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Chair

The Honourable Robert Nault

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• (1100)

[English]

The Chair (Hon. Robert Nault (Kenora, Lib.)): Colleagues, we're eating up the time of our witnesses, so I would like to get started.

This study is pursuant to the order of reference of Tuesday, October 3, 2017, Bill C-47 an act to amend the Export and Import Permits Act and the Criminal Code.

Before us today, from the Canadian Shooting Sports Association, is Steve Torino, president; and from the Ontario Federation of Anglers and Hunters, Greg Farrant, manager of government affairs and policy. Welcome to the committee.

I think everyone here knows the process, so I am going to quickly turn it over to our witnesses to do their presentations. Then we'll get right into Qs and As.

Without further ado, who is going to start?

Greg, according to Steve, you're starting. The floor is yours.

Mr. Greg Farrant (Manager, Government Affairs and Policy, Ontario Federation of Anglers and Hunters): Thank you very much.

Good morning, Mr. Chair. Good morning, members of the committee.

On behalf of the Ontario Federation of Anglers and Hunters, our 100,000 members and our 740 member clubs across Ontario, thank you for affording us the opportunity to appear before you today to comment on Bill C-47.

Clearly, most reasonable people do not object to increased oversight when it comes to the export of various types of what are referred to as conventional weapons in the Arms Trade Treaty and increased vigilance as to what countries these weapons are being sent to, where they might be used to engage in acts of war, terrorism, or subjugation of their own citizens. In fact, since a large part of the bill deals with the export of these types of weapons and not importation into Canada, we have no major objections in that regard. There are, however, two or three troubling aspects regarding the importation rules and the absence of certainty in the legislation that I want to comment on very briefly today.

During second reading debate, the Parliamentary Secretary to the Minister of Foreign Affairs stated:

I would like to make it clear that Canada's accession to the Arms Trade Treaty does not and would not affect domestic ownership of firearms or Canada's domestic firearms laws and policies. The ATT would govern the import and export of conventional arms, not the trade in sporting and hunting firearms owned and used by law-abiding Canadian citizens.

This government understands that this treaty will in no way affect domestic ownership of firearms.

In response to a question from the member for Red Deer—Lacombe, he responded by saying:

Let me make it clear that accession to the Arms Trade Treaty will in no way affect domestic gun ownership in this country. It will in no way put any restrictions on law-abiding Canadian citizens. It does not deal in the trade of sporting and hunting firearms.

Finally, in response to a question from one of his own colleagues, he stated:

The ATT governs the import and export of conventional arms, not the trade in sporting and hunting firearms owned and used by law-abiding Canadian citizens.

This is an important point, reinforced by the fact that the parliamentary secretary to the minister repeated the government's position on this three times.

While the ATT does contain a measure of assurance in the preamble—not the treaty itself but in the preamble—that speaks to legitimate trade, lawful ownership, and use for several purposes, there is no language in the treaty itself or in the bill that provides similar comfort, what at least one member referred to as a “greater clarity” clause. The question is why not?

If the government believes that the treaty does not impinge upon domestic ownership or use of firearms, and in the words of the parliamentary secretary, “will in no way put any restrictions on law-abiding Canadian citizens”, why wouldn't the government include wording in the bill that would provide a level of certainty for legal, law-abiding firearms owners? I have every doubt that the nation-states that are party to the ATT are predisposed to amend the treaty itself to include such wording, so why is our government reluctant to at least provide some assurances in Bill C-47 that recognize what the parliamentary secretary has said and is reflective of language in the preamble to the ATT, whether that's wording that appears in the preamble or the top hat of the bill or elsewhere?

In our view, this is a missed opportunity for the government to demonstrate clearly their conviction that the treaty is not intended to impact negatively upon that group by reaffirming this in the legislation, and we would respectfully recommend that the committee rectify this oversight.

This becomes even more important in view of the fact that we believe the treaty contains language that may indeed pose a problem for legitimate firearms owners in Canada, and in fact could impinge upon Canada's domestic firearms laws and policies contrary to the government's assurances. I would refer you to article 2 of the treaty, which outlines eight categories of conventional weapons, the last of which is small arms and light weapons. Further to this, articles 3 and 4 clearly state that the treaty also applies to ammunition used by any of those eight categories, their parts and components.

Given that the ATT refers to both persons or individuals and organizations, how could that be interpreted as not impacting on firearms owners in Canada, who may on occasion order firearms, ammunition, or parts from the United States? This is lost on me, but I would appreciate any clarification on the matter if someone can provide it. If that is not possible, it would certainly appear that the treaty does in fact impinge on legal firearms owners, but there is no accounting for this in the bill through exemption or any other means.

•(1105)

The second issue I will speak to briefly this morning was a source of considerable rancour during debate, namely, the contention that requirements in the ATT require nation-states to collect information, which, ipso facto, has the appearance of a new and different firearms registry. I'm not a lawyer nor do I pretend to be one, but in reading article 12(3) of the ATT, its reference to record keeping and in particular the phrase "end-users", it certainly appears that nation-states that sign on to the treaty are encouraged to create and maintain a version of some type of registry that, in our view, has some resemblance to what went before.

This government, and indeed the Prime Minister himself, have repeatedly assured the firearms community across Canada that they have no intention of bringing back a long-gun registry, and we have taken the government at face value. However, by signing on to the ATT, which includes the criteria suggested in article 12(3), it's hard to see how this is not a variant of the former model, which is cause for much concern and calls into question earlier comments I referred to which contained assurances that lawful firearms owners would not be impacted.

However, the keeping of and retention of records by importers, exporters, firearms dealers, and end-users for defined periods of time that is referred to in the bill, without being required to turn these records over to the government on demand, is something that most in the industry already do for insurance and other purposes. This, in itself, does not constitute a registry subject to future regulations. The problem occurs when the requirements under the ATT require nation-states to keep records where individuals or end-users could be identified, and they're shared, something the ATT seems to provide for. This is problematic in terms of privacy, and problematic in that it takes on the appearance of a pseudo registry, intentionally or otherwise.

Our final concern relates to the fact that so much of the substance of this bill remains unknown. As the member for Laurier—Sainte-Marie noted in the House, the meat of the bill will be in the regulations, which are yet to come. Any legislation, not just this bill, that proposes to govern activities substantially through regulations

that are unknown and unseen during debate is always of concern because, as the expression goes, the devil is in the details.

We obviously can't comment on regulations that have yet to be created or seen, but we do want to express concern over the fact that legislation is debated in a public place while regulations, which will largely govern the government's actions going forward in this area and give force to the legislation, will not be subjected to the same level of scrutiny.

Once again, Mr. Chair and members of the committee, I wish to thank you for inviting us to be part of this discussion. Thank you.

•(1110)

The Chair: Thank you, Mr. Farrant.

I'll go to Mr. Torino, please.

Mr. Steve Torino (President, Canadian Shooting Sports Association): Thank you, Mr. Chairman and members of this committee, for inviting me to comment on Bill C-47, and to answer any questions I can in this regard. I would also like to present some relevant background information that may be pertinent to this bill.

I am president of the Canadian Shooting Sports Association, and I chaired the firearm advisory committee for the Liberal government from 1996 to 2006, and co-chaired the firearm advisory committee for the Conservative government from 2006 to 2014. I was also an adviser to the Canadian delegation to the United Nations on the Arms Trade Treaty and related programs from 2006 to 2014. Our association represents some 60,000 firearms owners and active target shooters.

The Arms Trade Treaty covers not only conventional arms used in conflicts, but civilian legal arms, ammunition and related parts and accessories as well. Since Bill C-47 contains amendments to the Export and Import Permits Act, allowing the accession to the Arms Trade Treaty, it should be stated that Canada is basically a nation of importers of these products, and that any amendments to current policies and practices can have an impact on this \$5 billion per year industry and its clients, the end-user.

CSSA members are concerned with possible negative effects from the implementation of the Arms Trade Treaty and Bill C-47, including a possible curtailment of exports to Canada of currently available civilian firearms, ammunition and related parts and accessories. Canada's annual imports of civilian firearms, ammunition, parts, and accessories exceeds \$400 million according to Statistics Canada. In addition, there is concern in the firearms community of a possible return to a firearm and ammunition registry, alluded to in article 12 of the treaty.

The inclusion of brokering in Bill C-47 appears to be a major amendment to the Export and Import Permits Act and the Criminal Code. To the best of our knowledge, there are no illegal brokers operating in Canada who would be affected by this amendment, and all legal brokers in our opinion are in compliance with Canadian standards. So the thought arises as to what events and subsequent consultations have occurred in this regard that would lead to this amendment.

Canada's rules regarding the import and export of conventional arms and small arms and light weapons already exceed the ATT guidelines. Canada's practices for export are well established. Canada's import and export controls exceed UN treaty requirements, and are in line with those of our principal allies and partners in the major export controls regimes. It is our experience that Canada's export controls officials are very involved in analyzing each proposed transfer.

Much of the balance of Bill C-47 seems to refer to codifying current policies and practices or creating modifications thereto.

Current world conflicts raise questions as to the efficacy of the controls in the Arms Trade Treaty, when a myriad of weapons appear in the hands of insurgents who are labelled as undesirable to peace in the affected regions. As well, the source of such weapons used in the present series of "terrorist" attacks worldwide pose similar queries.

The current Arms Trade Treaty was supposed to be passed by consensus. Yet when the consensus could not be reached in April 2013, it was passed by simple majority vote in the UN General Assembly.

