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# Special Committee on the Canadian Mission in Afghanistan

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EVIDENCE

**Wednesday, May 5, 2010**

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**Chair**

**Mr. Kevin Sorenson**



## Special Committee on the Canadian Mission in Afghanistan

Wednesday, May 5, 2010

• (1530)

[English]

**The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)):** Good afternoon, colleagues.

This is meeting number 8 of the Special Committee on the Canadian Mission in Afghanistan on Wednesday, May 5, 2010.

I'd remind everyone that we are televised today. We would ask as a favour that you adjust your communication devices, BlackBerrys, and telephones.

This afternoon we continue our study of the transfer of Afghan detainees.

As our first witness today, from Washington, D.C., we have Andrea Prasow, senior counsel for the terrorism and counterterrorism program with Human Rights Watch.

We certainly thank you for appearing here today. I understand that you will initially have some brief comments. I'm not certain whether you've ever seen the proceedings of a parliamentary committee, but we will take questions from the members of this committee. We'll look forward to your answers.

If you wouldn't mind, you could give us your opening comments.

Welcome back to Canada. Welcome to the Parliament of Canada and to this committee.

**Ms. Andrea Prasow (Senior Counsel, Terrorism and Counterterrorism Program, Human Rights Watch):** Thank you very much.

Mr. Chairman, members of the committee, thank you for giving me the opportunity to testify.

It means a great deal to me to be here both as a concerned member of the human rights community and as a Canadian. Human Rights Watch has been investigating and documenting human rights abuses in Afghanistan since 1984.

I personally have been to Afghanistan twice in the last year, most recently in March. While there, I had the opportunity to meet with members of local human rights groups as well as international bodies. I have also visited the prison known as the Afghan national detention facility, or Block D at Pol-e-Charki prison, as well as the U.S.-run detention facility in Parwan that has replaced the former detention facility at Bagram airfield.

Based on first-hand interviews with former detainees and their family members, as well as on information provided by Afghan non-

governmental organizations and other international organizations working on human rights, Human Rights Watch has developed a good understanding of the problem of detainee abuse in Afghanistan. We are particularly concerned about the torture and other ill treatment of detainees by the National Directorate of Security, or the NDS, the Afghan intelligence service that most frequently takes custody of persons captured by NATO forces. Put simply, the transfer of detainees by Canadian Forces to the NDS, even under memoranda of understanding that include diplomatic assurances, violates Canada's obligations under international law.

NDS torture and ill treatment of detainees in its custody has been well known for years. In 2002, 2003, and 2004, Human Rights Watch issued reports citing concerns about torture and other abuse by Afghan detention authorities. On many occasions we have directly relayed our concerns to the international forces in Afghanistan and their governments. In mid-2006, Sam Zarifi, then deputy Asia director at Human Rights Watch, met with NATO officials, including Canadians, in both Brussels and Kabul and described our concerns about NDS abuse of detainees.

In late 2006, Mr. Zarifi met with the Afghanistan desk at DFAIT here in Ottawa and described our concerns about NDS abuse. In November 2006, Human Rights Watch issued a public letter to the NATO secretary general describing our concerns about NDS abuse. In that letter, Human Rights Watch noted that it knew of at least one instance in which the NDS hid from the Red Cross a detainee who had been handed over by NATO forces.

You are all aware of the credible allegations that detainees handed over by Canadian troops to the NDS in 2007 were mistreated. Detainees transferred by Canadians to Afghan custody reported being beaten, whipped, starved, frozen, choked, and subjected to electric shocks during interrogation by Afghan government officials, including soldiers, police, and NDS officials.

In 2009 the Afghan Independent Human Rights Commission, or AIHRC, published a study on detention facilities that concluded that "torture is a commonplace practice in Afghanistan's law enforcement institutions".

Many former detainees held by the NDS will not discuss their treatment for fear of retaliation. Nonetheless, Human Rights Watch has obtained detailed recent information about NDS's treatment of detainees that makes clear that the problem of torture persists. On December 7, 2009, an Afghan man named Abdul Basir died in an NDS detention facility. The NDS told Basir's family that he had committed suicide by throwing himself out of a window. Photographs obtained by Human Rights Watch show small, dark circles on the deceased man's forehead, blackened cuts on his back, bruising in several places, and a large cut to his shin. These injuries are consistent with severe physical abuse.

NDS Department 17, the intelligence service's investigatory branch, had detained Basir for approximately one month prior to his death. Basir's family members reported that they were warned by the NDS not to seek an autopsy if they wanted Basir's father and brother, who were also in NDS detention, to be released.

Human Rights Watch has also obtained written interview memoranda prepared by the Afghanistan Justice Project describing the abuse suffered by NDS detainees. For example, one man described an NDS raid on his home in January 2009 in which his parents were beaten and his home was searched. His brother was taken to NDS detention, where, he claims, he was beaten and tortured for 18 days. He was allegedly beaten with a cable and rifles, subjected to electric shocks, and deprived of sleep. He was then transferred to Department 17, where the torture continued.

I will refer you to my written remarks for a more detailed explanation of recent allegations of abuse in NDS custody.

• (1535)

International law absolutely prohibits torture and other forms of cruel, inhuman, or degrading treatment or punishment. Not only are states prohibited from engaging in torture, they are equally prohibited from transferring someone to the custody of another state to face torture. This fundamental tenet of international law must be the guiding principle in your consideration of Canada's role in the treatment of detainees in Afghanistan. The requirement that states not transfer people to other states to face torture is known as the obligation of non-refoulement. It is found explicitly in certain treaties, such as the Convention Against Torture, and is implicit in other major human rights treaties. It is also a part of the laws of war. Again, I refer you to my written testimony for a more detailed explanation of the relevant international law. I note that Canada is bound by protocol too—the Geneva Conventions—which apply during non-international armed conflicts, such as the current conflict in Afghanistan.

The memoranda of understanding, or MOUs, between the governments of Canada and Afghanistan, which contain so-called diplomatic assurances against torture, do not satisfy Canada's legal obligation of non-refoulement. The current monitoring provided for in the MOUs is inadequate. While we have received anecdotal reports that the conditions of recently transferred detainees have improved, we have been unable to verify these reports. Further, these reports pertain only to specific detainees who have been identified as having been transferred by the Canadian Forces. The nature of the NATO mission, as well as the number of joint Afghan-NATO operations, provide ample opportunity for detainees who have been

effectively captured by the Canadian Forces to be formally taken into custody by other NATO allies or by the Afghans. Those detainees who may subsequently be handed over to NDS custody fall outside the terms of the MOUs and are not subject to any form of monitoring or reporting other than the limited monitoring the AIHRC is able to conduct.

Individualized monitoring may place detainees at risk, since they remain in the custody of their torturers. Individualized monitoring may also fail to detect torture. System-wide monitoring alone may also fail to detect the scope of the problem, including the fact that some detainees may be hidden from international monitors. This government is familiar with the brutality of torture from the Maher Arar case. The current MOU regime does not provide a way for the Canadian government to intervene if it believes that a transferred detainee has been tortured.

The path for Canada is clear. Because of compelling evidence that the persons transferred to Afghan custody face a real risk of torture, Canada should immediately cease transferring detainees to Afghan custody.

Human Rights Watch recognizes that barring transfers to the NDS, the effective recipient of most detainees in Afghanistan, does not resolve the question of what to do with persons taken into custody. Indeed, when Canada previously suspended transfers, there were reports of summary executions of alleged insurgents who had been captured by Afghan forces operating jointly with the Canadian Forces. These practices should not reoccur. Canada must at all times adhere to its obligations under international law. Practical difficulties in meeting those obligations never justify violation of the law or complicity in violation by other parties.

NDS facilities are not the only places in Afghanistan where national security detainees are held. The ANDF, or Block D at Pol-e-Charki prison, also holds people captured in counter-insurgency operations. It's operated by the Afghan ministry of defence and offers humane living conditions, including access to health care and regular family visits. These are due, in large part, to the extensive training, supervision, and mentoring provided by the U.S. military. While there remain significant problems concerning due process for detainees held at the ANDF, as of today, Human Rights Watch has not received any reports of mistreatment of detainees. Canada could explore entering into a similar partnering relationship with the ministry of defence or another agency of the Afghan government.

The detention facility run by the U.S. in Parwan, at Bagram air base, represents another possible approach. While Human Rights Watch continues to oppose long-term detention without charge by U.S. forces in Afghanistan, our current concerns relate largely to shortcomings in due process rather than to detainee treatment. The United States is engaged in training and mentoring Afghans to ultimately take over the operation of the detention facility. The target date for handing over the facility to Afghan control is January 2011. Once the facility has transitioned to Afghan control and operates within the Afghan justice system, it may be a reasonable alternative site of detention for persons picked up by the Canadian Forces.

• (1540)

A significant motivation for torture by the NDS and other Afghan justice and detention institutions is the belief that criminal convictions can only be secured through confessions. A study by the AIHRC released in 2009 found that only 21% of law enforcement officers used documents and evidence collection to build a case.

Here again is an opportunity for Canada to actively engage with the Afghans and other nations working on rule of law to build the Afghan government's capacity for detention and trials that comply with international standards.

The torture of detainees handed over by Canadian Forces to Afghan custody is a tragedy. But it also presents an opportunity to help reform Afghanistan's treatment of prisoners. I do not suggest this will be easy, but it is certainly necessary. The training of Afghan military, police, and intelligence services on proper detention practices will promote the rule of law in a manner that is consistent with Canada's mission in Afghanistan. It will also provide a real and lasting service to the Afghan people.

Mr. Chairman, members of the committee, I thank you for your time. I would be happy to answer any questions.

**The Chair:** Thank you very much, Ms. Prasow.

We will now move to the first round of questioning.

Mr. Rae.

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

Mr. Chairman, I'm going to sharing some time with Mr. Dosanjh.

To be clear, and for greater emphasis in terms of your testimony, Ms. Prasow, I would refer to the document that you've given to members of the committee. The legal test is set out on page 8 of that document, where you refer to parties to the Convention against Torture. Article 3 states:

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

Secondly:

For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

I don't want to put words in your mouth, but I take your testimony today to be that the evidence with respect to Afghanistan would fit

into the category of "a consistent pattern of gross, flagrant or mass violations of human rights" such that Canada should not be transferring prisoners to the NDS facility.

**Ms. Andrea Prasow:** That's correct. I believe that if Canada undertakes an individualized assessment, it must find that every detainee in its custody would face a substantial risk of torture if transferred.

**Hon. Bob Rae:** Your testimony is further that neither the first agreement that was signed by Canada at the end of 2005 nor the second agreement that was signed by Canada in the spring of 2007 provide sufficient protection that it would give Canada reason to believe they had in fact fulfilled the obligations with respect to the Convention against Torture.

**Ms. Andrea Prasow:** That is correct. The MOUs are insufficient. My written remarks detail some recent European court jurisprudence on the issue of diplomatic assurances.

• (1545)

**Hon. Bob Rae:** That's what I want to get to. On pages 12 and 13 of this document, you refer to a series of cases, which are the Chahal case in the United Kingdom, the Saadi case involving Italy, the Trabelsi case involving Italy, and the Al Saadoon case in the United Kingdom.

