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## Discussion Following the Remarks of Mr. Flynn and Mr. Hage

Discussion

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## DISCUSSION FOLLOWING THE REMARKS OF MR. FLYNN AND MR. HAGE

MR. KING: I would like to ask the first question. The situation here as outlined by Steve and also confirmed by Robert says basically that one of the problems we all face is the tremendous hatred throughout the world of us.

MR. HAGE: That does not apply to Canada by the way.

MR. KING: I am wondering if you have any thoughts as to getting to the source. Should we be fighting a two-front war trying to convince the world that we are not so antagonistic? You know, you must have thought about that, Steve; and you may have some thoughts about that, too, Robert. One of the problems I have is that Steve is giving me a good formula for security in the United States, but you also have the problem with security overseas, unless they just want to stay home. So, if they do not get us here, they will get us over there. There is also the problem of traveling overseas. Does that mean we become isolationists? I think both of you would have comments on that. Do you want to start off, Steve?

MR. FLYNN: Sure. I would say it almost has to be a three-level war. There is a hearts and mind issue. Are there things that clearly get at the source issues of why the depth of animosity out there, can they be mitigated at some point?

Secondly, for people who clearly are engaged in these acts, are planning these acts, and are intent on carrying them out, we obviously need the capacity to deal with them as early in the process as possible. That requires the kind of approach we are taking with Al Queda. You just have to do that.

Lastly, is the issue of dollars. If you drill down on strategy, the general view in Washington is that homeland security, basically costs too much, takes too long, and is too hard. That is why terrorism has to be eliminated at its source and those who sponsor it have to be eliminated. If you take a look at what the perspective of what the policy has been since 9-11, that is where all the resources and so forth have gone. The case we made in this Hart/Rudman task force report is there is a deterrence value to building of capacity that if you use this as a means of warfare, you will not get much fruit for your efforts. You will not cause mass disruption. The value of doing this will come if I can with just with a few folks cause a blockade of the economy and shut down the systems. Then that incentive persists, but by building a protective capability for not overreacting, we can deal with that set of issues. It comes back to the heart and mind; you have to have all three. At the end of day, there is nothing that United States can do to win over the hearts and minds of the Taliban.

There will be folks out on the planet who will have views that are entirely contrary to even our most treasured values. They have access to this arms bazaar and they will be able to piece together some capacity to carry out this.

So, certainly, we mitigate, reduce the armies, but I don't think we can imagine ourselves in a world where there will not continue to be a terrorist threat that will require us to deal with deterrence on this side of the pod, not just in the traditional ways.

MR. KING: Do you have any comments, Robert?

MR. HAGE: It is sort of a hard one for a Canadian Government official to respond to, but one of the things that strikes me in postings around the world is you are not necessarily hated; you are loved in so many places. You have to look around at the number of people that want to live in your country. That is one of your main concerns, is to stop this incredible flow of people who want to come live in the United States.

I think the point that we are all trying to make is you cannot give everyone 100 percent security. You can minimize the risk, and in doing so, you can be paranoid. You cannot build a fortress America. It is obviously something of great concern to Canada, because what you do to react to this, to the threat certainly has an impact on us.

I think the solution we found is to concentrate on those high risk cases, to deal with them, to ensure that you got the right intelligence, that you are cooperating, that we are working with the Europeans and Asians and sharing information, that the people and the goods that are traditionally flown into North America can continue, and to deal with it on the basis that you are not hated outside of North America. I think it is a fallacy to concentrate on that.

MR. KING: Other questions? Mr. Garber.

MR. GARBER: Richard Garber, Natural Resources Canada. A question for Dr. Flynn. Both state and non-state actors can exploit asymmetric warfare techniques against the west, particularly through such weapons of mass destruction. Would you please comment on the paradigm shift for the United States military and its security apparatus? What is the relevance of the traditional response and the threat of massive retaliation? Is it significantly less, particularly against the threat from non-state actors?

