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A Legislative Proposal:

**to Deter and Sanction the Use of Civilians
as Human Shields under Canadian Law**

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EXECUTIVE SUMMARY

1. What are “Human Shields”?

The term “human shields” refers to a tactic of warfare in which civilians are used to shield military objectives from attack. Under International Humanitarian Law (IHL), the prohibition against the use of human shields – is absolute. While this practice has been employed by both state and nonstate combatants, it is used pervasively by terrorist groups like the Islamic State, Taliban, Hezbollah, and Hamas. These groups have regularly, pre-emptively and systematically utilized tens of thousands of civilians, and indeed entire population centres, for this purpose.

2. Human Shields and Western Counterterrorism Policy

This war crime of “shielding” is a central cog in the terrorist arsenal and has exponentially amplified the impact of terrorist violence. Tactically, it impedes the efficacy of western militaries, bound by democratic norms and laws, in contending with terrorist actors unencumbered by moral, legal or juridical constraints. Strategically, it incentivizes terrorist entities to maximize and weaponize the death toll of the civilians held as shields, enabling terrorists to transpose asymmetrical warfare from the battlefield to the courtroom. By pursuing lawfare as a furtherance of terror by other means, human shield practitioners seek to hold the west accountable for human shields-related deaths, manipulating western legal systems to undermine, defame and delegitimize western counterterrorism efforts – while accruing substantial gains for the terrorist cause in the court of public opinion.

3. A New Legislative Precedent from the U.N. and N.A.T.O.

Until recently, western countries have not taken effective action in holding terrorist groups and their sponsors accountable for using human shields. But in December 2018, the U.S. passed the *Sanctioning the Use of Civilians as Defenseless Shields Act*. This Act imposes sanctions on terrorists and other foreign persons using human shields. The legislation, and the international consensus it embodies, generated the first-ever resolution by the U.N. General Assembly that specifically and generally condemned the terrorist use of human shields. N.A.T.O. also was inspired to act. In March 2019, the N.A.T.O. Supreme Allied Commander sent a letter urging all N.A.T.O. Member Nations to take steps to counter use of human shields.

4. Canada and Human Shields

C-CAT proposes that Canada respond to N.A.T.O.’s call to action, act on this international consensus and pass legislation to deter and sanction the use of human shields. Canada can and should act as a model for other democracies in taking substantive action to curtail the use of this loathsome tactic. C-CAT has therefore authored draft legislation to be considered by parliament.

PART I. THE PROBLEM – WIDESPREAD USE OF HUMAN SHIELDS AND THEIR ILLEGALITY

Documented Use by Terrorist Groups

1. Human shields have been regularly used by a variety of terrorist groups, including the Islamic State, Taliban, Hezbollah, and Hamas. These groups' use of human shields is well-documented and broadly representative of the various applications of this tactic in terrorist strategy. These groups have regularly, pre-emptively and systematically utilized tens of thousands of civilians, and indeed entire population centres, for this purpose. These listed terrorist entities can serve as a broad template in considering the need for human shields legislation.

The Islamic State

2. The Islamic State utilized human shields in Mosul, Ramadi, and Fallujah, Iraq, prolonging the battles for each of those three cities and extending their hold on territory. In June 2017, the U.N. refugee agency UNHCR reported on the use of human shields, stating that approximately 100,000 civilians remained trapped as human shields in the Old City of Mosul, which at the time was the northern Iraqi stronghold of the Islamic State.¹ In another incident, Islamic State combatants fleeing Manbij, Syria, in August 2016, placed civilians in each of their 500 vehicles in order to escape destruction as they retreated – knowing that the United States would be hesitant to fire on vehicles containing civilians.
3. As stated in a *New York Times* article in 2015, “Islamic State troops ... appear to be taking advantage of the restrictions” the U.S. military had imposed on itself to minimize civilian harm, “as the militants increasingly fight from within civilian populations to deter attack”.² U.S. and allied troops avoided “striking significant – and obvious – Islamic State targets out of fear that the attacks will accidentally kill civilians”.³ The Islamic State took advantage of this reticence to conquer cities and massacre the hundreds of civilians captured in them.⁴ In March 2017, a U.S. military spokesman stated that the Islamic State was trying to bait U.S. and allied forces

¹ Stephanie Nebehay, *100,000 civilians behind Islamic State lines in Iraqi city of Mosul*, Reuters, June 16, 2017, <https://www.reuters.com/article/us-mideast-crisis-iraq-mosul-idUSKBN1971YZ>

² Eric Schmitt, *U.S. Caution in Strikes Gives ISIS an Edge, Many Iraqis Say*, New York Times, May 26, 2015, https://www.nytimes.com/2015/05/27/world/middleeast/with-isis-in-crosshairs-us-holds-back-to-protect-civilians.html?_r=0

³ *Ibid.*

⁴ See, e.g., *ISIS Slaughters 400 Mostly Women and Children in Ancient City of Palmyra Where Hundreds of Bodies Line the Street*, Daily Mail, May 24, 2015, <http://www.dailymail.co.uk/news/article-3094956/ISIS-slaughters-400-women-children-ancient-Syria-city-Palmyra-hundreds-bodies-line-street.html>; Michael E. Miller, *Islamic State's "War Crimes" Against Yazidi Women Documented*, Washington Post, April 16, 2015, https://www.washingtonpost.com/news/morning-mix/wp/2015/04/16/islamic-states-war-crimes-against-yazidi-women-documented/?utm_term=.a2d36a187975

into killing civilians, calculating that rising civilian death tolls would restrain U.S. and allied forces from using airstrikes to recapture Mosul.⁵ U.S. spokesperson for the U.S.-led taskforce, Col. Joseph E. Scrocca, stated that “ISIS is smuggling civilians so we won’t see them and trying to bait the coalition to attack”.⁶

4. The Islamic State is not merely a historic threat – they are demonstrably growing, and there is no indication that the group will be changing their *modus operandi* regarding the use of human shields. According to a U.N. Security Council Committee report dated January 20, 2020, the Islamic State has begun to re-establish itself in Iraq and Syria, and has been “mounting increasingly bold insurgent attacks, calling and planning for the breakout of ISIL fighters in detention facilities and exploiting weaknesses in the security environment of both countries”.⁷ This was noted as especially concerning in light of the reduction of U.S. forces in the region, where at least 100,000 Islamic State members are currently detained in “precarious ... holding arrangements”.⁸ In fact, 2019 saw “an acceleration of the reconstitution of [the Islamic State] as a covert network in the Syrian Arab Republic, mirroring what had happened in Iraq since 2017 ... freed of the responsibility of defending territory, there was a notable increase in attacks in previously quiet areas held by the Government of the Syrian Arab Republic around the country”.⁹ In assessing future risk, the Committee made the provisional assessment that the group’s strategic direction is unlikely to change under Abu Bakr al Baghdadi’s successor, Abu Ibrahim al Hashimi al Quraishi.¹⁰ If al Quraishi follows in al Baghdadi’s footsteps, there is every indication that the Islamic State’s widespread use of human shields will continue.

Taliban

5. Taliban regularly places military assets around or within hospitals, religious sites, and schools. Australian Foreign Minister Alexander Downer stated in 2007 that “the Taliban ... make every effort to cause civilian casualties and to create situations where we might not be able to avoid civilian casualties”.¹¹ U.S. Secretary of Defence Robert Gates stated in 2009 that “a principal

⁵ Michael R. Gordon, *New ISIS Tactic: Gather Mosul’s Civilians, Then Lure an Airstrike*, New York Times, March 30, 2017, <https://www.nytimes.com/2017/03/30/world/middleeast/mosul-iraq-isis-military.html>

⁶ *Ibid.*

⁷ U.N. Security Council, *Letter dated 20 January 2020 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities addressed to the President of the Security Council*, United Nations, January 20, 2020, <https://undocs.org/S/2020/53>.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Noor Khan, *Afghan Civilians Said Killed in Clash*, Washington Post, June 30, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/30/AR2007063000028.html>

strategic tactic of the Taliban” is “provoking or exploiting civilian casualties”.¹² U.S. Major General Charles Dunlap Jr., who acted as Deputy Judge Advocate General of the U.S. Air Force until 2010, explained that the Taliban learned to “shield themselves from air attack by violating the law of armed conflict through embedding themselves among civilians”.¹³ In this sense, the Taliban created “a substitute for conventional military weaponry”.¹⁴ The Taliban did not need to “build conventional air defenses; rather, just by operating amidst civilians they enjoy[ed] a [sanctuary] that is as secure as any fortress bristling with anti-aircraft guns”.¹⁵

Hezbollah

6. In southern Lebanon, Hezbollah blends its fighters amongst civilian women and children, converting thousands of schools, hospitals, and homes in southern Lebanon into military quarters and weapons stores. In 2006, U.N. Undersecretary-General for Humanitarian Affairs Jan Egeland stated that “Hezbollah must stop this cowardly blending ... among women and children”.¹⁶ Egeland stated that “they were proud because they lost very few fighters and that it was the civilians bearing the brunt of this ... I don’t think anyone should be proud of having many more children and women dead than armed men”.¹⁷ Israeli officials have also expressed concern, especially that the use of this terrorist tactic will only grow in the future. In 2018, Israel Defense Forces (IDF) Spokesman Brigadier-General Ronen Manelis stated that “one in every three or four houses in southern Lebanon is a headquarters, a post, a weapons depot or a Hezbollah hideout”.¹⁸
7. One specific example of this tactic is the placing of missile production factories in dense urban areas in Beirut. Israel released satellite images in 2018, marking on the map underground missile production factories located on three civilian sites in Beirut.¹⁹ All three sites were marked in close proximity to the Beirut International Airport. One site was under a soccer

¹² Press Conference with Secretary Gates and Adm. Mullen on Leadership Changes in Afghanistan from the Pentagon (May 11, 2009), transcript available at

<http://archive.defense.gov/transcripts/transcript.aspx?transcriptid=4424>

¹³ Charles J. Dunlap, Jr., *Does Lawfare Need an Apologia?*, 43 CASE W. RES. J. INT’L L. 121, 134 (2011)

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Lloyd Vries, *Rage, Rockets & Rhetoric*, CBS News, July 24, 2006, <https://www.cbsnews.com/news/rage-rockets-rhetoric/2/>

