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• (1530)

[Translation]

The Clerk of the Committee (Mr. Andrew Chaplin): Ladies and gentlemen, I see a quorum.

[English]

I have been informed by the chair that neither he nor the vice-chairs are available to chair the meeting, so the first item of business is to proceed to the election of an acting chair. I am now ready to receive motions to that effect.

Mr. Dosanjh.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): I nominate Russ Hiebert.

The Clerk: Mr. Dosanjh has moved that Mr. Hiebert take the chair.

The committee has heard the terms of the motion. Is it the pleasure of the committee to adopt the motion?

[Translation]

Ms. Diane Bourgeois (Terrebonne—Blainville, BQ): Can we move other motions?

The Clerk: We can only deal with one motion at a time. We must first of all vote on Mr. Dosanjh's motion.

Ms. Diane Bourgeois: We will deal with it—

The Clerk: If the motion is defeated, another may be moved.

[English]

The motion is that Mr. Hiebert do take the chair.

(Motion agreed to)

The Clerk: Mr. Hiebert.

The Acting Chair (Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC)): Good afternoon.

It's a pleasure to have you all here today. We're looking forward to the testimony.

We have a tight schedule this afternoon, with two groups of witnesses before us.

I invite Ms. Swords to lead us off, and then perhaps we can move to Ms. Nölke. Then we'll go to the other side, with Colonel Herfst and Mr. Rigby, in that order.

Please begin.

Ms. Colleen Swords (Assistant Deputy Minister, International Security Branch and Political Director, Department of Foreign Affairs and International Trade): Mr. Chairman, honourable members of the committee, I thank you for the opportunity to appear before you today in response to your request seeking to hear witnesses concerning any agreement allowing the transfer of prisoners in theatre from Canadian custody to any other.

I will provide you with a broad overview of Canada's approach to detainee issues in Afghanistan by highlighting some of the background to Canada's arrangement for the transfer of detainees, as well as by outlining the role of the International Committee of the Red Cross and the Afghan Independent Human Rights Commission. I will also touch upon our efforts to strengthen Afghan detention and correctional system capabilities.

[Translation]

My colleague from the Department of National Defence, Mr. Vincent Rigby, will provide you with additional information on the operational context in Afghanistan and how the Canadian Forces implement our arrangement.

I would also like to introduce, Sabine Nölke, Deputy Director within the Department of Foreign Affairs' UN Human Rights and Humanitarian Law Section, who will be able to provide additional legal background with regard to our detention policy.

As evidenced by the committee's recent work, Canada's engagement in Afghanistan has generated significant interest among Canadians and Parliamentarians. A key issue which has received attention is the question of detainee transfers in Afghanistan. This issue is of considerable importance to the government.

As evidenced by my appearance here as well as that of Mr. Rigby, Canada's detention policy in Afghanistan is a cross-governmental responsibility.

[English]

Let me begin by stating that Canada and its international partners are making a difference in Afghanistan. Helping to build a stable, secure, democratic, and self-sufficient Afghanistan is in our collective interest. The events of September 11 demonstrated that our security is linked to situations elsewhere in the world. Ensuring that Afghanistan never again becomes a terrorist haven and a source of regional and international instability is a global responsibility. Afghans, the United Nations, NATO, and our allies are deeply invested in this essential endeavour.

Our overall efforts in Afghanistan have been endorsed by successive United Nations Security Council resolutions. I want to cite a few excerpts from them because they are relevant to the question of how we handle detainees.

Security Council Resolution 1510 of 2003, which recognized NATO's leadership of the International Security Assistance Force, authorizes the expansion of the mandate of ISAF to allow it, as resources permit, to support the Afghan transitional authority and its successors in the maintenance of security in areas of Afghanistan outside of Kabul.

The most recent Security Council Resolution, number 1707 of September 12, 2006, reaffirmed the international community's commitment to the sovereignty of Afghanistan and to that country's responsibility for providing security and law and order throughout the country. The international community's efforts, including those of Canada and of NATO allies, aims precisely at strengthening that indigenous capacity.

As we defend our collective interest and assist the Afghan government to meet the needs of the Afghan people, there are those who are trying to prevent the international community and Afghans themselves from rebuilding their country. The insurgency, as we have seen, has targeted symbols of progress and normalcy, attacking schools, civilians—including aid workers—government offices, and officials.

As part of our ongoing operations since 2001, when Canada first informed the UN Security Council that it would commence military action in Afghanistan and the exercise of individual and collective self-defence against al-Qaeda and the Taliban, the Canadian Forces have captured and subsequently transferred individuals suspected of committing crimes or planning to commit terrorist acts against international forces or Afghans themselves.

I want to turn to the arrangement Canada has with the Afghan authorities. Following the Bonn accords in December 2001 and the Afghan compact of 2006, and in recognition of the newly formed Afghan government's sovereignty and responsibility for the handling of detainees captured within their own territory, Canada concluded an arrangement on the transfer of detainees from the Canadian Forces in Afghanistan to Afghan authorities.

This arrangement and how it is implemented is the main focus of your request for our appearance here today. I will therefore devote some time to outlining its genesis and its underpinnings.

The arrangement was signed by General Hillier on behalf of the Government of Canada and by the Afghan Minister of Defence, Minister Wardak, on behalf of the Islamic Republic of Afghanistan, on December 18, 2005. For ease of reference, we have provided the committee with a copy of the arrangement.

Intended primarily to provide commanders on the ground with clarity on what to do in the event of a transfer, the arrangement lays out two key principles.

The first principle is the recognition of the need for detainees to be treated humanely under any circumstance and in accordance with the standards set out for prisoners of war in the Third Geneva Convention.

The second relates to the principle that Afghan authorities, in exercising sovereignty over their own territory, should have the ultimate responsibility for detainees transferred and held within Afghanistan. This is consistent with Canada's key objective for Afghanistan, and indeed the international community's, namely to support Afghan authorities in strengthening local capacity and good governance.

• (1535)

I want to be clear that while the arrangement is not a treaty and is not legally binding, it captures in writing and reaffirms already existing legally binding commitments, in particular those in the Third Geneva Convention, as well as obligations undertaken by both Canada and Afghanistan under international law with respect to detainees. In this context, there was no need to enter into a separate legally binding agreement with the Government of Afghanistan.

I would note that the modalities for the transfer of detainees concluded between Afghan authorities and other NATO allies such as Denmark, the Netherlands, and the United Kingdom are also not of a legally binding nature.

The Canadian arrangement establishes the procedures to be followed in the event of a detainee transfer and reinforces the commitment of both participants to meet their obligations under international law. Specifically, the arrangement includes a commitment to treat detainees humanely and in accordance with the standards set out for prisoners of war in the Third Geneva Convention, which affords detainees with the highest treatment standard regardless of their status and obviates the need for status determination; an acknowledgment of the right of the ICRC to visit detainees at any time during their custody; an obligation for both parties to notify the ICRC upon transferring a detainee, in accordance with their obligations pursuant to international law; a commitment that persons transferred from the Canadian Forces to Afghan authorities will not be subject to the application of the death penalty; and lastly, a recognition by both parties of the legitimate role of the Afghan Independent Human Rights Commission with regard to the treatment of detainees.

Given the content of the arrangement, I would like to take a moment to review the respective roles of the ICRC and the Afghan Independent Human Rights Commission and of Canada's relation with both those organizations.

The ICRC is, of course, a highly regarded international humanitarian organization. It's an important and valued partner for Canada, and we strongly support their role in the promotion and protection of international humanitarian law. As part of its internationally recognized mandate, it visits and monitors the situation of detainees around the world to ensure they are treated humanely in accordance with the standards set out in the Geneva Convention.

Canada maintains an open and constructive dialogue with the ICRC on detention issues, both in the field and in Ottawa. The ICRC president, Dr. Jakob Kellenberger, was in Ottawa earlier this fall, and he expressed appreciation for Canada's continued cooperation on this issue.

Canada notifies the ICRC in a timely manner each time a detainee transfer occurs, and my colleague Mr. Rigby will be elaborating further on this point. Canada also notifies the Afghan Independent Human Rights Commission in recognition of their role. The AIHRC provides an additional avenue for Afghans to obtain information on the whereabouts of relatives if these are believed to have been detained by foreign forces, including Canadian Forces.

Finally, I'd like to note that we also notify the NATO-led International Security Assistance Force, ISAF, of any detainees transferred. The information shared with NATO is similar to that provided to the ICRC and the AIHRC.

Let me say a word on capacity building. Based on the premise that Afghan authorities should have the ultimate responsibility for detainees transferred and held within Afghanistan, Canada has been actively contributing to efforts to assist and strengthen Afghan capabilities in this field. This is assisting Afghanistan to fulfill its obligations regarding the humane treatment of detainees and conditions of detention. Consistent with our leadership role on justice and security system reform in southern Afghanistan, particularly in Kandahar, and in light of our strong commitment to international humanitarian and human rights law standards, Canada recently deployed a corrections expert to the United Nations assistance mission in Afghanistan for the past three years.

• (1540)

More recently, a senior expert from the Correctional Services Canada undertook a needs assessment of the facilities in Kandahar and provided recommendations for future Canadian engagement in the corrections and detentions sector.

As part of the assessment, the Canadian expert consulted with ICRC representatives in Afghanistan, as well as with other relevant stakeholders. That report provided recommendations for immediate and long-term activities for capacity building in the corrections and detention centre, including in Kandahar province in particular. We are reviewing the recommendations of that report, which could include deployment of Correctional Service Canada officers to the PRT, the Provincial Reconstruction Team, to contribute to training activities and capacity-building projects in Kandahar province.

In conclusion, Canada strives to maintain an open, transparent process with respect to detainee issues, and Canada is fully supportive of efforts to strengthen Afghan capacity and good governance.

