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**Thursday, November 23, 2006**

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**Chair**

**Mr. Garry Breitkreuz**

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Thursday, November 23, 2006

• (0910)

[English]

**The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)):** I'd like to bring this meeting to order. This is meeting 22 of the Standing Committee on Public Safety and National Security. We are being televised this morning, and we're dealing with the commission of inquiry on the events relating to Maher Arar.

We have with us this morning witnesses from the Department of Foreign Affairs. Mr. Alan Kessel is the legal adviser.

I believe sir, you have some opening remarks. You can introduce your colleague and maybe explain to us who you are. We'll allow you whatever time you need to make your opening remarks. Then the usual procedure is to begin with the official opposition and ask questions. We're here for one hour.

Go ahead, sir.

**Mr. Alan Kessel (Legal Adviser, Department of Foreign Affairs):** Thank you, Mr. Chairman.

Let me initially introduce my colleague Robert Desjardins, who's the director general of our consular bureau in the Department of Foreign Affairs and International Trade. Together, hopefully we'll be able to respond to your questions in due course. I do appreciate the opportunity, Mr. Chairman, to make a few remarks.

I'd like to thank you, Mr. Chairman and the other members of the committee, for the opportunity to provide you with the views of the Department of Foreign Affairs and International Trade on the report of the Arar inquiry commission. Let me say at the outset, Mr. Chairman, on behalf of my colleagues in the department who worked so diligently for Mr. Arar's release, how much we regret what he endured.

Mr. Chairman, I thought it might be useful if I provided the committee with a brief overview of the actions and involvement of the department in this case.

Officials of the department were fully engaged on Mr. Arar's case as soon as we learned of his arrest in New York on September 26, 2002. Staff in the Consulate General in New York took quick action to locate and visit Mr. Arar to help find legal counsel for him and to communicate with his family. Justice O'Connor himself makes clear in his report that officials in New York took reasonable steps to provide Mr. Arar with consular services, including addressing the possibility that he might be sent to Syria.

For their part, officials in Damascus, again in Justice O'Connor's view, did everything reasonably possible to obtain consular access to

Mr. Arar throughout his year of imprisonment and exercised good judgment in seeking as much access as possible. Ambassador Franco Pillarella and Consul Léo Martel were persistent and vigorous in managing Mr. Arar's case in the face of significant challenges. It is important to note, for example, that Mr. Arar is a dual citizen of Syria and Canada, a fact that imposed constraints on our actions since the Syrian authorities regarded him as a citizen of their country and would not normally allow Canadian consular access to him. In these circumstances, obtaining and maintaining this access was virtually unprecedented.

Shortly after his return to Canada in October 2003, and to avoid a repetition of the unfortunate events that befell Mr. Arar, departmental officials sought and obtained U.S. concurrence to a process of notification and consultation in cases of involuntary removal to a third country of a Canadian citizen by the United States or an American citizen by Canada. This understanding, the Monterrey Protocol, was concluded on January 13, 2004. I think it's worth noting that the protocol is the only such understanding with another country that the United States has entered into, to my knowledge.

Mr. Chairman, you will recall that Commissioner O'Connor engaged Professor Stephen Toope to prepare a report with respect to allegations of torture in Syria. The finalization of the report allowed the department to bring its findings to the attention of Syrian authorities, and a copy of the report was provided to them on October 27, 2005. We expressed our serious concern with respect to the findings of Professor Toope and asked that the Syrian authorities conduct a thorough investigation. I should note that we have not actually received an adequate response to that request.

As noted by Commissioner O'Connor, departmental officials worked diligently in challenging circumstances to help Mr. Arar throughout his ordeal. Everyone who was engaged on this extremely difficult case was relieved and gratified when our efforts to secure his release succeeded. As recommended by Justice O'Connor, the government has registered its firm objections to the governments of the United States and Syria for their treatment of Mr. Arar.

The government has done this at the most senior levels. In a telephone conversation with President Bush on October 6, the Prime Minister spoke about the Arar case and expressed Canada's objection to the actions of American officials. On the same day, Mr. McKay, the Minister of Foreign Affairs, wrote to the United States Secretary of State and the Syrian Minister of Foreign Affairs to register Canada's objection to their governments' treatment of Mr. Arar.

The minister reminded Secretary Rice that U.S. officials gave no indication and provided no notification to the Canadian consulate in New York that they intended to deport Mr. Arar to Syria, an action that led to his prolonged incarceration. This was inconsistent with the respect for the rule of law that normally characterizes Canadian-U.S. cooperation in judicial and law enforcement activities.

