



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Foreign Affairs and International Development

FAAE • NUMBER 006 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, December 3, 2013

—
Chair

Mr. Dean Allison

Standing Committee on Foreign Affairs and International Development

Tuesday, December 3, 2013

•(1530)

[English]

The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)): Pursuant to the order of reference of Friday, October 25, 2013, Bill C-6, An Act to implement the Convention on Cluster Munitions, we're going to get started with that today.

I want to welcome our witnesses back again today.

We've got Sabine Nolke, who's the director general, who was here before. Welcome back.

We've got Lieutenant-Colonel Chris Penny. Welcome back, sir.

And, of course, we've got, from the Department of Justice, Christopher Ram.

They'll be there to answer any questions we may have.

Before we get started, we just submitted a couple of budgets. One is for this committee, which is for \$3,300 for witnesses we had here for Bill C-6. I just want to ask the question, if we could get that approved.

All in favour?

Some hon. members: Agreed.

The Chair: Thank you very much.

The second budget is for our Subcommittee on Human Rights, and it's in the amount of \$6,500 for their study on human rights in Sri Lanka.

Are there any questions?

All those supporting that...?

Some hon. members: Agreed.

The Chair: Thank you very much.

Okay, then, let's get right to clause-by-clause.

We're going to start with the short title, clause 1. We will postpone that until we've come back to move through all the amendments.

(Clause 1 allowed to stand)

The Chair: We're now going to start with clause 2.

LIB-1 has been moved. I'm going to suspend that right now because it depends on what happens with LIB-3.

We will have to come back to clause 2. We will do that in due course.

I will now go to clause 3. There are no amendments on clause 3.

Is there any debate?

Then I'll just call the question.

(Clause 3 agreed to)

(On clause 4—*Implementation of commitments*)

The Chair: For clause 4, we've got an amendment put forward by the Green Party, who is not here, but the amendment is put forward.

Is there any discussion on PV-1?

All right, then, I will just call the question.

(Amendment negated)

The Chair: Shall clause 4 be carried?

Hon. Deepak Obhrai (Calgary East, CPC): This is without the amendment?

The Chair: There's no amendment. The amendment was defeated.

(Clause 4 agreed to)

The Chair: Shall clause 5 carry?

(Clause 5 agreed to)

(On Clause 6—*Prohibitions*)

The Chair: We're going to move to clause 6 now.

In clause 6, we have LIB-2.

Mr. Garneau, do you want to speak to your proposed amendment LIB-2?

•(1535)

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Yes, Mr. Chair.

Basically, I wanted to put in this amendment to specifically address the issue of investing funds, and, of course, making the difference between knowingly and unknowingly investing funds that might be used for the manufacturing of cluster munitions.

When there was testimony in the Senate, Senator Fortin-Duplessis suggested that direct investment in the production of cluster munitions would be covered as an offence by this bill. The Library of Parliament further suggests that aiding and abetting the production of cluster munitions would cover certain forms of investment. So part of it is covered. It remains unclear, however, what the required level of intention would be for investment to be covered by the bill as it's currently written. This clause makes it clear that the threshold for an offence, in terms of funding cluster munitions, is prior knowledge that the funds will be used in the production or development of cluster munitions. It's to clarify that if you knowingly invest in a fund of some sort that will ultimately be used, then you're liable to an offence. So it's to provide that clarification.

The Chair: Okay.

Is there any other discussion?

Mr. Obhrai.

Hon. Deepak Obhrai: Thank you.

I would like to call upon the Justice people here to respond to this amendment, to the question: why we are opposing this amendment?

Mr. Paul Dewar (Ottawa Centre, NDP): I have a point of order.

Mr. Chair, I think it's not the role of our public servants to indicate whether someone supports or not, it's about providing the committee with advice.

Maybe my colleague could clarify his question.

The Chair: Indeed.

He hasn't been in committee for a while.

Mr. Paul Dewar: I know, he's new to this.

The Chair: He's a little out of practice.

Hon. Deepak Obhrai: Go ahead.

The Chair: Go ahead.

Mr. Paul Dewar: Deeply honest...

Mr. Christopher Ram (Legal Counsel, Criminal Law Policy Section, Department of Justice): Let me add my thanks to the honourable member for preserving me from the hot seat.

We did look at the question of investment when we were developing the legislation. There were a number of concerns, not so much with the mental element that has just been raised by the honourable member, but with the question of referring to the word "investment" in the statute because it's not a term of art in criminal law. We would then have had to define it, and it could have been quite difficult to define.

There are a number of other questions. If it's not that distinctive or it's not defined, potential charter issues could arise. There are also division of power issues that could potentially arise. Obviously under the Constitution, criminal law is a matter for the Parliament of Canada, property and civil rights is a matter for the provinces, and criminalizing investment is on the boundary, so there could be federal-provincial issues. We didn't look into that in a lot of detail but

we would have to do that to advise on the constitutionality of the amendment.

Over and above that, on the question of the *mens rea* or mental element that was referred to by the honourable member, when we use the language that we use in clause 6 and again in clause 11 of the bill, clause 6 paragraph (f), I believe, in the case of aiding and abetting, we specifically incorporated the language from section 21 of the Criminal Code, which takes with it all the case law. There are a number of cases, in particular a Supreme Court decision in the case called Dunlop and Sylvester that says that the mental element for aiding and abetting is the intention to assist someone in committing a criminal offence and knowledge that the offence is being committed, which I think is more or less the language of the proposed amendment.

The risk of using different language to accomplish the same objective in this statute as in the Criminal Code is that the courts will assume that if you use different language that you intend a different meaning and they will probably go looking for a different meaning and we're not really able to predict exactly what that meaning would be.

Thank you, Mr. Chairman.

The Chair: Mr. Garneau and then Ms. Liu.

Mr. Marc Garneau: If the word "invest" presents difficulty, would you be amenable to removing that word and talking about "knowingly provide" funds to be used in the development of, etc.? In other words to remove the word "invest".

Mr. Christopher Ram: That would require some careful consideration on our part. But the framing of the legislation as it is covers any kind of aiding or abetting. It's not limited to investment. In other words there are a number of ways that I could aid or abet. For example, the making of a cluster munition from within Canada. I could design one on my computer and e-mail the designs to somebody in another country. "Aiding and abetting" covers that. If you focus the legislation on investment or providing funds or whatever the expression is, *Expressio unius est exclusio alterius*, you might have the effect of altering the interpretation in a way that narrows the legislation.

I can't go any further than that. We'd have to carefully consider it, I think.

● (1540)

Mr. Marc Garneau: I mentioned to myself at the beginning that "aiding and abetting" certainly does cover certain aspects of it.

But I want to specifically make the point about another way of potentially contributing to the manufacture, and that is through provision of funds, if it is done knowingly.

The Chair: Thank you, Mr. Garneau.

Ms. Liu.

Ms. Laurin Liu (Rivière-des-Mille-Îles, NDP): I just want to briefly express my support for Mr. Garneau's amendment. I believe that many witnesses came forward to committee to expressly demand that we add this clause or this idea. I think it's true to the preamble of the convention.

The Chair: Ms. Nolke.

Ms. Sabine Nolke (Director General, Non-Proliferation and Security Threat Reduction Bureau, Department of Foreign Affairs and International Trade): Just to note that the possibility of including specific reference to investment was discussed during the negotiations in Dublin, but agreement was not reached on that particular provision in Dublin so it's not specifically contained in the convention, which is one of the reasons why we kept out that specific wording. The intention of the convention was to be as wide as possible in prohibiting any assistance, and that's what the bill currently does.

The Chair: Thank you.

Mr. Obhrai.

Hon. Deepak Obhrai: Mr. Chair, there is one procedural issue arising out of this. When a change is going to be made to the bill by any amendment that is done here unfortunately from what I understand—the justice department can correct me—it has to go back to cabinet for approval and then we come back again with those changes, which will then delay the whole process. That is what the PCO ruling has been. I'm just laying it on the table.

Mr. Paul Dewar: Were you asking the table?

Hon. Deepak Obhrai: I've been informed. I'm just telling the table that if you put in any amendments, anything, I'm just letting the opposition know it'll have to go back to cabinet.

Mr. Paul Dewar: I'd like to refer that to our friends at the table.

Hon. Deepak Obhrai: Perhaps you would. I'm being very nice.

The Chair: Are there any comments at the back from our witnesses?

Mr. Christopher Ram: Sorry, was there a question?

