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Tuesday, March 8, 2011

Chair

Mr. Scott Reid

Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development

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● (1305)

[*English*]

The Chair (Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC)): Okay, we have enough people to start.

[*Translation*]

The 49th meeting of the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development will now come to order. Today is March 8, 2011.

We welcome two witnesses today.

[*English*]

Jayne Stoyles is the executive director of the Canadian Centre for International Justice. Matthew Eisenbrandt is the legal coordinator for the same organization.

Colleagues, I would like to request your indulgence to deal with a matter in camera at the end of this meeting. It is part of the reason why I'm in such a hurry. It's a matter we're all familiar with, but I can't do it unless we're in camera.

First of all, do I have your permission to do that? Do you all know what I'm referring to?

Some hon. members: Agreed.

The Chair: Okay. Good.

I saw some hands. I saw Madame Deschamps, and I think I saw Professor Cotler.

[*Translation*]

I will now yield the floor to Madam Deschamps, who will be followed by Mr. Cotler.

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): My comments are not related to the topic under consideration, Mr. Chair. Often, when 1 p.m. rolls around, we rush to conclude the meeting. However, with your permission, I'd like to take the opportunity to mention that today marks the 100th anniversary of International Women's Day. I would like to congratulate all the women who work at the House of Commons, including our analysts, House staff and the women working in various ministers' or members' offices. This occasion is noteworthy. I would also like to congratulate the women who are appearing as witnesses for their efforts to make our society a better place in which to live. Thank you very much.

[*English*]

The Chair: Thank you.

That's very appropriate. As it turns out, we have two analysts and a clerk at the head table, all of whom are female and very competent. I'm aided by my office manager, Sonia Wayand, who's extremely competent as well. I will encourage everybody else not to comment on the subject, however, in the interest of time.

Mr. Cotler.

[*Translation*]

Hon. Irwin Cotler (Mount Royal, Lib.): I also wanted to mention the occasion, but I'm being told not to, so I will refrain from doing so.

[*English*]

Can we take a few moments to address the motion on Iran that has been before you in the last week as well?

The Chair: Let's find out. If everybody wants to get into amending it, I would prefer to push it aside until Thursday, but let's just confirm.

Have people had a chance to look at it, and are people willing to pass it without amendment? If not, I'd prefer Thursday, given the time constraints.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): We should at least have a discussion on it.

The Chair: All right.

So can we leave this until Thursday, Mr. Cotler?

Hon. Irwin Cotler: What about tomorrow?

The Chair: I was going to talk about that when we go in camera.

Thank you very much to our witnesses.

Ms. Stoyles, please lead the way.

[*Translation*]

Mrs. Jayne Stoyles (Executive Director, Canadian Centre for International Justice): Distinguished members of the committee, I want to thank you very much for the opportunity you have provided me to appear before you once more to discuss how survivors of serious human rights violations can turn to Canada's judicial system when all other options have been exhausted.

[*English*]

Distinguished members of the committee, I want to thank you for the opportunity you have provided today to follow up on CCIJ's appearance before this committee in April 2009. I was here with a number of CCIJ advisors and with Stephan Kazemi and his lawyers to discuss the important issue of the need to amend Canada's State Immunity Act.

As a reminder about my background, I'm the first executive director of the Canadian Centre for International Justice, which is based here in Ottawa and which I helped to establish. CCIJ is a charitable organization that works with survivors of torture, genocide, and other atrocities to seek redress and to bring perpetrators of these crimes to justice in criminal and civil courts, both in Canada and internationally.

I am a lawyer. I previously directed the global campaign to establish the International Criminal Court. Last summer I was very honoured to receive the Tarnopolsky Human Rights Award from the Canadian Bar Association and the International Commission of Jurists. It was for me wonderful recognition of the increasing importance and impact of the efforts we and similar organizations in other countries are making as we seek to end impunity for international crimes, such as torture and genocide.

As you will recall, in April 2009, Stephan Kazemi delivered a very eloquent statement to this committee about the importance of justice in response to the brutal torture and rape of his mother while she was on a work assignment in Iran in 2003. She died of her injuries after Stephan unsuccessfully tried to have her returned home to Canada for treatment. He was not even able to have her body returned so that he could give her a proper burial. Neither the government of Iran nor the individuals involved were ever held accountable in Iran. In fact, one of those responsible was promoted, and there's no possibility that there will be any justice in Iran.

Stephan so poignantly talked about how difficult it is for others to imagine the harm caused by the loss of a mother and of her love, particularly under such horrific circumstances. But it's important that we do try to imagine what this would be like. As we all sit here in our professional capacities, we are also human beings with families, with mothers, with children. Despite what we may think, this could be our own story.