I am pleased to say that Mr. MacKay also secured Secretary Rice's commitment to ensure that all relevant U.S. agencies are aware of the provisions of the Monterrey Protocol, and she recognized the legitimacy of Canada's concerns about the failure of the U.S. authorities to notify our Consulate General of Mr. Arar's removal from New York to Damascus.

In his letter to Syrian Foreign Minister Moallem, Minister MacKay made him aware of Justice O'Connor's conclusions that the Syrian authorities held Mr. Arar incommunicado for almost two weeks in October 2002 and that during this period, Justice O'Connor concluded, Mr. Arar was interrogated and tortured. The minister urged the Syrian authorities to address the vitally important question of torture and related human rights issues in light of its international obligations and of recognized international standards. Our embassy in Damascus remains engaged with the Syrian authorities on this issue.

Mr. Chairman, I now turn briefly to Justice O'Connor's other recommendations, which affect the operations of the department and its cooperation with other departments and agencies. We have acted quickly and decisively to respond, and these recommendations have already been, or are in the process of being, put into practice.

In the area of human rights, for example, the department acted, before the commission reported, to post our embassy's human rights reports on the secure Foreign Affairs website, to which all members of the Canadian security and intelligence community have access.

A one-day workshop on torture is now conducted as a regular part of consular staff training. It has been operating for two years and was developed with input from the Canadian Centre for Victims of Torture. The workshop is being enhanced and made available to an increasing number of front-line staff.

We wholeheartedly endorse Justice O'Connor's recommendation 16. To provide better coordination and coherence, the department and CSIS have discussed a draft protocol to set out the responsibilities of each party in consular cases that have a terrorism or national security dimension. Once this is formalized, we will use it as a model for a protocol with the RCMP.

In the area of consular case management, we are studying the difficult question of dual nationals in cases where an individual finds himself or herself in the country of his or her other nationality and that country does not recognize the person's Canadian status. This is an area that will always complicate providing consular services to Canadian dual nationals. Provisions in international law on this subject are vague and weak. It is not even mentioned in the Vienna Convention on Consular Relations.

Mr. Chairman, let me conclude by saying that the Arar inquiry commission conducted a thorough investigation into the circumstances of Mr. Arar's ordeal. The department cooperated fully and expeditiously with the commission, and we are implementing the

recommendations that concern us. Our perspective is forward looking, and we are working to ensure that the recommendations are implemented with vigour and in the spirit of cooperation.

I thank you, Mr. Chairman.

● (0915)

**The Chair:** Thank you very much, Mr. Kessel.

Before we go to the official opposition, could you clarify one point? You did in your report a little bit. You talked about the Monterrey Protocol. Would you mind clarifying for us what that is, precisely?

**Mr. Alan Kessel:** Yes, certainly, Mr. Chairman. I think many of you will recall, and it has been mentioned a number of times, that on January 13, 2004, the then Minister of Foreign Affairs, Mr. Bill Graham, wrote a letter to his counterpart, Mr. Colin Powell, indicating essentially our mutual interest to ensure that this type of activity did not happen again and that we wished to consult on such cases in the future. Mr. Powell then wrote back confirming to Mr. Graham his understanding, and together these two letters form what we consider to be an understanding between the Government of Canada and the United States government, which continues today.

So Mr. Graham, in his foresight, at the time sought to say that, before we even came down with the results of the O'Connor commission, we saw there was a particular issue here with the U.S. and the government of the day felt it could resolve this. Together they produced the Monterrey Protocol, which in fact is being implemented. Officials on both sides, in both administrations, in the current Government of Canada and in the department that Condoleezza Rice now runs, are implementing this Monterrey Protocol.

If the committee would like a copy of it, we do have it here.

● (0920)

**The Chair:** Yes, that was actually going to be my next question. Could we get a copy of that?

**Mr. Alan Kessel:** Absolutely, and if the clerk would like, it's right here.

**The Chair:** Thank you very much.

We'll now go over to Mr. Holland from the Liberal Party for seven minutes of questions.

**Mr. Mark Holland (Ajax—Pickering, Lib.):** Thank you, Mr. Chair.

Thank you to Mr. Kessel for appearing before the committee today, and also to Mr. Desjardins.

I'm wondering if we can start talking about the one voice letter, and specifically the fact that department officials within Foreign Affairs were pushing for there to be a one voice letter. Justice O'Connor in his recommendations discussed a disappointment, obviously, with the fact that this wasn't sent, and indicated that it might have led to a protracted period of time in getting Maher Arar back.

