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**EVIDENCE**

**Thursday, November 21, 2013**

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**Chair**

**Mr. Dean Allison**



## Standing Committee on Foreign Affairs and International Development

Thursday, November 21, 2013

• (1530)

[English]

**The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)):** I call this meeting to order.

Gentlemen, thank you very much for taking the time to be here today as we look at Bill C-6.

General Natynczyk, we thank you for being here. We will start with you first.

I also want to introduce Dr. Dorn, who is a professor at the Royal Military College of Canada.

We realize both of you are here as individuals, so thank you for that.

General Natynczyk, why don't we start with you, sir. We'll go with 10 minutes, and up to 10 minutes as well with Dr. Dorn, and then we'll move back and forth over the rest of the hour with questions and answers.

Thanks again for being here. The floor is yours.

[Translation]

**Gen Walter Natynczyk (President, Canadian Space Agency, As an Individual):** Mr. Chair, ladies and gentlemen of the committee, I would like to thank you for inviting me to appear today.

I am delighted to have this opportunity to share my personal views on Bill C-6, the Prohibiting Cluster Munitions Act. I am here today as an individual, as well as a former member of the Canadian Armed Forces and former Chief of the Defence Staff.

[English]

As many of you might be aware, I served in uniform for about 37 years. Over the course of my service, I deployed for three years on peacekeeping operations, on stability operations, and on combat duty. I've worn the blue beret with the United Nations in Cyprus, Bosnia, and Croatia. I've been a NATO commander in Bosnia, and I was deployed throughout 2004 as a deputy commanding general of a U.S.-led multinational force in Iraq, while on exchange duties with the U.S. Army. I participated in exercises in Europe, the Middle East, and South Korea.

[Translation]

With that perspective, I hope to be able to share my opinions and experiences as they relate to the convention's impact on the Canadian Armed Forces in conducting operations around the world with Canada's closest allies.

Throughout my military career, I saw how the relics of war, even after the guns had gone silent, killed and mutilated the most vulnerable: the young, the disabled and innocent civilians.

[English]

I spent my time in Bosnia and Croatia in 1994-95 and I saw the indiscriminate effects of landmines on civilians tilling their fields, children playing near schools, our own Canadian men and women and allied United Nations soldiers who attempted to bring peace and security to those troubled countries.

[Translation]

Similarly, unexploded cluster munitions have a devastating impact on civilian populations long after the conflict has ended. Countries like Vietnam, the entire region, in fact, continue to suffer the effects of cluster bombs dropped during the Vietnam War.

[English]

It's because of this heavy cost to civilians that the international community, justifiably, has created this international law to prohibit the use of cluster bomb munitions. I believe this convention is very right and very important to Canada and to the global community to save lives.

[Translation]

Even though the Convention on Cluster Munitions is not yet in force in Canada, the Department of National Defence and the Canadian Armed Forces adopted measures that were in line with the convention during my time as Chief of the Defence Staff.

[English]

You'll remember that in 2008, when I approved the interim order, Canadian service men and women were on a NATO-led combat mission in Afghanistan and participating on numerous other operations in the Middle East, Africa, Kosovo, and Haiti. Since then our soldiers, sailors, and airmen and women also participated in the United Nations-sanctioned and NATO-led mission to protect civilians in Libya.

[Translation]

In each of those theatres of operations, our men and women in uniform were asked to serve in conditions that could be described as unstable, uncertain, complex and ambiguous. And we expect our military leaders, from corporals to generals, to make sound and timely decisions that contribute to a mission's success in the most challenging situations. They are frequently called upon to make decisions in the face of serious time pressures and complex conditions.

•(1535)

[English]

I believe that Canadians can be justifiably proud of their armed forces. From my standpoint, man for man, woman for woman, unit for unit, they are among the most professional forces in the world. As a result, our allies want Canadians on their flanks. My experience has been that when a crisis erupts, our allies and partners are immediately requesting the participation of the Canadian Armed Forces.

[Translation]

The challenge is that some of our NATO allies, such as Poland, Turkey and Estonia, as well as some of our international partners, including South Korea and Israel, have chosen not to join the convention. Clearly, each of those countries is dealing with major geostrategic security concerns that we, in Canada, are not faced with.

[English]

The United States, our NORAD and NATO ally, also made the decision not to join the convention. While we cooperate closely with their armed forces across the defence and security spectrum, sometimes we must agree to disagree, as is the case with the cluster munitions convention.

I understand that during the negotiation of the convention, Canada and several of our NATO allies championed a clause, I believe it to be article 21 of the convention, that sought to safeguard our ability to cooperate on military operations with countries that are not party to the treaty.

[Translation]

If we had to enforce article 21 of the convention, the exceptions listed in clause 11 of Bill C-6 would protect our men and women in uniform against prosecution, because they would have simply been carrying out their military duties.