¹⁷ *Ibid.*

¹⁸ Quoted in Anna Ahronheim, *IDF Spokesman Warns Lebanon of War with Israel if Iranian Presence Grows*, Jerusalem Post, January 28, 2018, <http://www.jpost.com/Arab-Israeli-Conflict/IDF-Spokesman-warns-Lebanon-of-war-with-Israel-if-Iranian-presence-grows-540009>

¹⁹ Judah Ari Gross, *IDF Releases Photos of Alleged Hezbollah Missile Sites Near Beirut Airport*, Times of Israel, September 27, 2018, <https://www.timesofisrael.com/idf-releases-photos-of-alleged-hezbollah-missile-sites-near-beirut-airport/>; Yoav Zitun, *IDF releases footage of Hezbollah precision-missile factory*, Ynet News, September 28, 2018, <https://www.ynetnews.com/articles/0,7340,L-5359926,00.html>; *Israel Releases Images Alleging Hezbollah Missile Project in Beirut*, Reuters, September 27, 2018, <https://www.reuters.com/article/us-un-assembly-israel-beirut/israel-releases-images-alleging-hezbollah-missile-project-in-beirut-idUSKCN1M72LL>

stadium in the area, used by a Hezbollah-sponsored team; another site was just north of the airport; and the third site was underneath a residential neighbourhood approximately 500 metres from the airport's tarmac.²⁰ Israeli Prime Minister Benjamin Netanyahu accused Hezbollah of “deliberately using the innocent people of Beirut as human shields”.²¹ A few days following the Israeli announcement, the Lebanese Foreign Minister escorted various foreign diplomats to two of the three alleged sites; the diplomats expressed to the *Washington Post* following the tour that it “seemed inconclusive”.²²

Hamas

8. Hamas is similarly known to utilize human shields in the Gaza strip. The most striking recent example was the multiweek March of Return, where thousands of Gazan civilians rioted at the Israel-Gaza border. Groups of armed Gazan fighters used these riots as an opportunity to attempt a breach of the border. Hamas' leader in Gaza, Yahya Sinwar, brazenly admitted to the use of human shields in this context – stating that the March of Return was designed to sacrifice “that which is most dear to us – the bodies of our women and children”.²³ Mahmoud Al-Habbash, Supreme Shariah Judge and Advisor to Palestinian Authority (PA) President Mahmoud Abbas, made a similar acknowledgement regarding the March of Return, when he stated on Official PA television on April 6, 2018, “you Palestinians, our people, go and die, so that we'll go to the TV and media with strong declarations”.²⁴
9. U.S. Ambassador to the U.N. Nikki Haley quickly condemned Hamas for “us[ing] Palestinian civilians as human shields at the boundary fence” as part of the March of Return.²⁵ The European Parliament also condemned the March of Return, passing a resolution on April 19, 2018, stating that it “strongly condemns the persistent tactic of Hamas of using civilians for the purpose of shielding terrorist activities”.²⁶ U.N. Secretary-General Antonio Guterres repeatedly called on “all concerned to refrain from any act that could ... place civilians in harm's way, especially children”.²⁷

²⁰ *Ibid.*

²¹ *Ibid.*

²² Liz Sly and Susan Haidamous, *Lebanon puts on a tour of alleged Hezbollah missile sites to prove Israel wrong*, *Washington Post*, October 1, 2018, https://www.washingtonpost.com/world/lebanon-puts-on-a-tour-of-alleged-hezbollah-missile-sites-to-prove-israel-wrong/2018/10/01/f5a1d15e-c579-11e8-9c0f-2ffaf6d422aa_story.html

²³ Mark Dubowitz and Orde Kittrie, *Get Serious About Human Shields*, *Wall Street Journal*, August 22, 2018, <https://www.wsj.com/articles/get-serious-about-human-shields-1534977827>

²⁴ Official Palestinian Authority TV, *Hamas is sending civilians to die for media coverage, says Abbas' advisor*, *Palestinian Media Watch*, April 6, 2018, <https://palwatch.org/page/14068>

²⁵ Ambassador Nikki Haley, Remarks at a UN General Assembly Special Session on the Situation in Gaza, United States Mission to the United Nations, June 13, 2018, <https://usun.state.gov/remarks/8477>

²⁶ European Parliament resolution of 19 April 2018 on the situation in the Gaza Strip, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0176+0+DOC+PDF+V0//EN>

²⁷ Secretary-General's statement on the situation in Gaza, April 5, 2018, <https://www.un.org/sg/en/content/sg/statement/2018-04-05/secretary-general's-statement-situation-gaza>. See also,

10. Hamas faced similar condemnation for its use of human shields during the 2014 Gaza war. The European Union resolved at that time that it “strongly condemns calls on the population of Gaza to provide themselves as human shields”.²⁸ U.S. President at the time Barack Obama stated that “Hamas acts extraordinarily irresponsibly when it is deliberately sitting rocket launchers in population centers, putting populations at risk because of that particular military strategy”.²⁹ U.N. Secretary-General at the time Ban Ki-Moon stated regarding Hamas, “we condemn the use of civilian sites – schools, hospitals, and other civilian facilities – for military purposes”.³⁰

Other Groups

11. The tactic has proven effective and “shielding” is now a central cog in the terrorist arsenal. Beyond these above groups, human shields as a tactic has been used by many others, including the Houthi rebels, various groups during the Syrian Civil War, Boko Haram, Al-Shabab, the Moro National Liberation Front, Central African Republic (CAR) militias, Myanmar Armed Forces, and Democratic Republic of the Congo (DRC) militias.

- (1) **Houthi Rebels:** The Final Report of the Panel of Experts on Yemen Established Pursuant to Security Council Resolution 2140 (2014) stated in January 2016 that “at least three United Nations and international non-governmental organization staff told the Panel that Houthi-Saleh forces had more than once housed African migrants and refugees as human shields in unused buildings in Aden previously targeted by air strikes, or where weapons caches were claimed to be stored.”³¹ Further, the U.N. High Commissioner for Human Rights stated that “credible reports indicate that Houthi-

e.g., Secretary-General Antonio Guterres, Remarks to the Security Council, 13 April 2018, <https://www.un.org/sg/en/content/sg/speeches/2018-04-13/remarks-security-council>; Statement attributable to the Spokesman for the Secretary-General on the situation in Gaza, 30 March 2018, <https://www.un.org/sg/en/content/sg/statement/2018-03-30/statement-attributable-spokesman-secretary-general-situation-gaza>

²⁸ *EU Council Conclusions on the Middle East Peace Process*, July 22, 2014,

http://eeas.europa.eu/archives/delegations/israel/documents/press_corner/20140722_en.pdf

²⁹ Press Release, The White House, *Remarks by the President at Press Conference after U.S.-Africa Leaders Summit* (Aug. 6, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/08/06/remarks-president-press-conference-after-us-africa-leaders-summit>

³⁰ *Secretary-General’s Remarks at Press Conference with Prime Minister Benjamin Netanyahu of Israel* (July 22, 2014), <https://www.un.org/sg/en/content/sg/speeches/2014-07-22/remarks-press-conference-prime-minister-benjamin-netanyahu-israel>

³¹ *Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014)*, S/2016/73, January 26, 2016, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_73.pdf

affiliated snipers shot at families attempting to flee their homes in Houthi-controlled areas – suggesting the use of human shields”.³²

- (2) **Syria:** A 2014 U.N. report on the Syrian Civil War found that “government forces used children as human shields.”³³ Similarly, the U.N. Office of the Special Representative of the Secretary-General for Children and Armed Conflict stated in 2013 that “the office of the Special Representative has received and continues to get verified reports that Syrian children are ... used as human shields”.³⁴ The U.N. Secretary General’s Annual Report for 2011 on children and armed conflict asserted that children in Syria were “used by soldiers and militia members as human shields, placing them in front of the windows of buses carrying military personnel”.³⁵
- (3) **Boko Haram:** The U.N. High Commissioner for Human Rights reported on Boko Haram in 2015 that “boys and girls were increasingly used as human shields and to detonate bombs, a pattern that has intensified since 2014.”³⁶ Similarly, the U.N. Special Representative of the Secretary-General for Children and Armed Conflict, Leila Zerrougui, stated in April 2015 that Boko Haram uses “children as human”.³⁷
- (4) **Al-Shabab:** The U.N. High Commissioner for Human Rights stated in 2009 that “the Al-Shabab militant group has been using human shields”.³⁸ The U.S. Department of State found the same, stating in its 2017 Trafficking in Persons Report that “Al-Shabab used children for combat and other support functions ... serving as human shields during incursions”.³⁹

³² *Civilians in Yemen caught between warring parties*, Office of the UN High Commissioner for Human Rights, February 10, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21163&LangID=E>

³³ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *First UN Report on Children in Syria’s Civil War Paints Picture of ‘Unspeakable’ Horrors*, February 5, 2014, <https://childrenandarmedconflict.un.org/first-un-report-on-children-in-syrias-civil-war-paints-picture-of-unspeakable-horrors/>

³⁴ United Nations Office of the Special Representative of the Secretary General for Children and Armed Conflict, *Secretary-General’s Annual Report on Children and Armed Conflict: Success but Also Grave Danger for Children Affected by New and Ongoing Conflicts*, June 12, 2013, <https://childrenandarmedconflict.un.org/press-release/secretary-generals-annual-report-on-children-and-armed-conflict-success-but-also-grave-danger-for-children-affected-by-new-and-ongoing-conflicts/>

³⁵ Report of the Secretary General on Children and Armed Conflict, A/66/782-S/2012/261, April 26, 2012, http://www.un.org/ga/search/view_doc.asp?symbol=A/66/782

³⁶ *Report of the United Nations High Commissioner for Human Rights on violations and abuses committed by Boko Haram and the impact on human rights in the affected countries*, A/HRC/30/67, December 9, 2015, <https://undocs.org/A/HRC/30/67>

³⁷ Leila Zerrougui, Special Representative of the Secretary-General for Children and Armed Conflict, *Bring Back Our Girls Now*, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, April 15, 2015, <https://childrenandarmedconflict.un.org/bring-back-our-girls-now/>

