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Chair

Mr. Dave MacKenzie

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● (0845)

[*English*]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): We'll call this meeting to order. It's meeting number 11 of the Standing Committee on Justice and Human Rights. We're dealing with Bill C-10, an act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act, and other acts. It's obviously very comprehensive.

Time is of the essence, because it is a large bill, so we'll get started.

So that we understand, clause 1 is postponed, pursuant to Standing Order 75(1), and we'll come back to clause 1. We move right to clause 2.

(On clause 2—*Enactment of Act*)

The Chair: My understanding is that we have an amendment being proposed by the NDP.

Mr. Jack Harris (St. John's East, NDP): Yes, Mr. Chair, we have a proposal that clause 2 be amended by adding after line 14.... This is in relation to the entire Bill C-10—that the act be amended by adding a new proposed section 3.1:

> Within three years after this act comes into force, a comprehensive review of the provisions and operations of this act, including a cost-benefit analysis of its implementation that incorporates the costs to the federal government and, to the extent possible, the costs to provincial and territorial governments, must be undertaken by any committee of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose.

If I may speak to it, Mr. Chair, as we all know, this is a most controversial piece of legislation. There are strong opinions on both sides of this. We've heard witnesses talk about how, first of all, this is going to be an extremely costly bill. The increase in the number of people who will be put into prison as a result of this will have a significant cost for federal and territorial and provincial agencies that bear the costs of having people in prison for less than two years because of the nature of the division of corrections responsibility in Canada. Also, of course, there are the human costs.

There are many who have appeared before us and many in the public who have said this is in fact a backwards step, that this will not reduce crime. The overall effect of these provisions.... And I say this on the clear understanding that we support some aspects of it. We in fact moved in the House of Commons, on two occasions, to take the new sexual assault provisions out of this bill and have them dealt with separately and fast-tracked to the House. But the overall impact of this bill, particularly with adoption of a more punitive approach that will see more people put in prison, has been described as being extremely detrimental to society. Some of our witnesses said there will be more crime, more victims, more social dislocation, putting increased numbers of people in prison for what you'd call petty trafficking, petty dealing of marijuana and cannabis products, for example. This is going to lead to creating more criminals, more social dislocation, more people who are unable to get into a rehabilitative life, which is one of the principal aims of the corrections system.

Judges, in dealing with sentencing, for example, talk about the protection of society, the question being how best to achieve that. We have very highly trained and expensive judges, who are given the task of determining how best to achieve that on an individual case. Are the principles of sentencing as a protection of the public best achieved by rehabilitating the offender or by punishing that offender for a lengthy period of time? That's what the principles of sentencing are all about.

We had the Minister of Justice in the House yesterday telling the opposition that they should not play politics with the judiciary and they should respect the judiciary. The respect for the judiciary recognizes that the judiciary has a responsibility and role in our society to craft a sentence that does the best job in terms of the protection of the public.

Many people feel this bill does not respect the judiciary, the people who are given the task by our society to determine how to deal with each individual offender. It's called judicial discretion, but it's not discretion in an arbitrary sense; it's a discretion that allows the application of the law to each individual case and the consideration of all the factors that go into a proper and fit sentence.

● (0850)

If you asked everybody in this country whether they think we need a justice system where the punishment fits the crime, I doubt very much if you would have anybody objecting to that. But that doesn't justify a regime whereby the legislature is setting out arbitrary sentences, mandatory minimums for swaths and swaths of crimes that ought to be dealt with by the application of judicial principles of sentencing that ensures the protection of the public. When we have experts in criminology, experts in corrections, experts in an understanding of law, law professors, etc., telling us that aspects of this bill will lead to more crime and more victims of crime, then we have a serious problem.

We're not being naive here. We can count. We know the numbers. We expect, I suppose, that much if not all of this bill and maybe some amendments will be accepted. We do live in hope. Our job is to try to be persuasive, and we will be trying to do that. What we need to recognize is that this bill, comprehensive as it is in nature, needs to have a review of the success or failure of its provisions in terms of doing what the government says it's going to do. We do know the costs are there. The provinces have told us that. Quebec's attorney general was here telling us about that. We've had extensive media coverage of other provinces concerned about the cost and the fact that it's being downloaded to them. Obviously there are going to be political implications for that, but from a Government of Canada point of view and the House of Commons, we want to see a comprehensive review as to how this has operated.

The provision here is inserted very early in the act, and it's not related to the Justice for Victims of Terrorism Act, but we were advised by the legislative draftspersons that this was an appropriate place to insert it early in the bill so it could receive consideration up front.

We believe this bill is greatly overreaching. It adopts a punitive approach rather than a rehabilitative approach. And unfortunately for those who are concerned about the costs of crime to victims, this bill and the consequences of this bill will lead to greater criminalization of our society and indeed more victims who will be suffering as a result. We'll be creating more criminals, whether it be the provisions of the Youth Criminal Justice Act that are being proposed here, whether it be the lengthy periods of time that people will be incarcerated prior to trial who might otherwise not be exposed to that level of criminal element in our prisons. They will be hardened and less likely to be able to be rehabilitated. I could go on and on. There are provisions here that are mean-spirited when it comes to our pardon system, taking away the notion of pardon and changing it to sentence suspension, record suspension.

I practised criminal law for part of my career, but I practised law for 30 years. When you talk to the ordinary person about record suspension, that's no different in their mind from suspended sentence. It doesn't really have the same impact as a pardon. Saying they got a pardon for that offence they committed when they were 18 or 19 or 20 or 21, they've proved to the parole board and they've proved to society that they are rehabilitated, that to me is a meaningful expression of society's recognition of someone having rehabilitated themselves. To take away that notion that someone can redeem themselves.... Redemption is a very significant value in our society. It's part of Christian heritage and it's part of all religious heritage that someone who has offended can be redeemed somewhere along the way and demonstrate they are no longer a threat to society. The pardon encapsulates that. To say their record is just going to suspended has a very different aspect. That's a small example but an important one as to how this legislation fails our society, fails our system.

Something must be happening right. We know there are victims of crime, and every victim of crime deserves our understanding and our compassion and probably deserves far more than they get in terms of criminal injuries compensation. We had a half-decent system 10 or 15 years ago, but it's been mostly gutted across the province since the federal government stopped supporting it. There was recognition for victims on the criminal injuries compensation side, which has dissipated.

● (0855)

You can't just talk about how we support victims and we believe in victims. We do believe that victims need to be included in the system. You'll see, when we talk about this bill, that we support the involvement of victims in the parole process. We support victims' having greater knowledge of where the offender who perpetrated the crime against them is located within the system—what discipline they're being subjected to and other things.

So there are aspects of this bill, as we proceed clause by clause.... Mr. Chair, I hope you'll indulge me a little, but I'm just giving a little bit of an overview here of our concerns about this bill. We do see aspects of this bill, particular individual points, that are improvements, but the bill as a whole needs to be re-evaluated after a period of implementation. We are proposing three years because we think it's a significant shift in how we approach criminal law and corrections in Canada.

We have grave concerns that by separating the notion of rehabilitation as a means of public safety it's going to lead to greater criminality and a greater attack on our society. We're not talking about rehabilitation because we want to treat criminals in an easy manner; we're talking about rehabilitation for the benefit of society, so that someone who can be saved from a life of crime or rehabilitated back into society be given an opportunity to do that. That's for the purpose of public safety and for making our streets safer.

We have a name here, the "Safe Streets and Communities Act". Well, you know this government has a habit of some laughable euphemisms for some of the bills they've brought through, particularly in the criminal justice area. But the reality is that we've received significant evidence from experts—people with experience and knowledge and statistics and significant academic records, studies, and demonstrations—that prove there is a—

The Chair: Point of order.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Mr. Chair, we've been here for 15 minutes now, and we haven't got to a clause or at least to any substantive part of a clause. I must have missed the memo about a filibuster.

Mr. Harris has been here long enough to recognize that this particular clause is moot. Any committee of the House, and the House itself, can move a motion at any time to do exactly what he wants. Within three years the numbers, as he said, are going to be exactly the same as they are today. So this clause is not necessary. Any committee can take this study on at any time. They can move a motion. They are the masters of their own destiny.

So if his intention is to filibuster, I wish I had received the memo last night, because I could have had an extra five hours of sleep. It would certainly be helpful to move on to something more substantive.

● (0900)

The Chair: Point of order, Mr. Harris.

Mr. Jack Harris: I don't believe it's a point of order. It sounds like an argument to me. If he wants to argue against the—

The Chair: No, I think it's debate. It's debate, so—

Mr. Jack Harris: I don't intend to take all day, I say to Mr. Jean, but I do want to emphasize that as a part of the act, it's an important clause to say that this legislation must be re-evaluated after a period of implementation of three years. Yes, any committee can do it, but when you have a legislative mandate to do this, then it's taken as a requirement and it can't be undone without changing the legislation, which is a serious thing, as the member knows.

