



House of Commons
CANADA

Special Committee on the Canadian Mission in Afghanistan

AFGH • NUMBER 006 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Wednesday, April 21, 2010

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Chair

Mr. Kevin Sorenson

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• (1530)

[English]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): I call the meeting to order.

Good afternoon, colleagues. This is meeting number 6 of the Special Committee on the Canadian Mission in Afghanistan, on Wednesday, April 21, 2010.

Again I will remind everyone that we are televised, so you may want to adjust your cellphone and your BlackBerry so they aren't ringing in the middle of today's testimony.

Towards the end of today's meeting we are going to have time for committee business; the first portion will be public and we may consider having two minutes of in camera after that. But for certain the first portion of the meeting will be public.

We're going to continue our study on the transfer of Afghan detainees. We have a panel of witnesses this afternoon.

I'm pleased to welcome, from the Embassy of Canada, Ron Hoffmann, Ambassador to the Kingdom of Thailand.

Welcome to our committee.

From the Department of Foreign Affairs and International Trade, we have Arif Lalani, director general, policy planning bureau, and David Sproule, deputy legal adviser and director general of the department's legal affairs bureau.

Welcome.

I understand that each of you will have a few comments to make. Then we'll go into a couple of rounds of questioning. We thank you for being here today.

I believe Mr. Sproule is going to start this afternoon.

We look forward to your comments.

Mr. David Sproule (Deputy Legal Adviser and Director General, Legal Affairs Bureau, Department of Foreign Affairs and International Trade): Thank you, Chairman.

My name is David Sproule. I am the deputy legal adviser and director general of the legal affairs bureau in the Department of Foreign Affairs and International Trade. I served as Canadian ambassador to Afghanistan from October 6, 2005, until April 17, 2007. Immediately prior to this assignment, I was Canadian High Commissioner to Bangladesh.

Let me begin by noting that an overriding consideration for Canada and the more than 60 partner countries present in Afghanistan is to ensure that the impact of our assistance endures. We do this by helping develop strong and democratic institutions, thus equipping Afghanistan to assume full responsibility for its own long-term governance and security needs.

When I began my assignment in Afghanistan in 2005, our diplomatic personnel at the embassy consisted of five staff—me, one political officer, and three development officers—and three administrative staff, 10 security staff, and Glyn Berry at our PRT in Kandahar. Our objective was to transform our tiny operation into a full-fledged embassy and PRT, with the necessary personnel, infrastructure, communication systems, financial controls, and security protections to operate effectively in an austere and dangerous environment.

Our embassy and the PRT staff focused on diplomatic and development work designed to support our armed forces security operations.

We reported on our meetings and program work with President Karzai and key cabinet ministers; officials in government ministries and agencies; the Kandahar provincial administration; assembly and development councils; the Afghan army, police, and judiciary, a large number of UN and international organizations; other embassies; human rights organizations; and NGOs.

We also organized visits for numerous Canadian ministers, members of Parliament, government officials, the Prime Minister, the Governor General, and private sector experts from Canada.

A number of issues dominated our work, including: making the case for more NATO soldiers and Afghan army and police to assist Canadian Forces in Kandahar; enhancing training programs for the Afghan army and police; developing a bilateral aid program to meet Afghanistan's long-term development needs, such as education, micro-credit for women, and health, as well as some of the immediate requirements in Kandahar, including roads, wells, and police stations; strengthening Afghan institutions such as Parliament and the judiciary; addressing the problems of corruption and narcotics trafficking; negotiating formal and informal arrangements with the Afghanistan government; protecting our civilian personnel; preparing human rights reports; and supporting the detainee file.

A number of factors informed our efforts during this period with regard to the detainee issue, the key ones being: our presence in Afghanistan is based on relevant UN Security Council resolutions and a recognition that we are there at the invitation of the Afghan government and in support of its sovereignty; the need to facilitate the detention of enemy personnel to prevent them from returning to the battlefield and again threatening the lives of Canadian soldiers and diplomats; and, the importance of ensuring that persons captured by Canadian Forces are afforded proper standards of treatment and humane living conditions.

In this regard, let me add that we have never been under any illusion about the human rights situation in Afghanistan; it is part of the reason we are there.

To ensure appropriate treatment of detainees transferred to Afghan authorities, we needed to be satisfied that they were going to treat them in accordance with the international legal standards to which Afghanistan was committed. We obtained assurances from the highest levels of the Afghan government through the December 2005 arrangement. We made sure there was a firm understanding by Afghan authorities of both the importance Canada attached to this issue and the essential role we were playing in their country.

In order to further strengthen Afghan assurances, the 2005 arrangement recalled the existing entitlement of the International Committee of the Red Cross, the ICRC, to oversee detainees and the explicit recognition of the constitutional role and responsibility of the Afghanistan Independent Human Rights Commission, the AIHRC, in monitoring the treatment of detainees. We then began to make significant investments in Afghan institutions to build their capacity in the judicial system, policing, and corrections fields.

●(1535)

The first detainee issue that arose during my tenure was the operational delays in notifying the ICRC of those turned over to Afghan authorities by our forces and the insufficient detail provided to allow individuals to be properly tracked within the Afghan detention system by the ICRC. We sought to address these issues in mid-2006 by providing more detail on each individual turned over and putting in place a system to facilitate the direct notification of ICRC offices in Geneva and Kabul.

We also focused on the poor conditions in Afghan detention facilities and the inadequate training of prison personnel. We responded by mounting a Corrections Canada assessment visit to detention facilities in Kandahar to determine how facilities could be improved and the training of prison staff upgraded, and we funded initiatives in both these areas. Two CSC personnel and additional RCMP officers were assigned to our PRT in Kandahar to establish training and mentoring programs in prisons and for police. Visits were conducted by Corrections officials to Sarposa prison and to the NDS facility in the province.

Let me emphasize that while we were under no illusion about the possibility of mistreatment within Afghan detention facilities, we made crystal clear to the most senior Afghan government officials the importance Canada attaches to the proper treatment of detainees that we turned over to their authorities. We had received strong assurances that the Government of Afghanistan took its human rights obligations seriously.

Nevertheless, to further enhance protections against the potential for abuse or mistreatment in Afghan detention facilities, we improved the access and funding for the Afghanistan Independent Human Rights Commission staff. We began developing a diplomatic contingency plan outlining steps to take vis-à-vis the Afghan authorities in the event allegations of abuse were brought to our attention. In conjunction with this, we refined our standing operating procedures on the handling of detainees.

The initiation of these measures coincided with the decision to significantly increase the number of diplomatic personnel in Kabul and Kandahar to facilitate support and programming along these lines of effort, including on detainee issues. Full implementation of these plans took place during the tenure of my successor, Arif Lalani, who will now describe these measures in more detail.

Thank you.

●(1540)

The Chair: Thank you very much, Mr. Sproule.

Mr. Lalani.

Mr. Arif Lalani (Director General, Policy Planning Bureau, Department of Foreign Affairs and International Trade): Thank you very much, Mr. Chairman.

Good afternoon.

My name is Arif Lalani. I am currently the director general for policy planning at the Department of Foreign Affairs and International Trade.

I served as the Canadian ambassador to Afghanistan from April 2007 to August 2008. Immediately prior to that, I was ambassador to Jordan and to Iraq.

[*Translation*]

You have heard from my colleague David Sproule and from others about the complexities of the mission—civilian and military—in Afghanistan, over the entire period of Canada's approximately 10-year engagement there.

I would like to speak to you today briefly about the objectives during my time in Afghanistan, and specifically about the detainee transfer file. My predecessor, and officers from the embassy and headquarters, had been developing a number of aspects of the file. David has outlined those to you.

[*English*]

I arrived in Kabul on April 27, 2007. The detainee file was a priority from day one. On my first day in the embassy, on April 28, instructions were sent by headquarters to negotiate a supplemental arrangement to the 2005 detainee transfer agreement using guidelines that had been drafted between the post and headquarters over a period of months. The embassy completed negotiations within six days—by May 3. The conclusion of the supplemental arrangement and other actions Canada took allowed us to address some key aspects of the file.

The detainee transfer arrangements up to that point had three main challenges: notification to the ICRC and other authorities, despite improvements, remained convoluted; we did not have in place a monitoring regime by Canadian personnel for detainees transferred by Canadian Forces; and, record-keeping, by all concerned, needed to improve.

In the month following the arrangement, Canada had begun to implement an increasingly robust monitoring regime, with Canadian civilian personnel, to augment the work of others, such as the Afghanistan Independent Human Rights Commission and the ICRC. We had changed our notification process to the ICRC so that officials in Kandahar notified the Kandahar ICRC office immediately, in addition to the notifications to Kabul and Geneva. We had developed and began to implement standard operating procedures for the transfer of detainees and for their monitoring. And we had dispatched a technical assistance mission of Canadian experts to examine further options for training, and the provision of equipment to assist Afghans with the management of detainees in Afghan facilities.

Over the course of the year, Canada focused on implementing the transfer regime, including identifying key people accountable for the file, and the creation of a database of detainees transferred by the Canadian Forces.

We had other urgent work at the embassy and in the country, of course.

There were two strategic objectives.

[Translation]

First of all, we were trying to help develop and implement a whole-of-government engagement in Afghanistan, one that saw our military and civilian effort managed in a coherent fashion, and in the midst of a counter-insurgency campaign.

[English]

We needed to ensure that a civilian engagement could occupy the space secured by the military so that we could concentrate on the governance, development, and stabilization efforts that were required.

That's why we doubled the civilian presence in Kandahar and Kabul, including officers to monitor detainees.

Second, we needed to have influence commensurate with our investment. Canada was one of the top donors to Afghanistan. On any given file—education, police reform, micro-finance loans for women—Canada was among the top three donors. It was my job, on a daily basis, to ensure that we had voice on these issues, that we were developing policy with headquarters and in Kandahar that would have an impact in a way that would help Afghans build governance institutions, strengthen economic development, and provide for their own security.

Ron Hoffmann joined the embassy in August 2007 as deputy head of mission. His position was created so that we could operate at a fundamentally different level—as a major actor across a number of priority files—with the deputy helping to run the embassy and its operations, including the Kandahar civilian component, and the head

of mission focused on influencing the outcome of the files in which we were so heavily invested.