³⁸ United Nations Political Office for Somalia, July 11, 2009, <https://unpos.unmissions.org/11-july-2009>

³⁹ *2017 Trafficking in Persons Report: Somalia*, U.S. Department of State, <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271280.htm>

- (5) **Moro National Liberation Front:** The U.N. Office of the Special Representative of the Secretary-General for Children and Armed Conflict stated that “children were used as human shields” by the Moro National Liberation Front in the Philippines.⁴⁰
- (6) **CAR:** The U.N. Multidimensional Integrated Stabilization Mission in CAR stated that “MINUSCA undertook a fact-finding mission in January 2018 that confirmed the deliberate targeting of civilians at the Ippy hospital. . . The attackers then forced a group of civilians – primarily women and children – to accompany the combatants as they retreated towards the town by foot . . . MINUSCA reminds the leaders . . . that using civilians as human shields, are grave violations of international human rights law”.⁴¹ Further, the U.N. Office of the Special Representative of the Secretary General for Children and Armed Conflict stated in 2016 that “the U.N. documented cases of children used as human shields or to lure international forces into ambushes”.⁴²
- (7) **Myanmar:** The U.N. Special Rapporteur on the human rights situation in Myanmar stated as part of a 2017 report that “there have been numerous reports of killings, torture, even the use of human shields by the Tatmadaw [the armed forces of Myanmar], allegedly in some cases accompanied by threats of further violence if incidents are reports”.⁴³
- (8) **DRC:** The U.N. Office for the Coordination of Humanitarian Affairs stated as part of a 2017 report that “the protection situation stands alarming, with 500 girls and boys being used as combatants or ‘human shields’ by militias . . . since the beginning of the crisis in August 2016”.⁴⁴

⁴⁰ United Nations Office of the Special Representative of the Secretary General for Children and Armed Conflict, *Progress in the Philippines, but Recent Clashes in Mindanao Highlight Challenges for the Peace Process*, October 25, 2013, <https://childrenandarmedconflict.un.org/press-release/progress-in-philippines/>

⁴¹ United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic, *MINUSCA Strongly Condemns Attack by the UPC and FPRC Armed Groups on Hospital in Ippy Ouaka Prefecture*, February 5, 2018, <https://minusca.unmissions.org/en/minusca-strongly-condemns-attack-upc-and-fprc-armed-groups-hospital-ippy-ouaka-prefecture>

⁴² United Nations Office of the Special Representative of the Secretary General for Children and Armed Conflict, *Central African Republic: Report Describes Children Victims of Relentless Violence in a Climate of Total Impunity*, March 7, 2016, <https://childrenandarmedconflict.un.org/press-release/central-african-republic-report/>

⁴³ United Nations Office of the High Commissioner for Human Rights, *End of Mission Statement by Special Rapporteur on the situation of human rights in Myanmar*, July 21, 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21900&LangID=E>

⁴⁴ United Nations Office for the Coordination of Humanitarian Affairs, *Complex Emergency in the Kasai region, DR Congo*, Situation Report No. 8 (22 June 2017), https://reliefweb.int/sites/reliefweb.int/files/resources/ocha_drc_kasais_situationreport_22062017_en.pdf

12. The use of this tactic has only been growing, and this is exponentially amplifying the impact of terrorist violence. Tactically, the use of human shields impedes the efficacy of western militaries, bound by democratic norms and laws, in contending with terrorist actors unencumbered by moral, legal or juridical constraints. Strategically, it incentivizes terrorist entities to maximize and weaponize the death toll of the civilians held as shields, enabling terrorists to transpose asymmetrical warfare from the battlefield to the courtroom. By pursuing lawfare as a furtherance of terror by other means, human shield practitioners seek to hold the west accountable for human shields-related deaths, manipulating western legal systems to undermine, defame and delegitimize western counterterrorism efforts – while accruing substantial gains for the terrorist cause in the court of public opinion.
13. The use of human shields therefore provides a strategic “win-win” for terrorists and a “lose-lose” scenario for democratic countries. To change this calculus, western countries must act to address the international culture of impunity that has enabled this war crime to flourish as a terrorist weapon of first resort. Failure to do so will only result in mounting civilian death tolls with western countries increasingly compromised in their ability to protect and uphold the standards of the democracies they defend. Regrettably, the current frameworks of international law and state policy have proven less than adequate in curtailing the use of human shields. Further legislation enshrining the broad international consensus against this tactic and specifically targeting its practitioners in the bedrock of the western legal systems is therefore a critical first step in achieving the objective of diminishing the use and efficacy of this tactic.

Established Illegality in International Legal Instruments – This Is A War Crime

14. It is settled international law that the use of civilians as human shields for military targets – is illegal and criminal. The precedents for this illegality can be found in both the Geneva Conventions, and the Rome Statute of the International Criminal Court (ICC).
15. The Geneva Conventions of 1949 were ratified by 196 nations, including every member of the United Nations. The Geneva Conventions, and the additional protocols of 1977, make clear that the use of human shields is illegal under international law. Article 51 of the first protocol prohibits parties to a conflict from ***“direct[ing] the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations”***.
16. Further, Article 58 requires parties to a conflict to

“(a) without prejudice to Article 49 of the Fourth Convention, endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives; (b) avoid locating military objectives within or near

densely populated areas; (c) take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations”.

17. The Rome Statute, done at Rome on 17 July 1998, outlines the use of human shields as one war crime for which individuals can be prosecuted at the International Criminal Court. Specifically, it prohibits individuals from *“utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations”* – see Article 8, section 2 (b) (xxiii).
18. Recently, in December 2019, the ICC Prosecutor articulated that she would be investigating the use of human shields by Palestinian actors (namely, Hamas) as part of her investigation into the Situation in Palestine. While the Court’s investigation has yet to begin, the Prosecutor found as part of her preliminary examination that there is a “reasonable basis to believe” this war crime has been committed.

Condemnations by the United Nations

19. In recognition of this tactic as a war crime, the U.N. Security Council has explicitly condemned the use of human shields in a variety of contexts. The U.N. Security Council has specifically condemned the use of human shields by the Taliban and other extremist groups in 18 different resolutions relating to the Afghan conflict. In addition, the Council condemned the use of human shields in a resolution relating to the Syrian conflict, and in one relating to the Sudanese conflict. On June 26, 2018, the U.N. General Assembly broke its pattern of largely ignoring the use of human shields outside of the Afghan conflict, by condemning the use of human shields in an unanimously adopted resolution. The resolution stated that the General Assembly “strongly condemns the use of civilians to shield military objectives from attacks”.⁴⁵ The U.N. condemnations of the use of human shields has ramped up in recent years, with other U.N. bodies and officials publishing condemnations; the Council president issuing at least two presidential statements on the topic; and N.A.T.O. getting involved by urging its members to take action against the widespread and growing use of this terrorist tactic.
20. The U.N. Security Council has issued several condemnations of the use of human shields in the international arena. These include the following:
 - (1) The preambles to UNSCR 1776 (2007) and UNSCR 1833 (2008) both state: “condemning further the use by the Taliban and other extremist groups of civilians as human shields”

⁴⁵ <https://undocs.org/A/RES/72/284>.

- (2) The preambles to UNSCR 1890 (2009) and UNSCR 1943 (2010) both state: “condemning further the use by the Taliban, Al-Qaida and other extremist groups of civilians as human shields”
- (3) The preambles to Resolution 2011 (2011), Resolution 2069 (2012), and Resolution 2120 (2013) (Afghanistan) all state: “condemning further the use by the Taliban, Al-Qaida and other violent extremist groups and illegal armed groups of civilians as human shields”
- (4) Paragraph 12 of UNSCR 1806 (2008), Paragraph 12 of UNSCR 1868 (2009), Paragraph 18 of UNSCR 1917 (2010), Paragraph 17 of UNSCR 1974 (2011), Paragraph 28 of UNSCR 2041 (2012), Paragraph 28 of UNSCR 2096 (2013), Paragraph 28 of UNSCR 2145 (2014), and Paragraph 28 of UNSCR 2210 (2015) all state: “condemns . . . the use by the Taliban and other extremist groups of civilians as human shields”
- (5) Paragraph 32 of UNSCR 2274 (2016) states: “condemns . . . the use by the Taliban and other violent and extremist groups of civilians as human shields”
- (6) Paragraph 21 of UNSCR 2344 (2017) states: “condemns . . . the use by the Taliban, including the Haqqani Network as well as Al-Qaida, ISIL (Da’esh) affiliates, and by other terrorist groups, violent and extremist groups, and illegal armed groups of civilians as human shields”
- (7) Paragraph 23 of UNSCR 2405 (2018) states: “condemns further the use by the Taliban, including the Haqqani Network as well as Al-Qaida, ISIL (Da’esh) affiliates, and by other terrorist groups, violent and extremist groups, and illegal armed groups of civilians as human shields, and underlines the need to hold perpetrators, organizers, financiers and sponsors of such acts accountable and bring them to justice, and urges all states, in accordance with their obligations under international law and relevant Security Council resolutions, to cooperate actively with the Government of Afghanistan and all other relevant authorities in this regard”
- (8) Regarding Sudan, in the preamble of UNSCR 1828 (2008): “demanding an end to . . . the use of civilians as human shields”
- (9) The preamble to UNSCR 1882 (2009) states: “deeply concerned that children continue to account for a considerable number of casualties resulting from killing and maiming in armed conflicts including as a result of . . . use of children as human shields”

- (10) Regarding Syria, in paragraph 1 of UNSCR 2139 (2014): “strongly condemns ... all grave violations and abuses committed against children in contravention of applicable international law, such as . . . use as human shields, as described in the United Nations Secretary-General’s report on children and armed conflict in Syria (S/2014/31)”
- (11) In paragraph 2 of Resolution 1894 (2009) (on children and armed conflict): “Reiterates its condemnation in the strongest terms of attacks in situations of armed conflict directed against civilians as such and other protected persons or objects as well as indiscriminate or disproportionate attacks *and the utilisation of the presence of civilians to render certain points, areas or military forces immune from military operations, as flagrant violations of international humanitarian law and demands that all parties immediately put an end to such practices*” (emphasis added)
- (12) In paragraph 10 of Resolution 2139 (2014) (Syria): “Further demands that all parties demilitarize medical facilities, schools and other civilian facilities and avoid establishing military positions in populated areas and desist from attacks directed against civilian objects”
- (13) In the preamble of Resolution 2143 (2014) (on children and armed conflict): “Expressing deep concern about the military use of schools by armed forces and non-State armed groups in contravention of applicable international law, including those involving their use as military barracks, weapons storage facilities, command centres, detention and interrogation sites and firing and observation positions.”
- (14) In paragraph 18 of Resolution 2143 (2014) (on children and armed conflict): “Expresses deep concern at the military use of schools in contravention of applicable international law, recognizing that such use may render schools legitimate targets of attack, thus endangering children’s and teachers’ safety as well as children’s education and in this regard:
- (a) urges all parties to armed conflict to respect the civilian character of schools in accordance with international humanitarian law;
 - (b) encourages Member States to consider concrete measures to deter the use of schools by armed forces and armed non-State groups in contravention of applicable international law;
 - (c) urges Member States to ensure that attacks on schools in contravention of international humanitarian law are investigated and those responsible duly prosecuted;

(d) calls upon United Nations country-level task forces to enhance the monitoring and reporting on the military use of schools.”