I suppose the point of order was to set me off my track, which is unfortunate, because it stops me from being concise. I have to go back.

The Chair: You can continue.

Mr. Jack Harris: I'm not going to start all over again—

Some hon. members: Oh, oh!

Mr. Jack Harris: —but I want to emphasize, Mr. Chair, it is not my intention whatsoever to filibuster this. And you will see that very shortly when we start moving some of the recommendations, some of the clauses in a block. We do believe there are some aspects of this bill that should get speedy attention.

I think it's very clear that there's a significant difference between the approach taken in this legislation and the approach that seems to have done a lot of good in Canada. We have a decreasing crime rate. We do have serious problems in our cities with guns and gangs, there's no question about that, and we do have crimes that go undetected and unpunished in some cases, but that's a question of law enforcement.

In this particular case, we're talking about what you do with someone who is before the courts. We believe we've heard significant objections to this. I myself have received in excess of 10,000—I think we might be up to 15,000—letters to date. The same copies have been sent to other members, to the Minister of Justice, and to the Prime Minister, objecting to the approach being taken by this bill. It's a significant matter of public debate.

I believe that this approach the government is trying, some grand experiment of let's see if we can fix this by doing here what was done 20 years ago in the States and failed; let's roll back the clock and pretend we're in 1980 somewhere in the United States, and we'll be tough on criminals and see if it works.... Well, iIt didn't work in the United States. If incarcerating more people leads to a safer society, the United States would be the safest country in the world. We all know that's not the case, because the crime rates in the United States are through the roof.

In Canada, on the other hand, when we talk about safe streets and safe communities, the reality is that despite all of the publicity that's given to violent crime and certain types of crime within Canada, when Canadians were asked in polling as to how safe they feel in their communities and their homes, 93% of Canadians actually feel safe. And this is not some flimsy one-question poll. Serious polls demonstrate that 93% of Canadians actually feel safe.

We have a situation here where this bill is out of step and out of touch with history, with the experience of those who understand the field, and in some cases with common sense. It's punitive in nature and will lead, as many suggest, to a greater lack of safety and not to safer communities.

Having said that, Mr. Chair, I move this amendment for your consideration so that when this bill passes we will all know that it's going to be reviewed on a comprehensive basis within three years.

The Chair: Thank you, Mr. Harris.

I was remiss when I started to try to get us going early. I neglected to indicate to the committee that we have two legislative clerks with us here today to help us, and officials from both the Department of Justice and the Department of Public Safety, if anyone has questions.

Having said that, Mr. Jean, you're next on the list.

● (0905)

Mr. Brian Jean: Actually, Mr. Chair, I made my point in my point of order.

The Chair: Ms. Boivin.

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): Thank you.

I would like to add a few things because we are just at the beginning. We are going to start the comprehensive study and clause-by-clause consideration of the omnibus bill that amends nine of our country's fundamental pieces of legislation. There are still a lot of questions about the form and content of this omnibus bill.

I don't want to go back over all the points raised by my colleague Mr. Harris before the committee regarding the amendment. But if we can only make one change, this is the one. In terms of principle, as a legal practitioner, as a member of the Quebec Bar and as a lawyer with over 25 years of experience—without giving my age away—I know that this amendment could still give people some peace of mind. People who, like myself, care about the legal side of things will have some peace of mind, even though it will not dispel all our deep concerns about the omnibus bill.

We have to remember that we are legislators and that the decisions that we will be making here today will have a huge impact on concrete and specific matters in the future. Lawyers on all sides will try to find the smallest loophole somewhere. The lawyers around the table or in this room know exactly what I am talking about.

I wouldn't want to see someone be able to slip through the cracks of the system because of an error on a legislator's part. The type of amendment that the NDP is proposing and that we are going to keep seeing at the various stages of the study of the omnibus bill does not change the content of the bill in any way whatsoever. In my opinion, the amendment is perfectly in order. It simply provides some assurance, although, as Mr. Jean said, it could be done through a motion at any stage. As Mr. Harris said, it is so much stronger if it is in the bill, if it is passed by Parliament, then by the Senate, and if it finally becomes law. We do in fact hope that, within three years after this bill comes into force, a comprehensive review of the provisions and operation of this act will be undertaken by a committee of the House of Commons or a joint committee designated by Parliament. The review would include a cost-benefit analysis of the implementation of this bill that incorporates the costs to the federal government and, to the extent possible, the costs to provincial and territorial governments.

We all know that a great deal of concern has been expressed by the legal community, be it the Canadian Bar Association or the Quebec Bar. Their representatives came to share various points with us which should have made us think this reform through seriously. In its latest November 2011 issue of the *Journal du Barreau du Québec*, the Quebec Bar said that Bill C-10 is not a legally justifiable reform. And that comes from lawyers who work on all sides. So we are not just talking about defence lawyers, but also about crown prosecutors and everyone involved in the justice system.

The Quebec Bar believes that, by imposing a number of mandatory minimums, Bill C-10 will simply send to jail people who could be rehabilitated and who should not be behind bars. That was the criticism made before this committee by Mr. Battista, the chair of the criminal law committee of the Quebec Bar. He is actually the expert appointed by the Quebec Bar to evaluate and analyze those types of matters. He tells us that the Harper government's omnibus bill is causing concern for a number of criminal lawyers. Once again, let me say that this does not only concern criminal lawyers and defence lawyers, but also crown prosecutors. We are told that the new measures to toughen up sentences for drug traffickers, sexual predators and violent young offenders include a whole host of provisions meant to radically change Canadian criminal law, and we are not even able to have an in-depth debate.

This is one of my concerns. It is very important to adopt the type of amendment we are introducing this morning. I was just elected in this 41st Parliament, whether those who have heard from witnesses at committee meetings in previous Parliaments like it or not. That is not our case—I am talking about the three members on this side of the table. We were not there. You may say that it is our problem, but it is the problem of Canadian taxpayers who chose to elect us and who sent us to do a very important job here. We are here to make sure that the legislation being passed works and that the goals of the bill can be reached.

● (0910)

We were told that, legally, this reform was not needed and that it was more a question of an ideological approach that was not based on findings, facts and studies on the subject. That is what we have heard the small number of witnesses say during the short time we had to ask them questions. I would have liked to be able to ask some of them more questions. As Mr. Harris said, we are in favour of some parts of this omnibus bill. When a majority on both sides of the House is in agreement, I think that those parts should be taken out and passed as soon as possible, in order to make sure that they are in effect right away. That means that both sides of the House have done an in-depth analysis and have concluded that those parts of the legislation should not pose any problems. However, that is not the case for all the parts.

In the case of people without a criminal record, meaning people who have not offended previously, Mr. Battista wonders about the risk of imprisonment. This is what the latest edition of *Journal du Barreau du Québec* says:

> In a number of cases, judges currently have the discretion to determine the sentence of an accused found guilty and not to send the accused to prison if they determine that other options are more appropriate.

But this whole concept is being changed, although, with the exception of a few cases, it works very well in Quebec, as far as I am told. I don't think it is worth changing a whole system for a few small cases. We should find a way to solve the actual problem instead of throwing it all out the window and pretend like it never existed.

There is also the whole issue of record suspensions or pardons, which will be more difficult to obtain under this legislation. We want those people to serve their sentences, but once they have paid their debt to society, not only will sentences increase, but we are also going to make sure that they are not going to be rehabilitated right away and that we are not going to help them to reintegrate into society very quickly. This makes me concerned about the future.

So we are talking about some fundamental changes. As I have been saying throughout the process, I have concerns about potential recourse to courts and court challenges. The article goes on to say:

> According to Mr. Battista, court challenges are definitely going to increase, simply because the negative effect of minimum sentences—especially when they are significant—leaves the accused without any real choice. “More trials and challenges are likely to take place whereas many of them could have been avoided through negotiations. It is also safe to assume that there will be constitutional attacks on some provisions that leave judges with no way out.”

The type of system that we are in the process of adopting under Bill C-10 is being reviewed in a number of places in the world, including the U.S. and the U.K., because the costs associated with the prison system were not seen to be proportionate to the intended objectives of reducing crime. I would change the so-called Safe Streets and Communities Act to “unsafe”, because this type of concept, this type of omnibus bill, causes great legal turmoil.

I am not giving you a political speech; it is a legal speech. As a lawyer and member for Gatineau, I am truly concerned to see what is being done with a system that works rather well. I think you have already conducted studies on the three of nine pieces of legislation included in this omnibus bill. Amendments have been introduced and suggestions have been made by the many experts who have appeared before your committees, but practically nothing has been retained by the government. There is something fundamentally wrong with this whole rushed process, which does not reflect the work that we have to do as politicians and that we have to accomplish for our fellow citizens.

