House of Commons
CANADA

Standing Committee on Foreign Affairs and International Development

FAAE • NUMBER 038 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, November 5, 2009

Chair

Mr. Kevin Sorenson

Standing Committee on Foreign Affairs and International Development

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● (0900)

[*English*]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Order.

Good morning, committee, and welcome back. This is the 38th meeting of the Standing Committee on Foreign Affairs and International Development. It is Thursday, November 5, 2009. Today we are going to continue our study on the treatment of Canadians abroad by the Government of Canada.

From Amnesty International we have Alex Neve, the secretary general. Welcome back.

From the University of Montreal we have Stéphane Beaulac, professor of international law.

Appearing as individuals are Raoul Boulakia, lawyer, and Paul Champ, lawyer, with Champ and Associates. We look forward to your comments.

Before we begin, I believe Madame Lalonde has a point of order or something to say.

[*Translation*]

Ms. Francine Lalonde (La Pointe-de-l'Île, BQ): Mr. Chair, you will not be surprised to hear me say that I would like us to set aside 15 minutes at the end of the meeting to finally adopt my motion, which we have considered at the end of two other committee meetings.

[*English*]

The Chair: Madame Lalonde, I'm going to give you 20 minutes.

Some hon. members: Oh, oh!

[*Translation*]

Ms. Francine Lalonde: Finally! Thank you.

A voice: You are generous.

Ms. Francine Lalonde: Everyone will read about that in the papers...

Some voices: Oh, oh!

[*English*]

The Chair: In Montreal, I'm sure.

Seeing how everybody seems to be getting along well here this morning, I'll see Mr. Obhrai—

Mr. Deepak Obhrai (Calgary East, CPC): Are we moving into committee business?

The Chair: No, we aren't. Madame Lalonde asked that at the end we make sure we have committee business.

I will welcome your opening statements, and then please be prepared to take questions from members of our committee. This is a study that has gripped our committee somewhat since the summer. We were called back to discuss this issue. In addition to that, as a committee we asked to study it for four more hours. You are the last segment of what we're going to study, unless we decide to go into more studies later.

Welcome. We all look forward to your opening statements.

Mr. Neve.

Mr. Alex Neve (Secretary General, Amnesty International): Thank you very much, Mr. Sorenson, and good morning, committee members.

It's a pleasure to be in front of you again. It's particularly a pleasure to have an opportunity to share concerns and recommendations regarding an issue that Amnesty International has followed closely for quite a number of years now. Over many years there has been a growing number of high-profile cases that have highlighted many ways in which Canadians imprisoned in foreign countries face serious human rights violations.

The cases have also demonstrated that the responsibility for the violations lies not only with the country where the individual is detained, but may often involve the complicity or negligence of Canadian officials or the direct involvement of officials from third countries. Some of the cases have been quite complex in that regard. They've arisen in a variety of different contexts, including national security investigations, criminal charges, commercial disputes, and allegations of passport fraud.

The human rights at stake are serious, and the violations experienced by a growing number of Canadians have been severe: torture, mistreatment, arbitrary arrest, discrimination, unlawful imprisonment, the possibility of the death penalty, denial of consular rights, access to legal representation, contact with family, and others. The range of countries is also considerable: Syria, Bulgaria, Egypt, Saudi Arabia, Ethiopia, Jordan, China, Iran, the United States, Kenya, Sudan, and others.

Many Canadians who have found themselves in such situations have eventually been released from imprisonment, sometimes after many long years, and have been able to return to Canada. That's often come about only after considerable and sustained public pressure and media attention.

Some of their cases have been examined in depth, including through two high-profile judicial inquiries, various court cases that are under way in Canada and abroad, media coverage that at times has been extensive, documentaries, and now a number of books.

Their names and tragic stories have become all too well known to Canadians: Maher Arar, Abdullah Almalki, Ahmad El Maati, Maziar Bahari, William Sampson, Abousfian Abdelrazik, Arwad Al-Boushi, Kunlun Zhang, Michael Kapustin, Suaad Mohamud, and others.

There are also those who did not come home. I recall the tragic death of Canadian-Iranian photojournalist Zahra Kazemi in Iran in 2003 after she was brutally tortured and raped in Iran's notorious Evin prison.

Other Canadians still languish in foreign prisons where they face ongoing serious human rights violations and where at the moment there appears to be little prospect of release. I very much want to remind the committee today of Huseyin Celil, sentenced to a life term in China; Bashir Makhtal, sentenced to a life term in Ethiopia; Mohamed and Sultan Kohail, facing the possibility of execution in Saudi Arabia; and Omar Khadr, facing ongoing legal limbo and injustice at Guantanamo Bay. All have experienced torture or ill treatment, all have faced profoundly unfair trials, and all have raised concerns about the inadequacies of Canadian government efforts to defend their rights.

What has become abundantly clear over many years now is that Canadian laws, policies, and institutional arrangements do not adequately safeguard the rights of Canadians who find themselves in these circumstances.

I'd like to quickly highlight three key areas where Amnesty International believes change is sorely needed: complicity before detention, meaningful protection during detention, and access to justice after detention.

Let me begin with concerns about complicity before detention. There have been frequent and very disturbing recent revelations about the ways in which the actions of Canadian officials, including the RCMP, CSIS, and Foreign Affairs, have directly contributed to the human rights violations Canadians have experienced in other countries. Those concerns have been confirmed through two judicial inquiries, various court proceedings, and information that is now clearly on the public record.

It is not enough to condemn or regret complicity. Legal and institutional changes should be put in place to guard against such complicity in the future.

● (0905)

One of the most significant proposals in that respect is Justice Dennis O'Connor's recommendation for a comprehensive new model for ensuring proper review and oversight of Canadian agencies involved in national security cases—an area where concerns about complicity are commonplace.

Justice O'Connor laid out the proposed new model in a major report released in December 2006 as part of the Maher Arar inquiry. But close to three years later there have been no steps taken to implement the new model, and the government has not yet indicated its plans in that regard.

Amnesty International's first recommendation is that the model for a comprehensive review of agencies involved in national security activities should be implemented without any further delay.

Justice O'Connor had a wider set of recommendations as well, all directed toward minimizing the likelihood of Canadian complicity in human rights violations of Canadians detained abroad and strengthening the quality of consular assistance provided to detained Canadians. Three years later, however, there has been no public reporting as to the progress and details of implementation of those recommendations. A public progress report is urgently required.

Let me move on to the second phase: concerns about meaningful protection during detention. Whether or not there has been Canadian complicity in the circumstances leading to their imprisonment, Canadians detained abroad often find that Canadian officials are unable or unwilling to offer them meaningful protection once they are detained. Canadian officials will often weigh the pleas for forceful intervention in the case against other foreign policy considerations Canada faces with the country concerned, including trade, investment, and security cooperation.

In some cases, the fact that the Canadian involved has dual nationality constrains Canadian diplomacy. Sometimes Canadian officials exert considerable effort to no avail, because the foreign government is indifferent or even hostile to Canadian overtures. Other times officials turn their backs, even when it is clear that minimal effort would almost certainly make a difference. Far too often officials fail to consider innovative strategies, such as calling on other governments to assist in Canada's efforts or making greater use of multilateral bodies to raise the case.

Responsibility for overseeing the Canadian government's efforts on behalf of Canadians detained abroad lies with the consular services division of the Department of Foreign Affairs. It is not an independent body and is therefore subject to various political considerations that may occasionally limit or shape their efforts. We believe it is time for reform that makes it clear in Canadian law that consular assistance is a right and that will guard against the possibility of consular assistance being withheld or minimized because of other considerations.

We first recommend, therefore, that Canadian law be amended to establish that all citizens of Canada who are imprisoned or face human rights violations in other countries have a right to receive consular services and protection from the Canadian government.

Second, we recommend that an expert ombudsman or other independent office be established to which Canadians detained or facing human rights violations abroad may appeal when they do not receive sufficient support or protection from the Canadian government.

Last, what about after detention? Even once Canadians detained abroad have been released and returned to Canada, the violations of their human rights often continue. This very much includes an inability to seek and obtain a remedy for the violations they have experienced. The right to a remedy for serious human rights violations such as torture is itself an internationally recognized right. For Canadians who have experienced violations in other countries, this means they should be able to seek redress and compensation from those foreign countries and, when there is Canadian complicity, from Canadian officials as well.

In most cases, because of the nature of the justice system in the country concerned, the prospect of turning to foreign courts for compensation is an illusion at best. Understandably, therefore, Canadians need to be able to make use of the Canadian court system to pursue redress from foreign governments. Canadian law, however, generally makes that impossible. Canada's State Immunity Act shields foreign governments from lawsuits in Canadian courts unless the case involves a commercial dispute. This is not defensible. It should not only be open to Canadians to sue foreign governments for breach of contract; they should also be able to pursue compensation when something as serious as torture is on the line.

There are a number of court cases challenging this law, but this shouldn't be left to the courts. There is a role for Parliament to step in and make sure that act is amended.

● (0910)

There have also proven to be great difficulties in ensuring accountability for the role that Canadian officials have played in the human rights violations experienced by some Canadians detained abroad. Maher Arar's case is a welcome exception because he received compensation and an apology. Others are left to labour and struggle through complicated and lengthy court proceedings in an effort to possibly one day obtain some sort of compensation. We need a new approach to that as well.

