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**Far More Than A Wishing Well
Canadian/ Latin American Cooperation in the Field of Criminal Law Reform
and Criminal Justice**

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Social peace is, even at the best of times, always fragile. In the case of much of Latin America, lasting peace remains improbable unless democracy's recent gains can be consolidated by the rapid construction of robust, credible and fair criminal justice systems. Whether in Latin America, Canada or anywhere else, citizens look to their government to provide internal security, protection against crime and enforcement of human rights. One of the greatest threats to democratic institutions comes from a public perception that public institutions are unable or unwilling to provide such protection. No public institution can for very long maintain an aura of legitimacy in the face of a general perception of corruption and impunity. This is the reality faced by most governments in Latin America and many countries are asking for concrete financial and technical assistance to help them "modernize" their law enforcement and criminal justice institutions. These requests often remain unanswered. It may be that international development organizations have not yet fully integrated the idea that social development, lasting peace and prosperity depend on the existence of strong and fair criminal justice systems.

In theory, the need to strengthen criminal justice and law enforcement institutions is generally understood as part of the project to promote good governance in developing countries and in emerging democracies. In practice, however, there is still a great reluctance on the part of development assistance agencies and governments in general to come to the aid of developing countries struggling to equip themselves with tools to build efficient systems to fight crime, corruption, human rights abuses and impunity. Much of the assistance that is provided focuses on the "safe fringes" of the problem. Development assistance occasionally contributes to law reform, training judges, or supporting human rights organizations in their attempts to denounce abuses and mobilize public opinion in favour of legislative reforms. However, for many, the question of addressing the need to strengthen state agencies' capacity to implement law reforms, enforce laws and protect human rights remains unpalatable. For instance, during The Legal/Judicial Roundtable meeting hosted by the Canadian International Development Agency, in April 1996, participants were in favour of maintaining "a bias towards greater engagement with civil society rather than state structures".

Such reluctance is understandable given the corruption, inefficiency and poor human rights track record that prevail in many if not most criminal justice systems in developing

countries. Many of the institutions requesting assistance are distrusted by those who could help. The reluctance to help is also understandable on the grounds that there never is a guarantee that strengthened law enforcement and social control institutions, which may be built today to support legitimate democratic institutions and to protect human rights, will not be subverted tomorrow and turned against these same institutions and used in ways which ignore or repress human rights.

For some, it is a question of whether it is safe to help developing countries refurbish their crime control and criminal justice institutions. An alternate question, of course, is whether it is safe or wise not to do so. In a globalized society, the interdependence of all countries is revealed in ways which have perhaps never before been perceived with the same clarity. However, many have yet to fully appreciate just how interdependent countries truly are, particularly those within a same region, in matters of social peace, internal security and protection against crime.

Long term prosperity and security at the inter-American level, in a region dominated as it is by the presence of the last remaining super-power, will obviously depend on much more than how eagerly each country pursues new opportunities for trade and technological cooperation. The new world economy increases the need for solid and diversified partnerships between countries of a region. Recent experience has also shown some of the many intricate ways in which countries, in any given region, are interdependent in their efforts to fulfill their respective economic and social development potentials. In that context, it becomes clear that the future prosperity of every country in the region will increasingly depend on the prosperity of the region as a whole.

Canada may be a relatively small player in inter-American affairs, but it can play an important role. Canadians are beginning to better understand what is at stake and what a new and closer relationship with countries in the region could mean to them. Previously published *Focal Papers* have examined several aspects of this closer relationship. They have identified concrete opportunities and strategies for developing new partnerships, as well as a new agenda for cooperation at the hemispheric level. This paper concentrates on the long-term objective of promoting peace, security and prosperity in the region and on how the realization of this objective is dependent on stronger Canadian-Latin American-Caribbean cooperation in the field of human rights, democratization and good governance. It focuses on the often proclaimed but generally underestimated importance of helping build institutionalized conflict resolution mechanisms and fair and effective criminal justice systems. The latter are essential pre-requisites to lasting peace and prosperity in the hemisphere.

Canada must recognize the ultimate futility of offering symbolic support or financial incentives to a country's democratization process without helping it, as a matter of priority, develop a strong, fair and credible criminal justice system. Democracy is destined to be short-lived if it is not accompanied by the means to fight corruption, hold

government officials accountable, offer real protection for human rights through dissuasive responses to proven abuses, and respond to citizens' demand for public safety.

Much of the official development assistance provided in this particular field of international cooperation resembles the behaviour of one with an ambitious dream, who dares not stop hoping, but who, in the absence of a clear idea of how to make the dream a reality, is content to drop a few coins in a wishing well. Such an "investment" may not hold much promise of achieving concrete results, but it does keep the dream alive, at least in one's mind. However, the kind of ritualistic approach which so far has characterized many cooperative projects, stands in clear contrast with the careful and strategic investment that is required to go beyond wishful thinking and make the dream come true.

