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Chair

Mr. Dean Allison

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• (1530)

[English]

The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)): This meeting is pursuant to the order of reference of Thursday, March 3, 2011, Bill C-61, An Act to provide for the taking of restrictive measures in respect of the property of officials and former officials of foreign states and of their family members.

I want to welcome both of our ministers here today. We have Minister Nicholson and Minister Cannon. Thank you very much for being here today to talk about the bill. We also have Ms. Nölke who's going to talk, if we have any follow-up questions, for the department, along with Mr. Kessel and Ms. McKey. So thank you very much for being here.

I don't know who's going to go first, but, Minister Cannon, if you'd like to start, you have 10 minutes.

Mr. Nicholson, are you going to speak as well?

Hon. Rob Nicholson (Minister of Justice): I'm going to have a few words to say as well.

The Chair: All right. We'll do that, and then, as is our custom when we have ministers here, we'll have 10-minute first rounds and then we'll go to clause-by-clause after that.

Minister Cannon, thank you for being here. The floor is yours, sir.

[Translation]

Hon. Lawrence Cannon (Minister of Foreign Affairs): Thank you, Mr. Chair.

Colleagues, I am here to speak today on Bill C-61, the Freezing Assets of Corrupt Regimes Act. Recent events in North Africa and the Middle East have brought home again how quickly the political landscape can change and how important it is that we have the tools in place to be able to respond quickly and effectively to those changes.

[English]

In order to be able to support efforts at democratic reform, it is critical that Canada has the ability to ensure that misappropriated property may be frozen to allow for its return to the new authorities and people of the state concerned. It is also critical that we support efforts to hold accountable foreign officials who have misappropriated state funds or inappropriately acquired property as a result of their public office or family, business, or personal connections.

Colleagues, this legislation responds to those needs by creating a new and effective means to allow us to respond to requests from foreign states to freeze the assets of corrupt former officials.

[Translation]

The draft legislation would permit the government to freeze the assets or restrain property of foreign politically exposed persons upon receipt of a request from a state, and where the Canadian government has determined that the state is in turmoil or political uncertainty. Assets would be frozen for a five-year period, which would provide the foreign state with an opportunity to initiate the necessary proceedings to allow for seizure and forfeiture of assets situated in Canada. The time period is open to renewal.

[English]

Colleagues, it may be asked why we are creating new legislation instead of imposing sanctions under existing Canadian law or simply proceeding with existing criminal law instruments. If the United Nations Security Council has not imposed sanctions, then Canada can use the Special Economic Measures Act to impose unilateral sanctions. This tool, however, requires a high threshold to be met, namely that there has been a grave breach of international peace and security leading to a serious international crisis.

• (1535)

[Translation]

Another possible tool at the government's disposal is the Mutual Legal Assistance in Criminal Matters Act. This act however requires a foreign state to produce evidence of criminal activity or the existence of legal proceedings or a court order in order for Canadian authorities to be able to act on assets situated in Canada. In the case of a newly emerging governing authority, it may be difficult to come by such evidence on short notice.

[English]

The time required to meet the procedural steps under the existing criminal law-based framework in situations where speed is of the essence could potentially allow the foreign national in question to conceal or deplete the assets in question.

Our existing sanctions legislation, while effective in addressing states of concern, is not the appropriate mechanism when the state in question is in the process of democratic transformation. In these cases, using the sanctions tool would punish the whole state and not solely the corrupt former regime. This would not be an appropriate response at a time when the Government of Canada and the international community wish to express their support for democratic transition.

Both sanctions in criminal law-based proceedings will remain available for use in appropriate circumstances. However, it is clear that we need a nimble legislative regime that will permit asset freezes in circumstances where our existing tools are not sufficient.

This new legislation includes a number of procedural and substantive safeguards. It provides that freezes are imposed for a limited period of time and automatically expire if they are not removed. It provides authority to the Minister of Foreign Affairs to recommend the revocation or repeal of an order or regulation if the person does not meet the definition of a politically exposed foreign person. It also provides authority to the Minister of Foreign Affairs to issue permits for dealing with certain property, exempt certain persons and property, issue certificates in cases of mistaken identity, and provide exemptions for reasonable expenses.

It is important to note in this context that this bill is about assets preservation, not seizure. The bill allows the government to help a foreign state, without bypassing ordinary due process in relation to asset restraint or forfeiture.

We encourage the move toward political, economic, and social reforms to create more free and open societies. We are working with other states to promote freedom and democracy in the region, and we stand ready to support peaceful and legitimate aspirations for democracy and justice.

Tyranny and corruption cannot go unchallenged. The Government of Canada does not want to say no to requests for help from emerging foreign democracies, especially when speed is of the essence to avoid allowing a former dictator to conceal or deplete assets that rightfully belong to his people and are needed to assist the state in its recovery from misrule. The government also wants to ensure that individuals who have misappropriated state funds can be held accountable for their ill-gotten gains.

This bill will allow us to meet these important objectives. We hope the committee can swiftly return this bill to the House so we can put this important new tool into place as quickly as possible.

Merci. Thank you.

The Chair: Thank you, Minister Cannon.

Mr. Nicholson.

Hon. Rob Nicholson: Thank you very much.

I'm pleased to be here today to speak to you about Bill C-61, the Freezing Assets of Corrupt Regimes Act.

As you know, the Government of Canada is strongly committed to working with emerging democracies. These countries in turmoil need assistance, not sanctions. We must work together to ensure that

states emerging from repressive regimes are given the assistance they need.

This bill, if passed, will allow Canada, at the request of a foreign state, to take rapid action to freeze the assets of persons who have been in positions of power in their home states and may have misappropriated state assets or illicitly acquired funds by virtue of their office or family connection and moved these to Canada. The capacity to restrain assets would extend to the family and close associates of such people.

This new legislation is designed to assist states experiencing political turmoil by allowing for the rapid preservation of assets. As such, the legislation would allow a country that finds itself in difficult circumstances the time and opportunity to make a request to Canada for the recovery of assets using existing Canadian laws. Due to the situation these states may find themselves in, their authorities may not be able to gather the evidence required to use existing Canadian legal mechanisms that govern asset restraint and recovery.

The proposed legislation is about preservation so the assets are not dissipated during the time it may take a state to put itself in a position to take legal measures in Canada. Bill C-61 will close a gap in Canada's existing capacity to assist a foreign state that finds itself in a position of turmoil with the restraint of assets.

The law in Canada, as enacted by Parliament, requires that certain preconditions be met before alleged criminal proceeds located in Canada may be restrained at the request of a foreign state. In particular, the Mutual Legal Assistance in Criminal Matters Act, which governs such requests, requires that a foreign state provide Canada with a restraint or seizure order issued by their criminal court ordering the freezing of specified property as proceeds of crime. The foreign order may then be filed with the Canadian courts and executed as if it were an order issued in Canada. The Mutual Legal Assistance in Criminal Matters Act also requires that charges be laid in the foreign state against the person whose property is sought to be restrained and/or frozen.

Canada's laws on mutual legal assistance reflect our commitment to assisting our treaty partners in fighting criminality while at the same time protecting the interests of individuals.

As I am sure you will agree, these legal safeguards are fundamental to Canada's criminal justice system. In requiring that a foreign state provide Canada with sufficient information to meet these safeguards, we are protecting the rule of law, a principle that is paramount in a free and democratic society.

Canada's proceeds of crime regime, as set out in our Criminal Code, also allows for the seizure and restraint of alleged proceeds of crime and their subsequent forfeiture. However, our domestic proceeds of crime regime also incorporates preconditions to seizure and restraint. Under our domestic proceeds of crime regime, assets may only be restrained if the following conditions are met: the assets to be restrained and/or frozen are identified; there is evidence linking the Canadian assets to an alleged criminal offence in Canada or in the foreign state; and there is evidence that the Canadian assets are the proceeds of crime.

Generally speaking, our criminal forfeiture system is conviction based. In order to obtain a forfeiture order, the law requires a successful criminal prosecution unless the offender has absconded or died. In those cases an application for criminal forfeiture of the tainted property is possible.

The preconditions of our domestic laws may be difficult for a transitioning state that is still in turmoil to meet. The information and evidence required by Canada may simply not be made available in time to prevent the assets from being diverted or depleted. The Freezing Assets of Corrupt Regimes Act would permit a freezing order without requiring the evidence of criminality or specific identification of assets that now exist under current law.

• (1540)

The freezing of assets would automatically expire after five years, although the period could be extended if circumstances warrant.

To ensure that companies are not put out of business while assets are subject to restrictive measures, the legislation would incorporate safeguards that would permit persons to carry out specified activities or transactions. Where necessary, it would also ensure that affected persons and their dependants have access to reasonable expenses.

We believe that the Freezing Assets of Corrupt Regimes Act will address the existing gap in our laws. We want to ensure that any misappropriated property or illicitly acquired assets are preserved in order to provide a foreign state with the time that is necessary to seek their return and make them available to the new authorities and the people of the states in turmoil.

Thank you, Mr. Chair.

• (1545)

The Chair: Thank you, Ministers.

Before we get started, I want to clarify our time. I believe we have you two ministers for an hour.

Hon. Lawrence Cannon: Until 4:30.

The Chair: Thank you. I wanted to clarify that.

We're going to start with Mr. Rae, for 10 minutes.

The floor is yours, sir.

Hon. Bob Rae (Toronto Centre, Lib.): I thank the ministers for being here. I will be sharing my time with my colleagues.

I want to say to both of the ministers that as far as our party is concerned, we support the objectives of this legislation. We still have some questions about it, but we do not intend to throw any huge monkey wrenches into the works.

We are concerned about the speed with which this legislation has been produced and also the speed with which it is expected to be carried. But I can say from my experience, both provincially and federally, that I know there are times when this has to be done because of the urgency of the situation and the nature of the assets in question.

We will be suggesting in the course of the clause-by-clause that there be a provision in the act that provides a sunset for the legislation and for the establishment of a committee that would look at the relationship between this legislation and the other pieces of legislation that both ministers have referred to. I think there should be a way to simplify what is being put forward.

I hope the government can consider that proposal. I certainly will be discussing it with my colleagues in committee as we go forward.

Anybody can answer the questions I have. The definition of a foreign state, under clause 2, obviously means a country that isn't Canada, but also any of its political subdivisions or agencies.

To deal with this sort of situation, you're dealing with a period of transition, in which case some of these states won't necessarily have stable governments. Are there any other criteria you can think of applying that would somehow define what the state of the government making this request would have to be?

Do you see what I'm getting at, Mr. Kessel?

