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—
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Mr. Norman Doyle

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• (1530)

[English]

The Chair (Mr. Norman Doyle (St. John's East, CPC)): We'll call the meeting to order.

I want to welcome today Jean-Guy Fleury, chairperson; Marilyn Stuart-Major, executive director; and Timothy Morin, acting senior general counsel, all from the Immigration and Refugee Board of Canada. They're here to give an overview of the Immigration and Refugee Board.

Welcome, lady and gentlemen. You have one hour, as you are aware, between now and 4:30. I know you have a presentation, so we'll have approximately 10 minutes for your presentation, and then we will turn it over to our committee members for questions and general discussion.

I welcome you and ask you to begin.

[Translation]

Mr. Jean-Guy Fleury (Chairperson, Immigration and Refugee Board of Canada): Mr. Chairman, committee members, thank you for inviting us here today. I would like to introduce Marilyn Stuart-Major, Executive Director of the IRB, and Timothy Morin, Acting General Counsel. Both will assist me in answering any questions you may have.

Mr. Chairman, I will respect the time limit that you have given me.

It has been some time since my last appearance before this committee, and I am very pleased to be back before you. As we have many new committee members with us today, I will first take the opportunity to provide you with a brief overview of the work of the Board.

As you have been provided with briefing materials that give a more detailed review of the IRB and our three divisions, I will not get into too much detail on this. I will provide you with an overview.

[English]

I'd like to begin today by briefly touching upon the role of the IRB, what we are, and what we do.

The IRB is an independent tribunal that reports to Parliament through the Minister of Citizenship and Immigration. The IRB consists of three divisions: the Refugee Protection Division, the Immigration Appeal Division, and the Immigration Division itself. Our mission is to make well-reasoned decisions on immigration and refugee law efficiently, fairly, and in accordance with the law. As I

am sure you know very well, we make decisions that have a huge impact on the lives, security, and freedom of those who appear before us. In essence, the IRB, on behalf of Parliament and Canadians, delivers justice and fairness. The fact that we are a tribunal and not a court allows us greater flexibility in how we manage the cases and appeals that come before us. This is really the beauty of administrative tribunals: they are independent, yet flexible; at arm's length, yet fully accountable.

I would now like to take a moment to explain what we do not do. We are not an enforcement body. We do not remove failed claimants or persons found to be inadmissible to Canada. That responsibility lies with the Canada Border Services Agency. That agency itself, through cooperation with CSIS, is also responsible for performing security screenings of all refugee claimants prior to their refugee hearing at the board.

We do not develop government policies that may result in legislation on immigration and refugee matters, including who has access to our refugee determination process. That job rests with CIC. Nor does the IRB select refugees from abroad. Again such a responsibility resides with CIC. We have already heard from representatives of CIC and the agency, and you know that we operate as part of a continuum in the refugee and immigration process.

In the context of refugee determination, CIC refers claims to the IRB. We apply the law and decide the cases. Our decision is then subject to judicial review by the Federal Court. Other avenues of redress, such as the pre-removal risk assessment at CIC, are open to failed refugee claimants. Finally, the agency is responsible for removing failed refugee claimants.

[Translation]

The IRB carries out its mandate within a complex and ever-changing environment. We do not control the number of cases referred to us in any given year. Both international and domestic factors affect the number of refugee protection claims made in Canada. The same is true for shifts in international migration patterns, which can affect the number of people seeking admission to Canada.

In recent years, we have seen a downward trend in the number of refugee claimants, both in Canada and worldwide. At the same time, we have seen an increase in the number of immigration appeal cases, especially sponsorship appeals. As a tribunal, we must be prepared to respond quickly to these fluctuations.

Over the last few years, the goal at the IRB has been to become a more dynamic and responsive tribunal. We have pursued a course of transformation and innovation to allow us to respond in a more effective way to fluctuations in the number and kind of cases we receive. As many of you will remember, a few short years ago we had a significant backlog at the Refugee Protection Division — there is nothing like a crisis to generate innovative thinking.

Tribunals exist to deliver a simpler, quicker version of justice than courts. While we are subject to the constraints of the law, we have the ability and the responsibility to be inventive and creative in how we act on our mandate. This is what we have done over the past three years, while never losing sight of the ultimate objectives of fairness and justice. Efficiency and creativity need not and cannot come at the expense of fairness.

• (1535)

[English]

The first part of the agenda for change was the introduction of the chairman's action plan in 2003. At that time, we were faced with a backlog of 52,000 claims in March 2003. The result of our action plan has been a greater consistency in decision-making and in the management of claims.

In the year following the implementation of the action plan, our output reached unprecedented levels. We dramatically reduced the backlog from a peak of 52,000 three years ago to approximately 20,000 today. Of course, other factors have contributed to this decline as well, not the least of which was the concurrent drop in refugee claims.

There is of course more to do. Along with former IRB chairpersons, I have told this committee in the past that we will reach six-month average processing times in the Refugee Protection Division as quickly as possible. They are currently at 11 months, which is an improvement over the 14-plus months at the height of the backlog, but more work needs to be done, and I remain committed to the six-month goal. As a matter of fact, with enough appointments, we predict that this year at least 50% of the cases could be rendered within six months.

As I mentioned a few moments ago, our changing environment includes an increase in recent years of a number of immigration appeal cases, particularly refusal of sponsorship appeals. We launched an innovation initiative in the Immigration Appeal Division to address workload pressures, to better meet the needs of appellants, and to make long-term investments in the IAD, whose work is so critical to the overall immigration portfolio. We learned from the first action plan. We did not make the same mistakes, and we've improved on how to approach innovation. In short, we need to ensure that we have a more representative and responsive appeal mechanism for family reunification.

We have released a preliminary report on the innovation initiative on our website, and we have consulted with our partners, shareholders, and the bar in the period of 90 days. The report represents our vision for the future of the division and charts a course for the IAD as a less formal and more flexible tribunal. The report is currently being further developed as our consultations with the departments and the agency continue, and all partners are determined to find a reasonable solution.

The recommendations of the innovation plan converge around two themes: resolving appeals sooner and more quickly, and resolving appeals through mediation outside the hearing room. IAD innovation will bring about cultural change in the IAD. The IAD will become a less formal, more proactive body that better reflects its status as an administrative tribunal. This means more information earlier on from both parties to enable the division to function effectively.

[Translation]

The Immigration Division's Action Plan identified as a priority the development of a comprehensive human resource strategy — this is the third largest division in the Board — as almost 50 per cent of the division's decision-makers — who are public servants — will be eligible for retirement in the next few years. The strategy focuses on the renewal of the workforce and a comprehensive training plan to ensure the availability of qualified decision-makers over the long term.

The IRB must ensure that we continually inform our partners, stakeholders and the public at large of who we are and what we do. We need to let them know why there is a need for innovation and where we intend to take the Board. More generally, I also believe we need to educate the public on the role of the board and de-bunk long-held myths.

Further to this end, the IRB has engaged in an ongoing process of outreach. For example, the Board recently briefed MPs and their staff in Ottawa and across Canada on the nature of our work, and on how they should approach the Board if needed. We will continue to offer ongoing sessions to MPs as circumstances warrant. We also regularly meet with stakeholders and various community groups around the country.

I believe you have been provided with material on our new member selection process. In 2004, the IRB implemented fundamental reforms of the appointment and appraisal processes for Governor-in-council Board members. We have been truly leading edge in the establishment of a merit-based appointment process at the IRB.

Under the new process, as the chief executive officer, the chairperson of the IRB is fully accountable for the selection and the quality of IRB's decision-makers. The advisory panel assisting the IRB chairperson in the selection process is independent and representative of Canadians. The panel includes membership from the legal community, academia, non-governmental organizations and human resources experts. The new independent, transparent and merit-based selection process ensures that only highly-qualified candidates are considered for appointments by the government. The qualifications of candidates are measured against a new strengthened standard of competence to ensure that skills, abilities and personal suitability are the basis for the appointment. The government has been appointing from our list of qualified candidates.

• (1540)

[English]

Perhaps it goes without saying, but ultimately we will not succeed with our innovation agenda without a full complement of decision-makers and without timely appointments and reappointments. While we currently do not have a full complement at the IAD or the refugee branch, we are hopeful that the present situation will resolve itself in the near future.

In conclusion, I frankly believe the IRB has been a leader in innovation. We fully understand that adaptation is now a permanent feature in accountable public service. We're already there and we're working to get better results.

I would finally like to take this opportunity to commend the IRB staff and my members. It is because of their professionalism and dedication to their work that we are here today.

We look forward to responding to any questions you may have. If anyone would like a detailed debriefing after the meeting at another date, we will gladly oblige.

We'd love to answer questions.

