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Chair

Mr. Kevin Sorenson

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• (1530)

[Translation]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, ladies and gentlemen.

[English]

Good afternoon. This is our ninth meeting of the Special Committee on the Canadian Mission in Afghanistan on Wednesday, May 12, 2010.

I remind everyone again today that we are televised, so if you wouldn't mind, please shut off your cellphones.

We are continuing to study the transfer of Afghan detainees. Our witness today is the Honourable Bill Graham, former Minister of National Defence from 2004 to 2006 and former Minister of Foreign Affairs from 2002 to 2004. Mr. Graham has had a long, distinguished parliamentary career here.

We welcome you back to this place and specifically to this committee room. We look forward to what you have to say to us. You have appeared before many committees before. Not much has changed as far as how committees have been run over the years. We look forward to your comments. Then we will go into the second round of testimony.

Thank you for appearing. We await your comments.

Hon. William Graham (Former Minister of National Defence (2004-2006) and Former Minister of Foreign Affairs (2002-2004), As an Individual): Thank you very much, Mr. Chairman, and thanks to the committee for inviting me to speak to you this afternoon about this important issue.

I just want to say at the outset that I wish the committee well in dealing with an issue that I think is very important, not only for the future of the Canadian Forces but for the way in which we will be able to deploy them in future actions that I'm sure they'll be called upon to serve for Canada, as they have so well in the past.

[Translation]

I am sorry, but I am going to give my initial remarks in English. Of course, I will be willing to answer questions in French afterward.

[English]

Mr. Chairman, with your permission, perhaps I could just outline a few observations of my own, at the opening. I believe at this point I could perhaps be helpful to the committee in understanding the circumstances around which the original agreement was drafted with the Afghan authorities, which dealt with the transfer of detainees.

You'll know that, to some extent, this matter was covered extensively in Janice Stein and Gene Lang's book *The Unexpected War*. The chapter on this is pretty extensive. Much of what I will say will replicate what is said in that book.

Members of the committee will recall that we decided to undertake the combat mission after we had put our PRT in place, and to support our PRT as a process to move control of the southern area of ISAF from the exclusive area of operations of the Americans. I think that's part of the picture, part of what we were doing in southern Afghanistan at that time.

A political issue for the Afghans was that we were transferring authority from an exclusively American command to an ISAF command, which would have taken place after we'd had our original combat mission, you will recall...but took place in June of the following year.

It was a very different type of mission. The role of the Canadian Forces was to provide primarily security for the political process to take place, which was coordinated with CIDA and DFAIT, essential partners in the three-D process.

I'd like to emphasize that in our view, the rule of law was an important component of our campaign in Afghanistan, both from a legitimacy point of view and our credibility with the Afghan population. The question of detainees was a difficult one that we had to resolve. There was no capacity in the Canadian Forces to manage large numbers of detainees. That was clear. We didn't have the number of troops or the type of infrastructure that would have allowed us to do that.

Early discussions with NATO had indicated that NATO had no intention of providing a detainee holding capacity. The Americans had capacity in Bagram, but in our view, not only was this getting to the point where they were resistant about taking more detainees, it also was true, at that point, that because of both Guantanamo and our experience with Abu Ghraib, we were not of the view that the Americans would be appropriate authorities to receive prisoners from Canada. And that matter was raised in debate in the House, which I'll come to later.

That takes us to the point that we were in Afghanistan. We were in Afghanistan, so the Afghans were the logical and appropriate partners, with built-in protections for the prisoners, of course. The Dutch, the British, the Danes were working on this solution as well. We had a sense of promise that things were improving in Afghanistan.

From a chronology point of view, in May 2005 Foreign Minister Abdullah and I met. We agreed that an agreement was necessary and it would have the support of both the Afghan and Canadian governments. We discussed the idea of a transfer with Afghan authorities, again when I was in Kabul in October. Foreign Minister Abdullah was keen. President Karzai gave his okay. Defence Minister Wardak, however, made the point that the Afghan forces had no capacity to deal with detainees but that the President agreed that a special force would be trained to handle them.

We therefore proceeded to work on our agreement, which was drafted with senior members of the Judge Advocate General's division in the Department of National Defence, in fact one of whom was a doctor in international law. They were in contact with and had complete support of their colleagues in Foreign Affairs and PCO. There was an understanding that the Dutch and British were working on similar agreements and would be transferring prisoners to the Afghan authority as well.

The agreement contained, as you know, amongst other provisions, the Geneva Convention protections whatever the detainee's classification; the Red Cross was to be notified; and a provision that the Afghan human rights commission was to be engaged. This, I want to emphasize, colleagues, we believed was an extremely important provision. It was a part of what we believed was building civil society in Afghanistan at that time, giving capacity to the human rights commission of Afghanistan.

I have to say that I have subsequently had the opportunity of meeting Dr. Samar, who, you will recall, was the president of the commission. She was in Toronto as recently as a couple of weeks ago, attending a meeting. I met with her and she assured me that the Afghan commission at that time took their role extremely seriously. They investigated prisons. While they had problems, they certainly were doing their best to ensure that prisoners were looked after, and they did take their role extremely seriously.

• (1535)

We added a provision that there would be no death penalty, which was added, as you'll recall, as a result of conversations that we had in the House.

When we finished drafting the agreement, our officials assured me—and I pushed them hard on this—that our agreement contained the best language possible for the protection of prisoners.

I think it's appropriate at this point to emphasize that the agreement was drafted in anticipation. We had very limited experience with prisoners in the system at that time. While we were aware that the Afghan prison system was not perfect and was in fact wanting in many respects, we had no reason to believe they would not be capable of treating prisoners in accordance with the international humanitarian obligations set out in the agreement.

In November of 2005, we met here with NGO representatives. I can say there was general agreement that the appropriate approach to this issue was to transfer prisoners to the Afghans rather than the Americans at that time. Concerns were expressed about Afghan prison conditions, which was something we were going to address through CIDA, but there was every support for the policy of transferring prisoners to Afghanistan at that time.

Some members in the room will recall that the question of prisoners was raised in the debate in the House of Commons in November of 2005. I raised the agreement. Various opposition members raised similar concerns about any transfer to U.S. authorities, but as I understood it, they supported the transfer to Afghan authorities provided the proper provisions respecting the Geneva Conventions were present.

It is true this agreement lacked a right to follow prisoners, which was something contained in other agreements. This agreement was criticized for that. With hindsight, it could have contained such a provision, which the present government in its wisdom has added. I must emphasize, however, that we believed at the time that we had an agreement that contained the highest level of protection for any possible prisoners.

In the end, the agreement was not perfect. No agreement is. Every agreement depends as much on the way in which it's applied as to how it is written.

For myself, members and Mr. Chairman, I want to assure you that I was motivated in pushing on this issue because I believed this was a political struggle in Afghanistan and required demonstrating that we as Canadians operated under the rule of law. Mistreatment of prisoners would weaken the legitimacy of our role in Afghanistan itself and the support that Canadians would give the mission at home. It's a position that I believe I fully canvassed with members of the House during the debate at which I spoke, and I welcomed the observations of the honourable members of the opposition.

You will also recall the subsequent debate about extending the mission. I have read *Hansard*. I saw that the question of prisoners, when we discussed extending the mission in May of 2006, was only mentioned on two occasions in that lengthy six-hour debate.

Mr. Chairman, I remain confident that the Canadian Forces are imbued with a sense of operating under the rule of law, which is something that General Hillier and General Natynczyk have emphasized on many occasions, and which I personally experienced, whether dealing with our soldiers or members of the Judge Advocate Division.

I'd also like to pay tribute to the members of the Judge Advocate Division, the legal officers, and the many other officials who, as you may know, serve in the field at risk to their lives and provide instant advice to ensure that our troops conduct themselves in accordance with the obligations under the Rome Statute and the relevant provisions of international humanitarian and Canadian law.

As I said at the opening, I wish you well, sir, and honourable members of committee, in dealing with this issue in a way that ensures the reputation of Canada as a promoter of international humanitarian laws is preserved and the integrity of our armed forces is protected.

Thank you very much.

• (1540)

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

We'll move to the first round of questioning for seven minutes.

Mr. Rae.

Hon. Bob Rae (Toronto Centre, Lib.): Mr. Chairman, first of all, I have to declare that I succeeded Mr. Graham as the member for Toronto Centre, and I'm very conscious of his contributions not only to the House but also to our shared constituency.

Mr. Graham, on your first point, that there was a process of elimination to determine what the policy on transfers would be, you stated at the outset there was no capacity to manage the detainees from a Canadian perspective.

Were there any studies or any reports or any discussions you were aware of that said this is what it would take for us to handle our own detainees, this is how many we think we're going to have, and this is what we think we'll need to do? Were there any types of analyses done on exactly what would be involved?

Hon. William Graham: I certainly wasn't party to those. I was advised that discussions had been held, but you'll recall that we had the PRT, which was fully occupied in dealing with its issues. We had the number of troops who were on a combat mission.

Certainly, from the defence department's point of view, at that point the department was very stretched in the number of soldiers we were sending to Afghanistan and what they were doing. There was definitely a strong opinion at the leadership level that to have diverted troops to the process of managing prisoners would have impinged on their ability to conduct the combat mission.

This was not a matter that was just our problem. The British were discussing the same thing; the Dutch, the Danish, everybody came to the same conclusion. There was an unsuccessful attempt to suggest that perhaps NATO would have been a logical possibility for providing one of the countries in NATO to provide a detainee supervision brigade, or something of that nature, but NATO wasn't willing to pick up that challenge, so that didn't go anywhere.

Hon. Bob Rae: You mentioned that there were NGOs present at a meeting you had in November 2005. We've heard from a number of NGOs over the last several months and indeed over the last couple of years with respect to the treatment of prisoners. Can you tell us which NGOs? Can you remember? Do you have a record of that meeting as to who was there?

