

CANADIAN JEWISH CONGRESS SUBMISSION ON TERRORIST FINANCING TO THE COMMISSION OF INQUIRY INTO THE INVESTIGATION OF THE BOMBING OF AIR INDIA FLIGHT 182

INTRODUCTION:

In its 1984 brief on the legislation establishing the Canadian Security and Intelligence Service, Canadian Jewish Congress (CJC) noted that, “If terrorism is allowed to implant itself in Canada because we are reluctant to establish realistic measures to prevent it, its impact will spread beyond any particular community to affect Canada as a nation and in the international forum. [A]s terrorism grows more organized and more international in scope, so must the efforts to contain it be more organized, serious and efficacious.”

The following year, the bombing of Air India Flight 182 demonstrated the tragic and severe consequences of international terrorism. CJC has long been involved in research and advocacy regarding the prevention of terrorism, and intervenes in this case to share its experience and expertise with the Commission, particularly regarding the financing of terrorism.

In our estimation, in the intervening years between the establishment of CSIS and the horrific attacks of 9/11, insufficient attention was paid to counter-terrorism measures. To date, Canada has been spared the agony of the suicide bombings and attacks that since the turn of the new century have become a commonplace weapon in the terrorists’ arsenal, from Israel to Morocco to Iraq and places such as Kenya, Bali, Turkey, Russia and Spain. But our nation has certainly not been immune to terrorism, not least the tragic events that this current inquiry is investigating.

Canada’s Jewish community cannot but see itself in the context of the vulnerability of and the attacks on sister communities elsewhere in the world both before and after September 11, 2001. The search for justice, for example, continues a decade-plus after the July 18, 1994 bombing of the AMIA, the central Jewish communal building in Buenos Aires, which caused the death of 86 people and the wounding of another 300. Investigators have assigned responsibility for this barbarous act to the Iranian-backed Hezbollah headquartered in southern Lebanon and indictments have been issued against four senior Iranian officials. Synagogues and other communal institutions were attacked in 2002 and 2003 in Turkey, Morocco and Tunisia.

At home, in November 2002 Osama bin Laden indicated that al-Qaeda deemed Canada a target and the seriousness of that threat remains today. Jewish institutions in Canada have been targeted for violence by individuals linked to terrorist organizations, including Ahmed Ressam who in 1999 revealed a plot to detonate explosives in the heart of Montreal’s Hasidic community, and Jamal Akkal, a Palestinian-born Canadian citizen and resident of Windsor, Ontario, who was arrested in Israel in early December 2003 and apparently confessed to being recruited and trained by Hamas’ military wing in Gaza, (although he subsequently has stated through his Israeli lawyer that his confession was coerced.)

Akkal reportedly had orders to attack visiting Israeli officials and Jewish community targets in Canada and the United States. According to Israeli authorities, senior Hamas militant Ahmed Wahabe allegedly told Akkal to raise funds among Muslims in Canada ostensibly for the families of suicide bombers, which he would actually use for purchasing a weapon and financing his attacks. Akkal has now completed his prison sentence in Israel and according to news reports has returned, or is in the process of returning, to Canada. While we do not make any comment on the guilt or innocence of Akkal as an individual, as Canadian Jews we cannot but take note of the incident and the allegations by Israeli security personnel about Hamas' awareness of North American Jewish communities as presenting potential targets for terrorist violence .

TERRORIST FUNDRAISING:

A. CANADA AS A BASE FOR TERRORIST PLANNING AND LOGISTICS

In particular, successive governments prior to September 11th underestimated the extent to which international terrorist organizations were using Canada as a rich source of fundraising and as a base for fellow travelers and sleeper cells. Among the general public, the tendency may be to regard terrorism in the abstract as an international, or transnational, phenomenon with training bases for terrorists situated in far-flung regions of Asia, the Middle East and Africa. Thus, many Canadians would likely be surprised at the extent to which radical Islamist operatives and members of other terrorist organizations have set up shop in our country.

CSIS has indicated that Canada has been used by both outside terrorist groups and terrorists residing in the country as an important source for fundraising as well as procurement of equipment and identification and travel documents, and as a “safe haven” and “support base” from which to plan and direct terrorist operations around the world.

While the most visible aspect of terrorist activity is physical violence and destruction, the absence of such violence here at home does not mean the absence of terrorist activity. Most activities in Canada support actions elsewhere linked to homeland conflicts, and can be relatively subtle in nature. As CSIS notes, these activities include:

- providing a convenient base for terrorist supporters and operatives;
- fundraising;
- lobbying through front organizations;
- propagating hate and ideologies that incite and perpetuate violence;
- recruiting fighters for wars and conflicts abroad;
- procuring weapons and *materiel*;
- coercing and manipulating immigrant communities;
- facilitating transit to and from the United States and other countries; and
- other illegal activities.

Given the multicultural and pluralistic nature of its society, Canada is especially vulnerable in an increasingly inter-connected world to terrorist infiltration. While the vast majority of ethnic, cultural and community groups and their members pose no threat, terrorists are well positioned to exploit, intimidate or attract individual fellow ethnics and/or coreligionists into supporting, financially and otherwise, and providing valuable cover for their activities in one way or another.