Zahra Kazemi is not the only person to be tortured and killed in the notorious Evin prison and in other parts of Iran, not by far. Torture, crimes against humanity, and other atrocities are being perpetrated right now in many parts of the world against Canadians and people with a connection to Canada. We're all watching what's unfolding in the Middle East and the incredible violence and brutality being unleashed against innocent people who are simply seeking the most basic of rights: an end to dictatorship, a path to democracy, and the alleviation of extreme poverty.

The fact that this continues today is in fact in large part because it's still very rare for those responsible for these crimes to be held accountable in courts of law. We have the new International Criminal Court in the Hague, but it has limits on its jurisdiction and its funding, and it's premised on the idea that most of the cases for torture and war crimes will take place in national courts around the world.

Canada's criminal courts have a very important role to play. Yet it is very important that civil courts in Canada also be in a position to play a role, as the federal budget allocates an insignificant level of resources to war crimes trials in Canada. Civil trials provide the alternative of allowing survivors and victims' families to go to court themselves. It's only with a large web of accountability mechanisms globally that we can send a strong and clear message to the likes of Iran's Mahmoud Ahmadinejad and Libya's Moammar Gadhafi that they cannot indiscriminately torture and kill to maintain their hold on power and their access to their countries' resources and wealth.

At our previous appearance before this committee, we discussed in detail how the survivors of torture who have a connection to Canada and the family members of victims, such as Stephan Kazemi, are effectively barred from proceeding with their claims by Canada's State Immunity Act. The purpose of the act is to allow foreign government officials to carry out their official duties without fear of lawsuits. Yet as it currently reads, the State Immunity Act also protects the government and its officials from lawsuits, even when they torture and kill a Canadian. While it contains some exceptions, it does not explicitly include an exception to immunity protection for acts of torture and other serious international crimes.

Since our appearance before this subcommittee in April 2009, we have seen two very important developments that would remedy this problem. We want to talk about these developments today and also discuss what might be the next steps. The first development was the introduction of Bill C-483, the Redress for Victims of International Crimes Act, which would squarely address the problem. The second was a decision by the Quebec Superior Court on the issue of state immunity in the Kazemi case, in late January of this year, a decision that makes the need for Parliament to act by passing Bill C-483 all the more clear.

● (1310)

The CCIJ very much welcomed the introduction of Bill C-483 at first reading, on November 29, 2009, and its reintroduction on May 3, 2010. The bill was introduced as a private member's bill by Liberal MP Irwin Cotler, and had the support of Conservative MP Scott Reid, NDP MP Paul Dewar, and Bloc Québécois MP Francine Lalonde.

This bill proposes to amend the State Immunity Act to prevent a foreign state from claiming immunity from the jurisdiction of Canadian courts in legal proceedings that relate to genocide, crimes against humanity, war crimes, or torture, when domestic remedies have been exhausted. In other words, Stephan Kazemi or a torture survivor himself or herself could sue human rights abusers like the Government of Iran and the individual torturers.

You as members of the subcommittee clearly demonstrated in your report on the situation in Iran, issued at the end of December 2010, that you understand the importance of allowing civil cases to go forward in Canada against torturers and war criminals and the barrier to justice that is currently created by Canada's State Immunity Act.

CCIJ welcomed recommendation number 13 in the report, that the Government of Canada remove immunity for foreign officials for gross violations of international human rights law from the State Immunity Act, and the recognition in the report that Bill C-483 would achieve this.

The need to ensure such an amendment to the act through the prompt passage of Bill C-483 has been made all the more clear by the ruling of the Quebec Superior Court at the end of January in the Kazemi case. The ruling was in response to the claims made by the Government of Iran that neither the government, as such, nor any individual officials can be made to stand trial in Canada for torturing and murdering a Canadian because of the State Immunity Act. The ruling provides a very mixed result.

It has some positive consequences for Stephan Kazemi, but with such a narrow approach that it will be very unlikely to allow most other victims a right to a remedy in Canada. Stephan's personal claim has been allowed to proceed, and this is of course extremely positive.

As we noted previously, the State Immunity Act currently contains several exceptions. One of these is for harm suffered inside Canada, and it is because of the existence of this exception that Stephan's claim can proceed. The Quebec Superior Court found that a claim may be brought by someone in Canada who suffers significant trauma as a result of the torture of a close relative in another country, as Stephan did. This was a very important interpretation of this exception to the State Immunity Act, and one that, unless overturned on appeal, will result in the first Canadian civil trial for torture committed overseas.

At the same time, the court found that there is no right to a remedy for a torture victim who dies overseas. The harm did not occur in Canada, so it does not give rise to an existing exception in the State Immunity Act. The court explicitly refused to read a new exception for torture into the act. So Zahra Kazemi's estate is barred from proceeding with its claims in this case because the harm that Zahra herself suffered did not occur in Canada.

