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Chair

The Honourable Andrew Telegdi

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● (1535)

[*English*]

The Chair (Hon. Andrew Telegdi (Kitchener—Waterloo, Lib.)): For the purposes of this hearing, Ben started in the last one, and I'm hoping the people who are missing will show up before he gets to the point he was at.

Ben, you can begin. I look forward to your presentation.

Mr. Benjamin Dolin (Committee Researcher): Last week I briefly summarized the legal bases for the safe third country agreement found in the Immigration and Refugee Protection Act, sections 101 and 102. I mentioned the key international instruments, and then went through the agreement's provisions and highlighted the important sections of the Canadian regulations. As I mentioned, this committee did a study of the pre-published regulations at the end of 2002. I left off at the point of discussing the issues that were raised by witnesses in the course of that study.

One of the main focus points of groups critiquing the agreement was the American asylum system. Many of the witnesses questioned whether the United States was indeed a safe country for all asylum seekers. Specifically brought to the fore were the expedited removal process, American detention procedures, the one-year time limit to file a claim in the United States, and differences in the interpretation of the refugee definition in the American jurisprudence.

The expedited removal process came about in 1996, when the Illegal Immigration Reform and Immigrant Responsibility Act was passed. Upon a foreign national's arrival at a port of entry, this legislation authorizes an immigration officer to order the person removed without further hearing or review if the officer believes the person arrived without proper documents and is illegally in the country. If the foreign national without proper travel documents makes an asylum claim, he or she can still be removed from the U.S. if the asylum officer determines they do not have a "credible fear" of persecution. The act does permit an immigration judge to review a negative decision of the asylum officer, if requested by the claimant.

The witnesses the committee heard from expressed concerns about this process. They feared that claimants returned from Canada pursuant to the agreement would not necessarily be granted full hearings in the United States if they were undocumented. They could find themselves in the expedited removal process, which many witnesses, including the UNHCR, suggested does not provide adequate procedural guarantees against refiling.

The department officials who appeared countered that claimants who were returned by Canada to the United States would not fall into the expedited removal process, as it would only apply in American ports of entry, and claimants who were turned away at the Canadian border would already be in the United States. This was not the understanding of the UNHCR, which indicated in its brief submitted to the committee at the time that although U.S. government officials have stated they expect most persons returned from Canada would not be subject to expedited removal, this has not yet been confirmed.

The issue of detention was also discussed at some length. Most of the NGOs who appeared before the committee described what they viewed as an excessive use of detention by the American authorities. The conditions of detention were also questioned, and it was indicated that many refugee claimants in the United States, including minors, were held in facilities with criminals.

Department officials appearing before the committee indicated that while the U.S. may in practice detain more asylum seekers, in law their grounds for detention were the same as in Canada—i.e., if the person was a security risk unlikely to appear for a hearing for removal, or their identity had not been established.

Witnesses questioning the American application of the refugee definition made specific reference as well to the fact that gender-based claims were treated differently in Canada, particularly those based on domestic violence. In fact, in the regulatory impact analysis statement accompanying the pre-published regulations, the department conceded that Canada and the U.S. had different approaches in this regard.

All of this relates to a Board of Immigration Appeals decision in the United States in the matter of R-A- from 1999, where a restrictive view of the refugee convention ground of a particular social group led to the rejection of a claim based on domestic abuse. This decision was subsequently vacated by order of then Attorney General Janet Reno, and new regulations to guide decision-makers were being drafted at the time of the election. They were not completed before President Bush took office, and under his then Attorney General Ashcroft, guidelines were being worked on when we were reviewing the regulations in 2002, but to my knowledge, nothing has yet been issued.

Turning to the one-year time requirement for filing an asylum claim in the United States, many of the witnesses appearing before the committee argued that this bar could result in claimants who were returned from Canada under the agreement not having access to either asylum system—for example, if they came to Canada after having been in the United States for over a year as students or visitors. UNHCR in particular argued that there be an exemption in the Canadian regulations for such cases.

It should be noted, however, that the one-year bar is not absolute in the American jurisprudence. It is subject to override if claimants can show changed circumstances—for example, a student who has been in the U.S. for a year or more and now fears returning home after a recent military coup. There is also provision for allowing claims to proceed when there are other extraordinary circumstances relating to the delay in filing, such as serious illness, disability, or ineffective assistance of counsel.

There were some concerns that were not addressed by the committee in 2002 that have since come to light, one of which is the U.S.A. Patriot Act, which permits the indefinite detention of some foreign nationals, including asylum seekers. Who is detained is completely within the discretion of the Attorney General, who can make a designation that a person is an alien terrorist if the Attorney General has reasonable grounds to believe that the person falls into one of a list of specified categories, or more broadly is engaged in any other activity that endangers the national security of the United States.

Another serious issue that has arisen as the U.S. enhances its security measures is the allegation that the Central Intelligence Agency uses a practice called extraordinary renditions. In what would be a clear violation of the refugee convention and the convention against torture, American officials have reportedly admitted to knowingly deporting people to torture—according to the *Washington Post* anyway—and that they in effect torture by proxy to obtain intelligence.

● (1540)

Another aspect of the American asylum system that is discussed in the literature, and that sharply contrasts with Canadian refugee determination proceedings, is the lack of legal aid representation for asylum seekers in the United States, particularly those in detention. Statistics suggest that claimants in the U.S. are four to six times more likely to be successful when represented by counsel, but more than a third have no representation in immigration court. Worse still, those in detention are twice as likely to have no representation.

Those were the criticisms we heard about the American asylum system. Other concerns expressed include the fact that the agreement applies only to land border ports of entry. The fact that inland claims are not covered is due in part to lessons that have been learned from European experiences in implementing safe third country regimes. Some countries in Europe had to establish time-consuming and costly processes for inland claims. A lot of resources ended up going to procedures intended to determine the claimant's route to the country rather than actually determining their refugee claim itself.

We also heard evidence relating specifically to the German experience. In 1993 Germany enacted a safe third country rule that related to all nine countries with which it has land borders. No one who sought entry from one of those countries over land was allowed to enter and make a claim, without exception. Overnight, the number of asylum claims at the border dropped to zero. However, every year since then, approximately 100,000 people have applied for asylum in Germany. They all cross the borders illegally and apply inland.

Many of the witnesses the committee heard from feared that, as occurred in Germany, the agreement will lead people to enter the country surreptitiously. One witness even indicated that church groups would assist in this endeavour, setting up what they referred to as a modern underground railroad. Other witnesses pointed to human smugglers as likely beneficiaries of the agreement.

The committee was also told of the fairly orderly system that now exists at Canada's ports of entry, including the land border. All claimants are fingerprinted, photographed, and issued instructions for medical examinations. Of course, this will not occur if people avoid reporting to border posts.

Witnesses also addressed procedural and administrative issues relating to implementing the agreement, one of the key ones being the resource requirements.

The union we heard from, of course before the CBSA was formed, the immigration workers union, suggested that officers at the border would need to do more in-depth interviews with claimants to determine if they meet one of the exceptions in the regulations. As an increase in claims at inland offices and airports could be expected, more resources would be required there as well. The union officials also said that the expected increase in irregular migration would place more demands on the border enforcement agencies.

The committee also heard concerns about whether the proposed procedures would be fundamentally fair. Many witnesses referred to the burden of proof that asylum seekers would be required to meet, as the regulations indicate that claimants must establish that they are eligible to make their claim in Canada. This may be difficult for claimants who do not have legal counsel at the border, do not speak one of Canada's official languages, or who may require some time to provide the evidence necessary to show that they are exempt under the agreement and should be permitted to access Canada's refugee determination system, because once deemed ineligible, that's it. Section 101 of the Immigration and Refugee Protection Act says that once you've been determined ineligible to be referred to the IRB, you are forever ineligible.

● (1545)

One other item that came up in our study was the supplementary draft agreement, often referred to as the side deal. It was a diplomatic note accompanying the safe third country agreement based upon article 9 of the agreement. The side deal would permit the U.S. to refer up to 200 people per year to Canada for resettlement, provided they're outside the United States and Canada and have been determined by the Government of the United States and the Government of Canada to be in need of international protection.

The agreement itself clearly contemplates Canada being able to refer refugees to the United States for resettlement, but this supplementary draft agreement only refers to Canada's willingness to resettle American referrals. When discussing this matter, former Minister Coderre indicated before the committee that the United States had originally asked that Canada accept 2,400 referrals per year.

The department, when questioned about the agreement, gave assurances that any refugees referred by the United States would be subject to Canadian law, and would be screened by our officials prior to entry.

That is my summary of what we heard during our study in late 2002. We have a couple of minutes for questions.

● (1550)

The Chair: David.

Hon. David Anderson (Victoria, Lib.): I'm interested in the last point you raised, about the side agreement.

In other words, if we felt there was a problem with American determination with respect to a particular country, it would be quite possible for us to say, as I understand the general thrust of side agreements, that as we differ with you on country X, then prior to deporting anyone back to country X, we wish to, in the interest of the humanitarian and refugee principles we uphold, have that person or persons come to Canada, have their claim assessed by a Canadian board, and, if they succeed in persuading the appropriate authorities in Canada that they are in fact refugees and are in fact in danger of persecution, we could then hold such people in Canada.

