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—
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The Honourable Jason Kenney

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•(1145)

[*English*]

The Vice-Chair (Mr. Mario Silva (Davenport, Lib.)): Good morning, everyone. I'd like to call the meeting to order.

I apologize for the delay. As you are aware, there was a vote in the House, and therefore we had to proceed.

Due to the fact that we have to end here by one o'clock, and we want to be fair to everyone who has taken their time to be here, and since we also have questions, I would propose, with the indulgence of the committee, two things.

One is that we allow all the witnesses to speak, one after the other—therefore, we won't have a break—and two is that there will be a limitation to about five minutes of questions of the witnesses.

Is that agreed to by all members of the committee?

Some hon. members: Agreed.

The Vice-Chair (Mr. Mario Silva): Okay. Thank you very much.

The first witness will be Alan Kessel.

Mr. Alan H. Kessel (Legal Advisor, Department of Foreign Affairs and International Trade): Thank you, Mr. Chairman.

[*Translation*]

My colleague—

The Vice-Chair (Mr. Mario Silva): We are opposed to having all the witnesses seated together. I don't know whether any others object to that. I do not want any trouble. I really want to get this important meeting underway. It is up to the committee to decide whether it wants to hear from all the witnesses before asking the questions. If not, we could start with the departmental representative and then hear from Mr. Alex Neve. It is really up to the committee to decide.

I am ready to hear what you think.

[*English*]

Mr. Kevin Sorenson (Crowfoot, CPC): Is the problem that they're at the table or—

The Vice-Chair (Mr. Mario Silva): Yes.

Mr. Kevin Sorenson: I would suggest when the department comes that the department is the only one at the table. They would give their presentation and then we would invite Amnesty International to present.

The Vice-Chair (Mr. Mario Silva): The only reason I made that suggestion is that we only have an hour.

Mr. Kevin Sorenson: I know. I think it's probably still best to have just the department.

The Vice-Chair (Mr. Mario Silva): Okay. If that's the will of the committee, we'll go with the department, but we still want to hear from Mr. Neve.

We'll try to limit the debate, if we can, to ten minutes. If you can do up to ten minutes, then we'll have questions. We'll ask the members to limit themselves to five minutes.

We hope to have Mr. Neve speaking here by 12:30, and then we'll ask questions as well.

Thank you.

Mr. Alan Kessel.

•(1150)

[*Translation*]

Mr. Alan H. Kessel: Thank you, Mr. Chairman.

Mr. Chairman, my colleague Ms. Eid, representing the Department of Justice, and I are pleased to appear before you to discuss the Optional Protocol to the United Nations Convention against Torture.

I would like to start by explaining the role of the various departments at the federal level in relation to international human rights. There are three departments that are almost always involved. In very basic terms, the division of responsibilities among the departments may be described as follows:

[*English*]

First, the Department of Foreign Affairs and International Trade is generally responsible for leading negotiations on new international human rights instruments and for the maintenance of Canada's relationship with international human rights bodies.

The Department of Justice, my colleague, is responsible for assessing the domestic impact of international human rights instruments and for coordinating the federal consultations with respect to becoming a party to an instrument.

Canadian Heritage is responsible for the promotion of human rights within Canada, which includes federal, provincial, and territorial consultations on human rights. Other federal departments are involved when the subject matter falls under their respective mandates.

Mr. Chairman, let me start by underlining that Canada is strongly committed to the prevention, the prohibition, and the elimination of torture and other cruel and inhumane or degrading treatment or punishment globally. Indeed, Canada ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on June 24, 1987. It was one of the first states to do so.

I would just like to mention some of the existing international mechanisms with which Canada collaborates for the prevention and elimination of torture. Canada has recognized the competence of the Committee Against Torture, in article 22, and the Human Rights Committee, under the optional protocol to the International Covenant on Civil and Political Rights, to consider individual complaints against Canada. As you know, there have been and continue to be hearings by that committee on issues brought to them by individuals in Canada. Detainees can file complaints to those treaty bodies with respect to their detention, and the committee will provide its views to us.

As required by the Convention Against Torture and the International Covenant on Civil and Political Rights, we have also submitted to the Committee Against Torture and to the Human Rights Committee periodic reports that provide information on the legislative program and the policy framework that governments in Canada have put in place to implement these instruments, including its obligations with respect to the prevention of torture. The presentation of these periodic reports is the opportunity to have a dialogue with the Committee Against Torture and the Human Rights Committee during which conditions of detention and the treatment of detainees can be and are discussed. Through their concluding observations, the committees may make recommendations with respect to the implementation by Canada of these treaties.

In addition to its cooperation with the Committee Against Torture and the Human Rights Committee, Canada supports the work of the special rapporteur on torture. Canada has extended a standing invitation to all special procedures—that includes special rapporteurs and working groups—which means that Canada will always accept visit requests from all special procedures.

For example, the United Nations Working Group on Arbitrary Detention visited Canada from June 1 to 15, 2005, at the invitation of the government. Although the focus of the working group is mainly the legality of detention, it visited 12 detention facilities, including police stations, pre-trial detention centres, facilities for convicts, a facility for young offenders, and immigration holding centres. In the detention facilities, the working group was able to meet with and interview, in private, more than 150 detainees.

While the convention does require states' parties to take measures to prevent acts of torture from being committed in places under their jurisdiction, the protocol complements the convention in terms of prevention. As you know, the objective of this protocol, as you've heard from previous witnesses, is to establish a proactive system of regular visits, undertaken by independent international and domestic

bodies, in places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman, or degrading treatment or punishment.

