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Thursday, March 10, 2011

Chair

Mr. Scott Reid

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● (1310)

[*Translation*]

The Chair (Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC)): Today is March 10, 2011, and this is the 50th meeting of the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development in the 40th Parliament.

[*English*]

Today we are continuing to look into the implications of the State Immunity Act.

We have two witnesses with us today, one in the room and the other by teleconference. We'll ask each to make an independent presentation, and then we'll go to questions. The questions will be directed at both witnesses.

At the end of this, I propose we shorten the time for questions slightly in order to allow us to deal with a couple of motions that were brought up by members of the committee and see if we have consensus on them. Rather than dealing with these items of indeterminate length at the front end, I'm suggesting we do it at the back end. Is that acceptable to everybody?

An hon member: Agreed.

The Chair: Okay, great.

We'll begin with Professor Larocque. He is from the University of Ottawa, and is here in the room. When Professor Larocque is finished, we'll invite Mr. Grossman who is joining us by video conference from Montreal.

Professor Larocque, please feel free to begin.

[*Translation*]

Dr. François Larocque (Vice Dean and Associate Professor, Faculty of Law, Common Law Section, University of Ottawa): Distinguished members of the committee, I thank you warmly for inviting me to appear before you on the study into the implications of the State Immunity Act and Bill C-483, An Act to amend the State Immunity Act (genocide, crimes against humanity, war crimes or torture). I know that this bill is not currently under study by the committee, but my comments on the implications of the State Immunity Act reflect my support of what Bill C-483 would provide to the state of the law.

[*English*]

My name is François Larocque. I'm a lawyer, assistant professor, and vice-dean of the University of Ottawa Faculty of Law. For the past 10 years my academic research has been devoted to various jurisdictional questions that arise in the context of transnational human rights litigation; that is, civil lawsuits brought in one country with respect to grave violations of fundamental human rights committed in another country.

As a practising lawyer, I have intervened either directly or as a consultant in a number of lawsuits, both here in Canada and in the U. K., brought by survivors of torture who seek civil redress against the foreign governments that tortured them, including the Bouzari litigation, and most recently the lawsuits against Iran brought by the estate of the late Zahra Kazemi and Stephan Hachemi.

[*Translation*]

In the context of these prosecutions, courts in Ontario and Quebec stated that the State Immunity Act protected governments that committed torture and even protected those responsible for acts of torture. In other words, our State Immunity Act ensures impunity in terms of the most serious violations of international law.

Clearly, the State Immunity Act, as it stands, is deficient and must be amended so that Canadians who have been affected by torture may have access to the redress they are entitled to. This is why I believe that Bill C-483 deserves the support of all the honourable members of this committee when it is studied, which I hope it will be.

[*English*]

Quite simply, Bill C-483 is a good idea whose time has come. As noted in the outline I've circulated, my presentation will briefly touch on three points. It will be an honour for me to expand on these points while answering the questions distinguished members direct to me.

As this committee well knows, the crimes for which Bill C-483 seeks to create an exception under the State Immunity Act—genocide, crimes against humanity, war crimes, and torture—are prohibited by peremptory norms of international law and by Canadian statutory and common law. There is no clearer set of violations of basic and universal human rights than these crimes.

Bill C-483 is a good idea because it fixes an international incoherence. While civil law countries allow victims to seek redress as part of their criminal proceedings, Canada does not. I submit that Canadian survivors of torture and crimes against humanity are as deserving of redress as survivors who live in France, Italy, or Spain. Bill C-483 would fix this problem.

Bill C-483 is also a good idea because it fixes a Canadian incoherence. When Canada enacted the Crimes Against Humanity and War Crimes Act in 2000 in fulfillment of our obligations under the Rome Statute, we explicitly removed all immunities with respect to criminal prosecutions for these crimes, but did nothing to permit civil lawsuits for the very same acts.

I submit that if a torturer or a *génocidaire* is barred from claiming immunity in criminal proceedings, there is no reason in principle that he or she should be allowed to claim immunity in civil proceedings.

[*Translation*]

This brings me to my second point in the presentation outline I provided.

