



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Foreign Affairs and International Development

FAAE • NUMBER 005 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, November 26, 2013

Chair

Mr. Dean Allison

Standing Committee on Foreign Affairs and International Development

Tuesday, November 26, 2013

• (1530)

[English]

The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)): Good afternoon everyone. Pursuant to the order of reference of Friday, October 25, 2013, we are resuming our consideration of Bill C-6, An Act to implement the Convention on Cluster Munitions.

I want to welcome our witnesses and introduce first those who are here with us at the House of Commons. From Handicap International Canada, we have Marc Drolet, the executive director. Welcome Marc, I'm glad to have you here today. Then we have Jérôme Bobin, the manager of communications and mobilization. Welcome, sir, to you as well.

Then, joining us via video conference from Geneva, Switzerland, we have Amélie Chayer, a policy analyst with the Cluster Munition Coalition. Welcome Ms. Chayer. I think you're six hours ahead, so you're well into the evening. You're at almost 10 o'clock, so thank you very much for joining us.

Why don't we start here, with Handicap International? Then we'll turn it over to Ms. Chayer. We will then go back and forth across the room asking questions and probably get in a couple of rounds.

So over to Handicap International for your opening statement.

Mr. Marc Drolet (Executive Director, Handicap International Canada): First of all, thank you so much for inviting us today.

[Translation]

Thank you very much for the opportunity to speak before you.

[English]

Co-recipient of the Nobel Peace Prize, Handicap International is an independent aid organization that celebrated its 30th anniversary last year. Our organization also received the Conrad Hilton humanitarian prize in 2011 for the quality of its field operations.

Handicap International is on the front line in over 60 countries, including Haiti, Afghanistan, Sri Lanka, Iraq, Sierra Leone, and Laos, working alongside the disabled and vulnerable experiencing poverty and exclusion, particularly in situations of conflict and disaster.

Cluster munitions are unreliable and indiscriminate deadly weapons that kill and maim people long after the conflict has ended. We call this the "war after the war". Credible estimates establish the number of casualties directly attributable to cluster munitions at more than 50,000, most of them innocent civilians, as you know. There is no control over the end target of these munitions,

and therefore no means to ensure a distinction between military and civilian targets. Accordingly, it is not surprising that recent research has shown that more than 90% of the reported casualties are civilian, and about half of them are children.

Our roles include being with the victims in the field, offering them support with their disability, trying to facilitate their social reintegration, and helping to clear the littered areas of unexploded munitions, a risky, time-consuming, and costly task. This means that we realize daily at Handicap International realize how horrendous this weapon really is.

I have no doubt that everyone in this room is aware of the devastating long-term physical, psychological, and economic consequences of cluster munitions. I expect we also all agree on the critical importance of the 2008 Convention on Cluster Munitions, and by all means the need for Canada to ratify it.

Handicap International commends the Government of Canada for initiating the current ratification process as reflected in Bill C-6. Handicap International is pleased to note that several clauses of the bill lay out clear and unambiguous prohibitions. At the same time we are concerned with some exceptions and omissions that go against the very purpose of the convention. Especially troublesome are exemptions in the bill for interoperability, and the absence of prohibitions on financing and investment.

With regard to interoperability, Handicap International understands and respects the government's preoccupation with ensuring that Canadian Forces continue to be involved in joint military operations with Canada's allies, some of whom are not party to the convention. This legitimate preoccupation is in fact explicitly addressed by the convention in the way that does not limit Canada's right to cooperate with other nations not party to it. Handicap International's concern with the exceptions set out in the bill is not that they might allow Canadian Forces to participate in joint military operations with allies not party to the convention, but rather that they are not necessary and would do the following.

Firstly, they would allow such participation even if cluster munitions were used, and even give Canadian military personnel the latitude to expressly request and direct the use of cluster munitions as per paragraph 11.1(b).

Secondly, they would grant Canadian Forces explicit permission to use, acquire, and possess cluster munitions while on attachment, exchange, or secondment as per paragraph 11.1(c).

Thirdly, they would allow Canadian Forces to aid and abet a person using cluster munitions while in combined operations as long as it would not be an offence for that other person to commit that act as per paragraph 11.3(a).

Proponents of this approach evoke article 21 of the convention to reconcile their position with the treaty. This overlooks the fact that article 21, while permitting military cooperation and operations between state parties to and state parties not to the convention, includes other paragraphs that place explicit obligations on state parties to the convention to actively discourage the use of cluster munitions.