Canada actively participated during the 10 years of the negotiation of the optional protocol and voted in favour of its adoption by the United Nations Commission on Human Rights and the General Assembly in 2002. We support the fundamental elements of the optional protocol. We believe the protocol can be an important tool in protecting human rights.

• (1155)

Canada has followed closely the developments with respect to the optional protocol and has been interested in what other countries, particularly decentralized federal states, are doing or plan to do to establish their domestic preventative mechanisms and to coordinate these domestic mechanisms.

To discuss implementation of the protocol on federal states, in January 2005 the Canadian permanent mission in Geneva organized a meeting of decentralized states. The purpose of the meeting was to exchange information in the hope of sharing creative approaches and problem-solving strategies in the specific context of federal and other decentralized states. While we're not a party to the protocol, as mentioned last week by the representatives of the Association for the Prevention of Torture and the Canadian Association of Elizabeth Fry Societies, Canada has a number of mechanisms already in place, both federally and provincially, to protect persons in places of detention from torture. Many of these bodies have the power to visit and do conduct visits of places of detention. My colleague Ms. Eid will elaborate on these mechanisms.

The monitoring mechanism created by the optional protocol itself is significantly different from those established by other UN human rights treaties. In other human rights treaties, state compliance is generally monitored by a committee of international experts. The optional protocol is the first instrument in force that includes domestic monitoring mechanisms. There are few models that can assist states in developing their own domestic monitoring mechanisms, and quite clearly the complexities of establishing independent, proactive, domestic visiting mechanisms, particularly in a federal state with a vast territory, must not be underestimated.

In April 2006, in support of its candidacy for a seat on the new UN Human Rights Council, Canada pledged to consider signing the protocol. Consultations and analysis began after the adoption of the optional protocol, and they are still ongoing. After this analysis is completed, Canada will be in a position to make a decision as to the signature and ratification of the optional protocol. We'd like to commend the Association for the Prevention of Torture for its commitment to the prevention of torture and for the excellent tool it has prepared to assist states in the establishment of domestic mechanisms.

As the Working Group on Arbitrary Detention stated, Canada is perceived of as a model and a point of reference for the people of many countries with regard to the rule of law and respect for human rights. This means that the highest standards are applied to Canada, and as Canadians, we can be proud of our reputation for taking our international human rights obligations very seriously. In order to ensure that we can live up to our future commitments and preserve our international reputation, we should continue to do the necessary homework.

I apologize for rushing through this statement, but I'm very much aware of the time constraints, and I hand it over to my colleague. Thank you.

[*Translation*]

Ms. Elisabeth Eid (Director and Senior General Counsel, Human Rights Law Section, Department of Justice Canada): Thank you, Mr. Chairman and committee members.

I'm very pleased to be here to discuss the Optional Protocol to the UN Convention against Torture. I will be discussing the consultation process in general terms. I will then move on to discuss the Optional Protocol in more specific terms.

Generally speaking, the Department of Justice is in charge of the consultations within the federal government designed to determine whether Canada should become part of an international human rights treaty such as the protocol. This is an internal review process which is very demanding on resources and requires the participation of a number of federal departments, as well as the provinces and territories.

There are a number of steps involved in the process of ratifying a human rights treaty. For the federal government, the initial steps are as follows:

- (1200)

[*English*]

First, there was a review done by the Department of Justice with respect to the provisions of the instrument and to look at the scope of the obligations.

Second, there was a review of federal legislation, policies, and practices by the affected departments to determine to what extent our existing measures meet the requirements of the treaty or whether new measures need to be adopted.

If it is determined that existing measures do not meet the requirements of an instrument, then options are considered. Consideration is given as to whether legislation must be enacted or amended, and of course the cost implications are also assessed.

Now where a human rights treaty relates to matters that fall under provincial jurisdiction, the government encourages a similar process to take place amongst provinces and territories. Similarly, provinces and territories may require additional new measures, and they may also need to do an analysis of the resource implications of any new measures that are required.

Obviously it's important to have provincial and territorial government support for signature and ratification in order to ensure domestic implementation where international obligations affect

matters under their jurisdiction and to make sure that Canada as a country is in full compliance. Consultations with the provinces and territories are conducted through the Continuing Committee of Officials on Human Rights. This is a standing federal, provincial, and territorial committee. It was established way back in 1975, and one of its main functions is to serve as a consultation mechanism for the ratification of human rights treaties by Canada. These committee members participate in monthly conference calls, and the committee meets twice per year face to face. Canadian Heritage acts as a federal representative on the committee and chairs the meetings. As well, Justice and Foreign Affairs actively participate in those discussions with the provinces and territories.

It is possible that a human rights treaty may also impact matters under a first nation's jurisdiction, so that's also something to be considered. Then consultations with first nations governments would be required.

Consultations may also occur with non-governmental organizations. Correspondence from non-governmental organizations and members of the public, writing about a particular treaty, are certainly tracked and given full consideration.

Of course, where a parliamentary committee, such as this one, is examining the question of whether Canada should become a party to a human rights treaty, the testimony of witnesses, and obviously the report and recommendations of the committee, are given serious consideration.

Once the consultation process is complete, the issue of whether Canada should become a party to a treaty is placed before cabinet for an ultimate decision. A decision in favour of becoming a party is usually conditional upon receiving the formal support of the provinces and territories for Canada's ratification. Often, obtaining formal support from the provinces and territories can take some time, as they must undertake, as I just said, their own analysis of the treaty provisions. Many of the jurisdictions also require cabinet approval. In the case of Quebec, they require the approval of the National Assembly with respect to human rights treaties.

