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Chair

Mr. Scott Reid

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

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● (1235)

[*Translation*]

The Chair (Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC)): I hereby call to order this 15th meeting of the Sub-Committee on International Human Rights of the Standing Committee on Foreign Affairs and International Development.

[*English*]

This is a televised meeting, so I'll just encourage people to keep the back chatter to a minimum so that we don't have any problems with the audio system.

Today we have a large number of people at the table who are here to answer questions, but I think we should recognize that we have two key witnesses. First of all, Jayne Stoyles is the executive director of the Canadian Centre for International Justice.

Am I correct that Mark Arnold and François Larocque are with you, Ms. Stoyles?

Mrs. Jayne Stoyles (Executive Director, Canadian Centre for International Justice): That's right.

The Chair: We're very glad to have all of you here.

As well, Stephan Kazemi is here as a witness, and he is accompanied by two of his lawyers, Kurt Johnson and Mathieu Bouchard.

I'm going to suggest that we start with Mr. Kazemi, and once he's completed his comments we'll turn to Ms. Stoyles.

Just so you're aware of this, normally we have more or less ten minutes for the opening presentations. Then we turn to questions from the floor. The length of those questions is to some degree dictated by how tightly our witnesses have been able to keep to the ten minutes for their presentations.

With that being said, Mr. Kazemi, would you like to begin?

Mr. Stephan Kazemi (As an Individual): Yes.

The Chair: Please go ahead. Just speak naturally and we'll hear you.

Mr. Stephan Kazemi: I'll speak in French.

[*Translation*]

Ladies and gentlemen, I would like to thank you for your kind invitation to appear before the Committee to discuss my experience which, to a great extent, is the same as that of my mother, Ziba Kazemi, as she was known to her friends and to me.

I want to begin by saying that preparing this brief was a painful exercise. Too often, I have come up against the indifference and incomprehension of others, who are incapable of imagining the pain that I felt and that I still feel, almost six years later. Too often, the harm caused by the loss of a mother and of her love, in such tragic circumstances, seemed to escape the people I was addressing.

And yet, writing this brief, one action out of so many others, also gave me tremendous satisfaction, because seeing that justice is done is really my only concern. As I see it, where there is no justice, there can be no peace.

When I arrived in Canada in 1993 from France, where I was born, with my mother, Ziba Kazemi, an expression used here struck both of us and got us talking: « C'est pas pire » or, literally, « It isn't worse ». It is a popular expression. Well, my message today is simple: when it comes to torture, there is nothing worse.

Is that obvious? And, if it is obvious, how can Canada give immunity to torturers? What sovereignty-related pretext could justify a decision not to bring to justice people who take extreme measures to torture their fellow human beings, who wound and bruise the human body? To what extent can these rules and precepts be disembodied, dismembered, even detached from human reality, in order to guarantee impunity to those who would mutilate, burn or cut apart this body and this heart that we were given?

My mother was a professional photojournalist. Through her art, she wanted to inform, connect with and educate people. She gave a voice to the people of those countries she focused on—she even gave them hope. Her greatest desire was, and I quote: “to put an end to the quasi-unanimous silence of the international community, when one country legalizes torture and the other legislates absolute power; to break the silence of some and the brainwashing of others.”

With me today are my lawyers, who will be able to answer any legal questions. However, my testimony today is of a more personal nature, and is intended to perhaps put a face on the tragedies experienced by millions of people every day in silence, far from the cameras, too often forgotten.

So, I am her son. I am the one who shouted, who protested, seeking justice. The one who refused to wait passively for diplomatic notes to produce an effect. I am the one who wanted the entire world to know what happened to my mother, and that our government and our laws too often betray us, unworthy of the memory of a mother, her son and a country of openness and respect that welcomed them some years ago.

I would like to quote a brief passage from something written by my mother, Ziba, about her country of origin, Iran:

> For 20 years now, Iran has been transfigured as horrified and dazed children looked on. They see their country bending under the weight of the political illiteracy so deeply entrenched at the very pinnacle of the power structure and which despoils their fortune even as the population multiplies. Iran, an ancient country built around a mosaic of racial, cultural, linguistic and religious diversity. Iran, stretched across a vast land of riches and with a geopolitical status of great significance, the same Iran that nourished the dreams of so many creators and sensitive souls and which now strikes terror in the hearts of its citizens.

So, here I am, almost six years after my mother's violent kidnapping by the Iranian government. After throwing her in prison, slapping her, bruising her, beating her, depriving her of her dignity, and then murdering her, they, the members of the Iranian government, buried her six feet under.

● (1240)

Before the death of my mother, and even in the days and weeks that followed her death, I was very naive. Naive like others, of course, who believed that the government of a country is responsible for protecting its citizens. Today, I am aware that, in real life, that ideal has many limitations, limitations which flow in part from a lack of political will, including inside the Canadian government. In fact, too often, the best interests of the government take precedence over the freedom or even the lives of the individuals who are citizens of that country.

I understand that you asked me to appear today to tell you about my feelings and my experience in this regard and to discuss legislation that we have here in Canada and which gives governments, as well as their brutal, bloodthirsty officials, complete immunity in relation to their victims. So, there you have it: that is the impression and the feeling I have been living with for five and a half years—that of a government that has and continues to make it clear that it could not care less. Because, not only were its initial efforts in vain, but it resists and expresses opposition to the action taken against the Iranian authorities, preferring instead to support enforcement of the Law of State Immunity in relation to Iran and its officials, in this case.

Thus far, I have sacrificed many—indeed, some of the best—years of my life, simply to make an example of this case, of my experience and especially Ziba's, so that these kinds of events never occur again. I am proud to take my personal responsibilities in this affair, and I would like to see the federal government do the same, be it in relation to my mother's cause or in terms of actions it can take to ensure respect for human rights internationally, both in Iran and elsewhere on the planet.

The Office of the United Nations High Commissioner for Human Rights, as well as the Committee Against Torture, recently strongly recommended that the Government of Canada allow victims of torture to seek redress before Canadian courts of law. The relevant documentation can be found on the website of the Ziba Kazemi Foundation—zibakazemi.org. There you can also find the report of the Special Rapporteur on the right to freedom of opinion and expression in Iran, Mr. Ambeyi Ligabo, a man I like very much. He devotes several pages to my mother's case and emphasizes the climate of impunity that prevails in Iran, a climate that we reinforce by maintaining that same immunity here in Canada.

Indeed, some time after the release of his report, the Special Rapporteur on the right to freedom of opinion and expression in Iran joined with other UN special rapporteurs to make the entire world aware of their deep concerns with respect to the climate of impunity that has yet to be resolved, the same climate in which the worst human rights violations continue to be committed.

I have expressed to you my bitterness and my feeling of helplessness, but I am also aware of and very much appreciate the flowers that have sprouted even in the midst of this field of misery. I am talking about our system, the Canadian system. I am talking about laws and mechanisms that work and that are there for the people. I am also talking about the flowers these same people have planted all along my path, and I now believe deeply that the time has come to plant a new flower—that it is time for justice to be done to the worst victims of this world. It is time to send a clear, concise message to the world at large—that we, the people of Canada, will not tolerate torture.