Given what you've said about the side agreement, it would seem there's nothing that would prevent us from a similar side agreement with the United States, which would remove the concern over certain countries as potential countries to which people might be deported from the United States, by in turn having them pass through Canada for determination before any deportation took place.

Mr. Benjamin Dolin: In the side agreement, the only issue that would arise in respect to your question is that resettlement would be allowed provided they are outside the United States and Canada, as defined in their respective national immigration laws.

Hon. David Anderson: Sure, but that's a detail. There's nothing to stop us from telling the Americans to send them directly, we'll deal with them; if we find they're not refugees, we'll deport them back to country X. If we find they are, even though the Americans didn't, we'll hold them in Canada.

There's nothing to stop that, is there?

Mr. Benjamin Dolin: There's nothing to stop that, but under the terms of this agreement.... That could certainly be done outside the context of this diplomatic note. The diplomatic note does say that they have to be determined by the Government of the United States and the Government of Canada to be in need of international protection.

Hon. David Anderson: But again, the issue we really face, with respect to a third country and the United States, is the fact that in some areas, which you've described very well—congratulations, and thank you—we and the United States have differing views. In those specific areas, we could cherry-pick and treat those areas separately in Canada prior to any deportation to an unsafe home country of the person concerned.

Mr. Benjamin Dolin: That would be possible. There is the provision that the Minister of Citizenship and Immigration may examine any claim that they desire in the regulations. Some witnesses brought up past U.S. recognition rates with respect to certain South American countries, where Canada had 90% acceptance rates and the U.S. was refusing all refugees from certain Central American countries, and Chile at one point. The problem they were pointing out before the committee was that when these people do arrive at the border, they will be turned back, unless there is an official government policy otherwise.

● (1555)

Hon. David Anderson: Mr. Chairman, I would simply, if I could, comment a little more broadly. I don't think it will be a question, but I'll see when I get to the end of my comment.

Chile's a good example in the past where this has occurred, and the figures of 90 on the one side and 10 on the other are adequate enough for the purposes of discussion.

If we are concerned that people, regardless of what country they happen to have their feet placed on at a certain moment in time, could be persecuted were they returned to Chile, why on earth won't Canada, in the interests of protecting human rights on a global scale, have those people leave the United States, come to Canada, and be resettled here?

It seems to me that we keep worrying about procedural detail and we lose sight of broad principle. The principle of refugee protection is to protect people who otherwise might be sent back. Really, we can take no comfort and satisfaction if we stand by when some other country sends them back to a country in which they might be persecuted.

It seems to me we should be more active in seeking them out if we think that other countries are making mistakes in sending them back to countries in which we believe they would be in danger.

My suggestion is we explore this option so that we can, in fact, be a little more specific in what we do and have the uncertain hand of fate, chance, and capricious events be less of a problem for people who would be likely to suffer persecution were they returned.

The Chair: Thank you.

Lynne.

Mrs. Lynne Yelich (Blackstrap, CPC): In regard to one of your comments about the children being put in the same place as criminals, was this in our detention centres or was this in the United States?

Mr. Benjamin Dolin: Witnesses were speaking of the American detention of asylum seekers, yes.

Mrs. Lynne Yelich: Okay. I didn't catch that.

Because I'm just sitting in today, I wondered how far this agreement.... You're still in the study phase?

Mr. Benjamin Dolin: No. It's coming into effect December 29.

Mrs. Lynne Yelich: So who is in agreement, then? What are some of the positives? So far the witnesses all have many negative comments. I just wondered if there were any positive comments.

Mr. Benjamin Dolin: When we did the study the witnesses who came forward, for the most part, had serious concerns about the agreement in terms of refugee protection.

The department clearly stated that the benefits of the agreement would be that you would not have asylum shopping between the two countries; you would not have multiple claims, somebody claiming in the U.S. and Canada; and you would reduce the cross-border flow.

Last week when I began my briefing—it was cut short, unfortunately—I gave some of the numbers. The estimates were that anywhere from 10,000 to 15,000 people are currently making claims at land border ports of entry coming into Canada; maybe 100 or 200 are going the other way.

Clearly, there's a great benefit that could occur if the agreement works as planned and you don't end up with too much surreptitious entry into Canada.

Mrs. Lynne Yelich: Thank you.

The Chair: Thank you very much.

It's time for you to come back here. We are now going to hear from the department, the Canada Border Services Agency, and the United Nations.

We're going to have an interesting panel. Let's assemble.

We'll have a two-minute recess.

● (1559)

(Pause)

● (1603)

The Chair: We're going to start off with presentations. Monsieur Jean, you'll be starting off, and then we'll go into border security with Madame Deschênes.

[*Translation*]

Mr. Daniel Jean (Assistant Deputy Minister, Policy and Program Development, Department of Citizenship and Immigration): Thank you very much, Mr. Chairman.

I'm going to rapidly describe the agreement itself, the follow-up process, and the relationship we are setting up with the United Nations High Commission for Refugees to implement that follow-up.

Claudette Deschênes, from the Canada Border Services Agency, will discuss the proposed implementation measures. A few officials from Citizenship and Immigration Canada, or CIC, are also present in the hall. Bruce Scoffield and Luke Morton both took part in drafting the agreement with the Americans. With Claudette there is Randy Jordan, who works on implementation at entry points.

After several years of negotiations and planning, CIC and the Canada Border Services Agency welcome the upcoming implementation of the Canada-US Safe Third Agreement.

CIC and CBSA thank the standing committee for its support throughout this process. You will recall that in 2002, the standing committee offered several valuable suggestions which have been incorporated into the final agreement.

We also appreciate the vital role played by UNHCR and other partners and stakeholders in reaching a final agreement that balances Canada's international commitment to protection with our need to better manage access to our asylum system.

UNHCR has advised that agreements between States can enhance refugee protection by ensuring that asylum applications are handled in an orderly way and through promoting the principle of burden sharing.

The Canada-US Safe Third Agreement successfully incorporates these principles. The agreement acknowledges the international legal obligations of the Government of Canada and the Government of the United States under the principle of non-refoulement outlined in the 1951 Convention and its 1967 Protocol, as well as the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the Convention Against Torture.

Canada and the US are committed to safeguarding access to a full and fair refugee status determination procedure for each eligible refugee claimant on its territory. This commitment is clearly reflected in the Safe Third Agreement.

On page 4, one reads that article 8(3) of the Safe Third Agreement provides that Canada and the US will invite UNHCR to participate in the annual review of the agreement and its implementation.

I might point out that in the French translation of the document there is an error which we corrected by hand. In the English version it says “biennial”, or, every two years. Unfortunately, there is a translation error which was not caught before our appearance. For the discussions, there will of course be a review every two years, or more frequently if required.

Section 102(3) of the Immigration and Refugee Protection Act stipulates that the minister must report to the Governor in Council on all countries designated under the Safe Third provisions established in 102(1)(*a*) not less than every two years or more often if required. If we were to examine a provision in an American bill, this could be done more often than every two years.

With respect to public interest the regulations identified two groups where the use of discretion is warranted in the public interest: capital punishment and temporary suspension of removals. The minister may also issue guidelines should further public interest issues be identified.

Page 5 discusses the role of the United Nations High Commission for Refugees. I am happy that you have invited to appear before you today the permanent representative in Canada of this High Commission.

In drafting the Safe Third Agreement, both Canada and the US were firmly committed to establishing a robust monitoring role for UNHCR. This role has been clearly defined in the final agreement and will provide UNHCR with access to ports of entry, detention centres and asylum seekers, allowing them to produce a comprehensive annual report.

Several of the points in the transparency on page 5 are points the standing committee had identified in its 2002 report. I must also thank the non-governmental organizations for their excellent cooperation in preparing the implementation of this agreement, the follow-up that will be done and the information they may provide to the High Commission with regard to that follow-up.

● (1605)

[*English*]

The recently passed U.S. 9/11 commission bill offers an example of the importance of reporting. We followed very closely what was happening in the U.S. Congress. This bill was the subject of intense debate and it generated concerns in Canada due to the proposed inclusion of tougher asylum provisions. These provisions were dropped from the final version of the bill. CIC will continue monitoring the implementation of the 9/11 commission bill. That's one example of where we said we're not going to stop looking at it every two years. If there were a punctual need to review because something is happening legislatively in the United States, of course we would be paying attention.

I'll move to page 7. As you know, the definition of family relationship, which can create an exception under the agreement, is broader than the one on family class. It's because we're not granting status; we're using that as an anchor so as not to return the person to the first country of asylum. Somebody arriving in Canada who has a family member in Canada will be entitled to their protection hearing for reunification in Canada, and we've chosen an anchor that is broader than normal family class because we're not granting status. We're using that as an anchor to provide access to protection. In order to be considered an anchor relative, an individual must hold a specified legal status.

We're on page 8. CIC is committed to ensuring that the particular needs of people making gender-based asylum claims are taken into consideration through ongoing monitoring in the annual review of the agreement. This was an issue that was raised also at the time by the standing committee. CIC commissioned a report on gender-based asylum claims by Professor David A. Martin, which we will share with you, that looks at the issues of gender-based and other protection issues in terms of U.S. policies.

I'd like now to invite Claudette to talk about what is being done in terms of preparing the implementation of the agreement.