I'll wrap it up here with that three-part agenda, which I urge the committee to think about very carefully in its deliberations. Action is needed before detention, during detention, and after detention to better protect the rights of Canadians who find themselves in these circumstances.

Thank you.

The Chair: Thank you, Mr. Neve.

Maybe I'll just remind everyone—and I think that was very good—that our committee has been very clear that we don't want to look specifically at individual cases; we want to be more broad about consular services. Naming various cases may be all right, but don't dwell on them specifically.

And you didn't, Mr. Neve, so thank you.

Mr. Beaulac.

[*Translation*]

Mr. Stéphane Beaulac (Professor of International Law, University of Montreal): Good morning. I am very pleased to have this opportunity to speak to you today. In the time that is allocated to me, in the next 12 or 15 minutes, I would like to do two things: first, talk about the Hague Convention on International Child Abduction; and second, address the issue of diplomatic protection within international law and Canadian law, along with the present day notion of duty to protect.

First of all, let me speak to the Hague Convention. Last Tuesday, one of the witnesses gave a good overview, and in particular spoke about his basic idea of the status quo and the reinstatement of the status quo with regard to child abduction. For my part, I would like to make three brief comments this morning concerning The Hague Convention.

First—this is an issue of general public international law—there is what is called the principle of reciprocity concerning international treaties in general. Here is what that means. In principle, since Canada is a participant in The Hague Convention, we have requirements with regard to other participants in the international treaty. However, Canada is not, strictly speaking, obligated to meet obligations under The Hague Convention regarding countries that are not participants in the treaty, including a number of Islamic countries such as Saudi Arabia.

With regard to non-member states, Canada might want to respect the obligations contained in the Hague Convention, whether out of goodness of heart or based on an *erga omnes* obligation, as this is known in international law jargon. However, Canada is not obliged to do so and insist on respecting the Hague Convention to justify a lack of action in a case involving children abroad. Simply put, that often appears to be an excuse, a smoke screen.

That brings me to my second point concerning The Hague Convention, i.e., the explicit exception to the status quo principle contained in article 13 of the convention, which states the following:

> Notwithstanding the provisions of the preceding article, [...] is not bound to order the return of the child if [...]
>
> b) [...] there is a grave risk that his or her return [maintaining the status quo] would expose the child to physical or psychological harm [...]

Essentially, that means that the principle of status quo is not absolute. In a case involving children abroad, it is all very well for Canadian officials to invoke The Hague Convention out of the goodness of their hearts, but they should do so properly, by alluding to the general principle of status quo, but also—and this to me is crucial—by referring to that major exception that is in article 13 concerning the risks to the child.

This brings me to my third point with regard to The Hague Convention. To make it as simple as possible, I would say that treaties in international law, like provisions in domestic law, are not used or interpreted in a vacuum; they must be used within a given context. For us, that means that The Hague Convention must be interpreted, if we choose to do so, in light of the International Convention on the Rights of the Child—the most important piece of legislation in international law on the protection of children. Its guiding principle is the notion of a child's best interest. Consequently, all decisions affecting children should be made by keeping in mind their best interest. In concrete terms, I would suggest that the basic principle of The Hague Convention on the status quo is adequate, but it must be understood and applied together with the notion of the child's best interest. In my opinion, that means that the article 13 exception concerning the risks to the child should be taken into account.

● (0915)

The issue should be taken with the utmost seriousness. You will agree with me that the best interest of children depends on it.

[*English*]

Obviously I'll be glad to come back to all three points during the discussion.

[*Translation*]

The second part of my presentation deals with diplomatic protection. At the outset, I would like to point out that diplomatic protection is a concept of international public law that applies when states have to deal with the files of their citizens abroad. Diplomatic protection has long been enshrined in international law. It was first articulated in 1924, in the Mavromatis case.

Does international law contain a right to diplomatic protection? The answer is yes. To whom does that right belong? It belongs to the state, and not to its individual citizens. In other words, it is a traditional position in international law. A state's own nationals are not entitled to an enforceable diplomatic protection before an international judicial body. However, if that right does not exist in international law, could a Canadian citizen still invoke the right to diplomatic protection? That is where things get a bit complicated. The answer is yes, in accordance with the sovereign state's domestic laws, in this instance, Canadian domestic law.

Here is how, in the Barcelona Traction case, the International Court of Justice explained the situation:

● (0920)

[*English*]

> The municipal legislator may lay upon the State an obligation to protect its citizens abroad, and may also confer upon the national a right to demand the performance of that obligation, and clothe the right with corresponding sanctions.

[*Translation*]

In other words, a national from a sovereign state can claim the right to diplomatic protection before a national tribunal, pursuant to domestic law, not international law. In the case of Canada, that would be pursuant to Canadian law and the Canadian Charter of Rights and Freedoms.

With regard to Canadian domestic law, as was explained to you last Tuesday, diplomatic protection and issues of international relations in general fall within the royal prerogatives of the Crown. Generally speaking, the government has full leeway in the matter. Nevertheless, do Canadian citizens have the right to diplomatic protection? That was perhaps not the case in the past, but it certainly is today. That is the position that I and others defend, in light of the Canadian Charter of Rights and Freedoms and recent judicial decisions, particularly in the cases of Abdelrazik, Ronald Smith and Omar Khadr. Canada is not the only country to defend that position. Germany and, more recently, South Africa have recognized the national right to diplomatic protection.

Canada—and this will certainly be confirmed by the Supreme Court in the second phase of the Khadr case— has the duty, no less, to protect its citizens abroad, and therefore to grant diplomatic protection. Obviously, certain conditions have to be met, in particular having exhausted all local recourse. The duty to protect is based on the Canadian Charter of Rights and Freedoms. Under those conditions, the government does not have carte blanche within those proceedings. It must respect its minimal obligations to protect its citizens abroad.

Unlike my colleague from the University of Ottawa, Amir Attaran, I do not think it necessary to adopt a new law on the protection of Canadians abroad. As was confirmed this morning, that is also the position defended by Amnesty International. That could be done, but it is not necessary. How come? Because we have the Canadian Charter of Rights and Freedoms, an act that is above all other legislation and that already includes the duty to protect. It needs to be articulated. The Supreme Court will certainly help us clarify that duty to protect those Canadian citizens abroad whose lives, security or freedom are endangered. Those terms are an obvious reference to section 7 of the Canadian Charter of Rights and Freedoms.

Is the duty of diplomatic protection an obligation of means or an obligation of result? Given the legal foundation that is the Canadian Charter of Rights and Freedoms, many of us think that the duty to protect is today an obligation of result. It is more than doing one's best: the appropriate recourse has to be obtained under the circumstances. The result is often quite simple. It is a question at the very least of making a request and deploying all efforts possible to repatriate the Canadian citizen facing problems abroad.

I would like to clarify the following: I am not claiming that the Canadian Charter, as the legal foundation for Canadians' right to diplomatic protection, is applicable on foreign soil. It can be, but under exceptional circumstances. There is no doubt that the Canadian Charter applies on Canadian soil. The decisions of the federal government concerning cases dealing with the treatment of Canadian citizens abroad are made in Canada, in Ottawa. According to that logic, there is absolutely nothing that justifies the government's exemption from the application of the Canadian Charter of Rights and Freedoms as part of its decision-making. In my opinion, it is therefore not an issue of extraterritorial application of the Canadian Charter of Rights and Freedoms. The charter applies in Canada to people who make decisions regarding diplomatic protection in Canada.

● (0925)

Lastly, when I say that there is a duty to protect Canadian citizens abroad under the Canadian Charter, and that that dictates the measures to take to ensure the well-being of our citizens and that there is an obligation to achieve results, this causes no conflict with foreign law. It is basically a question of national law that concerns our federal government, that is the decisions and measures taken by Canadian authorities under Canadian law and not under foreign law.

Allow me to conclude on this point. I would say unreservedly that invoking foreign law to justify the inaction and insufficient action of Canadian authorities in cases of diplomatic protection is too often used as a pretext. This is a dilatory measure, as one would say in the legal field, and it should be denounced as such.

Thank you for your attention. I will be pleased to answer all your questions during this discussion.

Thank you.

[*English*]

The Chair: *Merci beaucoup, monsieur Beaulac.*

Mr. Boulakia.

Mr. Raoul Boulakia (Lawyer, As an Individual): Thank you for the opportunity to speak to you.

I think all Canadians are gripped by and very concerned with the whole question of how we can improve consular services to Canadians abroad. What I'm trying to do today is propose some simple and practical measures that would be useful to avoid problems in the future and to resolve problems quickly or effectively.

While these measures could be incorporated within and protected by legislation—and I do believe legislation would be helpful—implementation of the following measures can be done as a matter of policy. So in a sense I agree with Professor Beaulac that you can do a lot without legislation. You can do a lot immediately. Ultimately what we do really reflects our will to try to make things better, and we should all work together for that.

The first point I would make as a matter of policy is that we need clear authority in one ministry for dealing with Canadians or alleged Canadians who are overseas. One ministry must be in charge of assuring the positive rights flowing from the charter, which include a citizen's right of return to Canada, under subsection 6(1); the right not to be unjustly deprived of liberty or security of a person, under section 7; and the right not to be subject to cruel or unusual treatment.