I would like to see Canada take a leadership role; to see the torturers of this world on their guard, knowing that, from now on, they might have to face their victims and possibly lose a commercial shipment or two as compensation for the pain they have inflicted through their own folly. A futile move? No, because these executioners, be they in Iran or elsewhere, often only understand one language—the language of dollars and cents. By allowing their victims to receive compensation through the Canadian courts, we hit these people where it hurts them most. We will not cure them quite so easily, I fear, but putting an end to the immunity they currently enjoy will gradually force them to stop doing what they are doing. Is there any greater disincentive that the certainty that you will have to answer for your actions?

● (1245)

What I am seeking is justice. That is obviously not a matter of money for myself, as someone who has been fighting for more than five years, standing before the gates of Hell—I, who have been living from day to day with my every thought, my every emotion focused on this affair. I consider it my mission to make a significant contribution to justice, in the light of my own experience, and to turn a tragic event into the seeds whence will sprout millions of flowers, a living monument to my mother's memory.

Finally, at every step on this path, along with the failures, there has been one tremendous victory: the people. We have had a chance to reach out and touch the hearts of people. Even six years after this tragedy, I am still receiving words of encouragement, greetings, letters and tributes from people whom I do not know but who, like me, believe in goodness, in truth and justice, who believe in my mother, in me, who have not forgotten us, and who look to us still.

Even though justice has eluded us thus far, and even though, in spite of the beauty and perfume of the other flowers in our midst, justice remains unattainable, we, the people, still believe in it and want to breathe new life into it. Justice that does not help the people is no justice at all; it is justice that is sick and unbalanced. In Canada, justice means allowing the citizens of this country to be tortured with impunity. That is the reality; those are the facts.

Ladies and gentlemen, thank you for allowing me to take some of your precious time today. I hope to meet with you again, in the near future, in a world where there is no fear, a free world, a world that can begin right here, in Canada.

I hope we will meet again soon.

The Chair: Thank you for your testimony, Mr. Kazemi.

[*English*]

Ms. Stoyles, please.

[*Translation*]

Mrs. Jayne Stoyles: Distinguished members of the Committee, thank you very much for this opportunity to discuss a matter of great importance to Canada. It is entirely possible to see that the survivors of human rights violations in Iran obtain justice and to prevent this type of violence in future.

[*English*]

Distinguished members of the committee, I want to thank you very much for the opportunity to speak with you today about a very important issue, the need to reform the State Immunity Act, and more specifically, how the issue of immunity has prevented victims of torture in Iran and their families, people like Stephan, from obtaining justice.

I also want to thank Stephan for his courage in telling this kind of story and continuing to seek justice in his case.

I am the executive director of the Canadian Centre for International Justice, which is based here in Ottawa. The CCIJ is a charitable organization that works with survivors of torture, genocide, and other atrocities to seek redress and bring the perpetrators of these crimes to justice. I am a lawyer and I previously directed the global campaign to establish the International Criminal Court.

I want to quickly introduce my colleagues who will join this discussion, both of whom are part of the CCIJ network.

Mark Arnold is a lawyer in Toronto specializing in civil litigation, who has, in recent years, turned his attention to pursuing justice in Canadian courts for human rights abuses committed abroad. He represented Mr. Houshang Bouzari, a torture survivor from Iran who is now living in Canada, in a lawsuit against the Government of Iran. I'd like to mention also that Mr. Bouzari is with us here today in the gallery.

François Larocque is a professor of law at the University of Ottawa. He has studied the issue of immunity for many years and intervened in the Bouzari case on behalf of the non-profit organization Canadian Lawyers for International Human Rights. He is also involved in two ongoing cases concerning the State Immunity Act.

As you have heard very succinctly and poetically, the family of Zahra Kazemi continues to wait for justice. We've heard how Ms. Kazemi, who was a Canadian citizen, was tortured in an Iranian prison for doing nothing more than taking pictures of a demonstration. Her injuries show that during her torture, Iranian officials sexually abused her and broke several bones, including her skull. Those injuries, of course, eventually killed her.

In the nearly six years since her death, no one has been held accountable. In fits and starts, and under heavy international pressure, the Iranian regime has admitted some responsibility, but no one has been convicted in the case. Her family, including Stephan, understanding all too well the futility of the investigation in Iran, filed their suit in Montreal against the Government of Iran and three individual Iranian officials. Iran now argues it's immune from the lawsuit because of Canada's State Immunity Act, and the court will decide this issue later this year.

There are several differences that distinguish Ms. Kazemi's case from a previous, unsuccessful attempt to hold Iran accountable for torture, and that was in the case of Mr. Bouzari, but there is at least a likelihood that her lawsuit will also fail because of the restrictive language with which our State Immunity Act is written. This speculation is based on the case of Mr. Bouzari, who in 1993 and 1994 was imprisoned, beaten, whipped, shocked, and subjected to mock executions over nearly eight months.

As a previous employee in Iran’s oil sector, he had been retained by a consortium of companies seeking to develop oil resources in Iran. He was tortured because he refused to concede to demands for a bribe from the son of Iran’s president. A few years after Iranian officials released Mr. Bouzari, he and his family moved to Canada. His lawsuit in Ontario against the Government of Iran, however, failed. Even though Iran did not defend the case, the Ontario Court of Appeal ruled that the State Immunity Act provided Iran protection from lawsuits involving torture. Leave to appeal the decision to the Supreme Court of Canada was denied.

The practical result of Mr. Bouzari's case is that residents of Canada who are or were tortured in Iran, as in other repressive countries, cannot get justice. Mr. Bouzari certainly cannot return to Iran to file suit there, and the investigation of Ms. Kazemi's death in Tehran clearly shows the impossibility of an impartial process in Iran.

The plaintiffs in these two lawsuits live in Canada, making it unlikely that a court in any other country would take jurisdiction over their cases. Canadian courts, therefore, become the last resort. As a result of the dismissal of his case in Ontario, Mr. Bouzari has been completely denied justice, and there is a risk that the same could happen to Ms. Kazemi's family. I should add that Maher Arar's lawsuit against the governments of Syria and Jordan was likewise dismissed on the same immunity grounds. If Ms. Kazemi's suit is not permitted to go forward, this will likely close Canadian courts permanently to survivors of torture.

● (1250)

The principle of state immunity is, at heart, about respect for sovereignty. Immunity generally prevents the courts of one nation from sitting in judgment of another country's official or sovereign acts. It's intended to prevent disruptions in diplomatic relations where courts may come to conclusions that differ from the pronouncements of the government of the day. Today, however, most nations acknowledge that they should not be immune from everything, particularly when they are engaged in activities that are not, at their core, sovereign acts. Canada's State Immunity Act was passed in 1982 and reflects this restrictive approach to immunity. In other words, that it was not intended to provide immunity for everything.

Although the State Immunity Act begins with the presumption that foreign governments are immune in Canadian courts, the act then sets out exceptions for which immunity will not be granted. For example, foreign states are not immune from civil liability for commercial activities, nor are they immune from any death, bodily injury, or property damage that occurs in Canada. These exceptions apply because the underlying activities are not deemed to be sovereign in nature. Equally, the international community now considers torture an act that is not appropriate for any sovereign to undertake. In the hierarchy of international law, the prohibition against torture is at the top, the international equivalent of a constitutional norm. It binds all nations, and no country is entitled to employ torture, no matter what the circumstance. Torture is not an act that should be immunized.

The current barrier created by the language of Canada's State Immunity Act in civil lawsuits is compounded by the fact that justice is largely unavailable in criminal cases in Canada as well. In the nine years since the Crimes Against Humanity and War Crimes Act was passed to empower Canadian criminal courts to try suspects accused of committing atrocities abroad, the Canadian government has prosecuted only one case. A similar provision of the Criminal Code concerning torture sits unused.

