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Chair

Mr. Scott Reid

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• (1235)

[Translation]

The Chair (Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC)): Order, please. This is the 11th meeting of the Subcommittee on Human Rights of the Standing Committee on Foreign Affairs and International Development.

[English]

It is April 2, 2009.

Today we have a very distinguished witness. David Matas is the senior legal counsel for B'nai Brith Canada and has, in that capacity and other capacities, performed yeoman service on behalf of human rights issues in Canada, in addition to the many other things he's done.

I've had the pleasure of being involved...sometimes in a peripheral way. Nonetheless, I've been able to watch him work on the issue of human rights, particularly the rights abuses of Falun Gong practitioners in China. It's always a pleasure and always educational to listen to him.

I invite you, Mr. Matas, to give us your testimony now.

Mr. David Matas (Senior Legal Counsel, B'nai Brith Canada): Thank you very much for inviting me.

I'm going to talk about human rights in Iran from a few different perspectives. I want to talk about the incitement to genocide of President Mahmoud Ahmadinejad, I want to talk a bit about Camp Ashraf, and I also want to talk a bit about the Baha'i.

The first issue relates to a position of B'nai Brith, and the other—Camp Ashraf—the B'nai Brith hasn't taken a position on. With the Baha'i, they are sympathetic.

First of all, in terms of the incitement to genocide of Mahmoud Ahmadinejad, there are two developments in Iran that, in combination, present a very worrying perspective. One is the development of nuclear weapons. I say the development of nuclear weapons and not just nuclear energy because the official position of Iran is that all they are doing is developing nuclear energy. Personally, I'm convinced both from what's available in the public record and what I've been able to glean independently that Iran is hell-bent on developing nuclear weapons and has been determined to do so for some time.

The second worrying element is the incitement to genocide of Mahmoud Ahmadinejad against the Jewish people and against the

Jewish state. For that second element of incitement to genocide, the B'nai Brith has prepared a brief, which I've authored, called "Indictment of Iranian President Mahmoud Ahmadinejad for Incitement to Genocide Against the Jewish People". It's been, as I understand it, circulated in committee and has been translated into French.

I understand as well that you've previously had a witness, Gregory Gordon, who has dealt with that issue and also written at length. He wrote a very learned article on this issue that comes to the conclusion we had come to previously, that the remarks of Ahmadinejad do amount to incitement to genocide.

What we have from the government of the state of Iran is a worrisome combination of both the threats of mass killings and the development of the means to carry out those threats. We have to, if we're concerned about human rights, act on that situation now.

When it comes to genocide, we can't wait until the genocide happens and then act after the fact. We have to act before. We have to act on the incitement. Now is the time to do something, before the nuclear weapons are fully developed and Iran becomes a nuclear state.

Dealing with nuclearization in isolation is difficult and one may well ask what Canada can do about that, but I believe the combination gives Canada an opportunity to act. There are, I believe, a number of different things Canada can do to counter the incitement and the weaponization of nuclear energy.

One of them is simply referring Ahmadinejad's incitement to genocide to the International Court of Justice in The Hague. The genocide convention allows Canada to do that. Canada is a state party to the genocide convention, and so is Iran. That convention gives the court a jurisdiction to deal with such an issue. In fact, it was used by Bosnia against Serbia recently with some success.

There may well be other states that would be willing to join in such a lawsuit. Australia has made some positive remarks indicating it might be prepared to join with other states in such a lawsuit.

There are some limitations to such a legal initiative in the sense that the remedy is simply a judgment against Iran for its own failure to prosecute Ahmadinejad rather than a direct prosecution of Ahmadinejad, but it would help to send the message that what Ahmadinejad is doing is wrong. It may be easier to deal with and act against Ahmadinejad in isolation than everything the whole Iranian state is doing.

● (1240)

A second initiative that Canada can take is simply trying to get the matter before the International Criminal Court, which is a very direct remedy.

The Security Council has the power to refer a situation to the International Criminal Court, even in a country that is not a state party to the treaty of the court, and they have done so in the case of Sudan recently. Sudan is not a state party. They referred the situation in Darfur to the court, and the court has issued an arrest warrant for al-Bashir, the sitting head of state of Sudan. Obviously, if they can do that for Sudan and Darfur, they can do that for Iran and incitement to genocide.