Prospects for Peace, Security and Prosperity in Latin-America

Latin America's relationship with Canada has grown noticeably in recent years and will likely continue to do so. As new economic and political alliances are being forged in every region of the world, Canada, Latin American and Caribbean countries have a growing interest in developing stronger ties and a new agenda for inter-American cooperation. Canada joined the Organization of American States (OAS) in 1990, later entered into the North American Free Trade Agreement (NAFTA) and recently signed a free-trade agreement with Chile. It is in favour of concluding similar agreements, over time, with other countries in Latin America and the Caribbean. Some observers have argued that Canada's "conversion" to Latin America was not really part of a coherent strategy, but rather a response to necessity, as the country sought protection from the emergence of economic blocks and the threat of becoming a negligible quantity in the hemispheric trade system. However, irrespective of the circumstances which awoke Canada's interest in strengthening its hemispheric political and economic relationships, it is easy to predict that Latin America will be important to Canada, as it will continue to offer Canada one of the most promising avenues for diversifying its international relationships.

One needs not refer to any complex economic indicator to know that much of Latin America is not prosperous. The 1980's have come to be known as "the lost decade" for development in Latin America and the Caribbean. By the early 1990's, many of the countries in the region had begun to post economic indicators that suggested a recovery was underway. However, this economic growth, often associated with a restoration of democracy, is not being felt by the majority of the population and more and more people are slipping into poverty. While 136 million Latin Americans lived below the poverty line in early 1980, by the end of the decade, the figure had swelled to 195 million, or 45% of the total population.

Poverty takes the form of unemployment, underemployment, lack of suitable housing, malnutrition, and inaccessible health care, education and other basic services. Child neglect reaches alarming levels as domestic and social violence against women continues to rise. The rapid urbanization of the population and the resulting unsustainable development of

the cities are creating tensions and conflicts which most municipal governments are ill-equipped to address. Ethno-cultural relationships are becoming more tense and problematic than ever, as systemic discrimination against minority groups remains unaddressed. Public corruption proliferates and defeats development efforts. Economic and environmental crimes reach proportions that threaten the very foundations of existing economic and political institutions. Every Latin American city is considered more dangerous today than it was ten years ago. As the people, and in particular the poor, increasingly react to such irresponsibility and impunity, social violence continues in the cities and rural regions of Latin America.

The movement towards democratic forms of governance and increased citizen participation, although still incipient in several countries of the region, seems to be gaining ground. The recent case of Haiti, regardless of how much it may have offended Latin-American sensitivities conditioned by a long history of military intervention by the United States, appears to have carried a lesson which may inhibit for some time potential fall backs in dictatorial adventures.

Nonetheless, the need to adjust to the requirements of globalization and the abandonment of certain forms of paternalistic welfare is bound to bring considerable turmoil in its wake. The adjustment process experienced by most countries in the region has had a high price and has caused a weakening of the state. Although the latter consequence has been applauded by some, it is certainly incompatible with the development and strengthening of democracy in the region.

The people of Latin America find their living environment radically changed. Traditional points of reference and social values seem to have vanished. In just a brief time span, new political structures have arisen, social relations have shifted profoundly and are still in flux. At every level of society, people feel insecure and rootless, and governments and social organizations are hard pressed to find suitable responses to this changing world. There is considerable evidence of a loss of respect for certain political institutions, including the parliamentary process and the legal system. In a situation of growing insecurity, both at the economic and the personal safety levels, the main challenge facing the authorities may consist of avoiding an anti-democratic back-lash, this time not from the armed forces but from the citizenry at large.

One of the most dangerous sources of violence in Latin America is criminal violence. What is particularly alarming is that a significant segment of the public blames democracy for the increased violence and that, in order to combat violence, democratic governments have shown a willingness to sacrifice individual rights and freedoms.

The strengthening of democracies requires a political change directed at restoring the legitimacy of political institutions, including and most importantly criminal justice institutions. In the words of César Gaviria, Secretary General of the Organization of American States, "this is a crucial question in societies where the rules are not respected and conflicts end up being resolved privately". He adds that the strengthening of the state

is essential for the development and strengthening of democracy in the region and that it most certainly involves "the rebuilding of the state's capacity to perform in areas that are fundamentally its responsibility, such as public safety, education and health".

International solidarity and practical support to these societies to assist them in achieving their social and economic development objectives will be crucial to the realization of the promise of peace and prosperity for the whole of the hemisphere. International cooperative efforts to promote the development of democratic, just, fair and effective social, political and legal institutions in all countries of the hemisphere will continue to be crucial. Since the administration of justice is an essential part of governance, these efforts should obviously assign a high priority to the democratic development and the implementation of just, fair and effective criminal justice policies, systems and practices.

