



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 057 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Wednesday, February 6, 2013

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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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• (1530)

[English]

The Chair (Mr. Mike Wallace (Burlington, CPC)): I call the meeting to order.

Ladies and gentlemen, welcome to the Standing Committee on Justice and Human rights, meeting 57.

Pursuant to the order of reference of Friday, November 30, 2012, our orders of the day are to consider Bill S-9, an Act to amend the Criminal Code.

Our first witness is the Honourable Rob Nicholson, the Minister of Justice and Attorney General of Canada.

Thank you, Minister Nicholson. You have approximately 10 minutes.

Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada): Thank you very much.

I'm very pleased to be joined by Mr. Greg Koster and Mr. Don Piragoff from the Department of Justice.

I'd like to welcome you, Mr. Chairman, and all the new members to this committee. I certainly wish you all the best. I'm sure you'll find it a very interesting role to be a part of. I was on this committee for just under eight years, and it was a great experience. I wish all of you who are joining it the very best.

I'm pleased as well to appear before you on Bill S-9, the Nuclear Terrorism Act. The bill, if passed, will permit Canada to become a state party to both the 2005 amendment to the Convention on the Physical Protection of Nuclear Material and the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.

[Translation]

The diplomatic history and Canada's role in negotiating these two international instruments are well known and are already part of the parliamentary record.

[English]

I will focus my remarks before this committee on the specific elements of the bill, and I will take a moment to address some of the questions that were raised at the second reading debate in the other chamber.

The first new offence would be found at proposed section 82.3 of the Criminal Code. It is directed at persons who make a device or possess, use, or traffic in nuclear or radioactive material or devices

for the purpose of causing harm to persons, property, or the environment.

This offence would also criminalize activity against a nuclear facility or its operations for those same nefarious purposes. The proposed maximum penalty for this offence would be a term of life imprisonment.

You will note that the concept of making a device was added by amendment during the review of this bill in the Senate.

A second new offence would be found at proposed section 82.4 of the Criminal Code. This targets persons who use or alter nuclear or radioactive material or devices, or do anything against a nuclear facility or its operations, in order to compel a person, a government, or an international organization to behave in a certain way. Again, the maximum penalty would be a term of life imprisonment.

The third new offence would be at proposed section 82.5 of the Criminal Code. This offence is directed at illegal activity done in order to obtain nuclear or radioactive material or devices or to obtain access to a nuclear facility. This uses elements of existing criminal offences, such as theft, fraud, and robbery, and adds an element—for example, to obtain nuclear material.

Finally, given the severity of the potential harm, as well the massive government and public reaction if there ever was a risk that one of the proposed offences in Bill S-9 would be committed, a new section, proposed section 82.6, calls for the creation of an offence of threatening to commit a nuclear terrorism offence.

[Translation]

The proposed penalty for this offence threat will be a maximum term of 14 years of imprisonment.

[English]

These four offences that I have just described make up the backbone of Bill S-9. The offences are targeted and the proposed penalties are appropriate, given similar provisions in the Criminal Code and related jurisprudence.

The treaties that Bill S-9 seeks to implement require state parties to assume extraterritorial prosecutorial jurisdiction. In this regard, Bill S-9 would give our courts the jurisdiction to try these new offences in the listed factual situations that are set out in clause 3 of the bill.

In addition, even though the majority of Criminal Code offences are prosecuted by the provinces and territories, the Attorney General of Canada would have new concurrent prosecutorial authority over these new nuclear terrorism offences, as is the case with existing terrorism offences in the Criminal Code.

The bill also seeks to define a number of terms, including “nuclear facility” and “radioactive material”.

• (1535)

The final point I would like to make on the technical aspects of the bill is that with the inclusion of these new offences in the existing definition of “terrorist activity” in section 83.01 of the Criminal Code, a number of important terrorism provisions will apply, such as consecutive sentencing, a reverse onus at bail hearings, and the availability of a one-year wiretap authorization. Taken together with the various general provisions in the Criminal Code that address different forms of party liability such as attempts and conspiracies, as well as existing Canadian law outside of the Criminal Code, these proposed amendments would put Canada in a position to ratify both of these important nuclear security treaties.

Some have questioned the timing of the introduction of Bill S-9, but when we look at some of our closest allies, we see that they too have recently taken steps to ratify and, in some cases, introduce these bills for discussion within their parliaments. For instance, the United Kingdom became a party to both these treaties in 2009 and 2010. Australia modified its laws to achieve ratification of the two treaties in 2008 and just recently again in 2012. Finally, I would note that the United States had a bill before Congress aimed at domestic ratification of these treaties, and it recently died in the Senate's Committee on the Judiciary.

Another question raised during second reading debate concerned the addition of the words “makes a device” to the proposed section 82.3 offence. As I mentioned earlier, this was an amendment that was made, and we accepted that amendment. In discussion with the Department of Justice we believed it wasn't strictly necessary; that said, to make it absolutely clear, we did agree to go along with that proposal.

The two treaties together have approximately 38 criminalization requirements, and therefore the offences were grouped together under the common offence element. The prohibition on making included making devices but not making nuclear or radioactive material. The proposed offence at 82.3, as introduced, was intended to apply to persons who, again, make a device. In this regard, the offence applies to anyone who possesses a device. It might be the same person who makes it, but either way it's covered. If you make it, you possess it. That being said, the government did have a look at the amendment, and we think it better reflects the intentions of the bill.

Questions have been raised about the scope of proposed section 82.5, one of other sections I enumerated, which deals with the commission of an indictable offence in order to obtain a nuclear or radioactive material or device. While a number of specific offences are listed in the treaty, such as theft, robbery, etc., the treaty language also refers to “the use of force or any other form of intimidation” at paragraph 9(1)(f) of the CPPNM amendment and “use of force” in paragraph 2.2(b) of ICSANT, the other treaty. This is broad conduct

and beyond the specific offences listed in the treaties, but the notion of the use of force could include any act of violence or force and therefore any number of existing, indictable offences could be contemplated as falling within that conduct. It's for this reason that the present formulation in section 82.5 was used.

The final technical question raised during the debate on second reading of the amendments to the CPPNM under paragraph 9(1)(d) was the criminalization without a specific intent requirement of import or export of nuclear material without lawful authority.

In international law, states such as Canada are permitted to rely on domestic law to implement international treaty requirements. Given that this particular requirement under paragraph 9(1)(d) does not have a specific intent requirement such as to compel a government or cause a death, the existing offences under the Export and Import Permits Act, the Customs Act, and the Nuclear Safety and Control Act fully satisfy this treaty requirement, so there was no need to create a new offence in this particular bill.

• (1540)

Mr. Chairman, my remarks have addressed some of the important features of Bill S-9 and I have attempted to answer some of the technical questions that were posed in the debate.

As was highlighted by world leaders at the last nuclear security summit in the Republic of Korea in March of last year, nuclear terrorism continues to be one of the most challenging threats to international security.

With this particular piece of legislation, we have taken concrete steps to strengthen the way Canadian criminal law deals with acts relating to nuclear terrorism. The amendments proposed and the subsequent ratification of these instruments will deliver a global message that Canada continues to take nuclear security very seriously and that international collaboration yields beneficial results for everyone.

Thank you, Mr. Chair.

The Chair: Thank you for that, Minister.

We have the minister until 4:30 p.m. and we will go to questions right away.

Madame Boivin from the NDP will be first to ask questions.

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): Thank you, Mr. Chair.

Welcome, Mr. Minister. This is your first appearance before this committee in 2013. That is the case for several other witnesses, I am sure. Given the announcements you regularly make, we expect to see other bills come before us.

The NDP has supported the bill. We are fully aware of the fact that this piece of legislation will help us fulfill our international obligations under various agreements. You did explain that.