The Chair: I think Mr. Obhrai was making a statement and I think Mr. Dewar was making that a question.

Mr. Paul Dewar: Indeed.

Hon. Deepak Obhrai: It's the opposition. It's my understanding that any amendment that is made here would have to go back to cabinet, and then the bill would come back here.

Ms. Sabine Nolke: I would have to take advice on that from the Privy Council Office itself, but our understanding is not dissimilar to yours. But since I'm bearing witness here, I certainly wouldn't want to swear an oath to that fact. Thank you.

The Chair: Mr. Dewar, we have a list.

Mr. Paul Dewar: I wanted to get another opinion, Chair, for obvious reasons. I understand what the government might be intending here, but legislation can also just go from here, go back, and there are other opportunities to change it then. Of course, if there is an amendment, it can go back to the Senate, if you choose to direct it that way.

You have to appreciate, Chair, that we got this bill after a prorogation. It was in the Senate. It's where it started. The government should be a little more humble in terms of timelines here. I think my colleague is trying to suggest somehow this would delay things. Well, the fact of the matter is the government has delayed Parliament for quite a while. So if we're going to delay things to make legislation better, there's no problem on this side.

But I think he should also be clear about his advice, because I'm not sure we had clarity on this, and it would be helpful if the point that he was making was absolutely clear. And following that would be, what is his point? Is it that this is a rush job now?

This is an international treaty, Mr. Chair, and we want to make sure it's the best legislation we can offer, and to suggest that we can't look at amendments or that we have to rush things through, I don't think honours the commitment that we've made to our partners internationally, and I don't think it's good for our reputation.

Thank you.

● (1545)

The Chair: I have a list here. I have Madame Laverdière, then I have Mr. Obhrai.

Ms. Hélène Laverdière (Laurier—Sainte-Marie, NDP): It's simply to say I second what my colleague Paul Dewar just said.

The Chair: Okay.

I have Mr. Obhrai, and then Mr. Garneau.

Hon. Deepak Obhrai: In line with what Madam Nolke said, this information was provided to us by the PCO.

The Chair: Mr. Garneau, and then Mr. Ram.

Mr. Marc Garneau: We signed the convention in 2008. It's been over five years, so I'm not sure what the point of the question was. Is it to suggest that a little bit of a delay would be unacceptable? Is that the reason for it?

The Chair: Okay, Mr. Ram.

Mr. Christopher Ram: Thank you, Mr. Chairman.

Far be it for me to become involved in the debate; it's not my role. But just in terms of the mechanics of how this sort of thing is done, it would depend on the nature of the amendment.

The legislative services branch of the justice department normally drafts the legislation and it would normally draft government amendments. The way that normally happens is that a policy decision is made—and in this case, we're talking about government legislation, obviously—which then gives clear policy direction to the drafters, who then, with experts like Lieutenant-Colonel Penny and me, have to sit down and figure out how to make the actual amendment or the actual provision work in conformity with the treaty, in conformity with the charter, Canadian criminal law, and whatever other parameters there might be.

From the justice department's standpoint, I think the requirement is more of a practical one. We need clear policy direction and then time to look at how to make it fit. How long that takes would depend on the nature of the amendment.

The Chair: Thank you very much.

Mr. Dewar.

Mr. Paul Dewar: I agree with most of that except Parliament's the one to give direction here, and we give direction, and my friend's right, he then drafts it.

After amendments go from here, they usually go back to the other place, and then come back to us. Anyway, the point being, I hope we've learned something from our civics lesson today. But the fact is we can actually get this thing moving if our friend is willing to take the time to do it right, and I'm sure he'll be open to amendments later.

Thank you, Chair.

The Chair: All right, is there any more discussion on amendment LIB-2?

(Amendment negatived)

The Chair: Colonel Penny, welcome to committee.

Yes, sir.

Mr. Marc Garneau: Mr. Chair, I had suggested removing the word "investment". There was no real determination on that issue.

The Chair: Hold on a second.

Are you moving an amendment then?

Mr. Marc Garneau: After the discussion, it is worth seeing if that would be acceptable.

The Chair: We've already voted, so it's now done.

We're going to move on.

Ms. May, welcome to the committee. You have Green Party amendment PV-2, if you would like to speak to that.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you, Mr. Chair.

As this is the first time I have appeared before the Standing Committee on Foreign Affairs and International Development, I want to put on the record that although I am here at your invitation, I have found the provisions a more difficult process that doesn't involve rights of participation, so I participate with a small but not personal note of protest, and I appreciate those of you around the table today permitting me to present this amendment. I think these provisions coming up with this new process originated from the Prime Minister's Office since motions simultaneously appeared in front of about 20 committees. This is set to foreclose my ability to put forward substantive amendments at report stage.

I apologize for missing my first amendment, part of the problem of coming to multiple committees one after the other.

Quickly, let me just say the provisions that I've put forward in Green Party amendment PV-2 are to take language we find in the convention, because it is very important, as everyone around this table recognizes, that Canada fully support and implement the convention on cluster munitions.

As Mr. Garneau pointed out, it has been eight years and we need the implementing legislation and this is to cover off one of the provisions in the convention. It's found in article 3, paragraph 2. My amendment is to add to clause 6, which would create a new paragraph 6(i) that would ensure that to:

(i) possess, contrary to the undertaking made in accordance with paragraph 2 of Article 3 of the Convention, any stockpile of cluster munitions more than 8 years following the ratification of the Convention

was one of the prohibitions.

It is probably likely that such an additional provision isn't necessary when you look at paragraphs 6(a) to 6(h), but it is important to make sure that the implementing legislation of the Parliament of Canada be fully compliant with all articles that are found under the convention itself. It's in that spirit that I offer you an additional paragraph 6(i) to ensure that any stockpile of cluster munitions is eliminated more than eight years following the ratification of the convention.

Thanks, Mr. Chair.

• (1550)

The Chair: Thank you.

Is there any discussion on this?

Mr. Obhrai.

Hon. Deepak Obhrai: Could we have advice from the other side?

The Chair: Mr. Ram.

Mr. Christopher Ram: Just in criminal law terms here, Mr. Chairman, I only had a short time to look at the amendment but, as I understand the policy of the amendment, it fits within the scope of the bill and certainly fits within the scope of the convention, not that I'm an expert on the convention, but being amended into a criminal law bill causes some concerns. It may weaken the existing offence of possession that's in the bill. This is one concern. We are criminalizing the possession of all cluster munitions in Canada with the bill and this speaks separately of stockpiles. The criminal law community feels we're not sure what a stockpile is, how many cluster munitions it would take before you could convict somebody of having a stockpile as opposed to a collection or something like that. We didn't use that word in the primary offences for that reason. We didn't want to leave it open to a Canadian court to interpret.

There are also a couple of certainty concerns. When we enact criminal offences they have to meet charter and other standards of certainty. This one incorporates part of the convention that could be amended. It's scheduled, but putting it in the schedule does not make it part of the legislation. It's only there as an interpretive aid, and the date it would take effect is uncertain. Normally there would be a proclamation clause that the offence would be coming into force on a day fixed by order of the Governor in Council, and it would be gazetted. This would be triggered by the coming into force of the convention, and Canadian law, if I could say, doesn't know what that date is.

The Chair: Ms. Green. Ms. May, sorry.

Some hon. members: Oh, oh!

An hon. member: That's branding.

Ms. Elizabeth May: Mr. Blue, it's fine with me.

Some hon. members: Oh, oh!

Ms. Elizabeth May: These mistakes happen all the time.

I don't believe that this speaks to entry into force. It speaks to ratification, which is Canadian ratification. Entry into force is the international moment when the entire convention enters into force.

The Chair: Mr. Ram, or Ms. Nolke.

Ms. Sabine Nolke: Thank you.

The difficulty with this particular amendment is that it conflates two issues. The eight-year stockpile destruction in the convention speaks to stockpiles held by state's parties, whereas the bill itself deals with possession by individuals. It implements the criminal law aspect that is the state's implementation by assigning individual criminal liabilities to certain acts and activities. That is what the criminal law does. So the eight-year limitation which starts with entry into force of the convention for a given state refers to that state's obligation, not to an individual obligation. I think that is what the difficulty here is. I certainly would agree with my colleague from justice that since we have a much stronger, broader prohibition on possession already, this might cause confusion in the court trying to interpret which provision would apply, and might give rise to unintended defences saying, well, I'm still within the eight-year period, therefore, you can't convict me of possession. I think that it would not strengthen the bill. It would probably rather weaken it.