• (1535)

Article 21 must be construed to be consistent with and reflect the obligations spelled out in article 1 of the convention to never assist anyone undertaking a prohibited act. After all, how could the convention both require the discouragement of the use of cluster munitions and at the same time allow facilitation of their use?

Handicap International is of the opinion, on the one hand, that it would be important to explicitly state that a member of the Canadian Armed Forces does not commit an offence against the law merely by engaging, in the course of his or her duties, in operations, exercises, or other military activities with the armed forces of a state not party to the convention, and which has the capability to engage in conduct prohibited by the convention. Such a statement is important to avoid criminal charges against members of the Canadian Armed Forces who have no knowledge that their action may result in the use of cluster munitions by other parties.

On the other hand, despite this qualification, it would also be important to explicitly state that whatever the circumstances, the men and women serving in the Canadian Forces will not direct, request, aid, and abet the use of cluster munitions or use, acquire, and possess such weapons.

Handicap International's position on this issue is based not only on the opinion of experts, but also on the legislative instruments developed by some 30 countries, including NATO allies such as France, Norway, Portugal, Hungary, and Belgium, as well as other countries such as New Zealand, Switzerland, and Sweden.

The legislative framework developed by these countries does not give their armed forces license to engage in activities prohibited by the convention, therefore demonstrating that such license is not at all necessary to enable effective participation in joint military operations with states not party to the convention.

Also problematic—and this is another issue completely aside from interoperability—is the fact that Bill C-6 does specify that the prohibition on assistance applies to direct and indirect investments in the production of cluster munitions and their components. More than 25 countries, including the United Kingdom, Australia, New Zealand, and France, have taken the position that investment in cluster munitions development or production is a form of assistance prohibited by the convention, particularly when there is an intention

that the investment be used, or even the knowledge that it is to be used, for such a purpose. Canada should follow suit.

In conclusion, the Convention on Cluster Munitions represents a historic step in international humanitarian law meant above all to prevent casualties among innocent civilian populations. Bill C-6 should be strengthened to ensure that everything possible is done to promote the spirit and achieve the purpose of the Oslo Convention. Some qualifications may be necessary, but they should be narrow in scope, and certainly not be contrary to the objectives of the convention. As currently drafted, the bill could, paradoxically, very well contribute to the continued use of cluster munitions rather than their elimination as intended.

The good news, as demonstrated by so many other countries, including some of Canada's closest allies, is that the exceptions and omissions we have flagged are not needed to achieve truly balanced legislation that both protects innocent civilians and allows, among other things, Canada's participation in joint military operations.

On behalf of Handicap International I would like to thank you for this opportunity for your time and questions.

[Translation]

Thank you.

I can also answer your questions in French.

[English]

The Chair: Thank you, Mr. Drolet.

We're going to now move to Ms. Chayer, who is with us from Geneva.

The floor is yours.

• (1540)

[Translation]

Ms. Amélie Chayer (Policy Analyst, Cluster Munition Coalition): Thank you very much, Mr. Chair. I will do most of my presentation in French.

First, I would like to thank the Standing Committee on Foreign Affairs and International Development for the opportunity to take the floor. I represent the Cluster Munition Coalition. We are made up of non-governmental organizations that operate in some 100 countries, working to eradicate cluster munitions. Our task is to have all states join the Convention on Cluster Munitions and fully comply with its provisions.

We are the sister campaign of the international campaign to ban landmines, which has worked closely with Canada to adopt the Ottawa Convention on anti-personnel mines. This campaign won the 1997 Nobel Peace Prize for its efforts to eliminate those mines.

I come from Montreal, but I have been working for a number of years for the Cluster Munition Coalition and the treaty to ban anti-personnel land mines. I currently work in Geneva.

I would like to tell you about my friend Mr. Thi, whom I met in Dublin at the treaty negotiations. He is a farmer from Vietnam. In 1977, he was blown up by a cluster munition while digging up his field. Half of his arm was amputated. Over the next few decades, he has continued to work in the same field where he kept finding explosive submunitions just like the one that blew off his arm several years earlier. On a daily basis, he lives in terror because of those cluster munitions. That is not something we can relate to, where we are. This daily terror certainly does not compare to our farmers' experience in the Prairies. However, in a number of countries affected by cluster munitions, this is the daily reality, a reality that can be fully avoided through the Convention on Cluster Munitions.

The Cluster Munition Coalition thanks Canada for engaging in the ratification process of the Convention on Cluster Munitions. I would also like to say that I agree with all the comments our colleagues from Handicap International Canada made a few minutes ago.