In each of these cases, you say the diplomatic assurances that were provided or the political agreements that were provided were not sufficient to give a waiver to the country with respect to the convention. In the case of Mr. Saadi, a Tunisian being transported from Italy, or in the case of Mr. Chahal, who was a militant member of the Sikh community in India, or in the case of Mr. Trabelsi, for each of these cases, you said the European Court found the transfers could not be justified.

**Ms. Andrea Prasow:** That's correct. The European Court stopped short of saying there was an absolute bar against the use of diplomatic assurances per se. But in each of these individual cases, the European Court held that the diplomatic assurance did not protect the sending state.

**Hon. Bob Rae:** I want Mr. Dosanjh to have a chance to ask a question. Can you very briefly give us an account with respect to the U.S.-run facility?

How is it different from the efforts on training, intervention, and inspection that Canada has made with respect to the places where Afghan detainees captured by Canada are believed to be held?

**Ms. Andrea Prasow:** It's fundamentally different. The U.S.-run facilities were built by the United States, or funding was provided for the ANDF. The detention facility in Parwan was physically constructed by the United States.

In both facilities the United States was involved with training and mentoring Afghan officials to take over each role. For example, at the ANDF, if you were to enter the guard tower, you would see a U.S. guard sitting at a computer, next to an Afghan guard. The U.S. guard would be training the Afghan on how to use the equipment. And every other aspect of the facility is like that.

The U.S. facility in Parwan is run by the U.S. military. Starting tomorrow, 250 Afghan guards will report for duty, where they will begin training in anticipation of the ultimate handover of the facility to Afghan control. The facility will only be handed over to the custody of the Afghans when the U.S. is confident they have sufficiently trained and mentored the guard force as well as every other officer who operates in the facility. They are also training judges and they're training national security prosecutors on how to run a case specifically on the evidence collection that I referred to briefly in my earlier remarks. The U.S. military is training the Afghans on how to build a case without a confession, to take away the incentive for torture.

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

Mr. Dosanjh.

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

There has been argument made here in Canada that building capacity as you continue to transfer, and taking other mitigating steps, somehow complies with the international obligations. Can you respond to that?

**Ms. Andrea Prasow:** Absolutely. Building capacity is important, but it in no way complies with Canada's international legal obligations.

Canada is obligated, on a case-by-case basis, to examine, for every detainee, whether he would face a substantial risk of torture if transferred. The evidence I've presented here today and the evidence that's been available for years about abuse in NDS custody makes it clear that the only reasonable conclusion of that assessment would be that a detainee transferred to the NDS would face a substantial risk of torture.

**Hon. Ujjal Dosanjh:** There is sometimes an implicit assumption in the arguments put forward in Canada in favour of continuing to send detainees to NDS that somehow Canadian detainees, because of the monitoring and because of the MOUs, would be treated differently. I note that in your presentation you indicate that there have been 11 instances of detainee abuse disclosed by the United Kingdom government itself. Would Canadians, in your view, be treated any differently?

**The Chair:** Thank you, Mr. Dosanjh.

**Ms. Andrea Prasow:** I believe that monitoring may have been helping the treatment of certain specific detainees recently transferred by Canada. But as I noted in my prepared remarks, many detainees might be captured essentially by Canadian Forces but physically taken into custody by other forces. Therefore, they fall outside the scope of Canada's monitoring.

Additionally, we have heard credible reports that the NDS has hidden people from international monitors.

•(1550)

**The Chair:** Thank you, Ms. Prasow.

[Translation]

Ms. Lalonde, you have seven minutes.

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

Thank you, Ms. Prasow. So there is no doubt in your mind that people detained by Canada cannot be transferred if Canada wants to comply with international law.

[English]

**Ms. Andrea Prasow:** At this time I believe it is a violation of international law for Canada to transfer detainees to the custody of the NDS.

[Translation]

**Ms. Francine Lalonde:** What are the consequences of this violation of international law?

[English]

**Ms. Andrea Prasow:** Well, I believe the most immediate consequence is that Canada should stop violating international law and stop transferring detainees to the custody of the NDS. Of course, international law requires a certain level of accountability, and there are various mechanisms for attaining that, which I think this committee probably has before it and can assess with assistance other than mine.

[Translation]

**Ms. Francine Lalonde:** You are saying that this prohibition under international law, making it impossible for a country to transfer detainees to a risk of torture, is also included in various conventions, not just in the main convention on human rights.

[English]

**Ms. Andrea Prasow:** That is correct. Several conventions explicitly prohibit countries from transferring detainees. But the prohibition on torture is considered a *jus cogens* norm. It is the most fundamental principle of international law. It's so serious that states are required to seek out people who have perpetrated torture and prosecute them. So international courts and commentators have read into every other treaty that doesn't explicitly deal with the obligation of non-refoulement the obligation that states not transfer people to face torture.

[Translation]

**Ms. Francine Lalonde:** Some witnesses have told us about the difficulties they had at the beginning, about practical difficulties that arose. You are saying that practical difficulties never justify breaking the law. Could you expand on that?

[English]

**Ms. Andrea Prasow:** Absolutely.

I don't in any way wish to minimize the breadth of difficulties faced by Canadians and other international forces in Afghanistan. The conflict has been long and has required a great deal of sacrifice. The fact that it is difficult is not an excuse for Canada to violate international law. I firmly believe that the Canadian Forces and the Canadian government have within them the capacity, skills, knowledge, and ability to improve the situation. I look forward to Canada doing that going forward.

[*Translation*]

**Ms. Francine Lalonde:** Canada could look at the possibility of a partnership with other forces on the ground. That is your suggestion that would allow Canada to comply with international law. It would mean using suitable facilities and sharing the time there to ensure a constant presence.

This is the first time that I have understood that forced confessions were considered necessary. Is this a practice in Afghan criminal law? That could be the explanation for some cases where the attempt has been made to extract confessions by abuse and torture, instead of gathering evidence, which can be difficult to do.

Could you give us your specific thoughts on that?

[*English*]

**Ms. Andrea Prasow:** Absolutely.

One example, which I detailed in my written remarks but didn't mention earlier, is the case of a man whose brother was interviewed by the Afghanistan Justice Project. After the brother was tortured in the custody of the NDS, after he had been rendered unconscious, his thumbprint was placed on a document that included a confession. In Afghanistan, thumbprints are often used in lieu of signatures. He was then revived medically and beaten until he was rendered unconscious again.

I think that presents a very good example of the incentive behind the torture of many of the detainees in the custody of the NDS. If they don't know how to prosecute a case without a confession, the motivation, particularly with the eyes of the international community on the Afghanistan justice system to actually prosecute cases, is present for them to use coercive means and torture.

• (1555)

[*Translation*]

**Ms. Francine Lalonde:** So your suggestion to Canadian authorities—I imagine you have made the suggestion to the United States as well—is to work at improving the knowledge and the abilities of investigators and prosecutors so that forced confessions are no longer seen as necessary. Given the current situation, that kind of training must be very inadequate. It can require a lot of time and effort, correct?

[*English*]

**Ms. Andrea Prasow:** I don't think I can assess how long it would take. I do think it would require further commitment of resources. I don't specifically mean personnel. Resources might be people who have particular skills who are not currently in the field. It might mean more direction about the implementation of resources in the field. But I think it's essential. I don't think it is available to Canada to not do this, to not improve the state of the legal system in Afghanistan and also comply with its international legal obligations.

[*Translation*]

**Ms. Francine Lalonde:** Preparing the Afghan people to develop a justice system worthy of the name would be one way to help them prepare to govern themselves. Is that what you mean when you say that, by so doing, we would be providing the Afghan people with a genuine, long-term benefit?

[*English*]

**Ms. Andrea Prasow:** That's right, and I think that's consistent with Canada's mission in Afghanistan to create lasting change and actually improve the lives of Afghans.

**The Chair:** Thank you very much, Ms. Lalonde.

We will move to the government side. Mr. Dechert, please.

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

Thank you, Ms. Prasow, for being here today and sharing your views with us. It's really much appreciated.

According to Mr. Gavin Buchan, who was here last week, and other Department of Foreign Affairs officials, the decision to transfer prisoners detained by Canadian Forces to Afghan authorities was necessary because Canada is not an occupying force and is in Afghanistan at the request of the democratically elected Government of Afghanistan, assisting it to fight what is essentially a civil war.

Do you agree with this analysis of the Canadian government's decision to transfer prisoners to Afghan authorities?

**Ms. Andrea Prasow:** No.

I do agree that Canada doesn't have the legal authority to detain people in Afghanistan for some prolonged periods. As I mentioned before, we continue to have problems with U.S. long-term detention in Afghanistan.

But even if Canada doesn't have that authority, it doesn't obviate its legal obligation not to transfer people to the custody of a state where they face torture.

**Mr. Bob Dechert:** Okay.

Did Canada have another option with respect to the transfer of prisoners in 2005, given that the mission in Afghanistan is deemed to be a non-international armed conflict under the laws of war? Was there another option available?

**Ms. Andrea Prasow:** Protocol II of the Geneva Conventions, which Canada ratified in 1990, specifically provides that after someone has been deprived of his liberty, before he is released, it is the obligation of the state that has custody of him in a non-international armed conflict to take into account his security upon release.

**Mr. Bob Dechert:** So you think there should have been another option?

**Ms. Andrea Prasow:** I think it was incumbent on Canada to make that assessment at that time.

**Mr. Bob Dechert:** Okay.

In your presentation you've stated that it was well known in 2002, 2003, and 2004 that torture and abuse of prisoners were widespread and common in Afghanistan. Yet in the context of that, the government of Prime Minister Martin, the previous Government of Canada, chose to transfer Canadian detainees to the Afghan NDS in 2005.

You further pointed out in your written presentation that the international body known as the Committee Against Torture submitted in its conclusions and recommendations to Canada in July 2005 that Canada unconditionally undertake to respect the absolute nature of common article 3 of the Geneva Conventions in all circumstances.

So do you believe then that the former Government of Canada in 2005 knew, or ought to have known, that it was likely that prisoners would be abused if transferred to Afghan authorities, especially the NDS?

**Ms. Andrea Prasow:** I believe there has been ample evidence for many years to suggest that when making an individualized assessment of whether a detainee faces a substantial risk of torture, the evidence was available at the time suggesting that an appropriate conclusion would have been that detainees would face torture. I think that is why the transfers were stopped—although, as I noted, there were some serious problems—

• (1600)

**Mr. Bob Dechert:** So there was certainly ample evidence in 2005 when that decision was made. Okay.

Ms. Prasow, other lawyers better qualified than me in matters of international law will ultimately determine if Canada was bound by common article 3 of the Geneva Conventions in these circumstances. However, assuming for the sake of argument that your analysis is correct and that Canada should not have accepted diplomatic assurances from the Afghan government when transferring detainees, is it your view that Canada was in breach of its obligations under international law when it entered into the 2005 prisoner transfer arrangement?

**Ms. Andrea Prasow:** I don't have all the evidence available to the Canadian government in 2005, so I don't think I can make that assessment. But I would note that I don't think it is open to debate that common article 3 applies at all times in any form of conflict, whether an international armed conflict or a non-international armed conflict.