Such questions create ambivalence in our own mind. This is certainly reflected in official development assistance policies and strategies which still hesitate to clearly identify the development of fair and efficient criminal justice institutions as a priority for action, as a necessary pre-requisite to the protection of human rights and the strengthening of democracy. At the United Nations, in spite of official pleas and repeated formal undertakings, the Criminal Justice Fund established to assist countries in implementing international standards in the field of crime prevention and criminal justice is nearly always empty. At the Copenhagen Summit on Social Development (1995), democratic accountability, the protection of human rights and the rule of law were identified as essential elements of a social development strategy, but the essential role of criminal justice institutions in achieving these objectives remained largely unaddressed. The crucial nature of the role which must be played by criminal justice institutions is also still largely unrecognized by the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD), or in Canada's own *Policy for CIDA on Human Rights, Democratization and Good Governance*. A reluctance to include support to criminal justice institutions, except in the most indirect manner, is also evident in the patterns of ODA funding in the areas of good governance, democratization and human rights. What we hope to do in the following pages is to make a convincing argument in favour of resolving this ambivalence and realizing the importance of hemispheric cooperation in the field of criminal justice.

The challenges of crime in the post-sovereign world

Many of us may have yet to fully understand that, in a world where national borders are increasingly irrelevant, the most significant threats posed by crime may not always come from within our own neighbourhood. We have become aware that drug trafficking is carried out by world-wide networks possessing a proven ability to avoid surveillance and prosecution by national authorities. However, this same capacity to escape national controls is enjoyed by groups dedicated to other illicit and harmful activities.

Economic crimes, such as corruption of public officials or money laundering, threaten the integrity of a society's social, economic and political institutions and can defeat a country's social and economic development efforts in a matter of weeks. Crimes against the environment or criminal genetic manipulations can affect the future of all human beings. Organized, trans-national criminal activities can render any local or national crime prevention or control activities completely futile. Illegal trafficking in firearms or illegal substances can contribute to wide-spread social and political violence almost independently of national borders. Organized terrorist groups which have taken full advantage of modern communication technologies are now able to hide almost anywhere in the world, avoid detection and still retain a great capacity for effective concerted action. Yet, in most countries, public concern with crime remains mostly parochial and tends to focus almost exclusively on immediate issues of personal or community safety.

How safe are we really, anywhere in the world, as long as it is possible in some countries to engage in criminal activities which may irreparably damage the environment, threaten the integrity of financial institutions or undermine democratic institutions? To strike an even more sensitive cord, one may also ask the question: "how safe are our children, anywhere in the world, as long there exists safe-havens where weak criminal justice systems, with the complicity of corrupt public officials, can offer relative impunity to those who would kidnap children for illegal adoptions, slave labour, sexual exploitation or trafficking in human body parts?"

There is not one society in today's world which does not find itself profoundly affected and challenged by the far-reaching changes brought about by the globalization of the economy, the means of communication and culture. And, we are barely beginning to understand that these changes have also brought about a deterritorialization of crime and its consequences. As national boundaries are becoming increasingly obsolete and irrelevant to trade and the economy, they are also becoming largely irrelevant to many successful and often large-scale criminal activities. Even if it were possible for a country to turn itself into an impregnable fortress, it obviously could not do so without doing serious damage to its democratic institutions. In such a radically different world, local responses to crime, unless they are efficiently coordinated with similarly vigorous efforts in other communities and in other countries, will remain largely ineffectual. In fact, today, it is fair to say that a weakness in our response to crime anywhere in the world is often a weakness everywhere.

The presence of many weak criminal justice systems in our own hemisphere offers a greater threat to our own social peace and safety than is generally recognized. According to the "weakest link" or the "crime displacement" theory of crime control, our collective response to crime, at the global or hemispheric level, can never be much stronger than it is at its weakest point. The weakest criminal justice system in a region may well provide the measure of the effectiveness of the overall regional response to crime.

In many countries, the public credibility of existing justice institutions is so low that it threatens the overall credibility and viability of existing political institutions. The over-reliance on criminal law and punishment to address social problems is exacting a human

and financial cost that few societies can still afford to pay. As the public's feeling of insecurity and its impatient demands for safety and security become more pressing, peace and social order are becoming more fragile.

Most modern justice institutions were shaped following the rapid industrialization of part of the world and the concurrent appearance of modern nation-states representing themselves as the guarantors of individual safety and social order. However useful or inspiring these institutions might have been in the past, the socio-economic reality that they initially reflected has changed. In that sense, developed and developing countries alike, notwithstanding the huge difference between the amount of resources that they can respectively devote to the task at hand, are very much at the same point: they all have to reinvent their legal institutions and reconsider the wisdom of their over-reliance on criminalization and punishment as a response to every social problem. A fearful denial of society's responsibility for crime prevention, education and social justice leads to the expectation that the criminal justice system alone will provide a solution. In many countries, the credibility of justice institutions has been deeply affected and an increasing fear of crime is a harsh reality that remains to be addressed.