In its current version, section 20 of the Arms Trade Treaty clearly states that any future changes to the treaty will be passed by a 75% majority of the states parties present for the vote. This simple majority vote by the states parties could change Canada's current working policies, putting decisions in the hands of states parties, who, in some cases, have serious conflict issues of their own, and who could possibly interpret any proposed changes to the Arms Trade Treaty in the light of their own issues. This interpretation could, and possibly might, have some unintended and unwanted consequences for Canada, since our controls far exceed those of most states parties.

When Canada enters this treaty, and I gather it will, we would be subject to any changes made by other nations, without much say on our part in the final outcome. This can be viewed as not necessarily the best situation to maintain our decision-making abilities in a sovereign Canada.

It is our recommendation to include language in Bill C-47 that would remove the spectre of this legislation creating a future firearms registry, in keeping with the commitments of this government.

Thank you for your time and consideration.

•(1115)

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

Now we'll go to questions, and we'll start with Mr. O'Toole, please.

Hon. Erin O'Toole (Durham, CPC): Thank you very much, Mr. Chair.

Thank you, gentlemen, for outlining some of the concerns that members of both your groups have with Bill C-47. I would describe them as very reasonable concerns, and I appreciate your expressing them in a little more detail today.

For your benefit, I will speak for a moment on where we've been so far in committee, and then I will have a few questions specific to your concerns.

First, we heard from government officials from the trade and export controls bureau that essentially Canada had one of the world's leading import and export regimes. I added to the testimony to say we've had that since the war.

They weren't able to give detail on any of the violations you were referring to, Mr. Torino. They said that they don't know of any violations in a brokering aspect or under the act as it currently stands, but they have undertaken to get that.

Ms. Gilmour who appeared said that we're already complying with 26 of the 28 elements of the ATT, and have done since long before the UN brought forward a treaty. In fact, the two elements—really there's just one, the brokering changes, and the second element is a change from policy to law. Policy has already been implemented, since the Mulroney government, and they are going to change from a policy direction into law. You could say there's really only one change being made by this legislation because there hasn't been a problem in Canada.

We recently heard from Amnesty International that they view this as not a step forward because the U.S. and mainly the large military equipment exporters around the world are not parties to this ATT.

That's why we're here today, and now we're hearing from those concerned.

Mr. Torino, you mentioned that you were involved as an adviser on the ATT from 2006 to 2014. Did Canada ask for an explicit carve-out, not in the preamble, but in the treaty itself? Did Canada advance that specific exemption for lawful firearm users, sport shooters, or hunters as part of the UN discussions on the treaty?

Mr. Steve Torino: My understanding is a request was made, and we ended up with something in the preamble that said "mindful of". There was nothing in the treaty at all.

Hon. Erin O'Toole: So Canada's position I would say—

Mr. Steve Torino: That was my understanding, but I was not the negotiator. I was simply an adviser. The head of the delegation was Habib Massoud. If you feel up to it, you should contact him and get the details.

Hon. Erin O'Toole: Okay.

It's my understanding from the research that we did ask for a specific exemption for civilian use.

Mr. Steve Torino: That was my understanding also.

Hon. Erin O'Toole: The concern I think you both have is the fact that the UN chose not to provide an exemption or a specific carve-out, but to use the preamble, which does not give the certainty you feel is required in this area.

Mr. Steve Torino: Having been present there until 11 o'clock or 12 o'clock at night and listening to all the negotiations that went on, I think the word "negotiations" enters into it. I'm not really sure of who did what at the end, but in the end, we did not get anything in the actual body of the treaty.

I believe a couple of other countries did ask for the same thing or something similar to that.

Hon. Erin O'Toole: I believe so as well. Thank you.

In questioning the officials from the department, I quoted Professor Kent Roach from the U of T or Osgoode Hall law school with respect to preambles. I'll quote it again:

Preambles can oversell legislation either by expressing unrealistic hopes that are not always supported by the fine print or the text of the law or by suggesting that "we can have it all".

The certainty that would be provided by explicit exemption language would likely satisfy most of your members. Would that be fair to say for both of you?

Mr. Greg Farrant: In my context, yes.

Mr. Steve Torino: I think so.

Hon. Erin O'Toole: So we have members of the government, including the parliamentary secretary whom you quoted, Mr. Farrant, who make these broad claims to lawful hunters and sport shooters that they won't be impacted by this, but the only way to truly say that is an explicit reference to it in the bill.

We will have clause-by-clause study where we can suggest that as a committee. You're saying here that if we do that, your members will be satisfied.

• (1120)

Mr. Greg Farrant: Yes. With all due respect to the government in this matter, I think—and I hate to oversimplify anything because nothing in legislation is simple—adding a clause similar to the wording perhaps in the preamble of the ATT itself or whatever, but a clause directly in the legislation, would give a huge amount of comfort to all those people who are referenced in the parliamentary secretary's remarks, and I think would satisfy a massive concern with this bill.

Hon. Erin O'Toole: That seems like a very reasonable request under the circumstances. As you said, the concern is, and I'll quote you, Mr. Farrant, that there could be a "pseudo registry" if that certainty is not provided. The parliamentary secretary and the government like to repeat often that they're not going to return to the registry, which they now acknowledge was profoundly unfair. A small inclusion of explicit language would resolve this once and for all. I think that's a reasonable request considering a majority is going to push through Bill C-47. Rather than relying on a preamble that even legal scholars have said is not reliable to the point we'd like, explicit language with respect to an exemption for lawful use for hunters, for sport shooters, would satisfy this confusion.

I hope my friends on the government side heard your reasonable proposal and my suggestion, and we can, at the clause-by-clause stage, insert that so we can all be assured that this is going to be effective, at least from Canada's standpoint.

Some of our witnesses have said that because the big four weapons exporters around the world are not signatories, or will not abide by the treaty, our participation is merely symbolic. If we're going to be symbolic or an example to the world, we should do so in a way that eliminates concerns of lawful users of firearms.

The Chair: Thank you, Mr. O'Toole.

Mr. Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): Thank you, Chair.

Mr. Torino, your presentation at the start of the committee meeting concentrated on a somewhat different aspect of this bill and treaty. In the first part of your presentation, you spoke of the inclusion of brokering in Bill C-47. You called that a major amendment. You referenced the possible curtailment of exports to Canada. Are you, or have you previously been, a firearms dealer or broker?

Mr. Steve Torino: I am a firearms dealer, and have been so for years, and that's been well known to both governments.

Mr. Borys Wrzesnewskyj: Okay. I see.

Mr. Steve Torino: I'm a retailer, actually.

Mr. Borys Wrzesnewskyj: Okay. Is your business strictly domestic? Is there no international component? You referenced international brokering.

Mr. Steve Torino: In terms of the international brokering, when we started to look at this, we realized that just about any company, any organization...Colt Canada I realize is strictly military, non-civilian, but could they be considered to be a broker? There are many elements here when anyone imports firearms. Canada is a nation of importers. We are not a nation of manufacturers, other than Savage. If you are ordering something from outside the country, are you therefore a broker? Again, as was said before, the devil is in the details and the regulations.

What exactly is a broker? Each country seems to be looking at it slightly differently. I noticed that at the UN. There were a lot of different interpretations about what is a real broker. Many of them are concerned with the real problems happening in the conflict areas. We're looking at ourselves here in Canada saying we don't have the same issues. Our levels of control are so much higher.

Mr. Borys Wrzesnewskyj: I see that's your first concern which you noted, but especially in Mr. Farrant's testimony, there was a different concern that he seemed to concentrate on.

Mr. Farrant, you raised concern over the possible creation of a gun registry in Canada, notwithstanding the fact that it's been made clear by the parliamentary secretary, by the minister, by the government, publicly declared—and, in fact, you quoted the parliamentary secretary several times—where we've made it absolutely clear this is not about doing that. In fact, there's no wording that claims that.

You referenced article 12, which requires a state party to have a domestic national record-keeping system. We've had a system like that since 1947, which Mr. O'Toole referenced, since World War II. We've had a record-keeping system under the EIPA. These record-keeping obligations are familiar to all Canadians involved in the legitimate trade of arms. These are not new requirements that will be changed in any way by Bill C-47. Given those facts, and all the declarations that have been made, it's clear that the bill will do a number of things, but one of the things it will not do is create a new registry.

Do you agree?

●(1125)

Mr. Greg Farrant: Not entirely.

I do agree, and here I'm parsing a fine line. There was a lot of discussion during debate, and I believe the phrase that was used was "backdoor registry". Do we believe that this is a backdoor registry? No.

What is absent to make it such is the wording that when it comes to inventory...and it talks about inspectors at all reasonable times being able to go in and look at inventories, etc., for compliance. What's missing from that, which would make it into something of a backdoor registry, is the wording that the minister may demand that the inventories in their entirety that are kept by these groups or individuals be turned over to the government. That would be something different.

The fact that article 12 refers to end-users, we interpret that—maybe correctly, perhaps not—as me, Mr. Torino, anybody who has firearms in this country being the end-user if they are the ones purchasing them, or the ammunition, or the components and parts and whatnot. That section 3 of article 12 starts to get very close to some of the language that used to be associated with Bill C-68 when the long-gun registry was still in effect in this country. That is a bit of a concern for us.

Does the bill create that? I have to say quite fairly, no. However, depending on what the regulatory attachments are to the bill, if there's any indication in those regulatory attachments that the government can at will, or on demand, require those records to be turned over, which includes not only perhaps inventory but sales, then we have more of an issue at that time.

