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Chair

Mr. Kevin Sorenson

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• (1530)

[English]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Bonjour, chers collègues. Good afternoon.

This is meeting two of the Special Committee on the Canadian Mission in Afghanistan, Wednesday, March 17, 2010.

I would encourage all members of this committee, if they wouldn't mind, to turn off your blackberries or cell phones or whatever.

In our second hour, just for the sake of the committee members, we wanted to let you know that we'll go to committee business to consider a number of things—first of all a motion that's been brought forward, and also the first report of the subcommittee on agenda and procedure and the plan for our future business.

In our first hour, we will continue the committee study on the transfer of Afghan detainees. As our witness this afternoon, we have Mr. Paul Champ, legal counsel of Amnesty International.

Mr. Champ, I didn't get an opportunity to meet you before, but we welcome a brief opening statement and then we'll proceed to questions from the members of our committee.

Again, welcome. If you have an opening comment of five to ten minutes or whatever, I know the committee members look forward to getting into a bit of a discussion and questions and answers with you.

Mr. Paul Champ (Legal Counsel, Amnesty International): Thank you very much, Mr. Chair. I want to thank you and the committee members for inviting me, on behalf of Amnesty International, to appear today.

I would like to remind the committee members that I am legal counsel for both Amnesty International and the B.C. Civil Liberties Association. I have been representing them with respect to the issue of transfer of detainees in Afghanistan since 2006. I represented both of those organizations in a court challenge that commenced in February 2007 and have also represented both of those organizations before at the Military Police Complaints Commission since February 2007.

I would just like to make some brief comments on two issues, if I may. Obviously, my clients have been closely following the excellent work of the committee and the different witnesses who have been called here and what we understand to be the issues of utmost concern with respect to the detainee transfer controversy.

There are two points we would like to make to the committee right now. First is our concern that there remains a risk of torture in Afghanistan with respect to detainees captured by Canadian Forces and handed over to Afghan authorities. I will provide a few brief comments on that. The second thing is just to provide an update to the committee on the proceedings before the Military Police Complaints Commission. As I recall, this committee started looking into this issue in October 2009 because of concerns about obstruction before the Military Police Complaints Commission, so I thought this might be a good opportunity to provide the committee with an update on the status of that process.

First, with respect to the issue of risk of torture in Afghanistan at present, it appears from our perspective that a lot of the focus over the last four or five months on this issue has been the suggestion that there were problems in Afghanistan in 2006 with the detainee transfer system and that they were fixed in May 2007. The focus has been on why it has taken so long to fix the problem. I would just like to say, on behalf of both Amnesty International and the B.C. Civil Liberties Association, that it is our view and our position, based on the evidence available, that there remains a serious and substantial risk of torture for detainees in Canadian Forces custody who are handed over to Afghan authorities.

I would remind members that the second supplementary arrangement that was signed between the Government of Afghanistan and the Government of Canada in May of 2007 allowed Canada to start monitoring detainees. Since that time, however, we have found that once Canadian diplomats started visiting detainees in custody, they began to hear numerous first-hand graphic detailed accounts of abuse and torture. I know there has been some suggestion that these allegations were not credible, but I would just remind the committee that the Federal Court considered these allegations in 2008, and Federal Court Justice Madam Anne Mactavish reviewed those allegations and reports to Canadian diplomats and said this:

These complaints included allegations that detainees were kicked, beaten with electrical cables, given electric shocks, cut, burned, shackled, and made to stand for days at a time with their arms raised over their heads.

Moreover, in some cases, prisoners bore physical signs that were consistent with their allegations of abuse. In addition, Canadian personnel conducting site visits personally observed detainees manifesting signs of mental illness, and in at least two cases, reports of the monitoring visits described detainees as appearing "traumatized".

That's the information that was being given to Canadian diplomats in 2007. Ultimately, as we know, transfers were suspended in November 2007 for four months because instruments of torture were actually found in the interrogation cell.

We don't know what details Canadian diplomats have been learning since that time. In November 2009 Minister of National Defence Peter MacKay did say publicly that there had been three suspensions in 2009. He said one reason for suspension was that the national directorate of security had refused access to prisons for a period of time, and the other two suspensions were due to further allegations of abuse. There have been no further details on that, and we would be very interested to learn the details of those further allegations or reports of abuse. I would just remind the committee, however, that whenever you hear an allegation of abuse arising from a prison in Afghanistan, really that's a euphemism for torture.

● (1535)

I note that in June 2007, Minister MacKay, then Minister of Foreign Affairs, and Minister of Public Safety Stockwell Day told the public at that time, to their credit, that there had been new allegations heard from Afghan prisons, and they said then it was allegations of abuse. What we found out a year later, though, is the actual reports had said that these were individuals who were beaten with electrical cables while blindfolded, subjected to electric shocks, and hit on their feet with cables. Another man could not say what happened to him, other than the fact his toenails were missing. So it's our concern that Minister MacKay has said as recently as November 2009 that there have been very recent suspensions, last year. We don't know the details of those reports and we don't know why Canadian Forces deem it safe to transfer detainees in that context.

And finally on that point, I would say we do know and have learned that the British forces in Afghanistan have suspended transfers to Afghan authorities, specifically the national directorate of security. They made that suspension in June 2009. That moratorium on transfers continues today. One big question that's obvious to my clients is if the British forces view it as a risk of torture to transfer detainees, why does Canada deem it to be safe? So that's our concern on the contemporary risk of torture.

The second issue I would like to update the members on is where the Military Police Complaints Commission is at. As you recall, it was adjourned in October 2009 because of lack of disclosure of documents. The then chair Peter Tinsley said it was unfair to the subjects—that is, the military police officers who are the subjects of the complaints—to proceed with the hearings in the absence of full disclosure of those documents. So he adjourned the hearing until those documents can be produced.

I can inform the committee that a number of documents have been produced, both to those subjects and to ourselves. We cannot disclose what these documents contain until they've been introduced into evidence, but there has been a significant amount of disclosure finally from the government. However, there is still a large number of documents that have not yet been disclosed. Just yesterday the Military Police Complaints Commission lead counsellor, Ron Lunau, wrote to the government again asking about where the other documents were that they were waiting for from the Department of National Defence and also from the Department of Foreign Affairs. So there remains an issue over disclosure.

I'd also point out that one of the issues that was live at the time the hearings were adjourned was the concern or allegation that potential witnesses were being intimidated by Department of Justice lawyers.

They were being advised and threatened not to appear before the commission and not to cooperate with legal counsel for the commission. I can advise this committee that since that time we have learned from Department of Justice counsel that all of those witnesses are now cooperating with the commission counsel, so that's a positive development.

Secondly, the issue of whether witnesses were intimidated in the past is still a live issue that will be argued at the commencement of the hearing later this month. The hearings are scheduled to recommence on March 24 for three days of motions. There will be an adjournment for a week and then starting April 5, 2010, there will be six straight weeks of witnesses. We do not have the list of witnesses yet, but we understand the commission is continuing its work in meeting and interviewing potential witnesses, and we look forward to a final list soon.

My final point on that and the final point I'll make with respect to my opening statement is just to inform the committee that there has not been any appointment of a new chair to the Military Police Complaints Commission. The previous chair's appointment—Mr. Peter Tinsley—ended on December 11, 2009. There were statements by the government at that time that there would be a new chair appointed. There has not yet been any new chair appointed.

● (1540)

However, another commission member, Mr. Glenn Stannard, has been appointed acting or interim chair. Initial correspondence that we received from counsel for the commission in January 2009 was that Mr. Stannard would deal with procedural issues with respect to this hearing and that he was looking forward to another chair who had legal training being appointed, because Mr. Stannard is not a lawyer.

Approximately four weeks ago, we were informed that in the absence of any other appointment, Mr. Stannard was now appointing himself to head the commission hearing. So at this stage, we're going forward with Mr. Stannard as not only the acting chair of the commission, but also acting chair of the hearing.

I'll just point out to the members that my clients do not take any objection to Mr. Stannard himself in any way. He is the former chief of police of the city of Windsor. However, we have noted our concern that he does not have legal training per se and it appears that this is going to be a fairly complex legal proceeding. We've already had numerous objections from Department of Justice lawyers on issues concerning jurisdiction, privilege, national security immunity, and so forth, so we have concerns about the efficient operation of the proceeding.

We'd also note that there is no other police complaints body in any province of Canada that does not have a requirement that a lawyer lead it, so we have concerns about that.

That's where it stands. I'll just leave it at that.

That's my opening statement. Thank you very much, Mr. Chair.

The Chair: Thank you, Mr. Champ.

We'll move into the first round and go to Mr. Wilfert for seven minutes, please.