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

I think the important aspect of this particular clause is first of all to understand that we are being requested by a foreign state that is not in turmoil, as such. We have a state that is engaging in normal activities—it's not a Libya, for instance, which is falling apart—in which case we could have local officials who are functioning in the same way as when our authorities in Canada deal with local authorities in other countries on mutual legal assistance issues.

I think we should distinguish clearly that we're not dealing with a country that is a failed state. We're dealing with a country that is functioning and that is in the process of reviewing its own books to determine whether former officials, current officials, are asking us, Canada, for assistance. We're dealing with a functioning state.

Hon. Bob Rae: Let me give you a couple of hypothetical examples. You can help me out as to which door we would knock on—whether we knock on the SEMA door or whether we knock on another door or this door.

You have a situation, let's say, in Egypt or Tunisia, where essentially provisional governments have been formed. You might say the state is not in turmoil, but neither you nor I are in an exact position to determine the degree to which that's the case.

Let me just see if I'm correct. Essentially what the law says is that you "may" make regulations. There's nothing in this act that requires the Government of Canada to act upon a request of anybody who calls himself the government of a state. Is that correct? You can assure me on that front, at least?

• (1550)

Ms. Sabine Nölke (Director, United Nations, Human Rights and Economic Law Division, Department of Foreign Affairs and International Trade): Yes, that's quite correct. One of the conditions under which the orders or regulations can be made requires the Governor in Council to consider if the making of the order or regulation is in the interests of foreign relations. That, of course, includes an element of considering who is asking the question and is it in the interest of foreign relations to respond to that question. That is precisely the kind of consideration you are looking at that would come into play. Is the authority making the request an authority the Government of Canada and its allies and the international community are prepared to deal with?

Hon. Bob Rae: Just one more question and then I'm going to switch to *mon collègue*. Is it your view that a decision that is made under clause 4, or other decisions that are made by the minister, are reviewable by the Federal Court?

Mr. Alan H. Kessel: Yes.

Hon. Bob Rae: Thank you.

[Translation]

Mr. Bernard Patry (Pierrefonds—Dollard, Lib.): Thank you very much.

Minister, thank you for being here today.

Mr. Cannon, if I have understood your opening remarks, you said that assets would be frozen, first, at the request of a foreign state and, second, if our government determined that the state is in turmoil or political uncertainty.

[English]

It looks like a non-evidence-based rule, in a sense. In the end, they say it's at the request of the foreign country. For sure, when you have a state like Tunisia, it's safe to say now it's going well and there aren't that many problems. But Egypt did not request to freeze the assets of the former president. With this bill, would you be entitled to freeze the assets without the request of the new government of Egypt? Can you do it on your own?

[Translation]

Hon. Lawrence Cannon: No, a request needs to be made. We cannot do it on our own.

Mr. Bernard Patry: You cannot act on your own.

In Libya's case, was there a United Nations Security Council resolution that enabled you to freeze Colonel Gadhafi's assets? With this bill, would you have been able to do so without the Security Council's approval?

Hon. Lawrence Cannon: Yes, we could have done so under this bill. If the bill had already been adopted, it would have enabled us to freeze those assets.

Mr. Bernard Patry: So that means that, in Yemen's case, which is also...

[English]

a failed state in a certain sense, you will be able at that time in Yemen—if there are major problems there—to freeze their assets without the request of a new government there?

[Translation]

Hon. Lawrence Cannon: Yes, but this would always be done in the interest of Canada's international relations with that state. That is the key guiding principle.

[English]

Mr. Bernard Patry: You talk a lot about safeguards in Bill C-61. What about the safeguards for...? Can you give me the definition of a family? Where does it stop? You could have cousins, you could have.... Where does the family stop?

My second question is this. Let's say you have someone in Tunisia who is co-owner of a hotel, a big...*une chaîne d'hôtels*. I don't want to name any one of them, but let's say it's 50-50. What's going to happen? You freeze the hotel? What's going to happen about safeguards?

[Translation]

Hon. Lawrence Cannon: I will ask our experts to field that question.

[English]

Ms. Sabine Nölke: Concerning the family members, there's no precise definition in there. It will be as prescribed in the regulations. In other words, the family members will be specifically listed. If regulations are made under this legislation, they will come attached to a list of names, and the family members will be defined through that list, so there's no doubt as to which people the legislation applies to.

If I understand the question about the ongoing business correctly, and please correct me if I am wrong, the legislation would permit the minister to issue a permit that would allow the ongoing running of a business to ensure two things: that the asset is not unduly depleted or run down because it's not able to function, but also so that Canadian interests in question would not be unduly affected. In other words, if it's an ongoing business, Canadians will still be able to be employed by the business, would be able to receive their salaries, would be able to work for the business.

The Chair: You have 30 seconds.

Mr. Bernard Patry: Okay. I just want to know from Minister Nicholson, did you request an opinion from the Canadian or Quebec bar associations on this issue?

Hon. Rob Nicholson: I did not personally, no.

• (1555)

Mr. Bernard Patry: Thank you.

The Chair: Thank you.

We're now going to move to Mr. Dorion.

[Translation]

Mr. Jean Dorion (Longueuil—Pierre-Boucher, BQ): Minister, as you know, over the last month and a half, we have been asking the government to take action on an almost daily basis. Our main concern is that the assets in question, especially those belonging to the Trabelsi family, will be liquidated and that the profits will be invested in tax havens.

You said that you do not have the means necessary to take action and comply with this request. However, we believe that section 354 and part XXII of the Criminal Code, as well as section 54 of the United Nations Convention Against Corruption, provide Canada with the necessary means. Earlier, you said that Canada does not have this kind of authority. Perhaps the experts can explain to us why that is.

[English]

Ms. Erin McKey (Senior Counsel, Criminal Law Policy Section, Department of Justice Canada): The United Nations Convention against Corruption provides, in article 54, an obligation on states to assist. But the obligation is to assist in compliance with your domestic laws. The domestic law that allows us to implement the obligation under the United Nations Convention against Corruption is the Mutual Legal Assistance in Criminal Matters Act. This was described in some detail by Minister Nicholson in his opening remarks about the requirements to restrain. This also requires that charges have been laid in the foreign state and that we have a restraint order we can file with the Canadian court to have the order enforced.

Similarly, section 354 of the Criminal Code, which establishes the offence of possession of the proceeds of crime, allows for restraint to be taken under part XII.2 of the Criminal Code. But there needs to be evidence of criminality, identification of assets. Minister Nicholson ran through the pre-conditions of the code requirements that would govern restraint, and this evidence is necessary in order for our domestic legal mechanisms to take effect, whether they be pursuant to the Mutual Legal Assistance in Criminal Matters Act or the Criminal Code regime. We require the evidence of criminality to be produced before the court.

Hon. Rob Nicholson: Sometimes the details aren't available at the time these come to our attention. On the asset side, there may be no identification of assets. The state in question may not be in a position to produce the kind of criminal documentation that we expect in the ordinary case. This is why it was necessary to produce a bill like this that will fill in those other situations where a state may not be able to get that kind of information to Canada in time to make sure that those assets aren't dissipated or moved elsewhere.

[Translation]

Mr. Jean Dorion: Once the Tunisian government has issued through Interpol international arrest warrants against some Ben Ali family members living in Canada, does the Canadian government

not then consider their assets to come from questionable sources? Does the Criminal Code of Canada not enable the government to seize or freeze those assets in order to make sure that they cannot be sold and so on?

[English]

Hon. Rob Nicholson: It's not just a question of being suspicious. We have to be exact. This could affect businesses, or it could affect innocent bystanders. You want to be as specific as possible about what we're taking action on. You have legislation introduced by the Minister of Foreign Affairs last week that will give us the flexibility to freeze those assets so that the paperwork and the investigations can continue and action can be taken.

But this will complement. It doesn't supplant or take over any other area. This is in addition to the tools that are already there, whether they be under the Special Economic Measures Act or the Mutual Legal Assistance in Criminal Matters Act. This will be another tool to make sure that individuals who misappropriate or steal money aren't going to be able to get away with it.

• (1600)

[Translation]

Mr. Jean Dorion: Mr. Nicholson, you talked about innocent people who could be affected by the application of the current legislation. To my knowledge, the bill does not contain any mechanisms that enable those whose assets are frozen to request a decision review. Is there such a mechanism?

[English]

Hon. Rob Nicholson: In answer to one of the earlier questions, it was indicated that the review of the courts is possible on these. There's a flexibility given to the minister to make sure that innocent people aren't inadvertently caught up and do not find, for instance, that their wages are not being paid. So I think there's flexibility within the legislation. Again, there are safeguards. Among others, it's not a permanent freeze; it's up to five years. These are all safeguards that I think are appropriate.

[Translation]

Hon. Lawrence Cannon: Mr. Dorion, I do not have the French version with me, but section 5 enables anyone to question or to...

[English]

Do we have it in French?

[Translation]

We only have it in English.

Mr. Jean Dorion: It begins as follows: "The Minister may issue to any person in Canada [...]" Is that what you are talking about?

Hon. Lawrence Cannon: Yes, and there is also clause 13, Mr. Dorion.

Mr. Jean Dorion: Yes. It states the following: 13. (1) A person who is the subject of an order or regulation made under section 4 may apply in writing to the Minister to cease being the subject of the order or regulation on the grounds that the person is not a politically exposed foreign person.

Hon. Lawrence Cannon: Subclause (2) also relates to this.

Mr. Jean Dorion: How are we protected from the possibility of a foreign state abusing this legislation to make life difficult for people living here—people opposed to the regime and perhaps campaigning for democracy—to complain to the Canadian government and to create problems for those people in terms of their assets?

[English]

Ms. Sabine Nölke: The criteria set out in clause 4, which provides that the Governor in Council must determine that “the making of the order or regulation is in the interest of international relations”, is a fairly widely cast provision that allows the government to make the assessment, for example, of whether the request was improperly made, was made for purely political purposes or for vindictive purposes, or was otherwise improperly made. In this case, clearly, it would not be in the interest of foreign relations to accede to such a request.

Mr. Alan H. Kessel: I would just add that if you take a look at the way the legislation is drafted, there's a delicate balance between the value systems we have as Canadians, which were built over many centuries and which basically prevent governments from arbitrarily removing, without substantial evidence, assets that belong to citizens, meaning that you would go to a judge and that independent authority would sanction that removal, and the need to act quickly in an environment where we have a world that is in turmoil.