To summarize my time there, Mr. Chairman, Canada was in the process of strengthening its civilian presence in Kabul and Kandahar in order to achieve our national objectives. The detainee transfer file was an important component of a highly charged and important set of issues that the embassy team and I managed.

With regard to detainees, by the time I arrived at the embassy, the reporting had done its job. The issues had been acknowledged. Decisions had been made. Within a week, there was a formalized agreement in place.

Then came the work of ensuring that everyone involved—both the Afghan authorities and all Canadian personnel—fully understood the new system and were working together towards the goal of the agreement. That work was carried out in an outstanding manner by my successor, Ron Hoffmann, and all of the dedicated Canadians who risked their lives to serve in Afghanistan.

Thank you very much.

• (1545)

The Chair: Thank you very much, Mr. Lalani.

Ambassador Hoffmann, please.

[Translation]

His Excellency Ron Hoffmann (Ambassador, Embassy of Canada to the Kingdom of Thailand): Thank you, Mr. Chair.

My name is Ron Hoffmann. As I have already explained it, I am currently Canada's Ambassador to Thailand, Cambodia, Laos and I am Canada's Ambassador designate to Myanmar (Burma).

I arrived in Kabul in early August 2007 to establish the new position of deputy head of mission. I was later appointed ambassador, ultimately serving two years in Kabul. As Arif already explained, my arrival coincided with a significant transformation of the Canadian engagement in Afghanistan.

[English]

In the deputy role, I was considered head of chancery, responsible for infrastructure, staffing, services, health and safety, security policy, quality of life, and oversight of mission administration generally. This was in the context in a dramatic growth in civilian resources. One of my key functions was to help foster mission cohesion, to ensure an effective whole-of-government approach, but also to effect stronger integration and coordination of our Kabul and Kandahar operations.

I was also asked to contribute to our detainee management strategy. My role was to ensure that we had the right people doing the right things in monitoring; that we were analyzing and communicating issues clearly and thoroughly; that we were reacting effectively and appropriately to new issues and developments as they arose; that our military and civilians were working in concert; that our support and investments in Afghan institutions were appropriate to their needs; and that our engagement with other parties, including—and perhaps especially—the Afghan government, was active and effective.

When I arrived in Afghanistan in the summer of 2007, the security situation was an increasing concern, in Kabul and elsewhere.

[Translation]

Our duty of care obligations to our personnel were taken seriously and overseeing stepped-up mission security in the capital became a major preoccupation.

[English]

Given the influx of additional personnel, we also worked to address seemingly mundane but critical issues like embassy overcrowding, the need to upgrade the chancery and staff quarters, and the strengthening of internal operations and accountabilities.

I was appointed ambassador on the departure of Arif in the summer of 2008. This assured continuity of leadership in the programming we were delivering. It also meant familiarity with key issues we were contending with, and it enabled us to capitalize on the high-level relationships that we already had in place.

I travelled to Kandahar more than 20 times, many of them with Afghan ministers or heads of agencies to support the leadership role of the country's own government. In my last six months alone, I travelled with ministers of defence, interior, education, transport, and health, and the head of the NDS respectively.

We witnessed tangible successes, but it was nevertheless a difficult and a costly time. The security situation remained dire in parts of the country and was worsening in some areas.

There were daily reminders that we were in a country at war, a country fighting for its survival and for its future. For instance, as ambassador, I led Canada's in-country efforts to secure the safe release of CBC journalist Mellissa Fung, kidnapped in the early fall of 2008. I worked closely with senior Afghan authorities, with whom I engaged in person or by phone about 20 times during the final frenetic week of Mellissa's captivity, before she was freed by the Afghan government.

And, during my time in theatre, it was with great sadness that I bid farewell to a Canadian man or woman in uniform at an average rate of one every 12 days. We lost Canadian civilian humanitarian workers in this period too.

We were fully aware, Mr. Chairman, that the Afghan state and Afghan society in general suffered from the profound consequences of two generations of war. This reality touched every aspect of life in Afghanistan. While conditions were improving and the state was modernizing and gaining in capacity, progress was slow and it was uneven.

We were well aware that the justice and security institutions suffered from deep systemic challenges. The Government of Afghanistan had a clear official policy prohibiting torture and abuse of prisoners, but we were also aware, Mr. Chairman, of gaps in human capacity, insufficient training, poor infrastructure, and some very crude conditions. I was personally confident, however, that the measures Canada had in place during my time in Afghanistan meant that the risk of mistreatment faced by detainees the Canadian Forces transferred to Afghan authorities was minimized.

Like my predecessors before me, as ambassador and as a deputy closely involved with the issues, I was frequently in discussion with Afghan authorities at multiple levels across government, including ministers and, regularly, the Afghan president, to reaffirm Canada's expectations and to discuss Afghanistan's detainee management obligations. They understood the importance we attached to the issue and they understood their commitments in this regard.

Our monitoring system and our steadfast demands for humane treatment of detainees were respected and applauded by allies, by independent groups, and by Afghan senior level authorities. The Afghan Independent Human Rights Commission articulated this view to me, as did NATO ISAF, the UN, and key international organizations.

In addition to our robust system of monitoring and our ongoing advocacy and senior level engagement, Canada invested in improvements in Afghan prison capacity and infrastructure. We provided training, equipment, and improvements in physical conditions in facilities both in Kandahar and in Kabul.

Mr. Chairman, I believe that Canadians had and have much to be proud of. It wasn't easy in Afghanistan, and we weren't perfect. We learned lessons continually and we regularly adjusted. But Canada's military, our diplomats, development workers, and police and corrections staff worked increasingly in unison, and they did their best to fulfill their mandates and their responsibilities.

● (1550)

[Translation]

I look forward to trying to answer any questions you may have. Thank you.

[English]

The Chair: Thank you, Mr. Hoffmann.

We'll proceed with the first round of questioning.

We'll start with Mr. Rae.

Hon. Bob Rae (Toronto Centre, Lib.): Thank you very much.

Ambassadors, welcome. It's good to hear from you, and if I may so, it's good to see all of you. I've had the opportunity of working with you and with your staffs in Kabul and in Canada, I very much appreciate your being here.

I don't want to be unfair, and I don't want to put words in anyone's mouth, but it seems to me that sort of the thrust of your testimony is that there was a policy decision.

Ambassador Sproule, you referred to it in the second paragraph of your statement, I think, where you talk about the fact that the building up of the capacity of the Afghan government and Afghan institutions was a pre-eminent goal, and therefore, the decision was made that the transfers would take place, and every step would be taken—and successive steps were taken—on the basis of hard experience to deal with the problems that happened as a result of the initial decision to make transfer the policy. Is that a fair summary?

•(1555)

Mr. David Sproule: Yes. I think it's fair to say that we continually were developing our policies to enhance our ability on the detainees issue and confront changes and challenges that we met along the way.

Hon. Bob Rae: Again, I'm not trying to be difficult. I'm just trying to understand the dilemmas of public policy here.

The implication of that decision was that there would be a risk of mistreatment of people who were being transferred.

Mr. David Sproule: We were confident that the risk was minimal, particularly given the mandate that the ICRC had in terms of access to detention facilities, as well as the recognition of the role of the Afghanistan Independent Human Rights Commission.

Hon. Bob Rae: But you yourself, Ambassador Sproule, used the phrase in your comments: "...we have never been under any illusion about the human rights situation in Afghanistan...". What exactly do you mean by that?

Mr. David Sproule: Well, we were aware of systemic deficiencies, lack of training, and the need for Canada to assist in this regard so that they could upgrade their abilities to oversee detainees, provide proper care facilities, and to do that long after we left Afghanistan.

Hon. Bob Rae: But, Ambassador Lalani, what you describe in your report is that the experience.... I mean, when you arrived, the collective experience appeared to be...because there were number of reports. There were the UN reports, and presumably a number of other reports, not all of which we've seen, as well as your own internal reports; Mr. Colvin, who has testified, and others who were on the ground, who have testified to the effect that torture was widespread in the system. The state department's reports every year state that torture is a widespread phenomenon in Afghan institutions.

The words "Geneva Convention" don't appear in anyone's paper here. I understand the need to build up Afghan institutions, but if the consequence of that policy decision is that people are sent to a risk of torture or mistreatment or abuse, isn't that a problem in terms of how we've lived up to our international obligations?

Mr. Arif Lalani: Sure. Let me answer since you referred to me. Everything that we have described, and, I think, everything that we have done, that Canada has done, over our entire engagement there—as I think you were quite right to point out—has been to make sure that we were in compliance with our Geneva Convention and other obligations.

Part of that, as every other country has noted in the arrangements they have signed with the Afghan authorities, is also a responsibility Afghanistan has under its constitution and under its international obligations. But if you look at what everyone has been trying to do, it is to say that of course there are shortcomings. As David pointed out, and as others have pointed out, that's why we're there. We wouldn't be there if there weren't problems across the board. And you know that. You've been there yourself.

What I think the regime on monitoring has been trying to do is to say, can we monitor, with frequency, and can we get the process in a way that allows people to have confidence when we transfer detainees? I think the system that we have put in place, that has been

referred to by others, frankly, as one of the most rigorous systems that is in place at the moment, provided that confidence. I think we have seen that work over the course of the past few years.

•(1600)

Hon. Bob Rae: But just to complete the trio, Ambassador Hoffmann, despite the rigour of the reviews, the rigour of the visitations, and the rigour of the attempts to improve the capacity of the Afghan prisons, we continue to have stories. We can all argue about how compelling they are or how true they are, but we continue to hear serious allegations—I'll put it that way—about mistreatment, some of them so serious that the army itself says, "We can't transfer, we're going to halt transfers." There has been a series of times when we've halted transfers—

The Chair: Thank you.

Hon. Bob Rae: Just to complete the sentence, if I may Mr. Chairman—

The Chair: Go ahead.

Hon. Bob Rae: —doesn't that show that, throughout the piece, this risk of abuse has been an underlying reality of public policy as it relates to us and other allies in Afghanistan?

The Chair: Thank you, Mr. Rae.

Please answer very quickly, Mr. Ambassador.

His Excellency Ron Hoffmann: Mr. Rae, I'd say that some of this information on these developments came to light not in spite of our program, but because of our program, and there are a number of lessons from our experience.