21. The Security Council President has also issued at least two presidential statements in recent years condemning the use of human shields.

(1) October 31, 2017: “The Security Council expresses *grave concern* at the scale and severity of the violations and abuses committed against children in 2016, as documented in the report of the Secretary-General (S/2017/821) on children and armed conflict, which included alarming levels of killing and maiming of children, recruitment and use of children, *including by the use of children as human shields and the increasing use of children as suicide bombers*, and, in certain situations, denial of humanitarian access to children”.⁴⁶ (emphasis added)

(2) November 2, 2016: “The members of the Security Council condemn the use of human shields and call on all parties to take feasible precautions with the view to avoiding harm to civilians and civilian objects in accordance with international humanitarian law”.⁴⁷

22. U.N. bodies besides the Security Council have also on multiple occasions condemned the use of human shields by specific groups, especially the Islamic State. These condemnations include:

(1) The U.N. High Commissioner for Human Rights at the time, Zeid Ra-ad Al Hussein, stated in March 2017: “ISIL’s strategy of using children, men and women to shield themselves from attack is cowardly and disgraceful. It breaches the most basic standards of human dignity and morality. Under international humanitarian law, the use of human shields amounts to a war crime. . . I do not underestimate the enormity of the challenges facing the Iraqi Security Forces and their Coalition partners as they try to dislodge ISIL from their last strongholds in Mosul, and the immense difficulties they face in trying to save civilians from their nightmare existence under ISIL control . . . This is an enemy that ruthlessly exploits civilians to serve its own ends, and clearly has not even the faintest qualm about deliberately placing them in danger.”⁴⁸

⁴⁶ *Issuing Presidential Statement, Security Council Expresses Deep Concern over Scale, Severity of Violations against Children in Armed Conflict*, United Nations, October 31, 2017, <https://www.un.org/press/en/2017/sc13050.doc.htm>

⁴⁷ *The United Nations Security Council condemned the use of “human shields” by ISIL in Mosul and called on all parties to take “all feasible precautions” to protect civilians*, United Nations, November 2, 2016, <http://www.unmultimedia.org/tv/unifeed/asset/1764/1764569/>

⁴⁸ *Mosul: Protection of civilians paramount as ISIL intensifies use of human shields*, Office of the UN High Commissioner for Human Rights, March 28, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21452&LangID=E>

- (2) The U.N. High Commissioner for Human Rights' Representative in Iraq, Bruno Geddo, stated in June 2017: "these civilians [the approximately 100,000 civilians trapped by the Islamic State in Mosul] are basically held as human shields in the Old City."⁴⁹
- (3) U.N. spokeswoman Ravina Shamdasani stated in October 2016: "ISIL's depraved, cowardly strategy is to try to use the presence of civilian hostages to render certain points, areas or military forces immune from military action, essentially using tens of thousands of men, women and children as human shields [in Mosul]."⁵⁰

Related Concern: Child Soldiers

23. As discussed, one of the benefits accrued by those employing human shields is to compromise the military capacities of democratic nations. Reluctant to utilize legitimate military force when civilians have been placed deliberately in harms way impedes Canadian troops and other allied military contingents from effectively defending themselves against hostile forces employing a human shields tactic.
24. Democratic countries contending with hostile actors who utilize child soldiers face a similar challenge. In fact, we would argue that the use of child soldiers should be captured under proposed legislation that sanctions the use of human shields. Placing armed children in conflict zones is in effect one sub-type of human shields use, and perhaps is one of the most lethal, effective and loathsome forms of shielding.
25. The protected status of children under international and domestic laws reflects a universal and deeply engrained sensibility in democratic countries regarding the moral turpitude associated with the violent targeting of children. Thus, the quandaries and consequences generated by using human shields is greatly enhanced when children are the civilian shields involved. But in the case of child soldiers -- the equation is radically more lethal. The ensuing ethical and tactical dilemmas -- are far more crippling. Child soldiers can be fully capable of inflicting mortal harm on the military forces they face. In this respect they are not just shields, used defensively to shield an asset and incapacitate a reticent adversary. The child soldier is different. He or she is also an "offensive shield", acting to deter while concomitantly and proactively presenting an *immediate* and lethal danger to the soldiers involved. The reticence of western militaries unwilling to fire on child soldiers can have particularly deadly consequences for those troops. The consequences for the children can be no less dire. Their

⁴⁹ Jack Moore, *ISIS Holds 100,000 'Human Shields' in Mosul's Old City, U.N. Says*, Newsweek, June 16, 2017, <http://www.newsweek.com/isis-holds-100000-civilian-human-shields-mosuls-old-city-says-un-626652>

⁵⁰ Quoted in Fazel Hawramy and Emma Graham-Harrison, *Islamic State Using Hostages as Human Shields in Mosul-UN*, The Guardian, October 28, 2016, <https://www.theguardian.com/world/2016/oct/28/islamic-state-uses-hostages-as-human-shields-mosul-says-un>

deployment as “offensive shields” renders them far more likely to suffer grievous harm than “ordinary” human shields who are not active combatants and present no active threat in and of themselves. The probability of such harm is obviously severely escalated when child soldiers are deployed against military forces representing certain state or non-state entities who as a matter of policy would not hesitate to respond to offensive actions by children with lethal force.

26. The use of child soldiers as a tactic is well-documented, widespread, and growing. According to a 2018 Canadian military briefing note, “child soldiers ... are likely to be encountered on an increasing basis” by Canadian troops, especially in the Middle East and North Africa (MENA) region.⁵¹ In February 2020, Palestinian Media Watch (PMW) presented a report to UNICEF outlining the continued widespread use of child soldiers in Palestine.⁵² In 2018, Canada expressed hesitation to even deploy peacekeeping troops to Mali, understanding the elevated risks to Canadian troops of deploying to a country where the use of child soldiers is pervasive.⁵³

Related Concern: International Air Travel Over Conflict Zones

27. Legislation that spotlights and sanctions the use of human shields – also conceivably captures actors that have allowed for civilian international air travel over conflict zones. For example, Iran and the Islamic Revolutionary Guard Corps (IRGC) have recently been accused of using civil air traffic over Iran as human shields after the recent downing of Ukrainian Air Flight 752 by Iranian missiles. The *New York Times* reported in the aftermath of the crash, based on interviews with Guards and other officials, that “Iranian officials feared that shutting down the airport would create mass panic ... [and] they also hoped that the presence of passenger jets could act as a deterrent against an American attack on the airport or the nearby military base, *effectively turning planeloads of unsuspecting travelers into human shields*” (emphasis added).⁵⁴

⁵¹ Robert Fife and Steven Chase, *Ottawa weighs risks of child soldiers in Mali*, *Globe and Mail*, March 6, 2017, <https://www.theglobeandmail.com/news/politics/ottawa-weighs-risks-of-child-soldiers-in-mali/article34210997/>

⁵² Maurice Hirsch and Itamar Marcus, *PMW submission to UNICEF*, Palestinian Media Watch, February 2020, <https://palwatch.org/page/17470>

⁵³ See, for e.g., Robert Fife and Steven Chase, *Ottawa weighs risks of child soldiers in Mali*, *Globe and Mail*, March 6, 2017, <https://www.theglobeandmail.com/news/politics/ottawa-weighs-risks-of-child-soldiers-in-mali/article34210997/>; David Krayden, *Canada’s peacekeeping mission in Africa is destined to become the folly in Mali*, *CBC News*, March 21, 2018, <https://www.cbc.ca/news/opinion/mali-mission-1.4585038>;

⁵⁴ Farnaz Fassihi, *Anatomy of a Lie: How Iran Covered Up the Downing of an Airliner*, *New York Times*, January 26, 2020, <https://www.nytimes.com/2020/01/26/world/middleeast/iran-plane-crash-coverup.html>

PART II. SUMMARY OF ACTIONS TAKEN SO FAR TO DETER AND SANCTION HUMAN SHIELDS USE

The U.S. Shields Act (December 2018)

1. Although the use of human shields has been illegal since at least 1949, when the Geneva Conventions were done, the first legislation specifically targeting human shields use for sanctions – was only passed in December 2018. The United States’ *Sanctioning the Use of Civilians as Defenseless Shields Act* (“Shields Act”) was signed into law by President Donald Trump in December 2018, after previously passing both the House and the Senate unanimously. The Shields Act condemns the use of civilians as human shields and imposes sanctions on foreign persons that are responsible. It specifically targets Hamas and Hezbollah for mandatory sanctions and allows for permissive sanctions on all other foreign persons who use or support this terrorist tactic. This section provides a summary of the Shields Act, which is reproduced in full in Appendix A below.
2. The Shields Act begins by articulating the mechanisms for imposing sanctions, and differentiating between mandatory and permissive sanction schemes. It mandates that the President submit annual lists of persons who fit the criteria for both sanction schemes. Specifically, the following are subject to mandatory sanctions and must be included on the President’s annual list:
 - A. Each “foreign person”⁵⁵ who is a member of Hezbollah or is knowingly acting on behalf of Hezbollah, and who “knowingly orders, controls, or otherwise directs the use of civilians protected as such by the law of war to shield military objectives from attack”
 - B. Each “foreign person” who is a member of Hamas or is knowingly acting on behalf of Hamas, and who “knowingly orders, controls, or otherwise directs the use of civilians protected as such by the law of war to shield military objectives from attack”
 - C. Each foreign person or agency or instrumentality of a foreign state that knowingly and materially supports, orders, controls, directs, or otherwise engages in any such act by a person described above (i.e., a member of Hezbollah or Hamas or someone knowingly acting on behalf of Hezbollah or Hamas)
3. Then, the following persons are subject to permissive sanctions: each foreign person that knowingly orders, controls, or otherwise directs the use of civilians protected as such by the

⁵⁵ Defined in sec. 4 as any citizen or national of a foreign state, or any entity not organized solely under the laws of the United States or existing solely in the United States.

law of war to shield military objectives from attack, excluding foreign persons included in the most recent mandatory sanctions list.