The Chair: Thank you very much, Mr. Fleury, for your presentation, a very good presentation. And let me compliment you on the very good work you are doing.

We have approximately 45 minutes and we have nine members, so I think to be fair and to give everyone an opportunity, we'll go back and forth for five minutes each. We'll start with you, Andrew, and go back and forth in order.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Why are we departing from the usual back and forth?

The Chair: We only have a 45-minute meeting. We don't have the full two hours, so everyone will be given an opportunity to have five minutes to say what they want, if the committee agrees to that.

Mr. Bill Siksay: I'd really prefer that we stuck to at least giving the opposition parties the chance to go first, and then we can alternate back and forth with the folks who haven't had a chance to get in at that point.

The Chair: Okay, if that's the will of the committee, we'll go Liberal, Bloc, and NDP, then Conservatives, then back again.

Is that what you want to do? Okay.

• (1545)

Mr. Blair Wilson (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.): Sorry, Mr. Chair, but I thought we had a set procedure that gives us seven minutes and then five minutes to examine witnesses.

The Chair: That's generally in a two-hour meeting. Today we have 45 minutes for these gentlemen, so I thought everyone would be given an opportunity if we had five minutes each. We generally have a two-hour meeting. If you want to, we'll go for five minutes, back and forth. Okay?

We'll start with you, Andrew.

Hon. Andrew Telegdi (Kitchener—Waterloo, Lib.): Thank you.

Mr. Fleury, can you tell us how much the numbers have dropped because of the safe third country?

Mr. Jean-Guy Fleury: Our estimate is that at the border it's about 17%.

Hon. Andrew Telegdi: It's 17%?

Mr. Jean-Guy Fleury: Yes.

Sorry, at the border it's 50%. But there are three ways to enter; there are also the airports and inland. But if you aggregate the drop in terms of refugees referred to the board, it would be 50% at the border.

Hon. Andrew Telegdi: It's 50%. Then you mentioned that overall it's a 17% drop.

Mr. Jean-Guy Fleury: Yes, roughly.

Hon. Andrew Telegdi: Do we have any information on people trying to find other ways of getting into the country, such as river crossings and that kind of stuff?

Mr. Jean-Guy Fleury: I don't have any information. Maybe the agency would have some, but I don't. By the time people are referred to me....

Hon. Andrew Telegdi: You said you're short. How many complements are you short?

Mr. Jean-Guy Fleury: I have a complement that used to be 240 decision-makers—Governor in Council appointees—at one time. Today I would be at about 160 Governor in Council appointees. That's the complement. I have a vacancy rate of about 20%.

Hon. Andrew Telegdi: So it has gone from 240 to 160 appointees.

Mr. Jean-Guy Fleury: Yes, it would be roughly 30-some....

Hon. Andrew Telegdi: Are you having trouble getting reappointments?

Mr. Jean-Guy Fleury: I'd like to maybe start with a preamble, and then I'll answer your question directly, Mr. Chair.

We have a lot of members and a lot of Governor in Council appointees. We're the biggest tribunal. The closest to us would be Correctional Services, the National Parole Board, and they would have about 60 members. What I'm trying to say is that people's mandates don't come in at the same time, so almost always, every two or three cabinets, there could be appointments. What happens is that when you have elections or transitions, the appointment process almost comes to a stop 60 days prior to the time of the election. And then there's a new government or a different government. I've had four different ministers, as you know, since I arrived three years ago.

All I'm saying is that the minister is key to me in terms of appointments. If there are periods when appointments can't go on, you're bound to fall behind, as we did.

I'm very encouraged. We've had appointments recently, and it's starting, and I'm very optimistic that I will also get new recruitment in the near future.

Hon. Andrew Telegdi: Your six-month timeframe, you mentioned, is dependent upon having the full complement, so if you are going to be able to deal with that, then you have to have that.

Mr. Jean-Guy Fleury: Yes, I need that. There's a combination of two factors, Mr. Chair, on this question. That is, if a person who has been with me eight years—and it's usually not more than 10 years—is not renewed, and I get a new person, it takes roughly six months of full-time training, mentoring, and observation to get the person ready to start making decisions on their own. In the first year, when you have a member who has eight years' experience, and someone who starts new, there's a considerable drop.

I don't know if I've answered the question, Mr. Chair.

The Chair: To my satisfaction, yes.

Hon. Andrew Telegdi: You need a full complement, then.

Mr. Jean-Guy Fleury: It's very important, as one would know. I mean, we live and die by decisions and we live and die by appointments.

Hon. Andrew Telegdi: I'm sure you must have put your mind to it at some point—how many people would you need for a refugee appeal division?

Mr. Jean-Guy Fleury: We did some early work in preparation when the act was passed. Roughly we're talking about maybe 20 decision-makers, plus support staff. Roughly I would think 70 people at the maximum.

• (1550)

Hon. Andrew Telegdi: Thank you.

The Chair: Thank you, Andrew.

Madame Deschamps is next.

[Translation]

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): Good afternoon, Mr. Fleury. I'm sorry for being late.

Perhaps you mentioned this earlier, but I would like to know if there has been a decrease in the records processing resources over the past few years.

Mr. Jean-Guy Fleury: Yes. But you would need to go back three years. Three years ago, the government allocated \$10 million to us, but we had to justify this amount from one year to the next, bearing in mind that we had to deal with the issue of security and the fact that we had quite a sizable backlog. We received this \$10 million amount for three years.

Ms. Johanne Deschamps: Given that you managed to reduce this backlog despite a reduction in resources, would it be possible to provide the committee with some background on this backlog on a regional office basis?

Mr. Jean-Guy Fleury: Certainly.

In answer to your question, we had to reduce staff once the \$10 million were no longer available. Employees were advised that there was little work, and most of them found work elsewhere. That has not been easy.

Ms. Johanne Deschamps: Given that you lost resources, can you explain how you still managed to reduce your backlog?

Mr. Jean-Guy Fleury: We have more tools available, thanks to the action plan. We worked on five plans. First, we examined all the research documents that we had and our capacity to address the

needs. We examined the stats of the hearing process, in order to see if we could be more efficient.

Pursuant to the act, the chairperson may issue guidelines concerning the procedure that applies to hearings or country requirements. We worked on this. We tried to further improve professional development.

We must not forget that this action plan was developed by the employees and by decision-makers who knew where we could find solutions to improve our approach to working. That's the huge secret behind this initiative. Had we hired an outside consultant, there would have been no way out and it would have cost millions of dollars.

So this was done internally. People started to say that if we did things in such and such a fashion and if we had such and such tool, perhaps we could be better organized. Consequently, with regard to decisions, we have increased productivity by 30 per cent the first year and 20 to 25 per cent the second year.

Ms. Johanne Deschamps: And in light of this reduction in the backlog, what has been so far the percentage of claims being rejected?

Mr. Jean-Guy Fleury: The percentage of rejected claims has not changed over the past three years. It varies between 42 per cent, 44 per cent and 46 per cent. Last year, it was 46 per cent. That is the acceptance rate. I should be able to provide you with the rejection rate.

Ms. Johanne Deschamps: I have no other questions for now.

Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ): Could you give us an idea of how you can ensure some quality consistency in the processing of claims?

Mr. Jean-Guy Fleury: A great deal of money is invested. First, I will talk about the three levels that allow us to ensure that we are constantly up to date. We have a cutting-edge legal department, staffed with individuals who have been with us for nearly 15 years. So the whole legal approach has been refined. We can provide the decision-makers with decision summaries to help them.

Second, the United Nations has recognized our research department as one of the best. It is excellent.

I have talked about research and lawyers; there's also professional development. We invest in professional development and training. We are developing a number of other organizations.

I have never been able to provide an exact figure in this regard, however the minimum amount we spend for the decision-makers is equal to 7 per cent of payroll. I don't think I am mistaken. It's a lot.

• (1555)

[English]

The Chair: Mr. Siksay.

Mr. Bill Siksay: Thank you, Mr. Chair, and thanks, Mr. Fleury, for being here yet again.

Mr. Fleury, to follow up on the consistency question, that is a concern that is often raised by folks who observe the refugee appeal process. You talked about the research background you have, but is there any kind of test carried out by the commission to test the consistency of decisions? Do you make comparisons of decisions, and what does that research show?

Mr. Jean-Guy Fleury: They're not researchers, but we have coordinators for every team of 12 people rendering decisions, and we have...even legals will do some reading of decisions and help us.

I hadn't finished, because there was more to it in terms of quality and *cohérence décisionnelle*. We have special days devoted to a country condition. We'll have speakers from outside to talk about a country, or specialists will come and talk to us about country conditions or situations they know about—and they're specialists.