[English]

From my perspective, I believe article 21 enables our forces to remain fully interoperable with the U.S. armed forces. This comprehensive level of cooperation is a unique strategic advantage for Canada. It is the result of the reality of our joint defence of our continent and a reflection of shared trust, confidence, and values.

The interoperability clause of the convention strikes a fair balance between profound humanitarian principles on the one hand, and Canada's security realities on the other.

I believe it's important for Canada to retain full capability to participate in combined operations with our allies that enhance our national and collective security.

[Translation]

Many Canadian Armed Forces members are currently on secondment or taking part in exchanges with the U.S. military in places like Afghanistan or the continental U.S. These members occasionally support training activities for our Polish allies. They may be posted in Turkey under NATO command or under UN command in South Korea.

[English]

My assessment is that the fulfillment of their routine military duties should not expose them to prosecution, for example, for calling in aircraft to save the lives of our soldiers or allowing an aircraft to land on an airfield we control, for air-to-air refuelling of fighter aircraft, for sharing of intelligence, or for authorizing a port visit of a ship.

Having had the exchange experience as the deputy commanding general of the Multi-National Force - Iraq throughout 2004, I can say to you with confidence that I was never aware that cluster bombs were actually stocked in theatre or that I participated in planning for their use or, in fact, authorized their use. I had none of that experience whatsoever.

However, unwittingly I could have done so, and I could have participated in activities, without my knowledge, that assisted in the use of cluster munitions, but I would not have known it at that time.

[Translation]

Therefore, Mr. Chair, it is my personal opinion that these exceptions are necessary to protect members of the Canadian Armed Forces when they are sent into dangerous situations, with the expectation that they will fulfill their duties to protect Canada and its interests.

[English]

In my layman's opinion, Bill C-6, as currently drafted, appropriately reflects the Convention on Cluster Munitions prohibitions and exceptions.

I believe it strikes the right balance between our international obligations to rid the world of these destructive weapons, while recognizing Canada's unique security realities, and ensuring a specific legal protection for the men and women of the Canadian armed forces who continue to serve.

Thank you.

**The Chair:** Thank you very much, General.

We're now going to move to Dr. Dorn.

The floor is yours, sir.

[Translation]

**Prof. Walter Dorn (Professor, Royal Military College of Canada, Department of Defence Studies, As an Individual):** Mr. Chair, thank you for the opportunity to appear before this important committee.

I gave the same remarks in 1995 with respect to the Chemical Weapon Convention. In addition, I was present in Parliament when the Ottawa convention banning antipersonnel mines was ratified.

At the Canadian Forces College, I teach officers from 20 countries about arms control and international UN law. I work as a consultant for the UN and have taken part in peacekeeping operations.

• (1540)

[*English*]

As with landmines, we all agree it's high time that the world send cluster munitions to the trash bin of history. To achieve this ban, the treaty is categorical in its first article that a state party may "never under any circumstances" use or assist in the use of these inhumane weapons. Canada's long-overdue ratification of the 2008 convention is welcome as the country takes its place among the progressive nations demonstrating humanitarian concern, but the implementing legislation, Bill C-6, contains one completely out-of-place clause. I appreciate that the government is willing to hear the arguments against clause 11 and to consider eliminating or amending the obnoxious paragraphs.

Who would want Canadians to use cluster munitions, aid and abet, direct or request their use, or conspire with another person to use these indiscriminate weapons? Yet this wording is in the legislation itself to allow for the so-called cooperation with a non-party, which we know to be aimed at the possible cooperation with the United States. Besides being abhorrent, the problems with the approach are twofold.

First, it is against the spirit and I am convinced the letter of the treaty. Article 21, paragraph 3 of the treaty is not a basis for and cannot be used to justify the legislation's clause 11. The treaty article only reaffirms that "States Parties...may engage in military cooperation" with states non-party. It allows countries to be a part of a coalition in which some members might use cluster munitions, but it does not give any authorizations for their use by states parties. This understanding of a complete prohibition "under any circumstance" in the convention's primary article is the view of a great many states, international lawyers, civil society organizations, and Canada's main negotiator of the convention, Earl Turcotte, who is in fact one of the primary drafters of article 21.

Another reason to amend clause 11 is that it is not necessary. With deference to General Natynczyk, who has a great deal of experience, I can foresee scenarios whereby some of the problems he might have encountered in Iraq can be overcome. The various scenarios that have been advanced are really exceedingly rare, as we've just heard from him, and can be dealt with in ways that do not contravene the convention and do little damage to interoperability.

For instance, individuals in a chain of command can recuse themselves, that is, temporarily remove themselves, so that a cluster munitions order may skip or detour around the Canadian. General Lessard was telling me about this possibility for the Canadian Forces yesterday. Similarly, if Canadians are in planning or intelligence units, they can recuse themselves from assisting in specific parts dealing with cluster munitions.