Before we start discussing Bill S-9 as such, it would be important to talk about how bills are analyzed by your department. Some matters that were made public during the parliamentary break have made me seriously concerned as the justice critic for my party. Your answers may alleviate those concerns. However, it is clear that, under the Department of Justice Act, the minister must ensure that bills are consistent with the purposes and provisions of the Canadian Charter of Rights and Freedoms.

I will not go into details when it comes to courses. I will let the courts do that. Nevertheless, some important concerns have arisen. They have to do with our actions, as a committee, when we study bills from your department. Rightly or wrongly, that situation makes us doubt the seriousness and thoroughness of your department's approach. I am talking about your department's lawyers complying with that legal obligation.

Regarding Bill S-9—I will remain within the context of that bill—it is clear that you, as minister, have to sign a certificate. In fact, that would apply to practically any other bill introduced by the government or submitted to us by the government through the Senate.

I would first like to know whether the examination provided for under section 4.1 of the Department of Justice Act has been carried out regarding Bill S-9. Also, as what we are hearing at different levels makes the whole situation somewhat unclear, I would like to know what steps are taken before you sign the certificate.

Finally—and this question follows up on my previous one—I would like to know if you have indeed signed the certificate of compliance with the charter. Before we begin the study of Bill S-9 or any other bill, we need you to clarify this situation.

[English]

Hon. Rob Nicholson: First, thank you for your welcome to the committee in 2013.

Again, as you've underscored, our justice legislation is very important to the government. Yes, you can expect more legislation to come before this committee, and of course I hope it will have everyone's support.

As you quite correctly pointed out, under section 4.1 of the Department of Justice Act, I have an obligation to examine bills that are presented—not just by the Department of Justice, but all government bills. I must satisfy myself that they comply with the charter and Mr. Diefenbaker's Bill of Rights.

That said, I do get advice on legislation. It is provided to me by the Department of Justice, and they do an excellent job of analyzing these bills to ensure they're constitutionally sound and comply with the pieces of legislation and the constitutional requirements that I have just indicated. The actual signing is done by a legislative counsel, but again, that analysis is carried out by the department, and on all the bills that come before Parliament, I am advised by the department with respect to their constitutionality.

With respect to this bill, in your analysis and your study of it I think you'll come to the same conclusion that I have: that it does not raise constitutional questions, that it's completely within the purview of the Parliament of Canada to pass this law, and that it's consistent

with other parts of the Criminal Code. This bill does comply, as do the other pieces of legislation I will be bringing forward for your consideration in the future.

● (1545)

[Translation]

Ms. Françoise Boivin: Do you simply receive verbal advice, or are we talking about written advice and proper analyses in compliance with the charter? I am trying to understand the process.

The allegations we have heard are very serious and cast doubt on the whole process. Your answer is rather vague, Mr. Minister.

[English]

The Chair: Give a short answer, please.

Hon. Rob Nicholson: I can give you complete assurances that the bills we have before Parliament meet that test. I get advice, either verbally or in writing, with respect to legislation, and I'm very pleased and very satisfied with the advice I've received over the years.

Mr. Chairman, with respect to the bill you have before you, after my analysis of this and what I've heard, I am completely satisfied that this is completely constitutional and should continue to have the support of everyone at the committee.

The Chair: Thank you, Minister.

Our next questioner is Madam Findlay, from the Conservative Party.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you, Mr. Chair.

Welcome, Minister Nicholson and colleagues. It's good to see you here again.

Minister, of course I have complete confidence that you and your department have looked at the constitutionality of all the legislation you put forward for our consideration. With that confirmation in mind, I would like to go to the substance of the legislation before us.

Minister, you mentioned in your remarks that this legislation came about as a result of two international conventions in 2005 and that it addresses what is considered to be the continuing threat to international security, nuclear terrorism. I know this is a made-in-Canada piece of legislation. There were 38 recommendations, and we have tailored it to work with our existing Criminal Code provisions.

This is a fairly foundational question. I wonder if you could comment on how you see the threat of nuclear terrorism in Canada and as Canada relates to our international allies?

Hon. Rob Nicholson: I think it's very clear that nuclear terrorism is a significant threat not just to the security of Canada but to global security as well. Al-Qaeda, for example, as you may know, has had a long-standing desire to acquire weapons of mass destruction. There's no secret to that, and this government acknowledges that threat. In cooperation with other like-minded countries, we have examined the threat of the proliferation of nuclear materials and the consequences that could be brought about if they are used for improper or criminal purposes.

It's not surprising that the two treaties that are the subject of this bill came about, and it's no surprise as well that a number of countries, a number of which I have mentioned, are in the process of looking at them or have ratified them. Both of them have been ratified, for instance, by the United Kingdom. Australia is another example. Russia, France, and others have either ratified it or are looking at it. There was one attempt at ratification by the American Congress; I don't know if they use the term "died on the order paper".

Nonetheless, this continues to be a concern for all countries.

We're doing our part. We're making a statement that we acknowledge this is a continuing threat, and we're doing something about it by signing on and bringing our laws into compliance with the recommendations in both treaties. With the passage of this bill by this committee—of course, subsequent to royal assent it will become the law of Canada—we will be able to sign on to those treaties.

I think this is a step in the right direction. It sends the message to individuals involved with illegal activity that Canada is a part of a group of nations that are going to continue their dedication to fight this kind of activity. It sends the message to our allies and partners that we're with them on this issue. As you're aware, these are not threats that just affect only one country or another. In a sense, we're all in this together when these threats and this type of activity take place.

Thank you for the question.

• (1550)

Ms. Kerry-Lynne D. Findlay: As I mentioned earlier with respect to the ratification, it's my understanding that there were 38 recommendations. What has the approach been from your department in terms of how we proceed with domestic law to implement this?

In other words, there isn't just a list of 38 things. You've infused it, it would appear, into the Criminal Code provisions. Could you speak to that approach?

Hon. Rob Nicholson: Yes. Thank you for that question, and you're quite correct. We took those 38 elements of criminalization contained within the treaties, and if you examine them on a case-by-case basis, you will note that many of them are covered already by existing legislation, in particular by the Criminal Code. Things like theft, obviously, are already there.

We had a look at the four sections that I enumerated in my opening comments. In a sense, we grouped the kinds of activities together in four specific sections that deal directly with these types of activity and we addressed the penalties that go along with them as well. We made the distinction that it's not just theft if you're stealing this kind of material. The threat to society is of such import that the penalties are increased. It wasn't just a question of gathering up and making sure that all this activity was criminal; we wanted to make sure that the right penalties were in place, penalties that accord with the seriousness of this kind of activity.

We didn't want to have all kinds of duplication, Mr. Chair. It was unnecessary to have 38 new sections. That was not the case. As you can see, and your analysis will confirm it, they're grouped together. This is a cleaner and more precise approach, in my opinion.

The Chair: Thank you, Minister.

Our next questioner is Madam Bennett, from the Liberal Party.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thanks very much.

Thank you, Minister.

The Liberal government signed this convention in 2005 and it came into force in 2007, but Canada has not been able to ratify because this isn't in legislation yet. Seeing everybody is in favour of it, what took so long?

Hon. Rob Nicholson: Actually, it was very difficult, as you will remember, Ms. Bennett, to try to get any legislation through in the criminal justice area. If the dozens of bills that I introduced into the House weren't opposed by one of the three parties, there was a desire many times by the opposition parties to talk about them incessantly, to go on and on, and I'd get a bit of a filibuster, so it was a bit of a challenge. With respect to the election that took place in 2011, we have a majority government. These things are moving along a lot better, and I'm very pleased about that.

As I indicated to you, quite apart from that, the activity in question is criminal activity, and more specific, and the penalties are increased. That said, if you look around, you will see that it's consistent with our allies. I indicated to you that both the British and the Australians have moved on this concern in the last couple of years. The Americans are not there yet, but my expectation is that they will examine this issue again, so it seems to me it's consistent with our allies.