**Mr. Bob Dechert:** So it's your view that, certainly, Canada was bound by that provision of article 3 in 2005 and that there was ample evidence in 2005 that abuse might occur?

**Ms. Andrea Prasow:** I believe, based on the reports of Human Rights Watch and other non-governmental organizations, there has been evidence of abuse. I don't know what the evidence was available to the government, beyond what I have referred to already.

**Mr. Bob Dechert:** Other witnesses have said the same thing.

As you know, there was a new and revised 2007 prisoner arrangement. Going back to the 2005 arrangement, are you familiar with that?

**Ms. Andrea Prasow:** I am.

**Mr. Bob Dechert:** Okay.

On a scale of 1 to 10, how would you rate the arrangement in terms of the protection of prisoners' rights and compliance with Canada's requirements under international law?

**Ms. Andrea Prasow:** I will choose not to give a number on the quality of the arrangement.

**Mr. Bob Dechert:** Would it be lower than 5?

**Ms. Andrea Prasow:** I will refer you to my written remarks detailing the problems that the European Court has found with diplomatic assurances. Human Rights Watch does not believe that diplomatic assurances are an appropriate method to—

**Mr. Bob Dechert:** I'll take that as a less than 5, at least.

Are you familiar with the similar prisoner transfer arrangements negotiated by the British and Dutch governments around the same time in 2005?

**Ms. Andrea Prasow:** Yes, I am.

**Mr. Bob Dechert:** So on a similar scale of 1 to 10, how would you rate those arrangements with respect to the protection of prisoners' rights in compliance with applicable international law?

**Ms. Andrea Prasow:** Without providing a number, I will note that the U.K. government is engaged in a judicial review right now about its transfer agreements, and the Dutch government has implemented the Copenhagen process in order to assess the best way to deal with detainees captured by NATO forces.

**Mr. Bob Dechert:** So can you tell us what is different in those agreements in comparison with the agreement Canada entered into in 2005?

**Ms. Andrea Prasow:** The 2005 agreement was somewhat weaker than the other agreements—which, I believe, is why the 2007 agreement was entered into. Nevertheless, taking both agreements together, Canada's international legal obligations are still not satisfied.

**Mr. Bob Dechert:** Fair enough.

Is it possible that such abuses would have been prevented, or at least discovered, if the monitoring process, which was added in 2007, had actually been in place in 2005?

**Ms. Andrea Prasow:** It's possible, but as I stated earlier, I don't believe that monitoring is an appropriate way to detect abuse.

**Mr. Bob Dechert:** Certainly, in your view, something stronger was required in 2005 than what Canada actually had in place at that time.

**Ms. Andrea Prasow:** What Canada has in place today is inadequate in terms of a mechanism for detecting abuse as well as for ensuring that detainees are not transferred to face torture.

**Mr. Bob Dechert:** Thank you.

**The Chair:** You have another half a minute or a minute.



**Mr. Bob Dechert:** Just to recap, then, in your view, there was ample evidence that prisoners might be subject to abuse if turned over to Afghan detainees in 2005. You think the Canadian government had an obligation under applicable international law not to transfer them and not to accept simple diplomatic assurances. So was Canada, in your view, in compliance with its international obligations when that arrangement was entered into in 2005?

**Ms. Andrea Prasow:** I do not know the full scope of the information that the Canadian government had before it when it was making an individualized assessment.

**Mr. Bob Dechert:** Can you take a guess—

**The Chair:** Thank you very much. We'll come back.

Mr. Harris.

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

Thank you for your presentation.

I'm also interested, as was the previous member, in the initial decision to not do more than the 2005 agreement. We were told by witness Gavin Buchan, for the record, that they were satisfied with legal advice that both diplomatic assurances and what I would have to call the commencement of capacity building, because they were only starting that process, were adequate in these circumstances and were in compliance with international legal obligations because—and this term was used—they respected Afghanistan's sovereignty. What's the role of Afghanistan's sovereignty in your understanding of international humanitarian law in these circumstances?

• (1605)

**Ms. Andrea Prasow:** Whether a state is considered to be an independent sovereign nation, or the strength of the nation at that time—given that Afghanistan had just gone through a transition—is irrelevant to the assessment. The assessment is that Canada, the country that has custody of a person, must conduct an individualized assessment of whether each detainee it intends to transfer will face a substantial risk of torture.

Assurances from the receiving state are inadequate because they're unenforceable. Diplomatic assurances are diplomatic promises from high levels of government. The entity in the Afghan government that assigned the MOUs is the ministry of defence. It's unclear whether the NDS considers itself bound by the MOU since no NDS official signed those documents.

**Mr. Jack Harris:** We've also heard that, at least up until May 2007, there was inadequate record keeping kept. In fact, a senior official, David Mulroney by name, stated that after May 2007 they started to develop a database to keep adequate track of prisoners. Where does that fit into your understanding of what Canada's obligations would be under humanitarian law in dealing with such a state like Afghanistan and the kinds of prisoner MOUs we had?

**Ms. Andrea Prasow:** There isn't a specific obligation that the country follow through for years on end to find out the results of the treatment of a detainee that they've transferred. But if Canada had detailed information about abuse that detainees had transferred to the custody of the NDS, if it had that information before it, it could use that in making any future assessment about whether a detainee might face a substantial risk of torture upon transfer.

**Mr. Jack Harris:** Given the record that you referred to and the knowledge of reports from groups like yours, diplomatic reports, U. S. government and Canadian government reports on human rights abuses, you've suggested that there was a real risk of torture in Afghanistan and in Afghanistan prisons. So would you need that specific information?

The reason I ask that is because our government has taken the position again and again that because there was no credible—that was the adjective—evidence that “Canadian” detainees had been tortured, everything was all right and Canada's obligations to act further ended.

**Ms. Andrea Prasow:** I think the evidence I've presented today makes it clear that there is credible evidence that many detainees faced torture in the custody of the NDS. That has been the way the NDS has operated for years. It's not a secret that the NDS has tortured detainees in its custody. Whether there is a specific guarantee that a detainee transferred by Canada will face torture, that's not the issue. The issue is, when looking at the context, is it reasonable to assess that the person will face a substantial risk of torture?

When you have a pattern and practice of abuse, which I believe is evident in the NDS treatment of detainees, I think it's incumbent upon that government to determine that indeed detainees do face the risk of torture and therefore they cannot be lawfully be transferred.

**Mr. Jack Harris:** The solution you've painted leads me to believe that you think what the U.S. is doing now is a good thing, that by running the prison themselves, training side by side Afghan nationals to take over these operations, is the way to go. I do recall, though, and I'm sure your organization had something to say about this at the time as well, that one of the reasons Canada was shy about doing that was the Abu Ghraib situation, which is obviously well known and notorious. Would that be a good reason to avoid setting up your own prison, or passing them over to the Americans at the time, lest you be complicit in the kinds of atrocities that occurred there?

**Ms. Andrea Prasow:** Well, I absolutely have grave concerns about abuse that occurred at the hands of U.S. interrogators and guards in Bagram, and that may in fact be occurring in other U.S. facilities in Afghanistan right now. We have heard recent reports, recent allegations of abuse, but for the two facilities I've talked about specifically, the ANDF and the detention facility in Parwan, both of which I have personally visited, at the moment we have not received any reports of mistreatment, and they do present a model that Canada can consider. It's not the only option, but I think they are viable options and they are worth examining.

**Mr. Jack Harris:** You referred in your paper as well to an organization called the Afghanistan Justice Project, with a number of allegations made there, including the fact of an individual who was hung upside down for four days, beaten for two months, and then hidden by the NDS in the detention facility when the human rights groups came to look. Can you tell us a little bit about the Afghanistan Justice Project? We're familiar with the Afghan Independent Human Rights Commission, but this is a new one to me. Can you tell us a little bit about that and whether you think these kinds of statements are credible?

•(1610)

**Ms. Andrea Prasow:** It's a relatively small organization that works on the ground in Afghanistan. The Human Rights Watch researcher who works in Kabul has worked with them and is confident in the quality of their work. I think they have an ability to locate and interview former detainees on the ground that is quite enviable. They have obviously been able to locate people. They've provided me with detailed interview memoranda of their interviews. They were translated. They were originally conducted in the language of the detainee or the relative, in their spoken language, so I'm pretty confident that this information is fairly accurate. I personally cannot attest to the validity of it, but I think it is important to note that all the examples I have detailed in my written remarks and that I've mentioned today are but a few examples of many. I know this committee has heard other examples before, and there are many more available. The U.K. government is discussing them—

**The Chair:** Thank you very much, Ms. Prasow.

We'll move back to Mr. Hawn, please. Again, on the second round I remind everyone it is a five-minute round, not a seven-minute round.

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

Thank you, Ms. Prasow, for being here, and with respect to that reminder, short answers would be appreciated.

Are you aware of our own rule of law efforts in Afghanistan with respect to improving prisons and the number of Corrections Canada people there, RCMP, CIVPOL, the work we are doing as well with the prison system and the justice system?

**Ms. Andrea Prasow:** I am aware that Canada is doing good work there. I don't know the numbers at all.

**Mr. Laurie Hawn:** You seemed to give the impression it was only the Americans who were doing something, not us, when in fact we are taking strong steps with the Afghans to train them and build their capacity.

**Ms. Andrea Prasow:** Absolutely. And as my written remarks make clear, what I am encouraging Canada to do is to increase that work.

**Mr. Laurie Hawn:** I understand. We'd all like to do more.

Have you been to Sarposa yourself?

**Ms. Andrea Prasow:** No, I have not.

**Mr. Laurie Hawn:** Have you been to the NDS facility in Kandahar?

**Ms. Andrea Prasow:** No, I have not.

**Mr. Laurie Hawn:** Have you been to Kandahar airfield, to the detention facility there?

**Ms. Andrea Prasow:** No, I have not.

**Mr. Laurie Hawn:** Have you talked to anybody who operates that facility or has worked with the NDS in that milieu?

**Ms. Andrea Prasow:** When I was last in Kabul in March, I met with Christopher Gibbons at the embassy in Kabul and he described to me some of the work that is taking place in Sarposa.

**Mr. Laurie Hawn:** Has Christopher Gibbons worked with those people?

**Ms. Andrea Prasow:** Christopher Gibbons is the head of political affairs at the Canadian embassy in Kabul, and I believe he works closely with the DFAIT officials who conduct the monitoring visits.

**Mr. Laurie Hawn:** Are you aware that our visits to Sarposa and other facilities are unannounced under the MOU that we have with the Afghan government?

**Ms. Andrea Prasow:** Yes, and I think that is excellent and important.

**Mr. Laurie Hawn:** Would it not be difficult for somebody to hide prisoners from the Canadians, certainly, if our visits are unannounced?

**Ms. Andrea Prasow:** I think it's probably not that difficult to hide prisoners, but I do believe—

**Mr. Laurie Hawn:** Even if you show up and knock at the door and say, "I want to see Joe Blow"?

**Ms. Andrea Prasow:** I do believe unannounced visits are important, and my written remarks explain that I believe the full-time presence of monitors is essential.