More particularly, with respect to the consultation process for the optional protocol, federal officials have begun the work on the consultation process. Considerable work has actually been done. The Department of Justice has analyzed the provisions of the instrument. We have certainly explained the requirements of the optional protocol to other departments, as well as to the provinces and territories. We have held interdepartmental meetings and bilateral meetings with specific departments as well.

- (1205)

On some of the particular considerations that apply to this instrument, places of detention are defined quite broadly in the protocol; therefore, there are places of detention that exist under federal, provincial, territorial, and aboriginal jurisdictions. Places of detention include a variety of institutions, such as prisons, federal penitentiaries, police stations, immigration detention centres, youth detention facilities, and psychiatric hospitals. Several federal departments and agencies are implicated, as well as the provinces and territories. Due consideration needs to be given, of course, to consulting with first nations governments.

As my colleague has stated, Canada already has a number of mechanisms in place federally and provincially to protect persons in places of detention from mistreatment. These include correctional investigators, and there are ombudspersons we are aware of in the provinces. There are police oversight agencies, human rights commissions, and the courts that ultimately oversee instances of problems in detention facilities.

Some of the issues that need to be examined include whether there are existing visiting mechanisms for all of the places of detention within the scope of the protocol and whether the existing bodies we have at the federal, provincial, and territorial levels conduct visits that meet the requirements of the protocol. The protocol requires that regular visits be made. Many of the current mechanisms we know are more reactive and will visit places of detention when there are complaints. But what is envisioned by the protocol are more proactive, regular visits.

The other criterion under the protocol is that bodies must be sufficiently independent from government. So there needs to be an examination of the existing bodies to determine whether they meet this criterion of sufficient independence from government under the protocol.

Another issue we're examining is whether relevant privacy legislation will permit the sharing of personal information between the government and the new UN subcommittee. There are other information-sharing issues raised by the protocol.

A further issue is to what extent the protocol requires—or it will be desirable to ensure—proper communication and coordination of the work between all of the various visiting mechanisms at the provincial, territorial, and federal levels. Of course, there are the resource implications.

Finally, there has to be a proper study and evaluation of the resource implications if we need new mechanisms to visit places of detention or if the mandates of the existing bodies need to be expanded.

Canada takes its international human rights obligations seriously. The general practice is to ensure that human rights treaties are only signed and ratified after Canada is satisfied that its domestic laws and policies meet the obligations under the treaty.

Implementation of the optional protocol will require significant cooperation from all levels of government, including agreement on financial implications and necessary resources.

This work takes time, particularly when we have multiple departments, agencies, and all levels of government involved.

• (1210)

[Translation]

Thank you for inviting me to speak to you about the Optional Protocol. We eagerly look forward to the results of your committee's study. I am now ready to answer any questions you may have. Thank you.

[English]

The Vice-Chair (Mr. Mario Silva): Okay. *Merci.*

[Translation]

Ms. St-Hilaire will be asking the first question.

Ms. Caroline St-Hilaire (Longueuil—Pierre-Boucher, BQ): Thank you, Mr. Chairman.

I would like to thank both of you for your presentations. I think you gave us a good overview of the issue. I am not sure whether I understood correctly, but my impression is that you gave us a very clear general outline of the situation, which, however, may have been somewhat theoretical in that particularly Ms. Eid spoke a great deal about consultations with the provinces and territories.

Can you tell us where the consultations are at, whether there have been any problems with some provinces and exactly what type of problems have propped up?

Ms. Elisabeth Eid: At the moment, we're in the process of reviewing the issues I spoke about earlier with the provinces and territories. We are reviewing the mechanisms in place already in the provinces and territories to determine whether they meet all the criteria of the protocol and whether they are independent enough of the government. Some work has been done, but there is still more to do to analyze all this information. We are continuing to work with the provinces and territories, and as I said, we have conference calls every month. We also have face-to-face meetings. The next meeting will be in November, but we are in fairly regular contact with the committee.

Ms. Caroline St-Hilaire: If I understand correctly, you cannot really tell us with which provinces there are problems, and with which the consultations are going well. It is not really very clear.

Ms. Elisabeth Eid: We do not really have the official position of these provinces and territories at this point.

Ms. Caroline St-Hilaire: If I understand correctly, you are still in the consultation process, there is an exchange of information, but nothing has been decided upon.

Ms. Elisabeth Eid: There is no official position.

Ms. Caroline St-Hilaire: When will these consultations end? Do you have a deadline?

Ms. Elisabeth Eid: At the moment, we are working at the federal level. We are holding our consultations with a view to adopting a federal position. Of course, we share information with the provinces and territories to explain where we are at in the federal process. We expect this will take several months at the federal level and several more months with the provinces and territories.

Ms. Caroline St-Hilaire: So there is no deadline, a time limit you will be setting.

Ms. Elisabeth Eid: There is no set date.

Ms. Caroline St-Hilaire: You mentioned costs as well. Money is always an issue, but when it comes to human rights, I do not think we should be putting the two considerations into the equation. What would the exact cost be?

Ms. Elisabeth Eid: As I explained, that is one of the issues we are going to have to study carefully. To my knowledge, no study has been done regarding the resources required by the protocol. That is something that needs to be reviewed. For example, if we were to establish a new mechanism, we will have to do an evaluation of the cost that would be involved. It is something that needs to be determined. It would not necessarily be done by the Department of Justice. Each department and the provinces and territories will have to do their cost assessment.