So there's a one-day development a month, and then there are special days by country, by region. In other words, the three regions, Vancouver, Toronto, and Montreal, are linked together, and we will discuss Mexico and look at past decisions. We cannot influence or try to influence decision-makers in any way, shape, or form. However, what we want to do is have the mutual understanding of the condition of the country, so we invest a lot of time in those situations—we have to—with the result that the difference between countries in the three regions is now so low that we have only one country that could have about a 30% difference. The rest would remain within 10%.

Mr. Bill Siksay: Is that your target, then, 10%?

Mr. Jean-Guy Fleury: No, we don't have targets. It's a way of monitoring. It's a way of knowing if something is going awry or maybe some interpretations.... I'm quite satisfied with what we do there.

Mr. Bill Siksay: Which country is the 30% country?

Mr. Jean-Guy Fleury: I don't have it, but I could certainly give it to you.

Mr. Bill Siksay: It would be helpful to know that, yes.

You mentioned that folks go through a six-month kind of.... I'm sorry.

Mr. Jean-Guy Fleury: I was going to say we also have national packages; the research department does research on countries. This research is what is given to everyone in the hearing. There's no information that is not divulged to everyone.

The research department on the country condition is always updating international documents that come from Amnesty International or whatever institution.

I'm sorry I interrupted you.

Mr. Bill Siksay: No problem.

Do they do that in conjunction with the Department of Foreign Affairs as well?

Mr. Jean-Guy Fleury: No, we work independently, to keep the independence.

Mr. Bill Siksay: So there could be a country that Canada has serious problems about internationally in terms of raising human rights questions that the IRB takes a different view of.

Mr. Jean-Guy Fleury: Well, if the Department of Foreign Affairs published something that's in the public domain, we would definitely....

Mr. Bill Siksay: I think a year ago or more there was a real discrepancy in the number of cases that were heard in Vancouver without legal representation for the claimant, as opposed to other parts of the country. Is that still the case, and do you have a sense of why that is?

Mr. Jean-Guy Fleury: I don't have my statistics to hand, but I will provide them.

There was an issue with legal aid. The federal government was negotiating with the province, and for a while it looked like legal aid would not be awarded or granted for refugee claims.

It did pick up. We adjusted. We started having staff give briefings to the non-represented, and then the situation was remedied and an arrangement was agreed to. But I would say it is possibly the region where there are more people unrepresented, and I will get you the numbers.

Mr. Bill Siksay: I just wonder what kind of support the board members get, especially IRB panel members. They have a very difficult job. I'm sure that hearing the difficult stories people tell them day in and out must be very draining and demanding on them. I've heard from some folks who work in the field that they're often concerned about the people hearing the cases, just because of the difficulty of what they listen to day in and day out.

● (1600)

Mr. Jean-Guy Fleury: There are a few things we do, for sure. First of all, the coordinator knows their decision-makers very well, and if the stress level is such that they need to have less work, a different kind of country, or something like that, we sometimes look at that. That is why to a certain degree there is quite a lot of value in not allowing people to serve for more than 10 years, because of the demands. I think we watch that very carefully.

I agree we've had people on stress leave, but proportionally that would not be greater than in any other organization of the federal government.

The Chair: Thank you.

Mr. Komarnicki.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): Thank you.

I have a couple of questions on some of what's been said, looking at it on a comparative basis. There was some mention of the turn-down rate or acceptance rate, and the processing times. When you look at it in the bigger context, how do we compare with other developed countries in acceptance rates or turn-down rates and processing times?

When I listen to some of the factors you have to deal with—in other words, you may have a drastic reduction in claims in one area because of a third-party agreement, and you have positions that aren't filled according to what you might like—I appreciate you're balancing quite a few things. But you have a program to ensure you have quality people in place, and you have a program that deals with the assessment of risk, or pre-removal risk assessment, following a determination in the event of a negative decision.

Have you looked at how our system, process, and procedure compare to developed countries? How would you compare what we now have in place...obviously not what you had hoped for?

Mr. Jean-Guy Fleury: Mr. Chair, I want to clarify that we don't do the risk assessment; the risk assessment is done by the department.

But going back to your question, I see three parts to it. First of all, we're very engaged with the UN in terms of comparing with other countries. When I came in, I went to England, and we compared England. We looked at France. And that information is updated every year. When I go to Geneva every year, we have round tables of similar countries that have similar.... That allows us to see new ways of doing business, whether it's technology or whether it's how they interpret the convention, and the UN helps us with that very much.

The second thing is that there is no methodology known to measure and compare countries in terms of acceptance rate. We are not measuring necessarily the same thing. If I were to give an example, I'll use the United States. The United States has the first level rendering a decision within 60 days, and it is a public service. Then there's an appeal, and then there's another level of appeal over and above. So by the time they do their three levels of appeal and by the time you look at the acceptance rate, we're not very far behind.

In terms of the processing time that I've talked about, six months, I don't think I'm in a good position to compare, but I will say that if we ever get to six months, we're doing very well. If you could do it in four months, then there would be a limit as to how.... You can't sacrifice quality, you can't sacrifice equity, but you have to make sure that justice is not denied by having cases not heard. So that's our big....

I hope I've answered your question. The acceptance rate is difficult sometimes to measure. I would say we rank very well with the United States, contrary to the myth, the myth being that we would be porous or more.... My sense is when we look carefully we're not, and I think we're doing very well that way. But I'm not happy with the fact that we haven't reached the six months. I am not happy and will never be. I think when you look at the provinces and the responsibilities they assume on refugee determination, it's very important.

My other concern, of course, is with appeals. We never had a backlog on appeals; we were always rendering decisions on appeals in six months. Now we're going to 10 months. The numbers are too high. I have redeployed some decision-makers to the appeals side to make sure we're not falling too far behind. But on that side of the issue, the resource issue is very important also for the department, because in appeals it's an adversary system, where the department comes and represents the minister versus the appeal that is going to

be heard. So if they don't have their resources...even if I had 60 decision-makers, it would not necessarily help me.

Some comparisons are possible. Best practices are compared—I'm going back to the refugee file—and on the acceptance rate I know that we are not, as we are portrayed, more generous than any other system in place. But it's hard to compare.

● (1605)

Mr. Ed Komarnicki: The bottom line is, I gather, that the six-month target you would like to meet is one that would be reasonable given all of what you have seen in the system.

Mr. Jean-Guy Fleury: I would say yes, like Sweden.

In England they have blitzed, they have done a lot of work, but by the time you put the appeal system that they have.... We try to do it right the first time. We invest a lot of money and a lot of time on getting it right the first time.

The Chair: Blair, please.

Mr. Blair Wilson: Thank you, Mr. Chair, and thank you, Mr. Fleury, for your presentation.

I just have a couple of questions. I'm looking at the numbers and the graphs and trying to determine the trend of what is shaping up in Canada.

Before I say anything, I must congratulate you on your job of getting the backlog down from the 52,100 that it was in 2002 to the 20,000 where it stands today.

The question I have is on the number of claims that are being referred. Obviously, as the years go by, the number of actual refugee claimants coming into Canada has decreased. If you combine that with a \$10 million increase in budget, and we start having an effective eating into the backlog in a consistent way, it appears that if you keep on track the way you are going, we are probably two to three years away from a just-in-time system, where the refugee claims are being processed as quickly as they are coming in, which I think is a positive sign.

In the second line, where it says "claims finalized", where it seems to have been dropping from 45,000 to 35,000 to 25,000, I'm wondering why the number of claims we process in Canada is decreasing. Are there fewer refugees in the world or are there fewer refugees coming to Canada?

Mr. Jean-Guy Fleury: Well, it's a phenomenon everywhere. It's not just us. The same thing happens in the States and everywhere. The drop that you see in the last two years is international. And then you have safe third that plays into it.

The year we had so much productivity...we couldn't sustain that all the time. We knew people were going all out, but at the same time, if I had all the members I need, we could eat away at the backlog at a faster rate than I'm doing it at right now. Right now, I'm plateauing.

As a matter of fact, if you look at the numbers.... I was hoping to come here with 19,999, but we have been at 20,300 to 20,500 for the last six months. And it's a direct relationship.

I don't want to talk too much about appointments, but I think I did try to make the point that once you start having a time stop in terms of appointments, it has its bearing.

Mr. Blair Wilson: Thank you.

I'm new to the committee, so I'm assuming that the countries of origin for most of our refugee claims are from countries such as Afghanistan, Iran, Iraq, Sudan. What are the top three or four countries we receive refugees from?

Mr. Jean-Guy Fleury: I'll read them out, the top ten. As of today, the top ten are Mexico, China, Sri Lanka, Colombia, India, Zimbabwe, Pakistan, Haiti, Nigeria.... We could send the list.

Mr. Blair Wilson: Okay, yes.

I'm just curious, though. My initial assumption would be that you would have Afghanistan, Iran, Iraq, and Sudan in that list. Why...?