**Mr. Laurie Hawn:** Are you aware that when Corrections Canada people go there they stay there for 8 to 12 hours, they visit there at least three times a week, and they are unannounced?

**Ms. Andrea Prasow:** I think that is wonderful. I think that monitoring continues to be an inadequate source of identifying torture.

**Mr. Laurie Hawn:** Okay. Other than actually being there and seeing it, other than allegations and anecdotal evidence, I'd be hard-pressed to find a better way to identify it than actually being there and seeing it.

**Ms. Andrea Prasow:** It's very difficult to detect torture. People who perpetrate torture are clever. They do not chop limbs off and take people into interview rooms to be seen by visiting officials.

**Mr. Laurie Hawn:** You've said several times that Canada has been in violation of international law. That's a strong opinion. It is a legal opinion that I respect. There are many others who don't share that opinion, who are lawyers, who have worked very directly with the situation in Kandahar, with the Afghans—obviously, with that whole situation.

With respect, yours is a strong opinion. Do you appreciate that it is just an opinion?

**Ms. Andrea Prasow:** It's a legal opinion. I personally believe it's correct, but I understand that people have taken a different opinion.

**Mr. Laurie Hawn:** So I understand, and quite a few people.

You mentioned talking to the Government of Canada in the fall of 2006. Have you talked to the Government of Canada since then directly?

**Ms. Andrea Prasow:** I am not aware of any specific meetings between Human Rights Watch representatives and the Government of Canada since then.

**Mr. Laurie Hawn:** And you yourself have not talked, obviously, to anybody in the government.

**Ms. Andrea Prasow:** I myself haven't, and I personally did not conduct the meeting in 2006; it was Sam Zarifi. I did not work for Human Rights Watch at the time.

• (1615)

**Mr. Laurie Hawn:** Have you ever had a conversation with any of the commanders on the ground in Kandahar—General Grant, General Laroche, General Fraser?

**Ms. Andrea Prasow:** I think they would be better people to ask that question.

**Mr. Laurie Hawn:** Have you talked to those people?

**Ms. Andrea Prasow:** I personally have not, and I don't believe anyone in the organization has.

**Mr. Laurie Hawn:** Thank you.

You mentioned—in your statement, I think it was—that:

While we have received anecdotal reports that the conditions of recently transferred detainees have improved, we have been unable to verify these reports. Furthermore, those reports pertain only to the specific detainees identified as transferred by Canadian forces.

We are responsible for detainees transferred by the Canadian Forces. Is that correct?

**Ms. Andrea Prasow:** That is correct.

**Mr. Laurie Hawn:** Now, correct me if I'm wrong, but you don't seem to accept this anecdotal evidence of improvements, but you do seem prepared to accept anecdotal evidence from elsewhere of wrong-doing. I think there's a dichotomy there.

**Ms. Andrea Prasow:** Well, when the question is whether someone faces the risk of torture, without being able to verify the evidence I'm not confident in relying on it.

Additionally, as I noted earlier, the specific detainees who are identified as being transferred by Canadians are the ones who are being monitored, but we have received reports of captures taking place in the field, where ISAF forces are present and are effectively taking custody of the person, but the Afghan National Army personnel physically take custody and therefore that person doesn't fall within the scope of any monitoring.

**Mr. Laurie Hawn:** If it is an Afghan National Army operation and they are running the operation, does it make sense that they would be the ones who would be detaining prisoners on their own operation?

**Ms. Andrea Prasow:** I can't speak to operational concerns.

**The Chair:** Thank you, Mr. Hawn.

Mr. Wilfert, please.

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

Thank you very much. I found your report very thorough, and I was very impressed with the sections that you brought to bear, particularly dealing with international law obligations.

Whether it's a 2005 transfer or a 2007 transfer, the issue still is whether or not we have the obligations under international law, and you've indicated the MOU was not in fact sufficient. In our own situation, the Judge Advocate General indicated, I think in a letter of 2007, that the military was very close to the line with regard to the transfer issue, again, recognizing our legal obligations.

You indicate that we should immediately stop the transfers. There were discussions with other NATO allies, including the British and Dutch, about a separate prison, etc. What would you suggest we do today to immediately fulfill those obligations, given the fact that time is obviously running out?

**Ms. Andrea Prasow:** As I mentioned before, I think it's incumbent upon Canada to increase the efforts it is engaged in to build capacity and train Afghan officials on rule of law issues, particularly about how to build a criminal prosecution.

Afghanistan doesn't have an administrative detention statute. Detainees who are held by the NDS are essentially pretrial detainees, although many are released without charge. They are being held for the purpose of future criminal prosecution, which means there's an opportunity to train the national security prosecutors, who are operated by the attorney general's office, about how to treat detainees properly.

As I'm sure you know, if a prosecutor is strict with the police and explains that he will not accept evidence that hasn't been obtained by lawful means, there's a strong disincentive for the police to use those unlawful means. That's an area in which Canada truly excels, and it's an opportunity for Canada to take that rule of law knowledge to the Afghan forces.

**Hon. Bryon Wilfert:** Concerning your advice on an interim step, I agree that capacity building, etc., all needs to be done. But given that if there were any doubt that we were violating international law we would have to do something today, what would you recommend?

**Ms. Andrea Prasow:** I recommend that Canada cease transferring detainees and I recommend that Canada engage in this rule of law capacity building. I understand that this takes time, and while we do not support long-term, indefinite detention, if it is necessary for a limited number of detainees that they be detained by Canadian Forces, I think that might be the lesser of two evils right now.

**Hon. Bryon Wilfert:** That is, that we ourselves keep them?

**Ms. Andrea Prasow:** For a very limited period of time, for the limited purpose of protecting them from torture.

**Hon. Bryon Wilfert:** And that certainly would, then, fulfill the obligations you've outlined.

**Ms. Andrea Prasow:** It would specifically fulfill the obligation of not transferring someone to face torture.

**Hon. Bryon Wilfert:** Yes.

**Ms. Andrea Prasow:** There are other obligations, of course, to which I can't speak.

**Hon. Bryon Wilfert:** Thank you.

**The Chair:** Mr. Rae.

**Hon. Bob Rae:** Coming back to this question of the standard, I don't want to take issue with my friend, Mr. Hawn, but I want to try to be clear. One of the arguments the government has been making, and I think it's a very sincere argument on their part, is to say, we don't have evidence of torture having taken place with respect to any of the people we transferred—what we would call the “Canadian detainees”—and therefore we've met the test. That seems to be the argument that comes from the government.

I want to get from you a sense, from a legal perspective, of whether that is the test or whether there is another test that should be applied. I think it's very important that we understand this. We'll hear from other lawyers too, and there will be lots of different opinions, but I want to understand: is that the right test, or is there another test that has to be applied?

• (1620)

**Ms. Andrea Prasow:** Even if it is true, and I don't believe it's been confirmed, that detainees recently transferred by Canadian Forces have not been abused, I believe that anyone making a fair assessment of whether a detainee captured by Canadians would face a substantial risk of torture if transferred to the NDS has to conclude that the answer is yes.

**Hon. Bob Rae:** I'm not going to make Mr. Hawn's case for him, but I want to say that one of the things that would occur to me to say, if you were a Canadian lawyer in court, would be that the counterfactual to what you've just said is that we have put in place measures that have proven sufficiently stringent that we do not believe, on the basis of our reviews.... We're not relying on the word of the Afghan government; we're not doing as in the Chahal case, in which they were relying on the word of the Indian government, and as in the other case, in which they were relying on the word of the Tunisian government. Under the most recent agreement that's been signed, we're not relying on the word of the Afghan government but relying on Canadian eyes and ears, which are going into those facilities and checking on whether or not our detainees are subject to abuse.

Is that good enough?

**The Chair:** Thank you, Mr. Rae.

Respond very quickly, please, Ms. Prasow.

**Ms. Andrea Prasow:** I don't have confidence, no matter how well-meaning or well-trained a monitor is, that they can adequately determine whether or not someone has been tortured in the custody of the NDS, particularly because evidence suggests that torture occurs within the first 72 hours of custody.

**The Chair:** Thank you.

Mr. Dechert.

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

Ms. Prasow, we've been discussing that the former government chose to transfer prisoners to the NDS in 2005 rather than detain them in a Canadian facility or transfer them to an alternative facility, such as the U.S. facility at Bagram at that time or other ISAP force facilities. You described in your written materials a number of these alternative facilities that Canada could possibly have chosen.

How would you compare those facilities and the treatment of prisoners at, say, the U.S. Air Force base at Bagram to the facilities operated by the NDS and the treatment that might have occurred to prisoners there?

**Ms. Andrea Prasow:** As I stated before, I haven't personally visited Sarposo or any NDS facilities. I have visited the ANDF and the detention facility in Parwan, but based on credible accounts of the treatment that has occurred at NDS facilities, I believe the difference is night and day. We have received no credible reports of mistreatment in either of those U.S.-run facilities.

**Mr. Bob Dechert:** So there were other options available to the Canadian Forces in 2005. They could have chosen to send the prisoners to, say, U.S. forces at Bagram.

**Ms. Andrea Prasow:** These specific options were not available to the same degree in 2005. What I'm concerned about with respect to the ANDF and the U.S. detention facility in Parwan is that, as of today, transferring people to their custody is an option, as is building a similar model.

**Mr. Bob Dechert:** So when the Canadian government first decided to transfer prisoners and they knew or ought to have known that there was a substantial risk of abuse, what, in your view, should they have done at that time with any prisoner they captured?

**Ms. Andrea Prasow:** I don't know about the operational tools they had at their disposal. What I do know is that there is an obligation not to transfer people if they torture.

**Mr. Bob Dechert:** So you are saying they should not have transferred them.

**Ms. Andrea Prasow:** They should not have transferred them—although I am speaking specifically based on information I have as of today in 2010. As I said before, I don't know the full scope of the information that was available to the Canadian government in 2005, although Human Rights Watch has been reporting on this issue for years.

**Mr. Bob Dechert:** Since at least 2002. And you mentioned that the Committee Against Torture had given a specific report to the Government of Canada in July of 2005.

As we have been discussing, the 2007 prisoner transfer arrangement added things that didn't exist in the 2005 arrangement. For some strange reason, there was no procedure for monitoring or follow-up in the 2005 arrangement. When there was any kind of allegation of abuse, the Canadian authorities moved quickly to revise that agreement and add monitoring.

Would you say that the 2007 agreement was an improvement upon the 2005 arrangement?

**Ms. Andrea Prasow:** I think the 2007 agreement was an improvement, but I don't think it's possible to decrease the level of your violation of international law.

**Mr. Bob Dechert:** It doesn't go far enough; I take your point on that. But it certainly was an attempt to do things better than in 2005, in your opinion. Is that a fair statement?

• (1625)

**Ms. Andrea Prasow:** It was an attempt to put into place a mechanism that I believe the international community has been clear is inadequate.

**Mr. Bob Dechert:** Were they clear at that time, or have they been clear since that time?

**Ms. Andrea Prasow:** I think it would have been clear at that time. I certainly think that as of today it is very clear.