I'll be pleased to answer questions the committee may have that fall within the competence of the Department of Foreign Affairs.

• (1545)

The Acting Chair (Mr. Russ Hiebert): Thank you, Ms. Swords.

Unless there is further comment to be made, we'll move to the second set of witnesses.

Please proceed.

Mr. Vincent Rigby (Acting Assistant Deputy Minister (Policy), Department of National Defence): Thank you very much, Mr. Chairman.

Honourable members of the committee, perhaps I could begin by echoing the sentiments expressed by Ms. Swords. Thank you for the opportunity to be here today to discuss Canada's approach to detainee issues in Afghanistan. It's a great privilege.

I'd like to introduce Colonel Bert Herfst, who is the Deputy Judge Advocate General Operations. He'll be able to provide the Canadian Forces legal background to our detainee policy on deployed operations, including those specifically in Afghanistan.

[Translation]

My colleague, Ms. Swords, has laid out the principles and specific provisions of our detainee arrangement with the Government of Afghanistan in some detail, including the essential roles of the International Committee of the Red Cross and the Afghan Independent Human Rights Commission. She has also touched on the important question of supporting the Afghan authorities in strengthening their detention and correctional system. With your permission, I would like to describe how the Canadian Forces on the ground are implementing the arrangement.

[English]

Before I get into the details of our detainee policy with respect to Afghanistan, perhaps I could provide some background on our detention policy writ large under national operations.

First and foremost, let me stress that the Canadian Forces conduct all of their international operations in accordance with applicable Canadian and international law. As a matter of policy, they are to treat all detained persons humanely, in accordance with the standards of treatment and care set out by the Third Geneva Convention, relative to the treatment of prisoners of war.

Moreover, our military personnel are specially trained to carry out this policy. I'm aware that the committee recently visited Canadian Forces bases in Edmonton and Petawawa. You were no doubt informed during these visits that all Canadian Forces personnel deployed on international operations are provided with pre-deployment briefings and training. This process includes training specifically designed to ensure that deployed personnel understand prisoner of war status, the treatment of prisoners of war, and detainees.

I should also point out that the Judge Advocate General offers a course entitled, "The Law of Armed Conflict". The purpose of this is to educate Canadian Forces members about the laws and treaties to be followed when taking part in international military operations, including the proper treatment and care of sick and/or wounded civilians, detainees, and prisoners.

The JAG has also produced a publication entitled, *Code of Conduct for CF Personnel*, which is used for unit-level instruction on the basic laws of armed conflict, including detainee standards of treatment.

If I could, Mr. Chairman, let me now turn specifically to Afghanistan.

As everybody in this room knows, our mission in Afghanistan is extremely complex and covers a wide range of military operations, including armed conflict. But whatever the specific operational circumstances in which the Canadian Forces might find themselves in theatre in Afghanistan, they are to apply the standards of international humanitarian law, including those found in the Geneva Convention—and at all times.

As Mr. Swords has explained, it is Canada's intent, under our arrangement with the Afghan government, to transfer persons detained by the Canadian Forces to the Afghan authorities. Our detainee arrangement applies to all Canadian Forces in Afghanistan, regardless of the command structure in which they are operating—in other words, whether our personnel are operating under national command; under ISAF, NATO's International Security Assistance Force; or under the U.S.-led operation, Enduring Freedom.

The Canadian Forces conduct virtually all of their operations jointly with Afghan national security forces. The preferred approach is for the Afghan authorities themselves to carry out all aspects of detention, if possible. After all, they have the lead responsibility for law enforcement in their own country. If, however, Canadian Forces personnel capture an individual, they are authorized, both nationally and in accordance with ISAF's operational procedures, to temporarily hold that person, prior to transferring him or her to Afghan authorities at the earliest possible opportunities.

The Canadian Forces compound at the Kandahar airfield has a small transfer facility for captured individuals prior to the transfer to the Afghan authorities, although it should be noted that transfers also take place in the field.

• (1550)

[*Translation*]

In accordance with Canadian Forces doctrine, designated, specially-trained Canadian military personnel may conduct initial questioning and screening of persons under our custody to obtain information of immediate tactical value.

Questioning is conducted through the use of Canadian Forces-authorized questioning and interview techniques, and is in complete accordance with Canadian law as well as with all relevant international laws and conventions, including the Third Geneva Convention. Initial screening is also conducted to determine if captured persons should be released or detained, to obtain details for our own records, and to notify the ICRC, ISAF, and the Afghan Independent Human Rights Commission.

[*English*]

When an individual in Canadian custody is transferred to the Afghan national security forces, information concerning that person—for example, name, age, sex, physical condition—is relayed from Canadian Forces in theatre, through National Defence Headquarters here in Ottawa, to the Canadian permanent mission in Geneva, which in turn advises the protection service of the International Committee of the Red Cross through a diplomatic note.

Similar information is passed locally, as Ms. Swords pointed out, to ISAF and the Afghan Independent Human Rights Commission. This information is treated confidentially.

The Canadian Forces may delay the transfer of individuals to local Afghan authorities at the place of capture if there is reason to believe the detainees might be mistreated. In such circumstances, they would not conduct the transfer until contact was made with Afghan authorities in whom we have total confidence.

The committee may recall a publicized incident this past spring when Canadian soldiers detained two suspected insurgents during a cordon and search operation. The Canadians had reason to question the intentions of the local Afghan authorities in that particular area. They therefore transported the individuals to Kandahar and transferred them to trusted interlocutors of the Afghan national security forces.

Everything I've talked about up to this point has one common theme. That is that all individuals detained by Canadian Forces personnel in Afghanistan are treated humanely in accordance with the standards of the Geneva conventions to ensure their safety and welfare respecting their health, customs, and their religious tenets.

For example, if an individual were wounded when captured, he or she would be provided medical care in accordance with Canadian Forces standards. The individual would not be transferred until Canadian medical officers were confident that recovery would not be put at risk in any way, shape, or form.

If Canadian Forces personnel were to detain a female—this has not happened yet—every effort would be made to ensure treatment in accordance with applicable religious and cultural practices, to the extent that this is operationally feasible. Specifically, female detainees would be segregated from male detainees; female Canadian Forces personnel would be employed to guard them; and male personnel would not be permitted in the female detainee holding area unless escorted by a female guard.

Let me offer one final issue that is often raised in the context of detainees. I'm referring to the details surrounding individual detainee cases. Because of operational requirements and taking into account section 51 of the Access to Information Act dealing with military operations, information regarding numbers of detainees transferred, the current status of detainees apprehended by Canadian Forces in Afghanistan, and the identity of the specific authorities to which these individuals were transferred is not releasable to the public.

Let me close by reiterating some of the key principles that underpin our detention policy on deployed operations globally and in Afghanistan specifically. Ms. Sword has touched on many of them, but they really do bear repeating.

[*Translation*]

The Canadian Forces conduct all their operations, including in Afghanistan, in accordance with applicable international and domestic law.

The Canadian Forces treat all detained persons, in Afghanistan and around the world, humanely, in accordance with the standards of treatment and care set out by the Third Geneva Convention relative to the treatment of prisoners of war.

All Canadian Forces personnel deployed on international operations including in Afghanistan, are provided with pre-deployment briefings and training to ensure they understand prisoner of war status and the treatment of prisoners of war and detainees.

The Government of Canada supports the principle that Afghan authorities should have the responsibility for handling detainees captured in their sovereign territory.

The development and implementation of Canada's detention policy in Afghanistan is an interdepartmental responsibility. National Defence officials work closely with our colleagues in Foreign Affairs, Correctional Services, and other departments and agencies across government to ensure that this policy is applied properly and effectively.

• (1555)

[English]

With that, Mr. Chair, I'll conclude. I'd be delighted to answer any questions you may have with respect to National Defence's role in carrying out our detainee policy in Afghanistan.

Merci beaucoup.

The Acting Chair (Mr. Russ Hiebert): Thank you, Mr. Rigby.

We're going to now proceed to a seven-minute round, with Mr. Dosanjh leading off.

Hon. Ujjal Dosanjh: Thank you.

Mr. Rigby, you have indicated the restrictions on what you can disclose to us. I must tell you from my personal perspective that I don't know how the country's security could be jeopardized by telling us, without naming names, how many prisoners our forces have taken, how many have been transferred to the Afghan government, and how many have gone to third countries.

Is this restriction placed at the discretion of the minister or someone else in the department, or is this embedded in some legislation?

Mr. Vincent Rigby: Mr. Dosanjh, this has been standard operating procedure for the Department of National Defence for some time. My understanding is that virtually all our NATO allies carry out the same standard.

It's a bit of a slippery slope if we start providing some information with respect to numbers or with respect to some details on specific issues. It can lead to other questions that get into specific operational requirements, which could technically jeopardize soldiers' lives and could put us in a difficult situation.

That's the idea behind this practice. As I say, it is pretty much a standard practice right across NATO, as far as I know.

Hon. Ujjal Dosanjh: I really don't much care whether it's standard practice with NATO. The question I have is that you're saying this is standard practice with us.

Can you explain to me how the anonymous number of people captured and the number of people transferred to the Afghan government or to third countries other than Afghanistan could jeopardize any security? Security of our personnel is uppermost in my mind. I'd like to be persuaded—if it is just a policy not embedded

in law and there is no legislative prohibition, I'd like to know how that can lead to a breach of security that might endanger operational information or the lives of our troops.

Mr. Vincent Rigby: Mr. Dosanjh, all I can say is that an operational decision has been taken not to release specifics with respect to detainees.

Hon. Ujjal Dosanjh: It is an operational decision taken by whom?

Mr. Vincent Rigby: It would be our military commanders, as far as I know.

Hon. Ujjal Dosanjh: Is it the CDS or a person on the ground in Afghanistan?