Hon. Bryon Wilfert (Richmond Hill, Lib.): I'm going to share my time with Mr. Dosanjh.

I have two quick questions to the witness.

First of all, on the issue of Mr. Iacobucci, the government has vetted these through its lawyers and government officials have vetted the documents that this committee has asked for. We haven't received them, obviously, and that is why our party continues to call for a public inquiry: because that's the only way we think we're going to get to the root of the matter.

In your opinion, is Mr. Iacobucci simply going to be vetting documents that have already been looked at, and ultimately it doesn't really matter and the Prime Minister is going to have the final say? Or do you expect anything different?

Mr. Paul Champ: I can advise the committee that I have had an opportunity to read the terms of reference for Mr. Iacobucci. From my reading of it, Mr. Iacobucci will essentially be providing a second opinion on the national security redactions that have already been made to documents already disclosed. It's a large volume of documents that have come to the fore since early 2007 and that had been disclosed in various litigation, both in the Federal Court and before the Military Police Complaints Commission.

As I read those terms of reference, he's doing nothing more than providing a second opinion on the redactions already made. I would point out that I would have some concern about the function of that and what is the utility of that.

My clients have continued to advocate for a full judicial public inquiry. We have raised concerns, but the Military Police Complaints Commission is really only looking at one very narrow aspect of this issue that obviously goes over several departments. It's not even looking at everything the Canadian Forces do; it's just the military police. That has been our view.

I would also point out in terms of timing that it has taken Department of Justice lawyers in the national security group an extremely long time to review and redact those documents. In the litigation before the Federal Court, I know there were rolling court orders for them to produce those documents, and they kept coming back and saying that it's taking too much time, or it's taking time, and the court granted them more time. But I can say that it took them a very long time—over a year, at least—to produce just a small amount of those documents.

With respect to Military Police Complaints Commission, on the documents that have still not been disclosed from, for example, the Department of Foreign Affairs, the commission has been asking for those documents for over two years. It's our understanding that one of the reasons why they've not been disclosed is that it's taken that long to complete the national security redactions.

All I would say is that I would be concerned that Mr. Iacobucci's mandate is no doubt going to take an extremely long time, and frankly I'm not sure what it's going to achieve, other than to provide a second opinion on what Department of Justice lawyers have already done.

• (1545)

Hon. Bryon Wilfert: Then would you suggest that it's not the best use of public dollars and that the only way to really get at the facts is a public inquiry?

Mr. Paul Champ: Again, I would say to the committee, that has been the position of my clients, quite strongly: that there should be a full judicial public inquiry, where, if the government is going to be paying a former justice or senior lawyer to review these documents, that person should also be asked to draw conclusions from those documents and perhaps ask questions of witnesses.

In terms of use of public dollars, I'd also point out that these same documents, precisely these same documents, in uncensored form, are going to be provided to Mr. Iacobucci, but the government is withholding them from the Military Police Complaints Commission. The Military Police Complaints Commission has been asking for over two years for the uncensored documents so they can review them. Mr. Tinsley, the former chair, wrote to Mr. MacKay on a few occasions asking him to give access to those documents to the commission.

I would just like to remind the committee that the Military Police Complaints Commission is a branch of government. It has top-secret-cleared government lawyers to review those documents, yet for reasons that have never been clear to us, the government has refused to provide those uncensored documents to that body.

Hon. Bryon Wilfert: Thank you.

Mr. Dosanjh.

The Chair: Mr. Dosanjh, you have two and a half minutes, please.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Thank you.

I have just a couple of questions. One, you mentioned that there are motions challenging the jurisdiction of the commission already being sent forth from the government lawyers. Can you shed some light on that if at all possible, if you're allowed to? That's number one.

The second question is, can you sort of make a comparison between what the practices in the U.S. and Britain are versus Canada? In the British courts some of these documents that the British government is providing are absolutely unredacted and have all kinds of details.

Mr. Paul Champ: On the issue of the motion on jurisdiction, as you will recall, the Attorney General of Canada challenged the Military Police Complaints Commission decision to hold public hearings into this issue. They went to Federal Court arguing that the commission cannot look at this issue at all and the hearings should be quashed.

There was a ruling in September 2009 by the Federal Court upholding some of the objections made by the government, but nevertheless concluding that there was some jurisdiction for the commission to inquire into those issues. The court made it clear that the focus must be on military police officers. However, it also said that it should look at information that was both within the possession of the Canadian Forces military police or was within the means of knowing of the military police. So we've interpreted that to mean that the commission can look at what the military police knew, or what they could have known had they investigated the matter properly.

At this point the government is making objection to, as we understand it, much of the evidence that the commission intends to call, on the basis that this isn't information that military police knew or had the means of knowing. We don't know how that's going to be tied together.

It's our view that, for example, if Canadian diplomats were making visits to prisons, making reports that detainees are telling them they've been tortured, Canadian Forces military police could have obtained those reports had they looked. But at this point it appears that the government is going to object to that kind of evidence going before the commission. We'll see what they say.

• (1550)

Hon. Ujjal Dosanjh: And your response to the second question?

Mr. Paul Champ: The second point is that there has been, I would say, a marked or notable difference in the levels of transparency that the U.S. government and the British government have shown with respect to their detainee operations compared with the Canadian government. For example, both the U.S. government and the British government have disclosed the number of detainees they've captured. The U.K. has even gone into detail about the dates individuals were captured and the dates they were transferred. All of that is withheld or kept secret in Canada. The names of detainees.... The United States has even disclosed the names of detainees who are captured and held in their prisons in Bagram.

Another issue is that there are some documents that are starting to come out of litigation in the United Kingdom. There is a similar challenge in the United Kingdom with respect to the transfer of detainees, and there are documents coming out of there—I've seen some—and there are far fewer redactions than what we see in Canada.

The Chair: Thank you, Mr. Champ.

[Translation]

Mr. Bachand, for seven minutes.

Mr. Claude Bachand (Saint-Jean, BQ): Thank you, Mr. Chair.

First of all, thank you for making a return appearance before the committee. Finally, we have legal status. I'm sure all of the media and all of my friends are pleased to see that today, coffee and juice are available. Many members of the media are present. Finally, we'll be able to discuss issues in a more legal context.

I'm not sure whether you took in today's question period. Many questions were asked about the possible construction of a prison in Afghanistan. As I see it, it's almost like admitting that Canada was aware that people were being tortured and that discussions had taken

place with the British and the Dutch to set up their own prison. Even in today's articles, there are reports that Mr. Amrullah Saleh, the director of the centre, was really very unhappy about the situation.

According to the report:

[English]

Mr. Saleh threatened to cut off inspections and—apparently seeking to appease the NDS chief—the three countries agreed to only conduct joint visits with plenty of advance notice and limit them to once a month at most.

[Translation]

The minister informed us that pursuant to the second agreement, unscheduled visits could be made at any time, but here, we see that this isn't quite the case.

So then, and I think you mentioned that at the outset, torture continues to occur in Afghan prisons. Would you say my assessment is fairly similar to yours?

[English]

Mr. Paul Champ: Yes, absolutely.

[Translation]

Mr. Claude Bachand: Alright then.

Have you read the U.S. State Department's 2009 Human Rights Report: Afghanistan?

The facts are reported very clearly. The report says this:

[English]

“torture was commonplace among the majority of law enforcement institutions, especially the police” in Afghanistan.

[Translation]

This is not a report that was released seven or eight months ago, but at most only a few months ago. In fact, it is dated March 11, 2010. If we acknowledge the obvious, namely that detainees are being tortured in spite of the agreements between our government and the Afghan government, then logically, we have to call a halt to transfers immediately and take steps to ensure that those captured by the Canadian Forces are not transferred.

Are you prepared to admit that based on the U.S. State Department report and on the information available to us, there is enough evidence to justify calling an immediate stop to the transfer of detainees?

[English]

Mr. Paul Champ: Thank you, Mr. Bachand.

I had only heard very briefly about the questions in the House today. However, I do have some information or knowledge about the issue of prisons in Afghanistan.

I have heard through the litigation in the United Kingdom that there was an issue in 2009 where the national directorate of security refused access to the Netherlands, Britain, and Canada for a period of time, and that one concern was that the chief of the NDS, Mr. Saleh, was saying you promised you were going to build us a prison, and until you follow through with that promise, we're not letting you have access. I reviewed one document related to that litigation, where it also appears that President Karzai was backing the chief of the national directorate of security.

It could well be that this was an incident Mr. MacKay was referring to in November 2009. If you recall, Mr. MacKay did say that there were three suspensions in 2009. He said two were with respect to new allegations of abuse, and one other suspension was due to the national directorate of security barring access, so he may well have been referring to that. As I understood it, transfers are ongoing, so presumably this issue has been resolved, but it's troubling that we had no idea that was ongoing at the time.