I'd like to start by asking this. What was the basis of the talks between the Department of Foreign Affairs at that time and the RCMP and CSIS? Could you tell us who was involved with those discussions at that point in time?

**Mr. Alan Kessel:** Well, perhaps I should say at the outset that I certainly wasn't involved in this process at that time. I wasn't even in Canada at that time; I was posted overseas. What I can say is that it appears that Mr. Justice O'Connor has really canvassed this issue quite considerably, and in going through the report, I think it's quite clear what the process was and how the recommendations that came out of that indicated that we should find a way to improve the communication between departments.

So I think perhaps we are best able to respond to the recommendations that have come out of the report—simply to indicate that this particular issue, which was of concern to the Department of Foreign Affairs, as you will know when you read the full report, as it was our initiative to produce that one voice letter... We are gratified that the commissioner has come out with the suggestions he has.

In fact, I may turn to my colleague Robert Desjardins, because he is particularly implicated in resolving that recommendation.

Could I ask you, Robert, to speak about some of the things—

**Mr. Mark Holland:** I don't mean to interrupt the witness, but I'm aware of some of the actions the department is taking on a go-forward basis, and this committee is going to be looking at it in more detail. What I'm concerned with right now is the fact that we have conflicting information about who knew what and when they knew it; and specifically, we have problems knowing what was going on with the discussions of the one voice letter.

I don't agree with your conclusion that it's clear. In fact, I think it's quite unclear as to what the positions of both CSIS and the RCMP were at that point in time. So I'm asking for your assistance, I guess, as the department that was advocating for a one voice letter, in understanding what the objections of CSIS and the RCMP were.

**Mr. Alan Kessel:** Mr. Chairman, I can't add anything more than Commissioner O'Connor has described in his very lengthy report. I'm afraid I'm not able to provide more than Justice O'Connor has provided in that.

What I can say is that given the concerns that were raised and given the very long explanation of the yinny and yangny between the various departments, rather than dwelling on who did what and when, what we have decided to do is fix the problem.

If I could pass my chalice over to Mr. Desjardins, I would like him to explain just how we're going to fix that problem.

● (0925)

**Mr. Mark Holland:** There may be somebody who asks a question on that, and I would welcome that question and be interested in it. I'll tell you exactly why it's important. There has been no accountability taken for this affair at this point at all. In fact, the government has not yet issued an apology. Your minister has not issued an apology. I think it is imperative that we understand what exactly went wrong, and that the individuals who are responsible for this be held to account. I think that it's partially the responsibility of this committee, through this process, to undertake that.

If you cannot answer the question because you were not involved at that period of time, is there somebody who could tell this committee, from within your department, what happened with the one voice letter? What were the specific objections of the RCMP at that period of time? What were the objections of CSIS that were occurring? Again, if you can't answer it, who could we turn to, as a committee, to find out that answer?

**Mr. Alan Kessel:** Mr. Chairman, quite frankly, the reason I'm here is that we were looking forward, and the reason I'm here is to show what the department is doing in response to the recommendations. I think it's entirely up to the department to determine who to send for that purpose.

I think the department's view was that the issues that Mr. Holland is asking about were extensively covered in the entire process of the O'Connor commission. It went on for many months, with a very large report that lists in detail who said what to whom and when they said it. I think the objective from this government's point of view—and it certainly was the objective of the previous government—is that we find solutions to the various problems. I think the previous government's view and the government's view today is that we actually deal with that problem.

I would suggest you may want to go through the report again in detail, because it does elucidate quite a bit of that debate. Maybe if we can move to the solution part of it, if there are follow-up questions and you wish to continue that, it's entirely up to the chair to determine how best to have a response. For the moment, the best response I can give you is the one I have now.

**Mr. Mark Holland:** With respect, you didn't answer the question.

The problem I have is that the O'Connor report detailed a massive intelligence failure; the O'Connor report did not detail a slight problem that we should just resolve with some minor changes. This was a massive intelligence failure, for which at this point there has been no accountability. I certainly believe it's imperative for us to understand what went wrong. If this is simply taken in such a way that we're going to make some changes and move forward and no one is held to account for what occurred, then how can we have any expectation that things will meaningfully change?

The O'Connor report and the testimony we've had before this committee have indicated that particularly with, in my opinion, the RCMP and the RCMP commissioner there are major discrepancies in the information that was put before us. I am getting extremely frustrated in trying to reconcile those. I ask the question again: where can I find information about the one voice letter with your department?