Mr. Vincent Rigby: I believe it goes right up the chain of command.

Hon. Ujjal Dosanjh: It goes to the CDS?

Mr. Vincent Rigby: I believe so.

Hon. Ujjal Dosanjh: All right.

As a general question, I'd like to know what the experience has been under this arrangement that Canada has vis-à-vis our own Canadian access to these individuals, if we so choose to exercise that right of access, or the International Red Cross access to them. What has been the experience on the ground?

• (1600)

Mr. Vincent Rigby: Up to this point, Mr. Dosanjh, I think the experience has been excellent. There is nothing in the arrangement with Afghan authorities that prevents Canada and Canadian Forces members from asking Afghan authorities to follow up with detainees. Certainly we have had Canadian Forces personnel following up in detention centres with respect to detainees we've actually transferred. So that's been our experience up to this point.

With respect to the International Committee of the Red Cross, again, they have an international mandate to follow up in this regard with detainees who are transferred to Afghan authorities. Our relationship with the ICRC has been excellent. They have all the information we've provided to them, and certainly they've had access and have been following up with detainees we've transferred to Afghan authorities.

Hon. Ujjal Dosanjh: If we have followed up ourselves, how often has that been done? In what condition did we find those prisoners we had transferred? Were they held under appropriate conditions?

Mr. Vincent Rigby: Up to this point, sir, visits to Afghan detention centres have been on an irregular basis. I cannot give you a specific number at this point as to how many times Canadian Forces personnel have visited detention facilities in Kandahar, for example, but there have been visits, and we are looking I think towards the future and perhaps having more regular visits to detention facilities. This is something we plan to talk to the Afghan authorities about.

Hon. Ujjal Dosanjh: Has there been anything in your experience or from what you know that might lead you to the conclusion that we need to review and improve the arrangement that is in place?

Mr. Vincent Rigby: At this point, we believe the arrangement has worked extremely well. We're very comfortable with the way the arrangement has been drafted. We're very comfortable with the role of the International Committee of the Red Cross, with the Afghan Independent Human Rights Commission, and with our access to prisons as required. We've had absolutely no information passed to us directly by the ICRC or the Afghan Independent Human Rights Commission or Afghan authorities themselves as to mistreatment of detainees passed on to Afghan authorities by Canadian Forces.

That said, we're always dealing with our ICRC colleagues and with our colleagues in the Afghan national security forces. Certainly we will be looking at ways on the detention side, for example, and on the correctional services side—and Ms. Swords referred to this—to improve capacity building in the areas of security sector reform and justice and so on and so forth.

Hon. Ujjal Dosanjh: Thank you.

The Acting Chair (Mr. Russ Hiebert): Thank you, Mr. Dosanjh.

Since we recognize that we will not have enough time for a second round of questions, I propose to the committee that we extend this first round to eight minutes or shortly after eight minutes. You can share it among yourselves as you wish.

Ms. Bourgeois, you're next.

[Translation]

Ms. Diane Bourgeois: Thank you, Mr. Chairman.

Good afternoon, ladies and gentlemen.

My first question is for Ms. Colleen Swords. Why are these prisoners in prison? Apart from the fact that they are terrorists, what have they done? It is all fine and well to say that they are terrorists, but I would like to have some more clarifications.

[English]

Ms. Colleen Swords: That's a question, in a way, that's best directed to the military on the ground, but because the nature of our operation in Afghanistan is multi-faceted, some of those who would be picked up may indeed be insurgents. Some of them might actually be those who've engaged in some criminal activity. That's why the sense is that it's best to turn them over to the Afghan authorities for them to determine how best to handle the justice system, starting from any charges and right through to detention.

It's a variety, because the nature of the mission in Afghanistan is quite a mixed mission. It's all about stabilization of the Afghan government; they don't fall into one category or the other.

Would the Department of National Defence want to add to that from the field perspective?

Mr. Vincent Rigby: Perhaps all I could add is that we don't usually refer to them as prisoners. We like to use the term "detainees" specifically for what they are. When we first capture an individual—when we first take a detainee under our wings—we do an assessment of whether they should be passed on to the Afghan national security forces or released. If it's clear in our minds that they are insurgents and have been conducting insurgent operations in Afghanistan and against alliance forces, then we will pass them on to Afghan national security forces. That's generally the idea.

• (1605)

[Translation]

Ms. Diane Bourgeois: I feel it is important for you to tell us what type of individuals these people are, whether they be insurgents, criminals or prisoners, as written in the document.

We know that the Afghan government is currently weak. I have here a study by Houchang Hassan-Yari, Professor and Director of the Department of Political Science and Economics at the Royal Military College of Canada. He says that the Afghan government is very weak, that the police, in particular, face rampant corruption and that the government must find a solution to the problem of poppy crops.

It is important for you to tell us who you have incarcerated. If the government is corrupt, if it is weak and if you hand over these insurgents or criminals to the government, what guarantees do we have that these people will remain in detention and will not turn against the people in the field? That is the first component.

Secondly, there are the warlords. All recent studies indicate not only that the Taliban are gaining ground, but also that the warlords, who we, as Canadians, have put in place, often violate human rights in Afghanistan and contribute to propagating the problems there.

Drafting regulations or concluding arrangements is good, but I question the safety and the security that such arrangements will provide.

Thirdly, in the Arrangement for the Transfer of Detainees signed by the Canadian Forces and the Defence Department of the Islamic Republic of Afghanistan, it says, in point 8, that:

The Detaining Power will be responsible for classification of detainees' legal status under international law.

That goes back to what I was saying earlier. Let's say that a person is detained for opium trafficking in a corrupt government. Are you confident that will bring about much security? Will that prevent the government from releasing the person? How can we be sure that such a weak and corrupt government will pursue your action? I am sure that your action is excellent, but how can we ensure that it will be pursued?

[English]

Ms. Colleen Swords: In a way, there are three questions. In another way, they're all the same question, which is basically, yes, the government in Afghanistan needs a lot of help. There are tremendous challenges there on all fronts—if that weren't the case, we wouldn't be there—but those challenges are on so many fronts that you have to start somewhere, and they're on so many fronts that an agreement alone is not enough. That's why we have, on the part of the Canadian government, identified correctional reform as an area into which we want to put some resources to assist them in their correctional facilities.

In addition, the European Union has a very large police training program, and UNAMA has focused on justice sector reform.

Has it happened yesterday? No. Has it happened today? No. Will it happen in ten years? Well, only if we start now. The concern is that if you just say they can't do it and we've got to do it all ourselves, we will never build indigenous capacity for the Afghan people to do it themselves. The only way to do that and to build it is to work with them now on specific projects, with specific training that deals with the justice sector and with correctional facilities. We don't know any better way to do it than working with them, starting right now.

•(1610)

[Translation]

Ms. Diane Bourgeois: Again, according to Mr. Houchang Hassan-Yari, who is very familiar with Afghanistan since he works here for the Canadian Forces, allegiance in Afghanistan is first and often only to the tribal leader. The central government is a foreign and distant body, and the national sense of belonging is weak.

How can a Canadian Forces service like yours or a correctional service help the Afghan people have confidence in a central government, when that is not part of Afghan traditions? The Afghan people have never experienced that, they are not familiar with that. You seem to be going against the flow and to want to get them to believe in a strong central government that is legally responsible and in a correctional service that should provide them with some security. I do not understand.

[English]

The Acting Chair (Mr. Russ Hiebert): You've got about thirty seconds.

Ms. Colleen Swords: I think you've identified another of the challenges in Afghanistan: the relationship between the central government and the provincial governments.

Having said that, I can tell you it is different, depending on which province you're in. Some of the provinces have much more robust justice systems than others, so it does vary. The correctional services are provincial, and they vary considerably from one province to another.

Training is another challenge. Very often countries that are doing training try to do it at the central level. Well, it doesn't always spill down. We've discovered that in Kandahar we actually have to get out and do some of our own training with respect to police training and the correctional services, because although some of it has been done by UNAMA, it's been done in Kabul, and we need to do more of it out in the provinces.

You've identified one of the problems, but it's a problem we are working on.

The Acting Chair (Mr. Russ Hiebert): Thank you.

Ms. Black is next.

Ms. Dawn Black (New Westminster—Coquitlam, NDP): Thank you very much.

Thank you very much for coming again. It's a pleasure to have you here and to get some information.

The department has said many times that nothing in this arrangement prevents Canadians from requesting a visit to the detainees to do any follow-up. You seemed to indicate we have been

doing that. That's in contradiction to the information I had in reply to a written question to the minister, who told me on September 18 that Canada had not yet requested to visit any detainees.

If you're in agreement with the minister, it would mean we've only started to ask after the end of September.

How many prisoners have we followed up on, and what was the state of their incarceration?

Mr. Vincent Rigby: I can perhaps ask Colonel Herfst if he has the details on that answer, but my understanding is that these have been informal ad hoc visits that did not necessarily entail a formal request to Afghan authorities to make an appearance at the detention centres, so I don't believe there's a contradiction between me and the minister. It may be more just a matter of process and how we put it through the system.

I'll pass to you, Colonel.

Col G. Herfst (Deputy Judge Advocate General Operations, Department of National Defence): Mr. Rigby is correct in that it is done at the local level. It's done by those people in Kandahar who on a fairly regular basis have needed to go downtown and have contact with the Afghan authorities for particular reasons. I'm thinking, for example, of members of the military police, who, as Madam Swords has indicated, are working towards mentoring and helping the local police to increase their capacity. It's in that vein that we have that kind of contact.

Ms. Dawn Black: Let's just say that to the minister's side, I can read to you that the Canadian government has not yet requested to visit transferred detainees—

Col G. Herfst: That is correct.

Ms. Dawn Black: —and that was September 18.