The fragility of social peace is revealed to us in ways we can no longer ignore. It is obvious that meeting the challenges of our times will require that we learn to do things differently. Although specialists do not necessarily agree on what is the exact nature of the link between law reform and social change, it is clear that the current social changes will require vast and complex reforms to our political, economic and legal institutions, both nationally and internationally. Neo-colonial approaches, no matter how well intentioned, will not be the solution. Unfortunately, there is no road map to guide us through these changes and no country or group can claim to have all the solutions.

The challenges facing criminal justice in Latin America

The fight to eradicate violence and control crime in Latin America and the Caribbean involves the accomplishment of two interrelated tasks: the strengthening of the state and the granting of legitimacy to democratic institutions. There should be no doubt that the prevailing expression of criminal violence constitute a serious threat to democracy in Latin America. Urgently needed therefore are practical demonstrations that crime and violence can be confronted, by the state, without compromising democratic or human rights principles.

The winds of change and the growing awareness of the insufficiencies burdening the traditional administration of justice, criminal or otherwise, have led an increasing number of Latin American countries to face the need for substantial reform in these areas. Needless to say, the response to these challenges has not gained the same intensity in all the countries of the region. In some cases, the most that can be ascertained is the intention to introduce reforms, without clear awareness of the "what" or "how". This is understandable if one considers that some societies in Latin America are only beginning to

take the first timid steps in democracy. Other democracies, although of longer standing, are still frail and, to a considerable extent, are dependent on the tolerance of a military caste which, if its privileges are in any way threatened, can easily turn from guarantors of the constitution into its enemy. Very few, if any, are solid democracies, and even those that are, experience considerable turmoil as a consequence of the international economic situation and of the changes demanded by the process of globalization, for which none is ready.

In addition, the most elementary analysis of recent events indicates that fundamental democratic values are often not very deeply rooted in the civilian population. As a result, Latin American political parties tend to be bad losers, simply because they seem to have only superficially accepted the rules of the democratic political game. Thus, they practice obstructionism rather than opposition, and often do not hesitate to block the legislative process, regardless of the consequences.

In spite of these institutional handicaps, one may point to a variety of initiatives aimed at modernizing the criminal justice system and making it more efficient and responsive to international standards. Among such reforms, one may point at the introduction in recent years, in several countries of the region, of orality. This is a momentous change in countries in which the administration of justice was exclusively based, throughout history, on written documents. Furthermore, the establishment of constitutional courts or tribunals has made justice and the protection provided by the principles contained in a state's constitution, more accessible to the average citizen. In addition, legal aid is being introduced in several criminal justice systems, so as to make proper defense affordable to low-income strata of the population. These developments alone are tantamount to a revolution in a region where justice has traditionally been denied to the have-nots.

In spite of these changes, the main challenges facing criminal justice in the region remain enormous. The following represents a sample of some of the most important ones:

Making the criminal justice system accessible: Promoting better and more equitable access for all to the criminal justice system and to alternative means of conflict resolution remains a priority for reform. The situation of children, women and the poor, who are obviously very vulnerable to criminal victimization, violence and other forms of abuse, is in that respect very disturbing. Justice has to be made not only more accessible, but also more transparent. Public opinion, and the mass media that contribute to forming it, often fail to understand the most rudimentary principles, such as that of the presumption of innocence. The challenge is to educate the public at large, through the education system, information media and any other available means, in the fundamental principles of justice and human rights, emphasizing how they can serve to protect everyone and not merely provide justification for some misguided leniency towards hardened criminals. If this is not done, the growing application of those principles and standards by the courts will meet increasing public resistance and could lead to an angry and dangerous backlash which could imperil the entire modernization process.

The strengthening of a criminal justice system does not necessarily imply centralization. In view of the history of most Latin American countries, it is essential to address the issues of crime prevention and access to justice by promoting greater decentralization and community participation. As argued by César Gaviria, "it is therefore very important to promote forms of local control and to dismantle the methods and formalisms of the old centralized state in order to consolidate the rule of law and reduce violence" .

Crime prevention: It is important to establish and support national crime prevention structures which promote collaboration between law enforcement and criminal justice agencies and citizens. Civil society and individual citizens must be allowed and encouraged to participate in comprehensive crime prevention and to understand the importance to community development of implementing effective ways of making communities safer from crime. The support of law enforcement and justice agencies for crime prevention and the protection of human rights must be promoted by introducing policies, guidelines and legislation that clarify that the goal of policing and criminal justice is the protection of human rights and ensuring the safety and security of persons and property, particularly through collaboration with citizens and civil society .

Victims of crime: In most countries the plight of victims of crime and abuse of power has yet to be recognized and acknowledged. Reforms are urgently required and adequate recourses and services for both groups of victims have to be developed. In particular, the issue of violence and discrimination against women requires immediate attention. The document titled *Practical Measures and Strategies in the Field of Criminal Justice to Abolish Violence Against Women*, proposed by Canada and currently under consideration by the United Nations Commission on the Prevention Crime and Criminal Justice provides a sound basis from which to address these concerns.