• (1555)

The Chair: Mr. Dewar.

Mr. Paul Dewar: Thank you, Mr. Chair.

I want to thank my colleague for her participation in this.

Just for the record, while I have the floor, along with my colleagues on the NDP side, we voted strongly against the provisions that were made to allow you to come to committee, because it actually undermines your ability to participate in our parliamentary democracy.

I wanted to hear from our experts on this because my read of it was, Chair, that this could undermine the bill, because if we do put the amendment forward then we'll have, if you will, two kinds of standards in play here. Is that the concern, that the eight-year provision might actually undermine what we already have in the bill as it exists?

Ms. Sabine Nolke: That is certainly my reading, and I believe my colleague's reading as well.

Mr. Christopher Ram: I didn't want to get too far into policy, but there are also other scenarios where possession of a stockpile might take place in Canada outside the eight-year period.

We've made provision in the bill, for example, if a Canadian company wants to go into the business of destroying these things, because it's quite difficult, and it's possible that we may want to import cluster munitions into Canada for the purposes of destruction at some point in the future. Also, there is the possibility that the Canadian Forces in operational scenarios may come into possession if they take hill 60 and there's an ammunition dump on the top of it. I'm not sure, but I think we then own the cluster munitions and we have an obligation under the treaty to dispose of them.

So we've tried to create scenarios, again bearing in mind that this is criminal law that creates the necessary envelope for unpredictable events.

Thank you, Mr. Chairman.

Mr. Paul Dewar: Thank you, Chair.

The Chair: Lieutenant-Colonel Penny.

LCol Chris Penny (Directorate of International and Operational Law, Office of the Judge Advocate General, Department of National Defence): Sir, just to build on what has already been said, I think following ratification of the convention, Canada will have an international legal obligation to destroy stockpiles. The convention doesn't require that to be translated into domestic law of Canada. I would note that the amendment isn't necessary, as the Canadian Forces is already in the process of destroying its munitions. It's expected that this will take place well before the eight-year deadline. In fact, the remaining stockpiles that Canada has have been removed from operational stockpiles since 2007, so there's no concern that they will be used. There's certainly already a well-entrenched process for contracting out for the destruction of those stockpiles.

The Chair: Mr. Garneau and then Ms. May.

Mr. Marc Garneau: I was just going to ask for clarification on the stockpiles that are going to be disposed of. Does that exclude a small portion that will be used for training purposes? Is there no sort of expiry clause on those until you decide that you can't use them anymore?

LCol Chris Penny: To provide further information, the stockpile awaiting destruction is 12,597 rounds of 155-millimetre artillery shells, dual-purpose improved conventional munitions. The convention would permit the retention of a small number of those for the purpose of training in clearance or developing countermeasures. That's within the convention itself.

While there has been some discussion of that, there are no current plans to retain any of those stockpiles. But if that were to be done, the convention would permit it and the legislation before you would permit it as well, but only for those narrow purposes.

The Chair: Mr. Ram.

Mr. Christopher Ram: Just a note that it's covered by clause 8, Mr. Chairman.

The Chair: Thank you very much.

Ms. May.

Ms. Elizabeth May: Given the excellent commentary from colleagues around the table and from the experts, I don't think I'm allowed to do this but I would be prepared to withdraw the amendment. But I think you might have to put it to a vote since I'm not a member of the committee. I don't know if I'm allowed to withdraw.

The Chair: I would need unanimous consent, so I guess my question is, do we have unanimous consent for Ms. May to withdraw the motion?

Okay, we have unanimous consent.

Thank you very much.

•(1600)

Ms. Elizabeth May: Thank you.

The Chair: We'll then move on to Green Party amendment 3.

Ms. May, the floor is yours.

Ms. Elizabeth May: Thank you, Mr. Chair.

On this one, I'm more confident that I believe the legislation will be much improved by this. I think a lot of the commentators who have looked at this legislation are concerned that we have too many exemptions for activity that is in the course of military cooperation. In order to make this convention as effective as possible in banning the use and possession of cluster munitions, I'm proposing *Parti Vert* amendment 3. We're still at clause 6 on page 4, adding an additional prohibition against:

(i) in the course of military cooperation or combined military operations involving Canada and a state not a party to the Convention, knowingly transport or engage in an activity related to the transport of a cluster munition, explosive submunition or explosive bomblet that is owned by, in the possession of or under the control of that state.

What I'm proposing you do as the committee is to incorporate in clause 6 a clear prohibition so that the intent of the convention and Canada's ratification of it forms a complete statement of integrity that we will not be engaged in the use of cluster munitions, even in the situation where we are in military cooperation with a state that is not a party to the convention.

The Chair: Is there any discussion?

Mr. Obhrai.

Hon. Deepak Obhrai: Let's have the experts advise on this amendment.

LCol Chris Penny: Ma'am, the reason for not including this is twofold. I'll speak to transport and I'll speak to assistance, or transport-related activities, separately.

In either case, the convention itself does not prohibit that activity and the bill was drafted to include only those activities that are prohibited by the convention itself.

With respect to transport, however, the Canadian Forces has already made it clear that it will nonetheless be prohibited within the directive of the Chief of the Defence Staff, that will be issued following royal assent for Bill C-6. That would prohibit the transport of cluster munitions on vehicles or vessels owned by or controlled by the Canadian armed forces.

Violation of that, I should note for the record, would be punishable under the code of service discipline, either as disobedience of a lawful command or as conduct to the prejudice of good order and discipline. So there would be potential penal sanctions for violation of that, which would flow from that directive itself.

With respect to activities related to the transport of a cluster munition, that could cover a vast range of potential activity that could take place in the context of combined operations or military cooperation with a state not party. Guarding an airfield from which states not party to the convention are flying aircraft carrying cluster munitions, for example, or providing air traffic control services or services to a ship on a port visit to Canada that is known to carry

cluster munitions, all of that would potentially be captured by the concept of activities related to the transport of cluster munitions.

The Chair: Ms. May.

Ms. Elizabeth May: I just have what may seem to be an obvious point.

I appreciate, Lieutenant-Colonel, your point that it isn't precluded by the convention. But in the context of international negotiations, any global convention has the aim of having every party, every country around the world, ratify it. To be a fully global, effective convention every government should become a party. In that context, a convention wouldn't anticipate the behaviour of non-parties generally because the hope is that every government will ratify and therefore this is closing a loophole by saying that in a period of time let's hope that all governments will ratify this convention. Then I wouldn't need this particular provision to the prohibitions list. But in a period of time where we know that some rather large players are not ratifying, this would be one way of improving the ambit of the convention. I think the fact that it wasn't anticipated in the convention language, with all due respect, is not a strong argument, because one would hope that every government would eventually ratify.

•(1605)

The Chair: Do you wish to reply?

LCol Chris Penny: To address that, Madam, universality of the prohibitions within the convention, universality of state membership, would be the ideal. It would certainly avoid any need for interoperability provisions within the convention itself or within the domestic legislation.

This was an issue through the negotiations. Working with states not party to the convention was expressly contemplated as a recognition of reality at least at this stage. Article 21 was drafted for that purpose as a necessary transition provision to allow states such as Canada with interoperability concerns to nonetheless join the convention, recognizing that they still might need to work with states not parties to the convention until such time as those states join. It was in that context contemplated, with the overall object and purpose of the convention being a universal ban on cluster munitions, a meaningful article 21 that permitted interoperability, of the sort that we've discussed, allowed numerous states to join that wouldn't have been able to and contributed to that object and purpose.

The Chair: Mr. Ram and then Mr. Garneau.

Mr. Christopher Ram: Very quickly, Mr. Chairman. It will save time, perhaps, because this is a recurring issue obviously with both the bill and the convention.

The legislation was specifically drafted with what lawyers would call a class closing rule in it. If you look at the way clause 11, in particular, has been drafted, apart from what is permitted as an exception to the prohibitions in clause 6, there are two other requirements. Number one, there has to be military cooperation and a person who's permitted to engage in that military cooperation, but the military cooperation has to be with at least one non-party state. The intention of this is that as more and more countries ratify the convention and join the convention, the permitted exclusions from the offences will become narrower and narrower. If every country ratifies it, there will be no exceptions under this bill except for the ones in clause 12 for defensive research and that sort of thing. If all of our allies ratify it, then the practical effect will be the same. The idea is to close this down, as Lieutenant-Colonel Penny said, as more and more countries renounce cluster munitions.