I'm much more optimistic these days when we introduce legislation, and I will be introducing more legislation. Because of the new configuration in the House of Commons, I am much more optimistic today that we'll get it through.

• (1555)

Hon. Carolyn Bennett: Seeing that everybody is in favour of this bill, did you or your predecessor have a conversation about this particular kind of legislation in terms of protecting Canadians with the leaders of the Liberal and NDP parties in previous parliaments?

Hon. Rob Nicholson: To be fair, I've had conversations throughout the years with them, and yes—

Hon. Carolyn Bennett: On this?

Hon. Rob Nicholson: On all legislation—

Hon. Carolyn Bennett: On this?

Hon. Rob Nicholson: On this particular legislation, this was part of the enumerated bills that I wanted to get to, but yes, most of the focus of the last year or two has been concentrating on cracking down on drug dealers and going after people in the child pornography business and people who sexually assault children. I know most of the efforts of this committee, and certainly of the government, were to push that, but this was always important to us. Again, because most of the activity was already criminalized, I wanted to get it through.

If you look at the bill that was most recently passed in Parliament, there was some activity that wasn't criminalized, so it seemed to me that was very important. For an adult, for instance, to give sexually explicit material to a child wasn't a crime in Canada a year and a half ago. That was a big concern to me, so that was one of the new provisions that I wanted to get through. Indeed, two adults talking to each other and conspiring online to set up a child for the child to be sexually exploited wasn't a crime in Canada, so yes, those have actually been my priorities. I've tried to push those as much.... And again, I welcome and I applaud any support we get. As you know, it was very difficult for our first five years in government.

Hon. Carolyn Bennett: You're telling me that even though you would have had the support of both parties, this was not a priority for you.

Hon. Rob Nicholson: It is a priority, but if you're asking me what I've done with my time, my time has been pushing all the legislation that we have had.

I'm glad to hear this; if there are bills that the Liberals are going to support us on, this is wonderful news, and we're going to push these things, but I have found many times in the past that even when bills supposedly had the support of all parties, the debate would go on and on in the House of Commons. While everyone has the right to debate, it was always my hope that we could get through some of that legislation and get it enacted into law.

Hon. Carolyn Bennett: I don't think those kinds of generalities are fooling anybody these days.

Under the status quo, are the acts that you now are making punishable under proposed sections 82.3 to 82.6 currently criminally liable? Without this bill, are these still criminal offences? Is that what you're saying to me?

Hon. Rob Nicholson: Yes, many of these things—theft, threats—are generally covered, but what we have done in this particular bill, in compliance with the two treaties we signed on to, is particularize the type of activity that we want to prohibit. We have changed the penalty structure.

I gave the example of theft. It's not just a question of stealing something; it's a question about what the penalty should be.

Hon. Carolyn Bennett: Are we saying that at the moment...?

Do you have any situations in which—

Hon. Rob Nicholson: I'm sorry; I have one other part.

There are provisions with respect to extraterritorial jurisdiction that are not contained in the present law of Canada, so I think these are steps in the right direction.

Hon. Carolyn Bennett: Is there a case you could give me in which somebody was prosecuted and acquitted under the existing Criminal Code, but for which you would get a conviction under this new law?

• (1600)

The Chair: Give us a very short answer, please.

Hon. Rob Nicholson: I'll look into any possible case, but I'd get back to you on that.

The Chair: Thank you. That's your time.

Our next questioner is Monsieur Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

Thank you, Mr. Minister, for appearing, and thank you, of course, to the deputy minister and counsel Koster for appearing.

It's pleasing to know that there appears to be some consensus on the passage of the bill, and so we're cautiously optimistic that no one will have a meltdown.

There is some confusion. Four new offences are being created under this act, and there seems to be some illusion that perhaps these offences were otherwise covered in the Criminal Code. I'm sensing that perhaps we've been very specific in creating these new offences so as to respect the concept of proportionality in sentences, given the harm that could potentially be created.

Could you comment on that, Minister?

Hon. Rob Nicholson: Yes. As I say, much of the activity is already criminalized within the Criminal Code, but here we have particularized exactly what kind of activity we've had.

For instance, regarding some of the wording—compelling a government to do something—you'd have a hard time saying exactly what section of the Criminal Code it falls under without additional facts or information, but we've made it very clear that if somebody is trying to compel the government to do something like that, in violation of the two treaties here, it will be criminal activity. We've made it very clear with respect to the extraterritorial jurisdiction.

Again, we're expanding on activity that we find reprehensible and for the most part find criminal, but that said, this legislation particularizes exactly what we want to do. I hope it continues to have the support of the members of the House.

Mr. Robert Goguen: I gather also that certain provisions of the Criminal Code that have been made applicable with regard to bail hearings and reverse onuses were already there and are not being added to clutter things, but we basically tacked them on to keep the code as simple as possible.

Hon. Rob Nicholson: Actually, that's a very good point. You've touched on a number of things, such as consecutive sentences and reverse onus on bail. These are provisions that we have brought in and in many cases introduced under other pieces of legislation; we've made it clear that those provisions will apply to these offences as well.

In addition, as you can see when you examine the individual offences, we have increased the penalties for this kind of activity, which might otherwise be captured under some other section of the Criminal Code. That is only reasonable when you look at the kind of activity and the potential threat to the safety and security of this country and of like-minded people around the world. This approach is perfectly consistent with that, and very reasonable.

Mr. Robert Goguen: Thank you.

The Chair: Thank you very much.

Our next questioner is Madame Boivin, from the New Democrats.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

Regarding the minister's answers to my questions about section 4.1 of the Department of Justice Act, I would say, like my Liberal colleague, that they involved some generalizations. My understanding is that we are being asked for a blank cheque without actually knowing what exactly is happening.

So I am using this opportunity, Mr. Chair, to submit a notice of motion, which will obviously not be debated today, as we will continue with our witnesses. Notices of motion have to be submitted 48 hours in advance.

The notice of motion reads as follows:

That the Standing Committee on Justice and Human Rights conduct a thorough study of the practice under section 4.1 of the Department of Justice Act since its enactment;

[...]

and report its findings and recommendations to the House.

I am submitting this motion now.

I will continue with my questions, Mr. Chair.

Mr. Minister, will Bill S-9 be put into force by order? Can we expect it to come into force quickly? In 2004, the government introduced Bill C-7, which concerned a 2002 piece of legislation on public safety. Part 23 of that bill was used to implement the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. That part has still not been brought into force, and that should have been done by order.

It seems that we all accept that nothing will change in terms of this. I think this bill is extremely important, considering certain types of threats. That being said, if we want to be part of agreements and be able to ratify them, this must be implemented.

Do you think it will take you much longer to bring the bill into force by order? Will it follow the same course as the 2004 bill? A number of years have passed since 2004.

• (1605)

[*English*]

Hon. Rob Nicholson: I would expect this would be done quickly, Mr. Chair. I'm hoping this bill will get passed quickly. Let's get this into the law of this country. That's the first important step. We have to get this passed and get royal assent.

I see nothing in the way of moving forward on this bill. It's up to you. When you have a look at it, I think you'll agree with me that not only is it constitutional but it also makes a lot of sense, so I urge you to get this through the process as expeditiously as possible. I see no impediment for the ratification of the treaties.

[*Translation*]

Ms. Françoise Boivin: Thank you, Minister.

Some people are saying that sections 82.3, 82.4 and 82.6 have a broader scope than the agreements call for. What do you have to say to them?