Foreign Affairs has authority over Passport Canada, and it also has an important authority to give diplomatic assurances to foreign governments, which is often necessary to ensure or negotiate for a fair trial, for a release from detention, or for guarantees of evacuation from a country. Foreign Affairs should be in charge of all efforts to assist Canadians abroad and must have greater authority and the lead over the Ministry of Citizenship and Immigration and the Ministry of Public Safety.

Neither of those two latter ministries in practice work together on files, and neither of them has the clear mandate of assuring the positive rights of a citizen. Very specifically, the mandate of Public Safety is primarily detection of impropriety or abuse, but not assistance in resolving the person's situation. So you have to have one ministry that takes the lead, where the buck stops with them and they're in charge, to make sure we focus on seeing whether there is a way to resolve a problem for a person.

Sanctity of diplomatic assurances is very important. Diplomatic assurances must be protected from negative comments in disputes with respect to an individual. When Canadians require consular assistance in the future, they will be undermined if comments made publicly imply that past diplomatic assurances made in order to evacuate a Canadian were false or are questioned.

It's important that when Foreign Affairs makes an assurance to a foreign government—for instance, that we have evidence that this person is not guilty of an infraction under your law, or we believe this person is a citizen and should be evacuated—the assurance made by Canada has to be treated as impossible to violate. Even if you could violate it or subvert it in a privileged context like discussion and litigation, it actually undermines the security of future Canadians, because why should governments believe Canada if we make assurances and then question them later?

We require independent perspective and advocacy to be inserted early on in the process. Groupthink takes hold when officials have a negative perception of an individual, and that can take hold for a variety of reasons because the function of the officials is primarily to detect abuse, or it can be simply because once the negative suggestion is made that this person is questionable, people can fear sticking out within the group as the one who's taking the risk of advocating for the individual.

That doesn't only extend to bureaucracy; it also extends to politics and to media. As a member of Parliament, if you go to bat for somebody who turns out to have been questionable, that can be a risk for your own political career.

● (0930)

Even within the media, many people are convinced that they shouldn't advocate for someone or talk about someone, because they think that if they knew the real story, they might realize that this person has some terrible cloud over them.

Once groupthink takes hold, even people who are well qualified within a department, very knowledgeable, feel intimidated about suggesting good ideas. For example, a law professor suggested DNA testing early on in the Mohamud case, and that was shot down as expensive or not worth it. When you're in a group and there's a current perception or decision that has to be justified, it's hard to stick out in that group and be the one person who asks why something else can't be done.

So in many group efforts, common sense just doesn't take hold quickly. I would suggest a citizen's advocate bureau that would be independent of the group. It could suggest positive rights and measures, and it could fearlessly advocate for the person concerned. The intake office could be located in Ottawa. In major metropolitan areas, counsel would be able to liaise with families or communities. This office would have to have access to privileged information, similar to the access given to the special advocate's office in the security certificate cases. It is possible for counsel to have a combination of independence and access.

One of the problems with special advocate work is that people have to go to what's unflatteringly described as “the bunker”, a closed office in Ottawa, to view privileged information. In the electronic age, there is no real reason why information shouldn't also be accessible in offices outside Ottawa. I would suggest a hub in Ottawa with intake officers where officials from a foreign government, Canadian government officials, or persons who are simply concerned about an individual can call in and report a problem that needs resolving. Lower-ranking intake officers could often resolve problems in-house. It would actually be a combination of independent and in-house. There are a lot of problems that could get resolved quickly and cheaply without turning into bigger problems. And that's better for everybody. But when a matter can't get resolved easily, you may require greater advocacy. You may even require access to the Federal Court for remedies, or you may have to deal with foreign or international law bodies.

Intervention would begin regardless of whether there was action or inaction. It begins based on need. The intake office would have to be staffed around the clock. Right now, Foreign Affairs is able to take calls in Ottawa at all times. In the Mohamud case, that did happen. But the catch is that if the people taking the calls at the consulate report a cloud of doubt or a problem, the supervisor immediately takes the word of the person he or she is supervising. So you just don't get out of a groupthink problem.

With respect to accessibility to the Federal Court, it must be possible to seek orders of mandamus and emergency remedies promptly. Now here is where legislative amendment would be needed, but the court should have the power of habeas corpus, which it does not have right now.

● (0935)

One of the reasons the Federal Court has to be involved or accessible to an advocate is that it's where you can get the remedies. It's also where privileged information can be reviewed. It's the chief justice of the Federal Court who can designate a judge to decide whether documents are privileged. There should also be a quick modality to get all the records on a person to the court right away so the court can review what should and shouldn't be privileged. Right now it's extremely slow getting anything released.

I would sum it up by proposing first, that Foreign Affairs and International Trade have a clear leadership role; second, that we have a sanctity to diplomatic assurance that gets greater respect in Canada; and, third, that there be a citizen's advocate bureau.

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

I'd also like to remind those appearing here that if you want to submit something later, please do. I tried to write out the points you made. I thank you for bringing up the points about clear authority in one ministry and a citizen's advocacy bureau. If there are others we kind of missed or that you skipped over, please forward them.

Last, but certainly not least, is Mr. Champ, please.

Mr. Paul Champ (Lawyer, Champ and Associates): Thank you, Mr. Chair.

Mr. Chair, I want to thank you and the members of the committee for this invitation and the opportunity to provide you with some thoughts of the experience I have had with this issue of Canadians detained or imprisoned abroad. I've represented a few Canadians abroad, some well known and some less well known, and have come across similar experiences in those cases.

In my presentation, I'll try not to repeat some of the excellent points made by the other witnesses, and I will make a few points where I perhaps disagree a little.

Imagine your office gets a frantic call from a mother who says her son is working for a company abroad. He called her—and it was a 30-second call—saying he was arrested in this foreign country, and she doesn't know what to do. She called Foreign Affairs, and they said they'd let her know when they could. That call was six hours ago, and she's really concerned. This country doesn't have a great reputation for respect for human rights. Her son has medical conditions, and she's not sure if he has access to medication. She asks us what we can do.

This might not be fictional for some of you. The kinds of problems that are presented to your offices often have to do with federal legislation, employment insurance, CPP, or those kinds of things. I'm sure all of you have excellent assistants who know what do in those situations. They know how to assist constituents.

In this kind of a case, though, what do they do? I'm sure all of you get lost. You will ask yourselves who you know. Maybe some of you are fortunate to know Mr. Cannon personally and can make a call that way, or maybe you know the director general of consular affairs and you can make a call that way. There's nothing necessarily wrong with that. Unfortunately, the uncertainty and arbitrariness of the rights of Canadians detained abroad to some protection or consular assistance is very ad hoc, it's very arbitrary, and, at worst in many cases, it has been viewed as discriminatory.

The reason for that, it seems, is there are no specific laws or guidelines or standards governing the rights of Canadians abroad. I know Foreign Affairs has a manual, and it's probably been submitted to the committee. It's not always implemented quite that way, and it also doesn't seem to have any mechanism for overview or oversight or accountability to ensure it's being respected.

To go back to that fictional example, you're trying to help this mother, your constituent. She calls you the next day and says she has spoken to Foreign Affairs, that they are aware. They have confirmation from this foreign government that her son is detained, but they won't tell her anything because of the Privacy Act. They won't disclose information because they say it would violate her son's personal information.

Again, that's not fictional; that's the experience of a client. Foreign Affairs officials told her they couldn't tell her anything because that would be disclosing her son's personal information. I'll say right now I think that's just a way to deflect the responsibility of taking action. Because there are no other laws or mechanisms for oversight, those families have nowhere to go.

The next question is what should those rights be. The duty to protect is a great notion, but the way it stands in Canadian law is just a notion. I can't tell you how many times I've had Department of Justice lawyers tell me and tell the courts before me that there is a right; Canada has a right to intervene to assist Canadians imprisoned abroad, but there is no enforceable duty. That means it's discretionary, without any sort of standard whatsoever, and that's when we get into arbitrary and ad hoc responses to those situations where Canadians are imprisoned abroad and are at risk of serious human rights abuses.

● (0940)

Professor Beaulac, in his submission, suggested that the charter can protect Canadians in those situations. I can just tell committee members I wish that were the case. I represented one individual, Abousfian Abdelrazik, where we were successful in relying on the charter to obtain some relief, but it was on a very narrow issue about being able to facilitate his return to Canada. The right to return to Canada is very express in the charter. But on protecting Canadians who are in prison abroad and protecting them from perhaps violations of fundamental human rights abuses, I can tell you that the Government of Canada's position is that the charter does not apply in those situations, right now anyway.

So there has to be something else. There has to be some kind of codification, either in law or regulation, that requires Canadian government officials to take specific actions. The suggestion of an advocate who has access to confidential information is a sound one—or an ombudsman; I've heard that suggestion. That would be very helpful.

Another point I would like to make in my brief time is about what I've seen in some cases: the consular function sometimes is influenced or overridden by the concerns or priorities of other government departments or agencies. That was a concern noted by Justice O'Connor in the Arar inquiry. That is a concern I have seen in one of my cases where the consular officials were at times being misled by other government agencies or at other times were being influenced by other government agencies not to take action.

