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Chair

Mr. Michael Levitt

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

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•(1305)

[English]

The Chair (Mr. Michael Levitt (York Centre, Lib.)): Good afternoon, everyone. Welcome to the 33rd meeting of the Subcommittee on International Human Rights.

Today we're continuing our study on Yazidis, Christians, and other religious and ethnic minorities in Syria and Iraq.

We have with us today Dr. Bill Wiley. Dr. Wiley is a Canadian lawyer and former officer in the Canadian Forces, specializing in international law. He is the founder of the Commission for International Justice and Accountability, or CIJA. He has worked on war crimes investigations with the Department of Justice and with the Office of the Prosecutor at the International Criminal Court. He is currently gathering evidence of human rights violations perpetrated by the Syrian regime.

Dr. Wiley, we're very excited to be hearing from you today, and we appreciate your taking the time to join us. Please take 10 minutes or so for your remarks. Then we will open it up to questions from committee members.

Thank you very much. Please proceed.

Mr. William Wiley (Executive Director, Commission for International Justice and Accountability): Thank you very much, Mr. Chair.

If you permit me, I'll begin by thanking your subcommittee for your continued engagement with the ongoing conflicts in Syria and Iraq, specifically the mass atrocities being perpetrated by government forces and non-state actors such as Daesh. I'm honoured to testify before you concerning our organized efforts to combat violations of international criminal and humanitarian law, ICHL, through the application of individual criminal responsibility.

By way of introduction, I would reiterate that my name is indeed Bill Wiley. I am the executive director of the CIJA. My testimony today will introduce the CIJA to you and in turn afford you an overview of our international criminal investigations and related work in Syria and Iraq, which Canada's strong leadership has done much to facilitate.

For some years, governments and non-governmental organizations have raised the alarm in response to the widespread and systematic disregard on Syrian and Iraqi territory for the precepts of ICHL. In addressing you, my role is not to elaborate on these facts, which are already well known. Rather, I propose to speak to the

establishment of individual criminal responsibility for these egregious crimes and the role that Canada is currently playing to ensure that those most responsible for the perpetration of core international crimes are held accountable for their acts before a court of law.

Furthermore, my role, as I see it, is to correct statements, oft-made by advocacy groups in particular, that nothing is being done to investigate egregious offences. As such, I will take a moment in this opening address to highlight the concrete steps being taken by the brave men and women employed by the CIJA in Syria since 2011 and in Iraq since 2014 to secure justice for the victims of the crimes being perpetrated in their own countries.

Finally, I shall touch upon additional initiatives that can be implemented, not least with the support of Canada, to put into place a wider array of criminal justice accountability options.

What, then, is the CIJA? Stated succinctly, the CIJA is an international non-governmental organization with a mandate from its donors to undertake international criminal investigations in the midst of the ongoing conflicts. The CIJA's investigations conform to the evidentiary standards applied within any international and western domestic criminal law jurisdiction. Our modus operandi reflects the CIJA senior leadership's long experience gained in the service of international and hybrid courts as well as within domestic war crimes units such as that situated in our own country at the Department of Justice.

The CIJA's 150 personnel collect evidence to the highest legal standards and undertake analysis with an eye to preparing, as we do, dossiers inculcating ranking individuals for present-day and future criminal prosecution in domestic as well as international jurisdictions. As such, the CIJA is far more akin to the investigative division of an international prosecutor's office than it is to a human rights organization. As you might imagine, the fact that the CIJA undertakes criminal investigations in its capacity as a non-profit foundation, as opposed to a public institution, renders the CIJA truly unique.

With respect to the CIJA's evidence collection, our analytical interest extends beyond merely documenting prima facie crimes. The United Nations and various NGOs already undertake such work for informational and advocacy purposes. Rather, the CIJA's principal focus falls upon collecting, corroborating, and holding what is known in our field of law as "linkage evidence"—that is, evidence that links high- and highest-level political, military, and security intelligence actors to offences committed by lower-level perpetrators.