The federal war crimes program, tasked with pursuing these cases, has not received a funding increase at any time during its ten-year existence. Of the four government departments in the program, we understand that the two assigned to the investigation and prosecution of criminal cases, the RCMP and the Department of Justice, receive only an approximate 8% of the program's funding. The Canada Border Services Agency and Citizenship and Immigration Canada, which focus on exclusion and removal of alleged war criminals with no regard to the need for justice, receive the lion's share of the budget.

This funding imbalance has very real and very practical consequences for the RCMP and the Department of Justice. It appears that only one criminal prosecution at a time may be possible. Given that there may be at least 1,500 alleged torturers and war criminals living in Canada, it's almost impossible to imagine the program using these extremely limited resources to pursue a case like Ms. Kazemi's, in which the individuals responsible are outside Canada's borders.

As a result of its use of the State Immunity Act to deny torture survivors a remedy, Canada's also currently in breach of its legal obligations under the UN Convention Against Torture. Article 14 of the treaty requires parties to provide redress and compensation to survivors of torture. After the Bouzari decision, the United Nations Committee Against Torture, which is the body charged with overseeing the proper implementation of the convention, conducted a periodic review of Canada's compliance with the treaty. Committee members were well aware of the Bouzari case and they rejected the Canadian government's argument that countries are only required to provide compensation for torture that occurred within its own borders. Instead, the committee made clear in its final report that article 14 requires states to provide redress to all survivors of torture, regardless of where the torture occurred. The committee noted Canada's "absence of effective measures to provide civil compensation to victims of torture in all cases", and it recommended "that Canada should review its position under Article 14 of the Convention to ensure the provision of compensation through its civil jurisdiction to all victims of torture".

By amending the State Immunity Act, Canada can also begin providing deterrents against future human rights abuses. Such deterrents will only come through a robust system combining criminal and civil penalties and holding accountable both individuals and governments. I understand there will be concerns that such a step will open the metaphorical floodgates, swamping Canadian courts with lawsuits about human rights abuses that occurred overseas. However, the judicial system already has checks in place to reject any cases not properly before the courts. In all cases, judges must assure themselves that a lawsuit has a real and substantial connection to the province in which they sit. In Mr. Bouzari's case, the primary connection to Ontario was his residence in the province at the time he filed suit. The Court of Appeal did not decide whether this was sufficient for jurisdiction, because it dismissed the case on immunity grounds. Only because no remedy was available in Iran, they said, was this issue not an easy one to decide.

● (1255)

Even if a real and substantial connection exists with a Canadian province, a lawsuit would still only proceed if Canada is the best forum. If another country is in a better position to hear a case, perhaps due to location of witnesses and evidence, and if that country protects due process rights, a Canadian court can dismiss the lawsuit. As a result, Canadian courts will only take on those cases in which Canada is both the best forum and the last resort.

Removing immunity for torture will not suddenly make Canadian courts a watchdog overseeing the internal workings of other countries, or require them to pry into all areas of a foreign government's business. Rather, it will permit inspection in a small number of cases concerning the most abhorrent actions imaginable, when the nations responsible are unwilling or unable to do so.

This also limits disruption of the smooth flow of foreign diplomacy. In fact, the denunciation of torture in Iran through the courts would be directly in line with Canada's policy toward Iran. Canada has taken a lead role in passing resolutions at the United Nations General Assembly denouncing Iran's human rights practices, including one at the end of 2008.

The position we are advancing today is not new or novel. The issue has been studied and debated extensively over a number of years. Last November, the CCIJ hosted a workshop about civil litigation in Canadian courts for torture and other atrocities. The workshop brought together experts from across Canada, including both practitioners and academics. Participants agreed that there was a strong need to reform the State Immunity Act to provide an exemption for torture and other atrocities.

Several years earlier, the International Human Rights Clinic at the University of Toronto Law School, in conjunction with a host of experts, produced a recommended amendment to the State Immunity Act that was eventually introduced as legislation. We have provided the members with a copy of that proposed amendment, whcih may serve as a starting point for a new bill. There have also been discussions on other types of amendments to the act, some of which have been presented as private members' bills.

Such a system is workable. The United States allows victims of torture and other atrocities to sue individuals who are responsible for those crimes. Those lawsuits have hardly overwhelmed the system. In fact, courts have proven fully capable of dismissing or trimming down legally deficient claims.

Although the U.S. laws cannot generally be used against governments, Congress did create an explicit exemption to its Foreign Sovereign Immunities Act to allow lawsuits against a handful of countries, including Iran. Similarly, there is a global trend toward removing immunity for torture and other atrocities in the civil context. In fact, we understand that in many countries there is no equivalent to Canada's State Immunity Act.

The international community overwhelmingly agrees that torture is illegal in all circumstances and abhorrent in a modern society. By providing immunity to regimes that commit torture, like Iran, Canada is failing not only in its obligations under the UN Convention Against Torture, but also in its moral duty to provide refuge and hope to victims.

Amendment of the State Immunity Act would allow Canada to stand clearly on the side of survivors, rather than the torturers. It would also provide a very concrete way for this committee to make a contribution to the prevention of the kinds of extreme violations of international human rights that you have been hearing about in the course of your investigation of the situation in Iran.

I thank you for your time today.

● (1300)

[*Translation*]

Thank you very much.

[*English*]

The Chair: Thank you very much.

We'll now turn to questions from the floor. Normally we start with seven-minute questions and then we follow those in the first round with five-minute questions, but always it's essential that questioners and responders keep their questions and responses as short as possible. Having said that, we're ready to begin.

Mr. Silva.

Mr. Mario Silva (Davenport, Lib.): Thank you, Mr. Chair.

I want to thank all the witnesses for coming forward. I must say it's quite an impressive group that is before the committee.

I will begin by asking Ms. Stoyles a question. The issue and the facts were pretty much laid out, but beyond that you mentioned some of the amendments that might need to be made. I want you to elaborate specifically on what amendments to the State Immunity Act you think need to be made, and that we could do as parliamentarians in this committee.

Mrs. Jayne Stoyles: Thank you very much for the question.

I should say also that any questions addressed to me, if it's okay with the members, will also be addressed by my colleagues who are here today. Maybe I'll make a first point, then, and see if they would like to add.

If I understood correctly, the question was about what exactly would be the amendment we're seeking. There are different opinions as to the exact wording, and I think that is something we would be following up with you to discuss, but the essential request today is that we provide an exemption to Canada's State Immunity Act for the commission of torture, and hopefully for other atrocities, such as war crimes, crimes against humanity, and genocide as well. It would be quite similar to the wording that already exists in the act for commercial activity and for criminal activities committed in Canada.

We've provided one example of wording that was developed by the University of Toronto legal clinic. It goes through the act and makes potential wording clear. We would be happy to have discussions following that up and drawing on our group of experts to take a look again at whether that exact formulation is correct, or whether there's something else that would be appropriate.

Mr. Mark Arnold (Lawyer, Gardiner Miller Arnold, As an Individual): Could I respond as well?

Mr. Silva, I'm delighted that you would ask the question on what amendments we are seeking. You've moved us a quantum step ahead. What I was hoping I would get from the committee today was a commitment to put the issue on the agenda. Now, sir, that you appear to have committed yourself to putting it on the agenda we can study the amendments that are necessary.