That takes me to my next question, though, because you mentioned the military police. How are the military police involved with the detainees? Is it the military police who process them on to the Afghans? Second, are the actions of the Canadian military police in Afghanistan in any way different in Afghanistan from what they are in any other theatre of operation that Canada is involved in?

•(1615)

Col G. Herfst: The answer to the second part is very easy. We train to one standard and we apply that one standard. It is in conformity with all our obligations under international law.

Yes, it is the military police who have the primary responsibility both to advise on and to implement local arrangements for the processing and transferring of detainees. They advise the commander on the ground in respect of detainee transfers.

Ms. Dawn Black: Am I correct in understanding that it is Canadian military police who transfer detainees over to the Afghan authorities?

Col G. Herfst: It is if we are dealing with a transfer that takes place not necessarily at the place the individual was captured, because from time to time an individual may be transferred almost directly, depending on who is present at that point.

Mr. Vincent Rigby: There are effectively two options. You can transfer a detainee in the field at the place of capture or you can take the detainee back to the detention facility at Kandahar.

Ms. Dawn Black: Would they then go into the custody of the Canadian military police?

Mr. Vincent Rigby: That's my understanding, and if it's done in the field, it's usually done with the commander who is at the location at that precise time.

Ms. Dawn Black: Are you aware of any problems with suspects being released by the Afghan authorities before there's been a chance for a full investigation to determine whether or not charges should proceed?

Col G. Herfst: We choose not to speak in terms of suspects; they're detainees for us.

Ms. Dawn Black: Okay, "detainees", then.

Col G. Herfst: We transfer them, and then it's for the Afghans to take whatever appropriate measures under their regime they wish to take.

Ms. Dawn Black: I'm asking the question because there's a story in today's *Globe and Mail* by Graeme Smith that documents the case of a suspect, a detainee—excuse me if I don't have exactly the same language you do—who was detained over the death of Glyn Berry. He documents very forcefully in his article today that a Mr. Pir Mohammed was arrested as a main suspect. They said the police became more suspicious after they raided his home, finding weapons, documents, and a Kalashnikov, but before a proper investigation could take place, he was released after less than two days in custody because, according to this article, Mr. Mohammed had friends in high places, powerful men who gave him freedom before the police were satisfied that they had had an opportunity to properly investigate him. Apparently the key to his release was Mullah Naqib. It was said that Mr. Muhammed was lucky enough to be born as a member into this old warlord's tribe.

It does raise some very serious concerns, particularly when we're talking about the life of a Canadian diplomat and the investigation or lack of investigation thereafter.

Mr. Vincent Rigby: Perhaps I can just say, in the context of our detainee arrangement, that we in the Department of National Defence and the Canadian Forces are certainly not aware of any detainees we passed on to Afghan authorities who would then be released and come back onto the battlefield to inflict casualties or to wage operations against our forces. We're not aware, I don't think.

Ms. Dawn Black: I certainly hope not.

Mr. Vincent Rigby: If we were aware, we would certainly take action. We would certainly raise that directly with the Afghan national security authorities and national security forces, and we would, as part of our residual responsibilities of the arrangement, get some answers.

Ms. Dawn Black: I sent another written question to the minister, and the department made it clear to me in their response that detainees—anyone who's captured—had no right to counsel.

I'm wondering how the department came to this view and how the guilt of the detainee—I was going to say prisoner—is determined, or are they all basically presumed to be guilty?

Col G. Herfst: No. These are detainees in the context of a very complex security operation or even combat, so we're not treating

them in the same way you would treat, for example, a criminal suspect.

On the issue of whether the rights a criminal suspect here in Canada may expect at time of arrest are the same as when we capture and detain an individual on the battlefield, in our estimation that portion does not apply to the detainee.

Ms. Dawn Black: Okay. Is this arrangement—call it the arrangement—legally binding on Canada and on Afghanistan?

Col G. Herfst: It's a morally binding document, if you will.

• (1620)

Ms. Dawn Black: I really wonder what the point is of signing an agreement if it's not binding.

Mr. Vincent Rigby: I think the notion is that it's not legally binding because it is meant to reinforce the commitments we've already made to, for instance, the third convention.

Ms. Dawn Black: What about on the Afghan side?

Mr. Vincent Rigby: They've done the same. They're party to the convention against torture. They're party to the—

Ms. Dawn Black: It just seems a bit odd for two nations to sign something that doesn't have any legal standing.

Col G. Herfst: It makes their responsibilities, when they have detainees, so much clearer for the people who are in theatre and on the ground and operating there. There's no more question of, do you do this or do you do that. It's very clear. It's very succinct. It says this is who you pass these detainees to.

Mr. Vincent Rigby: It's very important I think to get the procedures in writing. I think one of the main purposes of the arrangement is to make it absolutely clear between Canada and the Afghan government. It's also in the context of the International Committee of the Red Cross and the Afghan Independent Human Rights Commission knowing their roles.

The Acting Chair (Mr. Russ Hiebert): Thank you, Ms. Black.

Ms. Colleen Swords: I will just add that it is actually quite common to have arrangements that get into a bit more detail than you could do in a treaty. We have them, for example, in the transfer of offenders. We have a treaty—the transfer of offenders treaties, the treaty between governments—but then we have administrative arrangements that lay out more specific details. It's really quite common to have an arrangement that gets into more detail than you do in the actual treaty. In this case, the actual treaties are Geneva conventions and all the human rights conventions that Afghanistan is a party to and we are a party to. So you wouldn't want to rewrite them.

Mr. Vincent Rigby: I know we have to move on, but as a final point, the arrangements other NATO countries have struck with the Afghan authorities are not legally binding either—for instance, with respect to the Dutch.

Ms. Dawn Black: It's a little stronger than ours, though, in terms of follow-up.

The Acting Chair (Mr. Russ Hiebert): Thank you.

We'll go to Mr. Hawn.

Mr. Laurie Hawn (Edmonton Centre, CPC): Thank you very much, Mr. Chair, and thank you for coming.

Actually, I'll just follow up for a second on Ms. Black's question. The arrangement is not legally binding, and I think I understand why, and why that's practical, but some have suggested that what Canadians do now might land them in the International Criminal Court later on. If this arrangement is not legally binding, do you see that as a serious concern, assuming that the Canadian authorities do carry out their jobs in accordance with the agreement?

Ms. Colleen Swords: In order to land yourself in the International Criminal Court, you have to have done a crime against humanity or a very serious crime. International law actually provides for and allows for the transfer of detainees, so it doesn't make any sense at all to suggest that somebody would end up in the International Criminal Court.

Mr. Laurie Hawn: Thank you.

We make assumptions sometimes—and it does come out in most groups like this—and we attribute Canadian standards to places like Afghanistan. Clearly that's not going to be the case.

Can we ever make meaningful long-term progress and improvements in what the Afghans are doing without taking what people who assume Canadian values would call risk? Do we not have to take some of those risks ourselves, if we're ever going to work with groups like Afghan authorities to bring them up to where we like to think we are? Is this about risk assessment?

Ms. Colleen Swords: In a way it is, and in a way that's exactly what we're trying to do. I think we have to bear in mind that Afghanistan is I think the fifth-poorest country in the world. It has huge economic challenges across the board, not the least of which relate to their justice system and their correctional service system. We need to help them. We need to help them across many, many fronts, and this is just one more.

Mr. Laurie Hawn: Things that somebody in Canada might consider a violation or a concern under our Charter of Rights and Freedoms may be things that in practical terms we really have to expose ourselves to in working with the Afghans to bring them along. Is that a fair statement?

Ms. Colleen Swords: I think there is never any excuse for something as serious as human rights violations that rise to the level of torture or something like that. If we're talking about whether you have a cell that is a certain size and has a flush toilet, a different standard will obtain in some of the really poor countries. So I think we need to be a bit careful on the standards we're speaking of.

• (1625)

Mr. Laurie Hawn: Exactly. Thank you.

I'll pass it on to my colleague.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): It was reported that the prime suspect in the killing of Glyn Berry

was released by the Afghan police on the recommendation or request of a local mullah, and the suspect hasn't been seen since.

If our soldiers ensnared this fellow in one of their operations and the mullah came calling and demanded that he be released, what would our troops be required to do?

Mr. Vincent Rigby: It's very clear in terms of what our forces' role is with respect to capturing insurgents or suspected insurgents: we are to pass these detainees on to the Afghan national security forces. It is very clear what their mandate is. It's as simple as that.

Mrs. Cheryl Gallant: So even if we were to capture this person, by the rules, he could be just let go again?

Mr. Vincent Rigby: Obviously the commander on the ground can show discretion. In the specific context you provided here, you could have the commander calling back to Ottawa or taking this issue up the chain of command and asking for direction. I should clarify that point. In this specific context in which we potentially capture somebody who we have reason to believe launched an attack specifically against Canadian Forces personnel, the commander would in all likelihood get back to Ottawa and ask for the next step to follow, because the issue you're laying out is a very delicate and very sensitive one.

Mrs. Cheryl Gallant: Our prime goal is keeping our security forces as safe as possible and protecting their lives. On that note, should the Taliban capture one of our soldiers, would they be afforded the same type of adherence to international rules as we are required to adhere to for their sakes?

Col G. Herfst: Thankfully that has not been a situation we've had to deal with.

Mrs. Cheryl Gallant: And if they were to be captured?

Col G. Herfst: We just simply don't know what the Taliban would do.

Mrs. Cheryl Gallant: I will share with my colleague, Mr. Blaney.

[Translation]

Mr. Steven Blaney (Lévis—Bellechasse, CPC): Good afternoon and thank you.

Essentially, we are talking about an arrangement that was signed just under a year ago, on December 18, 2005. Basically, the cornerstone of the arrangement is the Third Geneva Convention. You say that both Canada and Afghanistan have committed to treating detainees in accordance with requirements set out in this agreement.