There's another issue out of that as well, as has been reported by *The Globe and Mail* this morning—and I've seen other documents corroborating it—that there were discussions in 2006 to have a joint detention facility co-managed by the Afghan authorities as well as NATO forces. I have a document from March 2006 in the United Kingdom, which puts forward that proposal and says:

This proposal would be beneficial, because it would retain an Afghan face, it would lend greater confidence to meeting international obligations, and invest in Afghan infrastructure to create a lasting capability that could continue to operate when international forces withdraw.

And then it says:

This proposal is meeting a resistance from the Canadian and the Dutch.

So we don't know why that occurred.

In cross-examining Ms. Colleen Swords, the ADM for the Department of Foreign Affairs, in 2007 I heard something about this proposal. We learned that there was some discussion about a co-managed facility, but we don't know why Canada ultimately opposed that. This has been the proposal that my clients have been suggesting for a very long time, to ensure that Canada is meeting its international obligations.

On your last point, about the United States State Department report, which was just released a few days ago, unfortunately those kinds of comments or statements about the risk of torture in Afghanistan have been the same in their reports for several years. I can tell you that I've seen some of Canada's own comparable reports from the Department of Foreign Affairs. They were disclosed to us in the litigation, and for several years running they were also very similar, where Canadian reports were saying that "torture is all too common"—that was a Canadian phrase, "all too common"—in facilities. We have no reason to believe that the situation has improved in Afghan prisons. We have no evidence of that.

I can tell you I'm aware of another report in the summer of 2009 by the Afghan Independent Human Rights Commission called "Causes of torture in law enforcement institutions". That was a very scientific study by the commission of individuals in Afghan detention. They interviewed 400 individuals, and of those over 90% claimed that they had been abused or tortured in Afghan custody.

So based on that evidence, and also what we've heard—that Canadian diplomats have received new allegations of abuse, apparently, according to Minister MacKay, in 2009—in the face of all that overwhelming evidence, according to the legal test of risk of torture, I can't see how the Canadian Forces can continue making transfers in the manner that respects international law.

• (1555)

The Chair: Thank you, Mr. Champ.

We'll move to the government side.

Mr. Dechert, welcome to this committee. You have seven minutes.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

Mr. Champ, welcome. It's good to see you. Thank you for your appearance here this afternoon.

You mentioned the decision of Madam Justice Mactavish. I understand that in that action, on behalf of Amnesty International and the B.C. Civil Liberties Association, you made the argument that the Canadian Charter of Rights and Freedoms should apply to non-Canadians detained by the Canadian Forces in Afghanistan. And I understand that at the trial level, Madam Justice Mactavish had determined the Charter of Rights and Freedoms did not apply. That was upheld by the Federal Court of Appeal, and the Supreme Court of Canada then declined leave to appeal. Doesn't that make it the law of Canada, that the Charter of Rights and Freedoms does not apply to these detainees?

Mr. Paul Champ: That's correct. According to the law right now, detainees do not have the protection of the Charter of Rights and Freedoms.

Mr. Bob Dechert: Okay.

I was just curious. In your arguments before the court, you argued that sections 7, 10, and 12 of the Charter of Rights and Freedoms would apply to the detainees. But you didn't argue that any other provisions of the charter, including section 8, "the right to be secure against unreasonable search or seizure", and section 9, "the right not to be arbitrarily detained or imprisoned", should apply to these detainees.

I was wondering why you didn't make these arguments. They're all legal rights. And if some of the legal rights in the charter apply, wouldn't they all apply?

• (1600)

Mr. Paul Champ: They would, indeed, all apply.

We weren't taking the position or challenging the Canadian Forces' right to capture and detain individuals in Afghanistan. According to the UN Security Council resolution approving ISAF and also the memorandum of understanding, the technical arrangements between Afghanistan and Canada, it was clear they had the legal authority to capture and detain. So we weren't taking issue with that.

"Unreasonable search or seizure" would be when you capture them and you search them, is there any breach there? We didn't have any evidence alleging that. In terms of arbitrary detention, if you are holding individuals for several months without charge, I think it could be an issue, but we had no evidence of that.

Our concern with respect to section 7 is that they were transferring individuals without any right of hearing. And the Supreme Court of Canada has held, with respect to non-Canadians who are either extradited or deported, that they have the protection of the charter if they're going to be sent to torture. And that's what we were relying on.

Mr. Bob Dechert: Perhaps I could just get clarification, though. If you apply the charter, you don't pick and choose. And it's my understanding that sections 8 and 9 require you to have reasonable cause—search warrants and arrest warrants. Would that be reasonable procedure in a theatre of war?

Mr. Paul Champ: No, it wouldn't. The Charter of Rights and Freedoms does not prescribe specific procedures in all circumstances. It would be adjusted to the particular circumstances, the same way in which international human rights law, for example, and international humanitarian law interact. Humanitarian law has to deal with the laws of war. And the human rights of individuals protected by the Geneva Conventions modify international human rights law. So under the International Covenant on Civil and Political Rights, for example, the extent someone would have these kinds of rights is modified by international humanitarian law and Geneva Conventions; the exigent circumstances of armed conflict would not necessarily have that full range of rights. And we weren't arguing against that.

Mr. Bob Dechert: Thank you for that.

When did you first hear of allegations of abuse of Afghan detainees?

Mr. Paul Champ: Specific Canadian transfer detainees?

Mr. Bob Dechert: Yes.

Mr. Paul Champ: The first time was April 21 or April 22 of 2007, when an exposé by Graeme Smith appeared in *The Globe and Mail*.

Mr. Bob Dechert: Did you not hear of any allegations prior to that date?

Mr. Paul Champ: We were not aware of any specific allegations prior to that date, no.

Mr. Bob Dechert: Isn't it true—

Mr. Paul Champ: Not that they didn't occur. We later learned of allegations that occurred prior to that. But up until April 2007, we had no information on that.

Mr. Bob Dechert: But we now know there were allegations.

Mr. Paul Champ: That's correct.

Mr. Bob Dechert: Even dating back as far as early 2005.

Mr. Paul Champ: I'm not aware of any specifically in 2005, but definitely in 2006.

Mr. Bob Dechert: Okay.

The Government of Canada began to negotiate a transfer agreement with Afghanistan in early 2005.

Mr. Paul Champ: That's correct.

Mr. Bob Dechert: Let's say May or June of 2005. And yet they didn't conclude an agreement until December of 2005.

Mr. Paul Champ: Correct.

Mr. Bob Dechert: Okay. And you're familiar, I assume, with that agreement.

Mr. Paul Champ: Very familiar, and with the earlier drafts.

Mr. Bob Dechert: Okay, and the earlier drafts. So that was under the authority of the previous government, as you know.

In your professional opinion, was that agreement sufficient to protect the interests of Afghan detainees?

Mr. Paul Champ: Absolutely not. It was completely deficient.

Mr. Bob Dechert: How did it compare with the British and Dutch agreements that were also struck around the same time?

Mr. Paul Champ: The most significant or glaring difference was with respect to access to detainees, a right of access to visit detainees once they have been transferred. That was the primary difference.

Mr. Bob Dechert: Right. So that occurred in 2005, and the British and the Dutch, who were all part of the same allied forces—

Mr. Paul Champ: That's right.

Mr. Bob Dechert: —had that protection. The Government of Canada did not put that protection in.

Mr. Paul Champ: Absolutely.

Mr. Bob Dechert: You're also familiar with the agreement that was eventually put in place in 2007.

Mr. Paul Champ: I am.

Mr. Bob Dechert: Is it your view that it was an improvement on the 2005 agreement?

Mr. Paul Champ: Absolutely. It was a significant improvement over the 2005 agreement.

• (1605)

Mr. Bob Dechert: So the Canadian military was taking steps to address the problem.

Mr. Paul Champ: Well, we don't what the timeline was in which they took steps. I'm not sure if you're aware of the providence of that, but I first learned of that new agreement when I was standing in the middle of court about to argue a motion for an injunction to stop transfers. The agreement had been signed literally hours before in Kabul and it was faxed to Ottawa. The judge presiding at the time, Justice Kelen, suggested that maybe the new agreement was signed in the face of that court motion, but I'm not sure. I've seen a lot of documents. I haven't seen the history of drafting of that second agreement.

Mr. Bob Dechert: Fair enough.

You mentioned the Military Police Complaints Commission. I know the commission counsel there, who is a former colleague of mine and a very fine lawyer with a long military history. Are you satisfied with the legal process in that proceeding, and do you see a conflict or a duplication between what that commission is doing and what this committee is doing?