The Security Council can do that. Canada is not a member of the Security Council, but Canada has a right to bring this matter to the attention of the Security Council, and that is in the genocide convention as well. Article 8 says that "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate".

A competent organ in this case is the Security Council. Canada has the right, even though it's not a member of the Security Council, to put this matter, in effect, on the agenda of the Security Council.

Through B'nai Brith, I and Michael Mostyn, who is here with me and works for B'nai Brith, went to visit the American embassy and the Russian embassy in Ottawa to attempt to get their concurrence to such a referral. Obviously, we didn't get a response on the spot, but we got some interesting discussion and sympathetic consideration. Because it would need the concurrence of the permanent five, or at least the permanent five would have not to veto such a reference, we thought it worthwhile to make that initiative, and we're hoping to meet in the future with other permanent representatives, although, Mr. Chairman, as you have mentioned, my involvement with the Falun Gong community may dissuade me from going personally to meet with the Chinese embassy, but somebody will. This is another initiative that Canada can take.

A third possibility is simply saying that Ahmadinejad is banned from entry to Canada, based on his criminal behaviour. He is, in my view, inadmissible and I don't think it would hurt to say so. On the contrary, it would have a salutary effect.

One could also be opportunistic about this and try to take advantage of whatever possibility there is to press the issue. I was recently in Geneva at the Human Rights Council. It was the working group of the Universal Periodic Review reporting on Israel, and Iran participated in the debate. Iran in Geneva doesn't even call Israel by its name, a sign of its hatred toward Israel. It calls it the Zionist regime, the Zionist entity, and they did so in this debate. Germany called a point of order and said, "You have to call Israel by its proper name." Iran protested saying, "We don't recognize Israel and we can call it what we want." The chair said, "No, that was out of order", that Israel is a member of the United Nations and to call it Israel. It's little things like that. It doesn't have to be grand gestures. It could be little gestures. At every opportunity to make the point, it should be made, so that this becomes a matter of concern.

I am aware that Canada at the United Nations each year has been presenting resolutions at the General Assembly on Iran, which have passed successfully, and I commend Canada for doing that and it should continue doing that, but this agenda needs to be pushed on all fronts.

Let me say a little bit now about Camp Ashraf. I'm a refugee lawyer in Winnipeg and I'm very concerned about refugee rights. Camp Ashraf is a camp of Iranian refugees in Iraq. They are members of the PMOI, People's Mojahedin of Iran, or the Mujahadeen-e-Khalq. That organization has been designated as a terrorist organization in Canada, the United States, and Europe. Europe recently, after a long string of litigation, removed the designation this January, consequent upon court cases that said the designation was perverse and without evidence. But the designation remains in Canada and the United States.

● (1245)

Under Saddam Hussein this group was protected. There are about 3,000 in this camp. They're on the border of Iran. When the Americans took over, the Americans also protected them and called them protected persons under the Geneva Convention. The current Iraqi regime has elements in it that are friendly to Iran, and Iran wants them expelled to Iran. This group was part of the original revolution in Iran, and then they were expelled by the mullahs and killed in the thousands before they fled. If they are returned to Iran, they risk arbitrary execution and torture.

From my perspective as a refugee lawyer, the terrorist designation doesn't matter because the prohibitions against torture and arbitrary execution are absolute and have no exceptions. I have expressed concern about the potential expulsion of this group to Iran once the Americans leave Iraq. I think that's a concern this committee should express as well. This group should not be expelled to Iran from Iraq, and they should remain as protected, either in Iraq or in some other country.

Thirdly, with the Baha'i, I haven't been involved in advocacy, but as a refugee lawyer, of course, I have clients who are suffering from persecution in Iran because of their association with the Baha'i community. I just wanted to express my concerns about their persecution. I would welcome any positive steps this committee might take to try to put an end to that persecution.

That's what I wanted to say by way of an opening statement, and I would welcome any questions you might have.

The Chair: Thank you, Mr. Matas.

Normally, our procedure is to have a seven-minute round of questions for each party, and then we go back and the two parties that have more than one member, that's the Liberals and the Conservatives, get an additional five-minute question.

So the first question would come from the Liberals.

Mr. Oliphant, please.

Mr. Robert Oliphant (Don Valley West, Lib.): Thank you, Mr. Matas, and thank you for your life's work and your body of work. I've been a fan from a distance for a long time.