Mr. Borys Wrzesnewskyj: So it's clear, and I think this is an important point, you have just acknowledged that quite clearly the way it's written, the legislation does not create a gun registry.

Mr. Greg Farrant: That's correct, but there are also several warning shots in there that we have to be careful of.

Mr. Borys Wrzesnewskyj: Thank you.

The Chair: Thank you, Mr. Wrzesnewskyj. Your time is up.

[*Translation*]

Ms. Laverdière, it's your turn.

Ms. Hélène Laverdière (Laurier—Sainte-Marie, NDP): Thank you very much, Mr. Chair.

Gentlemen, thank you for being here today.

If I remember correctly, we met before, in 2012. You appeared before the committee at an information session on negotiations for the Arms Trade Treaty. You were able to share your concerns, which you had an opportunity to present again when you accompanied the Canadian delegation to those negotiations.

I must admit that at the time the Liberal members and we, the members of the NDP, had a lot of trouble understanding why the Conservative government only brought your organizations to New York to take part in these negotiations, and avoided bringing other very well-known organizations such as Project Ploughshares, and others who worked on these issues for years and had acquired great expertise. It seems to us, and we continue to think, that this was not a very balanced representation of Canadian civil society.

Honestly, we have some concerns regarding this bill which are rather different from yours. These concerns are very well summarized in an analysis of the bill done by Michael Byers from the Rideau Institute. The subtitle of that study is interesting. It is "An Act to facilitate arms exports to countries which violate human rights?"

I want to take advantage of having the floor to say that it would be very interesting to have this document distributed to all of the members of this committee for information. I also had the opportunity of asking for it—

●(1130)

[*English*]

The Chair: I will give it to everybody on the committee.

[*Translation*]

Ms. Hélène Laverdière: Thank you very much, Mr. Chair. I will table it officially. I don't know if it is clear enough. The other document was prepared by a group of civil society organizations. In it, these organizations express their 10 main concerns regarding the bill. I think that these two documents will be very useful tools for the members of the committee.

I'd like to get back to Mr. Byers. Can the clerk confirm that he was invited to the committee? I believe he was on our list of witnesses. Did he agree to come and present his point of view on the bill to us? We have had him before the committee a few times, and I think he can contribute some very interesting expertise.

I would like to raise a related topic that is not directly connected to today's study.

In Quebec recently, we have been hearing about a group of gun owners who are opposed to the Quebec gun registry. They are conducting quite a virulent campaign against PolySeSouvient, or Poly Remembers. This very well-known Quebec organization was created following the horrible Polytechnique massacre that was perpetrated against women, as you will recall. This informal group of gun owners pirated the Poly Remembers Facebook page. It sends photographs of guns to survivors of the Polytechnique massacre. It has also sent hate messages and made threats against some of the survivors of the massacre.

I would like to know whether you condemn this type of action.

[English]

Mr. Steve Torino: Thank you.

I have tried not to follow this on purpose, because the Canadian Shooting Sports Association is not involved with those organizations. I think that any legal way of protesting is necessary in a free and democratic society such as we have in Canada. When it goes too far, I believe that the authorities then start to take a look at things. Beyond that, I don't think I can answer that question.

[Translation]

Ms. H  l  ne Laverdi  re: Thank you.

I am done, Mr. Chair.

[English]

The Chair: Thank you.

Mr. Saini, please.

Mr. Raj Saini (Kitchener Centre, Lib.): Good morning, gentlemen.

Thank you very much for coming. I think it's very important that we hear your perspectives.

I want to pick on what my colleague Mr. Wrzesnewskyj said, and I will follow up with what Mr. O'Toole said.

We have three major articles in our regime right now. Article 5 of the ATT requires a state party to "establish and maintain a national control system", which we're already doing. We have been following article 12 since 1947 and article 13 since 1993.

I'm wondering what you think, because you talk about a gun registry and you're talking about regulation maybe. I'm unclear where you see anything extra happening when it's already being followed.

• (1135)

Mr. Greg Farrant: I'll speak to that if I may, Mr. Chair.

I think you've just pointed out the very concern that we have. I'll grant you that if those are already in place, I understand your question, but the problem is that without exemptions in this piece of legislation, and the exemption we're asking for is a very simple one, a very straightforward one, and one that echoes what the parliamentary secretary said in his remarks during debate repeatedly, all of the articles you've just cited now have the potential, and I stress "potential", to become something else in this country, depending on what the regulatory regime attached to Bill C-47 becomes, and we don't know what that's going to be. I'll give you an example, if I may. This is hypothetical, obviously.

If the government, through regulation, included some sort of provision for the minister at his discretion to demand, request, or whatever, certain records, that in itself would start to veer towards constituting something that we had before and do not have right now. I recognize these three articles you quoted, and one we already talked about, article 12, has language in it that is of concern in terms of inventories, in terms of the information that it requires of individuals and organizations, or "persons and organizations" as they refer to it. We remain concerned about those articles themselves

without some sort of clarification in our national legislation that would address it.

Mr. Raj Saini: I would like to read something for you, because I think it's important. The United States, as you know, has signed the treaty. They have not yet ratified it, but former U.S. secretary of state John Kerry said:

I also want to be clear about what this treaty is not about. This treaty will not diminish anyone's freedom. In fact, the treaty recognizes the freedom of both individuals and states to obtain, possess, and use arms for legitimate purposes. Make no mistake, we would never think about supporting a treaty that is inconsistent with the rights of Americans, the rights of American citizens, to be able to exercise their guaranteed rights under our constitution. This treaty reaffirms the sovereign right of each country to decide for itself, consistent with its own constitutional and legal requirements, how to deal with the conventional arms that are exclusively used within its borders.

Also, during that negotiation process—and Mr. Torino may have more information because he was the adviser—there were certain key U.S. red lines during that time. One of them, as you are quite aware, is:

The Second Amendment to the Constitution must be upheld. There will be no restrictions on civilian possession or trade of firearms otherwise permitted by law or protected by the U.S. Constitution.

You know how important this issue is in the United States. I'm just wondering how you would comment on that when they were quite clear in their comments that this would not affect anything domestically in their country.

Mr. Steve Torino: If I may attempt to answer, the issue here is that the Arms Trade Treaty does not include what we call conventional arms as well. It includes small arms and light weapons, and everyone present at the conference, which went on for a very long time, were very clear that civilian firearms of any kind, ammunition, accessories, and so forth, had to be included in there to make a joint package.

The problem with the Arms Trade Treaty always has been and always will be that one size does not fit all. What we do in North America is not the same as what's going on in some other places where they have serious conflict issues, and where weapons of all types are flowing freely back and forth, with the agreement of the government or not, no one knows, and I don't think that's of issue here. This is one part of it that is very much of concern.

Canada does not have a registry of non-restricted firearms. That was cancelled in April 2012. The treaty does refer to keeping records of all types of firearms and weapons of all sorts. Mr. Farrant referred to that before. There's a giant hole there. What our members are afraid of is that this will come back somehow as what was referred to as a backdoor registry, and if not that, at least possibly a curtailment of imports into Canada of various and sundry products that would affect the community.

Canada also does not have the right to say that we want consensus on the treaty. It's a simple majority vote, and 75% of the members present at any Arms Trade Treaty conference in the future can change it. If Canada votes against, we would fall within the 25% that would not agree to it, but it would still pass, and this might affect us in Canada. These are concerns that we're raising to the committee, and nothing more than that.

•(1140)

Mr. Raj Saini: I'm glad you mentioned that because Canada's also part of the Wassenaar Arrangement which, I think, has been very beneficial.

I know I have very limited time, but I just want to correct the records. My friend, Mr. O'Toole, said that the top four countries have not signed the treaty, but that's actually incorrect. Germany and France, which are two of the top five exporters, have signed and ratified the treaty.

Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Sidhu, go ahead, please.

Mr. Jati Sidhu (Mission—Matsqui—Fraser Canyon, Lib.): Thank you, Mr. Chair.

Thank you for coming in front of the committee.

Let's go back to the 75% concern that Mr. Torino has. Anywhere in the world...actually, there are three thresholds: 51%, 66%, and 75%. Even countries or associations that don't have any constitution...people go by the book *Robert's Rules of Order* and I haven't seen anything beyond the 75% majority. What are you suggesting? If you're not really happy, a 75% majority can change things around, and then we fall back into 25%. What can we do as a country?

Mr. Steve Torino: I think that when Canada is affected by something, they must still be part of the treaty and they must still agree with what's been passed and implemented by the 75% majority. If not, their choice is to get out of the treaty, but up to the date that they get out of the treaty, they must still abide by the changes made. That is in the Arms Trade Treaty itself, that you must abide by the decisions as long as you are part of it. You can get out, if you don't like what's going to happen in the future, but as of at that point, you must agree with what's happening.

It's an issue. It's raising a concern to this committee that is involved with finally deciding which way C-47 will go. I thought it was necessary to bring this up to the committee.

Mr. Jati Sidhu: You're telling me we have a problem with that, but going forward, what's a cure? Sitting aside, out of any negotiation, doesn't get you anywhere. If you still have to abide by what they pass, 75% majority you have to come along, I don't think it's appropriate not to be part of the treaty.

Mr. Steve Torino: I never suggested that. As far as I'm concerned, I think that Canada's going to sign on to the treaty, so I'm just raising the issue here at this point because it is a possible concern for the future.