As we geared up this new system of monitoring, which was a robust one and a complex one and required enormous resources from and risk to Canadian personnel to implement, we thought that risk was worth it, because it was important to deliver those obligations; they didn't cover a range of allegations over the course of us stepping up that program. As that monitoring program matured, was refined, and became more and more robust, the number of allegations actually declined. In 2008 we had none, and I think that was a demonstration of the positive outcome of what we were doing.

For the allegations that there were, we took every allegation seriously. Some people complained about the food, about the air conditioning, about the toilet paper, and then the range was much more serious. There was one very compelling allegation of all that we have had—the 10 or 12 over the entire time of our experience with 200 or so visits. There was one that we felt was materially much more significant than the rest, and we took the actions that we think are appropriate to that. That did involve a lengthy stop to the transfer of detainees while we implemented the program and the action plan that we had pre-established, which was to work with the AIHRC, the ICRC, and the Afghan government across the board to ensure that the measures that we expected were needed were actually implemented. And there were no transfers until we were fully satisfied.

The Chair: Thank you very much, Ambassador.

We'll move to the Bloc Québécois.

Madame Lalonde, vous avez sept minutes.

[Translation]

Ms. Francine Lalonde (La Pointe-de-l'Île, BQ): Thank you, gentlemen.

I would like to first address Mr. Sproule. Mr. Sproule, thank you for your testimony.

You said that you started after the 2005 arrangement was signed. In your words, as written on page 4: "We have never been under any illusion about the human rights situation in Afghanistan." We can also read in the middle of the paragraph: "We obtained assurances from the highest levels of the Afghan government through the December 2005 arrangement." Had you read the arrangement carefully? Were you aware of any shortcomings for Canada, such as the inability to make visits at any given time? What assurances did you obtain from the highest levels of government for the detainees? I want to point out, by the way, that you were required to identify the detainees, to monitor them and to be able to visit them at all times.

The Chair: Thank you, Ms. Lalonde.

Mr. Sproule, you have the floor.

[English]

Mr. David Sproule: Our assurances were based on the fact that the Afghanistan government signed a memorandum of understanding in December of 2005, which was their obligation that they'd entered into to ensure that detainees were treated well. We also had further confidence by the fact that they explicitly—

• (1605)

[Translation]

Ms. Francine Lalonde: May I interrupt you to just say that you were well aware that the participants were not only from the Islamic Republic of Afghanistan? The Canadian Forces and the Minister of Defence for Afghanistan were also there. As a result, through the Canadian Forces and the general who signed, Canada was part of the arrangement and thereby responsible for the implementation of this arrangement.

[English]

Mr. David Sproule: The arrangement was signed by General Hillier. This was a memorandum of understanding between the ministry of defence of Afghanistan and the armed forces of Canada. It was not a treaty; it was consistent with many MOUs that we sign with many countries. It was quite appropriate to enter into this kind of agreement, keeping in mind that at the very same time we signed with the Afghan government an agreement with regard to technical arrangements, which was the plan for the rules under which our armed forces would operate in Afghanistan. And this was primarily a defence-to-defence agreement.

[Translation]

Ms. Francine Lalonde: I have one last comment. You had no assurance that this commitment to the detainees would be kept.

[English]

Mr. David Sproule: We had the assurance of them signing this agreement specifically, and during the course of my tenure in Afghanistan, not a single incident was brought to our attention of abuse of a Canadian detainee. And, wherever we could, we improved our ability to ascertain the treatment of detainees and

assisted the Afghanistan government in improving its ability to provide proper oversight and facilities for the detainees.

The Chair: Monsieur Bachand.

[Translation]

Mr. Claude Bachand (Saint-Jean, BQ): Thank you, Mr. Chair.

My question is for Mr. Lalani.

Mr. Lalani, in his testimony, Mr. Colvin talked about you, not always in a very nice way, I must admit.

[English]

He said that censorship expanded with the arrival of Arif Lalani as Canada's new ambassador to Afghanistan in May 2007, and that "Immediately thereafter, the paper trail on detainees was reduced". He also said, "Reports on detainees began sometimes to be censored, with crucial information removed".

[Translation]

The Globe and Mail released a memo. Could you take a look, because, on the left, we can read the following: "Richard, you should go with my list."? The names of the people he was supposed to send the report to were crossed out; they just put "Proudfoot, Buck" and a few names only. Could you look at that document? Do you recognize it?

[English]

The Chair: Mr. Bachand, do you have that document for the rest of the committee?

Mr. Claude Bachand: No. I just want to know if the witness recognizes the document.

The Chair: Just on that point for the committee, I think it's important that we bring documents as committee members to the committee. We have certain rules around those documents. They can't be passed out until we have translation, until.... There are a number of other rules, but sometimes when documents are brought by those who are giving testimony, we may stretch the rules a little bit. This time I may allow this—

Mr. Claude Bachand: Okay.

The Chair: —but next time.... Whenever a member of this committee brings a document, be prepared to pass it out so that all people can see the document.

Continue, Mr. Lalani.

[Translation]

Mr. Claude Bachand: Do you recognize the document?

Mr. Arif Lalani: Yes.

Mr. Claude Bachand: Did you make a note on the left side so that they would go with the list you provided?

Mr. Arif Lalani: Absolutely.

Mr. Claude Bachand: Could you tell us why you censored that document?

Mr. Arif Lalani: I apologize, but I will be answering in English.

• (1610)

[English]

I'm happy to talk to you about this. I recognize the document. It's one page; there are more pages. But you want to talk about the distribution, so let me certainly do that.

One of the issues that had come out in previous reporting and previous discussions, and that was part of new standard operating procedures that we were trying to put in place to regularize the system of dealing with this file, was to make sure that we had identified certain people who were identified for this file and therefore accountable to respond to this file. In some ways, I think some of you might agree, the best way somebody could assure that I don't read something is to put me on a cc list of 100 people.

Mr. Claude Bachand: Okay—

Mr. Arif Lalani: If I might just finish, because I know this is an issue that has come up; if you look at who the distribution went to, I know that these are not familiar people or addresses of people. Basically, what I had said—keep in mind, also, that this was, I think, my fourth day on the job after having negotiated the agreement with Richard and with others—was that what we ought to do was send this thing to the people who are in a position to take a decision, which is the head of the task force in Ottawa at the foreign ministry, the director general there, the person at the Privy Council Office who's in charge of the file, and the two addresses in Kandahar, one at the base and one at the Kandahar Provincial Reconstruction Team. I also put in there that we'd leave further distribution to FTAG. It was just trying to kind of get the message to the right people.

The Chair: Mr. Bachand, we're a minute and a half over already, so we'll come back on the second round. You will get another round.

We'll now come back to the government side, to Mr. Obhrai.

Mr. Deepak Obhrai (Calgary East, CPC): Thank you very much, Mr. Chair.

Mr. Chair, I first would like to thank all three witnesses very much for coming today. Also, the three of them span the period of time from 2005 onward to 2009; that period was a very crucial one for Canada, because that is when we started moving into the country, started building the capacity, started having detainees.

As you have stated quite clearly, there was a process evolving throughout this time, and all three of you were involved in this process. One was the identification of the deficiencies of the first agreement that were coming up and that you noticed, which, as Ambassador Sproule pointed out, was during his campaign; then it went to Arif Lalani's, when the new agreement came into place, and then to Mr. Hoffmann, with the operation of this new agreement came through.

But very clearly and importantly, all three of your jobs underline one very serious thing that everybody must understand, which was how to meet our international obligations, as you rightly pointed out, under the Geneva Convention and this.

Because today we are talking about detainees, I will go to the question of the detainees. Very quickly, I will go to Ambassador Sproule.

Ambassador Sproule, during your time or during Arif Lalani's time, Mr. Richard Colvin wrote a lot of reports during his time, as Mr. Arif Lalani has said, but at no given time did he ever say—or do you know that he said it, or perhaps you could tell the committee whether he said—that we should stop the transfer of detainees.

Mr. David Sproule: No, he never did.

Mr. Deepak Obhrai: He never said that we should stop the transfer. Of course, the environment was such that we were all working towards that, but never during all of his....

Arif—Ambassador Lalani—would you like to tell the committee during your time out there when this robust agreement was already in place...? During one of your official visits in November, you did get given information that one detainee was very seriously mistreated. Would you tell the committee what action you guys took once you got that information so that we and everybody could understand that you acted very rapidly to fulfill the agreement? Perhaps you can shed light on that.

Mr. Arif Lalani: I'm happy to—and it's still "Arif".

We did have a serious incident in November after the agreement was in place and we were monitoring very regularly. I should point out that I'm also going to refer to Ron, who was my deputy; we were interchangeable. There was a period in November when I was out of the country and Ron was chargé. So we both acted on this particular case, but I think it's a good example.

So in November, in one of our monitoring missions, at the end of it, there were some allegations made. The allegations were very clearly—I think to everybody doing the inspection—probably of a different magnitude, because we could see some of the responses on the person. I think there were some things in the holding cell that were seen by people. So we moved very quickly. Our standard operating procedures were activated immediately. That meant notifying people in Ottawa. It meant notifying the ICRC. It meant notifying the Afghan human rights commission. It meant notifying Afghan authorities at the highest levels in Kabul.

A number of things came about as a result of that. A decision was made by the commander on the ground to immediately suspend the transfers until we could resume confidence in the system. What resulted then was in fact an even more intense monitoring regime to continue to go back very regularly to that area.

One of the things we had to do was actually protect the people who might be making allegations. We had to be very careful about how we did the monitoring missions and how we continued to do them as we tried to bring things to light.

• (1615)

Mr. Deepak Obhrai: You mentioned that a more robust system came about. In Ambassador Hoffmann's testimony, he made a point that I want this committee to know about.

As you mentioned, following this incident in 2008, there were not any more serious complaints, the number of complaints of that nature was going down. Is that right, Ambassador Hoffmann? Is that what you said at the time?

His Excellency Ron Hoffmann: I did, Mr. Obhrai. As our monitoring regime gained traction, it really began to gain traction during this November period when we had a number of visits to answer allegations, which kicked off our diplomatic engagement efforts and political involvement and stepped up further monitoring to react as Mr. Lalani has stated.

It certainly demonstrated to me, as someone closely involved with it, that our monitoring regime was one that really had an impact well beyond theory and well beyond a paper process. It was one that involved real people who were trained and supported and who risked their lives to go to these facilities to do everything Canada practically could do to ensure the detainees who were handed over were protected.