The delicate balance was created by only freezing those assets rather than seizing those assets—seeing the difference is a really major point—and also by having provisions in the act to allow those who feel hard done by to approach the courts for review. Also, the period of time for which the government may freeze is five years. Clearly, it could be renewable, but it's five years. In other countries, such as Switzerland, it's 10 years. Still others have different periods of time.

[Translation]

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): In the bill, you use the wording “politically exposed foreign person” and you list people covered by that definition. Then, you state the following: “If a foreign state, in writing, asserts to the Government of Canada that a person has misappropriated property [...]” You talk about a foreign state, and I am wondering who can ask the government to freeze assets. Can a diplomat do so?

• (1605)

[English]

Mr. Alan H. Kessel: The state can speak through its diplomats. Usually that's done through a diplomatic note to Canada. We would in fact be speaking with that foreign state once they had provided us with a note indicating their wish to have the assistance of Canada. Usually in that note they will indicate the individuals. And if we're fortunate, they will also provide some direction as to where the assets may be.

The Chair: Thank you very much.

We're now going to move over to Mr. Obhrai.

Sir, you have 10 minutes.

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

Thank you, Ministers, for coming. Your coming here indicates how important this bill is and that we should take timely action as quickly as possible.

Mr. Chair, I'll be sharing my time with my colleagues here.

I have a question of clarification, Mr. Chair. After the ministers leave, we go to clause-by-clause. As my Liberal colleague has said, he wants to put in a sunset clause, while the NDP colleague stated during the briefing that he wanted to put in a review clause. There is a difference between a review clause and a sunset clause. Therefore, I am asking my question.

I am not asking you; I'm asking them.

Could you clarify what having a sunset clause would do to this bill, as distinct from having the NDP amendment, which says “a review after five years”? Could we have clarification on that, so that when we go through clause-by-clause consideration we have a clear understanding of what the amendments coming forward are?

Hon. Rob Nicholson: A sunset clause, Mr. Obhrai, means that it basically would disappear in the absence of legislation extending it a little bit, as the Anti-terrorism Act provisions were extended with respect to recognizance and special investigations.

I think this is solid legislation. If you decide that you have to have a review within five years, that will be a decision of the committee, but I think your examination of this, and certainly ours, is that this is an important addition to the tools Canada needs to make sure that people who misappropriate or steal money, people who are in the business of corrupt activities, don't find a safe haven here in Canada.

It has been demonstrated, I believe, by the minister and the government that there is a gap. We're suggesting that this will close that gap and make sure that the tools are available to the minister to act and to act quickly. This is what we want.

In the end, we want to get this legislation because of the turmoil that exists in various parts of the world; we want to have the tools on hand. I don't think it's necessary to start sunseting these. I don't try to kick work over to some future set of parliamentarians. I feel sorry for people like you, Mr. Obhrai, and Mr. Wallace and Mr. Goldring and others, looking at it again in five years. I suppose it would just confirm what you know today, that this is important legislation. But again, that would be a decision of the committee to make.

But this is solid legislation that I think is an important tool for Canada to have.

Mr. Deepak Obhrai: But understanding what you just said here, a review is better than a sunset clause.

Hon. Rob Nicholson: Definitely it is.

Mr. Deepak Obhrai: A sunset clause would kill this bill. A review would not kill—

Hon. Rob Nicholson: A review is better than a sunset, without question.

Mr. Deepak Obhrai: Am I right in my assumption?

Hon. Rob Nicholson: You're almost always right, Mr. Obhrai, and this would be certainly no exception to the general rule on your opinion, yes.

Some hon. members: Oh, oh!

Mr. Deepak Obhrai: Thank you.

The Chair: Mr. Lunney.

Mr. James Lunney (Nanaimo—Alberni, CPC): Thank you very much.

First, I appreciate the ministers being here on short notice to address Bill C-61, and also the officials. I know they've been acting quickly. They briefed the opposition members on Thursday and have briefed many of us this morning already on this technical bill.

First of all, I just want to say by way of review that we have a legal framework that governs our relations with other nations on some of these criminal matters. We've already mentioned the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. There is also the Mutual Legal Assistance in Criminal Matters Act, and we have mentioned the Special Economic Measures Act, SEMA.

Those things normally govern our affairs, but we have seen a need to act quickly because of the rapid changes around the world. It seems that, for the pace at which things normally move around here, this has gone very quickly. While on the surface it looks as though it is quickly, I know officials have been working very hard analyzing what has been done around the world with many of our democratic partners.

Can you give us some idea how this legislation compares with what many of our Commonwealth or other democratic partners are doing?

• (1610)

Ms. Sabine Nölke: Switzerland has in place very similar legislation to this, although it allows the quick freezing for up to ten years, so their time period is a little bit longer than ours.

The United States has the capability of quick freezing assets through the tool of the executive order. This is not a tool that is available to us. Just by way of example, the United States issued a presidential order a week ago Friday freezing the assets of named members of the Gadhafi regime prior to the passage of the UN Security Council resolution that required UN member states to do so. They were able to do that with a very nimble tool that they have in their particular kit.

The EU has a similar tool, which also does not require an evidentiary basis for an asset freeze. Once the EU passes a directive ordering their member states to freeze those assets, it is binding on all EU member states at the same time. So our democratic partners have very similar tools already in place. We are simply using the Canadian legislative framework to do what they're doing through different ways and means.

Mr. James Lunney: Thank you. I have a second question.

Because things are happening and changing so quickly on the international scene, we have seen nations in which you have an authority in place and you have a prime minister or in some cases the entire cabinet dismissed, and it may be that within a week or two that you see another change and they're gone and somebody else appears in those positions.

When you're triggering this kind of action, who actually asks or makes the request on behalf of another state? And how do you make those determinations?

Hon. Lawrence Cannon: I'll let the lawyers answer that, but I would suspect that we maintain relations with a foreign state under international law. We recognize these foreign states, and that's the very reason why we have diplomatic relations with a foreign state. In terms of a determination, that is a guiding feature. But so also is the international community. We could point out a number of states with some differences.

My colleague from the Bloc was mentioning that if, for instance, we are not assured that the requesting state is stable, or if a state is somewhat rogue, obviously we'll make a determination, under the guise of our legislation, as to how we deal with our international relations with that country.

I'll see whether legally....

Mr. Alan H. Kessel: I think the question is a good one. It's not often noted that many countries change their cabinets on a frequent basis. One could look only at Italy in terms of the number of times they've changed. We deal with the government of the day; as long as we consider that government to be our counterpart, how a prime minister organizes his cabinet and who is in it is entirely up to that state. We just accept, when they ask us for something, that we will try to live up to it.

Mr. James Lunney: Thank you very much.

The last, quick question here is related to those assets. I think I heard a remark that we're hoping that if we're lucky, a request will come with some identification of assets.

When you're triggering a response like this and want to freeze assets, could you give us some idea of how this plays out? Is it the Office of the Superintendent of Financial Institutions that engages, and how exactly does that kind of thing roll out?

Hon. Rob Nicholson: It becomes a policing matter, and we rely, of course, on the RCMP. They get input from FINTRAC and other sources. It's the usual procedure, which you'd find ordinarily under the identification of criminal assets, that would apply to this bill as well.

This is one of the reasons for the bill, that sometimes you don't get as much information as you would like. Obviously, the more Canada is given, the more likely it is that it will have a successful conclusion or that we'll be able to freeze those assets. Again, it becomes a policing matter.

• (1615)

The Chair: Thank you very much.

We're going to move over to Mr. Dewar for the last question of the first round.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Mr. Chair, and thank you to our colleagues and to the people who have been working hard on this bill.

My first question would be to Minister Cannon, Chair.

When you were asked in the House about requests, one thing that came up in your response was that there wasn't a tool that you can use, that alas, there's a loophole. We're hearing that this legislation is to plug that loophole; that in the case of Tunisia or Egypt, you weren't able to act through SEMA, and that essentially what we're dealing with here is to give you that tool and the toolkit. Is that a fair assessment?

Hon. Lawrence Cannon: Yes, that's a fair assessment, colleague.

Mr. Paul Dewar: One of the things that had been asked at the time was if you had been asked formally by representatives of Tunisia or Egypt—but I think Tunisia was the focus at the time—to have assets frozen, the reality is that you wouldn't be able to have the assets frozen, is what I'm hearing you say. That's why we have this legislation in front of us. Were you asked by the Tunisian officials to freeze assets?

Hon. Lawrence Cannon: We were indeed asked by the Tunisian officials to do so. I think, if I'm not mistaken, it was at the very end of January, or in that period of time.

Mr. Paul Dewar: I'm trying to measure that with what I was hearing in the House. You weren't clear at the time, because I thought you were saying that you just didn't have the powers to do it. But I didn't get the clarity at the time. So you were asked in January, is what we'll say, for the record.

Hon. Lawrence Cannon: Basically, what occurred from there, Mr. Dewar, was there was an exchange of...a request from the Tunisian authorities in place. We took that. Minister Nicholson at the Department of Justice looked at the options. We came to the conclusion that obviously the foreign government in question—Tunisia—wasn't in a position to be able to give us the information that we needed to be able to proceed, and therefore we came quite quickly to the conclusion that we needed to have a tool that would enable us to do it.

You mentioned a United Nations resolution—

Mr. Paul Dewar: I didn't.

Hon. Lawrence Cannon: No, but I'm saying there are two ways here—

Mr. Paul Dewar: I know that. I'm just trying to clarify the record of account and why we have this in front of us, and you've established the fact that there's a void here; there's a loophole and we need to fill it. But I was just trying to figure out, because of the confusion in the House with your responses, whether or not you had been asked. You're telling me for the record that you had been asked by Tunisian officials, but not by the Egyptians?

Hon. Lawrence Cannon: No, not by the Egyptians.

Mr. Paul Dewar: Thank you for that clarification.

The other thing, I guess, on that note is this. I'm just going back to Mr. Patry's question, I think it was. We wouldn't need this if there is a UN resolution. Is that correct?

Hon. Lawrence Cannon: That is correct.

Mr. Paul Dewar: Okay. I want to clarify that, because I think there might have been some confusion around that.

The reason we need it in this, the instance of Tunisia and Egypt, is that we didn't have a UN resolution. That said, we also have the case of Burma, where we invoked SEMA with no UN resolution. So again, we have to establish here that there are times when SEMA can be used, when there is no UN resolution. Is that correct?

Hon. Lawrence Cannon: In the case of the Burma sanctions, we weren't freezing assets.

Mr. Paul Dewar: No, I understand. I'm just being clear here, because we're saying, coupled with the UN resolution, we can use SEMA. We can do this, no problem, but without it we need something else, and that's why we're here. I'm just trying to set the record straight on why we need this.