**The Chair:** Please give a brief response, and then we'll go to Monsieur Ménard.

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

I really do want to hear from Mr. Desjardins, because I believe that forward looking is good. I think it's useful to say that the previous government—but both governments that were involved in this process—had a very strong commitment to ensuring that the areas of concern in terms of communication between departments be corrected. I think the previous government was very conscious of a need to put in place a process that would allow this not to happen again. I think the strong will of the previous government was carried through into the current government. The current government has taken up that torch and has indicated strongly to departments—I'm sure you've had the opportunity to chat with departments other than ours—to ensure that this thing is corrected.

I would ask, with your indulgence, Mr. Chairman, if we could actually take a look at what was done. If we do need to come back at your discretion to explain things further, then I'm sure we can arrange that. But I think we should look a little bit forward, from Mr. Desjardins.

Thank you.

• (0930)

**The Chair:** We'll probably have an opportunity at some point.

We will go to Mr. Ménard.

[*Translation*]

**Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ):** Thank you for joining us, Mr. Kessel.

I had time to read your statement. When the Arar case was first brought to your attention, did you know why he had been removed to Syria?

**Mr. Alan Kessel:** Thank you, Mr. Chairman. If I may, I'll answer that question in English.

[*English*]

I have to resort again to the report, because quite frankly, I think this whole area has been carefully and articulately enunciated by the commissioner. The chain of events is very clear on when our consular officials were advised. That was very early on in Mr. Arar's dealings with American authorities, and we engaged very quickly with Maureen Girvan, who was our consul official at the time in New York.

The department is extremely satisfied with the conduct of our consular officials. In fact, so is the commissioner. It's rather interesting, because I was trying to go through this very process that you have just mentioned, and in looking at what Maureen Girvan was doing and at what some of our other officials were doing in New York, it is quite clear, certainly from the extensive response in the report, that the commissioner was entirely satisfied with the work done by our staff.

[*Translation*]

**Mr. Serge Ménard:** Mr. Kessel, you've already taken up two of the seven minutes allotted to me for questions. Yet, I asked you a simple question. Did you know why Mr. Arar had been removed to Syria?

[*English*]

**Mr. Alan Kessel:** Our officials did not know.

[*Translation*]

**Mr. Serge Ménard:** Thank you. You see, you didn't need two minutes to answer the question.

Did you attempt to find out why he had been removed to Syria?

[*English*]

**Mr. Alan Kessel:** The officials at the time, as you will have seen in the report, were surprised and shocked at the treatment that Mr. Arar received from U.S. officials. We had never experienced something like that in the history of our relationship with the U.S. The normal process would have been that if there were an immigration issue, the individual would be returned either to the point of origin, which in this case, I guess, was Zurich, if he was coming in to the U.S., or to Canada, as Mr. Arar had indicated that he wished to be returned to Canada.

We were taken aback by the decision of the U.S., without informing us, to remove Mr. Arar to Syria.

[*Translation*]

**Mr. Serge Ménard:** Again, I don't know whether your answer is yes or no. My question was as follows: Did you attempt to find out why Mr. Arar was removed to Syria?

[*English*]

**Mr. Alan Kessel:** Maybe I'm not understanding the question, but I can tell you that the individuals dealing with Mr. Arar on the ground did not know why he was being sent to Syria.

[*Translation*]

**Mr. Serge Ménard:** That's why I asked if you tried to find out why he had been removed to Syria.

[*English*]

**Mr. Alan Kessel:** Clearly there was a discussion between the departments to determine if there was something we should be aware of with respect to Mr. Arar. The subsequent discussions between the various departments did reveal that there were concerns on the part of the RCMP, and that was something, as is mentioned in the report of Mr. O'Connor—and this goes back to the discussion, which I would certainly like Mr. Desjardins to get to—

• (0935)

[*Translation*]

**Mr. Serge Ménard:** I have seven minutes to obtain from the witnesses answers to questions which, to my mind, can be easily answered.

You stated that the RCMP had some concerns. What concerns are you referring to?

I'm sorry to rush you. This isn't like a court of law or a commission of inquiry. I only have seven minutes allotted to me.

What specific concerns did the RCMP have?

[*English*]

**Mr. Alan Kessel:** I'm glad you mentioned that this is not a commission, because quite frankly, we have massive amounts of documentation from the commission.

[Translation]

**Mr. Serge Ménard:** I've read the commission's findings. That's why I'm not asking you any questions that have been answered in Justice O'Connor's report.

What specific concerns did the RCMP have?