The Chair: Mr. Garneau.

Mr. Marc Garneau: You bring up the point that transport is not mentioned in the convention. Nevertheless when this receives royal assent, the Chief of the Defence Staff will issue a directive forbidding transport to occur, if I understood you correctly. We're trying to make sure that this legislation is clear. I'm just wondering why we shouldn't put it in this legislation as opposed to—I don't mean this the wrong way—at a lower level within a directive in the Department of National Defence.

LCol Chris Penny: As I said, within the Canadian armed forces that directive of the prohibition against transport will prevent transport within vehicles and vessels under our ownership or control. Transport itself would also potentially capture issues such as transit by a non-state party, which would be not something the Canadian armed forces itself is doing but, for example, a port visit or overflight by a non-state party would be considered in many respects transport of munitions. This prohibition would extend beyond the Canadian armed forces itself.

Mr. Marc Garneau: But the directive could be changed later on without Parliament, in any way, having any say in it.

LCol Chris Penny: That is correct, sir, but the government and the Canadian Forces are on record as saying that this is the policy that will be implemented. And as indicated, violation of that policy that will be reflected in the Chief of the Defence Staff directive would give rise to penal sanctions for individuals engaged in that activity.

• (1610)

Ms. Sabine Nolke: I think the important point to consider is just to reiterate what Colonel Penny said. With the wider prohibition on transport under Canadian criminal law, it applies to any person on Canadian territory. In other words, it might also apply to nationals of a foreign state for whom the transport of cluster munitions is not a criminal offence. Overflight was mentioned as a possibility, port visits as another. With the Canadian Forces directive, it only applies to Canadian soldiers, i.e., it criminalizes essentially under the Code of Service Discipline the conduct of persons over whom the Government of Canada has control, and we do not wish to extend our own criminal law, in this sense, to nationals of states or to individuals who might be in the lawful exercise of their duties because their state is not a party to the convention we have named to cross Canadian territory. So that is where the distinction lies, as we

do not seek to unduly affect individuals coming from nations that do not consider themselves bound by the convention.

The Chair: All right. Is there any other discussion?

I'm going to call the question on the Green Party amendment 3.

(Amendment negated)

The Chair: We're now going to move on to Green Party amendment 4.

Ms. May, the floor is yours.

Ms. Elizabeth May: Thank you, Mr. Chair.

This is a similar effort to ensure that, in dealing with states that are not party to the convention, Canada takes a very strong view of implementing the convention fully by not providing any direct or indirect financial assistance to a state that is not a party to the convention, where we could have a reasonable expectation that the use of that financial assistance would be towards the production, acquisition, use, maintenance, or transport of the prohibited weapons within the convention, so, cluster munitions, explosives, submunitions or explosive bomblets, except, again, with a legitimate exception, as witnesses have already mentioned, the importance of considering Canada's role in the destruction of such munitions.

So that's an exception within my fourth amendment to the bill, which would appear, again, in clause 6 after the existing paragraphs a) to h) list of prohibitions.

This is to more fully ensure that Canada's ratification to the convention and that our implementing legislation do everything possible to ensure that we close any loopholes for Canada's participation in direct or indirect financial support to the use, transport, or purchase of cluster munitions.

I think it's a very clear amendment. It's a financial amendment, so it doesn't interfere with some of the other exceptions that appear in the bill, and I hope that in that light, it could receive the support of this committee.

Thank you, Mr. Chair.

The Chair: Mr. Ram.

Mr. Christopher Ram: Thank you, Mr. Chairman.

I'll just be very brief because it follows up on something I've already said. Bearing in mind that this is a criminal law bill, it's very helpful to ask as you look at amendments who would be the accused. The effect of an amendment putting a provision into clause 6 as a prohibition then makes it a criminal offence under clause 17. If an individual does this, if I or a member of this committee gives another country or another person, for that matter, financial assistance, then we go back to the question of investment. I could either be actually making a cluster munition or, at minimum, aiding and abetting it, if I know that is what's going on, as an individual.

If you're talking about Canada giving aid to another country for prohibited activities, that's prohibited by the convention itself. I'm not sure if this was enacted whether it would be an offence, and I'm not sure who it would apply to.

Thank you, Mr. Chairman.

The Chair: Are there any other comments?

Go ahead, Ms. May.

Ms. Elizabeth May: Maybe I could answer that. Thank you, Mr. Chair. I appreciate the latitude

This is to ensure we do have examples in our history, and it doesn't take much to imagine them, where so-called charitable organizations assist in helping other countries develop munitions. I think it's an appropriate criminal prohibition against providing direct or indirect financial assistance to a state that could be developing cluster munitions.

As you say, the Government of Canada, Canada as a party to the convention, would face the prohibition, but this would ensure that... and we can't imagine all the different permutations for individuals, organizations, institutions, mistaken and benighted individuals of all kinds. I remember well friends of mine in Great Britain who wondered when New Yorkers would figure out that donating money to various IRA front groups was actually resulting in people being blown up in Northern Ireland. This would be a good criminal prohibition.

•(1615)

The Chair: Okay.

Mr. Ram, and then we'll go to Mr. Garneau.

Mr. Christopher Ram: I will just note that under both section 2 of the Criminal Code and the provisions of this bill, liability extends to persons or organizations. Some years ago, Parliament amended the Criminal Code to make sure that organizations cover a wide variety of strange creatures out there that ought to be subject to criminal liability. If you can identify it as an organization, then it can be charged and it can be prosecuted for the offence, and if not, you can go after the individuals who are in that organization, anyone, again, who has the requisite knowledge and intention.

Thank you, Mr. Chairman.

The Chair: Mr. Garneau.

Mr. Marc Garneau: Mr. Chair, after having heard them say perhaps a million times in the House of Commons that committees are masters of their own destiny, I think enough of a pattern has developed in these proceedings today to draw the conclusion that the Conservatives, whose bill this is, and which they are not even speaking on, are clearly not wanting to speak and are continuously referring to the group of experts here today.

At the very least, could I ask that, when we make votes on the rest of the clauses today, they be recorded votes as a minimum?

And of course, I would encourage members of the Conservative Party, whose bill this is, to stand up and defend it. This is, after all, the foreign affairs parliamentary committee.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Garneau.

Mr. Obhrai.

Hon. Deepak Obhrai: Yes, Mr. Speaker, I understand what the Liberal member is saying, but we have experts. This bill, of course, is indeed a government bill drafted by a policy that was given. The

experts have the information and the necessary knowledge to tell us that the amendments that you have put forward.... It's not about defeating your amendments, but that it is already covered, and that can only be done through expert advice. I think it is prudent.

He may not like the fact that we are not talking about it, but we are letting the experts who know their business talk about it, in line with what has already been done here, given the policy. He may not like it, but I would suggest very strongly, Mr. Speaker, that for all the amendments—

Mr. Paul Dewar: Chair.

Ms. Hélène Laverdière: Chair.

Hon. Deepak Obhrai: Sorry, I'm not used to the committee business now.

Mr. Chairman, we listen to the experts very clearly to understand the concerns and the issues that the opposition has put forward in the amendments. Mr. Speaker, it would be foolish for the amendments... and only the opposition who put in the amendments to only speak on what they want to say and not forget the expert advice that covers that. I think it even makes sense for them to listen to what the experts are saying about their amendment. It's not about anybody being foolish or anything; it's about having the bill correctly done so it is a legal bill.

This is the Government of Canada, a legal bill that is out there. Sure, the committees are masters of their own destiny, but, Mr. Speaker, I have been on committees for a very long time and we have always, always sought expert advice so that we can answer. We don't have that expertise advice, Mr. Speaker. I'm sorry to say that. We are keeping quiet because we don't have that expert advice. We didn't put that in this thing, Mr. Speaker, and we are seeking their expert advice. And I would strongly suggest for every amendment that is put, we seek the advice from the experts to know what that amendment is all about, whether it is already covered and it meets the requirements of the opposition of the day.

Now, of course, in all honesty, Mr. Garneau had a press conference this morning. He was publicly out there attacking this bill, so now as the experts are telling him, more of his amendments are there. And of course, the NDP had questions in the House. They made a very strong public statement. But it is absolutely necessary, Mr. Speaker, we listen to the experts. Otherwise, Mr. Speaker, I would say we are doing a disservice to the Canadians for whom this bill is out there.