In terms of provisions in the bill, I will get to that now, and maybe the officials might help you here. In the case where you accept or reject an application, would you have to make known what the rationale for that was?

• (1620)

Hon. Lawrence Cannon: We certainly would have to make that known to the party that is asking us.

Mr. Paul Dewar: Okay. How would that be done?

Hon. Lawrence Cannon: Most likely through diplomatic notes.

Mr. Paul Dewar: And I'm assuming that would be confidential?

Hon. Lawrence Cannon: Yes, it is.

Mr. Paul Dewar: And when we had the briefing...I'm correct in saying that if there was a case where someone had a concern and they had appealed to you and you said, "No, I'm sticking with my decision", it would be subject to judicial review.

Hon. Lawrence Cannon: Yes.

Mr. Paul Dewar: So there's an attempt to do that.

I want to also note that as helpful as my friend, Mr. Obhrai, has been in telling you what we were proposing, it turns out we can do that ourselves. What I think we were saying at the briefing is clear. He's right on one count: I did suggest that we'd like to see a five-year review.

I think there is an opportunity here for compromise, and I suggest there is a way—I think we can work on this after, and I want to see what you might think of this—of doing both, and that is to focus the mind. You could have a sunset with a review. A review would happen before to decide whether or not you have a sunset.

I'm just thinking of your response to that, albeit you might be seen as an interested party, Mr. Nicholson, but that is a possibility. I'm just helping my friend, Mr. Obhrai, with the idea that it doesn't have to be either/or; it can be with that provision. I'll leave it for us to decide after.

If in fact then we have the resources of FINTRAC.... Maybe to you, Minister Nicholson, there's a concern, generally speaking, on how to track assets of people who have dubious human rights records. I'm just wondering. Many people ask me, quite rightly, if we knew these things were happening, if we knew this regime wasn't stellar, if we knew they had assets here, did we actually have an idea of how many assets were invested in Canada by, say, Gadhafi or Ben Ali, and if not, why not?

Hon. Rob Nicholson: I wouldn't get into the details of when and where assets are. It's a policing matter, and it probably was in the purview of the Minister of Public Safety, I would suppose, if anyone. We do all have an interest in not giving out too many details as to exactly when and where these are, for policing—

Mr. Paul Dewar: Of course, but you're confident that, if need be, you would have access to that data?

Hon. Rob Nicholson: My understanding is that the police in this country are quite engaged and focused on this type of activity.

Mr. Paul Dewar: The last question is to Minister Cannon.

One of our provisions in our sanctions with Libya, I believe, is on arms sales and prohibition. I just want to ask you this. It's been a couple of years since we have actually had a report on arms exports, for Parliament or for Canadians to be able to see. Can you tell us when we'd be able to see that? Is it coming?

If we can get an idea of when, because it's a couple of years since Parliament.... We used to report on arms exports, and we're seeing more and more of these instances where we have countries to which we might have regretted selling arms. I think the last report was in 2006. I'm not sure, and I can be corrected on that, but I think that would be important, particularly if we're putting sanctions in place on the prohibition of exports but we're not saying what the arms exports are.

Hon. Lawrence Cannon: I can promise that I'll be able to get you an answer on that, Mr. Dewar, when I come back to defend the estimates.

Mr. Paul Dewar: Okay, thank you.

Thank you, Chair.

The Chair: I want to gauge the committee. We've got our ministers for the next five minutes. I was going to have a question from Mr. Van Kesteren, Mr. Goldring, then Mr. Rae, and Mr. Dorion as well.

If we were to go with four questions, my question is this. Once the ministers leave, did we want some more questioning of the officials? We can continue on, if that's the case, or we can go right to clause-by-clause.

I just want to gauge where we're at, because I don't want to break up the order too much; I want to continue where we're going.

[*Translation*]

Mr. Jean Dorion: Perhaps we could introduce a motion. In the case before us, there does not seem to be a motion that requires a 48-hour notice.

The bill we are discussing today is extremely important. We, the Bloc Québécois members, have been demanding for almost a month and a half—I even did so at the end of January, in Strasbourg, at the Parliamentary Assembly of the Council of Europe—that the government freeze the assets of the Ben Ali family in Canada.

It is important to adopt this bill quickly if it is deemed to be appropriate. Of course, everyone knows that Parliament is in recess next week. Everyone also knows that we are perhaps in a pre-election period.

For these reasons, I wanted to suggest that the committee hold an additional meeting during the week of March 7, in order to study Bill C-61, An Act to provide for the taking of restrictive measures in respect of the property of officials and former officials of foreign states and of their family members, and that the committee complete its clause-by-clause study during the same meeting. Mr. Chair, there are not that many clauses involved. I think that we are perfectly capable of completing our study.

•(1625)

[*English*]

The Chair: We have our ministers here and we're going to continue the questioning with them. As far as motions, we'll deal with the motions after we're done with our questioning of witnesses.

We're going to go back to Mr. Van Kesteren and Mr. Goldring, and we'll finish up with Mr. Rae, and the ministers then can move on.

Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Chair.

A quick question for Mr. Nicholson. I'm curious about this. Obviously as this progresses I think you're going to find that people will find more creative ways to hide some of their money. When we had our meeting this morning and we were briefed on this act, we said obviously this would include things such as art.

I'm wondering to what extent the Canadian government would commit themselves to a police investigation, considering that there would be a sizable cost involved. Do we proceed to the point where we would try to find where this money is hidden? Are we going to be compensated for that type of investigation, if it becomes lengthy and costly?

Hon. Rob Nicholson: It's more of a policing matter, but my understanding is that the resources are already in place. We have ongoing cooperation with international organizations. INTERPOL is another good example of that. These organizations, these investigative tools, are in place, and we continue to cooperate with them.

It's part of our ongoing efforts to make sure Canada is not a repository for these types of assets. It's also part of our international commitment to work with others to make sure that the information is shared. I think we've come a long way, quite frankly, in terms of what I've been able to see, and it will continue. But the resources are there.

The Chair: Thank you.

Mr. Goldring, and then Mr. Rae.

Mr. Peter Goldring (Edmonton East, CPC): Congratulations, ministers and ladies and gentlemen, for the hard work you've put into this to bring this out in a proposal so rapidly. It's obviously a reflection of the urgency to proceed with it as soon as possible.

I'm looking at what my colleague was just saying, but in a little bit more depth. Under clause 8, "Duty to Determine", is it my understanding that all of those organizations listed have in place now a mechanism, so it would not be onerous on them to provide this investigative process on any application that's made? Does it cover, too, the various derivatives, identifiers, of various names? How thorough would that be?

Ms. Sabine Nölke: Thank you, Mr. Chair. I'll respond to this question.

Yes, those tools are already in place. In fact, clause 8 is an exact reflection of existing legislation and regulations dealing with asset issues, including both under the Special Economic Measures Act and the United Nations Act.

The mechanisms are in place. The initial point of contact certainly, for example, for financial institutions is—as was correctly stated earlier—the Office of the Superintendent of Financial Institutions. They put out a notice as soon as a regulation or order has been passed attaching the assets, and it reaches financial institutions immediately. Those are in the position to respond and they have the mechanisms in place. They scan the data banks as soon as new input is received, and they're quite capable of responding to this. They do this on a daily basis. They have done it, for example, with respect to the Libya regulations that were passed just last week.

Concerning the identity of the individuals, obviously since this legislation is based upon receipt of the request by a foreign state that

knows whose assets it wishes to see attached, we would rely to some extent on the provision of accurate names. There are some issues sometimes arising out of the transcription of names—for example, from the Arabic or from the Chinese. Transcriptions aren't always consistent, so yes, we would be looking at possible aliases. For example the name of Moammar Gadhafi, even in our media, is spelled three or four different ways on a daily basis. So we would need to ensure that all possible varieties of those names are captured.

Thank you.

• (1630)

The Chair: Thank you, and thanks, Mr. Goldring.

We're going to finish with a quick question from Mr. Rae.

Oh, Ms. McKey?

Ms. Erin McKey: I'm sorry. To add to the answer that's just been given in terms of how onerous this will be on the institutions that are identified, there are currently obligations on our financial institutions. The list is pretty much the same as what you see in this bill.

Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, in relation to politically exposed persons, we didn't make up the name for the purpose of this legislation. It's an internationally recognized class of suspicious or risky individuals per se. So there's already an obligation on banks and institutions in terms of due diligence.

There is a requirement under section 7 of that act as well for reporting suspicious transactions in relation to the assets of those individuals. So there's already an obligation. This may heighten their awareness once certain people are identified in particular, but they should be doing due diligence in relation to the general clause in any event.

The Chair: Okay.

Mr. Rae.

Hon. Bob Rae: I guess this is really a question for Mr. Kessel as much as it is for the minister, perhaps.

Clause 4 talks about getting a request to freeze the property. Then paragraph 4(1)(b) says, "by order, cause to be seized, frozen or sequestered".

Just to be clear, Mr. Kessel, there is provision in this act for the seizure of property. It's not true to say that all we do is freeze. Isn't that true?

Mr. Alan H. Kessel: We seize it in order to freeze it, meaning that we hold it so that it's not removed. But I'd ask my justice colleague to explain how this works.

Ms. Erin McKey: Actually, there is a capacity in the legislation for seizure in the event that it is the route the government.... This is framework legislation, so the order in council can contain any of the measures listed here. It may be that seizure is one of the mechanisms. I think what is contemplated, and you heard both ministers speak at the outset, is really a preservation regime to hold things in place. So if people have a yacht, we let them keep it. We don't want them to sell it and transfer the assets out of Canada. If they have an apartment block, there's an ability to create the exemption so that they can continue to have tenants and run it, but they won't sell it and transfer the assets out.

The contemplation, the objective, isn't for the Government of Canada, unlike under the terrorist financing regime, unlike under the proceeds of crime regime, where the thresholds have been met, to be seizing and managing property. The contemplation is that it will really be geared towards preservation. That isn't to say that were a particular case to become known and the assets that are located are, for instance, a bag of diamonds somewhere.... It may be that in certain instances you want to have an ability to seize. So it is in there. It's just the extent to which it will be invoked.

Hon. Bob Rae: When you think about it, this is quite a substantive degree of interference. Somebody gets on a list, is listed by a foreign government. I know the bill is called the Freezing Assets of Corrupt Regimes Act, which is all very well, but it doesn't apply only to corrupt regimes; it applies to any government. There's nothing that says any government can't deal with an issue that they say flows from the activities of any of their predecessors. They don't have to give you any court judgments. They don't have to give you any evidence with respect to exactly what this has done. They simply have to say, "We're giving you a request", and in response to that request, you can pass a regulation to seize that person's property.