Can you tell me what the legal requirements are for detainees?

[English]

Ms. Colleen Swords: This is probably one the lawyers should deal with. The Third Geneva Convention deals with prisoners of war. It deals with prisoners of war in the context of an international armed conflict—which this is not, per se, because we're in there helping the Afghan government. There's an article 3 that applies to non-international armed conflict. Basically we've decided that we're going to apply the standards of humane treatment that are set out in the Geneva Convention, no matter what.

Article 12 in the Third Geneva Convention does provide the possibility for states to hand over a detainee to another party. That's basically what we're implementing through this arrangement. I'm a lawyer; I didn't want to say it with two lawyers in the room, but there are two who are actively engaged in humanitarian law, so perhaps they would like to add something.

Ms. Sabine Nölke (Deputy Director, United Nations, Human Rights and Humanitarian Law Section, Bureau of Legal Affairs, Department of Foreign Affairs and International Trade): The Third Geneva Convention, of course, contains a large number of standards, not all of which would necessarily apply to a detainee taken in this particular conflict.

The primary one that is important, of course, is the humane treatment provision—i.e., the individual is entitled to his physical integrity and is not to be tortured. The primary one that is of most interest as well is the right of access to the International Committee of the Red Cross. That would not normally be granted in cases of unprivileged belligerence; it's a privilege in that particular case.

The Third Geneva Convention also contains a number of other privileges that are given to.... If you have seen movies of the Second World War, you'll have seen the way prisoners would be grouped in various detention camps. These are not the kinds of rights we're talking about. We're talking about the prima facie standards of treatments, namely humane treatment and right of access. Those are provided by the Third Geneva Convention.

• (1630)

[Translation]

Mr. Steven Blaney: If I understand correctly, the Red Cross has authority for oversight. In the document that he presented, Mr. Kellenberger welcomed the Canadian government's cooperation. To your knowledge, have there been concerns with detainees that the Canadian Forces have transferred to Afghanistan? Has the Red Cross mentioned problems that may have arisen?

[English]

Mr. Vincent Rigby: We're not aware of any specific instances, as I mentioned before, of the Canadian Forces transferring a detainee to Afghan authorities and then hearing through either the ICRC or directly from the Afghanistan Independent Human Rights Commission that these detainees have been mistreated by Afghan authorities. We're not directly aware, no; there's anecdotal evidence that occasionally will come up, but we certainly have not heard directly that any of these detainees has been mistreated.

The Acting Chair (Mr. Russ Hiebert): Thank you, Mr. Blaney. We're out of time.

On behalf of all the members of the committee, I want to thank you for appearing before us today. Your expertise is greatly appreciated.

At this point, members, we will suspend for just a few moments as we prepare for the next set of witnesses. We'll resume shortly.

- _____ (Pause) _____
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- (1635)

The Acting Chair (Mr. Russ Hiebert): Members, could I have your attention, please? We're going to continue now. We have a tight schedule.

Again, I'm going to propose that we follow the same order, with each party in the first round having eight and a half minutes. That seems to work well and it uses up all of our time.

Seeing no problems with that, I'd like Mr. Byers to lead us off, if he could, for ten minutes.

Mr. Michael Byers (Professor and Canada Research Chair (Tier One) in Global Politics and International Law, University of British Columbia): Mr. Chairman, committee members, thank you for inviting me to speak with you on the matter of the Canada–Afghanistan arrangement for the transfer of detainees. My remarks today focus on the arrangement's effectiveness in guarding against the possibility of torture.

I've worked on the issue of torture since 1992, when the development of the legal prohibition against torture formed part of my PhD thesis at Cambridge University. In 1998, I served on the legal team that represented Amnesty International and other human rights groups in the Pinochet case in the House of Lords. In January 2002, I became involved with the issue of detainee transfers in Afghanistan when I drew Canada's legal obligations to the attention of *The Globe and Mail*.

I don't know how many of you have met torture victims. I'm almost always struck by the deadness in their eyes. It's as if someone has ripped out their soul. Torture, the deliberate infliction of severe pain, is a despicable and inhumane practice. That is why torture is absolutely prohibited by a wide range of treaties. That's why every civilized country has committed itself to preventing and punishing torture wherever it is found. That's also why, when we negotiate a detainee transfer arrangement, we should do what we can to protect against the possibility of detainees being tortured after they leave our hands.

Unfortunately, the Canada–Afghanistan arrangement does not even include some patently obvious and reasonable protections. To begin with, and contrary to what Mr. Dosanjh said, the arrangement does not provide Canadian officials with the right of access to our transferred detainees.

Compare this with the memorandum of understanding concluded between the Netherlands and Afghanistan prior to the negotiation of the Canada–Afghanistan arrangement and used, according to former Defence Minister Bill Graham, as a model for our arrangement. The Dutch memorandum provides their officials with the right of access to any of their transferred detainees. The Dutch memorandum also provides for a right of access for “relevant human rights institutions within the UN system”, a category that includes the United Nations special rapporteur on torture.

The Canadian arrangement fails to provide this. Instead, the Canadian arrangement relies solely on the International Committee of the Red Cross, an organization that normally does not inform other countries when any particular country fails to uphold the right of detainees.

On September 18, 2006, in a written response to a question posed by Dawn Black, MP, Minister of Foreign Affairs Peter MacKay acknowledged this fact. He said:

In all of its activities, in particular visits to prisoners, the ICRC's relations with its contacts and detaining authorities are based on a policy of discretion. ... In cases where the ICRC visits detainees we have transferred to Afghanistan, we are confident the ICRC would advise the Afghan authorities, as the current detaining authorities, if the ICRC had any concerns about a particular detainee or the conditions of detention.

Note that Mr. MacKay is careful not to suggest that the ICRC would inform the Canadian authorities, for, on the basis of past practice, they likely would not. So when Mr. Rigby, seated in this seat an hour ago, suggested that no information had been received from the ICRC of violations of detainees transferred from Canadian custody, that did not mean the ICRC hasn't come across violations. It's simply that we have not been told, in accordance with the standard practice of the ICRC. It is also, I would suggest, why there is no representative of the ICRC testifying here today. It's not part of their policy of strict discretion to comment on these factors to a third government, as Canada is in this instance.

• (1640)

As Madam Bourgeois said, Afghanistan is a poor country, a feeble country. Its military police and its judicial and correctional institutions are undergoing a deep-rooted transformation that is far from complete. It's no criticism of the Government of Afghanistan to acknowledge that. Corruption and human rights violations remain commonplace. We're helping them to improve, but they have not improved enough yet.

By relying on the ICRC to oversee the detainees and to liaise solely with the Afghan authorities in the event of violations, Canada is washing its hands of the detainees in a situation where their rights are hardly assured. The washing of hands extends to the possibility that Afghanistan might transfer some of the detainees onward to third countries, including countries with a demonstrated and recent record of torture. The Canada-Afghanistan arrangement does not even provide Canada with a right to be notified in advance of any such transfers. This again stands in contrast with the Dutch memorandum, which does provide a right of notification.

These omissions pose problems for Canada's obligations under common article 3 of the 1949 Geneva conventions, which, as Ms. Swords explained, applies to non-international conflicts of the kind that now exist in Afghanistan. Common article 3 protects "Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms", and it therefore applies to any detainees. Common article 3 specifies that a number of acts "are and shall remain prohibited at any time and in any place whatsoever", including "cruel treatment and torture" and "outrages upon personal dignity". The absolute, territorially unlimited, and time unlimited character of common article 3 imposes obligations on Canada that would be violated if a detainee transferred by us was

tortured or otherwise mistreated in the custody of either Afghanistan or a third country.

The Canadian arrangement also fails to provide adequate protections against violations of the 1984 torture convention, article 3 of which specifies that "No State Party shall expel, return...or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." The United Nations Committee against Torture has indicated that the term "another State" in article 3 encompasses any additional country to which a prisoner might subsequently be transferred. For this reason, Canada's obligation extends to ensuring that any detainee is protected against torture not just when transferred to the custody of Afghanistan, but also if transferred onward into the custody of a third country.

I disagree with Ms. Swords on the Rome Statute of the International Criminal Court. I believe the Canadian arrangement does not provide adequate protection against possible violations of the ICC statute. Article 8 of that statute identifies acts that constitute war crimes, and these include serious violations of common article 3, including cruel treatment and torture.

Article 25 of the Rome Statute identifies the circumstances in which a person shall be criminally responsible and liable for punishment within the jurisdiction of the court, and it specifies that those circumstances include aiding, abetting, or otherwise assisting such a crime, "including providing the means for its commission". I would suggest that handing over a detainee provides the means for the commission of war crimes against him or her.

Canada ratified the Rome Statute in July 2000. Consequently, any torture, cruel treatment, or other outrages upon personal dignity that are aided, abetted, or otherwise assisted by Canadian soldiers in Afghanistan are subject to the jurisdiction of the ICC. I have sufficient confidence in the Canadian military justice system that any such crime would be prosecuted by a Canadian court martial, but that doesn't mean the possibility of an ICC action is precluded, and that's a shame, because this country fought very hard internationally to get the ICC. The Canadian arrangement thus fails to protect against the possibility that Canadian soldiers might one day face charges of war crimes in The Hague.

• (1645)

So where do we go from here? That's the big question. The Canada-Afghanistan arrangement should be renegotiated to include all the protections provided in the Netherlands-Afghanistan memorandum.

As the Dutch are demonstrating in southern Afghanistan today, these protections have no detrimental operational consequences. There is no reason to believe that the Afghan authorities would object to a renegotiation since they have already agreed to the terms of the Dutch memorandum. Nor indeed, as Ms. Swords suggested, would these protections interfere with the development of indigenous Afghan governmental capacity in any way.