Mr. Chair, I know you were saying let's not dwell on specific cases, and I'll refer to one of my client's cases just to illustrate the point. When Abousfian Abdelrazik was arrested by the Sudanese secret police in September 2003, his family members were aware. They believed he had been arrested and they went to Foreign Affairs. Consular officials were telling them they had no confirmation from the Sudanese officials that he had been arrested. They continued to tell his family—both in Canada, where he had a wife and children, and in Sudan—that they had no information. While consular officials in Foreign Affairs were telling his family that, the documents show that at the very same time another branch in Foreign Affairs called ISI, or security intelligence branch, that deals with CSIS.... ISI and CSIS were in very close contact, and CSIS had told ISI, on the day Mr. Abdelrazik had been detained, that they were aware he had been detained and they were carrying on communications. In fact, Mr. Abdelrazik was interrogated in Sudan by CSIS officials, while at the very same time—in October 2003—consular officials were telling his family that the Canadian government had no idea where he was.

In my view, Mr. Chair and members, that is totally unacceptable. I think we can all agree that is totally unacceptable, but the question is what laws are there to prevent that from happening. Obviously, these government officials didn't think there was anything restraining them from acting in that fashion. There have to be laws that give guidance to those government officials that it is not right and that it is wrong, laws that provide protection to Canadians.

The other fundamental point has to be that all Canadians have the right to protection from abuses and mistreatment, fundamental human rights abuses. These aren't Canadians who are arrested in normal legal proceedings where the Canadian officials take a look at the situation—for example, when someone is caught perhaps with drugs on them and so forth. Obviously, Canadian officials will monitor that. But I'm talking about the more exceptional situations where a Canadian is imprisoned in a country that, for a variety of reasons, doesn't have the institutional capacity to have a properly functioning justice system and where human rights abuses are common just because the country can't stop them, or in other cases—such as Iran and, I would suggest, Syria as well—where fundamental human rights abuses are used systemically, and systematically by the states.

● (0945)

In those cases, the Government of Canada must intervene in a very strong fashion, I would suggest, and the level of intervention should be proportionate to the risk involving that Canadian. If it requires an intervention at the ministerial level, if consular officials on the ground assess or believe that a Canadian is maybe at risk of torture or is at serious risk of torture, I suggest there should be protocols, if not laws, in place that require the minister to intervene.

We are familiar with the Arar case. It took some time before the foreign affairs minister finally did intervene. Again, that was an ad hoc sort of situation where, as a result of public pressure, he took that action.

In Mr. Abdelrazik's case, again to illustrate a point rather than to dwell on the case—and I'm respectful of the time—we knew as well...I cross-examined the head of the mission, who told me that during Mr. Abdelrazik's second period of detention, in 2004 and 2005, Sudanese officials at that time completely stopped all visits. No one could visit him—consular officials couldn't visit him and his family couldn't visit him—for a period of six months. The head of the mission told me he believed at the time that Mr. Abdelrazik was likely being tortured. He told me under oath that's what he believed, but the question is, what did he do about it? He couldn't take any other actions.

Those are some of the considerations I wanted to raise to the committee, some suggestions, obviously not in the same systematic fashion as Mr. Neve and Professor Beaulac, but I do think it's an issue of concern to many Canadians. I hope the committee takes these concerns very seriously and makes recommendations to the government.

● (0950)

The Chair: Thank you very much, Mr. Champ, and indeed to all our witnesses.

We'll move into our first round, and we'll split between Mr. Patry and Mr. Pearson, please.

[*Translation*]

Mr. Bernard Patry (Pierrefonds—Dollard, Lib.): Thank you very much, Mr. Chair. I would also like to thank our guests.

Mr. Neve, in the conclusion to your presentation, you set out three recommendations, including the right of all Canadians to receive quality consular services. You also mentioned the creation of an ombudsman position and you then spoke of detention.

I would like to come back to the creation of an ombudsman position. This is an interesting idea, but the applicable context of such a position is still very vague in my mind. In what circumstances do you believe it would be useful to have an ombudsman? What would his or her role be? Would there not be a danger that this person would interfere in the role of the Department of Foreign Affairs and in that of our courts? Is there another country that has an ombudsman in such circumstances?

[*English*]

The Chair: Thank you, Mr. Patry.

Mr. Neve.

Mr. Alex Neve: Thank you for the question.

We're not wedded to the notion of an ombudsman per se. I think what we're recommending is that there needs to be an office of independent authority and independent powers. It could be along the lines of what you heard from Mr. Boulakia as well. I think he called it a citizens' advocate commission. I've heard it described in a number of ways—the office of the commissioner for Canadians detained abroad.

I think what we're looking for is someone or an office that has some authority, independent of the Department of Foreign Affairs, independent of consular affairs, because of the concerns you've heard from all of us about the ways in which other kinds of considerations, different strategies that other ministries may have with respect to a particular case, or even concerns about the ways in which other foreign policy considerations may interfere with government action on a case.

It's necessary that there be an independent body to whom individuals and/or their families can turn to enforce what you're hearing from all of us about the importance of recognizing this notion. Whether the charter does or does not adequately protect it already, I guess, is a debate, but a body that would be charged with enforcing this notion that there is a right to obtain meaningful consular assistance when you find yourself in this situation, and a duty on the part of the government to provide it, and that such a body would be imbued with powers to make sure that happens....

The Chair: Mr. Pearson.

Mr. Glen Pearson (London North Centre, Lib.): Mr. Patry was also asking about what other countries were doing, and that's where my question was going.

I know that Mr. Paradis, the former head of consular services, has suggested that not only an ombudsman might be part of the solution, but also an act that would protect Canadians abroad. Then he went on to talk about the Vienna convention for consular relations as a way in which...because obviously as a country we are changing as more and more of our people are travelling. I presume that's being faced by many different countries around the world. They also need a forum, not just Canadian services but consular relations with other countries must have a forum whereby they talk about these things.

I wonder if you could answer Mr. Patry's part about what other nations are doing. Also, what do you think about the idea of its being a convention and trying to establish something more credible?

Mr. Alex Neve: Off the top of my head, I don't know of another country that has an office or a body like what we're describing. I'm not saying that it doesn't exist. I'm not familiar with it. Maybe others are.

We totally agree that there is need for work at the multilateral level as well. A whole variety of international legal issues that arise in these cases are problematic. International law is by no means clear enough when it comes to issues around multiple nationalities, for instance, which very often arise in these kinds of cases. Sometimes it's put forward as more of an imagined obstacle than it is, but there are instances where dual nationality is a real concern. When you are dealing with someone with dual nationality, international law isn't clear enough with respect to the obligations and duties that arise in the consular area. That's sort of a bigger and longer-term strategy, I think.

Obviously, revisiting issues around consular relations at the international level and revising and amending international treaties is long-term and sometimes quite contentious work, but we certainly agree that there is a need on that level as well.

● (0955)

The Chair: Another minute.

Mr. Glen Pearson: Just quickly, Mr. Neve, when you talked about meaningful protection during detention, you said that we need to develop some new innovative strategies. You kind of glossed over it, but I think you gave an answer, too. Do you have some more?

Mr. Alex Neve: I think one of the things we have often come across—and this goes back years in our work on these cases—is that there's often a lack of imagination as to ways in which other countries can be drawn into assisting Canadian efforts on a case. I'm not saying it never happens, but it doesn't happen anywhere near as much as we think it should.

Also, rarely, imaginative thinking about ways in which UN or other settings and other bodies within the human rights system or elsewhere could be used as well. This is all the more reason, perhaps, to create the ombudsman or citizens' advocate or some body that, among other things, would be charged with ensuring that some of those strategies are really given priority attention.

The Chair: Madame Lalonde.

[*Translation*]

Ms. Francine Lalonde: Thank you very much to all four of you.

I will speak briefly about this, but myself and my office are dealing with the case of a woman. In certain countries in particular, being a woman changes everything you may have said, because women must deal with additional negative conditions. We have devoted a great deal of time to this case. Even when one is a member of Parliament and has an assistant looking after a case, it is not easy. My assistant was even told that she should stop calling the embassy of a given country and that I had to stop calling the ambassador. It's a good thing I was not told this directly.

This point has not been raised, but embassies, when visited for reasons other than speaking about detainees, have major responsibilities with regard to the economic ties with the country in which they are located. The same persons who would be best suited to defend detainees with regard to the locals find themselves in a type of conflict of interest and may fear not being able to defend those interests properly.

I would like to speak to Mr. Beaulac. I found his presentation very clear and encouraging. It is based on the duty to protect under recent legislation. However, it seems to me that even though everything is set out in the charter to ensure that someone may state that he is using that charter as an action guide in his relationships with his nationals and foreign countries, we have not quite reached that point. I wish we had, but for now, that is not the case. We must recall that, until these rulings came down concerning these people, they were not treated in that fashion at all.

I am not saying that people who work for the government and in the embassies do not have good intentions. I know many of them, and I agree that it is not easy.

I would like to hear more from you about that. How can we succeed in changing things? Even if a law was created, it would come down to the same thing because it would have to be adopted.

● (1000)

Mr. Stéphane Beaulac: Thank you for the question and your intervention, Ms. Lalonde.