● (1610)

Ms. Claudette Deschênes (Vice-President, Enforcement Branch, Canada Border Services Agency): A comprehensive manual has been prepared to ensure that our staff are fully trained on their responsibilities and accountabilities under the safe third country agreement. We are presently training staff at the ports of entry. Training is ongoing, but this afternoon we spoke to all the regional directors general to make sure, and we have their commitment that staff will be fully trained and aware of all the procedures for implementation. There has been an updating of the immigration database so we can statistically monitor the agreement, which I think is quite important in terms of the success.

The port of entry "direct back" policy, which has been in place now for a long period of time, is also there to be used when claim volumes are too large to deal with. Any case that arrives before implementation may be directed back to the United States, but the claimant will be brought back to Canada for an interview and dealt with under the old procedures. No one who arrives at a port of entry before the implementation will be dealt with under the new rule. They will all be dealt with under the old rule, although they may be processed in January, for example.

The UNHCR is working on a monitoring plan, to be finalized this week, and that includes our detention facilities; we are working with them and CIC.

We are also working with the Province of Ontario in terms of pre-implementation volumes to ensure that if there is a spike in volumes, refugees will have the care they need on arrival in Canada.

So generally, I think I can firmly say to you that we have all the training in place and will be ready to implement it to ensure that the protections under this safe third country agreement are rendered to the applicants.

The Chair: Thank you.

Monsieur Assadi.

Mr. Jahanshah Assadi (Representative in Canada, United Nations High Commissioner for Refugees): Mr. Chairman and honourable members of the committee, thank you for inviting UNHCR to appear before this committee to discuss the safe third country agreement between Canada and the United States.

I would like to introduce my colleague, Mr. Buti Kale, senior protection officer, who joins me here today.

This is my first appearance before this committee. However, UNHCR has regularly appeared before previous committees. The last time was in November 2002, when we participated at a round table meeting on the safe third country regulations. There have been a number of developments since then, most notably the fact that the agreement is likely to come into effect at the end of this month.

UNHCR recognizes as positive the ultimate objective of the Canada-U.S. safe third country agreement, which is to ensure an appropriate allocation of state responsibility for determining refugee status. UNHCR shares the concern of states, including Canada and the U.S., with respect to avoiding situations where responsibilities in this regard are undetermined and hence not assumed, often leading to so-called orbit situations for the concerned individuals.

As you know, UNHCR is vested by the international community with a mandate to protect refugees and to find solutions to refugee problems. In North America, as is the case elsewhere in the world, UNHCR exercises a supervisory responsibility, which entails ensuring that Canadian and U.S. practices are in conformity with the refugee standards and principles enshrined in the 1951 UN convention relating to the status of refugees. This requires close collaboration between UNHCR and the two government authorities, as provided for under article 35 of the 1951 convention.

This being said, Canada and the United States have well-developed and mature asylum systems. A significant number of people seek and receive asylum in both countries every year. We are pleased to highlight that Canada and the U.S. acknowledge in the preamble of the agreement "...the international...obligations of the Parties under the principle of non-refoulement" set forth in the 1951 convention and its 1967 protocol and the 1984 Convention against Torture.

The principle of non-refoulement can only be safeguarded when access to a full and fair refugee status determination procedure is guaranteed for claimants who fall within the purview of the agreement. The parties are aware of this important requirement and have stated such under the preamble of the agreement. Also, the parties reaffirm "their mutual obligations to promote and protect human rights and fundamental freedoms".

Mr. Chairman, the United States government and the Canadian government have consulted UNHCR in the drafting of the agreement and its accompanying regulations as well as standard operating procedures in a transparent and constructive manner. While not all of UNHCR's recommendations were eventually incorporated into the agreement, it is noteworthy that the agreement reflects key safeguards suggested by UNHCR and other stakeholders.

These safeguards include, first, ensuring that chain deportations do not take place—in other words, that removals from one country to the next without a chance of having a refugee claim examined do not occur; second, taking into consideration the importance of family unity by expanding the exceptions for refugee claimants with family in the country of destination; third, ensuring that information exchanges do not jeopardize the safety of claimants and/or their families in the country of origin; fourth, discretion to admit to their territories on account of the public interest persons who would otherwise have been required to return to the country of last presence; and fifth, a provision calling for both countries to cooperate with UNHCR in the monitoring of this agreement with input from non-governmental organizations.

● (1615)

Mr. Chairman, UNHCR welcomes the invitation extended by the parties under article 8.3 of the agreement to have UNHCR participate in the monitoring and the review of the implementation of the agreement, with input received from NGOs. UNHCR intends to work closely with the two governments to ensure that the agreement is implemented fairly and is consistent with the terms and principles of the agreement, as well as with international refugee law. To this end, in June 2004, UNHCR submitted a monitoring plan to the Canadian and U.S. governments.

The proposed monitoring plan was discussed in a tripartite meeting in Washington, D.C., on August 6 of this year and is expected to be signed soon. Furthermore, a quadripartite meeting involving the parties, UNHCR, and Canadian and U.S. NGOs will be held on December 16 at Niagara Falls, Ontario, aimed at exchanging information between the two parties before the entry into force of the agreement, which is scheduled for December 29.

I wish to stress that given the seriousness of the monitoring responsibility, UNHCR intends to exercise great diligence in promptly, consistently, and regularly discussing any emergent issues with the Canadian and U.S. authorities. In this respect we are pleased that UNHCR in Canada and the Department of Citizenship and Immigration have already established a working group on the safe third country agreement in order to pre-empt and resolve any problems that may arise in the implementation of the agreement. We would like to thank Canada for playing a key role in facilitating the consultation process throughout the drafting process of the agreement, its accompanying regulations, and standard operating procedures.

Finally, UNHCR recognizes that in addition to clear policy guidance by both parties, the smooth implementation of this agreement will to a large degree depend on adequate training and staffing of both officers and interpreters at land border entry points. We have urged Canada and the United States to devote the necessary resources to ensuring that preparations are in place well ahead of the agreement coming into effect, in the event of a possible rush to the border. Moreover, UNHCR remains committed to contributing to the governments' training and orientation activities in the implementation phase of this agreement as well.

Thank you again for this opportunity to present UNHCR's views. Thank you, Mr. Chairman.

● (1620)

The Chair: Thank you very much for the presentations.

I'm going to go to Helena.

Ms. Helena Guergis (Simcoe—Grey, CPC): Thanks.

Thanks very much for being here.

I have a couple of questions. With Christmas coming up, do you foresee any problems with getting staff at the borders up to speed? Was the December 29 implementation date set unilaterally by the U.S.?

Mr. Daniel Jean: In the U.S. regulations there was a statutory requirement that implementation could not take place in less than 30 days. There was a minimum implementation date. It was agreed between the parties that December 29 would be the implementation date. It was made public via the U.S. regulations, which were published a little later than the Canadian regulations, and we also made it public after that in Canada.

As far as making sure we're ready and all that, beyond the training we've done with our officers, we will have officers on call to deal with the administrative matters that may arise. In this context, the agency would be dealing with that. If there are issues related to the interpretation of policy, we have policy officers on call to be able to help during the implementation.

Both the United States and Canada are committed to making sure this implementation process is as smooth as possible.

Ms. Helena Guergis: If we weren't up to speed, could the implementation be delayed if it was necessary?

Mr. Daniel Jean: We're satisfied at this stage that we have everything in place to be able to implement.

Ms. Helena Guergis: Has there been any planning regarding increased resources to combat the expected increase in people-smuggling?

Mr. Daniel Jean: I think the first thing we need to realize—and Claudette can add to this—is that already 50% of the asylum claims in Canada are now done inland. In the recent years, with the statistics we've shared with the committee—and we'll be glad to update you with the statistics if you want—there's been a major shift from claims by asylum claimants, refugee claimants, from traditionally what was port of entry or airports to land port of entry, and more and more inlands. Now more than 50% of the claims are made inland.

Claudette will speak to the smuggling question.

Ms. Claudette Deschênes: With the creation of the agency, this is certainly something we were starting to work on regardless. I don't think we would tie it to the safe third country agreement. There's work that's ongoing, with the RCMP and with the justice department and so on, on smuggling patterns, and we continue to monitor that. Certainly the integrated border enforcement teams that we have, both with the Americans and the RCMP as the lead, work very much on those issues already.

Ms. Helena Guergis: How was Professor Martin chosen by the CIC to prepare the legal opinion, and are his views consistent with those of other legal analysts?

Mr. Daniel Jean: We needed somebody who had the expertise to talk about the U.S. refugee system, somebody who could make comparisons in terms of international refugee protection issues for both Canada and other countries.

If you had the benefit of serving five years in Washington, where I've seen most of the experts in this field, and if you were to ask anybody there for three names of the most balanced experts who could talk about a subject like this one, I would say that the name of David Martin would come up in conversation nine times out of ten. He is a very well-regarded international scholar. He understand the U.S. system very well; he understands the Canadian system very well. He has a strong background. He's a professor at the University of Virginia.

● (1625)

[*Translation*]

The Vice-Chair (Ms. Meili Faille (Vaudreuil-Soulanges, BQ)): Mr. Clavet.