• (1610)

Mr. Jean-Guy Fleury: Well, there are programs of refugees sponsored by government that would come from many refugee camps. Those are people arriving in Canada. But when you look at the privately sponsored and the government-sponsored, you'll probably see what you had in mind in terms of where the refugees are situated.

Mr. Blair Wilson: As a last question, what is your sense of the number of refugees that Canada as a society can consistently take in and integrate into our country? Is there a number where we reach a ceiling? How much more capacity do you think our society has?

Mr. Jean-Guy Fleury: I'm not in the policy area, nor am I with the government. I'm talking about the department. They have analyses, and I haven't been privy to that. But my sense is that we have to be proud as Canadians that we're doing so well. We have an inside refugee determination, but just 44% are accepted; someone is not being accepted.

So there's a fairness there.

Mr. Blair Wilson: If I still have time, what effect is the European Union going to have on our refugee claimants, since that safe third-party loophole allows us to push refugees back to other safe countries?

What impact do you think that will have on Canada?

Mr. Jean-Guy Fleury: It's been brought to my attention that safe third is only between Canada and the States. But in Europe, I think it's in 2008 where they will have the minimum number of refugees.

We don't have safe third with Europe.

The Chair: Would an individual with a criminal record have access to the refugee system, or would that be determined by CIC?

Mr. Jean-Guy Fleury: In all probability the CIC would not refer them to us.

The Chair: It would not refer them to you?

Mr. Jean-Guy Fleury: No, because all of the screening would have been done, and if there is any reason to believe there is criminality or what have you, they are not referred to us.

The Chair: What happens to the cases that are rejected? Do they automatically leave the country? Could you tell me a little bit about that?

Mr. Jean-Guy Fleury: Oh, I think you'd have to ask the agency. Mr. Chair, once we make and render a decision, the documents are referred back to the ministries.

The Chair: Okay.

Thank you, Blair.

Ms. Deschamps.

[*Translation*]

Ms. Johanne Deschamps: I want to talk to you about the Safe Third Country Agreement. This agreement came into force on December 29, 2004. A report was supposed to be tabled after one year. We are still waiting for this report.

Mr. Jean-Guy Fleury: I welcome your question. Foreign Service, the department and the United Nations entered into this agreement. I read the testimony provided by the department last week, stating that it expected to have the assessment shortly.

Ms. Johanne Deschamps: A commissioner has all the independence needed to make a decision, except that his power is discretionary. Should he exercise his discretionary power he must so report to the chairperson.

Correct me if I'm wrong but could this discretionary power act as an impediment, since it could put pressure on the commissioner with regard to a future evaluation? Is this discretionary power used often?

Mr. Jean-Guy Fleury: No.

I want to make sure I clearly understand what you mean by "discretionary power".

Ms. Johanne Deschamps: If the commissioner deems it necessary, he may use it.

Mr. Jean-Guy Fleury: At the decision-making level.

Ms. Johanne Deschamps: Depending on the criteria.

Mr. Jean-Guy Fleury: He can do it based on the convention or the legislation.

• (1615)

Ms. Johanne Deschamps: If he goes beyond this, he must so report to the chairperson.

Mr. Jean-Guy Fleury: No, meaning those making the decisions.

Our commissioners undergo an evaluation process to ensure that they have received the necessary training and to meet their needs, should they have any. The way they make their decisions, positive or negative, has no impact on my decision to recommend that the government renew a commissioner's mandate.

Ms. Johanne Deschamps: So, since I love statistics, would it be possible to get a breakdown of the decisions, both positive and negative, made by each commissioner in each region?

Mr. Jean-Guy Fleury: We simply wanted to mention that the decision-makers are responsible for different countries, different regions. So, it is extremely difficult to compare one commissioner to another in terms of percentage. However, there have been access information requests, and we have provided information on each commissioner pursuant to the legislation.

Mr. Jean-Yves Laforest: Mr. Fleury, is it possible for a claimant to file a complaint about the quality of the process, irrespective of the result? For example, if an applicant feels adversely affected by the process or that someone working within the framework of the process did not show him proper respect, could the claimant file a complaint?

Mr. Jean-Guy Fleury: We have an internal complaints process. Complaints may be filed by defence lawyers or by individuals. I ask complainants to consider the merits of their complaint, etc., and I make a decision based on whether that complaint is founded or not. The number of complaints is published each year in our report to Parliament. Individuals' names are not mentioned, obviously.

Mr. Jean-Yves Laforest: You identify the number of complaints.
[English]

Mr. Jean-Guy Fleury: *C'est cela.*

The Chair: Okay. *Merci.*

Barry Devolin.

Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC): I'm also new to this committee, so I'm trying to learn your process. I have a couple of questions about the member selection process. I appreciate the fact that interested individuals make an application, and there's a preliminary screening and a test. I'm curious about what percentage of people who make those applications get screened out. Is a ballpark figure half of them or...?

Mr. Jean-Guy Fleury: I'll give you numbers generally, because I don't have them in front of me. Under the new regime we've instituted, we received roughly 250 applications. Keep in mind that I usually have 20 vacancies a year, but it can go to 40—in some years people reach the 10 years—so I go back to the selection process.

The selection process starts with the individual's completion of an application form. It is quite complete. They must meet the basic requirement, which is university graduation and five years of related work. That's the basic; then they write a test. The test is corrected by specialists I have in the group. They also give us information with respect to community work they do.

The panel of Canadians that I referred to—do you have the graph?

Mr. Barry Devolin: Yes.

Mr. Jean-Guy Fleury: There's the preliminary screening right now, then the advisory panel is number three. They meet, and they've elected themselves a chair. I'm there as an observer in the sense that I don't speak unless I feel that one candidate or the other could be given consideration, in the sense that I may want to interview them. This panel looks at everyone, and at each one's test results, background, and so on. And they refer to me a number of candidates who I can interview and with whom I can continue the process.

Do you feel I'm taking too long, Mr. Chair?

The Chair: No.

Mr. Jean-Guy Fleury: We wanted to make sure we knew what we were looking for in a good decision-maker. So we sat down with an outside consultant and decision-makers and we identified the competencies necessary to be a good decision-maker. It's very clear there are nine competencies, and then you have the right tools to evaluate.

At the test, the conceptual thinking analysis and communication are ranked. In other words, we pass a judgment as a result of the test.

If they go to interview, I interview with my managers for the other five of the nine competencies. It's highly structured and done on compartments.

So to answer your question with rough numbers, about 70% didn't go further than the test; that's 70 out of 200 candidates. Out of the interviews, I would say approximately another 30% would have been dropped. I could stand corrected, if the numbers were in front of you. I'm going from memory, but I'm pretty close because I'm directly involved in the process.

• (1620)

Mr. Barry Devolin: But the process you've put in place produces enough of what you would consider to be suitable candidates who have gone through the steps. That's not the bottleneck; the bottleneck is at the appointment?

Mr. Jean-Guy Fleury: Yes. The government has a sufficient list of candidates now for the complement that we have.

Mr. Barry Devolin: Are the appointments for three years?

Mr. Jean-Guy Fleury: It varies. We have appointments for three, five, and two years, provided you have a good performance evaluation, which gives you the maximum of ten years. Initially it's for three years, then for a second five years, if the performance evaluation is favourable, and for another two years at the end, which would give you the maximum ten years that they sit.

Mr. Barry Devolin: Right.

Am I out of time? I have a really quick question.

The Chair: You have 15 seconds.

Mr. Barry Devolin: Do you have people in the system for three or five years who get removed because of performance? How frequently does that happen?

Mr. Jean-Guy Fleury: There are two or three things at play. First, once I make a recommendation to the minister on a new appointment or a renewal, it's the minister's prerogative if people are renewed or not. It's not necessarily based on performance. It's the prerogative of GIC.

The Chair: Okay. Thank you.

Mr. Siksay.

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

Mr. Fleury, I want to come back to Mr. Telegdi's original questions about the numbers you need for a full complement. Maybe I misunderstood, but I thought I heard you say you needed 240 for a full complement.

Mr. Jean-Guy Fleury: I said that three years ago we were at 240. Today we are at a complement of 161 and I'm missing 32.

Mr. Bill Siksay: So you have 129. Is that right?

Mr. Jean-Guy Fleury: Yes.

Mr. Bill Siksay: Is that over all three divisions?

Mr. Jean-Guy Fleury: It's over two, because in the third one, they are public servants; they're not Governor in Council appointees.

Mr. Bill Siksay: In terms of the Refugee Protection Division, what's the situation there specifically in terms of—

Mr. Jean-Guy Fleury: Proportionally the vacancies would be about the same. My complement for the appeals side is 37. So I've re-deployed people from the refugee side to the appeals side. I'm still not at full complement in that area. The rest of the vacancies would be on the refugee side.