Mr. Deepak Obhrai: Thank you, Ambassador.

I want to finish by saying thank you to all of you, but I want to support one statement made by Ambassador Hoffmann that our civilians, those guys who have been going out to monitor have been monitoring at their own risk, a risk to their own lives; they are going out for NDS and all these things. I want to make sure everybody understands that while we say the monitoring factor was taking place, it was at a considerable risk to our own people and our own monitors who were going out there to do this business.

Would you like to say a word about the bravery of our own officials who are going out to check on the detainees?

His Excellency Ron Hoffmann: Thank you, Mr. Obhrai.

As I mentioned earlier, Canada felt that risk was necessary because we had international obligations that we felt must be respected.

The roads that our officials travelled on—as I said, over 200 times—to fulfill these obligations were roads that saw civilians killed on multiple occasions by attacks and IEDs. The facilities they went to, whether it was Sarposa prison, the justice ministry prison, or the NDS facility, those institutions were attacked in a very serious way on multiple occasions, involving massive loss of life.

We knew those risks. The individuals who went knew the risks. The significant numbers of soldiers who provided the transport and close protection knew those risks. But these were risks, as I said earlier, that we felt we had to take to be able to be in compliance with our international legal obligations, and they were ones that those taking those risks were professionally committed to doing.

•(1620)

The Chair: Thank you very much.

We'll now move to Mr. Harris, please.

Mr. Jack Harris (St. John's East, NDP): Thank you, Chair.

Thank you, gentlemen, for coming here today.

First of all, Mr. Lalani, you said that of course there were “shortcomings”. I would find that a rather soft euphemism for the concerns that have been raised before our committee in terms of the

NDS with its culture of torture and abuse of prisoners, going back to the evidence we heard from Eileen Olexiuk, who produced several human rights reports; from what we heard from Mr. Colvin; and from what we heard from Cory Anderson, who was telling us three weeks ago that the NDS was not a viable partner in terms of operations in Afghanistan.

I'm concerned about two things that we heard. For example, David Mulrone told us that after we signed the second agreement in approximately May 2007, we started to develop a database, essentially indicating what you said, Mr. Sproule, which was that we didn't know very much before then.

Mr. Anderson told us three weeks ago, in terms of specific allegations of abuse, that “the reason there were no specific allegations of abuse prior to May of 2007 is that we didn't have an instrument in place that would allow us the ability to find out, and we weren't doing any monitoring”.

Would you agree, Mr. Sproule, that prior to the new agreement, at least, when you started a process of monitoring—we that know the ICRC, for example, wasn't reporting anything back to Canada; they were only reporting to Afghanistan—there's really kind of a black hole about what happened prior to May of 2007 in terms of who we passed over, what happened to them, whether they disappeared, and whether they were maltreated? Is that fair to say?

Mr. David Sproule: No, I don't think it's fair to say.

I think it's.... Keep in mind that the numbers of detainees started to increase significantly in the fall of 2006 with our Operation Medusa in the Panjwai valley. With that, numbers started to increase significantly. Reporting was done on that by our embassy, some of which was done by Mr. Colvin. That prompted very serious planning to be going on at headquarters. In that planning, we developed, for example, a more robust monitoring system where we asked the Afghanistan Independent Human Rights Commission to track our detainees to ensure that they were being treated properly.

At the same time, we put in a whole number of initiatives, which I described in my statement, to upgrade the Afghan capacity to treat detainees to the standards they had committed themselves to, both in terms of corrections personnel, facilities, and training, but also from the RCMP side.

Mr. Jack Harris: But these are all generalities, Mr. Sproule, with respect. We were told that the AIHRC was complaining about the fact that they didn't get access to the prisons. We have reports coming out of Britain to the same effect: that they couldn't get into the prisons. This is an ongoing problem that certainly went well beyond May of 2007. We're being told by officials who were in Afghanistan on behalf of DFAIT that we didn't really know what was going on prior to 2007, and I have to accept that this is the case. Apparently, you don't.

Let me ask you another question. We've also seen coming out of Britain—and I have a copy here today, but I'm not going to show it to you because it's only in English—a seven-page document, which is essentially about the detention policy in Afghanistan and was prepared for the minister responsible for Afghanistan in the British government. It goes back to March of 2006 when they did a very elaborate analysis of their responsibilities and applied a policy that was expected to be approved by the minister.

Can I ask any of you gentlemen whether you've ever seen such a document prepared for our use, the use of the Canadian government in Afghanistan, which sets out the obligations of the government and a recommended detention policy?

• (1625)

Mr. David Sproule: We have done extensive work in the legal area in terms of pinpointing and making sure that our military staff, our civilian staff, are well aware of obligations under human rights instruments as well as international humanitarian law instruments. As I mentioned in my statement, we also have developed standard operating procedures, adjustments, to take into account how to upgrade and improve our response—

Mr. Jack Harris: I understand that you did certain things. What I asked you was this: was there a document that set out Canadian policy? If there isn't one, that's fine.

Let me ask you another question. Was it part of the policy of our government in Afghanistan to transfer prisoners to the NDS “for further questioning”? I ask that question because we had an individual testify at this time last week with a suggestion that as a translator he had translated some 40 or 50 documents that contained just this phrase. It was contained in a transfer document that was to be passed over.

This was done by the military, so I guess that maybe it's a two-part question. The military seemed to be operating in a particular vein over there, and I get the impression from General Hillier and other witnesses that the military didn't see any role for themselves after they passed people over, that it was up to DFAIT to look after these sorts of things. But I ask you, are you aware that such a practice took place? Was this part of Canada's policy to do that? Or what can you tell us about it?

The Chair: Thank you, Mr. Harris.

Mr. Sproule.

Mr. David Sproule: No, it was not government policy. It was not the policy of our department of defence. It was not the policy.

The Chair: Thank you very much.

Mr. Lalani, I thought maybe you and Mr. Sproule were both prepared to answer a question Mr. Harris posed earlier, so I'll give you a brief few moments if you want to respond as well.

Mr. Arif Lalani: I did, but I think David has answered most of it, and it's a little difficult without having seen the document.

The Chair: All right. Thank you very much.

We'll come back to the government side, with Mr. Hawn, please.

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

Thanks to all of you for being here.

Through you, Mr. Chair, to Mr. Sproule, you had a number of people on the ground in Kabul, Kandahar Airfield, and Kandahar city, Mr. Sproule, in addition to Mr. Colvin, who were your eyes and ears on the ground with respect to all matters, including treatment of Canadian-transferred detainees. Were you confident the reports received from them were complete, factual, objective, and rigorously assessed?

Mr. David Sproule: Yes. Mr. Colvin was a very conscientious and extensive reporter. When I was present, his reports were reviewed carefully by me. They were sent along. His reporting, as well as the reporting we were getting from our PRT and our officer who was posted to the Kandahar air base and also other members of the embassy, was transmitted to Ottawa. Those reports were what prompted the development of the system that was put in place and implemented by the time Ambassador Lalani arrived.

Mr. Laurie Hawn: So you had reports from a variety of other people besides Mr. Colvin, for all of which you put some faith in the quality of those reports.

Mr. David Sproule: Well, yes. Indeed, one of my roles as ambassador was to ensure there was a coherent message going back to Ottawa. Sometimes that involved discussing with our PRT their perspective, our perspective in Kabul, and making sure that we had as much information as possible and that it was conveyed in a clear manner to facilitate policy-making in headquarters.

Mr. Laurie Hawn: Were there any of those particular reports from those deployed around the area that would have sounded alarm bells for you about Canadian-transferred detainees and mistreatment?

Mr. David Sproule: The concern we had during my tenure was weaknesses in terms of the notification process—delays—which we addressed by trying to short-circuit the communication through Ottawa and Geneva by sending information simultaneously and directly to Kabul. Later, this was improved by sending information from the military, when they had a detainee to transfer, directly to the Kandahar ICRC officials there.

• (1630)

Mr. Laurie Hawn: Mr. Lalani, obviously we've all talked about general concerns; it's a rough place. Did you talk about issues of concern with the Afghan government officials, with our allies? What kinds of discussions did you have with them?

Mr. Arif Lalani: We had those discussions all the time, at the highest levels. It was something that I think all three ambassadors did. We discussed it with the president. We discussed it with the head of the National Directorate of Security. We discussed it with our allies.

I think there were about five or six other countries that had signed arrangements similar to ours. We discussed it, and I discussed it regularly with international organizations, some of which need for their work to be discreet so they can do the work that is required.

We absolutely did discuss it. We took it very seriously. It occupied a big part of my time.

Mr. Laurie Hawn: Thank you.

Ambassador Hoffmann, you were last in the line of succession, if you will. The government policies and procedures evolved over time, obviously in a very complex situation. In fact, Cory Anderson, when he was here, said there was no problem with the new arrangement; it was a good arrangement and people were doing their best to abide by it, on all sides.

Were you satisfied with that whole-of-government approach, that DFAIT, the Department of Defence, Corrections Canada, the RCMP, and so on, were able to work together to respond to the challenges that arose and address those problems to help the situation evolve?

His Excellency Ron Hoffmann: By the time I arrived in Afghanistan in early August 2007, a great deal of work had been done by many people—you will have heard from some of them in this committee—to ensure that the approach by the different arms of the Canadian government was increasingly integrated and they were working towards one goal. Over the 24 months that I spent in Afghanistan, there is no doubt that the process deepened further.

We had the independent commission on Afghanistan, led by John Manley, which made recommendations, of course, to the government and Parliament. That took it to a much more integrated level still; it really covered all aspects of Canada's engagement. It was vital on the matter of detainees, where we were completely aligned and ensuring that our respective roles and responsibilities that we had identified were implemented quickly and effectively.

But it's also true that all aspects of our engagement involved an integrated approach, where our government policy was clear in terms of why we were there and what we were trying to achieve. All arms of the Government of Canada were working towards those same goals.

It's one of the reasons why, when I left Afghanistan, I said publicly on many occasions that Canadians have much to be proud of. I think we performed in an integrated way, and by the time I left, probably better than any other nation of the 60 that were involved in Afghanistan.

The Chair: Thank you very much, Mr. Hoffmann.

Mr. Dosanjh.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Thank you.

Thank you, ambassadors.

I'm going to follow up on what my colleague, Bob Rae, started asking you. I'm going to set out the international legal standard in domestic and international law.