● (0915)

If we can at least pass the proposed amendment to clause 2, we have reason to hope that, in three years, the system will not be turned upside down too much. I don't want to be a prophet of doom, but I feel that a lot of people will be going to court, perhaps at several levels. There will be charter challenges, there will be much more negotiation between the crown and the defence, and, when you get right down to it, that will not do victims any good. I have heard their heartfelt testimony, but, unfortunately, I have studied the bill in vain for anything that will benefit the victims who came to speak to the committee.

If they are serious, if they really want to change the system, if that is what the Conservative government sincerely wants, our proposed amendment should cause them no concern because it makes a helpful suggestion that would respect the spirit of the legislation as amended.

[*English*]

The Chair: Thank you.

Seeing no other names on the list, I'll now call the vote.

(Amendment negatived)

The Chair: We'll now move to Liberal amendment 1.

Mr. Cotler, I believe you have an amendment.

Hon. Irwin Cotler (Mount Royal, Lib.): Yes, Mr. Chairman. Thank you.

Let me explain the amendment, because we support the objective of this legislation. The purpose of this legislation is to provide, for the first time, a civil remedy for victims of terror against their terrorist perpetrators. Those terrorist perpetrators can be either the state sponsor of terrorism—that is to say, it could, for example in the case of Libya, be not only an agent that is a listed entity in Canada that carries out the terrorist act—or it could be the state itself that perpetrates it. Or let us say, in the case of Iran, the terrorist act may not only be carried out by a listed entity in Canada that is its proxy—for example, Hamas or Hezbollah—but it could be carried out directly by the state itself—Iran.

As I say, in terms of its overall objective, we support this legislation because it amends the State Immunity Act, which thus far has shielded states or their agents from any civil liability such that no Canadian victim of such an act of terror could initiate a remedy in a Canadian court. In effect, we had this anomalous, if not legally and morally absurd, situation where by reason of the State Immunity Act shielding the foreign perpetrator of terrorism, it prefers the foreign perpetrator of terrorism—as it were, in its consequences—over the Canadian victim who is seeking a remedy. So the purpose of this legislation—to effectively give a remedy to Canadian victims—is something we support.

I might add, Mr. Chairman, that we have also the anomalous situation where if there is a breach of contract by that foreign state, then a remedy lies, but if it's a terrorist act that causes damages, a remedy does not lie. Surely a victim of terror is deserving of a remedy no less than a person who suffers damages by reason of a breach of contract.

The purpose of this specific amendment, Mr. Chairman, is because the legislation as now drafted, with which we agree, does not catch the foreign state that directly commits the act of terror; it will catch only the agent or proxy that carries out that act of terrorism on its behalf. So the purpose here is that clause 2 of the bill be amended by replacing line 26 on page 3 with the following:

a foreign state, listed entity or other person that

Again, the objective is to catch or to provide a civil remedy against the foreign state, which otherwise will remain immune if we go only after the act of terrorism committed by a listed entity in Canadian law. We agree that there should be a civil remedy with respect to an act of terrorism committed by that listed entity—i.e., Hamas, Hezbollah, etc.—but we believe that the state sponsor of that listed entity, which may commit it not through its proxy, but by itself, should be held liable as well. Otherwise you're going to have a situation, Mr. Chairman, whereby the objective of this legislation can be defeated simply by the state carrying out the act of terrorism itself and not through its proxy or agent. Certainly that could not have been the intent of the legislator in this regard.

● (0920)

The Chair: Mr. Harris.

Mr. Jack Harris: We would support this amendment. Mr. Cotler is very knowledgeable in this area, and I believe we have some reservations about the efficacy of this legislation as to whether it would actually be effective or would perhaps raise expectations a little more than it realistically might provide.

But if the purpose of this cause of action is to show that people are going to have a remedy for terrorist acts committed against them by states or by state-sponsored entities, then it seems logical to include the states themselves as actors in this. We support that, as you'll hear later on other clauses. We don't like the idea of having only listed states. To include "foreign states" in this is proper, because if what we're aiming to do here is to give someone remedy for terrorist acts, then including states in that is, in our view, considered logical.

The Chair: Thank you.

Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you.

Very briefly, I do respect the intention behind this amendment, but I have reservations about removing state-to-state issues from the executive level and placing them in the hands of the judiciary, which in effect this amendment would do. If charges are being brought in the courts, it in my view is an inappropriate remedy for the ill that Mr. Cotler seeks to address. It is instead more appropriate for a government, taking into account the whole host of factors that may apply in the case of state relations, to bring forward a remedy.

Thank you.

The Chair: Mr. Cotler.

Hon. Irwin Cotler: Mr. Chairman, I have to say that I don't understand the submission just made by the honourable member. If what he seeks is to allow the victim to have a civil remedy, why would he wish to immunize the state sponsor that directly commits that act of terror from being held liable? It seems to me somewhat absurd to say, okay, we will go after the proxy of that state sponsor of terrorism, but if the state itself commits the act, it's immune. That simply does not make any sense.

This has nothing to do with judicial determination or executive acts. This has to do with the whole question of how you provide an effective civil remedy for victims of terror. That's what this is all about.

You have a choice here. You either say that the victim has a civil remedy only against the agent or proxy of the state committing the act of terror, or it has a remedy against the state itself when it directly commits the act of terror. Otherwise, you're going to have a situation here where it simply won't act through its proxies: it can be encouraged to commit the act of terror itself and then be immunized against any civil liability from the victim.

It just doesn't make sense. I don't understand what the member is saying in terms of.... We support the bill. We want to make it effective. We want the victim to have a civil remedy. We don't want it to be immunized under the State Immunity Act. It takes away with one hand what it gives with the other.

It just doesn't make sense. From their point of view—forget about me moving the amendment—this is something the government should see. This is something the government should propose, not something that I should have to come before this committee to do. Basically we want to support the legislation, but we want it to be effective and we want that victim to be able to have a civil remedy against its state perpetrator directly. That's all.

● (0925)

The Chair: Thank you.

Seeing no other intervenors, I will call the vote.

(Amendment negatived)

The Chair: The next amendment is another one from Mr. Cotler.

Hon. Irwin Cotler: Mr. Chair, the government bill currently allows for a foreign state to be sued only if it provides support to a listed terrorist entity. But the bill should allow a foreign state to be sued for providing support to a terrorist group that is not a listed entity, provided that the non-listed entity is acting at the direction of, or in association with, a listed entity.

Again, Mr. Chair, the whole purpose of our amendment is to actually make the legislation more effective. I thought we would not have had to come here to do this, that the government would have said, you know what, you have provided and made recommendations that in fact enhance our legislation, that allow us to make it more effective for the victims of terrorism. This is what this legislation is all about.

For greater clarity, this amendment will only allow a suit against the foreign state if it sponsors unlisted terrorist groups that are functionally connected to terrorist entities presently listed by Canada, but not if the foreign state sponsors terrorist groups that are unlisted and unaffiliated with those already on the Canadian list.

What we are saying here, Mr. Chair, is basically that the rationale for this change is that terrorist organizations often function under other names. So you have the situation where one name of the organization may be listed as a terrorist organization under Canadian law and other aliases of that same terrorist organization may not yet be listed. This is a phenomenon that we know only too well, that the same terrorist entity now listed just changes its name, and is no longer listed, but it still commits the terrorist act, and you still have the victim. The victim will not have a remedy unless the amendment that we propose here will catch those who in fact then operate under an alias.

Simply put, the amendment more fully enables the bill to meet its stated objectives—again, not my stated objectives, which I share with the government, but its stated objective with regard to this legislation.

The alleged sponsors being held liable for supporting terrorist entities that are satellites of already listed entities thereby in effect closes a gap in the law that would allow listed entities to escape liability through the use of an alias or through let's say outsourcing terrorism to other terrorist bodies. This is another way they immunize themselves from the terrorism, by simply outsourcing it or going under another name.

The amendment does not alter the nature of the conduct for which the terrorist sponsor is being held accountable; nor does it permit civil liability for unlisted entities that are totally independent of listed ones. It simply removes a kind of ruse that is commonly used by terrorists and their supporters.

Furthermore, I close with this, Mr. Chair. Most unlisted entities, if they have committed a significant terrorist act, are likely to be listed by Canada eventually. Therefore, this proposed amendment, while effectively spreading a wider net in the pursuit of justice, also in effect seeks to implement a basic intent of the bill. I'm saying this over again. It seeks to more effectively implement the intent of the bill, as proposed by the government, by allowing suits to be launched in a more timely way, rather than having victims wait for a prolonged listing process to run its course before being able to seek redress.

It just means that if they change their name, they go under an alias, but they are the same terrorist entity, and are associated with the listed terrorist entity, then that ruse of going under another name will be caught by this amendment, and we will be able to in fact hold that outsourced entity also responsible because of its relationship with the listed entity.

That's what it's all about, Mr. Chair, only to make the legislation more effective.

● (0930)

The Chair: Thank you, Mr. Cotler.

Mr. Jean.

Mr. Brian Jean: Yes, Mr. Chairman.