One of the unfortunate outcomes of the ruling is that it could create an incentive for torturers to ensure that their victim dies. If Zahra had survived and returned to Canada, she would likely have suffered significant psychological harm inside Canada as a result of her traumatic experience. She might then have been able to sue Iran, according to this Quebec court ruling, arguing that this harm falls within the exception to the State Immunity Act.

The court was clearly indicating that it could use only the existing exceptions written into the State Immunity Act by Parliament. By refusing to go further so that the ruling could apply beyond Stephan Kazemi's unique circumstances, the court was sending a clear invitation to Parliament to take up this issue. Bill C-483 does just that, and it is members of this committee who understand why it's important for governments like Iran to be sued for torture and who are in the best position to update Canadian law to make this possible.

Recognizing that your committee does not formally have Bill C-483 before you for consideration, we would like to ask that you do all you can to seek its passage in your individual capacities.

First, we ask that you speak to your party leaders and their staff about the need for the bill.

Second, we hope you will think of who else within your parties would work closely with you to champion the bill, and approach them to request that they assist you in building support, including going to the clerk to have their names added as seconders for the bill.

Finally, we hope you will do whatever you can to raise awareness of the issue and the need for the bill more generally within your parties. I would offer the suggestion of raising it during caucus meetings and regional caucus meetings.

● (1315)

We have an event this Thursday at 12 noon when Stephan Kazemi will be with us again. That's taking place in the Press Club on Sparks Street, and we hope you will invite your colleagues to this opportunity to hear more about this issue. Of course, you know much better than we do how to build general support within your party, and I'm sure you will have many other ideas.

When Stephan Kazemi appeared before this committee almost two years ago, he made the point that since his mother's death, he has been all-consumed by the effort to seek justice. He has been crystal clear about the fact that in no way does he want to profit financially from her torture, and that the court case is about his need to see someone held responsible as part of his effort to rebuild his life. The Quebec court decision would allow that, but in speaking with the media Stephan has also eloquently articulated how deeply he had hoped, and still hopes, that he can make a difference for other people. His mother stood up for the rights of others through her work, and paid the ultimate price for doing so. Now Stephan wants her death to help ensure that other people, other Canadians, are not tortured, raped, beaten, and murdered.

Bill C-483 would provide one very important tool to help Stephan to realize that goal. We hope that we can count on each of you to get it passed as quickly as possible, so that torturers and war criminals will no longer be able to fend off responsibility when they order and participate in such horrific acts of violence.

● (1320)

[*Translation*]

Thank you very much for your attention, and your assistance.

[*English*]

The Chair: Thank you, Ms. Stoyles.

Mr. Eisenbrandt, please.

Mr. Matthew Eisenbrandt (Legal Coordinator, Canadian Centre for International Justice): Thank you.

Distinguished members of this committee, I also want to express my sincere thanks for the leadership you have shown on the need to ensure that there is access to Canadian civil courts to sue governments such as that of Iran for their torture when there is no other justice option available. We very much appreciate this opportunity to be with you today to discuss how to achieve this.

I'm the legal coordinator for the Canadian Centre for International Justice. I've held this position for three years. Previous to this I served for more than five years as the legal director of the Center for Justice and Accountability, a U.S.-based non-profit organization that also works to prevent torture and other severe human rights abuses by helping survivors hold perpetrators accountable through legal cases.

I have worked on CCIJ's intervention as a friend of the court in the Kazemi case to provide legal analysis about the issue of state immunity. And I coordinated a workshop of leading Canadian and international legal scholars and practitioners who came together at the University of Ottawa in 2008 to discuss what changes were needed in Canadian law to allow torture survivors in Canada to have access to justice.

Having endorsed Bill C-483, we thought this committee would be interested in hearing some of the key arguments in favour of this legislative change and the responses that can be given to what we anticipate may be some of the questions or concerns raised by your colleagues as you discuss it with them.

First, it is important to note that there is a global trend away from immunity in civil lawsuits. Most countries—including almost all civil law countries, which make up two-thirds of the world—do not have legislation providing immunity to foreign governments. Many also allow victims to file civil claims in conjunction with criminal prosecutions of torturers and war criminals.

Courts in the United States have heard dozens of lawsuits concerning torture and other atrocities. The U.S. Supreme Court recently ruled that the United States immunity law, which is very similar to Canada's, does not grant immunity to individual officials. Italy's top court has ruled on several occasions that Germany is not immune in lawsuits for Nazi-era abuses. Even though the U.K. House of Lords did apply immunity in a torture case, that decision is now on appeal at the European Court of Human Rights.