You have a whole raft of legal talent here, and we have access to talent all across the country. We can do the amendments for you, and Parliament can do the amendments that are necessary. We want your commitment as MPs to move onto the agenda the issue of amending the State Immunity Act to protect torture victims.

Thank you for the question.

● (1305)

Mr. Mario Silva: If we have a subsequent meeting maybe you can provide us the information in writing so that committee members can see some of those. I know there's a wealth of talent before us, but I want to make sure we'll be able to get that information to our committee members.

Mr. Mark Arnold: Just call us, call Jayne, and we are there at your disposal. We will come to any meeting anywhere and meet with anyone. This issue is critical. We need to provide protection to Canadians and others in Canada who have suffered these violent acts.

Mr. Mario Silva: When Canada signed the convention against torture and ratified it we also set out a series of legislation to comply with the international protocol. Do you feel that we did not go far enough in terms of the implementation stages with the convention and therefore in some ways we're not in full compliance with the convention against torture? Is that what I'm getting from you as well?

Dr. François Larocque (Associate Professor and Director, National Program, Faculty of Law, Common Law Section, University of Ottawa, As an Individual): I can speak in either language, but sometimes my French brain takes over my English.

When Canada ratified the convention against torture the most immediate legislative action it took was to implement the criminal side of the equation. The crime of torture was added to the Criminal Code and universal jurisdiction was provided for it. However, it did not implement article 14 explicitly. This is what the UN Committee Against Torture noted in its report to us in 2005.

Mr. Mario Silva: I know Canada does not make reservations on international treaties, so there were no reservations made by Canada. Unlike other countries that ratified the convention and put reservations, Canada did not make any reservations. It's a question of we have not put all in place in terms of our domestic legislation to be in compliance with our international commitments. Is that what I'm getting?

Dr. François Larocque: That's right.

This could generate a huge discussion in itself, but there are many reasons why this might have occurred. One is maybe that it was deemed wise to proceed step by step. It is quite rare in fact that conventions are implemented wholesale, that every section of a convention or treaty is implemented wholesale. It is quite often done, particularly in human rights cases, on a piecemeal approach. Sometimes it's because it is thought that Canadian law already provides the necessary protection that is required from the treaty. However, this is not the case with article 14 of the convention against torture. There is no explicit implementation on that obligation to provide a civil remedy for torture.

Mrs. Jayne Stoyles: I would add that when I was referring to the review of Canada's record by the United Nations Convention against Torture and they essentially said that Canada was in breach of its obligations, it was essentially because of the interpretation of the State Immunity Act that was given in the Bouzari case at the Ontario Court of Appeal. In that decision, the Ontario Court of Appeal said that because the State Immunity Act exists and protects governments like Iran from civil suits, this means that the torture had to have been committed in Canada in order for someone to receive a remedy, which is clearly not the intention of the convention on torture. The UN committee then was making it clear that was not their intention in drafting the convention on torture. It was intended to provide a remedy regardless of where the torture was committed, and Canada's interpretation was far too restrictive.

It really highlighted that we need to have an amendment to the State Immunity Act to make clear that immunity should not be provided for officials who commit torture.

Mr. Mario Silva: We are also signatories to the International Criminal Court, which would be another important issue regarding the State Immunity Act and so forth. Are we then in breach of two conventions, both the United Nations Convention against Torture and that of the International Criminal Court, which Canada signed onto as well?

● (1310)

Dr. François Larocque: I can respond to that.

There is no direct obligation in the Rome Statute to provide civil remedies for the crimes that it prohibits. So I would not say that Canada is in violation of the Rome Statute for failing to provide a civil remedy. I would say the source of the breach, in our case, would be the convention against torture.

That being said, there is a view that could be taken that for all crimes of international law—torture, genocide, crimes against humanity, war crimes—a full panoply of remedies should be made available, criminal and civil. So that argument could be made, but to your earlier question, there is no direct obligation flowing from the Rome Statute.

Mr. Mario Silva: Thank you very much.

The Chair: Thank you.

Madame Thi Lac.

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): Thank you all for being here. You have come out today to enlighten us on this important subject.

I would like to begin with Mr. Kazemi. In your opening statement, one could see that your grief is real and that your mother's death and the cruelty and inhumanity she suffered are unacceptable. You are right to say that subjecting someone to torture, beatings and sexual assaults is something that all Canadians should speak out against. I want you to know that we, here today, understand your struggle.

You talked about justice. You stated several times during your testimony that you do not believe that justice has been done. Could you just tell me, in two minutes, when you will consider that justice has been done?

Mr. Stephan Kazemi: It will be when my requests, which go back almost six years, have received a positive response. First, repatriation of my mother's body, which has no business being in Shiraz, Iran. This is the first time I have said this, but my mother's personal wish, a wish that she communicated to me, was to be exhumed. Her final wishes were not respected. Furthermore, even if she had not wished to be exhumed, she should be buried here, close to me.

Second, I would like the known perpetrators of this crime to be tried and punished. It is patently clear that the Government of Iran is responsible for this crime. I cannot target just one or two people, because the torturers are not the only ones responsible. The real perpetrator of this crime is the Government of Iran. It is a very clear case—it could not be clearer—of cover-up. All these years, the entire government has proven, through its own stupidity, that it was responsible and that it was aware of all the details of this affair. Whether we are talking about the Committee on Section 90 or the different opposition parties, it is a political battle in Iran, but all the parties know the truth and are thus complicit. The Government of Iran is responsible for this crime.

Mrs. Ève-Mary Thaï Thi Lac: Thank you very much for that additional information.

I would like address a question to all the witnesses. Whoever feels they would like to answer or thinks they have the best answer should speak up.

Ms. Stoyles, you mentioned that the United States allows victims of torture and other atrocities to bring legal proceedings against those responsible for such actions. How does the process work in the United States? Could we use the same process here in Canada? You also said that the U.S. Congress has created an explicit exception in order to be able to sanction other states in that regard. Ms. Stoyles, could such an exception apply to cases such as the one involving Mr. Kazemi's mother, or the case you referred to at the beginning of your presentation?

● (1315)

[*English*]

Mrs. Jayne Stoyles: Thank you.

Perhaps I'll start, or would you like to start, Mark?

Mr. Mark Arnold: Very simply put, as I understand American law, they have a similar foreign sovereignty and foreign sovereign immunity act, but under that statute, there is an exception for what I believe are called “state sponsors of terrorism”. Under that exception, there are numerous American judgments against Iran. I'm presently consulting with American counsel on some of their cases in the United States. That's the way they've dealt with it there.

The other thing I should mention—I need to also point out to you—is that present today is Mr. Houshang Bouzari, who is the gentleman sitting behind me with the white hair. He is a survivor of torture. Of course we took his case all the way to the Supreme Court of Canada, only to fall down on the issue of sovereign immunity. What we argued was that international law trumped Canadian domestic law, and we failed in that regard, which again crystallizes the need that if we're going to provide protection for torture victims who cannot get justice elsewhere, it really is essential to amend the local statute.

This doesn't mean we're going to run off and sue in foreign courts such as the United States and England. They have competent courts. This is meant to provide justice for individuals who cannot get justice in other countries.

There are U.S. exceptions. The way we're going to draft it here in Canada is up to you people, with our assistance to put that legislation together.

[*Translation*]

Dr. François Larocque: I would like to go one step further and explain exactly how the U.S codifies that exception.