4. In other words, members of Hamas, Hezbollah, and anyone knowingly acting on their behalf, are sanctioned if they knowingly order, control, or otherwise direct the use of human shields. Also subject to mandatory sanctions are each foreign person or agency or instrumentality of a foreign state that knowingly and materially supports, orders, controls, directs, or otherwise engages in the use of human shields by members of Hamas, Hezbollah, or anyone knowingly acting on their behalf.
5. Besides members of Hamas, Hezbollah, and persons knowingly acting on their behalf – each foreign person that knowingly orders, controls, or otherwise directs the use of civilians as human shields *may* be sanctioned.
6. The Shields Act defines the term “foreign person” to include both foreign individuals and foreign entities. Therefore, the Islamic State and the Taliban, who have used human shields extensively in recent years, could be listed pursuant to the “permissive” provisions, as could their relevant officials.
7. Once these persons are on these lists, the specific sanctions imposed are: (A) blocking of property, and (B) visa sanctions.
 - a. **Blocking of Property:** Property-blocking sanctions come from the Presidential powers conferred by the *International Emergency Economic Powers Act* (50 U.S.C. 1701 et seq.). The President is directed to exercise all powers conferred, to the extent necessary to block and prohibit all transactions in property and interests in property of the foreign person if such property or interests in property come within the United States, or within the possession or control of a United States person.
 - b. **Visa Sanctions:** In addition, all persons listed – are inadmissible to the United States, ineligible to receive a visa or other documentation to enter the United States, and ineligible to be admitted or paroled into the United States or to receive any other benefit under the *Immigration and Nationality Act* (8 U.S.C. 1101 et seq.). Beyond that, any visa already issued, is revoked, and these persons are denied admission to the United States. The only exception to the imposition of these visa sanctions is an exception to comply with the United Nations headquarters agreement, “or with other applicable international obligations” (that are not specified).
8. Note that the President may “waive the application of sanctions” under this section if he or she determines and reports to the appropriate congressional committees that such waiver is in the national security interest of the United States.

9. Note that the President is permitted to exercise all authorities under sections 203 and 205 of the *International Emergency Economic Powers Act* (50 U.S.C. 1702 and 1704) for purposes of carrying out this section – these are powers to investigate and prescribe regulations.
10. Then, if a person knowingly violates, attempts to violate, conspires to violate, or causes a violation of regulations prescribed to carry out this section – that person is subject to civil and/or criminal penalties. Maximum civil liability is the greater of \$250,000 or “an amount that is twice the amount of the transaction that is the basis of the violation”. Maximum criminal liability is a \$1,000,000 fine and/or 20 years’ imprisonment.

A Pivotal U.N. General Assembly Resolution

11. As outlined above, there have been many instances wherein the United Nations condemned the use of human shields. These instances of condemnation largely came out of the U.N. Security Council and related to specific situations of human shields use, mostly by the Taliban in the context of the Afghan conflict. There were at least 18 Security Council resolutions specifically relating to the Taliban “and other extremist groups” and their use of human shields. While these resolutions – in addition to the presidential statements and other U.N. bodies’ condemnations outlined above – hold real precedential value, the most pivotal international condemnation of human shields came out recently, on June 26, 2018. For the first time, in an unanimously passed resolution, the U.N. General Assembly specifically and generally condemned the use of human shields. This resolution came less than two weeks after the U.N. General Assembly voted to denounce Hamas. The precise wording of the June 26, 2018 condemnation was as follows:

“33. Condemns the failure to take all feasible precautions to protect the civilian population and civilian objects against the effects of attacks when using civilian objects, in particular schools and hospitals, for military purposes such as launching attacks and storing weapons, ***and strongly condemns the use of civilians to shield military objectives from attacks***”.
(emphasis added)

12. This resolution is general in that it does not relate specifically to one terrorist group or one conflict situation. This resolution came amidst an overall trend of increasing condemnations of the use of human shields as a terrorist tactic. This resolution also came amidst the passage of the U.S. Shields Act: it was adopted after the U.S. Shields Act was already considered and passed House; but before it passed Senate. The U.S. Shields Act passed the House in October 2017 and passed the Senate (with amendments) in October 2018.

The N.A.T.O. Call to Action

13. Beyond the U.N. General Assembly, there is now also a N.A.T.O. initiative to spotlight and counter the use of human shields. This was reportedly inspired by the passage of the U.S. Shields Act. On March 29, 2019, the N.A.T.O. Supreme Allied Commander put out the call to action – strongly encouraging member states to take domestic-level action to deter and sanction the use of human shields by terrorist groups.

14. In a March 29, 2019 letter entitled *Challenges Regarding the Use of Civilians as Human Shields by N.A.T.O.’s Adversaries* and addressed to the Secretary General of N.A.T.O. – the N.A.T.O. Supreme Allied Commander identified the issue of human shields as an “important obstacle” to the success of N.A.T.O. missions. He stated that use of this terrorist tactic provides N.A.T.O.’s adversaries “undeniable operational advantages”, notably in the Middle East and North Africa (MENA) region. The Commander encouraged nations to take measures to counter the use of human shields by terrorist groups. He stated that N.A.T.O. is “limited” in its ability to take further actions, and that it is “***essential that further measures be taken at the national level***” to maximize enforcement. As of time of writing, it is our understanding that no member state has responded to the letter as of yet.

PART III. PROPOSAL FOR CANADIAN ACTION – NEED FOR LEGISLATION

1. Canada should heed N.A.T.O.’s call to action. As noted by the Supreme Allied Commander, the ability of international bodies to act to deter and sanction human shields use – is limited. This global problem of the widespread and increasing use of civilians as human shields requires nation states to act. With the U.S., the U.N., and N.A.T.O. already engaged, it is time for Canada to demonstrate its leadership as a human rights advocate on the world stage by passing comparable legislation to deter and sanction the use of human shields by terrorist groups and their supporters. C-CAT has authored legislation to this effect predicated on the American model adapted to the contours of Canadian jurisprudence, for consideration by Canadian lawmakers. This legislation could also act as a model for other western democracies seeking to deter and neutralize the impact of this critical and abhorrent terrorist tactic.
2. C-CAT proposes that Canadian legislation not specifically target Hamas and Hezbollah for mandatory sanctions, as the U.S. Shields Act does, but rather target all “listed terrorist entities” banned under Canadian law. Specifically, C-CAT proposes that Canada utilize the same mandatory and permissive sanction schemes as in the U.S. Shields Act, but with wording adjusted to read as follows:
 - a. For the mandatory sanctions scheme:
 - i. Each foreign person that the Minister of Public Safety determines, on or after the date of the enactment of this Act,
 1. is a member of a listed terrorist entity; and
 2. knowingly orders, controls, or otherwise directs the use of civilians protected as such by the law of war to shield military objectives from attack.
 - ii. Each foreign person or agency or instrumentality of a foreign state that the Minister determines, on or after the date of the enactment of this Act, knowingly and materially supports, orders, controls, directs, or otherwise engages in any act described [in the paragraph immediately above] by a person described in that paragraph.
 - b. For the permissive sanctions scheme: Each foreign person that the Minister determines, on or after the date of the enactment of this Act, knowingly orders, controls, or otherwise directs the use of civilians protected as such by the law of war to shield military objectives from attack.
3. The Governor in Council can then waive the imposition of sanctions if necessary: C-CAT is proposing that the Canadian legislation allow the Governor in Council to “waive the application of sanctions” if he or she determines that such waiver is in the national security interest of Canada – mirroring section 3 (g) of the U.S. legislation.

4. In terms of the nature of the sanctions imposed, C-CAT proposes that legislation similarly involve property sanctions and immigration sanctions. Interestingly, the language of the U.S. Shields Act mirrors almost exactly the language of the United States’ Magnitsky Act (see Appendix A for the U.S. Shields Act and Appendix B for the U.S. Magnitsky Act). This makes sense, as both pieces of legislation target and sanction individuals involved in serious war crimes. C-CAT thereby proposes legislation that does the same; and rather than reinvent the wheel, utilize and adapt the legislation already used in the Canadian *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* – reproduced in Appendix C.
5. In terms of property-blocking sanctions, the Canadian Magnitsky Law prohibits sanctioned persons in Canada and Canadians outside Canada from:
 - a. Dealing, directly or indirectly, in any property, wherever situated, of the listed foreign national;
 - b. Entering into or facilitating, directly or indirectly, any financial transaction related to a dealing described above;
 - c. Providing or acquiring financial or other related services to, for the benefit of, or on the direction or order of the listed foreign national; and
 - d. Making available any property, wherever situated, to the listed foreign national or to a person acting on behalf of the listed foreign national.
6. C-CAT is proposing that the human shields legislation utilizes those same property sanctions. Then, C-CAT is proposing that these foreign nationals are made inadmissible to Canada under the *Immigration and Refugee Protection Act (IRPA)*. Just as the Canadian Magnitsky Law involved amendments to the *IRPA*, so too would the Canadian human shields legislation involve these amendments in order to make these individuals inadmissible to Canada under section 35 of the *IRPA*.
7. C-CAT’s bill also includes a safeguard provision to ensure the legislation is used as intended, targeting those wrongdoers currently beyond the reach of jurisdictions that Canada fully recognizes as capable of adjudicating such cases in their own domestic legal systems. In service of that objective – C-CAT proposes to include what we have coined as a “negative list” of countries whom Canada would recognize in this regard as being beyond the reach of the proposed sanctions. Countries would be included in this list if they (1) are extradition partners according to the schedule to the *Extradition Act*, or (2) share a bilateral extradition treaty with Canada. Such countries constitute Canada’s primary allies and possess legal systems in which Canada has expressed confidence. Notably, former Justice Minister and Attorney General Irwin Cotler has advocated for the use of this type of model in earlier deliberations regarding what was eventually passed as the *Justice for Victims of Terrorism Act (JVTA)* in 2012:

“I understand the government’s desire to prevent frivolous or vexatious lawsuits against our democratic allies. While my bill removes immunity from perpetrators of terrorism and its state sponsors, it seeks to address this concern by providing a limited carve-out for countries with whom Canada has an extradition treaty—that is, those democracies that respect the rule of law, that have an independent judiciary and that provide due process. Accordingly, victims of terrorism could seek redress in those countries precisely because of their democratic character and provision for due process. Given that such recourses would be available to victims with respect to these countries, it is not imperative to remove state immunity entirely.”⁵⁶

C-CAT proposes to accomplish this same objective identified by Mr. Cotler, in the proposed human shields legislation by excluding these countries and their nationals from the legislation’s definitions of “foreign state” and “foreign national”, respectively.