[*English*]

Hon. Rob Nicholson: The treaties themselves provide recommendations. In a sense, this is what they said you should be doing. It doesn't have to contain all the activity with respect to either terrorism or activity of this type. That's why I suggest that when you look at each of those sections, you'll see that they're reasonable. If they're more complete, if they have greater detail, then it's actually spelled out in the two treaties. I think you'll see that the wording is consistent with the intent of the treaties, and certainly consistent with our intent, which is to limit, prohibit, and prosecute this kind of activity when it takes place.

[*Translation*]

Ms. Françoise Boivin: I understand, Minister, but do you find that the scope is indeed a bit broader? If so, why is that?

[*English*]

Hon. Rob Nicholson: When we drafted each of these particular sections, we wanted to make sure that they're not only consistent with the treaty but that they're consistent with existing criminal law in Canada.

We tried to make it as complete as possible, and I think your examination of these sections will confirm that while the treaties themselves provide a floor, they don't put any sort of ceiling on it. As I say, when you see the legislation, I think it will confirm my comments.

Ms. Françoise Boivin: Do I still have time?

The Chair: You have 30 seconds.

Ms. Françoise Boivin: By the time I voice my question, it will be over.

The Chair: Okay. Then we'll go next to Mr. Albas, from the Conservative Party.

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you, Mr. Chair.

I'd like to thank the minister and the other witnesses for coming today to discuss this very important piece of legislation.

Before I begin my comments, Mr. Chair, I want to say that I found the briefing note brought by our analyst to be very informative, so thank you.

On Ms. Bennett's suggestion of the time that it takes for these kinds of bills, important bills, that maybe did not get through during the minority years, I've had the experience, Minister, of talking to a number of people. I'm a new member, so I wasn't there doing it, but I've heard from members from all sides that a lot of bills like Bill S-4, the Safer Railways Act, and Bill C-48, the Technical Tax Amendments Act, were important but just wouldn't have been able to get through because of the jousting of the minority years, so I'm very happy to see important issues like this move forward.

It's my understanding that the principal reason for the introduction of this bill is to amend Canada's Criminal Code to ensure that it reflects the obligations imposed by the International Convention for the Suppression of Acts of Nuclear Terrorism and the amendment to the Convention on the Physical Protection of Nuclear Material, both of which Canada has yet to ratify.

Minister, could you give some of your rationale on why it's important for Canada to become a state party for these important international counterterrorism instruments?

Hon. Rob Nicholson: It certainly demonstrates Canada's continued commitment to nuclear security and it continues to show Canada's leadership in this regard. We have been most cooperative over the years in working with our allies and partners on this concern, and indeed all areas of mutual concern and mutual interest. It very clearly demonstrates our commitment to working with our international allies.

It becomes very apparent when you look into these areas that in many ways the world becomes borderless, in the sense that this kind of activity.... I mentioned al-Qaeda. They don't respect anything, I suppose, but they don't respect international boundaries; we can all become targeted via this kind of nefarious activity, as I said in my opening comments, so I think it's important for Canada to move forward on these concerns, and, I wish, on all these areas.

For instance, I think I introduced four times the bill that cracked down on people who bring drugs into this country, to up the penalties on those things. It wasn't a question of a lack of commitment on my part or the government's part or my colleagues' part, but you know the situation we went through. If it wasn't filibustered by the opposition parties in the House of Commons, the Liberal-dominated Senate would hold it up forever.

We've tried on several occasions, and I'm much more optimistic today. I'm very pleased with the progress we are making, but it was difficult that it took us about four years to send the message out to people who want to organize crime and bring drugs into Canada that they're going to jail. I never wavered on that. Time after time we introduced that measure, and I'm glad it's now the law in this country and that there's better protection for children in this country. As with all of these things, I hope they have the support of everyone, but you can check the record of the last seven years.

• (1610)

Mr. Dan Albas: I appreciate hearing that, because you've certainly hit on the point that many of these issues are grave because they are borderless and there's no respect for boundaries.

In your opening statement you mentioned some efforts in other jurisdictions such as the United States. Have other countries ratified these treaties, Minister?

Hon. Rob Nicholson: There are a number of them that have. Russia and Germany are two. I'm not sure I mentioned those. I mentioned that the United Kingdom and Australia have done it.

There are a number of countries that still have a way to go. I mentioned the United States specifically, but New Zealand, France, Italy, and Japan have yet to do so. I don't know if it's minority parliaments or interparty jousting, as you said, that is slowing down the procedures in some of those countries—I don't purport to be able to do that—but I believe that ultimately it will be signed by a great number of countries that all have a stake in it. As I say, we're among the countries in a position to get legislation passed to conform with the requirements of the two, and it's my hope that this bill will be ratified as soon as possible.

The Chair: Thank you very much. Our next questioner is Mr. Mai, from the New Democratic Party.

[*Translation*]

Mr. Hoang Mai (Brossard—La Prairie, NDP): Thank you, Mr. Chair.

Good afternoon, Minister.

I want to begin by saying that I am happy to be a member of the Standing Committee on Justice and Human Rights. This is my first meeting as part of this committee, as I was previously a member of the Standing Committee on Finance.

For the time being, we are working on a bill that seems very positive and has everyone in agreement. I hope that will continue, especially since the minister is here today.

Earlier, Ms. Boivin asked a question about Bill C-10. That bill had to do with the 2002 legislation on public safety and implemented the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. You said that, in the case of Bill S-9, you wanted to move ahead quickly and you wanted an order to be issued. Could you explain to us why this situation is different from that of Bill C-10, which has still not been implemented?

[*English*]

Hon. Rob Nicholson: Bill C-10 has actually been entered into force. It may be a different incarnation. The Bill C-10 that was before Parliament contained a number of different areas, as I indicated, dealing with drug dealers and changes to the Youth Criminal Justice Act, so perhaps you are referring to the different incarnation in previous Parliaments. I mean, again—

Mr. Hoang Mai: Just as a clarification, I was referring to Bill S-7, which was to put in place

• (1615)

[*Translation*]

the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

[*English*]

Hon. Rob Nicholson: First of all, although I did it in general terms, let me welcome you to the committee.

You indicated that you are optimistic that this bill has support and continues to have support, and certainly I am hoping that this positive treatment and reception of this bill will continue with all the other pieces of legislation, as your colleagues will tell you. This committee is kept very busy because, as you know, this area is a priority.

The translation said Bill C-10. I'm not in a position to detail, and I appreciate it's a different bill, but I will personally have a look into that if you'd like. The Department of Foreign Affairs has a lead on that, but I will be glad to check into it. On the bills that come within our jurisdiction and the purview of this committee, we tend to move as quickly as possible.

The Chair: Go ahead on a point of order, Ms. Findlay.

Ms. Kerry-Lynne D. Findlay: With all due respect, we're here to discuss Bill S-9, the Nuclear Terrorism Act. I'm a bit confused as to the relevance of the questioning of the bill that's in front of us and I'm not sure I even understand which piece of legislation you're referring to, Mr. Mai.

The Chair: Thank you, Ms. Findlay.

Mr. Mai, I think there's been a commitment by the ministry to get back to you on—

Mr. Hoang Mai: I'll reply to that point of order, just to explain.

The question that my colleague Madame Boivin asked was with regard to when Bill S-9 will have a decree. The minister actually said we'll have it quickly. If we look at the past, if we look at what has been done, if we look at Bill S-7, there's still no decree on that front.

In order to make sure that this bill goes forward and that we actually ratify it, I want to understand why similar bills that were adopted and were agreed upon still have no decree at this time.

Ms. Kerry-Lynne D. Findlay: Then the question was about timing. I'm sorry; I was confused.

The Chair: I think there was a commitment by the ministry to get back to the questioner.

Hon. Rob Nicholson: I think this particular piece of legislation is in the purview of the Minister of Foreign Affairs. Certainly I'll pass on the comments and tell him how anxious the NDP is to see it implemented.

With respect to this one, I am very pleased that I'm getting some support, and I will pass that on to all of my colleagues. Thank you.