There are several things I want to cover. I wanted to jump to Camp Ashraf first and to any advice you might have on some of the political difficulties around that, it seems, for the Canadian government. It seems that people are aware of the issues around human rights violations and more within the camp and the Iraqi presence around it. You stated in January that many high officials in the Government of Iraq called for the expulsion, which gives no hint of voluntariness. Moreover, the Government of Iraq has far from complete control of Iraqi territory. The Government of Iraq, it seems, is neither able nor willing to respect its official position on the camp.

I wondered if you could talk a little bit more about that. We're coming to a critical juncture—the future of the camp and the 3,500 or so residents—and about Iraq's ability to deal with this.

Mr. David Matas: Sure. We are coming to a critical moment because of the status of forces agreement. Up until the end of last year, the legal basis for the presence of the Americans in Iraq was a Security Council resolution, but that changed starting this year. The Security Council resolution authority just didn't continue, and then it was replaced legally by a status of forces agreement. That agreement provides, in stages, for the handing over of power from the Americans to the Iraqis.

In my view, the best way to maintain protection is to either maintain an American or an international presence at the camp. That way, there could be some assessment of compliance with the assurances of the Iraqi government; there could be monitoring. I personally have been pressing the Americans and meeting with foreign governments to press the Americans to remain in some form.

To a certain extent, that succeeded, at least in January, when there was a handover, because there remains an American presence in Camp Ashraf. The controlling forces are Iraqi, but the Americans are there. As you say, there have been some violations in the camp. There have been problems with visitors getting in and so on, but at least the group is not expelled.

A next critical juncture is the end of June, because the status of forces agreement says at that point, all cities, towns, and villages get handed over to the Iraqis. There's an argument that Camp Ashraf is neither a city, a town, or a village; it's a camp. There's also, in any case, in my view, a possibility of an American presence without it necessarily being an American armed force. Another possibility, which frankly I would invite the Canadians to explore, is a multilateral or international force there to replace the Americans for the purpose of monitoring this particular assurance. Canada could certainly be part of that.

The situation is definitely worrisome. The person in charge, Al-Rubay'i, has not been helpful at all. He's been making a number of very difficult and worrisome statements. Of course, I appreciate the fact that you're even familiar with this, because in terms of the media, this has not been a headline issue in Iraq.

• (1250)

Mr. Robert Oliphant: I don't want to interrupt you, but my time is limited.

I have written Minister Van Loan about this issue, because it seems that a stumbling block for Canada taking a more assertive position on Camp Ashraf is the presence of the PMOI, the People's Mojahedin. That seems to be a stumbling block, and the fact that it is listed in Canada as a banned or terrorist organization. It was just reviewed this past November by our government, and despite the fact that the British and the EU have delisted that organization, it remains listed as a terrorist organization.

I know its past, but I am concerned that its present is not being acknowledged. I'm wondering if you'd like to comment on that.

Mr. David Matas: As I said in my opening statement, the listing shouldn't matter for the purpose of arbitrary execution and torture. These are absolute standards; they don't have exceptions. It's not okay to kill or torture terrorists arbitrarily, even if the listing were right. In principle, the listing should not be a blockage to this sort of protection.

Frankly, there is room to question that. Obviously the listing is a result of what happened in the European courts. It wasn't just that the governments delisted it; it went through extensive litigation on the substance. Those judgments are public and you can read through them. The judges are damning the listing. They didn't even think it was plausible.

The fact of the matter is, whether it's right or wrong, the listing is there and one has to acknowledge that.

Mr. Robert Oliphant: We'll continue to address that the best we can.

One last question, and I want to go back to your first point around the genocidal incitement. In March, my colleague, Irwin Cotler, wrote that "the precursors" in this particular situation "of provocation in Iran are more threatening than those in Rwanda" at the time. His great concern is about the rhetoric, the language, not only from Ahmadinejad, but the other high officials. Is that your opinion as well?

Mr. David Matas: Well, of course, drawing comparisons is always invidious, and no comparison is exact. Unfortunately for the Tutsi victim population, of course, they were a captive population.

There had been a long history of incitement to hatred in discourse within Iran, I guess you could say.

