger (†) next to the higher percentage figure in the Tables. Where the percentages shown for other themes differ little the implication is that the issues were of more or less equal importance in the parliamentary discourse of both countries.

The instances of discourse coded to the 45 themes listed in the table, reveal the importance of the subjects influencing the legitimization of the legislation in both countries. Both countries had the task of introducing new legislation that was necessary to deal with a new kind of threat from terrorist actions and were committed to supporting UNSC Resolution 1373 and other cooperative international actions to counter terrorism. The anti-terrorism legislation was required to strengthen each country's ability to prevent, control and respond to potential terrorist actions and some measures under consideration were seen as draconian. The governments were challenged to justify the legislative action proposed; discourse on the Bills included utterances of support and concern and responsibility and justice.

A review of the data recorded in support of the extensive list of 45 themes identified commonalities between many suggesting that some form of consolidation was desirable. There was a lower level of

frequency of occurrence for some themes and others were of greater consequence to Australia or to Canada and thus factored in the justification of the legislation in one country but not in the other. A review of the percentages in Table 6-1 identified 23 themes where the instances were less than 85 in total for the theme and were under 2% for each country. These were designated '*low profile*' themes many of which did not merit individual analysis. The '*low profile*' themes will appear listed or be referenced where appropriate in subsequent sections of this dissertation. Eight of the '*low-profile*' themes will be addressed in the Discussion Chapter. The 22 remaining 'higher profile' or *noteworthy* themes are marked with an asterisk (*) in Table 6-1 and will be discussed further. A synopsis of the 22 noteworthy themes is presented in Section 6.6.

The percentages of difference between Australian and Canadian results for fifteen of the 22 *noteworthy* themes were determined to be statistically significant with the results having a 95% probability ($p < 0.05$) with the exception of theme #24 having 90% ($p < 0.1$). The data were tested for significance using a 2-prop t-test assuming equal variance. The remaining seven *noteworthy* themes, while not significantly different across the two countries, were considered important in the discourse of both countries because the proportional differences between their numbers of instances recorded were low, varying from a high of 0.72% to a low of 0.05%. Statistical significance was also identified for 14 of the 23 '*low profile*' themes but because these themes produced a low quantity of discourse their apparent significance was not, for the most part, singled out for individual comment in this dissertation. As noted above, all 29 themes determined to be statistically significant are marked with a 'dagger' (†) in Table 6-1. In all cases the data were tested for significance using a 2-prop t-test assuming equal variance.

Table 6-1 is necessarily a lengthy presentation and therefore takes up most of the space on the two following pages.

**Table 6-1
Themes and Instances Identified:
Percentages for Australia and Canada**

45 Themes: (*Noteworthy) († Statistically significant)	Theme Number	Instances	Australia: Instances Identified	Percent of Total Australian Instances	Canada: Instances Identified	Percent of Total Canadian Instances
9/11 the Event	1*†	258	138	6.39% †	120	3.73%
War on Terror	2	76	35	1.62%	41	1.28%
Speaking off topic	3†	53	8	.37%	45	1.40% †
UN obligation	4*†	209	110	5.09% †	99	3.08%
What other countries were doing	5*	184	67	3.10%	117	3.64%
National Security matter	6*†	348	94	4.35%	254	7.90% †
Criminal Justice matter	7*	403	159	7.36%	244	7.59%
Military Alliances - modern	8	61	25	1.16%	36	1.12%
Border Security	9†	74	12	.56%	62	1.93% †
Financing of Terrorism	10*	156	72	3.33%	84	2.61%
Economy/Economic factors	11†	53	10	.46%	43	1.34% †
Geographic factors	12†	43	8	.37%	35	1.09% †
Protecting personal rights and freedoms	13*	191	68	3.15%	123	3.83%
Impeding personal rights and freedoms	14*†	280	62	2.87%	218	6.78% †
Good vs. Evil	15†	52	31	1.43% †	21	.65%
Supporting U.S.A.	16*†	82	50	2.31% †	32	1.00%
Criticising U.S.A.	17	27	11	.51%	16	.50%
Historical Military: Past Alliances	18†	41	34	1.57% †	7	.22%
Support for anti-terrorism legislation	19*	315	126	5.83%	189	5.88%
Negative talk on anti- terrorism legislation	20*†	434	131	6.06%	303	9.42% †
Immigration	21*†	109	8	.37%	101	3.14% †
Working with U.S.A. to fight terrorism	22*†	77	11	.51%	66	2.05% †
Terrorism is a global problem	23*†^	88	64	2.96% †	24	.75%
Work with other countries around the world	24*†	110	54	2.50% †	56	1.74%
Criticising lack of anti- terrorism legislation	25	42	12	.56%	30	.93%
Public Safety	26*†	164	49	2.27%	115	3.58% †
Defining terrorism	27*	170	75	3.47%	95	2.95%
Human Rights	28*	95	44	2.04%	51	1.59%
Increasing powers to intelligence agency/ national police	29*†	138	83	3.84% †	55	1.71%
Safe haven for terrorists	30†	11	0	0	11	.34% †
Not safe haven - terrorists	31	4	0	0	4	.12%

Respecting Charter of Rights (Canada), Constitution (Australia)	32†	83	23	1.06%	60	1.87%†
Not Respecting Charter of Rights, Constitution	33	83	27	1.25%	56	1.74%
Sunset Clause	34*†	125	36	1.67%	89	2.77%†
Terrorist organisation/organised crime	35*†	202	123	5.69%†	79	2.46%
Review period for bill	36†	75	21	.97%	54	1.68%†
Anti-terrorism legislation rushed through parliament	37†	61	18	.83%	43	1.34%†
Stopping hatred – protecting minorities	38	54	18	.83%	36	1.12%
Need for amendments	39*†	231	181	8.38%†	50	1.56%
Acceptance of amendments	40	84	35	1.62%	49	1.52%
Mahar Arar	41	1	0	0	1	.03%
Tampa	42†	9	9	.42%†	0	0
International Criminal Court	43†	11	10	.46%†	1	.03%
Extending PM's term using 9/11	44†	4	4	.19%†	0	0
Bill of Rights	45†	5	5	.23%†	0	0
Instances Identified						
	5376	2161	100.01%		3215	100.01%
	Total	Australia			Canada	

6.5 Tables Presenting Political Stance on the Bills and Amendments

6.5.1 Introduction

The research data, compiled over eighteen and a half months between 17 September 2001 and the end of March 2003 came from an examination of Hansard records of 393 sittings, 177 in the Australian parliaments and 216 in the Canadian House of Commons. Of those, 30 sittings in Australia and 50 in Canada dealt with the Bills covered by Table 6-2 for Australia and Table 6-3 for Canada as well as with the earlier discourse capturing the reaction to 9/11 and calling for anti-terrorism legislation.

As the instances of discourse on the Bills and amendments were recorded in the database, the political stance of the speaker was assessed by the researcher and noted in the data. Table 6-2 presents the stance recorded for each instance of discourse coded during debates on Bills in Australia. There were five Bills considered together as one unit (the 'Group of Five'), making up the main package of Australian anti-terrorism legislation and five other Bills included in the period under study. Table 6-3 presents similar data for five anti-terrorism Bills debated in Canada. The Stance Tables do not necessarily represent the voting positions of members of parliament. They indicate the position taken by the speaker at the time the instance was recorded, providing a measure of the discourse as each Bill proceeded through the debating process. Many speakers contributed multiple instances of discourse, sometimes modifying or changing stance on a Bill. Tables 6-2 and 6-3 follow the debates for and

against Bills as they moved through parliament and were passed into law or, alternatively, did not receive the necessary support in parliament, and failed.

Two additional tables, Table 6-4 for Australia and Table 6-5 for Canada, present a further breakdown of the stance data, by showing the instances of discourse in the database according to the political parties of the speakers recorded. The data in Tables 6-4 and 6-5 are identical to Tables 6-2 and 6-3 but broken down to show the positions taken by the political parties in favouring, criticising and opposing the Bills in the political debate. The purpose of Tables 6-4 and 6-5 is to show the reader how the individual political parties positioned themselves on the examined pieces of anti-terrorism legislation. This allows the reader to see how the bills were reacted to in parliament. It is one thing to see that a bill was accepted and passed through parliament or defeated or laid aside; it is another thing to see how the parties positioned themselves in responding to those bills within the political debate.

The cumulative total of the instances recorded for the Bills in Tables 6-2 and 6-3 (similarly in Tables 6-4 and 6-5) are less than the 5,376 instances totalled in Table 6-1 (and Table 6-6) because the early discourse recorded for the research included 247 instances of commentary in the Australian legislatures and 345 instances in the Canadian House of Commons before anti-terrorism Bills were introduced for debate.

For Tables 6-2 and 6-3 (and 6-4 and 6-5) the goal was to assess the stance of the speaker and the political party, represented by the utterances expressing a position on or reaction to the debated legislation. The stances of speakers were identified by analysing the debates and reading the Members of Parliaments' comments. The stance noted in the data recorded for each instance identified from Hansard was based upon an assessment by the researcher as the discourse of the Member of Parliament was studied. The Tables summarise the stance positions in four groupings, 'Combined Support', 'Combined Critical', 'Opposed', and 'Not Applicable' (N/A).

In order to address the reaction to the Bills by the Members of Parliament it was important that the rates of occurrence of the stance taken were compared across the Bills debated. This was achieved using the following method. First, percentages were calculated for assessing the relative importance of the stance data in the discourse for each Bill, summarised as, 'Combined Support', 'Combined Critical', 'Opposed', and 'Not Applicable'. Thus, for example, 'Combined Support' was recorded as being present in 759 instances for the 'Group of Five' Bills in the Australian data presented in Table 6-2. This represents 65.32% of the total number of instances of stances in the Australian data (n=1162) for the Bill. The percentages of stance data were similarly calculated for all six Australian Bills in Table 6-2. The percentages were then evaluated using a test for statistical significance to identify whether or not the difference in percentage of total instances was significant. The data were tested for significance using a 2-prop t-test assuming equal variance. The test used identified statistical differences to 95% accuracy ($p < 0.05$) or 90% accuracy ($p < 0.1$). The same method was used to identify whether or not the difference in percentage of total instances was significant for Tables 6-3, 6-4 and 6-5.

Care was taken to determine from the discourse the different types of support or criticism and sub-groups were decided upon. In some instances 'Support' was evident but it was not strong and so was categorised as 'Weak'. Often, 'Support' was in the form of answering or defending the legislation proposed against criticism expressed by others, i.e. 'Defend'. Similarly, 'Critical' was assessed where criticism was clearly evident in the discourse, and 'Neutral' was included as a sub-group for unfavourable utterances that were not critical but could not be considered supportive. In some instances, members were calling for changes to the legislation or for more attention to an issue before committing to support and otherwise threatening opposition. Several instances were seen as questioning the legislation and therefore were viewed as unsupportive, i.e. 'Question'. Comments

were recorded as 'Not Applicable' (N/A) when no clear position was established by the speaker and 'Opposed' is self-explanatory. As noted above, the stance identified in the discourse was not always identified with a member's voting position or political inclination and for the most part genuinely appeared to be a constructive contribution to the debate.

6.5.2 Table 6-2 – Australia: 1914 Instances of Discourse on Legislation – Stance on Bills Determined by Utterance Coded.

There were 1,914 instances of discourse entered into the database from Australia's House of Representatives and Senate, during the debates on anti-terrorism legislation. These were coded to the Bills debated as shown in Table 6-2, presented below, with the 'Group of Five' Bills accounting for more than half the instances. The number of instances of discourse for each Bill are also shown as a percentage of the total instances for the Bill debated.

The Stance column at the left of Table 6-2 shows the categories into which the instances were coded and assessed. The first three categories, 'Support', 'Defend' and 'Weak', are totalled as 'Combined Support'. Discourse coded as 'Defend', that is, in defence of the legislation, was a supportive stance, as was discourse assessed to be weak support. The next three categories, totalled as 'Combined Critical' include 'Critical' discourse, 'Neutral' discourse, where neither support nor criticism could be identified, and 'Question' where the discourse was querying an issue and could not be considered supportive. Finally, Table 6-2 shows the number of instances of discourse that were 'Opposed' and 'Not Applicable' (N/A). Total Instances are shown for the number of utterances coded to each Bill.

The number of instances of discourse for the main package of anti-terrorism legislation, the 'Group of Five' Bills, introduced in the House of Representatives on 12 March 2002, is shown in column (a) of Table 6-2. The 'Anti-Hoax Bill', listed in column (b) was actually introduced earlier on February 13 as the first piece of the new government's anti-terrorism legislation. Columns (c) through (f) present the instances of discourse for the other four Bills included in Table 6-2, listed below, keyed to the column headings:

- (a) - 'Group of Five' anti-terrorism Bills including:
 - the Security Legislation Amendment (Terrorism) Bill 2002
 - the Suppression of the Financing of Terrorism Bill 2002
 - the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002
 - the Telecommunications Interception Legislation Amendment Bill 2002
 - the Border Security Legislation Amendment Bill 2002
- (b) - the Criminal Code Amendment (Anti-Hoax and Other Measures) Bill 2002 (Anti-Hoax Bill)
- (c) - the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 (ASIO Bill)
- (d) - the Criminal Code Amendment (Offences Against Australians) Bill 2002 (Offences Against Australians Bill)
- (e) - the Criminal Code Amendment (Terrorist Organisations) Bill 2002 (Terrorist Organisations Bill)
- (f) - the Charter of the United Nations Amendment Bill 2002 (United Nations Bill).

Debates on the anti-terrorism legislation in Australia took place with a degree of urgency soon after the Fortieth Session of Parliament commenced in February 2002. Prime Minister Howard had given an undertaking on 16 October 2001 to pass Anti-Hoax legislation and this had high priority being

introduced on 13 February 2002 and moving through the House and Senate to receive Assent on 4 April 2002. This law was made retroactive to 16 October 2001. Speaking to the Bill, Attorney General Williams said that police had received 3000 reports about suspicious packages and more than 1000 anthrax hoaxes had been investigated since September 2001 (Hansard 19 February 2002 p. 462). This was the first piece of Government anti-terrorism legislation.

The Government, having won re-election in December 2001, had assembled the most imperative pieces of new legislation noted above and included them as the 'Group of Five' Bills introduced for debate. The October Bali bombings led to the urgency of introducing three further Bills related to anti-terrorism in the period covered by this investigation. The need for further legislative changes and criminal code amendments to deal with anti-terrorism issues has continued through the years that have followed but these are beyond the scope of this dissertation.

Two pieces of anti-terrorism legislation accounted for a considerable amount of the debate as shown by the counts of instances in Table 6-2, 1162 instances of discourse recorded as the 'Group of Five' Bills were debated and 526 instances during debate on the ASIO Bill. The remaining 226 instances were shared between the other four Bills in the Table.

6.5.2.1 'Group of Five' Bills

The main package of anti-terrorism Bills was often referred to as the 'Group of Five' in the discourse and therefore the Group is considered here as if it was one Bill. Discourse on the Group of Five Bills was over 60% of all the discourse recorded during the debates reviewed in the Table. This was the opportunity for members of parliament to express their views on the proposed new anti-terrorism legislation and there was general agreement that new laws were needed. 'Combined Support' for the Group of Five Bills was expressed in 65.32% of the discourse coded. This indicated that a strong level of support existed within parliament for enactment of the legislation, and that this level of support was significantly higher in comparison to the ASIO Bill but not against any of the other four legislative acts in Table 6-2, all of which gained a high degree of support. 'Combined Critical' comprised 13.25% or 154 instances. This is statistically significant when measured against the other five pieces of legislation in Table 6-2. Almost 18%, 206 of the utterances coded, were seen to be opposed to some measures contained in the Bills. This opposition was statistically significant in comparison to all other Bills except the ASIO Bill. While debate was rigorous, there was no question about new legislation being needed and it was the severity of some measures proposed that gained the greatest attention in the discourse.

6.5.2.2 The ASIO Bill

The ASIO Bill introduced on 21 March 2002 was an attempt by the government to be proactive in dealing with terrorism, including empowering ASIO to detain and question persons for up to 48 hours in connection with suspected terrorist activity. The Bill attracted much discourse over human rights issues, particularly in the Senate, and was withdrawn in December 2002 and reintroduced with amendments in March 2003. The ASIO Bill accounted for 27% of the coded Australian discourse on Bills. Combined Support for the ASIO Bill at 42.96% of the instances recorded was not statistically significant in comparison to any of the Bills in Table 6-2. However, all of those instances were unqualified support and the tally of 'Combined Critical' was weighted heavily to 'neutral' utterances (29 out of 39 instances). This suggests that the Bill might eventually succeed in a vote with the contentious issues resolved. Nearly half of the discourse on the ASIO Bill was judged to be opposed to it, suggesting discomfort with the strengthened police powers it contained. This 48.86% 'Opposed' was statistically significant in comparison to all the other Bills in Table 6-2 – that is, it was significantly more opposed than any other Bill in Table 6-2.

6.5.2.3 *The Anti-Hoax and Bali Bombing Bills*

Discourse on the Anti-Hoax Bill registered 97.06% in the Support stance given that it was dealing with concerns for personal safety that were shared by every Member of Parliament. Similarly, both the Offences Against Australians Bill and the Charter of UN Amendment Bill registered 100% Support, and the Terrorist Organisations Bill registered 97.29% Support. In relation to the other Bills in Table 6-2, the quantity of discourse produced as 'Combined Support' for the Anti-Hoax Bill and the three Bali Bombing Bills was significantly higher ($p = 0.05$) than that produced for the Group of Five (59.81%) and the ASIO Bill 2002 (42.96%). The four share similarities in having a low number of instances coded and a very much higher percentage value for support.

Three of the Bills were introduced because of the 12 October 2002 Bali bombings that brought the closeness of international terrorism to Australia, killing 100 vacationing Australians. In response to the Bali bombings the government had reviewed existing legislation and found loopholes that needed to be closed. The Terrorist Organisations Bill, introduced, passed and given Assent, all on the same day, 23 October 2002, was to rectify previous legislation passed as part of the 'Group of Five' that required 15 sitting days before terrorist organisations regulations could come into effect which at that time would have meant a delay until parliament resumed in 2003. This change allowed the Criminal Code Amendment Regulations 2002 (No. 2), made on 21 October 2002, that proscribed al Qaeda and related organisations, to come into effect straightaway. During the debate in June on the Security Legislation Amendment (Terrorism) Bill 2002 the Labor Party had insisted its support would be conditional on its amendment that only those terrorist organisations outlawed by the UN could be proscribed by Australia (Hansard, Albanese, 27 June 2002 p. 4660). After the Bali bombing Australia had asked the UN to add Jemaah Islamiah, the terrorist group responsible, to the list of terrorist organisations and it was outlawed on 27 October 2001 by Criminal Code Amendment Regulations 2002 (No. 3).

The Offences Against Australians Bill was introduced on 12 November 2002 and expedited through the legislatures receiving Assent on 14 November 2002, and made retroactive to 1 October 2002. This amendment to the Criminal Code outlawing the murder of Australians abroad, such as had occurred in the Bali bombing, ensured that terrorists and others who engage in crime overseas against Australian citizens and residents could be extradited and prosecuted in Australia. To extradite a suspected offender from a foreign country there must be 'dual criminality' that is, the conduct must constitute an offence in both Australia and the other country. The legislation provided a prosecution option where extradition could be based on offenses of murder where perpetrators are unable to be prosecuted in the foreign country under terrorism legislation. The Charter of the United Nations Amendment Bill 2002, was introduced on 14 November 2002 to update Australia obligations under UNSC Resolution 1373. This amendment strengthened legislation to make sure that terrorist groups could not raise money or have access to financial assets in Australia. The Bill clarified previous legislation, allowing holders of terrorist assets, such as banks, to have the same rights as owners of the assets and to ask the Australian Federal Police for assistance in determining whether the assets should be frozen. The Bill received Assent on 10 December 2002.

The Terrorist Organisations Bill drew only 74 instances of discourse in the debate, mostly of a supportive nature, and The Offences Against Australians Bill had only 28 instances coded with those reflecting 100% 'Support'. The Charter of UN Amendment Bill accounted for only 56 instances of discourse, all supportive. The three Bills, all conditioned by the Bali bombings, had an urgency recognizing overlooked or unanticipated matters of needed anti-terrorism legislation and all political parties were in agreement on the justification for the Bills.

Table 6-2 Australia
1914 Instances of Discourse on Legislation
Stance on Bills Determined by Utterance Coded
Sept. 17, 2001 through March 31, 2003

Stance	(a) Inst.	(a) %	(b) Inst.	(b) %	(c) Inst.	(c) %	(d) Inst.	(d) %	(e) Inst	(e) %	(f) Inst.	(f) %
Support	695	59.81%	66	97.06%	226	42.96%	28	100%	72	97.29%	56	100%
Defend	64	5.51%	0	0	0	0	0	0	0	0	0	0
Weak	0	0	0	0	0	0	0	0	0	0	0	0
Combined Support	759	65.32%	66	97.06%	226	42.96%	28	100%	72	97.29%	56	100%
Critical	66	5.68%	2	2.94%	7	1.33%	0	0	0	0	0	0
Neutral	64	5.51%	0	0	29	5.51%	0	0	0	0	0	0
Question	24	2.06%	0	0	3	.57%	0	0	2	2.70%	0	0
Combined Critical	154	13.25%	2	2.94%	39	7.41%	0	0	2	2.70%	0	0
Opposed	206	17.72%	0	0	257	48.86%	0	0	0	0	0	0
N/A	43	3.70%	0	0	4	.76%	0	0	0	0	0	0
Total Instances	1162	99.99%	68	100%	526	99.99%	28	100%	74	99.99%	56	100%

Columns key:

(a) - 'Group of Five' anti-terrorism Bills

(b) - Criminal Code Amendment (Anti-Hoax and Other Measures) Bill 2002 (Anti-Hoax Bill 2002)

(c) - Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 (ASIO Bill 2002)

(d) - Criminal Code Amendment (Offences Against Australians) Bill 2002 (Offenses Against Australians Bill 2002)

(e) - Criminal Code Amendment (Terrorist Organisations) Bill 2002 (Terrorist Organisations Bill 2002)

(f) - Charter of the United Nations Amendment Bill 2002 (Charter of UN Amendment Bill 2002)

6.5.3 Table 6-3 – Canada: 2870 Instances of Discourse on Legislation – Stance on Bills Determined by Utterance Coded.

The debates on anti-terrorism legislation in Canada followed a different pattern from the legislation introduced in Australia. Canada began debating Bill C-36, the Anti-terrorism Act, its major piece of legislation, on 15 October 2001 following an intensified study of existing legislation addressing criminal activity and terrorism. Bill C-42, The Public Safety Act 2001, was introduced on 22 November 2001, but soon encountered strong opposition. Bill C-44, An Act to Amend the Aeronautics Act, was introduced on 28 November 2001 containing a small section from Bill C-42 that was not contentious. Bill C-55, The Public Safety Act 2002, a revised version of the former Bill C-42 was introduced on 29 April 2002 with much continuing criticism. It was again modified and introduced as Bill C-17 The Public Safety Act 2002 on 31 October 2002, which passed through the lower House of Commons but had not been fully considered by the Senate when Parliament was prorogued late in 2003.

The instances of discourse on the five Canadian anti-terrorism Bills are presented in Table 6-3. The Table follows the same presentation as outlined above for Table 6-2. The columns again list the instances recorded and their percent of the total for each Bill against the same Stance categories described for Table 6-2. There were 2,870 instances of discourse recorded for the five Canadian Bills with more than half the instances pertaining to Bill C-36.

Bill C-36 engendered much discourse with 577 instances coded as 'Combined Support' in Table 6-3, and 762 instances coded 'Combined Critical'. There were 166 instances of discourse 'Opposed' to the Bill and 4 counted as 'Not Applicable'. In relation to the other Bills in Table 6-3, the quantity of discourse produced as 'Combined Support' for Bill C-36 was significantly higher ($p < 0.05$) at 38.23% than that produced for Bills C-55 (22.70%) and C-17 (27.27%). The quantity of 'Combined Critical' discourse for Bill C-36 at 50.49% was significantly higher ($p < 0.05$) than that produced for Bills C-44 (24.28%), C-55 (32.55%) and C-17 (31.99%). The quantity of discourse 'Opposed' to Bill C-36 was significantly higher ($p < 0.05$) at 11.00% in comparison to Bill C-44, which had no opposition recorded.

Bill C-42 encountered much serious opposition when introduced and only 199 instances of discourse were coded before it was withdrawn. The quantity of its 'Combined Support' discourse at 37.19% was significantly higher ($p < 0.05$) than the comparable discourse produced for Bills C-55 and C-17. Its 'Combined Critical' discourse at 47.23% was significantly higher ($p < 0.05$) than that produced for Bills C-44, C-55 and C-17. The quantity of discourse 'Opposed' to Bill C-42 was significantly higher ($p < 0.05$) than that produced for Bill C-44, which had no opposition, and significantly higher ($p < 0.1$) than the discourse opposed for Bill C-36.

A key section of Bill C-42 was to amend the Aeronautics Act permitting the sharing of passenger information with other countries, particularly for carriers transporting passengers to the US or flying over US air space. On 19 November 2001, the president of the United States signed into law a new act which required, among other things, that advance passenger information be provided in respect of all flights entering the US. Canada and other countries were required to comply by 18 January 2002. The Opposition, Bloc Quebecois and others let the government know they wanted to debate C-42 and this meant there was no way the Bill would go through in time to satisfy the US compliance date. As a result, the legislation drafted to meet the US requirement was withdrawn from Bill C-42 and reintroduced as Bill C-44 on 28 November 2001.