Hon. William Graham: Yes, we do actually have a record. It was with Amnesty International. I have spoken both to the Department of Foreign Affairs note taker and to someone from my own department who was there, whose records are clear that we were in total agreement that there was no way that, under the circumstances at that time, it would be appropriate to turn detainees over to the United States. Since we were in Afghanistan, Afghanistan was the solution, of course with the proviso that Geneva Convention protections had to be written into the agreement. They had to have some fence around the way in which they'd be treated.

Hon. Bob Rae: But the Geneva Convention requires that if there is a substantial risk of torture or mistreatment, prisoners are not to be transferred. The central problem, it seems to me, is that the evidence would suggest that there was a substantial risk, and indeed you could argue that there is a substantial risk today, given the widespread evidence and widespread reporting of the mistreatment of prisoners either by NDS or by other Afghan prison authorities.

• (1545)

Hon. William Graham: Well, I think that's very much, if I may suggest, the benefit of hindsight. It was not at that time evident to us that there was such a substantial risk.

In the first place, at that point we had not, to my knowledge, taken any prisoners, so we didn't have experience with prisoners. It is quite correct to say that the literature shows there were problems in the Afghan prisons, but as you know from being the member from Toronto Centre, there are problems with the prisons in Toronto. There were three young people killed in the Don Jail within the last year. Every prison system has its problems, including our own.

So you have to balance that to recognize that we were dealing with a country where we were trying to help them build a prison system, that this was a part of what we were building, that we were providing aid for that at the same time, and that this was a part of a process of moving along.

I think it's fair to say that the military leadership at the time did not foresee the number of prisoners who were going to be taken. I think in fact General Hillier gave that evidence before the committee, that in fact this was a surprise, the number of prisoners one took.

So we were operating, if you like, in a somewhat theoretical rather than completely knowledge-based world at that time.

Hon. Bob Rae: The other criticism that's levelled at the 2005 agreement is that other countries managed to negotiate an ability to actually physically inspect the facilities themselves, and that we left it to the Red Cross. How do you respond to that?

Hon. William Graham: That certainly is a criticism, and that's something that was subsequently rectified in the subsequent agreement that was drafted. It is a question of what we call the monitoring issue, of how were we to monitor. In this agreement, we believed the monitoring by the Red Cross was going to be sufficient. Other countries chose to put a monitoring provision in.

I know that at least in the case of the United Kingdom, they're having similar discussions in their Parliament today about how successful their agreement was in working, as well.

This takes me back to my point: agreements are all very well, but it's the way in which they're applied that makes them successful or not in the end.

Hon. Bob Rae: There is also the question of capacity as well. One of the things that's very clear... I mean, I was in Afghanistan in 2006, and the embassy was tiny. There were two officers and an ambassador. There wasn't the capacity to inspect anything. You wouldn't have had the people to do it.

Wasn't that part of the problem?

Hon. William Graham: That was certainly part of the problem, because it was clear that while it was the role of the military to turn the prisoners over to the system, it was going to have to be the civilian arm that would have to do the monitoring.

From reading what has been taking place before this committee, obviously evidence has said that this was one of the problems that subsequently arose. I can't honestly say that we foresaw all of that at the time; we didn't, or we might have acted differently. But we did believe strongly that the provisions in here for not only Red Cross but the human rights commission being involved, was adding a dimension that would make an important Afghan buy-in, if you like, into the management of the system, that would be very important for them and very important for us in terms of what we were trying to build in Afghanistan.

The Chair: Thank you, Mr. Graham.

Monsieur Bachand, vous avez sept minutes.

[Translation]

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

Welcome, Mr. Graham.

Mr. Graham, could you explain to the committee how it was that the 2005 agreement was signed by the Afghan defence minister, Mr. Wardak, and General Hillier? It always seemed odd to me that the document was signed by an elected minister on the one hand and a Canadian chief of staff on the other. Had you mandated Mr. Hillier to sign the 2005 agreement?

• (1550)

Hon. William Graham: At the time, Mr. Bachand, you and I and all the other members of the committee were trying to obtain a mandate from the Canadian people. We were in the midst of an election. That mandate changed the behaviour of the government. All I can say is that that is what I understand about the circumstances around the signing.

Mr. Hillier was in Afghanistan. You have to remember that our troops were going to be deployed in three months. When we starting negotiating the agreement, it was very important to us to complete that deployment by the end of the year. The agreement in question had the approval of our department and the Department of Foreign Affairs. If Mr. Hillier had not signed it, Mr. Sproule, the Canadian ambassador, certainly would have signed it. From what I was told, General Wardak had a personal relationship with General Hillier dating back to the time when he commanded the International Security Assistance Force. General Wardak had asked General Hillier to sign on behalf of Canada, because he trusted him and had a personal relationship with him. That is all I know about that decision. General Hillier agreed, the ambassador did not sign, and we know the result.

Mr. Claude Bachand: General Hillier did not negotiate the content of the agreement. I imagine it was negotiated by the Department of Foreign Affairs and verified by the Department of National Defence. You then told Hillier that since he was there, he would sign the agreement that you would send him.

Hon. William Graham: I would say rather that it was primarily the Department of National Defence, with the agreement and support of the Department of Foreign Affairs, that negotiated the agreement, because General Wardak was in charge on the Afghan side. General Wardak was not just the defence minister; he had responsibilities regarding the Afghan army, which we considered our partner. He was also the minister responsible for prisons at the time. He was

therefore the natural person to deal with. I had spoken to Minister Abdullah, with Mr. Karzai and Mr. Wardak, with the agreement of Foreign Affairs. Our department was taking the lead on this.

Mr. Claude Bachand: Mr. Graham, do you recognize, though, that there was something very important missing from this agreement, and that was a provision on monitoring visits to Afghan prisons? It would seem that this was not in the actual agreement. Why was something so important left out? It is all well and good to say this is how we are going to proceed with transfers, but if there is no provision for monitoring and it is not done...

You must have seen Mr. Laroche's statement that Foreign Affairs officials did not want to do monitoring. They said their convoy was not protected. But one thing is clear: there were periods where there was no monitoring in the prisons, so it was not possible to ensure that the Geneva convention was being complied with.

Hon. William Graham: Yes. My problem is that my time as minister ended on January 15. Everything, all the discussions about what was happening and all the finger-pointing, if you will, all that happened after I left, so I do not know what was the real problem and what was not. I was not there for that. All I was there for was the negotiation of the agreement itself. All I can tell you is that we negotiated that agreement in good faith and included Geneva Convention protection.

You yourself will remember, Mr. Bachand, that you told me in the House—I have a good memory—that we had to sign an agreement with the Afghans and that I would have the support of the members of the House provided that detainees were protected by the Geneva Convention. I replied that we would do so. Maybe we should have had monitoring as well. The agreement was imperfect in some ways, but it was the best agreement we could negotiate at the time.

• (1555)

Mr. Claude Bachand: Okay.

On May 27, 2005, you wrote Mr. Martin a letter in which you told him that you agreed to ensure that detainees would be well treated in accordance with the Geneva convention. You had apparently found a mechanism at the time. I will read what you said:

[English]

The letter also says that Canadians would pass information on detainees to the International Committee of the Red Cross, "which has the mandate and resources to track Prisoners of War and detainees captured during armed conflict." However, it does not clarify whether the ICRC would report back to Canada on the condition of the detainees.

[Translation]

Do you acknowledge that you wrote that to Mr. Martin?

Hon. William Graham: Certainly.

Mr. Claude Bachand: So you asked the Red Cross to monitor the detainees, but there was no explanation as to how the Red Cross would report to you about what was happening.

We have also learned in the meantime that the Red Cross is very discreet about how detainees are treated in Afghan prisons, so as not to jeopardize the Afghan authorities' openness to visits.

Hon. William Graham: We knew that the Red Cross's policy was to report to the nation in which the detainees were being held. We had the same experience with the prison in Guantanamo. The Red Cross said it was reporting to the American authorities and not to other countries.

You will recall that this was an issue that was debated at length in the House after I left. The issue was what the Red Cross's responsibility was.

It is clear that the Red Cross reports on what is happening in the prisons, but only to the local authorities.

Mr. Claude Bachand: Okay.

I have a very important question for you now. As Minister of Foreign Affairs and then Minister of Defence, do you believe there was torture—

[English]

The Chair: Your time is up on the second question. Thank you.

We'll turn to Mr. Hawn.

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

Thank you, Mr. Graham, for being here. And thank you for your leadership in the House during debates to extend the mission back in 2006 and 2008.

As an international law expert in your own right—I think you said it, and I just want to hear you repeat it—you were certain that the provisions of the 2005 agreement met Canada's international obligations under international law. Is that fair to say?

Hon. William Graham: Yes, although to be fair, sir, I'd been out of teaching international law long enough to know that I'd better rely on people who really knew what they were talking about. As a minister should, I relied on the advice of the officials in the department, who were backed up by the Foreign Affairs officials. That was the advice I got, and certainly everything from my own experience told me that this was good advice.

Mr. Laurie Hawn: Okay.

People have characterized the 2005 agreement as flawed, and I think in hindsight, as you said, we could probably point at that. But at the time, it's fair to say, you entered into that agreement in good faith, based on the information you had at the time.

Hon. William Graham: Absolutely. We felt that it was the best agreement we could get in the circumstances.

Mr. Laurie Hawn: Do you think it's fair to say that when the government changed, and the current government assumed the mission in 2006, that we assumed that agreement also in good faith?

Hon. William Graham: Absolutely.

Mr. Laurie Hawn: I know that you can't speak for the government, but would that be logical that we would have assumed that agreement in good faith?

Hon. William Graham: Oh, absolutely. I'm assuming that you do everything in good faith.

Mr. Laurie Hawn: Of course.

Hon. William Graham: It's for others to determine whether that assumption is correct or not.