Mr. Farrant raised issues of possible concern for the future. CSSA is doing the same thing.

Mr. Jati Sidhu: Mr. Farrant, the accession to ATT will not impact domestic gun owners. You mentioned that. It will only limit the ability for foreign countries to use Canadian-made arms to commit human rights offences. Could you please explain to the committee how ATT is going to affect gun ownership? Do you have any examples of how the addition to ATT affected any other countries?

Mr. Greg Farrant: I want to be very clear. We do believe the ATT will affect small end-users, small legal, law-abiding firearms owners in this country, because of some of the language in the ATT.

As for what happens in other countries, it is not either the mandate of my organization or really our concern. Our concern is Canadian, in particular Ontario, firearms owners, users, hunters, recreational shooters, etc.

We believe that such language, in several articles in the ATT—and we're not suggesting that Canada should or shouldn't sign on to the ATT. What we are looking for is some level of certainty and some level of protection, if you will—I hate to use that word—within C-47 that simply ensures there are exemptions for the recreational shooting and hunting communities in this country. We think that can be achieved through a small amendment to C-47.

We're not sitting here in judgment of the entire treaty, nor are we sitting in judgment of Canada's decision to sign the treaty going forward. Certainly, we wouldn't be so arrogant as to make that overarching recommendation. We're just seeking some protections because of language in the treaty and the lack of similar protections in the bill that would offset some of the provisions in the treaty, in our view. That's simply all we're looking for here. We're not making statements about what Canada should or shouldn't do.

•(1145)

The Chair: Mr. O'Toole, please.

Hon. Erin O'Toole: Thank you very much, Mr. Chair.

We've focused on some of your concerns about article 12 and how we could alleviate those reasonable concerns with a specific exclusion in the bill. That will be coming forward, and all members will be able to address your concern, which I think is reasonable.

Let's talk about the wider issue, because the government has talked about some of the horrible situations around the world, where rape is being used as a weapon of war, where there's civil strife, and crimes against humanity. We hear from the government—from Ms. Gilmour, who runs the department—that since 1986 there have been policies in place to restrict the export of Canadian arms to countries where any of those crimes or activities are taking place.

Is it fair to say your members agree with those controls?

Mr. Steve Torino: Yes, definitely. There is also, Mr. O'Toole, an automatic firearms country control list, which is even more specific as to which countries are considered acceptable and which countries are not considered acceptable. It definitely goes along with that. Thank you.

Hon. Erin O'Toole: You predicted my next question, Mr. Torino. Thank you very much. I assume, Mr. Farrant, your members are of the same view with respect to that.

Finally, we heard that for decades we've already had the ability to exclude all exports to countries on Canada's area control list. North Korea is on that now. I'm assuming your members are in full agreement with all of these regulations that have existed to keep arms out of the hands of despotic regimes, and these sorts of things.

Is that true as well?

Mr. Greg Farrant: Yes.

Mr. Steve Torino: Yes.

Hon. Erin O'Toole: Really, then, there's virtual agreement in Canada on all aspects of this bill, with some uncertainty with respect to the fact that specific exclusions were not provided for recreational and legal use of firearms.

We've heard from Mr. Saini, Mr. DeCoursey who is the parliamentary secretary, Mr. Sidhu, and Mr. Wrzesnewskyj. They seem to agree that supporting recreational use of firearms is legitimate within the context of Bill C-47, and that the best way to do it is with a specific exclusion.

If an exclusion is inserted into Bill C-47, would your organizations be prepared to support the full bill?

Mr. Steve Torino: It would depend on the wording of the exclusion and the final version. I'm sure this is going through clause-by-clause consideration, third reading, and so forth, so there are going to be other changes. I think we'd wait and see, but anything that would support what we've presented so far would be very acceptable.

Mr. Greg Farrant: I'll give a conditional yes on that, simply because the regulatory regime that's attached to the bill is unknown at this time.

•(1150)

Hon. Erin O'Toole: Yes, fair enough—a caveat.

Mr. Greg Farrant: A caveat, but the bill itself, with that exclusion in it, I see no reason why not to.

Hon. Erin O'Toole: This is wonderful, because this is a committee doing what it should be doing. We remember when Prime Minister Trudeau said he wanted committees to be more effective, to take in reasonable concerns. He took parliamentary secretaries off committees so they could be truly independent and bring forth reasonable concerns.

Therefore, a reasonable and modest exclusion to address concerns that even government members are trying to address in their questions would solve all concerns.

Let me pose it the other way. If the government were to oppose such a specific clause being inserted into Bill C-47, would your members take that as your concerns being ignored? Further, would your members take that as a sign that their concerns are valid, because there was no exclusion in the arms trade treaty, only mention in the preamble?

Would voting down such a reasonable clause be taken as ignoring their concerns and really fuelling the uncertainty on this area?

Mr. Greg Farrant: I'm going to choose my words very carefully because the parliamentary secretary is present in the room. Given the assurances that the parliamentary secretary gave repeatedly during

debate, and given assurances that I personally have received in meeting with government members—including PMO staff—in the past, we think the request we're making is a reasonable one. If something similar to that was not able to be incorporated in the bill, we would question why, and we would see it as an indication of some—I hate this expression, but I'll use it because I can't think of anything else—degree of bad faith on the part of the government.

Mr. Steve Torino: It would depend on the wording of whatever's being included. If the concerns are not addressed, our members would feel a bit let down, to put it very mildly. They would raise their concerns with the minister's office and with the committee. Other than that, it would depend on what's in there.

Hon. Erin O'Toole: It would be a demonstration that committees can work in the way they're intended, which is to take reasonable concerns from broad or vague language in a specific piece of legislation and clarify them to address those concerns. That's why we've asked both of your organizations to be part of that.

You wanted to add something, Mr. Farrant?

Mr. Greg Farrant: Yes. I don't think requesting that—quote, unquote—“exemption” or language that clarifies that situation within the legislation is unreasonable given the assurances we've had from the government side of the House. If it's not acceptable, you have to question why the language used in the House is not able to be translated into the legislation, just to give a level of comfort.

Hon. Erin O'Toole: That's a great point. Thank you.

The Chair: Thank you, Mr. O'Toole.

Mr. DeCoursey, please.

Mr. Matt DeCoursey (Fredericton, Lib.): Thank you, Mr. Chair, and thank you to both witnesses for being here today.

Mr. Farrant, when I came in, you were quoting me. I believe I was quoted three times exhaustively, and quite accurately, if my memory serves me correctly. I truly appreciate that, because my good friends on the other side of the floor have the tendency from time to time to misquote me in the House of Commons. I certainly appreciate the diligence with which you undertook to ensure that I was properly quoted.

I've heard the concerns addressed here today around some of the language in article 12. I believe, and it's the firm view of the government, that there is no cause for concern around issues related to article 12, which requires each state party to maintain national records of exports, because this is not a new obligation for Canada. Mr. O'Toole has referenced the fact that it's a matter of compliance with our Export and Import Permits Act, that we've been doing so for decades, and that the obligations for exporters will not change.

I also note that the language inserted into the preamble of this convention was done so at the suggestion of Canada. Mr. Torino, maybe you can clarify for sure that was the case in 2012, which would have been under the guidance of the former government. They voted for this treaty at the time and then, for unknown reasons, chose not to come home and do the necessary things to ensure that Canada was in full compliance with the Arms Trade Treaty.

I think we all agree we are a leader when it comes to arms trade regulation in the world, and there are two simple matters that we need to undertake to be in full compliance with the Arms Trade Treaty. We have a significant leadership role to play in ensuring that for other countries in the world affected by conflict, coming out of conflict, or subject to occasions where women and girls are subjugated to horrific forms of violence, we have an important role to play in strengthening their arms control regimes.

Mr. Farrant, I heard you say, after quoting me extensively three times, that you take us at face value, and I appreciate hearing that.

Maybe I'll frame my question this way. Given that what's to come in regulation is effectively codifying the assessment criteria that Canada already undertakes to ensure the proper issuing of permits for the export of conventional arms, and does not in any way purport to change any of the elements of article 12, which we are already fully complying with and have been undertaking to comply with for decades, where is the concern here for gun owners?

• (1155)

Mr. Greg Farrant: I'll try to very quickly address two or three things.

Number one, the fact that we're already adhering to article 12 does not make it any less disconcerting, given that there's no reassurance within Bill C-47 or in the words that have been spoken in Parliament by the government and the assurances we have been given in other places by members of the government, including in the Prime Minister's words about not bringing back a firearms registry.

In terms of the concern over article 12, albeit the fact that we may already be complying with it, it does not remove the concern going forward. We think Bill C-47 would have the ability to rectify those concerns quite simply with the insertion of one or two very simple sentences, which would override a lot of concern that the recreational and hunting community would have with regard to Canada signing on to the ATT.

In fact, I might suggest—and this is really stepping outside the purview of my organization's mandate—that one of the things I've heard through debate around this particular bill, and which we very strongly agree with, is the fact that there need to be controls over exportation of munitions, of weapons, whatever you want to call them, to certain parties and certain nation-states around this globe. That's very clear. Any reasonable person is going to support that. I'm not sure how this particular piece of legislation addresses the fact that exports from this country to another member state that is party to the agreement and can then turn around and send them somewhere else is—

Mr. Matt DeCoursey: There are clear provisions about diversions in this treaty as well.