Bill C-44, containing the legislation necessary to comply with the US air transportation requirements, produced 78 instances of 'Combined Support' out of the total of 103 for the Bill. This quantity of discourse at 75.72% was significantly higher ($p < 0.05$) than that produced by all the other Bills. 'Combined Critical' discourse on the Bill totalled only 24.28% and there was no Opposition. The data were tested for significance using a 2-prop t-test assuming equal variance.

Bill C-55, the revised version of Bill C-42 introduced in April 2002, continued to have difficulty gaining acceptance and involved 762 instances of discourse, more than half the number coded for Bill C-36. Of those, 173 instances or 22.70% involved utterances supporting or defending the Bill and 248 or 32.55% were 'Combined Critical'. The quantity of discourse Opposed to Bill C-55, 339 instances or 44.49%, was significantly higher ($p < 0.05$) in comparison to all the other Bills in Table 6-3.

Bill C-17, introduced in the House six months after its predecessor Bill C-55, brought about fewer instances of discourse supporting or criticising the Bill but the percentages remained similar, 27.27% for 'Combined Support' and 31.99% for 'Combined Critical'. Discourse opposing the Bill at 29.63% remained high and was significantly higher ($p < 0.05$) than that produced for Bills C-36, C-42 and C-44. Modifications to the Bill appear to have worn down the opposition to a point where 11.11% of the discourse was coded 'Not Applicable' making the 33 instances significantly higher ($p < 0.05$) when compared to all the other Bills. This result might suggest a degree of resignation on the part of many members knowing that the government had sufficient votes to carry the Bill however, in November 2002, it was passed to a Legislative Committee for further study, and eventually, but beyond the

research period for this dissertation, passed third reading in the House and was sent to the Senate, but Parliament prorogued before it received further consideration.

Table 6-3 covers the five pieces of Canadian anti-terrorism legislation introduced and reviewed in the period investigated in this dissertation, 17 September 2001 through 31 March 2003. Of the five, only Bill C-36 and Bill C-44 were passed into law, receiving Royal Assent on 18 December 2001.

Table 6-3 Canada
2870 Instances of Discourse on Legislation
Stance on Bills Determined by Utterance Coded
Sept. 17, 2001 through March 31, 2003

Stance	Bill C 36 Inst.	C 36 %	Bill C 42 Inst.	C 42 %	Bill C 44 Inst.	C 44 %	Bill C 55 Inst.	C 55 %	Bill C 17 Inst.	C 17 %
Support	416	27.57%	12	6.03%	73	70.87%	79	10.37%	81	27.27%
Defend	155	10.27%	61	30.66%	5	4.85%	94	12.33%	0	0
Weak	6	.39%	1	.50%	0	0	0	0	0	0
Combined Support	577	38.23%	74	37.19%	78	75.72%	173	22.70%	81	27.27%
Critical	729	48.31%	94	47.23%	17	16.51%	247	32.42%	82	27.61%
Neutral	32	2.12%	0	0	8	7.77%	1	.13%	13	4.38%
Question	1	.06%	0	0	0	0	0	0	0	0
Combined Critical	762	50.49%	94	47.23%	25	24.28%	248	32.55%	95	31.99%
Opposed	166	11.00%	31	15.57%	0	0	339	44.49%	88	29.63%
N/A	4	0.27%	0	0	0	0	2	0.26%	33	11.11%
Total Instances	1509	99.99%	199	99.99%	103	100%	762	100%	297	100%

Bill C-36 - The Anti-terrorism Act (Received Royal Assent 18 December 2001)

Bill C-42 - The Public Safety Act 2001

Bill C-44 - An Act to Amend the Aeronautics Act (Received Royal Assent 18 December 2001)

Bill C-55 - The Public Safety Act 2002

Bill C-17 - The Public Safety Act 2002

6.5.4 Table 6-4 – Australia: Political Party Breakdown of Stance Coded in Table 6-2

The political party breakdown of the stance data presented in Table 6-2 appears in *Table 6-4 – Australia -- Stance on Bills Debated Coded by Speaker's Political Party*. The instances are shown as counts and percentages for seven political groups coded from the discourse into the combined categories, 'Support', 'Critical', 'Opposed' and 'Not Applicable'. The discourse recorded is from both the House of Representatives and the Senate legislatures. The parties listed in the Table combine utterances coded from both chambers. The discourse coded from Hansard records of debates in the House of Representatives included speakers representing three parties, the Australian Labor Party (ALP), the Liberal Party of Australia (LP), and the National Party of Australia (NP), as well as the Independent Members (Ind.). Discourse from debates in the Senate included speakers representing the Australian Democrats (AD), the Australian Greens (AG), and Pauline Hanson's One Nation Party (PHON), in addition to the affiliations noted for the House of Representatives.

Discourse reflecting 'Support' for the Group of Five Bills was mainly from the 'Greens' (203), the Labor Party (222) and the Liberals (237), but all parties were represented. It must be observed again that this is no more than an indication of voting positions. The numbers of instances of discourse are also relative to the numbers of sitting members in each party and the number of times the most vocal members rose to speak. This dissertation is concerned with the means or arguments employed to justify passage, or the selling of the legislation and so is concerned with the discourse numbers not in terms of party size or proponents but as arguments to stake out and convey a defensible position to the electorate on a subject of great popular interest, the protection of Australians from terrorism. Representatives of the Australian Labor Party (the Official Opposition) and the Liberal Party (the Government), dominated the discourse in 'Support' of all the other Bills coded in the study to 31 March 2003.

Discourse in the 'Critical' category (criticising, neutral or questioning) for the Group of Five Bills, while only 154 or 13.25% of the instances recorded, was predictably emanating from the opposition ALP (6.28%) but only slightly less often from the governing Liberal Party (5.59%). The two main opposing parties were actively criticising and questioning to almost the same degree. Once again, both sides of the House were concerned that the legislation be seen to be 'right' in the minds of the public. 'Critical' discourse was minimal for the other Bills in the database with the exception of the ASIO Bill that drew 39 instances, 15 attributed to the Australian Labour Party and 24 to the Liberal Party of Australia.

Discourse judged to be 'Opposed' to the legislation under consideration was evident only with the Group of Five Bills and the ASIO Bill. More than half of the 206 utterances identified as being opposed to the Group of Five Bills came from the Australian Labor Party tallying 10.07% of discourse on the Bills. Every party expressed some observations in opposition to the Bills, including 31 remarks that were coded for the Liberal Party. Opposition to the ASIO Bill, with 257 out of 526 instances recorded for the Bill, was 48.86% with the Australian Labor Party accounting for 42.02% or 221 instances and Independents 3.80% or 20 instances, a strong vocalisation on behalf of three members.

Table 6-4 Australia
1914 Instances of Discourse on Legislation
Stance on Bills* Debated Coded by Speaker's Political Party
Sept. 17, 2001 through March 31, 2003

Party & Stance	(a)	(a) %	(b)	(b) %	(c)	(c) %	(d)	(d) %	(e)	(e)%	(f)	(f) %
AD	72	6.20%	9	13.23%	0	0	0	0	0	0	0	0
AG	203	17.47%	0	0	0	0	0	0	0	0	0	0
ALP	222	19.10%	28	41.18%	89	16.92%	9	32.14%	10	13.51%	27	48.21%
Ind.	4	.34%	0	0	7	1.33%	0	0	0	0	0	0
LP	237	20.40%	29	42.65%	130	24.71%	19	67.86%	62	83.78%	29	51.79%
NP	6	.52%	0	0	0	0	0	0	0	0	0	0
PHON	15	1.29%	0	0	0	0	0	0	0	0	0	0
Support **	759	65.32%	66	97.06%	226	42.96%	28	100%	72	97.29%	56	100%
AD	4	.34%	0	0	0	0	0	0	0	0	0	0
AG	4	.34%	0	0	0	0	0	0	0	0	0	0
ALP	73	6.28%	2	2.94%	15	2.85%	0	0	0	0	0	0
Ind.	5	.43%	0	0	0	0	0	0	0	0	0	0
LP	65	5.59%	0	0	24	4.56%	0	0	2	2.70%	0	0
NP	0	0	0	0	0	0	0	0	0	0	0	0
PHON	3	.26%	0	0	0	0	0	0	0	0	0	0
Critical ***	154	13.25%	2	2.94%	39	7.41%	0	0	2	2.70%	0	0
AD	20	1.72%	0	0	0	0	0	0	0	0	0	0
AG	20	1.72%	0	0	5	.95%	0	0	0	0	0	0
ALP	117	10.07%	0	0	221	42.02%	0	0	0	0	0	0
Ind.	9	.77%	0	0	20	3.80%	0	0	0	0	0	0
LP	31	2.67%	0	0	11	2.09%	0	0	0	0	0	0
NP	0	0	0	0	0	0	0	0	0	0	0	0
PHON	9	.77%	0	0	0	0	0	0	0	0	0	0
Opposed	206	17.72%	0	0	257	48.86%	0	0	0	0	0	0
AD	0	0	0	0	0	0	0	0	0	0	0	0
AG	0	0	0	0	0	0	0	0	0	0	0	0
ALP	8	.69%	0	0	4	.76%	0	0	0	0	0	0
Ind.	12	1.03%	0	0	0	0	0	0	0	0	0	0
LP	23	1.98%	0	0	0	0	0	0	0	0	0	0
NP	0	0	0	0	0	0	0	0	0	0	0	0
PHON	0	0	0	0	0	0	0	0	0	0	0	0
N/A	43	3.70%	0	0	4	.76%	0	0	0	0	0	0
Totals	1162	99.99%	68	100%	526	99.99%	28	100%	74	99.99%	56	100%

* Bills debated: (a) 'Group of Five' Bills; (b) Anti-Hoax Bill 2002; (c) ASIO Bill 2002; (d) Offences Against Australians Bill 2002; (e) Terrorist Organisations Bill 2002; (f) Charter of UN Amendment Bill 2002.

** Support -- Includes discourse noted as: 'weak', 'answering' and 'defending'.

*** Critical -- Includes discourse noted as: 'neutral' or 'questioning'.

N/A -- Not applicable.

6.5.5 Table 6-5 – Canada: Political Party Breakdown of Stance Coded in Table 6-3

The political party breakdown of the stance data presented in Table 6-3 appears in *Table 6-5 – Canada -- Stance on Bills Debated Coded by Speaker's Political Party*. The instances are shown as counts and percentages for seven political groups coded from the discourse into the combined categories, 'Support', 'Critical', 'Opposed' and 'Not Applicable', as was done for Australia in Table 6-4. The discourse is from Hansard records of debates in the House of Commons and included speakers from the Bloc Quebecois (BQ), the Canadian Alliance (CA), the Liberal Party (Lib.), the New Democratic Party (NDP), the Progressive Conservative Party (PC), the PC/Democratic Representative Caucus (PC/DR), and Independent Members (Ind.).

The governing Liberal Party introduced Bill C-36, the first piece of Canadian anti-terrorism legislation, less than a month after 9/11. The world was still recovering from the disastrous terrorist attacks and every political party was anxious to speak out on the new legislation called for by the United Nations. As debate on this major Bill proceeded all parties had reason to be speaking in favour of parts of the legislation and at the same time question and criticise other parts or even, to a lesser degree, take a stance in opposition to some of the proposed new laws. Discourse reflecting 38.23% 'Support' for Bill C-36 was dominated by the Liberals with 199 or 13.19% of the 1,509 instances recorded. The Bloc Quebecois and the Canadian Alliance parties joined the discourse with 139 and 141 instances respectively and the other parties spoke less frequently. Discourse in the 'Critical' category for Bill C-36, 50.49% or 762 out of the 1,509 instances, appeared to parallel the party speaking instances noted for 'Support' but with greater numbers or intensity. The count of Liberal utterances criticising or questioning the legislation was 285 or 18.89% and the Bloc Quebecois and Canadian Alliance parties followed with 165 and 176 instances. Remarks judged to be 'Opposed' to the Bill accounted for only 11% of the discourse.

Bill C-42 was introduced just over five weeks after Bill C-36. It had a much different reception and was withdrawn with 199 instances entered in the database. Discourse judged supportive of the legislation tallied 74 comments mainly recorded for the Bloc Quebecois and the Liberals, 33 and 19 respectively. 'Critical' instances similarly were 32 (BQ) and 37 (Lib.) out of 94; 'Opposed' were 11 (BQ) and 12 (Lib.) out of 31. Parts of Bill C-42 dealing with air travel to and over the US, and the sharing of passenger information needed urgent attention and were reintroduced in November 2001 as Bill C-44 as noted above. When the contentious contents remaining from Bill C-42 were reintroduced in April 2002 as Bill C-55, 762 instances of discourse were recorded, 173 in support (all but 8 spoken by Liberals), 248 'Critical', predominantly Canadian Alliance (105), Bloc Quebecois (54), PC/Democratic Representative Caucus (51), and New Democratic Party (32) members, and 339 'Opposed', with the greatest opposition discourse coming from the Bloc Quebecois. When the legislation was reintroduced for the third time as Bill C-17 in October 2002, 297 instances of discourse were coded. Eighty-one supportive statements were made by the Liberals, 95 'Critical' comments were tallied, 88 statements continued to oppose the legislation and 33 observations were judged to be speaking to the Bill but saying little of relevance.

Bill C-44, dealing with urgent amendments to the Aeronautics Act was introduced on 28 November 2001 as noted above. This legislation responded to the US requirement for sharing passenger information and passage was critical to air travel to and over the US. All political parties participated in the supportive commentary on the Bill. There was no opposition and only 25 critical comments or questions out of 103 instances of discourse.

Table 6-5 Canada
2870 Instances of Discourse on Legislation
Stance on Bills Debated Coded by Speaker's Political Party
Sept. 17, 2001 through March 31, 2003

Party & Stance	Bill C-36	C-36 %	Bill C-42	C-42 %	Bill C-44	C-44 %	Bill C-55	C-55 %	Bill C-17	C-17 %
BQ	139	9.21%	33	16.58%	9	8.73%	0	0	0	0
CA	141	9.34%	6	3.02%	14	13.59%	0	0	0	0
Ind.	0	0	0	0	0	0	0	0	0	0
Lib.	199	13.19%	19	9.55%	11	10.68%	165	21.65%	81	27.27%
NDP	54	3.58%	6	3.02%	8	7.77%	0	0	0	0
PC	18	1.19%	7	3.52%	1	.97%	0	0	0	0
PC/DR	26	1.72%	3	1.50	35	33.98%	8	1.05%	0	0
Support *	577	38.23%	74	37.19%	78	75.72%	173	22.70%	81	27.27%
BQ	165	10.93%	32	16.08%	8	7.77%	54	7.09%	12	4.04%
CA	176	11.66%	3	1.50%	3	2.91%	105	13.78%	49	16.50%
Ind.	0	0	0	0	0	0	0	0	0	0
Lib.	285	18.89%	37	18.59%	6	5.83%	1	.13%	18	6.06%
NDP	69	4.57%	4	2.01%	8	7.77%	32	4.20%	0	0
PC	23	1.52%	11	5.53%	0	0	5	.66%	0	0
PC/DR	44	2.92%	7	3.52%	0	0	51	6.69%	16	5.39%
Critical **	762	50.49%	94	47.23%	25	24.28%	248	32.55%	95	31.99%
BQ	53	3.51%	11	5.53%	0	0	217	28.48%	70	23.57%
CA	27	1.79%	4	2.01%	0	0	9	1.18%	0	0
Ind.	0	0	0	0	0	0	6	.79%	0	0
Lib.	40	2.65%	12	6.03%	0	0	0	0	2	.67%
NDP	30	1.99%	0	0	0	0	95	12.47%	16	5.39%
PC	8	.53%	1	.50%	0	0	0	0	0	0
PC/DR	8	.53%	3	1.50%	0	0	12	1.57%	0	0
Opposed	166	11%	31	15.57%	0	0	339	44.49%	88	29.63%
BQ	0	0	0	0	0	0	2	.26%	4	1.35%
CA	2	.13%	0	0	0	0	0	0	13	4.38%
Ind.	0	0	0	0	0	0	0	0	0	0
Lib.	1	.07%	0	0	0	0	0	0	2	.67%
NDP	0	0	0	0	0	0	0	0	4	1.35%
PC	0	0	0	0	0	0	0	0	2	.67%
PC/DR	1	.07%	0	0	0	0	0	0	8	2.69%
N/A	4	.27%	0	0	0	0	2	.26%	33	11.11%
Total Instances	1509	99.99%	199	99.99%	103	100%	762	100%	297	100%

* Support -- Includes discourse noted as: 'weak', 'answering' and 'defending'.

** Critical -- Includes discourse noted as: 'neutral' or 'questioning'.

N/A -- Not applicable.

6.5.6 Political Stance Summary

The stance taken by speakers as the anti-terrorism Bills were debated generated data that were analysed in two ways, first in terms of support, or the lack thereof, to the legislation in question as reflected in each instance of discourse recorded, and secondly as representing stance by political party. Table 6-2 tallying instances of discourse on Australian legislation, compiled measures of support, criticism and opposition for the 'Group of Five' Bills, the Anti-Hoax Bill, the ASIO Bill and the three Bills brought about by the Bali bombing. Table 6-3 tallied instances of discourse on Canadian legislation supporting, criticising and opposing Bill C-36, the major piece of anti-terrorism legislation, and four other Bills considered in the period under study. Tables 6-4 and 6-5, dealing with the political parties in Australia and Canada respectively present an analysis of the number of instances where a party member was recorded speaking on a theme. The 'support', 'critical' and 'opposed' totals appearing in Tables 6-2 and 6-4 are identical as are those totals in Tables 6-3 and 6-5 because the same data are presented in different ways. The Stance Tables do not necessarily represent the voting positions of Members of Parliament but they indicate the position taken by the speaker at the time the instance was recorded. The findings illustrated by the four Stance Tables will be considered where appropriate in the following chapters however the primary purpose of this analysis is to show the participation and positioning of the political parties as instances of their discourse were recorded in the debates on anti-terrorism legislation.

6.6 Synopsis of 22 Noteworthy Themes

Twenty-two of the 45 themes or issues that emerged through the analysis of the data were determined to be *noteworthy* because of their frequent mention in the discourse during the debates on the proposed anti-terrorism legislation. This section elaborates on the selection and context for these twenty-two *noteworthy themes*. The themes are listed by name with their reference number following in brackets.

9/11 The Event (#1)

This theme refers to discourse relating to the terrorist attacks in the US on 11 September 2001. During political debates, Members of Parliament from both countries would continually refer to '9/11' when discussing anti-terrorism matters. The term 9/11 not only represents the actual day of the atrocity but also stands as a unique marker for acts of terrorism.

UN Obligations (#4)

The theme of UN Obligations encompasses all talk in the legislature regarding the United Nations. This theme includes politicians debating the need to honour UN responsibilities and UN action in regards to anti-terrorism matters. Essentially, every time the UN was brought up in debate on the anti-terrorism legislation it was coded and included in the database as an instance of this theme.

What other countries were doing (#5)

This theme is focused on the question of whether other countries were developing anti-terrorism laws and if so, what had influenced them and how were they responding? Any time legislative actions of other countries relating to anti-terrorism laws or related matters were mentioned in the Hansard records the instance was coded into the data.

National Security Matter (#6)

All discourse references to the words National Security or issues addressing national security were recorded as instances of this theme. For example when the debates involved talking about military issues within the country such as designating 'restricted areas' surrounding the temporary deployment of military equipment in the country or establishing new military sites it was recorded in the National Security theme.

Criminal Justice Matter (#7)

Statements in Hansard referencing any concerns in the criminal justice field or using the term Criminal Justice were coded in this theme. Discussions concerning the relationship of terrorism to existing criminal law or how it might be impacted by anti-terrorism legislation were included in this theme. Furthermore any discussions about matters relating to municipal or regional policing were coded into this theme; however matters involving the federal level of policing were not included because a separate theme (#29) covered those issues.

Financing of Terrorism (#10)

One of the main avenues of response to the 11 September 2001 terrorist attacks was an international crackdown on the financing of terrorism. This matter was a United Nations-led initiative, frequently mentioned in the discourse and as a result listed separately from the theme of UN Obligations. Furthermore, the financing of terrorism was of great concern to other International Governmental Organisations as well as to individual states and it was appropriate to recognise it as a theme rather than include it as an UN issue.

Protecting Personal Rights and Freedoms (#13)

One of the major concerns for politicians in developing and implementing anti-terrorism legislation was the effect it would have on existing rights and freedoms. This theme, 'Protecting Personal Rights and Freedoms', and the following one, 'Impeding Personal Rights and Freedoms', were selected to capture these concerns in the parliamentary debates. Little interpretation of political discourse was needed to identify this theme as references to 'personal rights' or 'freedoms' were a common occurrence.

Impeding Personal Rights and Freedoms (#14)

This theme provided the counterpoint to Theme #13. Inherent in debates are two sides to the argument and Personal Rights and Freedoms was one of five sets of themes considered sufficiently important to list the two sides of the issue separately. This simplified coding the discourse when an instance clearly came down on one side or the other of the matter at hand.

Supporting U.S.A. (#16)

Words of praise and/or support for the United States were coded under this theme, often in relation to its being a victim of or combating terrorism. The purpose of this theme was to see how frequently comments of support for the United States occurred in the parliamentary discourse and whether this suggested a strong American influence when it came to matters such as anti-terrorism laws. The counterpoint theme, 'Criticising U.S.A.' (#17), was a low-profile theme with insufficient instances tallied and it was not an issue worth pursuing in this part of the research.

Support for Anti-Terrorism Legislation (#19)

Throughout the debates there was a sense of urgency in the discourse with government and opposition members both eager to do the right thing, to get appropriate legislation introduced and so equip the country with new means to combat terrorism. This theme served to identify those utterances of support from both sides of the House where the content of Bills were seen to be appropriate and necessary, as well as moving public policy in the right direction without deleterious consequences. Some instances might also have reflected political posturing as a means of justifying stringent measures contained in the Bills to the population at large.

Negative Talk on Anti-Terrorism Legislation (#20)

This is the contrasting theme to 'Support for Anti-Terrorism Legislation' (#19). Just as it was important to record instances of enthusiastic or calculated support so too was it important to code the opposite. The legitimization of anti-terrorism legislation required acknowledgement of a variety of concerns impacted by proposed new laws and the discourse espousing those concerns argued against measures seen to be very severe, restrictive or unnecessary. The instances noted drew attention to misgivings that had to be overcome in order to validate the new anti-terrorism laws. More instances were recorded for this theme than for any other.

Immigration (#21)

One issue of particular attention in the anti-terrorism legislation debates was immigration. The knowledge that the terrorist attacks of 11 September 2001 were orchestrated by individuals from outside the United States resulted in a backlash against people of Middle Eastern descent in both Australia and Canada. As well, it raised the spectre that foreigners regardless of their nationality presented possible security threats. Immigration issues were naturally affected by the new anti-terrorism concerns and relevant discourse was coded under this theme. It should be noted that immigration matters were specifically addressed by separate Bills in each country and the discourse recorded on this theme arose in the context of the anti-terrorism Bills.

Working with the U.S.A. to fight terrorism (#22)

The United States being the target for 9/11 and an important ally to Australia and Canada led to the creation of this theme. While 9/11 occurred in the US, it was interpreted largely to be an attack on all Western Nations. The fact that the United States bore the brunt of the attack gave it in the role of leading the retaliation and global response to terrorism. This theme was developed to capture the political discourse in the debates regarding all dealings and actions with the US against terrorism. This theme differs from theme #16, 'Supporting U.S.A.' in that coded utterances included here go beyond support to actual instances of working together.

Terrorism is a global problem (#23)

In introducing anti-terrorism legislation both countries were obligated to legitimise the argument that global terrorism had become an evil that required action from all countries. It had now become clear that no one was safe from terrorism anywhere in the world and the need for specific new laws was paramount in order to equip both local crime control agencies and international law enforcement personnel to deal with terrorism issues. Instances of discourse referencing terrorism in other parts of the world and related issues helped to establish a strong case for the need of specific anti-terrorism laws.

Work with other countries around the world (#24)

This theme adds to the previous theme of ‘terrorism is a global problem’. ‘Work with other countries around the world’ was considered different from the previous theme in that it was to capture discourse about actual initiatives and cooperation with intergovernmental organisations and nations other than the United States in dealing with terrorism. Instances coded here about subjects such as forging partnerships to combat terrorism have two effects. First, they validate the argument that terrorism is a global problem, one that has brought countries closer together. Secondly, they reinforce the shared concerns that anti-terrorism laws are not only justified, but also required to support cooperation with other states.

Public Safety (#26)

Public safety is a theme that coincides with national security. This theme provided a reference point for any instance of discourse where there was a mention of concern about freedom from danger, or protecting the population from risks or injuries, that could result from terrorism. As with other themes, the goal here was to flag utterances that suggested ‘public safety’ was either a concern to be taken under consideration or a reason to justify the proposed anti-terrorism laws.

Defining Terrorism (#27)

Given that there is no generally accepted definition of terrorism, discourse between politicians on this point demonstrates the difficulty in deciding who is a terrorist and what is a terrorist organisation. This theme captures both those who were grappling with finding a suitable definition for terrorism and those who were concerned that definitions could affect innocent individuals or groups.