Youth justice: In most countries, there is a growing concern with youth crime, and violent youth crime and youth gangs in particular. Effective prevention methods which address the roots of the problem and provide an appropriate answer to individual incidents often do not exist. The issues if of course intrinsically linked to broader issues of children's rights, youth protection against all forms of exploitation, education, and youths' access to meaningful social and economic opportunities. Furthermore, in many countries, the conditions of youth in detention are also the subject of serious concerns.

Urgency of procedural reforms: In most countries, there exists an urgent need to reform penal and procedural codes. Urgent and indispensable reforms are required to decriminalize minor offenses, establish viable and credible alternatives to imprisonment. In a region where over-reliance on incarceration even for minor offenses is the rule, it is imperative to develop alternative conflict resolution methods

such as mediation, conciliation or arbitration, in order to alleviate the burden already carried by the courts and the problem of over-crowding in carceral institutions. In a context where impunity remains a central public issue, explaining the nature and desirability of such reforms to the population and obtaining its support will be a crucial step in the process.

The tendency to over-rely on imprisonment which characterizes the administration of justice in the region, is nowhere more obvious than in the abusive reliance on long-term pre-trial detention. In fact, in many countries of the region, the percentage of the inmate population which is incarcerated while awaiting trial is really under 50% and sometimes reaches as high as 80%. This situation amounts to nothing short of a massive and systematic denial of justice and a blatant violation of the most elementary human rights. The required changes consist not only in the reform of penal procedural codes, but also in persuading the judiciary to adopt new attitudes. Training and persuasion are therefore crucial and so is public education.

Prison reform: Some of the worst abuses against the rights of prisoners come from the problems associated with prison over-crowding and the apparent unwillingness of the population and its political representatives to allocate the required financial resources for prison reform and prison building programs. Conditions must be created that would make it possible for prison authorities to comply with international standards for the treatment of prisoners by prison authorities. It should be clear, however, that applying international pressure on local politicians to create such conditions will not be enough, particularly in view of the lack of public support for the necessary financial expenditure and the often precarious economic situation of most countries in the region. Although technical cooperation has seldom, if ever, included resources for infra-structure construction, donor agencies should seriously reconsider the wisdom of such a policy. Moreover, international assistance efforts should not fail to consider that the criminal justice system consists of closely interrelated parts, so that partial solutions tend to worsen problems in other parts of the system. More effective law enforcement and more effective case processing by the courts will inevitably lead to an increase in the prison population. And, one cannot overemphasize the fact that prison-overcrowding in Latin America is a time-bomb which, in some countries, is about to explode, shaking the very foundations of the social fabric.

The absence of effective information management systems and reliable prison and judicial statistics in several countries of the region is often a serious hindrance to effective planning, efficient administration of scarce resources, and implementation of badly needed reforms. It is also a factor in the denial of justice and the violation of international standards. In systems without adequate information, inmates tend to "get lost", spending sometimes months and even years in prison before they can be located by relatives or human rights organizations. The challenge consists in designing and implementing statistical and information management systems capable of offering the user a timely and comprehensive picture of the situation in the entire system, and yet allow access to information about the individuals caught in it.

Training of officials: The judiciary, the armed forces, the police and, last but not the least, prison officials and personnel require intensive training in the meaning and implications of human rights principles and other applicable international standards. One often finds that even magistrates and judges are unbelievably ignorant of such instruments as the Universal Declaration of Human Rights, the Standard Minimum Rules for the Treatment of Offenders, or the more recent Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para). Part of the challenge thus consists in providing this indispensable training to ensure that fundamental rights, as recognized by the international community, are understood and respected. Another part of the challenge consists in providing the necessary motivation and strategic management skills to the responsible justice officials who are often ill-equipped to implement these standards and make them work.

Effective action against transnational crime: Transnational crime offers one of the most significant threats faced by democracy, the rule of law and public safety. Governments in the region must find new ways to work together and implement more efficient means of regional cooperation against this menace. Illicit drug trafficking, car-theft regional networks, trafficking in firearms and in human beings are only a few of the transnational crimes challenging crime control authorities. Therefore, cooperation, coordination and the streamlining of information exchange present them with multiple challenges. Regional and sub-regional agreements are necessary, but they remain insufficient unless legislation is brought about to give them full effect. Ideally, such treaties and agreements would imply some degree of harmonization between national legislation so as to expedite detection, apprehension, extradition when necessary, trial and conviction of offenders, and all this within the framework of full respect human rights. Timely exchange of information is also essential to the successful control of transnational crime and technological advances make it possible. However, the acquisition and the development of the required communication and data management systems necessitate resources that are too often simply not available.