Very briefly, I want to first of all thank the NDP for the hundred pages of amendments we received this morning for this bill.

With respect to Mr. Cotler—

Ms. Françoise Boivin: You're a Conservative.

Mr. Brian Jean: —I understand what Mr. Cotler's issue is. But this is a state issue, and I would suggest, frankly, that on his basis it violates the very principles of international law, because what he's suggesting is that judges would be able to decide what is a terrorist state or what is a terrorist entity. I think that's more of a state-to-state issue, from my perspective, and the principles of international law would be violated.

The Chair: Go ahead, Mr. Cotler.

Hon. Irwin Cotler: Mr. Chairman, this is in fact seeking to implement the principles of international law. The whole question of international law is set forth in the whole notion of the State Immunity Act, which at this point, before any amendments, the government's or mine, shields state sponsors and their agents from any acts of civil remedy in Canadian courts.

The government has agreed that we no longer want to immunize these state sponsors of terrorism or their listed entities. All I want to do is say that you're right. You've already done the international law thing. All we want to do is make it more effective. Once you've already agreed that the State Immunity Act should be amended so as to not shield state sponsors of terrorism and to not shield their aliases, agents, or proxies who go under another alias, then make it effective.

What is the point of putting forth legislation and bringing in an irrelevant notion about not wanting to give it to the courts? It has nothing to do with the courts, Mr. Chairman. It has to do with the fact that you want to go ahead and hold state sponsors of terrorism responsible or you don't.

The government already agrees that Canadians should have a civil remedy in the courts. They've already agreed to give the courts jurisdiction. They've already agreed to give the courts jurisdiction so that they can hold states responsible for acts of terrorism and so that they can hold their proxies responsible. This is not a matter of giving the courts jurisdiction they wouldn't otherwise have. It's the same jurisdiction the courts will have. It's the same liability the states will have.

We want to make the legislation more effective. This parroting of some notion that this is not in accordance with international law is simply incomprehensible, Mr. Chairman. With all due respect, it doesn't make sense. In accordance with what they are proposing, they should be supporting this amendment. I shouldn't have to be here today to argue for this amendment. I'm trying to make their legislation more effective. If they really care about giving civil remedies to victims of terror, then they should want to adopt an amendment that does that. Otherwise, what's the point of putting forth their own legislation?

To talk about international law and courts and the like.... The legislation is giving Canadian courts jurisdiction. This government legislation is giving Canadian courts jurisdiction. I'm not doing it with my amendment; the legislation does it. I don't think the government understands the legislation they themselves are proposing, because if they understood the legislation they themselves are proposing, they wouldn't be making these comments here today, because these comments just don't make sense.

The Chair: Mr. Harris.

Mr. Jack Harris: Thank you, Chair.

We support the amendment.

In response to Mr. Jean's concerns, I don't understand where he's coming from. The clause that would be amended already recognizes that the cause of action comes from a foreign state committing an act or omission in Canada that would be punishable under various sections of the Criminal Code. That's the definition of terrorism.

What Mr. Cotler's amendment says is that it is not just a foreign state or a listed entity. It would also include a terrorist group that acts at the direction of or in association with such an entity. We're talking about the ability of the cause of action to exist if it's done by a terrorist group that's not listed but is actually acting in association with a listed entity or foreign state.

How this gives judges the power to decide whether a foreign state is a terrorist state is beyond me. I think your comments may have relevance to some other part of the legislation. But surely Mr. Cotler is saying that if we're going to be giving people a cause of action if they're victims of terrorism, and you have listed entities under the Criminal Code and foreign states, and you also have groups that may not be listed but are acting in concert or under the direction of one of these listed entities or foreign states, then they would also give rise to a cause of action.

There may be problems of proof. That goes back to our reservations about the efficacy of the legislation in terms of actually being effective. But in principle, if you're going to suggest that victims of terrorism in Canada have a cause of action within Canada based on these types of acts, then why would you not include non-listed terrorist groups that are acting in concert with or at the direction of the same bodies?

If the other side wants to object to that, I'd feel more comfortable with a reasoned objection rather than something that's misplaced or baseless. If they're not going to vote in favour of this, hopefully someone over there can tell us why.

● (0935)

The Chair: Mr. Woodworth.

Mr. Stephen Woodworth: I object to the characterization of Mr. Jean's comments as unreasoned or not well placed. Up to this point in time, the Canadian government, through section 83.01 of the Criminal Code, has provided a definition of a listed entity. To introduce a term such as "terrorist group".... Of course, every one of us here knows what a terrorist group is, but I can tell you that once you get into court, without a definition of "terrorist group", it can indeed be problematic.

I see nothing wrong with the approach of Canada, up to this point, in providing a list.

Thank you.

The Chair: Go ahead, Mr. Cotler.

Hon. Irwin Cotler: Mr. Chairman, I think the honourable member, with all due respect, is confusing the question of the list of countries against whom an act can be taken. I have a separate amendment with regard to that. That is not what this amendment is about.

This amendment seeks to ensure that the agent or proxy of that listed state will not be able to escape civil liability by outsourcing it under another alias. That's all we're saying. We're saying that when you go into court we want to make it effective.

They agree that a Canadian citizen should have a civil remedy in a Canadian court. Up to now, that can't happen. This legislation allows it to happen.

It's not a question of the judicial determination. We agree that there should be a judicial determination. It is not a question of the listed entity and the government making that determination as to who is a listed entity. As a state, I have some concern about that, but that's another point. I'm talking about now going on the government's own legislation, with their own determination of the state as a listed entity, that the state proxy or agent should not escape liability by outsourcing it to another alias. That's all we're saying, making your legislation more effective.

I have to say that I don't understand the objections of the government. The more I hear the objections, the more I feel they don't understand their own legislation they are proposing and don't appreciate the fact that we're trying to make their legislation more effective and give Canadians a more effective remedy. They should in fact be responding to our amendments rather than voting them down. At the end of the day, they're going to have less-effective legislation than they themselves wish for, which we otherwise support in principle.

Mr. Chairman, I have to tell you this is an interesting case study of what's the problem with this whole approach. I say this because we have nine bills like this. If we had disaggregated the bills, if we were able to give the proper time to each of the pieces of legislation, we might end up with adopting the legislation and getting better bills for the public, for the people of Canada, for protecting, in this instance, Canadian victims of terror.

What we're going to get is a less effective version than the government deserves to have and what the Canadian people deserve to have. At the end of the day, a Canadian citizen going into court will have a less effective remedy against the state sponsor of terrorism. Now we can't take an action, because they voted my first amendment down. It's not because it's my first amendment; I thought it should have been in the legislation to begin with.

Right now, a Canadian citizen who will have a domestic remedy in a Canadian court cannot take an action against the state perpetrator itself. So if Iran tomorrow commits a terrorist act against a Canadian citizen, the only way we can take an action against it is if Iran in fact delegated it, or designated it a listed entity under Canadian law. We agree: if a listed entity under Canadian law carries out the act, they should be held liable. But if a state carries out the act and doesn't delegate it, or authorize a listed entity in Canada to do so, a Canadian citizen cannot now, under this legislation, take a direct remedy.

That has been the result of them voting down the first amendment. The result of them voting down the second amendment is that if a terrorist entity that is listed under Canadian law goes under a different alias, changes its name and is no longer a listed entity, the Canadian citizen will no longer have an action against them.

Mr. Chairman, the result of the objection to these two amendments is to make their legislation ineffective. It will be there, but it will not accomplish what the government itself seeks to accomplish. I find it surprising that they would not be responsive to amendments that improve their legislation, improve the objectives of that legislation, provide protection for Canadian victims, provide them with an effective civil remedy, and neither immunize the state sponsors of terrorism, which is now immunized, nor immunize the alias or outsourced entity to whom the act is thereby committed, so they also get immunized.

Regrettably, Mr. Chairman, the result of the rejection of two amendments is that a Canadian citizen will not be able to sue a state directly; and secondly, if the terrorist entity or proxy changes its name and is no longer a listed entity, even though it's functionally associated with the listed entity, they will not be able to sue that alias either.

● (0940)

Mr. Chairman, this goes back to immunizing the very terrorist entities this legislation was designed to take immunity away from. It was designed to give effective remedies to Canadian citizens. We no longer will have effective remedies. That's the result of the rejection of the amendment, Mr. Chairman.

The Chair: Thank you.

Ms. Boivin.

[*Translation*]

Ms. Françoise Boivin: Mr. Chair, when I see the kinds of amendments that are being proposed, starting with the first one introduced this morning and continuing to the two from Mr. Cotler we have just heard, I become concerned. It does not provide a great cause for hope for later on, when we get to the substance of the measures that the Conservatives are imposing with Bill C-10.

These are proposals that have been made to really improve the bill and to ensure that the government's stated objective is met. The only comment I hear from the party opposite, the Conservatives, that is, is to raise objections to or snicker at the number of amendments. I would like to remind people around this table that this is an omnibus bill more than a hundred pages long, with more than 200 clauses, and that it affects nine acts.