Bill C-483 is consistent with the global trend toward the removal of immunity for serious violations of fundamental human rights. In their testimony last Tuesday, Matt Eisenbrandt and Jayne Stoyles from the Canadian Centre for International Justice referred to legal developments in the State Immunity Act in the United States, in the jurisprudence in Italy's court of cassation and in the work of the United Nations committee against torture. In 2005, that committee reproached Canada for not meeting its international obligations by not permitting all victims of torture, in all cases, to obtain the redress they are entitled to.

I would like to point out two additional developments. First, in its 2005 report, the United Nations committee against torture made negative comments about Canada. The committee reiterated the same concerns about other countries, in this case Japan, New Zealand and South Korea. According to the committee, these countries, like Canada, are not respecting the letter or the spirit of the convention against torture. It's something I wanted to bring to your attention.

Secondly, you may be aware that there is a United Nations Convention on Jurisdictional Immunities of States and their Property that was signed in 2004. So far, only 28 countries have signed the convention, and only 11 have ratified it. In other words, it's a convention that is not unanimous internationally because it codifies and keeps the same exceptions that we have in our State Immunity Act, an act that is deficient.

I would like to raise a point about this convention. Of the eight countries that have ratified it, three of them—Switzerland, Norway and Sweden—have stated that this convention was without prejudice to developments in international law of an exception that would encourage the denial of immunity in cases of serious violations of international law.

Along with my plan, I provided to you with an example of one these interpretive statements, the one issued by Switzerland on April 16, 2010. I'll read it in English:

[*English*]

> Switzerland considers that article 12—

[*Translation*]

which is equivalent to section 6 in our Canadian legislation for crimes committed in Canada.

[*English*]

> —does not govern the question of pecuniary compensation for serious human rights violations which are alleged to be attributable to a State and are committed outside the State of the forum. Consequently, this Convention is without prejudice to developments in international law in this regard;

● (1315)

[*Translation*]

In other words, the state of law in the area of immunity internationally is still evolving.

[*English*]

My third and final point is that Bill C-483 is a good idea because it responds directly to the calls made by the courts that heard the Bouzari, Arar, and Kazemi cases.

In each of those cases, Canadian courts, rightly or wrongly—and I argue, wrongly—have found that it is for Parliament only to create a new exception to state immunity for grave violation of international law. Bill C-483 would create such exceptions for the clearest violations of international law, while ensuring that only valid claims are processed in our courts.

On a related note, I would also encourage this committee, should it ever come to study draft legislation to amend the State Immunity Act, to consider language that would clarify the relationship of our State Immunity Act to the continuously developing law of state immunity at international law and at common law in Canada. An example of such language would be the last clause I provided from the Switzerland interpretative declaration.

In closing, Bill C-483 is not only a good idea, it is also the right thing to do to prevent the impunity of those governments that blatantly violate fundamental human rights. It also provides access to justice for those survivors who have already suffered too much.

I thank this honourable committee for the time it has given me.

[*Translation*]

The Chair: Thank you very much, Professor Larocque.

[*English*]

Now we will turn to David Grossman.

Mr. Grossman, please feel free to begin.

Mr. David Grossman (Senior Program Analyst, Ontario Board of Parole): Thank you very much.

[*Translation*]

Distinguished members of the committee, I would like to sincerely thank you for this opportunity to testify before you. I believe everyone here today is aware of the significance of the matters that are being considered by this committee. A brief overview of my comments today has been distributed.

I am a Montreal lawyer with Osler, Hoskin & Harcourt. I am a member of the Quebec bar association and the Ontario Bar Association. I currently teach a course on evidence law at McGill University. Over the course of my career, I have had the privilege of working with the honourable Justice Michel Bastarache, when he was a justice of the Supreme Court of Canada, and with the honourable Irwin Cotler, on issues of human rights, including issues relating to state immunity. Today, I am a prosecutor for the Canadian Centre for International Justice in the case of Kazemi versus Iran. I must point out that I am appearing today as an individual, not as a representative of any of these organizations.

● (1320)

[*English*]

In a handout I have distributed to this honourable committee, I have highlighted three premises that I would like to look at as the points of departure in our examination of the implications of the State Immunity Act. I believe these premises are relatively uncontroversial.

The first is that we have faith in our judicial system to deliver justice to Canadians and to litigants generally who come before our courts. Around the world, our courts are recognized as bastions of fairness and impartiality, and with good reason. Moreover, I'd like to stress that there are procedural mechanisms allowed to all defendants in our courts to summarily dismiss abusive or unfounded motions or claims against them. These need not be restricted to cases of foreign states; these are available generally to defendants. They're part of the fairness and the tenor of our judicial system generally.