MR. FLYNN: I think the U.S. military apparatus is having a very difficult time shifting into that paradigm. All our energy is being applied at the adversary, which acts as a deterrence through the traditional use of force. Assuming we can identify them. This versus a preventative kind of approach required to deal with managing the threat within the new context that we are in.

This goes to the issues of risk and paradigm shift. One of the challenges is determining what low risk in this new environment. If I am a terrorist and I know who the known shipper is that gets facilitation through the process, that is who I target. The problem is if low risk players are not doing things that

we could demonstrably point to, that are in fact, illustrating due diligence on security and they become the target, then the whole paradigm of risk management goes out the window. And we are back to 100 percent management.

My case has been sort of a duality, with things like a radiological event. It is not just, hey, I am a good company. I have always traded across the border. I do not ship nukes. How can we have confidence that somewhere along your food chain, something has not happened? The notion of moving to a smarter box, a smarter truck, maybe one that has radiation detection that can be monitored as it moves through. One were you can verify, "Yep, no radiation in here. Its on the low risk side." So that gets to the fast train and wants to get accelerated through, but in the absence of building greater capacity for validating low risk as low risk, the entire paradigm implodes like aviation security did, as soon as there is an incident involved with these sectors. In terms of deterrence of low risk, that is something we have not wrestled with because of cost issues and challenges it presents.

MR. KING: Other question? Yes, sir.

MR. WADDELL: Chris Waddell from Carlton University in Ottawa. My question is for Dr. Flynn. In relation to your comments about multilateral approach to security; much of the rest of world at the moment does not believe the United States has much interest in multilateralism on a lot of issues. I am not just talking about Iraq. How much do think the attitude of the administration on those other multilateral issues has to change for the rest of world to be more interested in a multilateral approach with the U.S. on security?

MR. FLYNN: Let me put it this way. Clearly, I think we are not going to deal with every global public policy challenge of merit that has a global implication. The idea that we can somehow deal with these threats in the traditional form out of a unilateral or even bilateral approach, does not square with the real world.

I know it is difficult, as you found the experience in the EU, but there is an opportunity that Canada may have. If you move it from the radar screen to above the radar screen, this is something forcefully advanced as an overarching Canadian public international policy goal. What we are trying to sustain is global trade in commerce. Ultimately dealing with the terrorist threat within those trade lanes requires a multilateral approach. That is why we are making a commitment as Canadians to work these issues at the International Organization for Standardization, World's Custom Organization, and various multilateral forum; precisely because we know that our contribution to the war on terror will be made by building on this kind of capability. It will be very difficult for the Americans to come back and say, "No, you got that wrong. No, that is not how that is done." There may be a dragging of heels because the focus on other issues. I think it is a

vacuum to be filled. Doing so would help remind folks in America who have lost sight of it because the domestic security focus that is, ultimately, how it is achieved.

MR. KING: Do you have any comment on that?

MR. HAGE: Let me say something about multilateralism and how odd some of these things are. I was at a meeting recently on the Law of the Sea issues and there was a Canadian Coast Guard official there who mentioned that off the Canadian coast we do not know where the tankers are. After all of these years of tanker spills, you do not know the position of the particular tanker, unless you happen to have a plane overhead. Every Spanish vessel in the world has a transponder on it, so there is a room somewhere in Spain where the Spanish can track their fishing vessels. They know if somebody is inside their 200 mile zone or they are on the high seas, but there is nothing like that for tankers or cargo vessels. These things do not cost a lot of money.

There is a GPS system that the United States has. There is soon to be a Galileo Navigational System that the Europeans are putting out. I think it struck this coast guard official, after all of the years, that with the simple technology available we have not been able to implement it in order to track vessels that are potential polluters or fishing vessels going to cheat or tankers or container vessels that might carry cargo we are interested in. I do not think it is out of the question to have International Maritime Organization look or the Food and Agriculture Organization of the United Nations look at this type of issue in order to sort of start a process of requiring these types of transponders on all marine vessels.

MR. KING: That is good point. Ian Holloway.