Mr. Paul Champ: I think that's fair to say to a certain extent. If I recall, this standing committee began hearings because the Military Police Complaints Commission in October 2009 was basically stymied. The government had a number of objections in terms of why it couldn't proceed. They brought a motion to quash all summonses of all witnesses. They were taking the position that no witnesses could testify publicly. I don't know if that's still their position. They weren't producing any documents.

Mr. Bob Dechert: Most of them.

Mr. Paul Champ: Yes, most of them.

The Chair: You'll have to summarize quickly, please.

Mr. Paul Champ: Yes, most things are corrected, so I think there is some aspect of duplication. The Military Police Complaints Commission, however, is still just focused on the military police, whereas I understand this committee is looking at broader issues with other government departments as well.

The Chair: Thank you, Mr. Champ.

We'll move to Mr. Harris.

Mr. Jack Harris (St. John's East, NDP): Thank you, Mr. Chair.

Welcome, Mr. Champ.

I just want to touch on one thing. The previous colleague of mine asked whether the Charter of Rights applied, and it turns out that it doesn't in this particular situation. But this doesn't mean, I take it, that the prisoners who are detained by Canadian Forces and passed over are allowed to be denied their rights under the laws of war, their rights under international humanitarian law and these conventions that you mentioned. So the Charter of Rights is a specific Canadian constitutional document that in this case doesn't apply to foreign nationals.

Mr. Paul Champ: Yes, foreign nationals abroad.

Mr. Jack Harris: Foreign nationals abroad, yes. But it doesn't do anything to other rights that they have and that Canadian governments are expected to uphold. Am I right about that?

Mr. Paul Champ: That's correct. There are still Canadian laws that apply in the circumstances.

Mr. Jack Harris: And Canadian laws as well. So there are international humanitarian laws of war plus Canadian laws.

Mr. Paul Champ: Yes.

Mr. Jack Harris: You told us that the justice department lawyers who were dealing with these documents—I don't know how many of them were involved, but I know you used the plural—took up to two years to review documents and redact them using the process that I'll go into in a moment, and I guess you did offer an opinion that it might take a very, very long time for former Justice Iacobucci to undertake the same process with the same documents. He has

engaged to undertake this activity and exercise his own judgment. Would it surprise you if Mr. Iacobucci could finish this process in less than two years?

Mr. Paul Champ: I'm not sure what his other retainers are. If that's all he was doing, yes, perhaps he could do it in less than two years, but again, I'm not sure what he has on his docket.

Mr. Jack Harris: In respect to that process, I just want to present to you what we're told the justice department does when they're doing these redactions. Let me preface it by saying it appears that some of the documents that were redacted once, maybe two or three years ago, showed a lot of information that in the most previous redacted versions turned out to be black. In other words, the redactions are getting stronger and stronger, and more and more secrets are being kept from the public. Have you experienced that?

Mr. Paul Champ: I have to confess, Mr. Harris, I can't think of an example right now off the top of my head. That wouldn't surprise me. That's not uncommon at times, that you get disclosure from different sources within the government. Different government departments will do somewhat different redactions. I can't think of an example off the top of my head in this particular case, but that would not surprise me.

Mr. Jack Harris: Okay, well one of them is the document that General Natynczyk referred to back in December of this year. It was redacted a few years ago and now the actual allegations of mistreatment are included in the documents that General Natynczyk—

Mr. Paul Champ: Well, he released in his press conference a completely unredacted version. And we saw that what was redacted before were sentences like “We should take a photograph of this detainee prior to transfer so that we have evidence if he's abused following transfer to the ANP, as has occurred in the past”. That's what was blacked out.

That's of serious concern to us, because it suggests that as of April 2006, the Canadian Forces at that time were aware that detainees were being abused. They were so alive to that risk that they were taking photographs of individuals so they would have a record that they weren't the ones who abused them.

● (1610)

Mr. Jack Harris: Can I just run through the test that appears to be used by the Department of Justice in redacting documents? The officials determine whether the disclosure of the information would be injurious to international relations, national defence, or national security. If the officials conclude that the disclosure would result in injury, they must then determine whether the public interest in disclosure outweighs the importance of public interest in non-disclosure. So there is a balance here between the claims of injury and the claims of the public interest.

That seems to me to be a matter of opinion, shall we call it—perhaps legal opinion, but it's surely a matter of opinion that would vary from person to person.

I'm a lawyer, you're a lawyer. Can you tell us whether that test is something that can be consistent or reliable, or is it a matter of opinion? And what kinds of results did you get from that test being applied by different people?

Mr. Paul Champ: Well, Mr. Harris, there are some guideposts from the Federal Court on that. There have been some cases where they have considered weighing the public interest and also whether something meets the test of causing injury. For example, I think of Justice Mosley's decision in the Arar inquiry court judgment. It took about a year and a half or two years, but he released a very lengthy judgment where he started by saying that it can't be about embarrassment. You shouldn't be blacking out information of foreign agencies who might be doing wrong, and things like that.

The issue there, though, is whether something was actually causing injury in the first place. If a judge was looking at, for example, issues over the number of detainees and the date they were captured, I still don't understand how that can be a risk. How can you prove or demonstrate that there is a risk when our closest allies in Afghanistan are doing the same thing? So I don't know what would be there.

But some of that, for sure, is open to interpretation, and I think it can be fairly subjective.

Mr. Jack Harris: Well let me give you one "for instance". Do you think it would be injurious to Canada's international relations if it were disclosed or discovered that Canada was not doing a very good job in doing its duty of protecting individuals from torture? Would that be injurious to Canada's international relations and therefore be subject to redaction and non-disclosure to the public? Is that something that could happen?

Mr. Paul Champ: Well, I don't precisely know the arguments that were made in the past, but I think those are along the same lines of the arguments that have been made by the government. For example, I'll go to the Arar inquiry report again. It's my understanding the government was trying to withhold some information from the final report because it would show that Canada wasn't necessarily doing its job in some way, or, for example, if it was using information obtained from torture with respect to Mr. Abdullah Almalki. Somehow they felt that would damage international relations if it came out that they did that. But the court said no, that was really an issue of embarrassment.

I think those are probably some of the internal justifications that have been made. Unfortunately, there is not a lot of litigation under the Canada Evidence Act on the national security immunity provisions. So right now we're sort of at the mercy of justice department lawyers and their interpretation of those provisions.

The Chair: Thank you, Mr. Champ.

We'll move back to Mr. Hawn, please.

Mr. Laurie Hawn (Edmonton Centre, CPC): Thank you, Chair.

I'll share my time with Mr. Obhrai.

Mr. Champ, I want to thank you for coming and stating your opinion and interpretation as an employee of Amnesty International and the B.C. Civil Liberties Association.

Everybody understands there is risk in a place like Afghanistan. Have you spoken to the people who are running our detention facility there now, specifically Colonel Hetherington, who is there now?

Mr. Paul Champ: No, I have not.

Mr. Laurie Hawn: Have you looked at the progress that has been made over the number of years that we've been taking prisoners and developing the capacity of the Afghan system?

Mr. Paul Champ: I have not. I would love to see it, because when this sort of court case ended we were not able to get further production or disclosure. I would be very interested in learning about what other developments or progress they've made in that regard.

Mr. Laurie Hawn: I'd suggest to you that it's not a secret. The information is available, and in fact they've made tremendous progress.

Do you think there's a danger...? Do you think it's appropriate to transfer the context and perspective that we in Canada have for how things should be and impose that context and perspective on a place like Afghanistan, which clearly is not like Canada and never will be?

•(1615)

Mr. Paul Champ: I'm not sure what you mean by that, Mr. Hawn. For example, I've heard General Hillier say that prisoners and Afghan prisoners in prisons obviously cannot expect the same standard of treatment and conditions that Canadian prisoners receive in penitentiaries here. But that's not what we're talking about. I don't think there are any Canadian prisoners who are subjected to electric shocks, beaten with electrical cables or rubber hoses, or hung for days. Those are the concerns we have.

Mr. Laurie Hawn: I understand that, but would you also agree there may just be a chance that 90% of Taliban prisoners are going to claim torture regardless of the circumstances?

Mr. Paul Champ: I don't know what that statistic would be based on.

Mr. Laurie Hawn: You gave the statistic that 90% have been tortured.

Mr. Paul Champ: That is the finding of the Afghan Independent Human Rights Commission—

Mr. Laurie Hawn: What is it based on?

Mr. Paul Champ: It's based on their first-hand interviews with detainees.

Mr. Laurie Hawn: Thank you.

Clearly the detainees have a vested interest in that.