Mr. Hoang Mai: Thank you, Mr. Minister.

With respect to the bill per se, I understand there was an addition made at the Senate. Can you explain why this was not part of the bill initially? Is it something that we have to worry about? I understand that you've explained to us the fact that some of the additions were made to reflect what the convention was saying, but why was that part missing in the first edition?

Hon. Rob Nicholson: Strictly speaking, it wasn't necessary, if you have a look at what the two treaties were asking Canada to do. On the idea that the word "make" wasn't captured, it was captured, in my opinion. If you possess something or if you are distributing something, you are also in the business of making it. However, in having a look at it, it seemed to me that anything that helped clarify these things wouldn't be a problem, so the wording was slightly reconfigured in the Senate. We agreed with that.

The only other change was just a technical change to ensure that the English and French versions are identical. There was a minor change made there as well, but again I'm satisfied that we captured all the possible illegal activity. Over the years, when we get helpful suggestions or suggestions that might make something a little bit clearer, we're always glad to have a look at them.

The Chair: You have 30 seconds.

Mr. Hoang Mai: Do you think there is anything else in the treaties that wasn't covered in this bill?

Hon. Rob Nicholson: No. A lot of the activity is already covered, so it really isn't a question of trying to get everything mentioned in

the treaty, because for a number of years we've been in the business of trying to counteract terrorist activity in Canada. There have been provisions made over the last decade in that area, and there are provisions that have always been in the Criminal Code.

What we did in the four sections you have before you for study is particularize them with direct reference to the two treaties. Again, as was pointed out by Monsieur Goguen, we've applied a number of other provisions in the Criminal Code that have already been changed. Reverse bail is one of the examples, as is consecutive sentencing. Even within the activity that's already criminalized under the Criminal Code, we have, as you can see, increased the penalties because of the seriousness of this activity.

• (1620)

The Chair: Thank you, Minister.

Thank you, Mr. Mai.

Our next questioner is Mr. Seeback, from the Conservatives.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

Minister, I will say welcome to you, as everybody else has. I'm sure you're encouraged, as I am, by hearing the NDP say they want to move these things through quickly, so hopefully we'll get this moved and passed in the House as quickly as possible.

Sometimes we ask complicated questions, but sometimes we want to ask the obvious questions, and sometimes those are just as important. I think the answer to this is somewhat obvious, but I'm going to ask it anyway. It's with respect to the offences.

Do the offences apply to the otherwise lawful use of nuclear radiation material devices? If not, why not?

Hon. Rob Nicholson: No. As a matter of fact, you'll notice that there are exemptions with respect to the Canadian military. I would recommend that you have a look at those. We've been aware of the lawful use of nuclear material and accustomed to it, and we approve of it when this material is dealt with in a proper, lawful manner.

What this bill does is particularize the kind of activity that could threaten the safety and security of Canada and indeed that of our partners throughout the world. That was why the treaties came together. It wasn't because much of this activity wasn't frowned upon. They wanted to come together to see that a clear and consistent message is being sent throughout the world that we are cooperating with each other, harmonizing our laws, and making sure that there are appropriate penalties for the kind of activity we're talking about, and that this approach is consistent throughout like-minded countries such as our own.

While a number of countries have not yet changed their laws or ratified this treaty, I am optimistic that more countries in the future will do so. That's the message that I have gotten back, but we are not waiting around for all the other countries in the world or the countries that have signed on to this to ratify it. We're moving ahead at this particular time.

I think this is very appropriate, and I too am encouraged. If this is a step towards that kind of cooperation for these sensible and important pieces of legislation that we're bringing forward to the justice committee, I couldn't be happier if we get these bills through. I hope this is just the first of many that will come before this committee.

Mr. Kyle Seeback: That's great.

Actually, Minister, you raised a point that I'd like to segue to next. My understanding in reviewing the legislation is that the military is going to be exempt from these proposed amendments. You certainly alluded to that in your statement. Could you perhaps explain why that is the case?

Hon. Rob Nicholson: Yes. As I indicated to you, there is a military exclusionary clause. In essence, the activities of the armed forces as those terms are understood under international law and as governed by that law will not be reformed by the government by the proposed changes to the Criminal Code. The amendments don't directly apply to the activities of the Canadian armed forces and those acting in support of them who are under the formal command and control of Canadian armed forces while in the performance of their duties.

The military exclusion language used in both the treaties, as you will see when you examine them, is similar to that used in the International Convention for the Suppression of Terrorist Bombings, which is implemented in Canada under the Criminal Code. That's another area that you might want to have a look at, but I wanted to make sure it was part of the record so that you are aware of it.

Thank you for raising it specifically, but again, it's consistent with the language in those treaties and in others.

Mr. Kyle Seeback: I know you were doing this to be part of the 2005 agreement. Do you see the legislation actually providing more security here for Canadians? Is that an important part of it as well?

• (1625)

Hon. Rob Nicholson: I think it is. In answer to one of the questions about expanding existing Canadian law in the area of extraterritoriality and its application to this kind of activity, I said it's important, and it's consistent with the comments that I and others have made with respect to how borderless this kind of activity has become. Certainly it's consistent with that, and it's one of the things that we have to do. We have to consistently update our criminal laws to reflect what's happening out there.

As you know from your study of the Criminal Code, much of the time what we are doing on the Criminal Code is updating. We're reflecting what's happening out there in terms of changes of technology and changes in the techniques of criminal individuals. We have to do that. When we bring forward bills like this that make changes of the kind we are proposing here, we're being consistent with what is happening around the world and the threats we are facing. It is a different world from what it was 30 years ago, and we are always on the lookout to make sure our laws are as up to date as possible and reflect the threats that are out there. As I indicated, these types of threat continue.

The Chair: Thank you, Minister.

Our final questioner for today is Mr. Jacob. The minister is committed to be here until 4:30, and by my BlackBerry, you have five minutes.

[*Translation*]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): I am the last, but not the least, member to take the floor in the minister's presence.

Thank you, Mr. Minister, for coming to testify before us.

The risk of terrorists using former weapons scientists with knowledge in nuclear weapon production is significant and recognized by the Global Partnership Against the Spread of Weapons and Materials of Mass Destruction. Some people feel that the spread of such knowledge poses an imminent risk.

Do you think your government and other governments are investing sufficient efforts into redirecting former weapons scientists?

[*English*]

Hon. Rob Nicholson: Again, that might more properly be directed to the Minister of Foreign Affairs, Mr. Jacob.

We take seriously all kinds of activity, whether they're at home or abroad, that might constitute a potential threat to this country. As you can see, we're taking action on activity that we find reprehensible, and this bill before you today is an excellent example of how we are particularizing our response to the threat that we believe is out there for Canada. That's what this bill is all about.

[*Translation*]

Mr. Pierre Jacob: Do you think that the risk we are talking about has increased owing to the constant development of the Internet?

[*English*]

Hon. Rob Nicholson: It's very interesting that you should say that. We certainly see that the Internet often provides a venue for either the proliferation or the dissemination of information with respect to illegal activity. I've been before this committee a number of times on the whole area of child pornography and the difference the Internet has made.

Our job is to stay on top of these issues, look at changes either to technology or to different methods of committing these types of crimes, and make sure that our laws are as up to date as possible to reflect the current state of the threat before Canada.

I've made the point before that criminals don't just telephone each other, and they've gotten out of the habit of sending telegrams to each other. This is the world in which we live, so we are constantly looking at the existing laws within this country and constantly making sure that we are bringing forward legislation that responds to the challenges. This is just one of the challenges that we've had. The nuclear threat, we believe, is a continuing threat to Canada and to our partners and allies, and this is one of the responses that we've had.

• (1630)

[*Translation*]

Mr. Pierre Jacob: How would you rate the recent international progress with regard to nuclear issues?