Linkage evidence is central to the building of ICHL cases for prosecution. Establishing the linkage component of the cases that we build for current and future prosecution absorbs roughly 90% of the CIJA's human and material resources committed to any given investigation. It is in this respect that the CIJA complements most effectively the ongoing and future work of domestic as well as international prosecutorial authorities. It is likewise in this respect that the CIJA is not to be confused with a human rights organization, focused as human rights organizations are on questions of victimization rather than upon the establishment of a responsibility therefore.

• (1310)

CIJA personnel deployed in Syria and Iraq, roughly 50% of the CIJA complement, take considerable but managed physical risks to ensure that, unlike in past conflicts, linkage cases are established whilst the subject conflicts are under way. We do this to ensure that those most responsible for core international crimes do not go unpunished—to wit, that perpetrators are not left in positions of authority for any longer than is rendered necessary by political, diplomatic, and sometimes military considerations.

Whilst the CIJA's work shall prove to be instrumental to future international criminal trials, I regard it as important for the subcommittee to understand that other criminal justice options already exist. Evidence collected by the CIJA is central to facilitating ongoing criminal justice efforts in national jurisdictions where perpetrators have been apprehended, particularly in the European Schengen zone. At the present time, the CIJA is assisting no fewer than 12 western countries in the domestic prosecution of Syrian regime officials, returning Islamic State fighters, and other members of extremist groups.

During the year to date, the CIJA has answered in excess of 30 domestic requests for assistance pertaining to almost 400 individual targets under investigation by national authorities. These domestic jurisdictions in the west remain the only current avenue for criminal justice accountability for core international crimes, at least as far as Syria is concerned. While there is much more to be done, the fact remains that a good deal is already being done by public institutions and, if you will permit me to reiterate, by the CIJA.

In Syria and Iraq, the CIJA has several dozen investigators on the ground handling multiple operations throughout these countries. Further staff are deployed in support roles in neighbouring states. Most CIJA investigators are Syrian and Iraqi nationals, whose capacity the CIJA has spent many years developing, not e least with financial assistance from Canada. Working under the supervision of international personnel with long experience gained in The Hague and elsewhere, the primary mission of these investigators is to

collect voluminous amounts of information concerning the functioning of the Syrian regime, as well as the Islamic State, for evidentiary exploitation by CIJA political structure, military, and legal analysts.

To date, our personnel have moved into secure storage in the west in excess of 700,000 original pages of Syrian regime documentation; conducted hundreds of victim, and most especially insider, witness interviews; and collected other forms of physical and electronic evidence. Additionally, the CIJA continues to build a names database of Syrian regime political, military, and security intelligence officials. This system currently holds in excess of 1.2 million names. A distinct database of foreign terrorist fighters holds several thousand names.

Taken as a whole, the CIJA information and evidence holdings, as well as its investigative reach into Syria and Iraq, constitute a rich informational resource for public officials in countries such as Canada, informing as we do a wider range of criminal justice accountability, asylum screening, and targeted sanctions efforts. The CIJA systems will in future be utilized during state-building and concomitant lustration processes. The point I should like to make here is that the CIJA does not seek to supplant public institutions, and nor are we an advocacy body. Rather, the CIJA is designed to serve as a tool that public officials are free to take up as they see fit.

In Syria, the CIJA is largely self-supporting. In Iraq, CIJA investigations are undertaken pursuant to a memorandum of understanding with the Kurdistan regional government. On the basis of this MOU, the CIJA is able to secure crucial logistical and security support within Iraq at no cost. Working from various locations in the north, the CIJA examines, amongst other issues, the atrocity crimes perpetrated by the Islamic State against ethnic Yazidis, Christians, and other minority groups of particular concern to the subcommittee.

In its first Iraq-centred prosecution case file, completed several months ago, the CIJA identified two dozen suspects involved in orchestrating Islamic State slavery operations, which, as you know, have resulted in appalling instances of sexual violence and servitude. In sum, the seven prosecutable case files completed to date by the CIJA, over the last three years or more, identify several dozen individual perpetrators, reaching to the highest reaches of the Syrian regime and the Islamic State.