The second premise is that absolute immunity is not the law in Canada. The Supreme Court recently had the opportunity to opine on this specific point in the Kuwait Airways decision. As stated in paragraph 24 of that decision, the State Immunity Act represents a clear rejection of the view that the immunity of foreign states is absolute. Therefore, the premise upon which we are embarking in this study, the premise upon which we build in looking at the implications of the State Immunity Act, is that absolute immunity for foreign states does not exist.

The third premise is that torture, genocide, crimes against humanity, and war crimes, in other words, the crimes that are treated under Bill C-483, are particularly heinous offences, and our government should not be turning its back on the victims of these offences. When I speak on this point, I speak at a moral level as well as at a legal level.

Legally speaking, Canada has international obligations with respect to torture, genocide, crimes against humanity, and war crimes. All these crimes are clearly prohibited by customary international law. As you heard Professor Larocque mention, measures have been taken with respect to some of these crimes in the criminal sphere by Canada. I'd like to stress that internationally, under such instruments as the United Nations Convention Against Torture, Canada has specific obligations in the civil sphere as well. Article 14 of the United Nations Convention against Torture states:

> Each State Party [which includes Canada] shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible.

Taking this third premise, the moral and legal obligation on Canada not to turn its back on victims, we arrive at the substance of my presentation, which is, what can we look at in the State Immunity Act and its implications in terms of these crimes? That brings me to lend my full support, and to ask this honourable committee to lend its support as well, to Bill C-483. From this perspective, we can look at Bill C-483 as not only a just measure, but indeed in many ways a conservative measure, addressing the issues of state immunity against the backdrop of impunity, against the backdrop of the most heinous crimes known to humankind.

I believe it is properly the role of Parliament to address this point through legislation. Indeed, as Professor Larocque has stated, to the extent the Canadian courts have opined on this issue and found that state immunity exists in these areas, they have been doing so on the basis of the State Immunity Act, and on the basis that they believe they are representing the will of Parliament.

I would respectfully submit that it was not the will of Parliament to address the impunity of foreign states in this regard. However, from an international perspective, we see the development as well as the general premise of civil law countries, through their *partie civile* system and through decisions such as Professor Larocque mentioned in Italy, that immunity, even in the civil context when it comes to torture, genocide, crimes against humanity, and war crimes is something that international law no longer accords. Immunity in these aspects, if it is being granted by Canadian courts, is only being granted on supposed reliance on the State Immunity Act. In that regard, we believe there is both the legal and moral imperative for this committee and for Parliament generally to act with respect to Bill C-483.

● (1325)

The State Immunity Act, simply put, is an enactment of Parliament, and it should not be used as the basis for perpetuating an injustice against victims. In this regard, the bill can be seen as no more than an exception to an exception. It is, in limited circumstances, what would allow an apparent impediment, according to certain jurists, of the State Immunity Act and to allow justice to proceed in the context of our recognized and fair legal system.

Moreover, Bill C-483 respects the role of private litigants. Litigation is a very difficult process, and I venture to say especially so with respect to victims of crimes such as torture or genocide. From the financial and psychological perspective, litigation is difficult. Bill C-483 does not lessen that burden for litigants. Moreover, it does not force the Canadian state to take positive steps towards bringing foreign perpetrators to justice. It simply allows victims of these heinous crimes to allow the natural course of the justice system to run its way. It simply removes an impediment for the victims of these crimes, to the extent the State Immunity Act can be said to create that impediment in the first place.

Simply put, I would state that foreign states accused of committing genocide and other heinous crimes should be treated no better than other defendants in our justice system.

Bill C-483 does not do many important things. It does not accord further territorial or personal jurisdiction to Canadian courts. To the contrary, it specifically prefers remedies that would be taken in domestic courts of these foreign states. It does not expand the territorial jurisdiction of Canadian courts in this regard, and it does not break new ground, either from an international perspective or even from a domestic perspective.

The State Immunity Act already recognizes that exceptions to immunity exist and that absolute immunity is not the rule in Canada. In other words, what we are looking at here is an exercise in line drawing. We are not seized with the question of whether immunity for foreign states is a good idea. That type of absolute immunity has already been rejected by Parliament and by the courts, and internationally.