Human Rights (#28)

Some politicians arguing for the protection of human rights were against stringent anti-terrorism legislation and looked for compromise as the Bills were discussed in the Houses. Others believed safeguards were adequate. The instances coded would present the two sides, one of concern and the other determined to address those concerns, and ultimately the resolution of the contentious issues. Discourse showed the process by which the proposed laws were justified to parliament and to the population in each country.

Increasing Powers to Intelligence Agencies / National Police (#29)

Measures to strengthen security involved contentious issues in the debates on the new anti-terrorism laws. Discourse would again be noted where anxiety loomed or approval became evident. Changes were proposed in the criminal code and new powers were planned for intelligence agencies and the federal police. The instances recorded would take note of the concerns as well as the support for new policing abilities identifying reasons to justify the need of the new anti-terrorism laws.

Sunset Clause (#34)

One of the major concerns with the new terrorism laws was their finality. Once laws are passed they become part of the respective country’s legal system, and because of this, there were doubts about the continuing need for some of the legislation proposed. As a result some members of parliament called for the inclusion of sunset clauses which placed an expiry date upon the law or portions of the law and thus limited its finality. Coding instances dealing with arguments for a sunset clause captured the political discourse and provided support for arguments that justified the need for the new legislation.

Terrorist Organisation/Organised Crime (#35)

In the post-9/11 world, people were still trying to come to grips with terrorism and terrorist organisations. While neither were new entities, the reasons for including terrorist organisations in anti-terrorism legislation was unclear in Australia and Canada. To help understand the situation, parallels were drawn with organised crime. Laws and precedents that existed to address organised crime could be extended or serve as the foundation for new legislation to address the new problems associated with terrorist organisations. Any discourse noted in Hansard that connected terrorism or terrorist organisations to issues with organised crime was recorded in this theme.

Need for Amendments (#39)

As proposed legislation is reviewed and debated, calls for amendments are inherent in the procedures. This is part of the give and take process of law making. While the Bills may be gaining acceptance in a debate they are frequently viewed as requiring some form of re-writing. Recording the instances where members of parliament state the need for amendments revealed discourse about calls for clarification, improvement or dismissal of aspects of the Bill being debated. While not all calls for amendments result in action, the instances noted will also establish the member's position on the legislation and what the member believes necessary to warrant creation of the anti-terrorism law.

6.7 Uniting the Themes into Super-themes: Table 6-6

As noted in Section 6.4, the 45 themes presented an extensive list for analysing and subsequently discussing the findings. Commonalities among the described themes were easy to identify at the completion of the study and the solution was to group like themes together into five categories, or *Super-themes*. This interpretation of the findings offered a more manageable opportunity for comparisons to be drawn between Australia and Canada. Five of the 45 themes are included in the first Super-theme, *Terrorism Event*. Seventeen themes fit into the second Super-theme, *National Security*, twelve themes reflected concerns for *Criminal Justice*, the third Super-theme, nine themes described issues specific to the debates on *Anti-Terrorism Legislation*, the fourth Super-theme and the remaining two themes were listed as the fifth Super-theme, *Other*, to round out the total.

The five Super-themes, numbered using Roman numerals, and followed by their supporting themes listed by instances counted in a descending order, are presented in *Table 6-6 Super-themes, Themes and Instances Identified: Percentages for Australia and Canada*. The numerical data in Table 6-6 are identical to that shown in Table 6-1 for the 45 individual themes and each Super-theme has been assigned the total of the instances and percentages for the themes supporting it. Each of the 22 *Noteworthy* themes will be discussed within the following sections covering the five Super-themes. Comments on the remaining 23 '*low-profile*' themes will be noted in the 'Other' themes section.

Table 6-6
Super-themes, Themes and Instances Identified:
Percentages for Australia and Canada

Super-themes (followed by Noteworthy [*] Themes and 'low-profile' Themes in order of instance count) (†=statistically significant)	Theme Number	Instances	Australia: Instances Identified	Percent of Total Australia Instances: Super- themes and other Themes	Canada: Instances Identified	Percent of Total Canada Instances: Super- themes and other Themes
Terrorism Event	I	618	353	16.34%†	265	8.24%
9/11 - the event	1*†	258	138	6.39%†	120	3.73%
UN obligation	4*†	209	110	5.09%†	99	3.08%
Terrorism - global problem	23*†	88	64	2.96%†	24	.75%
Good vs. Evil	15†	52	31	1.43%†	21	.65%
Internat'n'l Criminal Court	43†	11	10	.46%†	1	0.03%
National Security	II	1427	493	22.81%	934	29.05%†
National Security matter	6*†	348	94	4.35%	254	7.90%†
Public Safety	26*†	164	49	2.27%	115	3.58%†
Increasing Intel. Agency/ Police powers	29*†	138	83	3.84%†	55	1.71%
Work with other countries around the world	24*†	110	54	2.50%†	56	1.74%
Immigration	21*†	109	8	.37%	101	3.14%†
Supporting U.S.A.	16*†	82	50	2.31%†	32	1.00%
Working with U.S.A. to fight terrorism	22*†	77	11	.51%	66	2.05%†
War on Terror	2	76	35	1.62%	41	1.28%
Border Security	9†	74	12	.56%	62	1.93%†
Military Alliances, modern	8	61	25	1.16%	36	1.12%
Economy/Economic factor	11†	53	10	.46%	43	1.34%†
Geographic factors	12†	43	8	.37%%	35	1.09%†
Historical Military: Past Alliances	18†	41	34	1.57%†	7	.22%
Criticising U.S.A.	17	27	11	.51%	16	.50%
Safe haven for terrorists	30†	11	0	0	11	.34%†
Tampa affair	42†	9	9	.42%†	0	0
Not safe haven - terrorists	31	4	0	0	4	.12%

Criminal Justice	III	1723	676	31.28%	1047	32.57%
Criminal Justice matter	7*	403	159	7.36%	244	7.59%
Impeding personal rights and freedoms	14**†	280	62	2.87%	218	6.78%†
Terrorist Organisation/ Organised crime	35**†	202	123	5.69%†	79	2.46%
Protecting personal rights and freedoms	13*	191	68	3.15%	123	3.83%
Defining terrorism	27*	170	75	3.47%	95	2.95%
Financing of terrorism	10*	156	72	3.33%	84	2.61%
Human Rights	28*	95	44	2.04%	51	1.59%
Respecting Charter of Rights (Canada), Constitution (Australia)	32†	83	23	1.06%	60	1.87%†
Not Respecting Charter of Rights, Constitution	33	83	27	1.25%	56	1.74%
Stopping hatred – protecting minorities	38	54	18	.83%	36	1.12%
Bill of Rights	45†	5	5	.23%†	0	0
Mahar Arar	41	1	0	0	1	.03%
Anti-Terrorism Legislation	IV	1551	627	29.01%	924	28.74%
Negative talk on anti-terrorism legislation	20**†	434	131	6.06%	303	9.42%†
Support for anti-terrorism legislation	19*	315	126	5.83%	189	5.88%
Need for amendments	39**†	231	181	8.38%†	50	1.56%
What other countries were doing	5*	184	67	3.10%	117	3.64%
Sunset Clause	34**†	125	36	1.67%	89	2.77%†
Acceptance amendments	40	84	35	1.62%	49	1.52%
Review period for bill	36†	75	21	.97%	54	1.68%†
Anti-terrorism legislation rushed through parliament	37†	61	18	.83%	43	1.34%†
Criticising lack of anti-terrorism legislation	25	42	12	.56%	30	.93%
Other	V	57	12	.56%	45	1.40%†
Speaking off topic	3†	53	8	.37%	45	1.40%†
Extending PM's term using 9/11	44†	4	4	.19%†	0	0
Super Themes Total		5376	2161	100%	3215	100%

6.7.1 Super-theme I: Terrorism Event

Terrorism Event, the first Super-theme, includes instances of discourse relating to the actual terrorist attack of 9/11, obligations to the UN, expressions of righteousness or wickedness, global concerns about terrorism or references to the International Criminal Court. The political discourse, as recorded in Hansard, provided the qualitative data documenting reactions to 9/11 in the parliaments. The debates that gave rise to instances mentioning these themes paved the way for new legislation. While the US was the direct target of the attack, the discourse in Australia and Canada strongly supported the amount of international condemnation that transpired after the attack. *Terrorism Event* is supported by the smallest number of themes and as a result comprised 16.34% of the total instances recorded for Australia, and less for Canada at 8.24%. The data were tested for significance using a 2-prop t-test assuming equal variance and in relation to this Super-theme the quantity of discourse produced by Australian speakers was significantly higher ($p < 0.05$) than that produced by Canadian speakers.

Theme #1, *9/11 the event*, deserves a special place in this study because the content of the discourse recorded has little to do with the legislation debated but everything to do with the reason the legislation was being debated. With 258 instances recorded it was a cornerstone issue for the legislation under discussion, providing the basis for justifying the new laws within the parliaments and to the public at large. The quantity of discourse produced by Australian speakers with respect to this theme was significantly higher ($p < 0.05$) than the quantity of discourse produced by Canadian speakers. Australian discourse comprised 6.39% of the total instances recorded compared to 3.73% for Canada. Discourse on this theme was captured twice in Australia, first by a parliament finishing its term at the end of 2001 and then by a newly elected government in early 2002. Both sessions of parliament gave speakers the opportunity to talk about 9/11 and they did so, contributing to the tally of instances for this theme. This may account for the theme's proportionally greater number of instances in Australia than in Canada where legislation was quickly tabled following 9/11.

Theme #4, *UN Obligation*, was more important in the discourse of the Australian legislature at 5.09% of Australia's total instances compared to 3.08% for Canada. The quantity of discourse produced by legislators on this theme in Australia was significantly higher ($p < 0.05$) than that produced by Canadian legislators. The events in North America were far removed from Australia but as an active middle power it has always had an international outlook and was a strong supporter of the UN and its hard stance against terrorism. Many of the Australian and Canadian instances noted were specific to supporting UN resolutions and conventions, or complimenting the work of the international agency.

Theme #23, *Terrorism is a global problem*, again shows a significantly higher ($p < 0.05$) quantity of discourse produced by Australian speakers for this theme in comparison to the quantity of discourse produced by Canadian speakers. Australian discourse was 2.96% of the total instances recorded compared to .75% for Canada. The discourse in the database shows legislators being concerned that the terrorism threat was not just American-specific but also a worldwide concern and therefore Australia was in need of the proposed new legislation. The theme counts suggest Australian politicians were worried about the global impact of terrorism particularly at the regional level as noted in Section 4.3.1 *UNSCR 1373 Country Reports – Australia*. The Canadian focus was on North America and its obligations to NATO.

6.7.2 Super-theme II: National Security

The second Super-theme, **National Security**, incorporates seventeen themes, seven of them noteworthy, concerning the safety at home and abroad of the country's people, assets and resources. The number of instances noted reveals that roughly a quarter of the concerns raised in the parliaments of both countries consisted of national security issues. Australia recorded 22.81% of its total number of instances in this category while Canada counted 29.05%. The quantity of discourse produced by Canadian speakers on this National Security Super-theme was significantly higher ($p < 0.05$) than that produced by Australian speakers.

Theme #6, *National Security Matter*, tallied the third largest number of instances in the study, recording 4.35% of all Australian discourse instances and 7.90% of Canadian instances. The quantity of discourse produced for this theme by Canadian speakers was significantly higher ($p < 0.05$) than that produced by Australian speakers, confirming that Canadian legislators found the issue to be of much greater concern in discussing the anti-terrorism Bills. At 7.9% of the discourse in Canada, national security, as an issue, was at the core of the anti-terrorism debates.

Theme #26, *Public Safety*, captured discourse about security matters and threats that could impact on citizens of Australia and Canada. Issues concerning the affect the new legislation would have on public safety were raised frequently in both parliaments with the theme addressed 49 times (2.27%) in discussing Australian legislation and 115 times (3.58%) in the Canadian parliament. For this theme the quantity of discourse produced by speakers in Canada was significantly higher ($p < 0.05$) than that produced by speakers in Australia, suggesting the new legislation for Canada may have attracted discourse from more politicians who were determined to make their concerns for public safety known to their constituents, or wanted all Canadians to be assured of their political party's interest in protecting them from terrorism.

Theme #29, *Increasing powers to intelligence agency/national police*, was important in developing new legislation to counter terrorism. Intelligence and policing agencies serve as a top level of defence against the plotting and actions of terrorist organisations. New threats demanded new responses and these had to be explained. Instances coded included arguments to justify increasing policing powers and countering concerns that new measures were too harsh. Both countries needed to show how these powers would improve the security of the population. Discourse in Australia was 3.84% of the total instances recorded compared to 1.71% for Canada. Proportionally, much more discourse took place in Australia, likely because of the specific new powers proposed for ASIO and as a result the quantity of discourse from Australian speakers on this theme was significantly higher ($p < 0.05$) than the quantity from Canadian speakers.

Theme #24, *Work with other countries around the world*, was once again more important in the discourse coded for Australia. While the significance was only 90% in relation to this theme the quantity of discourse produced by Australian speakers (54 instances) was significantly higher ($p < 0.1$) than that produced by Canadian speakers (56 instances). This topic, when considered along with theme #23, *Terrorism is a global problem*, confirmed the strength of the argument that cooperation among nations especially in the surrounding region, for example working through intergovernmental organisations such as ASEAN, was necessary in dealing with terrorism, a justification for the legislation. Australia, because of its geographic location, has always been conscious of its need for national security alliances. Australia and Canada were active members with other countries in intergovernmental organisations, all of which were reviewing their interests and responsibilities in

addressing global terrorism following 9/11. Both countries understood the need for international cooperation was a justification for necessary new legislation.

Theme #21, *Immigration*, resulted in the issue appearing to be of a much greater statistical significance to Canada, but a qualification is necessary concerning the legislation under consideration. The quantity of discourse produced in relation to this theme by Canadian speakers was significantly higher ($p < 0.05$) than that produced by Australian speakers. Canadian discourse tallied 101 instances (3.14%) while Australian discourse recorded only 8 instances (.37%). In Canada, immigration was the subject of separate legislation not having the priority of anti-terrorism legislation and not part of this study. Many immigration issues did arise in relation to anti-terrorism Bills C-36 and C-42, and this was reflected in the numbers of instances of the discourse recorded. Similarly, Australia dealt with immigration issues in other pieces of legislation not included in the 'Group of Five' Bills with the result that this issue could not be measured satisfactorily giving the legislation studied.

Theme #16, *Supporting U.S.A.* tallied 50 instances of Australian discourse (2.31%) compared against 32 for Canada (1.00%). In relation to this theme the quantity of discourse compiled for Australian speakers was significantly higher ($p < 0.05$) than that compiled for Canadian speakers. This theme reflected the ongoing support by Australia for the United States' participation in security for the region ever since World War II. Prime Minister Howard invoked the ANZUS treaty immediately after 9/11 signalling that Australia was clearly supporting American anti-terrorism actions. In the legislature, discourse referenced past instances when the US had helped Australia, and pledges of support for the US and other comradely dialogue was common.

Theme #22, *Working with the U.S.A. to fight terrorism*, reflects a similar concept to Theme #16 but the discourse resulted in 66 instances (2.05%) for Canada compared to 11 for Australia (.51%). For this theme the amount of discourse produced by Canadian speakers was significantly higher ($p < 0.05$) than the amount produced by Australian speakers. Canadian members of parliament saw their role as collaborating with a neighbour, working jointly with the United States to combat terrorism. This is hardly surprising given the close proximity of the two nations and the amount of cross border traffic that occurs daily. 'Working with the U.S.A. to fight terrorism' identified specific instances in which actual initiatives and cooperative actions were being discussed, such as sharing terrorist information amongst the various intelligence and security agencies. Australia does not have the close economic ties, geographic or border concerns that Canada shares with the United States. As shown in some of the data, instances noting economic concerns as an important consideration in supporting the United States were identified more often for Canada than Australia.

6.7.3 Super-theme III: Criminal Justice

The third Super-theme, **Criminal Justice**, tallies the greatest cumulative percentage of instances in the database for both countries. What is striking about this is the near identical percentage values for the countries, 31.28% for Australia and 32.57% for Canada. There is no overall statistical significance between the amounts of discourse on Criminal Justice in the two countries. Twelve themes are included in the Criminal Justice Super-theme and all but two share similar percentage values, indicating that most themes were of common interest to the legislators of both countries as reflected by a comparable amount of discourse devoted to the topics. The two themes that indicated a disparity in views are theme #14, *Impeding Personal rights and freedoms* and theme #35, *Terrorist Organisation and Organised crime*. These themes are discussed below.

The lead theme, #7, *Criminal Justice matter*, was one of the most frequently coded themes in the study, accounting for 403 instances of discourse. In the Australian debates this theme was coded 159 times or 7.36% of the total 2161 Australian instances recorded. Debates in Canada resulted in 244 instances where criminal justice issues were raised, being 7.59% of the 3215 Canadian instances. There was no statistical significance in the data coded for Australia and Canada. Both countries debated the necessity of the proposed legislation criticising apparent shortcomings or pointing out the desirability and justification for new laws to deal with the scourge of terrorism.

Theme #14, *Impeding personal rights and freedoms*, generated more discourse in Canada over how the new anti-terrorisms laws could affect people beyond those the legislation was attempting to address. The wide difference, between 62 instances of discourse in Australia and 218 in Canada, translated into percentages of 2.8% and 6.78%. The quantity of discourse recorded by Canadian speakers on this theme was significantly higher ($p < 0.05$) than that recorded by Australian speakers, establishing the topic as having greater significance for Canada. This could be related to the makeup of political parties in each country's parliament. Neither country has a two-party system and multiple parties strive to see their own political ideologies represented. At the time, the Australian right wing parties occupied the majority of seats in their legislature whereas in Canada it was the centre-left party that held the majority. Both countries ruling political parties were referred to as 'the Liberals'. Despite this it is not who was in power that may hold the answer to why there was a wide difference in the percentage value, but who was not. With Australia, the opposition was primarily one large party the centre left Labour party. Canada on the other hand had two centre-left parties in the opposition, the NDP and the Bloc Quebecois and both were hesitant in their support of new stronger anti-terrorism legislation; therefore the high number of instances recorded in the database for Canada may be attributed to these two opposition parties insisting to be heard.

Theme #35, *Terrorist organisation/organised crime*. The need to explain the similarities between, if not link, terrorism and organised crime was a challenge for both countries in justifying needed changes in legislation. This issue generated more discourse in Australia where 123 or 5.69% of recorded Australian instances made some reference to the subject, compared to 79 or 2.46% of the Canadian instances. The quantity of discourse from speakers in Australia was significantly higher ($p < 0.05$) than that from Canadian speakers. The more frequent Australian comments concerning the similarities between terrorist organisations and organised crime questioned why combating terrorism could not be addressed with tactics already in existence for fighting organised crime and why laws already established could not be amended if necessary to address terrorism.

Theme #13, *Protecting personal rights and freedoms*, accounted for 191 instances of discourse and showed no statistical significance between the percentages calculated for the two countries. The arguments supporting this theme were conscious of protecting the citizens of Australia and Canada. Both countries had members in parliament determined to show that any implementation of anti-terrorism legislation would not set back people's rights and freedoms and would provide the added security need to protect the public against terrorism. It would appear that Australia and Canada employed similar strategies to calm any potential fears about what the anti-terrorism laws might bring.

Theme #27, *Defining terrorism*, was an issue accumulating a considerable 170 instances of discourse on the subject. There was no statistical significance between the percentages recorded for the countries. Both engaged in debate about how terrorism should be defined, and the need for an adequate legal definition, a matter of concern to other countries as well. The Literature Review contains several references to the difficulty involved in 'Defining terrorism', an issue that continues to

evade agreement because of the concerns in determining how to clarify exclusions as well as inclusions in any definition.

Theme #10, *Financing of Terrorism*, was a core issue in the United Nations Security Council Resolution 1373 requiring action by member states. How Australia and Canada proposed to deal with the issue was explained through the discourse in order that the legislators and through them their constituents and the public at large could grasp reasons why new legislation was important. Of the 156 total instances 72 Australian and 84 for Canada, no statistical significance was identified with the percentages showing 3.33% of total instances for Australia and 2.61% for Canada. In both countries, this theme was one of the main reasons used to justify the need for anti-terrorism legislation.

Theme #28, *Human Rights*, did not turn out to be an issue of principal concern in the debates although the topic was noted in utterances 95 times, 44 instances (2.04%) for Australia and 51 (1.59%) for Canada. Comparisons between Australia and Canada were not statistically significant and the count of instances coded was among the lowest in the study. Many issues raised in the discourse and classified under theme # 13, *Protecting personal rights and freedoms*, embraced aspects of Human Rights but did not specifically reference Human Rights.

6.7.4 Super-theme IV: Anti-Terrorism Legislation

Super-theme four, **Anti-Terrorism Legislation** incorporates all the themes that relate to the construction of the proposed legislation, some criticising, some defending, and some calling for amendments, as well as interest in what was being done in other countries. The collective values for this Super-theme totalled 627 instances for Australia (29.01%) and 924 instances for Canada (28.74%). The data gathered showed the recorded political discourse on anti-terrorism legislation was nearly identical for both countries with no statistical significance. The process each government went through differed, and there was more negative discourse about the new anti-terrorism laws in Canada than in Australia, but such variances can be attributed to the distinctness of the political parties involved in the process. The important issue is the comparable level of interest and positions reflected by the discourse on the issues arising in the anti-terrorism legislative debates.

Theme #20, *Negative talk on anti-terrorism legislation*, was the largest theme coded with 434 instances divided between the countries, 303 for Canada and 131 for Australia. The challenge to legislators was to overcome expectations that specific new laws relating to anti-terrorism would be draconian and an affront to the personal rights and freedoms of the everyday citizen. Much of the discourse dealt with questioning the intentions of anti-terrorism legislation on one side and explaining its need on the other. More debate on this theme occurred in Canada resulting in 'negative talk on anti-terrorism legislation' appearing to be of greater importance to Canada with 9.42% of the instances recorded compared to Australia with 6.06%. For this theme the quantity of discourse produced by Canadian speakers was significantly higher ($p < 0.05$) than that produced by Australian speakers. Members of parliament in both countries clearly were apprehensive about the impacts anti-terrorism laws could have on the legal and societal values already in existence. The extensive questioning or doubting by opposition members presented opportunities for the government to reason and justify the importance of the legislation proposed countering the negative views.

Theme #19, *Support for anti-terrorism legislation*, resulted in 315 instances tallied, 126 for Australia (5.83% of Australian discourse) and 189 for Canada (5.88% of Canadian discourse) with no statistical significance indicated, meaning the amount of discourse on this theme was similar in both countries,

suggesting strong support in both parliaments even though disagreements existed on some details as Bills were discussed. It is apparent from the data that legislators in the two countries were of similar mind in their acceptance of a need for new anti-terrorism laws. New legislation was warranted and support for new measures to deal with terrorism was coming from all sides, the opposition as well as the government.

Theme #39, Need for amendments. The matter of amendments is frequently raised or discussed routinely in the process of debating Bills in the parliaments of Australia and Canada. In both countries criticism of, and corrections to proposed legislation is dealt with by calling for amendments. Of the 231 instances coded, substantially more were recorded for Australia, 181 or 8.38%, in comparison to Canada with 50 or 1.56%. For this theme the quantity of discourse produced by Australian speakers was significantly higher ($p < 0.05$) than that produced by Canadian speakers. This appears to be an imbalance deserving explanation. While calling for amendments is part of the process in the lower houses in both countries' parliaments the upper houses have an obligation to propose amendments to legislation that has been introduced. As indicated earlier, the discourse investigated in this study includes both the House of Representatives and the Senate in Australia and as a result the upper house discourse weighs heavily on the instances recorded for this theme causing a distortion in the number of instances for comparative purposes not likely to occur with other themes.

Theme #5, What other countries were doing, identified discourse concerning anti-terrorism legislation actions taken by other states. The utterances recorded on this theme were 677 or 3.10% for Australia and 117 or 3.64% for Canada and there was no statistical significance for either country. Not only was it established that legislators in both countries could see the need for the new laws, but they were carefully aware of how other nations were approaching the same issues. As well, within the data there are numerous mentions for both countries, Australia and Canada, observing what the other was doing.

Theme #34, Sunset Clause. The desire to fix a terminal end-date for troublesome laws was the subject of discourse 125 times, delivering 36 or 1.67% of Australian instances and 89 or 2.77% of Canadian instances recorded. In relation to this theme the quantity of discourse produced by Canadian speakers was significantly higher ($p < 0.05$) than that produced by Australian speakers. Concern over including sunset clauses in the anti-terrorism legislation proposed was a hotly debated issue that counted for more discourse in Canada than in Australia and figured in the Canadian legislation finally approved. In Australia the issue of a sunset clause in the ASIO Bill had been studied by a committee and it was not until late in March 2003 that the committee recommendation for a three-year sunset clause was accepted by the Government. The ASIO Bill (2002) was withdrawn in December 2002 and reintroduced on 20 March 2003 as the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2003, which contained a three-year sunset clause and other amendments, finally receiving Assent on 22 July 2003. (While the instances of discourse produced suggested the issue of a sunset clause was not as important in Australia as it was in Canada during the period studied, the topic of a sunset clause was and has been a controversial topic in Australia over the years and sunset clauses have been introduced in anti-terrorism legislation by both federal and state governments.)