This is quite a substantive piece. Now I know that we like to think that the government will not act in an arbitrary, wilful way. We like to think that other governments will be reasonable in their requests. Am I exaggerating the potential here? I hope I'm not, but it seems to me that on the face of it, it's pretty dramatic.

•(1635)

Hon. Lawrence Cannon: I'll refer you to paragraph 4(2)(b), which states, "there is internal turmoil, or an uncertain political situation, in the foreign state".

Hon. Bob Rae: It says "or an uncertain political situation". Well, I mean, an uncertain political situation.... We're in an uncertain political situation.

Hon. Lawrence Cannon: You are, not me.

Hon. Bob Rae: No, no, I'm very secure. My seat's as safe as anybody's.

Yes, that's stretching it a bit. I wouldn't say that.

You see what I'm getting at.

Mr. Kessel, do you see my problem? I'm not asking you to give an editorial opinion. That's one of the reasons I think we need to review this. I think we have to do something, but I think we have to think carefully about whether this is perhaps a measure we're taking because of an immediate situation. On reflection, we might want to think about it a bit.

Mr. Alan H. Kessel: I'll just refer to your point on clause 4. The first part, the *chapeau*, does say that the Governor in Council may make the order or regulation only if the Governor in Council is satisfied that (a), (b), and (c) have been met. So there's a certain requirement that you reflect as a government and as the Governor in Council before you act. It's not knee-jerk at all.

The Chair: Thank you. Thank you very much, Ministers. Thank you for your time today.

We're going to let the ministers step back from the table, and then we can get to clause-by-clause.

•(1635)

(Pause)

•(1640)

The Chair: Could I have everyone back to the table?

Presently we only have one addition, so my question to the committee is, are there going to be any other amendments, or is this the only amendment we're going to have? If there are no issues with clauses 2 through 19, I'm going to propose that we carry them in one fell swoop, if that's okay. Then we can get to Mr. Dorion's additional clause.

Does it sound okay for the committee to proceed in that fashion? I'm suggesting that we look at passing clauses 2 through 19 right in one fell swoop, unless there are any issues with any of those, and then we will come to Mr. Dorion's additional clause. Does that sound okay?

Some hon. members: Agreed.

The Chair: All right, then.

I'm going to call the question. Is there any discussion?

Hon. Bob Rae: Yes, just wait a second.

Can I just be certain that at the top of page 5 it talks about "authorized foreign banks, as defined in section 2 of the Bank Act, in respect of their business in Canada or banks to which that Act applies"? That refers to what we would call banks, what we know of as the big five or six banks?

Ms. Erin McKey: It's written in the opposite way and it looks more like banks.

Hon. Bob Rae: Okay.

The Chair: Are there any other questions on clauses 2 through 19?

(Clauses 2 to 19 inclusive agreed to)

The Chair: Thank you very much.

Let's move now to the amendment, and I'm going to get Mr. Dorion to read his amendment into the record.

[*Translation*]

Mr. Jean Dorion: The additional clause would read as follows:

That Bill C-61 be amended by adding after line 39 on page 8, the following new clause:

“REVIEW AND REPORT

20. (1) Within five years after this section comes into force, a comprehensive review of the provisions and operation of this Act must be undertaken by such committee of the Senate and of the House of Commons as may be designated or established by the Senate and the House of Commons for that purpose.

(2) The committees referred to in subsection (1) must, within a year after a review is undertaken pursuant to that subsection or within such further time as may be authorized by the Senate or the House of Commons, as the case may be, submit a report on the review to Parliament, including a statement of any changes that the committees recommend.”

Mr. Chair, since some of our colleagues have expressed this wish, I am prepared to accept that the five years be replaced by three years. Therefore, I suggest three years instead of five years, because this bill is strong. It would actually be very good if we could review it after three years.

[*English*]

The Chair: You're going to amend your new clause with three years?

Mr. Jean Dorion: *Oui*.

The Chair: Okay. Thank you.

I've taken names now for discussion.

Mr. Obhrai.

Mr. Deepak Obhrai: Mr. Chair, my first question is, if this clause says “Within five years after this section comes into force”, then within a year that would have been approximately six years, right? Five years and then a review and then one year to report back to Parliament. That's what this motion is talking about. Am I right?

Oui?

• (1645)

Mr. Bernard Patry: Yes, it's maximum. It could be six months or a year.

Mr. Deepak Obhrai: It's the max.

We have a problem with the three years, to be very frank with you. The minister already clearly said that we are going through the whole review process, we are doing all these things to this, and if every three years this committee has to be seized with this, it is just extra work and too much work. I think a five-year review is a pretty good one, with enough time for that. I don't have any problem with the five years added, as stated here, but three years is I think not.... We just cannot keep coming back and seizing on all these things. This is, as we have stated, filling in a gap of something that is there. There are concerns, questions. I think five years, as originally proposed...but three years for me is too short a time for us to keep coming back and looking at this.

The Chair: Okay.

On the list I've got Mr. Dorion and then Mr. Lunney.

[*Translation*]

Mr. Jean Dorion: Thank you, Mr. Chair.

I don't think that it would be too much work, since we have just adopted all the clauses of the brand new legislation in less than one minute after discussing it for an hour. So, I don't think that we will need to discuss it for hours every three years. I think that the review can be done very quickly.

However, if someone has something important to say about the legislation, they should have the opportunity every three years to bring it up and to say what provisions need amending.

[*English*]

The Chair: Thank you, Mr. Dorion.

Mr. Lunney.

Mr. James Lunney: Thank you, Mr. Chair.

Things change quickly, but inasmuch as it is new, what will happen is that as time goes by you will develop all kinds of people who will have opinions and probably witnesses who will want to come and express an opinion on how the law has been applied or if it's been applied and so on. I suspect we'll end up, if we do a review—or the committee in the future, whoever is on that committee, would probably end up hearing witnesses on it, and I imagine it would take a little more time than we have spent on it at the juncture, which is why I think it's appropriate to leave it at a five-year interval. You've got to give some time for these things to play out.

Second, I think Mr. Dorion does make a valid remark, though, when he makes a point about a one-year period of review. Maybe that's a little bit long. Why wouldn't we say six months, as opposed to a year, for a committee to review that, so we can shorten it up on that end?

And the way it's worded in this, “such committee of the Senate and of the House”—are we talking about a combined committee here? We had some discussion about this, it seems to me, recently. Is it a combined committee of the Senate and the House or both committees? Which committees in fact? The way this clause is worded, “such committee of the Senate and of the House of Commons as may be designated or established by the Senate and the House”, are we talking about a House of Commons committee, a Senate committee, both committees, a joint committee?

Mr. Bernard Patry: It you read it in French there is an “s” at the end; that's plural, and that means it's two committees.

Mr. James Lunney: So we need two committees to examine this?

Mr. Bernard Patry: Yes. That's the French.

Mr. James Lunney: Why is it necessary to have both committees review this? I would just ask for some discussion on that point.

Mr. Bernard Patry: The Senate will look at it—

Mr. James Lunney: So the Senate would—

The Chair: Hold on one second here.

I've got Mr. Rae on the list.

Hon. Bob Rae: I'd just say to my colleagues that I'm a strong proponent of the need for review, and the reason for that is because I think that we have to understand that this is an improvised piece of legislation. Governments have to respond quickly to situations, and you respond quickly with an improvised piece of legislation. But don't let anybody tell me that this is the product of deep consideration with respect to how this fits into the general framework.

I'll just make a couple of points.

One is I think the review should include a review of the United Nations Act, the Special Economic Measures Act, the Mutual Legal Assistance in Criminal Matters Act, as well as this legislation, so we see how all these things fit together and consider how it could be done better.

I have no problem with a joint committee. I think that's a possibility. I don't see how there's anything wrong with that. I think it's a committee that should have the ability to hold meetings and hearings in camera because I think there's a lot of information that needs to be received that's confidential. I don't know whether my colleagues in the New Democratic Party object to having a joint committee. I don't know. They may do it for their own reasons, and that's fine.

People have to appreciate that this is a new area that we're all learning about as time goes on. Three months ago, people wouldn't have said that if a government writes you and says, "I want you to seize the assets of Harry Jones", and you say, "Oh, okay, Harry Jones, we'll get them".... This has an unprecedented nature to it.

I'm prepared to pass the legislation, and our party is prepared to pass it, but we do think that the House has to take a deep breath after this is passed and ask how all these pieces of legislation fit together. Can we do it better?

I don't think that's unreasonable. We're not being difficult here. We're just saying we should be doing our work as legislators.

•(1650)

Mr. Deepak Obhrai: I have a point of order on the suggestion Mr. Rae has given.

Hon. Bob Rae: I like the officials, they do a great job, but we should be able to have a look at it.

Mr. Deepak Obhrai: Now you're bringing in all the legislation, all these things.

Hon. Bob Rae: Yes, sure.

Mr. Deepak Obhrai: I would ask you the simple question: would that fall under the purview of the justice committee or would that fall under the purview of the foreign affairs committee?

Hon. Bob Rae: We don't know.

If you actually read the wording, Deepak, it says "by such committee of the Senate and of the House of Commons as may be designated". So it's up to people to sit down and ask how they're going to do this, and we have to figure out a way to do it. I don't think it's unreasonable. I think it's perfectly reasonable.

Mr. Deepak Obhrai: I don't think it's unreasonable at all to do a review. We have agreed to the review, and I think the review is fine.

We don't see many problems. If you really added all the others to a review, it's fine with us. The only question I have is that three years is a little too early. I think we would need a little bit more time. I think five years is fine, and then what Mr. Rae has recommended is acceptable to us.

The Chair: All right. What I'm hearing is that Mr. Rae is suggesting a review of some other pieces of legislation that fit in with this, and what I'm hearing on the other side is that every three years doesn't seem very reasonable and practical, but maybe five

years would be reasonable to have a look at all these pieces of legislation.

Am I hearing that?

Mr. Lunney.

Mr. James Lunney: I think, Mr. Rae, if you start bringing in these other pieces of legislation—the Mutual Legal Assistance in Criminal Matters Act is a justice committee bill, and perhaps it brings in Public Safety as well, and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act—you're going way beyond Foreign Affairs and now into Public Safety and Justice.