To the people offended by the number of pages of amendments, I have to say that I am much more offended by a bill that seeks to enact the Justice for Victims of Terrorism Act and to amend such fundamental legislation as the Criminal Code, the State Immunity Act, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other acts. That frustrates me much more than the number of amendments.

Actually, the Conservatives are lucky because I wanted to introduce just one amendment, an amendment to drop this whole thing. But I was told that it was not admissible.

I don't know whether they do not understand their own bill or whether they only see what they want to achieve. The Conservatives seem to be quite blindly claiming that we must deal only with what they have presented to the committee, nothing else, and that not a single additional word can help. The explanation that Mr. Cotler has just given makes a great deal of sense. If the Conservatives opened their ears and their eyes they would agree. But that is certainly not happening.

This committee can pack up and go home, my friends, although there are non-contentious issues on which parties are ready to come to an understanding, to find common ground. Why we can't do that in this committee is beyond me. Just wait until we get to the Youth Criminal Justice Act or even to minimum sentences. That ought to be good.

● (0945)

[*English*]

The Chair: Seeing no further people on the list, I'll now call the vote on Liberal amendment 2.

(Amendment negatived)

The Chair: Next is amendment L-3.

I'm advised by the legislative clerks that if amendment L-3 is adopted, the government amendment G-1 cannot go ahead because the same lines are in the two.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): What did you say?

The Chair: If the next motion is adopted, then government amendment 1 does not go ahead because it's the same words.

Mr. Robert Goguen: Thank you.

The Chair: Mr. Cotler.

Hon. Irwin Cotler: Mr. Chairman, the purpose of this legislation has to do with the whole nature of Canadian law, the background with respect to the State Immunity Act, and the jurisprudence that has evolved regarding notions of what it means for the victim to have a civil remedy. Since the State Immunity Act currently gives no immunity to states for damage they cause in Canada, then cases against foreign states that will be brought under the government's proposed legislation will primarily involve acts outside of Canada—as I hope to indicate, for example, suing Iran directly, not just suing Islamic Jihad, which is sponsored by Iran, for killing a Canadian abroad.

I might add parenthetically that if you take the Lockerbie situation, it would not have been possible to go after Libya under the current wording in this legislation. That was why I proposed the legislation that you should be able to go after the state sponsor, Libya itself, for the Lockerbie terrorist act.

What we have here, I regret to say, and I will make this point once again so the government might reconsider, is that the government is in effect being soft on terror and harder on the victims. This government that purports to speak in the name of the victims—and we all want to protect victims—should be giving an effective civil remedy to those victims and not privileging the state sponsors of terrorism who commit terrorist acts against those victims.

Now, with an act of terror committed by the state of Iran, the Islamic Republic of Iran, or in the Libyan Lockerbie situation, they will be immune from a civil suit as a result of the government not wishing to respond to an amendment we propose that would give citizens a remedy.

With regard to this particular amendment, what we want to do under.... Because under proposed subsection 4(2) of the present bill, for a person who is victimized by a terrorist act outside of Canada to sue in a Canadian court, he or she must establish a real and substantial connection to the jurisdiction in which he or she is launching the suit—i.e., here in Canada. So the only connection to Canada will be the Canadian citizenship or permanent residency of the victim.

But in recent court rulings, Mr. Chairman, it's likely that citizenship and permanent residency alone—and I think the government realizes this—will not be sufficient to establish a real and substantial connection to Canada. Therefore, international law experts we've consulted, and I suspect they are the same international law experts they would be consulting, are of the view that it is possible that a significant number of actions against foreign states under this legislation may be precluded or stopped on jurisdictional grounds before they get to the merits, which would undermine the intention of the legislation.

There are cases pending before the Supreme Court of Canada on this very point. Therefore it's essential that the legislation explicitly state that a person's Canadian citizenship or permanent residency status is enough to establish the jurisdiction of the Canadian court.

The way it should be done is in proposed subsection 4(2), which we are speaking of here. We should be deleting the four lines—and I think this supports the next amendment put forward by Mr. Goguen—and maybe word it that for certainty, it is sufficient to establish that the plaintiff is a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act in order to establish the jurisdiction of the Canadian court with respect to the cause of action referred to in this section.

It's similar to what Mr. Goguen is suggesting; the language, I suggest to you, may be somewhat more specific with regard to the same remedy and the same effectiveness that the government seeks.

Again, Mr. Chairman, we are seeking only to make the legislation effective.

● (0950)

The Chair: Thank you.

Mr. Jean.

Mr. Brian Jean: Yes, Mr. Chair.

Very briefly, the honourable member worked with Minister of Justice John Turner and he was the Minister of Justice and Attorney General of the country from 2003 to 2006. If he's so adamant in supporting the government at this stage, why didn't he come up with the legislation when the Liberals were in power for 13 or 14 years? I say that with respect, Mr. Chair, because he keeps saying the same thing: he supports our legislation, he's trying to make it better. Yet it took a majority Conservative government to finally get it to this stage to get it passed.

Bluntly, I have a lot of respect for the man. He's a great professor and an Order of Canada winner and Minister of Justice. But why are we here today and arguing about something he wants to make better if he didn't do it in the first place?

Hon. Irwin Cotler: Mr. Chairman, I'm delighted that he—

The Chair: Just a minute, Mr. Cotler; I have Mr. Harris.

Mr. Jack Harris: I'm sure Mr. Cotler can defend himself on that point. I will say that time passes and ideas come and sometimes they're ripe for consideration. I'm not even sure this one is ripe, because I haven't been convinced of the effectiveness of this type of legislation—despite the enthusiasm our witness from the United States brought to it. Clearly, Mr. Cotler has pointed out a significant gap or hole in this legislation, which the government has also recognized.

I will say, Mr. Cotler, I'm not certain whether you are arguing now for your amendment to pass or to amend the amendment that the government has. Maybe you can clarify that. It seems to me that if the object is to ensure that the plaintiffs aren't going to run afoul of a jurisdictional or *forum non conveniens* type of argument, the way to do it is to be more particular. Perhaps the government amendment, even with your add-on to it, would be more effective than the one you have before us. That is, unless you're suggesting that your amendment needs another amendment to another section in order to be effective.

There seems to be more than one way to do this. I'm interested in assisting to improve the legislation that is now before us, as opposed to some legislation that Mr. Jean thought might have been before somebody else at some other time in the past.

I believe we are here together working in good faith to try to improve this legislation. I wonder, can you tell us whether you still wish to proceed in the manner you suggest by Liberal amendment number three? Or would you be satisfied with the next amendment coming forward with some modifications?

● (0955)

The Chair: Mr. Cotler.

Hon. Irwin Cotler: Thank you, Mr. Chairman.

I would be satisfied, because in fact the amendment that is proposed by the parliamentary secretary does capture the amendment I had in mind. I would be prepared to support it, and do support it. It's just a matter of the refinement of language.

I do want to say for the record, though, that when I was asked why, as Minister of Justice, I hadn't proposed similar legislation, Mr. Chairman, the answer was that if you look at Hansard, you will see that as Minister of Justice I sought the proposed legislation. We were defeated, Mr. Chairman.

As one of my first acts, and this can be confirmed, I went to the Minister of Public Security at the time and said that we were defeated but this is what I was hoping to do, and I would hope the Conservative government goes ahead and introduces this legislation.

I've been in support of this from the time they took power way back in 2006, Mr. Chairman. Hansard will show that I supported this in 2005. At that point, we did not get to the point where we had draft legislation prepared to go forward, although the intention to do so was clearly stated in the record. I went to Stockwell Day, the incoming Minister for Public Security, and said, “Stockwell, this is the legislation we were intending to propose, but we were defeated. I suggest that you do it. We have a common cause here: we want to give victims of terror a civil remedy.”

I just want to put that on the record, lest it be thought that we are coming late to this idea and only seeking to do it now.

The Chair: Mr. Cotler, given the discussion that occurred with respect to your amendment and the government one, do you wish to withdraw your amendment so we can move to the government one?

Hon. Irwin Cotler: I will withdraw mine, because the government amendment captures what I had intended. My only thought is that maybe the language I was proposing is somewhat finer, but I have no problem with it, because it captures the intent in what the parliamentary secretary is proposing.

The Chair: Thank you.

I'll need unanimous consent for the withdrawal of the motion.

Some hon. members: Agreed.

The Chair: We'll move to the government amendment, Mr. Goguen.

Mr. Robert Goguen: Just for the sake of clarity, what we're proposing is that clause 2 be amended by replacing line 4 on page 4 with the following:

> Canada or the plaintiff is a Canadian citizen or a permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act.

I'd like the public safety officials to comment on that briefly, if you'd give us leave to do that, Mr. Chair.

The Chair: Sure.