• (1315)

In addition to the criminal justice options being exercised in North America and Europe at the present time, there is an immediate road to large-scale justice in Iraq for the victims of Daesh offences. I refer to the fact that there is every prospect for Islamic State perpetrators to be put on trial in a specially designated court situated in northern Iraq, working to western standards of due process, for crimes such as the sexual offences perpetrated against ethnic Yazidi women and girls.

For some time, the CIJA has been leading the effort to establish such a specialized war crimes chamber within an existing Iraqi court. Our proposal has already garnered support from the relevant Kurdistan regional authorities, and we are optimistic that the Government of Iraq might soon agree to this idea.

Suffice it to say, by way of an introduction to this concept of Iraq-based fair trials for the Daesh perpetrators of core international crimes, most of the elements are already in place to commence the prosecution of Islamic State personnel currently detained on Iraqi territory.

In closing, I should like to highlight the fact that Canada is one of the very few states contributing concretely to efforts that are rendering possible criminal justice for core international crimes. More to the point, Canada continues to contribute generously to an undertaking that is facilitating the prosecution of Syrian regime and Islamic State perpetrators at the present time and that, concomitantly, has laid much of the foundation for the future international prosecution of the senior-most leadership of both the Syrian regime and the Islamic State.

I look forward to your questions. Thank you again for your continued interest in the wars in Syria and Iraq, not least in the context of criminal justice accountability.

• (1320)

The Chair: Thank you very much for your remarks, Dr. Wiley.

We'll go straight to questions, beginning with MP Sweet.

Mr. David Sweet (Flamborough—Glanbrook, CPC): Thank you very much, Chair.

Thank you very much, Dr. Wiley, not just for your testimony but for the extraordinary work you are doing.

You say that you are self-supporting. Can you give us an idea of how you are funded? Is it through a number of nations that participate with your organization?

Mr. William Wiley: Yes, that's right, sir. To clarify, the "self-supporting" in Syria simply means that we don't, obviously, have a link to the government, and have to arrange for our own logistical and security measures.

The CIJA budget in the current calendar year is approximately 7 million euros. Off the top of my head, that's probably \$10.5 million Canadian. Those funds, at the present time, are forthcoming from Canada, the United Kingdom, Germany, and the European Union. We are hoping that Denmark and Norway will soon rejoin us as donors. They've been very generous donors in the past.

Mr. David Sweet: Great.

You mentioned an extraordinary volume of evidence that you've collected. Again, I share with you—I'm certain my colleagues would agree—our great gratitude for the work you are doing under perilous circumstances.

We've had some people testify before us in regard to mass graves that they feel have been left unprotected and unsurveilled, and the risk of the evidence not remaining unmolested is very high. Is this the case in many places where Daesh has been?

Mr. William Wiley: It certainly is the case. We've been out to see some of the mass graves in Nineveh that are now under Kurdistan regional government control. They are not in good shape. But a partner organization of which we think very highly, ICMP, the International Commission on Missing Persons, which is now an IGO, an international governmental organization, has the primary

task of securing the sites where that can be safely done. I can't speak for them, but we worked together in Iraq, and there are certain complexities in their work, in that responsibility for the mass graves is controlled through the central government in Baghdad, as opposed to the Kurdistan regional government.

There are innumerable mass gravesites; there is no question about that. Perhaps I could just answer by saying that as long as the bodies are in the ground and nobody tampers with those gravesites, they're basically fine. Tampering usually takes the form of families returning to an area and trying to find missing loved ones.

Mr. David Sweet: That's understandable.

You mentioned something else, Mr. Wiley, that I'm very interested in. In northern Iraq you're establishing a chamber for war crimes against humanity, at western standards. You mentioned that Kurdistan has already approved of it and you're waiting for the Iraqi government. Is that the case? I suspect you have international backing with those countries that have funded you. Or is this something they would support?

Mr. William Wiley: Yes. A number of countries, in particular the European Union, which of course is not a country, and indeed Canada have shown some tentative support for the idea. The missing link at the present time is to secure the buy-in from the central government in Baghdad, because the court itself, for security and logistical reasons, needs to be situated up north—in Erbil, really. We're hoping to crack that nut. We're pretty much out of time this year, but I'll travel into Baghdad, I think in January, to start knocking on doors to get that support, or at least the benevolent indifference that would also be satisfactory.