6.7.5 Super-theme V: Other

Two themes, #3 *Speaking off topic (of legislation)*, and #44, *Extending PM's term using 9/11*, are listed in the fifth category, *Other*, shown in Table 6-6. These were 'low-profile' themes included in the table to preserve the overall data count.

Other ‘low-profile’ themes are listed appropriately within the first four Super-theme categories in Table 6-6 but will not be specifically addressed here given that their percentile measures fell below 2% of each country’s total instances. There were 23 ‘low-profile’ themes in total. Eight of the ‘low-profile’ themes are referenced in the Discussion Chapter.

6.8 Conclusion

The database compiled from Hansard records of debates on anti-terrorism legislation in Australia and Canada consisted of 5,376 instances of 45 themes raised in the dialogue exchanges recorded in the Parliaments of the two countries between September 17, 2001 and March 31, 2003. The discourse referenced several pieces of anti-terrorism legislation for each country over the period researched. The Australia anti-terrorism legislation considered began with the Anti-Hoax Bill 2002, followed by the ‘Group of Five’ pieces of legislation introduced as a package, the ASIO Bill 2002, and then an additional three bills, the Criminal Code Amendment: Offences Against Australians Bill 2002, the Criminal Code Amendment: Terrorist Organisations Bill 2002, and the Charter of UN Amendment Bill 2002. In Canada, five bills were debated, Bill C-36, The Anti-terrorism Act, the major piece of anti-terrorism legislation, Bill C-42, The Public Safety Act 2001, proposing several contentious issues, Bill C-44, An Act to Amend the Aeronautics Act, and Bills C-55 and C-17, both named The Public Safety Act 2002, subsequent unsuccessful versions of Bill C-42.

Political parties represented in the Australian House of Representatives debates included: Australian Labor Party, Liberal Party of Australia, National Party of Australia and the Country Liberal Party. In addition, there were three independent members of parliament. In the Australian Senate seven political parties held seats, the same three centre-right parties as in the House, the One Nation Party and three opposition parties, the Australian Labor Party, the Australian Democrats, and the Australian Greens. As well, there were two Independents.

In Canada, five political parties were represented in the House of Commons: the Liberals, Canadian Alliance, Bloc Quebecois, New Democrats and the Progressive Conservatives. Debates in the appointed Canadian Senate were excluded from the research because Senators in Canada do not have the same accountability as elected members in the House of Commons.

Following the data collection process, tables were developed to present the findings. Firstly, the 45 themes were quantified for Australia and Canada by the number of instances each theme had been referenced in the discourse. The instance counts were compiled and presented in *Table 6-1, Themes and Instances Identified: Percentages for Australia and Canada*. Table 6-1 compares the number of instances of each theme for Australia and Canada, and also includes the total instances for each theme. To address the main research question, it was important that the rates of occurrence of the themes were compared across the two countries. Percentages were calculated for assessing the relative importance of the themes in the discourse for each country and then the Australian and Canadian percentages were evaluated using a test for statistical significance, using a 2-prop t-test assuming equal variance, to identify whether or not this difference in percentage of total instances was significant. This test was repeated for each of the 45 themes and in the case of 29 themes, there was a statistically significant difference identified in the percentage of instances where the themes occurred in the Australian data compared with the Canadian data. A review of the data recorded in support of the extensive list of 45 themes identified commonalities between many themes. There was a lower level of frequency of occurrence for some themes and others were of greater consequence to Australia or to Canada and thus factored in the justification of the legislation in one country but not in the other. Twenty-two of the 45

themes were designated ‘higher profile’ or *noteworthy* as a result of their overall instances tallied and 23 themes were designated ‘*low profile*’ themes. A synopsis of the 22 noteworthy themes was presented following the summary of the Stance tables.

Four additional tables presenting the political stance on the Bills and amendments were developed from the database to quantify the instances where speakers indicated a stance on the legislation under discussion. As instances were recorded in the database, the political stance of the speaker was assessed and noted by the researcher. Table 6-2 for Australia and Table 6-3 for Canada present the stance recorded for each instance of discourse coded during debates on the Bills. The Tables summarise the stance positions identified from the instances of discourse in four groupings, ‘Combined Support’, ‘Combined Critical’, ‘Opposed’, and ‘Not Applicable’. The Stance Tables do not necessarily represent the voting positions of members of parliament. They indicate the position taken by the speaker at the time the instance was recorded, providing a measure of the discourse as each Bill proceeded through the debating process. Two additional tables, Table 6-4 for Australia and Table 6-5 for Canada, present a further breakdown of the stance data, by showing the instances of discourse in the database according to the political parties of the speakers recorded. The data in Tables 6-4 and 6-5 are identical to Tables 6-2 and 6-3 but broken down to show the positions taken by the political parties in favouring, criticising and opposing the Bills in the political debate. The purpose of Tables 6-4 and 6-5 is to show the reader how the individual political parties positioned themselves on the examined pieces of anti-terrorism legislation. In order to address the reaction to the Bills by the Members of Parliament it was important that the rates of occurrence of the stance taken were compared across the Bills debated. Percentages were calculated for assessing the relative importance of the stance data recorded for each Bill in Australia as presented in Tables 6-2 and 6-4. Similarly, Tables 6-3 and 6-5 presented stance data and percentages for comparison on Canadian Bills. The percentages were then evaluated using a test for statistical significance to identify whether or not the difference in percentage of total instances was significant.

Commonalities among the described themes were easy to identify at the completion of the study and in order to prioritise the criminal justice or national security concerns that motivated speakers to support the anti-terrorism legislation the 45 themes were conflated into five Super-themes. This interpretation of the findings offered a more manageable opportunity for comparisons to be drawn between Australia and Canada. The five Super-themes along with their supporting themes, listed by instances counted in a descending order, are presented in *Table 6-6 Super-themes, Themes and Instances Identified: Percentages for Australia and Canada*. The five Super-themes are designated Terrorism Event, National Security, Criminal Justice, Terrorism Legislation and Other. This conflation demonstrated the prioritised concerns that motivated the members of parliament to support legislation addressing criminal justice and national security matters. An analysis of the Super-themes and conflated themes followed including whether or not there was a statistically significant difference identified in the percentage of instances where the themes occurred in the Australian data compared with the Canadian data. The 22 themes designated ‘noteworthy’ for the study based upon the frequency of mention in the discourse were addressed and will be referenced further in the following Chapter. Eight additional themes were also identified as worthy of discussion.

Chapter 7 Discussion: Justification for the Legislation

7.1 Introduction

Anti-terrorism legislation introduced in Australia and Canada following the 9/11 terrorist attacks on the United States responded to the needs identified for more stringent national security and criminal justice legislation to address international as well as domestic concerns brought about by the unpredictable functions of terrorism. Both countries were able to assess the model of the United Kingdom's Anti-Terrorism Act 2000 in arriving at their own proposed legislation to stand them in good stead internationally and with the UN, while conforming to the expectations of Australians and Canadians respectively, populations that were mindful of their need for security and protection, their respect for others, and their rights as citizens. It was necessary for people to understand that new legislation was necessary because new challenges needed to be addressed. Some proposed solutions were seen as too draconian and changes were introduced before laws were passed. Through the process of debates in the legislature contentious issues were identified, the needs for the legislation made clear, modifications or amendments made, and the legitimacy of each issue clarified. Thus, the discourse in the debates arrived at acceptable justification for the new legislation in the parliaments and this was subsequently conveyed to the constituents by each member of parliament and beyond to the communities at large. Some Bills, for example the ASIO Bill, were debated for a long time and others, like Canada's Bills C-42, C-55 and C-17, never received Royal Assent.

The discourse between members of parliament was collected for this dissertation and coded according to 45 themes or subjects relating to anti-terrorism legislation. This analysis provided the qualitative data to be studied. A quantitative tabulation of the 5,376 instances of discourse collected is presented in Table 6-1. Twenty-two of the themes were designated 'noteworthy' for the study based upon the frequency of mention in the discourse and will be discussed in this Chapter. Eight additional themes, seen to be important issues relating to anti-terrorism legislation, were also identified for discussion in this Chapter. The commonalities identified between the 45 themes led to their grouping into five categories, or *Super-themes*, designated as Terrorism Event, National Security, Criminal Justice, Terrorism Legislation and Other as shown in Table 6-6 in Chapter 6, above. Discourse in the database making up the four operative categories will be discussed in this Chapter through referencing the selected subjects that support each collective issue or Super-theme bearing upon the justification for anti-terrorism legislation. This chapter will demonstrate how the 22 noteworthy themes along with the further eight identified were used by parliamentarians in the process of legitimizing the anti-terrorism legislation.

7.2 The Terrorism Event of 9/11 as Justification for Anti-terrorism legislation

The terrorist attack of 9/11 was the trigger that set in motion worldwide recognition of a new kind of threat to national security and a collective determination among countries to address the challenge. What better way to meet the challenge head on than through the United Nations. Therefore, the justification of anti-terrorism legislation begins with three key points, the initial attack, the framing of terrorism as a global issue and the contesting of terrorism internationally through the United Nations. The shock of 9/11 created an ever so rare uniting of the international community against the foe of terrorism. *Super-theme I, The Terrorism Event* (Table 6-6, Section 6.7), was seen to be an

international one, notwithstanding that the United States had been the target. It was not just an attack against the United States; it was an affront to the civilised world. As 9/11 was determined by many to be a global declaration of war by terrorists, every country was forced to look again at its criminal legislation and its national security arrangements to identify areas where new action was required in anticipation of countering new kinds of threats posed by terrorism. Australia and Canada were no exception and this dissertation is examining how those two countries rationalised and justified new legislation to counter the threats and challenges of terrorism and terrorist organisations.

The cataclysm that was 9/11 had many people questioning why. Not so much why was the United States attacked, but why were civilians made targets? Even countries that were not sympathetic to the United States reacted with shock at the large scale destruction solely affecting civilians. Had the attacks been focused on American military personal or infrastructure the level of shock may have been lessened. Recent history has had many instances of terrorist attacks on military targets none of which spawned the reaction witnessed after 9/11. Also there have been numerous terrorist attacks against civilians on a much smaller scale, including the previous World Trade Center bombing, that did not generate such a response. The level of destruction caused by the 9/11 terrorist attack placed it in a completely new class of terrorism violence not seen outside of a war setting and that was the impetus that moved legislators to agree upon the need for new measures in the Australian and Canadian parliamentary debates in the aftermath of 9/11 (*9/11 the Event* is theme #1.).

Ripples of concern about 9/11 spread in the international community; many nations saw Western democracy as the victim; the United States as the democratic leader had been the target, but the message was not just intended for the US, but for all. These were the messages relayed through the Australian and Canadian parliaments; compounded with the fact that there were citizens of multiple nations in the Twin Towers and aboard the hijacked planes, including Australian and Canadian citizens. Therefore, the attack had elements of a personal nature in that citizens of both countries were among the civilian casualties. Prime Minister Howard of Australia was in Washington DC at the time of the 9/11 attacks, and following his return from the US, expressed his condolences this way when addressing parliament:

The sheer scale of the loss of life suffered by our American friends has perhaps dwarfed the realisation that up to 80 or 90 Australians have lost their lives. There will be many in this House who will know somebody or who will know the family of somebody who died in New York or in Washington. (17 September 2001 p. 30740)

Discourse recorded in the legislatures of Australia and Canada was full of sympathy for the losses experienced in New York, Washington and Pennsylvania, condemnation for Al Qaeda and concern for the failures or shortcomings that had made it possible for the horrific events to take place. Despite being geographically far away from the U.S.A., the distance did not matter: Australia was not spared damage from the attacks. The protection of citizens is a priority of the government, whether they are at home or abroad. If terrorists were raising the stakes, setting their sights on larger targets with more destructive acts, as was demonstrated by 9/11, then new laws to combat this new threat were needed. No longer were existing laws enough to address the new challenges posed by terrorism. Following 9/11 calls were made immediately to strengthen security both nationally and domestically. This was made clear in Canada by Mr. Stockwell Day, Leader of the Opposition (CA):

One thing in which there was unanimity was that the events of September 11 have changed the world and now we must ask the tough question of how these tragic events must change our laws and our policies. (18 September 2001 p.5217)

Calls for enacting new anti-terrorism legislation began immediately for both countries, but changes to legislation in Australia were put off by the election call for 10 November 2001. These would quickly resume once the Fortieth Parliament opened on 12 February 2002. The early discussions in Australian and Canadian legislatures made it clear that this new kind of terrorism was viewed as a global problem with international implications (*Terrorism is a global problem* is theme #23.). Canada's Mr. Brian Pallister, (Portage-Lisgar, CA) summarised it briefly soon after 9/11, saying, "The struggle against terrorism is a global one" (17 September 2001 p.5131). On the same day, Australia's Mr Beazley (Brand, ALP), Leader of the Opposition, expressed it this way:

The attacks on New York and Washington DC have fundamentally changed the modern threat of terrorism. Mass terrorism is now a reality. Governments worldwide must respond to this new reality. National leaders must demonstrate that they are prepared to deal with a fundamentally new level of threat to ensure that people can go about their lives in peace and security. (17 September 2001 p. 30745)

What 9/11 did was demonstrate to the world how far an act of terrorism could go. Terrorism was not new, as discussed in Section 2.2, nor was hijacking airplanes and the fact that terrorists might fly hijacked planes into buildings was almost unthinkable, but once it happened it set alarm bells ringing internationally with the proof there are those dedicated enough to their ideals to take such drastic action. Compounding the issue further was the fact that the New York target of the suicide attack was a financial capital of the world. This is another key element that moved 9/11 as a terrorist attack against the U.S.A. to one against the world.

It was quite clear from the discourse in September and October 2001 that terrorism was being viewed as an international threat. The problem understood by members of parliament was that existing laws and crime fighting techniques were at a serious disadvantage. Terrorists were depicted as hiding in nations lacking the ability or desire to arrest them or force them to leave. However, it was not one particular state that was sheltering terrorists, allowing them to plan and carry out acts of violence. The view being presented was that terrorism could potentially be operating anywhere in the world; therefore it was now in the immediate interest of countries to band together to address the new terrorist threat.

In Canada, the Hon. Lawrence MacAulay, Solicitor General (Lib.), called for joint action through the international community:

...terrorist acts are an offence against the freedoms and rights of all civilized nations and cannot go unpunished. We must now come together as a nation, as a continent and as an international community to take the strongest possible stand against the evil of terrorists. (17 September 2001 p. 5128)

These sentiments were repeated in mid-October by the Hon. Anne McLellan, Minister of Justice and Attorney General of Canada, (Lib.):

Let there be no doubt. Whether we are in North America or somewhere else in the world, terrorism represents a global threat, the force of which reverberated in the cities of New York and Washington on September 11. (16 October 2001 p. 6165)

The 9/11 attack gave a new clarity to the threat of international terrorism causing countries such as Australia and Canada to rethink the relevance and appropriateness of their existing laws. The need for new legislation was evident to Canadian Members of Parliament as urged by Mr. Kevin Sorenson, (Crowfoot, CA), "We are not confident that our present laws allow for apprehension and retention of

terrorists and their associates. Therefore, today the Canadian Alliance asks the Government of Canada to immediately consider the question of anti-terrorism legislation” (18 September 2001 p. 5215-16).

Mr. Sorenson, a member of the official opposition, posed a challenge to the government and, for a change, both sides of the house were conscious of the need for new legislation, the only differences being the question of how stringent the legislation should be.

The Hon. Anne McLellan, Minister of Justice (Lib.) made it clear that Canada had worked with international partners for years, responding to issues that were precipitated in the past by other global experiences with terrorism, the implication being that Canada would act once again:

At the international level, Canada has a long history of working in concert with the international community to pursue initiatives that reduce the threat posed by international terrorists. Canada has signed all 12 UN counterterrorist agreements. Ten of these have already been ratified, including those that target unlawful acts committed on aircraft, unlawful acts of violence at airports serving civil aviation, actions threatening civil aviation and the unlawful seizure of aircraft. We are currently completing the ratification process of the remaining two agreements, the convention for the suppression of terrorist bombings and the international convention for the suppression of financing of terrorism. (18 September 2001 p. 5220)

The United Nations set the tone for what was to follow as has been discussed in Chapter 3, UN and International Security Issues. On 28 September 2001 the UN Security Council passed Resolution 1373 calling for the suppression of terrorism financing and improvement in international cooperation in dealing with terrorism. This, building upon earlier resolutions addressing incidents of terrorism, established the UN in a strong position to guide and monitor counter-terrorism activities by member countries. The Resolution insisted that steps be taken by member states with new laws to repress opportunities for terrorists and terrorist organisations to develop, function, raise funding and continue in existence (*UN obligation* is theme #4.). Furthermore, the UN required all member nations to submit reports on their progress in initiating anti-terrorism measures as noted earlier in Section 4.3.

The global security environment changed with the terrorist attacks of 9/11. The attack was so catastrophic that it caused a global effort to address a new level of terrorism, one envisioning that all countries were vulnerable. The scope of 9/11 resulted in a unifying of international opinion that terrorism was a serious threat and all efforts should be undertaken as soon as possible to address legislative vulnerabilities or lapses in its security. The United Nations’ aggressive stance on combating terrorism gave a serious boost to attempts by its member states to justify the need for anti-terrorism legislation. This was especially true for countries such as Australia and Canada, middle power nations with strong supportive ties to the UN as discussed in Section 3.3. Discourse in the legislatures was marked by a constant justifying of the need for anti-terrorism legislation through a unified global stance precipitated by the United Nations.

Mr Beazley (Brand, ALP), Leader of the Opposition, expressed his party’s support for Australia’s response to Resolution 1373 very clearly in June 2002, indicating:

The problems associated with international terrorist activities which are quite easily assigned to persons associated with the Al-Qaeda organisation have been experienced globally for some 10 years. Different countries have reacted in different ways to them, but all have been focused by the events of September 11. Indeed, after the events of September 11 the United Nations addressed its members and said that all its member states should move legislatively to support their intelligence and law

enforcement agencies to ensure that as much was done as could be done to protect their citizens from the possibility of terrorist attack. (5 June 2002 p. 3199)

The Australian legislature could do little more until the election was held and the new government sworn in. In Canada the Anti-terrorism Bill C-36 was quickly introduced, following on the heels of The USA Patriot Act, and borrowing ideas from the UK Anti-Terrorism Act 2000. Commenting on the introduction of the proposed Bill C-36, the Right Hon. Jean Chrétien, Prime Minister, (Lib.) stated, “The legislation will fully and effectively implement the UN Convention on Terrorist Financing and UN Security Council Resolution 1373” (15 October 2001 p. 6112).

The first tool terrorists were to be deprived of was their financial capabilities and fund raising abilities, a key focus of UNSCR 1373. Australia and Canada both included terrorist financing as part of their anti-terrorism legislation and used Resolution 1373 to legitimise their action. Canada moved quickly to freeze terrorist assets, accounting for funds amounting to CAD \$344,000 by 16 November 2001, as noted in Section 4.3.2. Other UN initiatives, coupled with the potential aftershocks of 9/11, similarly served to present international governments such as Australia and Canada with legitimate reasons to introduce strong laws to combat a newly identified level of terrorism.

In addition to the three key themes identified with the 9/11 terrorism event, the notion or theme of good versus evil was used to help parliamentarians establish and validate the need for anti-terrorism laws (*Good vs. Evil* is theme #15.). Understanding how 9/11 had changed the global security environment was difficult to explain when terrorism had always happened somewhere else. One way in which members of parliament could achieve this was to bring terrorism down to the very basic level of good versus evil. Questions such as why was the United States targeted by terrorists, and what is a terrorist, raised in the aftermath of 9/11, were not simple to answer, especially considering all-encompassing definitions of terrorism or terrorists perpetrators did not exist. Mr. André Harvey, Parliamentary Secretary to the Minister of Transport (Lib.), was representative of Canadian Government members who found it more comfortable to talk about the 9/11 event as evil: “We have to do everything we can to fight this very insidious and imperceptible evil, which caused the death of thousands of people in a few seconds in the United States, our main trading partner” (3 May 2002 p. 11184). The actions undertaken by terrorists were more than just violations of standing laws; they caused harm to thousands of innocent people as well as death and destruction; therefore a most appropriate explanation was to paint their actions as evil.

It would be fair to say that the majority of elected government officials in both Australia and Canada were not knowledgeable in the field of terrorism. Australian Attorney General Mr. Williams (Tangney) made the connection between terrorism and evil in explaining the government plan of action with the new anti-terrorism laws. “On the legislative front we have introduced a package of counter-terrorism legislation designed to ensure that we are in the best possible position to protect Australians against the evils of terrorism” (21 March 2002 p. 1930). By using terms like good and evil the government was able to explain its actions in a comprehensible, though simplistic, manner. Justification for the new legislation as a means to deal with new forms of evil made the whole process of validating new laws that much easier for the general public to understand.

7.3 Justifying the Authority for Anti-Terrorism Legislation

The call for legislative change rose from the rubble of 9/11. Had the attack not taken place or had it been stopped ahead of time, would there have been such a widespread global anti-terrorism outcry?

Following the shock of the terrorist attack, the calls for enacting new safeguards to prevent further terrorist action began. The development and implementation of Australian and Canadian anti-terrorism legislation took place at different times because of an early election call by the Australian Government but it was a top priority of both governments. The Canadian Government had their main anti-terrorism laws, Bill C-36, enacted in December of 2001, and the newly elected Australian Government devoted as much effort to create and implement their main anti-terrorism laws, the 'Group of Five', most becoming law in early July 2002. The Anti-Hoax Bill, the first element of the Australian anti-terrorism legislation, was introduced in February 2002 to be retroactive to October 2001, and received Assent in early April. The ASIO Bill, introduced 21 March 2002, was under discussion throughout and beyond the research period for this dissertation, being withdrawn in December 2002 and reintroduced in March 2003, finally becoming Act No. 77 in 2003. Three Bills were passed after the Bali bombing, closing unintended loopholes in the 'Group of Five' legislation. In Canada, Bill C-44 became law at the same time as Bill C-36. Bill C-42 was withdrawn and reintroduced as Bill C-55 and again as Bill C-17, each time continuing to meet opposition throughout the research period, finally arriving in the Senate in October 2003 and passing first reading, but that was the last stage completed because parliament was prorogued. The governments of both countries went about legitimizing, rationalising and justifying their anti-terrorism laws in similar ways. As the tally of discourse in the database revealed for *Super-theme IV, Anti-Terrorism Legislation* (Table 6-6, Section 6.7), Australia and Canada devoted a like amount of time in their parliamentary sessions to the particular debates on anti-terrorism legislation, considering how the new laws would work, and how they would impact on the everyday functions of not only the country, but its citizens.

There was clearly overwhelming support in the discourse for creating and implementing Anti-terrorism legislation at the beginning of the period studied (*Support for anti-terrorism legislation is theme #19.*). This does not mean there were no reservations about the proposed laws as Canada's Mr. Roy Cullen (Etobicoke North, Lib.) demonstrated when he said:

I believe many members like myself will support the bill, reluctantly in one sense because we find it offensive, but in my opinion this is a necessary response to some extraordinary circumstances that call for an extraordinary response. (27 November 2011 p. 7583)

Strong support for the legislation did not mean that members of parliament were not worried about the potential affect it would have on society. However, the shock of 9/11 had the governments convinced at the time that global security had drastically changed with the threat of terrorism very real.

There were clear cases in Australia and Canada of opposition members supporting the government, with all political parties cooperating in their determination for rapid and tough anti-terrorism measures during debates in Canada on Bill C-36 and during debates on the 'Group of Five' Bills in Australia. In the Canadian parliament, Mr. MacKay (Pictou/Antigonish/Guysborough, PC/DR), a member of the opposition, expressed appreciation to the government for their fast action in creating new terrorism-specific laws: "I want to begin by commending the minister, her department and all departments that have been involved in the process of drafting what is a very comprehensive, somewhat complicated but an extremely important piece of legislation" (15 October 2001 p. 6049). This same degree of inter-party cooperation was shared in the Australian Parliament where Mr. Melham, (Banks, ALP), an opposition member, greeted the introduction of new legislation saying, "...I have no problems in supporting it" (27 June 2002 p. 4656). These selections from the legislative discourse are representative of the unity that existed within governments in the aftermath of 9/11. The threat posed by terrorism, with the example of September 11 fresh in people's minds, demanded parliamentary

cooperation, and neither political side, the government in power or those occupying the opposition seats, could afford to look weak in a time of crisis.

Looking weak in a time of crisis could seriously affect the public perception of a politician and/or political party. Any type of disagreement over the creation of new terrorism-specific laws could put elected members with reservations or concerns in a difficult position. Take for example remarks by Australian MP Mr. Ciobo, (Moncrieff, LP), a government member reacting to qualified positions taken by others:

This government has taken very strong and decisive steps, in stark contrast to the filibustering that the opposition has been engaged in. We have responded to the new terrorist landscape and the new geopolitical issues that face us on a daily basis, and we have responded appropriately with this bill. This bill is good public policy. (19 September 2002 p. 6799)

This example of discourse legitimizing the need for new laws is a representation of the environment existing within the legislative debates on anti-terrorism laws. Any type of lagging or as Mr. Ciobo stated, 'filibustering', could be turned quickly against MP's trying to err on the side of caution. Therefore, the appearance of unity in supporting anti-terrorism laws, present through the initial debates on the main pieces of legislation introduced in both countries, can be attributed to politicians being cautious of public perceptions of their position in a time of global crisis as well as being genuinely concerned over the nation's safety. However, this unity began to wane once the shock of 9/11 receded from the political psyche. The ASIO Bill took a long time to be passed and the contentious parts of Bill C-42 never became law despite two reincarnations.