8. C-CAT has completed full first draft of proposed legislation. In order to protect our intellectual property, we will provide this draft legislation only to the Member of Parliament who sponsors our bill.

⁵⁶ Irwin Cotler, *Hold Sponsors of Terror to Account*, Ottawa Citizen, May 11, 2010. Note that this article was in relation to an earlier version of the *Justice for Victims of Terrorism Act (JVTA)* that was based solely on a negative list model and brought forward by Cotler as a private member’s bill.

PART IV. APPENDICES

APPENDIX A: U.S. LEGISLATION: SANCTIONING THE USE OF CIVILIANS AS DEFENSELESS SHIELDS ACT

Public Law 115-348
115th Congress

Approved December 21, 2018

An Act

To impose sanctions with respect to foreign persons that are responsible for using civilians as human shields, and for other purposes.

SEC. 1. SHORT TITLE.

This Act may be cited as the “Sanctioning the Use of Civilians as Defenseless Shields Act”.

SEC. 2. STATEMENT OF POLICY.

It shall be the policy of the United States to officially and publicly condemn the use of innocent civilians as human shields.

SEC. 3. IMPOSITION OF SANCTIONS WITH RESPECT TO FOREIGN PERSONS THAT ARE RESPONSIBLE FOR THE USE OF CIVILIANS AS HUMAN SHIELDS.

(a) Imposition of Sanctions.

- (1) Mandatory sanctions: The President shall impose sanctions described in subsection (d) with respect to each person on the list required under subsection (b).
- (2) Permissive sanctions: The President may impose sanctions described in subsection (d) with respect to each person on the list described in subsection (c).

(b) Mandatory Sanctions List. Not later than one year after the date of the enactment of this Act, and annually thereafter, the President shall submit to the appropriate congressional committees a list of the following:

- (1) Each foreign person that the President determines, on or after the date of the enactment of this Act
 - a. is a member of Hizballah or is knowingly acting on behalf of Hizballah; and
 - b. knowingly orders, controls, or otherwise directs the use of civilians protected as such by the law of war to shield military objectives from attack.
- (2) Each foreign person that the President determines, on or after the date of the enactment of this Act
 - a. is a member of Hamas or is knowingly acting on behalf of Hamas; and

- b. knowingly orders, controls, or otherwise directs the use of civilians protected as such by the law of war to shield military objectives from attack.
- (3) Each foreign person or agency or instrumentality of a foreign state that the President determines, on or after the date of the enactment of this Act, knowingly and materially supports, orders, controls, directs, or otherwise engages in
- a. any act described in subparagraph (B) of paragraph (1) by a person described in that para; or
 - b. any act described in subparagraph (B) of paragraph (2) by a person described in that paragraph
- (c) Permissive Sanctions List. Not later than one year after the date of the enactment of this Act, and annually thereafter, the President should submit to the appropriate congressional committees a list of each foreign person that the President determines, on or after the date of the enactment of this Act, knowingly orders, controls, or otherwise directs the use of civilians protected as such by the law of war to shield military objectives from attack, excluding foreign persons included in the most recent list under subsection (b).
- (d) Sanctions Described. The sanctions to be imposed on a foreign person or an agency or instrumentality of a foreign state under this subsection are the following:
- (1) Blocking of property: The President shall exercise all of the powers granted to the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) to the extent necessary to block and prohibit all transactions in property and interests in property of the foreign person or agency or instrumentality of a foreign state if such property or interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.
 - (2) Aliens ineligible for visas, admission, or parole:
 - (A) Visas, admission, or parole: An alien who the Secretary of State or the Secretary of Homeland Security determines is subject to sanctions under subsection (a) is
 - (i) inadmissible to the United States;
 - (ii) ineligible to receive a visa or other documentation to enter the United States; and
 - (iii) otherwise ineligible to be admitted or paroled into the United States or to receive any other benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).
 - (B) Current visas revoked: Any visa or other documentation issued to an alien who is subject to sanctions under subsection (a), regardless of when such visa or other documentation was issued, shall be revoked and such alien shall be denied admission to the United States.
 - (C) Exception to comply with united nations headquarters agreement and other international obligations: The sanctions under this paragraph shall not be imposed on an individual if admitting such individual to the United States is necessary to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force

November 21, 1947, between the United Nations and the United States, or with other applicable international obligations.

- (e) Penalties. The penalties provided for in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) shall apply to a person that knowingly violates, attempts to violate, conspires to violate, or causes a violation of regulations prescribed to carry out this section to the same extent that such penalties apply to a person that knowingly commits an unlawful act described in section 206(a) of such Act.
- (f) Procedures for Judicial Review of Classified Information.
 - (1) In general: If a finding under this section, or a prohibition, condition, or penalty imposed as a result of any such finding, is based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.)) and a court reviews the finding or the imposition of the prohibition, condition, or penalty, the President may submit such information to the court ex parte and in camera.
 - (2) Rule of construction: Nothing in this subsection shall be construed to confer or imply any right to judicial review of any finding under this section or any prohibition, condition, or penalty imposed as a result of any such finding.
- (g) Waiver. The President may waive the application of sanctions under this section if the President determines and reports to the appropriate congressional committees that such waiver is in the national security interest of the United States.
- (h) Regulatory Authority.
 - (1) In general: The President may exercise all authorities under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) for purposes of carrying out this section.
 - (2) Issuance of regulations: Not later than 180 days after the date of the enactment of this Act, the President shall prescribe such regulations as may be necessary to implement this section.
- (i) Rule of Construction. Nothing in this section may be construed—
 - (1) to limit the authorities of the President pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or any other relevant provision of law; or
 - (2) to apply with respect to any activity subject to the reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.), or to any authorized intelligence activities of the United States.

SEC. 4. DEFINITIONS.

In this Act:

- (1) Admitted; alien: The terms “admitted” and “alien” have the meanings given those terms in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101).

- (2) Agency or instrumentality of a foreign state: The term “agency or instrumentality of a foreign state” has the meaning given that term in section 1603(b) of title 28, United States Code.
- (3) Appropriate congressional committees: In this section, the term “appropriate congressional committees” means
 - a. the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate; and
 - b. the Committee on Financial Services, the Committee on Foreign Affairs, and the Committee on the Judiciary of the House of Representatives.
- (4) Foreign person: The term “foreign person” means
 - a. any citizen or national of a foreign state, wherever located; or
 - b. any entity not organized solely under the laws of the United States or existing solely in the United States.
- (5) Hamas: The term “Hamas” means
 - a. the entity known as Hamas and designated by the Secretary of State as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. 1189); or
 - b. any person identified as an agent or instrumentality of Hamas on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Asset Control of the Department of the Treasury, the property or interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).
- (6) Hizballah: The term “Hizballah” means
 - a. the entity known as Hizballah and designated by the Secretary of State as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. 1189); or
 - b. any person identified as an agent or instrumentality of Hizballah on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Asset Control of the Department of the Treasury, the property or interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).
- (7) United states person: The term “United States person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States.

SEC. 5. SUNSET.

This Act shall cease to be effective on December 31, 2023.

APPENDIX B: U.S. MAGNITSKY LAW (FOR COMPARATIVE USE)

114th Congress 2D Session
April 18, 2016
S. 284

Passed the Senate December 17, 2015

An Act

To impose sanctions with respect to foreign persons responsible for gross violations of internationally recognized human rights, and for other purposes.

SEC. 1. SHORT TITLE.

This Act may be cited as the “Global Magnitsky Human Rights Accountability Act”.

SEC. 2. DEFINITIONS.

In this Act:

- (1) Foreign person: The term “foreign person” means a person that is not a United States person.
- (2) Person: The term “person” means an individual or entity.
- (3) United States person: The term “United States person” means
 - a. a United States citizen or an alien law- fully admitted for permanent residence to the United States; or
 - b. an entity organized under the laws of the United States or of any jurisdiction within the United States, including a foreign branch of such an entity.

SEC. 3. AUTHORIZATION OF IMPOSITION OF SANCTIONS.

- (a) In General: The President may impose the sanctions described in subsection (b) with respect to any foreign person the President determines, based on credible evidence—
 - (1) is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in any foreign country who seek
 - a. to expose illegal activity carried out by government officials; or
 - b. to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, ex- pression, association, and assembly, and the rights to a fair trial and democratic elections;
 - (2) acted as an agent of or on behalf of a foreign person in a matter relating to an activity described in paragraph (1);
 - (3) is a government official, or a senior associate of such an official, that is responsible for, or complicit in, ordering, controlling, or otherwise directing, acts of significant corruption, including the expropriation of private or public assets for personal gain, corruption related to

government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdictions; or

- (4) has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, an activity described in paragraph (3).