First of all, if there is a substantial risk of torture, my understanding is that you cannot transfer your legal responsibility for the detainees just because you think that Afghans may be doing a good job or a better job than before; you can't absolve yourself of that responsibility.

Secondly, you cannot transfer the detainees if there is a substantial risk of torture.

Thirdly, you say that you all knew there was torture but you took steps to deal with it. So there's no question of having no knowledge; you have actual knowledge. In any event, even if you didn't have actual knowledge, there is enough information widely known about torture that it would be deemed knowledge. Furthermore, we have a positive duty as Canadians to determine the extent of torture. If there continues to be a substantial risk of torture, we have an obligation to prevent transfers and not transfer.

Now, that's what I understand the international law and domestic law to be. There's a question that I have specifically for all three of you. Do you believe that we as a country and you as ambassadors have met that test under these circumstances, in view of what the U. S. State Department wrote, their report, in view of our own reports, and in view of what's happening before the British courts, where there are allegations about NDS torture? And there's the Colvin evidence, the Anderson evidence, and the Malgarai evidence. There's the Gosselin evidence of eight allegations of abuse that he investigated; he didn't know what happened to them.

All of that evidence has been in the public domain. In the context of that, can you tell me whether you believe that we as a country and you as ambassadors have met that test?

• (1635)

The Chair: Thank you very much, Mr. Dosanjh.

A question of definition of evidence compared to allegation, but...

Mr. Lalani.

Mr. Arif Lalani: Let me start, if I may.

I do believe it. I wouldn't be here if I didn't.

I'm not a lawyer, so I'm not sure how I'd discuss with you the difference I see as a layperson between evidence and reporting. But let me say to you that in my mind—and I am the person on the ground who was responsible during my time there for the very clear objectives that you have set out—there was a difference to me between people making reports and accusations and allegations and finding out what the evidence was.

The best way for us to have evidence, to have confidence, was monitoring. During the time I was there, that is what we focused on. That was one of my key priorities. It was through the monitoring regime that we were able, in fact, to have the level of confidence that—I agree with you—you think we should have.

So yes, and it is obviously a difficult issue. I don't think that because perhaps we might have answered calmly that you should misunderstand how seriously and how personally we took that responsibility.

The Chair: Mr. Sproule.

Mr. David Sproule: Thank you, Mr. Dosanjh.

First of all, we never transferred any detainees that were captured by Canadian armed forces if there was any suggestion that there was a substantial risk of torture. We never did. We were confident that there was not; otherwise, we would not have transferred.

Hon. Ujjal Dosanjh: So you met the test...?

Mr. David Sproule: So we met and we exceeded our international obligations.

Let me just add.... This comes from our discussions with people in the field, human rights organizations, and international organizations involved. Canada's standards and the regime we put in place exceeded our obligations and were over and above those put in place by other countries. We're very proud of those.

The Chair: Mr. Hoffmann, did you want to respond to that as well?

His Excellency Ron Hoffmann: Yes, just very briefly. It is a unique honour and privilege to be sent abroad as the ambassador for one's country, and I think to be an ambassador for Canada is an especially proud honour. In Afghanistan or anywhere, including the countries I'm responsible for now, we know that we're upholding to the highest possible degree Canadian values and Canadian obligations in the world. That role was not diminished in any way in Afghanistan. The conditions were much more difficult.

Hon. Ujjal Dosanjh: Thank you.

I—

The Chair: Mr. Dosanjh, your time is up.

We'll come back to the government side.

Mr. Abbott, please.

Hon. Jim Abbott (Kootenay—Columbia, CPC): Thank you.

Gentlemen, who are you? The reason I'm asking the question is that I would like to explore the issue of the equivalency of testimony. In 45 seconds—because I have only five minutes—could each of you tell us your background, who you are, and what your credentials are for the kinds of statements that you just finished making to Mr. Dosanjh? Boast about yourselves.

His Excellency Ron Hoffmann: Happily. I went to Afghanistan in August 2007, having had a reasonable association with the set of issues before I got there. I was the Honourable John Manley's senior departmental assistant when 9/11 happened and we had our first deployment. I was senior departmental assistant for the Honourable Bill Graham as we deepened our role in Afghanistan. Then I became

director of defence and security policy responsible for Canada's NATO relations.

Afghanistan was a factor in my professional life for many years before I was sent in. I believe that's probably one reason I was sent there.

But I think the biggest issue is that I was the ambassador for Canada, who spoke for the government and was accountable to the Government of Canada and to Parliament for, as I said earlier, the highest standards of conduct.

• (1640)

Hon. Jim Abbott: I'm sorry. I don't mean to be rude, but we're on this tight timeframe.

Mr. Lalani, we need your credentials in 45 seconds.

Mr. Arif Lalani: Thank you.

I'm an immigrant to Canada. I fled a war and a *coup d'état* in Africa in 1971. I was raised and educated in Canada and am very proud to be serving my country in whatever capacity.

I've worked on the Middle East peace process before. I worked on the Bosnia reconstruction effort, which at the time was our largest military and civilian operation in the late 1990s. I served on the United Nations Security Council when we were last on the Security Council. I've been ambassador to Jordan and Iraq. So I'm very familiar with the conflict situation in which we all find ourselves in Afghanistan.

Hon. Jim Abbott: Mr. Sproule.

Mr. David Sproule: Mr. Abbott, I've served six assignments abroad. I've been an ambassador three times; I have 28 years in the foreign service. I'm a lawyer by profession, specializing in international law, including international humanitarian law.

I have served in countries where the human rights situation leaves something to be desired, so I have some point of reference in discussions of human rights and international humanitarian law.

Hon. Jim Abbott: The point I'm making, and I think it was Mr. Lalani who made the distinction—I apologize, I can't recall—is on the difference between evidence and reporting.

In these hearings, there has been, in my judgment, a lack of respect for the testimony that has come from experts, from people with the background you have and the credentials you have. There's been a lack of respect for that testimony and an exaltation of the reporting of people who do not have the credentials and the background. I think this is a very, very important thing to point out.

I also point out that every general we've had here, everybody who has been involved in military service, has made the statement that they would never obey an unlawful order. The point is that we are well served by gentlemen like you, by the entire foreign affairs department, by the armed forces, and by all the people who have dedicated themselves. I think they deserve an awful lot better in terms of respect. I thank you for being here today.

The Chair: Thank you, Mr. Abbott.

You do have another minute, but maybe we'll swing over to the Bloc Québécois and come back.

[Translation]

Mr. Claude Bachand: Thank you, Mr. Chair.

Mr. Lalani, I showed you a document earlier and you identified your signature. You explained why the distribution list was shortened. I understand. Some people think you censored the document. Is that correct?

[English]

Mr. Arif Lalani: If you're talking about the black marks on the document, I think those are redactions that are done by officials who redacted the documents. That's not me.

[Translation]

Mr. Claude Bachand: So you did not—

Mr. Arif Lalani: No, it was not me.

Mr. Claude Bachand: But you remember that document.

[English]

Mr. Arif Lalani: I certainly do.

[Translation]

Mr. Claude Bachand: Do you remember the contents of the document?

[English]

Mr. Arif Lalani: I have looked at it. Yes, I do.

[Translation]

Mr. Claude Bachand: Could you tell us about the contents of the document?

[English]

Mr. Arif Lalani: I think I'm probably able to address your question, so maybe if you finish your question, I will of course try to answer it to the best of my ability.

[Translation]

Mr. Claude Bachand: I finished my question. You can answer.

[English]

Mr. Arif Lalani: Let me try, then. On the content of the document, I think there are parts of this document that you have that are unredacted. I had to look at that document to find out what editing was done. I might point out to you that if a document or a report comes across my desk as the ambassador, or as the director general, as I am now in my job, it's there because I'm going to edit it to make it more clear, to make it more focused. That's all that was involved. That's standard operating procedure.

The main point of that document was that a certain international organization wanted Canada to do something about notification of detainees. That part, and that is the part on which we wanted the right people to know and for the right people to take decisions, was what was left in the message to give it focus, because that's what the message was about.

As I pointed out in my prepared remarks, one of the fundamental issues that you have seen in all of the reporting is that issue of notification, and that issue of notification, in fact, was settled, and a decision was taken a few days after that message was sent.

● (1645)

Mr. Claude Bachand: Okay.

The Chair: [Inaudible—Editor]...Mr. Bachand.

[Translation]

Mr. Claude Bachand: I would like to ask Mr. Sproule a quick question. I will read you the text I have in front of me.

[English]

It says: A memo obtained by The Globe and Mail shows that in 2006 the federal government was briefed on a lobbying campaign by NATO allies aimed at getting the Kabul government to create stronger safeguards for detainees after prisoner abuses elsewhere. "London, The Hague, and Canberra...are deeply concerned about the absence of solid legal protections for detainees which—in the age of Gitmo and Abu Ghraib—imperils domestic support for the Afghan mission, said the memo...written by diplomat Richard Colvin.

But also, it continues: "The memo was written after consultation with Catherine Bloodworth...as well as the military attaché in... Kabul embassy". And it was approved by you. Do you remember approving this memo?

Mr. David Sproule: Yes.

[Translation]

Mr. Claude Bachand: That means you knew there was great risk of torture in Afghanistan. In a way, this is proof that you knew.

[English]

Mr. David Sproule: Mr. Bachand, our reports for several years indicated there was a high likelihood that torture was going on in Afghanistan detention facilities. However, we were confident that, based on information we had, no Canadian transfer detainees had been abused or mistreated. Our view was that, nevertheless, we had to do everything we could to improve the capacity of the Afghan government to ensure those standards were met.

That's what we did when we consulted with our allies in terms of coming up with common ways to raise that standard, as well as the very specific bilateral measures that we took, which I described in my statement. In other words, we had a very proactive strategy. It wasn't a matter of being satisfied with the status quo, but helping the Afghanistan government to improve the standards that it had at that time.

The Chair: Thank you very much, Mr. Sproule.

We'll go back to Mr. Dechert.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

Gentlemen, thank you for your service to Canada and for sharing your experiences with us today.

I'd like to address my questions to both Mr. Sproule and Mr. Lalani, as your terms kind of overlapped when the new arrangement was being negotiated and put in place.