Mr. Laurie Hawn: But that would be perfectly logical.

Hon. William Graham: Yes, of course.

Mr. Laurie Hawn: Now, there's just one slight correction: we did take prisoners before the end of 2005. There was a situation with Minister Eggleton, and some prisoners were taken.

● (1600)

Hon. William Graham: No, I'm sorry, I didn't mean to suggest that we'd never taken prisoners. I think the facts would show that all the prisoners taken before were transferred to the American authorities, as being the authorities that were, at that time, Operation Enduring Freedom; they were in command of the field.

Mr. Laurie Hawn: Yes, I understand. But subsequent to that, and because of some political considerations at Abu Ghraib, Guantanamo, and so on, the government of the day's judgment was that it was better to transfer them to the Afghan authorities at that point than to American authorities.

Hon. William Graham: It was certainly a factor, as I suggested, the problems that were arising under Abu Ghraib and Guantanamo; those, however, were.... In the early stages, we didn't know about that. Those were things that were becoming very *au courant* at the time.

I would suggest that the other really important factor was that we were in Afghanistan. It was Afghan sovereign territory. We had to demonstrate that we were operating within a role to contribute to the pacification and building of Afghanistan for them, not for ourselves. I think we, the British, the Dutch, and others all came to the same conclusion. The only proper conclusion, given the circumstances of the nature of our mission.... It wasn't an invasion. It was a mission to support the building of a government there with a newly elected government. The only thing consistent with what we were doing there was to turn to them, as sovereign in their territory, and allow them to take the prisoners and be responsible for them.

Mr. Laurie Hawn: We talked about the strength of agreements. You had an agreement in 2005, and there was a supplementary agreement arrangement in 2007.

You know, agreements are fine, but it's the people who are administering them. An agreement can be perfect, but if you have imperfect people applying the agreement, you might get an imperfect result.

Is it fair to say that in a country like Afghanistan, working with some pretty imperfect institutions and people in the context of what we would expect, we're going to see some stumbling on their part?

Hon. William Graham: Yes, I think that's absolutely fair to say. It wasn't just in respect of this issue. We know about drugs, corruption, and all of those issues in Afghanistan. We were struggling with trying to correct all of that, for sure.

Mr. Laurie Hawn: Part of our mission there continues to be to correct where they fail to meet our expectations, and continue to work with them to raise their capacity and raise their adherence to the rule of law.

Hon. William Graham: Absolutely. Yes, sir.

Mr. Laurie Hawn: Knowing full well that they will fail from time to time, does that make their failure our failure?

Hon. William Graham: It depends what we do, obviously, in terms of.... It's very difficult to make an abstract statement to that effect. But I don't think we can be asked to be responsible for all of the problems of Afghanistan once we've gone there. We're there to try to support their improvements. Absolutely. I agree, yes.

Mr. Laurie Hawn: When your government found problems, you tried to fix them.

Hon. William Graham: Yes, sir.

Mr. Laurie Hawn: I would suggest that has been the continuing pattern of governments, regardless of which stripe they are. Would you tend to agree with that?

Hon. William Graham: Yes, sir.

Mr. Laurie Hawn: One of the things that I've found concerning, if I can make a statement here, is that we in Canada tend to put a Canadian context onto Afghanistan, and a Canadian perspective—i. e., that we expect people to operate to a level that we operate to in Canada. But as you said yourself, every prison system has its problems, including ours, so it's a matter of degree.

I'm going to make a statement and see if you agree or not. In my view, nobody is guilty of anything, whether it's the previous Liberal government or this government, and certainly not the Canadian Forces. Nobody is guilty of anything other than doing the very best they could under incredibly difficult circumstances, in an incredibly difficult situation, working with incredibly difficult people.

Hon. William Graham: I totally agree that, as Canadians, everybody is trying to do their best in Afghanistan in a very difficult situation; absolutely. They're doing their best for Afghanistan, for the international community, and in what we're trying to do as Canadians.

Whether there may be one or two circumstances where an offence was committed of some kind, I would suggest we have a system in place, in the form of a military justice system and a civilian justice system, that will ensure that if the facts ever point to such a circumstance, it will be dealt with appropriately by the judicial authorities.

Up until now I haven't heard of anybody being prosecuted for anything, so in my view of the facts, I think that is exactly where we are.

Mr. Laurie Hawn: We talk a lot about hindsight. Obviously it's always 20:20.

Do you think anybody could have predicted, your government or our government, the ferocity of the war or the conflict or the combat that was going to break out in Kandahar in 2006, with the level of casualties and so on?

The Chair: Thank you, Mr. Hawn.

Hon. William Graham: I think it's fair to say that we did not. Look at the nature of the equipment we took when we went. We took LAV IIIs and we ended up getting tanks. There was a whole host of assumptions made when we first went to Kandahar in terms of equipment and other things. We had to get helicopters that we originally didn't have. We perceived of a campaign that would be much more active in going into villages and dealing with people, whereas we found that subsequently the security element, which was determined largely by the use of IEDs and other forms of explosive

devices, made it impossible for us to conduct the type of campaign that was envisaged at the beginning.

I think that's a perfectly accurate description of what happened. It evolved, and the enemy evolved, largely from lessons they had picked up in Iraq and other places.

● (1605)

The Chair: Thank you very much, Mr. Graham and Mr. Hawn.

I will now move to Mr. Dewar, please, for seven minutes.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Chair.

Thank you, Mr. Graham, for being here today and providing us with your testimony.

I just want to clarify a couple of things with a couple of very straightforward questions.

Did you okay the agreement, in the end?

Hon. William Graham: Well, I didn't.... Yes, we had agreed on the terms that were in the agreement that was subsequently signed by Mr. Hillier, terms that had been—

Mr. Paul Dewar: I want to be very precise here. The agreement that was signed off at the end of the day—you okayed that final copy of that agreement.

Hon. William Graham: We would have okayed the final copy before General Hillier—

Mr. Paul Dewar: But did *you* okay the agreement?

It's important, because I'm not sure from your testimony if you okayed the agreement or if it was someone else. I would take it that if it wasn't you, it would be General Hillier.

Hon. William Graham: Well, I don't believe General Hillier just went off and signed something.

Mr. Paul Dewar: No, I'm not saying that. I'm asking if you, at the end of the day, okayed the final copy of the final agreement.

Hon. William Graham: I don't recall at any point someone saying, "Here, Minister, initial this", but that is the agreement that we had discussed with our officials, and our officials had discussed with Foreign Affairs, and everybody had agreed that that was the agreement we were going to put to the Afghan authorities. And it had been discussed with the Afghan authorities.

So in that sense, yes, I certainly agreed with that agreement; I would have, based on the letter that I'd sent to the Prime Minister, and getting the authority I did, if I'd had authority, I would have signed it myself.

Mr. Paul Dewar: I'm hearing from you that you're not entirely sure if you okayed the final agreement, but the spirit of it and the general thrust of it you okayed.

Hon. William Graham: Absolutely.

Mr. Paul Dewar: Did you talk to General Hillier before the agreement was signed off?

Hon. William Graham: No, I was talking to my constituents.

Mr. Paul Dewar: I appreciate that, but you also had two roles, and you were still the minister—

Hon. William Graham: No, I appreciate that. I'm not trying to avoid my responsibility, but General Hillier was in Afghanistan. He had the opportunity to sign it and he signed it. He didn't phone up and say, "Can I sign it?"

Mr. Paul Dewar: So at no point did you have a conversation with him to say, "Here is the agreement, you're okay with it?", and he gave you feedback. There was no feedback from him.

Hon. William Graham: That agreement was approved before he left.

Mr. Paul Dewar: By you.

Hon. William Graham: By me, by the department, by Foreign Affairs, by the Government of Canada. That agreement was approved by the Government of Canada.

Mr. Paul Dewar: By you.

Hon. William Graham: Fine: by me.

Mr. Paul Dewar: Okay. I'm having problems just getting a "yes".

Hon. William Graham: Well, you're trying to draw a sort of picture of whether someone put the agreement before me and said, "Here, initial it." I can't honestly recall that.

Mr. Paul Dewar: Normally would that be the process?

Hon. William Graham: No, that's not the way it is for—

Mr. Paul Dewar: Not for an agreement like this?

Hon. William Graham: Not necessarily, partly because this is a form of a memorandum of understanding. This is not a formal treaty.

Mr. Paul Dewar: But it's an agreement between two countries.

Hon. William Graham: It is, but it's a memorandum of understanding. It is not a treaty and it wouldn't go through the normal treaty process of seals and approvals and all that, cabinet and all that stuff.

Mr. Paul Dewar: I fully understand that.

Hon. William Graham: It was a totally different type of agreement. The agreement is the same; it's called an MOU. If you look at the other agreements, they are exactly the same.

Mr. Paul Dewar: The involvement of General Hillier, then, was simply, as you stated, to meet with General Wardak and to sign it off and that was it. Did he as general at any point give you input? From what you're telling me here....

I'm just trying to piece this together. I did take the time to read the *The Unexpected War* around this, and from your testimony today, it's clear to me that it was actually something that DND seemed to be the lead on. Is that correct, in terms of the transfer?

Hon. William Graham: It may be fair to say that DND was the lead, but it was very clear that it had the full support of the other key department in the Government of Canada in this affair, which is the Department of Foreign Affairs. I am assured that if General Hillier had not signed the agreement, David Sproule as our ambassador would have signed it in his place—in which case, we wouldn't be having this conversation about General Hillier, we would be wondering whether David Sproule was authorized to sign it.

Mr. Paul Dewar: It's not a matter of authorization, it's a matter of why the person who signed it, signed it. I guess there is some confusion here, because the only rationale I can glean from what was

written in the book and testimony from you is that General Hillier knew General Wardak well, and therefore it was a convenient way to sign off the agreement.