• (1325)

Mr. David Sweet: My last question is rather broad-sweeping. We're obviously focusing on Yazidis and other religious minorities and the nature of ISIS/Daesh to target them. Through all of the evidence collection you've done, have you seen an inordinate focus on the humiliation, persecution, killing, torture, and sexual slavery of these minorities over the rest of the population?

Mr. William Wiley: The human rights advocacy community obviously has done a tremendous service in bringing the suffering of the Yazidis in particular to the attention of a wider world. That includes decision-makers like you, of course, on the subcommittee. Not to compare the suffering, but it's important to keep in mind that the overwhelming majority of victims of the Islamic State are Sunni Arabs, victimized in both Iraq and most especially Syria, where Islamic State rarely gets its hands on minorities—Shia, Christians, and so forth; there's no Yazidi to speak of in Syria.

Mr. David Sweet: Thank you very much.

The Chair: Thank you.

We'll continue with MP Miller, please.

Mr. Marc Miller (Ville-Marie—Le Sud-Ouest—Île-des-Sœurs, Lib.): Thank you.

I want to focus a little more on evidence collection. I mean, obviously with mass graves, after the evidence that the acts have occurred, the concern is around trying to tie those acts to the perpetrators. I read only a short brief on what you've done. It seems like a very, very tall task in a very, very difficult situation.

Perhaps you could just speak a little more about trying to tie the crimes to individuals.

Mr. William Wiley: As I suggested in the opening brief, that's 90% of the work in building the case file, insofar as we are focused on high- and highest-level perpetrators. With the Syrian regime's military, political, and security intelligence structures, establishing the linkages between the highest levels of the regime and the physical authors, if you will, of the underlying acts is relatively straightforward. That's what informs our heavy emphasis on securing regime documentation and moving it westward.

It's much more complicated with Islamic State—and I'm choosing my words carefully here, because we're not in camera. Effectively, with Islamic State we do secure documentation, but we are much more reliant on other forms of information that are more difficult to turn into admissible evidence. I speak to sensitive sources inside Islamic State structures. There are enormous volumes of material that we have secured, and do secure, through cyber-exploitation processes—captured computers, telephones, hard drives, and so forth. Other forms of open-source material are generated by IS itself via the social media revolution. I'm too old for this, but it's YouTube, Instagram, Telegram, Facebook, and these sorts of things.

The difficulty is not building the linkage case; ultimately, and here I speak to Islamic State, it will be transforming it into admissible evidence at trial. One of our national partners has a great deal of experience doing terrorist prosecutions over a prolonged period, and they have been advising us on some of the challenges and solutions to these problems.

Mr. Marc Miller: Another aspect that another witness raised was the fact that a lot of the crimes, however they're characterized, were perpetrated by more low-level operators, neighbours, and friends—more local players in villages. How do you address that, first, obviously, in terms of documenting that—I assume there's a huge challenge—and second, as you look at post-state governance, a process of reconciliation that wouldn't necessarily entail full prosecution whether that ability is there in the first place or not? I'm just curious as to your views on a form of reconciliation that may preclude a strict application of law.

• (1330)

Mr. William Wiley: Realistically the scale of perpetration in Syria and Iraq is such that a minute fraction of perpetrators are ever going to be brought before a criminal court or tribunal. Ultimately alternative justice mechanisms of the sort to which you're referring are going to have to be put into place, such as truth commissions, or truth-seeking and truth-telling processes. We're criminal law people, as you'll have inferred, but we've built our evidential holdings and organized them in a way that ultimately they can be used by transitional justice mechanisms such as these.

Mr. Marc Miller: I have a final question on your operating budget. The Government of Canada funded another \$1.5 million. Is that sufficient, all in all? Can you give me a frank opinion, as to the contribution of member states and the people you're seeking money from, on what is your ideal world? If it's not enough, I'd be glad to hear a number.