[English]

**Mr. Alan Kessel:** The express concern that Justice O'Connor indicated was that while the RCMP had a right to speak to U.S. officials, and the Department of Foreign Affairs and International Trade was dealing with U.S. officials on consular matters, those two roads never met in Canada. So the RCMP officials and the Department of Foreign Affairs officials had not spoken to each other at that point, during the early stages of Mr. Arar's detention in New York, and that is exactly the issue of why there was a recommendation and, in fact, the only process that we have to guide us at this point.

As the government has indicated it would fulfill the recommendations, we must look at the recommendations that Mr. Justice O'Connor has put forward and try to respond to them. And the exact issue of communication that you've now raised again—and I appreciate it because Mr. Holland also raised it—is key to resolving this problem.

I'm now going to ask Mr. Desjardins if he would speak to the issue of communication between departments and what he's doing about it.

Thank you, Mr. Chairman.

[Translation]

**Mr. Robert Desjardins (Director General, Consular Affairs, Department of Foreign Affairs):** I'd be happy to speak to that issue.

First of all, before Mr. Justice O'Connor's report was released, we had already taking clear, concrete steps to improve communications between Foreign Affairs and International Trade . . .

**Mr. Serge Ménard:** Again, would you kindly answer my question. You were in contact with the RCMP, which conveyed some concerns to you. Correct? I'd like to know if someone inquired as to the reason why Mr. Arar was removed from Syria.

From an outsider's perspective, it seems obvious that if someone is removed to Syria, it is because that person is considered to be a terrorist or a member of a terrorist organization and the fate that awaits him is clear. I understand that Foreign Affairs was aware of these facts. Therefore, answer me this: did you inquire as to the reasons why Mr. Arar was removed to Syria?

[English]

**The Chair:** Mr. Ménard, you'll have to pose your question, and we'll have to get a brief response.

[Translation]

**Mr. Robert Desjardins:** The short answer . . .

**Mr. Serge Ménard:** Once again, you can see how useful the measures I suggested would be, once we vote on . . . I'm certain that I didn't take any longer than a minute and a half to put my questions, but I received non answers for six and a half minutes.

[English]

**The Chair:** If there's no response, we'll go over to the government side.

[Translation]

**Mr. Robert Desjardins:** To answer your question, I cannot discuss the RCMP's concerns. I represent the Department of Foreign Affairs and International Trade and I can tell you what steps we took. I can't tell you what the RCMP did, what it was thinking, or what it wanted to do.

[English]

**The Chair:** Thank you.

Mr. Hawn for seven minutes, please.

**Mr. Laurie Hawn (Edmonton Centre, CPC):** Thank you, Mr. Chair.

I'm not sure we're ever going to get answers to the kinds of things that are being asked across the way, and I don't dispute that they're good questions, but I have a couple of questions that are a little bit looking back and a little bit looking forward—the Monterrey Protocol that you talked about, for example. Candidly, are there holes in that? It's a pretty brief two-letter exchange between the Minister of Foreign Affairs and the U.S. Was the object of that conversation satisfying, in your view?

**Mr. Alan Kessel:** You know, you've basically hit the nail on the head here. We're dealing with an incredibly difficult situation in which the U.S. has its views on its defence counter-terrorism strategy and Canada has an obligation to protect its citizens. This unprecedented approach, which Minister Graham together with his counterpart, Colin Powell, entered into, started a process that the current government has continued.

I don't think there's anything more powerful than the Prime Minister of Canada picking up the phone and speaking to the President of the United States to say, "This is a problem; it concerns me, it should concern you, and we should continue to fix it", and the Minister of Foreign Affairs, speaking to his counterpart, Condoleezza Rice, saying, "My Prime Minister has told this to your President; I think we're all in the same book here and we need to make sure this doesn't happen again." And what we need is an expression of understanding and willingness to make sure this doesn't happen again, from the President of the United to the Prime Minister of Canada and from the Secretary of State to the Minister of Foreign Affairs. Quite frankly, in the diplomatic world, I don't know anything stronger than that.

● (0940)

**Mr. Laurie Hawn:** We have millions of Canadians with dual citizenship. Mr. Arar—Syria and Canada—was just one example of that dual citizenship situation.

Justice O'Connor's recommendation 17 talked about taking steps necessary to insist that Canadians' consular rights be respected. I know it's difficult to tell Syria or another country who has rights under its own laws and what to do, but we have, by some reports, 2.5 million to 4 million Canadians with dual citizenship. What are we doing proactively to try to establish the access to Canadian rights with all the countries with which Canadians hold dual citizenship, including Syria?