Ms. Larisa Galadza (Senior Analyst, International Affairs, Security and Justice Sector, Foreign Affairs and Defence Division, Treasury Board Secretariat): Bill C-10, as originally introduced in Parliament, would allow any person to sue who can demonstrate a real and substantial connection between their action and Canada in a Canadian court. In Canada, the meaning of "real and substantial connection" has been established by the Supreme Court of Canada, which identified eight factors to be considered when determining whether a court could be seized of a case that happened in another jurisdiction.

According to these eight factors, Canadian citizenship or permanent residency would not necessarily be enough to automatically establish a real and substantial connection between the cause of action and Canada. The proposed amendment would establish that Canadian citizenship or permanent residency of the plaintiff would be sufficient for a court to hear the case.

The Chair: Not seeing anyone wishing to speak to it, I will call the vote.

(Amendment agreed to)

The Chair: We now move to government amendment number 2, Mr. Goguen.

● (1000)

Mr. Robert Goguen: Again, for the sake of clarity, Mr. Chair, we are proposing that clause 2 amended by adding after line 4 on page 4 the following:

> (2.1) In an action under subsection (1), the defendant is presumed to have committed the act or omission that resulted in the loss or damage to the plaintiff if the court finds that
>
> (a) a listed entity caused or contributed to the loss or damage by committing an act or omission that is, or had it been committed in Canada would be, punishable under Part II.1 of the Criminal Code; and
>
> (b) the defendant—for the benefit or otherwise in relation to the listed entity referred to in paragraph (a)—committed an act or omission that is, or had it been committed in Canada would be, punishable under any of sections 83.02 to 83.04 and 83.18 to 83.23 of the Criminal Code.

Again, I would ask leave for the person from the public safety department to comment on this, Mr. Chair.

Thank you.

Ms. Larisa Galadza: This amendment would lighten the burden of proof on victims of terrorism by creating a presumption of causation of damage. The amendment would establish that the defendant is presumed to be liable if it supported a listed entity that caused or contributed to the loss or damage, subject to the cause of action. The presumption could be refuted if the defendant proved that he or she did not cause or contribute to the loss or damage in question.

The Chair: Thank you.

I should have mentioned before we started the discussion here, if this amendment is passed, the legislative clerks indicate that Liberal amendment 4 cannot be moved because it is similar in nature.

Hon. Irwin Cotler: Again, Mr. Chairman, I support the amendment in principle because I support the legislation in principle. This amendment, in fact, in the matter of liability, is relevant and helpful. The amendment I was proposing, Mr. Chairman, and the rationale for it, is if a foreign state funds a terrorist body. We didn't have explanation as to why this amendment was moved. I just want to provide a background rationale for the government's own amendment, let me say, Mr. Chairman.

It's now just a choice of whether it's theirs or mine, but the rationale remains the same—that if a foreign state funds a terrorist body that commits a terrorist act, it is usually very difficult, if not impossible, to prove that those specific funds caused a specific attack. In other words, it's difficult to establish causation, which is a necessary element for a successful suit against terrorist sponsors. Therefore, our approach was to add a deeming provision, which establishes that supporting a terrorist entity will make one liable for the terrorist attacks that entity commits, even if it cannot be proved that a specific donated dollar brought about that specific bullet.

That was the purpose for my amendment, which appears on the next page, Mr. Chairman, but I'm prepared to go along with one that goes along with the presumption, rather than have the deeming clause, because it captures the essence of what I think I would like to have. I think the deeming clause is preferable, but we don't have to go through the whole debate, because it's not going to get accepted —

The Chair: Mr. Harris.

Hon. Irwin Cotler: —so I'll go along with what the parliamentary secretary has proposed.

Mr. Jack Harris: I won't go into much detail. It was just to say that we support this amendment, because otherwise the record doesn't show in the votes that we actually support this particular amendment. And we support it for the reasons given by Mr. Cotler, and Mr. Goguen as well.

The Chair: Great.

Seeing no other names on the list, I will call the vote.

(Amendment agreed to)

The Chair: That then precludes Liberal amendment number 4.

(Clause 2 as amended agreed to)

(Clause 3 agreed to)

(On clause 4)

The Chair: On clause 4, I believe we have an amendment from Mr. Cotler: Liberal amendment number 5.

● (1005)

Hon. Irwin Cotler: Yes, Mr. Chairman.

The amendment here is really again for the purpose of making the legislation more effective, by clarifying the language in that regard.

The amendment effectively reads that clause 4 be amended by replacing line 39 on page 4 to line 5 on page 5 with the following:

> 2.1(1) For the purposes of this act, a foreign state engages in the support of terrorism if the foreign state knowingly or recklessly provides, directly or indirectly, material support to a listed entity as defined in subsection 83.01(1) of the Criminal Code, or to a terrorist group as defined in that subsection acting on behalf of, at the direction of, or in association with a listed entity.

Then the next paragraph, Mr. Chairman, seeks to define what material support is, so that we are clear what it in fact covers:

> (2) In this section, "material support" means currency or monetary instruments, financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and all physical assets, but does not include medicine or religious materials.

Again, Mr. Chairman, this is to both delineate and capture the nature and character of the terrorist acts so identified.

The Chair: Thank you, Mr. Cotler.

Seeing no other intervenors, I shall put the question on Liberal amendment number 5.

(Amendment negatived)

Mr. Jack Harris: Can we record that vote, Mr. Chair?

The Chair: I'm sorry, the vote was already completed. If you're going to ask for a recorded vote, do it before we vote.

Mr. Jack Harris: Mr. Goguen is offering to have it recorded, if we want it.

Mr. Robert Goguen: I don't see why not.

The Chair: Well, the clerk will do it, if that's your wish.

(Amendment negatived: yeas 5; nays 6)

[*Translation*]

Ms. Françoise Boivin: It is not going to be complicated. As always, it will be the Conservatives versus everyone else.

[*English*]

The Chair: Shall clause 4 carry?

(Clause 4 agreed to)

The Chair: We now have Liberal amendment number 6, in clause 5.

Mr. Cotler.

(On clause 5)

Hon. Irwin Cotler: Mr. Chairman, I have a series of amendments, as you can see, that hereafter follow. Let me just say that they all relate, in effect, to the same situation, so you don't have to go through them one by one, because if they're going to vote it down, they'll vote it down as a whole.

Let me explain it, because I suspect they will vote it down. To try to save the committee time, I will explain the objective of the series of amendments that follows, because they're part of a package.

Basically, Mr. Chairman, these amendments seek to remove the discretion of the government to list the state sponsors of terrorism and to allow the victim of terror to make his or her determination as to which sponsor of terrorism they wish to sue. Regrettably, the legislation as it now stands limits the victim's suit to only those countries that the government will list as state sponsors of terrorism.

Now the problem we have...and the government's own witness, Victor Comras, the U.S. State Department official who appeared earlier when this bill was heard before the Senate, and then appeared again before us, said earlier, and repeated again, "Don't go there"—we did that in our American legislation and the result was by doing that in effect we ceded the right of the victim to the determination by the government as to who the victim could sue. The U.S. government, for example, listed four governments as state sponsors of terrorism. Now, if government 5 or government 6 was not listed, but they committed a terrorist act or their proxy committed a terrorist act, the victim in Canada would not be able to sue because the government, for whatever reason, would not have put that government on the terrorist list. We believe that it's the victim who should be able to make that determination, not the government.

Now, I know what the government may say, so I want to conclude by saying the following. I know that the government has a legitimate concern with frivolous and vexatious suits that may be taken against our allies, so my amendment provides for that. What it says is that a civil remedy will not lie against a country with which we have an extradition treaty or a government in respect of which a remedy will lie in that government's own domestic courts—in other words, the United States, whatever.

The purpose of the amendment here is to broaden the number of state sponsors that the victim believes should be the object of a suit, but to guard against frivolous and vexatious suits by saying that no suit will lie against a country with which we have an extradition treaty, that country being deemed to be one that protects the rule of law, has an independent judiciary, and the like.

So through this series of amendments that follows.... And that's why you don't have to take them one by one; if this is going to be defeated, then you can defeat them all at the same time. I just want to put forth what the objective is here. It is to give the victim of terror the option of determining against whom the suit will lie, rather than have the government arbitrarily determine against whom the suit will lie and arbitrarily limit the remedies that can be exercised.

The government's executive exercise of discretion is being preferred in the government's legislation over the victim's capacity to exercise his civil remedy with respect to acts of terror. Again, Mr. Chairman, it's somewhat anomalous because we are here speaking for the victim and the effectiveness of the civil remedy.

● (1010)

I take the government at its word that it's seeking to protect the victim, but it is doing so in a way that will provide less effective protection for the victim. So I'm not questioning their legislative intent and their motives. I'm saying that we both agree that the overall import of the legislation is to give an effective civil remedy to victims of terror.