A further justification for the new legislation was the appreciation expressed in the discourse that other countries were similarly coping with a need to update existing laws to combat terrorism following the urgings of the UN (*What other countries were doing* is theme #5.). Both countries were familiar with the British experiences with terrorism and were able to look to the example set by the United Kingdom with its Terrorism Acts as well as to the USA PATRIOT Act 2001, as examined earlier in Section 4. In Australia, Mr. Beazley (ALP) called for the government to follow the legislation introduced by the UK: "...we needed to consider specific antiterrorism legislation, comparable to the UK Terrorism Act 2000" (13 March 2002 p. 1195). Similarly, Canadian Member of Parliament Mrs. Diane Ablonczy, (Calgary Nose Hill, CA) offered:

Mr. Speaker, Great Britain is one of the countries that has dealt very rigorously and resolutely with the issue of terrorism and is further ahead on the curve than Canada. It has legislation that has now been in place for over a year. It is legislation that we can look to for some precedent material. It is not perfect legislation and that is why, in response to my friend's concern, we suggest similar legislation. (18 September 2001 p. 5243)

The discourse quoted above from opposition members of parliament in both countries revealed a justification for developing anti-terrorism legislation specific to their country's needs. There was a conscious effort to follow the lead of other countries in designing appropriate legislation. As well, the discourse is an indication of the strong Commonwealth ties that remain for Australia and Canada in that members of parliament of both countries were prepared to turn to the legislation of the United Kingdom for guidance in their lawmaking. The fact that both Australia and Canada are Westminster styles of democracy validates the logic of turning to the example of the UK having anti-terrorism laws already in place and a country having a long history of dealing with terrorism as discussed in Section

2.3.1. However, it is clear from discourse in the debates that the UK anti-terrorism legislation was not the only source consulted. Both countries were very conscious of the anti-terrorism initiatives of their allies, some already in existence and others in the process of being developed. Australia's Mr. Dutton, (Dickson, ALP) provided an illustration of the familiarity many members had with legislation in other parts of the world in this excerpt of discourse:

As with the British Prevention of Terrorism Act 1974 and 1989, in the Australian version—in this case, relating to the powers of ASIO—a suspect or other person may be held for a period of 48 hours. Detention of persons suspected of being involved in similar acts of terrorism, financing of terrorism or planning for a terrorism act is also dealt with in the United States by the USA Patriot Act 2001. To further demonstrate how this type of power is being applied in legislation around the world for the very same reason that the coalition is attempting to—that is, the greater protection of our citizens and the prevention and investigation of terrorist acts—Canada has implemented the Anti-Terrorism Act 2002. The Canadian act allows police and other law enforcement agencies to detain a person for 24 hours if they believe a terrorist act will be carried out and that the detention of that person will prevent that from happening. (19 September 2002 p. 6794)

The terrorist attack on the US provided the shocking realization that countries without strong anti-terrorism legislation had a serious gap in their security infrastructure, physically and legally. Despite the fact the United States already had a form of anti-terrorism legislation with the Anti-terrorism and Effective Death Penalty act (AEDPA) of 1996, which was in response to the first terrorist bombing of the World Trade Centre in New York, it did not protect the country from 9/11. More effective anti-terrorism laws were now in demand in the US and elsewhere, and the populations needed to see their governments in action during a crisis reinforced by the United Nations Resolutions. As well as an intense interest in what other countries were doing there was a sense of urgency and interest in how fast other countries were reacting. Canadian discourse from the database supported this urgency to legitimise action in support of new legislation as expressed by Mr. Stockwell Day (CA), Leader of the Opposition:

...the European Union moved faster than Canada to adopt joint anti-terrorist policies. The United Kingdom and even Australia moved faster on the issue of military support. The United States has moved faster in the area of seizing assets of some 27 terrorists and organizations. (26 September 2001 p. 5590)

Speed of action appeared paramount, and was a further justification for the legislation. Any delay no matter how minor theoretically put the country and its citizens at risk of another terrorist attack such as the one the United States had experienced.

While there was an undeniable unity following 9/11 among parliamentarians that anti-terrorism legislation was in fact needed there were various strong points of opposition voiced about specific aspects of the proposed laws. Negative talk and other apprehensive discourse identified in the Hansards accounted for the largest number of instances recorded in the database (*Negative talk on anti-terrorism legislation – too strong, too conflicting* is theme #20.). The focus of much of the debates revolved around the potential impact the new laws would have on society. Mr. Melham (Banks, ALP) offered this cautionary argument as the Anti-Hoax Bill, the first piece of anti-terrorism legislation debated, was introduced:

One of the criticisms that can be directed at retrospective criminal legislation is that people will be unaware that their conduct may be an offence. It can be said that the

rule of law is undermined when citizens are unable to make choices and conduct their lives in reliance on the law as it stands at any particular point. (19 February 2002 p. 456)

This was representative of frequent concerns expressed during anti-terrorism legislative debates, the possibility that the new laws could unintentionally harm the innocent rather than protect them. An area of extreme difficulty and contention was that laws geared to catch terrorists might ensnare others. Even worse to some was the possibility that the new anti-terrorism laws could be misused against people; for example threatening union workers that their actions could be argued as a form of terrorism. The discourse captured this sensitive opinion by Ms. Diane Bourgeois (Terrebonne-Blainville, BQ): “Women that do not normally go on strike, such as nurses, for example, could do so, chant slogans and defy the law. According to this bill, they would be considered terrorists. This is what women are criticizing” (18 October 2001 p. 6301). The argument was not about the legitimacy of anti-terrorism legislation but about the necessary precision of meaning intended in establishing justifiable new laws. The belief that the government could overstep its bounds when forming the new laws was very real indeed.

Some members of parliament foresaw other potential dangers with the implementation of new anti-terrorism laws. Their effort was undoubtedly to highlight the possibility that too much power could be granted those responsible in matters of security, from the police to intelligence agencies. In Australia, Ms. Hoare (Charlton, ALP) pointed out a worrisome shortcoming in the proposed ASIO Bill:

This legislation allows for the detention, the locking away, of an Australian citizen who is not suspected of any criminal or terrorist activity but who may know, even unwittingly, somebody who may know of terrorist activity or a terrorist organization. (19 September 2002 p. 6807)

Too much power does not equate to more safety and in fact could have the opposite effect with innocent citizens becoming targets of their own governments. In Canada, similar fears were represented in the discourse of Mr. Pat Martin, (Winnipeg Centre, NDP), relating to Bill C-36:

...some of the powers afforded the police or the authorities within the bill could go beyond the original planned purpose and could be exercised with a force greater than anyone would have contemplated in the Chamber, to the detriment of peaceful protesters. (16 October 2001 p. 6179)

These concerns were voiced about legislation written to satisfy implementation of Resolution 1373 in both countries and show how legislators shared comparable anxieties. The legislation being debated at the time potentially posed drastic alterations to the power balance between state and citizen, and members of parliament wanted to be sure their anti-terrorism legislation would improve the security of the country yet be fair and just.

The problem was in getting everyone to agree upon how the new laws would take shape. Reaching the middle ground, alleviating concerns that the new laws were too draconian while giving the government the power it needed to be effective was an extremely difficult task. One way the elected representatives could justify the legislation was by agreeing to compromise through amendments to the proposed legislation (*Need for amendments* is theme #39.). There was unity among the parties that anti-terrorism legislation was needed and amendments would allow all sides to show cooperation in achieving the goals of the government. Those who might question their action would see that all efforts were made to achieve the best possible form of anti-terrorism laws. One example from the

coded discourse in the database is the comment by Australia's Attorney-General, Mr. Williams (Tangney, LP), remarking on amendments introduced in the Upper House:

While the Senate made a number of amendments to the bills that the government does not favour, the government is prepared to accept these amendments in the interests of securing the timely passage of these important bills. The government's bills send a clear message to those who would commit or support acts of terrorism. (27 June 2002 p. 4653)

The Canadian experience again mirrors that of Australia. Mr. John McKay, (Scarborough East, Lib.), used the oratorical convention of finding a less-desirable choice satisfactory when expressing his views on proposed government committee amendments that softened the intent of proposed legislation:

Recently a reporter asked me whether I was happy having seen the amendments the government was putting forward at committee stage. I said I could not see how any member would be happy. I could only see how members would be less unhappy. (26 November 2001 p. 7485-7486)

The words of Mr. McKay highlight the process of the government ensuring legitimacy for the anti-terrorism laws created. Whether members of parliament were in the opposition or the government party, they could take satisfaction from having participated in the processes for amending the legislation. They could claim to have fought hard, made concessions through political bargaining and formulated new laws they could support and therefore their constituents should also support the new legislation.

Perhaps one of the best example of compromise or need for amendment was the case for inclusion of a sunset clause, an issue that was hotly debated for Bill C-36 and the ASIO Bill and a theme exemplifying cooperation in the discourse analysed (*Sunset Clause* is theme #34.). One of the prevailing fears was the idea that 9/11 was a one-off event, and one that the world was not likely to see again anytime soon. The argument posed was that while strengthening security was good for the nation and its citizens some of the new anti-terrorism laws might no longer be needed if anticipated threats of terrorism fail to emerge. The problem with enacting legislation is that once it becomes law governments are very reluctant to go back and make changes. Those laws may never be implemented but add to the government's opportunities to do so. The way to address such concerns was to include a sunset clause in the legislation effectively having the laws or parts of them expire in a few years' time. If the anticipated terrorism threat was still a genuine concern the government could simply renew the laws.

During debate on Canada's anti-terrorism legislation, Bill C-36, Mr. Gilles Duceppe, (Laurier-Sainte-Marie, BQ) spoke for the record and raised the question of introducing a sunset clause for the Bill. Likely, he was also reminding the government and constituents in the Province of Quebec about former Prime Minister Trudeau enacting the War Measures Act in 1970 at the time of the October Crisis a result of the nationalist terrorism of the FLQ as described in Section 2.3.3. Canadian memories were easily refreshed because this was legislation that did not have a sunset clause and was used in an overreaction according to many. That experience led to the creation of the Canadian Charter of Rights and Freedoms. Mr. Duceppe raised the issue in this manner:

Mr. Speaker, the attacks of September 11 forced us into an exceptional situation that requires exceptional measures. In the case of the anti-terrorism act, if the situation improves, the exception must not become the rule. In order to respond properly to

both immediate and future needs, will the Prime Minister agree that it would be more prudent to provide a sunset clause that would, after three years, force parliament to reassess the situation and decide whether or not to renew the anti-terrorism legislation? (16 October 2001 p. 6195)

The Right Hon. Jean Chrétien (Lib.), Prime Minister, responded:

Mr. Speaker, not only am I in agreement with the hon. leader of the Bloc Québécois but, as I said yesterday in response to a question, if three years is too much, we are prepared to shorten that period. (16 October 2001 p. 6195)

Discourse recorded from the Australian debates carried similar circumspection, as this utterance by Mr. Leo McLeay (Watson, ALP), makes clear:

The provision of a sunset clause is also important. While there is great concern in the US and other parts of the world that there may be another terrorist attack, the government in Australia are currently saying—and I do not think they have changed the advice in recent days—that they do not see any apparent terrorist threat to Australia. The committee is of the belief that putting a sunset clause into this legislation to see how it works, to see if it is needed in three years time, is a very important issue as well. (5 June 2002 p. 3198)

The introduction of a sunset clause into anti-terrorism legislation provided assurances to members having reservations about the severity and application of some provisions and allowed them to rationalise and justify to one another and to their constituents both the need and the safeguards for the new legislation. By agreeing to include the clause the government was able to get the strict security laws it was after, justifying their actions and the law by agreeing that if the threat of terrorism dissipated over time then those provisions would be amended further or terminated.

An important issue to note was that both countries had majority governments, which effectively allowed them to pass legislation without input from the parties in the opposition. Two 'low-profile' themes flagged contentious issues in the process of justifying the legislation. While Bill C-36 and the 'Group of Five' anti-terrorism laws were fully debated with a large amount of parliamentary attention there was an effort by the government to enact the new legislation as soon as possible. This desire to have the laws in place quickly left many members of parliament outside of the government frustrated with the lack of an opportunity to voice their opinions on the legislation. In Australia, Mr. Albanese (Grayndler, ALP) expressed this clearly saying, "I want to take this opportunity to make a contribution to the debate because I was denied that when the bills were first introduced. These bills were rushed through this House in a manner that was entirely inappropriate" (27 June 2002 p. 4660). (*Anti-terrorism legislation rushed through parliament* is theme #37 and a 'low-profile' theme.) In relation to this theme the quantity of discourse produced by Canadian speakers was significantly higher (p 0.1) than that produced by Australian speakers. The data were tested for significance using a 2-prop t-test assuming equal variance.

However even though the government was adamant in wanting to establish the new anti-terrorism laws quickly, it was not oblivious to the anxiety of members of parliament, within their own party or in the opposition parties, who had major concerns over the creation and enactment of the legislation. An example of this was with the issue of term affecting the new laws and the demand for the inclusion of a review period (*Review period for bill* is theme #36.). Faced with this challenge, Australia's Mr. Williams (Tangney, LP), responded:

The opposition gained minor party support for an amendment to provide for an additional review of the counter-terrorism bills by a committee established for that purpose. The government considered this amendment unnecessary, particularly as the additional review will not be able to consider important classified material to which the parliamentary joint committee will have full access. However, the government is prepared to accept the amendment in the interests of securing passage of the bill. (27 June 2002 p. 4654)

The demand for a review period existed for both countries. In Canada, the government was determined to show that it was working within parliament to create these new laws and that despite its majority it was not trying to rush through the legislation. Canadian Prime Minister Chrétien (Lib.) cautiously summarised the government position this way: “I say that we have introduced in the bill a review clause in three years. Some say that it is not enough” (5 November 2001 p. 6932). The proposed legislation was contentious although needed; however, the argument for those with concerns over legislation or for those who opposed it accusing the government of fast tracking the legislation or rushing it through without proper debate posed an obstacle for the government in power. With such strong legislation the more united the members of parliament were the easier it would be to sell it to the people. Accusations such as the following by Canadian Member of Parliament Mr. Gilles Duceppe (Laurier-Sainte-Marie, BQ) forced the government to demonstrate the correctness of its actions and explain the steps it was taking:

The Prime Minister speaks of a careful examination of the situation. The leader of the Government's attitude conflicts with the PM's, for he is trying at this time to bulldoze parliament, so much so that the senators are already examining the bill before we have finished with it. (18 October 2001 p. 6322)

Political posturing by the government and the opposition continued as usual in the parliamentary discourse with both sides wanting to outdo the other in demonstrating they had the public interest in mind throughout the debates on anti-terrorism legislation.

7.4 National Security as Justification for Anti-terrorism legislation

National Security was an issue, along with Criminal Justice, identified in the hypothesis at the outset of the research design for this dissertation. The subjects have both served as ‘Super-themes’ as well, each embracing some of the 45 themes of discourse that surfaced in the findings of the Results Chapter. Both were expected to be major factors in determining how each country’s government justified their anti-terrorism laws to parliament as well as to the general population. *Super-theme II, National Security* (Table 6-6, Section 6.7), incorporates seven of the twenty-two noteworthy themes identified from the database. The topics included National Security matter, Public Safety, Increasing Intelligence Agency or Police powers, Work with other countries around the world, Immigration, Supporting U.S.A. and Working with U.S.A. to fight terrorism, ten additional ‘low-profile’ topics were also included in the super-theme. .

The terrorist attack against the United States introduced a global fear of terrorism on a new scale. Terrorism had long been in existence and many acts of terrorism had been carried out in the past as noted in Section 2.3, but nothing matched the loss of life and destruction of 9/11. It became apparent that terrorism was framed as a catastrophe waiting to happen to any country caught unprepared. The discourse occurring within the parliaments centred on the fact that the world had changed and new threats to public safety could arise at any time. Gone was the feeling that terrorism always happened

somewhere else. It could strike at any time and it was up to the government to protect its people through the strengthening of national security (*National Security matter* is theme #6.).

The Hon. Anne McLellan (Lib.), Minister of Justice and Attorney General of Canada, captured the government's premise for legislative action on national security matters:

The world changed on September 11 in a way that changed our collective sense of safety and security. Reviewing our legal framework was one component of a more thorough review undertaken by the federal government to strengthen our national security. (16 October 2001 p. 6164)

One of the problems for the governments as suggested earlier in this dissertation was the concern over implementing laws that some saw as being tougher than necessary. In the aftermath of 9/11, the initial reaction was to put security first. In the legislative discourse the common arguments for this view revolved around the idea that without security there can be no freedom because it is security that allows people to be free. Australia's Mr. Andrews (Menzies, LP) was one of several proponents, saying, "There can be no freedom without personal safety and national security" (17 September 2001 p. 30779). Others may not have agreed with this philosophy but that is exactly what constituted a significant part of parliamentary discourse. The idea of sacrificing freedom for security was a point to debate. The events of 9/11 caused a global security panic; people did not want what happened in the United States to happen to them. The terrorist attack against the U.S.A. was framed as an attack on the Western World; therefore, because it occurred in the United States, could it not happen again in Australia or Canada? If one understands this then the debate position calling for sacrificing some freedoms for security can be seen as reasonable. As the database show there were some members voicing concern over such talk. Canadian MP Mr. Michel Bellehumeur (Berthier - Montcalm, BQ) expressed caution, saying, "...that a balance had to be sought between national security and individual and collective rights" (26 November 2001 p. 7481).

The governments argued new laws were needed to strengthen national security. Australian Prime Minister Howard had called an election and his Party campaigned with National Security as their platform. This helped the Australian Liberal Party-led coalition to be re-elected in November of 2001. In addressing the 'Group of Five' legislation, Mr. Williams (Tangney, LP) the Australian Attorney General substantiated the importance of passing new anti-terrorism laws to maintain national security: "The purpose of this bill is to implement the government's election commitments to increase national security by further protecting our borders" (12 March 2002 p.1046). Quite clearly, he points out that security, a mandate of the newly re-elected government, is to be improved through implementing anti-terrorism legislation. Security matters were a cornerstone of the election and a strong justification for the legislation that followed.

One of the intriguing aspects found in the data was to do with how 'Supporting U.S.A.' and 'Working with U.S.A. to fight terrorism' were used as justifications. The intended difference between the two themes was that one covers a generalist level of support for American action taken against terrorism and the other focuses on specific cooperative actions to be undertaken with the US. What makes these two topics intriguing is the way their results materialised from the data. Essentially, they were like two sides of a coin: both identifiable as having the same value but with a different appearance. While the discourse showed that Australia used 'Supporting U.S.A.' to legitimise its anti-terrorism legislation, Canada justified its legislation as 'Working with U.S.A. to fight terrorism'. (*Supporting U.S.A.* is theme #16 and *Working with U.S.A. to fight terrorism* is theme #22.).

Both countries are strong allies of the United States; however, the discourse recorded in the data revealed that the Australian support for the US had an aspect of gratitude that was not present in Canada. American actions in helping Australia during conflicts and threats in World War II were highlighted numerous times in the Australian parliamentary debates as in this utterance by Dr. Southcott (Boothby, LP):

American values are similar to Australian values. We are a New World country with strong, unbroken, democratic traditions. In December 1941, Britain, Australia and the US were hit by a common enemy. At that time, we looked to the United States and they came to our aid. In America's hour of need, we must help them to the best of our abilities. (17 September 2001 p. 30798)

Australia's position on the front line in WWII is something that Canada never experienced. While Canada played a large role in WWII, the country itself was never in a vulnerable position as Australia was. Furthermore, Canada's geographical position adjacent to the United States provides it with a level of security that many countries including Australia do not have. For Australia, support for their ally in the region, the U.S.A., was a sound reason to justify the anti-terrorism legislation.

In Canada, the attitude of the US to security matters was an essential reason to justify aspects of the proposed anti-terrorism legislation. Working together with the US was extremely important to Canada when it came to fighting terrorism. The main objective for the United States was to protect itself from further attacks. Canada being right next to the US was in a position quite different from that of Australia. Security for the US began at home and tightening of borders and the implementation of new security protocols would arguably affect Canada more than any other nation. Canadian anti-terrorism legislation was constructed in a manner that would strengthen the country's security capabilities, appease the requirements called for by the United Nations, but most importantly, it was created with the United States in mind. We can see this concern in the quote from Mr. Mario Laframboise (Argenteuil-Papineau-Mirabel, BQ):

Bill C-44, which we are discussing today, is essentially a measure to align Canadian legislation with that of the U.S. I will come back to this, because since September 11, all this government has done is harmonize our policy and procedures with the U.S.... (6 December 2001 p. 7937)

As noted in the explanations supporting *Table 6-5* (Sec. 6.5.5), Bill C-44 was introduced in response to the US requirement for sharing passenger information, a condition for allowing Canadian flights over US air space and to US destinations. The Canadian Government was aware that any failure to address American concerns over potential Canadian security gaps would translate into issues influencing the open borders between the two countries and from this would heavily affect the billion dollars cross border trading relationship discussed earlier (Sec. 4.2.4). It was extremely important for the government to establish that it took the new global focus on terrorism seriously. There was a high level of concern expressed by Canadian Ministers that the country could be impeded by American security initiatives from traditional access arrangements. It was imperative for the border between Canada and the United States to remain as unhindered as possible. Mr. Brian Pallister (Portage-Lisgar, CA) expressed this forcefully:

By threatening the openness that we have enjoyed along the Canada-U.S. border, we jeopardize billions of dollars of trade and tens of thousands of Canadian jobs. Our very standard of living is at stake. Over 87% of our trade is done with the United States. (17 September 2001 p. 5130)

Working with the United States was an influential factor affecting the Canadian anti-terrorism legislation. Not only did the legislation have to be developed and enacted quickly, but it also had to appease American concerns, admittedly or not. Canada's anti-terrorism laws had to be sold not just to its own population but to gain the approval of the United States as well.

This was indeed a serious obstacle for Canada to overcome. Any indication that Canada was soft on security could reinforce American views that the country could be used as a staging area for future terrorist attacks. As became clear in the parliamentary discourse the American perception of Canada's anti-terrorism actions was worrisome as indicated by Mrs. Bev Desjarlais (Churchill, NDP): "Before I conclude I want to leave the House with a final piece of food for thought. A few months ago the American documentary news program *60 Minutes* accused Canada of being a haven for terrorists" (5 November 2002 p.1280). For Canada, an important justification for its anti-terrorism legislation was making it known that the government was working with the United States to deal with mutual concerns in their anti-terrorism efforts. The discourse reflected the continuing sensitivity to this issue which, as noted in Section 2.2.3, has found its way into Canada's National Security Policy that states one of three core interests is "... ensuring Canada is not a base for threats to our allies" (Privy Council Office, 2004, p. 13).

Such external pressures were not a predominant concern for Australia and they had time for an early election call to establish a government with a new mandate to develop and implement their anti-terrorism legislation. While discourse in the Australian legislature may have been less involved in comparison to Canada with the subject of working with the United States to fight terrorism, it was the reverse in terms of the amount of discourse recorded for working with other nations. (*Work with other countries around the world* is theme #24.) Canada's physical closeness to the United States contributed to a higher level of parliamentary discourse concerning working with the U.S.A. to fight terrorism. In Australia, the discourse had a more global or international flavour in the anti-terrorism legislation debates. Australia, because of its geographic location, had more reason to focus its attention on working with the international community (which included the United States). Mr. Albanese (Grayndler, ALP) summarised the views of many in the Australian parliament that saw their international relations as a means to rationalise the need for new anti-terrorism laws:

September 11 was a disaster and it is certainly the case that one cannot really see anything positive coming out of it. But, if one thing positive can come out of it, it is the recognition that we all cannot live in isolation—that the international community must act as one in a cooperative. (27 June 2002 p. 4660)

Mr. Albanese's words highlight the concerted effort of the government to emphasise the threat and potential impact of terrorism throughout the international community, which included Australia; therefore, the country had a responsibility to work with other nations to address security concerns that terrorists could exploit. The International Organisation Charts, presented in Appendix 2, offer confirmation that Australia and Canada were involved in international cooperation. Australia was conscious of its status in the region and had played a significant role in assisting East Timor in its transition to independence from Indonesia in 1999 as noted in Section 3.3. More recently, Australia's country reports to the UN make it clear that the country was highly involved with other regional states in cooperative actions concerning security, touched upon in Section 4.3.1. The discourse recorded for the topic of working with other countries around the world to counter terrorism supported the argument that Australia's relationships in the international community and leadership in the region were important reasons to justify substantial anti-terrorism legislation.