As Mr. Arnold has just stated, the United States drew up a list of states which, in its view, support terrorism. Today there are four states on that list. They are Cuba, Iran, Sudan and Syria. Not so long ago, North Korea, Libya and Irak were also on the list, but those three countries have since been removed. The United States has normalized its relations with these countries. So, those four countries are listed. There are a number of consequences associated with that designation, including a denial of immunity for civil proceedings launched only by U.S. citizens. No remedy is available to foreigners who have been tortured outside of the United States. Only U.S. citizens have access to that remedy whereby immunity is refused. It is a very limited mechanism, as well as being a highly problematic one.

If you are asking my professional opinion, I would say this is not something that Canada should consider doing. Canada should take a position that relies more on international law and is more respectful of the general principles of international law.

Mrs. Ève-Mary Thaï Thi Lac: Thank you.

Ms. Stoyles, would you like to add anything?

[*English*]

Mrs. Jayne Stoyles: Perhaps I can just add one additional clarification in terms of how this is done in the U.S. There are two pieces of legislation, the Alien Tort Claims Act and the Torture Victims Protection Act. Those create, essentially, the cause of action. They create the possibility of suing torturers for their crimes.

We in Canada don't necessarily need to create that kind of extensive legislation. There is actually something like that floating around in Parliament, but not specifically on the question of torture, more for environmental and labour crimes. We don't necessarily need to do that in Canada. We can use existing law. We can use law for injuries, other types of injuries in Canada, through provincial courts in tort law.

Really, what stands in the way in Canada is that most of these claims are against government officials, and it's the State Immunity Act that really creates the barrier there.

I should point out, too, that the torture convention, our international treaty on torture, states that by its very nature torture is committed by governments, so if there is a barrier to pursuing a remedy against foreign governments, then essentially there is no possibility of a remedy. It's very, very clear that if there is a right to a remedy, and that right is very clear in international law, we have to have this amendment to the State Immunity Act to make this go forward in Canada. It's in fact as simple as that, not as complicated as creating a system like they have in the U.S.

● (1320)

The Chair: Thank you.

Mr. Marston, please.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): First of all, Mr. Kazemi, thank you for coming before us today, carrying the burden that you do with the memories of the incident and the information. I know it has to be very troubling for you, but it is to some extent a mission. I can see that. I watched you as you made your presentation and after, but I want to assure you of one thing: Canadians as a whole do very much believe in justice; Canadians as a whole very much are opposed and disgusted by the thought of torture.

I am very troubled, and I have been for a time now, because the Government of Canada has been complicit in torture by proxy. We've had the Maher Arar case. We've had the Abdullah Amalki case. We have Omar Khadr down in the United States, or in Guantanamo, being held by the United States when our Supreme Court and the U.S. Supreme Court have ruled that it's a violation of rights. I don't want to politicize this by going off on that tangent, because I'm very tempted to.

I will give a commitment personally, which is all I can do here, that whatever you want done to get a motion in, I'd be prepared to work with you. My office staff will work with you. You get in touch with us and we'll be there.

Over the last number of months I've had people come to talk to me about the mining companies of Canada and the corporate and social responsibility, and how we're failing at that level as well. The word “impunity” keeps coming up over and over in that conversation. Until we remove that, it doesn't matter what else we do, we're still going to have victims.

Having justice is really important and critical, but prevention is more important. The first stage is to ensure that all countries know they're called to account. I think Canada has been lacking on the world stage for a number of years now because of our inaction on the optional protocol to the UN Convention against Torture. Again, I'm very troubled by that.

I'm more making a statement than asking a question, because this is the kind of thing that touches you in a way that's different from any of the witnesses who have come before us. Technically, we were talking about Iran here today, and you see how this discussion has become far broader than Iran, and it's most significant. I think we're at a potential turning point right here, right now.

So I would invite you to contact my office. I'm not trying to politicize this. I share this with anybody in this committee who wishes to. Let's get this job done.

If you'd like to comment on anything else, please go ahead, because I am not in a questioning frame of mind, to be quite frank about it. This is beyond an individual.

Mr. Mark Arnold: Perhaps I can comment.

Mr. Marston, firstly, thank you very much for your support on the issue.

You mentioned the complicity of Canada. Let me add a little piece to this interesting puzzle, if I may, particularly with respect to the case of Mr. Buzari.

The State Immunity Act provides a way in which foreign countries can be served with a claim, interestingly, and we served Iran through the State Immunity Act and Iran didn't defend. We went to court and what happened was that the Government of Canada intervened in the lawsuit, hired experts from England at huge cost, brought them into the court room and argued the position that Iran would have argued, had Iran defended the case. We fought in the Buzari case against the Government of Canada.

To be objective about it, the Government of Canada was simply upholding its own statute, the State Immunity Act, but there was a certain irony about that, where Mr. Buzari, who had chosen Canada as his home, had become a citizen of Canada and was now facing the Government of Canada in his quest for justice. What the Government of Canada should have done was taken steps to amend the State Immunity Act.

I wanted to add that piece to your puzzle.

Mr. Wayne Marston: There's one thing that comes to mind here. George Bush is under investigation, or whatever you want to call it, by the Spanish courts.

● (1325)

Mr. Mark Arnold: He's been indicted by the courts.

Mr. Wayne Marston: If we made the changes to our State Immunity Act here, would that open the door, and would that kind of case surface in Canada?

Mr. Mark Arnold: Do you mean indicting George Bush in Canada?

Mr. Wayne Marston: I'm not suggesting we'd be indicting. I'm just talking about what implications would these changes have comparative to that case.

Mr. Mathieu Bouchard (Lawyer, Irving Mitchell Kalichman, As an Individual): Actually, the State Immunity Act already has an exception for criminal cases, and there are provisions in the Criminal Code that implement the torture convention. As Jayne mentioned in her opening statement, they're not used at the moment because, I understand, the RCMP office that is in charge of investigating those crimes doesn't have much of a budget. But in theory, crimes committed abroad, especially crimes against humanity, can be prosecuted in Canada, including public officials, and their immunity has been removed through the State Immunity Act. So whatever we're saying here today is about civil cases. It's translating that immunity we've removed in criminal cases to civil cases so that you can also have compensation for the victims themselves.

We have here the common law system, where in criminal cases the crown prosecutes the criminals. In the continental legal system, private parties can join the prosecution and claim civil damages. That's what they call the *partie civile* in France. So it is possible in those European countries for a victim of torture to actually join the prosecution and ask for compensation against foreign officials, whereas, here, in Britain, and in common law countries we don't have that possibility. The only way to do this is to remove the immunity that's actually built into the State Immunity Act, especially for gross violations of international law.

Mr. Mark Arnold: Thank you for that comment.

Mr. Marston, in your comments, in effect, you were suggesting that this issue, if I may say, crosses party lines, that it's not a matter of debating torture. All of us in this room—all of us—oppose torture. No one favours torture.

In the past three or four years, I've consulted with MPs—for instance, Francine Lalonde. I was here three years ago at a press conference. The Bloc had put forward a private member's bill. That bill went nowhere.

About a year and a half ago, I consulted with Peter Julian. I came into Ottawa for the day and spent time in his office, with a number of other people, on amendments to the State Immunity Act. There's no doubt that the NDP supported that.

When he was my MP, the Honourable John Godfrey entertained me in his office in Toronto. I prepared a brief for him. He gave me his wholehearted support, and we worked together to try to get it on the agenda. They were in government at that time.