Mr. Bill Siksay: One of the documents that was in the kit that we were given said that the number of decision-makers in the Refugee Protection Division was 120.

Mr. Jean-Guy Fleury: Yes, 119 or 120.

Mr. Bill Siksay: That's the current number and not the ideal number.

Mr. Jean-Guy Fleury: Yes.

Mr. Bill Siksay: What would your ideal number be?

Mr. Jean-Guy Fleury: It would be 130.

Mr. Bill Siksay: So you're 10 short in that division right now.

You said there was an increasing number of immigration sponsorship appeals. Is there some way of characterizing that increased workload, or is there a typical case? Is there a particular kind of case that is coming forward that's different, or is it just more of the same?

Mr. Jean-Guy Fleury: More of the same.

Mr. Bill Siksay: Those are all my questions, Chair.

• (1625)

The Chair: Okay. We have time for a fast question or two.

Andrew.

Hon. Andrew Telegdi: One question that came up earlier is in terms of the safe third country agreement with the United States. We had a case with a Pakistani doctor who got out. She was raped, she went to England, but she could not apply for refugee status in Canada because she was in England. She was refused...to apply for refugee status in Canada. We have those kinds of situations that are somewhat analogous to the safe third.

I'd like your opinion. We had a presentation from the European Union. The ones that belong to the European Union are members of OSCE and they have to abide by the Organization on Security and Co-operation in Europe. They have to abide by their human rights standards. They're members of NATO and they have to abide by those standards, and of course there's the European Union itself. I wonder if it's just not a waste of effort for us to be entertaining refugee claims from the European Union.

The reason I raise that is I think their system is at least as good as ours, or they have more safeguards than we do, given the multiplicity of the bodies. The other issue is that there's a problem with visa requirements from some of the countries that belong to the European Union, which creates a problem between us and Europe in case they want to reciprocate.

Would you agree that the European standard in terms of human rights is at least equal to, if not better than, Canada's?

Mr. Jean-Guy Fleury: I wish I could help you there, but I don't know enough about the European standard myself, I must confess. Secondly, I think the department is in a better position to provide the standard issue in its standard discussions. I'm using the convention and the act.

The Chair: I think we'll have to cut it off there.

I want to thank you, Mr. Fleury, and your associates for coming today. I want to compliment you again on your very good work.

Did you have a statement you wanted to make, Ms. Stuart-Major?

Mrs. Marilyn Stuart-Major (Executive Director, Immigration and Refugee Board of Canada): I know there are a number of new members on the committee, and the chair talked about our outreach. If any one of the members of the committee is interested in the briefings, we'd be pleased to provide those briefings. As well, we invite you to attend any of our hearings across the country. Just contact our office and we'd be pleased to show you what we do and how we do it.

The Chair: Thank you. I'm sure some of our members will take advantage of it.

We'll have to break for a couple of minutes while we get our next group in.

- _____ (Pause) _____
-
- (1630)

The Chair: Maybe we can resume our meeting, or start our new meeting, I should say.

On behalf of the committee, I want to welcome representatives of the United Nations High Commissioner for Refugees. We have with us today Mr. Assadi, the representative from Canada, and Mr. Kale, a senior protection officer.

We have one hour. You will, of course, be given about 10 minutes to make an opening statement if you wish, after which of course we will go around the table and have questions, discussions, and what have you.

Welcome, gentlemen. You can begin any time you're ready.

Mr. Jahanshah Assadi (Representative in Canada, United Nations High Commissioner for Refugees): Thank you very much, Mr. Chairman.

Mr. Chairman, honourable members of the committee, thank you very much for inviting UNHCR to appear before this committee. Joining me, as the chairman said, is my colleague, Mr. Kale, the UNHCR senior protection officer here in our office in Ottawa.

First, Mr. Chairman, I wish to congratulate you on your election as chair of this very important committee. We very much look forward to working with this newly constituted committee on citizenship and immigration.

I welcome this opportunity to comment briefly on key refugee protection issues specific to the Canadian context, as well as to draw the committee's attention to recent developments that will significantly impact the international dimension of UNHCR's work.

As members of the committee are certainly aware, the UN High Commissioner for Refugees is mandated to provide international protection to refugees and to help governments solve refugee problems.

We have arranged to distribute an information brochure that describes our role here in Canada, so I won't go into great detail, except to emphasize a crucial point about the manner in which we carry out the supervisory functions of our mandate here in Canada.

As a party to the 1951 Convention relating to the Status of Refugees, Canada agrees to cooperate with UNHCR in supervising the application of the refugee convention, and this willingness to cooperate goes even further. UNHCR's role to attend and observe any proceedings concerning asylum seekers and refugees is actually enshrined in Canadian legislation. Thus, UNHCR is in a very good position to closely observe the actions that Canada takes in assuming its international obligations with respect to refugees and asylum seekers.

In general we find Canada's procedure for the determination of refugee status to be of a very high quality. From our observation, we find that the Immigration and Refugee Board has in place a fair and sound first instance decision-making procedure, which is very much enhanced by the fact that the IRB is an independent body.

A sound and well-resourced first instance mechanism must be the core of any refugee status determination procedure anywhere in the world. The fact that the IRB's decision-making looks at all protection aspects of the refugee claim, including the 1951 refugee convention as well as the 1984 convention against torture, helps to enhance fairness and efficiency.

Nonetheless, the chairman of the IRB himself has often stated that refugee determination is one of the most difficult forms of decision-making. UNHCR agrees, and it is in recognition of this fact that we believe that implementation of an appeal on the merits to review negative first instance decisions would strengthen even further the Canadian refugee status determination system. For UNHCR, an appeal on the merits would correct first instance errors and help to ensure consistency and fairness in decision-making.

The Federal Court judicial review is not an appeal on the merits. The court cannot replace a decision by the IRB with its own judgment. However, the Federal Court can refer a case back to the IRB if it finds that a decision is incorrect in law, or based on an unreasonable understanding of the facts, or if it was made in an unfair manner.

The pre-removal risk assessment, PRRA, is an important safety net, especially when there's a long passage of time between a negative decision and removal. Like the humanitarian and compassionate application, the PRRA is a circumscribed process that does not correct a first instance negative decision.

We also believe that another key element to enhancing the credibility and preserving the integrity of the refugee system is for

rejected asylum seekers to leave Canada if, after full and fair consideration, they are found not to be in need of protection. The voluntary return of rejected claimants should be promoted, as such programs can be helpful in returning them home in a safe and dignified manner.

• (1635)

I would now like to comment on UNHCR's monitoring of the safe third country agreement between Canada and the United States of America—an issue that I know is of interest to this committee.

As the committee is aware, UNHCR was requested by the two parties to the agreement to monitor the implementation of this bilateral accord. The scope of UNHCR's monitoring role was to assess whether the implementation of the agreement was consistent with its terms and principles, as well as with international refugee law; in other words, whether the asylum seekers had access to the refugee determination procedure either in Canada or in the United States, and that protection from being sent to a possible place of persecution would be granted to those in need of it.

In general, UNHCR's findings on this agreement have been positive, notably that the safe third country agreement is being implemented in accordance with the terms of the agreement and international refugee law. Eligibility decisions under the agreement are made correctly. The burden of proof required for refugee claimants, such as establishing family links, is generally reasonable. Moreover, UNHCR has enjoyed very good cooperation with government authorities and port of entry officials on both sides of the border in terms of free and unhindered access to ports of entry, as well as to asylum seekers.

During the course of our monitoring on the Canadian side, UNHCR held regular consultations with CIC and CBSA officials to discuss and/or address any issues that arose during the implementation of the agreement.

The main issues of concern that we identified and for which we proposed recommendations for these to be addressed included: one, an inadequate level of preparedness prior to implementation of the agreement; two, the policy of "direct backs"; three, lengthy processing times at certain ports of entry; four, refugee claimants often not understanding the complexities of the safe third country agreement interview process; five, a narrow definition and application of the public interest provision; and six, the need for a more timely provision of statistical reports.

I should mention that all of these issues have been addressed to varying degrees and UNHCR recommendations are being followed. Most notable amongst them is Canada's recent decision to discontinue the policy of "direct backs" as of August 31 of this year, except under extraordinary circumstances, which is a decision that we especially welcome.

Our findings during our first year of monitoring indicate that out of 4,041 refugee claimants, approximately 74% fell under one of the exceptions to the safe third country agreement and were deemed eligible to lodge their claims in Canada. The refugee claimants' main source countries of nationality were Colombia, Zimbabwe, Sri Lanka, the Democratic Republic of the Congo, Burundi, Peru, El Salvador, Guatemala, and Haiti.