Mr. Greg Farrant: Okay. The other—

Mr. Matt DeCoursey: That's part of the assessment process that the minister undertakes and that would be codified to regulation with the passing of this bill and our accession to the ATT. I think that's an important thing for people to understand.

Mr. Greg Farrant: The last point I would want to raise is that proposed subsection 10.2(1) talks about inspections and uses the language, "An inspector may, at all reasonable times". Any time you see language that says "at all reasonable times", it sets off a bit of a red flag, because what's reasonable to one person is not reasonable to another.

I'll give you an example. My organization has a firearms business licence. Once every two years, the Chief Firearms Office of Ontario comes in and inspects our records, our firearms and how they're stored, and sees that the records are being kept appropriately, etc. To the best of my knowledge, we've had that licence for over 20 years. We've kept every record since the day we were granted that licence. We can go back to an inventory 20 years ago. I think there needs to be some care taken in terms of defining "at all reasonable times", simply so fishing expeditions don't happen.

I know there have been some discussions with the government. I personally have had some with the government regarding another issue that will be coming back onto the table, and that is the UN marking system, which has been deferred by the minister to December 1, 2018. The talk there about how often things need to be inspected and how often things need to be followed up on and stuff like that is part of the marking system, too, and there are going to be some more discussions around that, so just—

• (1200)

Mr. Matt DeCoursey: I think that ongoing consultation with government is tremendously important too.

The Chair: Mr. DeCoursey, we'll have to wrap it up. I'm sorry.

Mr. Greg Farrant: I didn't mean to go off on a tangent there. I apologize.

The Chair: That's okay. We all have strong views.

Mr. Torino, I want you to wrap up as we finish off this part with the witnesses. Do you want to say a few words? Then I'll wrap up.

Mr. Steve Torino: Thank you, Mr. Chairman.

I would like to reiterate that, in our opinion, Canada's rules and regulations, as I mentioned in the presentation, far exceed those of most other countries. We're at the top of the list. Also, as has been said in this committee before, we've had them for many years.

If it's simply codifying the rules and regulations presently in place, nothing is going to change in that regard; however, the concerns raised about a possible registry and about a possible effect on what comes into the country for the lawful firearms community I think still stand. In terms of any type of amendment and any type of inclusion of some sort of legislation that would guarantee or at least rectify the situation for the concerns that have been presented so far, we'd like to know that, if possible.

Thanks very much to you and the members of this committee.

The Chair: Mr. Torino and Mr. Farrant, on behalf of the committee, I want to thank you very much. Many of us who are gun owners are very interested in this subject. I think I'm the only person around this table who was here when Bill C-68 went through, and I remember it very well. It's a discussion that needs to be had whenever there's a perception that maybe the unintended consequences of a piece of legislation need to be clarified. I appreciate very much your bringing this forward. We're looking forward to further discussions with witnesses, and we'll see where the committee goes from there.

Thank you very much.

Colleagues, we're going to take a short break, and then we'll start with our next witnesses.

• (1200) _____ (Pause) _____

• (1205)

The Chair: Colleagues, I'd like to bring this meeting back to order.

Before us in the second hour, from Project Ploughshares, we have Cesar Jaramillo, executive director; and from Oxfam, we have Martin Butcher, policy adviser on arms and conflict. He's on video conference.

I'm not sure if there's been a decision on who will go first. Why don't we start with Mr. Butcher and see if the system works. There are days when it doesn't work the way it's supposed to, so I might as well find out right off the bat if we can hear Mr. Butcher. That would be a good way to proceed.

The floor is yours, Mr. Butcher, and hopefully we will hear you loud and clear.

Mr. Martin Butcher (Policy Advisor on Arms and Conflict, Oxfam): Good afternoon. Thank you very much for the invitation. It's an honour.

The protection of civilians, the achievement of sustainable socio-economic development, and the reduction of humanitarian harm in conflict all necessitate preventing irresponsible arms transfers. This is why Oxfam supported the negotiation of the Arms Trade Treaty and now supports universalization and robust implementation of the treaty with a view to reducing human suffering.

For Oxfam, it is important that all states that have not yet done so should become party to the treaty and incorporate it into national legislation. We therefore welcome the Canadian commitment to accede to the treaty.

States parties must strictly comply with the Arms Trade Treaty, which can help protect civilians in even the most difficult situations by placing international humanitarian and human rights law at the centre of arms transfer decisions, giving only secondary concern to commercial considerations.

At the heart of the national implementation of the ATT are the criteria against which the risks associated with each arms transfer will be judged. For Oxfam, it is important that governments follow a process of thorough risk assessment and then explicit decision on whether or not to authorize transfer for all potential transfers, in line

with treaty obligations. This can be done using a number of different instruments.

For example, within the EU, arms transfers are subject to the intra-community transfers directive, a lighter touch regulation, which takes account of the economic integration of the EU and the non-sensitive nature of most intra-EU arms trading.

For wider transfers, the U.K., for example, has a system of open licensing where, in cases where the combination of equipment and destination is considered less sensitive, multiple deliveries are permitted under a single licence. Companies using such licences are required to keep careful records and are subject to audit upon demand by government. While we do have concerns in some cases regarding what the U.K. government considers "less sensitive", this does show that it is possible to provide for risk assessment and licensing of arms sent to all destinations, in accord with the obligations of the ATT. This is also vital with regard to transparency and reporting, essential components of ATT effectiveness.

Also important is that the scope of the criteria is broad enough for robust treaty implementation. Oxfam urges Canada to look to good models for criteria and to apply them widely. The EU criteria for risk assessment, detailed in the 2008 "common position on arms exports" and incorporated into U.K. law as the "consolidated criteria", are a good starting point for effective implementation of the risk assessment before granting an arms export licence, as required by the ATT.

All 28 EU member states use this system for evaluating arms export risk—a quarter of current ATT states parties. The criteria considered whether the proposed export would: contravene the U.K.'s international commitments; be used for internal repression or where there is a risk of serious violations of IHL, international human rights law, including gender-based violence; provoke or prolong armed conflicts or aggravate existing tensions in the destination country; be used aggressively against another country; adversely affect the national security of the U.K. or allies; be diverted or re-exported under undesirable conditions; seriously undermine the economy; or seriously hamper the sustainable development of the recipient country.

Noteworthy in this regard is that Canada has in fact formally aligned itself to this EU common position, which means that in theory it should already be applying these criteria. It would be interesting to know what alignment means in practice for Canada at this point.

Even excellent language in national law and regulation is insufficient if a government lacks the political will to properly implement the treaty and is not held to account by Parliament and the courts. The U.K. is of interest here again, with the High Court recently endorsing parliamentary scrutiny as a vital part of an effective strategic exports control system.

Oversight of arms sales is a job for Parliament. This has been the case in the U.K. for the last 20 years or so.

● (1210)

The 1996 Scott report into the arms to Iraq scandal noted that a well-informed Parliament has a critical role to play in preventing executive excess. This was confirmed by the recent High Court decision in the judicial review brought by the Campaign Against Arms Trade on arms to Saudi Arabia, which, although subject to appeal, found in favour of the government, with the court extremely reluctant to overrule the government when it comes to licensing decisions, and that this is much better a job for the legislature in general and the Committees on Arms Export Controls in particular. They said:

...the role of the Court can properly take into account that there is an expectation, consistent with democratic values, that a person charged with making assessments of this kind should be politically responsible for them.... [M]inisters have appeared before the Parliamentary Committees on Arms Export Controls and the All-Parliamentary Group on Yemen; ministers have also spoken in parliamentary debates on Yemen, made oral and written statements, responded to urgent questions, and answered a wide range of parliamentary questions and ministerial correspondence.

The seriousness of the case of arms supplies to Saudi Arabia during the Yemen conflict underlines that parliamentary scrutiny is most necessary in the most difficult cases. Where UK-supplied arms are being used...by armed forces who lack the necessary training...targeting capabilities [and self-analysis], the role of Parliament is vital.

Oxfam, therefore, recommends that the Canadian Parliament establish an appropriate committee structure for the scrutiny of government arms transfer policy and practice.

In conclusion, from Oxfam's perspective as an organization dealing with the human consequences of irresponsibly and illicitly traded arms, it is essential that Canada provide for transparent licensing of all arms exports in a robust manner, and for parliamentary scrutiny of that system.

Thank you very much.

The Chair: Thank you, Mr. Butcher. We heard you loud and clear, which is great.

Mr. Jaramillo, you are next. The floor is yours.

Mr. Cesar Jaramillo (Executive Director, Project Ploughshares): Thank you, Chair.

Good afternoon. My name is Cesar Jaramillo. I am the executive director of Project Ploughshares. Thank you very much to all members of the committee for the kind invitation to address you.

I've given a title to my brief remarks, which is "Bill C-47: if left unchanged, Canada will not meet ATT obligations".

For decades, efforts to better regulate illicit or irresponsible arms exports and to strengthen military export controls have been a key focus of the activities of Project Ploughshares. We were strong advocates of the landmark international Arms Trade Treaty long before its adoption and have since underscored the importance of full compliance as the ultimate measure of the treaty's effectiveness.

We were greatly encouraged by Canada's decision to join the Arms Trade Treaty after a highly conspicuous absence and we have engaged in a constructive spirit with colleagues at Global Affairs

Canada on this important file. However, while our desire to see Canada become a fully compliant state party to the treaty has not changed, our expert assessment is that the proposed legislation, Bill C-47, would not enable Canada to meet the requirements and expectations of the Arms Trade Treaty.