In recent years, cluster munitions have been used only by regimes such as the armies of Bashar al-Assad or Moammar Gadhafi. It has been more than 10 years since the United States have used cluster munitions on a large scale. Since 2007, the few times cluster munitions have been used, the state that had seemingly used them refused to confirm it, because the use of cluster munitions is not well regarded at all.

As a result of a recent resolution by the United Nations General Assembly, the number of states that condemn the use of cluster munitions by Syria has gone up to 131. More or less two-thirds of all the countries in the world are expressing their disgust for those weapons. When Moammar Gadhafi used cluster munitions, U.S. Secretary of State Hillary Clinton described that use as disturbing. When Bashar al-Assad used cluster munitions, U.S. Ambassador to the United Nations Susan Rice added the use of cluster munitions to the list of atrocities under the Syrian regime.

For a number of years, the International Security Assistance Force in Afghanistan has had a policy against the use of cluster munitions. Those weapons were not used during the NATO operations in Libya in 2011.

Clearly, those weapons are unacceptable. This is where we are really at now. We are talking about a large group of countries and an international instrument that has been negotiated down to the last detail. It is the community of nations that raises its voice when those weapons are used by people like Moammar Gadhafi and Bashar al-Assad.

● (1545)

So many voices are being raised that almost no one has the audacity to use those weapons. That is called stigma. Every time a government rejects those weapons, the stigma becomes increasingly stronger. As a result, those weapons will be used less and less.

Canada's bill worries us because some of its provisions clearly seem to go counter to the stigma. We feel that some aspects fly in the face of the goal and purpose of the convention.

Given the time constraints, I will not go over clause 11 in great detail right now. Our concerns are fully outlined in our written brief. We feel that clause 11 of the bill is clearly a violation of the convention.

First of all, article 1 of the convention lists the prohibitions. For instance, it is prohibited to use, produce and stockpile cluster munitions. It is also prohibited to assist, encourage or induce anyone to engage in those activities. That is the fundamental prohibition in the convention.

Article 21 of the convention deals with the relations with the States that are not members of the convention. Among other things, article 21 states that the military personnel of state parties may engage in military cooperation and operations with States not party to the convention that might engage in prohibited activities. Article 21 of the convention is not an exception to the prohibition on assistance in article 1 of the convention. In fact, article 21 clarifies that joint operations are allowed and that neither the state parties nor their armed forces are liable for the prohibited activities undertaken by non-party states during joint operations. It therefore does not reduce the scope of the prohibitions under article 1, which apply at all times.

So far, 40 state parties to the convention have clearly expressed their opinion on the matter; 38 of those states explicitly said that article 1 is the basis of the convention, that the prohibition is essential, and that article 21 is not an exception and therefore it cannot allow anyone to assist someone who might engage in an activity prohibited by the convention. Many of those countries are NATO members, including Belgium, France, Germany, Norway, Portugal and Slovenia, to name a few. All those NATO members will continue to participate in possibly joint operations without letting their armed forces ever use cluster munitions.

Since Canada started drafting its bill, there has been some criticism in other parts of the world. I will mention a few. I will say this in English, because the original comments made by the states were in English.

[English]

Still in the context of Canada's draft legislation, Norway publicly noted that article 1 of the convention referred to "the absolute prohibition on any use of all cluster munitions". It also noted that all countries had a responsibility to ensure that their implementation measures fully complied with the provisions set out in the convention.

Austria said publicly:

Austria attaches great importance to the obligation of all States Parties to fully bring into effect the international norms of the Convention and not to allow for any loopholes to exist in their national legal frameworks.

In Austria's view, exceptions in national legislation with respect to interoperability clauses risk to run counter to the object and purpose of the Convention.

● (1550)

The ICRC, coming out of its usual reserve, said that “The ICRC is increasingly concerned about the scope of the exceptions allowed in national legislation...”.

The Holy See said that “After showing strong resolve in Dublin when we adopted this Treaty, all of us, we should continue to show domestically the same will to implement all our obligations in good faith.”

The United Nations, via its coordination group on mine action, said that “the United Nations shares the concern over possible inconsistencies contained in national legislation that has either been adopted or is under consideration that may be contrary to the letter and spirit of the Convention...”.

New Zealand invited states to consider important issues, such as aiding and abetting, when drafting national legislation.

The Chair: Ms. Chayer, we're just over time and we want to have a chance to ask some questions. Could you just wrap up your comments, and we'll get to the questions?