A frequent legitimization for the new anti-terrorism laws in the parliamentary discourse was for the sake of public safety (*Public Safety* is theme #26.). The 9/11 target was the American public, innocent people going about their normal daily routine. In the aftermath of 9/11, there was a view that if the general population was now an official target for terrorism, how could anyone feel safe? Governments needed to reassure their people that they were undertaking every possible action to protect their safety. If a government cannot protect its own people what does that say about the government? Discourse by many Canadian members of parliament reflected an awareness of the need to alleviate public concerns over safety. Canadian MP Mrs. Diane Ablonczy (Calgary-Nose Hill, CA) expressed a representative view this way:

People have concerns about our security system. Canadians do not want to be vulnerable. We do not want to be at risk. We want to know that people in charge of our safety are doing their jobs and that we can trust them to look after our interests. (18 September 2001 p. 5242-5443)

Within the Australian Parliament, there emerged a tactic of validating anti-terrorism laws by building on the notion that protecting the public was the government's top priority through expanding it into a duty of the population itself. It was the country's responsibility, not just the government's but the people working in conjunction with the government for the benefit of public safety and the nation's own security. Mr. Edwards (Cowan, ALP) summed up this view, repeated in several of the instances coded:

It is my view that the fight against terrorism is one which must recruit all members of our community. No issue is more important to our nation than the issue of public safety and the issue of public security. Bipartisanship on these issues is paramount. (13 March 2002 p.1225)

Promoting the idea of a need for a partnership between the public and government provided a good solution for gaining public acceptance for anti-terrorism legislative action all in the name of public safety. In turn, this was a means to justify the new legislation in Australia.

One of the immediate solutions to address needs for increased national security was strengthening powers given to the police, particularly at the Federal level in Australia, and to provide intelligence agencies with the increased support needed to operate successfully against potential terrorist incursions. This was to be done by expanding the power base of the already existing security infrastructure. Mr. Cadman (Mitchell, LP), offered this utterance urging justification for new legislation increasing agency powers in Australia: "A further element of the package—and this is in the bill that will come to the House later—is to expand ASIO's powers to detain and question people for the purposes of gathering security information" (13 March 2002 p. 1151). The Hon. Lawrence MacAulay (Solicitor General of Canada, Lib.) spoke with a similar purpose when the Canadian anti-terrorism Bill C-36 was introduced to the House: "Mr. Speaker, first, this bill will be important to our law enforcement and security agencies. They need the bill because we need to stop terrorists from getting into Canada and need to protect Canadians from terrorists" (16 October 2001 p. 6232-6233).

The discourse in Canada about the need for increasing police and intelligence agencies powers was very similar to that in Australia. (*Increasing powers to intelligence agency/national police* is theme #29.) There was no doubt about the relevance of increased powers in the anti-terrorism legislation; it was a foregone conclusion. If the events of 9/11 did not spark its creation, the mandatory action dictated by the United Nation through its Security Council Resolutions would have. New terrorism laws were coming and with those new laws, new powers were going to be created or expanded for

agencies in the security field. Such action by the government had to be explained carefully as being justified by latent threats to national security. There were political pitfalls with the opposition to the creation of the legislation. Australia's Labor Party member Mr. Leo McLeay (Watson, ALP) captured the discourse on this topic, saying, "There is no doubt that ASIO do need that power. But there is a lot of doubt—and the unanimous view of the committee is that there is a lot of doubt—that this bill goes too far..." (5 June 2002 p. 3197). Legislation that was seen as too draconian would have difficulty passing into law and would therefore hold up the anti-terrorism process. It was imperative that any discourse in parliament dealing with increasing security powers had to be rationalised as serving the greater good. The message had to be presented that any increase in power resulting from the new laws was undertaken not to tighten control over the populace but to help protect them against terrorism.

Beyond the need to increase agency powers to safeguard security, immigration was identified as an issue in the discourse from Canada more so than from Australia although both countries dealt with immigration matters in separate legislation not covered by the dissertation. Immigration is a feature both countries rely upon for sustained growth as nations; however, it is also an easy target for criticism. Problem issues with immigration are a common matter of parliamentary debate; however, the matter was now compounded by terrorism. Rightly or wrongly, the terrorism threat was associated with outsiders, people who may already reside within the country and among them perhaps some whose sole purpose was to wage a campaign of terror. The result of this was evident in the discourse on immigration matters (*Immigration* is theme #21.). It was in the governments' interest to maintain a separation between terrorism concerns and immigration. National Security was to be strengthened and through this, new efforts would be implemented to prevent terrorists from taking advantage of the immigration process; however, immigration itself was not to be a target of the new legislation. It was simply a matter of tightening admission and other immigration rules that would help protect the country against potential terrorism thereby adding another level of protection for national security. This was clear in the discourse recorded as expounded by Mr. Brian Pallister (Portage-Lisgar, CA):

In terms of immigration, those who argue speciously that the strengthening of screening approaches is anti-immigrant are profoundly mistaken. Our immigration policies must be generous but they can be rigorous as well and they must be. We can no longer have a policy of admit first and ask questions later. (17 September 2001 p. 5130)

The discourse confirmed each country's government walked a tightrope with how the new anti-terrorism efforts were being perceived as affecting or potentially affecting immigration matters in the future. In Canada, while immigration was dealt with in a separate Bill that was not part of this study, there were clauses referencing immigration contained in Bills C-36 and C-42 to serve as a stop-gap measure until the new Immigration Act would come into effect. In Australia immigration was a contentious topic in the discourse as revealed by Mr. Cadman (Mitchell, LP): "I do not want to stop migration; Australia depends on migration. But Australia must have a manageable plan that people understand, where the people that are going to make a contribution can come here" (13 March 2002 p. 1149). Support for anti-terrorism legislation was the goal of the government. If support for anti-terrorism law was diverted or side tracked by contentious issues such as immigration the whole process could become bogged down in debate. In addition, immigration had the potential of producing negative public opinion that would only further complicate the already contentious matter. The issue was justifiable on the basis of national security, with new terrorism laws to address potential immigration abuses carried out by those with terrorists connections or agendas.

The 'War on Terror' became a catch phrase that was highly useful in the process of selling the necessity for the new legislation (*War on Terror* is theme #2.). The discourse occurring within parliament for both nations immediately following 9/11 revolved around the notion of being at war. This was in no small measure strongly influenced by the actions of the United States. In Australia, Mr. Brereton (Kingsford-Smith, ALP) reflected this, saying, "President George W. Bush has declared the United States to be at war against terrorism" (17 September 2001 p. 30752). While people could understand what constitutes war in the traditional sense, the difficulty for the government was that the enemy could not be easily explained other than by saying the enemy is a terrorist. It was not a war against another country; it was a war against rancorous people who turned to tactics of terrorism to carry out their grievances. Adequate descriptions of the enemy in this war were difficult to mount and Canada's Minister of Justice and Attorney General, the Hon. Anne McLellan (Lib.) added to the rhetoric from the U.S.: "This government has been clear but it is worth repeating over and over again: this is not a war against any one group or ethnicity but a war against terrorism" (16 October 2001 p. 6164). In Australia, Mr. Snowdon (Lingiari, ALP) made an acceptable effort to explain the unexplainable, in his way reprising Marshall McLuhan's contention that 'the medium is the message':

The reaction to the attacks has become known as the war on terrorism, but we need to be very careful that we understand what this war on terrorism is. One thing is certain: it is a campaign unlike any other that we have seen. (23 September 2002, p.7036)

Parliamentarians in both countries revealed similar mindsets in their efforts to make the distinction clear between the traditional view of a war and the new war on terrorism. Associating the words 'war' and 'terrorism', popularised by President George Bush (as noted in Mr. Brereton's quote above), was an effective way to communicate understanding and generate support for fighting against an enemy in the United States, but also for creating new anti-terrorism laws in Australia and Canada. People can easily understand that war is a threatening situation and therefore a country at war with terrorists presents risks to the population. The 'war on terror' was a justification promoted to support understanding of the need for new anti-terrorism legislation that would help to protect the public.

The idea of the nation being at war against terrorism presented opportunities for historical military alliances as well as modern ones to be exploited in justification of the government's anti-terrorism legislative agenda (*Military Alliances – modern* is theme #8 and *Historical Military: Past Alliances* is theme #18.). Australian MP Mr. Beazley (Brand, ALP), Leader of the Opposition, supporting anti-terrorism legislation in terms of the country's indebtedness to the U.S., argued: "We in Australia owe our freedom to the United States. In our darkest hour in 1941, our wartime Prime Minister called on the Americans, and they did not let us down" (17 September 2001 p 30745). Similarly, Prime Minister Howard (Bennelong, LP) had explained to parliament his reasons for invoking the ANZUS Treaty, demonstrating solidarity between Australians and their U.S. ally:

In every way, the attack on New York and Washington and the circumstances surrounding it did constitute an attack upon the metropolitan territory of the United States of America within the provisions of articles IV and V of the ANZUS Treaty. If that treaty means anything, if our debt as a nation to the people of the United States in the darkest days of World War II means anything, if the comradeship, the friendship and the common bonds of democracy and a belief in liberty, fraternity and justice mean anything, it means that the ANZUS Treaty applies and that the ANZUS Treaty is properly invoked. (17 September 2001 p. 30742)

Additionally, consider the words of Canadian MP Mr. Stockwell Day (CA), Leader of the Opposition; “When Canada has needed it in the past the United States has been there for us. When the world has needed it, the United States has been there” (17 September 2001 p.5117). Mr. Monte Solberg, (Medicine Hat, CA), echoed Mr. Day in legislative discourse a month later, saying:

We know that in the past the Americans have stood by us, going back to the second world war [*sic*]. We know they have stood by us when we have needed them. We have to be with them in their hour of need. (18 October 2001 p.6304)

All four MPs were drawing attention to America’s involvement in World War Two with the intention of justifying the need for anti-terrorism legislation as support for a long-standing ally and a critical partner in on-going military alliances.

7.5 Criminal Justice as Justification for Anti-terrorism legislation

Criminal Justice, Super-theme III (Table 6-6, Section 6.7), is the concluding Super-theme in this discussion of the legislative discourse justifying the anti-terrorism legislation introduced by the Australian and Canadian governments. The combined totals of all the discourse produced for themes represented in the Criminal Justice Super-theme resulted in proportionately near-equal numbers of instances for Australia and Canada over the period studied. The twelve themes conflated into the Super-theme included seven noteworthy themes, Criminal Justice Matter, Impeding personal rights and freedoms, Terrorist Organisation/Organised crime, Protecting personal rights and freedoms, Defining terrorism, Financing of terrorism, and Human Rights. Five additional ‘low-profile’ topics were also included.

One of the first challenges facing both governments as they introduced the needed anti-terrorism legislation was in clarifying distinctions that set the proposed new laws apart from existing criminal law. Most elements of what was seen as terrorism were already addressed in some fashion by existing criminal law. Murder, hi-jacking, destruction of property and threatening death or bodily harm, to name a few examples, were already covered by criminal law. In the early discourse pertaining to anti-terrorism legislation the government wanted it understood that the country was not defenceless to address terrorism and wanted to link it with existing criminal law as touched upon in the background information on Canada’s legislation (Sec 4.2.4). Mr. Stephen Owen (Lib.), Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, pointed out, “Mr. Speaker, we have an extensive list of criminal legislation in the country to deal with acts of terrorists, including all the major offences under the criminal code” (21 September 2001 p.5430).

There was no question that both governments considered terrorism to be a criminal justice matter. Criminal law had served against terrorism in the past and it was the criminal law that was now being amended to combat terrorism. In Australia, Mr. Melham (Banks, ALP) highlighted this point: “This bill proposes to amend the Criminal Code Act 1995 by adding new offences relating to the sending of dangerous, threatening or hoax material through the post or similar services” (19 February 2002 p. 456). Mr. Melham was taking a first step in legitimizing the new anti-terrorism legislation by establishing or reinforcing that terrorism was a criminal justice matter. Now the government was not necessarily introducing new legislation at all, the government was strengthening established criminal laws.

Canadian MP Ms. Judy Sgro (York West, Lib.) expressed a recurring theme used by both governments to establish the need to expand criminal legislation to incorporate terrorism in this utterance:

Canadians believe that all acts of terrorism are criminal and unjustifiable and that they should be condemned as such. We are confident that by enacting such legislation we are joining other likeminded countries around the world in efforts to prevent the commission of similar crimes in the future. (16 October 2001 p.6219)

Not only were acts of terrorism discussed as an extension of criminal law in the Canadian, and to a lesser extent Australian, discourse, but also including them in new legislation was indicated to be an accepted view internationally. The participation of Australia and Canada in the international community was used as validation for anti-terrorism legislation. The government was effectively saying, 'see it is not just us; everyone is doing it this way.' Terrorism was interpreted as a crime internationally and because of this, the government was addressing it by strengthening and adding to existing criminal legislation. What better way was there to validate a point than to frame it as internationally accepted? Furthermore, the involvement of the United Nations only added credibility to this point. Australian MP Mr. Rudd (Griffith, ALP) presented the argument this way: "... UN Security Council resolution 1373 calls on member states to legislate so that terrorist acts are established in domestic laws as serious offences and that the punishment reflects the seriousness of those acts" (4 December 2002 p. 9563). In essence, Mr. Rudd is speaking in favour of the idea of including terrorism in existing criminal law in order to conform to an internationally accepted recommendation on how to combat terrorism. Using the international need as a justification to address terrorism through criminal law provided the kind of legitimacy the government wanted. There was no question that terrorism was not a Criminal Justice Matter and the domestic laws required changes to incorporate the new issues that had been identified (*Criminal Justice matter* is theme #7.).

What was made clear in the first place in the parliamentary discourse in Canada was that restrictions were needed on terrorism financing. Legislative action was called for to deal with the financial assets and capabilities of suspected terrorist groups, organisations and individuals. The Hon. Lawrence MacAulay (Lib.), Solicitor General of Canada expressed this succinctly: "To defeat terrorists we need to choke off their money supply" (16 October 2001 p. 6233). Priority number one was to extend criminal law to cover the financing of terrorism.

The momentum behind the calls for quick action on thwarting terrorism by denying and impeding their financial capabilities came from the United Nations. As noted in Section 3.2.3, the principal directive of UNSCR 1373 was aimed directly at denying the cash flow to terrorist entities. Therefore, the impetus and validation for new legislation to combat terrorism through financial pressures came from the efforts of the international community. The Hon. Anne McLellan (Lib.), Minister of Justice, expressed justification for action against terrorism financing this way: "We will be working with our allies to ensure that we have all the laws in place necessary to strip terrorist organizations of their lifeblood, which is their money" (19 September 2001 p. 5291). This remark also embodies overtones of two other themes identified in the discourse, 'working with other countries around the world' and 'terrorist organizations and organised crime' but its strength is in drawing attention to the point that terrorism can be fought through financial avenues. Canada had frozen \$344,000 in 28 accounts identified with terrorist organisations by November 2001 as explained in Section 4.3.2.

Similar arguments arose in Australia. One of the government's justifications revolves around the assertion that terrorism can be countered by a concerted international effort to enforce tough new laws that aim to identify and prevent those involved with terrorism from generating funds that could potentially be used in their activities. Mr Williams, Attorney-General (Tangney, LP) outlined Australia's legislation responding to UNSCR 1373:

The Suppression of the Financing of Terrorism Bill will enact a terrorist financing offence and the mechanisms necessary to enhance the sharing of financial transaction information with foreign countries. The new offence will be in line with the requirements of the International Convention for the Suppression of the Financing of Terrorism. (12 March 2002 p 1040)

The common theme that kept emerging within the parliamentary discourse is one of international co-operation. The debates contain numerous references to the fact that the struggle against the terrorism threat is one that extends beyond national borders. The fact that terrorists and their supporters can raise money in one country through legitimate means, although with sinister intentions, is a risk that has global implications. Australia's Attorney-General, Mr. Williams (Tangney, LP) argued the legitimacy of anti-terrorism action through new legislation this way: "Turning to the Suppression of the Financing of Terrorism Bill, our ability to deal with terrorist financing will be enhanced by increased penalties for providing assets to those engaged in terrorist activity" (27 June 2002 p. 4655). The onus had been placed on the global community through UNSCR 1373, which provided unassailable justification to tighten legislative parameters on financial security matters (*Financing of Terrorism* is theme #10.).

The impact the proposed new anti-terrorism legislation would have on the public now, and in the future, was the principal concern expressed in the discourse coded for the topic of 'Protecting personal rights and freedoms'. Government practices have shown that once given assent legislation tends to remain available even if it is no longer needed. There are numerous laws still in existence that are comically out of date yet are still technically active. The solicitude revealed in the parliamentary discourse included numerous concerns over the long-term impact the proposed anti-terrorism laws would have on civil rights and freedoms. Government members in Australia and Canada who favoured immediate enactment of the anti-terrorism legislation went to great extents to calm fears that the new laws were too draconian and would deprive people of the rights and freedoms they had come to enjoy. The Right Hon. Jean Chrétien (Lib.), Prime Minister, acknowledged the uneasiness over this issue:

A bill such as this calls for a great deal of thought and study so that we can strike a balance between the protection of Canadians' fundamental rights and freedoms and their safety. We are not here to seize opportunities as they go by, but to introduce excellent bills. (16 October 2001 p. 6194)

Confirming the government's responsibilities to the general population, alleviating anxiety was a means of justifying the need for strict anti-terrorism legislation in discourse from both countries. The governments were upfront with acknowledgements that the new anti-terrorism laws were going to be severe. The need for exacting legislation was rationalised in a number of ways as described in this chapter; however, the governments took great pains to frame the new laws in ways that depicted them as not threatening existing rights and freedoms.

Even those members of the legislature occupying the opposition benches and who supported the new laws were careful to present themselves as favouring anti-terrorism legislation, but not at the expense of depriving liberty. In Australia, Mr. Crean, Leader of the Opposition (Hotham, ALP) underscored this view, saying: "Protecting our freedoms is as important as protecting our security. The bill has to be right; the whole community must support the laws to be introduced, but it has to be a balanced approach" (13 March 2002 p. 1146). This was representative of the types of political speech voiced in both parliaments over protecting personal rights and freedoms. The opposition however, had an advantage over the party in power, committing on one hand to the need for the laws while insisting

that they must be balanced and fair. What was abundantly clear from the legislative discourse was that the government in power and the opposition were both interested in justifying to their constituents and the population at large that the new laws were conceived to protect the nation and were designed with great effort not to be repressive but to ensure the protection of personal rights and freedoms (*Protecting personal rights and freedoms* is theme #13.).

One important factor bearing on the discourse is that both Australia and Canada had majority governments. Most of the discourse associated with the theme 'Impeding personal rights and freedoms' came from amongst the members of the Opposition. While not able to influence how the legislation would be developed, members of the opposition in parliament could still occupy the role of being the voice of reason, providing a type of parliamentary conscience. Whilst this dissertation is concerned with the discourse of justification used by the government, the theme 'Impeding personal rights and freedoms' offered a glimpse of the opposite.

The opposition was not in a strong position to dissuade the creation of the legislation. The only opportunities the opposition had to assert itself in the development of the anti-terrorism legislation was when it could draw attention to parts it did not like and criticise the government's plan or participate in the process of offering amendments. Australian Opposition MP, Mr. Melham (Banks, ALP), provided this typical opposition discourse, balancing agreement with the need for the new legislation, thus joining the argument for justification, with objection to the stringency of some of the new laws proposed:

We want to hunt down and arrest terrorists—but only terrorists. We want to protect peaceful, law-abiding Australians from infringements of their rights. This bill fundamentally fails to advance these two equally important objectives. The Attorney-General has argued that the Australian community must be prepared to accept sacrifices of rights and liberties in the name of security. Time and again the government declares that the world changed on 11 September. Australia's democratic values did not change on 11 September. Our rights and liberties did not change on 11 September. (19 September 2002 p. 6787)

The events of 9/11 were seen as catastrophic in many ways and this triggered unity in the face of adversity; however as the shock began to subside the unity that existed immediately post-9/11 began to diminish as time progressed. This is exemplified in the parliamentary discourse where support and calls for increases in security became regressive and were replaced by anxiety over the severity of the new laws. Arguments were posed that the legislation being enacted was too strong or draconian as suggested in this discourse of the Hon. Lorne Nystrom (Regina-Qu'Appelle, NDP): "As I said earlier today, the bill is really a power grab by the federal Liberal government. It is an infringement upon the civil liberties of the Canadian people" (30 May 2002 p. 11963). The initial unity and support for anti-terrorism legislation at the start diminished over time and MPs who began to have doubts about proposed legislation spoke out to present their objections and concerns. As discussion progressed and new Bills were introduced the enthusiasm for strong legislation appeared to diminish. Australia had difficulty with gaining acceptance for new police powers in the ASIO Bill and Canada finally left Bill C-17 to die. Stance Tables 6-4 and 6-5, although presenting only a measure of discourse, appear to show an example of the argument that support was diminishing for strong anti-terrorism measures. In the Tables, the percentage values of 'support' for Bill C-42 (37.19%) appear to be close to those for Bill C-36 (38.23%) even though C-42 was withdrawn because of opposition. The combined percentages for 'critical' and 'opposed' were similarly close for both Bills. Later, when C-42 was reintroduced as C-55 there were many more instances of discourse entered into the database but the percentage of 'support' had fallen to 22.70% and the combined percentages for 'critical' and

'opposed' had increased to 77.04%. On the third attempt, when the legislation was introduced as Bill C-17, 'support' had increased slightly over C-55 to 27.27%, combined 'critical' and 'opposed' at 61.62% remained close to the percentage for the original Bill C-42, and 11.11% of the discourse could not be categorised. While the measures of discourse are only a representation of voting patterns in the House, they do present an indication of the political sensitivities present, in this case a falling-off of interest in pursuing difficult legislation that no longer had a sense of urgency given the passage of time.

The government's response to the fears coded in the discourse about 'Impeding personal rights and freedoms' was to present arguments that civil liberties were not going to be ignored. However, the government was in a precarious position, charged with increasing security while not violating civil liberties. The challenge was to justify the anti-terrorism legislation's rigorous security parameters in a way that conceded an encroachment on civil liberties while denying the loss of any established rights or freedoms. The discourse of Canadian MP Mr. John McKay (Scarborough East, Lib.) presented a compelling validation for the new laws:

We do not have absolute rights in this country. There are times when we have to repeat that. I use as an example the criminal code. The criminal code is a circumscribing of people's rights to behave in fashions they wish to otherwise. The criminal code in fact circumscribes those rights. Therefore, when a government proposes to limit the rights of its citizens, it has to show there is proportionate balance, that the government took into consideration the impact of the effects. Preventive arrests and investigative hearings, et cetera, in my respectful submission, are areas where the government has felt the most concern and has responded with as many protections as it can in the circumstances. (27 November 2001 p. 7549)

Society has its established laws controlling what people can and cannot do and the existence of criminal law highlights the fact that people are not allowed to do whatever they please. Democratic societies are based on laws and society has rules and obligations that its people must obey. Furthermore, it is the government, elected by those same people, who create, set up and control the infrastructure to regulate the laws. The argument put forward is that the creation of new anti-terrorism laws is just the natural occurrence of governance. Therefore, the government justifies the creation of new laws, which may increase its powers, as a natural order of administering and protecting its citizens. The governments of both countries held that more robust legislation was for the good of their citizens and therefore was justification for the anti-terrorism legislation (*Impeding personal rights and freedoms* is theme # 14.).

Similar to the topic of 'Impeding personal rights and freedoms', the theme of Human Rights resulted in parliamentary discourse concerned about protecting people from harsh or severe treatment under the proposed anti-terrorism legislation. Arguments raised by those in opposition to, or concerned with the harshness of the new anti-terrorism laws followed a common idea that the legislation was giving the government too much power while constricting the traditional rights of its people. The concerns were not unfounded as revealed through the enacted legislation that gave strong new powers to the police and intelligence agencies. Those agencies were given new powers to conduct investigative and preventative measures related to matters of national security. The legislative discourse suggested the proposed conduct of investigations into suspected terrorist activities were examined in great detail. Such investigations were new and the abilities granted security authorities took the country into unfamiliar and uncomfortable new territory. In Canada, supporting the proposed legislation, Mr. Darrel Stinson (Okanagan-Shuswap, CA) offered a down-to-earth assessment in justification of severe new laws:

Today I hear the talk, the worry and the concern about human rights. It is a legitimate concern but is it concern about human rights or should it be about human lives? I for one would sooner have the RCMP rounding up and detaining suspected terrorists than rounding up and taking the families of victims of terrorists to the morgues. I think the families, relatives and friends of the people who died on September 11 would have the same feelings. We do not even have to ask. That is the feeling. (17 October 2001 p. 6279)

The discourse often offered that the new legislation was directed solely at the threat of terrorism. More than one utterance argued the point that it was better to err on the side of caution. Fears that the new legislation contained the ability in law to disregard matters of human rights for those involved in an investigation connected to terrorism were worrisome to many. Yet the need for anti-terrorism legislation was not negotiable, especially when one considers the global environment post-9/11 and the involvement of the United Nations demanding anti-terrorism action from all member nations. As shown by Australian Attorney General Mr. Williams (Tangney, LP) the government clearly understood the plight of protecting human rights while creating the new laws: "The bill also provides that any person taken into custody or detained must be treated with humanity and with respect for human dignity, and must not be subjected to cruel, inhuman or degrading treatment" (21 March 2002 p. 1931). Assurances of a continuing respect for human rights, something well established already in Australia and Canada, were used by both governments to justify the legislation proposed (*Human Rights* is theme #28.).