[English]

Hon. Rob Nicholson: The signing of these two particular treaties is evidence of the kind of cooperation that is possible throughout the world. As I indicated to you, a number of countries have already signed these treaties and ratified them. Dozens of countries came together to put this together, so if you're asking me if I'm optimistic, the answer is yes, when I see that kind of cooperation and when I see treaties like the two that are the subject of this particular piece of legislation.

It will be important for Canada that by passing this legislation, getting it through the House of Commons, and getting royal assent we are sending the message that we too are a part of that effort to contain this threat, and that we are showing leadership and are showing that we are prepared to work with our allies on this issue.

I think you can point to these two pieces of legislation as progress in this area. Certainly the legislation before you is evidence of that progress.

The Chair: Thank you very much, Minister, for joining us today to talk about introducing Bill S-9, and I thank the committee members for their excellent questions.

I will suspend for a minute while the minister leaves and we change over to the next hour.

• (1630) _____ (Pause) _____

• (1630)

The Chair: I'm going to call the meeting back to order for our second half.

I remind the committee that we're expecting the bells to start to ring at 5:15 for a vote at 5:45.

There is an item of committee business with the fourth report, which should be on your desk. It is a report from the subcommittee on agenda and procedure that sets out the plan for the committee for the next two cycles, or the next month. Instead of waiting, does anybody want to move that right now so that we can deal with it?

Ms. Kerry-Lynne D. Findlay: I move that we adopt this fourth report as set out.

The Chair: Are there any questions or comments?

(Motion agreed to)

The Chair: Now we'll move on to our witnesses from the justice department. We have Mr. Piragoff, senior assistant deputy minister, and Greg Koster, counsel, criminal law policy section. Welcome.

Did you have a statement you wanted to make, or will you just take questions?

Mr. Donald Piragoff (Senior Assistant Deputy Minister, Policy Sector, Department of Justice): We'll take questions.

The Chair: Let's start with questions. From the New Democrat Party, who would like to start?

Mr. Scott, you have five minutes.

Mr. Craig Scott (Toronto—Danforth, NDP): Thank you, Mr. Chair, and thank you both for being here.

I wanted to follow up on a few points made by the minister.

The Senate did notice that the “making a device” offence from at least one of the treaties was not in the initial bill. Nobody had any problem with putting it in.

The minister's response didn't appear entirely convincing when he said that he thought it was already covered by possessing or distributing. He went to say that if you're possessing or distributing, you must also be in the business of making. Now, that doesn't follow, so I'm wondering if there's any other reason, apart from what the minister gave, that you felt at the initial stages that making a device was already covered somewhere and didn't need to be in the bill.

• (1635)

Mr. Greg Koster (Counsel, Criminal Law Policy Section, Department of Justice): Thank you for the question.

When we were looking at the design of that particular offence, as you know, we were looking at the two treaties together, and they deal with separate subject matters: one is radiation material and devices, and the other one is nuclear material.

Now, the device is the only thing that is called to be made, so when we were designing that catch-all section 82.3 offence, we had to make some decisions. We saw that the “making” doesn't apply to nuclear material or radiation material; were there other verbs that could capture it? To be quite honest, we did look at “possess” and we looked at some of the existing offences in the code that used similar language, such as “manufactures”. The word “makes” was another one. There are a number of offences that use the concept of “make”.

Some of the courts have said that's a dictionary definition, which includes a completion, as the term is used—“to make it”—because if you haven't completed making it, you've attempted to make it. That's something different.

We said that if you've made it, you are in possession of it. When we made the decision about how to structure that offence, that was the thinking, to be honest.

Mr. Craig Scott: I appreciate that answer. It's quite clear from what you said that you did put your mind to it. It wasn't just a pure omission.

Mr. Greg Koster: It wasn't an omission.

Mr. Craig Scott: I think we're all glad to hear that. At the same time, there was no real pushback in making it clear through the Senate amendment.

Mr. Greg Koster: In my view, it strengthens the intent of the bill.

Mr. Craig Scott: I come from a background of international law, so I used to deal with treaties an awful lot. A huge percentage of our domestic legislation is now either a direct implementation of international treaties or has some connection. You would know that better than I, I think.

I addressed this issue a bit in my second reading speech. Even for somebody like me, reading an implementing bill that already has the handicap of being in the form that our amending bills take—meaning it's quite fragmented, and you have to be constantly going back and forth—and then layering on that a background treaty that isn't actually appended.... There's no commentary whatsoever to enable the average legislator to make their way through to how the treaties connect to the legislation.

I spoke a fair bit about this, and in my view there's a bit of a transparency rule of law problem that we're coming up against. When other systems introduce legislation, it's much more common to have fairly detailed commentaries about bills. I don't know this for a fact, but I'm pretty sure that a lot of those systems would have quite clear commentary literally taking the legislator through where a piece of legislation, a provision, links up with the treaty, and would probably have some commentary about why a particular form of implementation was chosen. However, we really don't have that in the way we present bills implementing treaties.

You can't bind the government, so it's just a question along these lines: do you think the time might be ripe to try to come up with a system of presenting bills, implementing treaties, that's just a little bit more transparent and helpful than what we have now?

Mr. Donald Piragoff: Thank you.

I hope that's not a reflection that we're not transparent in trying to answer your question.

Mr. Craig Scott: No, not at all.

Mr. Donald Piragoff: I know the problem. The way we implement treaties is that we usually have a body of law that, to a large extent, can already implement a good part of the treaty. As you indicated, it becomes a situation of looking at where the gaps are in the domestic law and then presenting to Parliament a bill that will fill the gaps, because the existing legal framework already would implement certain parts of the treaty.

My first question is that I hope we're being transparent. That's why we're here as witnesses: to help you understand the process of where the gaps are.

• (1640)

Mr. Craig Scott: It's a bit staged, though.

Mr. Donald Piragoff: Yes, I know.

Your more fundamental question is really not a question for us to answer. It's really a question for Parliament and for the Minister of Foreign Affairs, who is responsible for treaty negotiations.

As you know, the process changed two years ago, in that treaties are now deposited in Parliament for the purposes of comment by MPs. That's a new progression from the way it used to be before, when actually the treaty never even appeared in Parliament. I think Parliament is starting to take lessons from other countries as to how they do it. We have had some progression. That's not to say there isn't more room for moving forward with others.

In terms of a background brief, that is not the practice of most common law countries. I think the countries that you're referring to are usually civil law countries, a different constitutional system. In some of those civil law countries, international treaties become part

of their domestic law upon ratification. They don't even need to have implementing legislation. They're not dual states, they're monist states.

The Chair: Thank you very much.

Our next questioner is Mr. Armstrong, for the Conservatives.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): Thank you very much, Mr. Chair.

I welcome you to the chair, as we've heard before.

This is my first day on the committee. After 18 years as a professional educator before becoming elected, I'm really pleased to see that the department continues to put forward legislation that protects children from sexual predators and other predators who prey upon one of the most vulnerable segments of our society. I appreciate the work you've done on those particular pieces of legislation.

We've heard a lot of talk today about timing. Am I right to say that this is the first time this bill has been actually tabled and pushed through by a government?

Mr. Greg Koster: Yes, that's correct.

Mr. Scott Armstrong: So even though the Liberals originally signed on to the agreement, it was never tabled by the Liberal Party. It was never actually put in legislation by the Liberals in the previous government.

The Chair: It will be after this.

Mr. Donald Piragoff: The treaties were negotiated in 2005. I'm not sure which year we signed. I'd have to check with the Department of Foreign Affairs on whether we signed in 2005 or signed subsequently.

Mr. Scott Armstrong: But it wasn't tabled by the Liberals while they were in power.