UNHCR's final monitoring report covering the first year of the agreement's implementation will shortly be submitted to the governments of Canada and the United States, and we understand it will be placed in the public domain in due course.

I would now like to brief the committee on the importance that UNHCR attaches to Canada's role in the resettlement of refugees, not only in terms of the number it accepts on an annual basis, which hovers around 10,000 to 11,000 or so, but also for using its resettlement program in a flexible and strategic manner designed to provide durable solutions for a maximum number of refugees.

Canada has partnered closely with UNHCR in developing new strategies, such as applying a group resettlement approach to benefit a larger number of refugees who have been in a protracted refugee situation overseas and who can neither return home nor safely integrate in their host country. For example, this approach was used last year to resettle large numbers of Somali and Sudanese refugees from UNHCR camps in Kenya.

●(1640)

Another illustration is Canada's resettlement of over 1,000 Afghan refugees from the central Asian republics, where Canada not only responded to a protracted Afghan refugee situation, but it also positioned its program in order to leverage the governments in that region to allow the naturalization of 10,000 remaining Afghan refugees.

Today we are looking to Canada to play an active role in helping to build resettlement capacity in Latin American countries through technical and financial support. A number of countries in that region have committed to develop their own resettlement and integration programs in response to the Colombian refugee problem, but the know-how from experienced countries like Canada would be very much welcome, and to date, CIC has been forthcoming in its support for such initiatives.

Again, at the international level, Mr. Chairman, I think it's important for this committee to be aware that since the start of 2005—and this was mentioned in the discussions earlier with the IRB—the number of refugees worldwide is at its lowest level in almost a quarter of a century, at just over nine million persons. Several sizeable repatriation operations have contributed to the decrease of refugees, most notably in Afghanistan, where more than four million people have returned home since 2002. In Africa, return movements to Angola, Sierra Leone, Liberia, and Sudan have either been completed or are under way.

This positive shift in the number of refugees has been offset, unfortunately, by the growing number of internally displaced people, currently estimated at 25 million globally. These are persons who have been uprooted by violence and persecution and who are effectively refugees in their home country, as they haven't, strictly speaking, crossed an international border. A few examples of large-scale internal displacements are the 3.4 million people in Colombia, the 1.8 million in Sudan's Darfur province, and the 1.5 million in Uganda.

Addressing the inadequate level of protection assistance provided to these civilian victims has been recognized as one of the greatest challenges faced by the international community. As part of a new

UN inter-agency approach to ensure a more reliable and predictable engagement in situations of internal displacement, UNHCR has been tasked to lead the so-called clusters on protection, camp management, and emergency shelter. This marks a turning point for UNHCR, as internally displaced people are now to become integral and important parts of UNHCR's global activities.

This will no doubt create pressures on UNHCR's work in terms of operational capacity and our ability to secure additional resources. Our high commissioner is fully committed for UNHCR to take on these new responsibilities with internally displaced persons on the condition that this greater role not come at the expense of refugee protection and assistance. The Government of Canada fully concurs with this position.

To recap and conclude, Mr. Chairman, my office believes that Canada has a strong tradition of helping refugees, both in Canada and abroad; that its determination of refugee status is of a high quality; and that its resettlement program is immensely important as a protection tool and in assisting UNHCR in finding doable solutions for refugees. We are grateful for the ongoing cooperation and assistance we enjoy with the government as well as with other partners in Canada.

Thank you again for the opportunity to appear before this committee today.

●(1645)

The Chair: Thank you, sir.

Just one question. How does Canada stack up in terms of acceptance levels compared to other developed countries in the world?

Mr. Jahanshah Assadi: The ranking of Canada would be either second or third globally. The U.S. is the major resettlement country right now, as it resettles about 50,000 or so people. Canada and Australia, I would say, normally vie for second or third place. But it's in the top three.

The Chair: Andrew.

Hon. Andrew Telegdi: Thank you.

Just to correct one thing, we no longer elect chairs in committees; they're appointed by the Prime Minister. That was something we played with briefly, and unfortunately that democratic renewal, or whatever, was not continued.

In terms of refugee hearings and fairness of various systems, how do you feel about the European model?

Mr. Jahanshah Assadi: Certainly we consider that Europe and North America have quite developed models for the purposes of refugee status determination, but I guess to some extent it depends on what you mean by Europe.

In terms of some of the the former Eastern bloc countries, the UNHCR is working to expand their capacities.

●(1650)

Hon. Andrew Telegdi: Let me correct you, the European Union.

Mr. Jahanshah Assadi: Yes, some of those countries are members of the European Union.

I recall the question you put to Mr. Fleury. There are some countries in Europe with long experience and expertise in dealing with refugee status determination, while other, newer members of the European Union are now developing their capacity. We are actively engaged with some of those countries.

So it's difficult for me to give a broad-brush assessment of all the European Union countries. Certainly among them you have some that are amongst the best practitioners, and there are those that have set up relatively new systems and are working to develop their capacities.

Hon. Andrew Telegdi: But they all have to apply to the European Union. If you're a member of the European Union, you also have to apply to the OSCE.

Mr. Jahanshah Assadi: Yes.

Hon. Andrew Telegdi: You also have to apply to NATO, where it applies.

In some ways, I feel safer having those folks in the European Union make those determinations than I do with some aspects of our neighbour to the south, particularly when it comes to war resisters, for example. Do you have any comment on that?

Mr. Jahanshah Assadi: As I said in my presentation, Canada's system is of a very high quality. There are a number of states in Europe that also have very high standards. To some extent, they have been seeking to harmonize their standards within the context of the European Union.

Certainly for the UNHCR, the one document that is primordial, if you will, in refugee status determination is the 1951 UN Convention relating to the Status of Refugees. We have urged states seeking a common denominator in developing systems for refugee status determination not to use the lowest common denominator.

Hon. Andrew Telegdi: I'm asking you to make a comparison of the U.S.A., Canada, and Europe.

Mr. Jahanshah Assadi: As Mr. Fleury said before me, the U.S. has a very well-developed system for refugee status determination. In 2005, the U.S. received the second highest number of asylum seekers in the world. Their recognition rate was not too different from Canada's. Last year, nearly 49,000 asylum applicants were lodged in the U.S., about two and a half times the number lodged in Canada. So their system is quite developed; many seek and are granted asylum there. Again, their recognition rate is comparable to Canada's.

I wouldn't want to compare recognition rates between the North American countries and Europe, because they have different regimes in place in Europe. One aspect of the European system is a system known as temporary protection, by which they allow you to stay temporarily until such time as the conditions of your country of origin change and you can go back. For example, in the case of the refugees from Kosovo, they allowed the Kosovars to stay for a few years. Then when conditions in Kosovo changed, the people were encouraged to return.

In Canada, you don't have a temporary protection regime; you're either in or you're out. I wouldn't want to compare two systems that are not comparable, but both are sound and valid.

The Chair: Thank you.

I'll go to Mr. Laforest.

[*Translation*]

Mr. Jean-Yves Laforest: You said initially that Canada, as a signatory to the Convention on the Status of Refugees, enforced those conditions. At the same time, you also said that it respected and had put in place a very high quality system. This document says that, in Canada, the UNHCR takes action namely by observing hearings and interviews.

First, are there other factors beside these observations? Is it based on these other factors that you are able to determine that this is a quality system? Do you have any statistics about the number of interviews or hearings that you observe?

• (1655)

[*English*]

Mr. Jahanshah Assadi: Thank you for the question.

In fact, as I mentioned in my presentation, UNHCR's role is enshrined in Canadian law and legislation. The 1951 Convention itself also gives the UNHCR supervisory duties and responsibilities over how states implement their international obligations.

In the case of Canada, we actually have staff in Montreal and Toronto who work out of the IRB building. They take the elevator down to the hearing rooms on a daily basis; our staff sit in on IRB hearings. In the course of any given year we will observe and analyze, in person, 100 or 200 cases, if not more. We will do spot checks, if you will, based on what type of case is being considered, what type of nationality, what the complexities are, etc. We will be present in person at all major locations in Canada, particularly in the main areas—Montreal and Toronto—but also in Vancouver, Winnipeg, Calgary, and Halifax, to observe these hearings in person. We will then share our observations as to what their strengths and weaknesses might be with the IRB on a regular basis.

I can give you statistics afterwards—I don't have those statistics with me—but we look at a good cross-section of refugee claims; we observe and monitor them in person while they are being conducted, and we've been doing this for more than 15 or 16 years, from the very beginning, since the IRB was established in the late 1980s.

The Chair: Thank you.

Mr. Siksay is next, please.

Mr. Bill Siksay: Thank you, Mr. Chair. Thank you, Mr. Assadi and Mr. Kale, for being here again.

I have some questions around the safe third country agreement.