Mr. William Wiley: In fact, in the current fiscal year plus an additional six months, so over an 18-month period, Canada's given us \$3.3 million. It's divided between Syria and Iraq. It comes through

different funding streams although we tend to see it as effectively one war. That's just the way things are organized at Global Affairs.

Canada is the most generous donor at the present time, or perhaps it's tied with the European Union; it depends on the conversion rates. The problem is not that Canada should give more; the problem is states, including states that draw very heavily on our material, that give nothing. This is our fundamental problem. The CIJA, because it is a criminal investigative body and performs a task that would normally be done by public authority, doesn't fit properly into any country's or the European Union's normal donor funding streams. We simply don't do normal NGO stuff, if I could put it in crude terms.

Mr. Marc Miller: Thank you.

The Chair: Thank you.

We'll now move to MP Hardcastle.

Ms. Cheryl Hardcastle (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, Dr. Wiley. I'm having challenges today with my voice, so I'm going to front-load this. I'll ask a few quick questions and then I'll let you have the floor and you can kind of riff on what you think about it.

First I want to ask you to talk a little bit more about what you called a unique organization. We do know in the international community that some people have criticized the privatizing of international criminal investigations. Do you see the way this is going as being the way of the future? Does that unique structure create some unique challenges with regard to the co-operation of authorities? In your experience, are these new challenges because of the uniqueness of this entity? What are some of those challenges, and how can we maybe overcome them if this is the way of the future? I know you discussed earlier a little bit about our tribunal and the chamber and you said that you are concentrating on criminal law. What are your thoughts on that?

Mr. William Wiley: Certainly I would reiterate, ma'am, that what makes the CIJA unique is that it's the first time a private body, albeit non-profit, has undertaken international criminal investigations.

I'm a career international criminal investigator. I've been doing this for 20 years now. I started the foundation with the belief that international criminal investigations have no real future unless the system is shaken up to a certain degree. The difficulty is that the investigations have become very slow and very expensive. What we're seeing in the various countries that actually pay for these bodies—the Yugoslavia tribunal, Rwanda tribunal, the International Criminal Court, and so forth—is a considerable degree of donor fatigue. The budgets are just very, very high.

On one level, the CIJA is not about Syria and Iraq. In fact, we are engaged, albeit only modestly at this point, in a number of other armed conflicts. The CIJA is about fostering the evolution of international criminal and humanitarian law investigations, with the idea of making them faster, cheaper, and, from an evidentiary point of view, better.

We found that the model works. It works quite well, principally for three reasons.

One reason is leadership. We've all come out of the international system as investigators, analysts, and counsel, so we know how to put together an international criminal case, or indeed domestic criminal cases as well.

Second, and the principal advantage that we enjoy over international and domestic bodies—not that we're in competition, because we're meant to support these institutions—is the fact that we have a very, very high risk tolerance, a risk tolerance that no public body, other than armed forces, could realistically take on. I want to stress that there's a very big difference between a high risk tolerance and a high risk appetite. We have no risk appetite, but we have this high risk tolerance.

The third thing is that of course one needs enough money. Compared to an international criminal investigative body, we're of course very cheap, if I could put it crudely. We have had sufficient funding over the last several years, but frankly, fundraising is the bane of our existence, because we're lumped in with, if you will, the human rights community. If we were documenting, in the broad sense, like a human rights organization, our budget would be enormous, or it would be considered enormous.

Just to summarize that, and in answer to your first question, I'm aware of the criticisms of the so-called privatization of international criminal investigations. I hear them when I'm going around speaking. There are not many at this point...what we hear as normally coming from NGOs. Our colleagues, former colleagues in the public institutions, especially counsel, are very keen on the idea. I get a surprising number of discreet applications from colleagues still in the institutions and wanting to come and work with us.

Ultimately, the key task is that we need to see more of our dossiers go to trial domestically and of course internationally. The survival of our investigation is at trial. That's the proof in the pudding, if you will.

Finally, in terms of the co-operation challenges with public authorities, when selling this concept, so to speak, we don't charge domestic authorities for the assistance. If we have the resources and the money, then we assist. Sometimes, indeed, we're proactive, taking case files discreetly to national authorities when we pick up on higher-level suspects in their territory through our own networks.