Ms. Amélie Chayer: Yes, sure.

[Translation]

The Cluster Munition Coalition is concerned about other aspects of the Canadian bill as well. We particularly recommend an explicit prohibition on the stockpiling and transfer of foreign cluster munitions and an explicit prohibition of public and private investment in producing cluster munitions. We also recommend that the maximum quantity of cluster munitions be defined in the legislation in compliance with the article on stockpile destruction. Our other concerns are outlined in our brief.

In terms of the convention on the prohibition of anti-personnel mines and the Convention on Cluster Munitions, it is often said that a small group of people who are deeply committed can turn things around. With this bill, Canada's parliamentarians have the opportunity to do just that. The power to turn things around is in your hands.

Thank you very much.

[English]

The Chair: Thank you very much, Ms. Chayer.

We will start on my left-hand side with Madam Laverdière for seven minutes, please.

[Translation]

Ms. Hélène Laverdière (Laurier—Sainte-Marie, NDP): Thank you very much, Mr. Chair. I will be sharing my time with Ms. Liu.

Thank you very much, Mr. Drolet. I am happy to see you again. Your presentation was excellent and very useful. You really covered every aspect of the issue.

My thanks also go to Ms. Chayer for providing us with some very relevant additional information.

I really liked the comment that we should interpret article 21 with article 1 in mind, because article 1 defines the fundamental objectives of the convention. At previous committee meetings, the opposite was suggested, meaning that we should interpret article 1

with article 21 in mind. To me, that defies logic. So I was very glad to hear your comments.

In terms of implementing the convention, would you agree that the Canadian bill is the weakest or one of the weakest? Could you also comment on how you see the potential impact of that on other countries?

Mr. Marc Drolet: The current bill was submitted. We are very happy that, a number of years later, the government has taken this step. It is very important that the ratification takes place. We feel that clear prohibitions are already included, but they must be taken a little further, as we mentioned in our brief. They must be strengthened. Our points are very specific and they could simply improve things.

In terms of comparing things internationally, I am going to leave that to the treaty experts, which we are not. We are experts in what happens on the ground. So we are not going to comment much on that aspect.

● (1555)

Ms. Hélène Laverdière: What do you think, Amélie?

Ms. Amélie Chayer: As I said in my opening remarks, so far, 40 state parties to the convention have expressed their opinion on the interpretation of article 21. Of that number, 38 have said that it is very clear that article 21 is not an exception to the provisions under article 1.

So far, a number of states have passed national legislation and more states have made interpretative declarations on article 21. The vast majority of states, the consensus, feel that article 21 of the convention is not an exception.

[English]

It does not override the prohibitions of article 1.

[Translation]

Ms. Hélène Laverdière: Of course, I was referring to the proposed legislation.

I know that you are both in contact with people from Handicap International around the world. Is there a fear that, if the Canadian bill is not amended, it could weaken the convention as a whole and set a precedent for other countries in their ratification process?

Mr. Marc Drolet: It is always possible that the ratification of a bill that is not up to par can encourage other countries to follow the same path. Of course, that is one of our concerns.

The major goal of the convention is to eliminate those weapons and to make sure they are stigmatized. Clause 11 of the bill has three parts that need to be corrected, in our view. Some aspects need to be improved, particularly in terms of funding. If that is not done, companies or even the government could fund the manufacture of those weapons and, as a result, encourage their use. We really think that could be more harmful than useful.

Ms. Amélie Chayer: At the end of the day, a convention is strong only if every state passes strong legislation that clearly implements all the obligations and prohibitions of the treaty. That was the case when the convention on the prohibition of anti-personnel mines was signed. In that way, every state makes a commitment to follow the letter of the convention.

We are not the only ones concerned about a bill being passed with breaches. Many states are concerned as well. That is what I was referring to when I talked about the concerns expressed by Norway, Austria, the Holy See, the International Committee of the Red Cross and the United Nations Organization through its demining agency.

Ms. Hélène Laverdière: I will give the floor to Ms. Liu.

Ms. Laurin Liu (Rivière-des-Mille-Îles, NDP): Thank you.

Mr. Drolet, you said that Canada has not taken a stand to say that direct and indirect investments in the production of cluster munitions and their components represent assistance.

Two weeks ago, I had the same question for the official from the Department of Justice. I asked him why Canada had not taken that stand. The witness said that it was because the Criminal Code and other provisions already applied.

Why do you think the part about investments needs to be included in the bill?