Caveats can be entered before participating in a multinational coalition. Such national caveats are common. We were just speaking about this before the providing of testimony and you hear about how the commanders have matrices, Excel spreadsheets with national caveats. It's part of the routine business of working with multinational coalitions to ensure respect for national prerogatives. For instance, if Canadians were in a coalition operation, the U.S. might have to ensure that any U.S. aircraft that could be used for close air

support, an example just provided, do not carry only cluster munitions but have other munitions as well, which is normal.

Logistics such as air-to-air refuelling of U.S. planes carrying cluster munitions, or landmines for that matter, can be provided by the U.S. rather than Canada.

Training exercises can be designed so that any cluster munitions used are not done as part of the combined operations, but are completely separate.

By taking these actions, Canada would fulfill the other provisions of article 21 to discourage the use of cluster munitions and to encourage non-parties to accept or accede to the convention, something we can hope the U.S. will do in the near very future.

In any case, under article 21 Canada has an obligation to notify the U.S. of Canadian commitments under the convention.

Since the instances of non-cooperation are very rare, and in fact, the minister the other day said they were infinitesimal, and the humanitarian principles are shared by most of the members of the international community and almost all members of NATO, it is not expected to be a serious impediment to the important military relationship between Canada and the United States. General Natynczyk said that we have full interoperability, yet we still agree to disagree on different issues. Interoperability can be maintained.

Article 21 does give Canada cover when the U.S. uses cluster munitions in a fashion that is beyond Canadian control. Merely being a member of a coalition does not mean Canada is complicit or is assisting with cluster munitions. That is the real value and meaning of article 21.

This approach suggests a better way to design the cooperation section of the implementing legislation, drawing on the standard-setting Canadian legislation passed for the Ottawa treaty. The anti-personnel mines legislation states that Canadians are not prohibited from "participation in operations, exercises or other military activities" with non-parties "if that participation does not amount to active assistance in that prohibited activity".

This idea of active assistance is what should be the standard. This allows Canadians who are not actively assisting to be free from potential prosecution. That is a better way. It will allow Canada to be a stronger force for international humanitarian law, draw less ire from some of our colleagues and allies, and help the world to finally place these weapons into the trash bin of history's most inhumane weapons.

• (1545)

[*Translation*]

Thank you, on behalf of humankind.

[*English*]

**The Chair:** Thank you very much, Dr. Dorn.

We're going to start our first round, which will consist of three questioners. We will have a chance to do a second round. We should be able to get in two full rounds, and we'll see if we can go a little bit past that.

I'm going to start on my left-hand side with Mr. Dewar.

**Mr. Paul Dewar (Ottawa Centre, NDP):** Thank you, Chair, and my thanks to our witnesses.

General, I would like to start with you. Let me start off by welcoming you to the committee and thanking you for your service. As I said, you look good in civvies.

In your experience in joint operations with the Americans, did the Ottawa treaty ever prevent you when you were in situ with them from serving with U.S. forces?

**Gen Walter Natynczyk:** Thank you very much for the warm welcome.

We arrived in Iraq in January 2004, and we thought we were on a peacekeeping stability mission. This became a combat operation after Easter of 2004, with operations in Fallujah and Sadr City. For that whole period, which was a peacekeeping stability operation that became a full-blown insurgency, you would not deal with putting down land mines from a tactical or operational standpoint. None of that was within the context.

In answer to your question, there was no exposure to mines in theatre other than mines that were left from the previous Iraq-Iran war and clearing those in the south-southeast of the country.

**Mr. Paul Dewar:** What about when you were working with the Americans? Were you ever in a situation where the U.S. was considering the use of cluster munitions?

**Gen Walter Natynczyk:** During my time in Iraq, there was no knowledge at all about cluster bombs being in theatre, nor was there any planning of that type of munition back in 2004.

**Mr. Paul Dewar:** We had the minister here just the other day, and he mentioned on article 21 that he would prefer to see it gone and work towards that, with the caveat that we'd be able to do joint operations.

One of the things that he was wanting to see, and I think we'd all like to see, is to encourage the other countries, particularly the United States, to join us on the ban of these horrific munitions. Would you concur with that?

**Gen Walter Natynczyk:** Absolutely. Having been on exercise in a lot of troubled areas, whether in the Middle East, the Korean Peninsula, or Europe, the scars are very deep, so dealing with our allies and trying to convince them to move to more modern times is very tough.

• (1550)

**Mr. Paul Dewar:** On joint operations, when you have different points of view, do you employ those caveats? I remember when I was in Afghanistan in 2007. You're at KAF and you see certain troops who are behind the wire and are not going out because of their caveats. These were things that were negotiated with the joint force through ISAF and the agreements between countries as to where people would go, what they would do, and how they would operate.