Unfortunately, I am forced to agree with you that we will not be seeing any kind of prescriptive change any time soon that would accelerate the process and lead to a happy ending, whether it be in terms of a legislation or rulings in current cases.

In the history of Canadian law, it would not be the first time that work must be done over the medium and the long term to obtain changes and clear indications that already exist in Canadian law, but having this shown and confirmed by the courts is new.

Allow me to draw a parallel with equality rights without discrimination. Politically speaking, we have been working to promote and concretely enforce equality rights without discrimination since the late 1960s. It took a very long time, some 15 years, before we had the means to do so. Obviously, the last big piece was the adoption of the charter in 1982 and section 15 on equality rights, which came into force in 1985. That is not very long ago. It takes time. For people who are currently going through unfortunate situations, this is a disappointing response, but the case that is currently before the Supreme Court of Canada, that is, Mr. Khadr's appeal, will be heard in November. I hope that a ruling will be handed down quickly. That would be an important step towards moving Canadian law in the right direction, toward better protection and better treatment of Canadians abroad.

Ms. Francine Lalonde: To demand the repatriation of children detained in a country that has not signed The Hague Convention, according to what you say, there is no longer the requirement to agree to start from the conditions that exist in a non-signatory country.

Mr. Stéphane Beaulac: That is right. Allow me to explain it as follows. We cannot be criticized for not having done so because strictly speaking, there is no obligation, under international law, to respect a treaty in a country that has not signed it.

Let's be more concrete. If Canada must deal with a file in Saudi Arabia, which has not signed The Hague Convention, then it is not obliged to fulfil its international obligations. It may wish to do so. Many of my colleagues would argue that this is an *erga omnes* obligation, that is, that it exists with regard to all of the international community. Concretely, before an international authority, we cannot be criticized for not having respected The Hague Convention in our decisions concerning a given file in a country that has not signed this convention.

[*English*]

The Chair: Thank you. Your time is up.

Mr. Goldring.

Mr. Peter Goldring (Edmonton East, CPC): Thank you, Mr. Chairman.

And thank you for appearing here today, gentlemen.

Certainly with close to 50 million international trips over the years and the challenges of intervening in some of the cases that have happened—it's always a challenge—it's good to have a discussion on what we can do to help the situation.

Mr. Neve, you suggested that we allow the courts of Canada to particularly address cases of suing foreign countries for people who are aggrieved or have problems in a country. With the number of people we do have in these circumstances, you could be into the thousands of people who might want to apprise themselves of that. What are the chances that foreign countries will ever respond to that kind of challenge?

Mr. Beaulac, you mentioned that the right for Canada to apply the charter in a foreign country is under subsection 6(1) of the Charter of Rights and Freedoms. Subsection 6(1) does say that every citizen of Canada has the right to enter and to leave, but subsection 6(2) follows, saying that every citizen of Canada and every person has the right to move to any province. Then subsection 6(3) says the rights in (2) are subject to any laws or practices of general application in force in the province. Would that not also extend to any laws in foreign countries?

Is there not a question of how many other countries have laws that apply in Canada, superseding Canadian law? In other words, was the charter not meant to apply for the jurisdictions in Canada? Certainly it's highly questionable whether it applies internationally or not. Could you comment on that?

● (1005)

Mr. Alex Neve: With respect to the proposal about amendments to the State Immunity Act, I should clarify that the proposed amendments would limit the possibility for lawsuits against foreign governments to instances of particularly egregious human rights cases. It's human rights violations that are often called "crimes of universal jurisdiction", instances where someone has been subjected to torture, for instance, or has suffered crimes against humanity or war crimes in a foreign country. Those are crimes that within international law are now recognized to be the business of all courts in all lands, no matter where they happened.

Mr. Peter Goldring: So you're qualifying it to a very narrow section—

Mr. Alex Neve: But a very important section.

Mr. Peter Goldring: It didn't come through in your original comments.

Mr. Alex Neve: I realize I was very brief in my reference there.

The other thing is that the recommendations Amnesty International and others are putting forward also acknowledge that it would be important to put a safeguard in place to ensure that if it would be possible to pursue that lawsuit in the country where the harm happened, and if that country has a functioning, fair justice system, then that will more often than not be the best forum to pursue. So if the lawsuit could happen in the foreign country, fairly and with regard for human rights, that's probably where it should happen.

Mr. Peter Goldring: That's more under international law, is it not? It's not formulated on the basis of the charter proviso under subsection 6(1).

Mr. Alex Neve: This isn't linked to subsection 6(1). This is absolutely an international law concern.

Mr. Peter Goldring: It's really not clear when it addresses foreign countries. It's clear domestically, but it is certainly not clear in foreign countries.

Mr. Alex Neve: That's right.

Mr. Peter Goldring: Mr. Beaulac, would you comment on that?

Mr. Stéphane Beaulac: Yes. Actually I should start by apologizing; maybe I didn't make myself sufficiently clear. The gist of my argument had nothing to do with whether or not in situations of diplomatic protection the Canadian charter applies abroad. Some files may involve this aspect, and Mr. Champ was involved in one of them.

The argument I was making this morning was that this is not an issue of whether the Canadian charter applies extraterritorially. With regard to the Canadian charter, there's no lawyer in this country who would contest that this proposition applies to Canadian territory. The decisions with regard to diplomatic protection are made by the Government of Canada in this country. In deciding as to the validity and the charter conformity of those decisions, the Charter of Rights, particularly section 7—the right to life, security, and liberty of the person—should be the guiding principle in deciding how to address those issues.

Mr. Peter Goldring: But you had stressed in your comments that you were seeking it under subsection 6(1) for applying internationally.

Mr. Stéphane Beaulac: No.

Mr. Raoul Boulakia: I was speaking about subsection 6(1).

● (1010)

Mr. Peter Goldring: Thank you very much for clarifying that it was not subsection 6(1) you were referencing.

The Chair: Thank you.

You have another minute, Mr. Lunney or Mr. Goldring.

Mr. Peter Goldring: How many minutes do we have?

Mr. James Lunney (Nanaimo—Alberni, CPC): I have a number of questions, but I'll start with a short one, just to clarify something.

I've heard the term "diplomatic protection" used a few times, and, Mr. Beaulac, you just used that again. Are we referring to consular services being available?

I thought I heard you refer to diplomatic protection of citizens abroad. You're not equating that with diplomatic immunity, which applies to a country's representatives; you're referring to consular services abroad. Is that correct?

Mr. Stéphane Beaulac: I believe there are two points in your question. The concept of diplomatic protection, as part of the jargon in international law, includes consular protection.

The second point you're making is a separate issue in terms of the whole issue of diplomatic protection. A file can involve both aspects, but in my representations this morning I was speaking to the concept of diplomatic protection, which includes consular services.

The Chair: Thank you.

Mr. Dewar.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Mr. Chair, and I thank our guests. I actually found this very informative.

I concur with you, Mr. Chair, that we request from them some of their prescriptive points, and I'm sure they will want to provide us with that.

We had an interesting presentation at the last committee meeting. One of the things that was established was that we don't have a law in place that obligates our officials to provide consular services. We've heard today that there is a need to ensure clarity. There is a need to coordinate services. There's a need to have some sort of understanding for Canadians when they are in those situations that Mr. Champ underlined and Mr. Neve certainly referenced in terms of the work that his organization has done, and that is really what has to happen here. We don't want to have at this committee wave upon wave of cases when we know there are prescriptions for these problems.

I'm just going to thank our guests for what they've done and look forward to any follow-up they have, because I think it is time that we do something, and I certainly mentioned that in the summer.

I'm going to take the opportunity, Mr. Chair, to move a motion. The notice of motion was provided to the clerk. It reads:

> That, in the context of its study on the treatment of Canadians abroad, the Committee report the following recommendations to the House of Commons calling on the government to:
>
> Recognize its constitutional duty to protect Canadian citizens abroad;
>
> Enact legislation to ensure the consistent and non-discriminatory provision of consular services to all Canadians in distress; and
>
> Create an independent ombudsperson's office responsible for monitoring the government's performance and ordering the Minister of Foreign Affairs to give protection to a Canadian in distress if the Minister has failed to act in a timely manner.

I would like to move that motion, Mr. Chair, and thank our guests for their interventions today.

The Chair: Mr. Obhrai, on a point of order.

Mr. Deepak Obhrai: Just for clarification, if Mr. Dewar is moving this motion within this debate, does it mean we now immediately move into discussing his motion?

The Chair: That's exactly correct.

Mr. Deepak Obhrai: So we now have witnesses sitting here and we are going to discuss a motion that they cannot speak to.

The Chair: That's correct.

Mr. Deepak Obhrai: Am I right?

The Chair: Yes.

Mr. Deepak Obhrai: So he's basically telling those witnesses to go home.

Mr. Paul Dewar: No, they can stay.

The Chair: All right. According to our Standing Orders, any motion that comes out of the testimony of the witnesses is in order. This certainly does come out of what our witnesses have talked about today. You've heard the motion. Mr. Dewar has moved this motion. We now will allow Mr. Dewar to speak to the motion and we will debate the motion.

Mr. Paul Dewar: Mr. Chair, I won't take much time. I also want to ensure we get to other business.

After hearing our interventions today, after what we heard in the summer, after what we heard most recently, after we've had royal commissions, books written, etc., I think it is time for our government to act.