Thank you.

•(1620)

The Chair: Okay, I have Mr. Garneau, and then Ms. Liu.

Mr. Marc Garneau: First of all, if my honourable colleague had been at the meeting this morning he would not have used the word “attacking”. I was trying to be very constructive and to say that we think we can achieve a bill that still respects the government’s intent and yet clarifies it.

Second, certainly in my experience, and I don’t have as much in committee as you, once we’ve heard from these experts—and we have heard from them, some I have seen several times in the course of the last month—there comes a point where we, the members of the parliamentary committee, it would seem to me, should be able to argue our positions. Otherwise, we’re always deferring. We are met by stony silence with the simple exception of your saying “I defer to the experts”. That is certainly not my concept of how clause-by-clause discussions of amendments should occur.

The Chair: Thank you.

Ms. Liu.

Ms. Laurin Liu: Thanks, Mr. Chair.

I agree with the sentiment that was expressed by Mr. Garneau. This is absolutely ridiculous behaviour by the Conservatives, and I wish they would express the same kind of respect for other experts such as the government scientists they like to muzzle, but we have heard from enough witnesses in committee. The Conservatives had the chance to ask questions, and Canadians everywhere have a right to know what their response has been to the expert testimony we have already heard.

The Chair: Okay, is there any more discussion?

Mr. Obhrai.

Hon. Deepak Obhrai: Mr. Chair, in all honesty, in all fairness, the committee will decide. The majority of the members of the committee on this side have decided we are going to listen to the experts before we make our judgment, period. That is the position of this party, and that is the position of this government, and it’s going to be like that.

Mr. Chair, I just heard the NDP talking about muzzling of scientists, which clearly indicates they are putting forward a partisan argument.

If they don’t like it, so be it, but on this side, Mr. Chair, we will listen to the experts and then we will vote accordingly. That’s how we will pursue our decision.

Thank you.

The Chair: Okay, is there any more discussion?

Mr. Garneau, are you asking for a recorded vote on this particular vote?

Mr. Marc Garneau: Yes, Mr. Chair, I would ask for a recorded vote for this and every subsequent amendment today.

The Chair: That’s every amendment, okay.

Hon. Deepak Obhrai: Right now, in light of cooperation, I would agree with that.

The Chair: Okay, we’ll go to a recorded vote, if there’s no more discussion.

Just to be clear, we’re voting on Green Party amendment PV-4. Thank you.

(Amendment negated: nays 6; yeas 5) [See *Minutes of Proceedings*]

The Chair: I am now going to call the question on clause 6 as it is, as there has been no amendment.

(Clause 6 agreed to)

The Chair: Is there any discussion on clauses 7 to 10 inclusive? Is it all right if I group clauses 7 to 10?

Mr. Paul Dewar: I’m sorry, just one second, Chair. Thank you to my staff here. I have just one question on paragraph 10(b), if we can go back to that.

The Chair: If you have a question on clause 10, why don’t we vote on clauses 7 to 9 then?

(Clauses 7 to 9 inclusive agreed to)

(On clause 10—*Exception—deactivated cluster munitions, explosive submunitions, explosive bomblets*)

The Chair: Mr. Dewar, your question on clause 10, please.

• (1625)

Mr. Paul Dewar: Unless there are other questions, if people can just turn to clause 10, I just have a question for our experts. At paragraph 10.(b), I reference,

removing or destroying any priming, detonating, dispersal or release mechanism or rendering the mechanism inoperable in such a way that its function cannot readily be restored.

I just wanted to have a definition or clarification of “readily”.

The Chair: Go ahead, Mr. Ram.

Mr. Christopher Ram: Thank you, Mr. Chairman. It reflects the judgments of the Supreme Court in two cases. One of them is called *R. v. Covin* and the other one is called *R. v. Hasselwander*. I can provide the clerk with the citations if you want them after the session. Basically this provision is based on Canadian firearms law and it deals with the bill. We have a lot of case law on deactivated firearms.

The Supreme Court has held that in the *Covin* case this means that it can’t be restored to functionality within the scope of time needed to commit whatever offences are under consideration. For a cluster munition, I think, it would be quite a long time.

The only other point about the drafting of that provision is that in technical terms we needed to cover...and bearing in mind that the bill addresses both cluster munitions and submunitions. Submunitions have explosives in them that can be taken out and priming mechanisms that can be disabled; cluster munitions often don’t. So that’s the reason for the complex destruction standards. We wanted to make sure that a Canadian court would have absolute clarity, or as much clarity as possible, if someone is charged with possession of something that has in fact been deactivated. That makes it a lot easier to do things like training because you don’t have to use the actual munitions. If it’s deactivated to the standard, then it stops being a cluster munition both for the purposes of the convention and for purposes of the legislation, and the offences don’t apply.

Thank you, Mr. Chairman.

Mr. Paul Dewar: Thank you for the response.

Just in terms of “readily”...some clarification on who this applies to, because we have two different actors in this case—right?—specialists and persons?

Mr. Christopher Ram: This is an exclusion again to the prohibitions in clause 6 and the offences in clause 17. So it applies to whoever is found in possession of one of these things. It doesn't deal with Canada's deactivation; it just allows for the technical deactivation of something that is a keepsake, for example. We have issues in this country with war trophies being brought home, and that sort of thing. One of the possibilities here is that one of the more likely prosecutions in this is not somebody opening an illicit cluster munitions factory in Toronto. It's a peacekeeper or NGO worker or somebody bringing one of these things home that may not have been deactivated to a satisfactory standard. So we had to cover off all of those possibilities.

The deactivation standard allows a forensic expert to testify in a criminal court that what the accused was found in possession of was not a cluster munition because it met the deactivation standard. Again, that's the practice, most commonly, with firearms. It applies to a lot of other weapons in Canadian law. So there's a lot of case law about what cannot readily be reactivated or restored. It means that the prosecution could rely on it, if it's prosecuted.

Mr. Paul Dewar: Thank you, Chair.

The Chair: Lieutenant-Colonel.

LCol Chris Penny: I have further clarification on who this would apply to. It certainly would apply to members of the Canadian Forces training with inert munitions that therefore wouldn't require a ministerial approval for something that isn't dangerous. So it's training to identify for the purpose of clearance or deactivation.

Because it's an exclusion for any person, it would allow individuals from non-governmental organizations, for example, Mines Action Canada or Handicap International Canada, to maintain examples to show in presentations as well, again on the basis that they don't pose any threat to anybody to maintain those.

• (1630)

The Chair: I'm going to call the question on clause 10.

(Clause 10 agreed to)

(On clause 11—*Exceptions—military cooperation or combined military operations*)

The Chair: I'm going to turn it over to Mr. Fortin in one second who is going to talk to his amendment 1 from the Bloc. I just want to let you know, though, that I do have a ruling, but I'm still going to let you introduce your amendment and talk about it briefly.

Hon. Deepak Obhrai: What is the reason?

The Chair: I'll tell you when I hear the motion.

[*Translation*]

Mr. Jean-François Fortin (Haute-Gaspésie—La Mitis—Matane—Matapédia, BQ): Thank you, Mr. Chair.

First off, I'd like to mention that amendment BQ-2 and amendment BQ-3 are consistent with amendment BQ-1. I'll explain the principle underlying what I am proposing to the committee today.

The Bloc Québécois is glad that Bill C-6 was brought forward and sincerely hopes it will live up to the objectives laid out in the Convention on Cluster Munitions. Keep in mind that the importance of the convention cannot be understated. It prohibits the use of cluster bombs and establishes a framework for their destruction. The prohibitions that have to be included in the bill before us today, a bill to implement the convention, must be firm and comprehensive, while following through on Canada's commitment to never again use cluster bombs, a veritable scourge for civilian populations.

Unfortunately, we think clause 11 of the bill weakens the legislation and, to some extent, spoils its intent by setting out an exception for members of the Canadian Armed Forces participating in joint military operations. The reality is these members of the military could contravene the very spirit of the convention that Canada has signed. As we see it, the exception is so broad that it practically guts the bill of its substance and significance. Simply consider the fact that nearly all the armed conflicts Canada has played a role in recently have involved joint military operations with international troops, either under NATO or with partners who have yet to ratify the convention. Earlier, Ms. May said she hoped that all of our partners, all governments, would end up ratifying the convention. Canada has taken part in missions abroad, both NATO-led and others, and some of Canada's partners have stated their intention not to ratify the convention. In short, those operations, especially with the U.S., could put Canada in contravention of the very spirit of the convention it signed.