The question we are dealing with is where to draw the line. I would respectfully submit the proper place to draw the line is not where it would doubly victimize victims of torture, genocide, crimes against humanity, and war crimes. I would respectfully submit to this honourable committee that support for Bill C-483 is something that would advance the law in Canada and would ensure that justice would be served, and that defendants that are foreign states accused of heinous crimes would not be given undue privileged treatment under the law.

I would welcome your questions in this regard. Thank you very much for the time you've accorded me.

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

In order to give ourselves sufficient time to look at the two motions, I'm going to suggest that what we limit ourselves to five-minute rounds of questions and answers. I know that's tight and people on the committee can object to that, but I'm just suggesting that would leave us time to deal with the motions. I'm not seeing any objections, so let's do that.

I would also advise you that at 2 p.m., I'll have to vacate the chair. Mr. Silva will be taking over. I have to go to the House to deal with another item of business.

Mr. Silva.

Mr. Mario Silva (Davenport, Lib.): Thank you very much to the witnesses for being here.

Of course, I very much support the bill that is proposed by my honourable colleague, Professor Cotler. I just want to make a couple of comments and then ask a question.

What I see as the trend is that we are moving toward greater acceptance and recognition of international law, little by little, and I think this adds to it. This breaks down the culture of impunity which many states and many dictators have been able to hide behind for so many years while they massively kill their populations.

I want to know, if this law were in place today, the effect it would have on two specific cases. I want to hear comments from both of you or from whoever feels more comfortable answering.

In the case of Stephan Hachemi, whose mother was killed in Iran, would this give a greater ability for him to proceed civilly against the killers of a Canadian citizen, his mother?

The other case is Duvalier's return to Haiti. I am very much concerned with what is happening in Haiti. There are a lot of Haitians in Canada who suffered under his regime. Would they be able to go after him while he is in Haiti? I think his return is creating even greater instability in that country. I am wondering, if this legislation were in place today, would it help Canadians who are living here do something about it?

● (1330)

The Chair: To whom are you directing the question?

Mr. Mario Silva: Whoever feels most comfortable in answering it.

The Chair: Professor Larocque, would you go first?

Dr. François Larocque: I will take the first stab at answering and let David chime in when he is ready.

With regard to the Stephan Hachemi situation, this bill would be helpful. But as you may know, the Quebec Superior Court recognized that Stephan already had grounds to sue and that there was no immunity in his case, because of the emotional distress he suffered while in Canada. So because he suffered harm here, Iran had no immunity.

That being said, the judgment the Quebec Superior Court handed down creates an odd situation in which the family members of victims of torture now have redress, but the torture victims themselves who were outside Canada do not have a remedy. So this bill would be helpful in that respect, very much so.

With regard to the Duvalier situation, my understanding is that he is no longer a head of state and would have no claim to immunity whatsoever. So the normal rules of jurisdiction would apply. If there were ever an argument being made that he would be deserving of immunity, the bill would clearly defeat it.

Mr. David Grossman: I'll take the opportunity to build on what Professor Larocque said.

This bill could help litigants because it removes the automatic arguments of immunity which allow states to invoke impunity in disregarding Canadian courts.

With respect to the Hachemi and Kazemi case, we have a judgment from the Superior Court of Quebec. I agree with the decision of the Superior Court insofar as it allows the personal case of Stephan Hachemi to proceed. There is currently an appeal on this case and it will decide the issue of Mr. Hachemi as well as that of the estate.

The facts of this case allow us to argue that the current wording of the State Immunity Act makes it possible for Iran to have a suit launched against it without immunity being triggered in Canada. However, we are still awaiting judgment on that. We haven't even gone before the Court of Appeal. And the facts of the Kazemi case certainly help that out.

What I think we have much broader support from, through Bill C-483, is the concept that we can undermine this impunity argument from foreign states right from the start without needing to go through all these debates. In the Haiti instance, to the extent that any such claim would be raised, the bill would undercut it. I think it's the undercutting of that claim that speaks to the specific points of impunity, not just immunity, but impunity of foreign states.

The Chair: Thank you.

[*Translation*]

Ms. Deschamps, you have the floor.