Would you not note that this is one of the differences between countries and how they train and also how they operate in the field, that it's pretty customary now to have caveats and certainly to be very explicit about what those differences are?

**Gen Walter Natynczyk:** I would say, sir, from my experiences in not only Iraq but Afghanistan, Bosnia, and every peacekeeping mission that I've either seen or followed, and I was chief of joint operations for two and a half years in Kosovo missions and Africa missions, that the level of and the nature of the caveats depends on the national interest of each of the respective countries concerned. What risks they are willing to take depends upon how important peace, stability, or victory on the battlefield is to their national interests.

**Mr. Paul Dewar:** Thank you.

I wanted to clarify one thing, Chair. The last time we were here we were discussing whether Laos had signed on. I wanted to follow up for the record that they have signed and ratified. I know that was a question for the minister. I wanted to read that into the record.

We know, Mr. Dorn, that at least 11 of our NATO partners believe that this legislation, particularly clause 11 as cited, is something on which they disagree with us. Where the discussion was going the last time with the minister, and hopefully we're continuing that discussion, was on how we can amend it.

Do you see an amendment that would satisfy what you understand is the government's position and the integrity of this important agreement?

**Prof. Walter Dorn:** I sympathize with the government's desire to protect Canadian soldiers from prosecution if they're somehow involved, even peripherally, with cluster munitions, but I don't think you need such strong legislation. It goes the furthest of all legislation that's been passed by 84 ratifying countries in trying to say what soldiers can do.

In fact, I believe that provisions of this legislation are in contravention of the convention because they go so far in allowing Canadian soldiers to use cluster munitions and whatnot. A much reduced clause 11 in the legislation would be much more palatable to our NATO allies and to countries around the world and those like Norway that are really pushing for the Oslo convention to succeed in the widest possible measure.

There are other options. The landmine option is a viable one for me. It's no active participation and no active assistance with the use of cluster munitions. If you had this, for instance, under General Natynczyk's watch in Iraq, if the Americans had used cluster munitions but he wasn't even aware that they had them, he couldn't be prosecuted because he wasn't aware of that at the time. He wasn't actively participating in the use of cluster munitions.

You just need to be able to have legislation that puts the bar at a level whereby you're protecting Canadians from almost any conceivable scenario in which we've taken protection not to be part of the cluster munitions use.

**Mr. Paul Dewar:** That's all my time.

**The Chair:** Thank you, Mr. Dewar.

We're going to move to Mr. Anderson. Sir, you have seven minutes.

**Mr. David Anderson (Cypress Hills—Grasslands, CPC):** Part of our discussion the other day was on that issue of active participation and how that's defined. We had certainly some different positions at the table on what that definition might be.

General, I'd like to ask you about our interoperability agreements and how they work with other countries. Which ones are unique to Canada as compared to some of the other countries and the way they've set up their agreements?

**Gen Walter Natynczyk:** Sir, I would say that the most unique and profound agreement is NORAD, and now we've surpassed 50 years of our relationship with NORAD.

Again, this is a relationship where, at the highest level of government, through the military structure, we have a seamless relationship in terms of operations and intelligence in order to protect this continent, whether it be the deputy commander of NORAD in Colorado Springs all the way through to any exchange of U.S. and Canadian men and women on both sides of the border.

It is one such that a few years ago, when the U.S. had a fleet of their fighter aircraft break down and they grounded their whole fleet of F-15 fighters, within 18 hours we had scrambled a squadron from Bagotville and we basically protected Alaska during that period of time. That half-squadron arrived and within hours was going up to intercept very large aircraft that were approaching the Alaskan territory without having filed a flight plan. They were very big aircraft.

All of this is to say that the U.S. in that instance, as is the case each and every minute of every day, had a relationship of great trust and confidence in us, as we do in them, and we take that relationship around the world. It's interesting when you go aboard a U.S. ship and they take you into their sonar room and say that the individual working the sonar is the most talented individual on the ship and that individual is a Canadian. It's the same thing in terms of intelligence. Again, the level of integration in military intelligence is so strong and is reinforced by this current experience in Afghanistan. The fact is the value goes both ways.

In answer to your question, NORAD makes it all different, because the reality is that we are joined at the hip with the U.S. No other country has the kind of security relationship that we do. Others wish they had that relationship.

Beyond that, obviously, we get into a NATO context, but for the most part, we're talking about dealing with our European friends.

Thank you.

• (1555)

**Mr. David Anderson:** I want to follow that up a bit. The other day we heard that the numbers of Canadian soldiers who could possibly be involved in this would be extremely, extremely limited, if there ever were any. Then we have this discussion about active

participation. We've talked about transit over Canadian airspace, and about the possibility of close air support in a combat situation.

I'm just wondering how practical it is for us to then say to one of our non-signatories, and I'm thinking particularly of the U.S., that they need to change their armaments in order to accommodate our desires and our requirements in a combat situation. Is that practical at all?