**Mr. Alan Kessel:** This is the other issue that I think Mr. Justice O'Connor was quite clear on. He said this is a foggy area of international law. It's a new thing. The world has really changed in the past 30 years, 40 years, 50 years. We've seen massive movements of people around the world. Canada, like many other countries, has a law that permits you to retain the citizenship of your former country. Even were you to remove that, some would say, some countries would still consider you to be their citizen, because under their law you may be.

So there's a certain limited amount of coercion that the Government of Canada can do. If you're a Canadian living in Canada but you happen to be Irish and you happen to have a relationship with the law for some reason, we would just treat you as a Canadian going through the legal process. Maybe the Irish would come to us and say, "Hang on a minute, this guy's Irish and we're going to insist on his being Irish", and we'd say, "Good, he's Irish, but he's still going to go through the legal system." That's just one example.

The fact is that many countries are struggling with the concept of dual nationality, predominant residence—who are you?—where there are half-and-half citizenships. The reality is that we haven't concluded that. This is something that the international community is going to have to agree to.

The Vienna Convention on Consular Relations was done at a time when the numbers of dual nationals were minimal. Maybe one of the things to look at down the road is whether that or other international treaties have to look at the reality of dual nationals in a changing world where migration is a factor of life.

I'm sorry I can't be more specific on that. It's a very unspecific topic right now.

**Mr. Laurie Hawn:** Are we addressing that? Are we trying to address that through follow-on conventions and so on? Canada is not the only country faced with this.

**Mr. Alan Kessel:** No.

**Mr. Laurie Hawn:** Is there any proactive process going on to address it?

**Mr. Robert Desjardins:** From a legal perspective at this juncture, no. Work on international conventions is extremely complex and difficult, but we do have exchanges regularly with like-minded countries and countries that find themselves in the same situation as we find ourselves in dealing with an increasingly large segment of our population that does have another nationality.

It's very practical. It's very pragmatic. As Mr. Kessel mentioned, where we do have problems, it has to do with the legal framework of those countries. So individually or collectively or in small groups, we have to try to find measures of accommodation so that we do gain access to our citizens directly or indirectly when they need it. We have to find ways not to circumvent other countries' legal frameworks, but to work within them to make sure we can assume the responsibility that we have for our own citizens. Some pragmatic, concrete work is taking place between us and like-minded countries like Australia, New Zealand, and the U.K.

● (0945)

**Mr. Laurie Hawn:** Have we done any prioritizing? I don't know how many countries Canadians hold dual citizenship with, but there are some that would be problematic, like Syria. Some would be less problematic, like Australia. Have we done anything about prioritizing which we consider the biggest threats to Canadians if they get caught in a situation like Maher Arar and have we started with those?

**Mr. Robert Desjardins:** As Mr. Kessel mentioned, we know those countries where, for instance, it's illegal to acquire another nationality. They exist. We know them, and we see how best to deal with those situations. It's also important to note that we are doing considerable work informing Canadians of their obligations and the care that they need to take.

For instance, in the passport, in the book itself, there is an observation about dual nationality. We have a website, [voyage.gc.ca](http://voyage.gc.ca), that receives 4 million visits a year, where that information on dual nationality is clearly stated for Canadians. We use every opportunity to remind people who have another nationality or who may have another nationality to be very mindful of the precautions they need to take when travelling to their country of original nationality.

**The Chair:** Just a brief question, Mr. Hawn.

**Mr. Laurie Hawn:** Do we have any record of the number of Canadians who have dual nationality with any other country?

**Mr. Robert Desjardins:** There are approximations, projections, data, from StatsCanada. It's anywhere from 2 million to 2.5 million. We don't know, because people don't need to report that to us and we don't inquire.

**Mr. Laurie Hawn:** Okay.

**The Chair:** Thank you.

We'll have to shorten our round a little bit here to maybe four minutes each to get through this second round.

Mr. Alghabra.

**Mr. Omar Alghabra (Mississauga—Erindale, Lib.):** Thank you, Mr. Chair.

Good morning, gentlemen, and thank you for coming here.

Mr. Kessel, you touched upon the fact that Minister MacKay had registered Canada's objection with the United States. What was the outcome of that objection?

**Mr. Alan Kessel:** It was an understanding, a sharing of concern, and a commitment by Condoleezza Rice to bring this particular issue to the attention of the key departments in the U.S. administration to ensure that they would follow through on the Monterrey Protocol. This also flowed through from the Prime Minister's call to the President of the U.S.

**Mr. Omar Alghabra:** Are you satisfied with that? Do you think that's enough?

**Mr. Alan Kessel:** I'm very satisfied that the Prime Minister and the President agreed that this was a problem, and also satisfied that the Minister of Foreign Affairs and the Secretary of State agreed as well to make sure it resolves the problem.