Mr. Sproule, I think you mentioned earlier that you reviewed Mr. Colvin's reports in detail. You also mentioned that, late in 2006, increasing numbers of prisoners were transferred to the Afghan authorities. Can you take us through the process of how the new agreement came about, beginning with Mr. Colvin's reports, how you would report them to Ottawa, and who would see them in Ottawa? Also, how did that result in the agreement that was eventually signed when Mr. Lalani was ambassador?

Mr. David Sproule: I'd be happy to.

On the detainee issue, as I mentioned, much of our efforts were directed at improving the notification system. This required constant effort to ensure that, as soon as possible, ICRC authorities learned that a detainee had been transferred so they could oversee matters at the detention facilities.

But we also knew that it was important that we added more oversight, particularly with the increasing numbers of detainees, so starting in the fall, as a result of our reporting and in conjunction with our work with headquarters—both DND and Foreign Affairs—there developed an understanding and an agreement between our armed forces and the Afghanistan Independent Human Rights Commission to give them special access and provide them with information and the wherewithal and resources to undertake this monitoring for us. In addition, as I said, we thought it was important to supplement that with actual assistance to the Afghans so that their capacity was better and their facilities were better. Our RCMP's efforts with the police contributed to that.

During the early part of 2007, our headquarters was actively engaged in developing a yet more robust system, and that was put into place very soon after Mr. Lalani arrived as ambassador. That system is what we have now. We have perfected that in terms of our techniques and our procedures. As I think Ambassador Hoffmann mentioned, it has actually allowed us to identify where there are issues that we have to look at and, in some cases, where there are incidents we have to look into.

• (1650)

Mr. Bob Dechert: So would you say that it's hard to argue that Mr. Colvin's reports and concerns were ignored?

Mr. David Sproule: Well, indeed, Mr. Colvin's reports were an integral part of providing information that Ottawa needed to put in a more rigorous system of monitoring—

Mr. Bob Dechert: So the concern was raised and the government and the department responded.

Mr. David Sproule: Oh, absolutely. Part of my job as ambassador was to ensure that not only were those messages conveyed, but from our point of view, if we thought it was necessary to assist Ottawa in actually implementing concrete measures to do that.... It wasn't good

enough to keep reporting; it was important that we actively participated in the development of plans to address the issue at hand.

Mr. Bob Dechert: Would you say these concerns were addressed in a timely manner?

Mr. David Sproule: I am confident that as we got more information, as we learned more about the system and some of the obstacles and challenges we faced, we kept improving our game, so to speak. All of those considerations, including Mr. Colvin's advice and reporting, helped us develop this very rigorous system that we now have in place.

Mr. Bob Dechert: Mr. Lalani and Mr. Hoffmann, are you confident that we now have the systems in place to ensure that Canada's international obligations are being met in this regard with respect to prisoner transfers?

Mr. Arif Lalani: Thank you.

I am very confident that during the time I was there and when I left we were certainly meeting our obligations.

His Excellency Ron Hoffmann: I fully share that view.

Mr. Bob Dechert: Okay.

Do I have any more time, Mr. Chair?

The Chair: No, you basically have 10 seconds left. We'll go to Mr. Wilfert.

Hon. Bryon Wilfert (Richmond Hill, Lib.): Thank you, Mr. Chairman.

Gentlemen, it's nice to see you, particularly the two of you I saw in Afghanistan, and Ambassador Hoffmann as well, obviously.

Following up on Mr. Dosanjh's comments regarding the test, if I understood you correctly, you acknowledged a high likelihood of torture. So how do we meet this test if you only have the NDS investigating itself? In other words, the torturer is investigating the torture.

Mr. Arif Lalani: Let me start. I did not acknowledge a high incidence. What I said is, certainly there is a risk, which is why we all had agreements and which is frankly why the ICRC is on the ground and has the mandate it does and does the work it does. This is why, in the arrangement that has been signed, specifically and explicitly in the arrangement we talk about allegations and investigations.

To my mind, I think the key here is a combination of things. One is monitoring. The monitoring, I think, needs to be frequent. It needs to be standard. It needs to have people who have the right training. If you do that, then we believe—and as I think people who have testified before me, people who worked in the embassy, have said—that allows you confidence that you can transfer.

I think for me that's what the standard is. I think we were able to do that.

Hon. Bryon Wilfert: Mr. Hoffmann?

The Chair: Go ahead, Mr. Hoffmann.

His Excellency Ron Hoffmann: Mr. Wilfert, perhaps I could expand on the issue of the investigations. When we had an incident, even if it was not an obviously compelling one.... We had one, but there were others, and we took them all seriously. When we initiated action on that, we did not only go the NDS and say “please investigate yourself”. We went to the president's office via the national security adviser. We went to the minister or the deputy minister for foreign affairs responsible for the bilateral relationship and international human rights obligations. We went to the attorney general's office. We went to the Afghan Independent Human Rights Commission. We went to the ICRC.

In the cases where transfers were halted until we were satisfied, we did not only take our guidance from the NDS; we ensured that we consulted widely and factored in all views, including the views of those who were frequent critics of the NDS, before we felt we were on solid enough ground and satisfied and meeting obligations before we did so.

•(1655)

Hon. Bryon Wilfert: Through you, Mr. Chairman, to Ambassador Hoffmann, there were reports that Canada, the British, and the Dutch all were part of an agreement or a promise, in fact, to build a separate prison that we could oversee. So obviously there was concern about the transfer of detainees. We were talking, and according to the head of the NDS, Mr. Saleh, he indicated that in fact there was an agreement to build a prison, signed in Kabul by officials from all three countries. It would be without risk of abuse, torture, and ill treatment, and we would be able to monitor. Can you elaborate on that? Because there seems to be some conflict as to whether that ever happened.

The Chair: Thank you, Mr. Wilfert.

Mr. Hoffmann.

His Excellency Ron Hoffmann: Mr. Wilfert, there is indeed some confusion around this issue, and it's an issue that I know well. As part of Canada's commitment to help build capacity...and that meant many things. It meant infrastructure. It meant training. It meant equipment. It meant basic humanitarian supplies to improve the lives of prisoners in very rudimentary circumstances.

One of the realities of the Afghan prison system was one of insufficient capacity. The NDS facilities, in Kabul in particular, were overcrowded. The NDS and other institutions of government came to the international community and sought resources and help to build more capacity. The British led on an initiative, principally with the Americans, to build capacity—not to run the prison, not to oversee the prison, but just to build capacity.

Canada was approached because we were one of the key countries, and one of the top five on most matters, as Mr. Lalani indicated, and we were asked to contribute. We had agreed in principle to provide equipment— kitchen equipment, etc. This was a long process. Some things simply don't move very quickly in Afghanistan, as much as we'd like them to. There was the question of an exchange of letters—

Hon. Bryon Wilfert: This is the letter of February 12, 2009.

His Excellency Ron Hoffmann: Yes. This was the letter from February 11 or February 12 of 2009, and I'll say very clearly here that it reflected a misstep in the embassy. That letter had no status. I

was in Islamabad at the time, and we had an employee who signed the letter prematurely.

But that letter never had effect. It did not override the detainee transfer arrangements of May 2007. Some of the content of the letter was never effectuated. All aspects of our detainee management process, including unfettered access on an un-notified basis, continued throughout that period—

The Chair: Thank you.

Hon. Bryon Wilfert: And it was acknowledged by the NDS head, I assume—

His Excellency Ron Hoffmann: Absolutely.

Hon. Bryon Wilfert: —that there was a misstep.

The Chair: Thank you, Mr. Wilfert.

We'll now move to Mr. Hawn, and then to Mr. Dewar.

Mr. Laurie Hawn: Thank you, Mr. Chair.

Through you to Mr. Hoffmann, or to anyone, given what was just said and given that we're there at the invitation of the Afghan government to develop, among other things, Afghan capacity among our objectives, within the context of our obligations, our international obligations and so on, was there any real alternative with respect to detainees to having a transfer arrangement that we monitored as robustly as possible? Was there any other realistic alternative?

The Chair: Mr. Hoffmann.

His Excellency Ron Hoffmann: We had to remind ourselves every day in Afghanistan that we were in a different sovereign country, and as much as we'd have liked to try to solve our problems ourselves in any sector, we had to recognize of course that what we were doing had to reflect the sovereign needs and sensitivities of the country we were in.

In the case of detainee transfers, there was really only one organization that the Afghans asked us to transfer to; this was the organization that had their governmental responsibility for accepting these detainees detained under those circumstances.

With respect to capacity building, Mr. Hawn, because I think this is I think how you started the question, Canada did capacity building in part to support our international obligations, but we did much more than that. We did capacity building well beyond our international requirements. It was not a minimalist approach.

We did national training of managers in security institutions, whether that was the police, NDS, or military, but including NDS on management training, on human rights training, from institutions that were well beyond Kabul and Kandahar. Some of the infrastructure and equipment that we supplied were well beyond what we thought was the strict legal obligation. It was part of our commitment to build the Afghan state to be stronger and more independent.

• (1700)

Mr. Laurie Hawn: Mr. Lalani, I guess everybody who has signed the human rights agreements and so on is expected to abide by the same standards. That's a given. But is one of the difficulties that we seem to be having with all of this in Canada—the broad “we”—perhaps a lack of perspective or a lack of context? Are we applying the Canadian context to Afghanistan, where, even though they are bound by the same standards, the performance to those standards comes from a different context than we're used to here in Canada?

Mr. Arif Lalani: One, I think everyone struggles with the issue. Two, I go back to the fact that we have international organizations on the ground that look at this issue of detainee monitoring. They do it, obviously, because that's the best way to deal with this: to monitor and have evidence, and then improve, because the bottom line, as I think Ron Hoffmann and others have pointed out, is that we need to build the capacity of the Afghans for them to be able to fulfill their obligations. I think we are able to do that.

There seems to be a sense that simply because somebody might report something it is evidence. I think, given the importance of the issue and the importance of people attached to it, decisions need to be taken on something more than that. That's why the monitoring regime is so important.

Mr. Laurie Hawn: Thank you.

I'll share whatever time I have left with Mr. Dechert.

Mr. Bob Dechert: Thank you, Chair.

I'd like to ask Mr. Lalani and Mr. Hoffmann about visits of elected officials from Canada during your respective terms in Afghanistan. Without going into the details of the discussions, can you tell us if in your view the elected officials you met with were aware of the situation in Afghanistan with respect to detainees? If so, did they share your concerns?