An important United Nations committee has underlined the trend away from immunity and pointed to Canada as being in violation of its international legal obligations in this regard. In 2005 the United Nations Committee against Torture, the body charged with overseeing the proper implementation of the Convention against Torture, made it clear that the convention requires all states to provide civil remedies to survivors of torture.

Canada and most other countries have ratified the convention. And the committee pressed Canada to “ensure the provision of compensation through its civil jurisdiction to all victims of torture”. This was shortly after the Ontario Court of Appeal found that Canada's State Immunity Act barred a claim against Iran for the torture of an Iranian man, Houshang Bouzari, who is now a citizen of Canada, in a case we described during our last appearance. In other words, this UN committee was indicating that Canada should not grant immunity in torture cases. The committee has reinforced with several other countries in recent years this position that all victims of torture must be provided access to justice according to the torture convention.

The trend away from immunity in civil cases follows the elimination of immunity in most criminal cases concerning human rights atrocities, both internationally and in Canada. The Statute of the International Criminal Court and the legislation in Canada and around the world that allows for war crimes trials in criminal courts explicitly prohibits anyone in any rank of government from claiming immunity. Ensuring that immunity does not bar access to justice in civil cases for the same acts is a natural extension.

A second point in favour of Bill C-483 is that Canadian parliamentarians have already recognized the need to create exceptions to the State Immunity Act, with several exceptions already written into the act and a new one under consideration.

● (1325)

One of the exceptions in the State Immunity Act is for commercial activities. A second, the one that we have been discussing, which was used by the Quebec Superior Court to give Stephan Kazemi the opportunity for a remedy, is for involvement in injuries and property damage that occur inside Canada.

In recent years several proposed legislative amendments have also attempted to create an exception to the state immunity doctrine for terrorism, the most recent including Bill C-35, Bill S-7, and Bill C-408.

In June 2009, then Minister of Public Safety Peter Van Loan introduced to Parliament Bill C-35, an act to deter terrorism and to amend the State Immunity Act. One of the primary goals of this bill was to create a new exception to Canada's state immunity law so that it cannot prevent lawsuits in Canada against foreign governments for certain acts of terrorism.

Bill S-7 is an identical bill introduced after the prorogation of Parliament. It was introduced in the Senate in April 2010 by Senator Marjory LeBreton and was recently passed by the Senate and has had first reading in the House of Commons. This bill will allow lawsuits for alleged acts of terrorism that occurred on or after January 1, 1985, the year of the Air India bombing, in which 280 Canadians died.

Again, Bill C-483 is a natural extension. If foreign governments can be sued for commercial activities and for injuries and death they cause inside Canada, why would we not permit them to be sued for the torture and murder of Canadians outside Canada? If a new exception for terrorism proceeds, it should go hand in hand with an exception for torture and other violations of international law of this magnitude.

A third point in favour of the bill is its strong potential for the deterrence of torture, war crimes, and other atrocities. Throughout history these horrendous crimes have been committed with no accountability. But that has begun to change in recent years with the creation of the International Criminal Court and the launching of both criminal and civil cases around the world.

If governments and their officials know they will face justice in a court of law, they will be less likely to commit abuses. Not all of these international crimes will be completely prevented, in the same way that our domestic laws do not prevent all crimes. By the same token, one can only imagine how much more crime there would be if there were no police or judges to enforce domestic law. The same logic applies at the international level. If there is even the smallest possibility that increasing international enforcement measures could help prevent a future Darfur, Congo, or Burma, we must do all we can to provide justice.

Finally, it is important to note that Bill C-483 would remove immunity and thus allow civil claims for four types of acts that have already been criminalized in Canada. The bill would remove immunity in cases alleging acts of torture, genocide, crimes against humanity, and war crimes. Parliament has already criminalized these four human rights violations in the Criminal Code and the Crimes Against Humanity and War Crimes Act passed in 2000 when it ratified the International Criminal Court Treaty. By amending the State Immunity Act, Bill C-483 would merely permit survivors to seek compensation and redress from the states that commit these criminal acts.

Those are some of the key points that can be raised to make a compelling case for the passage of Bill C-483. Bill C-483 was also carefully crafted to address potential challenges, and I will briefly review two key points in this regard.

First, it is possible that someone will ask whether the amendment will throw open the metaphorical floodgates and swamp Canadian courts with lawsuits about human rights abuses that occurred overseas. The answer is no. The number of lawsuits will be limited. As with all civil cases in Canada, judges will have to be assured that a lawsuit has a connection to Canada and the province in which the case is brought. Even if a connection exists with the Canadian province, a lawsuit will proceed only if Canada is the best forum. If another country is in a better position to hear a case, perhaps owing to the location of witnesses and evidence, and if that country protects due process rights, a Canadian court can dismiss the lawsuit. As a result, Canadian courts will take on only those cases in which Canada is both the best forum and the last resort.