Mr. Oliphant, I believe you are the Don Valley West representative. You're my MP. Mr. Oliphant, I'm going to be knocking on your door for the same kind of support that Mr. Godfrey gave to me personally on that issue.

This issue crosses party lines. I'm just a simple lawyer from Toronto. I don't know how the politics work, but it seems to me that the simple solution—and I may sound silly—is that maybe five of you or four of you from the main party should go off and have coffee somewhere and decide together that you're going to put this on the agenda, have the issue studied, compare the bill, and get it through. It crosses party lines. And you know what? It doesn't cost any money to do it. There's no cost. The impact on the human rights of Canadians is huge, at very little cost on a cross-party issue.

The Chair: We're out of time for that round.

Mr. Hiebert will be next, but just before we go to him, I have to observe I have never heard anybody use the line before, "I'm just a simple lawyer from Toronto". I'll have to try that one time when I'm out in a rural riding. I'll have to try that line sometime at one of my meetings.

Mr. Mark Arnold: You don't accept the line, or do you like it and you want to use it? It's my line; you can't have it.

The Chair: I should pay royalties.

Mr. Hiebert.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Well, Mr. Chair, as a simple lawyer from Vancouver, I have a couple of simple questions.

We've heard some fascinating testimony. Thank you for being here and sharing your stories. They are quite moving.

There are a number of questions that come to mind. Some of them are perhaps a little bit more complex, but some of them are quite simple.

Here is a simple one: When was Mr. Bouzari's case prosecuted?

● (1330)

Mr. Mark Arnold: Mr. Bouzari's case began in the year 2000, and I believe it ended up in the Court of Appeal for Ontario in 2004. It went to the Supreme Court of Canada, and leave was denied.

Mr. Russ Hiebert: All right. So that was 2004.

In the speech that you provided, Ms. Stoyles, you mentioned that Ms. Kazemi's case is different from that of Mr. Bouzari. In a couple of ways it's distinguished. Can you explain how?

Mrs. Jayne Stoyles: In fact I was going to answer, but perhaps I'll let the lawyers on the case answer that.

Mr. Kurt Johnson (Lawyer, Irving Mitchell Kalichman, As an Individual): I would say the main distinguishing factor was the citizenship of Ms. Kazemi at the time the atrocities were committed. When Ms. Kazemi was unlawfully detained, tortured, beaten, and ultimately murdered in Iran, she held Canadian citizenship. She had been domiciled in the province of Quebec and was a citizen of Canada, and her estate was domiciled as a result in the province of Quebec.

So from the outset we faced fewer jurisdictional problems than Mr. Bouzari may have—although as Jayne mentioned, the courts never addressed the jurisdictional issue, having fallen, as Mark said, already on the state immunity issue. But Ms. Kazemi faced no issue there. The courts of Quebec clearly have jurisdiction to hear a suit, and I would say that's the principal distinguishing feature.

When Mr. Bouzari was tortured in Iran, he was not at the time a resident of Canada. He subsequently fled to Canada and pursued his justice here. I would say that's the main distinguishing factor.

Mr. Russ Hiebert: So you believe that Ms. Kazemi's Canadian citizenship would be sufficient for the State Immunity Act not to apply?

Mr. Kurt Johnson: No, that's not what we're saying. We're saying that but for the State Immunity Act, there is no question that the case could and should proceed before the Quebec courts.

Mr. Russ Hiebert: I see.

Mr. Kurt Johnson: And because there is no issue there, we face the same hurdle that Mr. Bouzari did in terms of the application of the State Immunity Act. We are raising arguments that were not addressed by the court in Mr. Bouzari's case. So there is an open window that we will be flying through or throwing ourselves through. I think that's another distinguishing feature of the case.

Mr. Russ Hiebert: Okay.

I think it was you, Mr. Larocque, who mentioned that Syria, Iran, Cuba, and one other country are currently exempted from the Foreign Sovereign Immunities Act in the U.S. What was the fourth country?

Dr. François Larocque: They are Cuba, Iran, Syria, and Sudan.

Mr. Russ Hiebert: And Sudan.

How many successful lawsuits have there been through these exemptions?

Dr. François Larocque: In the States?

Mr. Russ Hiebert: In the U.S., yes.

Mr. Mark Arnold: I don't know the numbers, but I can tell you there are many. I'm consulting on two right now. I'm aware of four or five others, if not more, where there are actual U.S. court judgments against Iran in the United States.

Mr. Russ Hiebert: Okay, so there clearly have been many people who have been successful against Iran.

Dr. François Larocque: That's quite right. There's an annual report to Congress on this exact question—that is, on the amount of money damages that have been awarded against the state sponsors of terrorism. Against Cuba and Iran, which have been the two most popular targets of these lawsuits, over $10 billion in judgments have been awarded against these countries as of 2007—although there were also some awards against Syria and Sudan.

Mr. Russ Hiebert: How do you think these countries were selected? Why were these four exempted?

Dr. François Larocque: Why are they exempted from immunity?

Mr. Russ Hiebert: Yes, as opposed to all the other countries of the world.

Dr. François Larocque: I have my own view on that. The list used to include North Korea, Libya, and Iraq as of three years ago, but as the United States has moved to normalize its relations with these countries.... Great strides were made, for example, with respect to Libya. And after the regime change in Iraq, the point became moot. North Korea I think is the most surprising removal from that list; nevertheless, it occurred.

When a state is removed from that list, it's seen, I think, more as a political overture or attempt to normalize trade and diplomatic relations.

● (1335)

Mr. Russ Hiebert: Sure.

Now, in the statements you've made, some of you have suggested that there's no need for us to follow the U.S. lead by simply providing exemptions in the State Immunity Act. We have a sample text here from the University of Toronto international human rights program.

Would there be a case to make that Canada would identify a select number of countries to allow to be exempt from the State Immunity Act?

Mrs. Jayne Stoyles: I would say no. I would be quite dismayed to see a list of countries that would be exempt. In part, it relates to the answer to your previous question about why those countries, those four in particular, in the U.S.... My understanding is that the amendment to the Foreign Sovereign Immunities Act in the U.S. was in connection with the new anti-terrorism legislation after September 11. Those countries were on the list of state sponsors of terror. That was the particular interest of the U.S. in creating this exemption.

It would be very unfortunate to politicize the process in the same way, to decide ahead of time, for example, which countries would be most likely to commit atrocities. That, of course, changes, depending on changes of governments and developments.

Mr. Russ Hiebert: If we wouldn't be specific about which countries would be selectively chosen to have this apply, why wouldn't we simply eliminate the State Immunity Act? If the whole purpose here is to provide some diplomatic sensitivity to our international relations, why would we open up the act to everyone, as opposed to a select few?

Mrs. Jayne Stoyles: The distinction here is that we're asking that those who commit torture, and ideally a few other categories of the most serious crimes of international concern—war crimes, crimes against humanity, and genocide—cannot be protected by the State Immunity Act. I think it's a separate debate, one that I wouldn't comment on in terms of there being any utility for the State Immunity Act as a whole. But certainly the intention behind having the State Immunity Act was to ensure, for example, that when a Canadian ambassador travels to another country, he simply can't be brought before the courts of that country, or vice versa when somebody is travelling here.