**Mr. Bob Dechert:** Okay.

Mr. Hawn, I think you had something to add.

**The Chair:** There are two minutes.

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

I would just like to cover one point. You talked about the importance of having individual cases reviewed. Are you aware that in fact that is what commanders on the ground in Afghanistan do and have done since at least 2007; that every detainee case is reviewed individually by the commander?

**Ms. Andrea Prasow:** I expect that's what they do.

**Mr. Laurie Hawn:** Yes.

**Ms. Andrea Prasow:** I'm not personally aware, but that is certainly what I expected.

**Mr. Laurie Hawn:** Well, it has been the testimony of every commander who has come before us. So to the point you are making—that this is important—we are in fact doing it.

A lot of the points you made are very valid points about what should be done. My point is that while that's true, we are doing some or all of those things—perhaps to a level that everybody would like to see raised—

**Ms. Andrea Prasow:** It's not the fact that the review is taking place that I'm concerned about; it is the conclusions of that review.

**Mr. Laurie Hawn:** Well, understand also that these are people who are on the ground, at the face, who understand the NDS, understand the operation, understand all of the things that we don't appreciate sitting here in Ottawa, and with respect, that you might not appreciate wherever your office is.

Would you agree that things have improved—not as much as anybody would like, but we are dealing with a very different country in very difficult circumstances and a very difficult situation. But things have improved. Is that fair to say?

**Ms. Andrea Prasow:** I think that if any detainee is tortured, things certainly haven't improved for him.

**The Chair:** Thank you.

We'll go to Mr. Bachand for one minute...two minutes—

**Mr. Claude Bachand (Saint-Jean, BQ):** I see four there.

**The Chair:** —three minutes.

**Some hon. members:** Oh, oh!

[Translation]

**Mr. Claude Bachand:** I will do this quickly because I only have three minutes. Please follow me closely and answer yes or no.

First, with regard to the memorandum of understanding, even if the surveillance system has improved as the other side seems to be saying, do you feel that the two agreements in 2005 and 2007 are inadequate?

[English]

**Ms. Andrea Prasow:** That is correct.

[Translation]

**Mr. Claude Bachand:** Second, given that inadequacy, you are asking that transfers cease immediately, correct?

[English]

**Ms. Andrea Prasow:** Yes.

[Translation]

**Mr. Claude Bachand:** Third, the matter could be resolved with a full-time presence in the detention centres, in cooperation with our NATO allies. Did I understand you correctly?

[English]

**Ms. Andrea Prasow:** That is one recommendation I am making. It is not necessarily the only solution, but it is a recommendation that I suggest Canada take seriously.

[Translation]

**Mr. Claude Bachand:** Okay.

Fourth, you said that explicit consent from the NDS is necessary. What happens, in your view, if the NDS refuses? Do we give up and say that we are done or do we insist on an agreement?

[English]

**Ms. Andrea Prasow:** Do you mean regarding the MIU?

**Mr. Claude Bachand:** No, I mean regarding the National Directorate of Security. You say here that you need them to accept this.

**Ms. Andrea Prasow:** Yes. It's not that I believe it's legally required. I think it's practically essential that the NDS accept the monitoring. If you're going to have a full-time monitor at an NDS detention facility, it's important that the NDS support that effort.

[Translation]

**Mr. Claude Bachand:** The NDS is one detention centre, but there are also several others elsewhere. We transfer to the NDS only, but you would make sure that all detention centres agree to the procedure.

[English]

**Ms. Andrea Prasow:** The NDS is the intelligence service, and it has many detention centres throughout Afghanistan. Because they are responsible for national security prosecutions, they take custody of virtually every detainee transferred by NATO forces.

**The Chair:** Continue, Mr. Bachand.

**Mr. Claude Bachand:** How much time do I have?

**The Chair:** You've used two minutes and 13 seconds and you had four minutes.

**Mr. Claude Bachand:** I will continue.

[Translation]

According to your document, only 21% of guards or investigators use documents and gather evidence, while 40% use other methods of investigation. But it seems that those 40% either refused to reply or do not did not wish to say whether they used torture to gather intelligence.

Am I reading your document correctly?

• (1630)

[English]

**Ms. Andrea Prasow:** That's correct. I can't speak to what an individual meant by checking "other", but the important part is that only 21% of the officials surveyed used documents and evidence collection to build a case.

[Translation]

**Mr. Claude Bachand:** Is there a way to conclude an investigation other than by collecting documents and evidence? If, as you say, 79% of the people cannot read documents or gather evidence, what other way do they have to get their job done?

[English]

**The Chair:** Thank you, Mr. Bachand.

**Ms. Andrea Prasow:** Unfortunately, the other method they have is to torture detainees into providing possibly truthful but probably false confessions.

**The Chair:** Thank you very much, Ms. Prasow.

We appreciate you being here before our committee today. We look forward to maybe hearing back from you. I also suggest that in the course of time, if you decide you could have elaborated on something...we have a larger document than you presented today; we thank you for that and for cutting your comments, but if there is something you would like to add, the committee would welcome that.

We will continue with the second hour of the Special Committee on the Canadian Mission in Afghanistan. I remind committee members that there will be votes at 5:30, and we want to give our guests the same opportunity as the last guest.

We are continuing with our discussion and study on the transfer of Afghan detainees. Testifying before us today, from the Canadian Security Intelligence Service, is Michel Coulombe, assistant director, foreign collection.

We welcome you to this committee today and look forward to your comments. You were present for the last hour. Please give your introductory comments, and then we'll go into a round or two of questioning.

[Translation]

**Mr. Michel Coulombe (Assistant Director, Foreign Collection, Canadian Security Intelligence Service):** Thank you, Mr. Chair.

Good afternoon. I am pleased to be here today to speak to the role that CSIS plays in Afghanistan in support of Canada's national security interests.

CSIS has publicly confirmed that it is present in Afghanistan and has been there since 2002. And although we generally keep our overseas activities very quiet, we decided to make an exception on Afghanistan in an effort to ensure that Canadians are as informed as possible about our country's number one foreign policy priority.

CSIS is in Afghanistan to support the Canadian mission in that country and to gather intelligence that alerts us to terrorist threats against Canada and Canadian interests. It should come as no surprise

to anyone that the Government of Canada would call on CSIS to play a role in supporting such a large, complex and ambitious project as the Afghan mission.

Our work in Afghanistan assists in all facets of the whole-of-government mission. Intelligence collected by CSIS personnel in theatre has led to the disruption and dismantling of insurgent networks planning imminent IED and car bomb attacks against military and civilian targets. At the same time, we collect intelligence to support Canada's overall strategy and posture in the broader region.

In addition to supporting the Afghan mission itself, the service is also mindful of the direct threat from extremist elements operating in the region whose goals are more ambitious than simply ridding Afghanistan of foreign interests. Here, of course, I am referring to terrorist networks, such as Al Qaeda, which continue to attract aspiring and violent extremists from abroad, including Canada. Canada has investigated and continues to investigate individuals who are suspected of having traveled to the region for the purpose of training or engaging in insurgent and terrorist activity, and who may ultimately return to their countries of origin, or other Western states, as combat-trained and experienced terrorists.

• (1635)

[English]

We are aware that Parliament has been seized with issues surrounding suspected insurgents held in detention and their alleged mistreatment at the hands of Afghan authorities. On this matter, CSIS has looked into our own activities in Afghanistan as they relate to the transfer of detainees.

I can confirm that when requested to do so by Canadian Forces, CSIS interviewed a number of suspected insurgents captured by, or in the custody of, the Canadian Forces prior to their release or transfer to Afghan authorities. All of the interviews we conducted took place under a structured process administered by the Canadian Forces, primarily in order to assist with the identification of detainees.

At the time, the Canadian Forces looked to the service for our cultural knowledge and experience in carrying out effective interviews for intelligence purposes. The decisions to transfer detainees to Afghan authorities, however, were not made by CSIS.

[Translation]

CSIS has not conducted any interviews of any suspected insurgents in Canadian Forces custody since 2007, partly because the Canadian Forces themselves have built up their own capacity to conduct interviews.

[English]

It is important to point out that in Afghanistan, as in Canada and everywhere else the service operates, our personnel are bound in every instance by applicable laws, ministerial directives, and internal policies. Our activities are also subject to the full review of the Security Intelligence Review Committee, SIRC, and the inspector general of CSIS. Both report regularly on our activities, either to Parliament in the case of SIRC or to the Minister of Public Safety in the case of the inspector general.

[Translation]

In closing, I would simply wish to impress upon the committee the importance of the service's contribution to the success of Canada's and NATO's overall mission in Afghanistan.

As parliamentary and public deliberations around these important matters continue, I would like to remind everyone that CSIS personnel are proud to serve our country professionally and with great dedication both in Canada and abroad, and willingly assume the varied risks involved in the type of work that we do.

Thank you, Mr. Chair, for the opportunity to appear before this committee. I will be happy to take your questions.

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

[English]

Go ahead, Mr. Dosanjh.

**Hon. Ujjal Dosanjh:** Thank you very much, Mr. Coulombe, for coming to testify. I have just a couple of questions.

You said that CSIS has not conducted any interviews of suspected insurgents in Canadian Forces custody since 2007. When in 2007 did you cease conducting interviews?

**Mr. Michel Coulombe:** It was the fall of 2007, in October or November.

**Hon. Ujjal Dosanjh:** That was the time around which the detainee transfers were halted, as you may know from the debate that's been going on.

[Translation]

**Mr. Michel Coulombe:** Yes, Mr. Chair.

[English]

**Hon. Ujjal Dosanjh:** Yes.

Can you tell us when you first conducted the interviews? Also, how many detainees do you believe CSIS interviewed over the years that you've been there, until 2007?

• (1640)

**Mr. Michel Coulombe:** Mr. Chairman, in terms of the number of detainees we have interviewed,

[Translation]

that is a question I am not going to answer because, in my opinion, it could compromise national security and the security of our employees on the ground in Afghanistan.

[English]

**The Chair:** Thank you, Mr. Coulombe.

Go ahead, Mr. Dosanjh.

**Hon. Ujjal Dosanjh:** Sir, this is my last question, and then I'll share my time with my colleague.

Can you explain to me how it might breach the national security of the country? I wouldn't force you to answer the question, but just explain to me how and why it would breach national security.

**Mr. Michel Coulombe:** I believe revealing the number of interviews gives a window in terms of our capacity on the ground

and it could give an idea of the number of people we would have deployed in theatre.

**Hon. Ujjal Dosanjh:** Thank you.

**The Chair:** Go ahead, please, Mr. Rae. You have approximately five minutes.

**Hon. Bob Rae:** Thank you.

Mr. Coulombe, in the third paragraph you talk about the work you do in terms of gathering intelligence. Would you regard NDS as your partner? Who do you work with? What agencies of the Afghan government do you work with most closely?

[Translation]

**Mr. Michel Coulombe:** As you know, Mr. Chair, normally, the service neither confirms nor denies the existence of agreements with foreign agencies. However, we have publicly acknowledged that we are in Afghanistan. The service has decided to say that it has come to an agreement with the NDS. This is the Afghan government partner with which we work.