**Gen Walter Natynczyk:** Sir, from my understanding just in reading this over the last few days, that doesn't happen military to military. The kind of discussion you're talking about happens at a diplomatic government-to-government level.

While at any one moment we can assess that the probability is low of anything, we have been abject failures at predicting the future. Had you told me a few years ago that we were going to be in Afghanistan, I would have said, "Okay, where is that?" We've been to places like East Timor, Eritrea, and Kosovo. When they say that we're going to go to Kosovo, we cannot predict what's going to happen next. That's the challenge for the military. The men and women in uniform will always salute the flag, move out the door, and do the best they can, because they have no choice. They signed up. They volunteered. And they do an extraordinary job.

All of that is to say that when we have them in harm's way we have to give them all the tools to be successful because their lives are at risk. That again has been reinforced by the experience in Afghanistan. Really, since Korea, we kind of forgot that piece. Having worn the blue beret a number of times, we actually got into really hot situations in places like Cyprus and places like Bosnia.

I think we need to provide the tools so that the men and women can achieve their mission to bring peace and security to far-off lands, because it affects Canada. The defence of Canada starts 10,000 kilometres away in places like Kabul, Afghanistan.

**Mr. David Anderson:** I'm probably only going to have time for one more question. I think the committee here has been clear that we think the best thing would be for these things to vanish. The minister was clear the other day as well.

I'm just wondering if you have any suggestions for us as to how Canada might be able to work with non-signatories to convince them that it's time to sign up, that it's time for them to get rid of their cluster munitions. We know that the list of nations that have decided not to sign is fairly long. Can you think of things we could do that might encourage others, particularly our closest partner, to reconsider their position and to sign on to the treaty?

• (1600)

**Gen Walter Natynczyk:** Sir, the answer to all of this is diplomacy and dealing with those troubled lands to try to bring the friction to some level of resolution. We know the areas around the world where there is that turbulence and friction.

The solution is not military. The solution is diplomacy, dealing with the interests, and reconciling the interests on both of those sides.

**Mr. David Anderson:** Until that happens, are you comfortable with the exclusions we see in clause 11 in order to protect our troops in their operations?

**Gen Walter Natynczyk:** Sir, as I said in my statement, yes.

**The Chair:** Thank you.

We're going to finish the first round with Mr. Garneau.

Sir, you have seven minutes.

**Mr. Marc Garneau (Westmount—Ville-Marie, Lib.):** Thank you, Mr. Chair.

My first question is for General Natynczyk.

I hope you're enjoying the Canadian Space Agency. Sometimes I wish I were back there myself.

**Some hon. members:** Oh, oh!

**Mr. Marc Garneau:** On the issue of cluster munitions, the U.S. still has them. I would like to have your assessment of why they still consider it to be a weapon that's worth having in their arsenal for possible use in the battlefield.

**Gen Walter Natynczyk:** I don't have any insight at all.

What I would say to you from a land warfare tactical and operational standpoint is that the U.S. has treaties with a number of nations around the world where, with regard to any kind of invasion of those nations, the U.S. is treaty-bound to come to their defence.

Clearly, that is the case with NATO, and we're all well aware of that, but my understanding is that the U.S. also has commitments to other nations that, as I mentioned in my statement, are in troubled regions of the world.

The problem is there has been the experience of offensive operations on to those countries. The question is, are the defences satisfactory? Clearly, the United States sees there is a need for all of the tools out there. I cannot make a judgment call on that, other than to say that these weapons are clearly abhorrent.

It would also indicate from the other non-signatories the great concern they have in terms of their vulnerability.

**Mr. Marc Garneau:** Thank you.

As far as we know, as I understand it, they haven't been used since 2003, and the U.S. army apparently declared that cluster munitions were a loser in Operation Iraqi Freedom and a relic as well. I've also seen them described as a useful weapon as well, so it's hard to understand exactly how they feel about it.

You were very clear on condemning the use of these weapons, particularly because of the devastating effects they have for decades after and particularly killing innocent civilians.

Here's a hypothetical question, General. We have been staunch allies of the United States, and you quite rightfully pointed out that we have carried our load. If we said to our U.S. ally that we would continue to be staunch allies in the years to come but if we engaged in joint operations with them, it would be on condition that in those particular engagements they didn't use cluster weapons, do you think that would seriously jeopardize our relationship with the United States in the context of NORAD or within the broader international context of NATO?

**Gen Walter Natynczyk:** Sir, I don't know. We have great relationships in terms of trust and confidence with them, but I don't know enough about their thinking with regard to this and the current situation in some of the hotspots around the world, so I really can't comment on that.