● (1330)

The language of Bill C-483 explicitly confirms that lawsuits for torture and other serious international crimes will only be permitted once all remedies have been invoked and exhausted in the country where the abuse has happened. Any civil litigation lawyer in Canada will advise a potential client about these limitations.

The number of lawsuits will also be limited by the fact that the evidence necessary to bring this kind of lawsuit is often challenging because of the obvious lack of cooperation by authorities in the affected country. It is also difficult to find witnesses and ensure their protection. The psychological trauma suffered by most torture survivors is an additional barrier, and many people lack the necessary financial resources.

The number of cases to proceed in other countries in which civil litigation for torture and other atrocities is permitted has been limited, likely due to a combination of these factors. At the same time, many survivors with whom we work talk about the importance of knowing that Canadian courts are open to these kinds of claims, even if they themselves will not be proceeding with a lawsuit.

A second potential critique of attempts to amend the State Immunity Act is the perceived impact on Canada's diplomatic and trade relations if Parliament signals its willingness to take foreign governments and individual officials to court. In response, one can point out, as I have described, that most countries of the world do not have legislation comparable to the State Immunity Act to provide protection from litigation, and that when the issue has been litigated, some courts have refused to apply immunity to civil claims for the most grievous violations of human rights. Clearly, these countries do not view their commercial and diplomatic interests as being at risk because of the possibility that someone in their country might sue Iran or other human rights abusers.

The U.S. and Italian models show that although some countries have protested lawsuits targeting them or their officials, there is little evidence that lawsuits have led to major diplomatic retaliation. In addition, there should not be an explosion of cases against Canadian allies that provide proper redress through their own courts. As I mentioned, Canadian courts can dismiss those cases. With countries that are not close allies and do not respect the rights of their citizens, civil lawsuits provide another effective tool to convince them to change their ways.

If the goal of deterring future abuses is in fact achieved by these cases, the United Nations and foreign affairs departments around the world will have fewer situations of human rights violations raising sticky diplomatic issues.

You may also wish to point out to colleagues that with the State Immunity Act, as it currently reads, a very embarrassing and frankly outrageous situation arises for the Government of Canada. This committee heard Stephan Kazemi, a Canadian, describe how the torture and death of his Canadian mother has resulted in so many years of pain and suffering in the prime of his life. In the same year, he was in court to seek some measure of justice at great emotional cost, with CCIJ and Amnesty International as Canadian charities using scarce resources to support him. There was the Canadian government using Canadian taxpayers' money to stand on the opposite side of the courtroom to argue against Stephan's right to proceed with his case for his mother's torture and murder, because it needed to defend its law, the State Immunity Act.

Great pains were taken to express that Canada was not condoning the human rights record of the Government of Iran, but the practical result is that it contributes to the commission of human rights abuses. There are people being raped, beaten, and killed in the same Iranian prison right now as we sit here. Rather than seeking dismissal of these worthy cases, Canada has the power and obligation to help bring these abuses to an end.

We hope the image of what Bill C-483 means in terms of human lives is what will stay with you, and we hope that you will act quickly across parties to ensure its prompt passage. We have background materials and copies of our statements to leave with you to help you do that.

Thank you so much for the opportunity to discuss this very important issue with you today.

● (1335)

The Chair: Thank you to both of our witnesses.

Given the time constraints involved—it's already 1:35—we will need to have six-minute rounds, including question and answer, so please bear that in mind. I'll have to be quite firm about this today because of the other matter we have to discuss and the time involved in switching over to in camera.

We'll start with Professor Cotler.

Hon. Irwin Cotler: Thank you, Mr. Chairman.

I want to begin by commending the witnesses, not only for their testimony today but also for being an inspiration for me as a parliamentarian moving Bill C-483 in light of our discussions and interactions in this regard. I want to commend you for your continuing commitment with respect to this type of legislative initiative.

As you've put it, there is a global trend away from immunity. If I may cite from your testimony: "Most countries in the world do not have legislation providing immunity to foreign governments. Many also allow victims to file civil claims in conjunction with criminal prosecutions of torturers and war criminals."

You made reference to the United States, Italy, and the U.K. Could you elaborate on what we can learn from those cases? You didn't make reference to the fact that there has been no flooding of diplomatic issues, which may have concerned people here. Are there any particular legal issues that arose in those cases or in the manner in which they were handled or the recent judgment in the Supreme Court of the United States that might assist us in making the case for such legislation here in Canada?

Mr. Matthew Eisenbrandt: There are many legal issues in these types of cases. The key barrier in all of them is immunity. That is something that Bill C-483 would immediately remove, and then we could move on to the other legal issues.