**Hon. Bob Rae:** I understand completely that you are in a difficult position. I was a member of the Security Intelligence Review Committee. So I am well aware of the service's concerns. However, I believe that is important for us to know certain things, such as whether you were aware that the NDS was going to interrogate individuals that you were transferring to them.

**Mr. Michel Coulombe:** First, Mr. Chair, as I mentioned in my opening remarks, the service does not transfer detainees.

**Hon. Bob Rae:** I understand that, but, when you interrogate someone and then transfer them as result of an order from the commanding officer, do you then receive information from the NDS about the person that you have transferred?

**Mr. Michel Coulombe:** No, Mr. Chair. Once the individual is transferred to the NDS, that individual is subject to a legal process. The service received no specific information about the people that had been transferred.

**Hon. Bob Rae:** No example comes to mind? You said you had agreements with the NDS. So you share information, such as if you are made aware of threats. You have examples. Given the circumstances, you are trying to protect the interests of our troops and the civil forces in Afghanistan.

Is it possible that you might get information from the NDS that came from a person transferred to them as a result of a Canadian decision?

**Mr. Michel Coulombe:** Yes, it is possible.

**Hon. Bob Rae:** In that case, would you have any idea at all about the techniques, tactics or means used by the NDS to get information from a person?

**Mr. Michel Coulombe:** Actually, we would have no idea of the techniques or methods used in the detention centre to get information.

**Hon. Bob Rae:** Were you aware of everything there is in writing? You heard what the representative of Human Rights Watch said in her testimony earlier. Were you aware of the existence of all the reports? A large number of reports, including those by the state department in the United States and by the UN, mentioned that torture was occurring in the NDS and the Afghan prison system.

**Mr. Michel Couombe:** Yes, Mr. Chair, the service was aware. We monitor the reports, including those from Amnesty International, governmental and non-governmental organizations, among others.

**Hon. Bob Rae:** Is it possible that you received information obtained as a result of mistreatment inflicted by the Afghan national security forces?

• (1645)

**Mr. Michel Couombe:** It is possible. The service always notes things like that.

**Hon. Bob Rae:** What do you do with the information, given the possibility?

**Mr. Michel Couombe:** Mr. Chair, the service implements procedures that begin with the departmental directive. It is very clear: the service must not rely on intelligence obtained by torture. We also have internal policies governing the procedures to follow when the service has doubts about the way in which information has been obtained.

**Hon. Bob Rae:** Did the service have the opportunity for frank discussions with your Afghan partner about all these reports about torture and about the fact that questions could be asked? How is it possible that it could go on in a service that is a partner of the NDS? [English]

**The Chair:** Thank you, Mr. Rae.

[Translation]

**Hon. Bob Rae:** Did you have discussions with the NDS on this specific matter?

[English]

**The Chair:** Very quickly.

[Translation]

**Mr. Michel Couombe:** Yes. You have to understand that the NDS has several sections. One of them, that might be called a correctional service, enforces the law, has the power of arrest and includes an intelligence service. We deal solely with the intelligence service. But, yes, we do have discussions with the NDS on the matter.

[English]

**The Chair:** Thank you.

Mr. Bachand.

[Translation]

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

Welcome, Mr. Couombe.

Could you tell me if you have been to Afghanistan?

**Mr. Michel Couombe:** Mr. Chair, I went to Afghanistan in September 2009.

**Mr. Claude Bachand:** Did I hear you correctly earlier when you said that CSIS began interrogating people in 2002 and stopped doing so in 2007?

**Mr. Michel Couombe:** That is correct.

**Mr. Claude Bachand:** So can you tell me what you went to Afghanistan to do in 2009? Is that a state secret?

**Mr. Michel Couombe:** As I said, the interviews we conducted were not the main reason for our presence in Afghanistan. We conducted the interviews at the request of the Canadian Forces, but the service's main role in Afghanistan is to support the mission, in other words, to gather intelligence to protect civilians and military personnel, and to alert us to potential threats from those operating in the region against Canada.

**Mr. Claude Bachand:** You said your agents were there from 2002 to 2007. So I would like to know why you went back in 2009.

**Mr. Michel Couombe:** Mr. Chair, I think I need to clarify something. We stopped conducting interviews with detainees in the custody of the Canadian Forces in 2007, but we were still in Afghanistan, and we continue to carry out our main mandate. We did not leave Afghanistan in 2007.

**Mr. Claude Bachand:** Okay, but you no longer interview prisoners, is that right?

**Mr. Michel Couombe:** That is correct.

**Mr. Claude Bachand:** Did you train or instruct your personnel, on the ground, on how to treat prisoners? Was that part of your role?

**Mr. Michel Couombe:** We do not give specific training on how to treat prisoners because that is not part of the service's role or mandate.

**Mr. Claude Bachand:** Your agents were in contact with them; they questioned them.

**Mr. Michel Couombe:** At the request of the Canadian Forces, our agents conducted interviews for the specific purpose of verifying the identity of detainees.

**Mr. Claude Bachand:** Very well.

Could you describe the techniques you used to question the detainees?

**Mr. Michel Couombe:** Once again, Mr. Chair, I feel that answering that question, which has to do with operations, could compromise national security, as well as the physical safety of our personnel in Afghanistan.

**Mr. Claude Bachand:** I understand that.

Nonetheless, could you assure me that the techniques CSIS used to question prisoners respected Canadian laws?

**Mr. Michel Couombe:** As I mentioned in my opening remarks, Mr. Chair, all of CSIS's activities, both in Canada and elsewhere, must respect applicable laws, ministerial directives and internal policies.



**Mr. Claude Bachand:** At one point, here on Parliament Hill, CSIS was accused of outsourcing torture to a certain extent. If I understand correctly, when you asked an uncooperative prisoner to comply and he did not, he was transferred by the Canadian Forces, not you. More specifically, was it a Canadian Forces commanding officer who transferred the prisoner to the NDS?

• (1650)

**Mr. Michel Coulobme:** I am not familiar with the process that the Canadian Forces used to make the ultimate decision. I cannot answer that question, Mr. Chair.

**Mr. Claude Bachand:** How do you respond to those who say that CSIS outsourced the brutal questioning of prisoners to the NDS? Do you agree with that statement?

**Mr. Michel Coulobme:** Mr. Chair, I would say that those people are wrong.

**Mr. Claude Bachand:** You said you cannot say certain things without compromising national security. I would imagine that CSIS, like all of the organizations operating in Afghanistan, sent reports and emails on the work it was doing to people here in Canada.

**Mr. Michel Coulobme:** Yes, Mr. Chair.

**Mr. Claude Bachand:** You are also aware that a committee may be formed to examine all of those emails. Would you say that those emails and reports are completely consistent with your testimony today?

**Mr. Michel Coulobme:** I personally did not review all the emails. However, the service is currently working with Mr. Iacobucci, and will cooperate to facilitate any process that may be put in place to examine the documents in question.

**Mr. Claude Bachand:** How are you working with Mr. Iacobucci?

**Mr. Michel Coulobme:** If, as part of his mandate, he requests documents that he needs for his review, we will provide them.

**Mr. Claude Bachand:** I have another question for you. Did the information exchanged between CSIS and other Canadian organizations respect information-sharing agreements and laws?

**Mr. Michel Coulobme:** Again, Mr. Chair, as I mentioned, all of CSIS's activities respected Canadian laws, including the sharing of information with other federal departments.

**Mr. Claude Bachand:** Did you share information with other countries?

**Mr. Michel Coulobme:** Again, Mr. Chair, answering that question could compromise national security, in my opinion.

**Mr. Claude Bachand:** Do you make similar remarks when you are being questioned by the Security Intelligence Review Committee? You are aware of the lingering doubts regarding CSIS—espionage and such. Parliament set up a review committee. Have you reported to the committee on your operations, and is that information available in the report that was tabled before Parliament?

**Mr. Michel Coulobme:** Mr. Chair, I will answer no to the first part of that question, about whether we give a similar presentation. SIRC has access to all the information on CSIS's activities. So the situation is not at all the same.

**Mr. Claude Bachand:** So you cannot tell the review committee that you cannot answer a question because it would compromise national security.

**Mr. Michel Coulobme:** Precisely.

**Mr. Claude Bachand:** You read the review committee's reports before they were submitted to Parliament. Were the reports consistent with the information that CSIS reported to the committee, the information that was presented in the report tabled before Canada's Parliament? Were they consistent with the testimony you gave before the review committee?

[English]

**The Chair:** Thank you, Mr. Bachand.

[Translation]

**Mr. Michel Coulobme:** Yes, the SIRC reports are consistent.

[English]

**The Chair:** All right. We'll move to the government side.

Mr. MacKenzie, you have seven minutes.

**Mr. Dave MacKenzie (Oxford, CPC):** Thank you, Chair.

And thank you to the witness for being here today.

I must say, on behalf of Canadians, we owe a great deal of our safety and security in this country to CSIS and its members. Sometimes we think it would be nice to know everything that agencies do to protect us, and at the same time we have to understand that intelligence gathering is a broad and very basic part of what you do, but it's not necessarily open to the public. I would just offer to you that our close friends to the south are going through a situation right now where they're going to debate whether or not their intelligence was as good as they had hoped or would want. I think we're in that position right now of saying that we haven't experienced what they have, and maybe some of it is a credit to CSIS. I know that Canadians who will see this do appreciate in fact the role that CSIS plays, so I'd like to pass that on to you.

You've been very open about being in Afghanistan since 2002. Does CSIS have a legal mandate to operate in foreign jurisdictions, and if so, can you tell us a little bit about what that mandate might be?

•(1655)

[Translation]

**Mr. Michel Coulombe:** Mr. Chair, the service has the legal mandate to carry out its activities outside Canada. Under section 12 of the Canadian Security Intelligence Service Act, the service shall gather information on activities that may on reasonable grounds be suspected of constituting a threat. But there is no restriction on where that information can be collected, be it in Canada or abroad. In short, the Canadian Security Intelligence Service Act sets out that legal mandate.

[English]

**Mr. Dave MacKenzie:** I'm not going to get into the SIRC aspect. One of my colleagues will talk about that. But can you tell us, in a general sense, the overview mechanisms that exist for CSIS?

[Translation]

**Mr. Michel Coulombe:** Yes, I already mentioned SIRC, which has a mandate to examine how the service carries out its activities. There are a number of components to that. SIRC can investigate complaints and review any agreements with foreign services. In fact, the committee has access to whatever information it needs to do its job.

The inspector general, who reports to the Department of Public Safety, is charged with overseeing all of our operations and ensuring that they respect our internal policies; he has to submit an annual report to the Minister of Public Safety.

In addition, section 21 of the Canadian Security Intelligence Service Act requires the service to apply to a judge of the Federal Court for certain powers, such as electronic surveillance.

Of course, the service is also subject to reviews by Treasury Board, the Privacy Commissioner, the Information Commissioner and the Commissioner of Official Languages.

That is an overview of the various mechanisms in place to review CSIS's activities.

[English]

**Mr. Dave MacKenzie:** Thank you.

As an organization, CSIS is an intelligence-gathering organization. That's its primary function. Would I be correct in that?