**Mr. Marc Garneau:** Very good. I'll offer my opinion. I don't think our relationship would be seriously jeopardized.

Dr. Dorn, I have a couple of questions for you. You've obviously presented this before the Senate and talked about changes to clause 11. How were those greeted at that point? Obviously, they're still there, so somebody disagreed with you. What were the counter arguments they presented to the changes that you feel should and can be done to clause 11?

**Prof. Walter Dorn:** I've had discussions with people from Foreign Affairs and from JAG in the military, and they were valuable discussions.

There's a debate about the utility of such strong language allowing such a wide range of activities for Canadian soldiers. We both agree that the Canadian soldiers should be protected, but this sets such a bad precedent for the rest of the world who might use those similar sorts of provisions to do lots of nefarious things.

The typical arguments that I get are the examples such as if a Canadian is on the ground and needs to call in close air support and the only plane that's in the air has cluster munitions on it. My response is that's part of force planning, that you can pre-envison all those kinds of scenarios so that you can make sure that it isn't the only aircraft in the air, that the Americans know that, and it will also put pressure on the Americans to make less use of cluster munitions, which we're supposed to do under the convention in any case.

I haven't found any case yet—the Australian discussion paper from the negotiations, or any case that I have discussed—that I saw as a showstopper for legislation that just says we won't actively assist with cluster munitions.

• (1605)

**Mr. Marc Garneau:** You raised the notion of caveats. Can you give me an example? Can you imagine a possible caveat that might help in the case of cluster munitions, for us to ultimately accomplish what we want to do, which is not to see them used?

**Prof. Walter Dorn:** I think General Natynczyk could give you very good examples of caveats from Afghanistan.

Obviously, we signed the landmine convention and the United States hasn't. We don't want to be laying landmines if we're in a joint camp together.

The caveats that came up frequently and were often complained about in Afghanistan were that the Germans wouldn't fly in the south and wouldn't engage in combat operations. These are standard practices in putting together a multinational coalition. I could see that we could have caveats on cluster munitions that would be perfectly natural. Even with our legislation we'd still have those caveats. We can't actively ask Canadian soldiers to plant landmines or cluster munitions, or drop them, or shoot them from artillery.



I think we'll be faced with that situation in presenting caveats anyway. All the prohibitions and treaties should be part of our caveat.

**The Chair:** You have 30 seconds.

**Mr. Marc Garneau:** You talked about active assistance. I'd like you to define what exactly you mean by that.

**Prof. Walter Dorn:** That would come in the very rare possibility of a court case. The court might have to decide what active assistance is exactly. Participating knowingly, because there's the *mens rea* provision of law, and knowingly putting a cluster munition into the ground and shooting it is being actively involved. If you're just sitting back and saying that the Americans are over there doing that, then that's not a problem, but if you're saying that you need a cluster munition in this position, then you're actively participating in it. If you're helping transport the cluster munition for its use, then that's active participation.

I think the word "active" is a pretty good one.

**The Chair:** Thank you, Mr. Garneau.

We're going to start our second round, which will be five minutes for questions and answers.

I'm going to start with Mr. Goldring.

**Mr. Peter Goldring (Edmonton East, CPC):** Thank you very much and thank you for being here, gentlemen.

I might say that I believe I looked snappier in my uniform than I do today in my civvies.

I think it's well known that Canadian soldiers' reputation as peacekeepers was really built in the wars throughout the past century. We can look at the first one, with Vimy Ridge. You can go through Ortona. You can go through D-Day. Perhaps a more comparable one would be Korea. We're recognizing 50 years since the ceasefire in Korea. The PPCLI was engaged in one of the pre-eminent battles there, Kapyong, and in fact won a presidential citation for it.

My point here is I believe that our soldiers' interoperability is saving lives and has saved lives, many lives. Having restrictions on that capability could keep them from helping out in different world situations that they have been in in the past. I certainly feel, as does everybody in this room, that cluster munitions are just obscene. They really should not be used. All attempts to ban them should be worldwide.

In the meantime, we have another responsibility and that's to the world. We have a responsibility to be engaged. As you said, General, we don't know where the next one is going to be. I hardly knew where Afghanistan was before that came up, but it was necessary for Canada to be on the pointy part of that confrontation with the United States. Whereas many other countries had exceptions to it, and they might not go out at night or they might not do it this way or they might not do it that way, Canada had none of those exclusions in acceptance. Canada was there predominantly with our American partners out in the field.

We owe these soldiers a great deal of respect and we want to protect their rights. I don't believe that we can make side deals with

other countries that will better protect our soldiers than we have in this agreement here. In other words, it's our responsibility to protect our soldiers from litigation or possible blame on being involved, from here, not depending on another country whether they're going to or not.

When we're talking about being actively engaged in these units, there's no time for recusing oneself, no time to step out of this or step out of that. You're there to be involved and totally engaged. I think it would be destabilizing if your partners out in the field thought you were going to have these hesitations from time to time. You said, General, that the way the circumstances are now, the soldiers will be hesitant, that they'll be uncertain, and that can interfere with a proper, solid commanding structure.