I want to say this directly to government members. I don't think there is anyone in government presently, or certainly on this committee from the government side, who would see this motion as any assessment of them, as a government, personally. I have said consistently at this committee that there needs to be something done when it comes to this issue, and without prejudice. Some of the cases that we've dealt with, some of the cases that have been in the media, some of the cases that have been studied, reported upon, go back to previous governments. So I implore members of this committee to recognize that. This is not about us as personalities. This is not about us as political agents, other than that we have an opportunity, as members of Parliament, to actually do something. The spirit of this motion is to ensure that we actually are able to take out the concerns that people had around perceptions of prejudice and the notion that we can do something.

I think what we heard today gave us some ideas on how we can enhance and support Canadians abroad. This motion's spirit, then—and I implore government members to understand this—is actually about a positive way forward; this is not about gotcha politics.

I hear Mr. Obhrai chuckling. I've talked to him personally about this, about the need to change things so that we can help Canadians abroad so that government is not put in this awkward position. And when you look at the scenarios we've seen, the structural problems that are there, there needs to be something done. That's what this motion is trying to provide in a positive way. It's a proposition motion; it's not an opposition motion, in the sense of, let's corner someone, let's try to make them look bad. There's nothing in this motion other than to propose something positive, to get something done on this issue, so that we don't have more people coming in front of this committee saying, we have problems getting services; we don't see our government supporting us.

That's the spirit of this motion. I look for all of your support, and I think this committee would be well served by having a motion like this supported by all members.

Thank you, Chair.

● (1015)

The Chair: Thank you, Mr. Dewar.

Mr. Abbott.

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

First, I think it's really important that we put on the record some facts before we discuss this motion.

It's important to note that in 2008, Canadians made over 53 million visits abroad. For a country of 33 million to have 53 million visits abroad gives you an idea of how many of our fellow citizens are moving around the world. An estimated 2.5 million Canadians reside outside Canada.

This is another statistic that's really important to remember: every minute of every day, the consular service receives three requests for assistance at one of its points of service. Every 20 seconds, around the world, there is a Canadian asking for consular service. In 2008-09, over 1.3 million Canadians received assistance while abroad.

I'm making the point that we are dealing in this motion with some pretty rare exceptions in the service performed by the government—I'm referring to the previous government as well as to our present government—and the civil service. These numbers are very, very big.

First, I'll talk about my difficulty with the motion. It appears to be based on the false premise that there's a constitutional duty to protect Canadians abroad. There is not. There is a right of return found in section 6 of the charter. However, all citizens, including Canadians, are subject to local laws outside Canada. The provision of consular service is done exclusively in foreign jurisdictions, and the international framework governing those services is the 1963 Vienna Convention on Consular Relations. In the implementation of consular policies and the development of new policies, such as those that approach issues of citizenship, which is the basic determinate of consular service, our government compares notes with a number of key western partners. Those services would be broadly similar to our own.

Our Department of Foreign Affairs has a cadre of trained professionals in the field, with support from headquarters, who already work with local authorities in providing consular services. There are mechanisms in place to respond to Canadian citizens who are dissatisfied with the level of consular service they receive while abroad. Our government has implemented a 24-hour, seven-day-a-week emergency hotline. People can contact their members of Parliament or the Department of Foreign Affairs, or they're welcome to contact the mission on the ground.

Our government has improved resources for Canadians abroad. Resources are available to them if they feel dissatisfied with the level of service when they return home and want an investigation relative to their dissatisfaction.

I did a little bit of research on this, and I understand there is one country, Germany, that obliges its government to provide consular services. This is contained in the Law on Consular Officers, their functions and powers (Consular Law), 1974. The law is general on many points, as circumstances and the capacity to deliver would vary from country to country. For example, article 5 of their law provides that “Consular officers shall help Germans in their consular district requiring assistance if the state of this distress cannot be resolved in any other way.”

The obligation does not extend to Germans or dual nationals habitually resident in a foreign state. Assistance may be refused if the person has abused such assistance in the past. Paragraph 5 provides that the “nature, form and degree of assistance shall depend on the conditions prevailing in the receiving State.”

● (1020)

To the best of my knowledge on the research that has been provided to me, this is the only law of a nation that would have many of the same standards as ours, that actually would oblige the German state to provide consular services. But in fact,when you read through it, you see that it doesn't really oblige Germany to do that. It fundamentally would be equivalent to our current Canadian status quo.

What about the U.S.? There are references to an obligation under U.S. law for the government to provide consular assistance. This is far from straightforward. Section 1732 of chapter 23, “Protection of Citizens Abroad”, of title 22, “Foreign Relations and Intercourse”, of the United States code provides that the President is to demand the release of any U.S. citizen wrongfully imprisoned abroad and take measures short of war to affect the release of the citizen. The law dates, by the way, all the way back to 1868.

However, the U.S. Department of State *Foreign Affairs Manual*, volume 7, which is akin to our manual of consular operations, does not refer to any obligation under the U.S. law to provide assistance. Rather, it cites authority to provide such assistance. Part 7(1) of Title 22 of the consolidated federal regulations sets out the authorities for the consular protections of Americans abroad.

There are references in some commentaries to obligations to provide consular services contained in various provisions in U.S. law, but the initial research yielded only what is cited above.

Basically, this motion would go into realms that no other nation has gone to, save Germany. As I say, we've already seen that the status quo that we have in Canada does not differ, with any significance, to what currently exists in the great country of Germany.

So, Mr. Chair, I think this motion is based on a false premise. I can't see any way in which it would be workable. I have difficulty understanding how it would be of any great value. In some of the testimony that I heard earlier today—with the greatest respect to our presenters, who are people with good knowledge and experience—some of the actions that it seems to me were implied would be for Canada, in the case of Sudan, to send a force in and invade when there is a suspicion of torture, or issues like that.

How else could Canada have acted or reacted in a situation like that? I realize that is taking it to the absurd, but that is where we end up when we say we demand that this is going to happen or that is going to happen. We have to recognize that in the same way that Canada is a sovereign nation, we must respect the sovereignty of other nations, short of absolute force.

As a consequence, Mr. Chair, as I say, this proposal, this motion, is one that absolutely cannot be supported by the government.

● (1025)

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

Mr. Goldring, then Ms. Brown.

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

I too have a serious problem with the way the motion is worded. The implication here seems to be to do something, and I agree with my colleague: what would that be? Would that be to take the issue of concern to court and receive a judgment? Chances are there would be no representation in that foreign court. So what do you do?

I have concerns with the motion's wording "to recognize the constitutional duty". Well, that is just completely in error. There is nothing in the Constitution to suggest that the Constitution applies. There's nothing to recognize. A better form of wording would be to "institute a constitutional duty", but then that would be rewriting the Constitution, and I suppose that could be set aside for another day.

One of the witnesses here has referenced section 6, in particular subsection 6(1), which states that "Every citizen of Canada has the right to enter"—not return, but enter. Of course, it means they have the right to enter, but if they are being prohibited from leaving a foreign country by that country's national law, they will have the right to enter Canada only after that national law has been dealt with. There's no constitutional duty here for Canada to take its charter of rights internationally and somehow have this charter of rights supercede the laws of every country on earth.

Also, for the follow-up section in here—

Mr. Paul Dewar: Mr. Chair, on a point of information, if we could establish—

The Chair: Mr. Dewar, is this on a point of information or—

Mr. Paul Dewar: Yes. We're floating around the fact that the Constitution is being read a certain way in this motion, and I think it's a slam-dunk. We have lawyers here who could tell us what the actual—

Pardon me?

Mr. James Lunney: You took away their time already, Mr. Dewar, by putting your motion.

Mr. Paul Dewar: No, I'm asking the chair if we can actually have some clarification on a point of law, which seems to be....

Some hon. members: No.

Mr. Paul Dewar: The Federal Court has ruled on this, and it's very clear. We're saying now that we don't recognize the rights of Canadian citizens, the charter of rights.

The Chair: Mr. Dewar, you're out of order here.

Mr. Paul Dewar: Are we saying the charter doesn't apply?

The Chair: Mr. Dewar, you're out of order.

Mr. Goldring.

Mr. Peter Goldring: It does go to add some clarity here with paragraph 6(3)(a), "The rights specified in subsection (2) are subject to (a) any laws or practices of general application in force in a province...." That certainly implies that the rights of movement, mobility, and freedom in Canada are subject to the laws of Canada. By extension, they would also be subject to the laws of other countries internationally.

We also have here under section 7, "Everyone has the right to... liberty...of the person and...not to be deprived thereof except in accordance with the principles of fundamental justice", except—in 7 (3)11:

> Any person charged with an offence has the right
>
> (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations.

That does not say Canadian law. It says that it's found by the general principles of law. By its own implication of course, that certainly would mean a variety of interpretations.

I think there's more of a need to educate many Canadians travelling to other countries to make them aware and cognizant of the fact that every country has its own jurisdiction, its own sovereignty, and its own set of laws that might be in conflict with Canadian law. They should be very much aware of those circumstances.

The next comment I have to make is on "Enact legislation to ensure the consistent...consular services to all Canadians in distress". The information we have is that there is a consistent enactment of consular services for the over 50 million Canadian travellers internationally and the number of people seeking intervention by consular services. Of course, with such a great number, there might be some variances. Overall, though, we're hearing that there is consistency.