I don't know if you're aware of a March 2006 study out of the Harvard Law School that raised some serious concerns about the implementation of the safe third country agreement. One of their concerns in particular was that they felt the safe third country agreement was endangering certain refugee groups. They particularly mentioned Colombian refugees, who, when turned back, face an acceptance rate in the United States that is far different from what it is in Canada. They also noted the declining number of NGO services for refugees at border points—they relate it to the implementation of the safe third country agreement—and raised a concern about increasingly dangerous attempts by individuals to cross the border and circumvent the land border crossings to make a claim once they are within Canada.

Did your monitoring deal with any of these specific concerns raised in this report from Harvard?

Mr. Jahanshah Assadi: Yes, we are aware of the Harvard study. As far as Colombians are concerned, we don't have the impression that they would necessarily get a better deal here in Canada. Again, it's difficult to take these types of statistics and say, well, if a Colombian came to Canada he would have a 40% chance of being accepted, and in the U.S. it would be 30%. It's difficult to make these comparisons. We consider the U.S. to be a safe country. Otherwise, we would not have agreed to do this monitoring, and we would have said so at the very outset. There are places in the world where we have clearly said that country X is not safe and therefore we would not go along with a safe third country agreement.

Given the nature of the rather developed systems in Canada and the U.S., we have said from day one that both countries are safe. The key is that either one of the two countries is available to asylum-seekers for purposes of status determination. I wouldn't want to necessarily make a judgment, for Colombians or anyone else, about whether there is a bias one way or another. Both countries have good systems, and both countries are indeed safe, so I would stay away from actually making a statistical comparison or a value judgment.

In terms of services, one of the things we have tried to do is to make sure that information about the realities and criteria in connection with safe third countries is available publicly so that asylum seekers don't come to Canada or the U.S. based on false hopes or rumours. NGOs along the border are doing an excellent job, but they have limited capacities in terms of assisting people. The more we can disseminate factual, objective information regarding safe third countries and the criteria that allow people to gain admission to either the U.S. or to Canada, the better. Fewer people will be required to come through the borders and be disappointed.

As far as the overall assessment of safe third countries, as I've said, ours has generally been a positive one. We have made a number of our concerns known—I spelled out a number of those—and the government has fortunately been forthcoming in taking action on those recommendations.

• (1700)

Mr. Bill Siksay: You raised a concern in your statement—I don't have the right diplomatic language, and I'd use different language than you did probably—about the need in Canada for an appeal on the merits of a case. I think we often talk about the refugee appeal division, which is provided for in our immigration act but hasn't been

implemented. Has the UNHCR raised specific criticisms about the American process in the same way I hear you saying that it's a good, high-quality system? Have there been specific criticisms of the United States' refugee system that you could tell us about?

Mr. Jahanshah Assadi: We've talked to just about every country in the world about its refugee system. No country is immune to our comments. Certainly, our office in Washington is in regular dialogue with the U.S. government. I'm sure that just as we talk to CIC and CBSA regularly here, they speak to the Department of Homeland Security and State Department. So yes, we are in regular contact with the U.S. about their system, as we are with other governments. But again, the bottom line is that the U.S. system is a credible one; it's an experienced and established one. As is the case with the Canadian government, our channels of communication with the U.S. government are quite good.

The Chair: Thank you.

I'll have to go to Ed.

Ed, please.

Mr. Ed Komarnicki: Thank you.

Mr. Assadi, I have a couple of general questions and then maybe a specific one. In reference to the safe third country agreement that Canada has with the U.S., I noted you mentioned that the agreement incorporates a monitoring role for your department to oversee the implementation and so on.

Do safe third country agreements, say in Europe, have similar monitoring provisions or is this unique to the Canada-U.S. agreement?

Mr. Jahanshah Assadi: What I would say is rather special about the safe third country agreement—and let's not forget that it's a bilateral agreement—is that the U.S. and Canada entered into this agreement and they invited us, the UNHCR, to monitor the agreement. We would have monitored this agreement in any event because it's part of our supervisory and mandate work, so the fact that the two governments decided to actually invite us was, for us, an additional facility, and they extended a welcome mat to us, which we obviously were pleased to have.

So if countries enter into safe third country agreements and do not explicitly invite UNHCR, as part of our normal mandated work we will monitor those agreements in any event, but in the case of the U.S.-Canada one, as I said, we were especially pleased to have been invited to monitor the agreement, because both governments were committed to extending facilities and cooperation to us.

• (1705)

Mr. Ed Komarnicki: I know it's difficult to make comparative analysis, but if you were to compare the safeguards in the Canada-U.S. agreement to similar agreements in Europe, how would you? Or are you able to make a comparison?

Mr. Jahanshah Assadi: I don't think one can make this type of comparison. The one in North America is pretty unique; its criteria are unique. For example, the exceptions that allow people to lodge claims in Canada and the U.S. are based on, say, family connections, and those family connections are spelled out. There are other exceptions that would allow people to make claims.

So it's very specific to the U.S. and Canada. But I just want to underline that as part of our normal protection and monitoring work, we would have monitored this agreement as we would have any other similar agreement anywhere in the world.

Mr. Ed Komarnicki: I have one very specific question, if I might. We have a group making a presentation to the committee in the next week or so, I think, and that has to do with the Vietnamese population in the Philippines. They were screened under the comprehensive plan of action, and some of them, a small group—I'm not sure of the number—300 or 400 people, are claiming need of protection, refugee protection. Does the UNHCR take any position in terms of that group and whether they would qualify under refugee protection at this stage, or are you prepared to make a comment on that?

Mr. Jahanshah Assadi: In fact, when this issue came up last year, we sent a note to the committee stating our position on the Vietnamese in the Philippines, but since there are a number of new members here, I'll very quickly summarize what our position is on this group.

These are people who, as you correctly said, were considered under the comprehensive plan of action to determine whether they were refugees or not. This group was determined not to be refugees under the comprehensive plan of action.

Under the CPA, governments plus an appeals body, plus UNHCR, reviewed all cases, and the Vietnamese in the Philippines that you're referring to went through a comprehensive status determination process and they were determined not to be refugees. Under the CPA they were destined to return to Vietnam.

They chose not to go to Vietnam. The Government of the Philippines allowed them to stay. UNHCR provided limited financial support and a project to help the Government of the Philippines deal with their integration and their other needs.

We understand that legislation is in the works in the parliament of the Philippines to allow those who wish to stay in the Philippines to do so. At the same time, we're aware that Canada might be interested in bringing some of them here, and we absolutely have no problem with that as long as the resettlement of the Vietnamese does not come from the refugee program, the refugee quota, the government-assisted refugee program.

The Chair: Thank you, Mr. Assadi.

Blair, please.

Mr. Blair Wilson: Thank you, Mr. Chair.

Thank you, Mr. Assadi, for your presentation.

Could you elaborate a little bit more on the recommendation you have here in your handout, on page 4, which discusses the narrow definition and application of the public interest provision, article 6?

Mr. Jahanshah Assadi: Article 6 of the agreement specifies that the two parties, the U.S. and Canada, can, if they wish, go beyond the exceptions that allow people to enter the country, and in the public interest, allow others. For example, right now if you qualify as part of the normal criteria, you have a relative in Canada, a mother, father, brother, sister, etc., and you are allowed to lodge your claim in Canada. That is the so-called normal exception. In other words, an

exception is made for you if you have relatives in Canada. You don't have to go back to the U.S. and have your claim lodged there.

There may be other public interest categories that might also be considered for exceptional consideration. Right now the public exception category applies to the eight what we call moratorium countries, where there is a moratorium on the removal of certain individuals. These are nationals of Rwanda, Zimbabwe, Burundi, Liberia, Haiti, Afghanistan, the Democratic Republic of the Congo, and Iraq. If you're a national of these countries, an exception is made for you as well so that you don't have to go back to the U.S. to lodge your claim.

We have advocated over the last year or so of our monitoring that perhaps the Government of Canada could consider including other categories for exceptional consideration. Here we're thinking of vulnerable individuals, disabled people, victims of torture, and the elderly. The government has said they will consider our request, but no commitment has been made.

• (1710)

Mr. Blair Wilson: Thank you.

You stated here the fact of the dramatic rise in internally displaced people and that now your mandate is going to be expanded to include that. My question is, do you have the capacity both financially and with human resources to be able to take on such a staggering mission?

Mr. Jahanshah Assadi: That's an excellent question, and it's a question I think that keeps the high commissioner awake many nights in Geneva.