(b) Sanctions Described: The sanctions described in this subsection are the following:

- (1) Inadmissibility to United States: In the case of a foreign person who is an individual
- a. ineligibility to receive a visa to enter the United States or to be admitted to the United States; or
 - b. if the individual has been issued a visa or other documentation, revocation, in accordance with section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)), of the visa or other documentation.

(2) Blocking of Property:

- a. In General: The blocking, in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), of all transactions in all property and interests in property of a foreign person if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.
- b. Inapplicability of National Emergency Requirement: The requirements of section 202 of the International Emergency Economic Powers Act (50 U.S.C. 1701) shall not apply for purposes of this section.
- c. Exception Relating to Importation of Goods:
 - (i) In General: The authority to block and prohibit all transactions in all property and interests in property under subparagraph (A) shall not include the authority to impose sanctions on the importation of goods.
 - (ii) Good: In this subparagraph, the term “good” has the meaning given that term in section 16 of the Export Administration Act of 1979 (50 U.S.C. App. 2415) (as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)).

(c) Consideration of Certain Information in Imposing Sanctions: In determining whether to impose sanctions under subsection (a), the President shall consider:

- (1) information provided by the chairperson and ranking member of each of the appropriate congressional committees; and
- (2) credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights.

(d) Requests by Chairperson and Ranking Member of Appropriate Congressional Committees: Not later than 120 days after receiving a written request from the chairperson and ranking member of one of the appropriate congressional committees with respect to whether a foreign person has engaged in an activity described in subsection (a), the President shall:

- (1) determine if that person has engaged in such an activity; and
- (2) submit a report to the chairperson and ranking member of that committee with respect to that determination that includes—

- a. a statement of whether or not the President imposed or intends to impose sanctions with respect to the person; and
 - b. if the President imposed or intends to impose sanctions, a description of those sanctions.
- (e) Exception to Comply with United Nations Headquarters Agreement and Law Enforcement Objectives: Sanctions under subsection (b)(1) shall not apply to an individual if admitting the individual into the United States would further important law enforcement objectives or is necessary to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, between the United Nations and the United States, or other applicable international obligations of the United States.
- (f) Enforcement of Blocking of Property: A person that violates, attempts to violate, conspires to violate, or causes a violation of subsection (b)(2) or any regulation, license, or order issued to carry out subsection (b)(2) shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of that section.
- (g) Termination of Sanctions: The President may terminate the application of sanctions under this section with respect to a person if the President determines and reports to the appropriate congressional committees not later than 15 days before the termination of the sanctions that:
- (1) credible information exists that the person did not engage in the activity for which sanctions were imposed;
 - (2) the person has been prosecuted appropriately for the activity for which sanctions were imposed;
 - (3) the person has credibly demonstrated a significant change in behavior, has paid an appropriate consequence for the activity for which sanctions were imposed, and has credibly committed to not engage in an activity described in subsection (a) in the future; or
 - (4) the termination of the sanctions is in the vital national security interests of the United States.
- (h) Regulatory Authority: The President shall issue such regulations, licenses, and orders as are necessary to carry out this section.
- (i) Identification of Sanctionable Foreign Persons: The Assistant Secretary of State for Democracy, Human Rights, and Labor, in consultation with the Assistant Secretary of State for Consular Affairs and other bureaus of the Department of State, as appropriate, is authorized to submit to the Secretary of State, for review and consideration, the names of foreign persons who may meet the criteria described in subsection (a).
- (j) Appropriate Congressional Committees Defined: In this section, the term “appropriate congressional committees” means:
- (1) the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate; and

- (2) the Committee on Financial Services and the Committee on Foreign Affairs of the House of Representatives.

SEC. 4. REPORTS TO CONGRESS.

- (a) In General: The President shall submit to the appropriate congressional committees, in accordance with subsection (b), a report that includes:
- (1) a list of each foreign person with respect to which the President imposed sanctions pursuant to section 3 during the year preceding the submission of the report;
 - (2) a description of the type of sanctions imposed with respect to each such person;
 - (3) the number of foreign persons with respect to which the President—
 - a. imposed sanctions under section 3(a) during that year; and
 - b. terminated sanctions under section 3(g) during that year;
 - (4) the dates on which such sanctions were imposed or terminated, as the case may be;
 - (5) the reasons for imposing or terminating such sanctions; and
 - (6) a description of the efforts of the President to encourage the governments of other countries to impose sanctions that are similar to the sanctions authorized by section 3.
- (b) Dates for Submission:
- (1) Initial Report: The President shall submit the initial report under subsection (a) not later than 120 days after the date of the enactment of this Act.
 - (2) Subsequent Reports:
 - a. In General: The President shall submit a subsequent report under subsection (a) on December 10, or the first day thereafter on which both Houses of Congress are in session, of—
 - (i) the calendar year in which the initial report is submitted if the initial report is submitted before December 10 of that calendar year; and
 - (ii) each calendar year thereafter.
 - b. Congressional Statement: Congress notes that December 10 of each calendar year has been recognized in the United States and internationally since 1950 as “Human Rights Day”.
- (c) Form of Report:
- (1) In General: Each report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.
 - (2) Exception: The name of a foreign person to be included in the list required by subsection (a)(1) may be submitted in the classified annex authorized by paragraph (1) only if the President:
 - a. determines that it is vital for the national security interests of the United States to do so;
 - b. uses the annex in a manner consistent with congressional intent and the purposes of this Act; and
 - c. not later than 15 days before submitting the name in a classified annex, provides to the appropriate congressional committees notice of, and a justification for, including

the name in the classified annex despite any publicly available credible information indicating that the person engaged in an activity described in section 3(a).

(d) Public Availability:

- (1) In General: The unclassified portion of the report required by subsection (a) shall be made available to the public, including through publication in the Federal Register.
- (2) Non-applicability of Confidentiality Requirement with Respect to Visa Records: The President shall publish the list required by subsection (a)(1) without regard to the requirements of section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)) with respect to confidentiality of records pertaining to the issuance or refusal of visas or permits to enter the United States.

(e) Appropriate Congressional Committees Defined: In this section, the term “appropriate congressional committees” means:

- (1) the Committee on Appropriations, the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate; and
- (2) the Committee on Appropriations, the Committee on Financial Services, the Committee on Foreign Affairs, and the Committee on the Judiciary of the House of Representatives.

APPENDIX C: CANADIAN MAGNITSKY LAW (FOR COMPARATIVE USE)

An Act to provide for the taking of restrictive measures in respect of foreign nationals responsible for gross violations of internationally recognized human rights and to make related amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act.

Preamble

Whereas human rights and the rule of law are integral to international law and Canada has repeatedly asserted its commitment to promoting international justice and respect for human rights;

Whereas signatory States to international human rights agreements have committed themselves to the obligations and responsibilities set out in those agreements;

Whereas Sergei Magnitsky, a Moscow lawyer who uncovered the largest tax fraud in Russian history, was detained without trial, tortured and consequently died in a Moscow prison on November 16, 2009;

Whereas no thorough, independent and objective investigation has been conducted by Russian authorities into the detention, torture and death of Sergei Magnitsky, nor have the individuals responsible been brought to justice;

Whereas the unprecedented posthumous trial and conviction of Sergei Magnitsky in Russia for the very fraud he uncovered constitute a violation of the principles of fundamental justice and the rule of law;

Whereas legislation and motions adopted by legislative assemblies in the United States, the European Parliament, the United Kingdom, the Netherlands, Italy, Poland and Canada have condemned the mistreatment of Sergei Magnitsky as “a violation of the principles of fundamental justice and the rule of law” and called for sanctions against any foreign nationals responsible for violations of internationally recognized human rights in a foreign country when authorities in that country are unable or unwilling to conduct a thorough, independent and objective investigation of the violations;

Whereas the Litvinenko Inquiry report, presented to the United Kingdom Parliament on January 21, 2016, found that two Russian agents, Andrei Lugovoi and Dmitry Kovtun, were responsible for the assassination of Alexander Litvinenko and that there was a “strong possibility” that they were acting on behalf of the Russian Federal Security Service;

Whereas Russian opposition politician Boris Nemtsov was assassinated outside the Kremlin on February 27, 2015, and to this day no thorough, independent and objective investigation has been conducted by Russian authorities;

Whereas the Senate, on May 5, 2015, and the House of Commons, on March 25, 2015, by unanimous resolutions called upon the Government of Canada to explore and encourage sanctions against any foreign nationals responsible for the detention, torture and death of Sergei Magnitsky and to explore sanctions as appropriate against any foreign nationals responsible for violations of internationally recognized human rights in a foreign country, when authorities in that country are unable or unwilling to conduct a thorough, independent and objective investigation of the violations;

Whereas member of the Ukrainian Parliament Lieutenant Nadiya Savchenko and other Ukrainians were illegally convicted and imprisoned in Russia in violation of international norms and fundamental justice;

Whereas the *Special Economic Measures Act* authorizes the Government of Canada to take economic measures against a foreign state or national for the purpose of implementing a decision, resolution or recommendation of an international organization or association of states, or in cases of a grave breach of international peace and security that resulted or is likely to result in a serious international crisis;

Whereas adding gross violations of internationally recognized human rights as a ground on which sanctions may be imposed against foreign states and nationals would further Canada's support for human rights and advance its responsibility to protect activists who fight for human rights;

Whereas it is important to acknowledge and remember Sergei Magnitsky's sacrifice, as well as the sacrifice of other victims of gross violations of internationally recognized human rights;

And whereas all violators of internationally recognized human rights should be treated and sanctioned equally throughout the world,

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short Title

1 This Act may be cited as the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*.

INTERPRETATION

Definitions

2 The following definitions apply in this Act.

Canadian means a person who is a citizen within the meaning of the *Citizenship Act* or a corporation incorporated or continued by or under the laws of Canada or of a province. (*Canadien*)

entity means a corporation, trust, partnership, fund, an unincorporated association or organization or a foreign state. (*entité*)

foreign national means an individual who is not

- (a) a Canadian citizen; or
- (b) a permanent resident under the *Immigration and Refugee Protection Act*. (*étranger*)

foreign state means a country other than Canada, and includes

- (a) any of its political subdivisions;
- (b) its government and any of its departments, or the government or any department of any of its political subdivisions; and
- (c) any of its agencies or any agency of any of its political subdivisions. (*État étranger*)

Minister means the Minister of Foreign Affairs. (*ministre*)

person means an individual or an entity. (*personne*)

prescribed means prescribed by regulation. (*version anglaise seulement*)

HER MAJESTY

Binding on Her Majesty

3 This Act is binding on Her Majesty in right of Canada or a province.

ORDERS AND REGULATIONS

Orders and Regulations

4 (1) The Governor in Council may, if the Governor in Council is of the opinion that any of the circumstances described in subsection (2) has occurred,

- (a) make any orders or regulations with respect to the restriction or prohibition of any of the activities referred to in subsection (3) in relation to a foreign national that the Governor in Council considers necessary; and
- (b) by order, cause to be seized, frozen or sequestered in the manner set out in the order any of the foreign national's property situated in Canada.