General, could you reinforce some of your beliefs to us? Number one, where is it best to have this understanding? To protect our troops, is it better to have the understanding in Canadian law or in foreign law to begin with? I would have hesitancy in our relying on our soldiers for litigation in other countries.

Could you comment on the importance of these clauses that protect our soldiers out in the field?

• (1610)

**Gen Walter Natynczyk:** Mr. Chair, ladies and gentlemen, I guess what I would say to you is a line that I used when I was in Iraq, because of how complicated it was, that the further you are from the sound of the guns, the less you understand. When you're there on the ground and the situation is going really bad, and you're trying to relate what the heck is going on to a higher headquarters that is beyond the sound of the guns, beyond the sound of the impact, and you're trying to get as many tools as you can to save your people, and nothing's perfect, and the situation's awful, you need every tool you can get.

Sometimes you try to define what a theatre of war is, and you can't even define the theatre of war. The fact is you're in that box, and no matter where you are, whether you're inside the wire or outside the wire, it doesn't matter; you're in that theatre of war. Again, I've had chaplains wounded because they were there.

This idea that somehow you can compartmentalize this is really something that is back here at home, where we are so lucky, because Canada, with the U.S., is kind of an island. But once you leave our shores, and whether you're in Europe or whether you're in the Pacific, or whether you're in Asia, the situation is very complex.

I would say to you that when we send our men and women offshore, as we have in the past, and the government allowed me to go to Iraq, we go in with one assessment, one evaluation of what might occur, and then it changes. It changes on the ground. There's no one who's writing up the story. It just evolves. The enemy has a vote and they write the script. We're talking about the blood of the sons and daughters of Canada, whether they wear a uniform, whether they're civilian. How do we ensure that we give them the tools so they can achieve their mission to bring peace? That's what it's all about.

You started, sir, talking about Korea. Korea was a peacekeeping mission. It was a United Nations mission, and yet the 2nd Battalion of PPCLI were calling artillery on themselves in order to save the day.

There is no rhyme nor reason. What we're talking about is how to conduct ourselves legally in war.

Thank you.

• (1615)

**The Chair:** Thank you, and thank you, Mr. Goldring.

We're going to move back to Mr. Dewar, and I believe he's going to share his time with Mr. Marston.

**Mr. Paul Dewar:** Building on what the general said, I agree about the confusion of war in theatre. My grandfather was gassed in World War I. My father, who was in World War II, didn't have to suffer that vulnerability. What we're trying to do is get those weapons out of there, frankly, so I think we might agree on that point.

Mr. Doran, I just want to nail down one piece here. We talked about it in the last session with Minister Baird. He talked about not worrying about clause 11 because we're going to have our generals provide directives that cluster munitions won't be used. That's one option. The other option is just to improve the law so you have good law.

Can you give us your opinion, regulation versus law?

**Prof. Walter Dorn:** I'll bring together the last two questioners' points.

A cluster munitions ban is now part of international law. We do want to have it clear for the soldiers whether they can or can't use cluster munitions, so a good Canadian law also helps make that, as well as the directions from generals for good rules of engagement, ROE.

The problem with this legislation is that it creates a tension for the soldier. He knows that he shouldn't be using or assisting with cluster munitions under international law. At the same time, the Canadian legislation is saying yes he can. It creates a moral dilemma for the soldier in the field at precisely the time you don't want that confusion.

Make it very clear: no participation, no active assistance with cluster munitions. It's the easiest way out of it.

**The Chair:** Mr. Marston.

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

General, I just want to say that 50 years ago tomorrow, when John Kennedy was shot, I was in basic training, marching around the parade square in Chilliwack. We saw the B-52s going overhead and we thought we had something very serious happening, but I don't want to digress too far.

In labour law when you negotiate a collective agreement, there's a thing called a notwithstanding clause, which is very similar in ideas, I think, to clause 11. From the notwithstanding clause, it says that according to the collective agreement, we must abide by the rules as

stated in the collective agreement, notwithstanding article 1, which says we can't do this, but maybe in these circumstances we can.

What I'm concerned about here is if in theatre you had command of joint forces, and you had the pressures from below to use these munitions—not you yourself necessarily, but a future commander—what would this do to undercut your ability to say, “No, we won't use these”, if there's that kind of notwithstanding clause built into this?

**Gen Walter Natynczyk:** Sir, I think the kinds of instructions I signed off on December 3, 2008 were really clear, that the Canadian Forces would not be an active party to this whatsoever.

I would also say to you that whenever we send our men and women on whatever duty, whether it be United Nations duty, whether it be a NATO duty, or whether it be as they are today in the multinational force and observers in the Sinai, the Chief of the Defence Staff retains the national command of those men and women.