I think you're going to end up complicating the composition of that committee. You already have two Houses of Parliament involved. It seems to me it would be better to keep it simple, but at least keep it at a five-year review and try to keep the terms of reference confined to the subject matter and that would be appropriate.

The Chair: Okay. Mr. Dorion.

[*Translation*]

Mr. Jean Dorion: Given the need to adopt this bill as quickly as possible, I am prepared to go back to our original suggestion that a review be conducted every five years. If that is the condition for adopting the bill, and adopting it quickly, I fully agree with the review being done after five years.

[*English*]

The Chair: Because we have an amendment on the original clause, do I have unanimous consent to drop the three years and go back to five?

Hon. Bob Rae: Not yet.

The Chair: Okay. We're making progress, but not quite so much. We have a little bit of bargaining—

Hon. Bob Rae: We're still bargaining. We're doing our business here, Mr. Chairman.

The Chair: All right. Who do I have on the list? I have nobody on the list.

Mr. Rae.

Hon. Bob Rae: I'm prepared to drop the Mutual Legal Assistance in Criminal Matters Act, although I do think all these things go together. I mean, you can tell me if I'm wrong, but I think there is a kind of architecture here that we're talking about.

I recognize that this is—if I can continue the analogy—another brick in the building. I would argue that it would be helpful if we could add the United Nations Act and the Special Economic Measures Act to the review of operation of this act, so that we do the three pieces of legislation together and not just this one on its own, so we can understand how these all fit together.

Mr. James Lunney: At least it's keeping it within Foreign Affairs.

Hon. Bob Rae: Yes, that's right.

The Chair: Okay. Mr. Dewar.

Mr. Paul Dewar: On the response to the joint committee, I'm not going to surprise anyone when I say I think this should be done by the House exclusively.

I've been on joint committees before, and there are occasions where it's relevant because of the way the place functions. We share responsibilities. If the Senate wants to take a look at this, they can. They can just pick it up and take a look at it. I'm not going to get in their way.

On Mr. Rae's point, I'm just trying to get my head around.... We're going to be looking at this particular piece of legislation, how it's functioning. If the review is thorough, then I agree with him that we should look at all aspects and what influences them.

My understanding—and maybe the officials can help us here—is that the way this legislation works, it actually is, as my dad used to say, adjacent to things. It's not incumbent, like SEMA. If we're doing a review of this legislation, right now, this is drawn from some of the facets of SEMA, but it's not directly implicated with SEMA.

Is that correct?

Okay.

I guess back to you, Bob. Are you wanting to look at this in terms of how these other pieces work in tandem? Is that what you want to do when you do the review?

• (1655)

Hon. Bob Rae: How do we decide, for example? I mean, the government has brought forward this legislation because they say SEMA doesn't work or work for this situation. One could argue that all you need to do is amend SEMA.

I'm sure you had these internal discussions before you decided on what the best option was to go to cabinet with. That's how I remember it used to be. I'd be surprised if that wasn't the case. I just think that in terms of our understanding this stuff...I can't imagine that we'd look at this and not look at SEMA at the same time, that's all.

Mr. Paul Dewar: Okay, thank you.

The Chair: I just want to remind everyone that although I've given some latitude, we are still talking about the three years. That's the amendment on the new clause. So we'll have to circle the planes—

Mr. Deepak Obhrai: On a point of order, Mr. Chair, he's withdrawn that.

The Chair: No, we need unanimous consent to do it.

I'll ask the question then. Can I carry the question on the three years? Can I do that so we can go back to the original one?

All right. Here's what I'm going to do. I'm going to ask the question on the amendment of the new clause, which just strikes five and makes it three years. I want to ask, then, if there's no more discussion on that particular issue, I'll call the question.

All those in favour of three years? Opposed?

[Translation]

Mr. Jean Dorion: Mr. Chair, is the time period set at five years?

[English]

The Chair: Yes, that's correct. If you vote against the three years, that means we're going back to the five years, the way it was originally written.

Can I call the question again, just to be clear?

All those in favour of putting three years in the clause? All those opposed to three years and going back to the five years?

(Amendment negatived)

The Chair: Okay, so we're back to the five years.

It is now five o'clock and we have another witness.

Hon. Bob Rae: What about my little amendment, Mr. Chair, my modest amendment to include the United Nations Act and the Special Economic Measures Act?

The Chair: Okay.

Mr. Deepak Obhrai: I'm going to agree with you, just like you voted for some of them. You have to say I'm a nice guy.

Hon. Bob Rae: You are. Every time I think of you, I say "let me call you sweetheart". That's what comes to mind.

Voices: Oh, oh!

The Chair: Mr. Rae, let's be very clear as to what that looks like and where you would like that in the particular amendment.

Hon. Bob Rae: It reads:

operation of this Act, and of the United Nations Act, the Special Economics Measures Act

Do you understand that?

[Translation]

Mr. Jean Dorion: Now we are talking about the United Nations.

[English]

The Chair: Hold on, I think we're close. We'll continue moving on.

Mr. Deepak Obhrai: Before you call the—

The Chair: Hold on one second.

I just want to tell you some of the concerns the legislative clerk has in terms of adding that additional amendment, Mr. Rae. You're talking about introducing two different acts that have no relation to this particular act.

• (1700)

Hon. Bob Rae: Sure they do. They absolutely do. They do because they're directly connected under the jurisdiction of the Minister of Foreign Affairs to exactly the same set of issues. I don't know why that would be a problem.

The Chair: Well, it's certainly not within the bill that we're looking at right now. I'm throwing that on the table.

Mr. Dewar.

Mr. Paul Dewar: Perhaps we could hear from our experts on this in terms of the UN Act, in particular. I understand SEMA, but just in terms of the relationship between the UN Act and this piece of legislation....

The Chair: Thank you.

Mr. Kessel.

Mr. Alan H. Kessel: I would just simply point out that the UN Act is really a facilitating flowthrough form of legislation that puts in place the mechanism by which we have to implement a UN Security Council resolution. It really is merely a mechanism for doing that.

Do you want to speak to the techniques involved?

Ms. Sabine Nölke: The United Nations Act essentially allows the government to implement non-military measures under article 41 of the charter of the United Nations. It's a vehicle with which we can comply with our international legal obligations under the UN charter to implement binding decisions of the Security Council.

The meat of what actually happens once the Security Council makes a resolution is contained in the regulations, because the act doesn't specify the types of measures that the Security Council can impose. It is very general on that point. So when we implement a decision, there's no discretion in that manner in what we implement. For example, the most recent Libya regulations were partially taken under the United Nations Act, and we implemented expressly what the Security Council obliged us to do. The discretion lies in how we implement, and for Canada that vehicle is the United Nations Act.

Some aspects of the Security Council resolutions are implemented automatically by operation of law. For example, travel bans are implemented through a mechanism that's already contained in the Immigration and Refugee Protection Act. But the United Nations Act, in and of itself, does not deal with any of the protection measures, asset seizures, restraints, or anything like that. That all comes into play when we pass regulations under the act.

The Chair: As a compromise, why don't we strike the UN and leave SEMA in there?

Hon. Bob Rae: That's fine. Another thing I was going to suggest as compromise, because I'm always looking for compromises, is to say "and related pieces of legislation", or whatever the phrase would be.

[*Translation*]

Mr. Bernard Patry: It is too broad.

[*English*]

That's too broad. It says anything and nothing.

Mr. Alan H. Kessel: That's like "any other relevant document".

Hon. Bob Rae: All right, leave it as SEMA then. I'll be satisfied with SEMA.

The Chair: Is that a compromise?

Okay.

Mr. Dewar, are you all right with that? Okay.

The new amendment is that the provisions operation of this act, as well as SEMA, be looked at, etc. So we're going to add SEMA.

(Subamendment agreed to)

(Amendment agreed to)

The Chair: We'll now go to the short title.

Shall the short title carry?

Mr. Paul Dewar: I don't like it.

Hon. Bob Rae: Well, it's not accurate. It's an inaccurate bill.

Mr. Paul Dewar: It's totally inaccurate.

● (1705)

The Chair: Here I thought we were going to have it all done and we're going to get held up on the title. It was so close.

Hon. Bob Rae: There is a substantive issue here. It doesn't only apply to so-called corrupt regimes.

Mr. Deepak Obhrai: What's your compromise?

Mr. Paul Dewar: It was written by people who were looking at writing the law.

Mr. Deepak Obhrai: If you don't like the title, what's your compromise?

Mr. Paul Dewar: What the title is on the front. Respect Canadians and their intelligence. You don't have to put it in monosyllabic phrases.

Mr. Deepak Obhrai: Am I to understand you don't want a title at all?

Mr. Paul Dewar: No short title.

The Chair: Okay, no short title?

Hon. Bob Rae: What about the Freezing Assets of Foreign Officials Act? Isn't that what we're doing?

Mr. Paul Dewar: It's a little bit of alliteration, at least.

Mr. Deepak Obhrai: We'll have to check with the officials here.

The Chair: Hold on one second.

Mr. Dorion.

[*Translation*]

Mr. Jean Dorion: What has been suggested—I am not sure by whom, since I listen to the interpretation and do not always hear the speakers' voices—is to call it the "Freezing Assets of Foreign Officials Act." I think this summarizes the whole idea well and is an appropriate short version of the long title of the act. However, if we use the wording "corrupt regimes," we are introducing an idea that is not at all clearly expressed in the long title.

[*English*]

Mr. Bernard Patry: Number one. That's why.

Hon. Bob Rae: That's the one that was written by your political advisers.

Mr. Paul Dewar: Why not just take it out? Why do we have to have a short title?

The Chair: In the interest of time, why don't we just vote against the short title?

Mr. James Lunney: Wait. I've been trying to get on the agenda.

I agree with what Mr. Rae mentioned. All these guys have been asking questions for the last.... Mr. Dorion has been asking what the government is doing to freeze the assets. He used that language all the way through this debate. This bill is designed to address those concerns, so I think it is appropriate to use that language.

One suggestion we just heard had to do with freezing the assets of foreign officials. That might make some of our diplomats nervous around here. I think the word “corrupt” is probably helpful, because it's not just any old official. There is some sense of wrongdoing here.

So I think the short title speaks to what we're trying to accomplish here, and I'm not so sure what the angst is about.

The Chair: Mr. Dorion.

[*Translation*]

Mr. Jean Dorion: So why is the word “corrupt” not in the long title, if that is what we mean to say? In my opinion, the short version adds an element that does not appear in the long title.

[*English*]

The Chair: Okay.

[*Translation*]

Mr. Jean Dorion: I officially propose that we use the wording “corrupt officials and former officials of foreign states” in the long title. Why not?