•(1335)

Domestic authorities were very quick to warm to the CIJA model. We refer to it as the CIJA model, and I hope, in the fullness of time, we see, as soon as possible, more CIJAs emerge, called whatever they are. I think this is key to making domestic and international investigations better.

Yes, the domestic authorities have warmed very quickly. Each country has its own data privacy laws, which can be an issue. With some countries, especially if we're supporting them on the Islamic State side, the information flow is very much one way, from CIJA to the national authority. If we're supporting national immigration authorities, usually we're just running names, and they'll come back for clarification on the hits, but there's not a lot of back and forth there.

There's tremendous back and forth with the national prosecutorial and investigative authorities. It's very collaborative. Some countries are held back by their data privacy laws and the fact that we're a private non-governmental institution. In most countries, the laws are not that bad, including Canada. Some countries are simply ignoring whatever their data privacy laws are to get the job done.

•(1340)

The Chair: Thank you very much.

We'll now move to MP Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair.

Thank you, Doctor, for coming in today. It was really great testimony.

I have two questions. One is to build on what MP Hardcastle said and what your answer was to her questions. We had a witness speak to us about accountability and building systems of accountability within the affected areas that we're talking about today. Does CIJA have a role to play in helping locals build accountability systems or, in essence, build a justice system post Daesh?

Mr. William Wiley: The short answer is yes. This is what we're trying to do in northern Iraq at the present time.

I would also add that at the present time we don't support Iraqi prosecutorial authorities. There are two reasons for that.

One is that prosecutions in Iraq at the present time, whether under the authority of the central government or the Kurdistan regional government, are pursued through deeply flawed terrorism legislation, which in our opinion doesn't offer sufficient due process guarantees to the accused.

Secondarily, of course, Iraq has the death penalty. Our donors—indeed, it's my position as well—won't support prosecution in capital cases in Iraq or anywhere else. In establishing this court in northern Iraq, we have to get implementing legislation through the Kurdistan regional parliament, and that gives us the opportunity to ensure that the death penalty won't be applied by this specialized chamber.

I will return to Syria in the new year to have a look at the possibility or the potential for criminal justice accountability in one of the areas of Syria where the confrontation line is relatively stable. I'm not overly hopeful that the prospects are that good. I think it's premature at the present time. Obviously in Syria we can't get international advisers in there and so forth. It's simply too dangerous for the average lawyer or analyst and whatnot. Also, obviously the death penalty is being applied by these ad hoc courts, which is a second problem.

So yes, it's simply premature. I see no realistic prospect for the application of criminal justice in or on Syrian territory to the necessary standards at the present time.

I want to add a final point. International criminal justice for core international crimes is highly symbolic. It's very important that trials are fair and are seen to be fair. Otherwise, we lose the symbolic benefit of the exercise.

Ms. Iqra Khalid: Is there a role for Canada to play, other than providing funding, to help you in your mission and to increase accountability within that region?

Mr. William Wiley: Absolutely. One of our better partners.... Is it Global Affairs Canada now? I've lived abroad for many years, and I apologize, I'm not always up to date on the latest name changes. Global Affairs Canada is one of our better partners, in fact as good as any, on a par with the United Kingdom and the European Union in particular, insofar as they assist us on the political and diplomatic level, in places like Baghdad, bringing us together with other interested states to raise money and so on and so forth.

That assistance is there. More generally, to go back to the theme pursued by your colleague, it's very hard, as a private organization, to bring states together. We can do it informally to a certain degree, but with the cleavages that exist within any given state, as a result of just different structures and whatnot, you can imagine, when you try to bring states together, how very difficult it is. Where we can get states together, or where they come together, and Global Affairs Canada's been very helpful here, things happen very quickly, frankly.

• (1345)

The Chair: Thank you very much.

MP Anderson.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Thank you, Mr. Chair.

I would like to thank our guest for being here with us today.

You mentioned, sir, that you collected evidence for asylum screening. I'm just wondering how extensive that is. Do you know if Canada has used that screening for its purposes?