There was an idea of normalizing diplomatic relations and ensuring some protection for state officials, but it was never intended.... As I said in my opening statement, the idea is related to sovereign acts, acts of a state that are essential in the normal course of its business as a government. Torture, although the practice may not suggest this, is not supposed to be part of the normal practice of a government in its day-to-day activities.

Mr. Russ Hiebert: It might be difficult to put your head to the other side of the issue here, but what are some arguments against opening up the act, against making these amendments?

Mrs. Jayne Stoyles: Perhaps I'll throw out one and then see if anyone else.... Of course I'll respond to it, but perhaps others would like to raise this.

In thinking this through, one of the things we assumed would get raised, which I addressed to some extent in my opening statement, is whether this would affect Canada's trade relations with other countries. If we bring a country like China to account for committing a human rights abuse, does that affect our trade relations? Our response to that is that it is being done elsewhere—in the U.S., for example—and in other countries. Certainly there's no indication that it has had any effect on the normal course of business relations. And we have to remember that we're talking about the most serious violations of international law, which are widely recognized and internationally condemned. So Canada taking a position that countries such as Iran or China or other countries need to uphold those obligations and pressing on that is not something that should interfere, in that sense.

The other important distinction here is that we're not actually talking, again, as has been said, about criminal cases, which the Government of Canada is actually bringing. We're talking about people like Mr. Kazemi being able to bring a case for crimes that have affected their own families, their own loved ones, or they themselves, if they have actually survived. And that is a very different scenario from the Government of Canada attempting to prosecute someone else.

The final point I'll make on that is, again, this does not mean that western European countries and the U.S. government and others are going to start to be brought before Canadian courts. Any government in the world that has a judicial system that's willing to look at these kinds of cases would obviously be a better forum. And as I said, there's a two-part test: it has to have a real and substantial connection to Canada, and in fact this has to be the best forum in which to bring the case.

● (1340)

Mr. Russ Hiebert: One last question—

The Chair: No. Actually, Mr. Hiebert, you're well over your time.

We'll move to Mr. Oliphant. We do actually have enough time that I think the last two questioners can have seven minutes, as opposed to the usual five.

Mr. Oliphant, please.

Mr. Robert Oliphant (Don Valley West, Lib.): Thank you.

I want to thank all of you for being here today and for all of your testimonies.

Mr. Marston has made my first comments redundant. Thank you, Mr. Marston for those sentiments.

I do want to say to Mr. Kazemi, or Mr. Hachemi—I'm not sure which name you prefer—that while we are reflecting on your mother's death, I'm hoping that we are more captured by her life in the work that we're doing. I am a fan of her work in the Palestinian territories, in Iraq, in Afghanistan, in Africa, the Caribbean, Latin America, where she talked about life. She presented those issues of life and drew attention to poverty and oppression, in her whole life. My motivation in this is more her life. I think that's how we will honour her.

The second thing I would say is that she chose Canada. I don't want Canada to let her down, because I suspect she chose Canada because of who Canada is, what Canada is. So we have to honour that. That will be our work.

Thank you for your testimony.

Mr. Stephan Kazemi: Thank you very much for acknowledging what a beautiful and brave woman she was and the legacy she left behind her. That's exactly true.

She chose Canada. We were in France in a fine situation. She chose Canada. She could have applied anywhere in the world. My mother studied at the Sorbonne. She had passed a masters in film with Éric Rohmer. She had a PhD in art and literature. So when she applied at the embassy of Canada, she was very well received. We went there gratefully. I appreciate that you acknowledged that.

I wanted to say that I regret a bit today—I'm sorry to say—the case of Mr. Houshang Bouzari. I think it makes the situation a bit more complicated. Unlike Houshang Bouzari, my mother wasn't working with the government of Tehran. She was just a woman who was dedicated to make a change in the world with what she had available to her: her camera, her eyes, her sensitivity. She paid a very hard price because she chose to have integrity and to live by what was right for her.

I hope that Canada will finally honour her integrity.

Mr. Robert Oliphant: These are slow steps, but this is part of that process. Mr. Arnold, yes. I will continue to work in Mr. Godfrey's place for other constituents, like Ahmad Abou-Elmaati and Dean Peroff, another constituent of mine. I'm working with Mr. Peroff now, particularly on the rights of detained citizens.

There are two issues here. The sort of macro issue is about the responsibility of the Canadian government to protect our citizens. This is one subset of that. I am quite involved in several others. But this piece of legislation will also now inform me, because this is one part of our government's responsibility to ensure that citizenship is indivisible, that our government will protect us when we are out of the country, proactively by ensuring civil rights in the world but also reactively through methods of recourse such as this act.

I want to ask a little bit about other countries. I am very pleased that Ms. Stoyles said that we would sooner actually focus on the exemptions of the acts out of immunity, as opposed to the countries. So we can have a principled activity, as opposed to a political activity—where we name our favourites or those most likely to offend—because offenders can happen any day anywhere. The offences need to be focused on, not the offenders. I think that needs to be placed in legislation.

I'm thinking of perhaps Spain or the U.K. with Mr. Pinochet, or whether there are other countries that have taken their acts and put it in line with the convention and have done something that we can model. Is there any knowledge of that?

● (1345)

Dr. François Larocque: I can speak to that with pleasure.

[*Translation*]

Mr. Robert Oliphant: You can use either French or English.

[*English*]

Dr. François Larocque: Merci. I'll start in English; I may switch to French.

First of all, it should be said that not every country on this planet has a state immunity act. In fact we are part of the minority. It is chiefly common-law-based countries, ironically, who have shied away historically from codification, who have state immunity acts: Canada, the U.S., the U.K. But some Commonwealth countries don't have a state immunity act, New Zealand being a chief example. They proceed and they deal with immunities on the strict basis of common law, customary norms being automatically incorporated as part of the common law. So that's how they do it. It's quite simple and straightforward, really.

Ironically, most civil law countries do not—for example, continental Europe. In fact none of them, to my knowledge, have state immunity legislation. France, Belgium, Italy, and Spain don't have state immunity laws. They do it as a basis of strict law, international law that they apply through their domestic courts. They don't have the conundrum of adjusting their national legislation to international norms. They just do it as a matter of law, quite simply.

An interesting case study I would like to bring to your attention is a litigation between Italy and Germany. I think the first case was in 2004. Actually it started way before that, but it was brought to the Corte Suprema di Cassazione, the Supreme Court of Italy, in 2004. It was called the Ferrini case, Ferrini v. Germany. Here was a man who was basically suing for war crimes and other atrocities, including torture, during World War II. He was deported to Germany, interned in camps, and forced to work. Here he is in the 21st century suing Germany, who incidentally, it should be pointed out, has been Italy's primary trading partner. They're great friends, and here Italian courts are entertaining a lawsuit against Germany for these atrocities that happened, and without the benefit of the state immunity legislation, strictly on the basis of customary international law. The Corte Suprema di Cassazione realized it in a judgment that has since been upheld 14 other times. So now there are 15 Italian judgments all recognizing that there is no immunity in international law for crimes against humanity and for these *jus cogens* offences, universal jurisdiction crimes. That's an important precedent to keep in mind.

Germany and Italy still to this day remain great friends. I went this morning to the website of the German foreign office, and there's a tab for every country of the European Union and the tab for Italy is all rosy. They maintain how their relationships are as strong as ever, despite their obviously having a disagreement on the extent of the immunity that should be given to those particular acts.

It's an interesting precedent to be borne in mind as not being fatal to foreign relations.