His Excellency Ron Hoffmann: I'll start, since I spent probably the longest period of time, and much of our time overlapped. I don't believe in my two years that there was a senior visit from the Government of Canada—or, frankly, from Parliament and many other Canadians—where we didn't review the full nature of our engagement.

One of the pillars of our engagement, of course, was this issue and our conduct on this issue. The matter of detainees was discussed with the embassy, with our visitors, and it was discussed with the Afghan government in its meetings. While I don't remember all of the meetings because there were so many, or all the visits, it was pretty well a constant feature of our dialogue and engagement with the senior levels of the Afghan government and ourselves.

The Chair: Mr. Dechert, please.

Mr. Bob Dechert: I'll go back to Mr. Lalani.

In terms of visits by elected officials from Canada, were they aware of the issues with respect to detainees and did you raise these concerns with them? Did they seem to share your concerns with respect to detainees? What was their reaction to these issues?

Mr. Arif Lalani: Thank you.

I think it would be fair to say that we discussed this issue, among other issues, with every visiting elected official. It was part of the brief that we would give to people to explain to them what we were trying to do. In that context, we certainly discussed it. I think they certainly understood what we were trying to do and had an understanding of what it was we were trying to do and what we were facing.

• (1705)

The Chair: Mr. Dechert, go ahead. No, you had better not go ahead.

Voices: Oh, oh!

The Chair: We'll come back to Mr. Dewar, please. We're trying to keep on a timeline.

Thank you.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you very much, Mr. Chairman.

Mr. Lalani, I want to get right to a question that I haven't quite figured out, just on the questions and responses, and it's in regard to Mr. Colvin.

Mr. Colvin provided evidence to committee—and I think you've probably read it—that there was a likelihood of detainees being abused and tortured when they were handed over. He told us that at committee. One of the other things he said was that there was some editing or censoring of his reports. Again, he said this, and I want to clarify it.

In particular, we know this was an issue, and certainly it was with the embassy here in Ottawa, because there were questions in the House and so on after Graeme Smith's report in *The Globe and Mail*. I know that was the topic for a lot of people, because we responded to that report, and I think you did. I want to be very specific here. I want you to answer through the chair.

He wrote that a Red Cross official who read the report in *The Globe and Mail* said that “allegations of abuse made by those Afghans interviewed by...Graeme Smith fit a common pattern”. He put that in his report. I think context is important, because the claim was made by Mr. Colvin and by the Red Cross as well that a more rapid response—and we've heard that we needed to respond more quickly—was absolutely critical in the first days because of the concerns around torture immediately following handover.

My question is whether you asked him to remove that from his report.

Mr. Arif Lalani: Thanks.

Look, I think you are quite right. The point of that message, as you've pointed out, was that a certain organization wanted us to speed up our notification procedure because they had concerns.

Mr. Paul Dewar: Right.

Mr. Arif Lalani: That point remained. It was front and centre in the summary of the message and in the content of the message, and that point was made, I think, in two or three successive paragraphs.

So in my view I was just kind of trying to make sure that in fact people understood that was what needed to be done; a few days later, we in fact did change the policy on that issue.

Mr. Paul Dewar: But did you ask him to remove that paragraph from his report? Just to be clear.

Mr. Arif Lalani: Well, to be clear, I tried to give focus to what I thought was the point of the message.

Mr. Paul Dewar: So you asked him to remove it, though? I don't want to dance here; I just want to know if you asked him to remove it. If you did, that's fine, and you've explained why.

Mr. Arif Lalani: I ask a lot of people to do a lot of things—

Mr. Paul Dewar: But I'm just asking you whether you asked him to remove it, yes or no.

Mr. Arif Lalani: And I'd look back at it, and sure I did, yes.

A voice: We all—

Mr. Paul Dewar: Okay, thank you.

The Chair: Mr. Sproule, did you want in on that one?

Mr. Paul Dewar: I wasn't asking Mr. Sproule; I was asking Mr. Lalani, if I may, through the chair.

I mean no disrespect to Mr. Sproule. I didn't have a question for him.

The Chair: Okay.

Mr. Paul Dewar: Because my question was to follow up with regard to the NDS and it wasn't to Mr. Sproule; it was with regard to the NDS.

Mr. Lalani, here's one of the questions we had about the new agreement—that's why I didn't have a question for Mr. Sproule. It has become evident to me through evidence that has been given, and through what I've heard today, that when an allegation was made—and I'm not talking about monitoring now—the responsible entity to look into that allegation, to investigate it, when it was an NDS facility, was the NDS. Is that your understanding as well?

Mr. Arif Lalani: Well, I think we had a number of allegations that were made as a result of our monitoring missions. That's point one.

Point two, the agreement that we signed had clearly in it that the Afghans would exercise their obligations and their sovereignty by investigating allegations. So that was done.

Point three, as has been made very clear in all of the reporting that I think you may have seen and that others will see, we also informed the ICRC, who undertook whatever action they wanted to take. I want to be very careful about saying more about their work because—

Mr. Paul Dewar: Well, you can't, and I understand that—

Mr. Arif Lalani: —it's absolutely important to protect their work.

Mr. Paul Dewar: We understood that, absolutely, but I'm just getting from you what you will confirm, then, which is that when an

allegation about torture was made by a detainee or by another source, it was the NDS who investigated that.

Mr. Arif Lalani: I think, from my recollection—

• (1710)

Mr. Paul Dewar: I'm sorry to interrupt. I know that the ICRC was involved and I understand their mandate, but according to the agreement... I mean, Ms. Buck made this statement in Federal Court as well: that it was the NDS that would be responsible for following up.

Mr. Arif Lalani: From my recollection of the cases that involved the NDS, they most likely made the investigation.

Mr. Paul Dewar: Do you understand why I would have concerns, as would many others, that in the case of Mr. Colvin's claim—

The Chair: Very quickly, Mr. Dewar, because your time is up—

Mr. Paul Dewar: —that there was torture going on and that there were concerns that he had to remove from the report, it wasn't giving the full picture? The fact of the matter, from what we've heard—and I think you've halted the transfer of detainees over concerns about the NDS—is that it really isn't a strong enough agreement to have the NDS investigate itself. Is that appropriate?

The Chair: Thank you, Mr. Dewar.

Mr. Arif Lalani: No—

The Chair: We're going to come back to you.

Mr. Paul Dewar: Okay. Thank you.

The Chair: If Mr. Hawn wants to continue on that, it will give them time to answer, but it is Mr. Hawn's time.

Mr. Laurie Hawn: Absolutely.

Thank you, Mr. Chair, and through you, to any one of you, with respect to *The Globe and Mail* article and the statements attributed to the International Committee of the Red Cross, you work with those folks all the time, and they have very strict guidelines and rules about who they talk to and what they say. Would they ever have engaged a reporter in that kind of dialogue or would they ever have engaged a person at Mr. Colvin's level in that kind of a dialogue publicly?

Mr. Arif Lalani: I'm sorry, but I missed the first part of the question because I was trying to answer Mr. Dewar.

Mr. Laurie Hawn: The ICRC has very strict rules about who they talk to and what they say and what they don't say. With respect to the article that was just quoted from, by Graeme Smith of *The Globe and Mail*, would the ICRC have ever talked to a reporter like that?

Mr. Arif Lalani: I don't know, but what I will tell you is that I would certainly not want to comment about the ICRC's work.

Mr. Laurie Hawn: Is it fair to say the ICRC does not comment about their own work either, publicly?

The Chair: Mr. Sproule.

Mr. David Sproule: Yes, in general, that's their methodology, and it's been successful over many, many decades.

If I could go back to a question, I think there was a suggestion by Mr. Dewar that Mr. Colvin's reports had been censored or edited by Mr. Lalani. I just want to say that I also edited Mr. Colvin's reports. That was part of my responsibility as ambassador, to ensure that the message was clear, that it was coherent, and that it took into account all of the various considerations and information that we had. This is a standard operating procedure. Ambassadors do it. I've done it in all three of my assignments as ambassador, and indeed, Mr. Colvin did it when he was chargé over the reports of those he oversaw during my absence.

I just wanted to clarify that point.

Mr. Laurie Hawn: Good. Thank you.

Mr. Dechert, I'll pass it to you.

The Chair: Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

Mr. Sproule, we've heard a lot about the deficiencies in the 2005 transfer agreement, specifically with respect to lack of a monitoring process, and we've heard that it was different from the British and the Dutch transfer agreements that were put into place around the same time. Can you explain to us why the Canadian agreement would have been different from the British and Dutch agreements and how our agreement was negotiated versus how those agreements were negotiated?

Mr. David Sproule: Our agreement was based on considerations of what we would need in terms of ensuring international standards for the treatment of detainees as we were about to begin our deployment to Kandahar. Up until that time, the number of detainees in Canadian custody was minimal, and we, as a government, were familiar with decades of work done by the ICRC.

For my part as an international lawyer, the ICRC, and its specific role outlined in the 2005 agreement, was the ideal and appropriate body to oversee the treatment of prisoners and detainees in Afghan institutions. Over and above, I might add, Mr. Dechert, to ensure this even more, we thought it was important to emphasize in that agreement the role of the Afghanistan Independent Human Rights Commission. So I was very confident that we had dotted our i's and crossed our t's and had what we needed going into our deployment in Kandahar.

Mr. Bob Dechert: Were you aware of the terms of the British and Dutch agreements at that time, and did you consider monitoring?

Mr. David Sproule: The position we were in is that we were prepared—and it was part of my mandate—to increase the resources of our embassy over time, and we were prepared to establish more elaborate mechanisms, including monitoring mechanisms, as the need arose. So our job was to monitor very carefully the situation and ascertain whether or not we could improve the measures we had in place. In December 2005, I was pretty confident that we had a very good agreement.

• (1715)

The Chair: You have 30 seconds for final comments.

Mr. Bob Dechert: In terms of elected Canadian officials in 2005, who would have known about the terms of the arrangement before it was signed? Who do you think would have overseen it?

Do you think the Minister of Defence at the time and the Minister of Foreign Affairs at the time would have known about the terms? Would they also have known what the British and Dutch were doing?

Mr. David Sproule: I'm pretty sure the Minister of Defence would have been familiar with the agreement we were about to enter into. After all, his Chief of the Defence Staff signed the agreement on behalf of Canada. Our ministers are always carefully briefed about issues at that level of importance.