Finally, there is one additional protection. It is an entirely reasonable protection that we should insert in the renegotiated agreement, namely, a right of veto over any proposed transfer to a third country. Clearly, without a right of veto, the right to be notified would be deprived of much of its practical effect.

Mr. Chairman and committee members, the current Canada-Afghanistan arrangement was drafted in a hurry. Canadian troops were already on their way to Kandahar. The then Minister of Defence was distracted by an election campaign. We all understand how easily mistakes can be made in situations such as these.

I'm not pointing fingers at anyone. But today, having had the opportunity to study the situation carefully, I hope you'll agree that it's time to renegotiate the arrangement. We can do better. Indeed, we must do better.

Thank you for your attention. *Merci beaucoup de votre attention.*

• (1650)

The Acting Chair (Mr. Russ Hiebert): Thank you.

Mr. Neve.

Mr. Alex Neve (Secretary General, English Speaking Section, Amnesty International Canada): Thank you, Mr. Chair.

Good afternoon, committee members.

Amnesty International very much appreciates the opportunity to be here today to share our concerns and recommendations regarding the policy and practice of the Canadian government with respect to the treatment of battlefield detainees in Afghanistan.

I want to begin by highlighting that Amnesty International has been raising these concerns with the Canadian government for close to five years. This is not a recent phenomenon. We first raised these issues in January 2002 in a letter to then Minister of National Defence Art Eggleton. We urged Canadian Forces at that time to refrain from turning over any captured fighters to U.S. forces—that was the issue at that time—unless and until U.S. authorities agreed to accept application of the Geneva conventions and establish competent tribunals to determine whether detainees were eligible for prisoner of war status.

In response, seven months later, the minister's successor, Minister McCallum, indicated that Canada would continue to transfer detainees in Afghanistan to U.S. military authorities. The U.S. had stated it would treat detainees humanely and in a manner consistent with the Geneva conventions, while not formally recognizing the applicability of those conventions.

We wrote again to Minister McCallum in October 2002. We repeated our concern that U.S. authorities were continuing to fail to comply with the Geneva conventions. We raised the further concern that some prisoners might be sentenced to the death penalty. At that time, we first suggested that Canadian Forces should begin to consider the possible need to develop Canada's own detention capacity in Afghanistan.

In February 2005, Amnesty International wrote to both Minister Pettigrew and Minister Graham. We asked for clarification of reports that some prisoners who had been transferred to U.S. custody had subsequently been sent to the U.S. detention facility at Guantanamo

Bay. We asked what steps Canada had taken to ensure that transferred prisoners would not be sent there. We also asked whether Canada had sought and received assurances that transferred prisoners would not be subject to the death penalty.

We wrote again to Minister Graham in October 2005. We pointed to the widespread and well-documented human rights concerns associated with U.S. detention in both Afghanistan and Guantanamo Bay. We stressed that U.S. assurances of a willingness to act in ways that were consistent with international legal obligations had clearly proven to be inadequate. We called for an end to prisoner transfers, and we again suggested that Canadian troops needed to consider taking responsibility for the detention of individuals apprehended in the course of operations in Afghanistan.

We next wrote to Minister Graham in November 2005, following a meeting with the minister, at which time we had been informed that Canada would be abandoning the practice of transferring to U.S. custody. Instead, a new policy would be adopted of transferring prisoners into Afghan custody. We stressed that there were serious concerns about treatment of prisoners in Afghan-operated detention centres. We raised questions about monitoring, about substantial resource and capacity problems in Afghan prisons, and the need for reliable assurances that there would be no subsequent transfers of prisoners into U.S. custody. We stated again that unless the serious human rights shortcomings we had identified could be addressed, Canada must be prepared to establish and operate its own detention facilities in Afghanistan, perhaps in concert with other nations that have contributed to ISAF.

Our next exchange was with the current government. On April 3 of this year, we wrote to Minister O'Connor. We had reviewed the written arrangement entered into between Canada and Afghanistan governing prisoner transfers. We were concerned it would not ensure the protection of the rights of prisoners transferred into Afghan custody by Canadian Forces. We asked again why Canada continued to choose not to develop its own detention capacity.

We wrote to Minister O'Connor again on May 12, following what was called the biggest ever capture of suspected Taliban insurgents by Canadian soldiers in Afghanistan. We drew attention to the important penal reform work that was being funded by CIDA and the concern that transfers of battlefield detainees into Afghanistan's rapidly worsening prisons would inevitably lead to human rights violations and serve only to exacerbate squalid, deteriorating prison conditions.

• (1655)

We had a detailed response from Minister O'Connor on July 26. The minister made it clear that Canada intends to continue the practice of transferring prisoners into Afghan custody and considers that to be consistent with the objective of strengthening the institutional capacities of the Afghan government. The minister indicates he is relying on the guarantee in the arrangement that detainees will be treated humanely and that concerns about transferred detainees experiencing torture or ill treatment were hypothetical scenarios about which he would not speculate.

He indicates he believes the monitoring role of the ICRC and the Afghan human rights commission are sufficient to ensure the humane treatment of detainees. He indicates it would be open to Afghan authorities to further transfer prisoners to another state as long as the “requirements of international law are met”. Finally, he indicates that Canada would not be developing its own detention capacity in Afghanistan because that would undermine the objective of strengthening the institutional capacity of the Afghan government.

We wrote, finally, to Minister O'Connor on November 14 of this year. We stressed that the core international obligation at the heart of Amnesty International's ongoing concern is the requirement that one state not transfer a prisoner to another state if there are substantial grounds for believing there is a risk of torture. We shared our findings, stemming from Amnesty International's ongoing, on-the-ground research, that torture and ill treatment in Afghan prisons continues to be routine and commonplace and that prison conditions continue to be abysmal. We highlighted in particular—and this is something I really want to stress—our concerns about torture at the hands of the national security directorate. We have asked for clarification as to whether Canada is transferring prisoners to the national security directorate. That information has not been provided, and Mr. Rigby today has again indicated this information will not be disclosed. I must say we have had some recent indication from a UN official that some, perhaps many, Canadian transfers have been to the national security directorate, and that is indeed worrying, as that is where the gravest concerns about torture and ill treatment and lack of accountability arise.

In our most recent letter to Minister O'Connor we have again raised concerns about transfers of detainees to third parties, and we've repeated our recommendation that Canada work with the Afghan government and NATO allies to develop detention facilities in Afghanistan in line with international standards and practice, and to do so in a manner that assists in developing the capacity of Afghan officials working in the penal and justice sectors.

Let me end by highlighting four key points.

First, Amnesty International is deeply concerned that given the prevalence and severity of torture and ill treatment in the Afghan prison system, particularly at the hands of the national security directorate, there are substantial grounds to believe that when Canadian Forces transfer a prisoner into Afghan custody, torture or ill treatment will occur. In doing so, Canada is in violation of its international human rights obligations.

Second, we do, of course, appreciate the monitoring role played by the International Committee of the Red Cross, as we do around the world, and also by the Afghan Independent Human Rights Commission. But the abuses continue despite the monitoring. The fact that monitoring exists cannot justify or excuse turning over a prisoner to a substantial risk of torture or ill treatment. It's important to highlight, as Mr. Byers has, that the ICRC does not publicly share details of any concerns it may document. That, coupled with the secrecy surrounding the details of the numbers of prisoners we're talking about, where they're being held, who they're being turned over to, what the basis for their detention is, etc., lead us to be deeply concerned that oversight is wholly inadequate. Absolutely, the monitoring and oversight provisions must be strengthened, and at the

very least must be consistent with the provisions in the Dutch memorandum.

Third, we wholly support Canada's stated objective of penal reform in Afghanistan, including with respect to prison conditions and prison operations. That is something Amnesty International has called for, for many, many years. Transferring battlefield detainees to a crumbling, overstretched prison system undermines that objective. We continue to urge that Canada work with Afghan officials and other NATO allies to develop new detention capacity in the country, which should be operated in tandem with Afghan officials and could serve as an important institution and capacity-building initiative.

● (1700)

Finally, I want to stress that Amnesty International's stated concerns do not imply that we believe that detainees apprehended by Canadian Forces should not be imprisoned. We do not have information about the specific allegations made against any of these detainees. Clearly, those who may have committed crimes or violated international human rights or humanitarian law provisions should face justice. It is vitally important, however, that justice be delivered in a manner wholly consistent with international legal standards. Any other course of action fails to advance the long-term sustainable reforms that are so sorely necessary in Afghanistan.

Thank you.

The Acting Chair (Mr. Russ Hiebert): Thank you for that testimony.

Given the time, we're going to have to revert to the seven-minute round, starting with Ms. Bennett.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thank you very much.

Thank you for your presentation, particularly because it's giving us a way forward. We like the ones that come with recommendations.

In the right of access and right of notification gaps that you see there, did I understand correctly that the Dutch actually have a capacity for detention, or do they merely have a better agreement that has right of access and right of notification?

Mr. Michael Byers: As far as I know, they do not have a detention capacity that's any better than what the Canadians have. In fact, they're probably using the same detention capacity at Kandahar airfield. But they do have a stronger agreement that ensures that any detainees they transfer can be followed up by right of access—not by discretion of the Afghan authorities, but by right. That means they can go into these prisons that Alex has described and ensure that our detainees are not being mistreated in any way. That is the crucial difference.

The Canadian agreement does not provide for follow-up and leaves this to the ICRC, which will not, in practice, report back to us. Therefore, it is essentially allowing us to wash our hands of it, which under international law we are simply not allowed to do.

Hon. Carolyn Bennett: Just to capture this, you're saying you want the agreement renegotiated to include right of access, to include right of notification, which is actually made better if you have a veto power as well, and that we would help the Dutch and others build better detention facilities that would eventually become part of the infrastructure of Afghanistan.