Mugesera, unfortunately, is still in Canada. I should say that I intervened in the Mugesera case for B'nai Brith, so I'm very familiar with that case. Mugesera's speech came long before the genocide, which was one of the issues, that is, whether there was a linkage between the genocide and his speech, because it came so long before.

I think one of the lessons I would draw from Rwanda is that incitement to genocide can be coded. It isn't necessarily always "kill all these people". I think that was part of the problem in dealing with the incitement to genocide in Rwanda. It was in the local language and it was often in coded references like "send these people down the river" and so on. Outsiders wouldn't necessarily know what people were talking about.

I'm sorry if my answers are too long, Mr. Chair.

• (1255)

The Chair: No, no, but we have to move on to the next questioner, and there's a second round.

Madam Thi Lac, *s'il vous plaît*.

[Translation]

Mrs. Ève-Mary Thāi Thi Lac (Saint-Hyacinthe—Bagot, BQ): Thank you for being with us today, Mr. Matas. I would also like to thank you for the excellent document that you provided for us. It sums up the situation very well and is very useful for committee members.

In your presentation, you talked at length about the sanctions that Canadian authorities could impose or lawsuits that they could pursue against the Iranian president through the international court. Could non-diplomatic sanctions be imposed, such as economic or trade sanctions?

Mr. David Matas: Yes.

Forgive me, but I am going to reply in English.

[English]

Yes, particularly when it comes to nuclearization, I think sanctions could play a part. The Security Council has in fact mandated limited sanctions against Iran. I think there's a good deal of promise in expanding that avenue of pressure, because Iran has shown some responsiveness to sanctions.

The reality is that nuclearization and weaponization require for Iran cooperation with foreign companies and importation of foreign goods. They've tried to smuggle in some of the things. One of the reasons I've come to the conclusion that the nuclearization is weaponization is the huge amount of smuggling that's been going on to try to get the component parts. That whole economic activity can be traced. I think you could do sanctions through the banking system as well, so that they can't exchange money.

Canada has some trade with Iran. We import oil off the east coast. I think we can look at that. There's also something simple like travelling. You can ban certain officials from Canada, which is a form of sanction. I mentioned that specifically about Ahmadinejad, but there are others as well.

Something you may be aware of is that there's an indictment, an international arrest warrant from Argentina, against a number of officials in Iran, including Rafsanjani, a former president, for the bombing of the Jewish community centre in Iran. I think Canada can add its voice and try to cooperate in getting that international arrest warrant enforced.

Yes, I would say that sanctions are potentially a very promising and useful avenue for pursuing these concerns.

• (1300)

[Translation]

Mrs. Ève-Mary Thāi Thi Lac: You also mentioned banning the president from entry to Canada. Have other countries imposed sanctions like that?

[English]

Mr. David Matas: No, I can't think of any country offhand that has actually said it would not allow Ahmadinejad to visit. I do know that with the President of Sudan there is this international arrest warrant, which means that states party to this agreement would have to cooperate. If al-Bashir were to show up in Canada, we, in order to comply with that treaty, would have to hand him over to the court. So I assume he wouldn't want to come here, and the issue of banning him wouldn't necessarily arise.

Of course, there was the case of Pinochet, a former president of Chile who was prosecuted. There was an extradition request to Spain that was taken quite seriously.

It's not just that I don't know. Typically, watch lists are not made public. I couldn't tell you, and I suspect you couldn't tell me, who is banned from Canada. Occasionally, a case flares up because somebody tries to get here, like Mr. Galloway, and then is turned away. The list is not normally made public.

I'm not just suggesting that he be put on the list. I'm suggesting that there be some sort of public statement that he's on the list so that the world will know. For all I know, because the list is not public, he may already be on the Canada list. If he is, though, it should be made public.

[Translation]

Mrs. Ève-Mary Thāi Thi Lac: You discussed Camp Ashraf. Some years ago, the refugees in the camp agreed voluntarily to lay down their weapons. They also gained a degree of protection from the Americans. Recently, a new American administration has been elected and we know the new president's position on withdrawing his troops from Iraq.

What repercussions could there be on those refugees, now unarmed, if the Americans left the area and thereby removed the protection they were providing? Is there a danger of them becoming victims of genocide?

[English]

Mr. David Matas: I certainly wouldn't suggest that they be re-armed. I don't think that's the answer. We have to look at protecting them in other ways. It's true that the change in administration has accelerated the removal of American troops from Iraq, but it was always planned that they would be gone sooner or later. They can't stay there indefinitely. At some point, we're going to have to face this problem.