I suggest that you might want to check with the Brits. I'm not going to put words in their mouths, but I think you'll find that their prisoner handling situation is entirely different from ours.

Switching quickly to the MPCC for a second, you talked about the government changing its mind and allowing witnesses to cooperate. Are you not of the understanding that the MPCC is now operating within its mandate, and witnesses have been told to cooperate because the MPCC lost the court case to get outside their mandate and is now sticking to their mandate?

Mr. Paul Champ: I don't know the reasons why those witnesses have agreed to cooperate or why they refused to cooperate in the first place. We were advised by Government of Canada counsel in the hearings that each one of those 28 witnesses made their own individual decisions and exercised their own individual consciences to say they did not want to cooperate. Subsequently all 28 have coincidentally said they now want to cooperate and exercise their own individual judgments. So I don't know what each individual had in their mind at the time.

The Chair: Thank you, Mr. Hawn.

Mr. Obhrai, you have one minute.

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

I'm going to the question that Mr. Bachand raised today in the House of Commons with reference to the minister in the agreement of 2007. Over 200 visits have already been made to the Afghan prison, including one as early as ten days ago. So there are constant visits there that we know of, yet we keep hearing you and Mr. Bachand not taking into account what my colleague Mr. Laurie said about the capacity-building of the Afghan government coming from ground zero. There are positive things that are happening, yet you keep ignoring all of the other positive aspects that are going on with these things.

Why are you not looking at some of the positive aspects that Canada has contributed towards achieving? What we say is torture... nobody agrees with that.

Mr. Paul Champ: I think we have been fairly clear that we think it's commendable that Canada has increased its resources. When we started the court case, for example, Canada had donated almost no money to the Afghan Independent Human Rights Commission. Since that time it has increased to the extent that Canada is the greatest contributor to the Afghan Independent Human Rights Commission. That's commendable.

We know that there were almost no Department of Foreign Affairs officials in Kandahar prior to our court case. I think there were two officials. Now they have about 12 officials, with a specific detainee officer. That's obviously commendable.

Canadian police officers have now been deployed to provide direct on-the-ground training. Those things are all commendable. I don't think we've ever not recognized that or said that those aren't significant improvements.

The Chair: Thank you, Mr. Champ.

We'll go back to Mr. Dosanjh and Mr. Wilfert.

Hon. Ujjal Dosanjh: Thank you.

I have two things I want you to either confirm or say they're wrong.

Mr. Obhrai just mentioned that they have had 210 visits to the prisons. I understand the way the government counts visits is if they have met 210 detainees through various visits, they call them 210 visits. Is that your understanding?

Mr. Paul Champ: I have no idea or information of the 210 visits. The only direct information I have are visits that were conducted up

to the end of December 2007. I've reviewed all of those reports, so I know what occurred for all visits from May 2007 to December 2007. I don't know the details since that time or how they count them.

Hon. Ujjal Dosanjh: The second question is, for 2005, I understand that there were no detainees being transferred to the Afghan authorities before 2006.

• (1620)

Mr. Paul Champ: There was a handful, I believe, in 2002. As you recall, the Canadian Forces were deployed in Kandahar Province in December 2005. From 2004 and 2005, Canada had a small force around Kabul. In 2002 they were involved in some counter-insurgency operations and Canada did detain some individuals. I think it's somewhere in the range of 12, and they were handed over to the American authorities.

Hon. Ujjal Dosanjh: Absolutely, but they were not transferred to the Afghan authorities.

Mr. Paul Champ: That's correct. I don't think there were any, until April 2006, who were handed over to Afghan authorities.

Hon. Ujjal Dosanjh: You've talked about the ongoing serious and substantial risk of torture, and we're sending Afghan detainees to the Afghan authorities with a potential risk of torture.

As a lawyer for Amnesty International, you have been asked for different opinions. Different parties have asked you. I'm going to ask you a very blunt opinion. You've essentially given it, but I just want you to be very clear. Are you suggesting that we as Canadians, the Canadian government in particular—with all of the evidence that's before us, both publicly or otherwise—that the Canadian government is in breach of its obligations vis-à-vis the Geneva Conventions?

Mr. Paul Champ: The Geneva Conventions, and also the Convention against Torture, and the International Covenant on Civil and Political Rights—I'd say we're in breach of all of those conventions.

Hon. Ujjal Dosanjh: Is it your view that the Government of Canada today, if taken to court, would most likely be found to be in breach of its international obligations?

Mr. Paul Champ: I do.

I would point back again to the Federal Court judgment in 2008. There were two judgments, one in February 2008 and one in March 2008, where Justice Anne Mactavish found that the charter does not apply and so dismissed our application on that basis. However, she took care to go through all the evidence of torture that we had led, and also problems with the May 2007 agreement. She had pointed out that prisoners had gone missing—when we showed up to interview prisoners, they were going missing and sometimes we were refused access—and then she outlined all of those allegations of abuse. She said that her conclusions were very troubling—the fact that she found that the charter did not apply had very troubling consequences for the concerns to those—

Hon. Ujjal Dosanjh: For our troops.

Mr. Paul Champ: Well, for troops, absolutely. She said detainees, and then she turned to troops and she said she had some concerns there, because it would seem the only Canadian law that applies is Canadian criminal law, and this raises a live concern, and she pointed that out. So if she had been asked to apply international law, I have no doubt in my mind that she would have found that we were in breach.

Hon. Ujjal Dosanjh: Thank you.

The Chair: You do have another minute.

Hon. Bryon Wilfert: Mr. Chairman, I have a question with regard to the collection and dissemination of intelligence, which I think is relevant to this issue.

If the federal government, or Canadian intelligence agents in the field, or military intelligence, CSIS, gets information, they often get information from the NDS. Is it logical to assume that a product of these interrogations that are done by the NDS would be that one would not only analyze what information they received from NDS, but how this information came about? In other words, what kind of interrogations were conducted—i.e., was torture applied?

What is your comment?

Mr. Paul Champ: I think that is a very serious concern, and I think that's one big question that remains unanswered. Are the Canadian Forces receiving intelligence back from NDS interrogations and are they inquiring to satisfy themselves that it wasn't the product of torture? I think that's a very serious issue. It would breach Canada's obligations under the Convention Against Torture.

I will go back to one of Mr. Dechert's good questions about whether the circumstances change in an armed conflict or a theatre of war. The prohibition against torture is a non-derogable duty. So when you have international human rights law and international humanitarian law going on top of each other, there are some cases where international humanitarian law would supersede some of the more strict requirements of international human rights law. That would not be the case with respect to relying on evidence obtained from torture. We would be very concerned if that is the case.

Based on a lot of the documents I've seen, I'm not sure if the Canadian Forces would ask the question. From many of the reports we've seen, it seems in many cases the Canadian Forces have taken the view that the human rights of detainees is a Department of Foreign Affairs issue, and we're not worried or concerned with that. I think that's something we've seen in other cases, for example, with CSIS acting abroad, saying or taking the view that whether someone was tortured in providing that information, that's not our concern or we don't have to inquire into that. But that is a very serious concern.

• (1625)

The Chair: Thank you, Mr. Champ.

We'll move back to Mr. Abbott.

Hon. Jim Abbott (Kootenay—Columbia, CPC): Mr. Champ, I was rather troubled with the question that Mr. Dosanjh asked. I consider it to be very irresponsible. I wonder if you could give us a little clarity. As a lawyer who is responsible to Amnesty International, would you agree with me that the Geneva Convention does not apply in Afghanistan because it is not a state-to-state conflict?

Your answer, if I understood you correctly, was that you were worried that we could be or the soldiers could be subject to the laws under the Geneva Convention. Considering that it doesn't apply, would you agree? Why would you answer that irresponsible question with an irresponsible answer?

Mr. Paul Champ: Well, I would disagree with you that the Geneva Conventions do not apply to the armed conflict in Afghanistan—

Hon. Jim Abbott: Who is the other state? Pardon me, I'm sorry to interrupt.

Mr. Paul Champ: Well, there's some dispute about whether it's an international armed conflict or not, but regardless, common article 3, which is the obligation or duty not to subject individuals to inhumane or cruel treatment, applies both in internal civil armed conflicts or international armed conflicts. So that applies regardless of whether it's an armed conflict or not, and I think almost any lawyer would agree with me on that.

Hon. Jim Abbott: Are you doing the same cherry-picking that you did with the Canadian Constitution in applying whichever part of the Canadian Constitution you thought would be valid and ignoring the other parts of the Canadian Constitution? Are you cherry-picking the Geneva Convention as well?