• (1610)

Hon. William Graham: General Wardak, as I understand it, actually asked General Hillier to sign it, because from his perspective, General Hillier, because of his personal relationship with him, carried more credibility than anybody else in the system.

Mr. Paul Dewar: Do you think that was appropriate?

Hon. William Graham: Well, If I'd been there, I would have signed it. It wouldn't have been appropriate for General Hillier to sign it if I'd been there; of course not.

Mr. Paul Dewar: What I'm saying is—

Hon. William Graham: But I don't think under the circumstances it was inappropriate or it was appropriate. As I said, it would either have been for the ambassador to sign it or for General Hillier.

Mr. Paul Dewar: I guess I am asking the question because I think most people would think, notwithstanding that it's not a formal treaty, that this agreement was something that Canada was wanting to have established with the Government of Afghanistan, the terms of which should be, I will say, our terms with agreement of the Afghan government.

So I'm a little uncomfortable with the fact that we would have asked General Hillier because General Wardak knew him well, and therefore they could have a conversation and sign it off. I say that because, first of all, I thought that was the job of our diplomats, and if they're speaking on behalf of the government, usually that's done by diplomats, not by generals.

So I guess my question is why was it General Hillier was allowed to sign that agreement when normally that would be the job of a diplomat?

Hon. William Graham: Well, I can't answer that question because I wasn't there, and in terms of communication with General Hillier or David Sproule—

Mr. Paul Dewar: But who's in charge? Who's in charge of this file?

Hon. William Graham: The Government of Canada is in charge of this file. General Hillier's a leading member of the Government of Canada.

Mr. Paul Dewar: But he's not an elected official.

Hon. William Graham: No, and neither is David Sproule, the ambassador.

Mr. Paul Dewar: No, but he was delegated—

Hon. William Graham: These were signed by officials. He's an official of the Government of Canada.

Mr. Paul Dewar: The reason I am asking this, Mr. Graham, is that they're delegated these authorities—

Hon. William Graham: Right.

Mr. Paul Dewar: —as diplomats and as generals.

In my view of the world, when we're talking about delegated authorities that are as important as the transfer of detainees, and realize the role of DFAIT officials after—if we get a chance to talk about that, we'll get into that, because they ended up having to do monitoring—what I'm hearing is that the delegated authority was to the general, not to the diplomat. And you don't have any reason other than to say that it was convenient for the general.

Hon. William Graham: Look, I don't disagree with you that it's unusual. But there are lots of cases of international agreements where they're signed by military people or others. There are lots. You can go back into history to see all sorts of them.

I mean, the rendition of Germany was signed by a bunch of generals and admirals. That was the ending of a war.

Mr. Paul Dewar: It was a delegated authority. And we were in the middle of a war, though.

Hon. William Graham: That was a big deal; that was a really big deal.

The Chair: Thank you, Mr. Graham.

We'll come back to the government side.

Mr. Dechert, please.

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

Thank you, Mr. Graham. I appreciate you being here this afternoon. When we first met, you were a professor of international law at the University of Toronto, Faculty of Law, when I was a student there, so it's very interesting for me to be at the other end of the questioning spectrum today. I have a question for you as a noted expert in the international law.

In your view, does the prohibition against refoulement, pursuant to Common Article 3 of the Geneva Conventions, apply to the transfer of detainees by Canadian armed forces to the Afghan authorities in these circumstances, the circumstances of our current mission?

Hon. William Graham: Whenever I went to all candidates meetings and somebody called me a “professor”, I knew it was usually because I was going to get into trouble

Some hon. members: Oh, oh!

Hon. William Graham: So I can tell that the member is using unfair, unfair tactics.

Somebody mentioned to me this term refoulement, which, as I understand it, is a term that deals with refugees, if they're turned back at a border by a government, coming across—they're refouled, in other words—and being put in harm's way by being returned.

I haven't studied this situation with that in mind, so I wouldn't want to give you an instant opinion on it—

Mr. Bob Dechert: You don't recall whether you got any advice on that at the time?

Hon. William Graham: —but I wouldn't have thought at first blush that this was a case of refoulement, in that sense, as I understand the use of the term.

•(1615)

Mr. Bob Dechert: That's interesting, because Amnesty International and Human Rights Watch, for example, or the lawyers who presented here from each of those organizations, absolutely do think that it does apply in this case and that Canada is bound by that.

Hon. William Graham: Well—

Mr. Bob Dechert: But that's their opinion. I'm not taking their side; I'm just pointing it out. I just wanted to hear your views on that.

Hon. William Graham: Yes; as long as we understand that opinions in international law tend to be many and varied.

Mr. Bob Dechert: Like any legal matter, of course.

Human Rights Watch and Amnesty International and several DFAIT officials, such as Eileen Olexiuk, all stated that the allegations of abuse of prisoners by the Afghan NDS were common knowledge in 2005 and in earlier years. In fact, Human Rights Watch told us they had presented reports dating back to 2002, 2003, 2004, alerting the international community about serious allegations of abuse by Afghan authorities.

Were you aware of those allegations in 2005?

Hon. William Graham: No, I honestly was not. I have to say that I have great respect for Human Rights Watch—they do extraordinary work—so I wouldn't dispute what they would have said. But they were not reports that had been brought to my attention about Afghanistan, either when I was foreign minister or defence minister.

Mr. Bob Dechert: Okay.

That's interesting. The lawyer for Human Rights Watch who appeared before this committee last week mentioned to us that she thought that transferring prisoners to the U.S. at Bagram probably would have been a better choice.

How do you respond to that?

Hon. William Graham: I honestly don't know how to respond to it. You probably could make a case that, in general, the United States authorities probably had a better capacity to deal with prisoners than anybody else. They had more personnel, more experience. But the problem was that we were dealing with a situation with the American authorities where I do not believe we would have been able to get an agreement with them, either about the Geneva Conventions or the way in which the prisoners would have been... and if somebody were transferred to Bagram and then sent to Guantanamo, or one of these other places, what recourse would Canada have had?

That was the position we were in. I'm not suggesting that the Americans are evil or anything, but they had serious problems at that time. As I said, if I can go back to the debates in the House—if you had been present then, sir, it was very clear—all parties in the House at the time were clearly of the view that it was much better to deal with the Afghan authorities than the Americans.

Mr. Bob Dechert: So in your view, it would be more likely that prisoners would be abused by the American authorities in 2005 than by the Afghan authorities.

Hon. William Graham: No, I didn't say that.

Mr. Bob Dechert: Okay. Fair enough.

Hon. William Graham: No, no, I wouldn't say that. That would be a very unfair characterization. No, I certainly would not say that, sir.

The Chair: Thank you. That's our five minutes.

The second round is a five-minute round.

Mr. Dosanjh.

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

Mr. Graham, you said that in drafting or negotiating this agreement, you had the advice from the officials of JAG.

Do you recall the names of the JAG officials who advised you or drafted the agreement?

Hon. William Graham: The principal advice I would have gotten would have been from the then Judge Advocate General himself, General Pitzul. He had two colonels with him, one of whom I was told had a doctorate in international law and was an experienced international lawyer.

But obviously, as General Pitzul pointed out, his role was that of legal adviser to the Minister of National Defence, and I very much took his advice. He was a very scrupulous, careful lawyer.

Hon. Ujjal Dosanjh: Do you recall the name of the colonel?

Hon. William Graham: No, I couldn't recall that.

Hon. Ujjal Dosanjh: There have been arguments, Professor Graham—if I might call you that, affectionately—advanced by various legal authorities and others that the evidence that's known in the public domain, or otherwise, establishes a substantial risk of torture for any detainees transferred to Afghanistan. Some of that evidence, according to Madam Olexiuk, who testified before this committee, relates to the period when you were the minister.

The arguments have been made that if you are capacity building and you are only trying to alleviate the problems, but you continue to transfer even in the face of that substantial risk of torture, somehow you can be immune to any allegations of offences under the Geneva Conventions. Is that your view?

• (1620)

Hon. William Graham: No, I wouldn't have accepted that view. You're suggesting, in other words, that because one is capacity building, one could go and make a transfer in the face of total knowledge that in fact this was going to result in torture.

No, I wouldn't accept that. Obviously that's not a justification for that.

The responsibility is under the Rome Statute. The Crimes Against Humanity and War Crimes Act, which is part of the legislation of Canada, part of our Criminal Code, doesn't have a proviso saying that if you're capacity building you can go ahead and do it.

No, I wouldn't accept it.

Hon. Ujjal Dosanjh: Nor does simply transferring detainees to Afghan authorities absolve us of our responsibility. Is that your understanding?

Hon. William Graham: Yes, but that responsibility is not absolute.

Hon. Ujjal Dosanjh: How so?

Hon. William Graham: You'd have to get some international lawyers to help you with that, but the transfer, having taken place in good faith, with the full understanding that the responsibility of the Afghan authorities would be properly exercised.... If something is subsequently done, the Canadian authorities can't be held responsible a year later if the Afghan authorities do something crazy. I mean, no criminal code system operates, to my knowledge, in that respect. You'd have to get a lawyer to tell you that.

What we do is that we're responsible if...in the face of, as I understand it, a knowledge of what you do. You can't be responsible for what you don't know about. It's not an absolute responsibility; there's no such thing.

Hon. Ujjal Dosanjh: Let me make the argument that is made sometimes by legal scholars, that if you know, or you ought to have known—because there's a positive duty to find out—that there was a substantial risk of torture and you continue to transfer, if something happens to a prisoner or prisoners, we are responsible as a country despite the fact of transfer. That's my understanding of the law. Just because it happened after the fact does not absolve us.

I'm making that argument because the argument made by some colleagues from the government has been that you ought to have known because there were reports in the public domain in 2005. Madam Olexiuk argued that there was sufficient evidence in the human rights reports that she wrote.

I'm saying this because I want to give you a chance to respond.

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

I have to get used to this five-minute and not the seven-minute round.