Mr. Roger Clavet (Louis-Hébert, BQ): Thank you, Madam Chair. It is always interesting to note the concerns expressed on various occasions by different organizations and political parties. The Canadian Council for Refugees no later than last December 1 expressed its reservations on the Safe Third Agreement. According to that council, this may encourage increased clandestine immigration, ie non-traditional, irregular ways of crossing borders. That same concern had been expressed earlier by this committee in 2002 with regard the safe third country regulations. The report of the Standing Committee on Citizenship and Immigration expressed that concern and asked whether there was a possibility of cancelling the agreement after one year or at some point to assess the number, the frequency and the incidence of these clandestine immigration attempts. That was a request made by the committee.

Has this been taken into account and corrected so that after a certain period of time has elapsed, perhaps one year, things could be reassessed and it would be possible to cancel the agreement should there be such an increase in the incidence of clandestine immigration? The report even asked for figures concerning the number of cases wherein immigrants are killed or injured when attempting to enter Canada illegally.

To summarize my question, have any protection or resiliation mechanisms been provided for, should we discover, as several fear, for instance, that the agreement leads to an increase in clandestine immigration?

Mr. Daniel Jean: The first thing is to really use current tendencies as a starting point, as I said earlier. The agreement only covers claims that will be made at entry points.

If you look at the statistics we shared with the standing committee over the past few years, there are fewer and fewer claims at entry points.

This is a speculative matter. Increasingly, the tendency is that claims are being made from within Canada. Some are made because people did enter surreptitiously; others because people come with a certain status and after having lost it they make a claim while they are here in Canada.

As we do for any agreement, any tool we put in place, we will assess the results and see whether there are any important concerns. Now, since a protection hearing is guaranteed by the system in one of the two most generous systems in the world, it would be difficult to understand why anyone would jeopardize his or her life to do that.

We wonder about that, because these are two neighbouring countries whose systems are among the most generous in the world. So we have to hope that we won't see this type of behaviour. Indeed, I am reassured to some extent to see that government organizations encourage people to be very responsible in those contexts.

Naturally there will be regular reports. If particular concerns are raised we will examine them. Will this require adjustments? Will it require measures that go further? It will be up to the minister and the department to decide when the time comes, and up to the two partners to see what needs to be done.

The Vice-Chair (Ms. Meili Faille): Mr. Siksay.

[*English*]

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, Madam Chair.

I have a couple of questions, and I want to thank the witnesses for being here again. We're getting to know you folks really well. Thanks as well to the folks from the UNHCR.

Mr. Assadi mentioned in his remarks that the monitoring plan has not yet been signed and is still under negotiation. I wonder if folks could expand on that, where it's at and when it's expected to be done.

● (1630)

Mr. Jahanshah Assadi: Thank you very much for the kind words of welcome, Mr. Siksay.

The monitoring plan, as I said in my statement, was submitted to the two governments in June of this year. We had consultations throughout the summer. Eventually we met in Washington, D.C., on August 6 to have, if you will, conclusive discussions. We had an excellent meeting in Washington. We had a number of things that needed further discussion, which were discussed in the subsequent months. I'm pleased that we now have, essentially, a final text ready for signature.

The monitoring agreement will be the subject of an exchange of letters between the two parties and UNHCR, and that will of course take a little bit of time in order for the necessary preparations to be completed for the exchange of letters. But essentially, the monitoring plan as such is final and agreed to by all three parties.

Mr. Bill Siksay: But we won't have a signed monitoring agreement in place before the implementation on December 29.

Mr. Jahanshah Assadi: No, it is our expectation that before December 29 the plan will be signed and finalized in every respect. Right now, it's effectively final, but it will be indeed final once it's signed, and that should take place before December 29.

Mr. Bill Siksay: I just have a question about whether there's been any indication of a rush to the border happening. Has there been any increase in the traffic in recent days or weeks?

Mr. Daniel Jean: First of all, since November 29, which was the date that it became public that the agreement would be applicable within 30 days, there have been no asylum claims east of Quebec or west of Ontario.

There are some small increases of refugee claims at Lacolle in Quebec. It used to get about three to four claims a day; it's getting on average about six a day right now. I'm talking about when we take the numbers per day and divide by the number of days, so don't quote me for a given day, but on average it's been six.

In the southern Ontario ports of entry, Fort Erie and Niagara, there is a small increase as well. There are no substantial increases, only 10% at Windsor. And even in Niagara or Lacolle, these increases are not even close to what we experienced about two years ago when the agreement was signed, and some people were under the misconception that it was going to be implemented right away. And they are not even close to the movement we had from Pakistani claimants about a year ago when they were under the impression that the United States, through its registration system, was going to implement tighter enforcement against them.

Mr. Bill Siksay: Do you have a statistic on the increase at Fort Erie and Niagara?

Mr. Daniel Jean: What I have as a stat is that on November 29—they use an appointment system there—they had at that time a caseload of 100 in their appointment system. As of yesterday they had 240 in their appointment system, so the increase in the course of several days at these ports of entry has been about 140.

Mr. Bill Siksay: Madame Deschênes, you said you had checked in with the regional directors general and that everybody will be fully trained by December 29. I take it that means the training hasn't happened yet. I wonder if you can tell me what is involved in the training, how many people will be getting it, how long it goes on for, and that kind of thing.

Ms. Claudette Deschênes: It's one day of training. Some training has already occurred in some regions, in some it was occurring today, and in others it will occur over the next week or ten days. We expect that the officers who have a specific responsibility for refugee processing will all be trained by December 29.

Mr. Bill Siksay: Is that a normal timeframe in training? Two weeks doesn't seem like a long time away to implement a new policy like this. Is that the normal timeframe for training?

● (1635)

Ms. Claudette Deschênes: I would say it's pretty much normal.

Mr. Bill Siksay: One of the things the standing committee raised in its safe third country report was a concern about staffing levels at some land entry points, where there weren't always two people on duty all the time. I know the agreement talks about having access to two people in respect to a decision-making process. I think you mentioned something about how that was going to be covered off, but I wonder if you could go over how exactly it's going to take place where there aren't two people on duty at the time the people approach.

Ms. Claudette Deschênes: If there are not two people at the moment the person approaches, that person will probably be asked to wait in the waiting room until we get a second person in there. But there are also mechanisms to call back an employee to come and do what needs to be done. Of course, the decisions don't have to be taken immediately. We have a period of time within which they have to be done.

The other thing that's occurring right now is we're monitoring and we'll be having regular teleconferences with the regional DGs and the program officers responsible for these programs to ensure that we understand what the concerns are. And we're setting up, as Daniel has indicated, contact names so that in an emergency we can get the policy advice we need.

Rght now, not all the ports get refugee claimants, so it may be that as we see the movement progress we may want to move from some offices into other offices, to cover off for the period of time.

Mr. Bill Siksay: Does the review by the two officers have to be an in-person review? If they come to a station where there is only one person on duty, can it happen by telephone, or does it happen in some other way, or does it have to be an in-person meeting?

Ms. Claudette Deschênes: I think I'll defer to Bruce Scoffield in terms of functional guidance on that.

Mr. Bruce Scoffield (Director, Policy Development and International Protection, Refugees Branch, Department of Citizenship and Immigration): Good afternoon. My name is Bruce Scoffield. I am director of policy development at CIC.

The question, I believe, was whether the interview for a decision under this agreement was an interview in person.

The agreement will be implemented as part of an existing process, which is for the admissibility and eligibility determinations that are made under the Immigration Act. This is a two-part process. First of all, there's an interview with an examining officer at the ports of entry, who prepares a report. That report is then reviewed by a more senior officer, a minister's delegate, who would then, where there were questions relating to eligibility, give the applicant an opportunity to hear those concerns or questions and rebut them if possible and would then make a decision and inform the applicant of that decision.

So there is an in-person process in every case.

Mr. Bill Siksay: Would the second person involved, the senior officer, still meet the person in person as well?

Mr. Bruce Scofield: That's correct.

Mr. Daniel Jean: It's the same process that currently exists when we make an eligibility decision at the port of entry. It's just that we're expanding.

The Chair: Thank you very much. We ran a little over there.

Mr. David Anderson.

Hon. David Anderson: Thank you for coming today. It's certainly appreciated, and the information is very helpful to us.

The major concern with respect to this agreement is of course the possibility of differing approaches by the United States and Canada toward refugee claimants and thus application of the system with this new agreement in a manner that would result in people being deported back to their home country in numbers different from what would otherwise be the case.

We had earlier comments by a previous witnesses, which you may have heard if you were sitting in the room at the time, that in the case of Chile some years ago, 90% of the claims were accepted in Canada and about 90% of the claims were rejected in the United States. This I will use for purpose of example.

For what countries today do we have similar basic differences with the United States in terms of results of the immigration processes used in each country? Where do we have substantial differences in the statistics with respect to certain countries, and is there anything you can offer in the way of comment as to why those statistics might be different?

● (1640)

Mr. Daniel Jean: I could certainly try to see for the benefit of the committee whether we could table acceptance rates per country for both Canada and the United States. I know it's always more difficult for the United States because they have several levels. An asylum officer can only say yes, and after that they have a process through an immigration judge and then the Board of Immigration Appeals.

That would be a much more accurate way of answering your question. What I can tell you in relation to your question is you certainly do not have the kind of picture that was described in the mid-eighties, where you have an acceptance rate that is very high in one country and, for the same country of origin, very low in the other.

