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“Anti Terrorism Fight Requires a Multi-faceted Approach”

by

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The ultimate aim of terrorists is to make victims of us all. There are the immediate victims – those maimed or murdered in a terrorist assault; then there are the families and friends of victims, who suffer emotional trauma and irrevocable loss; and finally there are the members of society as a whole, among whom the terrorists hope to sow panic and widespread fear.

If, as a result of all this pressure, a democratic society over-reacts to the terrorist threat by engaging in a decidedly undemocratic response, terrorists have achieved their intended goal. They have revealed to their victims the “flaws” in a way of life that terrorists consider corrupt.

This, in a nutshell, sums up the dilemma of democratic societies in responding to terrorist threats: How do you defeat an enemy -- which will use any means to destroy you -- while remaining true to democratic principles; in other words, without resorting to any means at your disposal. (responding in kind by the US in the wake of 9/11 for example, would be considered beyond the pale)?

Common sense tells us that no open society can ever fireproof itself completely against terrorist events, which, unfortunately, creates a field day for those armchair critics who spend their days and nights -- and a whole passel of taxpayer’s money -- pointing out the flaws in the system (it is hard not to imagine them fantasizing about the next attack after which they can claim credit for their “prescient” analysis).

More reasonable people understand that while not every eventuality can be planned for (or addressed by ever more government spending) we can be creative about how we respond to the terrorist threat, searching out every legal means to make terrorists’ and their sponsor’s lives more difficult.

That is the kind of thinking behind my Senate public bill, S-225, though, I hasten to add, that should not be construed to mean that I alone have been doing the thinking. S-225 is the result of a concerted effort of a number of people both in and outside government, including, most importantly, past Canadian victims of terrorist attacks, who have worked hard and with extreme dedication and patience to create a carefully and ingeniously crafted tool to place in the hands of victims to deter and combat terrorist acts.

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The official title of the bill is: *An Act to amend the State Immunity Act and the Criminal Code (detering terrorism by providing a civil right of action against perpetrators and sponsors of terrorism)*.

I first introduced a version of the Bill in May 2005 as Bill S-35. It died on the order paper when the 2005 election was called. Its successor Bill, S-218, was introduced the next year but also died on the order paper when Parliament was prorogued in 2007. Bill S-225, which is a modified and improved version of those earlier bills, has passed second reading in the Senate and has been referred to the Committee on Legal and Constitutional Affairs, where it should receive its first hearing in June.

The main elements of the Bill have remain unchanged. The amendment to the *State Immunity Act* would permit claims in Canada against foreign states that sponsor any of the groups listed as terrorist entities by the government of Canada. Under this amendment those states would not be able to claim immunity from Canadian courts in any proceedings that relate to any terrorist activity that the foreign state conducted on or after January 1, 1985.

This aspect of S-225 is important because without it, two of the largest acts of terrorism affecting Canadians – September 11th and the bombing of Air India flight 182, which occurred in June 1985 -- would unlikely be open to action under the Bill, and that runs contrary to its intent by limiting its application to future terror incidents and victims at the expense of those whose past suffering inspired its creation. Nor would Canadians be well served if the legislation's primary motivation -- deterrence – becomes viable only when the next victims of terror have been claimed, rather than the last. In fact some people might see that as somewhat unconscionable.

The amendment to the *Criminal Code* would provide a civil cause of action to anyone who has suffered damages as a result of a breach of the anti-terrorism provisions. This is hardly a radical departure in Canadian law. In fact the civil remedy proposed in S-225 is modeled on section 36 of the *Competition Act*, which gives a civil cause of action to anyone who has suffered damages as a result of a party engaging in quasi-criminal, anti-competitive conduct contrary to Part VI of the *Competition Act*.

The important point of this legislation for me – and I consider it very important – is the contribution it makes to deterring terrorist acts and the blow it strikes for all victims of terror.

When it comes to this particular war, civilians are not collateral damage but the primary targets. It is also civilians who plan and perpetrate terrorist acts, whether they are toting backpacks or commandeering aircraft. We need to give the victims a means to fight back and make some measure of progress in the fight against terrorism. Canadian law needs to reflect the unique status of victims in this unprecedented war.

It is worth remembering that in the Second World War entire societies were mobilized in the fight against the enemy. Citizens were pressed into service in defence of the homeland. This was known in the UK as civil defence and included air raid wardens, fire auxiliary services, first aid parties, rescues services and women voluntary services, the latter of which included a housewife section.

Bill S-225 proposes nothing other than to mobilize the civilian victims of terror in a very 21st century war against terrorism.