Mr. Marc Drolet: Any piece of legislation that can promote the stigma makes it possible to strengthen and affirm our position in a clear and direct fashion. In the convention as written, we feel that it is a form of encouragement.

A number of our allies have already done so. I named a few in my opening remarks. We feel that part should really be added, despite what some legal experts think.

• (1600)

[English]

The Chair: Thank you very much. That's all the time we have.

We'll move now to Ms. Brown, for seven minutes, please.

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

Thank you to both of our witnesses for being with us today. It's a very important discussion for us. I don't know whether you had the opportunity to read the transcripts of the minister's testimony last week, but obviously Canada finds these munitions reprehensible. We are going to do everything in our power to work toward seeing the world rid of these horrible things.

Mr. Drolet, you've got experience in the field and you know what you have to contend with when you're dealing with people who have been injured. The lives of people in some of these countries are already difficult, to say the least, and are compounded by the problems of children who have inadvertently picked up something they thought was a play toy but which then resulted in horrible handicaps. It is terrible that any child should have to go through that.

As you know, the minister has already spoken about the money Canada is contributing, particularly in Laos right now, to ensure that

we help that country with the demining process. We want to do everything that we can. We are working toward those things.

First of all, I want to say thank you to Handicap International. I had the opportunity to meet with a number of stakeholders a year ago and to discuss the issues of people who are suffering from disabilities in other countries, and how they have to work within the context of their own country, so often stigmatized—that word is being used. It was an opportunity to discuss and find a way for Canada to move forward in helping to put in place some of the policies that will look first of all at development, with disabilities as part of the lens, and how we can work our development dollars so that we are inclusive of people who have disabilities. It was a very fruitful discussion, and I am pleased to say that we had some of those stakeholders meet with Minister Fantino after that discussion. Minister Fantino was putting those into place during his time in the ministry. I expect that we will move forward with those things.

I just have a comment. We heard from the general last Thursday about the responsibility we have to our military right now when we are working with our closest neighbour, the United States. I respectfully submit to our witness from Switzerland that even though the countries of Norway and Austria and the Holy See have made these comments, they don't have the same relationship that Canada has with the United States. We have a far different connection here.

We work with our closest ally in many ways that these other countries do not have to. We are in a rather unique position, being not only on the same continent but connected as we are to the United States in the relationship that we have.

My question would be to both of you, since you both are undertaking initiatives to speak to countries that have not signed on to the treaty. Obviously we would like to see everybody sign on to the treaty; that would be our objective in the long term. Can you tell us what negotiations you have had with and what representations you have made to countries that are not signatories to the treaty? How can Canada then come in and have those discussions, recognizing that we do have this very close relationship with the United States? How can we have discussions with the others that are not signatories to the treaty? What negotiations are you having?

• (1605)

Mr. Marc Drolet: Mr. Speaker, I would like Amélie to answer to that. As executive director for Handicap International Canada, my role is toward the Canadian government, trying to advocate our position toward our country.

I have attended international conferences and have mostly tried to influence our Canadian delegates, but have also talked to others to gain a sense of what their positions are. When you speak to the military, they don't like being confined or limited in their actions. I had a very strong exchange with a lawyer who works for the French army who was trying to convince me that some munitions and land mines were legitimate defensive tools and should be considered as such. We agreed to disagree on that, because from my perspective I just see the humanitarian consequences of these vile weapons.

From my perspective, I think that Amélie can speak about what is being done to try to influence the other countries.

Ms. Lois Brown: Thank you.

[Translation]

Ms. Amélie Chayer: Thank you very much, Ms. Brown.

I am pleased to hear once again that Canada wants to do everything in its power to eradicate cluster munitions. In order to do so, the loopholes in the current bill must be closed.

I am also pleased to hear you talk about inclusive development. That is actually an important part of the restorative aspect of the convention, meaning assistance to those who were injured or maimed by those weapons.

According to the Cluster Munition Coalition, as well as many states, many of the NATO states and many witnesses you have heard from and will hear from, it is possible to maintain military cooperation with any allies, including the U.S., as long as no Canadian ever uses cluster munitions and as long as all Canadians fully respect the prohibitions of the convention.

In terms of the work of the Cluster Munition Coalition, we are working on ensuring that all states adhere to the convention. We are actually working with the member states on that. We will be very pleased to work with Canada on that issue.

The states are divided geographically. In terms of the work that goes into making the treaty universal and in terms of the committees that are set up, the states work together so that more potential states adhere to the convention. In terms of the states that we would like to see adhere to the convention, not only do we want them to adhere, but we also want them to scrupulously follow all the provisions of the treaty.