The third part I wish to comment on is "ordering the Minister of Foreign Affairs to give protection". Well, what does protection mean? Does that mean the protection under the Charter of Rights and Freedoms or under the Constitution of Canada? Is that what this is implying? Once again, it is based on a false premise that the Charter of Rights and Freedoms does apply internationally.

So I have problems all the way through on the wording and the implication of this motion, which seems to be reinforcing the false premise that the Constitution and the Charter of Rights and Freedoms apply internationally and in all international jurisdictions.

● (1030)

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

Ms. Brown.

Ms. Lois Brown (Newmarket—Aurora, CPC): Thank you, Mr. Chair.

I express a concern that, first of all, we had agreed we were going to have a very broad discussion on this issue, yet today's representations very much devolved into a case-by-case discussion. I think that is influencing where we are at right now.

My concern with the motion is that I don't see any discussion regarding the responsibility of Canadians travelling abroad. All I'm hearing is the rights of Canadians and the responsibility of government.

When we had the Department of Foreign Affairs here the other day they were talking about the importance of educating Canadians who were travelling abroad. They talked about the number of resources that we have put in as government over the years to ensure that information is available to travellers. They talked at great length about the registry of Canadians abroad. They told us there are consular services that are available 24 hours a day, seven days a week. We also heard that the Department of Foreign Affairs puts a travel advisory on their website and they do regular updates on those travel advisories.

In the discussion of this motion, for me to be comfortable with it, there would need to be some discussion in there about the responsibility of travellers. Does this mean that Canadian travellers are going to be legislated now to register with the Department of Foreign Affairs before they can travel? Does it mean that they are going to be denied visas to countries where there is a travel warning in place that the Department of Foreign Affairs has established and kept updated? Does it mean that travellers are now by law going to have to assign a power of attorney for personal care and property so that someone in Canada, through the Department of Foreign Affairs, has the right to have access to their personal information? Is that going to be part of that legislation?

All I see in this motion is responsibility put on the government, but I don't see a balance in there. Before I could support any sort of a motion, I would think I would need to see that.

Thank you, Mr. Chair.

● (1035)

The Chair: Thank you, Ms. Brown.

Mr. Lunney.

Mr. James Lunney: Thank you very much.

First of all, I have to express to Mr. Dewar that, frankly, as one government member, I actually do take umbrage at Mr. Dewar's pretense that this is not a "gotcha" type of politics.

I went through the opposition having the opportunity to question our witnesses who are here before us today. In turn, each of the opposition parties had their questions. When the government's turn arrives, we had seven minutes to question our witnesses. I had one minute in there, and I had some good questions I would have liked to have posed to our witnesses here today. That opportunity is now taken away while Mr. Dewar pretends that this is just an innocent little thing in terms of advancing this issue.

So with all due respect, I take umbrage at Mr. Dewar's pretense. There's an old saying: "Methinks the lady doth protest too much"—and that's Shakespeare, I think. Somebody can check it out for me. I think that by bringing it up, Mr. Dewar, you've revealed, in fact, your own motivation.

Now, on this issue, Mr. Chair, there are a number of issues that remain unresolved from our discussion so far. We're having a discussion about the right to consular protection and the duty of a country to provide it. I think that was the language Mr. Neve used. If you have a rogue state, a high-risk state, that respects neither our government nor our Canadian government agencies nor our chief allies who sometimes represent our interests in some countries, what confidence would we have that the ombudsman would have powers that the rogue state would respect? How far do folks who would like us to resolve every one of these issues expect the government to go? It's not our position. We're not an invasive country. We don't declare war on other nations. How far do you want us to go in protecting the rights of some citizens who find themselves in difficult situations?

From evidence we've had here before this committee—and our colleagues have mentioned this—there are some 53 million visits abroad. Canadians are a privileged people. We do travel, probably more per capita than most nations of the world. We are among the most privileged people on the planet. But many of the nations of the world do not have the kinds of comforts that Canadians are used to at home, or the protections we enjoy here at home. I think when you're dealing with travel to nations that have neither the institutional nor the judicial capacity for independence that we enjoy here in Canada—and even in Canada we have concerns about that that we're constantly working on in our democracy—that are either new democracies or failed states, in many cases, and we have a list of countries that our own nation puts out advisories on, about travel risks and travel concerns...when a citizen goes into those countries, they have to understand there's a risk associated with that. The government cannot provide unlimited protection to people who take unlimited or very severe risks. You'll never be able to provide 100% capacity or protection with rogue states, and we have tragic incidences like Zahra Kazemi as an example. Mr. Neve, I think, mentioned her case.

I wonder about this particular motion, where you intend to go with that. I had questions I would have liked to pose to our witnesses here that will remain unanswered.

Mr. Paul Dewar: Mr. Chair, a point of order.

Is he not allowed to ask the witnesses in his time for clarification?

The Chair: That's a very good question.

First of all, this is really the first time this has happened for a long time. I can't recall bringing a motion while our witnesses were here.

One of the things I'm very pleased with, with our witnesses here, is that all four are still seated at the table and listening intently.

An hon. member: We don't know that.

The Chair: It would appear that they're listening intently.

There are some good questions from all sides here, and I would encourage the witnesses that although you do not have the floor and I can't recognize you to answer those questions, you may want to follow up some of the questions that are being posed—not with general statements or whatever.

The other thing I would like to mention is that because our invitation went out late, we have no written submissions from you. If you have any documents that you would like to forward, not some long, extensive work that you've done but in reference to your speaking notes today, we would very much appreciate that. If questions arise, although you cannot answer them today as long as Mr. Lunney or any member of this committee speaks to the motion —when Mr. Lunney questions in regard to the ombudsman, that's part of this motion, and it's a very broad motion—if you want to respond to those, we would welcome that.

I'll go back to Mr. Lunney.

● (1040)

Mr. James Lunney: Thank you. The point I wanted to make was related to some of the discussion that came forth regarding the duty to protect and the application of the Canadian charter extraterritorially or in foreign space.

I heard one witness say that those rights should follow Canadians wherever they go, or that was the way it appeared to come across. I heard another witness say that's a nice notion, in response to that. It seemed to me there was a little bit of discussion going on, even amongst the witnesses, that it is a nice notion and we wish it were the case. I heard that from another witness here.

So if we are going to come to some conclusion in providing direction to the government, we need to discuss this more thoroughly than we have had the opportunity to do at this point.

When you look at our consular services being provided abroad to Canadians, there are more than 142,000 active consular cases around the world on an average day, 686 new cases in 2008-09, and some 1,600 Canadians receiving emergency assistance in more than 26 separate incidents. We are resolving most of these incidents very successfully. Thank goodness for the good work that our consular agencies are doing around the world, trying to resolve these issues when they do come up.

The kinds of issues that are very egregious are a small number of cases in high-risk situations in states, by and large, that don't respect law, or no law as we know it in Canada. So I have a little challenge with that.

I had another point I wanted to raise, but it got shuffled around a little bit.

I think the last point I would make at this point in the discussion is that when Canadians are travelling abroad, they are still subject to the laws of the nations they arrive in. I think Canadians ought to take that into consideration when they travel abroad to places where there are questionable practices and where they know there are high risks. We have to consider that the citizens themselves need to have some responsibility for going into high-risk situations and be aware of those risks and the limits of the government's capacity to provide protection in every instance.

Mr. Chair, at this point I will surrender the floor, but I'm sure I will have other comments to make on this.

The Chair: Next we have Madame Lalonde.

[*Translation*]

Ms. Francine Lalonde: Mr. Chair, point of order.

Could we suspend the debate on this question to hear our witnesses?

The Clerk of the Committee (Mrs. Carmen DePape): If you move it, yes.

[*English*]

She can propose that debate be adjourned on the motion.

The Chair: Madame Lalonde's motion would be in order. She is moving that we suspend or adjourn debate on this motion. That does not mean that we deal with the motion, that we vote on the motion; it means that it is suspended.

Madame Lalonde, I am not certain of your intent, but it seemed that when you made reference to that, you wanted to go back to some of the questions of the committee.

If she is moving that, that becomes a debatable motion. No?

Mr. Dewar, whose motion is on the table, wants to speak to this.

● (1045)

Mr. Paul Dewar: I would like to know what that means.

The Chair: I am going to ask the clerk. My understanding of this is that on a vote we can suspend. We are not calling for a vote; we are suspending debate. We would come back to that.

Hon. Bob Rae (Toronto Centre, Lib.): The motion is not debatable.

The Chair: You're speaking to a clarification, I guess.

Mr. Paul Dewar: I was going to suggest something similar, so I want to be clear on what this means.

Does it mean that after that's done we return to this right away?

The Chair: Yes. It means, in my understanding—I may be wrong on this, and I'll need some clarification. At our next meeting we have Bill C-300. When we go to committee business, this would be the motion that would come up.

Mr. Paul Dewar: I want to make sure that we'll go back to this motion. I don't know, and maybe the clerk can help us here, but as the motion is live, we would not return to the regular business; we would finish this business first. Can we get clarification on that? If you don't have it right now, I'd like it soon, because that would influence how I vote.

The Chair: All right. I'll ask our clerk.