There are differences, and cases where the differences are a bit higher or a bit lower than in others, but the essential issue is that both countries have very generous protection systems and meet their international obligations.

Hon. David Anderson: We can assume, then, before your more detailed statistics come—and thank you for that offer—that there are not major discrepancies with respect to any particular country at the present time.

Mr. Daniel Jean: Certainly not of the magnitude you described, saying one country would be at 5% and the other would be at 90%.

Hon. David Anderson: Okay. Would there be cases where the rate is perhaps double, or half?

Mr. Daniel Jean: I would much rather try to table, as I said. From a U.S. perspective, it's going to be a little bit tricky.

Hon. David Anderson: I understand that. Thank you.

The issue you also raised in your response a moment ago concerns the several levels in the United States. Can you give us some information about the process in the States and whether it delivers results in a similar timeframe to that in Canada and whether they have procedural differences that lead to either a superior system in terms of efficiency or to something less adequate?

Mr. Daniel Jean: The document by Professor Martin that we are sharing with you, and we could also share other documents, describes the U.S. system. In the U.S. system, normally the first-level review is done by asylum officers. In an affirmative way you can accept people, and after that, usually the claim is examined by immigration judges, who are a bit like our adjudicators.Then there is also the possibility for people who want to appeal to go to the Board of Immigration Appeals.

There was a 1996 reform that tried to speed up the refugee examination system. It was fairly efficient in terms of making the first legs of the process faster—the asylum officer part of it and the immigration judge part of it—but they certainly are having the same challenge that all developed countries have in bringing finality, post-determination.

Hon. David Anderson: Thank you.

I had looked at the paper by Professor Martin, and the questions spring from the paper. I think we would appreciate a more direct comparison of the two systems, because we are being asked on frequent occasions, for example, to have the appeal level implemented, and I wonder whether those new asylum officers in the United States have been an improvement that is worthy of consideration in Canada, or whether in fact it is similar to the Canadian first-line determination.

Mr. Daniel Jean: The heart of the 1996 reform in the U.S. was both to inject resources to speed up the determination and to.... You need to remember that it was done in the context right after the World Trade Center bombing, number one, and with several boats arriving in the United States, in particular the *Golden Venture* arriving in Manhattan, there was a political context that led to this reform.

In the context of that reform, there was an agreement reached that asylum claimants would not have access to working benefits until either they were approved or six months had passed, which basically meant that upon arrival, asylum claimants did not have access to benefits. It was used a bit to try to create disincentives for people who were using the refugee system but were really looking for a migration outcome. That's what helped them control some of the intake, and by the injection of the resources they had, they were able to meet the six months fairly rapidly in terms of the asylum officers and the immigration judges.

Where they struggled, as most other countries have struggled, if you make a factual comparison, is in what happens after you've had a negative decision—the ability to be able to translate that into the actual outcome at the end and create some deterrence to protect the integrity of your system. Most developed countries struggle with this.

● (1645)

The Chair: Thank you very much. That was perfectly on time.

Ms. Guergis.

Ms. Helena Guergis: I have in my hands here—and forgive me, because I still am a new member—a December 2002 report of the Standing Committee on Citizenship and Immigration. I'm looking at page 8. It talks about gender-based asylum claims, and it makes a recommendation:

> The Committee recommends that until such time as the American regulations regarding gender-based persecution are consistent with Canadian practice, women claiming refugee status on the basis that they are victims of domestic violence be listed as an exempt category under section 159.6 of the proposed regulations.

I'm wondering if you could give me some information about this and tell me where we are now.

Mr. Daniel Jean: This is precisely why we decided to commission a report by an expert to give an independent assessment of whether or not the U.S. system was consistent on a gender basis. The report is that it is.

I can tell you that I was actually serving in the States when the U. S. adopted their own gender guidelines to deal with refugee claims. They used extensively the Canadian ones as a model, because Canada was the first country to put them out.

Also, as we said, in the context of the monitoring we're going to do of the agreement and the monitoring we're going to do of the U.S. system and how it complies with sections of IRPA when it deals with safe country agreements, we are committed to continue to monitor any policy development in the U.S. that could put that into question.

The Chair: Madam Fry.

Hon. Hedy Fry (Vancouver Centre, Lib.): I want to ask several questions, one following up on David Anderson's question and another one about gender.

David, from some of the things I have seen, I think I agree with you that the United States and the United Kingdom have roughly the same refugee acceptance process or figures that we have. However, as has happened in the past, if the United States does not have the same kinds of relationships that we have with countries, as Canada, nor admit to certain countries having due refugee claims as we may have had, then there may be a time that will arise when the two countries will differ very much in terms of the places from which we see refugees coming. That is just based on past history. What are we going to do about that, if it ever arises? That's the first question.

The second question has to do with gender. I read your analysis, and I must say, having been minister of state for women's equality and having been to the United Nations for seven years in a row on this issue, that signing on to an agreement with regard to gender equality does not mean that you agree to gender equality. In the past, I have noted that the United States has not had the same attitude toward what we consider to be gender persecution. Rape is obvious; no one can ever, in all good conscience, suggest that rape is not a cause for gender persecution, or that we would not allow refugees in based on rape. But I do think that issues such as domestic violence and issues where women's rights have been so denied in certain countries where women are not treated as equals.... We have seen that fit in Canada. I may be corrected by the United Nations, but I think we are the only country in some instances that recognizes inequality of women in certain countries to be a real cause for refugee status.

This concerns me more than anything else, the disparity between the two countries in terms of what we consider to be equality. One might note that the United States has not even adopted an equal rights amendment for women in its constitution.

We have some concerns, especially with regard to women, and especially with regard to things like honour killings and countries where women or young girls have been forced into marriage, and with certain areas that we in Canada would consider as gross inequities to the rights of women.

I have concerns about that. I don't know whether you have the same concerns, or whether you would agree with me, or whether you think there's recourse.

● (1650)

Mr. Daniel Jean: On the issue of the possibility that there could be very different protection trends between the United States and Canada in relation to a country, one would have to hope, given that the U.S. system is totally independent or at arm's length from government, like ours is, that it would not happen. If it were to happen, of course, it would have to be an issue of concern to Canada, and this is where we would have to examine this.

On the issue of domestic violence, we could share with members of the committee a piece of information that one of our officials just gave us showing that where domestic violence has been invoked in cases that have come before the asylum determination process in the U.S., the number of cases approved is very, very high.

The Chair: Just to follow up on that, how about sexual orientation? What's the culture in the United States on that?

Mr. Daniel Jean: The way the agreement works is that we have both defined family as it applies in our respective jurisdictions. So if somebody arrives from the United States to claim protection in Canada and they have a spouse of the same sexual orientation in Canada, the anchor for the family exception will be triggered and they will have access to the protection hearing in Canada.

Hon. Hedy Fry: That's good with regard to family class, but what about with regard to issues such as persecution based on sexual orientation in certain countries?

Mr. Daniel Jean: The way the U.S. asylum system has looked at what we commonly refer to as social groups, and where discrimination may amount to persecution, is quite similar to the way it's been looked at in Canada. If it gets to the point where discrimination amounts to persecution and there may be grounds for refugee status, they've had cases that have been determined in that way as well.

Hon. Hedy Fry: Mr. Chair, just one last question.

With regard to HIV/AIDS, as you know, the United States does not even allow someone in transit with HIV/AIDS into their country. We accept people with HIV/AIDS. We do not do the prior screening to say you can't come because you have HIV/AIDS as a primary reason.

What would happen in a case like that?

Mr. Daniel Jean: You're talking about a case where somebody coming through the United States would be claiming protection in Canada if they don't have an anchor. If they don't have an anchor, they would be returned to the U.S., but the fact that they had HIV would not bar them from having protection in the U.S.

Hon. Hedy Fry: I would like to find out if that is true, because you're not even allowed to land in transit. That is one of the reasons why the United States has never even held the international AIDS conferences in the United States, because of that reason.

I think what I'm asking is, we are a country with a very different set of.... We have a charter that really considers minority rights to be key. We have a very clear sense of rule of law in this country in which we see certain things as not being acceptable. It's very different from the United States.

For me, that sense of our minority rights in our charter could create a problem. It's like the old NAFTA and medicare issue and our own sense of social responsibility in this country that's very different from the United States. We had to write those out of the NAFTA. My concern is that we will write out things that will contravene our charter even if they meet the allowable in the United States.

Mr. Daniel Jean: When it comes to protection, the U.S.—correct me if I'm wrong, Jahanshah—would be in violation of their international obligations if they were to say to somebody who comes to seek protection...because that person was HIV positive.... They would not be able to do that. It would be a violation of their protection obligations. If someone comes and seeks protection, they have to be heard, unless they fall within a category that can be excluded.

I think Bruce had some more information that he wanted to add on one of the questions.

● (1655)

Mr. Bruce Scoffield: I simply want to confirm that U.S. courts have understood that persecution based on membership in a particular social group can encompass persons who are faced with serious discrimination or persecution because of their sexual orientation. That has been decided.

To clarify that what Daniel said is quite right, there's no statutory bar to making an asylum claim in the U.S. because of a medical condition such as being HIV positive—statutory bars refer to things like serious criminality or membership in a terrorist organization—nor is it a factor that an immigration judge or an asylum officer can in law take that into consideration in assessing whether or not an asylum applicant has a well-founded fear of persecution.