In its current form, Bill C-6 is merely window dressing because it has been gutted of any real meaning. And that is why we are proposing three amendments. They would amend the first sentence of each of the subsections in clause 11 and completely transform it, turning the exceptions, which currently allow for the continued use of cluster bombs, into explicit prohibitions, as required by the Convention on Cluster Munitions. With our three amendments, Bill C-6 could actually do what it is supposed to: implement the convention. It wouldn't simply be a public relations exercise to the detriment of civilians who are killed every day by cluster bombs.

Mr. Chair, I will wrap up my remarks with a brief comment so as not to take up too much more of the committee's time. I heard what the experts had to say earlier. I realize their arguments are well thought out, but Canada has a role to fulfill. As it contributes to operations abroad and passes legislation to implement the convention, Canada must show it is mindful of the situation and serve as an example to other nations involved in joint military operations. With a tougher piece of legislation, Canada could set the example for the rest of our international partners.

I urge the committee members to adopt my three amendments, which will give the bill the teeth it needs to do what it is intended to.

Thank you.

[English]

The Chair: Thank you very much for your intervention, Mr. Fortin.

I'm just going to read why it is inadmissible.

Bill C-6, An Act to implement the Convention on Cluster Munitions provides for exceptions to prohibitions listed in clause 6 of the bill. One of these exceptions could be found in subclause 11 (1), which does not prohibit some specified individuals from doing certain acts listed in clause 6.

The amendment proposes to alter the wording from “does not prohibit” to “prohibits”. As *House of Commons Procedure and Practice, Second Edition*, states on page 766, “An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill”. In the opinion of the chair, the amendment is contrary to the principle of the bill as it negates an exception provided in subclause 11(1) of the bill. Therefore the amendment is inadmissible.

Thank you very much. Now we're going to move to amendment LIB-3. Mr. Garneau, I'll turn the floor over to you for your amendment.

• (1635)

Mr. Marc Garneau: Thank you, Mr. Chair.

If I may, I'd like to say a few words about this, because it also introduces the notion of active assistance. The amendment we are proposing here draws on the language of Canada's legislation banning land mines to bring clause 11 of Bill C-6 to what we consider to be in line with article 21 of the convention.

Although our preferred policy would be for Canada to insist that cluster bombs not be used at all in multinational operations Canada participates in, we accept the fact that Canadian Forces may end up working with other countries that use cluster munitions. In these cases, we believe the appropriate policy is to inform our allies that Canada will not participate in the use of cluster munitions while simultaneously protecting our soldiers from legal prosecution for working with these other countries.

The words “active assistance” we believe accomplish this by making it clear that Canadian Forces cannot knowingly or intentionally assist with the use of cluster munitions but that they are protected from prosecution should they unknowingly or unintentionally assist with the use of cluster munitions.

When Minister Baird came, he made it clear at the committee that he never wants to see Canadian Forces use cluster munitions. Government members of this committee have stated that they see clause 11 not as permission to use cluster munitions but really as intended to be a protection for Canadian soldiers in joint operations.

We believe the wording we are proposing in this amendment is a better reflection of the government's own stated position that it does not want to see Canadians using cluster munitions but that it does want to protect Canadians in combined operations with countries that may use cluster munitions. That is what is behind the proposal we're putting forward as amendment LIB-3.

Thank you.

The Chair: Just before we have debate on this, I want to mention that the vote on amendment LIB-3 will apply to your amendment LIB-1, which we have allowed to stand, as they are consequential. So if this amendment is adopted, then amendment Green Party-5 and amendment NDP-1 cannot be put. I'll remind you again when we get to the vote, but I just wanted you to know that this is consequential to amendment LIB-1.

I have Mr. Obhrai and then Mr. Allen.

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

We look at this clause 11 and we recognize the fact that because it involves a lot of exclusions, quite a lot of thinking and quite a lot of debate are going to be required.

May I suggest to the committee that we take away this clause 11 now and have a special session just on it? I suggest we have a special session on clause 11 only, at which we can then get more experts, yours and ours, and we can take the time to address this whole thing so we can get it right.

As I've said, we want to get it right. There are other areas we can go through quickly and then we can call in experts for the special session to talk about clause 11. Believe me clause 11 is quite a heated area about which the opposition has a lot of issues they want to discuss. So I suggest, if the opposition will agree, that we set a special session to discuss clause 11 of this bill and call in experts as we feel necessary.

Would that be acceptable? I put that forward.

• (1640)

The Chair: So what you are proposing is to stand clause 11?

Hon. Deepak Obhrai: Yes, because most amendments are to clause 11, and that is the clause with the exceptions and it is the one we need to have experts come in on to give us more information. Then Mr. Garneau would not be unhappy and say we are throwing everything to the experts.

I'm just putting that forward here. Would that be acceptable to the committee? Then we could move to the other one.

The Chair: Mr. Dewar.

Mr. Paul Dewar: Thank you, Chair.

I'm a little surprised, but pleasantly. It's really important that we get this work done, as my friend said, but that we do it right. Today, actually—I was just looking it up—is the fifth anniversary of the signing of the treaty. It's an historic day.

I think if we can do a set-aside on clause 11...and I'm stating this publicly because on this side we have tried to reach out to try to amend this. We had the minister saying that he was willing to listen and to look at amendments. I'm hoping that this is a genuine opening to really look at this bill in the right frame, that is, we're trying to work together to get this done.

In light of the fact that we've heard from witnesses that clause 11—and I don't blame anyone here—undermines the treaty itself, if the government is willing to actually reach across the aisle, as they say, look at solutions to fix the bill, and fix the bill so that we can all agree on it, I'm happy with that.

But I want to state this publicly: if this is just about the government bringing in people to shore up their point of view or about their talking points on the legislation as it exists with regard to clause 11, then I think that's a grave mistake for the government. I think we really need to look at honouring those victims we've heard about, those people who have been affected, those people who the minister saw and was emotionally moved by, and make sure that we honour the signature that is on that treaty we signed five years ago.

If the parliamentary secretary is putting forward a motion to go through the treaty, set aside clause 11, and come back to it, I'm happy to support that.

The Chair: Okay.

I had a list here, but I'm assuming that the list doesn't apply anymore.

Mr. Allen, did you have a question?

Mr. Mike Allen (Tobique—Mactaquac, CPC): It's just a comment on that, Mr. Chair.

The Chair: Then I do have a couple of names: Mr. Allen, Mr. Garneau, and then Ms. May as well.

Mr. Mike Allen: I'll just comment in reinforcing the support for Mr. Obhrai's suggestion, because there are a lot of differences of opinion on this, and I think "active assistance", as Mr. Garneau has pointed out.... I'm just a lowly accountant, not a lawyer, so with that in mind, I like counting beans. On the interpretation of "active assistance" in the context of what it meant in regard to the landmines, versus what it could mean here, I thought I understood in the testimony I heard that it wouldn't be applicable here, so I think that would be helpful.

Also, under the code of discipline, it was also my understanding that it expressly allowed us to take action, presumably against one of our forces members who knowingly did something under this treaty and violated the treaty. The code of discipline would allow them to do that, so from that standpoint I guess it would be good to have that fuller discussion on those specific topics. I would support Mr. Obhrai's suggestion.

The Chair: Mr. Garneau, please, and then Ms. May.

Mr. Marc Garneau: Mr. Chairman, I just want to say that I support Mr. Obhrai's suggestion of a breakout section for clause 11.

The Chair: Thank you.

Ms. May.

Ms. Elizabeth May: Thank you, Mr. Chair, and thank you to Mr. Obhrai. I think this is clearly the most controversial section of the whole bill. It's the one where, if we could find a way to compromise and have the convention and the spirit of the convention better reflected in our domestic legislation, we'd all be extremely pleased. I want to thank Mr. Obhrai.

Thank you, Mr. Chair, for giving me the opportunity to speak to it. I certainly will be happy to show up whenever you schedule a discussion on clause 11.

• (1645)

The Chair: Okay.

Just from a procedural point of view, we need to withdraw... [*Technical Difficulty—Editor*]...if Mr. Garneau can withdraw his amendment, and then once we do that, I'm going to ask if we can stand clause 11 for the time being.

Mr. Marc Garneau: Yes, very good.