While we provide those soldiers, sailors, airmen and women to the other forces under operational command or operational control, those are all trumped by national command, so the order that they will not participate will actually trump all others.

**Mr. Wayne Marston:** Good.

Mr. Dorn, would you like to comment on that, that the sense of that notwithstanding status seems to be built in here?

**Prof. Walter Dorn:** Right. Well, “notwithstanding” can mean various things under labour laws, constitutional law, international law.

This treaty came through a series of negotiations with amendments and compromises. The Canadian negotiator definitely did not want article 21 to become a loophole. He defended it against civil society groups, who said to watch about the danger here. He said, “No, this is not the Canadian intention.” He gave all the speeches on behalf of Canada during the Oslo negotiations and the other negotiations, and he sees that this is not an exception. Notwithstanding doesn't mean exception; it just means that article 21 allows you to participate in multinational coalitions that otherwise some countries might have been hesitant about, because if the Americans are going to use cluster munitions over there, maybe we can't participate.

This says that you can still participate in a multinational coalition, but it doesn't say that you can all of a sudden violate the basic provision of the convention, which is to not, under any circumstance, use cluster munitions.

•(1620)

**Mr. Wayne Marston:** I think the general has already answered that side of it.

**The Chair:** That's time.

We'll wrap it up with Ms. Brown for five minutes, please.

**Ms. Lois Brown (Newmarket—Aurora, CPC):** Thank you very much, Mr. Chair.

Gentlemen, thank you for being here.

General, I can't honestly say that I had a great deal of exposure to the armed forces before I was married, but my father-in-law was in the armed forces for 34 years. He was Canada's youngest RSM in the Second World War. He was responsible for transport, land, air, and sea, and ended up moving supplies in and out of the Italian campaign for three years before he was seconded to Blenheim castle. I kind of had to be exposed to all of this after I got married and learned a little bit about the armed forces.

One thing that Mr. Dorn said is something that you were talking a little bit about before when you were speaking to Mr. Goldring about the situation in theatre. Mr. Dorn was talking about when they were doing air-to-air refuelling. I'm not sure this is an exact quote, but he said that this should be part of your planning.

Can you foresee all of these scenarios when you're in theatre? I listened to my father-in-law tell stories about the situation when the Americans came in when they were getting ready for Monte Cassino. The Canadians had one objective, and then things changed.

Can you foresee all of these scenarios when you're in theatre? Can you speak from your own experience of how things change on the ground?

**Gen Walter Natynczyk:** May I just say that throughout my whole career, I've realized that the plan and all the planning gets you to the start point and then all bets are off.

You know, if you're really lucky, it follows the plan, but we're finding that you're never lucky. Aircraft are running dry of fuel somewhere over the Mediterranean or the Adriatic, and the closest tanker has the only fuel in the area. It's making sure your folks can actually get home safely that you have to give that aircraft fuel. We're running airfields, as we ran Kandahar airfield for quite some time. Aircraft come in, get fuel, and move out.

I guess I would say that this whole convention is a very good and proper thing, but the reality for those men and women who have to

fulfill their duties is one of chaos when they are in a combat theatre. Whether it be in Iraq, whether it be in Afghanistan, or whether it be in Kosovo or peacekeeping missions, you cannot predict what will happen.

We can do everything possible to make sure we abide by the intent and the spirit of this convention and of the law. Can you guarantee it? I believe as the minister said, there's a small percentage probability that there won't be a problem. That's the reality.

**Ms. Lois Brown:** When you said earlier, and I think this is a quote, that you "could have participated" but "would not have known it at that time", if one of our soldiers were caught in a situation like that, without this coverage in our legislation, what would happen to them?

**Gen Walter Natynczyk:** I think that's a question for a lawyer, and normally in my old job I had a platoon of them all around me.

**Some hon. members:** Oh, oh!

**Gen Walter Natynczyk:** The Canadian Forces must abide by the law of the land, and the code of service discipline applies, along with criminal law. Therefore, that individual or those individuals could be subject to prosecution.

**Ms. Lois Brown:** Thank you.

**The Chair:** Gentlemen, thank you very much.

General—

**Mr. Paul Dewar:** Can we hear from Mr. Dorn on that?

**The Chair:** Do you have a quick response?

**Prof. Walter Dorn:** Yes, I have a very quick one.

Certain things you can plan for. If you want to make sure that you're not assisting with cluster munitions, have it that American planes don't carry cluster munitions.

These weapons are becoming anachronistic; they're something of the past. Let's really bury them, instead of trying to hearken to the very remote possibility that we might be stuck in a situation whereby we might possibly have to assist with them.

The best thing we can do to make sure that cluster munitions are never used is to make it an absolute prohibition.

•(1625)

**The Chair:** Thank you.

General, thank you for taking the time to be here, and Doctor, we appreciate your input as well.

Thank you very much.

The meeting is adjourned.









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