MR. HOLLOWAY: Ian Holloway, Western Ontario. My question is directed to Dr. Flynn. Much of what you said, resonated with the Canadians in the room, but I was wondering if you could comment on the challenges involved in getting the things you said to resonate people in this country. This country is a republic, both in the capital R and small R sense. The small R sense, as they say, all politics are local.

My sense is that the administration will not take this seriously, or at least the populous party of the administration will not take this seriously until the average American takes the notion of multilateralism seriously. What sort of challenges do you think are involved in getting the average American to think about these problems in the kinds of way that you suggested they need to be thought about?

MR. FLYNN: As Canadians you know that Americans often do not even recognize that the continent is shared by two neighbors. My child has a map that her grandmother gave her that has the United States discombobulated from the continent. They cannot even put Canada up there as green, and

Mexico underneath. We have got Hawaii and Alaska dripping off somewhere.

By doing conferences like this one focused on the integrated bilateral issues, real things in heartland America along the Great Lakes, you go a long way towards getting Americans down the right path. These problems are not ultimately going to be solved by a purely domestic security approach.

I very much applaud the Smart Border Accord. I commend the Canadian leadership for recognizing quickly and rightfully it should be on the books as the Manley/Ridge Accord. It is pretty clear where the initial leadership came from moving this thing forward.

Thank God there was the work done in advance so there was something to pull off the shelf relatively quickly. I am trying to encourage building on that same format. It will come when we do tangible things, not ribbon cuttings or big announcements of conventions. It will be when we demonstrate that this box was tracked with U.S./Canadian cooperation through these ports, that it was a joint effort with the Royal Canadian Mounted Police that led this thing through the canal safely. That we found ways to work together.

The media is here. If Canadians are at least publicly saying this is just a start to a much broader challenge that must be pursued in those ways. I think that story can get some traction. But the heart of the enterprise will be to continue to make those action items really action, build on them, keep the momentum going and keep a spotlight on what is happening. The core reality is most of that cooperation is really taking place below the radar screen. CUFFS was done entirely below the radar screen, mainly because of a problem of Canadian domestic politics, not because of U.S. politics. The Americans did not even know there was a border there till 9-11. So it is not a problem here. The problem is when you do this stuff below the radar screen, and you make all this effort, when it hits the fan, as it did on 9-11, you do not get any credit because no one is aware of it.

These initiatives simply must be above the radar screen; high profile. This is the way Canada and the United States should approach it, not can be we get the technical people to chat about this and periodically do a press conference.

KING: And we may be covering some of this in next year's conference. I passed out the outline last night. We always anticipate here. Thank you very much.

MR. KING: Matt Schaefer.

MR. SCHAEFER: Matt Schaefer, University of Nebraska. I was going to ask on the funding questions, the who pays question, is this a true public good that governments are going to be the exclusive payers or are businesses ultimately going to see that government foot dragging on the funding and the effect these problems could have on their bottom line means they are going

to have to fund some of these initiatives? What is going on now? Do you see it as a mixed funding problem or a pure government funding problem?

MR. FLYNN: You have nailed the issue of our time. Who is going to pick up the tab? What we have right now is something that has evolved over almost 19 months. It is difficult to explain how little actually has happened. There has been a lot of progress in lots of ways, but tangibly, how little the ground has changed.

This is national security. We have a Constitution in the United States to provide for the common defense. The Federal Government should therefore be turning on the spicket and money should be flowing to the critical infrastructure; whether it is the private sector or localities so they could do the good for the broader nation. The Ambassador Bridge is owned by a private company that has no security, except for what it provides because neither Canada nor the United States will acknowledge that more trade comes across that bridge than anywhere else in the planet. There is no plan on either side to protect the bridge, because it is a private entity. Who wants to ante up the resources to pay for it?

Given the dependency of the issue here, it would seem to call for a significant amount of resources. When we approach these things just like best practices, what I hear from CEO's when I corner them in quiet places, is that what we need is set standards uniformly in force so there is a level playing field. Otherwise, I am at a competitive disadvantage for raising the bar in my own pot of the sector. When I know there are free riders who are going to exploit that if they are not enforced. The bad guys will go for the low point and as a result the entire sector will be impacted. So, for me, it is the worst of both worlds. I pay my competitiveness and I still pay the price for the security breach.