B. EFFORTS TO COMBAT FUNDRAISING AND MONEY-LAUNDERING

Money has been variously described as the fuel that drives the engine of terrorism or, as the 1996 Paris ministerial conference on anti-terrorist fundraising put it, “the soft neuralgic point of democracies”. Clearly, choking off the flow of funds to terrorist groups inhibits their ability to plan, secure weapons and personnel and carry out their heinous acts.

One of the particular challenges to preventing terrorist financing is that terrorist groups often co-opt legitimate means of raising and moving funds. Many organizations prey on a religious or moral obligation to donate to charity, and donors have little control over the destination of funds. Similarly, the traditional *hawala* underground banking system - which enables individuals living in Canada to send money to family members abroad - is an unregulated and unmonitored mechanism for transmitting billions of dollars every year.

In the wake of the horrific attacks of September 11, 2001 the government of Canada passed omnibus anti-terrorism legislation which included several sections criminalizing fundraising for terrorist activities in Canada. This action flowed from Canada’s endorsement of United Nations Security Council Resolution 1373, the Council’s wide-ranging anti-terrorism resolution passed in late September 2001 (see text in Annex “B”).

In particular, CJC applauded the long-overdue *Criminal Code* amendments facilitating the ratification of the *International Convention for the Suppression of Terrorist Fundraising*, which Canada finally accomplished in February 2002.

We further endorsed the addition of terrorist activity to the *Proceeds of Crime (Money Laundering) Act* and the expansion of the mandate of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to include fundraising for terrorist activity. By way of example, with respect to the latter, FINTRAC’s Annual Report for 2005-2006 states that “The total value of case disclosures of suspected terrorist activity financing and other threats to the security of Canada was approximately \$256 million.”

Recommendation 1: Recognizing the global and inter-connected nature of terrorist financing, Canada must, in fulfillment of its signed obligations, continue to be an active participant in relevant international bodies and multilateral efforts designed to counter terrorist financing and money-laundering, including the United Nations and the Financial Action Task Force on Money Laundering (FATF) established by the 1989 Paris G-7 Summit.

Recommendation 2: The Government of Canada must assure that FINTRAC and all elements of the domestic counter-terrorism régime dealing with terrorist fund-raising have sufficient human and financial resource allocations to perform their tasks effectively.

C. LIST OF BANNED ENTITIES

The Anti-Terrorism Act also subsumed an earlier piece of legislation (Bill C-16, *An Act respecting the registration of charities and security information and to amend the Income Tax Act*) aimed at deregistering charities or denying charitable status in the first instance to organizations in Canada that support terrorism. When this Bill was first tabled, CJC applauded the effort, particularly as a good first step toward stemming the flow of charitable dollars into terrorist coffers and protecting the integrity of charitable registration in Canada. But we were concerned that it merely “nibble[d] at terrorism’s edges” and urged the development of a more comprehensive anti-terrorism strategy focusing on the criminalization of all types of fund-raising for terrorist organizations conducted in Canada, both within and without the charitable system.

The omnibus anti-terrorism legislation tabled post 9/11 addressed this issue and set the stage for the critical establishment of a list of banned terrorist entities in Canada, freezing their assets and shutting off their access to Canadian-raised funds. The current list of CSIS’ 40 banned terrorist entities in Canada includes Hezbollah and other Shiite Islamic terrorist organizations; Hamas; the Egyptian Al Jihad and various other Sunni Islamic extremist groups from across the Middle East and Maghreb; the Tamil Tigers (LTTE), the Kurdistan Workers Party (PKK), and several of the world’s major Sikh terrorist groups.

One of the key issues that arose in determining criteria for inclusion on the list was the apparent division of some of the targeted groups into so-called “military” and “civilian” wings; that is, a suggested division between terrorist and social or humanitarian arms within a single organization. In our view, to speak of humanitarian branches of groups that are also involved in terrorism is an insidious oxymoron, and any attempts to distinguish between military and civilian wings of terrorist organizations must be rejected.

Even the most creative and imaginative bookkeeping could not, for example, differentiate funds raised for the putative humanitarian activities of Hezbollah from its murderous terrorist operations. In the words of terrorism expert John Thompson, “the political arm and the military arm [of Hezbollah] are one and the same. It’s almost impossible to distinguish between the two.”

Freezing the assets of, and shutting down fundraising front groups for, the military wings of terrorist groups is only a start for the money still flows to them from the donations to the social and humanitarian agencies that are inextricably enmeshed in the same apparatus of terror. Nor, where funding of terrorist groups is concerned, is donor intent particularly relevant. The donor has no control over the disposition of the contribution which could be diverted from its stated purposes. Furthermore, money earmarked for humanitarian endeavours frees up resources that can be applied to terrorist activities. As well, the “humanitarian aid” from these organizations comes with a price: one becomes beholden to the movement in exchange for social services and must participate in its activities to maintain the flow of assistance.