Take the U.S. Supreme Court case. That's a situation where the court was able to look at a long history of civil litigation in the United States against human rights abusers and to feel comfortable in making its pronouncement that there is no immunity under their Foreign Sovereign Immunities Act, that there has not been disruption of diplomatic relationships, and that there has not been a flood of lawsuits in the United States. There are a couple of decades of these types of cases that have been important to survivors of torture and other atrocities, but they have been limited in number and in scope. The United States Supreme Court was able to look at that issue and say that there is no justification for having immunity attached under their statute. In Italy there is an even more important point to be made, namely, that these are crimes that simply cannot incur immunity. That is a point that we have been trying to make and it is critical—these are not sovereign acts. The idea behind immunity is to protect other governments from lawsuits for sovereign acts. But torture, war crimes, and genocide are not acts that a sovereign is permitted to engage in. The Italian courts have taken a big step by recognizing this.

● (1340)

Hon. Irwin Cotler: You mention also that in Canada in the year 2000 we criminalized, in effect, war crimes, crimes against humanity, and genocide. Yet we did not pass parallel civil or remedial legislation. Governments tend to look to their departments of justice and foreign affairs for legal counsel on whether to undertake an issue of this kind. Have you had any discussions with the Department of Justice or the Department of Foreign Affairs on these matters? Have you noticed an evolution in their thinking? Maybe in the year 2000 they were not prepared to support something like this, but do you think that, given all the developments that you have described in the last decade, internationally and in the courts of Canada, they might now be more disposed to supporting this?

The Chair: You have 90 seconds, unfortunately.

Mrs. Jayne Stoyles: I think that the new war crimes legislation was passed in 2000, of course, because Canada had ratified the new International Criminal Court treaty and had the obligation to implement the treaty into Canadian law. So it looked at the criminal cases and looked at our history in Canada of criminal lawsuits, and in that legislation, of course, followed the global trend in criminal cases, which is very clear that immunity is not permitted for anyone. I think the fact that civil litigation didn't come at the same time was not necessarily a reflection that at the time there wasn't interest; it was simply on the basis that an international treaty had been ratified and needed to be implemented.

When we have raised these issues with the Department of Foreign Affairs, certainly there has been an openness to the discussion. We had one meeting at which there were some questions, the kinds of questions we've discussed with this committee. I think the key concern is the potential impact on foreign affairs, diplomatic relations, and trade. I think we have very clear answers to that, as we've set out. So we just really need to follow up on that. Certainly if you will be looking to them for advice, we will be providing the same kind of material.

I think the point has been very well made that in this period of time, things have progressed a lot in terms of the status of international law on immunity in civil cases. Certainly we might see some movement and more willingness to support this as a result.

[*Translation*]

The Chair: Go ahead, Madam Deschamps.

Ms. Johanne Deschamps: Thank you, Mr. Chair.

First of all, I want to let you know that our party intends to support Mr. Cotler's bill.

As you pointed out, Ms. Stoyles, in 2005, my colleague Francine Lalonde called upon the government to amend the State Immunity Act to allow victims of torture in foreign countries to seek damages.

If memory serves me well, in 2005, the United Nations Committee Against Torture criticized Canada for not taking legislative action to assist torture victims.

I'd like to come back to the case of Ms. Kazemi. Lawyers for Mr. Hashemi, the victim's son, argue that the current legislation is unconstitutional and that in view of its international commitment to fight torture, Canada should no longer grant immunity to states that commit acts of torture.

The case is currently before Superior Court Justice Robert Mongeon, who will decide if the act, as it now stands, violates the Canadian Charter of Rights and Freedoms. If that's found to be the case, what would that mean in terms of future action?

[*English*]

Mrs. Jayne Stoyles: Certainly the issue is whether the State Immunity Act, as it currently stands, is constitutional and complies with international standards. As you said, the UN Committee Against Torture, when it said in a previous case, the Bouzari case, that Canada was in violation of its obligations under the torture convention by not providing compensation to all victims, was responding to the decision of the Ontario Court of Appeal in the Bouzari case.

That is again the issue in the Kazemi case, with a slightly different set of circumstances, because of course she was Canadian at the time of her abuse. This is the issue that's still under appeal. As we've set out, Stephan himself has been given a right to proceed. But Zahra Kazemi's own abuse has not been considered, at the moment, to give rise to a right as a result of the State Immunity Act, because the court refused to read in this exception for torture. All of this will be appealed. So this is not yet at the end.