**Mr. Michel Coulombe:** Correct in the sense that it is the collection and the analysis of that intelligence, and dissemination to government.

**Mr. Dave MacKenzie:** So CSIS does not lay charges in Canada?

[Translation]

**Mr. Michel Coulombe:** That is correct. The service has no law enforcement authority. We cannot arrest people. We do not collect information for the purpose of gathering evidence that can be used in criminal proceedings. That is not our mandate.

[English]

**Mr. Dave MacKenzie:** And that's true—

**The Vice-Chair (Hon. Bryon Wilfert):** You have 30 seconds.

**Mr. Dave MacKenzie:** —whether it's in Canada or abroad?

**Mr. Michel Coulombe:** That's correct, Mr. Chairman.

**Mr. Dave MacKenzie:** Okay.

One of the areas that's always of interest is that when you deal with foreign agencies, there has to be a trust—and I'm not asking for the names of foreign countries or agencies—that the information you collect will be held in confidence or else the trust is broken and the relationships don't exist. Is that a fair assessment?

**Mr. Michel Coulombe:** Yes, that's correct, Mr. Chairman. It's known as the third-party rule, under which we will not disclose information received from another agency without the consent of that agency. And we expect the same from the agency with which we have an agreement.

**The Vice-Chair (Hon. Bryon Wilfert):** Mr. MacKenzie, you have another minute.

**Mr. Dave MacKenzie:** Okay.

I guess it's fair to say, when you're asked a question you don't feel is appropriate to answer, that deals not only with CSIS but also with our international partners, or even with our national partners. Would that also be a fair assessment?

•(1700)

**Mr. Michel Coulombe:** It is a fair assessment, but it does have a direct impact on CSIS or our ability to fulfill our mandate. If by answering a question we lose the confidence we need from a partner and that partner stops sharing information that would be relevant to our national security, there is a direct impact on us—on CSIS, but also on Canadians in general.

**Mr. Dave MacKenzie:** Could there also be a direct impact on civilians, in both Canada and other countries, in revealing some of that information?

**Mr. Michel Coulombe:** Mr. Chairman, there is a direct impact, in the sense that, again, if it impedes our ability to fulfill our mandate, it could increase the risk for people living in Canada or Canadians living abroad.

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

Thanks, Mr. MacKenzie.

We'll move to Mr. Harris, please.

**Mr. Jack Harris:** Thank you, Chair.

Thank you, sir, for joining us today.

I'm interested, and maybe you can clarify something here. You referred to an agreement with the NDS and our partner, the Afghanistan government. Was it a department of the government or a department of the NDS? Can you clarify that?

**Mr. Michel Coulombe:** Yes, Mr. Chairman. For the service, the partner is the NDS, the security intelligence component of the NDS.

**Mr. Jack Harris:** Thank you.

Now, again, to get that straight, you talked about the intelligence side and the corrections side. We've had some evidence that the Canadian Forces, for example, might interview somebody and then pass them over to the NDS for further questioning. Do you have any idea who would do that kind of questioning? Would that be the intelligence side or the correctional service side? It can refer to two.

[*Translation*]

**Mr. Michel Coulombe:** Mr. Chair, I am not exactly sure who at the NDS would be able to further question individuals.

[*English*]

**Mr. Jack Harris:** You indicated you played no part in the decision to transfer prisoners, or your organization didn't, but I do note that CSIS is actually copied on some of the documents that Mr. Colvin referred to in his testimony last fall, which talked about transfer arrangements and concerns raised by Mr. Colvin, for example, and about what was happening there.

Why would CSIS be copied? And would they have any role in advising with respect to the NDS, for example, and their ability to comply with international obligations?

[*Translation*]

**Mr. Michel Coulombe:** No, Mr. Chair, the service does not have any role in advising the NDS on how to fulfill its mandate, with respect to detention, for example. Why would the service receive copies of those documents? The service is part of the whole-of-government mission. The service needs to be kept aware of what other departments are doing and of the overall situation in Afghanistan. We do not work in isolation, we are part of the government-wide mission.

[*English*]

**Mr. Jack Harris:** As an intelligence agency, if nothing else, your organization would have been well aware of the notoriety of the reputation the NDS had for using torture methods in conducting interrogations. Given that, what did your agency do to ensure that any information it was receiving from the NDS wasn't achieved by those means?

[*Translation*]

**Mr. Michel Coulombe:** As I said earlier, Mr. Chair, the service has clear ministerial directives on the use of information that might have been obtained through torture. Furthermore, the service has internal policies on how to handle information that might have been obtained through the torture or ill-treatment of detainees, and we adhere to those policies. I should also point out that all of the service's activities, including the use of information obtained by any foreign agency, are subject to review by either the inspector general or SIRC.

[*English*]

**Mr. Jack Harris:** That really is not an answer to my question. I understand that there are policies. I'm aware of them.

What I wanted to know is how do you determine, how do you assure yourself, that the information you have received wasn't obtained by those means on an individual case, or is it like the government has said, that it's unless we have evidence that this particular piece of information was obtained by a particular form of torture? Did you have to have that level of knowledge? The

reputation is very clear. It seemed to be well known. How did you make that judgment?

● (1705)

[*Translation*]

**Mr. Michel Coulombe:** Mr. Chair, that does not necessarily mean that every piece of information that comes to us from an agency and that raises questions about human rights was obtained through torture. There are other techniques. The information could have been obtained from communications intercepts, physical surveillance or the agency's files. Sometimes, by reading the information, we can determine that it comes from an intercepted telephone conversation, for example. But, in the case of information obtained through questioning, if it is clear or if there is a suspicion that the information was obtained by means of torture, there are various things we can do. We can go back to the source to try to obtain more information on the conditions in which the information was obtained.

At the end of the day, if there is still a doubt, the ministerial directive is clear: the service cannot rely on that information. The information then becomes the subject of what we call a caveat, indicating that it cannot be used because it might have been obtained through torture or ill-treatment. The information is then labelled as such to ensure it is not used in the future.

[*English*]

**Mr. Jack Harris:** Did you have any such doubts and were there any procedures used with information received from the NDS?

[*Translation*]

**Mr. Michel Coulombe:** Yes, Mr. Chair.

[*English*]

**Mr. Jack Harris:** I was interested in your question, and I'm glad to see that intelligence collected by CSIS was able to lead to disruption and dismantling of insurgent networks planning IEDs—I think that's obviously one of your roles—and car bomb attacks against military and civilian targets.

My question, and I'll not ask you to reveal your source, but did CSIS directly undertake this disruption or dismantling, or was this being done through passing information onto the Canadian Forces, or to the NDS, for example?

**Mr. Michel Coulombe:** No, dismantling or any enforcement action wouldn't be done by CSIS. We would pass the information to the Canadian Forces. It could be to the local authorities to do what they have to do to act upon the information. Our role is only to collect that information.

**Mr. Jack Harris:** Did I understand you to say that you did at times obtain information from the NDS on Canadian detainees after they had been passed over to the NDS? Maybe I misheard you. I don't know.

**The Chair:** Thank you, Mr. Harris.

**Mr. Michel Coulombe:** I just said it was possible, but I cannot say if we did. I would have to check, but it is a possibility.

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

We'll go to Mr. Abbott, please.

**Hon. Jim Abbott (Kootenay—Columbia, CPC):** The discussion by Mr. Harris and our previous discussion about SIRC has raised a couple of questions in my mind.

I note that you have confirmed that your policies do not permit the transfer of individuals for the purpose of interrogation by unlawful means. I'm just concerned.

I'm not trying to put Mr. Rae on the spot here, but here we are with SIRC.... He was with SIRC from 1998 to 2003.

You were collecting information from 2002 to 2007, so there's obviously an overlap there. I would think that Mr. Rae would be interested in possibly verifying the kind of position...when we receive information from an organization like SIRC. You have said in your testimony that your activities are also subject to the full review of the Security Intelligence Review Committee, SIRC, and the inspector general of CSIS, both of which report regularly on the activities, either to Parliament, in the case of SIRC, or to the Minister of Public Safety, in the case of the inspector general.

I would really think that with the verification, particularly, of somebody who sat on SIRC, the veracity of the kind of information you're giving to us would be of the highest possible value to this committee. We have received an opinion by the previous witness and we've received an opinion by Mr. Colvin and others—and they have been valid opinions, I'm sure. To put that opinion on the same level as someone like yourself, testifying on behalf of CSIS, particularly with the support you have, the absolute total control of the Canadian people through SIRC and through the inspector general.... This is of the highest value.

I just wanted to make a comment. I find it a little frustrating that when we receive opinion from people, which is totally valid opinion, that's fine...but then we have a tendency, or some people in this room have a tendency, to take that opinion and not put your position at a significantly higher place. I just wanted to underscore that, because I think the comment, the testimony, that we have received from generals, from the chief of staff, and from generals who have been on the spot, from top civil servants who have years and years and years of history and training and dedication to our great nation, has never received the value against the other testimony and opinions of other people. I simply wanted to put that on the record.

My friend Mr. Obhrai has some good questions for you, but I did want to make that statement. I don't know that you would necessarily want to comment on my statement, but you're welcome to, I'm sure. I did want to put that on the record. It is not a question of equal value to testimony. Your testimony and the testimony of people like the generals, in my judgment, is of a significantly higher value and carries far more weight.

Thank you.

• (1710)

**The Chair:** Thank you, Mr. Abbott.

Mr. Obhrai.

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

I want to thank you very much for coming.

Your position over here is very difficult. I'll be very blunt about it. We're talking about detainee questions here. The Department of Foreign Affairs, the Canadian Forces, and the whole-of-government approach has been to work on improving the systems and everything.

We just heard testimony from a previous witness. Of course, we had a lot of questions about their testimony as well—somebody's opinion. But to bring a CSIS intelligence individual here and try to get something out of you, which the other government of Canada....

I want to join with my colleagues, all of us on this side, and say what a tremendous job you are doing, and highlight the fact that you do operate under supervision. You are not someone who has a free hand. You have rules and procedures, including the overview of this thing.

I have a very simple question here—

**The Chair:** You have six seconds.

**Mr. Deepak Obhrai:** Thank you.

It's very simple....

**The Chair:** Thank you, Mr. Obhrai.

We'll move to Mr. Dosanjh.

**Hon. Ujjal Dosanjh:** Thank you.

Thank you, Mr. Coulombe. You obviously are in a very difficult situation when you say it's possible that you receive some evidence that may be tainted, or received or adduced as a result of torture. And you say there's a caveat, and you have processes and procedures to deal with it, and that caveat means that the information is never to be used.

Let me put a hypothetical situation to you. If you have information that may assist you in dismantling an IED or disrupting other dangerous activity for our forces, though that information may be adduced as a result of torture, how do you deal with that dilemma on the ground?

**Mr. Michel Coulombe:** A very difficult question, Mr. Chair.

Again, everything we do is....