We are sort of trapped in this semi-discombobulated world where any standard. Regulation is a bad thing. Government cannot do that. You cannot get there from here on security without it. We do not want stupid regulations that neither provide security nor confound the market place. How do you do that? Because the private and public come together and work on what the standard should be and because everybody is worrying about who should be picking up the tab, we have not really jumped started that conversation much beyond a lot of pronouncements about how we are all very concerned.

MR. KING: Do you want to comment?

MR. HAGE: I do not know about the case of Ambassador Bridge, but the Canadian Government views this as a public question and public monies have gone into the infrastructure. Our economic prosperity depends on keeping that border as open as possible and as efficient as possible.

Governments are very much into user pay these days. There will be charges. It is probably not going to pay for the whole thing, but there are

charges for the NEXUS Program and this FAST Program. So the main users of the border pay something.

One thing they discovered with NEXUS is that where you get this common identity card is that people do not cheat. They go across the border in these FAST lanes and soon they will likely be doing it in airports as well. The reason is they do not want to lose their privilege. There are spot checks. If you are found to be avoiding customs, you lose that privilege. You find more honesty because of the system than a free for all type of system.

MR. KING: Other questions?

MR. ROBINSON: Michael Robinson from Toronto. This is sort of sublime from ridiculous because it is a microcosm of big questions. In the bilateral Canada/U.S. context there is actually a third nation; they are called the Mohawks and they happen to live in Ontario and New York. The reservation straddles the border. As reformed smokers we all know that the strategy to stopping smuggling was engineered by Canada. My former partner Minister Rock removed the tax which created the cigarette smuggling across that border. There are a lot of other things coming across, too. There are illegal immigrants, drugs, and guns. I would be interested in a comment on how somebody is going to finally have the nerve and courage to do something about these people on both sides of the border. These are natives. Leave them alone and let them continue smuggling to their heart's content because one of these days it is going to be an Al Queda guy going across that river.

MR. FLYNN: Maybe, I can address two issues here. One thing that I think we want to struggle with is a capacity to parch the risk and threat. One of the challenges outlined earlier as we talked about the containers that use Montreal and Halifax is that there is about a million TU's coming into Halifax and Montréal as they come to the U.S. One of the challenges I think we can and should be thinking of is viewing most everything within Ontario as low risk. However, if you cannot segment the risk away from the stuff that has come in from abroad, then everything suffers. Building capacity to filter the terrorist threat, which is not an indigenous threat as much as it is something that is likely to rise, gives us some capacity. We have this smuggling paradise, the Indian reservation. There are two ways to think about this. The term of art here in the U.S. is "draining the swamp." The basic view of draining the swamp is that you go after them more vigorously the bad guys. I am going to offer a contrarian sort of radical notion. You responded to some of the issues in smuggling in the way your Minister responded. You start to really look at if our public policy positions are largely unachievable on immigration and narcotics here in creating this very fertile environment for bad people to really exploit. One way to drain the swamp is to he rethink the regime that is creating circumstances and then you

start to drain away that wherewithal. Obviously, you have to step up to the hard issues of sovereignty as well.

MR. HAGE: Let me just say, and this is from memory, there have been Court challenges based on the Jay Treaty for leaders to cross the border unimpeded based on old treaties between Britain and the United States. I do not think these challenge have succeeded. As far as I recall, there is no legal right for natives to cross unimpeded. The question of enforcement is something else out of the hands of foreign affairs.

MR. SILVIA: I am Tom Silvia from the Michigan State Bar Standing Committee on Indian Law. We met last week with Supreme Court Justice Cavanaugh of the State of Michigan. One of the purposes of our group is to solve problems like this. We discussed this very problem in terms of the 13 tribes in the State of Michigan in terms of challenging the tribes to exercise their sovereignty responsibly.