In terms of what it means for us, this would allow us to give a number of the clients who come forward to us some hope of seeking redress. It's not a huge number of cases in terms of the numbers that would result. We have a few clients for whom this would provide a right to a remedy. In most circumstances, the availability of witnesses, the emotional trauma, the lack of financial resources, and other factors create a barrier to proceeding. At the same time, the clients who come forward who have experienced this kind of abuse or who are from a country like Iran, where there is an ongoing and significant level of human rights abuse, really just want to see that there is a possibility of justice, that Canadian courts are standing up for their rights, and that some cases are allowed to proceed in Canada.

I think this would provide a measure of hope to a broad base of survivors in Canada. There are at least one million people in Canada affected by these issues. It would send a very important signal about Canada's role in standing up for international human rights and not for torturers.

● (1345)

[*Translation*]

Ms. Johanne Deschamps: Would the other witness care to add to that?

[*English*]

Mr. Matthew Eisenbrandt: I think Jayne has phrased the issue quite well in terms of the hope that these cases could provide to even those people who themselves will not actually bring lawsuits. As we're saying, the number of cases that we'll move forward, based on the experience of other countries, will be relatively small, but the impact for other survivors and the impact on the actions of other countries would be quite important.

And I wanted to add, as you were saying about the Committee Against Torture's response to Canada's situation, the committee also reinforced that same issue, the obligation to provide remedies and access to courts to all survivors of torture. They reinforced that with several other countries after the case involving Canada, so that is not a one-time conclusion. They have reinforced that on a number of occasions.

[*Translation*]

Ms. Johanne Deschamps: Do I have any time remaining?

The Chair: You still have 45 seconds.

Ms. Johanne Deschamps: To avoid confusion over legal and constitutional considerations, so to speak, would citizens of other countries, for instance, then be able to proceed with claims against Canada from their own country?

[*English*]

Mr. Matthew Eisenbrandt: Lawsuits against the Canadian government are governed by an entirely different set of rules. This law is really looking outside of the country, and the amendment that we're talking about here would apply to foreign governments.

Ms. Johanne Deschamps: Merci.

The Chair: Mr. Marston, please.

Mr. Wayne Marston: Thank you for the presentation. It's good to see you here again.

I'm very impressed with the work that this organization does along with Amnesty International and the battle that you've undertaken here. The fact that we even consider the sovereign nation has a sovereign right to torture, that it can even be discussed, is in itself very disgusting.

We do have a problem. Bill C-7 is awaiting debate in the House. Bill C-35 died at prorogation. Bill C-483 is teetering because of a potential election. But I want to say on behalf of my party that should there be an election and should the good people of Hamilton East—Stoney Creek send me back here, I'm going to be working with, I presume, the members of this committee to make sure Bill C-483 comes forward again.

But I think what we need to do as well is have a discussion about making it as comprehensive as we possibly can, to include those positives that get lost along the wayside because of the proceedings of a minority Parliament. It's very important, so I want to give you that commitment here today. I've just looked down the aisle here, and I see my friends nodding.

The other thing we have to address as members of Parliament is the order of precedent, that this comes forward. Because if you're a private member, and I happen to be, I think, 163, there's a long wait before you have.... So we have to ensure a bill of this importance gets a priority, and I commit also to work with my House leader to try to get unanimous consent to get this up sooner, no matter who has the precedence on it.

Considering places like Iran or Libya or maybe the Democratic Republic of Congo—I have trouble saying "Democratic" Republic of Congo—if you have Canadians working there and let's just say we made these changes in law here, is there any consideration given to the risk factor for Canadians abroad following this? What kind of reaction might there be? That's something that concerns me, and I'd like a response, if you would, please.

● (1350)

Mrs. Jayne Stoyles: Let me first of all say thank you so much for those expressions of support.

We know there's a lot of election talk right now and that people are likely starting to have an eye to that potential. But we felt it was really important to have the opportunity to come. We know this committee has heard about this issue before and that you have looked at and provided some statements in support of Bill C-483. We hope we don't lose momentum for longer than that potential election period, and that if you are all back in your seats afterwards you will work with us still across parties to champion us.

That was really our hope today, to bring it to you knowing that you have provided some endorsement of the bill, to really ask you to think about working actively on this and championing it and making it a priority, as you've said. So I appreciate that very much.

In terms of retaliation against Canadians abroad, I think the most important point to remember is that we are talking here about removing immunity for torture, war crimes, crimes against humanity, and genocide. So if another country were to look at what Canada did and say "Well, you've carved out this exception to your state immunity act for those issues and we are going to do the same", we're still talking about Canadians implicated in those most serious crimes of international concern. Of course Canada would have an obligation itself, then, to investigate those allegations and to bring people to justice if there were serious allegations. That obligation exists already under many other treaties.