The Chair: So we need unanimous consent to withdraw Mr. Garneau's amendment from discussion right now. The next question is, do we—

Mr. Paul Dewar: Stand all amendments, then, on clause 11?

The Chair: So we will withdraw Mr. Garneau's amendment for now.

(Amendment allowed to stand)

The Chair: The next question is, can we stand clause 11 to come back and look at? All right?

Mr. Paul Dewar: Yes. So we're going to be standing all the amendments on clause 11?

The Chair: That's correct. Okay?

Mr. Paul Dewar: Yes.

The Chair: Okay?

(Clause 11 allowed to stand)

The Chair: Thank you very much.

Mr. Paul Dewar: While we're here, timelines...?

Hon. Deepak Obhrai: Let's have a look and figure it out.

Mr. Paul Dewar: Will we come back to that?

The Chair: We're going to come back to that, definitely. Before we leave here, we're going to come back to that.

(On clauses 12 to 22)

What I have before us now are clauses 12 through 22.

Mr. Garneau?

Mr. Marc Garneau: I just want to be 100% sure that we're standing amendment LIB-3.

The Chair: That's correct.

Mr. Marc Garneau: Thank you, sir.

The Chair: Do we have any questions or discussion in terms of clauses 12 through 22?

Mr. Paul Dewar: Mr. Chair, I would like some clarification on clause 15. There is language that I want some help with, where it says: A minister may delegate to any person, subject to any conditions that the minister considers appropriate, any powers, duties or functions conferred on the minister under this act.

My question has to do with its fairly general scope. We've seen in previous manifestations on this kind of legislation that it's much more defined. We've seen delegation of responsibilities in previous legislation that enacted treaties similar to this one that:

The Minister may designate one or more persons to exercise the powers, and perform the duties and functions, of the Minister under this Act or the Convention that are specified in the designation. That person or those persons may exercise those powers and shall perform those functions subject to such terms and conditions, if any, as are specified in the designation.

I'm giving you that, Mr. Chair, because I want to understand better the fact that what we have in Bill C-6 is very general in the scope of delegation of powers. When we're talking about a treaty as important as this one and we look back to previous treaties where we've had legislation to enact those treaties, the delegation responsibility is much more refined.

What I'm looking for here is to better understand why the delegation of authority is so general.

The Chair: Mr. Ram.

Mr. Christopher Ram: Thank you, Mr. Chairman.

The reason is quite simple. The only function for which ministers can be designated under this bill is in clauses 7 and 8, which is a ministerial order allowing someone to possess a cluster munition or submunition for research or training purposes and that sort of thing. All of the other delegated powers in the bill, regulations, are made by order of the Governor in Council.

The other powers are not delegated directly to the ministers; they're exercised by other authorities. It was felt that a very general overturning of the administrative law rule against subdelegation would apply here.

Basically, all the minister does is to issue an order that opts somebody out of the offences and imposes conditions on that order, obviously to make sure that what is done with the submunition is safe.

Mr. Paul Dewar: Thank you, Mr. Chair.

To understand it a little more, when I look at clauses 7 and 8, there are provisions there in terms of designation.

But I'm still trying to understand. If we look at previous manifestations—what I'm taking from is the Anti-Personnel Mines Convention Implementation Act, wherein it's similar in terms of scope and in terms of duty and authority. I'm trying to understand the difference between the two.

I guess what you're saying is that Bill C-6 lays it out in previous clauses, so that when we get to delegation of authority under clause 15 of this bill it's general because it was already defined previously.

Is that what you're trying to tell me?

•(1650)

Mr. Christopher Ram: Forgive me, Mr. Chairman, I have to go from memory here and I don't have the anti-personnel mines legislation in front of me.

We did start with that as the template for some of the provisions in this bill. The offences and things like that are based on it. When we looked at the ministerial powers, we basically tried to keep it simple

in the drafting because there's very little that the minister can do. We wanted to make sure that the minister could delegate that to officials, in terms of issuing ministerial orders and placing conditions on them.

There's nothing really more to it than that. If it doesn't correspond to the Anti-Personnel Mines Convention Implementation Act, it may simply be that drafting practice has changed in the interim.

Mr. Paul Dewar: Mr. Chair, I'll finish off.

My only concern is that when I look at what we're about to pass, it says, "a minister may delegate to any person, subject to any conditions that the minister considers appropriate....". That gives any powers, duties, or functions conferred on the minister under act. At first glance, the difference is that the other provision says as this one does; it mentions the convention, but the delegation of responsibility in the Anti-Personnel Mines Convention Implementation Act says:

The Minister may designate one or more persons to exercise the powers, and perform the duties and functions, of the Minister under this act or the Convention....

I guess what's missing here, and maybe it's not an issue—I just want to be careful because we're passing legislation—is that we don't have the same reference. It says "under the act"; it doesn't have language on the convention.

I'm just flagging that for the record. That's my read of it. If it's not an issue, I'll leave it. I wanted to raise that question, and I thank our experts for their point of view, unless there's something else that needs to be said.

Ms. Sabine Nolke: I don't think, quite frankly, that there's any nefarious distinction to be made. If memory serves, the Anti-Personnel Mines Convention Implementation Act was drafted in three days. If I look at it now, I see some glitches in it which, had I spotted them then, wouldn't be in it now. Referring to Canadian implementing legislation to ministerial powers under a treaty is not something that, had I noticed it and had been involved in the drafting then, would be in the legislation now.

The simple answer, Mr. Dewar, is that there was a drafting error in the original land mines bill that has now been corrected. The minister has no powers under the treaty because the treaty is something conducted among states. This is not something that Canadian legislation can confer on him.

The Chair: Mr. Ram, go ahead.

Mr. Christopher Ram: Thank you, Mr. Chair.

I have one final comment on the honourable member's comment on conditions the minister considers appropriate. The intention there is to allow for the possibility. Again, we considered that these things would be extremely rare. The object of the exercise was not to create a large, bureaucratic exercise that the minister would delegate to officials the job of working out who needs the exemption, what they're going to use it for, developing the conditions, and then the minister might personally approve it.

The minister may not delegate only part of the power unless the legislation allows him to do that. You have to delegate either the whole thing or nothing. This allows reservation of the ultimate discretion about whether to issue the order to remain in the hands of the minister personally, if that's the desired policy, and at the same time to allow officials to work out the conditions.

The Chair: Thank you.

Is there any other discussion with clauses 12 to 22?

All those in favour of clauses 12 through 22?

(Clauses 12 to 22 inclusive agreed to)

•(1655)

The Chair: Thank you very much.

We're going to move now to a new clause 22.1, put forward by Liberal amendment 7.

I'll turn it over to Mr. Garneau to discuss that amendment.

Mr. Marc Garneau: Thank you, Mr. Chairman.

The rationale for this, Mr. Chair, and colleagues as well, is that article 21 of the Convention on Cluster Munitions places several positive obligations on Canada to promote the values of the treaty with our allies and to encourage them to sign the treaty. When he appeared at this committee, Minister Baird made it very clear that he supports the values of this treaty and would like nothing more than if more countries—especially the United States—signed the treaty. I distinctly recall him saying that.

This amendment creates a gentle and realistic political incentive for this government, and future governments, to continue the work of seeking to ban cluster bombs for good. It gives parliamentarians an opportunity to participate in the good work of ridding the world of cluster bombs. Essentially, it suggests that an annual report to Parliament be submitted, wherein the government describes what it has done, actively, proactively, to try to encourage other non-signatories to get rid of their cluster munitions.

The Chair: Thank you, Mr. Garneau.

Mr. Obhrai.

Hon. Deepak Obhrai: Mr. Chair, before I go to the experts for their advice, I note that Canada is mandated to submit an annual transparency report to the United Nations. This report would be available to the public and would provide all the necessary information for Canada to meet its obligation under the convention.

Also, Mr. Chair, this would provide for another bureaucracy being set up to look into this to do that. It is for this reason that we don't think it's necessary, but if the experts would like to add something to that, they are more than welcome to do so.

Ms. Sabine Nolke: Thank you.

Parliamentary Secretary Obhrai has stated very correctly that we are already preparing an annual report, and certainly that is something that can be very readily made available to this committee or tabled in Parliament.

With regard to the very specific reporting requirements made in the draft amendment, I would suggest that what it does, in fact—

speaking here as a professional diplomat—is that it in effect would require us to report on diplomatic activities undertaken. There is a wealth of legislation already passed by this Parliament that protects detailed information on diplomatic activities, because, quite frankly, some states don't want it to be known that certain diplomatic contacts have been made, so that would be problematic in and of itself.