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): Thank you, Mr. Chair.

I'm not an expert in international law, but I had the opportunity to listen to experts earlier in the week, allowing us to grasp the essence of Bill C-483. I am in favour of this type of bill, and my party is as well. I do have two small questions to ask about this bill.

The subcommittee is also currently studying the issue of sexual violence against women in countries in conflict or in fragile states. Could rape be recognized as a crime under this bill?

● (1335)

Dr. François Larocque: The answer is simple, yes, absolutely. Rape is recognized as a war instrument. In times of conflict, it's a war crime. At other times, it's a crime against humanity, especially when rape is used systematically and on a large scale. I had the opportunity to take part, with an organization called AIDS-Free World and the Stephen Lewis Foundation, in preparing a report denouncing the use of systematic rape by the Mugabe government. The legal findings were clear: rape is a war crime or a crime against humanity, depending on the circumstances. So it would be directly dealt with by a bill like this one.

Ms. Johanne Deschamps: Okay. Do you have anything to add, Mr. Grossman?

[*English*]

Mr. David Grossman: I'll simply add to that my agreement with what Professor Larocque said. I believe it's certainly incontestable that in a certain context sexual violence will fall within the context of this bill, and I do believe that well it should. It should be treated as seriously—in fact, as one of the most serious infringements on freedom and on humankind—and therefore is rightly included.

[*Translation*]

Ms. Johanne Deschamps: In your presentation, you spoke about the government's international commitments. Doesn't the fact that Canada is a signatory to human rights agreements or conventions require Canada to lift the state immunity in relation to these crimes?

Dr. François Larocque: Certainly, that is what the committee against torture, a United Nations agency created under the convention, concluded. All of the 180 or so countries that signed the convention against torture—it is one of the most widely ratified conventions in the world—have conferred on the committee against torture the right and the authority to render decisions on the obligations taken under this convention.

The committee against torture's authoritarian interpretation of article 14 raised by my colleague is, indeed, that the obligation to provide civil recourse include the obligation of lifting the immunity to allow for that recourse.

Ms. Johanne Deschamps: Okay, thank you.

[*English*]

The Chair: Any comments, Mr. Grossman?

Mr. David Grossman: Again, simply to build on what Professor Larocque has said, the United Nations Committee against Torture has specifically noted with respect to Canada that, as a subject of concern, there is an absence of effective measures to provide civil compensation to victims of torture in all cases.

We believe the context of this mention, coming after the Ontario Court of Appeal's decision in Bouzari, as well as the commentary that has followed this comment, for instance, articles in the *Tort Law Review*, clearly make the link between the position that courts have interpreted Canada as having in the State Immunity Act and the obligations under article 14 of the convention.

The Chair: Mr. Marston.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): Thank you, Mr. Chair.

I really appreciate our two guests bringing their expertise here today.

I'll begin with Mr. Larocque. Of course, Mr. Grossman, if you'd like to respond as well, I'd be pleased to hear from you.

I presume that both of you gentlemen are familiar with Senator LeBreton's bill, Bill S-7. There are similarities here. I think it would have been a more effective bill had they seen fit to add what Professor Cotler had in his, in regard to genocide, crimes against humanity, and so on. I think Canadians as a whole would be quite shocked once they came to understand the comfort, perhaps, that we can say we give to other countries where the leaders are involved with torture. I'm sure they'd be shocked and there would be a certain level of disbelief.

One of the things that is a concern, though, is getting into an area where in legislation we start talking about designating terrorist countries. Then we get into who's a terrorist and who's not a terrorist and, of course, certain western nations tend to be selective in their choices. As an example, I was in Saudi Arabia in 1979 for six months, and I saw people there who were subjected to torture by their own government for a variety of reasons.

Think about the fact that the people involved with 9/11 came out of Saudi Arabia, but we're not saying that Saudi Arabia is a terrorist place, and then again we have thousands of people who go to Cuba each year, and countries choose to designate Cuba as a terrorist state. There's a balancing that has to be done. I mean, if you talk about the renditions out of the United States to Syria, it's very troubling.

How would you reconcile this situation? Or should we be designating terrorist states at all?