Mr. Robert Oliphant: Do the 2004 proposed amendments from the University of Toronto's international human rights program cover it? Are you happy with them? Would you go further or less in the wording?

Mr. Mark Arnold: I participated in that conference. Actually Stephan was there; Mr. Bouzari was there as well. You'll recall William Sampson, who was a torture victim from Saudi Arabia, also attended that conference.

We were quite pleased with those proposed amendments at that time. Study has to still take place. There are many questions that have to be asked. You've asked many of those questions today. I'm pleased with those amendments, but I'm not the final arbiter of this.

● (1350)

The Chair: Thank you.

Our last questioner today will be Mr. Sweet.

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

I hope the last questioner will be my colleague, Mr. Hiebert. He has one question left, and I don't think I'll take my whole seven minutes.

I don't mind being repetitive. Mr. Kazemi, Mr. Bouzari, there's no way we can comprehend the kind of pain you've gone through. You certainly not only have our warmest sympathies, but all our commitments that one day we can be of some help in seeking justice for you and finally having it done.

I am concerned, Mr. Chairman, because of the history of this case, that no one was called here from the Department of Justice. My colleague even had to ask the question of what arguments there have been to the contrary. It isn't fair that they would have to answer what the circumstances were, why we hadn't had any success. I think it's a significant diminishing of our ability to get to the facts, without having them here together.

That said, we'll work with what we have, in the most effective way we can.

Are you familiar with the Canadian Coalition Against Terror? I have had more exposure to their pursuit than your pursuit, but what would you say are the significant differences in the process they're seeking in redress for victims of terror, and in what you're seeking, redress, particularly for victims of torture?

Dr. François Larocque: I am familiar with the legislation that C-CAT had put forth through, I believe, Senator Tkachuk.

Mr. David Sweet: Yes.

Dr. François Larocque: It was reintroduced on Tuesday this week for first reading again.

What's really nice about the bill, and I think we have an example....

Mr. Mark Arnold: Is that Bill C-272?

Dr. François Larocque: I think it's been renumbered. I think it's now Bill S-233.

In any event, the preamble of this bill enunciates the principle that also animates our request. It essentially recognizes that these peremptory norms of international law are superior in the hierarchy to other inferior norms, such as state immunity. When a conflict occurs between these norms, the peremptory norms should trump the inferior norm of state immunity.

Then they go on, essentially codifying an amendment to the State Immunity Act for terrorism, on the basis that terrorism is a violation of peremptory norms of international law. It's the same principle, really, and that formula, that spirit, can also embody the bill we would be putting forward for torture, crimes against humanity, war crimes, genocide, terrorism, extrajudicial killing. These are the no-brainers at international law. These wrongful acts are vastly recognized as being illegal and against international public order.

Mr. David Sweet: In that case, could some amendments deal with the specific bill, if it proceeds post-haste, which would clearly bring into consideration all your concerns?

Mrs. Jayne Stoyles: Certainly we looked at that piece of legislation and we have talked about whether it's a matter of adding these crimes, because they are on exactly the same level. The crimes of terrorism, of course, have been very much in the public eye since September 11 globally, and I think it's the reason these very specific attempts have moved more quickly. These other atrocities, obviously, are equally serious.

In a way it's a question for you. One of the questions we've had is whether that process, the attempt to provide a definition of terrorism, is so challenging it will create challenges in the legislation. It was one of the things we wondered, because I know that attempt to provide the definition internationally has been very challenging. We had wondered, do we keep it clear and separate and do a process that's specifically about another set of international crimes? Perhaps you could advise us.

Mr. David Sweet: Definitely. I would have to have that bill and your proposal side by side.

Mr. Arnold.

● (1355)

Mr. Mark Arnold: Are you trying to work out in your mind the difference between terrorism on the one hand and torture on the other?

Mr. David Sweet: No, not at all. I was trying to see if two efforts could be combined into one. We have years of history on this issue, and I'm certain you'll want to see some success. That was the only intention of my question.

Mr. Larocque, you made some interesting observations. How many years has the United States been using this legislation, this exemption from the state immunity act, whereby they change the players who are exempt?

Dr. François Larocque: The first amendment that allowed lawsuits against the state sponsors of terrorism was made in 1996, but not only for terrorism. The amendment also worked for torture and extrajudicial killing.

Mr. David Sweet: Since1996 there have been a couple of administrations. Do you have any concern that now with normalization, with this administration talking about normalizing relationships with Iran, something may change in that regard?

Dr. François Larocque: That list may get shorter and shorter, yes.

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac: I have to make a speech in the House in about five minutes. I must apologize for having to leave now, but I want to thank you all for being here.

[*English*]

Mr. Russ Hiebert: I have a question related to the remarks made earlier.

Mr. Larocque, it was mentioned that you have two other ongoing cases dealing with the State Immunity Act. Can you tell us about those?

Dr. François Larocque: Not very much at this point, I am afraid.

I am trying on behalf of Amnesty International to seek leave to intervene in the Kazemi litigation in Quebec, and that is yet undetermined. The court has not yet decided our fate.

There is also similar and ongoing litigation in which I'm involved in Ontario as well, but I don't want to go too much into details.

Mr. Russ Hiebert: I appreciate that.

You mentioned that only a few countries have state immunity acts and that the general rule is that most do not. Which ones do have state immunity acts?

Second—and this is my last question—considering that you are not calling for the elimination of the act, only an amendment to it, are you acknowledging that it does have a beneficial role to play?

There are two questions there.

Dr. François Larocque: Undeniably, it has a role to play. I am not a political expert, but I think it would be hard to backtrack on the existence of the act, full stop.

Mr. Russ Hiebert: Which countries have it?

Dr. François Larocque: It is essentially Commonwealth countries for the most part, and the United States. When Canada enacted its legislation, it was to keep pace with those countries, Canada's main trading partners: the United States, the United Kingdom, and many African countries as well that are part of the Commonwealth.

Mr. Russ Hiebert: So most of the 55 or 56 Commonwealth countries have this legislation.

Dr. François Larocque: I could find that information for you, if you're interested, but I would say the majority of the Commonwealth countries do, with the notable exception of New Zealand being one that does not.

In fact most civil law countries do not have them, with the exception of Argentina, which I know has one. It basically reflects, in simply different terms, the same provisions that are contained in our act.

Mr. Russ Hiebert: We are almost at the end of our meeting. I have one very brief question as a follow-up, if I may.

If I'm not mistaken, the common law principle is that the king can do no wrong. So I'm guessing that the purpose of the State Immunity Act was not to create immunities where none previously existed, but rather to create a measured way in which limited rollbacks of immunities that were there under the traditional common law rule could be created. Am I understanding things correctly?

● (1400)

Dr. François Larocque: The history of state immunity in international law is extremely storied. It basically had to do with the increase of international trade between nations in the 19th century. As states descended into the marketplace and started to behave like private parties, it was viewed that it was unfair to cloak them with absolute immunity for missing out on a contract or for violating terms of a contractual agreement.

As a result, the first exceptions to immunity were developed. Others now exist. The Supreme Court pointed out that the list is not closed. In fact, our position is developing new and emerging exceptions for precisely what we are talking about here today: crimes against humanity, torture, and crimes of universal jurisdiction.

The Chair: Thank you, and my thanks to all our witnesses. You've been very helpful, and I think all members of the committee are grateful to you for taking the time to come here.

We are adjourned.

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