Mr. Michael Byers: That is exactly it. I fully support the development of indigenous Afghan governmental capacity. In fact, by holding the Afghan authorities to the highest standards, liaising with them and following up, we're actually helping them to build up to meet our expectations.

The other thing is that although Alex was talking about problems in U.S. custody, the reason we need protections against onward transfers could hypothetically extend beyond concerns in terms of U.S. treatment. What if the Afghan authorities decided to transfer some of our detainees onwards to Uzbekistan or some other country with a particularly notorious record of torture? Having a right of notification and a right of veto simply ensures that the Afghan authorities uphold our expectations and the expectations of international law in any foreseeable circumstance.

The point I would again like to come back to is that the Dutch, after several months of very intensive work and study in committee meetings just like this, drafted an absolutely fine agreement that we should use as our model today, recognizing that our agreement was negotiated too quickly in the midst of a federal election campaign. It's easy to fix; I've just explained how. The Dutch agreement plus a right of veto solves all the problems, or at least 99% of the problems, and that's pretty good.

• (1705)

Hon. Carolyn Bennett: Can you explain the role of the ICRC, not only in Afghanistan but around the world? In terms of governance and what you call traditional practices, is this a problem not only in Afghanistan but in the way the ICRC operates in the rest of the world as well?

Mr. Michael Byers: The ICRC's policy of discretion is what makes the ICRC so effective. It gets access, even from the most repressive of regimes, because those regimes know that the ICRC will not turn around and tell other people what's going on. The discretion and the confidentiality is why the ICRC gets access to prisoners. The price it pays is that it cannot go public. It cannot talk to third countries. It cannot fulfil the kind of function the Government of Canada seems to be expecting of it in these circumstances. That is what I believe the ICRC representative would have told you today if he or she had felt they were able to show up.

Mr. Alex Neve: I would just echo that.

I would not want to imply at all that we're critical that the ICRC is using discretion and that it is quiet and behind the scenes in the way it goes about the work in Afghanistan. That is its role. That is the role that plays around the world. And it is vitally important.

But that's a particular function. To extend beyond that and infer somehow that therefore the ICRC becomes an adequate overall body that is capable of safeguarding the rights of detainees in a country such as Afghanistan is just too much of a stretch. Oversight and monitoring needs to come through other means and other

mechanisms. The ICRC simply is not going to be able to play that role.

Hon. Carolyn Bennett: So whether that works in other places, the message you're giving the committee is that because Canada is so implicated in this now, this isn't good enough for the fact that we could be held responsible for what happens behind closed doors. Is that the case?

Mr. Michael Byers: It would be a concern regardless of the degree of our implication. But given that we are detaining people and transferring them under an inadequate agreement, I do feel some urgency in pleading with the committee to recommend a renegotiation of this agreement to match the terms of the Dutch agreement. They have shown us how it can be done.

Hon. Carolyn Bennett: And would you suggest that the committee not wait for the full report on the mission in Afghanistan but send a letter to the minister now?

Mr. Michael Byers: I take the view that my suggestions are so patently reasonable that you should send a letter now.

Mr. Alex Neve: I would echo that.

And I would stress, whether it be Amnesty International or legal academics or through media coverage or the work of parliamentarians, these issues are in front of the government. It's not that this is a new issue coming out of left field. The need to develop an approach to handling detainees in Afghanistan that doesn't lead to human rights violations has been in front of the government in various forms for quite some time—since early 2002, in fact. So I think the sooner the better.

The Acting Chair (Mr. Russ Hiebert): Thank you.

Moving on to the next round, Madame Bourgeois.

[*Translation*]

Ms. Diane Bourgeois: Thank you, Mr. Chairman. Good afternoon, gentlemen.

I don't know where to start, because you have raised aspects—especially you, Mr. Byers—that deal with the questions I asked and for which I did not get an answer. I now understand why I did not get an answer. I remember seeing one of the witnesses look down. I would like to start by congratulating you, Mr. Byers, for having had the courage to come and tell us that something is going on and that by looking at the detainee transfer arrangement...

Point 8 of the arrangement reads as follows:

The Detaining Power will be responsible for classification of detainees' legal status under international law.

Why are they detained? What are the reasons for detention? I asked that question earlier, perhaps not as clearly as that, because I am not a member of this committee. I am now asking both of you, gentlemen.

Who are these detainees? Are they terrorists? But there are many terrorists in Afghanistan... Tell me about them; tell me about these people.

•(1710)

[English]

Mr. Michael Byers: They could be a number of different things. They could be terrorists. They could be insurgents. They could be common criminals. They are detained on the battlefield or in the proximity of the battlefield, and that's perfectly appropriate. It's also perfectly appropriate, in accordance with international law, for them to be interrogated—not tortured, not abused, but interrogated. It's appropriate for them to be charged and prosecuted if they are suspected of crimes.

My concern is to ensure that, in this fragile country in transition, their rights and our obligations are not violated in the course of that investigative and prosecutorial process. In this country we investigate people, we interrogate people, and we prosecute people without torturing or abusing them. This is what we should expect and demand of the Afghan authorities also.

We are in Afghanistan in part because of human rights. If we're going to negotiate a detainee transfer agreement, let's make sure it protects human rights. Let's not simply rely on the day-to-day practice of a handshake or on the day-to-day assurances of goodwill. We would not do that in this country. That's why we have legislation instead of simply practices of behaviour. That's why we have a Criminal Code. That's why we have courts.

If we're there for human rights, let's do this properly. All I'm asking is that we do this properly, because we can. It wouldn't interfere in any way with what we are trying to do in Afghanistan and with what we hope the Government of Afghanistan will be able to do.

[Translation]

Ms. Diane Bourgeois: I would like to continue on this topic, because you are using terms that I am not familiar with.

The Afghan people are poor. If we take away their poppy crops and tell them to try and get by, to try and live, how will they do that? Will they live off the land by laying bombs or by working for the Taliban? I would like to know. It might be a young 20-year-old who has been paid to steal something. Is that a young thief, or someone who would want to destroy a Canadian tank?

It is all well and good to say that they are terrorists, or whatever the term used, but who can guarantee that they really are terrorists and that they are not prisoners under law? Do you understand what I'm asking? In terms of human rights, these are poor people. They are prepared to do anything to obtain food.

[English]

Mr. Alex Neve: Those concerns are fundamental. It's instructive I think to remind ourselves of the experience of Guantanamo Bay. It's a different detention regime, but many of those individuals are of course individuals who were apprehended on the battlefield in Afghanistan amidst vague, unspecified allegations that they were horrific individuals responsible for committing terrorism or aiding terrorists. Again, no legal regime was put in place to deal with those cases, no charges were brought against them, and there was no access to lawyers—a lot of the same things we're concerned about in Afghanistan.

With many of those cases, yes, there are still some against whom there seem to be allegations of some credence, and some sort of legal process, a highly problematic legal process, will be launched eventually. But large numbers of those individuals have simply been released, let go—not after 72 hours or two weeks but after several years of detention in very harsh, difficult prison conditions in Guantanamo Bay.

The possibility that some of those same scenarios are playing out with respect to prisoners being taken by Canadian Forces, transferred to Afghan custody, and held, again in circumstances where we don't know if any charges are being brought against them.... We're not being told the status of the cases. We're being told it's actually secret, and something that we can't know. They're not being given access to any legal representation of any kind. The oversight and monitoring mechanisms are inadequate to be able to follow what's going on in the cases.

That leads you back almost to the same scenario.

•(1715)

[Translation]

Ms. Diane Bourgeois: My last question will be brief, Mr. Neve.

You work in the area of human rights. In a country where there are no means of communication, how do families meet when someone is taken prisoner? I assume that there is only one detention site. The site may be far from where the prisoner normally lives. In terms of human rights, does that pose a problem?

[English]

Mr. Alex Neve: Certainly it does. One of the fundamental rights that attach to any detention regime, be it in the midst of an armed conflict or not, is ongoing, reliable access to family members. Amnesty International has not done particular research on that, so I can't say we know of a certain number of cases where family contact has been impeded or difficult. But I think you're quite right to imagine that in the circumstances prevailing in Afghanistan, with the very difficult prison conditions that have really been deteriorating and not improving recently, it will be a real problem.

The Acting Chair (Mr. Russ Hiebert): Thank you, Mr. Neve.

Ms. Black.

Ms. Dawn Black: Thank you very much, Mr. Chair.

Thank you both for coming here today and sharing your expertise and experiences with this committee.

I was struck, Mr. Neve, to hear you talk about the five years of repeated communications with a variety of defence ministers. You talked about how many times you made representation as Amnesty International to these different ministers. You didn't really say what response you got back. I'm assuming it wasn't a response that satisfied you in any way; otherwise you wouldn't have felt the need to keep communicating for five years. I think Amnesty plays a very important role, not only here in Canada but internationally. I just wanted to say that.

It seems to me, after listening to Dr. Byers and you, it would be quite a simple thing to change this agreement. So I don't really understand the reluctance to do that.

I want to ask you, Professor Byers, why you think the government hasn't taken the steps you've indicated should be taken to rectify the deficiencies in this agreement and make sure that no prisoners could be passed on through the Afghan authorities to a third party, as you talked about.

Mr. Michael Byers: With all respect, Ms. Black, the current government has only been in power for ten months. This was entered into by the previous government, and I'm hopeful that the current government will realize that some improvements are needed to a job that was done by another government. I think there's a real opportunity here for the current government to rectify a problematic situation.

I will also say in that context, because I know I'm speaking to a former military officer, that I've never met a military officer who wanted to violate the rules of international humanitarian law. In fact, they pride themselves on adherence to international humanitarian law. They simply want clear direction from their political masters. That clear direction includes a detainee transfer agreement that upholds the obligations of international humanitarian law.