**Mr. Omar Alhabra:** Just a minute ago you said that, given their response, the fact that they pledged to communicate with the Canadian government before any other incident is the best diplomatic language you can expect. I will humbly request that I think there's a better outcome, that the United States makes a pledge that if it's ever to deport a Canadian citizen, it's to deport him or her to Canada. Why aren't we asking that that's what happens—if the United States is going to deport a Canadian citizen, it sends them to Canada.

**Mr. Alan Kessel:** I believe the Monterrey Protocol, and certainly the message of the Prime Minister to President Bush, was exactly that. I think you do have that from the Government of Canada.

**Mr. Omar Alhabra:** But that's not the agreement right now, right? The agreement is that there should be communications before any—

**Mr. Alan Kessel:** Absolutely.

**Mr. Omar Alhabra:** But still, we didn't reach an agreement—

**Mr. Alan Kessel:** This would not stop the U.S. from proceeding against a Canadian or Canada proceeding against an American under our extradition legislation. Extradition, in fact, provides you all the protections you can have under our charter and under their constitution. Our concern was this removal concept. And what was particularly disappointing, going back to the previous question, was that Mr. Arar was using a Canadian passport. One thing I could tell Canadians of dual nationality is that if you're travelling abroad as a Canadian, use your Canadian passport, certainly if you're going to your country of origin, because it gives us a bit of a leg up, especially Robert Desjardins' gang, when we can actually say, this guy was travelling on his Canadian passport. That didn't help Mr. Arar in this case, and that's why we were particularly saddened in dealing with our American colleagues.

● (0950)

**Mr. Omar Alhabra:** But Mr. Kessel, I'm going to go back to my question. Is Canada going to demand from the United States and other countries around the world that if they're going to deport a citizen of Canada, that person should be deported to Canada?

**Mr. Alan Kessel:** That is our policy, and that's what we have asked other countries to do.

**Mr. Omar Alhabra:** But we're not getting guarantees from the United States that it will happen.

**Mr. Alan Kessel:** What we have got from the highest level in the government is the Monterrey Protocol, which says that they will not do anything until they speak to us, and that's the highest we can get at this point.

**Mr. Omar Alhabra:** That's what happened with Mr. Arar. They actually spoke to the foreign affairs department before they deported him to Syria, didn't they?

**Mr. Alan Kessel:** No, I believe what happened was that they deported him without consulting us. That's what the O'Connor commission found.

**Mr. Omar Alhabra:** What has the foreign affairs department done to Mr. Jaleel when he was detained in Uzbekistan before he was deported to China?

**Mr. Alan Kessel:** I have no answer on Mr. Jaleel, unless Mr. Desjardins—

**The Chair:** I think that's really not in the scope of this meeting.

**Mr. Omar Alhabra:** It's very relevant, Mr. Chair, because what the committee is looking into is that these things don't happen again. It's very relevant to the situation. So I'm not sure if we can say—

**The Chair:** He doesn't have an answer for you, though, sir.

Monsieur Ménard, for four minutes, please.

[Translation]

**Mr. Serge Ménard:** The department knew, when Mr. Arar was sent to Syria, that he was removed to that country because he was suspected of having been involved in terrorist activities. It wasn't because he was thought to be involved in drug trafficking, money laundering or some kind of international fraud. He was removed because he was suspected of terrorist involvement. Correct?

[English]

**Mr. Alan Kessel:** I believe we understood eventually that the RCMP had concerns about Mr. Arar. At the time that we were dealing with him at the consular level, which is the basic front line response that the government has to citizens, we were unaware of all the background to this. We were dealing in a small, tight timeframe to ensure that this individual received consular protection. This included ensuring that he had a lawyer, which was done; ensuring that his family was in contact with him, which it was; and ensuring that the U.S. government knew that we were concerned about this individual, which it did.

Regardless of that, the U.S. government removed him to Syria. Since then we have been putting processes in place to avoid that happening again, internally and with the U.S. government.

[Translation]

**Mr. Serge Ménard:** All the while that you were in contact with the RCMP, you never once heard that senior RCMP officials believed Mr. Arar did not have any terrorist ties and that his removal from the US was likely due to a miscommunication of information between the RCMP and US authorities.

[English]

**Mr. Alan Kessel:** Mr. Chairman, I have nothing to add more than what the O'Connor inquiry has given on this particular thing. He has expounded on this considerably. So I would suggest that what the commission has indicated on that particular issue is clear, and in the report of the inquiry. I don't have anything more to add to that.