A crucial question that emerged early on in the legislative discourse was how to define terrorism. There was no universally accepted definition for terrorism. There was a level of agreement and cooperation between countries on the need of anti-terrorism laws, but questions and issues remained about how people identified as, or associated with, terrorists were going to be treated in terms of their rights and freedoms, and human rights. The ambiguous nature of defining terrorism had politicians worried that all-encompassing legislation targeting terrorism was not possible and therefore needed to be fine-tuned. Many issues arose in the discourse surrounding the lack of a definition of terrorism and terrorists as discussed in Sections 4.2.3 and 4.2.4. The difficulty was in determining what constituted an act of terrorism, a consuming challenge for the legislators: what was it that made terrorism different or unique when compared to more familiar violations of the law, and how could this be addressed. Governments were challenged with establishing what it was that constituted terrorism and how distinctions could be made between terrorism and non-threatening activities such as organised protests. In Australia Mr. Andren (Calare, Ind.), raised these very same issues in parliament:

There is nothing in this bill to define terrorism, and there is no reference to a definition of a terrorist act contained anywhere, as far as I can see, in any of the bills. This raises questions as to how widely this bill might be applied and as to the potential that this act might be used in, for example, instances of legitimate protest, dissent or lawful advocacy. (13 March 2002 p. 1204)

Pressure was on government in both countries to explain what constituted an act of terrorism and what made it different from other crimes already addressed by criminal law. If security was to be strengthened the government would have to provide convincing reasons for the new laws while explaining what it means by terrorism. The Hon. Irwin Cotler (Mount Royal, Lib.) offered this discourse explaining how the matter was clarified in Canada:

First, and as a matter of particular concern, the definition of a terrorist activity has been circumscribed to ensure that the focus is on the intended terrorist evil rather than

the lawfulness or unlawfulness of the act which underpins it. (27 November 2001 p. 7574)

The sentiment of the parliamentary discourse about 'Defining terrorism' included observations that terrorism will be recognised for what it is when it happens. The act of terrorism was seen to be so distinctive that it was a crime above crime. The governments legitimised the new anti-terrorism legislation on the basis that it would enable authorities to attempt to prevent such actions from happening. However, if a terrorist action happens, the new legislation would allow those responsible to be tried for their actions (*Defining terrorism* is theme #27.).

Linking terrorist organisations to organised crime provided another opportunity to justify the need for anti-terrorism legislation. Criminal activities and organised crime are topics not unfamiliar to government and opposition members in the legislature, nor to the general public. The activities of criminal organisations are unacceptable and wrong, as well as a threat to society. Identifying organised crime with organised terrorism provided the governments with another opportunity to legitimise the necessity of the proposed anti-terrorism legislation. Efforts to combat transnational crime already existed and those same tactics provided the basis for targeting terrorist financing as discussed above. Recognizing the operational similarities between organised crime and terrorist organisations was key to the justification of the new legislation. In Canada, Mr. Brent St. Denis (Algoma–Manitoulin, Lib.) captured the concept:

What we are talking about is an approach to society that wants to destroy. Be that a terrorist gang, a biker gang or a drug cartel, there are elements in society in all corners of the world that wish to destroy that which we so strongly value and cherish. (17 September 2001 p. 5131)

Establishing the idea that terrorism could potentially further its efforts through partnerships with organised crime via illegal activities further strengthened the justification that anti-terrorism laws were necessary. More discussion occurred about terrorist organisations and organised criminal activities in Australia than in Canada (Terrorist Organisation/Organised crime is theme #35.). In Australia, discourse by the Leader of the Opposition, Mr. Crean (Hotham, ALP) outlined the thrust of the opposition plan to deal with terrorism organisations and organised crime:

Our plan highlighted the need to upgrade the effort of Australia's various intelligence and security agencies in tracking transnational criminal organisations that threaten our way of life. These activities involve terrorism, drug trafficking, organised crime, people-smuggling and trafficking, financial fraud, arms smuggling, the potential theft and sale of nuclear material and efforts to produce and acquire agents used to create chemical and biological weapons. (13 March 2002 p. 1146)

The Canadian and Australian approaches to the problems their anti-terrorism legislation was designed to address are similar. First, is the sameness in the interpretation of terrorism as being a crime and second is the understanding that terrorist organisations are not dissimilar to criminal organisations. There are those in the academic field of criminal justice who would agree that terrorism is in fact a criminal justice issue, as suggested in Section 2.2.4, albeit one that is unappreciated because of its apparent lack of characteristics that distinguish it from ordinary criminal issues. It would appear that the position presented by the governments of both countries is that terrorism, more specifically organised terrorism, is a variation of organised crime. This, it would appear, is a concept that is easy to understand. People might not be able to comprehend terrorism as it is a rare occurrence in countries such as Australia and Canada, whereas criminal activities such as drug trafficking, arms smuggling

and financial fraud are well known. Linking the two, terrorism and organised crime, served to help the governments justify the importance of and need for anti-terrorism legislation.

Two additional issues in the discourse served as foils masking dissent and are deserving of comment: 'Low profile' themes '*Respecting Charter of Rights (Canada), Constitution (Australia)*' (Theme #32) and '*Not Respecting Charter of Rights, Constitution*' (Theme #33), provided opportunities for lofty principled posturing in the discourse on the proposed legislation. (The quantity of discourse produced by Canadian speakers was significantly higher ($p = 0.05$) than that produced by Australian speakers in relation to Theme #32.) Those in the opposition who had previously agreed to the need for new laws and who had therefore positioned themselves as not against anti-terrorism laws, just not supporting the government's proposed version; began to voice their concerns openly. In Canada, one of the avenues of dissent against the legislation was the belief that it was in violation of the Charter of Rights and Freedoms. In Australia dissenters argued legislation was in conflict with the Constitution. In Canada, Mr. Michel Bellehumeur (Berthier - Montcalm, BQ) stated a contrary position this way: "We cannot even support Bill C-42 in principle, because it disregards the Canadian Charter of Rights and Freedoms, and gives far too broad powers to one single man or woman" (6 December 2001 p.7948). In Australia, Mr. Ripoll (Oxley, ALP), took exception to proposed provisions in the ASIO Bill:

This bill also has a massive constitutional flaw. This bill is going to be so strong and so powerful that the very first execution of any act under this bill will be challenged in the High Court because it is not constitutional. (19 September 2002 p. 6823)

These were but two examples of many utterances expressing a belief the new laws were too strong. A shared concern in both countries was that the new laws would provide those in authority with too much power to wield over the population. A worry was the new powers being granted to the police and intelligence agencies by Canada's Bill C-36 and Australia's ASIO Bill, among other Bills, would lead the country in the direction of becoming more repressive or even a police state. Whether these fears expressed by opponents of the anti-terrorism laws were political grandstanding or genuine is not clear; however what is clear is that the governments of both nations made the effort to justify the new laws as being in line with the Charter of Rights and Freedoms in Canada or adhering to the Australian Constitution. The Right Hon. Jean Chrétien (Lib.), Prime Minister of Canada had this response: "This legislation is entirely in keeping with the charter. The committee worked to ensure that the new legislation did not contravene the charter" (16 October 2001 p. 6196).

Essentially the debate about whether the laws were in violation of the Charter or Constitution became a matter of political opinion. Senator Ellison, Minister for Justice and Customs (Western Australia, LP), apparently frustrated by criticism about the Group of Five Bills, offered: "The answer is yes and yes; the government did seek advice on the proscription proposal and the advice was that it was constitutional" (26 June 2002 p. 2631). As this quote suggests, the discourse occurring in parliament went back and forth over the legality of the proposed laws. The only true test of whether these laws would stand up against a Charter or Constitutional challenge would have to happen once the laws were enacted and applied. However, the governments of both countries believed that their proposed anti-terrorism laws would survive such challenges and were quick to legitimise their anti-terrorism efforts by arguing strongly that the laws were in accordance with the Charter of Rights and Freedoms or with the Constitution.

Chapter 8 Conclusion

8.1 Introduction

Anti-terrorism legislation developed by Australia and Canada in response to United Nations Security Council Resolution 1373 has been the subject of much study (Shaffer, 2001; Rowe, 2002; Clarkson, 2003; Hocking, 2004; Shawcross, 2004; Lynch and Williams, 2006; MacDonald and Williams 2007; Roach, 2007; Jaggars, 2008). How the parliamentarians in the Australian and Canadian legislatures justified the new measures in their debates has not been studied until now. The countries needed to satisfy the UN requirements and provide the necessary strengthening of legal means and abilities to deal with the complicated issues arising from the threats of terrorism. There are many similarities and links between Australia and Canada that allow comparisons to be made between the two countries as has been outlined in the Introduction (Chapter 1) providing a solid basis for this study of how new anti-terrorism laws were legitimised by their legislatures.

The purpose of this dissertation was to examine how anti-terrorism legislation was justified in the Australian and Canadian Parliaments by examining the parliamentary discourse during debates on the legislation. Neither country had nation-wide anti-terrorism legislation prior to 9/11; the task was to show good reasons why it was now needed. Terrorism had not been an important issue for the countries' politicians before, and the debates on these Bills captured their initial struggles with the subject. The elected members of parliament, both government members and members of the opposition parties, were united in their desire to show support to the United States following 9/11 and to comply with the requirements laid out by the UN Counter-Terrorism Committee established by Resolution 1373.

The legislators were faced with a daunting task of establishing new laws that would make it possible to authorise strong measures while ensuring the protection of personal rights and freedoms. New policing powers of investigation and detention were required to deal with the scope of activity associated with terrorism including proactive measures that could prevent terrorist acts from occurring. Improved abilities to reach out beyond the country's borders were needed, and steps had to be taken to identify and freeze funding sources identified with terrorist organisations as required by Resolution 1373. These issues and more were difficult to confront for politicians conscious of their responsibilities to their electorates in the ridings they represented and knowing that there was an urgency to pass legislation to allow counter-terrorism measures to be effected. The discourse throughout the debates on the proposed legislation provided insights into how the government members explained the need for the proposed new laws and how the opposition members reacted, always supportive in their shared goal of combating terrorism but reluctant when democratic values and consideration for human rights appeared to be at risk. Both government and opposition members were very conscious in demonstrating the legitimacy of the new legislation they were shaping for the resonance their reasoning would have back home in the ridings and on the national scene.

Existing criminal legislation in both countries was adequate to deal with acts, such as murder or destruction of property, but legislating authority to prevent terrorism from happening was fraught with difficulties. The criminal justice system was accustomed to addressing wrongs after the fact and now it was to be empowered with pre-emptive authority to prevent terrorism. The armed forces provided defence capabilities to the extent necessary for each nation's security from attack in times of war. Now, defence capabilities against terrorism were to be written into criminal law equipping the

countries' policing agencies to stop aggressive acts before they happened. Changes and additions to the law were required to comply with UNSC 1373 that called for greater cooperation between nations in meeting the new challenges of terrorism. Terrorist organisations were known to be well financed and the identification and freezing of terrorist assets was a principal objective of Resolution 1373.

With the new legislation, new opportunities for cooperation with other countries in achieving the UN objective would become possible and the resulting reciprocal exchanges of information would be useful to identify or connect organisations within the country that posed risks to national security. In formulating the new anti-terrorism legislation, the governments realised that new investigative and policing powers would be needed to identify people and organisations suspected of being involved in or connected with terrorism inside or outside of the country. Furthermore, the tracking and interrogation of persons of interest in this regard required new provisions in the legislation, as did the detention of individuals suspected of being involved in, or having knowledge of, planned terrorist activities, the purpose being to foil terrorism events. Changes and additions to the criminal codes within each country to introduce new laws providing authority and direction for dealing with these and similar issues made up the substance of the new anti-terrorism legislation debated in the parliaments. The proposed new legislation was extraordinary for two reasons; first it was addressing potential threats to the population by taking steps to stop events before they happened, and secondly it was anticipating the possibility that planning, financing, and organising of acts of terrorism could be done in one country and executed in another by perpetrators from a third. The new laws were accordingly proposed with strong measures to amend and expand criminal justice legislation to embrace the new realities of terrorism and to extend provisions to matters formerly falling under the purview of the administration of national security.

8.2 The Findings

How the legislators in both countries justified the need for new anti-terrorism legislation in their parliaments in response to UNSCR 1373 was examined by reviewing the discourse recorded in Hansard transcripts of both countries over the eighteen-month period from September 17 2001 until the end of March 2003 following the invasion of Iraq. This was the period covered by the introduction and discussion in the legislatures of the main pieces of anti-terrorism legislation that included compliance with Resolution 1373 issued on September 28 2001.

In Australia, following a national election in November 2001, called by the Howard Government that campaigned on the need for greater National Security, an Anti-Hoax Bill was introduced in February followed by the initial anti-terrorism legislation introduced in March 2002 as the 'Group of Five' Bills and the ASIO Bill. These were followed in October 2002 by three Bills initiated as a result of the Bali bombings. In Australia, all of the Bills except the ASIO Bill had received Royal Assent by March 2003. In Canada, the major pieces of legislation were Bill C-36, the Anti-Terrorism Act, and Bill C-44, An Act to Amend the Aeronautics Act, introduced in mid-October 2001 and debated over a two-month period. The last of the Canadian anti-terrorism Bills discussed in this research, Bill C-17, The Public Safety Act 2002 (first debated as Bill C-42, then C-55), was awaiting final reading in the House and consideration by the Senate at the end of the research period.

The focus of the research was to identify themes in the discourse related to the justifications used to legitimise the new anti-terrorism legislation. Several themes were postulated at the beginning of the research and others were identified as 5,376 instances of discourse were coded for the study. The

completed database, with 45 themes, provided the qualitative research data that were compiled in tables providing quantified data about the themes and instances identified and the political stance taken by the parties in the legislatures. The themes recounted topics that came to justify reasons for proceeding with the legislation but they also included arguments opposing aspects of the legislation. Twenty-two of the 45 themes were deemed noteworthy because of their frequency of mention and a further eight were considered to have influential qualities supporting justification.

The 45 themes were subsequently conflated into four groupings of related topics or Super-themes that characterised the basis on which the legislation was justified: Terrorism Event; National Security; Criminal Justice; and the Anti-Terrorism Legislation itself.

8.2.1 Thematic Groupings of Discourse

The Terrorism Event, Super-theme I, was unquestionably a strong justification for both countries to introduce new legislation, beyond the fact that UNSCR 1373 required member states to identify and cooperate in the freezing of funds that could support terrorism. The shock of 9/11 had shown the vulnerabilities that all nations shared and Australia and Canada were both determined to take the necessary new steps to protect their people. Terrorism was no longer something broadcast on newscasts from places far away; it could happen anywhere and was now a global problem with the United Nations playing a revitalised lead role made possible by the support of the United States. Australia and Canada, as middle powers, both saw their obligations to support the United Nations as a justification for anti-terrorism legislation. Their sympathy and support for the United States was also prominent in the discourse coded about 9/11, the event. As noted previously in relation to this Super-theme the quantity of discourse produced by Australian speakers was significantly higher ($p = 0.05$) than that produced by Canadian speakers. This would likely be attributable to themes of the Terrorism Event being addressed on two different occasions in Australian debates, first in the months following 9/11 prior to the election call and secondly when the re-elected government introduced the proposed legislation.

Topics included in *Super-theme IV, Anti-Terrorism Legislation*, also served to justify approval of the proposed new laws for both countries. Strong support for the necessity of making new laws to protect the country from terrorism was uppermost in the early discourse recorded but declined with the passage of time. Even so, the negative comments about aspects of the legislation as well as calls for amendments often could be countered by supportive arguments and the process of give and take in the debates turned into a means whereby the new laws were validated. With terrorism being such a high-value subject of discussion internationally, legislative actions taken by other countries, particularly the United Kingdom and the United States were influential and provided arguments to support the new legislation. Discourse relating to sunset clauses also served the purpose of justifying the legislation. Members of Parliament raising this topic from the opposition benches were able to take credit for reigning in government proposals they considered severe and the government was able to establish measures they wanted with the provision of a second look in three or more years.

While Australia and Canada were successful in demonstrating sufficient legal reasons for most of the early legislation proposed, gaining Royal Assent very quickly for some measures, justification proved to be difficult in Canada with Bill C-42, The Public Safety Act, and in Australia with the ASIO Bill. Even though the Canadian government held a majority of seats, strong opposition to C-42 continued when it was reintroduced as Bill C-55 and again later as Bill C-17 finally passing the House but dying in the Senate as Parliament was prorogued. A second version of the ASIO Bill similarly had difficulty

being justified by the majority government in the Australian Parliament but was moving closer to gaining Royal Assent at the end of the period under study. Canada, with an appreciation of the anti-terrorism rhetoric next door in the United States, introduced its major legislation, Bill C-36, on October 15 2001 and was able to debate and pass it along with Bill C-44 in two months gaining Royal Assent on December 18 2001. Discourse throughout the research period evidenced a change as time passed, moving from a period of unanimous support for new anti-terrorism laws, in the early days following 9/11, to a weakening of support and outright opposition to some of the legislation by the end of the study.

Super-theme II, National Security, was a high-profile topic in the discourse on anti-terrorism legislation. It embraced themes relating to relationships crossing and beyond the countries' borders and recognising that the dominant thrust of new laws to deal with terrorism would require cooperation with other countries through alliances and increasing powers for intelligence and policing agencies, border security and immigration matters. National Security was a topic having much more discourse in Canada than in Australia with a considerable number of utterances expressing a generalised need validating new legislation to strengthen relationships with the US. As stated above the quantity of discourse produced by Canadian speakers in relation to this Super-theme was significantly higher ($p < 0.05$) than that produced by Australian speakers. This suggests National Security was an issue of greater interest in Canada than appeared to be the case in Australia as the anti-terrorism legislation was being developed. Public Safety was also a frequent topic for needed action in Canada as was Immigration, both signalling justification for new laws. Measures to upgrade vigilance through expanded intelligence agency and policing powers, and work with other countries, particularly in Australia, were frequently stated as justification of the proposed new legislation. Australia was very conscious of its regional role, anchoring the West in the southern Pacific, to paraphrase Siracusa and Coleman (2006), and strong anti-terrorism legislation was justified to maintain its status among regional and international governmental organisations.

Criminal Justice, the foundation for the Criminal Code Amendments making up much of the anti-terrorism legislation in both countries and the topic of *Super-theme III*, included the greatest number of instances recorded in the database and touched upon some of the most sensitive topics debated. Terrorism was a specific kind of violence and the discourse studied frequently offered the point that criminal codes had adequately dealt with violent acts over the years. The new anti-terrorism legislation was designed to expand the scope of those existing laws introducing controversial measures and giving discomfort to many legislators. The themes of discourse categorised in the Criminal Justice grouping present a checklist of the difficulties presented by the proposed new regulations that were drawn up to control terrorism but if misinterpreted could potentially affect innocent people. Personal rights and freedoms, human rights, protecting minorities and respect for the Constitution in Australia and the Charter of Rights in Canada were all topics of concern, and justification of the new legislation was only possible with assurances that it would not infringe on law-abiding people. Improving each countries' ability to control the operations of terrorist organisations and organised crime, and deal with terrorism financing was easier for the politicians and their constituents to understand but concerns were similarly expressed that innocuous organisations could be affected. Through all this, the frustration of not having a satisfactory definition of terrorism, the new criminality the legislation was addressing, clouded the debates. In both countries parliamentarians were frequently struggling to comprehend how the new laws could be affected without harming innocent people.

8.3 The Hypothesis

The examination of parliamentary discourse to determine how the proposed anti-terrorism legislation was justified began with the knowledge that Canada was next door to the United States, the country that had suffered a blow to its national security from 9/11 and therefore was leading the United Nations offensive against terrorism. It was also well documented that Prime Minister Howard of Australia had campaigned for re-election on a platform of improving the country's national security. It appeared that Australia's geographical position as the lone Western Nation in the South Pacific positioned matters of national security as priority number one. The reverse could be said about anti-terrorism legislation needed in Canada. The country's closeness to the United States put it in a position where matters of national security did not appear to be of a high priority.

The first hypothesis offered at the beginning of this dissertation was that national security matters would supersede criminal justice matters as justification for anti-terrorism legislation in Australia. Statistical comparison of the discourse quantities produced in relation to this theme did not support the hypothesis that the introduction of Anti-Terrorism legislation was predominantly discussed as a national security issue in Australia. Instead, the research confirmed it was Canada and not Australia that had a stronger national security reaction to 9/11. Canada tallied 29.05% of the discourse instances noted for National Security compared to 22.81% for Australia. The quantity of discourse produced by Canadian speakers was significantly higher ($p < 0.05$) than that produced by Australian speakers, confirming that national security matters were of greater concern to Canadian legislators than to Australian legislators. The discourse indicated that Canada's close proximity to the United States was not beneficial where internal measures of security were concerned. Existing Canadian border protection practices drew harsh criticism about security from aspersed American sources and this, combined with the immediate American protectionism in the aftermath of 9/11, greatly hindered cross border commerce. American security interests instantly became Canadian security interests. The discourse on Canadian anti-terrorism legislation indicated early desires to reassure the United States that national security was of the utmost importance for Canada and that the proposed anti-terrorism legislation would contain improved security measures incorporating the strong laws expected. As noted earlier, Canada has implied this concern in its National Security Policy within a reference to "... ensuring Canada is not a base for threats to our allies" (Privy Council Office, 2004, p. 13).

The second and related hypothesis was that in Canada the justification for anti-terrorism legislation would be centred on criminal justice matters. This proposition that criminal justice matters would stand out in shaping the justification for anti-terrorism legislation in Canada was, as with the first hypothesis, not proven by the research.

Instances of discourse tallied in Table 6-6 on Criminal Justice matters were very close, 31.28% for Australia and 32.57% for Canada. Statistical comparison of the discourse quantities produced in relation to the Criminal Justice Super-theme did not support the hypothesis that the introduction of Anti-Terrorism legislation was predominantly discussed as a criminal justice issue in Canada.

There was little difference in the quantity of discourse on criminal justice in the two countries resulting in no statistical significance between Australia and Canada. When measured by the instances of discourse recorded in the database for this research, legislators in both countries were equally concerned about criminal justice matters in debating the proposed new laws.

8.4 Concluding the Research Findings

This dissertation set out to determine how the governments of Australia and Canada justified the need for new anti-terrorism legislation in their parliaments following 9/11. The four thematic groupings embodied the justifications the politicians used and needed when promoting and defending the anti-terrorism legislation to constituents and in public fora. *The Terrorism Event* had been well documented and publicised, needing little further explanations about the need for the countries to react in various ways. Legislation was the process democratic countries used to codify rules and procedures for governing, and *Anti-Terrorism Legislation* was the product sold to the electorate, seen as necessary to fill the security gaps that emerged as potential threats to the Australian and Canadian people and infrastructure, demonstrated by 9/11, were identified. *National Security* was no longer a matter relegated to the defence, intelligence and diplomatic corps, traditionally focussed on matters beyond the countries' borders, but was expanded to be an issue involving strengthened investigative and regulative measures by border control and other policing agencies now charged with pre-emptive roles in protecting their country from terrorism. Politicians were able to continue championing a fair and just society with *Criminal Justice* measures upholding the rights and protections inherent in enforcing law and order in a democratic society, notwithstanding the introduction of some new rules and modifications to others.

The discourse tallied for Table 6-6, categorising the justifications for anti-terrorism legislation, showed almost as many total instances related to national security (1427) as to criminal justice (1723) in the study. The quantity of discourse that arose on these two Super-themes in this research is evidence supporting the argument referenced above that there has been a blurring between criminal justice and national security concerns occurring since the Cold War (McCullough, 2004). Similarly, this is a reflection on the conflicting concerns found in academic research over the place of terrorism in criminology that have been noted earlier in this dissertation (Bennett, 2004; McCullough, 2004; Hamm, 2005; Mythen and Walklate, 2005; Savelsberg, 2006; Hogg, 2007; McCullough and Pickering, 2009).

8.5 Implications of the Research

1. Democratic governments faced with violence have a need to strike a balance between rights and freedoms, and tough measures that could impede those rights, as has been discussed in the literature by Arendt (1970), Walzer (1977), and Keane (2004). The discourse in the parliaments of Australia and Canada validated those arguments and the discourse demonstrated that democracies have difficulty dealing with violence. The solidarity evident at the outset of debates on the anti-terrorism legislation waned as expansive and potentially invasive laws were considered. The governments had difficulty in trying to create forward-looking legislation such as the ASIO Bill or Bill C-42 that was in part looking to prevent or respond to anticipated future terrorism events.

Western countries have evolved their criminal codes over time and any proposed new measures must endure what Ignatieff (2004) terms "adversarial justification" in parliamentary debates, a process that can cause delay to the point of failure as with Canada's Bills C-42/C-55/C-17. This example, where the government felt strongly enough to reintroduce Bills a second and a third time, demonstrates the shortcomings in the process of reaching solutions in a democracy when there is no demanding urgency. Giving support to this observation is the opposite example of Australia in dealing with the three Bills introduced following the Bali bombings. These were introduced, debated and given Royal

Assent all in a matter of days. This was emergency legislation, the first correcting an oversight identified in the original anti-terrorism legislation that would have delayed the listing of Jemaah Islamiah as a terrorist organisation (Terrorist Organisations Bill 2002), the second outlawing and providing for extradition of terrorists involved in the murder of Australians abroad (Offenses Against Australians Bill 2002), and the third clarifying legislation concerning holders of financial assets of terrorist organisations (Charter of UN Amendment Bill 2002). Ironically, the reasons for these Bills should have been attended to in earlier legislation but anticipatory steps were not built into the process. Democracies therefore can react quickly where reasons to do so become evident but they have difficulty being pro-active.