Ms. Caroline St-Hilaire: Do you think a province could refuse to be involved for cost reasons?

Ms. Elisabeth Eid: A province or territory could definitely raise concerns about costs. At that point, the federal government would have to decide whether it wants to be part of the treaty without the support of a particular province.

Ms. Caroline St-Hilaire: That is not something it usually does.

Ms. Elisabeth Eid: That would not be an ideal situation.

Ms. Caroline St-Hilaire: Could the federal government defray some of the costs for the provinces?

Ms. Elisabeth Eid: I imagine that is something we would have to look at.

Ms. Caroline St-Hilaire: Something that would have to be negotiated.

Thank you.

The Vice-Chair (Mr. Mario Silva): Thank you.

Mr. Sorenson.

[English]

Mr. Kevin Sorenson: Again, thank you for coming, by the way.

It seems to me it's taking a long time. I don't know if it's longer than should be anticipated or if it's longer than usual, but it seems to me it's taking an awfully long time.

In 2005 we had a meeting of decentralized states in Geneva. I don't know what all came out of that. Is the holdback the provinces? I know you've listed all the different places in which the provinces play a role in this thing. There's the correctional part, there's the policing part, there are all the other different provincial areas you're meeting with. I think Madame St-Hilaire brought this up, but generally speaking, is this going to mean extra structural changes to the province's correctional system? What's the real roadblock or holdback here?

• (1215)

Mr. Alan H. Kessel: Let me respond to the first question you posed, which is why these things take a long time. I don't think this is out of the ordinary in terms of international instruments that have a large federal and provincial-territorial aspect to them.

Quite clearly, if we had an international instrument that was totally within the ambit of the federal government, things would go quicker. But we have a separation of powers in this country that provides for detention facilities in provinces, and now more frequently within aboriginal communities, which is a new thing for us. In that respect, I think we're doing the due diligence on this particular international instrument.

The process is certainly there. I think the provinces feel they're being consulted well, which I think is one of the key things in any international instrument that Canada enters into.

I think I'll let Elisabeth answer the infrastructure question you mentioned.

Ms. Elisabeth Eid: Obviously, if you have a treaty and the obligations only fall within the jurisdiction of the federal government, it's quite easy. We have cases in which we've been able to move very quickly forward on human rights treaty ratification when it's just the federal government. It is true that it gets more complicated when you have matters that fall within the jurisdiction of the provinces and territories. Usually those treaties take several years before we're in a position to become a party.

In this case, there is also the issue of consultations with first nations, because of the possibility of places of detention on reserves, for example. Also, there is a possibility of having a situation where you acquire new measures, such as new legislation, and financial implications that also can bog down the process.

Mr. Kevin Sorenson: You both mentioned the first nations a couple of times. We see a lot of the things that are provincial, but is there a hesitancy from first nations?

Ms. Elisabeth Eid: No. We know there are places of detention that could fall under their jurisdiction that we have to look at, consulting with them fully and understanding the implications and their perspectives on it.

Mr. Kevin Sorenson: If this thing were implemented, what about the reporting back? I would take it that reports are filed. It's an international convention we're signing on to. Would it be something the federal government would be reporting on, or is it a combination of...?

Ms. Elisabeth Eid: The protocol, as I understand it, does not create a reporting obligation as such; it creates a visiting mechanism, both at the international and at the domestic levels.

Mr. Kevin Sorenson: But there must be reporting.

Ms. Elisabeth Eid: There would be requirements to provide information, of course, and the subcommittee would issue a report respecting Canada. So there is information.

Mr. Kevin Sorenson: But it would be a federal report that would be filed?

Mr. Alan H. Kessel: If I may just answer that, remember that this is a protocol to the Convention against Torture, on which we report fully right now. In fact, Canada has appeared a number of times before the committee, and there's a requirement that we not only report federally but on all the provinces and territories. There's a major operation that goes into effect each time Canada has to prepare to appear before one of these committees.

The Committee Against Torture has reviewed Canada's report on a number of occasions and has found certain issues that they've taken up with us. This applies to the other treaty bodies as well. As you know, Canada has filed reports before the Human Rights Committee and the Economic, Social and Cultural Rights Committee.

So we have a process, which finds its home in Canadian Heritage with a terrific team of people who spend a lot of time putting together basically 13 or 14 reports that we need to put together, as Canada, to present to the committee. There's a lot of reporting going on.

• (1220)

The Vice-Chair (Mr. Mario Silva): Mr. Marston.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): I guess you can catch the theme that's going around the table: why does it take so long to do something that's so fundamental to the belief structure of Canada? Of course, you've provided information to that. It strikes me as very ironic as well that Canada shepherded this particular agreement through the United Nations and voted to adopt it, and now 34 nations have signed on ahead of us. It just doesn't seem right, I'm sure, to an average person who might hear what's going on in this place.

You mentioned privacy of information. It strikes me that in the case of a person who's a prisoner, their crime and conviction is a matter of public record, so I'm wondering why there would be that concern, or whether I'm reading it wrong.

Ms. Elisabeth Eid: Basically, there's an obligation on the part of the government to provide information to the subcommittee. The subcommittee can ask for all types of information, including particular information about the treatment or the condition of detainees. That may involve perhaps their medical information and it could involve some sensitive personal information about individual detainees.

Mr. Wayne Marston: I have another question. With all of the dialogue that seems to be happening on a number of fronts, have you met resistance? If you have, where?