The Obama administration hasn't addressed the issue of Camp Ashraf directly, as far as I can tell. It's a matter of concern that it has not yet reached all levels of the administration.

I mentioned the status of forces agreement. A number of people in Congress have taken the point of view that the status of forces agreement requires the approval of Congress and a number of legislative initiatives to have legal force. When Hillary Clinton was in the Senate, one of these initiatives was hers. She had a bill to approve the status of forces agreement, with certain add-ons or reservations. Senator Obama, who was also in the Senate at the time, sided with Hillary Clinton on that bill.

I've been meeting with members of Congress and their aides on this issue, and there is a view that this legislation should be carried forward, validating *ex post facto* the American presence under the status of forces agreement. Such a bill could provide some legislative American protection to Camp Ashraf. That's another avenue that I've been exploring.

The military organization in charge there is Central Command under General David Petraeus, and I've been considering the possibility of meeting with them to deal with this issue. It's like the incitement issue. We have a problem, and there are a lot of different ways of dealing with it. I think each of us should consider how we can deal with it. The threat is there, the threat is real, and the threat needs to be addressed.

• (1305)

The Chair: We'll move to Mr. Marston, please.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): This seems quite appropriate. I see David Kilgour coming through the door. You and I and some others raised the issue of Falun Gong and the harvesting of organs, and that was my first opportunity to meet both of the gentlemen. Welcome here today.

I want to just preamble a little bit. You were talking about executions and torture with the same kind of repugnance all of us would feel about that. I don't know whether you're aware of testimony in the last day or so from CSIS and the RCMP around the use of depositions received by way of torture, the fact that they are still prepared to use them. We found it very shocking to hear that conversation.

Beyond that, I have a couple of points I'd like to talk about. I spent a little time in the Middle East in the late 1970s, and one thing I noted at the time was a certain amount of bravado that took place. I was in Saudi Arabia, which was far more modern relative to Iran at that time. The bravado was there, and it struck many of us who were there that certain statements were made by the Saudi royal family that seemed focused outward to keep the attention of the people inside—in other words, a distraction.

In Iran they have 30% of the population controlling the other 70%. Is that not a method that is perhaps used to some degree or other?

You were speaking about the group that is on the Iraqi border. It strikes me that is an initiative that would have to go through the United Nations. At some point they have to be placed elsewhere, that's very clear. But in the meantime, I share your concern with the high risk they are in.

You did mention as well—I don't know if these were your exact words—that Iran, in your opinion, is still hell-bent on heading for nuclear weapons. I was reading a report just recently that came out in 2007 in the U.S. It talked about their opinion that Iran had stopped production, stopped the program. You've indicated very strongly that you think that's still happening, and you used smuggling as your example. Are there any other sources of information you have on that?

I'll just go a little bit further and that way I can leave both questions with you.

Another thing is that Mr. Gordon was here at our last presentation and he talked about Canada filing charges under Canadian internal law. I'd like your view on whether that is something against....

I'll leave those two thoughts with you.

Mr. David Matas: There was a report that came out that said weaponization had stopped a couple of years ago. Weaponization is a relatively easy process once you have nuclear energy. It doesn't take very long and doesn't involve that much effort. It's like putting the pieces together. What had stopped at that time was the weaponization, but the nuclearization continued.

I should say that I've been involved in a group called Lawyers for Social Responsibility, which is the Canadian affiliate of the International Association of Lawyers Against Nuclear Arms, IALANA, so I'm familiar with this whole issue of nuclearization on a technical level—at least at some level, as much as a lawyer can be. I've talked with others about this, and what they say is that what you're dealing with in Iran is a question of intent. Once they get to the state where they are nuclearized, they can switch to weapons almost overnight if they want to do it—even if they haven't actually begun the process of switching yet. So you really have to gauge their intent. In my view, their intent is pretty clear, for a number of reasons.

Some of the information I have is confidential, because of my refugee practice and so on, so I know some things that the leadership have said, but I can't give you the minutes. But there are lots of public indicators as well. Why in the world would they be smuggling in the components of nuclear parts? Why are they causing the inspectors...? The International Atomic Energy Agency is not very happy with Iran, and indeed, ElBaradei got the Nobel Peace Prize a couple of years ago largely because he was pressing Iran on this issue, regrettably with not that much success. And they're still very unhappy. I wouldn't say that the International Atomic Energy Agency has to be the final word on this, but I think if they're concerned, we should be concerned.