The Chair: Thank you very much.

That pretty well concludes our time. We were scheduled to go until 5:15.

I certainly want to thank you for your testimony today.

I think it was very well expressed by all parties and all members of this committee that we want to thank you for your service to your country. I can only imagine receiving a phone call that would say you're being transferred and you're going to Afghanistan.

On behalf of Canada and on behalf of the government, we want to thank you for your service in a very difficult part of the world. We thank you not only for your service to Canada, but for your contribution to peace and democracy building.

The other thing I would like to mention is that you sometimes may have felt you didn't get the chance to fully answer a question within the time that was allocated. If you ever want to submit another answer to supplement what you have already stated or to add other information, our committee would certainly welcome it.

Thank you very much.

We're going to suspend for one minute. We will then move to committee business, which will be in public, and we'll entertain a couple of motions from Mr. Hawn and Mr. Bachand.

- _____ (Pause) _____
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The Chair: I call the meeting back to order.

At the conclusion of most of these meetings, the committee generally has an opportunity to thank our witnesses for their testimony. They're doing that right now.

But we do want to move to committee business. The bells will start ringing in about 15 minutes to notify us of a number of votes this evening.

Mr. Harris.

Mr. Jack Harris: I have a point of order, sir. At our last meeting, a document was presented through the witness. There was a point of order raised that the document should be given to the committee. The clerk of the committee indeed contacted us afterwards and asked for a copy to be distributed to the committee. I indicated through staff that I wanted to raise this before the committee and discuss it before anything was done with it.

The document was not translated in both official languages, but I would perceive it to be a document that members of the committee would not want to have tabled in public. It contains information that I am satisfied would have been blacked out if it had been received from the government through a normal transaction.

• (1720)

The Chair: Mr. Harris, I'm going to let you continue, but I will remind you that we are not in camera. We're in a public meeting.

Mr. Jack Harris: I understand. I'm not going to say anything.

The Chair: Thank you.

Mr. Jack Harris: I appreciate that, Chair.

For example, it lists in the document the names and dates for all the individuals who were arrested. It details the search and indicates the ammunition, weapons, etc., found in various places. I'm satisfied that would be regarded by the military as being of operational importance and they would not want it to be disclosed. It has other information that I'm satisfied would not be in the interests of this committee to have disclosed.

I have a suggestion. I'd be happy to hear what others have to say about this. As members well know, in my question of privilege, I put forth the notion that the committee should be instructed to develop a procedure to receive the type of evidence that we need to know about. When we have uncensored documents such as this one, I really don't want to table it here.

On the other hand, there are things in this document that I put to these witnesses today. There is a statement saying that "based on the above, it's recommended that" so-and-so, so-and-so, etc., "be transferred to the National Directorate of Security, NDS, for further questioning". That's what it says. I think it's important for us to consider it.

The question is, how do we deal with this document? That's why I'm raising it.

The Chair: Yes. I thank you very much, Mr. Harris.

When documents are referenced before our committee.... We received a document today from Mr. Bachand, finally, and I'm under the impression it is one that has been tabled in the past. But when a member is working off a document, it's fair for the committee to know what document it is they're working off.

In reference to the document that you bring forward, I look at the document I was given. I guess it would depend on one's definition of "document", because I see a piece of paper with writing on it, and information on it, translated into our other official language, but there is no letterhead and there is nothing else that would give one to believe this was any official document.

And therein lies a problem. We're quoting from a piece of paper with accusations, allegations, with a bunch of writing, and we're holding it up as if it is some official type of document. You know, that's—

Mr. Jack Harris: I understand that, sir, but with respect, let me tell you that I have practised law for 30 years and the procedure for introducing documents in court—and this is not a court—is that if the witness cannot identify a document or cannot say anything about

the document, then that's the end of the story. But if the witness recognizes the document...and in this case it was a detainee transfer report and he said he had translated dozens of them and he identified it. If the document is identified, then you can introduce it as an exhibit. Now—

The Chair: Well, that's fine, except this isn't—

Mr. Jack Harris: —it wasn't translated in two official language, and there was this other problem with it, so it wasn't done that way. So the question is, what do we do with it now? I agree that what you saw was only the quote that was read into the record so everyone knew what was being read into the record. But he did identify this document as a detainee transfer document.

The Chair: It makes it very difficult to go back and really assess whether or not it is an official document. I mean, papers are running around all over the place, but to reference something as a document, or an official document, to give one the idea that is a highly official document, and then just see a piece of paper with writing on it, it's tough.

I'm going to go to Mr. Rae on this point of order. I think it is a legitimate point of order. Then we'll come back to Mr. Dechert.

Hon. Bob Rae: I don't want to prolong the discussion, because I know there are other motions. I just think that what's different about this and a court or whatever is that other members are entitled to see a document that's being shown to a witness. We have to be able to ask the witness questions. We have to be able to assess the credibility of the witness. Whoever introduces a document may ask us to read the first three sentences and then forget to read the last seven sentences, which say something different. We have to see the whole document, and that's the principle, I think.

I usually agree with the chairman and I think the chairman's rule is the right one. If you're going to introduce a document, you have to show it to everybody so everybody can see what it is, and then the witness can say this is what it is. Otherwise, we're in the dark. On this one, I think what we need to do, frankly, if you're concerned about the information in the document, then before you share it with the rest of us, you should redact it yourself. How's that?

Some hon. members: Oh, oh!

• (1725)

The Chair: All right. Thank you very much.

Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, just quickly, I want to reiterate that I concur with your decision on this. I also agree with what Mr. Rae just said.

Directly in response to what Mr. Harris said, my recollection is—and I think that if you check the record you'll find this—what Mr. Malgarai said last week was that "I don't necessarily recognize that document, I don't know if that's a document I translated, I just translated things like that". That was my recollection of what he said. He did not identify that specific document.

The Chair: Yes, we do have the quote here: "...I don't know if this is a document at all". He was asked, "Did you translate this document?" He replied, "I might have. I have translated similar documents to this". And then I questioned, "But did you translate this document?" He replied, "I can't tell for sure if I did or not".

Mr. Bob Dechert: No court would accept that.

The Chair: I think that solves that.

Go ahead, Mr. Harris.

Mr. Jack Harris: It solves it in this sense. I raised it as a point of order because the clerk had asked for a copy of the document and I didn't think it was right and proper for me to pass the document to the clerk for distribution to the committee because of the contents of the document.

I'm not seeking to put it before the committee at this particular point. We wanted the witness to comment on it. I'm satisfied that the witness has given testimony to the committee that this was the kind of document and this phrase appears there.

When we get uncensored documents from the ministers involved, then we'll be able to have a procedure to deal with that, and we may even want to present it again. But I just wanted to raise it because I wasn't willing to pass the document over and I'm not seeking to do so now.

The Chair: All right. Thank you.

Mr. Hawn, quickly on that.

Mr. Laurie Hawn: I have a very quick question. It may sound cheeky, but it is not totally intended to be cheeky.

I would be curious as to where you got an uncensored document that apparently contains classified national security information.

Mr. Jack Harris: I have no idea. It says, "Protected B" on it, and it was brown-enveloped to one of our members—

Mr. Laurie Hawn: Okay. That's what I thought.

Mr. Deepak Obhrai: On a point of order, Mr. Chair—

Mr. Jack Harris: —and it has been sent to the Chief of the Defence Staff, by the way.

The Chair: All right.

Mr. Obhrai, is this on a different point of order?

Mr. Deepak Obhrai: Yes, it's on a different point of order. I want to know, Mr. Chair, how it came about that two NDP members spoke to a committee witness. As far as I know, they are only allowed one member, but we had a situation over here where two members spoke. I want to know the procedure and I want to know how that happened.

The Chair: That's correct.

This actually came up last week. I wasn't disappointed or discouraged by it, but I did go and check the rules of order. It's very clear that if one is not signed in.... Because the NDP has one position on this committee, you can have any number sitting at the table, and indeed they can speak. They cannot vote. Only one position can vote, but they can speak, unless there is an objection raised by the committee. It doesn't suggest there—and I've asked our clerk to

check it out—whether or not, then, there would be a vote or if the objection itself would be enough to stop it.

My question to the clerk last week was whether I should proceed and question the committee. The book says that they may participate in the public proceedings of any committee of which they are not a member "unless the House or the committee" in question "otherwise orders". It would have had to be on a protest or on a point of order at that time, and it didn't happen.

And you know, I think that's good. We'll leave that for another time, but I think the committee was very generous to our New Democrats on that side. Hopefully it will continue, but there is not a chance that—

● (1730)

Mr. Deepak Obhrai: But now I want to put you on notice that in future you can expect an objection. I'm giving you notice, so don't try to hide it again—

The Chair: All right. Thank you.

Mr. Hawn, our time is almost at 5:30. Do you want to continue?

Mr. Laurie Hawn: Yes, we have a 15-minute bell. This won't take long.

The Chair: Okay. We can't take a vote unless we have unanimous consent for a vote once the bells are ringing.

Mr. Laurie Hawn: Okay. I'll speak quickly. I move: "That the Committee begin without delay to investigate and study Canada's preparations and plans for the withdrawal of Canadian Forces from Afghanistan in 2011—

An hon. member: Dispense.

Mr. Laurie Hawn: Dispense? Okay. You all have it. Good. Thank you.

The Chair: All right. We have the motion brought before us. It is a motion that Mr. Hawn has brought. Debate?

Mr. Rae.

Hon. Bob Rae: I would just indicate that Mr. Hawn is right. We need to be able to walk and chew gum at the same time, and the question will be for the steering committee to figure out how we do that. I'm certainly prepared to support this wholeheartedly if there's an understanding that we don't completely abandon the other issue, and that there will be some opportunity to combine the two, but I do think we need to address the question of the future.

The Chair: All right. The bells are ringing. Do you wish to continue?

Some hon. members: Yes.

An hon. member: Let's have a vote.

The Chair: We need unanimous consent to continue at this point. Do we have unanimous consent to continue?

An hon. member: No.

The Chair: We don't.

Mr. Laurie Hawn: So the NDP denies unanimous consent to examine the future.

•(1735)

The meeting is adjourned.

The Chair: All right. We will adjourn, then.

Thank you very much. We'll see you back here next week.

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