Mr. Wayne Marston: My concern is that if you take a state like Iran, right now, following their elections and the leadership of the uprising—as they call it—they're using the drug laws to destroy those young people now. They're hanging one every eight hours. So the language of who is doing what in our courts is wonderful and truly important, but on the ground there's a huge risk factor when you're dealing with people such as these who are prepared to do anything and everything.

Libya today is an example, when you watch the airplanes on television bombing and strafing their own citizens. You realize you're dealing with a leader—I don't even want to call him a leader—of people in control of a country that will destroy their own citizenry. So again these are the kinds of major players around the world that cause that kind of concern. Your own point was about getting rid of the victims so there's no evidence. Those things are very concerning.

I agree with you that we have to bring this and continue, because the momentum has already started. This country was reluctant to sign on to the torture agreement ourselves. It took us an embarrassingly long time to do that. But the momentum is there, and I agree we have to do it.

I have no further questions, Mr. Chair.

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

I think we're going to Mr. Hiebert next.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you for a very thorough presentation. I took lots of notes. I honestly don't have a lot of questions, because you've done a good job of answering most of them.

What are the arguments against the changes proposed in Bill C-483? I'm getting the sense that there's support around the table, and perhaps broader than that. But what could somebody say against the idea of extending the State Immunity Act to these officials who have permitted or instructed these atrocities to occur?

Mr. Matthew Eisenbrandt: I don't want to simply repeat myself, but the two points I made toward the end of my presentation are really the ones that have been the most discussed. The first one is whether it would open the floodgates and result in a lot of cases. I really think experience shows that will simply not happen.

The other, as Mr. Cotler also brought up, is the issue of diplomatic and trade relations and the impacts that might be there. I really think the experience of countries like Italy and the United States shows that's not a likely possibility. There may have been complaints about individual cases here and there, but there have not been major repercussions from these types of cases.

In addition, if we're worried about our allies being dragged into court here in Canada, there are many tools at the disposal of courts that they are certainly not shy about using if they think a case should be sent somewhere else, or would be in a better forum in another country. They are very well equipped to deal with that.

I don't know if you had a more specific question on that, or if that answers your question.

● (1355)

Mr. Russ Hiebert: I caught those two points you made at the end of your presentation. I was just wondering if there was anything in addition to those arguments. You're basically telling me there is no other reasonable reason to oppose the amendments.

Mrs. Jayne Stoyles: As Mr. Marston raised, I think there is sometimes this concern about what will happen to Canadians elsewhere, and what is already happening in Iran and Libya, and so on. I think the response is almost the flip side of the way it was presented. Right now we are seeing the commission of these abuses. Exactly what Zahra Kazemi faced in Evin prison has gone on many times since. This is happening in Libya and elsewhere, with the kinds of indiscriminate and widespread human rights abuses we're seeing.

We really have the potential to send a strong message that this is not going to be tolerated any more. This is all very new. It's really only in the last 10 or 15 years, at the criminal level internationally, that we started to have institutions to enforce these laws. We have the ICC and some national-level criminal cases on these issues. The idea of civil cases provides another opportunity, particularly when criminal cases don't always have the necessary resources because they're government-funded. Civil cases give yet another mechanism to try to bring people to court, provide some measure of accountability, and send that clear message.

So I think that's really the most important response. We have an opportunity to save money in our budgets by not having to respond too little and too late to international atrocities. We have the possibility to save lives through this kind of deterrence.

Mr. Russ Hiebert: Before I pass the balance of my time to Mr. Sweet, I have one brief question.

Do you think there were would be any difficulty with enforcement of these civil lawsuits if they were successful?

Mr. Matthew Eisenbrandt: Certainly enforcement and collection are always challenges, there's no doubt about that. But there are a few different aspects to these cases that are important, even if that isn't a possibility. A deterrent effect is given simply by a country or an official having to go into court to be confronted with the allegations against it. There is even further deterrence if damages can be collected and countries can be hit in the pocketbook.

On looking at the importance of this for the survivors of these abuses, I have worked with many survivors who tell me that even if they somehow didn't win in court, just the ability to get to court and have their story told is a critical victory and step forward in their own rehabilitation. So the chance to get to court, have a story told, and have a fair court in a country like Canada pronounce judgment about what happened is the most important thing.

Beyond that, on the enforcement of the judgment, you can look at any other countries around the world where these countries might have assets. Most counties have assets in places like Canada, the United States, and western Europe, so enforcement would be possible. Even if you were not able to do it in the actual country itself, there should still be other assets and other ways to enforce that judgment and get some compensation for the survivors.

● (1400)

The Chair: We've just hit six minutes exactly, which uses up the time that was available for the Conservative Party. So Mr. Sweet won't be able to ask any questions.

I want to thank our witnesses for coming in today. You've been very thorough. We are grateful to you for attending, and we give you our thanks.

[*Proceedings continue in camera*]

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