• (1310)

Mr. Wayne Marston: Just to be clear, that report was from the Office of the Director of National Intelligence. Mind you, it was 2007, to be clear on that. In fact, Mr. Gordon talked about the fact that they're at the level of yellowcake materials already. That's practically weapons-grade material; it's close. As I understand, I don't know if it was the U.S., but at least some countries had offered a nuclear program to Iran for peaceful means under strict conditions.

My second question was on Ahmadinejad being tried internally in Canada. That struck me at the time as a completely innovative view of how to do it. We've always talked external trial before.

Mr. David Matas: In fact, there is a trial like that going on in Canada right now. The accused is Munyaneza, and it's about the Rwandan genocide. We have legislation in Canada called Crimes Against Humanity and War Crimes Act, which allows for universal jurisdiction.

We did try it before under old legislation. Imre Finta, a Hungarian Nazi war criminal, was tried here, but it didn't work for technical reasons. Then, when Canada joined the International Criminal Court, we passed this new legislation, and we're actually using it now in this one case.

It would seem that, yes, if Ahmadinejad showed up here, I think he definitely could be prosecuted under that legislation.

Mr. Wayne Marston: So he would have to be here.

Mr. David Matas: There's a requirement of presence.

There has to be some tie to Canada. It's possible that we could get jurisdiction in other ways if there's a Canadian victim, but with incitement to genocide, that might be a hard argument to raise.

That legislation requires prosecution by the Attorney General. It doesn't allow for private prosecution. The government would have to try it. As to whether they could try it without his being here on the basis that the incitement to genocide had potential Canadian victims, it would be a novel legal theory.

Mr. Wayne Marston: As I said, this was just raised by Mr. Gordon. For myself, it was altogether news. We've always been looking at the external view.

Am I getting close to my time?

The Chair: In fact, you're somewhat over your time, Mr. Marston, but you've been under your time on so many other occasions and so gracious about it that I thought it was reasonable to let you go on. This is also a good line of questioning. As another point, it was Mr. Matas and not you talking, which is always a significant factor in these things.

That said, it's time to turn to either Mr. Sweet or Mr. Hiebert.

Mr. Sweet.

Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC): Thank you, Mr. Chair.

I can't help but echo the sentiments of my colleagues. We're very grateful, Mr. Matas, not only for the work you've already done with Mr. Kilgour, but also the fact that I see your itinerary, sometimes, travelling around and continuing to press the point. I just want to

express my personal thanks for your continued efforts in regard to the Falun Gong, and for reiterating the human rights infractions and atrocities in regard to the Baha'i in Iran as well.

We've had Mr. Genser here, who really began the conversation of the International Court of Justice, and Mr. Gordon as well. I posed a question to Mr. Gordon after those two rounds of testimony and he seemed to feel that there might be some legal precedent to follow.

Rather than just the approach of having a conviction that identifies Ahmadinejad and publicly shames him internationally—and particularly today, because you talked about sanctions through banks—is there some premise or a tort aspect that we could follow afterwards? Once there is that prosecution and hopefully conviction, because he's a representative of the state, could there actually be funds that could be seized through a tort action for punitive damages?

• (1315)

Mr. David Matas: That's a good question.

This of course gets us into the State Immunity Act. The State Immunity Act is an immunity for states and not individuals, but it's been interpreted to apply to individuals who are acting for the state. The courts have said that if you allow a lawsuit against a president or a foreign affairs minister or so on, it's in effect suing the state.

I, and others, have proposed exceptions to the State Immunity Act. There are some exceptions now, but they don't cover this sort of situation. I think there should be an exception for genocide, incitement to genocide, and torture. There's been a bill in the Senate to have an exception for terrorism. Actually, the Bloc at one time proposed an exception for torture, but it never went anywhere. I think it's something I would like to see. The State Immunity Act is too blanket right now.

The United States allows for lawsuits for international crimes for terrorist designated states, and they've designated Iran. In the United States these sorts of lawsuits are possible, but in Canada they're not. I don't see why they shouldn't be. I would encourage Parliament to look at opening up the State Immunity Act a bit to allow for these sorts of lawsuits.