[*English*]

Mr. Deepak Obhrai: Yes, but I think my friend has a good idea—get rid of it.

Hon. Bob Rae: Well, let's put instead the Freezing Assets of Corrupt Foreign Officials Act.

The Chair: Is that a suggestion we'd look at?

Mr. Dave Van Kesteren: But it's not just foreign officials. There is a whole list of everyone to whom it can apply.

Hon. Bob Rae: Well, they're all officials and they're all foreigners.

Mr. Paul Dewar: What about An Act to provide for the taking of restrictive measures in respect of the property of officials and foreign officials of foreign states and their family members?

Well, what's wrong with that? Actually, I don't want to know. It's okay. I think I know what you're going to say.

Mr. Peter Goldring: Under subclause 11(2), does this not apply to Canadian citizens who may be in Canada or a foreign country? No? So it's not just foreign officials, necessarily.

• (1710)

Mr. Louis-Martin Aumais (Deputy Director, Criminal, Security and Privileges and Immunities Law Section, Department of Foreign Affairs and International Trade): It's by virtue of the foreign state office that the person would have held or is holding. It's not the nationality that triggers it; it's the foreign state office that is related to the person.

[*Translation*]

Mr. James Lunney: Mr. Chair.

[*English*]

The Chair: Mr. Lunney.

Mr. James Lunney: Can we ask our officials to comment on whether they would be comfortable with the suggestion from Mr. Rae, which sounded to me like Freezing Assets of Corrupt Foreign Officials Act?

Does that create any problems, from your perspective?

The Chair: Do we have some consensus on that?

Hon. Bob Rae: Finally I get something. We've spent two hours on this coal face. It's unbelievable.

The Chair: All right. If there is no more discussion, I'll call the question.

All those in favour of the amendment of the title?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended for the use in the House at report stage?

Some hon. members: Agreed.

The Chair: Thank you. That is done.

Thank you, officials.

Some hon. members: Hear, hear!

The Chair: We're going to suspend for one minute to get our guests up here. We'll be running a little over, but we'll make sure we have half an hour.

Thank you for all your hard work.

• (1710)

_____ (Pause) _____

• (1715)

The Chair: Would members come back to the table?

I want to thank everyone for working to get that finished.

We are running about 15 minutes behind today, but we're still going to give our guest the half hour we promised him. I want to thank René Magloire for being here today. He is the special adviser to the President of Haiti.

Thank you for taking the time. I know your schedule is limited, so I'm glad you could work us in and we could work you in.

I know you have an opening comment or an opening statement. We'll turn it over to you. And we'll probably have enough time for each party to ask about five minutes' worth of questions, if we follow along that way. Then we'll wrap up around quarter to. How does that sound?

Sir, thank you for being patient as we worked on some of our legislation, and now I will turn the floor over to you.

[*Translation*]

Mr. René Magloire (Special Advisor to the President of Haiti, Legal Affairs, As an Individual): Thank you very much, Mr. Chair.

First, I want to thank you and thank the members of the Standing Committee on Foreign Affairs and International Development for providing me with the opportunity to tell you about a challenge that we have been faced with since January 16, 2011, in my country of Haiti.

As you know, on January 16, 2011, former president of Haiti, Mr. Duvalier, returned to the country, causing a lot of concern among the population. The Haitian government decided to fulfill its international obligations regarding prosecution of cases considered to be crimes against humanity. Former president Jean-Claude Duvalier, who was head of state from 1971 to 1986, has been accused of having participated in a number of serious violations of human rights in the country or having allowed such violations to take place. At this time, the Haitian judicial system—and I think that this is no secret—is very weak. This is the first time a case on crimes against humanity will be before the Haitian courts. Most Haitian juries are not very familiar with the notion of crimes against humanity.

However, the Haitian government has decided to continue fighting against impunity and to fulfill its international obligations. The President of Haiti has received a letter from the United Nations High Commissioner for Human Rights, Ms. Pillay. She offered Haiti the services of the United Nations Office for two purposes: first, a quick training of Haitian juries, and second, helping us build prosecutors' cases against former president Duvalier and his collaborators.

I am in Canada on a mission with the key goal of meeting with the many victims of our regime. Most of those people are now Canadian citizens, but they want to lay charges against Duvalier's regime and see how much Haiti could benefit from Canadian expertise in this area. We know that, not too long ago, Canada prosecuted a Rwandan national who was accused of serious crimes against humanity. We also know that Canada has gained a certain expertise in this area and we want to see whether it is willing to share that expertise with us. In addition, we would like the Canadian government to support the Haitian government's initiative to prosecute former president Duvalier and his collaborators. Canada's official support for the initiative taken by the Government of Haiti would be most welcome.

Duvalier has been charged with two types of crimes: economic crimes and crimes against humanity. As far as economic crimes go, we already have some supporting documents. They consist of reports that were drafted at the time by the minister of justice, the minister of economy and finances, the Bank of Haiti and various CEOs of organizations that alleged funds were siphoned off by this regime.

• (1720)

The problem is that Duvalier's defence attorneys are citing the principle of limitation. However, we believe that in this case, that principle does not apply because a series of procedures have been implemented since 1986. In fact, the Code d'instruction criminelle d'Haiti prescribes that if a case involves prosecution or investigation, limitation is interrupted and resumes over another 10-year period. We, the Port-au-Prince prosecution, are very confident that the principle of limitation cannot apply.

The debate in Haiti is currently focused on crimes against humanity. International expertise could help us with that. Based on international criminal law, the Armenian genocide of 1915-1919, all the case law, the Nuremberg trials, international criminal tribunals and regional criminal tribunals, we know that Duvalier's arguments will not hold up if properly informed judges are conducting his trial. That is our main concern.

I will stop here, if you have any questions, I will answer them.

[*English*]

The Chair: Thank you very much.

We're going to start around the room. I'm going to start over here with my colleagues, the Liberals, and Mr. Rae.

[*Translation*]

Hon. Bob Rae: Welcome. I hope that the Government of Canada will be able to help you.

Can you tell us which specific Canadian initiatives you would like to see implemented? Do you want us to share our expertise and to send foreign judges to conduct an investigation of the former president? Can you tell us how exactly this would be done?

Mr. René Magloire: The first thing we are looking for from your government is support. We are hoping for a political statement or political support of the Haitian government's initiative related to serious crimes against humanity.

Second, we would of course ask that you share the expertise that Canada has developed in these types of prosecutions. Canada has several senior legal experts who could help our prosecution prepare cases.

Friday, I met with the president and the director general of the Quebec Bar. They told us that there are Quebec Bar legal experts that could help us. Some of them have worked at international criminal tribunals. They have experience in similar cases.

• (1725)

Hon. Bob Rae: I have another question you may have a hard time answering. What is the current legal status of former president Aristide? Does Haitian law allow him to return to the country?

Mr. René Magloire: Yes. According to Haitian law, he can return to the country. In addition, some two weeks ago, he was issued a diplomatic passport by the Haitian government.

Hon. Bob Rae: So, he now has a diplomatic passport?

Mr. René Magloire: Yes.

Hon. Bob Rae: So, he can return to your country?

Mr. René Magloire: Yes.

Hon. Bob Rae: Will he have legal problems if he returns?

Mr. René Magloire: I cannot say at this time. However, I know that, in 2004-2005, an inquiry was launched into his administration. In principle, there could also be charges brought against former president Aristide.

Hon. Bob Rae: Okay. Thank you, Sir.

Mr. Bernard Patry: Mr. Magloire, thank you for being here. I have two very short questions for you.

First, what court of the Haitian government can prosecute former president Duvalier for his crimes against humanity? Second, we know all too well that run-off elections are currently taking place and that one of the two candidates was in Montreal last week. Have the discussions on the next Haitian election mentioned that former president Duvalier could be indicted by a human rights court?

Mr. René Magloire: Thank you, sir.

Former president Duvalier can be prosecuted by the Port-au-Prince court of first instance. The case is now before the investigating judge's office. The prosecution has actually brought the matter before the investigating judge's office, which is inquiring into it. In principle, according to Haitian law, the investigating judge's office has two months to conduct an inquiry and one month to render an order following the inquiry. Of course, this time period can be extended if it is justified, but it basically consists of two months and an additional month to render an order. Under those conditions, the trial could be heard before a court of first instance.

Regarding run-off elections, which will take place on March 20, I heard Ms. Manigat say that she may consider letting the case move forward. As you know, President Préval's mandate will be up on May 14, 2011, at the latest. As the former minister of justice under Préval and current special advisor to the President, I feel that we must do everything in our power, in collaboration with the international community, of course, to ensure that enough progress has been made in this case to warrant a conviction, just in case we are unable to continue with the trial or it becomes difficult to do so. The international community should pledge its commitment to the prosecution of and the fight against impunity as soon as possible.

[English]

The Chair: Thank you, and thank you, Dr. Patry.

Madame Deschamps.

[Translation]

Ms. Johanne Deschamps: Good afternoon, Mr. Magloire. Thank you very much for your patience. Certain incidents have contributed to the lateness of your testimony.

You are asking Canada for its expertise, and you want that expertise to be provided directly. In other words, as you said earlier, you would like Canada to send legal experts to Haiti in order to set up a structure that would, among other things, help rehabilitate your government in terms of serious crimes against humanity. Is that correct?

You have met with the Haitian diaspora. How did its members react to your expectations of them and to the request you are making, through them, for Canada's support?

● (1730)

Mr. René Magloire: Regarding the first part of your question, I think that the expertise of Canadian legal officers could be useful to us and is desirable, as much from the point of view of the prosecution and the crown prosecutors, as from the point of the judiciary itself. This expertise would be welcomed, I believe. I met

with Ms. Elizabeth Corte, Chief Justice of the Court of Quebec. She promised that she would provide support to Haitian judges.

As I already said, Haitian legal experts are not very familiar with these notions. Very few know about international criminal law, whether we are talking about jus cogens or the applicability of statutory limitations to crimes against humanity. If the judicial system is not provided with basic training and information, our initiative might fail. Canadian political support is also desirable.

Ms. Johanne Deschamps: How do the diaspora members see things?

Mr. René Magloire: I had the opportunity to meet with many Haitians from the diaspora or with Canadians of Haitian descent since last Thursday. Everybody wants justice to prevail in Haiti, since that would usher in a new era. I think that the objective behind the Duvalier case is not only to mete out punishment, but also to serve as an example to possibly discourage any officials who might think about misappropriating public funds.