Each of the tribes are an independent nation and independent government, having their own port system and ability to exercise their sovereign responsibly to deal with the types of problems my brothers over here found on the other side of the border. The Indian tribes in the United States have a very different legal relationship with their government then first nations on the other side. One of things we are attempting to explore is exactly that relationship and what it means for people who have a cultural identity that straddles that border. What we have been advocating in the State of Michigan is that the responsible exercise of sovereignty is the solution to this problem rather than having government come in and take away what has existed for 200 years.

MR. KING: One of the problems we face is the question of civil liberties. Can you comment on what you are suggesting affects our civil liberties in the United States and Canada in terms of impact today and in the future?

MR. FLYNN: What is your biggest fear now? 9-11. What is the next big fear? My next big fear is what will the United States do to itself after the next catastrophic event?

You know, the core function of government is to provide for the safety and security of its people. If the view or the report card is 19 months plus whatever the bad guys give us, the government has not done a whole lot to deal with that issue. How the government will scramble post 9-11 Patriot Act kind of style to provide the reassurance they got the security under control is something the private sector or anybody who admires civil liberties is not going to like very much. For me the Patriot Act is sort of the worst of all worlds. It is giving up more authority by diminishing accountability. If you give government more authority, you must raise the bar for accountability for abuse of that authority.

What I think we need to have is an adult-like conversation about how we manage this threat environment while preserving the civil liberties so that the

government does not abuse power. I have talked with my ACLU friends a number of times over the issues. I would say I talked about issues of Freedom of Information Act challenges. We face an issue that basically general counsels of critical infrastructure companies owned by private sectors tell the CEO's to stay mute on what their vulnerability issues are. If they talk about their vulnerabilities and it is publicly disclosed and they do not have the resources to fix them nor is the government going to provide the resources to fix them, then it is a serious liability problem for them. One that could cause real heartache, so keep your mouth shut.

There is a rational lawyer view on that kind of approach, but it is clearly counter productive. You set things like sunset clauses and other protections. I had a comment saying, "Well, you caved into terrorism by virtue of chipping away at that right." My response has been do you acknowledge that there is no risk? Is it your view there is no risk of another terrorist attack on U.S. soil? After a pause, they say, "No." I think that is probably so. I said, all right, do you think John Ashcroft is going to have a six-month chit-chat with you about preserving your concern of that issue after that next event? Now people who are most committed to these issues have to step up, not that this reflexive conversation about any change in these issues is a compromise to the terrorist. Hell no, we won't go. The people most vested in this and the guardians need to step in and say what is your problem, how can we fix it, and make sure these values are not compromised in the context of this new threat environment.

That is something I have remained frustrated on; people whose voices I most respect in this area are not stepping forward to make sure that their counsel is heard and trying to work through the problem. They are basically denying the problem. In many instances, that is a problem.

MR. KING: Do you want to comment on that?

MR. HAGE: Certainly, on the Canadian side, there are these concerns and there is a feeling in Canada among civil liberty groups that certainly refugees might receive a harsher treatment in the United States. I do not know if that is true or not, but it is a perception of some groups in Canada. So now there is this Safe Third Accord where a large number of refugees come to Canada through the United States. Now there is a possibility of turning them back. This has been controversial with certain groups in Canada and there is a question of reassuring them that the United States, the world's oldest and largest democracy, has methods that are comparable to other democracies and that refugees will be treated according to the relevant conventions. It is a question of education and assurance.

These items are not going to go away. There is certainly concern in Canada as part of this entry/exit policy that dual nationals from this list of countries that United States has published would be subject to being photographed and fingerprinted on entry into the United States. These are

Canadian citizens who might come from Sudan, Iraq, or a number of other countries who would be subject to these types of controls. This caused major debate in Parliament even though we have had assurances from the United States that they will look to the Canadian citizenship of these people and not to their other nationalities. It is this type of dialog that is so important. I guess what we have to do is get that dialog going before the action happens rather than after.

MR. KING: I think that is the message. We will adjourn this session and thank you for a wonderful session.