We have profound concerns about substantial shortcomings of the bill that make it impossible for us to recommend it before this committee. For absolute clarity, we cannot and we do not support Bill C-47 in its current form. This is a position that is shared by a host of Canadian groups from the disarmament, human rights, and development fields, some of which have testified before the committee on this very issue.

Before I address some of our major concerns about the bill, I would like to underscore the singular importance of this opportunity to review Canada's military export controls regime. It is a rare occurrence that may not happen again in years, if not decades. As such, we encourage all stakeholders, including members of this committee, to seek strong, effective legislation for Canadian arms exports that is truly in line with modern expectations of rigour, accountability, and transparency in the global arms trade, including, of course, full compliance with the Arms Trade Treaty.

A key concern about the proposed legislation is that it does not address the exemptions that have long been afforded to Canadian military exports to the United States. Under current practice, which has been left unchanged by Bill C-47, Canadian military exports to the United States are exempted from licensing and reporting requirements applicable to every other destination. These exemptions are utterly incompatible with the letter and the spirit of the Arms Trade Treaty. Even though we have long considered such an arrangement with the United States to be problematic and contrary to the expectations of transparency around Canada's arms exports, this loophole has become especially egregious as Canada readies to accede to the Arms Trade Treaty. We are aware that the position of Global Affairs Canada is that the exceptions granted to U.S.-bound exports are consistent with the Arms Trade Treaty. For several reasons, we must express our disagreement with this view.

In its first article, the Arms Trade Treaty calls for the highest possible common international standards. To be sure, there are two interrelated and equally important elements to this requirement—highest possible international standards and common international standards—yet the arrangement with the United States neither constitutes the highest possible standard nor is it common to the standards applied to others. Likewise, article 2 of the ATT is explicit about its applicability to all military exports covered under the treaty. Article 5 calls for the treaty to be implemented in “a consistent, objective and non-discriminatory manner”. We find it hard to see how “all” could be interpreted to mean anything other than the totality of Canadian exports, including those destined for the United States. Further, the unique treatment afforded to the United States is out of line with the expectations of consistency, objectivity, and non-discrimination specified in article 5.

• (1215)

Such exemptions would be incompatible with Arms Trade Treaty obligations regardless of the recipient. In the case of the United States, they are especially suspect. The United States is the largest exporter of weapons and military equipment in the world, and as such, Canadian components to the U.S. can be incorporated into systems in the United States and then exported to third parties without requiring further authorization from Canada.

The United States is also the largest recipient of Canadian military goods by far. Project Ploughshares estimates that Canada exports military goods worth as much as \$2 billion to the United States annually, typically more than half of all of our total military exports. Therefore, with Bill C-47 in its current form, the majority of Canadian military exports will neither be reported nor require export permits, even after Canada joins the Arms Trade Treaty.

Critically, the United States is not an Arms Trade Treaty state party and is not expected to become one in the foreseeable future. Canada, on the other hand, will soon be a state party and the expectation is that all its arms export regulations will be consistent with the provisions of the treaty, including those related to licensing and reporting obligations.

Further, a widely shared goal of state parties is the universalization of the Arms Trade Treaty. It is hard to see how Canada can contribute to that objective when it offers laxer conditions to a non-state party than it does to those states that have agreed to be bound by the treaty's obligations.

Another area of great concern relates to the way in which Bill C-47 addresses articles 6 and 7 of the treaty, which refer to prohibitions and risk assessment, respectively. In this regard, Global Affairs Canada has indicated that Canada's “current export permit considerations are consistent with all these elements as outlined in the ATT, but are established as a matter of policy, not law.” Also, Global Affairs Canada states, “The critical element was the need to create a legally binding obligation for the minister to take the ATT assessment considerations into account in deciding whether to issue an export permit.”

This characterization leaves the impression that the only measure necessary for Canada to be in full compliance with articles 6 and 7 is to establish a legal obligation for the minister to take certain factors into account when assessing export permit authorizations. In reality,

however, the Arms Trade Treaty establishes a higher standard than merely taking into account certain considerations when deciding on export permit authorizations.

The Arms Trade Treaty establishes categorical prohibitions on certain arms exports, depending on the outcome of an objective risk assessment process, and it includes unambiguous wording to this effect when referring to exports that a state shall not authorize. Canada's export controls regime lacks any such obligation or wording, whether in policy or in law.

The obligation for the minister to simply consider certain factors does not suffice to meet treaty standards, even if established as a matter of law. In the absence of language that explicitly requires the denial of certain export permits, the minister will have virtually unchecked discretion to authorize any and all military exports, however questionable the recipient or however damning the risk assessment, as long as he or she indicates that factors were taken into account.

We are further concerned that, under the current approach taken by Global Affairs Canada, the details related to these critical areas will be left to subsequent regulations, which are to be known only after the legislation is enacted. Of course, in principle, we do not oppose the notion that certain aspects of a bill can be and, in some contexts, have been, left to be addressed by subsequent regulations. What we find problematic is that aspects related to some of the most crucial dimensions of the Arms Trade Treaty, namely the prohibitions and risk assessment, would be a matter of regulations and not law.

• (1220)

Another area that the bill fails to address has to do with the lack of harmonization between the Department of National Defence and Global Affairs Canada vis-à-vis risk assessment processes for arms exports. While both departments will need to comply with the obligations of the Arms Trade Treaty once Canada becomes a state party, we are concerned that having two separate risk assessment procedures may lead to inconsistent standards and decisions concerning where Canadian military equipment may end up.

Earlier I pointed to the obligation contained in article 5 of the ATT to implement treaty provisions in a consistent manner in the context of the exemptions given to U.S.-bound exports. This requirement for consistency in the implementation of the treaty is also applicable to the dual risk assessment processes at the Department of National Defence and Global Affairs Canada.

To finish these remarks, let me reiterate that we remain very much supportive of Canada joining the treaty as a fully compliant state party. Unfortunately, however, Bill C-47 falls short of meeting the spirit, the objectives, and the specific provisions of the ATT, and thus we cannot support it in its current form.

Thank you very much for your attention. I would very much welcome your comments or questions related to these remarks.

● (1225)

The Chair: Thank you very much to both witnesses.

Colleagues, we'll go right to questions.

I'll start with Mr. Genuis, please.

Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC): Thank you, Mr. Chair.

To the witnesses, thank you so much for being here and for the hard work you undertake around the world.

Obviously, all of us would agree in principle that we have to do everything we can to end conflicts and to help people who are suffering as a result of them. It's interesting for me that in the context of this hearing, one hour after another, we've had two fairly different kinds of stakeholder groups both raising substantial concerns about this legislation. In some ways they're different concerns, but I think there is a common thread I would tie between the concerns that were raised in the first hour and the concerns that we're hearing in the second hour. That's around the subjectivity this legislation gives to the minister.

You're saying it's still up to the minister's discretion around approving arms sales. We heard earlier that there is subjectivity around what the regulations will look like. In both cases we have subjectivity leading to concerns about what the minister will actually do. On that basis, concerns are coming from different elements of civil society.

I'd be curious to hear your comments on that. Do you agree that maybe the reason we hear concerns from different groups in civil society is that these decisions will be made in regulation as opposed to actually being laid out in the legislation?

Mr. Cesar Jaramillo: Thank you very much for that very good question. I wasn't here for the first hour, so I'm not sure what concerns were raised by the earlier witnesses. I do know from our conversations with other colleagues and like-minded organizations in Canada who have testified before this committee that there are in fact several concerns about the bill.

One aspect, as you rightly point out, has to do with the wide discretion with which the minister would be in a position, as I said, to authorize any and all export permits as long as he or she says they considered the factors. We are greatly concerned that there is no such language, as is found in the Arms Trade Treaty, that refers to exports that shall not proceed, or that the minister cannot authorize. There is no categorical language.

Thus far, the closest Canada's export control regulations come to a categorical prohibition is two words: "closely controls". That's really the closest we come to a categorical prohibition, "closely controls". But even under that rubric of close control, right now, as you well know, we are in the early stages of a multi-billion dollar deal with one of the worst human rights violators in the world. That's Saudi Arabia. It is an undisputed fact that they are among the worst of the worst.

Evidence indicates that close control does not suffice and that there is a need for very specific categorical language that indicates, without room for ambiguity, that if certain triggers are met, certain exports quite simply cannot proceed. There is nothing to that effect in the current legislation, in the current regulations, or in the proposed changes in Bill C-47.

Mr. Garnett Genuis: I'll jump in here just because of the time, if that's okay.

I want to get a bit more specific and to get your opinion on some of the suggestions we heard earlier. We heard this morning from a number of groups who represent firearms owners in Canada. They expressed their strong support for a robust system of arms control that effectively keeps weapons out of the hands of bad actors around the world, but they are concerned about the impact of this legislation on responsible firearms owners, sport shooters and hunters here in Canada. They asked us for, in the spirit of greater clarity in the legislation, which is not something you addressed specifically, clear language, not just in the preamble but in the legislation itself, that carves out and protects the rights of responsible, law-abiding firearms owners in Canada.

I'd be curious to hear your perspective on that kind of language and even on what such an exception could look like in a way that would not infringe on some of your particular concerns.

Mr. Cesar Jaramillo: Thanks for the question. Yes. I am aware that some sectors have concerns about the impact the Arms Trade Treaty may have in terms of the rights of legal, lawful gun owners in Canada.