Hon. Ujjal Dosanjh: I think he wants to—

The Chair: You can answer very quickly, Mr. Graham.

Hon. William Graham: Mr. Chairman, the honourable member—and I don't want to get into a legal argument with him—has totally jumbled up the difference that international lawyers make between the law of war and the law in war.

There's personal responsibility, under the Geneva Conventions, for individuals who do certain things under the law in war. The law of war, which governs the responsibility of countries, is a different matter—wars of aggression and so on.

So I don't accept what the member said in terms of a country's responsibility, because what he's talking about under the war crimes act, as I understand it, is a war crime of individuals, and therefore would have to be proved in a court of law that they knew or ought to have known and failed to exercise their responsibility.

But there are greater international lawyers around than I, and maybe they can help the House with that. But it is a problem.

The Chair: Thank you, Mr. Graham.

Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

Just quickly, because we're running short of time, I just want to clarify that I was telling you what Amnesty International and Human Rights Watch lawyers had said, not what I believe.

Hon. William Graham: Okay.

Mr. Bob Dechert: Did you read the Dutch or U.K. transfer agreements in 2005 while the Canadian agreement was being negotiated?

• (1625)

Hon. William Graham: No, we did not have—

Mr. Bob Dechert: Were you aware of them?

Hon. William Graham: We were only aware that there were other agreements being negotiated at the time.

My recollection, actually, is that when we were discussing this matter in the House of Commons in November, in the take note debate, Mr. Blaikie raised the matter of detainees. He gave me a copy of the Danish agreement, I believe, and I took that to the authorities and said, "Are we getting as much as the Danes?"

Mr. Bob Dechert: Okay. The U.K. agreement was signed in April of 2005.

You mentioned that you have great respect for Human Rights Watch. They have told us that, in their view, diplomatic assurances that there will be no abuse are not sufficient—in fact, are never sufficient—and there should be monitoring. Yet the Canadian agreement that you okayed in 2005 did not provide for monitoring.

How do you respond to Human Rights Watch?

Hon. William Graham: I respond by saying that we believed at the time the two provisions for monitoring that were put in the agreement—namely, the Red Cross, on the one hand, and the human rights commission of Afghanistan—were monitoring procedures that would satisfy our responsibilities in international law; that this was the best that we were going to get from the Government of Afghanistan of the day; and that we had to get this agreement signed.

Mr. Bob Dechert: Fair enough.

Can I ask you another question? Do you believe that any Canadian prisoners transferred to the Afghan authorities have ever been abused since that agreement was signed in 2005?

Hon. William Graham: I really couldn't speak to that. That's pure....

I would really say, sir, that if we're talking here about—

Mr. Bob Dechert: I just want to know what your belief is.

Hon. William Graham: No, we're talking about criminal responsibility of individuals for acts, and as a cautious lawyer, I would suggest that one should allow tribunals that were established for that purpose to establish those facts.

Mr. Bob Dechert: Okay. Fair enough.

I'll defer to Mr. Abbott.

The Chair: You have about three minutes.

Hon. Jim Abbott (Kootenay—Columbia, CPC): Mr. Graham, we've already had two people speak of the high regard they have for

you. Certainly you and I had some good times in the House as political opponents, and I have the highest regard for you.

The reason I make that reference is the fact that I want to ask a tough question, and it is not done flippantly.

Opposition members and other people who have appeared, as well as commentators, have said that the government violated its international obligations under the Geneva Conventions and humanitarian law. Essentially, they are accusing government ministers past—yourself—and present of being war criminals.

I don't suggest—

Hon. Bob Rae: That is a ridiculous comment, Mr. Chairman. No such accusation has come from an opposition member. I've never heard of any such—

The Chair: Just continue, Mr. Abbott.

Hon. Jim Abbott: I believe it's my five minutes, and I'm not going to get into an argument with Mr. Rae.

The fact is that the term "war criminals" has been bandied around in these hearings. I would like to have your comment, please.

Hon. Bob Rae: Nobody has ever used the term. You've used it.

Hon. William Graham: It is a tough question, because you really have to know the circumstances.

I certainly have not heard of any accusations of war criminal behaviour of anybody, and the calling of bad faith, by members of the House. I will tell you, though, that, frankly, the Internet being what it is, and people being what they are, people have stopped me on the street and said "What were you doing? Are you a war criminal?"

That's the way people talk. That's the type of language we're living in today. I mean, we were accused of it in Vancouver by a group of young students; being in Afghanistan, we were war criminals. People throw these terms around. I said, "Are you saying we should be before the Rome Tribunal? Can you give me a date in a court of law?"

But people don't give you a date in a court of law; they just use the allegation.

Hon. Jim Abbott: But as an experienced member of the government, a former foreign affairs minister and defence minister, help us understand the relationship between the army and the people who are carrying out the orders of the government. Is there any space between them?

In other words, we had a general here who very aggressively said, all right, if there's a war criminal here, I'm the guy, because the buck stops here.

The Chair: Thank you, Mr. Abbott.

Hon. William Graham: Very quickly, I don't know about that, but I can tell you one thing I was impressed by when I was Minister of National Defence was the quality of legal services within the ministry. There are hundreds and hundreds of lawyers there who actually go out there.

As one of the former field commanders in Afghanistan told me, if they're going to attack a village and somebody asks, "Is that a proportionate response in accordance with the Geneva responsibility and the international humanitarian obligations of Canada?", they're advised by lawyers in the field on operations. Those young lawyers risk their lives along with the other soldiers to try to give the best advice they can.

●(1630)

The Chair: Thank you, Mr. Graham.

Hon. William Graham: So this is very difficult, but that's what they're trying to do.

The Chair: Thank you, Mr. Graham.

Monsieur Bachand.

[Translation]

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

Mr. Graham, is it true that the Liberal government in 2005 was afraid of causing a controversy similar to the one at Guantanamo Bay or Abu Ghraib? In other words, you did not want the situation in the Afghan prisons to become like the one in Guantanamo Bay or Abu Ghraib. Is that a true statement?

Hon. William Graham: No, I believe that... Obviously, there are differences between the two situations. All I can say is that when we were negotiating our agreement, since there had previously been problems with detainee transfers to the American authorities, as you had said in the House when I was there, we felt that while we were in Afghanistan, the best solution to our problems was to deal with the Afghans.

Mr. Claude Bachand: Is it true that you had three options: to operate according to the "take and keep" principle, which you discarded; to turn detainees over to the United States; or to work with the Afghans and the local system? From what you are saying, you chose the last option. Is that correct?

Hon. William Graham: Yes.

Mr. Claude Bachand: But you considered the idea of take and keep at some point. Why did you discard that option?

Hon. William Graham: For reasons of capacity. We did not have the capacity to do that and engage in combat at the same time.

Mr. Claude Bachand: Okay. Regarding the transfer of detainees to the American authorities, didn't you say, during debates that took place before the two scandals I mentioned occurred, that you were sure the Americans would treat detainees humanely?

Hon. William Graham: No, I believe, as the member mentioned... Obviously, the Americans have a spotless record in most cases. The problem was that they were determined to transfer prisoners where they wanted, to Guantanamo and elsewhere. We did not feel at the time that this was an appropriate solution for the Canadian government. I believe that most of the members of the House felt that way as well.

Mr. Claude Bachand: Regarding Ms. Olexiuk, whom you must know—

Hon. William Graham: No, I do not know her.

Mr. Claude Bachand: She is a woman with a great deal of experience who was in Afghanistan for the Department of Foreign

Affairs from 2002 to 2006, I think. She revealed that in 2005, she had raised the possibility that detainees transferred to the Afghans were being tortured. She claims that the Martin government ignored her concerns. Do you remember reading that report?

Hon. William Graham: I read a newspaper account of what she had said on television.

Mr. Claude Bachand: But you did not see the report?

Hon. William Graham: No, certainly not. Mr. Bachand, we are talking about the Department of Foreign Affairs. If this woman had written a report, she would have submitted it to the authorities in that department.

Mr. Claude Bachand: She would have submitted it to Foreign Affairs, but you were at National Defence.

Hon. William Graham: That's right.

Mr. Claude Bachand: And there was no discussion between National Defence and Foreign Affairs?

Hon. William Graham: All I can tell you is that the authorities in the Department of Foreign Affairs and the Department of National Defence agreed on the terms of this agreement and that the Government of Canada supported the signing of the agreement. The authorities in Ms. Olexiuk's department therefore decided, based on their knowledge of the situation, that they would sign the agreement. That is all I can tell you. I cannot know what was going through their minds.

Mr. Claude Bachand: I am going to talk to you about someone you know well, Eugene Lang. Here is what he said:

[English]

We were aware that...there was going to be risks of potential abuse in Afghan prisons and at the hands of the Afghan security forces, which is why we tried to negotiate an agreement.

●(1635)

[Translation]

I have a question about what Mr. Lang wrote. While you were minister, did you ever wonder whether there was torture in Afghanistan? Did you reach the conclusion that there was torture in Afghanistan or that there were risks of torture in Afghanistan? Did you reach that conclusion while you were minister?

Hon. William Graham: We knew there were risks. That is why we put the provisions in the agreement we signed. If there had not been risks, we would not have put anything in the agreement.

Mr. Claude Bachand: Mr. Graham, the Geneva convention states that you cannot transfer detainees if there are risks of torture. The Liberal and Conservative governments keep telling us that when they found out what was happening, they made changes. But as soon as there are risks of torture, you cannot transfer detainees.

Why did you keep on transferring them if you yourself felt there were risks of torture?

Hon. William Graham: There were no transfers when I was there.

Mr. Claude Bachand: There were no transfers when you were there?

Hon. William Graham: The agreement was signed on December 15. I had my hands full with the election on January 16.

Mr. Claude Bachand: Yes, but you were there before the agreement was signed.

Hon. William Graham: The only prisoner was me, in Rosedale, Toronto Centre.