Ms. Elisabeth Eid: As I said, we are engaged in consultation with the provinces and territories, and also with other departments and agencies. I did describe the issues for you. It's really a matter of the work that needs to be done to put us in a place where we feel we're fully in compliance and to move forward—issues of new measures, issues of possible legislative changes, issues of resources—and be able to actually calculate the amount of resources that may be required.

Mr. Wayne Marston: From your response, my sense is that you have not met resistance to this but you have a technical side that's causing an encumbrance to get through it—but not actual resistance.

Ms. Elisabeth Eid: Yes.

Mr. Wayne Marston: You might be thrilled to hear this.... Oh, Mr. Sorenson has left the room.

I believe it's the responsibility of the federal government to pay the cost of this. It's a federal agreement, for what that is worth. I appreciate your due diligence.

I heard mention of the length of time to complete the process. Are we talking months, years, or...?

Ms. Elisabeth Eid: We're doing the best we can to move the process along. I can't put a fixed time period on it.

Mr. Alan H. Kessel: The shepherding process did take ten years originally, so I think it's quite clear that even sitting among a community of nations, when you're dealing with 180 countries all

trying to herd those cats into one vision of what we should be doing, it's an accomplishment in and of itself.

We've learned from experience in this federal system that working hard with our colleagues in the provinces and territories is an effort well worth the time, because it avoids problems in the future. A good foundation and a good open dialogue with our colleagues makes for a much better relationship, and I think we're putting that time in now for that purpose.

Mr. Wayne Marston: Great. Thank you.

The Vice-Chair (Mr. Mario Silva): With the indulgence of the committee, I would like to ask a very brief question to the witnesses.

First of all, I'm concerned about Canada's image in the world. Canada has always been a leader. By virtue of whatever delays that are taking place, we are looking very negative, and I'm concerned about the image of Canada. Hopefully, the two departments are quite aware of that as well.

The other thing I'm concerned about is the sense that is out there—whether or not it's true—that departments tend to work in silos, that sometimes there's bickering between departments and there's not the cooperation that is needed. Maybe you can comment on that, whether you've encountered that and whether we can have full cooperation to get this thing implemented as fast as possible, because it's not giving Canada any credit out there internationally.

• (1225)

Mr. Alan H. Kessel: I'll talk a little about the image. I think Canada's image is rather good. I don't believe we have a problem with respect to image on this issue.

If we were a country that didn't have any domestic mechanisms, or we hadn't signed onto the Convention Against Torture, or we weren't a leader in human rights, I could understand. Maybe there are countries out there that have no intention of signing onto this that could be in that category, but I don't think Canada is in that category. We're doing our homework, and Canada will, as it usually does, deliver a good product at the end of that discussion. I give credit to my colleagues, certainly in Justice.

In terms of talking with the other departments, everybody has a point of view in terms of their particular mandate. The department that manages prisons, Public Safety, is also a major player in discussions of this nature, and clearly they are involved in determining future costs and how things will run. So we are all of a vision, which is to work as quickly as possible to make this thing happen, and I think we're doing that.

The Vice-Chair (Mr. Mario Silva): Thank you very much to the witnesses.

Now I'd like to call Mr. Alex Neve to the table.

Mr. Wajid Khan (Mississauga—Streetsville, CPC): I have a 30-second question. Is it okay with you? We have four minutes.

The Vice-Chair (Mr. Mario Silva): That's okay, with their indulgence and very quickly.

Mr. Wajid Khan: Thank you very much, gentlemen.

Mr. Kessel, you mentioned the timeframes, and that is of concern. When did you start working on this, what direction did you get from the previous government, and what sort of timetable was set for this, if any?

Mr. Alan H. Kessel: Like all international instruments, we talk to departments and our provincial counterparts at the beginning of the process, so we started talking about this issue when we were negotiating the protocol.

Mr. Wajid Khan: Was it a year, or what...?

Mr. Alan H. Kessel: Was it a year? During the period, I don't know....

Ms. Elisabeth Eid: It would be during the negotiation process.

Mr. Alan H. Kessel: Right. Was it 1992?

Mr. Wajid Khan: It was in 1992; we're in 2007.

Mr. Alan H. Kessel: It's very interesting you say that, because I spent ten years working on the development of the International Criminal Court treaty. It started its discussions at Nuremberg and Tokyo. We were grateful when we got what we did, and I think you have to look at each specific issue in and of itself.

I think this is progress. It's not as if we're creating something totally new, but we do have something that is a proactive mechanism rather than a reactive mechanism, and I think we give the due diligence necessary to make it happen and happen well.

The Vice-Chair (Mr. Mario Silva): Thank you.

Thank you very much for coming before the committee.

Now we have Mr. Alex Neve, from Amnesty International.

Mr. Alex Neve (Secretary General, Amnesty International Canada): Thank you very much, Mr. Chair, and good afternoon, committee members.

Despite being unconditionally banned in numerous international human rights treaties, national constitutions, and laws around the world, the ugly and very vicious reality of torture continues to be commonplace and to haunt every corner of the globe.

In 2000, Amnesty International issued a major comprehensive report documenting the prevalence of torture worldwide. At that time, we noted that torture was occurring in three-quarters of the world's states, that it was systematic and widespread in almost one-half of the world's states, and that children experienced torture in one-quarter of the world's states. This is no trivial concern. Torture truly, clearly, is an international human rights crisis.