Mr. Paul Champ: No, I don't think so. I don't think there would be any lawyer who would disagree with me that common article 3 applies. That's an article that's in all the Geneva Conventions, 1, 2, 3, and 4. It's the prohibition against cruel and inhumane treatment, and I think any lawyer would agree with me that this applies in this conflict.

I agree with you completely that it's likely that the third Geneva Convention, with respect to prisoners of war, does not apply to this armed conflict.

Hon. Jim Abbott: Then perhaps you might want to go and take a look at the transcript of the answer to the question that Mr. Dosanjh put, because that was not my understanding of your answer.

Mr. Paul Champ: Common article 3 is part of the Geneva Conventions, and I believe they're in violation of common article 3.

Hon. Jim Abbott: I don't recall you invoking common article 3 when you answered Mr. Dosanjh's question.

I'd like to go to the issue of the redacted documents. Do you happen to recall the accidental leaking by American congressmen that the CIA was tracking Osama bin Laden by cellphone, and in fact it sent Mr. bin Laden back to his caves? Do you happen to recall that?

Mr. Paul Champ: I'm unaware of that report.

Hon. Jim Abbott: In fact I believe it did happen.

Are you suggesting there should be unrestricted access of these documents, notwithstanding the probable damage that it could do to our soldiers? Is that what you're suggesting?

Mr. Paul Champ: No, it's quite the contrary, Mr. Abbott. We've never advocated for that. We've just advocated for some kind of process that's more functional. For example, in the Military Police Complaints Commission, again, those lawyers are top-secret-cleared. We've suggested to have those lawyers look at the documents and then work out with Department of Justice lawyers what information can be introduced and which redactions, without our being involved in that. We've understood and recognized that there are legitimate national security concerns with respect to those documents.

Hon. Jim Abbott: The name Iacobucci comes to mind in connection with that answer. What is wrong with Mr. Iacobucci? Why would you insert an additional process when my friends are complaining about how long this is going to be taking? You're now suggesting we layer a little bit more onto Mr. Iacobucci, are you?

Mr. Paul Champ: The way I see it is that at least the Military Police Complaints Commission lawyers can do something with the documents. There is some utility if they see the uncensored documents.

As I understand it—and I've read those terms of reference a couple of times—all Mr. Iacobucci is doing is giving a second opinion with respect to whether those redactions or national security privilege was properly applied. He's not going to be doing anything else once he reviews that. So I don't know about that.

Hon. Jim Abbott: Thank you, Mr. Chair.

The Chair: Thank you.

That brings us to 4:30. We want to thank you, Mr. Champ, for appearing before our committee today. I know you appeared once before when not all members were here. Thanks for coming back today.

We're going to suspend for a couple of minutes, and then we're going to move into committee business. My understanding is we're going to be dealing with a motion from Mr. Hawn. As well, we will go in camera and deal with our steering committee report a little later on. We'll suspend for one minute.

• _____ (Pause) _____

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• (1630)

The Chair: Welcome back, everyone. We're going to move into committee business. You have before you a motion of which notice has been given by Mr. Hawn. He has fulfilled the 48-hour requirement for this motion.

Mr. Hawn, would you like to speak to your motion, please?

Mr. Laurie Hawn: Yes, Mr. Chair, I will do so quickly.

The motion is that the committee begin without delay to investigate and study Canada's preparation and plans for withdrawal of Canadian Forces from Afghanistan in 2011 and Canada's whole-of-government efforts and plans in Afghanistan post-2011, in light of the fact that the end of Canada's combat mission in Afghanistan is quickly approaching in 2011 and that the committee was constituted to specifically study the mission's purpose and changing nature in a whole-of-government context; and that the policy relevance and importance of these plans are clearly of immediate concern and primary importance.

That goes to questions that are of the greatest concern to our NATO allies and non-NATO allies. They are certainly of the greatest concern to the Canadian Forces and members who are obviously aware of what's happening in 2011. They would appreciate some guidance on the mission.

Frankly, looking forward to something productive is a lot better use of this committee's time than looking backward. We're all going to bring witnesses. The witnesses are going to say, frankly, what we expect them to say. Anybody who is surprised at Mr. Champ's testimony shouldn't be. He's an employee of two organizations that are fighting our government, so of course he's going to say that.

This is just a desire to get back to what the committee should be about, which is studying the mission and the conduct of the mission moving forward to 2011, and the future of this mission. That's of far more importance, in our view, than is engaging in what we think is a partisan political witch hunt.

The Chair: So, Mr. Hawn, your motion would also include Canada's developmental role, the whole-of-government approach....

Mr. Laurie Hawn: Between now and 2011, what's going to happen? How does the withdrawal take place? What does the mission look like after 2011? What roles can Canada play? What resources would those take? It's the whole mix of where we go from here.

The Chair: Thank you, Mr. Hawn.

Mr. Wilfert and then Mr. Harris.

• (1635)

Hon. Bryon Wilfert: Mr. Chairman, first of all, as you know, the committee passed a motion from Mr. Harris to deal with the continuing study of the Afghan detainee issue, and that was passed by this committee.

I had suggested to Mr. Hawn the other day, Mr. Chairman, that the official opposition would be more than happy to support this motion, with two provisos. One is that we go immediately to a full public inquiry so that we can deal with the detainee issue and have all the relevant documents. The second was that we simply—and I know that it's not a friendly amendment, Mr. Chairman—take out the words “begin without delay to”. In other words, it would say, “that the committee investigate and study Canada's preparations”, and so on. We are quite happy to do that, but since we have already passed a motion to deal with the detainee issue, that obviously takes precedence.

We are prepared to look at this. I guess it will depend on how many witnesses and on what the timeframe will be on the detainee issue. But there's no question. We do not believe, Mr. Chairman, that the detainee issue is a waste of time. We don't believe that it's a political witch hunt. We believe, in fact, that it's getting to the truth. Unfortunately, if we want to move to this motion immediately, all we have to do is get the government to call a public inquiry, and we'll deal with it today. Otherwise, we want to be on record as saying that we support what Mr. Hawn is saying, but it has to come after the current discussions we are having with regard to the detainee issue as, again, passed by this committee.

Thank you.

The Chair: Thank you, Mr. Wilfert.

We'll go to Mr. Harris.

Mr. Jack Harris: Thank you, Chair.

I'd like to second the motion to remove the words "begin without delay to" from the motion.

Surely we need, at some point, to look at this issue. But you know, we have, at this point, an outstanding effort by this committee to get access to unredacted documents. We ourselves should be finding a way to receive those documents without doing injury to national security or other aspects of confidence in the public interest. And I believe that we can do that. As long as that remains unresolved, I think we still have to continue with the Afghanistan study.

We heard new information today. For example, it may take up to two years for Mr. Iacobucci to do his review. You can interpret it whatever way you want, Mr. Dechert—I've interpreted it one way—and we'll let the chips fall where they may. I will agree that we need, at some point, to look at that, but not before we have some resolution to this issue of our ability to get at the truth through this committee. The reason we're doing this work, by the way—and I think Mr. Champ recognized that today—on the detainee issue is that there doesn't appear to be another effective mechanism available to do the whole issue. As he indicated, the Military Police Complaints Commission is looking at only one specific aspect of it. An inquiry would look at the whole picture. We're attempting to fill the gap until there is an inquiry, and I think we have an obligation to do that.

The Chair: Mr. Harris, I missed the first part. Are you prepared to move...?

Mr. Jack Harris: I second....

The Chair: He didn't move it.

Hon. Bryon Wilfert: If he didn't move it, I will move it, and if Mr. Harris is seconding it, that will be fine.

The Chair: Mr. Wilfert, will you move that amendment?

Hon. Bryon Wilfert: My amendment would simply be to remove the words in the first line, "begin without delay to".

Mr. Jack Harris: I would second that motion.

The Chair: Now we can discuss that amendment.

Go ahead, Mr. Hawn.

Mr. Laurie Hawn: I'll be brief, because we all know how this is going to turn out. Simply put, Mr. Wilfert's amendment would frankly gut the motion. They're within their rights to propose any amendment they want. They're within their rights to pass it. But let's be very clear that it would gut the motion. Simply put, we have a process in place with Justice Iacobucci. They don't like it. No matter what process we put in place, they're not going to like it. That's a simple fact. We object to the amendment just because of the fact that it will effectively gut the whole motion. But they can proceed any way they like.

The Chair: Thank you, Mr. Hawn.

We'll go to Mr. Bachand and then to Mr. Dosanjh.

[Translation]

Mr. Claude Bachand: Thank you, Mr. Chair.

We had more or less the same discussion when the small committee met the other day. However there is one argument that I hold strongly to that has not yet been made by my colleagues.