Justice in Progress: a strategic plan for Central America

The challenges outlined above are impressive, but not necessarily insurmountable. For instance, Central American countries have given themselves a strategic plan of action, based on a careful assessment of existing problems and the current capacity of criminal justice institutions to face them. Priorities for action both at the national and the sub-regional level were carefully identified and related to broader issues of social and economic development. These priorities were also reconciled with the priorities identified by the United Nations Crime Prevention and Criminal Justice Programme. The strategic planning exercise was impressive and, in many ways, so was the commitment to action.

In the final statement of the Fifteenth Central American Presidential Summit, held 18-20 August 1994 in Costa Rica, the Presidents of the countries of the subregion emphasized the particular importance of strengthening the rule of law, democratic institutions and crime prevention, as essential elements of a sustainable development strategy for the region. They asked the Latin American Institute for Crime Prevention and the Treatment of Offenders (ILANUD), in coordination and consultation with relevant national institutions, to draw a plan of action and to submit it to the Council of Ministers of Foreign Affairs of Central America. ILANUD accepted the challenge and, with the financial support of the United States Agency for International Development (USAID), a plan of action, *Justice in Progress*, was developed and later approved at the Sixteenth Central American Presidential Summit held in Honduras (October, 1994), on the occasion of the *International Conference on Peace and Development in Central America*.

In the *Declaration of Commitment for Peace and Development* issued at the end of the Conference, the Presidents of Central American countries reaffirmed their commitment to the "Partnership for Sustainable Development in Central America", as a region of peace, freedom, democracy and development. In response to the mandate adopted by the Presidents, the Plan contains five areas of high priority. They are: (1) improving citizen security, badly threatened by the explosion of urban crime, through, inter alia, the strengthening of the police and the development of police-community coordination; (2) protecting the environment through legislation, environmental protection agencies and environmental courts, the effective enforcement of environmental laws, the development of mechanisms for the reporting of infractions and other needed administrative measures; (3) fighting against corruption in the public sector through legislation, enforcement, modernization, inter-institutional coordination of inspection agencies, and support for public action against corruption; (4) fighting against new forms of organized crime through control of drug abuse and trafficking and the strengthening of inter-agency cooperation in controlling organized and trans-national crime; and, (5) improving management systems in the administration of justice by means of various reforms to the judicial and the correctional systems.

All of these proposed measures can be said to generally enjoy the support of civil society in Central America. The success of the overall subregional initiative is important to ensure peace, security and prosperity in the region as a whole. Few of the proposed measures can effectively be implemented without major financial and technical support from countries and agencies outside of the sub-region.

The role of international cooperation in facing the challenge of crime

How can the prospect for peace, security and prosperity in the region be enhanced through international assistance and cooperation?

A narrow view of development and prosperity prevailed for a long time which allowed economic criteria to totally dominate the international development and cooperation agenda. However, prosperity defined in narrow economic terms alone only breeds oppression, social unrest and instability. In the unforgiving international race between countries for an economic advantage over others and for a greater share of markets, there is always a huge price to be paid for ignoring environmental, cultural and human rights issues. The price is insecurity, conflict and fear, and these ultimately defeat whatever short-term economic benefits may have been accrued. Furthermore, the detrimental effect of a country's neglect of social and political development issues is rarely confined within its borders. Such consequences tend to also be felt not only by neighbouring countries, but sometimes by the whole region.

More people are becoming aware of the intricate interdependence that exists among social, political and economic development. As the need to make economic development socially, politically and environmentally sustainable becomes clearer, so does the lack of wisdom in assuming that peace and prosperity within our hemisphere will simply come from freer trade arrangements or economic development alone.

It is also mere wishful thinking to expect that democracy and a respect for human rights can be nurtured anywhere without efficient and fair criminal justice institutions. Furthermore, given the growing irrelevance of international borders for many of the most pressing social problems which criminal law and criminal justice systems are trying to address, it is unlikely that new solutions can emerge anywhere but in the context of international cooperation and mutual assistance.

Cooperation in the field of crime prevention and criminal justice normally takes two main forms: a narrower, more immediate and pragmatic form, that is mutual assistance and cooperation in the detection, apprehension and prosecution of criminals; and, a broader, more complex form which consists in developing regional and international consensus on priorities for action, on norms, rules and human rights standards that apply to criminal justice activities. In the latter case, the importance of providing technical and financial assistance to developing countries in order to implement international standards is usually emphasized.

The first form of mutual assistance in the field of crime control has already been formally acknowledged for some time as a priority by the international community. Although many past efforts have yielded significant results, they obviously were no match for the counter-efforts of organized crime and for a rapidly evolving situation. The second form of international cooperation and mutual assistance in criminal justice is still, relatively speaking, a new field of endeavour. It was only fairly recently that the importance of such cooperation was officially recognized. For example, it was not before 1991 that the United Crime Prevention and Criminal Justice Programme was restructured to reflect the importance of such cooperation between governments.