The research also demonstrated that democratic governments have difficulty with retroactive legislation. The Offenses Against Australians Bill 2002 was the second of two retroactive Bills introduced by the Howard Government. The first was the Anti-Hoax Bill, passed into law in February 2002 and made retroactive to 16 October 2001. In the aftermath of 9/11, there were some 3,000 hoaxes reported of letters and packages containing a suspected hazardous substance and this had created a panic among the population. The Prime Minister took an undertaking on 16 October 2001 to pass legislation to deal with the terrorising hoaxes when parliament reconvened and the Anti-Hoax Bill was the first piece of legislation considered. Many parliamentarians were unhappy with a retroactive law, but had to accept that it was to deal with the emergency to calm and protect citizens.

2. The violence of 9/11 forced a change of perspective on criminal justice legislators. During the period covered by this dissertation the shock of 9/11 and the fear that similar terrorist actions could happen in Australia or Canada was of utmost concern to the members of the legislatures in both countries. The politicians debating the anti-terrorism legislation could be excused for trying to fit the square block that was terrorism as seen by the United Nations into the round hole of each nations' criminal justice system that many criminologists had deemed sufficient to deal with terrorist acts. New laws to curb the financing of international terrorism were not a stumbling block because of the parallels that could be identified with organised crime. However, here was an International Governmental Organisation calling upon member nations to change or add to their criminal justice laws so that the protection afforded their people would now be extended beyond the borders in a cooperative effort with like-minded nations. This joint action required an external perspective on criminological issues, something perhaps acceptable to nations today, but difficult to grasp for politicians of that time. People had been comfortable with an understanding that terrorism was something that happened in isolated instances, often far away, but even if close to home the perpetrators were expected to be dealt with by police and courts as in any other criminal endeavour. Confounding the politicians was the mental picture created by US President Bush's call for a 'War on Terror'. A 'war on drugs' or a 'war against cancer' was in the public vocabulary but 'War on Terror' was coupled with the knowledge that 9/11 perpetrators had come from distant countries, and warring with others abroad meant involving national security agencies, perhaps including armed forces, to protect the country from possible future terrorist actions. Legislating steps that amounted to integrating military behaviour into civilian law enforcement was a radical idea that politicians treated with circumspection. Introducing changes to the criminal code to anticipate terrorism was all the more difficult because of the lack of a definition of terrorists and terrorism.

8.6 Limitations of the Study

The period of study selected for this dissertation achieved the goal of capturing the sensitivities in the legislatures of the two countries as the results were tracked over an eighteen-month period. There was an obvious determination to right the effrontery of 9/11 at the outset but this determination faded as the politicians wrestled with the difficulties of getting the legislation right for their democratic countries. An extended period of study would have required a modified, if not different, focus but might well have permitted slightly different conclusions to be drawn. For example, the hypothesis that national security matters would supersede criminal justice matters as justification for anti-terrorism legislation in Australia, might have been proven true if legislation debated over a longer period had been included in the study.

The focus placed on studying the legislation put forward to deal with Australia and Canada's response to UNSCR 1373 excluded other legislation having provisions relating to concerns over terrorism. These included, for Australia, the Border Security Legislation Amendment Bill 2002; the Proceeds of Crime Bill 2002; and the Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Bill 2002; and for Canada, Bill C-24, a Criminal Code Amendment concerning organised crime and law enforcement, and amendments to The Customs Act and the Citizenship of Canada Act. Related government action in support of NATO and the dispatch of troops by both countries to Afghanistan was also outside the study. The inclusion of these matters might have added a further dimension to the research, however, given the extent of discourse that was reviewed, the choice to be prudent is not regretted.

One of the themes that turned out to receive scant attention in the discourse, the International Criminal Court (ICC), was ahead of its time for the legislation discussed. The United Nations, having called for ratification of the ICC in 1998 did not receive the 60 ratifications required until July 2002, and judges and the Prosecutor did not take office until 2003. Only a few instances of this theme were identified in the discourse studied and these were calls suggesting the ICC was the proper body to deal with terrorism crimes and others explaining it was not available to act.

8.7 Considerations for Future Study

Many lines of inquiry presented themselves as the discourse was studied and the results of the paper developed. This paper looks at the legislative response by two countries to 9/11 and UNSCR 1373. The parallel military action, again precipitated by the United Nations, is equally worthy of study perhaps in terms of whether the post-9/11 world was made safer by the military reaction or by the results of legislation. How all member states responded to UNSCR 1373 would also deserve investigation (and perhaps has) on many fronts including promises and results achieved arising out of Country Reports and aspects of the resulting increased cooperation between nations. Similarly, the synergies resulting from efforts to combat global terrorism and those dealing with international organised crime would be an interesting subject to examine.

This dissertation has been limited to identifying the justifications used by parliamentarians, first within the Houses and subsequently, by extension, to their constituents, for the anti-terrorism legislation passed into law. This justification was communicated far beyond the parliaments by media sound clips and reporting from the legislatures, criticism and commentary, all of which contributed to how the anti-terrorism legislation was 'sold' to the public of the nation. On the other hand the collective media and voices from the public, other opinion leaders, had been sufficiently worried and incensed

by 9/11 that there was a demand for the government to take action, by legislation or otherwise, and the impact of such influence was not insignificant within the countries. The study of the role of media in advocacy against terrorism as well as its place in the introduction and justification of this new legislation is worthy of further detailed examination.

Appendix 1: Parliamentary Sitings and Dates

Australia Parliamentary Debates – House of Representatives

Thirty-Ninth Parliament, First Session – Tenth Period

Official Hansard Number 14, 2001 & Number 15, 2001
September 2001 8 sittings (17,18,19,20,24,25,26,27)

Fortieth Parliament, First Session -- First Period to Fourth Period

Official Hansard Number 1, 2002 & Number 2, 2002
February 2002 7 sittings (12,13,14,18,19,20,21)

Official Hansard Number 3, 2002 & Number 4, 2002
March 2002 7 sittings (11,12,13,14,19,20,21)

Official Hansard Number 5, 2002 & Number 6, 2002
May 7 sittings (14,15,16,27,28,29,30)

Official Hansard Number 7, 2002, Number 8, 2002 & Number 9, 2002
June 2002 12 sittings (3,4,5,6,17,18,19,20,24,25,26,27)

Official Hansard Number 10, 2002 & Number 11, 2002
August 2002 8 sittings (19,20,21,22,26,27,28,29)

Official Hansard Number 12, 2002 & Number 13, 2002
September 2002 8 sittings (16,17,18,19,23,24,25,26)

Official Hansard Number 14, 2002 & Number 15, 2002
October 2002 8 sittings (14,15,16,17,21,22,23,24)

Official Hansard Number 16, 2002
November 2002 4 sittings (11,12,13,14)

Official Hansard Number 17, 2002 & Number 18, 2002
December 2002 8 sittings (2,3,4,5,9,10,11,12)

Official Hansard Number 1, 2003 & Number 2, 2003
February 7 sittings (4,5,6,10,11,12,13)

Official Hansard Number 3, 2003, Number 4, 2003 & Number 5, 2003
March 2003 11 sittings (3*,4,5,6,18,19,20,24,25,26,27)
(*Official Hansard Number 2, 2003)

Total sittings: House of Representatives -- 87

Australia Parliamentary Debates – Senate

39th Parliament, First Session – Tenth Period

Official Hansard No. 13, 2001 & No.14, 2001
September 2001 8 sittings (17,18,19,20,24,25,26,27)

40th Parliament, First Session -- First Period to Fourth Period

Official Hansard No.1, 2002
February 2002 3 sittings (12,13,14)

Official Hansard No. 2, 2002 & No. 3, 2002
March 2002 7 sittings (11,12,13,14,19,20,21)

Official Hansard No. 4, 2002
May 2002 3 sittings (14,15,16)

Official Hansard No. 5, 2002 & No. 6, 2002
June 2002 8 sittings (17,18,19,20,24,25,26,27)

Official Hansard No. 7, 2002 & No. 8, 2002
August 2002 8 sittings (19,20,21,22,26,27,28,29)

Official Hansard No. 9, 2002 & No. 10, 2002
September 2002 8 sittings (16,17,18,19,23,24,25,26)

Official Hansard No. 11, 2002 & No. 12, 2002
October 2002 8 sittings (14,15,16,17,21,22,23,24)

Official Hansard No. 13, 2002 & No. 14, 2002
November 2002 7 sittings (11,12,13,14,15,18,19)

Official Hansard No. 15, 2002 & No. 16, 2002
December 2002 8 sittings (2,3,4,5,9,10,11,12)

Official Hansard No. 1, 2003
February 2003 3 sittings (4,5,6)

Official Hansard No. 2, 2003. No. 3, 2003 & No. 4, 2003
March 2003 11 sittings (3,4,5,6,18,19,20,24,25,26,27)

Total sittings: Senate -- 82

Total sittings for Australia:--169 parliamentary debates

Canada Parliamentary Debates – House of Commons

37th Parliament, First Session 29/01/2001 to 16/09/2002.

Official Report (Hansard) Volume 137; Number 79 to Number 088
September 2001 10 sittings (17,18,19,20,21,24,25,26,27,28)

Official Report (Hansard) Volume 137; Number 089 to Number 106
October 2001 18 sittings (1,2,3,4,7,8,9,10,11,21,22,23,24,25,28,29,30,31)

Official Report (Hansard) Volume 137; Number 107 to Number 122
November 2001 16 sittings(1,2,5,6,7,8,9,19,21,21,22,26,27,28,29,31)

Official Report (Hansard) Volume 137; Number 123 to Number 132A
December 2001 11 sittings (2,3,4,5,6,9,10,11,12,13)

Official Report (Hansard) Volume 137; Number 133 to Number 136
January 2002 4 sittings (27,28,29,30,31)

Official Report (Hansard) Volume 137; Number 137 to Number 151
February 2002 15 sittings (1,4,5,6,7,8,18,19,21,21,22)

Official Report (Hansard) Volume 137; Number 152 to Number 162A
March 2002 12 sittings (1,11,12,13,14,15,18,19,20,21,22,27)

Official Report (Hansard) Volume 137; Number 163 to Number 179
April 2002 17 sittings (8,9,10,11,12,15,16,17,18,19,22,23,24,25,26,29,30)

Official Report (Hansard) Volume 137; Number 180 to Number 196
May 2002 17 sittings (1,2,3,6,7,8,9,10,21,22,23,24,27,28,29,30,31)

Official Report (Hansard) Volume 137; Number 197 to Number 211
June 2002 15 sittings (3,4,5,6,7,10,11,12,13,14,17,18,19,21,21)

Total sittings: House of Commons, First Session – 135

37th Parliament, Second Session 30/09/2002 to 12/11/2003

Official Report (Hansard) Volume 138; Number 001
September 2002 1 sitting (30)

Official Report (Hansard) Volume 138; Number 002 to Number 019
October 2002 18 sittings (1,2,3,4,7,8,9,10,11,21,22,23,24,25,28,29,31,31)

Official Report (Hansard) Volume 138; Number 020 to Number 035
November 2002 16 sittings (1,4,5,6,7,8,18,19,20,21,22,25,26,27,28,29)

Official Report (Hansard) Volume 138; Number 036 to Number 045
December 2002 10 sittings (2,3,4,5,6,9,10,11,12,13)

Official Report (Hansard) Volume 138; Number 046 to Number 050
January 2003 5 sittings (27,28,29,30,31)

Official Report (Hansard) Volume 138; Number 051 to Number 070
February 2003 20 sittings (3,4,5,6,7,10,11,12,13,14,17,18,19,21,21,24,25,26,27,28)

Official Report (Hansard) Volume 138; Number 071 to Number 081
March 2003 11 sittings (17,18,19,20,21,24,25,26,27,28,31)

Total sittings: House of Commons, Second Session – 81

Total sittings for Canada: -- 216 parliamentary debates

Total sittings examined for Australia and Canada: -- 216 + 169 = 385 parliamentary debates

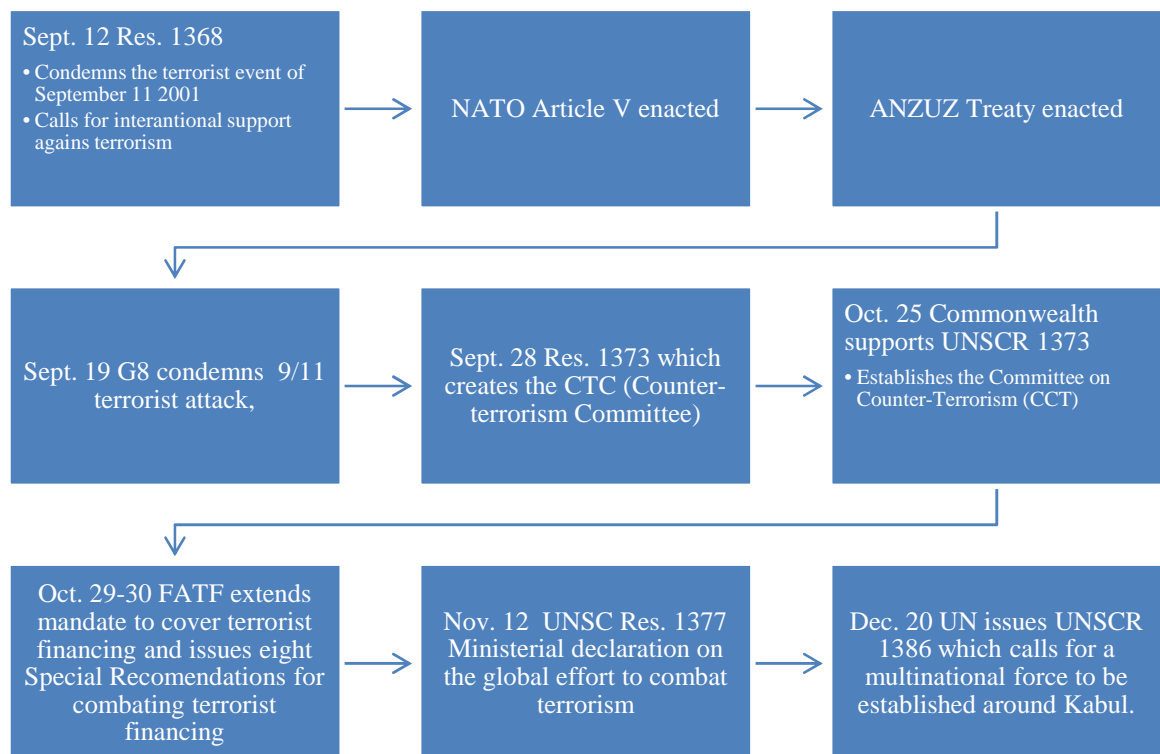
Appendix 2: IGO Actions to Combat Terrorism

Actions Taken by International Government Organisations To Combat Terrorism in 2001, 2002 and 2003

2001 International Government Organisations Action Flow Chart

Immediately after the terrorist attacks of September 11 the United Nations Security Council issued Resolution 1368 effectively condemning the event and calling on international support to fight terrorism. The UN Security Council set the international tone. Along with action from the United Nations NATO and ANZUS both enacted clauses within their respective agreements that enabled a joint military response in defence of the United States. ANZUS is not an international organisation but is included as a balance to Canada's involvement with NATO. ANZUS represents a military treaty between the US, New Zealand and Australia; however it is important to include it in this section because of the role it played following 9/11. NATO enacted article five of the Washington treaty, ANZUS enacted its own treaty to show solidarity and support with the United States. In the months after 9/11, there was a flurry of activity by international organisations and countries alike. The Group of 8 (G8), the Financial Action Task Force (FATF) and the Commonwealth of Nations follow the lead of the United Nations and issue strong condemnations against terrorism while pledging to take action.

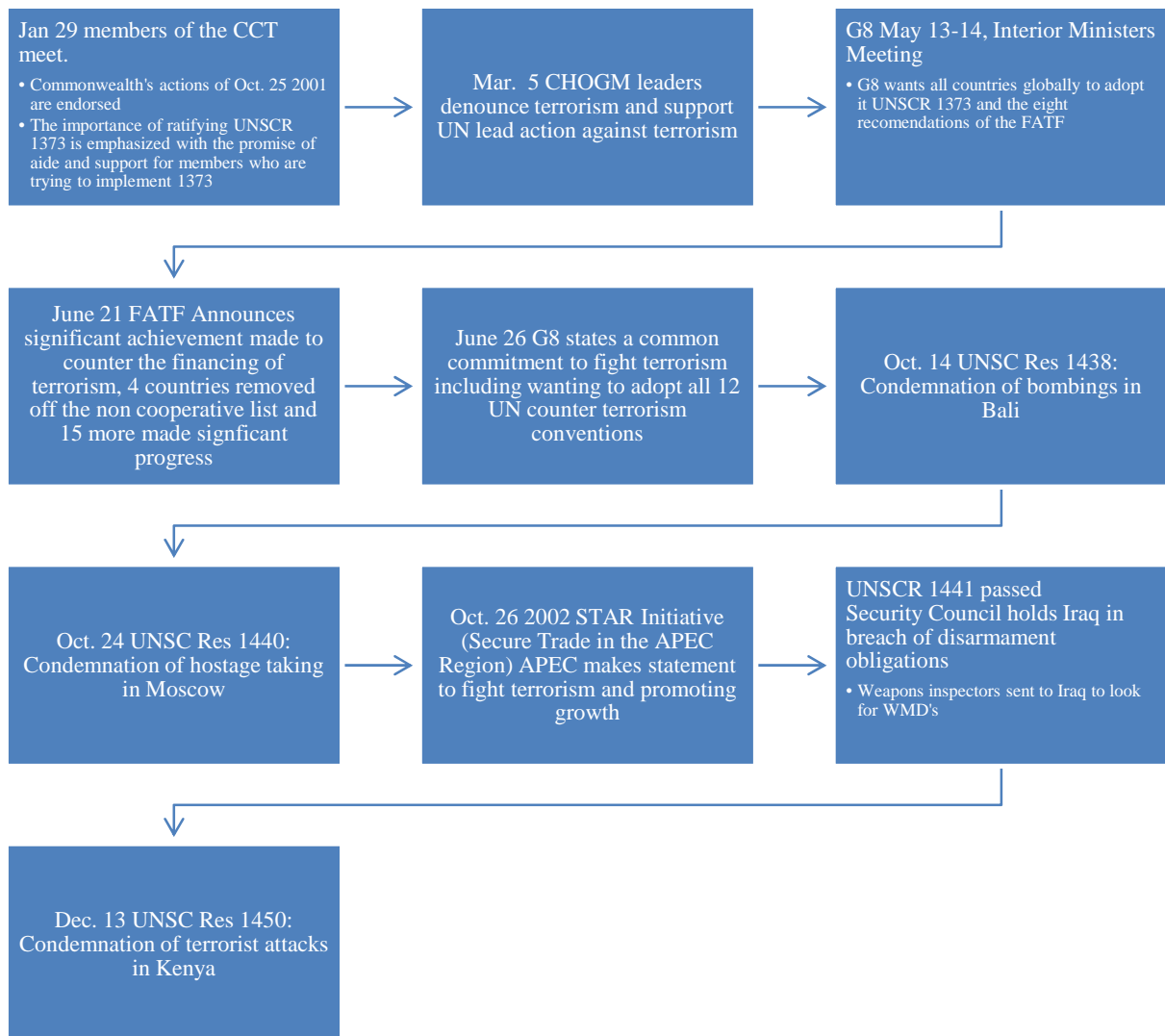
UNSCR 1373 was a catalyst linking these international organisations together, calling for the ratification of all pre-existing conventions against terrorism. Resolution 1373 was also concerned with the financing of terrorism calling all member nations to counter terrorism financing through such actions as the freezing of terrorist funds, seizing assets and creating laws where needed to deny terrorism its financing capabilities. UNSCR 1373 was perhaps the single most influential convention introduced that affected anti-terrorism legislation. The resolution was binding on all member countries of the United Nations, compelling them to ratify it and its conclusions. In late 2001, both the FATF and the Commonwealth immediately declared their support for UNSCR 1373 and initiated action.



2002 International Government Organisations Action Flow Chart

The importance of UNSCR 1373 continued to guide action in 2002. More international organisations began to bring themselves in line with UNSCR 1373. Counter-terrorism concerns continued to be a driving force. The Commonwealth of Nations, its sub group CHOGM, the G8, FATF, and APEC all took action in 2002 that can be traced back to the UN.

The United States alleged that Iraq had terrorist ties and was harbouring weapons of mass destruction. In order to seek international support the US approached the United Nations to legitimise a military response should the allegations be confirmed. As the United Nations played a significant role in uniting the world in the fight against terrorism, the United States tried to capitalise on that same sort of global unification in regards to Iraq.



2003 International Government Organisations Action Flow Chart

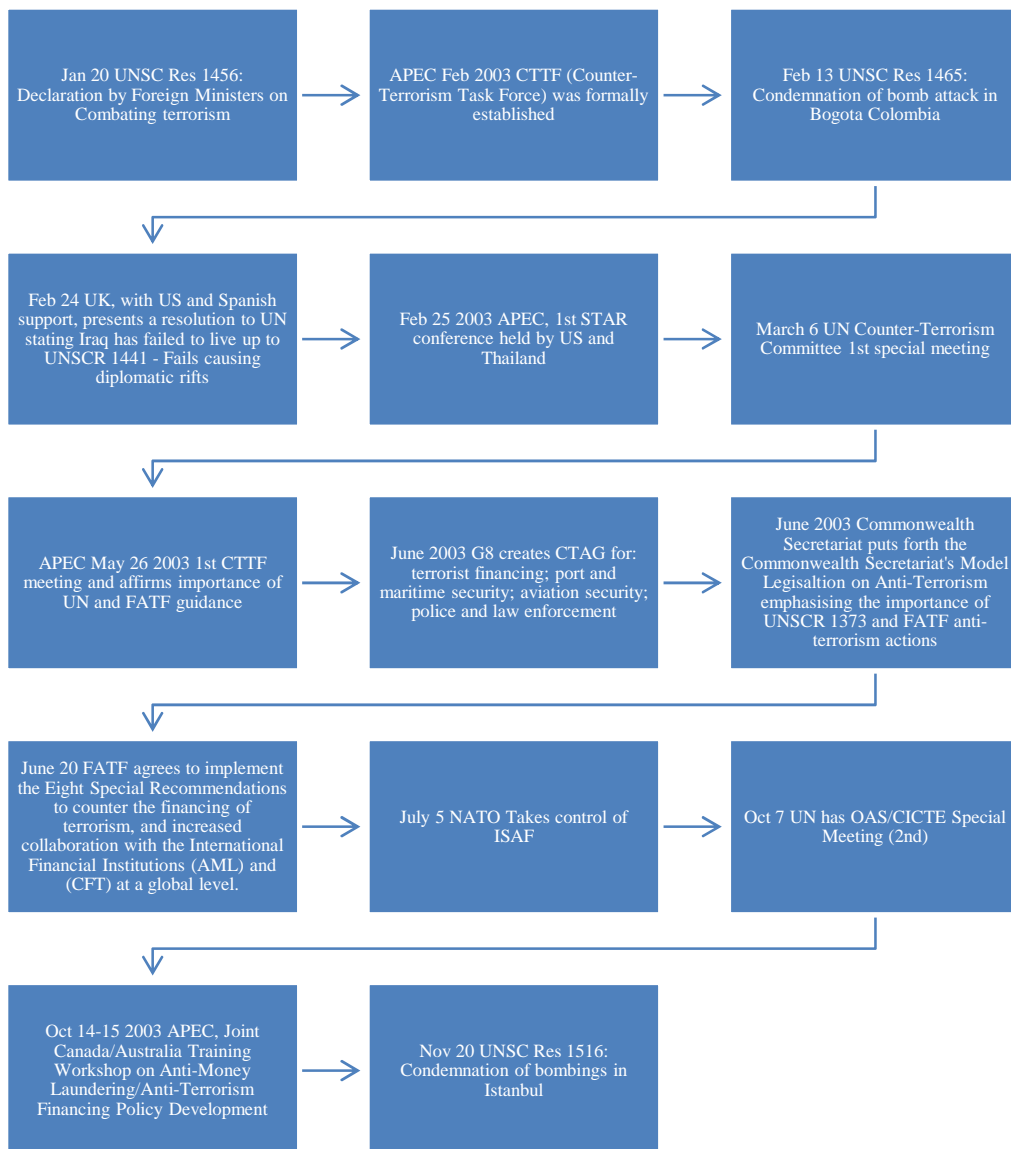
A pattern of increasing counter-terrorism action by international organisations continued, as depicted in the flow chart, with the UNSCR 1373 for guidance. APEC created a Counter-Terrorism Task Force, The G8s established its Counter-Terrorism Action Group, and the FATF expanded its counter-terrorism mandate.

By late February, the US effort to obtain support from the United Nations began to wane as it became unsuccessful in forcing the issue on Iraq and the United States determined it was in its best interest to move on Iraq without UN support.

2003 also bore witness to the military responsibilities of the ISAF being turned over to NATO.

UNSCR 1386 paved the way for NATO to assume command with the request of a multinational force to help stabilise Afghanistan. This was a military operation founded by the UN that was a direct result of 9/11. While it was not an UN-led military response, the military action was legitimised through the International Security Assistant Force stipulated by UNSCR 1386.

By 2003, countries that had established anti-terrorism legislation effectively began to work together with other countries to help them achieve similar actions. APEC and the Commonwealth of Nations reflect this with Australia and Canada taking anti-terrorism mentoring positions.



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