Mr. William Wiley: The Syrian regime names database was set up, or we started the process of setting that up, about two years ago. It's always been funded by Germany, and it's run outside of our headquarters. It was initially run in Sofia, Bulgaria. For security reasons I won't say where it is now, but it remains in continental Europe. It employs Syrian refugees in this task. Effectively, we're pulling names from the digitalized regime documentation and putting them into a stand-alone database with hyperlinks to the source documents. It's a very inexpensive, simple platform, and a great many immigration authorities are using it.

In a public forum such as this—I apologize profusely—it would be remiss of me to indicate which countries are drawing on this, but suffice it to say that it's available to any liberal democratic state that needs it.

Mr. David Anderson: Okay.

Mr. Miller touched on this a bit earlier, but previous witnesses have suggested that rather than going after the lower-level perpetrators, they need to be brought to justice in their own area. From your experience, do you think it's realistic to expect that we're going to be able to establish functional justice and court systems in these areas post conflict that will be able to hold people to account?

Witnesses have said they think that's the way to bring some sense of peace to these areas and to settle these disputes between what were previously neighbours. Is it a realistic expectation to think that we can do that in the future?

Mr. William Wiley: To be honest, it's not going to be easy. I worked as a legal adviser quite a few years ago in Baghdad during the trial of Saddam and the other senior Baathist officials. To put it in layman's terms, from a due process point of view the whole thing was a God-awful mess, and for myriad reasons.

We think that through this initiative in northern Iraq, for various reasons, we can have trials that will meet western due process standards. In Syria, even with the war over, if there is a transition to a liberal democratic form of governance, it will really take some time. There will be a great deal of residual violence, amongst other things. I think criminal justice related specifically to Syria will probably have to happen outside of Syria, at least if it's to meet necessary due process standards. However, with transitional justice mechanisms in truth telling and truth seeking, I think experience shows that these mechanisms can be set up on Syrian territory.

Mr. David Anderson: I just have a question, then. We've had some folks come and suggest that a safe zone should be set up in the Mount Sinjar region, the Nineveh plains, or whatever to protect some of the ethnic minorities. Do you think that would be a useful idea to you in terms of setting up the structures you need to get some of the results you want? Is it a good idea, in your perspective, or does it matter to you? Would it make a difference?

• (1350)

Mr. William Wiley: It doesn't make any difference to us. From a criminal investigative point of view, we already operate in that area with the support of the Kurdistan regional forces. It's pretty safe in there compared with Syria or further south, in Mosul. It's like Parliament Hill.

Mr. David Anderson: It's safe most of the time.

Mr. William Wiley: Indeed.

Mr. David Anderson: I'm not sure how much more time I have, but I want to take a couple of minutes to talk about some of the risks that your investigators and contributors take while investigating. They're doing some heroic work here. What are some of the dangers they face as they're trying to do their work?

Mr. William Wiley: Generally in Iraq we don't have too many problems, because we operate forward to the confrontation line, but ultimately always north and west of that line.

In Syria it's a very different matter. There are three principal risks to the investigators on the ground at the present time. One, more broadly, is indirect fire, aerial attack. One of our investigators was wounded in Hama six weeks ago, not too badly, during an aerial attack, with no relationship to his work as such.

The second threat we have is the entities opposed to our work, so initially the regime. We had a team in greater Damascus, all of whom were captured about four years ago, so we didn't, in fact, reinforce failure there. We don't have a regular presence there any longer. The regime has ceased to be a threat. The threat over the last three years has really been posed by radical jihadists: Jabhat al-Nusra and, since early 2014, Islamic State. Some of our investigators were arrested by the Nusra Front and Islamic State. They were released, in the end, because we have very good security protocols to protect them against this eventuality—encryption of their equipment, of course, and cover stories, if you will. But they are vulnerable to denunciations, and they have to be careful.

The final area—this has always been the most dangerous—is the document extraction in the north because of the highly fluid nature of the confrontation lines and both the regime and radical jihadists being hostile to our work for various reasons. It is in moving that material to international borders and then over the borders and onward to the west that we've had the most people either wounded or, in one case, killed, because it takes them out of their normal area of operations.