Broadly speaking, international cooperation efforts in the field of crime control and criminal justice policy have been inspired by one of two competing models of cooperation. They mirror, at the international level, the tension which often exists at the national level between the "crime control" and the "criminal justice" models. The first one, fashioned after the "international war on crime" approach, has tended so far to prevail due largely to the influence of the United States and its "war on drugs" policy. In this model, the emphasis is on trans-national crime and the "weakest links" in the international crime control network are encouraged or coerced into taking an active part in the "war", generally at the detriment of the pursuit of domestic law enforcement and criminal justice priorities. Many countries have thus far benefited from technical and financial assistance, but in a way which has often encouraged or forced them to neglect law enforcement and criminal justice activities that would reflect the true priorities of their population. The second model is more akin to peace making and emphasizes the importance of fostering the development, within all criminal justice systems, of a commitment to the rule of law, democratic principles and the protection of human rights, social peace and human security. In the field of international cooperation, the relative strength of participants is usually unequal. Some donor countries favoring one approach over another may be able to impose on the receiving country crime control policies which have little regard for its own best interest or for the wishes of its population. The gap between a country's criminal justice institutions and the population they purport to serve is sometimes thus widened, with great repercussions for the credibility of these and other political institutions within the country.

To say that the international community must learn new modes of cooperation and mutual assistance in the field of crime control and criminal justice, and that it has little time left to do so, is not necessarily to say that it is totally in the dark. The nature of the social and institutional reforms that are called for is being more clearly understood as part of a broad international consensus on human rights, democracy and governance issues. The consensus is reflected in the United Nations Declaration of Human Rights (1948), international human rights conventions and treaties, as well as various declarations and plans of action adopted at recent United Nations conferences and summits concerning children (The Children's Summit, New York, 1990), the environment and development (Rio de Janeiro, 1992), human rights (Vienna, 1993), population and development (Cairo, 1994), women (Beijing, 1995), crime prevention and criminal justice (Cairo 1995). Other international fora such as the Council of Europe, the Commonwealth, *La Francophonie*, the Organization of American States, have contributed as well to the identification of priorities for action in the field of criminal justice reform and crime prevention.

In all these cases, these efforts have reflected a conscious effort on the part of the international community to preserve a delicate balance between measures for the protection of human rights and measures for the prevention and control of crime. This is particularly commendable given the growing national pressures to sacrifice freedom and human rights in favour of the pursuit, through repressive measures, of an always elusive domestic security.

Canada's official commitment

At times, Canada's development assistance in the area of democracy, human rights and good governance has been criticized as insufficient. Canada's tepid support for social and institutional development, some have argued, has often stood in stark contrast with its enthusiastic approach to economic development and pursuing trade opportunities. The criticism is only partly justified.

One of the pillars of Canada's foreign policy objectives for the region has to do with promoting its own economic interests through multilateral trade and the resulting creation of employment domestically. However, as was made explicit in a recent government statement of foreign policy, *Canada in the World* (1995), the country's long term objectives go far beyond a simple attempt to make the most of existing opportunities offered by inter-American markets. Canada's foreign policy objectives for the region, as well as for the rest of the world, flow from a broader peace, prosperity and security agenda. The agenda encompasses the promotion, throughout the region, of stable, democratic, prosperous societies at peace with each other. Fulfilling Canada's foreign policy objectives in the region thus requires a determined effort on its part to promote democracy and good governance, human rights and the rule of law, and prosperity through sustainable development. What is not always clear, unfortunately, is exactly how these political objectives are to be achieved concretely, including the commitment to provide adequate financial assistance.

In December 1995, the Government of Canada published its official Policy for CIDA on Human Rights, Democratization and Good Governance. In the policy statement, one finds that the objectives of the Canadian International Development Agency in this area will consist of strengthening:

- the role and capacity of civil society in developing countries in order to increase popular participation in decision making;

- democratic institutions in order to develop and sustain responsible government;
- the competence of the public sector in order to promote the effective, honest and accountable exercise of power;
- the capacity of organizations that protect and promote human rights in order to enhance each society's ability to address rights concerns and strengthen the security of the individual;
- the will of leaders to respect rights, rule democratically and govern effectively.

In October 1996, Canada's Minister of Foreign Affairs, Lloyd Axworthy, announced the creation of a new "peace building initiative" and the establishment of a new peace building fund to provide timely assistance to rebuild the institutions of war torn societies and to make peace last.

In both cases, one can hardly disagree with such laudable policy objectives. In practice, however, one is tempted to ask exactly how does one re-build and strengthen institutions in someone else's country. In the cases of both of these policies, the Canadian government's official statements are rather vague about the actual implementation of these objectives. In both cases, it refers to the importance of helping a country develop appropriate institutions, but it remains mostly silent on how this can be achieved. Furthermore, in both cases, it talks vaguely about helping develop a legal framework, an independent judiciary or about training judges, but it remains silent on how criminal justice systems, specifically, can and should be strengthened.