Different governments have different priorities, and in criminal justice, our Conservative priorities—stopping people from grooming children as sexual predators, raising the age of consent so that we stop international sexual tourism, or mandatory jail sentences for sexual predators—might slow some of these things down. Those would be the priorities of our party.

When much of this legislation was already contained in the criminal justice system, Liberal priorities, like persecuting long-gun owners, hunters, and farmers—

Hon. Carolyn Bennett: Did this come straight from the PMO?

Mr. Scott Armstrong: —and softening the rights of violent criminals or slapping young offenders on the wrist might have slowed them down as well.

I have another question for you on a different subject area. Across Canada we have several nuclear facilities. What can you say to Canadians who question whether those facilities are safe? Are you aware of how safe those facilities are?

Mr. Donald Piragoff: I can only talk about the criminal law. If you want to talk about the actual safety of facilities, you should be talking to the minister who is responsible, the Minister of Natural Resources.

In terms of criminal law protection, the facilities have had physical protection for a number of years. As the minister indicated, there were some early conventions—they even go back into the mid-1980s—that required countries to seek the safeguarding of physical facilities. Canada has been a party, and has had legislation since the mid-1980s to deal with the physical protection of the facilities in terms of criminal protection.

There are other treaties that deal with nuclear regulation, but they are not within the purview of the Minister of Justice. As I said, that is the responsibility of another department.

Mr. Scott Armstrong: Then going back over 20 years ago, the government has taken strong steps to make sure that all nuclear facilities have adequate protection. Would you say that's an accurate statement?

• (1645)

Mr. Donald Piragoff: Yes.

Mr. Scott Armstrong: Thank you very much.

In terms of this bill and the international treaties signed, we talked about some other countries, such as Australia. I think when Australia introduced this bill, they cut and pasted things piecemeal into their criminal justice act. I think we've taken a different approach.

Can you talk about the different approaches in how the two different countries are implementing this legislation?

Mr. Greg Koster: Well, I can speak to what we've attempted to do here.

It's true that a plain reading of both British and Australian laws shows that they use much of the same wording—not just the subject matter of the offences, but the way it's set out in the convention. I doubt it was a cut-and-paste, but it looks very similar.

Now, the way we did it here in Bill S-9 is that we wanted it to fit within the existing Canadian law so that it flowed nicely within the code and had a good relationship with the existing terrorism offences and the way the existing law defined certain activities. That's why our law looks a bit different from, for example, the Australian and British laws.

Mr. Scott Armstrong: Would you say that the process would have reduced a lot of duplication—that since a lot of this legislation already existed in our criminal justice system, putting the whole compartment in would have caused a lot of duplication in our current legislation?

Mr. Greg Koster: I don't think it would necessarily reduce duplication, because it's very specific.

What this did do is tie it together. The British law is a number of pages and the Criminal Code is already quite thick, so we attempted to be as concise as possible while still capturing all the required elements of the treaties.

The Chair: Thank you very much.

Thank you, Mr. Armstrong.

Our next questioner is Madam Bennett.

Hon. Carolyn Bennett: Thanks very much.

I'd ask the minister if this bill will help and if there were any cases. I wonder if you could let us know if there were any cases acquitted under the previous provisions in the Criminal Code, cases you would be able to get a conviction on this time with the new law. In that vein, are there any current or ongoing files right now that the minister intends to prosecute with these measures once this law is passed?

Mr. Greg Koster: We can undertake to look for past cases, although in our research I haven't come across any. For example, under the original 1980 convention, I'm not aware of any prosecutions that were both successful or unsuccessful.

With regard to ongoing cases, that's perhaps an issue best left for the law enforcement agencies, or under the purview of the Minister of Public Safety.

Hon. Carolyn Bennett: I will presume that all the provincial Attorneys General have been consulted and agree with this bill.

Mr. Donald Piragoff: They're aware of the bill and they have not expressed any concerns or opposition, so they would be supportive.

Hon. Carolyn Bennett: Has the minister consulted with his counterparts?

Mr. Donald Piragoff: The minister generally does not consult directly with his counterparts. In terms of the department, Greg can answer that question, because he was drafting the bill.

Mr. Greg Koster: At the time when we were contemplating the construction of this bill, we did, at the senior officials level, advise all the provinces and territories of Canada's intent to become a state party to the two treaties. We did that primarily because of the concurrent prosecutorial jurisdiction. We wanted to make sure they were on side with that, and they were.

Hon. Carolyn Bennett: There is an application of extraterritorial jurisdiction for these new offences. If somebody is caught in Canada and the act was actually done in another country, could you let the committee know how Canada determines whether you prosecute here or extradite?

Mr. Donald Piragoff: The extradition is dependent on the other country making a request. That's the first issue. It's really not our decision until the other country makes a request to extradite.

Whether we extradite or we prosecute domestically is a question of essentially which jurisdiction has the best evidence, the most interest in the prosecution, and the greatest likelihood of a successful prosecution. Those factors would come into effect when an extradition request had been made and the individual was also present in Canada. We would have jurisdiction as a result of an extraterritorial provision similar to what is in this bill.

Those are the kinds of factors that are considered in the decision-making process.

• (1650)

Hon. Carolyn Bennett: The present wording of the section says that an offender would retain normal eligibility for parole pursuant to paragraph 745(d). Is there an expectation in the range of incarceration the minister expects as a standard for these offences?

Mr. Donald Piragoff: No. There's a maximum, which is life. It's really up to the courts, depending on the circumstances of the case and the circumstance of the offender, to fix an appropriate sentence.

Hon. Carolyn Bennett: Do you mean the judges would get to decide?

Mr. Donald Piragoff: That's what they get paid for.

Hon. Carolyn Bennett: That's what I thought too.

Maybe somebody else will pick this up, but in terms of the military exemption, I think that some people have some concerns as to how you determine whether a particular act is or is not in accordance with customary international law. Would a judgment by the ICC be considered binding on our courts?

The Chair: Do you have a quick answer to that question?

Mr. Donald Piragoff: Bindings of other tribunals are not binding on Canadian courts.

Canadian courts are sovereign. They determine the applicability of Canadian law, depending on domestic law. They will look at international judgments, or even judgments of other courts in other countries, for guidance and wisdom, but they are sovereign in terms of applying and interpreting Canadian law.

The Chair: Thank you very much.

Our next questioner is Madam Findlay of the Conservative Party.

Ms. Kerry-Lynne D. Findlay: Thank you.

I have some points of clarification arising out of Ms. Bennett's questions.

In Canada, when prosecutions proceed because of offences against our Criminal Code, the Minister of Justice does not prosecute those himself, does he?

Mr. Donald Piragoff: No. The minister is not the Attorney General for the provinces, although he is the Attorney General for the territories.

However, this bill, like the Anti-terrorism Act, provides for a concurrent jurisdiction, whereby either the Attorney General of Canada or the Attorney General of the province has jurisdiction to prosecute.

Ms. Kerry-Lynne D. Findlay: The normal system is that crown counsel, either federal or provincial, deal with the evidence brought to them through law enforcement and then recommend whether or not to proceed. Isn't that correct?

Mr. Donald Piragoff: That's correct.

Ms. Kerry-Lynne D. Findlay: Mr. Koster, when you were talking procedurally about how you went about getting provincial input on this bill, you said it was done at a senior official level. That is quite a common practice in developing legislation, is it not?

Mr. Greg Koster: Yes, it is.

Ms. Kerry-Lynne D. Findlay: When the minister and his provincial counterparts meet, which they did quite recently, they talk in broad principles about areas they'd like to pursue or cooperate on, but when it comes to legislative initiative and the drafting of legislation, that would be done at a senior official level. Correct?

Mr. Greg Koster: Yes, that's correct.

Ms. Kerry-Lynne D. Findlay: Thank you.

With respect to the setting of both maximum and minimum penalties in our Criminal Code, our independent judiciary has the ability to set sentences within those parameters. Is that not also correct?