We haven't had anyone hurt in this way in a couple of years, principally because we transferred responsibility for the planning of these operations out of the field and into headquarters. We found that our Syrian colleagues had more of a fatalistic attitude to, let's say, their future than I did. They were sort of leaving it in God's hands. What we have them doing now is proper movement plans and so forth. I knock on wood here, but that's solved that problem.

Mr. David Anderson: Thank you.

The Chair: Thank you very much.

We're going to move to a short question from MP Tabbara before we wrap up.

Mr. Marwan Tabbara (Kitchener South—Hespeler, Lib.): Thank you, Mr. Chair. I'll be very quick with my question here.

Sometimes when atrocities have happened around the world, or a tragedy, news outlets are quick to call them terrorist acts when sometimes they in fact are criminal acts. You were quoted in an August 2016 BBC article as preferring that, in domestic courts, Daesh fighters be tried as criminals and not as terrorists. Can you explain why?

• (1355)

Mr. William Wiley: We don't do advocacy, as I said, but of course we're happy to push positions occasionally privately with partners. We've been encouraging domestic prosecutors to accept as much assistance as we can give them to undertake some of their Daesh prosecutions, pursuant to, if you will, normal criminal law as opposed to terrorism law. Returning Daesh fighters in Europe, for example, are, in every case that I'm aware of, being prosecuted pursuant to terrorism law.

This is, in our opinion, counterproductive from a counter-messaging point of view. Think about the stereotypical disaffected young man—perhaps not in every case ethnically Muslim, but the

majority—who are vulnerable to IS online recruitment propaganda. Labelling IS fighters who are prosecuted as “terrorists” is counter-productive, we believe, because young men will say, well, George Bush is a terrorist, or Tony Blair. You follow what I'm saying here.

If we can have, through criminal justice processes, some, although not all...because it's very easy to prosecute pursuant to terrorism law. If we can occasionally have some of these men prosecuted pursuant to normal criminal law for murder, theft, rape, and other normal criminal offences, if you will, or offences other than terrorism, we can send the signal to those would-be joiners that they're looking at joining a criminal syndicate: they're not on their way to becoming soldiers of the caliphate or fighters for the prophet and so forth. The objective is really a counter-messaging, countering violent extremism.

Mr. Marwan Tabbara: Thank you.

The Chair: Thank you very much, Dr. Wiley. We greatly appreciate your being available to provide testimony before the committee this afternoon. As you can imagine, this is an issue that not just this committee but all parliamentarians here in Canada feel exceptionally strongly about. Again, our Parliament is taking action on multiple fronts in terms of the plight of specifically Yazidis but also other religious minorities in Syria and Iraq.

I thank you again for being here with us today.

Mr. William Wiley: It was my pleasure. Thank you for your ongoing work in this area. It means a lot to those of us in the field, especially the Syrians and the Iraqis.

Thank you.

The Chair: Before we adjourn, some members of the sub-committee have raised an issue that I want to bring before the committee to get some consensus on. There are two particular hot spots that we've reviewed over the last number of months, since this committee has been formed, and there have been flare-ups in those hot spots of late. It's something that we can seek to address maybe at the next meeting. I know have another meeting tomorrow. In particular, it's the Rohingya, and also Aleppo.

We studied the Rohingya last session, but since October 9 there has been a recurrence and an increase in violence in Myanmar, particularly targeting the Rohingya. The issue has come up about us possibly issuing a shorter joint statement on the nature of this flare-up and our feelings about it. Certainly, if we're interested in doing that and being heard on that, that's something we can discuss at the next meeting.

With regard to Aleppo, we issued our joint statement on Aleppo after our emergency hearing probably three weeks ago, but I think it's clear that there has been an escalation this past weekend that seems to be continuing, with a clear deterioration in terms of the catastrophic actions that are taking place. Maybe we can get some feedback from the analysts at the next session, but if there is a feeling that this might be a positive route to go, we can address that.

With that, we shall adjourn.

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