• (1230)

This reality stands in sharp contrast to the firm, unwavering laws that ban torture. The Universal Declaration of Human Rights: no one shall be subjected to torture. The International Covenant on Civil and Political Rights: no one shall be subjected to torture. The United Nations Convention on the Rights of the Child: no child shall be subjected to torture. In the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment itself, no exceptional circumstance whatsoever—whether a state of war or a threat of war, internal political instability, or any other public emergency—may be invoked as a justification for torture.

Law is clear; practice is something very different. Torture, the intentional infliction of severe physical or mental pain or suffering, is absolutely and entirely illegal, but everywhere around the world torturers thrive.

One reason is that torture happens behind closed doors, in secret, far from the scrutiny of the courts, the glare of the television camera, or the awareness of the public. Secrecy is one of the torturer's greatest allies, and piercing the shroud of secrecy that surrounds torture is therefore absolutely essential to this campaign to try to put torture to an end once and for all.

That is why, four and a half years ago, the United Nations finally adopted this incredibly important new human rights treaty that seeks to shatter the secrecy about torture. Through the optional protocol, the United Nations has set out a powerful new system for inspecting detention centres, all with an eye to identifying and eradicating the conditions that encourage torture. The optional protocol requires states to establish national-level bodies for carrying out such inspections. It also, of course, establishes a new international-level expert committee empowered to carry out such inspections. National and international inspections are precisely what is needed to shine light on the practice of torture and ensure the scrutiny and attention that will make it impossible for torture to continue.

It was, of course, one thing for the UN to agree to the optional protocol, agreement that came after more than ten years of sometimes difficult and contentious negotiations among governments, many of whom at various points along the way sought to weaken the effectiveness of the new inspection procedures. It was one thing for the UN to agree; it is now quite another to encourage individual governments to ratify the optional protocol and thus commit to being part of this important new system. Twenty states had to ratify it before it would even enter into force and the new international committee would be established. That finally happened last year, and the optional protocol has now been operational for almost one year. Thirty-four countries have now signed on, the most recent being Cambodia and New Zealand, in March. The ten members of the subcommittee of the UN Committee Against Torture, the new international expert body entrusted with the task of carrying out inspections, were elected in December of 2006. The system is up and running; 34 countries are onboard, but not Canada. It has been four and a half years since the optional protocol was adopted. It's time for Canada to be part of the club.

Canada needs to ratify because we must as a nation stand firmly on the side of doing everything possible, supporting every initiative, endorsing every law, that seeks to abolish and end the despicable practice of torture. We must do so to ensure that we have everything in place nationally to guard against the possibility of torture or ill treatment in our prisons, but we must do so primarily to ensure that we have done everything we can to create strong global laws and institutions that can confront and eradicate torture and ill treatment in other countries.

Canada has always sought to make a difference in the global struggle to protect human rights. We have always sought to lead, not merely follow. By virtue of that history of leadership, it is noted when Canada is absent, or silent, or tardy. Other states feel less compelled to step up if Canada has not yet done so. When Canada leads, others truly do follow. That is what this nation stands for. That is what the world needs. That is certainly what women, men, and young people at risk of torture need.

Of course, we cannot overlook the cruel reality that torture can strike very close to home. Recent cases—such as Maher Arar, Abdullah Almalki, and Muayyed Nureddin in Syria, Zahra Kazemi in Iran, Ahmad El-Maati in Egypt, William Sampson in Saudi Arabia, and Kunlun Zhang in China—all remind us that Canadian citizens are vulnerable to torture abroad and all tell harrowing stories of how their torture took place in secret.

• (1235)

Of course, the issue of monitoring has come into sharp focus recently with the current debate under way about how to ensure that prisoners, apprehended by Canadian Forces in Afghanistan, do not experience torture in Afghan prisons.

This is not just theoretical. It is not just wishful thinking. It is an approach that works. In 1987, the Council of Europe established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. That committee began its work in 1990 and now has jurisdiction over 46 European states. Over the past 17 years, the committee has carried out over 225 visits, 140 of which were planned, 85 of which were ad hoc, rapid response visits. Has torture ended in Europe? Clearly not. Has the committee's work made a difference? Absolutely, and it will continue to do so. This year, visits are planned to 11 countries, including several where concerns about torture are grave indeed, including Georgia, Moldova, and Serbia.

Canada is rightly perceived around the world as a strong proponent of international human rights protection, including the crucial global ban on torture. That is all the more reason why Canada's failure to ratify after four and a half years is glaring and problematic. The world expects Canada to be on board with this new initiative. The world expected Canada to be one of the very first nations to sign on.

Why the delay? We know the federal, provincial, territorial, and first nations governments are discussing it and have been for some time. Provincial and federal authorities are reportedly not concerned about the international-level inspections, but apparently have questions and concerns about the requirement that national-level inspections be conducted. Who would carry those out, how frequently, how much would it cost? We've heard much of that this morning.

Three years ago, Amnesty International shared with the government the results of our own research that demonstrated that through the web of ombudsmen's offices, Correctional Services investigators, and other bodies, there was already in existence the means for complying with national-level inspections, in large part. Certainly, refinements, clarifications, and a boost in resourcing may be needed, but the processes and general architecture for prison monitoring are already in existence and provide the framework with which to move

forward with regard to this treaty. But still we wait. We have found it very difficult to get much information about the status of discussions among the various levels of government and within government because those discussions happen entirely behind closed doors. We do not know how far discussions have gone, for instance, in considering any reforms or additions that may be needed to existing prison oversight mechanisms. All we know is that consultations continue. It has been very difficult to get any sense of progress, no real sense of difficulties and challenges, no meaningful, transparent way for parliamentarians, for the Canadian public, to engage.