Mr. Claude Bachand: Yes, but you were there as minister before the agreement was signed in 2005.

Hon. William Graham: Yes.

Mr. Claude Bachand: So as a lawyer who is familiar with international law, you could not allow the transfer of detainees if you felt there were risks.

Hon. William Graham: There were no transfers.

[English]

The Chair: Thank you, Monsieur Graham.

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

Mr. Laurie Hawn: Thank you, Chair.

Mr. Graham, you know we've talked about the CF and we've talked about DFAIT and so on. Is it fair to say that your government took a whole-of-government approach to situations like Afghanistan? Is that the logical approach that any government would take in that kind of a multi-faceted, complicated international operation?

Hon. William Graham: Yes, we tried to do our best to do that. Yes, sir.

Mr. Laurie Hawn: It's not a CF here and a DFAIT here, doing things in opposite directions. It's trying to work together for the mission?

Hon. William Graham: Yes.

Mr. Laurie Hawn: Perhaps you could clarify; I think somebody mentioned Prime Minister Martin was brought into it in May of 2005. Did I mishear that...? Anyway, regardless, what kind of consultations went on amongst cabinet colleagues in your government with the Prime Minister, or just amongst colleagues, about the situation in Afghanistan and how to deal with it and so on?

Hon. William Graham: Well, we had regular discussions about Afghanistan itself, which translated into a lot of...but around prisoners, I can't recall any specific cabinet discussion about this issue other than, as I said, I wrote the Prime Minister to get authority to work on the issue. I know that there were inter-departmental discussions, but I don't recall any cabinet discussions around that specific issue.

The discussions were largely about CIDA's role, our role, how would we fund it, what the PRT would do, whether we would commit to the combat role, etc., and our relationship to NATO. That was very preoccupying as to NATO, what we were going to do, the transfer of NATO authority from the Americans to NATO after our role. You'll appreciate all that. Those were the large discussions we had.

Mr. Laurie Hawn: I guess following up from that, there's been talk about what a foreign affairs minister knew or should have known, or what a defence minister knew or should have known.

In your experience in both of those positions, can you describe for us the kind of activities that you would have undertaken as either Minister of Foreign Affairs or Minister of Defence with respect to a mission like Afghanistan? For instance, who would you have consulted, what kinds of messages would you have received, what volume of message traffic would you have received, and that sort of thing?

Hon. William Graham: You can appreciate that we got a large volume of traffic on all sorts of different issues. We had to look at the problem of what was the proper equipment to be sending. That was a huge thing, because it was a large matter and we had to get money for it. We had to deal with all those usual problems, you'll appreciate, of equipping.

We had to deal with the relationships between the departments, which would be CIDA, Foreign Affairs, and ourselves. You'll appreciate the discussions have shown that there weren't as many Foreign Affairs officials in the country at the beginning as there were; you had the Manley report, and things were changed.

So all of those sorts of discussions would have been literally every day, practically, once we got more active in Afghanistan. I went to Afghanistan once as a foreign minister and once as a defence minister, so on those trips I would have met with Mr. Karzai to discuss what we were doing.

We were constantly involved in one way or another in the file.

●(1640)

Mr. Laurie Hawn: Is it fair to say that in either ministry, the minister would be fairly inundated with information and would be relying on people filtering the information to him that they thought was most important for him to address personally?

Hon. William Graham: Yes, that's the way the system works. You basically get what you're given. But we're also politicians, and we use our judgment as well.

As I said in my opening, I kind of pushed this issue of prisoners because I felt it was going to the legitimacy of the mission and it was important for us to deal with it. In the department, some people felt, you know, why we were spending as much time on this at that time, but I think everybody came around to recognizing its importance.

So our job as politicians is to put in our political input, but our job as ministers is to listen to our officials and basically base our conduct on the good advice we're getting from them.

Mr. Laurie Hawn: Is it fair to say that Afghanistan today, notwithstanding continuing problems, which will probably always be there, is a better place than it was in 2002 or 2005?

Hon. William Graham: Well, in 2002 I wouldn't want to live under the Taliban, that's for sure.

Mr. Laurie Hawn: Post-Taliban.

Hon. William Graham: Well, it's obviously extraordinarily complicated, but I think it depends on whether you're a glass half-full person or a glass half-empty person. I tend to be on the optimistic side. I think the glass is more half-full, and I'd like to believe that we're making progress.

Mr. Laurie Hawn: Do you think some of the activity that's ongoing in this committee and in the media and what not is perhaps distracting, or detracting from further progress along that route?

Hon. William Graham: No, as I said at the beginning, I think it's really important for the committee to make sure that they get to the bottom of it and that the public know the transparency is there. These are serious allegations, and I think the committee's doing serious work to make sure the Canadian public and everybody's assured that, as Canadians, we're making sure that the rule of law is being obeyed.

So I don't see the committee's work as problematic in any way.

The Chair: Thank you, Mr. Graham.

Mr. Wilfert.

Hon. Bryon Wilfert (Richmond Hill, Lib.): Thank you, Mr. Chairman.

Mr. Graham, it's clear from your comments that in 2005 we did not expect the ferocity of response from the Taliban in terms of the mission that we went into. We went in with LAVs and we needed tanks.

Clearly on the MOU that was made between Canada and the Afghan government, one of those assurances was assurance against torture. Would that be correct?

Hon. William Graham: Yes; well, the assurance was that specifically the Geneva Conventions would be respected, and so, absolutely, that's contained within it, along with a host of other things, yes.

Hon. Bryon Wilfert: My question to you, Mr. Graham, is does that satisfy Canada's legal obligation to ensure that prisoners are not transferred to a state when they face the real risk of torture? Because it seems to me that, in your comments, we were relying on the Afghan human rights commission and the Red Cross...empowerment, and I understand about capacity-building for those too; that at the time, first, there weren't that many prisoners taken, and second, we didn't expect that we would be taking a lot; and that therefore, using the Afghan human rights commission and the Red Cross would in fact ensure our legal obligations in terms of torture.

Hon. William Graham: We certainly believed that the agreement was capable of ensuring our obligations. And I believe or understand, without being completely *au fait* with all the facts, that there were circumstances subsequently when military officials decided they wouldn't transfer prisoners when they were of the view that the agreement couldn't be properly monitored and that, in fact, there was no protection for the prisoners. There was one occasion when they wouldn't transfer for a period of time because they were concerned about it.

So, absolutely.

Hon. Bryon Wilfert: And because this was an MOU between Canada and Afghanistan, did we receive written assurances from the Afghan government that they would live up to their legal obligations in this regard?

Hon. William Graham: Well, I don't know about written assurances, but I can tell you I had personal conversations with Dr. Abdullah Abdullah, who was the foreign minister, my counterpart, about the importance of the agreement and the importance for

the Canadian public to know that we were living up to the rule of law, and that, in fact, the success of the mission was depending on the rule of law because that's what we were there to establish, and he totally agreed with that.

President Karzai, when we raised it with him as to why we wanted the agreement and that it was important for us to have an agreement before we began our operations in the spring, accepted those arguments.

So I can't say as to whether it was a written assurance, but I can assure you that the Afghan authorities that I spoke to were of agreement.

To be fair, General Wardak himself, when he was reticent about the agreement, was reticent because he was concerned about his capacity to be able to make sure it was going to be properly applied.

• (1645)

Hon. Bryon Wilfert: Since General Wardak was concerned about capacity, and you'd received assurances from the foreign minister, Abdullah Abdullah, and from President Karzai, could I assume, then, that they were prepared to allow for and support the activities of the Afghan human rights commission and the Red Cross to ensure that those elements of the agreement would be in fact adhered to?

Hon. William Graham: Yes.

Hon. Bryon Wilfert: Okay.

It was the European Court of Human Rights that said on a case-by-case basis diplomatic assurances are inadequate if the issue comes to torture. I just wanted to get your take on what was expected, both by us and by the Afghan authorities, in terms of any transfers, and how in fact they would be monitored either by the human rights commission, which we of course were supporting both financially and obviously otherwise, and by the Red Cross. During the very short time, obviously before the election in 2006, were there any reports back from the Afghanistan Independent Human Rights Commission or the Red Cross of any concerns they had at the time?

Hon. William Graham: No, the Afghanistan Independent Human Rights Commission and some of our own NGOs that we spoke to, and I mentioned Amnesty International earlier, were certainly concerned about the conditions in the Afghan jails. It's not the same as torture, but they were concerned about the level of conditions. I think that was a legitimate concern. That's why one of the things we had to do was provide some corrections officers and CIDA money to help improve the quality of prisons. That was one of the things we were doing when we were rebuilding Afghanistan in the rule of law, we contributed money to the judiciary, to the police, and to the corrections system. This was all part of the package of what we were doing with our presence in Afghanistan. In that sense, this is a part of that.

I haven't seen the case you're referring to in the European Human Rights Commission, but we were not in the position of sitting there saying, "We know that they torture in the Afghan prisons, so we'll put in this agreement, but we're going to turn them over anyway." We didn't know that there was torture in the Afghan prisons. We didn't have the experience of that.

When we signed the agreement, we had every legitimate right to rely upon the word of the sovereign government of Afghanistan that they would live up to their obligations to Canada that they subscribed to in the agreement. If we had believed they weren't going to live up to them, we wouldn't have signed it with them. But we believed they would.

Hon. Bryon Wilfert: Thank you for that, Mr. Graham.

The Chair: Thank you, Mr. Graham.

We'll go back to Mr. Dechert and Mr. Hawn.

Mr. Bob Dechert: Thank you, Mr. Chair.

Mr. Graham, I accept at face value your statement that you believe that Canadian armed forces officials, Department of Foreign Affairs officials, your government officials were trying to do their best in the circumstances, and very difficult circumstances. I believe the same is true today.