● (1340)

Dr. François Larocque: I've written on this topic. I would direct members to the bibliography I provided at the end of the documents I circulated. Under “Book and Book Chapters”, the third entry is “Civil remedies for terrorism”. It's a chapter I wrote precisely on the previous incarnation of terrorism bills, where I spoke strongly against a procedure whereby states would be designated.

I believe it's a politicization of the judicial process. I believe it's unprincipled and should not be adopted as an approach. This is what the United States has done. The U.S. has entered into a very awkward game of designating states and then undesignating them, and using that as a political carrot, so to speak. Recently, for instance, the U.S. government de-designated Libya. I think the Americans regret that right now. This was done months ago before current events had exploded.

This is a cautionary tale of why designating states is the wrong approach, either for terrorism, torture, crimes against humanity or war crimes. These crimes are wrong and are prohibited by the highest norms of international law, no matter who commits them.

Mr. Wayne Marston: Mr. Grossman.

Mr. David Grossman: In response I'll add very quickly two practical points and one theoretical one.

First, from a practical perspective, there's a heavy obligation on the federal government, if we adopt this modus operandi of continually adding countries to the list, of keeping track of everything. As things move forward, there's the obligation if Canada in good faith and well meaning wants to remain fair, to ensure that the list is always current.

The second point that flows from that is that Canada then becomes far more actively engaged in this operation of bringing foreign states to justice than Bill C-483 discusses.

As I mentioned, Bill C-483 puts the burden on private litigants to litigate their disputes. The federal government would be involved in making sure that there's this exception to state immunity, but after that, it does not need to take a position. It does not need to say that it follows foreign state A or it does not follow foreign state A. It is up to litigants to do it.

By pressuring the government to maintain a list of perpetrators, that is really asking the government to have a much more active role that may or may not be appropriate for it as it feels at the time.

Finally, as a principled point, I have no trouble saying that all state torturers, all states that commit genocide, all states that commit crimes against humanity, all states that commit war crimes should be caught by a bill that creates an exception to state immunity, because we have faith in our justice system to mete out frivolous and abusive claims. We have faith in our justice system to do this.

I have no question that to the extent a state is unjustly accused, we will not see on the merits that state have repercussions lobbied against it. On the other hand, if we do not adopt this position, there is a very significant risk that in principle this bill would fall short of what it seeks to do, which is to take a large bite out of the impunity foreign states have with respect to these crimes.

Mr. Wayne Marston: We have witnesses on a variety of issues before this committee, and impunity is something that keeps coming up in the horrific things that are done.

I agree with both of our speakers, and I have talked to the other critics in justice regarding naming states and they are all in agreement that this is something we should not do.

I really appreciate your support for the NDP here today; I'm just teasing you both. The reality is it's a very significant situation and this committee is taking it very seriously.

I thank you for your testimony.

The Chair: Thank you very much, Mr. Marston. We'll turn now to Mr. Hiebert.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you both for being here. It's very interesting testimony. I have limited time, so I'll get straight to the point.

Which countries currently allow what Bill C-483 proposes?

● (1345)

Dr. François Larocque: First of all, I should preface my remarks by saying that most countries on Earth don't have a state immunity act. To the extent that countries apply customary international law and follow the normative hierarchy of peremptory norms and norms of international law, in theory all countries that don't have a state immunity act can follow what Bill C-483 proposes to do.

As to what courts so far have found states to be non-immune with regard to the crimes that are targeted by this bill, outside the United States, Italy and Greece, none.

Mr. Russ Hiebert: Which countries are you telling me have a state immunity act, like the one we have, with the amendments being proposed?

Dr. François Larocque: The minority of states on the planet, and ironically, they have common-law traditions, have legislation in place for a state immunity act. So the answer to your question would be that the United States is the only one with a state immunity act with legislated exceptions. But again, going to Mr. Marston's question, it is only for designated states.

Mr. Russ Hiebert: Your answer leads to my second question. Without a treaty, then, are we not limited to customary international law, which requires a state to voluntarily submit itself to judgments from another country? In that context, how likely would a foreign state—let's say, Iran—be willing to submit itself to a judgment from a Canadian court?

Mr. Grossman, you're welcome to reply as well.

Dr. François Larocque: Do you want to answer first, and I'll follow up?

Mr. David Grossman: Certainly.