We hear about first nations involvement. It's not clear yet if that process of consulting is under way, or, if it is, what its status is, and this is something more widely symptomatic in terms of the difficulty of the Canadian public and parliamentarians accessing, in a meaningful way, intergovernmental discussions and processes in this country with respect to international human rights issues.

Let me end by stressing that Canadians want Canada to ratify. Close to 4,000 people have signed an Amnesty International petition calling on Canada to ratify. Eighteen months ago, in an open letter to the Canadian government, eight Canadian citizens who have either experienced torture themselves or lost a loved one to torture abroad, along with their lawyers, three Canadians who served as prominent UN human rights experts, 43 Canadian organizations, and 24 prominent Canadians, including former foreign ministers Lloyd Axworthy and Flora MacDonald, all called on Canada to ratify. That letter, issued in December 2005, urged Canada to ratify by May 2006, which would have marked the first anniversary of the expert UN-level Committee Against Torture, which called on Canada to ratify. May 2006 came and went—no ratification. Now May 2007 has come and gone—no ratification.

• (1240)

Canada still sits on the sidelines. Torture is too serious a concern and the importance of combating it is far too pressing a need for Canada to wait any longer.

Thank you.

[*Translation*]

The Vice-Chair (Mr. Mario Silva): Thank you very much.

Do you have any questions, Ms. St-Hilaire?

Ms. Caroline St-Hilaire: Thank you very much for your presentation, Mr. Neve. I have two main questions, because I think you described the problem very well. You heard the previous testimony and you spoke about the fact that you are rather disappointed about the slowness of the process. I would like you to elaborate a little on that. What is your response regarding the problems, the lack of a deadline, and so on?

My second question is more practical in nature. Do you have a strategy to force the various players to speed the process up? Do you suggest what could be done to apply more pressure to the various levels of government? I'm speaking here about gentle pressure, of course.

[English]

Mr. Alex Neve: Of course, *toujours*.

With respect to your first question, it has been difficult for us to get clarity as to where difficulties or concerns may lie. We've certainly heard, as you have this morning, on a number of different occasions, an assurance that consultations are under way. We've been very aware of some of the particular issues that are the focus of those discussions and don't doubt at all that those discussions are happening.

Because of the lack of transparency with respect to the coordination of international human rights processes in Canada, there is no public reporting of that. There's no ability for civil society—and I would suggest to you it's even difficult for parliamentarians—to get any clear, concrete sense of the status and nature of those discussions, to truly understand, for instance, if there is an emerging problem that could benefit from some political leadership, for civil society groups to know whether there are particular issues that we should be stressing or highlighting in our overtures to governments, or public education even, to generate the kind of awareness and understanding that build support for initiatives of this kind. But when we don't know what the progress is, when we don't know where the difficulties, if any, may lie, it's difficult for all of us, parliamentarians and civil society, to play the kind of role we should in advancing something so fundamental to what this nation must stand for as the question of how we're incorporating and bringing into our national fabric our international human rights obligations. So I'm unfortunately not able to shed any further light for you as to whether there may be some difficulties on that front.

With respect to a strategy, I think some of the questions have been asked here about whether it's time, for instance, to really push for a timeline and a calendar to start to be developed with some clear expectations as to when the consultation process needs to end, when some clear recommendations are going to come forward to various governments so that political-level decisions can be made. I have great respect for civil servants, federally and provincially, who are engaged in this work, and I know many of them personally, and I know they share the same passion I do with the need to eradicate torture in this world. They understand the role Canada can play in that regard, and they're doing a lot of technical work that is necessary, but we need to see things happen at the political level as well. I think clear direction needs to come at senior political levels, federally and provincially, that this is an issue that matters. There's an expectation politically in this country that Canada needs to be ready to do this and to do it soon; four and a half years is long enough to wait. By demonstrating that degree of political support and concern about the process, I think that bolsters the efforts of many within the bureaucracy who are trying to advance the technical work as well.

I think it may also then reach a point where we're going to need to see, for instance, federal ministers speaking with each other. If there's one department that is a little bit more reluctant than the other, then

we need to see our justice minister engaging with our public safety minister, or whatever the case may be. Similarly, we need to see federal ministers engaging with provincial ministers to make sure a shared political vision emerges with respect to the importance of this instrument as well.

The last thing any of us would want to see is another four and a half years go by, with the consultations continuing and good technical work happening—and I'm not trying to suggest that it isn't—without that clear political direction being in place.

• (1245)

The Vice-Chair (Mr. Mario Silva): Thank you.

Mr. Khan.

Mr. Wajid Khan: Thank you, Mr. Chair.

After listening to your presentation and hearing the witnesses, I am concerned, as Mr. Chair mentioned a few moments ago, about the reputation of Canada. We say when Canada leads, others follow. But I think the pace from 1992 to 2007 seems to be rather glacial.

I'd like to receive your comments, sir, as to why it has taken this long. Is there a will to do that? Has there been lack of political leadership over the last 15 years? I asked this question of our bureaucrat, but I didn't get a clear answer. Was there a direction? Do you have any idea if any direction is given, and if not, why not? And why is Canada not acting?

Mr. Alex Neve: Again, I wish I could give you a clear and precise answer to that. Let me start with the question of Canada's reputation.

I think that is something this committee should be concerned about. I wouldn't want to suggest at all that because we haven't ratified the optional protocol to the torture convention, we're suddenly now viewed within UN circles as a bad guy when it comes to human rights. I don't think that's the case at all. We've got way too strong a track record, and we are continuing to do very positive things at the international level.