Were you wanting to speak to that? Mr. Obhrai, and then our clerk.

Mr. Obhrai, is it specifically to Mr. Dewar's point as to whether or not we go to our regular business at the next meeting or at committee business?

Mr. Paul Dewar: I want the clerk to talk about it.

Mr. Deepak Obhrai: Hold it, hold it. I have a right to speak and ask questions.

The Chair: It's not—

Mr. Deepak Obhrai: Yes.

The Chair: No. If you're speaking to what Mr. Dewar is saying—

Mr. Deepak Obhrai: Yes, I am. I should have every right to speak here, whether Mr. Dewar likes it or not.

The Chair: Mr. Obhrai, I want to clarify—

Mr. Deepak Obhrai: No, no—

The Chair: Just one moment. On a motion to suspend, no one has the right to debate.

Mr. Deepak Obhrai: I'm talking about clarification on the motion to suspend, because Mr. Dewar is asking a question. Do we go back to that situation?

Hon. Bob Rae: There's a motion to suspend.

Mr. Deepak Obhrai: I am asking for a point of order. I can ask for a point of order, can I not?

Hon. Bob Rae: At some point, we have to—

Mr. Deepak Obhrai: At some point, what? I know there's a coalition on the other side.

The Chair: I'm going to call order.

Mr. Obhrai, very quickly.

Mr. Deepak Obhrai: Mr. Chair, let's be clear on this thing. Mr. Dewar used a procedure to stall. I need a clarification. As you've rightly pointed out, this is the first time this has happened. Let's get the record straight and let's get this whole process very clear, not on the basis of what the unholy coalition on the other side wants.

Why do they not allow me to talk? When they want to talk about something, it's fine with them. When Mr. Bob Rae would like to throw his snippets at others—

The Chair: That's enough. Order.

I'm going to ask our clerk to give clarification on the process that this would go to next.

The Clerk: There's no debate on Madame Lalonde's motion that the debate be adjourned, so the question is to be put right away. As for the question of whether it comes back first thing at the next meeting, I think it's something the committee has to agree on.

If we put it in committee business, then it would normally be done there. I don't think it's very clear whether we do it at the beginning or at the end. It's really a decision of the committee. The debate will return, but at what point, I don't know.

Mr. Paul Dewar: Then can we have committee business next meeting?

The Chair: Yes, we can. The problem is we're working on Bill C-300, where we have very clear timelines. If this means we go back to the debate on this motion, then I don't know how that works with Bill C-300.

We have a very clear directive from the House to return Bill C-300. We have a very limited amount of days that we can listen to those witnesses on that bill, so here is where it becomes difficult.

We are now going to entertain the motion to suspend this debate.

Mr. Deepak Obhrai: A point of order.

The Chair: On your point of order.

Mr. Deepak Obhrai: On my point of order on this motion that—

The Chair: There is no debate on the motion.

Mr. Deepak Obhrai: I am asking for clarification.

The Chair: Okay. It's a point of clarification. Good.

Mr. Deepak Obhrai: On a point of clarification on this...can I ask that question? All right. Thank you. If this motion that was put forward by the Bloc says we have a motion to adjourn this meeting —

An hon. member: No, to suspend.

● (1050)

Mr. Deepak Obhrai: To suspend this meeting, which in turn.... Does it mean we go back to the committee business you proposed at the beginning of this meeting?

The Chair: That is a very good point of clarification.

Mr. Deepak Obhrai: Would you tell the Liberal critic over there not to yap while I'm talking?

The Chair: The point is this. Mr. Obhrai raises a very good point. We made a commitment to Madame Lalonde for committee business, but in her motion to adjourn debate, she has suggested we go to questions of the witnesses.

Madame Lalonde, are you then waiving that committee business on your motion that we had committed to?

Ms. Francine Lalonde: Oh, wow.

The Chair: Are we adjourning—

[*Translation*]

Ms. Francine Lalonde: Mr. Chair, I think people are taking things too far here.

I duly tabled a motion which was debated twice, but because of the points of clarification which kept piling up, we have never been able to vote on it. We were supposed to begin doing so at 20 minutes to the hour, except that as of 10:15, our colleagues opposite who, I must admit, were very well prepared, took up a great deal of time. So that means I lose the right to introduce this motion? That is absurd.

[*English*]

The Chair: No.

[*Translation*]

Ms. Francine Lalonde: I do not agree that I should not be allowed to come back to my motion, but I can introduce it when we come back from the House.

[*English*]

The Chair: Today.

Your motion is still in order, but what we're saying is that if we adjourn debate here.... You've asked that we be able to entertain questions to the witnesses—

[*Translation*]

Ms. Francine Lalonde: Yes.

[*English*]

The Chair: But what I am saying is that because of the time, we will not get to your motion today.

Ms. Francine Lalonde: We will go nowhere, as I see.

The Chair: Your motion is still in order, and it's still on the order paper for us to hear.

Ms. Francine Lalonde: Yes, that's right.

The Chair: Mr. Patry.

[*Translation*]

Mr. Bernard Patry: Mr. Chair,

[*English*]

I just want a point of clarification following Mr. Obhrai's comments. If we continue until 11 today, what is going to happen at the next meeting? Will it be finished today, or will we start again with Bill C-300 at the next meeting?

The Chair: That is my point.

Mr. Bernard Patry: That is what I want to know.

I don't want to come back in one week and be doing this motion forever.

The Chair: The motion just has to be for this debate to be held during committee business.

Now, because of the timelines, I again refer to the table. You still have the choice of bringing forward Bill C-300 and then including time for committee business where we would return to this debate.

We have a motion to suspend debate today. All in favour—

Mr. Deepak Obhrai: You have not clarified this. Are you going back to the committee? It is my understanding that Madame Lalonde's committee motion will not come forward.

The Chair: That's correct.

Mr. Deepak Obhrai: This will go to 11 and then we're done?

The Chair: That's right.

Mr. Deepak Obhrai: So how are you going to ask them questions? Are we going back into rotation, or what is going to happen?

The Chair: Yes, we're back on the second round. The questions will be short.

Mr. Deepak Obhrai: But then how long can you carry on with this questioning?

The Chair: For five minutes.

Mr. Deepak Obhrai: Then who has the next question and answer?

The Chair: Ms. Brown.

Mr. Deepak Obhrai: For five minutes. All right, here we go.

The Chair: That's correct.

All in favour of suspending debate for the last five minutes on the motion of Mr. Dewar? Are we in favour of suspending? Madame Lalonde's motion was to suspend?

(Motion agreed to)

The Chair: Debate is adjourned, and we'll go into our second round. Hopefully we'll have a few more questions for our panel.

● (1055)

[*Translation*]

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): Mr. Chair, what about the members' right to speak? Many people have already spoken.

[*English*]

The Chair: I made an error there. Our clerk now tells me that Mr. Dewar has a couple more minutes of his time left.

So, Mr. Dewar, I'll give you the privilege of concluding, and maybe even thanking our guests.

Mr. Paul Dewar: I'd like to thank our guests.

I just want to ask our guests for clarification on whether this motion, in any way, shape, or form, is actually not in keeping with what the Federal Court has already said are the obligations of the government vis-à-vis the Constitution.

I'll go to you first, Mr. Boulakia.

Mr. Raoul Boulakia: In the Abdelrazik case, Justice Zinn decided very clearly that there was a charter responsibility. In Suaad Mohamud, I relied on Abdelrazik and the Government of Canada—

The Chair: That is covered in a ruling already. We're trying not to do specific cases, but to be very general.

Mr. Paul Dewar: On a point of order, Chair, I agreed with that, but we didn't say in our motion that we couldn't refer to cases. We said that we wanted to focus on some—

The Chair: All right.

Continue, Mr. Boulakia.

Mr. Paul Dewar: Let's not get caught up with—

Mr. Raoul Boulakia: Just to point out, the court already ruled in the Abdelrazik case, so it's too late to say there's no court ruling.

Secondly, in the Mohamud case, we relied on the charter to get the government to agree to make consular representations, and one of the things the consulate did was to go before the court in Kenya to ask for an adjournment of the prosecution of Ms. Mohamud while Canada investigated and did the DNA testing. That's also the nuance between ordering some foreign government or court to do X or Y and what consulates can do, which is to make representations to them. That's what we reach through our legal representation.

So sometimes there's a question of nuance rather than absolute, categorical thinking. Part of the obfuscation of the charter is that it applies to Canadian officials and how Canadian officials interact with Canadians, and that impacts on the representation Canada has to make to foreign governments with respect to due process.

Mr. Paul Dewar: In other words, Chair, I would say it's not about another government having to abide by the Canadian Constitution; it's about our officials having to recognize the rights of Canadians. That's already been argued in the Federal Court and has been accepted, and I think that point is important to make.

Finally, Mr. Chair, I hope this committee will come back to this issue and pass it. I simply note that this is a recommendation made that it go to the House. It says, “report the following recommendations to the House”. We can't force the government to do it; it's a matter of recommending to government.

Thank you.

The Chair: Thank you very much.

I want to thank the witnesses for coming today. You actually were able to witness procedures—

A voice: Democracy.

The Chair: —and, yes, democracy at work. We'll call it that.

We thank you for your input. We have looked forward to your coming here on this subject.

We are now adjourned.

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