Mr. Donald Piragoff: That's correct.

• (1655)

Ms. Kerry-Lynne D. Findlay: This government has brought in several pieces of legislation that call for new mandatory minimum sentences, but in fact, when the Conservatives came into power in 2006 and formed a government, there were already mandatory minimum penalties for certain offences in the Criminal Code. Is that not right?

Mr. Donald Piragoff: There were 40-something offences that had mandatory minimum penalties, I believe, prior—

Ms. Kerry-Lynne D. Findlay: So some 40-plus offences within the Criminal Code of Canada already carried mandatory minimum penalties before the Conservative government was formed in 2006.

Mr. Donald Piragoff: Yes.

Ms. Kerry-Lynne D. Findlay: You're confirming that.

Mr. Donald Piragoff: That's correct.

Ms. Kerry-Lynne D. Findlay: Thank you.

With regard to these offences under Bill S-9, my understanding is that they carry maximum life sentences and that the threat of the offences carries a maximum of 14 years.

Is that correct?

Mr. Donald Piragoff: Correct.

Ms. Kerry-Lynne D. Findlay: All right.

Therefore, there would be discretion within the judiciary to set sentences upon conviction, as long as they didn't exceed those amounts. Isn't that correct?

Mr. Donald Piragoff: That's correct.

Ms. Kerry-Lynne D. Findlay: Thank you.

How much time do I have?

The Chair: You have a minute and a half.

Ms. Kerry-Lynne D. Findlay: Thank you.

I'll get to the question that I wanted to talk about in the first place.

On this Senate amendment and the addition of "making", I was a bit confused, so I want some clarification.

It would seem to me that if you were making nuclear material or a nuclear device, you would obviously be in possession of it. That is what was assumed with the original wording. However, I can see a situation in which perhaps you are in possession of such material that you didn't actually make; the person who did make it may have then passed it along.

For greater clarity, is that the reason, or part of the reason, that the minister agreed with the amendment to include "making"?

Mr. Greg Koster: It is part of the reason, but the making is only in relation to the device. Just for the record, it's just in relation to the device.

One of the reasons that wasn't mentioned was that, as we all know, this is fitting in with the world structure. Other countries may use that term of "making" a device, and in fact do use that term. As far as international relations are concerned, and in relation to extradition and mutual legal assistance requests for which this treaty will form the basis, it'll help in that regard.

Ms. Kerry-Lynne D. Findlay: Okay.

In Bill S-9 I noticed that there were several provisions for definitions. Am I correct in assuming that the definitions we're adopting are consistent with the meaning of those definitions in adoption by other countries?

Mr. Greg Koster: That's correct. The nuclear facility definition was taken from ICSANT; the nuclear material definition existed in the Criminal Code from the 1980 convention and is consistent with the original CPPNM, article 1; the radioactive material definition was taken from ICSANT, article 1; and the device definition was taken from ICSANT, article 1.

Ms. Kerry-Lynne D. Findlay: Thank you.

The Chair: Thank you.

Our next questioner is Mr. Scott.

Mr. Craig Scott: Thank you.

I just have one question before passing it back to Madame Boivin.

The minister referred to how specific intent elements of at least one of the treaties actually more or less already exist in our system. He mentioned three statutes, if I'm not mistaken, that already do the job, so it wasn't necessary to be more specific in this act.

I'm wondering if the department could undertake to submit an overview, as brief as possible, of what those statutes are and how they actually do implement any specific intent requirements under the treaties, unless that's already been done and I've missed it.

Mr. Donald Piragoff: I can answer that.

I think what the minister was saying wasn't on the specific intent. Some of the treaties require that we criminalize the import or export *simpliciter* of certain material. What the minister said is that we already have legislation that does that.

For example, exporting without a licence is in section 13 of the Export and Import Permits Act. Importing or exporting without a licence is also covered by section 26 of the Nuclear Safety and Control Act, and smuggling of materials would be caught already by section 59 of the Customs Act. That would be just a simple import or export, with no requirement for any specific intent.

• (1700)

Mr. Craig Scott: Okay, that's great.

It's on record now, so thank you so much.

The Chair: Madame Boivin is next.

[Translation]

Ms. Françoise Boivin: Thank you, Mr. Chair.

The Criminal Code contains some provisions that make it possible to take action even if offences are committed outside our territory.

In addition, clause 9 of Bill S-9 talks about the *autrefois* convict defence, which applies to someone who may have been found guilty abroad. That would not apply in some specific cases. Of course, I'm talking about the *autrefois* acquit or *autrefois* convict defence, covered in section 607 of the Criminal Code. It was mentioned that this was so in cases where the foreign trial failed to meet certain basic Canadian legal standards, and where the individual had not served a sentence for those offences despite his or her conviction. What do you mean by "*certaines normes juridiques canadiennes de base*"? Nowadays, we no longer know what that means.

[English]

Mr. Donald Piragoff: I don't have the provision in front of me, so I'll be answering purely on my memory of the provision that you refer to, which is an existing provision of the Criminal Code.

That provision was put in for the purposes of ensuring that a person would not have a bogus acquittal or a bogus conviction in a foreign country and then say, if they were arrested in Canada, "Well, I've already been tried and I've been acquitted" or "I've already been tried and I was convicted and I got a small fine, so you cannot try me again".

Ms. Françoise Boivin: But when you talk about

[Translation]

"*certaines normes juridiques canadiennes de base*"

[English]

—basic Canadian....

[Translation]

I don't know how to translate the word "*juridique*".

[English]

What do you mean? Do you have criteria? Is it set, or is it going to be done case by case? I ask just so that we have an understanding beforehand, before we get into that.

Mr. Greg Koster: I'm sorry I don't have an exact answer for that full question. I just want to be clear that in the provision that's in the bill, all that's being amended is the reference to section 7. We've done amendments to section 7, so this actually was meant to fall within the sort of consequential aspect. Those words were not ones that we've created. We just renumbered because we renumbered the provision that section refers to. All of the things that fall after the reference to 7.2 to 3.1 to 3.7 are just to account for the renumbering in section 7.

Ms. Françoise Boivin: I'm not sure that I'm following you or that you're following me. I'm referring to the fact that we put aside the defence of section 607 of the Criminal Code in certain specific concepts. Mr. Piragoff addressed it, and I understand the bogus conviction. There are some countries where it could happen.

We talk about some type of norms, but I don't exactly know which norms you're talking about or if there are some definite criteria. Let's say a crown attorney is deciding if he's going to file some type of accusation against somebody. Will there be some direction given? What gives?

Mr. Donald Piragoff: It is very much a judgment call on the part of a crown attorney to look at the situation. It really becomes, to use the comment, a smell test first. Does something smell fishy here, something that is not proper?

However, the real determination is the court, because the court has to make the decision as to whether or not a defence is applicable or not. The court would be looking at the facts, and the facts as to what happened in the foreign country would have to be presented. The court would then interpret the basic norms of what constitutes a fair trial in Canada.

A lot of that would be governed by the principles in the Canadian Charter of Rights and Freedoms, because of course it sets out some basic principles. Those principles have been elaborated by the courts, including the Supreme Court of Canada, into more detail. A court would look at some of those fundamental principles and might say that what happened in a foreign country was not a really fair trial but a bogus trial. The court would not acknowledge that the trial

happened and would not give any validity to that acquittal or that conviction. Therefore, the defence would not be applicable.

● (1705)

The Chair: Thank you very much.

I have no other speakers or questioners on my list, so I'm assuming that no one has any further questions for our gentlemen.

Thank you very much for joining us today and answering these questions.

I want to thank all three parties for submitting lists of names for witnesses. We will be starting with witnesses at our Monday meeting.

With that I will adjourn the meeting. Thank you very much.

The meeting is adjourned.

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