Mr. David Sweet: I know there's a piece of legislation before the Senate, or there was in the last session, regarding the proceeds of terrorism, which may work with some amendments.

Going back to some testimony you had earlier about the treatment the state of Iran has imposed upon its own people—and when I say its own people, it goes across a broad area of ethnicity and religion, so really it is its own people in total—with the incitement of genocide statements being very public, it's not a stretch to think that their vociferous pursuit of nuclearization is for weaponization.

Just to be clear, I agree with you, but I also want to know the evidence you mentioned about smuggling into Iran. Were they smuggled items primarily for weaponization?

Mr. David Matas: As I say, you can't actually weaponize a nuclear capacity until you have a nuclear capacity. It's almost like a second stage. You can't get weapons-grade plutonium until you can make plutonium. The stuff that was being smuggled in was the stuff to develop the nuclear capacity. It would have been hard to tie it specifically to weapons at that point because they just weren't developed enough at that point for that distinction to be meaningful. It becomes more a trial of intention rather than looking at the goods on the ground. I mean, there was an attempt, I would say, to actually weaponize before they developed the capacity to do so, which is what stopped.

One also has to keep in mind the kind of bureaucratic structure of Iran. We've been talking about weaponization on the one hand and incitement to genocide on the other from Iran, but the reality is they come from two different parts of the Iranian government. It's the mullahs who control the nuclearization, very strangely, whereas Ahmadinejad is kind of a civilian branch of the government, although I would call him a stooge of the mullahs. What Ahmadinejad is saying is worrisome, of course, simply in terms of the content of what he says. It's even more worrisome because in my view it's a reflection of the views of the mullahs who are not as public on these points of view, but he's just repeating. It's the mullahs who at the end of the day run the nuclear threat.

This report involved what a particular branch of the government was going to do about weapons, and I think it was the defence department within Iran. The mullahs basically pulled the defence department out of this issue for the time being, but it didn't change their intent one iota, as far as I could tell.

There's one other point I wanted to make here because I've been dealing with governments on this issue. Some of them tried to work the issue the other way, and, rather than join them, kind of oppose them and say that they couldn't really deal with incitement to genocide because it would make it more difficult for them to deal with nuclearization or weaponization. They say if they want to negotiate with Iran on weaponization they have to lay off on incitement to genocide. They say if they start prosecuting the president, Iran is not going to talk to them at all on anything, basically.

I reject that analysis. In my view, I think you're going to be more effective in quelling the nuclear threat if you confront incitement to genocide directly. I think you basically have to stand up to the problem. You can't stand up to it by trading off one part against the other.

• (1320)

Mr. David Sweet: Thank you.

The Chair: Unfortunately, Mr. Sweet, your time is up.

Mr. David Sweet: Mr. Chairman, if I could say something, I'll risk the fact that I would get unanimous consent on this.

Among Mr. Genser, Mr. Gordon, and Mr. Matas, there's been some compelling testimony, all of which comes to the precipice of very hard evidence of weaponization and nuclearization in Iran. I

would like to ask that we accept any written submissions as testimony in this regard for the Iranian study. There may be some people who would want to submit evidence to this committee in this regard under the cover of confidentiality. I would like us to be open to accept that as testimony considered for our final report.

The Chair: If we're taking this in terms of a motion, it would be essentially that the committee, or I guess myself as chair, issue a call for papers or a call for written testimony and that it be presented to us to review in camera and then make decisions as to what is made public. Is that what you're suggesting?

Mr. David Sweet: I actually like that aspect of it better. Certainly it's hard to judge the validity of information without an author. If we're going to handle it in camera, the author would then have that cloak of assurance. I like that much better, Mr. Chairman.

The Chair: This is a motion that hasn't had 48 hours' notice, so it can only be accepted if there's unanimous consent.

Is there unanimous consent to what Mr. Sweet has said and I've kind of refined?

I'm not hearing anybody say no, so I'll assume that means yes.

(Motion agreed to)

The Chair: I will issue the appropriate invitation. I'll have to figure out a deadline that seems reasonable, but we'll discuss that in the in camera part of our meeting when we return to scheduling issues.