It may be in another context something that is relevant to a visa decision, but that's a very different situation from someone on U.S. territory making an asylum application with the full due process protections, including access to the U.S. federal courts.

The Chair: Thanks very much.

I let this one go over a little, and I apologize to the committee, but I think it's a very important issue. Certainly on sexual orientation we have two different cultures, and maybe the committee will address that as we go along.

Madame Faille.

[*Translation*]

Ms. Meili Faille: Mr. Chairman, I have three questions.

What guarantee can you give us that francophone immigration will not be curtailed, in light of the fact that people will be returned to the United States? In fact I am thinking here of the right to a hearing in French.

Secondly, what measures were taken to ensure that the refugees will not be directed to the process known as “Expedited Removal”, which is in place in the United States for improperly documented arrivals?

Thirdly, what are the recommendations of the UNHCR, the United Nations High Commission for Refugees, for refugees who were not considered by the signatories to this agreement?

Mr. Daniel Jean: I will be happy to reply to the first two questions, but I believe that the third is addressed to Mr. Assadi.

As for francophones, if a claimant requesting refugee status does not speak the language, we must normally give him access to interpretation services. Those same practices apply in the United States.

As for your second question, the agreement guarantees that they will not be included in the expedited removal process.

I'm going to ask Jahanshah to reply to the third question.

[*English*]

Mr. Jahanshah Assadi: There are a couple of suggestions we made that at this stage haven't yet been taken into consideration. I think they were made available to the committee back in 2002. They include what we call an effective review mechanism, which would allow a claimant to have a review of a negative decision taken at the ports of entry.

This is another reason why we place considerable emphasis on adequate training and resources at the ports of entry. Even if you have two officers taking decisions, adequate training and resources are key. I'm very pleased that Madam Deschênes today has reconfirmed that training, orientation, and resources will be there for decision-makers at the ports of entry.

Another point we mentioned that might be useful is to include so-called de facto family members in the category for exceptions: people who have, by definition, been very close to the applicants as de facto relatives, even though they may not be blood relatives, who have been taking care of the individuals for some time.

These are things we have talked to the government about and we will continue to discuss with them in the future as well.

[*Translation*]

Ms. Meili Faille: This is why I asked the question about francophone immigration. We are currently experiencing problems in certain border posts in the US. People are being detained because they do not obtain a hearing when they ask for one.

I would like to obtain a guarantee from the Canada Border Services Agency as well as from Citizenship and Immigration Canada that people will not be detained when interpretation is not available. In fact what we need is a guarantee that interpretation will always be available.

● (1700)

Ms. Claudette Deschênes: I'm going to speak on behalf of the agency.

As I mentioned earlier, this was raised when I went to Victoria for discussions concerning the CCR. We are making sure that a mechanism will be put in place to deal with eventual problems concerning interpretation, especially into the French language. We have to find the best way of settling this.

As to guaranteeing today that interpretation will be available at all times, I don't think I can do that. However, we certainly do want to satisfy official language requirements.

Ms. Meili Faille: Has the agreement with the Red Cross you referred to, concerning detention and the quality of life of people who are currently detained, been signed?

Ms. Claudette Deschênes: The agreement with the Red Cross already exists, that is to say that the Red Cross verifies detention conditions for us. What is missing at the present time is the assurance that the Red Cross will have access to provincial institutions, for instance. We are still working on that, especially in Ontario.

Ms. Meili Faille: We know that people are usually detained in the United States for longer periods of time. I know that the agency intends to keep detention periods to a minimum.

Was this considered in discussions with the United States?

Mr. Daniel Jean: Detention criteria are the same in the United States as in Canada. A person can be detained if there is some doubt as to his or her identity, or if it is feared that the individual presents some risk to the public. There can be detention if there is a risk that the person will flee or will not remain under the control of the Department of Citizenship and Immigration. So the criteria are exactly the same.

As for the length of the detention period, this depends on the individual case. But that is not the issue.

The purpose of the agreement was to ensure that a refugee claimant would have his or her need for protection heard in one country or another, so as to avoid having what has been called refugees in orbit, as Mr. Assadi described them. Under this agreement there is a formal guarantee of a protection hearing.

Ms. Meili Faille: Do I have any time left?

[*English*]

The Chair: No, I let you run over a little bit to balance that one off. Thank you very much.

Well, you can take half of my time because I have just one question to ask. Go ahead.

[*Translation*]

Ms. Meili Faille: My question is brief as I don't have the agreement in front of me.

Is there a complaint mechanism concerning the decisions that are taken? Can the decisions be appealed?

Mr. Daniel Jean: It is in the interest of both countries that this agreement be implemented as it was conceived. In that context, neither country wants to see abuses, on either side of the border. If the NGOs witness a case that poses some problem they will be able to draw our attention to it.

Secondly, in the framework of the follow-up that the UNHCR will be doing, the NGOs will also be invited to share their concerns regarding the implementation of the agreement. They can do so as concerns arise, or in a more systematic manner.

Ms. Meili Faille: Whom should the organizations direct their complaints to? To CIC, the agency or the UNHCR?

Mr. Daniel Jean: This is indeed the type of issue we will be discussing at the meeting which will be held in Niagara tomorrow; the NGOs will be taking part in those discussions so that they have access to these entities if there is a particular problem they want to raise with them. This is also an opportunity to ensure that they will be fully involved in the follow-up process to be carried out by the UNHCR.

Ms. Meili Faille: So it will be the UNHCR that will be responsible for collecting...?

Mr. Daniel Jean: No. If there is a particular case to be flagged, the NGOs will contact the authorities concerned. Tomorrow we will have a meeting with their representatives precisely to plan that.

At the systemic level, of course, the UNHCR is responsible for the follow-up.

Ms. Meili Faille: Tomorrow, you could then let the committee know what decisions were taken with regard to where these complaints should be addressed.

● (1705)

Mr. Daniel Jean: As soon as the planning meetings have been held with the NGOs and the UNHCR on the follow-up to be done and the measures to be put in place, we will be happy to share that information with the committee.

Ms. Meili Faille: Very well.

[*English*]

The Chair: Thank you very much.

I want to get back to the question of sexual orientation. We have a totally different cultural attitude from the people south of the border. In cases where we would be protecting somebody on the basis of their being discriminated against because of their sexual orientation, how does our value system on that compare to the United States?

Mr. Daniel Jean: I think the critical issue here, Mr. Chairman, is that what is at stake is not the comparison of the value system; it's a comparison of protection systems. What we tried to say earlier is that they have an arm's-length, independent system, just like we do. When you look at them in practice, discrimination against a social group, including for sexual orientation, that can amount to persecution in practice has led to decisions on protection in the United States.

The Chair: Has anybody made any qualitative study on the two countries?

Mr. Daniel Jean: Certainly, in providing the report of Dr. Martin, we were trying to provide the committee, people who have an interest in general in this agreement, with some information on the U.S. system and how far it goes in reaching protection. Once again, as I said before, if we see that there are specific preoccupations that emerge in the context of the agreement that should be looked at, we would certainly be paying attention to it.

The Chair: Thank you very much. I wonder if in the future when we get stuff from your office, we could get it just a little beforehand. Thank you.

We'll go on to Bill.

Mr. Bill Siksay: Thank you, Mr. Chair.

Continuing on that same line, Monsieur Jean, the paper you distributed from Professor Martin doesn't deal with the question of discrimination against lesbians, or persecution of lesbians, in other countries. Is there some reason why that wasn't included in the parameters of his work on gender issues?

Mr. Daniel Jean: We asked primarily on gender because that was a concern raised by the committee at the time. We can certainly try to see what we can provide to you that is available that shows the U.S. has arm's-length, independent systems, that they are extending decisions of protection to social groups when this issue of discrimination amounts to persecution in a way that is quite similar to what is being applied in Canada.

Mr. Bill Siksay: I would like to see specific information around how gay and lesbian people are treated in the refugee system in the United States and in Canada, and in similar ways where we have the gender analysis here.

Mr. Daniel Jean: We can certainly try to provide you with the instructions that are given in the context of asylum determination on both sides and allow you to make some comparisons, yes.

Mr. Bill Siksay: I think that's very important, particularly given what the chair has pointed out. I also think there is a significant cultural difference between the countries, and certainly a developing one. I think that's a very crucial issue for us to look at.

The other thing I wanted to ask about is the issue that a lot of Canadian citizens and landed immigrants have experienced what they believe to be racial profiling when they cross into the United States. Certainly the case of Maher Arar is an indication of where someone seems to have merited special attention from the U.S. authorities, and some particular attention, and was deported rather swiftly to a position where they were subjected to torture and their life was actually in danger.

How is this issue being addressed in terms of this safe third country agreement? I think people really believe that there are different standards between Canada and the United States on that issue. We see very dramatically different kinds of border entry standards between the two countries at this point, with fingerprinting and photographing being implemented in the United States. That seems to be some indication of a different standard, in terms of how two countries deal with border issues. I'm wondering if you could comment on that.

Mr. Daniel Jean: What the agreement is about is responsibly sharing protection between two countries that have two very generous systems. Currently in the United States more than 50% of people who apply for asylum are approved. This is not a fact that is necessarily well-known. We have a very generous system as well.