Mr. Hawn would like us to proceed without delay to review Canada's preparations and plans for the upcoming withdrawal of Canadian Forces. I would like to point out that we had an excellent opportunity to do just that after the holidays, for four weeks, but the government decided to shut down the House. In the process, we lost a considerable amount of time.

I would also like to remind you that the committee was prepared to continue this work before the holidays, but that the Conservative Party delegation boycotted the proceedings. So then, when I hear that we should get down to work without further delay, I have to respond that the delay was of the Conservative Party's own making. That is an important argument in the context of today's discussion.

We also agree that the words "without delay" should be stricken.

● (1640)

[English]

The Chair: Thank you, Mr. Bachand.

Mr. Dosanjh.

Hon. Ujjal Dosanjh: I agree with my colleague who spoke before on this side. I believe that this particular committee has been established to deal with the whole issue of Afghanistan. If I may point this out to my colleague, part of the resolution of the House indicated that the Special Parliamentary Committee on Afghanistan should review the laws and procedures governing the use of operational and national security exceptions for the withholding of information to Parliament, courts, Canadian people, or those responsible for administering those laws, and on and on and on. One of the core functions of the committee is how this government has been dealing with the issue of sharing information with Canadians about something that goes to the core of who we are.

Secondly, Mr. Chair, I believe this government has been less than forthcoming in their plans for 2011. We don't know. We can't study —

Hon. Jim Abbott: That's exactly why we want it.

Hon. Ujjal Dosanjh: We can't study something out of thin air that doesn't exist. We need to hear —

The Chair: Let's have order.

Hon. Ujjal Dosanjh: We need to hear what the government has to say; otherwise it's academic. We could study and recommend A and the government could simply do B. We want to know what the government has planned.

Let's not get into some academic studies and ignore a very important function that we're performing on which the government refuses to have a public enquiry, refuses to cooperate with the Military Police Complaints Commission, and refuses to divulge and disclose information to this committee or to Parliament.

The Chair: Thank you, Mr. Dosanjh.

We have Mr. Obhrai, Mr. Wilfert, and Madame Lalonde.

Mr. Obhrai.

Mr. Deepak Obhrai: Thank you, Mr. Chair.

Mr. Chair, I'll state very shortly an alternate point of view here. Not putting the words "without delay" in here raises the question as to when we're going to do it; is it after 2011 or what? Understanding that those on the other side are playing absolute partisan politics in everything, we will never win any argument with these guys.

Anyway, it's on the record, so why don't you call the question? I want you to call the question.

The Chair: Thank you, Mr. Obhrai. When we're finished debate, we will call the question.

Mr. Wilfert.

Hon. Bryon Wilfert: Madame Lalonde had her hand up earlier.

The Chair: No, it was Mr. Wilfert and then Madame Lalonde.

Hon. Bryon Wilfert: Okay, I want to be clear, Mr. Chairman that

[*Translation*]

Ms. Francine Lalonde (La Pointe-de-l'Île, BQ): As you can see, he has something against women.

[*English*]

The Chair: I follow the list that we have here.

Hon. Bryon Wilfert: I will make it very clear that I am deleting "begin without delay to".

We're prepared to deal with the study Mr. Hawn is talking about on the condition that we complete the detainee study issue first. We have not come, Mr. Chairman, to a resolution as to how many witnesses we're going to have and what the timeframe is. If we can come to a resolution of that, I'm sure at some point.... I agree with my colleague Mr. Dosanjh and others that because of the proroguing of the House we lost time.

We're quite prepared to work cooperatively with all concerned. To suggest somehow that the detainee issue is of no value or not important.... It is in fact part of the March 2008 resolution that was adopted by the House of Commons. So we have the right to study it, we are studying it, and we are going to do so and go to the next one, on the condition that we complete this study first.

So "begin without delay to" is our amendment, seconded by Mr. Harris.

The Chair: Mr. Wilfert, then let me ask you a question. How long do you anticipate this study going?

Hon. Bryon Wilfert: That will depend, I guess, on how cooperative all members of the committee are, which includes the government members.

Mr. Chairman, there have been many times when we have been able to work very well on all sides. The reality is that if we have a common interest here to deal with this issue, I think we can deal with it in a proper manner and a proper spirit. But we want to make it very clear: we are not suggesting in any way that this is not an important issue to be studied.

• (1645)

The Chair: Okay, Mr. Wilfert.

We're coming to you, Madame Lalonde.

We can't disclose what took place in an in camera steering committee room, but what I'm hearing now is a little different from what we heard in that room.

Hon. Bryon Wilfert: That is not the case. That's an interpretation.

The Chair: Madame Lalonde.

[*Translation*]

Ms. Francine Lalonde: I am in favour of the amendment, obviously, but I do have the following question for Mr. Champ: quite apart from the need to know the truth about whether or not detainees were tortured, how is this whole situation affecting the Afghan people, the future and the Karzai government? Since he has been looking into this for some time now, does Mr. Champ have some idea? This is also an important consideration. It is not simply a matter of resolving a dispute and getting at the truth here. It is also important to know how this will affect Afghanistan's reconstruction. I would have liked to hear his answer. He told me that certainly it was important, and it is, because if we come across looking like hypocrites who knew about the torture, but who still continued to transfer prisoners, we lose some credibility. Therefore, it is important to understand that we must put a stop to the transfer of prisoners.

[*English*]

The Chair: Madame Lalonde, thank you for speaking to the amendment. We really appreciate that you stuck to the amendment.

Mr. Abbott.

Hon. Jim Abbott: First, I'd like to thank Mr. Dosanjh for speaking in favour of this motion as written, when he made the point that 2011 is coming very quickly, as is stated in the motion, and at this particular point Mr. Dosanjh and the rest of this committee have absolutely no idea what the government plans are. Certainly I appreciate his speaking in favour of the amendment that we begin this without delay so that we can be doing something that is relevant to what is going to be happening in the future.

I don't think there's any question that this could very possibly drag on, if there is a lack of good will, and at this point it seems as though there may be a bit of a lack of good will. This could drag on well into 2011, probably just about six months after Mr. Iacobucci delivers his edict, as a document that could be available to this committee.

I am absolutely in the largest quandary to try to understand where the opposition are coming from when they're asking for a full public inquiry. I wonder whether there's anyone on the opposition side who could give me the name of any full public inquiry ever that has not gone over its time, and well over time.

Can you imagine a full public inquiry on this issue being able to have a commencement date before at least six months from now? Can you imagine a full public inquiry being able to go without a request for an extension? Can you imagine a full public inquiry not requiring a further extension for the writing of the actual report from the public inquiry?

We're talking about a full public inquiry. If that were ever granted, it would be in the least interest of the Canadian people, if this is indeed the pressing issue the opposition says it is, for the simple reason that we'd be looking at a time at least two or three years from now before the conclusion of a full public inquiry.

Contrast that with Mr. Iacobucci, who has been given the job of taking a look at the redactions, making available whatever documents are able to come before this committee.

If this committee wants to work very quickly with the potentially revised redacted documents and do whatever they're going to do, these are all very interesting things. But I wonder whether the people of Canada might be interested, as Mr. Dosanjh so generously advanced, in knowing what the Government of Canada prospect is in terms of 2010, how the government is going to go about doing these things so that the people of Canada can be part of the pullout, part of the end of the armed conflict side of the Canadian government and the people of Canada in the country of Afghanistan.

As I say, I'd like to thank Mr. Dosanjh for speaking against this amendment clearly, because he recognizes the importance of this committee's being able to get on with its job of going ahead and getting to what the government is going to be doing in 2011.

• (1650)

The Chair: Thank you, Mr. Abbott.

Mr. Hawn is the last person we have. Then we can vote on the amendment.

Go ahead.

Mr. Laurie Hawn: Thank you, Mr. Chair.

I too want to thank Mr. Dosanjh for inadvertently supporting our opinion.

We really might as well call the question. We are in fundamental disagreement here, and that's not surprising. The amendment will gut the effect of the motion. However, that's the direction we're heading, so I suggest we just call the question.

The Chair: All right, are we ready for the question on the amendment to the motion?

Hon. Bryon Wilfert: Could I ask, Mr. Chair, that the clerk read back....

The Chair: The amendment would be that the committee investigate and study Canada's preparations and plans for the withdrawal of Canadian Forces from Afghanistan in 2011 and Canada's whole-of-government efforts and plans in Afghanistan post-2011, in light of the fact that the end of Canada's combat mission in Afghanistan is quickly approaching in 2011 and that the committee was constituted to specifically study the mission's purpose and changing nature in a whole-of-government context; and that the policy relevance and importance of these plans are clearly of immediate concern and primary importance.