Circumstances

(2) The circumstances referred to in subsection (1) are the following:

- (a) a foreign national is responsible for, or complicit in, extrajudicial killings, torture or other gross violations of internationally recognized human rights committed against individuals in any foreign state who seek
 - (i) to expose illegal activity carried out by foreign public officials, or
 - (ii) to obtain, exercise, defend or promote internationally recognized human rights and freedoms, such as freedom of conscience, religion, thought, belief, opinion, expression, peaceful assembly and association, and the right to a fair trial and democratic elections;
- (b) a foreign national acts as an agent of or on behalf of a foreign state in a matter relating to an activity described in paragraph (a);
- (c) a foreign national, who is a foreign public official or an associate of such an official, is responsible for or complicit in ordering, controlling or otherwise directing acts of corruption - including bribery, the misappropriation of private or public assets for personal gain, the transfer of the proceeds of corruption to foreign states or any act of corruption related to expropriation, government contracts or the extraction of natural resources - which amount to acts of significant corruption when taking into consideration, among other things, their impact, the amounts involved, the foreign national's influence or position of authority or the complicity of the government of the foreign state in question in the acts; or
- (d) a foreign national has materially assisted, sponsored, or provided financial, material or technological support for, or goods or services in support of, an activity described in paragraph (c).

Restricted or prohibited activities

(3) Orders and regulations may be made under paragraph (1)(a) with respect to the restriction or prohibition of any of the following activities, whether carried out in or outside Canada:

- (a) the dealing, directly or indirectly, by any person in Canada or Canadian outside Canada in any property, wherever situated, of the foreign national;
- (b) the entering into or facilitating, directly or indirectly, by any person in Canada or Canadian outside Canada, of any financial transaction related to a dealing referred to in paragraph (a); and
- (c) the provision by any person in Canada or Canadian outside Canada of financial services or any other services to, for the benefit of or on the direction or order of the foreign national;
- (d) the acquisition by any person in Canada or Canadian outside Canada of financial services or any other services for the benefit of or on the direction or order of the foreign national; and
- (e) the making available by any person in Canada or Canadian outside Canada of any property, wherever situated, to the foreign national or to a person acting on behalf of the foreign national.

Order authorizing Minister

(4) The Governor in Council may, by order, authorize the Minister to

- (a) issue to any person in Canada or Canadian outside Canada a permit to carry out a specified activity or transaction, or class of activity or transaction, that is restricted or prohibited under this Act or any order or regulations made under this Act; or
- (b) issue a general permit allowing any person in Canada or Canadian outside Canada to carry out a class of activity or transaction that is restricted or prohibited under this Act or any order or regulations made under this Act.

Ministerial permit

(5) The Minister may issue a permit or general permit, subject to any terms and conditions that are, in the opinion of the Minister, consistent with this Act and any order or regulations made under this Act.

Revocation, etc.

(6) The Minister may amend, suspend, revoke or reinstate any permit or general permit issued by the Minister.

Tabling of order

5 A copy of each order or regulation made under section 4 must be tabled in each House of Parliament within 15 days after it is made. It may be sent to the Clerk of the House if the House is not sitting.

DUTY TO DETERMINE

Determination

6 Each of the following entities must determine on a continuing basis whether it is in possession or control of property that it has reason to believe is the property of a foreign national who is the subject of an order or regulation made under section 4:

- (a) authorized foreign banks, as defined in section 2 of the *Bank Act*, in respect of their business in Canada or banks to which that Act applies;
- (b) cooperative credit societies, savings and credit unions and *caisses populaires* regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*;
- (c) foreign companies, as defined in subsection 2(1) of the *Insurance Companies Act*, in respect of their insurance business in Canada;
- (d) companies, provincial companies and societies, as those terms are defined in subsection 2(1) of the *Insurance Companies Act*;
- (e) fraternal benefit societies regulated by a provincial Act in respect of their insurance activities and insurance companies and other entities engaged in the business of insuring risks that are regulated by a provincial Act;
- (f) companies to which the *Trust and Loan Companies Act* applies;
- (g) trust companies regulated by a provincial Act;
- (h) loan companies regulated by a provincial Act;
- (i) entities that engage in any activity described in paragraph 5(h) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* if the activity involves the opening of an account for a client;
- (j) entities authorized under provincial legislation to engage in the business of dealing in securities or to provide portfolio management or investment counselling services; and
- (k) other entities of a prescribed class of entities.

DISCLOSURE

Duty to disclose — supervising and regulating agencies

7 (1) Every entity referred to in section 6 must disclose, every month, to the principal agency or body that supervises or regulates it under federal or provincial law, whether it is in possession or control of any property referred to in that section and, if so, the number of persons or dealings involved and the total value of the property.

Duty to disclose — RCMP or CSIS

(2) Every person in Canada and every Canadian outside Canada must disclose without delay to the Commissioner of the Royal Canadian Mounted Police or the Director of the Canadian Security Intelligence Service

- (a) that they have reason to believe that property in their possession or control is owned, held or controlled by or on behalf of a foreign national who is the subject of an order or regulation made under section 4; and
- (b) any information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

Immunity

(3) No proceedings under this Act and no civil proceedings lie against a person for a disclosure made in good faith under subsection (1) or (2).

RIGHTS OF FOREIGN NATIONALS WHO ARE THE SUBJECT OF AN ORDER OR REGULATION

Application

8 (1) A foreign national who is the subject of an order or regulation made under section 4 may apply in writing to the Minister to cease being the subject of the order or regulation.

Recommendation

(2) On receipt of the application, the Minister must decide whether there are reasonable grounds to recommend to the Governor in Council that the order or regulation be amended or repealed, as the case may be, so that the applicant ceases to be the subject of it.

Time limit

(3) The Minister must make a decision on the application within 90 days after the day on which the application is received.

Notice if application rejected

(4) The Minister must give notice without delay to the applicant of any decision to reject the application.

New application

(5) If there has been a material change in the applicant's circumstances since their last application under subsection (1) was submitted, he or she may submit another application.

APPLICATION FOR A CERTIFICATE

Mistaken identity

9 (1) Any person in Canada or any Canadian outside Canada whose name is the same as or similar to the name of a foreign national who is the subject of an order or regulation made under section 4 may, if they claim not to be that foreign national, apply to the Minister in writing for a certificate stating that they are not that foreign national.

Determination by Minister

- (2)** Within 45 days after the day on which the application was received, the Minister must,
- (a)** if he or she is satisfied that the applicant is not the foreign national, issue the certificate to the applicant; or
 - (b)** if he or she is not so satisfied, provide a notice to the applicant of his or her determination.

Reasonable expenses

10 (1) A foreign national who is the subject of an order or regulation made under section 4 may apply to the Minister in writing for a certificate to exempt property from the application of the order or regulation if the property is necessary to meet the reasonable expenses of the person and their dependents.

Certificate

(2) If the Minister determines that the property is necessary to meet the reasonable expenses of the applicant and their dependents, the Minister must issue a certificate to the applicant.

Time limit

(3) The Minister must make a decision on the application and, if applicable, issue a certificate within 90 days after the day on which the application is received.

OFFENCES

Offence and punishment

11 Every person who knowingly contravenes or fails to comply with an order or regulation made under section 4

- (a)** is guilty of an indictable offence and is liable to imprisonment for a term of not more than five years; or
- (b)** is guilty of an offence punishable on summary conviction and is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than one year, or to both.

GENERAL

No civil liability

12 A person who, in relation to any property that is the subject of an order or regulation made under section 4, acts reasonably in taking, or omitting to take, measures to comply with the order or regulation is not liable in any civil action arising from having taken or omitted to take the measures if they took all reasonable steps to satisfy themselves that the property was property that is the subject of the order or regulation.

Existing equities maintained

13 All secured and unsecured rights and interests in any property that is the subject of an order or regulation made under section 4 that are held by a person, other than the foreign national who is the subject of the order or regulation, are entitled to the same ranking that they would have been entitled to had the order or regulation not been made.

Proceedings not precluded

14 The making of an order or regulation under section 4 does not preclude the commencement of proceedings under any Act of Parliament other than this Act, or any civil proceedings, in respect of any property that is the subject of the order or regulation.

Regulations

15 The Governor in Council may make regulations for carrying out the purposes and provisions of this Act.

REVIEW AND REPORT

Review

16 (1) Within five years after the day on which this section comes into force, a comprehensive review of the provisions and operation of this Act and of the *Special Economic Measures Act* must be undertaken by the committees of the Senate and of the House of Commons that are designated or established by each House for that purpose.

Report

(2) The committees referred to in subsection (1) must, within a year after a review is undertaken under that subsection or within any further time that may be authorized by the Senate or the House of Commons, as the case may be, submit a report on the review to Parliament, including a statement of any changes that the committees recommend.

Review

(3) Committees of the Senate and the House of Commons that are designated or established by each House for that purpose may conduct a review concerning the foreign nationals who are the subject of an order or regulation made under this Act and submit a report to the appropriate House together with their recommendations as to whether those foreign nationals should remain, or no longer be, the subject of that order or regulation.

RELATED AMENDMENTS

Special Economic Measures Act

17 [Amendments]

Immigration and Refugee Protection Act (IRPA)

18 [Amendments]

[Section 35 of the *IRPA* now reads:

35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

...

(e) being a person, other than a permanent resident, who is currently the subject of an order or regulation made under section 4 of the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*.