We are saying that the nature of the legislation as it now stands will unduly circumscribe that civil remedy by unnecessarily limiting the action that can be taken by arbitrarily investing in the government the discretion to choose against whom the civil remedy can be exercised, rather than vesting it in the victim, with the caveat that it should lie only against states with which we do not have an extradition treaty.

Thank you, Mr. Chairman.

The Chair: Would you clarify, Mr. Cotler? You indicated that you were speaking to a number of your amendments. Would you clarify for us what those—

● (1015)

Hon. Irwin Cotler: I'm really referring, Mr. Chairman, to the rest of my amendments.

The Chair: Amendments L-7 to L-13?

Hon. Irwin Cotler: It's referring to the amendment on page 5, the amendment on page 6, the amendment on page 7—

Mr. Jack Harris: It seems to be pages 5 and 6.

Hon. Irwin Cotler: Pages 5 and 6.

Ms. Françoise Boivin: Yes, pages 5 and 6.

Mr. Jack Harris: Amendments L-6, L-7, and L-8, it seems to me, Mr. Chair.

The Chair: You're talking about amendments L-6, L-7, and L-8.

Mr. Jack Harris: They're the only ones that refer to what he's talking about.

The Chair: Amendments L-6, L-7, and L-8.

Hon. Irwin Cotler: Sorry?

The Chair: Are you applying that to amendments L-6, L-7, and L-8?

Mr. Jack Harris: He said pages, not numbers. There's a confusion between amendments L-6, L-7, and L-8, and page 6, page 7, and page 8.

Mr. Robert Goguen: That will be fine.

The Chair: Except that amendment L-6 is on page 5.

Hon. Irwin Cotler: Mr. Chairman, the specific amendments that fall under the question of the executive discretion in the delineation of the list of state sponsors would be those that appear on page 5 and on page 6; those are the two, Mr. Chairman.

Ms. Françoise Boivin: So it's amendments L-6, L-7, and L-8.

Hon. Irwin Cotler: Yes.

The Chair: Okay, thank you.

So when we do vote, do you agree that we'll apply the vote to the three of them, Mr. Cotler?

Hon. Irwin Cotler: I'm sorry...?

The Chair: We need agreement that when we do vote, we're applying the vote to those three amendments.

Hon. Irwin Cotler: Those two, Mr. Chairman.

Mr. Robert Goguen: Six and seven?

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): And page 7, he's saying.

A voice: Yes, because that's clause 5—

The Chair: Maybe I haven't shortened the time at all; maybe I've extended it.

Mr. Jack Harris: Chair, on a point of order, those amendments are to different clauses, so it's kind of confusing procedurally. I think his argument applies, but I'd prefer that we vote on the amendments separately and then when we finish the proposed amendment to clause 5, we have a vote on clause 5. Otherwise it's rather confusing, as we can see.

The Chair: Okay.

Mr. Jack Harris: May I make a comment?

The Chair: Well, I have Mr. Goguen on the list first.

Mr. Robert Goguen: Only a detail to Mr. Cotler's comment. He was talking about the witness, Mr. Comras, as being a government witness. He did testify, but in fact he was an opposition witness. It doesn't take away from his testimony.

The Chair: Thank you.

Mr. Harris.

Hon. Irwin Cotler: I would like to clarify, if I may.

The Chair: I have Mr. Harris.

Mr. Jack Harris: Mr. Cotler can clarify later, I'm sure.

I agree with the point that was made. I want to make a general statement about clause 5 and about the whole notion of lists. My comments might apply to some of these amendments as we get to different provisions. My comments are on clause 5. In the context of the amendment, I agree with Mr. Cotler that if we're going to go down this road and open up a new tort, an international tort, this is something new and we should do it properly. A tort is a civil remedy for a wrong committed against an individual. The legislation and the courts facilitate this by defining it and making it possible to bring these actions.

By creating a government-nominated list that's going to be changed every two years, or reviewed every two years, of certain states against whom this remedy may apply, we have an anomaly contrary to the whole notion of creating a legal remedy for victims of terrorism. The notion, the principle, we agree with. We agree that individual victims of terrorism ought to have a remedy, and Canada can be a leader in making this possible. There are not many other states that do it. The experience of the U.S. was described to us. Whether it was a government witness or an opposition witness is irrelevant. The experience of the U.S. is useful, in that the one glaring example of the government removing states from the list is the case of Libya. One of the cases that gave rise to this whole notion of having an internationally based tort for terrorist acts was the Lockerbie bombing. Clearly, the Libyan government under Colonel Gadhafi was engaged in that, and even paid reparations at some point. Here is a case where the government of the United States removed Libya from the list at a certain point.

We're considering establishing a tort that's designed to have an effect on individual claimants as well as a normative effect. Maybe Professor Cotler can put on his law professor hat and recall the days of tort law. One of the purposes of tort law is to change the behaviour of people. You can sue people for negligent driving, and that's to encourage them to drive properly, or at least to get insurance. So it changes behaviour.

We're considering making it possible for states who sponsor terror to be condemned internationally. There will be an opportunity, at least in Canada, for people to pursue civil remedies against a country, or assets in other countries. It would curtail the ability of terrorists to operate internationally. If we can do that, then I think we should. It shouldn't be interfered with by diplomatic niceties. We have our reservations about whether or not it will work. That's one of the reasons we proposed the motion at the beginning of this session. There should be a review in three years, a comprehensive review of the effectiveness of this legislation. We ought to say that this is a remedy available to Canadians who are victims of state-supported terrorism. This is open-ended and it should not be interfered with. I don't think we need to go much further than that.

We saw how previous governments of Canada had different types of relationships, with Libya, for example. Over the last couple of decades, there were times when they were shunned and times when they were frankly embraced, literally and figuratively, despite the fact that this country was engaged through its leadership in support for international acts of terrorism.

● (1020)

So if there's going to be a remedy here, I think the remedy ought to be against any states whose governments actively engage in the support of terrorism, and we shouldn't leave them immune. If this is going to be an exception to the State Immunity Act, then it should be an exception that's available in a broad way.

This amendment goes some way to ameliorating the lists, so we would support this amendment. But I will say, and I'll save myself a second speech, when it comes to the vote on clause number 5, we will oppose that clause and we will oppose the clauses that engage clauses 6 and 7, which also deal with the list issue.

We are opposed to this idea of having only lists that can be changed from time to time. We think that if we're going down the road of creating an international tort for terrorist acts committed by states or sponsored agencies, then that should be open-ended and not dependent upon the whims of Canada's foreign policy at any particular time. It seems to me that if victims of terrorism are to be given a remedy, then they ought to be given a remedy through our courts and through our legal system and we should ensure that's available to anyone who is unfortunately in that circumstance.

The aim here, obviously, is to not only provide a civil remedy, but also to deter states from engaging in that as part of one of the consequences of providing for civil suits. So we will support this amendment and the others, but we will not support clause 5 as a whole because clause 5 is the clause that sets up and supports and contains provisions that relate to the idea of only listed entities being allowed as defendants in actions.

● (1025)

The Chair: Thank you, Mr. Harris.

Mr. Woodworth.

Mr. Stephen Woodworth: Thank you very much, Mr. Chair.

I am not certain whether I heard Mr. Cotler suggest that decisions to list or not list an organization would be made arbitrarily or on the basis of unnecessary considerations. I hope I didn't hear him say that. But I just want to make it clear that if anyone did feel that our government or any Canadian government's decision to list or not list would be made arbitrarily or unnecessarily, I would take issue with that.

I also want to say that I am no expert in this. I acknowledge that. But it seems to me that decisions to list or not list an organization as terrorist may engage interests other than simply the interests of compensation to victims. I will give a negative example I am aware of, and that is a decision that may need to be addressed to delist the MeK, which is an Iranian terrorist group currently resident in Camp Ashraf in Iraq. I have constituents who very much would not want the government to delist that group until that group gave transparent access to the residents of Camp Ashraf. That may have nothing to do with compensation or indeed even with terrorism, but it is a valid interest that I would hope a government would be able to take into account in making such decisions.

I just want to make the point that I don't think listing or delisting decisions are made arbitrarily or unnecessarily but they may be made on the basis of other interests and not only the interests of compensating victims, which I recognize are important, but are not necessarily the only factor.

Thank you.

The Chair: Thank you.

Having no other intervenors on our list, I call the vote on Liberal amendment 6.

Mr. Jack Harris: Record this, please.

The Chair: We will have a recorded vote, please, Clerk.

(Amendment negatived: nays 6; yeas 5)

The Chair: We're now at Liberal amendment 7.

Mr. Cotler, did you wish to speak to this?

● (1030)

Hon. Irwin Cotler: Mr. Chairman, the reference here refers to clause 6 of this legislation, and the amendment seeks to replace lines 39 to 42 on page 6 of the legislation with the following—

The Chair: Mr. Cotler, if you will, just a second. We're at your amendment number 7. We had some confusion a few minutes ago, which I probably created, but if you don't wish to discuss it any further, we can vote on it now.