[*Translation*]

We still work from the ministerial directives as our premise. One of the directives stipulates that we cannot rely on information obtained through torture. I have to tell you that I am very reluctant to answer any hypothetical questions because there are any number of possible scenarios. In situations such as that, we would try to obtain further information and not base our actions solely on information that was obtained through torture. However, we have a responsibility to act if we believe that not doing anything could result in the loss of life, whether the lives of Canadian military personnel, civilians or even military personnel from other NATO countries in Afghanistan. But we would never act based solely on information we believed to be the result of torture.

•(1715)

[English]

**Hon. Ujjal Dosanjh:** But if you try to seek similar evidence from sources not tainted by torture and you're unable to get that because you're in a battlefield in a country torn asunder by war, but you have this nagging feeling that something may happen to our forces, you indicate that if you try, but if you can't find it, you do act on that original information if you think the lives of our troops are at risk. Do I understand you correctly?

[Translation]

**Mr. Michel Coulombe:** No, I said the basic principle was to respect the ministerial directive that states that we cannot rely on information obtained through torture. Again, I do not want to discuss hypothetical situations.

[English]

**Hon. Ujjal Dosanjh:** But these are real scenarios that probably happen every day on the ground, sir. I don't want to put words in your mouth. I've not been to the battlefield myself. I was in Kandahar and limited to the base itself. It's a very dangerous situation.

What do you do if you can't find corroborated evidence independently of the tarnished evidence? What do you do? Do you do nothing?

**Mr. Michel Coulombe:** Mr. Chair, I think the average Canadian would not accept that its intelligence service do nothing and let Canadian military or civilians be killed because we did nothing.

**Hon. Ujjal Dosanjh:** Thank you.

It is a very difficult situation.

Do you have any questions?

**The Chair:** Mr. Rae.

**Hon. Bob Rae:** Because Mr. Abbott has raised my name in vain, I was tempted to quote my friend, Mr. Obhrai, and say these are very serious charges, but I won't do that.

**Voices:** oh! oh!

**Hon. Bob Rae:** I just want to be clear about the role of SIRC, Mr. Coulombe. Typically, SIRC hears and responds to complaints with respect to the conduct of the service, with respect to an individual case that comes before it. I wasn't even going to bother, because I can't ask you whether there were any cases that SIRC reviewed with respect to the issues in Afghanistan, but I'm going to ask you that anyway and see what you say.

I can just tell Mr. Abbott that I'm not in a position to answer that question either. I just want to see whether Mr. Coulombe answers it.

**Mr. Michel Coulombe:** Thank you, Mr. Rae.

Mr. Chair, first of all, I don't want to get into a debate. I'm not an expert on the review, and having Mr. Rae here, I don't want to get into an argument on it. But he's right.

[Translation]

SIRC investigates complaints, but if I am not mistaken, pursuant to section 54, SIRC can also decide to investigate any matter and

submit a report to the government, on its own initiative or at the minister's request.

[English]

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

We'll go back to the government side.

Mr. Obhrai, welcome back.

**Mr. Deepak Obhrai:** Thank you.

Let's go back to the question that I was bringing over here—the whole Government of Canada approach. You are not in Afghanistan by yourself. Foreign Affairs is there. Canadian soldiers are there. CIDA is there. Everybody is there. Collaboratively, you're all working together toward meeting your mandate.

In this whole collaboration that you're doing over there, naturally we all work together to ensure, as you stated, that Canadian Forces and the Canadian people all work for the international law, international rules, and whatever is prescribed down here. Nobody—and I want to make this very clear—has accused any of the Canadians or anybody else of not working within the laws that they have been mandated for. Witnesses have come and stated that very clearly, all of those who are on the ground, including yourself. That must be made very clear to all Canadians.

Having worked with all the individuals together collaboratively and everything, your opinion on.... And we are going to go on with this detainee issue because that is the issue this side over here is seized with, or obsessed with, as my colleague says, and not other issues. But within your context, and I know it's tough—I don't know if it's national security or not—you have felt that all of the Government of Canada's approaches, including soldiers and everybody else, including you doing your part of your work in talking to detainees, in working with NDS and everything.... I want your impression. In your opinion, have we done an excellent job and maintained our international obligations and laws? Did you feel at any given time that there was deficiency in the Canadian approach?

•(1720)

**Mr. Michel Coulombe:** If you're asking for my opinion—

**Mr. Deepak Obhrai:** You're the guy from CSIS, so....

**Mr. Michel Coulombe:** Based on my interaction, and having been there, yes, everybody is doing what they have to do according to international laws and everybody is doing the utmost to fulfill their respective mandates.

**Mr. Deepak Obhrai:** Good. It's good that it's on the record, including yours.

Frankly speaking, and I want to say this because my colleagues are all obsessed with this whole idea.... I don't have any other questions to ask you, but I want to thank you very much for doing a wonderful job.

**The Chair:** Thank you, Mr. Obhrai.

We'll go back to Mr. Hawn. You have about two minutes.

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

Does CSIS work with the NDS or other agencies over there in a training role at all, to raise their capacity at all, or is that just beyond the scope right now?

**Mr. Michel Coulombe:** We have provided training to the NDS, to the counter-terrorism capacity building.

**Mr. Laurie Hawn:** Obviously without breaching anything, are they receptive to that training? Have you seen progress with them?

**Mr. Michel Coulombe:** Yes, and I would like to point out that the training we provided them was not in terms of improving, for example, trade craft. The training we provided was management training and how to manage a security intelligence service in a democracy.

**Mr. Laurie Hawn:** Meaning in a way that would respect human rights and so on.

**Mr. Michel Coulombe:** Exactly.

**Mr. Laurie Hawn:** So we have been making efforts to raise the human rights approach of the NDS, by CSIS as well as everybody else?

**Mr. Michel Coulombe:** Yes.

**Mr. Laurie Hawn:** You work in a lot of tough situations. I don't mean just you personally, but you personally and CSIS. How do you compare Afghanistan with other areas that you may have worked in yourself?

**Mr. Michel Coulombe:** Probably along with Somalia, it's the most dangerous place at this time.

**Mr. Laurie Hawn:** And the challenge of working in a place like Somalia or Afghanistan, which have had varying periods of complete lawlessness—it's a very tough situation, with very tough people to deal with, and a complete lack of human rights and so on.

We're starting from ground zero. Is it fair to say it will take a while to get them up to a level that would be anything that would be remotely acceptable to what we consider in the west?

**Mr. Michel Coulombe:** It's obvious, yes, it will.

**Mr. Laurie Hawn:** I'm not asking you for a scale of one to any number, but in your view, have we made considerable progress in those areas since the mission started?

[Translation]

**Mr. Michel Coulombe:** I will say a few words about our relationship with the National Directorate of Security. I can say that, as an intelligence service, it has made some progress.

[English]

**The Chair:** Thank you, Mr. Hawn.

Monsieur Bachand.

[Translation]

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

I would like to pick up on our earlier discussion, Mr. Coulombe. You said that the review committee had two mandates: to examine CSIS's activities and to investigate complaints. You said that when appearing before the committee, you could not tell the chair or the review committee that you could not answer a question because of national security concerns. That is what you said, is it not?

**Mr. Michel Coulombe:** When we appear before the members of SIRC in a forum that is not public, the members have access to all the information we have.

• (1725)

**Mr. Claude Bachand:** I asked you a second question about the SIRC report submitted to Parliament. You said that it was consistent with the discussions that took place behind the committee doors. Is that not a contradiction? If you say that you cannot answer my questions because of national security concerns, and then I see those questions in the SIRC report, is that not a contradiction? Was the SIRC report censored before it was submitted to Parliament?

**Mr. Michel Coulombe:** Mr. Chair, you would have to ask the SIRC members that question. Instead of presenting an exact account of what was said, the public report may simply contain the committee's deliberations or findings. You would still have to ask SIRC, that is not part of our responsibilities.

**Mr. Claude Bachand:** To your knowledge, have all the SIRC reports since 2002 included a section on Afghanistan?

**Mr. Michel Coulombe:** Frankly, Mr. Chair, I cannot answer that. I would have to look at all the annual reports since 2002. I cannot say whether that was the case every year or every two years. I do not know.

**Mr. Claude Bachand:** Who appears before SIRC and answers their questions? Is it you or the person who was supposed to come in your place? Who represents CSIS before the review committee?

**Mr. Michel Coulombe:** Do you mean when the committee investigates a complaint or when it decides to review one of the service's activities, specifically?

**Mr. Claude Bachand:** I mean when the committee does a review. Yes, the committee investigates complaints, and I would imagine that, in those cases, it is the police officer identified in the complaint who appears before the committee. But when the committee reviews one of CSIS's activities, someone has to appear before the committee to represent CSIS. Who is that person?

**Mr. Michel Coulombe:** It can be anyone who may have relevant information and who SIRC wants to see.

**Mr. Claude Bachand:** Very well.

Let us compare CSIS's structure with that of the RCMP for a moment. We know that a commissioner is at the head of the RCMP. Is CSIS headed by a commissioner as well?

**Mr. Michel Coulombe:** No.

**Mr. Claude Bachand:** Who is at the head of CSIS?

**Mr. Michel Coulombe:** A director.

**Mr. Claude Bachand:** What is the current director's name?

**Mr. Michel Coulombe:** Richard Fadden.

**Mr. Claude Bachand:** Is Mr. Filmon the chair of the review committee?

**Mr. Michel Coulombe:** Yes, Mr. Chair.

**Mr. Claude Bachand:** I have no further questions.

[English]

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

We do have a couple more minutes.

Mr. MacKenzie.

**Mr. Dave MacKenzie:** This committee has dealt with issues of human rights. It seems to me that the whole issue has always been about human rights. Afghanistan is a country that some have described as medieval, and in a lot of other ways.

I can appreciate the levels of training you're talking about here, because that's very important, but it's a very difficult situation in Afghanistan. It has to be, when the Afghan people do not feel that human rights have ever been an issue with the Taliban. When they kill policemen, their military, and civilians and children, it has to be a difficult situation to try to have the officials in Afghanistan move to the level of the western world in respecting human rights.

I'm wondering if Canadians should expect that to occur overnight. You answered to one of my colleagues about the training you do. Training them at the level we're trying to train them from the top down, is that not a huge step for Canada to take and for the civilian body in Afghanistan?

[*Translation*]

**Mr. Michel Couombe:** Yes, Mr. Chair, it is indeed a huge step for Canada to try to help democratic institutions gain ground in Afghanistan. The service is doing its part as far as the intelligence service, the NDS, is concerned.

● (1730)

[*English*]

**The Chair:** Thank you, Mr. MacKenzie.

I have one quick question. If CSIS were brought before SIRC on a complaint and SIRC found that CSIS had acted improperly in any way, without listing the details of the rebuke, would they say anything in their annual report?

**Mr. Michel Couombe:** No.

**The Chair:** So it would never be disclosed.

**Mr. Michel Couombe:** Neither the nature of the complaint or the complainant would be disclosed. I don't want to put Mr. Rae on the spot if he wants to correct me...but no.

**The Chair:** All right.

Thank you very much for attending here today. We appreciate the work that the Canadian Security Intelligence Service does in keeping Canadians safe at home and abroad, and for your role in Afghanistan, here in Canada, and around the world. We thank you for your professionalism here today as well.

We are adjourned.

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