It's not my view, but there are those on the other side of the House and out there in the world, groups like Amnesty International, Human Rights Watch, and others, who say we could have done better. Perhaps that decision to transfer prisoners to the Afghan authorities rather than the U.S. authorities at Bagram was a bad one, or perhaps Canada should have built its own prison system and taken care of the prisoners itself. But I accept that everybody was doing their best.

You entered into an agreement, which, by your own admission, was flawed. We know it wasn't as good as the U.K. and Dutch agreements, and perhaps other agreements that were entered into at the same agreement. By your own admission it was improved in 2007.

If there are allegations of abuse today, do you and your government, your party, share any responsibility for that?

Hon. William Graham: I can't speak for today, because I speak to you—very happily—as a private citizen.

Mr. Bob Dechert: Fair enough, but in your capacity as Minister of Defence and Minister of—

Hon. William Graham: I'm freed from the allegations of this House of partisanship and other things. I can behave like a citizen like anybody else.

Mr. Bob Dechert: As a Canadian involved in the decision-making process, how do you respond to that?

Hon. William Graham: I can say that, certainly, when I was minister.... If you could go back, I'd go back. I could do a lot of things differently than I did. But perfection is the enemy of the good, as it's said.

Mr. Bob Dechert: You did your best under the circumstances.

Hon. William Graham: We did our best in the circumstances in light of the knowledge we had of the day. That's the best you can do. It's very difficult to foresee everything, that's for sure.

• (1650)

Mr. Bob Dechert: We're hearing conflicting views. Some DFAIT officials say allegations of abuse were widely known, and they told all members of the government, including your government, about that. Others say they weren't. Others say they don't think that there

has been any abuse or that there's any evidence of abuse. There seems to be a difference of opinion based on different views of policies that might have applied or should apply in this circumstance.

How do you see these differing interpretations? How do you put that in context for us? What should we take from that?

Hon. William Graham: My experience as a minister was that in two ministries that had very large, very competent people, there was always a diversity of views. Within that group of officials, one works out what is the appropriate approach. That's worked out at the level of those officials. As a minister, you get the result of that. You don't go downstairs to the bottom of the foreign affairs department and walk around the halls and knock on doors and say, "What do you think about this?" You have a deputy minister who comes to you and says, "This is the view of the department."

When I was foreign minister and when I was Minister of National Defence, I had a deputy minister, and a chief of defence staff, and a legal adviser, all of whom said, "This is the right thing to do. This has been coordinated with the other departments. This is our advice to you."

I believed that advice, and I think I was appropriate to do it.

Mr. Bob Dechert: You yourself, sir, are very well qualified as a minister, as a professor of international law, as an expert in international law, and having served in those capacities and in government for many years, you were well qualified to accept that advice and understand the advice.

Hon. William Graham: That's for others to decide.

Mr. Bob Dechert: But I assume you would agree with that.

Hon. Bob Rae: I don't remember you saying that at the time.

Some hon. members: Oh, oh!

Mr. Bob Dechert: I don't think I said that. I wasn't here at the time.

Hon. Bob Rae: No, you weren't here, but I'm thinking of some of your colleagues.

Mr. Bob Dechert: I have great respect for Professor Graham.

Hon. William Graham: I'm glad the honourable member brought that up, actually. There were certain moments when nobody was saying that at all.

Mr. Bob Dechert: I think we're clear here, that you were—

Hon. William Graham: You must like my evidence all of a sudden.

Mr. Bob Dechert: I've always admired you, sir, as an international lawyer. And I believe that you and all the other Canadian officials were doing the best they could in difficult circumstances. I believe the same is true today.

But we're sitting here and we're hearing differing views now from people who were there at the time. Some are saying quite clearly you absolutely should have known, and others are saying there was no clear evidence and what you did was the best in the circumstances.

I'm simply curious to know what you would do if you were in my shoes today, in trying to interpret what Canada should have done back in 2005 and what it should be doing now.

Hon. William Graham: I think I would do what the chairman, I believe, is doing—trying to get the best evidence you can. You're going to have to be the judges of what you believe, with your knowledge of the political system and how it works, and what you think would be the best in the interests of the country. I'm confident that the committee in its wisdom will come to that.

That's all I can suggest.

The Chair: Mr. Dewar, please, for five minutes.

Mr. Paul Dewar: Thank you, Chair.

I want to go back to wrap up the piece about General Hillier.

So you were informed by General Hillier when he'd signed the agreement, and it was done with General Wardak?

Hon. William Graham: Probably not the next day, but certainly I would have been informed, yes.

Mr. Paul Dewar: Did you support him being delegated that responsibility?

Hon. William Graham: I had no problem with it.

Mr. Paul Dewar: I'm saying that because in the book I'm reading—you mentioned the book—it says that you didn't support that, but your evidence today is saying that you did support delegating the authority to General Hillier.

I'll read it to you:

The general signed the agreement for Canada, even though Graham

—that's you—

had not delegated this responsibility to him. Hillier insisted that the Department of Foreign Affairs had seen and approved the agreement at every stage and explained why he took this unusual step of signing the agreement:

—saying what you had said— “Wardak was a friend of mine. We got to know each other when I was Commander of ISAF and he was CDS in Kabul. Wardak asked if I could sign the agreement since he had such great respect for me.”

How do we square that?

Hon. William Graham: Look it seems to me there are two issues here. There's the underlying issue as to whether or not the fact that General Hillier signed the agreement somehow delegitimizes the agreement. If that's the point, that's a discussion. If it's just an attack on General Hillier for going and doing something, that's something completely different.

Mr. Paul Dewar: Not at all. No, I'm just talking about who should do what.

Hon. William Graham: If I'd had to choose between them—if I had been there and somebody had said, “What do you think?”—I would have said “Get the ambassador to sign it.” But that's....

That would have been my opinion.

Mr. Paul Dewar: I'm just going by what I read here.

Hon. William Graham: But I wasn't there, and I didn't have General Wardak leaning over the table saying, “I'll sign it now if Hillier signs it, but I won't sign it if....”

You know, you have to be in the negotiating room to know what's going on. I wasn't there.

•(1655)

Mr. Paul Dewar: And that's what the concern is. That's my concern, that—

Hon. William Graham: Well, it's not my concern, because I don't think it goes to the legitimacy of the agreement whatsoever. It's a memorandum of understanding that was entered into in proper and due form between...that has just as much effect by its signature in the way it was signed as if it had been signed by the ambassador.

So that's not a concern to me.

Mr. Paul Dewar: But the content of it is important. What I'm seeing here is that DND was kind of the lead in this agreement, this memorandum. And you admit that it was during the debate...as already mentioned, it was Bill Blaikie who brought up the process to which the Dutch had agreed. When that was brought forward by you or your staff to officials in the military, the Canadian Forces, they said that they pushed back, to say, no, we don't need to put those aspects into our agreement. In other words, they said that we didn't have to follow the Dutch arrangement of monitoring.

Hon. William Graham: Right, but we did follow the principle about no death penalty. We did take that from that agreement.

Mr. Paul Dewar: Right, but you didn't know about that until it was brought up in the House, correct?

Hon. William Graham: No, that's correct; Mr. Blaikie gave me the agreement.

Mr. Paul Dewar: So what kind of advice were you getting? Who was it from?

Hon. William Graham: I explained to the committee that I got the advice from Major General Pitzul, who was the—

Mr. Paul Dewar: Do you think that advice was sufficient advice, in light of what we know now?

Hon. William Graham: You're asking me if General Pitzul could have given me the advice based on what we know now. He couldn't give me advice based on what we know now. He gave me advice based on what he knew then, which was the way in which we operated at that time as well. Nobody can foresee into the future. You can't ask General Pitzul to give me advice on the basis of what you know today.

Mr. Paul Dewar: But a member of the opposition was able to figure out what the Dutch were doing. I don't think it's asking too much for our officials to have given you advice.

I'm not going after you, Mr. Graham.

Hon. William Graham: No, no, I appreciate that.

Mr. Paul Dewar: I'm asking you who's doing what. And from where I come from, it should be our folks looking at what's going on in theatre, what are best practices, and advising you as minister.

I'm glad they said we should take out the death penalty. Frankly, it's a no-brainer. But they should have looked at what the others were doing and advised you. But it wasn't in this agreement. In fact, they pushed back.

Hon. William Graham: Well, they pushed back on the monitoring issue because they didn't believe it was appropriate in the circumstances. And that was the agreement—

Mr. Paul Dewar: Because they thought—

Hon. William Graham: —and that's what we didn't do. As you know, the subsequent government went into a monitoring agreement.

Mr. Paul Dewar: They said it was because the Afghans would push back; that was why they didn't put it in.

Hon. William Graham: Well, if you've done negotiating in contracts—

Mr. Paul Dewar: I've done it.

Hon. William Graham: Then as you know, if you can't get the other guy to agree to it, that's a reason why it might not be in the contract.

Mr. Paul Dewar: But when the other guy's got it in their agreement, I always get it in mine.

Hon. William Graham: Well, that's a fair point. That's a fair point.

Mr. Paul Dewar: Thank you.

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

I do have a question, Mr. Graham. Are you able to go a little bit past 5 o'clock?

Hon. William Graham: I'm totally in the hands of the committee.

The Chair: Thank you.

Hon. William Graham: There's a more interesting hearing going on across the hall, you know. I don't think anybody in this room would rather be here than over there.

The Chair: I wouldn't think that. I think most of us would rather be here listening to you.

Mr. Graham, I do have a copy of the book that you referenced earlier on, *The Unexpected War*. In that book you actually get a fairly glowing...with some nice testimonials about your abilities and what you wanted to accomplish at that time.

I was here in the House at the time. In fact, I got into a bit of a problem in one question period when I asked the former defence minister about transferring prisoners to the Americans. There was some hesitancy. As a new member of Parliament at the time, I found out from the Speaker that I could say that he misled Parliament, but I couldn't say he intentionally misled Parliament. But that was the crux of the debate that day, whether or not they were transferring.