But in addition, this is, as we have repeatedly stated here, and as my colleagues have repeatedly stated, a criminal law bill. To put a positive obligation into the context of a criminal law bill is, well... unconventional, I suppose, is one point, and I'm sure my colleague from Justice will comment on it, but it could also suggest that refusal to do so might give rise to criminal sanctions. That is certainly not something that I think we would want to see.

Essentially, the convention does apply these obligations on states, but they are not mandatory obligations. States are called upon to do these activities because, again, treaties cannot compel states how to conduct their relationships with each other. They can prohibit certain activities, but they cannot compel positive obligations. Therefore, putting such a kind of obligation into Canadian implementing obligations would go far above and beyond what, first of all, the treaty requires, but also what is state practice worldwide.

I think my colleague from Justice has some additional comments.

•(1700)

Mr. Christopher Ram: Yes, just very briefly, Mr. Chairman.

In general, if you put an obligation, and this applies more to some of the amendments, I think, that have been stood, but it applies here as well.... If you put a positive obligation into a statute and you don't provide otherwise in the statute, then the criminal offence under section 126 of the Criminal Code applies, which is disobedience of a statute. Anyone who does or admits to doing anything that is an obligation under the statute could be liable for that offence. It triggers a general criminal offence unless you provide otherwise.

The only other comment on this particular amendment is that there are several hundred reporting obligations in various federal statutes that cover various sorts of activities. If we were asked to draft something like that, again I would refer to my initial remarks about getting policy direction on exactly what the report was intended to include, but in a great many of them, there is some kind of an exemption that effectively does not compel ministers to report on something that might be sensitive in terms of international relations or national security.

That doesn't seem an obvious issue with this, but it's something that would have to be looked at, I think. If you look at it, there is a wide range of reporting requirements. There are several in the Criminal Code on things like electronic surveillance that are very detailed. Some of them are very general. Whether this is or is not a criminal law bill I think is in the hands of Parliament. Right now, I would describe it as a criminal law bill as it stands.

Thank you, Mr. Chairman.

The Chair: Mr. Garneau.

Mr. Marc Garneau: Thank you, Mr. Chair.

I'm not a lawyer, and I'm not an accountant like my colleague, Mike, across the way. I'm an engineer, and I have to say that you really threw me when you talked about an obligation that was not obligatory.

That's what you essentially said, Madam Nolke, today. It's an obligation in the convention, but it's not obligatory. Did I misunderstand you?

Ms. Sabine Nolke: No, you did not. That was my poor choice of words. It's a commitment under the convention.

Mr. Marc Garneau: Okay, and—

Ms. Sabine Nolke: International treaties distinguish very carefully between binding obligations and commitments and undertakings. They use different language. A binding obligation will use the word “shall”, as in “states shall do x, y, and z”. Otherwise, it would be “states undertake to” or “states are encouraged to”. The language differs.

Mr. Marc Garneau: So it's a commitment?

Ms. Sabine Nolke: Yes.

Mr. Marc Garneau: So to go to the annual report that goes to the United Nations, I'm sure that in it we will quite proudly say that we are getting rid of our cluster munitions and that we're not using them, we haven't used them, and all those good things. Do you know, based on past reports, whether we've ever said anything in there about any efforts to do the part that's the commitment with respect to trying to rid the world of cluster bombs?

Have we ever said anything about that? Because it is a commitment, but it's not an obligation. It's a commitment, though.

Ms. Sabine Nolke: Yes. At this point, we haven't ratified the treaty yet, so our reporting at this point is entirely voluntary in the first place.

Let me just check with one of my colleagues behind me to determine what the contents were on those reports because, quite frankly, I don't recall.

Mr. Marc Garneau: While you're checking, would it be possible to put something...? I'm sure there's a format for reporting of some kind even though we're not there, we haven't ratified. In that reporting format, does it say anything about that commitment? If it doesn't, is there any possibility that Canada could consider putting that in there? Because it is a commitment.

• (1705)

Ms. Sabine Nolke: I'm advised that the reporting is updates on stockpile destruction, but not on advocacy activities.

Mr. Marc Garneau: Okay.

Mr. Chair, may I come back to.... Since it really talks only about stockpiles, what I'm trying to propose here is that we provide some indication of what energy we've put into this commitment that we will try to help to rid the world of cluster bombs. My amendment is proposing that. I'm certainly open to modification of it, but I would certainly like its intent to be adopted.

The Chair: Okay.

Is there any other discussion on Mr. Garneau's proposed amendment?

Go ahead, Ms. Nolke. Then we have Mr. Dewar.

Ms. Sabine Nolke: If I may just add this, I've also just been advised that one of the elements that goes into our annual voluntary—at this point—reporting is activities that we've carried out for clearance purposes, for example. So the types of projects that the minister indicated we might be carrying out in the future, once we are parties to the convention, would be items that we would also be reporting on. Those, of course, do include advocacy activities such as funding NGOs, for example, that are active in seeking universalization of the treaty.

The Chair: Mr. Dewar, then Mr. Allen, and then—

Mr. Paul Dewar: No, I'm fine.

The Chair: Mr. Allen.

Mr. Mike Allen: My comment on this is that I am concerned about putting in the statute a reporting relationship like this, especially on advocacy efforts. Since the committee is master of its own destiny, I would think that it would be better for us to maybe once a year call the minister to committee to report on those efforts, as opposed to doing it in the statute.

The Chair: Mr. Garneau.

Mr. Marc Garneau: I'm certainly very amenable to that kind of suggestion. Is this something that could be put in as one clause in the bill: that the minister will be called to the committee to report on advocacy efforts? Is that something that's within the scope of this bill as an amendment?

The Chair: Do you have a comment, Mr. Obhrai?

Hon. Deepak Obhrai: Yes, that is my hand. Of course.

Voices: Oh, oh!

Hon. Deepak Obhrai: What do you think I raised my hand for? I didn't say hi.

The Chair: I thought you were waving at Mr. Dewar.

Hon. Deepak Obhrai: I think we need a little more time to come back on that amendment. If you are agreeable, when we have the session on discussing clause 11, we can then discuss what you have just said and what H el ene has just said, and see if that can be matched somehow. All right?

Is that agreeable?

The Chair: My suggestion was going to be that we vote on this particular one, or that you withdraw it, and then you present us a new one and then we'll look at clause 11. Do you want to vote on this, or do you want to withdraw this particular amendment?

Mr. Marc Garneau: I will withdraw the amendment with the understanding that it will come up again.

The Chair: Absolutely. Do we have unanimous consent for Mr. Garneau to withdraw the amendment?

Some hon. members: Agreed.

(Amendment withdrawn)

The Chair: All right, thank you very much. We'll remove that for now.

We have two more clauses to look at today and then we need to talk about what the schedule could look like for looking at clause 11.

I am going to call the question with regard to clauses 23 and 24. Is there any discussion, or any concern?

(Clauses 23 and 24 inclusive agreed to)

The Chair: We have some stood clauses. Obviously two were dependent on the withdrawal of amendment LIB-3, so that is it for now. That is as far as we can go today on this particular piece of legislation. We'll come back with either a new clause 22.1 by the Liberals...as well as looking at clause 11.

What does this look like in terms of a timeline? How do we want to proceed?

Hon. Deepak Obhrai: We are happy if we do it sometime next week, if your calendar allows it.

The Chair: We have officials on Syria coming in for an hour on Thursday. We could possibly look at an hour on Thursday. We also have the Office of Religious Freedom coming in for an hour on December 10, next Tuesday, so there is another possible hour there.

Do we want to look at one hour on Thursday and one hour on Tuesday?

Hon. Deepak Obhrai: No, we'll go for Tuesday.

The Chair: Does Tuesday give us more time?

Hon. Deepak Obhrai: Yes, and if we have all done our homework we should be able to do it in an hour.

The Chair: We'll see how we make out.

The suggestion is that we look at one hour on the 10th as a starting point for a week Tuesday.

Mr. Paul Dewar: We could ask for that, and I'm thinking Ambassador Bennett would approve.

The Chair: Thank you very much to our witnesses for all your help today.

Is there anything else right now?

Thank you. With that, the meeting is adjourned.

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the Parliament of Canada Web Site at the following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : <http://www.parl.gc.ca>