I do think, though, there's a sense of disappointment at the international level because of the role Canada has played, because of the fact, as I said, that we generally really seek to lead on initiatives of this sort and not be a nation that comes following much later down the road. Everyone knows we need all the more leadership on the international level. We can't risk having any leadership diminish.

With respect to why it's taking so long, again, I can't give you a concrete answer to that because I don't have access to the progress of all of those discussions. But I think your question about political leadership, direction, and guidance is an important one.

I don't think we've seen that. I know through my own engagement I've had with various ministers, federally and provincially, over the years, I often have had a sympathetic audience and lots of nodding and assurances that the matter will be raised with counterparts. I would have to say to you I've never seen anything particularly concrete come of that. I think anything that can be done to remind our political leaders in this country, federally and provincially, of the role they have to play in advancing this would be very valuable.

Mr. Wajid Khan: Would you say, sir, that the subcommittee should have a bigger role in this, that we should actually be visiting or focusing on the torturing nations? I think Canada has been absent at that table as well.

Mr. Alex Neve: I'm sorry, I didn't catch that.

Mr. Wajid Khan: In your view, should the subcommittee that you are the witness at today have an expanded role? Should we be focusing on the torturing countries? I'm not aware that we are actually very actively participating on the international stage.

Mr. Alex Neve: Certainly, obviously, the prevention of torture is an issue very close to the soul of Amnesty International, and any work this subcommittee is willing to do to more widely tackle that.... The work you're doing on the optional protocol is vitally important, but this is only one tool amongst a multitude of others that need to continue to be strengthened nationally. We have some issues within our own laws and practices in Canada, and internationally, because there's a multitude of other ways in which the UN and other international systems need to be strengthened.

So at some point, if this subcommittee was interested in taking on a wider study of Canada's role in efforts to combat torture worldwide, or whatever the study might look at, I think that could be a great contribution.

The Vice-Chair (Mr. Mario Silva): Thank you.

Mr. Marston.

Mr. Wayne Marston: Thank you for coming in today. Mr. Neve and I have met a time or two to discuss things.

Torture is an amazing thing. We in Canada are very lucky. We don't actually have to think about it very often in the context of our country. A number of years ago I spent some time in Saudi Arabia. I was struck when I met people who could hardly walk because of damaged feet, or who were missing eyes. I was in the market one day and a throng of people pushed me to the front as they were amputating a man's hand and beheading the next guy in line. It struck home hard.

I had the good fortune to have some time with Maher Arar and Mr. Amalki. Mr. Amalki, in particular, came to Hamilton, talking about what he lived through, especially in Syria, and the coffin-like confinement they go through for months, if not years. As well, I have a concern because right now we have Bashir Makhtal, who's being held in Ethiopia; we have Huseyin Celil, who's being held in China. Both cases are very likely cases in which torture is being applied.

But I think we tend to sit back, as a country, in this. I won't say we're complacent about torture, but because we don't think it'll happen here, there's less of an emphasis within the public mind on it.

I'd strongly urge anybody to watch a movie called *Road to Guantanamo*. If you think North Americans can't apply torture, when you see that movie, you'll find out things are grossly different.

So I think what we're hearing today is boiling down to one thing: we've not had, and continue to not have, the political will to make this happen in Canada. Would you agree with that?

• (1250)

Mr. Alex Neve: I think that's true. As I said earlier, I often find a sympathetic audience in speaking with ministers and senior officials around this. There is no disagreement at all that this is something worthwhile, but I have not yet seen that translate at those levels into a clear commitment that translates into the kind of direction and leadership that is needed within all governments to make it happen and make it happen quickly.

Mr. Wayne Marston: I think everybody here would agree that Canada has been a leader in human rights in the eyes of the world for many years. People may or may not want to agree, but that leadership role is going to be challenged by this delay.

Again, when I was in Saudi Arabia we were respected for the positions Canada took on a variety of interventions around the world. I've spoken to friends back there, and that's starting to change. It's starting to change for a number of reasons; I'm not trying to suggest it's as a result of this. But Canada is now being seen more in line with American policy, and I think it's essential that we move this forward as quickly as we can.

The Vice-Chair (Mr. Mario Silva): Thank you.

I have just one last question. There has always been a great concern about the enforcement mechanisms of the treaties that are signed. We are obviously very supportive of our past participation and hope that the government will also support this optional protocol. Would you not say that this optional protocol adds another tool in the enforcement of human rights and that's why it's so valuable and so necessary to have this treaty be part of the Canadian body of law as well?

Mr. Alex Neve: Absolutely. I think one of the things that is so exciting about this is that it is concrete. Of course, treaties—which are about promises, pledges, and aspirations, as so many human rights treaties are—are vitally important. They do set the legal standards that through other mechanisms and processes we then all work to hold governments to.

This is an international instrument that is establishing a very concrete national- and international-level process that's actually meant to make a difference. We need that so desperately within the international human rights system. I think that's one of the most paramount reasons that this is an instrument so deserving of, ultimately, absolutely universal international support. Clearly, it will take us quite some while before we get every nation on board, but surely we're at a stage where we need to have nations like Canada firmly committed to this.

The Vice-Chair (Mr. Mario Silva): Thank you.

There are no further questions.

I want to thank Mr. Neve and the other departmental officials for coming before the committee. It's been a very important and very good discussion that we've had here. I thank you very much for your presentations.

The meeting is adjourned.

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