I see no reason why the military would object to us renegotiating the Canadian agreement to incorporate the standards of the Dutch agreement. It's good enough for one of our most important NATO allies. They put a lot more time and thought into it. This is a chance for us to improve our side of things.

On the reluctance of the prior government, I did mention that this agreement was negotiated in a bit of a hurry. The troops were on their way to Kandahar and there was a federal election campaign. Prior to that, the situation in Afghanistan was in transition. It was initially an international armed conflict based upon article 51, the right of self-defence in the United Nations charter. It was initially focused on al-Qaeda and removing the Taliban government. It is a transition to an operation that's as much focused on reconstruction as it is on counter-insurgency.

The concerns and perspective of Canadian governments have changed over time. If there's one thing we have learned from various things, from Guantanamo Bay to the Maher Arar affair, it's that we have made mistakes. Reflection and study now put us in a position to rectify those problems.

I'm delighted you are meeting on this. I think it's so simple to fix this, and I really hope you will give a clear indication of this to Parliament so they can fix this problem before we get into any problems. I simply don't want someone to be tortured or abused because my government hasn't taken the time and the care to ensure that we have a good agreement governing how we behave.

• (1720)

Ms. Dawn Black: I have two more questions, and I want to put them out there because I know the clock is ticking away.

One, is it normal practice in international affairs for the Chief of Defence Staff to be the person who signs an international agreement with a foreign government? I know it was a minister in Afghanistan who signed on behalf of Afghanistan, so I just wondered if that's a bit odd.

My second question is more of a hypothetical one to which I'd like you both to respond. In terms of Canadians taking detainees,

suppose that Canadians came across one of the very highly valued al-Qaeda operatives that we hear about. If Canadians were in the position of taking that operative as their detainee, what would happen? How would that work if they are a highly valued person that the Americans are looking for, that the international community is looking for, or that perhaps Pakistan has some interest in? How would that be handled?

Mr. Michael Byers: On the first question, there are some unusual aspects to this situation. Yes, it was unusual for the Chief of Defence Staff to sign an arrangement like this. It should have been done by the ambassador to Afghanistan. It doesn't mean that it's fatally flawed, but it is unusual.

It's also unusual, to be frank, that the civil servants are insisting that this is not a treaty. It fulfills the conditions of a treaty under the Vienna Convention on the Law of Treaties, and I would think we would want it to be a treaty, because then we can demand that the Afghan government fulfill its side of the bargain on legally binding terms.

With respect to your second question, I would certainly hope that we have a plan for when or if we apprehend a senior al-Qaeda operative, just like I hope we have a plan for if we apprehend someone who we think has been targeting the Canadian Forces. Mr. Rigby suggested there wasn't a plan. He said we'd have to check back with Ottawa. Well, let's get on top of this in advance so that we know what we're going to do. If we capture Osama bin Laden, how are we going to ensure that he provides high-value intelligence for our NATO partners and that at the same time our obligations under international humanitarian law are not violated?

There are ways to do this, but you have to plan them in advance. One way you could do it, just to throw out a suggestion, would be to say that regardless of who we transfer to, for high-value operatives a Canadian official will always be present during the course of the interrogations. Problem solved.

Mr. Alex Neve: I agree completely with that. I think foresight is absolutely what's necessary here. Obviously the agreement does not rule out the possibility of third-party transfers to almost any state. The range of actors that could involve is staggering and of grave concern. To figure that out on the run once that high-profile, very difficult, sensitive case arises would obviously be inadequate. There would be extreme pressure coming at Canadian officials from any number of different corners, so I think we need to have some clear policy and practice established in advance.

The Acting Chair (Mr. Russ Hiebert): Thank you, Mr. Neve.

We have seven minutes left. That will leave me with Mr. Blaney.

[*Translation*]

Mr. Steven Blaney: Thank you very much. I will be sharing my time with my colleagues.

Thank you for sharing your concerns and your constructive comments with us. I am going to ask some questions. Perhaps you could answer them, and after that, I will give the floor to my colleagues.

First of all, you say that an arrangement similar to the one signed by the Netherlands and Afghanistan on the transfer of detainees would resolve 99% of the concerns that you have raised and that you would like to see improved in the Canadian arrangement. You say that the former minister said he used the first agreement as a model and that he was in a hurry. Under these conditions, would it not be simpler to do what we call a cut and paste? Why change things? That is what I am wondering. Perhaps you could answer that, and if I know that you are not necessarily the one who made those changes.

Secondly, would your proposed changes prevent transferred detainees from being exempt from the death penalty?

Thirdly, did Afghanistan sign the 1984 Convention against torture and the 1998 treaty that led to the creation of the International Criminal Court?

• (1725)

[English]

Mr. Michael Byers: The first question that I'll deal with is the death penalty. Our arrangement with Afghanistan does preclude the death penalty being applied to any detainee we transfer.

[Translation]

Mr. Steven Blaney: At present?

[English]

Mr. Michael Byers: Yes, and this is one of the reasons why I would like us to be considering this to be a treaty. If we consider this to be a treaty, then they are legally bound not to apply the death penalty. If it's simply a code of conduct, then they are not legally bound to refuse to apply the death penalty. There's a reason why we should be talking about this as a treaty, rather than denying that possibility. I think it works better for us if it's a treaty.

On the question about the 1984 torture convention, I believe Afghanistan has ratified it. As far as I know, they have not ratified their own statute of the International Criminal Court, but that does not matter because we have ratified it. Therefore, any Canadian national anywhere in the world who commits a war crime or a crime against humanity is subject to the jurisdiction of the ICC. Our soldiers are still exposed even though the Afghan government has not ratified the Rome Statute.

On your first question, why are things missing, as I said, it was negotiated quickly in the course of a federal election campaign. Also, I suspect—but I am not sure—that it was actually modelled on another pre-existing arrangement, one that may well have been with the United States of America, that was probably entered into in 2002 or 2003 concerning our transfers to U.S. custody during that period. The reference is to the Geneva Convention and common article 3, which would suggest that interpretation. I'm not sure, but one thing is obvious to me. Contrary to what then Minister of National Defence Bill Graham said, the Dutch agreement was not used as a close model, although it may have been a quite distant model. Certainly, some very good things that I think any reasonable person would have recognized the value of in the Dutch agreement did not find their way into the Canadian arrangement. That is what you need to rectify.

Mr. Alex Neve: If I can just add one other point on the death penalty, it's absolutely true that both the Canadian and Dutch

agreements do make it clear that the death penalty should not be used. But in addition to the concern we have about this not being a legally binding treaty—thus, what is the weight of that guarantee?—we also have the secondary issue of the possibility of transfers to other countries. In the agreement between Canada and Afghanistan, it becomes a little unclear as to whether the death penalty won't be used. Would it in turn apply if the individual is transferred to another country that readily does make use of the death penalty? The United States would be one example, but certainly not the only one.

Mr. Laurie Hawn: Thank you for coming and sharing your opinions with us.

As a quick question, you were talking about being leery of countries with a recent record of torture. What would you call a recent record of torture? Five years? Ten years? Fifteen? Ever?

Mr. Michael Byers: Mr. Neve is a better spokesman on this issue because Amnesty International tracks very closely the records of different countries. Afghanistan is in a part of the world where there are a number of countries with serious human rights records. Mr. Neve has mentioned the recent problems the United States has had, and I certainly had concerns about the practice of transferring directly to U.S. custody when we were doing that because of things like Guantanamo Bay. But it's a more general concern. With all respect, the current government has shown some real backbone when it comes to human rights in places like China and Burma, and I would think that improving this agreement would be entirely consistent with this government's stance.

Mr. Laurie Hawn: The reason I asked that question is not intended to be cheeky. It's intended to go to the aspect of labelling. With our experience in Somalia, would Canada not have been called a country with a recent history of torture?

• (1730)

Mr. Michael Byers: The response is that it was not a systematic practice of torture. Those were a couple of soldiers who of course were treated to the full rigour of the Canadian military justice system. What I'm more concerned about, and what I think Amnesty International is concerned about, are countries with systematic problems, where the governmental regime is not either intent or able to deal with the bad apples.

Mr. Alex Neve: Just to build on that, our concern has to be with respect to countries where their record—and the record, of course, comes from a variety of different sources, such as research from organizations like my own, UN sources, media reports, etc.—gives us reason to believe there's a contemporary risk of torture. I don't think the temporal limit is probably the right test.

Mr. Laurie Hawn: As a quick question, have the Dutch ever used their right of access, to your knowledge?

Mr. Michael Byers: I don't know, but knowing what I know of the seriousness with which the Dutch government takes these matters, I would expect they have.

Mr. Laurie Hawn: I think you may be selling plans a little bit short when you make the assumption that there's no plan for a high-value target. I'm not privy to any, but I think I can guarantee from my background that there are contingency plans for those kinds of high-value targets.

You talked about Canada paying for infrastructure and operating prison facilities in Afghanistan. How much and how long are we talking about? Have you given any thought to that?

Mr. Michael Byers: I'm not sure whether we need our own detention facility, but certainly building one or helping the Afghan authorities to build one that could be co-managed to deal with these kinds of detainees would cost some money. But, again, the question is what value we put on our adherence to human rights and what value we put on strengthening the infrastructure and institutions of the Afghan government over the long term. I think this is entirely consistent with what we're trying to do in that country.

The Acting Chair (Mr. Russ Hiebert): All right. I think we'll have to wrap it up there.

Again, thank you both for your insightful testimony this afternoon. It was very much appreciated.

I understand Mr. Byers has a flight to catch, so we'll have to wrap up on time.

That's the end of this meeting. We're adjourned.

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