In our view, it is doubtful that, in the absence of effective criminal justice institutions capable of addressing human rights abuses, strengthening the capacity of a select number of human rights organizations and the "will of leaders to respect rights" will actually have much of an impact.

Canadians like to think of their contribution to international development as generous and, in many respects, it is. Proportionally speaking, that contribution is less than it was in the past, but that decrease in the amount spent on developmental assistance is justified in their view by the fact governmental spending had to be curtailed, even domestically, to address the problems created by the national debt and the soaring governmental financial deficits. In Canada, the level of public support for international development assistance spending has remained stagnant over the last decade, in spite of several attempts to better explain to the public at large the vital importance of the endeavour for the promotion of world peace and prosperity. However, given the mean-spirited and selfish mood that the current economic uncertainty sometimes seems to inspire, the fact that the level of public support has not significantly decreased is perhaps in itself encouraging .

Upon closer examination, we may have to acknowledge that the attitude of Canadians towards international development assistance has nevertheless changed significantly in recent years. To put it somewhat bluntly, Canadians have always had a problem understanding this form of assistance as anything other than either a form of financial investment expected to produce tangible and timely returns, or a form of charity. They could relate to development assistance aimed at facilitating economic development, since it was in most cases tied to the exportation of Canadian goods and services, or to the securing of trade advantages for the country. They could also relate, although somewhat differently, to more disinterested initiatives in the area of famine relief, health, education and human rights as an expression perhaps of their commiserating, generous or charitable feelings. Much of the initiatives in the latter category were carried out by non-governmental organizations (NGOs) which have had to declare themselves as charitable organizations in order to benefit from certain tax advantages, thus reinforcing the public perception of their work as essentially of a charitable nature. In recent years, the Canadian public has become less inclined to support

development assistance which could not be shown to have concrete, if not immediate, pay-offs for the Canadian economy. Charity, it is increasingly argued, should start at home and given the shrinking government resources, it is assumed that there is little left with which to help other countries, except perhaps in the most dire situations. In that context, major development assistance expenditures are typically announced in the context of the signing of business contracts worth millions of dollars. Small expenditures earmarked for education, health, or human rights projects are typically given as low a public profile as possible for fear of creating a public opinion back-lash. Public officials and other international development specialists in the field of human rights and good governance are under great pressure to come up with convincing evidence that their work will have some concrete pay-offs for Canadians and they usually cannot do so, at least not in the narrow terms which such requests usually imply. The attitude of Canadians towards international development has indeed changed.

CONCLUSION

The southern half of our hemisphere is currently engaged in what can only be described as a vast peace-building project. The other half cannot afford to simply wait on the "side-lines" and attempt to position itself to eventually collect the peace dividends. The success of the project is still precarious and Canada, which has means and expertise to contribute to it, should do so. Peace, security and prosperity in the whole of the hemisphere depends on that success.

An important and urgent part of this peace-building project concerns the strengthening of criminal justice institutions and other conflict resolution mechanisms. Without them, democratic institutions risk losing legitimacy and are not sustainable. It cannot be assumed that the fact that a government acceded to power through democratic elections is sufficient to establish its long-term legitimacy and viability. The latter depends also on the effectiveness of the governance provided and on whether basic public expectations such as that of security and public order are being met. This is why providing assistance to countries that are trying to develop credible and fair criminal justice institutions is essential to the consolidation of peace and democracy in many parts of the hemisphere.

Building, renewing and maintaining fair and credible criminal justice institutions is always a difficult challenge. The challenge becomes a huge one in a context often characterized by largely unresolved social and political conflicts, a lack of financial resources, a general public distrust of public institutions, a lack of democratic tradition and a weak human rights culture, as well as pressure from international financial institutions to limit government expenditures. When attempting to meet this challenge, Latin American countries place great hopes in the prospect of obtaining outside financial and technical assistance. To some extent, many of these countries are already receiving concrete assistance from the European Community and the United States. They look to Canada, now an active partner in the O.A.S., for technical and financial assistance in the field of crime prevention and criminal justice.

Canada has made several formal international commitments to offer financial and technical assistance in the field of crime prevention and criminal justice. It is already involved in some concrete projects in Haiti, as well as in several other countries in Central and Eastern Europe, Africa and Asia. There might still be, in many cases, some remaining confusion about the practical objectives to be achieved by such projects and the best means to implement them. Furthermore, it is not certain that these initiatives have been sufficiently explained to the Canadian population and, as a result, public support for such activities cannot be taken for granted.

Canada must recognize its responsibility to participate fully in the peace-building project we have just described. Canadian institutions must honor their official commitments and mobilize themselves to offer the institutional cooperation and assistance they are capable of. Canadian governmental and non-governmental institutions must make their full contribution to the task of meeting the new challenges of crime prevention and criminal justice in our hemisphere.