That being said, we turn now to our second round. We are running late enough that I'm going to have to ask the indulgence of the subcommittee to put an extra five minutes on so we can have one question each. We may not need the extra time.

Mr. Martin, do you have anything you'd like to ask?

Hon. Keith Martin (Esquimalt—Juan de Fuca, Lib.): Mr. Matas, thank you very much for defending the defenceless and giving voice to the voiceless. Like everybody at this table, I've been a huge admirer of your work and I've shamelessly used it.

I have a couple of questions. We know Mr. Ahmadinejad is an absolutely repugnant figure and his comments are noxious to all of us in this room. However, through the law of unintended consequences, the indictment against Mr. Al Bashir actually caused a larger problem in Darfur, as you know, and the indictment against Mr. Kony resulted in an upsurge of killings by the LRA in Uganda and the Congo. If our primary objective is to neutralize the extremist elements within Iran and bring Iran into the fold of the international community, could an indictment of Mr. Ahmadinejad increase the threat level to Israel and other countries? Is it going to compromise our primary goal, which is to neutralize these distasteful and horrible elements and bring Iran and the moderate majority of Iranians into the international community?

Second, in the Byzantine world of Iranian politics, what are the ways you'd recommend to actually support moderate groups in Iran to be able to marginalize the extremist elements within the complex Iranian power structure and enable a more moderate governance structure to take over in Iran?

Thank you.

• (1325)

Mr. David Matas: In terms of unintended consequences, I do not think the situations in Sudan or the Congo are comparable to the situation in Iran, because what you're dealing with in the Congo is a non-governmental force and in Sudan you're dealing with the head of state. Ahmadinejad is the president, but the ultimate power in Iran is the ayatollah, and we've seen in the past that if Ahmadinejad gets too far out of line, Ayatollah Khamenei reins him in. I don't think Ahmadinejad is saying in public anything different from what Khamenei is saying in private, but Khamenei is saying it in private and not in public.

It's possible to get the regime to distance itself from Ahmadinejad if he gets himself into too much trouble. Indeed, a lot of the speculation about the upcoming presidential election is the extent to which Khamenei will support Ahmadinejad. I think it is possible to get the regime to distance itself from Ahmadinejad and the incitement through this type of legal effort, but there's nothing like a Khamenei in Sudan. It's Bashir and Bashir and Bashir. I don't think you could apply that analysis to Sudan.

Also, this argument of unintended consequences can work different ways. Sure, you can see what happens as a result of what was done, but you don't know what would have happened if it hadn't been done. There's an argument that if this hadn't been done, things would be even worse than they are now because you would have had people committing crimes against humanity with impunity, and that, of course, causes problems, not just in the theatre where the crimes are committed, but worldwide. If we are going to come to grips with these crimes, I think we have to send out a message that there's no impunity.

Hon. Keith Martin: I'm really trying to look at the least worst option. I think you understand exactly where I'm going in trying not

to do something that makes matters a lot worse, actually increasing the security threat rather than decreasing it.

Mr. David Matas: Yes, absolutely.

In terms of moderates in Iran, I personally am not associated in any way with the People's Mojahedin of Iran or with the NCRI, but I know what they would say. They would say if you want to encourage the moderates in Iran, you'd deal with the PMOI or the NCRI.

Even leaving that aside, the democratic opposition of Iran is not in Iran because there is no democracy in Iran. The people who are called moderates within the government are all within a narrow range of views that the mullahs will accept. So if you're limiting yourself to asking which of this range of views that the mullahs will accept should we support, I think that's much too narrow a question. We have to think in a broader Iranian perspective, looking at the people who are not even in Iran, but who are Iranian and opposed to the regime and can't be in Iran because they're opposed to the regime. What we have to think about is encouraging change in Iran, and the best way to do that is to stand up forcefully and clearly to what they're doing wrong, through legal and political means.

• (1330)

The Chair: We are actually out of time. Why don't you just finish up?

Hon. Keith Martin: Thank you very much, Mr. Matas.

The Chair: Thank you very much, Mr. Matas. We really appreciate your coming by. As always, you were intelligent, well informed, and very helpful to all of us.

At this point the committee is going to go in camera. We'll suspend for a moment. I'll ask anybody who is not a staff member of somebody sitting on the committee right now to please leave the room. Under our rules I think we're also allowed to have one person from each whip's office.

[Proceedings continue in camera]

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