[Translation]

**Mr. Serge Ménard:** Mr. Kessel, Mr. Justice O'Connor was never told that the Commissioner of the RCMP believed Mr. Arar was innocent from the moment he was removed to Syria. We learned that right here. Obviously, you didn't know that.

Would your attitude have been different had you been convinced that because of a mistake on the part of authorities, most likely on the part of the RCMP, an innocent man was going to be left rotting in a Syrian jail for another year?

• (0955)

[English]

**Mr. Alan Kessel:** Mr. Chairman, our obligation as the Department of Foreign Affairs and International Trade is to provide consular services to Canadians who are in trouble. We did that. The O'Connor inquiry found that we did it well. We will continue to do that.

I do not possess the information that Mr. Ménard wishes on these other subjects.

**The Chair:** Okay.

Does anybody from the government side have a question? Mr. Norlock.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** Serious concerns were expressed by Commissioner O'Connor with regard to the sharing of information contained in consular visit reports with others outside of DFAIT. I think you alluded to and answered some of the questions, but specifically, what steps, if any, have you taken to implement this recommendation 18 requiring consular officials to first fully advise those receiving visits that this information will be shared with others?

I ask that question in the particular context surrounding the type of investigative techniques some countries in the world use, other than those accepted in, shall we say, western democracies, and in addition to that, perhaps the kind of rights and privileges that Canadians hold when they are arrested and detained for investigation of certain crimes or suspected crimes.

Perhaps Mr. Desjardins could answer.

**Mr. Robert Desjardins:** Yes, thank you very much.

Under the Vienna Convention, a country that detains a foreigner has the obligation to inform that person of his or her right to have access to a consular representative, and that normally is granted or should be granted. The purpose of the consular visit is not to pursue any kind of investigation. The purpose of the consular visit is to assess the well-being of the individual, have a clear understanding of the charges that are laid against him or pending against him, ensure that due process takes place, and arrange for a legal counsel. So normally consular officers do not pursue in any way, shape, or form any kind of investigation.

Now, it is possible that information could be brought to their attention that may have a bearing, for instance, on national security. Then, of course, it would be the responsibility of the consular officer to report that matter, and discussions and consultation would take place here at headquarters as to whether and how that information could or should be shared with other agencies.

But consular officers are there to provide to detained Canadians the basic consular services, and that does not include investigative techniques or approaches.

**Mr. Rick Norlock:** I'm not suggesting that you would have the investigative technique or approach, but you mentioned you look at the well-being of the individual. Because we are not always sure that

these meetings are in private—we may think they are, but they may not be, and I think you know where I'm going there—if the consular official has the slightest inkling that there could be something amiss there, is there a policy that the official would transmit that to Ottawa? And then what would happen? When he transmits it to Ottawa, what steps would we then take? Would we then engage the diplomatic process to have the department advise the minister, and then the minister would call the country in which this is occurring to say that as a result of our visit we still have concerns? Would that occur?

**Mr. Robert Desjardins:** Depending on the nature of the concern, we would take appropriate action. For instance, what we do on a regular basis is make representations on behalf of detainees when we have reason to believe their health concerns are not being addressed properly. So it's done, really, at the local level. The consular officer goes to the prison authorities and raises concerns and then expects action to be taken. If we're satisfied with what is being done, bravo. If we're not, then we pursue it, elevating the level of representation as required.

**Mr. Rick Norlock:** So the elevation could go as far as the minister's making an intervention with his counterpart of that country, saying that we think they have a person in their custody and we are concerned that he is not being treated in accordance with national conventions?

• (1000)

**Mr. Robert Desjardins:** Absolutely.

**The Chair:** We'll have to end the meeting here.

We have one brief item of business. Mr. Brown, you were going to raise this before we conclude.

We'll just thank our witnesses. Thank you very much. Your part of the meeting is done. We just have one item of business that we have to quickly conclude.

Our time is up.

**Mr. Gord Brown (Leeds—Grenville, CPC):** Thank you, Mr. Chairman.

In my capacity as chair of the subcommittee that's reviewing the Anti-terrorism Act, I'd like to say that the committee continues to do its work. As you know, we have already tabled our interim report, but we are continuing work on other issues and we are requesting an extension until February 28. So this committee would have to request that—

**The Chair:** You're suggesting we write a letter?

**Mr. Gord Brown:** Yes, forward a letter to the House leaders, to the House, to request that extension.

**The Chair:** Can we get the consent of the committee to do that? Are there any problems with that?

**Some hon. members:** Agreed.

**The Chair:** Thank you very much.

This meeting is adjourned.







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