I'm just going to quote a couple of sentences from this book, somewhat out of context. I'm going to take different sentences from a couple of paragraphs. It says:

Although Bill Graham had supported the Kandahar mission he was deeply concerned about one issue.

Then it goes on and talks about the operatives, and about the issue of transferring Afghan prisoners.

It also says that Mr. Graham was an international lawyer with a strong interest in international humanitarian law. He had serious concerns about the transfer. Then it says:

Nevertheless, for Bill Graham this issue was vital, and he would push his officials hard to get a resolution that satisfied his standards.

It was highly politicized at that period of time in terms of the Americans. We had one member of Parliament stamping on a doll of the President of the United States. We had others standing in the House slamming the Americans. It wasn't immediately after 2001, but it was three or four years after.

You were coming into an election. Was there any consideration to the thought that we just could not transfer to the Americans for political reasons?

This book lays it out—your concerns about what was happening at Guantanamo, and what was happening in Cuba. But was it politics, or was it indeed the potential for concerns of their rights at Guantanamo, compared to an agreement, with conditions, that you absolutely felt would have the detainees in a safer position in Afghanistan?

● (1700)

Hon. William Graham: Well, if I said there were no political considerations in this, I don't think you'd believe me, Mr. Chairman, and I don't think you should. I mean, of course politics are part of what motivates us who are in politics. That's a given.

But I think the balance of what we were trying to achieve here, as I said in my opening, was a recognition that we were acting in Afghanistan. The taking of prisoners by the United States had been going on for a long time. It was largely very much their war, if I can call it that.

The meetings and discussions we had at NATO, and with Mr. Karzai himself, were very much about legitimizing the international force in Afghanistan and taking it away from an exclusive American operation to become a true international United Nations authorized operation. That was the whole thrust of why we agreed to go with the Dutch and the British down to the south. That was the whole of what we were trying to achieve. That was, if you like, the geopolitical thrust of what we were doing. It was long discussed in NATO and everything else.

This prisoner issue was one very important subset in that. When I say we looked at it and said it was preferable to turn the prisoners over to the Afghans with appropriate safeguards than to the United States, then that prisoner issue was an overall consideration of the geopolitical issues at stake and the nature of legitimacy in the country of Afghanistan and legitimacy in the eyes of the Canadian public as well.

Every one of those factors played a role and every one of them factored into our decision. And I think we made...frankly, the same decision would be made today if everybody in this room was sitting there faced with exactly those same circumstances. That's all I can say.

The Chair: You would also agree—not to put words in your mouth—that the additional transfer agreement later on that included monitoring of prisoners was a good addition?

Hon. William Graham: It certainly created an additional pressure, if you like, on the Government of Afghanistan and gave Canadians more of an authority to do it. I don't disagree it was an improvement on the agreement. I said the agreement was not perfect, and I accept the fact that it was capable of improvement. There may be other improvements in the light of today. Maybe we should be making other improvements in the agreement. Life is a growing evolution, so maybe we should be making some other improvements, Mr. Chairman. I would be happy to concede that lots of improvements could be made to the agreement.

So I accept your statement. But I would also say, sir, and I am sincere about this, that a lot depends on how it's applied. The day after you signed your new monitoring agreement, all these problems didn't go away, if I can believe what's being read in the press. The British had a monitoring thing that was enforced long before ours, and if you read what's going on in the British House of Commons today, the same debate's taking place there that's taking place here, with or without the monitoring.

So it's not the monitoring in and of itself, it's how it's applied in the circumstances that also has to be taken into account. This would be my respectful submission.

The Chair: Thank you.

Monsieur Bachand.

[Translation]

Mr. Claude Bachand: Earlier, Mr. Graham, you said you did not transfer any detainees before 2005. But I remember seeing a photo in the *Globe and Mail* where JTF2 soldiers seemed to be transferring detainees to the Americans. That is my first point. Correct me if I am wrong.

As for my second point, when the British Columbia Civil Liberties Association and Amnesty International took the federal government to court, they revealed that between 2002 and 2006, the Canadian Forces had taken more than 40 people prisoner, which seems to contradict what you are telling us, unless those 40 detainees remained under the control of the Canadian Forces.

Were there transfers before the agreement? Were any detainees transferred to the Americans? What did you do with the detainees you did not transfer? Did you keep them under Canadian government authority in the Kabul prison?

• (1705)

Hon. William Graham: First of all, when I said there were no detainee transfers, I did not say “never”. Everyone knows about the matter involving Mr. Eggleton and the JTF2 transfer in 2002. It was a cause célèbre. Everyone knows about it. So I am not denying that.

I believe there were some other occasional transfers in the interim, but I do not have any first-hand knowledge of specific cases. When we were in Kabul, for example—ISAF—I believe some prisoners were captured. I was not the Minister of Defence at the time, but I imagine they were transferred to the American authorities. That was the practice at the time, before our agreement was signed.

As for the events in 2006, I ceased to be the minister on January 15, 2006, so if the 40 detainees were captured between January 1 and January 15, I am guilty, but I doubt very much that

that is what happened. It was after operations began in Kandahar in May. That is what I assume; I do not have any personal knowledge about this.

[English]

The Chair: Thank you.

Thank you, Mr. Bachand.

Mr. MacKenzie, did you have a quick question?

Mr. Dave MacKenzie (Oxford, CPC): Yes.

Hon. William Graham: This is getting a little bit like Chinese water torture.

Some hon. members: Oh, oh!

Mr. Dave MacKenzie: Well, you're doing a very good job.

Hon. William Graham: Do I have any prisoner's rights here?

Mr. Bob Dechert: We won't transfer you anywhere.

Mr. Dave MacKenzie: You were never one of my professors, so we don't have to....

I thought at one point you said that you were defeated in 2006. My recollection was that you stepped down. And I'm not so sure about your replacement, but—

Hon. William Graham: I'm very proud of my replacement. He's a great member.

Mr. Dave MacKenzie: —he's not a bad guy.

What I'd like to ask you about, though, is the following. There has been a great deal of discussion, both here and in the House, about redacted documents. When you were the minister, did you do the redaction of the documents yourself?

Hon. William Graham: No, no. Sometimes I would receive very sensitive documents—for example, that were classified. Unless I said, “Look, I have to see that”, they would be redacted. So they'd be redacted at the level of the security officials.

I don't recall ever challenging it, because I don't think I ever had a case where I had to say “Look, I want to know what the actual circumstances of this are.”

Anything that was redacted was usually of an operational nature, where knowledge of the operation would have been inimical to national security. Obviously, as a minister, one has a right to the information. I'm sure that if one had insisted.... But the circumstances weren't appropriate at that particular time.

Mr. Dave MacKenzie: So if I understand you correctly, you're saying that the redaction was done by officials when you were the minister, which is exactly what we would expect, and you wouldn't expect it to be any different today.

Hon. William Graham: I have no idea what the practice is today.

Mr. Dave MacKenzie: But it's not directed by the minister; it's done by officials who do it because they follow set policy or procedures.

Hon. William Graham: Yes, I'm assuming that redaction is done by officials in the department and not by ministerial staff acting under the instructions of the minister. If that were done, I would say that would not in any way be in conformity with what was done or practised when we were there. Anything that was redacted was done by the officials.

• (1710)

The Chair: Thank you.

Mr. Hawn, and then we will wrap up.

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

We've taken about 12 minutes to talk about General Hillier signing a document.

Can I ask you one really simple question, Mr. Graham? Is there any doubt that the 2005 agreement was an agreement between the Government of Canada and the Government of Afghanistan?

Hon. William Graham: No, but I have to say that the lawyers are clear that it was more an agreement in the form of a memorandum of understanding than a binding legal treaty of that nature; it was not intended to be that, and I don't think any of the other agreements that were entered into were done at the level of international law.

Mr. Laurie Hawn: So it was a government-to-government agreement.

Hon. William Graham: It was government to government, as I believe I tried to explain.

Mr. Laurie Hawn: Yes, and you did. You're doing a good job.

Even Andrea Prasow of Human Rights Watch said in her testimony a week or so ago that the reports of recently transferred detainees indicate that conditions have improved. I think that's the story we're hearing.

The 2005 agreement was done in good faith. It turned out that it was not what we thought it was, but changes were made and things improved.

Is it fair to say, using your expression from a minute ago about the "balance" of what we are trying to achieve, that the balance of what

Canada is trying to achieve—either under your government or under this government—is to make things better with whatever institution we're dealing with in Afghanistan, whether it's the Afghan National Army, the police, the prison system, the judicial system, or whatever? That's the basis of everything we are trying to achieve, on balance, knowing that some in Afghanistan are going to work better than others and that they're going to stumble and that we're going to pick them up and show them how they could have done better—as your government tried to do, as our government has tried to do, and as the Canadian Forces, DFAIT, CIDA, and everybody else has tried to do all along?

Hon. William Graham: Yes, sir, I think that's a fair statement.

Mr. Laurie Hawn: Nobody is guilty of anything other than doing the very best they could—the very best they could—under very difficult circumstances, in a very difficult place, with very difficult people, with the information they had available at the time.

Hon. William Graham: That's drawing a very long bow.

Some hon. members: Oh, oh!

Mr. Laurie Hawn: You answered in the affirmative the last time, so I was just giving you a chance to do it again.

The Chair: All right.

I want to thank you very much, Mr. Graham, for attending here today.

We have asked a number of former ministers to attend, and you are the first of what I hope are a number of them. You are the only one so far who has responded in the affirmative. We do appreciate that.

We wish you all the best. We thank you for your insight, both as a distinguished parliamentarian and defence minister. It was good to see you again.

Hon. William Graham: Thank you very much.

The Chair: We're going to move in camera for the final 15 minutes.

[Proceedings continue in camera]

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