NOTES FOR PRESENTATION TO THE SENATE SPECIAL COMMITTEE ON ANTI-TERRORISM RE: BILL C-3 (Security Certificates and Special Advocate) February 11, 2008

My name is Roch Tassé. I represent the International Civil Liberties Monitoring Group, a coalition of 38 civil society organizations that came together in the aftermath of September 11, 2001, to monitor the impact of anti-terrorism measures on human rights and to advocate against violations of national and international human rights standards.

On February 23, 2007 the Supreme Court unanimously ruled that certain provisions of the *Immigration and Refugee Protection Act* were unconstitutional as they were incompatible with the *Canadian Charter of Rights*, notably with respect to the non-disclosure of information used in a decision to detain and remove a person under a security certificate. The Court found that the use of "secret evidence" violates section 7 of the Charter, which guarantees the right to "life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice".

Chief Justice McLachlin, speaking for the entire court, wrote in paragraph 54 of the ruling:

> Under the IRPA's certificate scheme, the named person may be deprived of access to some or all of the information put against him or her, which would deny the person the ability to know the case to meet. Without this information, the named person may not be in a position to contradict errors, identify omissions, challenge the credibility of informants or refute false allegations.

In paragraph 64, she says:

> A person whose liberty is in jeopardy must know the case to meet. Here that principle has not merely been limited; it has been effectively gutted.

The only major difference between this Bill C-3 and the previous law is the introduction of the special advocate. And even here the government has adopted a flawed and minimalist version of "special advocate" --- essentially the U.K. model that is characterized as "unfair" by the special advocates themselves. The presence of a special advocate might offer some improvements over the current situation, but ultimately does not resolve the basic problem that the individual is denied a full opportunity to know the case, and to meet the case.

Consequently, Bill C-3 does not overcome the Supreme Court's arguments and decision of illegality. It does not save or sanitize the security certificate process. There is still no due process, and section 7 of the Charter is still not respected.

Futhermore, C-3 still discriminates between citizens and non-citizens. We would argue this is in violation of Article 15 of the Charter, which the Supreme Court did not fully address.

C-3 also perpetuates the threat of deportation to torture, and failing deportation, does not address the fundamental issue of indefinite detention.

But perhaps the most worrisome aspect of Bill C-3 is that it still allows a decision based on "intelligence" reports and conclusions rather than solid "evidence" that would be required in a court of justice, and with lower standards of proof than in criminal prosecution. While the special advocate would be allowed to challenge those "intelligence" reports and conclusions, he/she
would not have access to the whole CSIS file. More importantly, he/she would not be able to cross-examine the source of this "intelligence", for instance a detainee in some foreign jail or an agent from another country.

This is particularly troubling in light of questionable CSIS intelligence conclusions revealed by the Arar Commission, the Air India Inquiry, the cases of Abdullah Almaki, Ahmad Abou El Maati, Muayyed Nureddin and other cases in the public domain.

It is even more troubling when we know that the bulk of foreign intelligence received by Canada comes from the CIA whose director told a U.S. Senate intelligence committee, just last week, that "one-fourth of the human intelligence reports on al-Qaeda" was obtained under torture. This is the same agency who refuses to remove Maher Arar from the U.S. No Fly list on the basis of its intelligence conclusions. This is the agency whose flawed intelligence conclusions justified the sacrifice of hundreds of thousands of civilian lives in Iraq.

Under those terms the people targeted by security certificates would still be denied a fair trial.

ICLMG Position

The only way to meet the requirements guaranteed by the Charter and International covenants, and in accordance with the principles of fundamental justice, is through prosecutions under the Criminal code. Failing this, at the very least, any new procedures proposed under IRPA should have standards of proof equivalent to those used in criminal prosecutions, namely "proof beyond reasonable doubt" rather than "reasonable grounds to believe".

By merely deporting individuals alleged to represent a security risk, instead of prosecuting them, Canada fails in its international obligations to prosecute acts of terrorism and to truly ensure the security of Canadians.

Conclusion

In conclusion, the new security certificate of Bill C-3 is essentially identical to the old, unconstitutional process. It fractures our justice system along the flimsy line of citizenship. It takes questionable CSIS and CIA intelligence, some of it acquired through torture, as absolute truth. And at the end of the day, when it works, by the government's own logic, it frees potential terrorists into the world.

This Chamber is rushing to pass a law that not only goes against the values and rights that are enshrined in our Charter but against the most basic common sense. It would do well to toss aside party allegiances and offer Canadians the sober second thought they are supposed to offer when our Parliamentarians lose track of what is best for our country.