What the agreement ensures is that people will be entitled to a hearing for protection; they will have full access to a protection hearing on either side. There are some exceptions, which we described before. That's what's at stake, making sure people have access to protection.

On the issue of whether or not there is inappropriate behaviour by border officials on either side, there are other processes in the Canadian-U.S. bilateral relationship that manage these issues.

● (1710)

Mr. Bill Siksay: I hope you understand the concern of Canadians who have been detained at the border or denied entry into the United States. It seems to set up a different standard, and one that may apply to people making refugee claims as well. I hope you appreciate the interest in that issue.

One question that I know has been raised in the past around the issue of detention was the concern that when people are held in detention they might be held in a facility that contains people who are incarcerated for criminal infractions and that it wasn't an appropriate place to detain asylum-seekers. Has that been part of the agreement, and is there a standard established around that?

Mr. Daniel Jean: In terms of the agreement, that was not looked at. In terms of standards of detention that we've set from a policy standpoint, they are the same in both countries. In terms of where people are detained, Claudette can tell you that as much as possible we try to detain people in appropriate facilities where it's feasible.

Mr. Bill Siksay: Is that the same for the United States?

Mr. Daniel Jean: I would say from a comparative perspective they have the same thing. They try to hold in detention hearings people who are low-risk.

Mr. Bruce Scoffield: Perhaps I could add that we did look at the issue of detention, and in fact Professor Martin provided a report, an earlier report, which was tabled with this committee in 2002. It is very clear that in the U.S. the policy is to detain immigrants, visitors, asylum-seekers in appropriate administrative detention facilities, not to have them commingle with criminals or people serving penal sentences.

It's true that on occasion, because of crowding or a lack of available space, it might happen, but the policy is to not do that, if at all possible.

Mr. Bill Siksay: In Canada, when they're detained in a provincial facility, is the same true, in that they're not mixed in with the criminal population?

Ms. Claudette Deschênes: The policy intent is to as much as possible not put them in that area. Normally, people who are in a provincial facility will have criminal records, or they might. I'm not saying it never happens, and that's some of the work we're doing with the Red Cross, in terms of having some monitoring to make sure that as much as possible we do not commingle populations.

Mr. Bill Siksay: Do we know how frequently that has happened in Canada to this point?

Ms. Claudette Deschênes: We're doing some work on that.

Mr. Bill Siksay: It would be good to know that kind of information.

In terms of the detention of children, is there a comparison between how often the United States does that and how often Canada does it?

Mr. Bruce Scoffield: Again, Professor Martin did provide some information on the earlier paper, which unfortunately I didn't bring with me today.

The policy where children are detained is, first of all, to try to keep families together, but also where appropriate to place children into child welfare facilities, often run by state or local authorities, not to detain them in prisons.

Mr. Daniel Jean: Bruce, correct me if I'm wrong, but unaccompanied minors will not be subject to the agreement. Their protection hearing will be here in Canada.

Mr. Bruce Scoffield: That's correct. There is a specific exception for children who come to the border without their parents.

The Chair: Madam Fry.

Hon. Hedy Fry: I am actually going to ask the question that Mr. Siksay asked just now, because I think it is very important for us to know that children not accompanied by adults will not be dealt with under this situation.

You are aware, as I know, that the United States never did sign on to the UN Convention on the Rights of the Child.

If we belabour this issue, I don't think it is because we feel that the United States does not have the same number...quantitatively they may accept the same number of refugees as we do, but the question here that I think most of us are trying to get is, what are the differences qualitatively?

I think the fact that the United States has not signed on to the rights of the child convention, has never signed on to the land mines agreement, and has never signed on to do anything that we in Canada have taken for granted as being very important conventions to sign on to gives us pause for concern. When a country we're signing a third country agreement with is willing to change its constitution because it does not wish same-sex couples to marry.... One needs to be concerned that this country feels strongly enough about a person's sexual orientation that they will not allow people to come...they think it is a persecutable thing. I think to write people out of their constitution is a form of denying them their human rights and equality. That's a human rights issue.

I have a really difficult time accepting that we have looked at some of these issues really well. I want to feel very sure that in Canada, if we sign an agreement with another country, we know what we're agreeing to and we are not party to certain forms of discrimination that we would not accept in our own country.

I'm sorry, but regardless of what Dr. Martin said in his analysis, I am not necessarily assured of that, based on practice and based on certain very distressing things that I see going on currently with regard especially to the constitutional rights of people in your own country.

How can you accept that other people have rights in other countries if you do not accept them as having rights within your own country? I have a concern about that.

● (1715)

Mr. Daniel Jean: That's a very valid question, and it's why there is a public interest exception. For example, under the agreement we will not return people who may be facing a death penalty.

Of course, this public interest clause is something that could be expanded by the minister if she were to see that there are situations of protection where there are things that are not at the same par.

But so far we've defined it in the clear areas where we know there are differences, such as the death penalty.

Hon. Hedy Fry: I'm sorry, Mr. Jean, but you just reminded me of something. The United States has the death penalty and is probably one of only four countries in the world that has refused to remove the death penalty when it is contrary to the United Nations Human Rights Commission.

I worry about things like that, when a country can look down its nose at the United Nations human rights convention, and at the same time we think we haven't clearly written in.... I'm not saying we shouldn't, don't get me wrong. I accept that for the sake of security we need to be able to sign a safe third country agreement. I really do agree with that. I'm not opposed to it. I'm just saying that there are certain very glaring examples of how this particular country has differed so much, not only from Canada—which is reasonable for it to do; it's a sovereign nation and we have signed agreements with other sovereign nations who differ—but it has also so strongly differed with some of the United Nations conventions per se. Are we very sure that this particular country would agree with some of the standards held by the United Nations Convention on Refugees? I don't know. I have to ask this question because I think it's a reasonable question to ask.

I need to know that there is something put in, some clause or some ability for us to be assured of this, that we are not being a party to... for certain things that Canada itself has already signed on to, that we would not in effect be opposing our own signatures on greater conventions than this bilateral one.

Mr. Daniel Jean: That's precisely why there is the public interest clause in the agreement. We've already defined there that we will not return somebody who may be facing the death penalty.

There's also an important point that needs to be reinforced, and I think Mr. Assadi made it in his opening statement. This agreement is not just about curtailing abuse and security; it's also about making sure that protection and resources are managed in an appropriate way. You do have people who claim asylum on both sides and receive asylum on both sides, which is not actually a good use of protection resources on either side of the border.

The Chair: Just before we go to Madam Faille, you mentioned a 50% acceptance rate in the United States.

● (1720)

Mr. Daniel Jean: It's always dangerous to make a comparison with the U.S. system because there are several levels. But we can give you the most recent statistics we have on the U.S. acceptance rates at each level, and you will see that more than 50% of people who seek protection are given some form of protection.

The Chair: That doesn't include the people they keep from landing as they try to swim to shore. The patrol boats pick them up and take them up to Guatemala. They return them forcibly...or Haitians. I've seen this happening on U.S. television on a number of occasions. They'll cut programming and show them trying to prevent somebody from touching U.S. soil, because then I guess it doesn't trigger U.S. law. They're picked up and taken back—boat people coming over.

Anyway, I don't think you'd know the answer to that. I imagine it wouldn't include those people, because they are denied any kind of hearing.

Madam Faille.

[*Translation*]

Ms. Meili Faille: I simply want to ask a question. Earlier, we talked about racial profiling. I know that Claudette explained criteria having to do with patterns that are established, and that there is a program to intercept people who correspond to these criteria.

However, various communities in Montreal are concerned, all the more so since a number of francophone countries are targeted by the interdiction program. There is a certain tension in the air. The simple fact of knowing that the United States is becoming a closer ally of Canada in this area is raising some real worries.

You gave a reply earlier, but could you explain in more detail the rights of refugees or immigrants when they arrive? I don't want to shock you, but there is something that causes the interdiction of certain persons rather than others, even when they are Canadians.

As for refugees, what guarantees can you give us that this type of profiling will not be done and that anyone who wants to claim refugee status will not see their rights curtailed?

Mr. Daniel Jean: The agreement is categorical. Individuals must have access to a protection hearing in one country or the other. Normally, this should be in the first asylum country, unless the individual falls under one of the exceptions, such as the family reunification exception or the public interest exception.

It is precisely to avoid cases like the ones you describe that we have a follow-up process. We have invited the NGOs to identify those cases. But the two countries have committed themselves in a formal agreement to seeing to it that people will have the right to a protection hearing. The type of situation you describe would thus be a direct violation of the agreement.

[*English*]

Mr. Bill Siksay: I have a couple of other questions. I'm curious about what happens when an American citizen arrives at the Canadian border to make a refugee claim.

Mr. Daniel Jean: His claim will be heard. In the Canadian system right now, his claim is not going to be dealt with in any different way from anybody else. It basically means that we will first determine whether he is eligible at the port of entry.

Of course, he's a citizen of the United States, so he is not subject to this agreement, because this agreement does not cover either Canadian or U.S. citizens, unless we decide he's ineligible because he's committed a very serious crime. If we're able to declare him ineligible, then he'll be sent directly to pre-removal risk assessment. He is referred to the Immigration and Refugee Board. His case will be heard there. There is a determination.