Hon. Irwin Cotler: You're referring now to....

The Chair: Number 7.

Hon. Irwin Cotler: Number 7, correct.

Mr. Chairman, it states here that clause 5 be amended by adding the following after line 35 on page 6: “If a court of competent jurisdiction”—and again, we are vesting jurisdiction in the courts by reason of this legislation—“has determined that a foreign state that is set out on the list referred to in subsection (2) has supported terrorism...”. And that refers to the list as drawn up by the government.

I might just say, parenthetically, to the query from the parliamentary secretary that I don't impute to the government any sense of arbitrariness in the setting of that list. I'm worried about the consequences of that list—namely, the consequences that would limit the civil remedy. I don't question the government's good faith; I question only the effectiveness. That has been the purport of all my amendments here.

To continue, it said, "that foreign state is not immune from the jurisdiction of a court in any proceedings against it that relate to terrorist activity by the state, as defined in subsection 83.01(1) of the Criminal Code, on or after January 1, 1985."

I think it speaks for itself.

The Chair: Thank you.

Having no other intervenors, we'll call the vote on Liberal amendment 7.

(Amendment negatived)

Hon. Irwin Cotler: Mr. Chair, I want to note for the record that the government is voting against the remedy to be taken against the list they proposed, once again defeating the effectiveness of their own proposed amendment. This is a set of very anomalous situations, Mr. Chairman. We are seeking to give the victims more effective remedies, while supporting the legislation.

The Chair: I think if you wish, Mr. Cotler, you could ask for a recorded vote.

Hon. Irwin Cotler: Yes, I do ask for a recorded vote on this one.

The Chair: We already took the vote. I'm sorry.

Ms. Kerry-Lynne D. Findlay: No, we already took the vote, and this is further debate on a matter that's already been voted on.

Hon. Irwin Cotler: Fine.

The Chair: Now, shall clause 5 carry?

Mr. Jack Harris: Can we have a recorded vote?

The Chair: Absolutely.

(Clause 5 agreed to: yeas 6; nays 4)

The Chair: We now move to Liberal amendment—

Mr. Brian Jean: Chair, just a point of order, if I may.

The Chair: Sure.

Mr. Brian Jean: I just wanted to point out for the record, Mr. Chair, that we have 208 clauses; we've dealt with five clauses in almost two hours. By my calculation, it's going to take about 40 meetings to get this through. The House has specifically directed this committee to deal with this matter within 100 days of sitting. I think Canadians have had enough, or thereabouts.

The point is, Mr. Chair, if we're going to sit for 40 meetings to get through these clauses.... And I understand they're very important, but we've debated and debated this. We debated it in previous Parliaments. We've dealt with this matter intensely.

I just want all members to recognize that this is going to take 20 meetings to continue, which means 10 consecutive weeks. We will not have this matter done until March or April. So I would just like to direct all members' attention to this.

● (1035)

The Chair: Mr. Harris.

Mr. Jack Harris: Point of order, Mr. Chair.

I realize that your mathematics may be correct if we're looking at the first five clauses. But I will just point out that when we get to clause 10, I have a motion to in fact pass 25 clauses in one vote, if the committee so wishes. If you apply that logic to it, we should be finished by noon. I think it's very early in the game to be suggesting how many days or hours or years it's going to take to go through clause-by-clause. We haven't been sitting for 100 days since May 2. So there's lots of time to give this due and proper consideration.

We have a job to do here, on both sides of this table. I, for one, and our members here, intend to proceed to do that. If the government doesn't want to have proper consideration of this, they can move a motion of closure, as they did in the House, but we would oppose that strongly.

The Chair: Thank you.

I appreciate the interventions, but obviously the time in clause-by-clause is always the time it takes. We'll try to move along as quickly as we can, but that is the nature of it.

Mr. Cotler.

Hon. Irwin Cotler: Mr. Chairman, I just want to say that this first bill we have supported in principle. That is number one. Number two, this is precedent-setting legislation. Maybe the government doesn't realize the importance of the legislation they are themselves proposing. I find it actually strange that they would object to the kind of consideration we're giving to precedent-setting legislation, which purports, for the first time in Canadian legal history, to amend the State Immunity Act to give a civil remedy to victims of terror. That deserves, and the Canadian public I think would wish, that this committee would give it the informed consideration it warrants.

I might add, Mr. Chairman, that it has not been considered by this House before. It has been considered in the Senate. It has not been considered by this House before. And the amendments so proposed for the first time in this chamber, the amendments I've been proposing here today, are designed to improve the legislation for the purposes for which they seek to have it enacted.

The Chair: Thank you.

We'll go to Ms. Boivin.

[*Translation*]

Ms. Françoise Boivin: Yes, this part of the bill has never been reviewed clause by clause.

I did not feel that anyone here has tried to monopolize the discussion in any way whatsoever. This is being done in all intellectual honesty, at least on this side of the table, in order to improve the bill.

I take some issue with this attempt to make us swallow, as if it were just a question of math, 208 clauses over 109 pages dealing with nine fundamental pieces of legislation that are going to change our whole criminal justice system in a number of ways. It will take the time it is going to take, but at least we will be able to leave here saying that we did what we had to do to get the job done.

If my colleague opposite really feels that someone is trying to take up all the time and prevent matters from moving forward, we can talk about that later. I personally feel that the current discussions are very important and are worth pursuing by the committee.

[*English*]

The Chair: Thank you.

We are on clause 6 and Liberal amendment number 8.

Mr. Cotler.

Hon. Irwin Cotler: Thank you, Mr. Chairman,

The amendment is that clause 6 be amended by replacing the lines 39 to 42 on page 6 with the following:

> agency of a foreign state or in respect of proceedings that relate to a terrorist activity or the support of terrorism engaged in by a foreign state.

Again, Mr. Chairman, the purpose of this amendment is to seek to clarify and make more effective the remedy for the victim of terror against the foreign state, its sponsors, and its agencies in that regard.

● (1040)

The Chair: Thank you, Mr. Cotler.

Seeing no further intervenors, I call the vote on Liberal amendment number 8.

(Amendment negatived)

The Chair: Shall clause 6 carry?

Mr. Jack Harris: May I comment on clause 6?

We'd be opposing clause 6 for the reasons stated, because it incorporates the list of countries. The same would be applied to clause 7 and clause 9, so I don't need to repeat that. Without the necessity of a recorded vote, I want to let the record show that we're opposed to clauses 6, 7, and 9 because of the reference to the list in those clauses. We will support clause 8.

(Clause 6 agreed to)

The Chair: We're at clause 7 and Liberal amendment number 9.

Mr. Cotler.

(On clause 7)

Hon. Irwin Cotler: Mr. Chairman, I would move that clause 7 be amended by replacing lines 2 to 5 on page 7 with the following:

> used for a commercial activity, terrorist activity or the support of terrorism.

Again, Mr. Chairman, it is for the purposes of making the civil remedy more effective and for ensuring that the state sponsor of terrorism and their agencies are more effectively held liable, and to seek to implement the overall nature and purpose of this legislation on behalf of the victims of terror.

The Chair: Mr. Harris.

Mr. Jack Harris: We would support that amendment. That effectively removes the list of foreign states but provides that property used for a commercial activity, terrorist activity, or the support of terrorism would be subject to that particular section.

The Chair: Seeing no other intervenors, we'll call the vote on Liberal amendment number 9.

Mr. Jack Harris: It fails.

The Chair: The motion fails.

Mr. Brian Jean: Mr. Chair, I don't know if it was my vote that wasn't counted in that, but I raised my hand and I put it down for those in favour.

The Chair: Honestly, I didn't see it. The clerk didn't see it. Please keep your hand up if you're intending to vote.

Mr. Brian Jean: I'm sorry, Mr. Chair.

We're moving close, but certainly if that's the condition.... Was it my vote that was not counted?

(Amendment negatived)

The Chair: So the amendment fails, and we now have Liberal amendment number 10.

Hon. Irwin Cotler: Mr. Chairman, I move that clause 7 be amended by replacing lines 13 to 16 on page 7 with the following:

> rendered in any proceedings that relate to terrorist activity or the support of terrorism.

Again, the purpose of the amendment is to render more effective the civil remedy involved.

The Chair: Thank you.

Mr. Cotler, I understand there is a discrepancy between the English and the French.

● (1045)

Hon. Irwin Cotler: That is correct, Mr. Chairman. I understand there is a discrepancy between the English and the French.

The Chair: So were you moving the English amendment?

Hon. Irwin Cotler: Yes, Mr. Chairman.

The Chair: Thank you.

Those in favour of the amendment—the English version of the amendment.

Ms. Françoise Boivin: Amendment of the amendment.

(Amendment negatived)

(Clause 7 agreed to)

The Chair: Clause 7 is carried, and the committee is now out of time.

The meeting is adjourned.

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