Ms. Johanne Deschamps: To wrap things up, Mr. Chair, I don't know whether a project could be submitted to CIDA, for instance. We could present a project that would involve a group of experts and legal officers from Canada who could go to Haiti and provide expertise and training. I assume that the Minister of International Cooperation is very open toward Haiti. I assume that she would be open to such an initiative.

Mr. Jean Dorion: Is there any time left?

[English]

The Chair: Go ahead.

[Translation]

Mr. Jean Dorion: Thank you for being here, Mr. Magloire.

I feel that your name is closely associated with Haiti. Actually, I was still a child when your uncle, former president Paul Eugène Magloire, visited Montreal. At that time, he made a strong impression.

I would like you to clarify something for me. We are talking about Jean-Claude Duvalier, and I'd like to know what exactly his status is right now. Is he in prison, in police custody, under mandatory supervision? What is his status?

Mr. René Magloire: At this time, former president Duvalier is under a prevent-departure notice. The committing magistrate has personally asked him to not travel without his authorization, but no written order has been issued. However, according to Haitian law, if there is no written order, there is no decision. A prevent-departure notice has been issued, so he cannot leave the country, but he can travel within it. He's actually done just that recently.

● (1735)

Mr. Jean Dorion: How is his safety ensured? There must be people who do not have fond memories of him.

Mr. René Magloire: This is a huge problem for the officials and the police. His travels are a real headache for security forces. We want the investigating judge's office to follow up on the case because we have been working on it for two weeks. I am at the head of a team that was put in charge of preparing the case for the prosecution, the crown. This case was sent before the investigating judge's office, and I hope that, at Mr. Duvalier's next hearing, which could take place this week, other measures will be taken against him.

Mr. Jean Dorion: Thank you, Mr. Magloire.

[English]

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

Mr. Goldring, you have five minutes, sir.

Mr. Peter Goldring: Thank you, Mr. Chairman.

Mr. Magloire, you mentioned Duvalier and that you're looking for assistance to, I suppose, try him. The United Nations is still involved in Haiti. Is it not a body that could be handling this investigation more in a World Court type of situation? Could you maybe comment on Aristide? You said there was an administrative investigation on his actions in 2004-05. When I was there in 2006, it seems to me there were rumours anyway of a considerable amount of funding that left the country with him too. Could you comment on those two?

Mr. René Magloire: The second question was about a rumour...?

Mr. Peter Goldring: Yes, well, I have no way of knowing, but certainly the rumour mill was flowing quite heavily there that there were suspicions that Aristide left the country with a considerable amount of public funds too. Did your administration's investigations show any of these discrepancies or show any suggestions that there were public funds that moved with him too?

Mr. René Magloire: To begin with the second question, Aristide....

[Translation]

I know that, in 2004-2005, an administrative inquiry was conducted into his regime. I did not participate in it myself. This investigation revealed that Aristide and some of his close collaborators had also plundered treasury funds. It is certain that, if Aristide should return to Haiti, the same measures will be taken against him.

[English]

Mr. Peter Goldring: The number I heard was somewhere in the range of \$600 million to \$700 million. That's the number that was being repeated.

[Translation]

Mr. René Magloire: I don't know. I know that, in Jean-Claude Duvalier's case, the figure ranges from \$400 million to \$900 million. However, even in Duvalier's case, I don't have the exact figures.

[English]

Mr. Peter Goldring: When I was there in 2006, it was shortly after we'd formed a government. I did an extensive report that identified certain things that should be in the recommendations as a priority. One of the items I noted back in 2006 was the great difficulty in land ownership and reform.

From the speaking notes and talking notes that we have here on our discussions on Haiti, I note that one of the difficulties is the need for 200,000 homes, particularly now, after the earthquake. They are basic transitional wooden box homes. They're not very complex. After more than a year, they've only been able to erect 30,000 to date. It would suggest to me that the people living under tarpaulins will be under tarpaulins for another five years before they get into even a modest home. They say the great difficulty is in land tenure, land ownership, and deciding who owns what.

I would think the government would be able to move the situation along more quickly than that. Could you comment on what the great difficulty is? What is holding it up so that we have 170,000 families still living under temporary plastic tents?

• (1740)

[Translation]

Mr. René Magloire: I would like to be able to provide a definite answer to your question, but I am not very informed about reconstruction efforts in Haiti. I am a specialist in legal and judicial matters. What I do know is that we have land registry issues in Haiti. This problem is longstanding, and it involves title to property, which is somewhat of a grey area in Haiti. Therefore, we are trying to reform that system.

When you came to Haiti, in 2006, I was probably the minister of justice. However, as part of our reform program, the priority was to strengthen the judicial system and, at the same time, to provide the judiciary with independence. This is why we adopted, in 2007, the following three pieces of legislation on judicial reform: the Loi relative au Conseil supérieur du Pouvoir Judiciaire, the Loi portant sur le Statut de la Magistrature and the Loi relative à l'École de la Magistrature. We think that this legislation will be useful in the framework of judicial reform.

In addition, it is true that we have a problem with title to property in Haiti and it would be useful to get expertise in resolving this issue.

[English]

Mr. Peter Goldring: I have another observation.

The Chair: It will be your last observation.

Mr. Peter Goldring: As I said, this was in 2006. Having had some briefing on the amount of aid that Canada and other countries contributed in the 10 years prior to that, I noticed that the state of the economy of Haiti didn't go up; it actually went down during that period of time.

You then talked about Duvalier. There were suggestions about Aristide, too. There has unfortunately been a long history of governance issues and problems in the past. Do you see those governance issues greatly improving so that you have a more optimistic future? The past has been a tragedy. What optimism is there for the future?

[Translation]

Mr. René Magloire: Up until January 12, 2010, much improvement had been noted in the governance of Haiti. The World Bank and even the International Monetary Fund mentioned this fact in their reports.

However, owing to the earthquake and because of the centralization of the population in Port-au-Prince, the whole country collapsed.

You are right, things are not moving quickly. It will be difficult because, just to clean up Port-au-Prince, more time is needed. Because of the infrastructure of the buildings in Port-au-Prince, what little heavy machinery we have cannot fit into the streets. Therefore, people have to clean up using shovels and to move the rubble onto the side of the road so that it can be picked up.

This is a very difficult situation for a country that, before January 12, was doing its best to improve its situation. The earthquake of January 12, 2010, had a catastrophic effect on the country.

Before I wrap up, I would like to answer one of your first questions regarding MINUSTAH. Following the offer made by the United Nations Stabilization Mission in Haiti that was accepted by President René Prével, the human rights unit of MINUSTAH has been working with us, especially with me and with our human rights representatives.

We are organizing a seminar, at the end of the month, that will bring together some Haitian and foreign experts so that we can learn more about the notion of international criminal law. The United Nations Human Rights Council has been extremely supportive in this endeavour.

• (1745)

[English]

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

We're going to finish up with Mr. Dewar.

Mr. Paul Dewar: Thank you, Mr. Chair.

[Translation]

Thank you for your testimony, sir.

[English]

The word you used that sticks with me is “impunity”. I also make the observation that the Haitian people have gone through more than most people would be able to even conceive of, let alone live through, when I think of the recent history. To make matters worse, we have the catastrophe of the earthquake and then the cholera epidemic. But then to have the return of someone like Monsieur Duvalier, for many people—and I've heard witness statements since he has returned, both from people here in Canada and from people in Haiti, about what that has done to people—it has brought back the horror of his regime.

I'm curious. You've come to us today, and we are in a committee of the Parliament of Canada. Has the Canadian government—and I don't know this, I'm just asking—spoken out in favour of holding Duvalier to account? Do you know of any statements the Canadian government has made to that effect? The government might know that.

[Translation]

Mr. René Magloire: No, not yet.

[English]

Mr. Paul Dewar: I haven't either, and I'm just curious. You want support for the judicial infrastructure, if I can use that word, in Haiti. But I think most people would want to see justice as the key facet here.

In terms of providing support, you're saying to have Canadian experts help. I think it's important that you're here today because we as a committee are studying Haiti. For the record, we want to make sure that one of the things you, as a witness, are asking for is support for the judiciary of Haiti to be able to deal with the case of Monsieur Duvalier.

In terms of evidence, do you have access to enough to go ahead with a case, if you had the support and the infrastructure in Haiti?

[Translation]

Mr. René Magloire: Yes. Regarding economic crimes, as I said, we have several reports and we have also obtained from the Banque de la République d'Haiti copies of cheques signed by Jean-Claude Duvalier himself and by his ministers or director generals. So, we have all that evidence.

Regarding crimes against humanity, there are witnesses and plaintiffs that have already pressed charges. In addition, the investigating judge's office has already heard from some witnesses. Here, in Canada, I met on Friday evening with several Canadians of Haitian descent who want to press charges against Mr. Duvalier. We will do what is necessary to make sure those charges do make their way to the prosecutor in Port-au-Prince or to the office of the investigating judge who will hear the case.

[English]

Mr. Paul Dewar: One of the things that's important is gathering of testimony. We have experts in that field. We have a war crimes trial capacity here. In fact, we've had success in the case of Rwanda, as you know.

I'm wondering if you have explicitly asked the Department of Justice for support in helping organize and get evidence brought forward. Is what you're doing here now, asking for people to support that?

Mr. René Magloire: That's right.

Mr. Paul Dewar: All right, because I think that is important to bring forward to this committee as a recommendation.

One of the challenges is of course being able to then deal with it in Haiti, as you've mentioned. Do you see this as being something that could be referred to the International Criminal Court?

• (1750)

Mr. René Magloire: In the court?

[Translation]

Mr. Paul Dewar: I am talking about trying Mr. Duvalier before the International Criminal Court.

[English]

Would it be something you would want to see, a reference of Monsieur Duvalier to the International Criminal Court?

[*Translation*]

Mr. René Magloire: According to the Rome Statute, Mr. Duvalier cannot be prosecuted by the International Criminal Court, since his crimes were committed prior to 2002, that is, before the Rome Statute came into force.

[*English*]

Mr. Paul Dewar: Thank you for that clarification.

Finally, Chair, I think it is clear that there is a role here for Canada. I would like that we be very clear on what the ask is from our witness, and I would hope that our government can provide the

assistance necessary to help, because, as was already explained, if Haiti is to go forward, it has to deal with what happened in the past.

I will just thank our witness, and hopefully we will be very explicit in what we say in our recommendations to help.

Thank you.

Mr. René Magloire: *Merci.*

The Chair: Thank you for taking the time today. We appreciate your patience as we were a little delayed getting started.

The meeting is adjourned.

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