If the determination is positive and if nobody appeals, he could be granted status. If the determination is negative, of course, he is entitled to prompt removal risk assessment. If he or she feels that despite the fact he is not being granted protection there should be other reasons why he should not be removed to the United States, such as undue hardship, he also has the ability to make an application under humanitarian and compassionate grounds. So it's exactly the same system.

● (1725)

Mr. Bill Siksay: I wonder if Mr. Assadi could comment on whether sexual orientation is one of the particular interests of the UNHCR in terms of the monitoring work you're doing. I don't know if you've developed a list of issues that you look at specifically, but will sexual orientation and discrimination and persecution of gay and lesbian people be some of the things you are looking for in your monitoring work?

Mr. Jahanshah Assadi: In our monitoring work, as I said in my statement, we will be looking, among other things, to make sure that the two parties are in fact respecting their international obligations and undertakings under the relevant international conventions.

As I mentioned, both have signed up to the 1951 convention on refugees and the 1984 convention on torture. UNHCR will normally not intervene with respect to individual cases, but if the need does arise for us to exercise what we call our international mandate, as we do in all parts of the world, we will look at individual cases that may require our review and our possible intervention with the country that has taken a decision.

This is something that we do globally and it is nothing that's specific to the monitoring agreement. It is part of our normal work and part of our normal mandate internationally.

Mr. Bill Siksay: I have one last question, Mr. Chair. I know that the UNHCR raised in earlier work a concern about how someone proves they have relatives in Canada. I am wondering if the folks from the departments can go through how that process would happen. How does someone determine this? What's the burden of proof? How does that whole process around determining that someone actually does have relatives in Canada work?

Mr. Daniel Jean: We're going to go for a standard of reasonableness. We're going to try to give them all opportunities to show that they may have an anchor that triggers. If they're not able to satisfy it but come with something subsequently, we would also be ready to consider that as well.

The procedural knowledge and burden of proof is on the applicant to satisfy the decision-maker—it's always the case in immigration—that a family relationship exists. Credible testimony may be sufficient. So if they don't have documents, because in some countries documents are not available, credibility may be sufficient.

In the absence of documentary evidence or computer records, in these circumstances, we may request that the applicant and their relative provide sworn statements attesting to their family relationship. That way there is a principle whereby they tell us their identity, give us sworn statements of their identity, so that will be the identity we assume they have.

That's what is going to be used. We're using, as I said, the balance of probabilities of saying what's reasonable to determine that the person falls within a family class. Our objective here is to maintain the integrity of it, not just to say no. As long as they can give us credible evidence that there are family members, they will be allowed.

The Chair: That's it. It looks like we have....

[*Translation*]

Ms. Meili Faille: Is the level of proof required the preponderance of probabilities?

[*English*]

Mr. Daniel Jean: I'm always careful when I'm being asked to quote legal things—credible testimony.

[*Translation*]

It is the preponderance of evidence.

Ms. Meili Faille: Is it credible testimony or the preponderance of probabilities?

Mr. Daniel Jean: In French, it is the *prépondérance de la preuve*, the preponderance of evidence. We can give that to you in writing, Ms. Faille, that is not a problem.

● (1730)

Ms. Meili Faille: There are three levels, and there is a difference between them. I simply want to make sure that we agree on the level. With regard to the safety certificates, the level of evidence required is different. I simply want to know whether the burden of proof is...

Mr. Daniel Jean: With your permission, we will provide that information in writing.

[*English*]

The Chair: We'll look forward to that.

Does anyone have any more questions?

[*Translation*]

Mr. Daniel Jean: On several occasions, Ms. Faille asked what the minister was alluding to when she referred to 22 possible recourses for those claiming refugee status. I'm going to leave some documents with you today. There is, first of all, the document the minister was probably alluding to, which presents the fictional case of an individual. In it one can see the number of avenues this individual would be entitled to resort to were he to use all of the avenues available during a certain period of time.

I will also leave you a presentation which summarizes the process to claim refugee status in Canada. I have already described it many times; I described it again today when I talked about what would happen to an American arriving in Canada. Naturally, unless the person is declared inadmissible when he or she arrives in Canada, the case is referred to the IRB. There is a protection hearing on all of the consolidated protection needs, including refugee protection and torture. If the decision is negative, the person is entitled to a risk evaluation before removal. If he does not have the right to protection but if he thinks he has grounds to request remaining in Canada for compassionate reasons, he may apply by invoking humanitarian considerations. In that context, he may also invoke the risk posed by returning.

That is the existing process. We provide you with some statistics that describe all of it. We also include a fictional case which outlines the various recourses and avenues a person may take.

[*English*]

The Chair: Thank you very much for appearing. I think it was most useful for the committee to have you come. Of course, this is an area of interest, and we'll be following up to see how the implementation goes. We'd like to thank you for appearing, and we look forward to the United Nations HRC coming forward and telling us about your experiences. You know we have specific questions on the whole issue of sexual orientation. We'll be looking for that as well as gender.

I would like to thank you again for coming, and I would like to wish you all happy holidays. No doubt we'll see you in the new year.

Madame Faille, we'll get to the motion you gave notice of.

[*Translation*]

Ms. Meili Faille: The motion I tabled two meetings ago is the following:Whereas:

> the Refugee Appeal Division is included in the Immigration and Refugee Protection Act;
>
> Parliament has passed the Immigration and Refugee Protection Act and can therefore expect that it be implemented;
>
> the House of Commons and parliamentarians have a right to expect that the Government of Canada will honour its commitments;
>
> The Standing Committee on Citizenship and Immigration requests that the Minister of Citizenship and Immigration implement the Refugee Appeal Division or submit an alternate proposal without delay.

● (1735)

[*English*]

The Chair: Is there an amendment? Is there debate?

Mr. Boudria.

[*Translation*]

Hon. Don Boudria (Glengarry—Prescott—Russell, Lib.): Thank you, Mr. Chairman. I wonder if all of this will necessitate a dialogue with the provinces. As I have a great deal of respect for provincial authority I would like to know whether there are repercussions at that level. For instance, do we need to arrange consultations with them so as to give them an opportunity to express a definitive opinion on this Refugee Appeal Division, while recognizing all of the consequences this may have on the process, as well as on those who deal with refugees while they are here, etc.? In fact, we are adding a step to the process. I wonder if this is necessary. Perhaps it has been done. If that is the case, I apologize. I don't want us to get tangled up in procedural matters.

Firstly, are there provincial ramifications to be considered? Secondly, has all of that already been dealt with?

[*English*]

The Chair: There is the question of the province. It's something we have in the legislation, having an appeal division. It's something that never has kicked in. It's something the government promised, but it's not for me to defend the motion. That's in the act we put in. The government promised we would do it.

I think Mr. Jaffer had a....

[*Translation*]

Ms. Meili Faille: I would like to add that Ms. Courchesne made a comment following the provincial consultation which was carried out a month ago, to the effect that the Refugee Appeal Division was needed and necessary. This followed upon the federal- provincial consultation. Thank you.

[*English*]

The Chair: Mr. Jaffer.

Mr. Rahim Jaffer (Edmonton—Strathcona, CPC): I'd just like to propose a friendly amendment that I believe has been discussed by my critic for immigration and Madame Faille. I would like to propose that the motion be amended by adding the following immediately after the word “Division” in the last sentence: “or advise the committee as to an alternative proposal without delay”. That was something that I know was discussed with her.

The Chair: Do you move that as an amendment?

Mr. Rahim Jaffer: Yes, a friendly amendment.

The Chair: Thank you.

Hon. Don Boudria: Could the member repeat that, Mr. Chairman? Where does it go?

Mr. Rahim Jaffer: Just behind the word in the last sentence of the motion where it says, “The Standing Committee on Citizenship and Immigration requests that the Minister of Citizenship and Immigration implement the Refugee Appeal Division or advise the committee as to an alternative proposal without delay.”

The Chair: Okay. Is there debate on the amendment?

Bill Siksay.

Mr. Bill Siksay: Mr. Chair, I'm happy to support that amendment if it can move this motion forward. We discussed this with the minister when she appeared before the committee on more than one occasion. She's been questioned about the RAD or the alternative processes that might be in place. Her answers have been less than detailed and less than forthcoming. I think there is a lot of agreement, certainly here and among the organizations and groups that serve refugees in Canada, about the importance of this and moving forward with this.

We've heard how, in the course of the debate on the government's legislation—this was a government proposal, after all. It didn't come from an opposition amendment; it came out of the government directly. Part of the reasoning behind having the RAD was that we would reduce the panels at the IRB from two people down to one person. This was presented as part of the package that would allow for that. I know there were concerns raised at the time about reducing those panels. Going to the RAD system dealt with that concern and convinced a lot of people to support something they may have been uncomfortable with. I think this amendment will improve the motion, and if there is something in the works, we'll get that on the agenda. I'm happy to support it.

● (1740)

The Chair: Is there any further discussion on the amendment?

(Amendment agreed to)

(Motion as amended agreed to [See *Minutes of Proceedings*])

The Chair: I want to wish everybody a great time, happy holidays, happy Christmas, and every other religious holiday in between. I'll look for you back in the new year.

Thank you very much. We are adjourned.

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