With respect to the issue of whether without a treaty we require states to subject themselves to our jurisdiction, the simple answer is that in many respects, we've already accepted that this is not the case. As I stated, the idea of absolute immunity does not exist in Canadian law. We are simply engaged in a process of line drawing here. So to take the perspective that all foreign states must necessarily submit to Canadian jurisdiction or else our courts have nothing to say about them is, with respect, a position that has already been ruled out by the current State Immunity Act.

With respect to what happens in the private sphere in the context of issues such as genocide, crimes against humanity, torture, and war crimes, again, we don't have a perfectly clear answer. As I stated, we are presently litigating the Kazemi case. There are various specific points in the Kazemi instance that make it very clear that we have a possibility of exercising jurisdiction over Iran, absent consent from Iran in that case.

More generally, I'll simply add to that the fact that consent to jurisdiction is not necessarily the point of departure when it comes to these crimes or the object of these lawsuits. Whether a given foreign state is going to openly subject itself to the courts of this country is a question that's going to be dealt with on a case-by-case basis. What I think Bill C-483 does head on is tell foreign states that we will not accept their impunity in deliberately turning their backs to our justice system. We will not accept their statement that they are not at all subject to our courts in these contexts. Whether or not that foreign state, in its domestic law or in its domestic interactions, takes a position of refusing to submit to our courts, we, as the Canadian people and as the Canadian government, will be taking the position that when it comes to these serious crimes, we do not accept an answer of impunity. I think that's the principled stand Bill C-483 takes.

Dr. François Larocque: I would only add, to be brief, that I understood your question to be largely about enforcement. Enforcement is tricky, even in commercial cases. Even in normal, ordinary cases, it's always a challenge. That being said, enforcement need not be a matter of consent. Iran, for instance, would not necessarily have to consent to the enforcement of a judgment against Iran. We could just go ahead and execute a judgment, for example, targeting non-diplomatic assets held by Iran in Canada. The reality is that countries have investments everywhere, and these would be fair game, so to speak.

The Chair: That uses up the available time for that round of questions. That actually brings to the end our questions for the witnesses.

We thank you very much for attending. We are now going to deal with a couple of motions. You're welcome to stay, or you're welcome to leave, but we do thank both of you very much for being here with us.

Perhaps this is also a good chance, Mr. Silva, for me to vacate the chair and for you to take it, if you're willing to do that.

● (1350)

The Vice-Chair (Mr. Mario Silva): We have two motions before the committee. I will take them in the order they were introduced. We'll deal with Professor Cotler's motion first, and then with Mr. Marston's motion second.

Has everybody had a chance to look at Professor Cotler's motion? Is there any discussion?

Go ahead, Mr. Marston.

Mr. Wayne Marston: It's not that I have any concern about the motion. It just strikes me that we passed a committee report and it went to Parliament, so why is it that we need to do this?

The Vice-Chair (Mr. Mario Silva): I believe there was a request of the committee at that time. There were some issues dealing with the—

A voice: [*Inaudible—Editor*]

The Vice-Chair (Mr. Mario Silva): Exactly.

Maybe Professor Cotler could respond to that.

Hon. Irwin Cotler (Mount Royal, Lib.): Mr. Marston is right. We have the report and it dealt with the fourfold Iranian threat. The situation in Iran has worsened considerably following the publication of our report, specifically in the matter of human rights violations.

That's why we had the special hearing and witness testimony. I was asked to summarize the concerns and recommendations coming out of our hearing with respect to just the human rights situation in Iran.

Mr. Wayne Marston: Thank you.

The Vice-Chair (Mr. Mario Silva): Is there any debate? Do I see unanimous consent to support the motion?

(Motion agreed to) [See *Minutes of Proceedings*]

The Chair: Now we'll go to Mr. Marston's motion. Has everybody had a chance to look at it?

Mr. Marston.

Mr. Wayne Marston: I understood that Mr. Cotler was giving some thought to an amendment to this, but I haven't heard back from him. I don't know whether he was able to do that or not.

Hon. Irwin Cotler: Mr. Chairman, I did look at it, and I thought it best to leave it the way it is. I think it is appropriate in the present form.

The Vice-Chair (Mr. Mario Silva): Is there any debate? Do I see unanimous consent?

(Motion agreed to) [See *Minutes of Proceedings*]

The Chair: Thank you. I believe we do not have any other business.

The meeting is adjourned.

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