The first point I will make is that this is not a conversation that is exclusive to Canada. In the United States, in other contexts, the NRA—you know, the sports shooting association types—have repeatedly raised this concern, not just in Canada but internationally, and in the context of multilateral Arms Trade Treaty negotiations.

It is a surprise to me that we are still having this conversation because time and again, every authoritative expert in the world has tried, in a constructive spirit, to placate those concerns and to say that the Arms Trade Treaty has nothing to do with domestic gun ownership. The Arms Trade Treaty was neither designed nor intended to infringe upon the rights of lawful gun owners domestically, but rather to curb irresponsible international arms transfers.

● (1230)

Mr. Garnett Genuis: Sorry, Mr. Jaramillo, given that is the intention, surely you would accept that a section in the text of the legislation—not in the preamble, but in the text of the legislation—which specifically ensured that would be helpful in advancing the objectives that you want to see advanced. Is that right?

Mr. Cesar Jaramillo: No. My position is that it would not be necessary to include such language. The best basis for this claim is the treaty itself, because there is nothing in the treaty that explicitly or implicitly indicates a threat to Canadians' lawful gun ownership.

The Chair: Thank you, Mr. Genuis.

Now we'll go to Mr. Levitt, please.

Mr. Michael Levitt (York Centre, Lib.): Mr. Butcher, I'm going to ask you some questions. You've been sitting there so patiently on video. I don't want you falling asleep or dozing off.

We had a discussion a couple of days ago. An issue of Westminster-style democracies, like New Zealand, Australia, the U.K., came up. It was the issue of policy and regulation versus legislation, particularly around the point of the mandatory nature of the rules moving forward.

We had a little bit of back and forth on New Zealand, but I got some clarity on that. Theirs is actually policy-based. It's not in legislation. I want to explore the U.K., where you're sitting now, and get a sense from you about what the design looks like there. We're interested in what other jurisdictions are doing on this point.

Mr. Martin Butcher: Certainly. The legislation that regulates the export of arms from the U.K. is the 2004 Export Control Act. Within that, we also have the consolidated criteria by which the EU common position on arms exports is brought into British law. That's done within a provision of the 2004 act, which allows the government to make secondary legislation, without requiring that the full legislative process be undertaken every time those regulations are to be changed.

There are also a variety of responsibilities under the Arms Trade Treaty and a number of other international instruments. As those are brought into British legislation under enabling acts, there's a legal obligation for the government to follow those treaties.

We have a variety of legislative and regulatory powers and responsibilities for the government here in the U.K.

Mr. Michael Levitt: Thank you.

You talked a bit about parliamentary oversight. I'm interested in hearing a little more about how that's been built into the process.

Mr. Martin Butcher: Absolutely. For about 20 years now, we've had the Committees on Arms Export Controls, which bring together the defence, foreign affairs, international development, and international trade committees. They each supply a quarter of the MPs on the committees. In a variety of different ways, the committees seek to hold ministers to account.

Most typically, certainly up until 2015, the committees held an annual inquiry where some members of civil society would present evidence and then the foreign secretary and the business secretary would present oral evidence. They would receive written evidence from a wide variety of sources, as well as oral evidence from industry, and compile a report looking at the government's own report on its arms transfer activities in the previous year.

In the last Parliament, that was varied, and they tried to look at a series of individual questions, like arms transfers to Saudi Arabia, the implementation of the Arms Trade Treaty, and procurement

questions. Due to the deeply political nature, in particular of arms sales to Saudi Arabia, that one didn't go so well. The committees have just been reconstituted and we're now eagerly anticipating how ministers will be held to account by committees in future. As I mentioned, there are also a variety of questions and requests for ministerial statements that are made throughout the year on arms trade issues.

• (1235)

Mr. Michael Levitt: Thank you.

I want to shift the focus a little to human rights abuses and the impact of the conventional arms trade on conflicts, specifically the impact of illicit small arms and light weapons. My colleague sitting next to me, Ms. Vandenbeld, on Tuesday brought up the example of the Congo, which we all know has undergone numerous civil conflicts and suffered from awful human rights abuses. I know Oxfam is active around the world. Can you maybe use that as an example of the issue of illicit arms trade in conflict?

Mr. Martin Butcher: Absolutely. Clearly, in Africa in particular, Oxfam is extremely active. The illicit arms flows are extremely damaging and fuel conflicts across the continent. It's estimated that something like 95% of small arms and light weapons in Africa come from outside the continent, most with very little control, and circulate within the continent, often with no control at all. This is an area of massive concern for us.

The Arms Trade Treaty, if properly implemented, can play a massive role in changing this situation, thereby improving the lives of people in the Congo with possibilities for development. By clearly delineating what is legal trade, when arms move across borders, we can be certain that a particular shipment of arms is moving legally. By fully implementing the provisions of the treaty, for example, on the diversion of arms, an African government must make sure that all its stockpiles are absolutely secure and safe, that there is no movement of arms out of those armouries, into the grey and black markets, and ensure that they have proper customs regulations, that customs people are trained and paid on time, and the same goes for the security services.

The ATT can play a role in making sure that the legal trade is secure and that there is a clear delineation between what are legally traded and illegally traded arms, which will allow the seizure of those illegally traded ones.

Mr. Michael Levitt: Thank you very much.

The Chair: Thank you, Mr. Levitt.

We'll go to Madame Laverdière, *s'il vous plaît*.

[Translation]

Ms. Hélène Laverdière: Thank you very much, Mr. Chair.

I thank both of you for your presentations.

Mr. Butcher, I'd like to ask for your advice. On two occasions, I have proposed the creation of a Canadian parliamentary arms exports committee along the lines of the British model, but both times my proposal was rejected by the government representatives. Should I try a third time?

[English]

Mr. Martin Butcher: I think it would be a very good idea to try a third time. I'm sure that in whatever international fora exist for the discussion of ideas between British and Canadian parliamentarians, parliamentarians on the arms export control committees would be only too happy to discuss with you how it works in the U.K. and why it would be a good thing for the Canadian Parliament to have such a system.

• (1240)

[Translation]

Ms. Hélène Laverdière: I should probably visit you.

Mr. Jaramillo, the fact that there is no prohibition in the law at this time is a problem, since this respects neither the spirit nor the letter of the treaty. Someone also told me that this situation was a problem because the minister is not protected. The minister may be subject to diplomatic or political pressures of all kinds, and not have the power to say that he or she cannot do this because it is prohibited by law.

Do you agree with that analysis?

[English]

Mr. Cesar Jaramillo: Thank you, Madame Laverdière.

I would agree with that assessment. It would be beneficial for the minister himself or herself to have those hard limits on the discretion for arms export authorization.

I want to clarify this point because I have the sense that perhaps we're focused on the rightly important point of whether it's a policy or a law. That is a valid point and it is a very important point whether it's by regulation or lower guidelines, but the central question is what is the obligation that we're talking about? Whether it's by policy or whether it's by law, what is the obligation? If you look at it—and this is really in the end what we consider to be the main problem of Canada's export control regime—it gives the illusion of strength. You will find scattered references to human rights. You will find scattered references to not exacerbating armed conflict. You will find scattered references to hard obligations, and the emphasis on not being a guideline but a hard obligation, but again, what is the obligation? At the end of the day, it is merely to consider certain factors.

This is incompatible with the Arms Trade Treaty, and I would emphasize this is not a matter of personal opinion or the opinion of Project Ploughshares. You will find that “shall not authorize” language in the Arms Trade Treaty itself. What we're saying is that if Canada truly wants to align its regulations with the specific provisions of the Arms Trade Treaty, there must be some hard prohibitions on certain exports when triggers related to human rights, exacerbation of armed conflict, genocide, etc., arms embargos are met, certain exports shall not proceed. This is nowhere to be found in the legislation. Again, the minister will retain nearly unchecked

discretion to authorize any and all arms exports as long as certain factors are said to be considered.

[Translation]

Ms. Hélène Laverdière: In addition, we are told that most of the criteria will be included in the regulations because this will provide greater flexibility should we want to add criteria. However, this also means that there will be more flexibility if we want to remove criteria. Many people say that it would be preferable to include the treaty criteria in the bill and keep the door open through other mechanisms to the possibility of adding criteria if need be. We consider that the elements that are a part of the treaty should be in the bill.

What do you think of that position?

[English]

Mr. Cesar Jaramillo: Thank, you again, Madame Laverdière. That's a great question.

First of all, I've heard this notion about retaining flexibility as being a key rationale for doing it through regulations because we need to be flexible in situations as circumstances change, etc. It's a seductive argument, but it simply doesn't hold because the types of items that we say must be matters of law and not regulation are top-level items. These are things that are not realistically going to be affected by the weather or the political environment or the economic upheaval in this part of the world or whatever.

We are not saying it's always as a matter of law to not sell to Saudi Arabia, for example, because consensus could change. Saudi Arabia could be a beacon of human rights or something like that. What we are saying should be a matter of law is that there are certain exports that cannot proceed, period. That sort of top-level parameter, which is not process-related or procedural, but rather sets out again the hard limits of what's acceptable for Canadian arms exporters should be a matter of law and not subsequent regulations, among other reasons, because the public's and your own ability to scrutinize the content of the regulations is very limited.

The way we are headed, the bill may get royal assent without our knowing a single word of what is going to be contained in those regulations, so how can we properly assess the merits of the changes when they are not fully known?

• (1245)

The Chair: Mr. Wrzesnewskij, go ahead please.

Mr. Borys Wrzesnewskij: Thank you, Chair.