Mr. Bernard Patry (Pierrefonds—Dollard, Lib.): On a point of order, that's not the amendment.

The Chair: I read the motion as amended.

The amendment is that we take out "begin without delay to".

Hon. Bryon Wilfert: On the condition that we complete the detainee study issue first.

Mr. Bernard Patry: Ask your clerk.

Hon. Bryon Wilfert: We're quite prepared to study it.

The Chair: All right, I'm sorry, I didn't see this amendment.

Go ahead.

Hon. Jim Abbott: On a point of order, Mr. Chair, I don't think any of us want to carry on this debate further, except that we have not had a debate on this amendment. The amendment, as I understood it, was the exclusion of "begin without delay to". I apologize, because Mr. Wilfert is an honourable gentleman and I'm sure that he wouldn't tell us that he had said something when he didn't. I just don't recall that. I'm sorry.

The Chair: In fact, to be quite honest, initially, Mr. Wilfert, I never did get that you were moving an amendment—

Hon. Bryon Wilfert: My apologies.

The Chair: —because you didn't. So I'm going to read this again, and I'm going to open it up again if you want to debate this, because it's more than just to remove the words "begin without delay to", which was spoken of at quite some length.

It has been moved by Mr. Wilfert that the motion be amended by replacing the words "begin without delay to" with the words "on condition that the committee first complete its study on the transfer of Afghan detainees".

Mr. Laurie Hawn: I'm sorry, where would those words appear?

The Chair: "On condition that the committee first complete its study of the transfer of Afghan detainees, that the committee investigate and study Canada's...."

Mr. Laurie Hawn: It's on the condition...that the committee investigate, okay. It comes first.

The Chair: Mr. Abbott.

Hon. Jim Abbott: Well, Mr. Chairman, I would have been inclined to vote in favour of our motion as amended with the exclusion of "begin without delay to" until.... We recognize that it gutted it, but it still had a tiny, tiny bit of the original meaning of the motion.

Mr. Wilfert's amendment, as we understand it, will not only close the door but he's going to take hammer and nail and screws to make sure it will simply not open. This is not acceptable. He is basically saying that everything is going to be focused securely and exclusively on the issue of the detainees.

Can Mr. Wilfert imagine a situation where we have—

• (1655)

Mr. Deepak Obhrai: Imagine.

Hon. Jim Abbott: Excuse me.

Mr. Wilfert, I wonder if you can imagine a situation where during the course of time, however long we have this detainee issue on the table, that there would be a responsible, reasonable period when we could be looking at the content of this motion, deal with some or all of it during that period, and then come back to the detainee question.

Sir, you have basically co-opted this committee into the inquisition relative to the question of whether or not there is a torture issue that has to be taken into consideration. With due respect, and perhaps with all the best intentions, with this motion as amended you have basically moved this from the flexibility we require as a committee to a country mile away from the original intent of the Afghan committee.

With respect, I would suggest that you might want to withdraw the latter portion of your amendment, in which case we can gather at least a small crumb of cooperation among the various members of this committee. The government members are acquiescing that we do not have the numbers on this committee, as constituted, to stop this motion, but at least we would have a small piece of common ground to move forward with this as and when we have the opportunity.

The Chair: Thank you, Mr. Abbott.

I'm going to come back to Mr. Wilfert.

Hon. Bryon Wilfert: Mr. Chairman, my understanding of what the government was proposing was that they simply wanted to go immediately to study—because it says “without delay”—this particular report.

If in fact the government is suggesting something else, which is that if we were to go to Afghanistan they're looking for one meeting to look at this, I would suggest that we go back in camera to have a discussion.

There seem to be two different things here. On the one hand, Mr. Abbott, I'm not trying to nail anything; I want to make sure that we deal with the detainee issue. But if at some point this committee were to travel to Afghanistan, which again is part of the mandate from the House of Commons, March 2008, and you want to have a meeting to discuss these items—

Hon. Ujjal Dosanjh: That's an in camera discussion.

Hon. Bryon Wilfert: —that would be different. That's why I would suggest we'd have to go in camera.

The Chair: Well, I think the problem, as I understand Mr. Abbott, and perhaps Mr. Hawn, is this condition that the committee first complete its study of the transfer of Afghan detainees. That would prevent us from moving into this study until we have completed the other study. We've already passed the motion that we would study the detainee issue. If that “begin without delay to” were dropped, it would not be the government's intent not to have the detainee issue discussed.

Mr. Harris, then Mr. Dosanjh.

Mr. Jack Harris: Thank you, Mr. Chair.

I think there should be some flexibility. I have to say, with respect, there's a little gamesmanship going on today. For example, I don't like the last five words that were used. The last five words could be used if someone wanted to play games and say the committee has agreed this is of immediate concern and primary importance and let's get at it, even though the first phrase is gone. We're relying on you, Mr. Chair, to prevent that kind of thing from happening.

In good faith, I would accept those words if they weren't going to be used to try to hijack the committee on a particular day by saying

that we've already agreed on this. I'm really glad that I had my motion on the table first and the chair is interpreting it as the priority of this committee. I think we're getting the impression, at least from Mr. Wilfert, that there should be some flexibility.

I don't have a problem if someone wants to give a briefing at some point. It may take us some time to finish the Afghanistan detainee issue, unless something breaks very quickly. We could be studying the Afghanistan detainee issue for quite some time. I don't think it means we should be precluded from hearing on this issue once or twice to get up to speed or in connection with some other activity of the committee. I don't think it needs to be so hard and fast that we can't talk about this unless we finish the Afghanistan detainee issue.

I think we've clearly indicated there's a priority on this. If those last five words are not going to be used to try to hijack the agenda of the committee, then I don't see a problem with being flexible. I hope I can get an undertaking from the government members on this

• (1700)

The Chair: Mr. Dosanjh, Mr. Abbott, and Mr. Hawn.

Hon. Ujjal Dosanjh: It's my view that I don't think you can resolve it here. I now understand what's underneath or behind it.

If there are legitimate reasons and rationales for doing this, then the steering committee should have a quick meeting between now and Wednesday and bring the motion forward in a reworded fashion. We won't then have to spend half an hour or 45 minutes talking around the motion and not understanding what it's intended to do.

The Chair: Mr. Abbott.

Hon. Ujjal Dosanjh: I don't think you can have that discussion here.

The Chair: I have to go in order here, unless we have a motion to move in camera. That could solve everything.

Mr. Abbott.

Hon. Jim Abbott: I'd like to make this clear. I don't want Mr. Wilfert to be of the impression that I was implying what he was saying, which was we would do it in one meeting or whatever. I'm not implying any conditions. I don't have the authority to make those commitments, even if I wanted to.

The point is that in this case, we're starting to find some common ground here. I agree with Mr. Harris. If we have an opportunity during the course of the ongoing detainee situation to get to this, this would carry that out.

We have a good working relationship. I don't want to leave Mr. Wilfert with the wrong impression. I was not implying all of the things that he was attributing to it.

Hon. Bryon Wilfert: I understand.

The Chair: This is good. We're starting to work together here. Let's take a deep breath.

Good for you, Mr. Wilfert and Mr. Abbott.

Mr. Hawn, can we continue in that spirit?

Mr. Laurie Hawn: Of course, Mr. Chair.

There are enough proposed changes in this that it probably is a good idea to discuss it in camera in subcommittee.

The Chair: All right. Unless you were moving that we go in camera, Mr. Patry is next.

Mr. Patry.

[Translation]

Mr. Bernard Patry: Mr. Chair, I'm going to read the following in French, because it is my mother tongue. The first two sentences read as follows: "*Que le Comité commence sans délai à examiner et à étudier les préparatifs et les plans du Canada en vue du retrait [...]*"

As I see it, before we look at the plans, perhaps we should ask the Department of National Defence and the Department of Foreign Affairs if in fact they do have plans. We should also ask when these plans might be available to the committee. Then, the committee could come to a decision.

[English]

We don't even know if there are plans for this right now. The draft says it's to investigate and study Canada's preparations and plans. I

don't know if there are any plans for the withdrawal. I think we should ask the department about this.

The Chair: Thank you, Mr. Patry.

Do we have a motion to move in camera?

Mr. Laurie Hawn: We only have ten minutes, Mr. Chair. We need to go in camera for the other stuff we talked about.

Hon. Ujjal Dosanjh: We can move to the steering committee.

The Chair: We're going to have to go in camera regardless, because we need to pass the steering committee report.

Mr. Laurie Hawn: This is another issue for the steering committee.

Hon. Bryon Wilfert: I move that we go in camera.

The Chair: Mr. Wilfert moves that we go in camera.

(Motion agreed to)

[Proceedings continue in camera]

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