We have been very careful to say, first and foremost, that our normal protection work is refugees. That's what we have a mandate for, and they will not be short-changed at the expense of internally displaced people. If we are to take on the problem of internally displaced people, and that we said we will do, because there's a need out there, then, one, it would not have to be at the expense of refugees, and two, we would require resources to do so—financial, plus other types of political and diplomatic support that come with dealing with the very delicate issue of internally displaced people. We're hopeful that the same governments that support us in our efforts, and not just the UN itself, but the UN system, the international community as a whole, will provide us with the necessary resources in dealing with this new phenomenon of internally displaced people.

It's an excellent question and one that is going to be a challenge.

Mr. Blair Wilson: Is there a thought to maybe break it out and have it under a separate umbrella organization so that it can deal exclusively with that issue and go directly from country to country for funding?

Mr. Jahanshah Assadi: I think the approach, as I've mentioned in my statement, is to try to get the entire UN system working together. Various UN agencies will form clusters of responsibility and leadership so that we spread the work around and the responsibilities for sectors are clearly defined. As I said, in our case we are given the role for account management, shelter, etc., but certainly it is seen to be something that the entire UN system and many other partners will have to play a role in. Not one agency today is equipped to deal with this phenomenon on its own.

Mr. Blair Wilson: Given Canada's capacity, our experience and expertise, in your judgment where would Canada best fit in assisting you and your organization in dealing with solutions to that problem?

Mr. Jahanshah Assadi: Canada is at the forefront of coming up with innovative and excellent ideas of dealing with displacement in general. Last year Canada provided UNHCR with about \$31 million U.S. Canada is an important donor to UNHCR, but I think moral support, political, diplomatic, and financial support from Canada and like-minded countries will be very important for us.

The Chair: Thank you.

Madame.

[*Translation*]

Ms. Johanne Deschamps: I want to come back to the Safe Third Country Agreement, if I may. The information we have, that is the first statistics that have already been compiled within the framework of this agreement, between 2004 and 2005, there was a 40 per cent decrease in refugee claims made at border crossings and a 23 per cent decrease at inland offices and airports. Since Canada shares its only land border with the United States, clearly the agreement has greater impact on refugee claimants travelling through the United States.

This affects individuals in the two countries providing the highest number of claimants: Columbians and Mexicans represent 47 per cent of refugee claimants per year. Already, in North American, we can imagine that many of them leave their country of origin and travel through the United States in order to apply.

Should we be concerned about the adverse impact on these refugee claimants? Do they prefer to remain illegal refugees, for fear of being returned to the United States? Could this agreement be causing increasing illegal border jumping?

• (1715)

[*English*]

Mr. Jahanshah Assadi: Again, I spelled out in my presentation the wide range of nationalities that were affected by safe third. You have Colombia in first place, Zimbabwe in second place, Sri Lanka in third place. You have a Latin American country, an Asian country, and an African country, so the affected nationalities are quite varied. I wouldn't want to just focus on the fact that one or two nationalities are affected.

The key for us is that there be one state—either the U.S. or Canada—where asylum seekers can lodge their refugee claims, that there not be responsibility shifting, and that responsibilities be clearly designated. In the case of the safe third, our monitoring of its first 12 months of implementation demonstrates that in fact both countries are living up to their international obligations.

I can't make a value judgment as to why people prefer to lodge claims in Canada over the U.S. In fact, most of the traffic has been in the direction of Canada, you're correct. Whether the safe third has had an impact on illegal arrivals or illegal trafficking or smuggling, for example, is a question that we often put to the government. The government has assured us that the safe third has not resulted in any noticeable spike in the number of people seeking to enter Canada illegally in order to circumvent safe third.

The Chair: Thank you.

Mr. Devolin, you have a question.

Mr. Barry Devolin: Yes. I have a couple of questions. I may not use the right words to ask this question either.

I presume there are countries in the world where there are standard practices that would be unacceptable here in Canada, where people would be asked to do stuff that they would not be asked to do if they were a citizen of Canada, stuff that would be unacceptable here.

One example that comes to my mind is something like conscription. Can somebody claim refugee status in another country—Canada, for example—because they live in a country where conscription—compulsory military service, I guess you could call it—is standard? Would that be a basis for claiming refugee status in Canada?

Mr. Jahanshah Assadi: Again, I don't want to make a general statement on a general question, but if we're talking about a country where the rule of law prevails, where a democratic system prevails, and the law happens to be that there are compulsory military duties for certain age categories, that, in and of itself, would not constitute grounds for refugee status.

However, if we are talking about a different society with a different system, and the individual in question might be a minor, certainly in some countries where there is forced conscription of minors and where the rule of law and democratic systems do not prevail, UNHCR will look at cases of that type with a different approach, if you will.

I would say that it will vary. There is no one-size-fits-all type of response to conscription issues. We will look at these on a case-by-case basis. But certainly, that's just one example. Where there is forced conscription of a minor, say the way it was in the Great Lakes region of Africa after the genocide, when a number of young kids were being forcibly conscripted into the military to do things that were unpalatable, obviously UNHCR takes a very negative view of such types of action. But there will be other types of conscription issues that are of a different nature.

• (1720)

Mr. Barry Devolin: In the example I was thinking of, South Korea, there is mandatory military service for all young men, but a young Korean male couldn't claim to be a refugee. I guess he could try to claim refugee status in Canada by saying that either he didn't want to serve or that it was sexist, because it's only for men and not for women.

Mr. Jahanshah Assadi: Absent other factors, based on what you've just said in this illustration, I would say, no, there wouldn't be grounds. But again, it would be a case-by-case determination.

The Chair: I'm going to get Mr. Silva in here for a question or two, and then we need a couple of minutes for motions that Mr. Siksay has put forward.

Mr. Mario Silva (Davenport, Lib.): Thank you, Mr. Chair, and thank you, Mr. Assadi, for your presentation.

I wanted some clarification about asylum seekers. The information I have is that as of 2002, there were over a million people who were seeking asylum worldwide, and there were over 10.4 million refugees worldwide. You mentioned that there has been a decrease. Did that number you quoted today include asylum seekers or not?

Mr. Jahanshah Assadi: These would be refugees who are registered with UNHCR. Don't forget, for example, that we don't register or deal with Palestinian refugees. They are dealt with by another UN agency, and there are a couple of million of them as well. The number we have on our books today is just over nine million. We would also include asylum seekers, including those people who are destined for repatriation.

Mr. Mario Silva: That's what I wanted to know.

The second question is a little different from Mr. Devolin's, but it is still on the issue of military service. It is not about conscription, because we know that in the U.S. there is no conscription, but we also know that under international law and under the UN mandate the U.S. is really engaged in illegal activities in Iraq. Given that particular situation and mission, and given the fact that many people who are serving in the army have now come to Canada asking for asylum, could you please comment on whether you think they should be recognized as legitimate refugees under Canadian law?

Mr. Jahanshah Assadi: I can only say that in the few cases that have come to Canada and have been dealt with by the IRB, we don't have any issues with the decisions taken by the IRB.

The Chair: Okay, we'll call it an evening.

Thank you very much, Mr. Assadi and Mr. Kale, for your presentation today. It is very much appreciated, indeed, and again, congratulations on the good work you are doing.

Thank you.

Mr. Jahanshah Assadi: Thank you very much.

The Chair: We have three notices of motion that we have to deal with.

Mr. Siksay, if you want to read these into the record, go ahead.

Mr. Bill Siksay: Thank you, Chair.

Given the concern that a number of us have on the whole question of regularization of people who are undocumented in Canada and concerns about the deportations of some of those folks, which some folks believe are increasing, I want to give notice of three motions.

The first one is:

That, pursuant to Standing Order 108(2), the Committee recommends that the government establish an in-Canada regularization program that is accessible and affordable to allow non-status immigrants and their families living and working in Canada to apply for permanent residency.

That the Committee adopt this recommendation as a report to the House and that the Chair present this report to the House.

In accordance with the provisions of Standing Order 109, the Committee requests that the Government provide a comprehensive response to this Report.

The second motion is:

That, pursuant to Standing Order 108(2), the Committee recommends that the government create a long-term solution for an accessible and affordable program that permits new immigrants to enter Canada to join the workforce, particularly in sectors with labour shortages.

That the Committee adopt this recommendation as a report to the House and that the Chair present this report to the House.

In accordance with the provisions of Standing Order 109, the Committee requests that the Government provide a comprehensive response to this Report.

The final one is:

That, pursuant to Standing Order 108(2), the Committee recommends that the government place an immediate moratorium on deportations of all undocumented workers and their families who pass security and criminality checks while a new immigration policy is put in place.

That the Committee adopt this recommendation as a report to the House and that the Chair present this report to the House.

In accordance with the provisions of Standing Order 109, the Committee requests that the Government provide a comprehensive response to this Report.

Thanks, Mr. Chair.

● (1725)

The Chair: Thank you.

These motions will be sent to your offices.

Bill, we'll try to deal with these on Wednesday.

The meeting is adjourned.

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