As legislators, we spend a lot of time parsing through the phraseology of legislation, through the words, and we try to get it as right as possible, but we are human beings. We don't necessarily always get it 100% right. Sometimes in that work, we lose focus of what we're dealing with. That's why I'd like to come back to Mr. Levitt's line of questioning.

When you referenced Africa and 95% of the arms in Africa, the small arms being illegal, could you also quantify from the other end—the DRC as a particular case—but generally, annually, how many lives are lost because of this illegal trade in small arms?

This question is for Mr. Butcher.

Mr. Martin Butcher: In the Congo specifically, no. Globally about 500,000 people a year lose their lives as a result of irresponsibly or illegally traded arms in conflict and armed violence. That fluctuates somewhat, but it's roughly that level.

Mr. Borys Wrzesnewskij: Would a majority of those individuals be civilians?

Mr. Martin Butcher: The vast majority would be civilians.

Mr. Borys Wrzesnewskij: Every day, as we spend time parsing through, trying to decide whether or not we should proceed, approximately 1,500 civilians are dying because of this trade, which takes me to the next point.

I find it interesting that there seems to be a correlation. The Ottawa treaty, the land mines treaty, was referenced earlier in testimony. There seems to be a correlation between the countries that have not signed or acceded to the ATT and those that haven't acceded or signed onto the Ottawa treaty on land mines. I'd like to note that we are soon approaching a very important anniversary, the 20th anniversary of the Ottawa treaty on land mines. That is something in which we in Canada can all be proud that we played such a critical role.

We shouldn't find ourselves on a list of countries that haven't signed or acceded to the ATT, which seems to correlate with the list of countries that haven't signed onto the Ottawa treaty: Cuba, the Russian Federation, Venezuela, Zimbabwe. I have to tell you that it is an uncomfortable place, as a Canadian legislator, to find oneself in that position.

Do you believe that we should move forward expeditiously at this point in time? We spent years on this. Should we move forward in acceding to the ATT?

Mr. Butcher.

Mr. Martin Butcher: Oxfam certainly believes that it would be a very good thing for Canada to accede to the ATT. The universalization of the treaty is extremely important.

We also believe that the strong and robust implementation of the treaty at the national level is extremely important. The full implementation of the control of all exports within the meaning of the treaty is very important.

I would say yes. We would love for Canada to accede to the treaty. We will very much welcome that when it happens. We look forward, as we do with all state parties, to examining implementation and working to make that the strongest it can possibly be.

• (1250)

Mr. Borys Wrzesnewskij: That leads us into the second point. You've raised this intriguing idea of parliamentary committee oversight. Once again, taking into account that, as hard as we try, legislation is rarely perfect, sometimes you come back to it, take a

look and try to fix things, perhaps where conditions have changed, etc.

I would like to have a little clarity on that committee. Does it meet regularly or is it a case-by-case situation where there's a major trade in arms and the committee would meet to review decisions or is it based on this annual report? Could you provide a little clarity on how it has been structured?

Mr. Martin Butcher: Yes. In general, for most of its existence it has met in a fairly short number of months in the year to look at or review the government's report on the arms that it has exported over the previous year and its policy for doing so. It has held maybe three hearings each year—one for civil society, one for the arms industry, and one for government ministers—and has accepted a certain number of written submissions.

I should say that this is not along the lines of the U.S. model, whereby a lot of major arms deals have to get permission in advance from Congress. This is a retrospective analysis of what policy is and the way it has operated, with a view to improving that policy and practice in the future. These are not monthly meetings.

The Chair: Thank you very much.

We'll go to Ms. Vandenberg, please.

Ms. Anita Vandenberg (Ottawa West—Nepean, Lib.): Thank you very much to both witnesses.

Mr. Butcher, I was very interested to hear what you were talking about in terms of specific defence and security arrangements between EU countries. My understanding is that, within the ATT, having expedited procedures for low-risk countries and having these kinds of agreements and partnerships are not inconsistent with the ATT. Is that correct?

Mr. Martin Butcher: That is correct. The ATT stipulates there must be a procedure for all exports, but it doesn't say what that procedure has to be. As long as you follow the framework of the treaty, you're free to come to your own arrangements as long as they comply with that framework.

The EU is a very specific example, because you have 28 sovereign states with a single market for a lot of goods. The intra-community transfers directive on arms allows for light-touch transfer. Belgium can transfer arms to Luxembourg without much regulation, but there is still some and, importantly, there is the possibility for government to audit the transfers that have been made and to report on them publicly should they choose to do so.

Ms. Anita Vandenberg: Thank you.

With regard to Canada and the United States, I've listened very carefully to the letters and other criticisms from certain civil society organizations.

As a committee, we were in Washington and visited with the office of regional security and arms transfers at the Department of State. I put these questions to them. They outlined brokering controls and end-user controls that in many ways are stricter than those of many countries. They even told us that they were designed to be consistent with the Arms Trade Treaty.

In fact, in certain areas like the see-through provisions for dual-use technologies and mergers and acquisitions and the sale of companies to others, they're actually in advance and are working with other countries to try to bring other countries up to it, so that kind of an agreement, if we were to have an expedited procedure with the U.S., would be consistent with our compliance with the Arms Trade Treaty.

• (1255)

Mr. Martin Butcher: I would say that one problem the U.K. has had with the transfer of parts and components to the United States to be incorporated into weapons systems for onward transfer is that we then lose control of what is done with those arms or armed systems once they're transferred to that third country. Had the transfer been direct from the U.K. to the third country, there are many occasions when we would have put conditions on the transfer of parts, components, or arms that the U.S. does not necessarily impose. There is some loss of control.

As long as that kind of thing is allowed, and as long as there is a Canadian process, then.... I'm not an expert in the existing Canadian process, but as long as there is a process that is compatible with the ATT, that would be allowed.

Ms. Anita Vandenberg: I think it's very important that Global Affairs Canada is working very closely with the U.S. to make sure that we have an ongoing dialogue there rather than just saying that we can't have an exemption, and then no longer work together to try to strengthen these rules.

I was very interested in what you were saying in terms of clarification about the U.K. and other Westminster democracies, the policy regulation versus the actual legislation and the text of the legislation, because I know that you mentioned that, in the U.K., a lot of this is done through regulation.

The Arms Trade Treaty is binding on those who have acceded to it. Regardless if it's regulation or through the wording of the legislation, the country Canada would be bound by the Arms Trade Treaty.

Mr. Martin Butcher: Yes, absolutely. The treaties are binding on the countries as state parties to them, absolutely.

Ms. Anita Vandenberg: Several countries have chosen to do it one way or the other. In either way, we would be legally bound.

You mentioned a word, and it's very interesting, "universalization". There are those who have said that the Wassenaar Arrangement and other existing agreements are enough, that there is no need to go further and sign the Arms Trade Treaty. The fact that the Arms Trade Treaty is legally binding and universal, how important is that?

Mr. Martin Butcher: I think it's extremely important. Oxfam worked hard to achieve the adoption of the Arms Trade Treaty because we thought it was necessary. There was a gap in international regulation. There are many other kinds of regulations. The Arms Trade Treaty works with and alongside those. It's complementary to things like the Wassenaar Arrangement. It's also complementary in Africa, for example, to things like the ECOWAS convention and other sub-regional agreements. They all have their part to play, but certainly for us the Arms Trade Treaty is an essential part of international law in the control of arms.

The Chair: Thank you, Ms. Vandenberg.

The last question will be by Mr. Aboultaif before we call it an afternoon.

Mr. Ziad Aboultaif (Edmonton Manning, CPC): Thank you to the witnesses.

Mr. Butcher, I have a quick question for you.

Outside the technicality and the agreement itself and what's around it, there are some major exporters not part of the agreement yet or who haven't entered the agreement yet. How do you see the effectiveness of this agreement, and how do you see the future of it while there are certain countries still out?

Mr. Martin Butcher: That's a very good point. There are certainly major exporters outside the treaty; Russia and China would be two. The United States is sort of half in and half out, at the moment, although its domestic legislation is fully compliant with the treaty.

We at Oxfam view this as a long-term process. A lot of countries joined the treaty very quickly and over the past three years of its being in force have been learning how to operate it. Other countries will come in later. We see this happening more gradually now, but it's happening. Russia has stated an intention not to join the treaty. China, as we understand it, is slowly and quietly examining whether it is in its interest to join the treaty. Other countries will be doing the same thing.

In terms of this treaty, it's very interesting that, for example, as a large number of African countries join the treaty—and we are encouraging others, particularly in east Africa, to do the same—and as they operate the treaty and their arms imports are being reported, since they are complying with the terms of the treaty, a country like China, which exports a lot of arms to Africa, is brought some way into the treaty's ambit, just because arms it supplies, but might not report the supply of, will be reported by the African states that have bought them. The treaty gradually and slowly will build up to work more strongly and will spread across the world.

Certainly for us, the greatest guarantee of getting more countries into the treaty is that they see it working. They see it contribute to security and transparency in the arms trade, and they see it being in the interest of states to be part of it. That requires the robust implementation we talked about.

• (1300)

The Chair: Thank you, Mr. Aboultaif.

Colleagues, that wraps it up.

Mr. Jaramillo of Project Ploughshares, and of course Mr. Butcher from a faraway place, representing Oxfam, thank you very much for your presentations and well-thought-out discussions with the committee.

Colleagues, this ends our committee for this week. We'll see you on Tuesday.

The meeting is adjourned.

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