After initially endorsing the notion that elements of the Hamas and Hezbollah terrorist organizations were divisible and subject to differential treatment, the government of the day reversed course and understood finally that delineating false distinctions between the terrorist and so-called social/political wings of groups like Hamas and Hezbollah detracted from the legislation’s objectives, compromised the integrity of the Canadian charitable system and undermined the government’s own claim that it was taking all available steps to combat terrorism in Canada and abroad.

Recommendation 3: Cabinet should approve the inclusion of all components *in toto* of future organizations added to the list of banned entities, making it illegal for individuals to contribute financial or other material support to such groups even if it is allegedly designated for humanitarian purposes or for the so-called non-violent political arms of these organizations. The Office of the Superintendent of Financial Institutions should then send out appropriate notices of advisement to relevant financial institutions in Canada to freeze completely all assets of said organizations and their various front organizations in this country. As well, there should be no back-tracking to separate the entities currently listed into banned terrorist and acceptable “humanitarian” wings.

D. STATE SPONSORSHIP OF TERRORISM

A main thrust to counter international terrorism has to be aimed at its state sponsors. These countries, including Iran and Syria, must be identified openly and isolated. Canada should demonstrate leadership in its bilateral relations with such nations, by curtailing or eliminating altogether trade, aid, diplomatic exchanges and visits, to send the critical message that support for international terrorism is unacceptable.

In this vein, there are two private members' bills (S-218 and C-346) currently in the legislative process aimed at amending the *State Immunity Act* and the *Criminal Code of Canada* to enable Canadian terror victims to launch civil suits against foreign states and local Canadian organizations and individuals that have supported terrorist groups responsible for the death or injury of such victims.

Specifically, the change to the *State Immunity Act* would permit claims in Canada against foreign states which sponsor any of the groups listed as terrorist entities by the government of Canada. In the past, Canada has amended the *State Immunity Act* to hold foreign states accountable when they were in breach of commercial contracts. The proposed change would modernize the *Act* to provide authority for similar accountability regarding the State sponsorship and support of terrorism by denying immunity to states that directly engage in or fund and sponsor terrorism from the jurisdiction of Canadian courts. While providing an extra measure of justice, the right to impose large punitive or compensatory damages could also have a deterrent effect on rogue régimes.

Such a change is consistent with Canada's obligations as a signatory to UN Security Council Resolution 1373, especially as set out in Article 2, including 2(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts and 2(b) Take the necessary steps to prevent the commission of terrorist acts.

The *Criminal Code* amendment would allow a civil cause of action to victims and their families who have suffered damages as a result of violations of the *Anti-Terrorism Act*, along the lines of the current statutory right to take civil action in cases of wrongful death. Authority for this change is lodged in Article 5 of the *International Convention for the Suppression of Terrorist Fundraising* which states that,

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2 [acts of terrorism]. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

This measure, too, would offer the victims of terrorism and their families an important means of "fighting back".

Recommendation 4: This Commission of Inquiry should encourage all parties in both Houses of Parliament to support the passage of (Bills C-346 or S-218) according to the timing of consideration of the legislation respectively in the House of Commons and the Senate of Canada.

E. CONCLUSION

The report of the UN High Level Panel on Threats, Challenges and Change (2004), “*A More Secure World: Our Shared Responsibility*” got it exactly right in observing that, “Terrorism attacks the values that lie at the heart of the Charter of the United Nations: respect for human rights; the rule of law; rules of war that protect civilians; tolerance among peoples and nations; and the peaceful resolution of conflict.”

Many in the West were shaken from their complacency on September 11, 2001 and forced to confront some very harsh and uncomfortable truths about the threats not only to personal and collective safety, but also to a way of life and world-view. The terrible attacks of that day seared into our minds the notion that we no longer have the luxury of identifying terrorism as anything other than a pathological evil that civilized societies must combat with all available resources and resoluteness.

It is most unfortunate that such a response was not forthcoming in the wake of the downing of Air India Flight 182. But by supporting the actions discussed above on terrorist financing, listing of banned entities and new statutory provisions for Canada and its citizens to use the courts for justice and compensation, this Commission of Inquiry can, even two decades plus later, make an important contribution toward ensuring that the legacy of the Air India disaster is a safer and more secure world.

OCTOBER 2007

ANNEX “A”

SUMMARY OF RECOMMENDATIONS

Recommendation 1: Recognizing the global and inter-connected nature of terrorist financing, Canada must, in fulfillment of its signed obligations, continue to be an active participant in relevant international bodies and multilateral efforts designed to counter terrorist financing and money-laundering, including the United Nations and the Financial Action Task Force on Money Laundering (FATF) established by the 1989 Paris G-7 Summit.

Recommendation 2: The Government of Canada must assure that FINTRAC and all elements of the domestic counter-terrorism régime dealing with terrorist fund-raising have sufficient human and financial resource allocations to perform their tasks effectively.

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ANNEX “B”

UN Security Council Resolution 1373 (2001)

September 28, 2001

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C., and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. *Decides also* that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. *Calls upon* all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. *Notes* with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. *Declares* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. *Directs* the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. *Expresses* its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. *Decides* to remain seized of this matter.