We would be delighted to have Canada's support.

[English]

The Chair: Thank you very much.

That's all the time we have, Ms. Brown.

We're going to move to the final questioner in the first round, Mr. Garneau.

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

On the one hand we have the government, as expressed by Madam Brown, saying that yes, we decry the use of cluster munitions, as we all do around the table here. But unfortunately it is not willing to reassess the interpretation of article 21 of the convention. Certainly my party has been very clear in taking the position that Canada should clearly state that it will not participate in a particular joint operation with an ally such as the United States that could use cluster munitions in a particular joint operation.

Yes, we will work with our allies, all the time, in lots of other things, but not if they say they could use cluster munitions in a particular operation. I don't believe that kind of caveat is going to harm our relationship with our allies in any way whatsoever. We're much stronger than that in our relationship with the United States, and have proven it over the years. We are a very stalwart and reliable ally. On top of that it would show dramatically that Canada is actively working to rid the world of this indiscriminate and horrible weapon. We all agree on that.

However, I have to say that it's my impression that the current government is unwilling to take that position of international leadership. That unfortunately is the situation. Therefore, it all boils down to the interpretation of article 21 of the convention. In his submission to the committee, Earl Turcotte, who was the Canadian chief negotiator for the Convention on Cluster Munitions, said that Bill C-6's interpretation of article 21, mostly reflected in clause 11 of Bill C-6, is complete and utter nonsense. This is the guy who helped write it for Canada.

In his view, article 21 does not allow Canada to use cluster munitions in joint operations. Again, this is coming from the guy who was part of writing the convention. This is the interpretation we took when we wrote the convention.

I'd like to ask our two witnesses, starting with Monsieur Drolet, what do you think of a country that makes specific commitments when it's negotiating the convention and then reneges on them when it's about to ratify the convention?

• (1610)

Mr. Marc Drolet: The Government of Canada, by signing the ratification of the convention, theoretically should stick to the essence of it in all of its articles. Article 1 is very clear. My colleague Amélie, in Geneva, mentioned the relationship between article 1 and article 21.

Our concern is really about clause 11 of the bill and about making some changes there. We believe there are paragraphs within that clause that need to be changed.

First, paragraph 11(1)(b) talks about "expressly requesting the use of a cluster munition, explosive submunition or explosive bomblet". That doesn't make sense. The "using, acquiring or possessing" that's in paragraph 11(1)(c), right after that, doesn't make sense either. Finally, in paragraph 11(3)(a), "aiding, abetting or counselling" gives the latitude to our soldiers to do that.

I believe that creates an ethical and moral problem for our troops, who have on the one side humanitarian law, and then this clause 11, which sort of permits it.

We're hoping that this can be fixed, and we're hoping that other changes can be included as well.

[Translation]

Mr. Marc Garneau: Ms. Chayer, would you like to comment?

Ms. Amélie Chayer: Mr. Garneau, I missed part of what you said because of technical problems.

What Canada is trying to do with clause 11 is an aberration. Canada is on its own with the current wording of clause 11. The Cluster Munition Coalition is very concerned.

Let's take the example a step further. If all the states seeking to adhere to the convention prohibiting cluster munitions wanted to keep an opening like the one in clause 11, cluster munitions would not be eliminated. The goal and purpose of the convention would not be achieved. That is why any small crack like that is prohibited. Reservations about the treaty are not permitted. That is why the reaction to the Canadian bill is so strong.

Mr. Marc Garneau: Thank you very much.

Mr. Drolet, ideally, we would have heard from cluster munition victims. There aren't any on our list of witnesses. In your view, what would they have to say about Canada's position and Bill C-6? Have you included that in your comments or do you have something to add?

Mr. Marc Drolet: I will give the floor to Jérôme.

Mr. Jérôme Bobin (Manager, Communication and Mobilization, Handicap International Canada): I have been working with Handicap International for eight years. I have had the opportunity to meet a number of cluster munition victims. I think the Oslo treaty, the Convention on Cluster Munitions, was received by the victims as a true window of hope for the future. It is one of the first times that assistance to victims has really been discussed. That is their main concern. The eradication of those weapons was also discussed.

When we talk about victims, we must remember the circumstances. People lost their limbs, but there are also the families of people who were killed by those weapons. As a result, the communities of those victims are also victims. For them, the Convention on Cluster Munitions signed in Oslo is a window of hope. In my view, anything that might close that window, whether it be this bill or any other provision or declaration that could make us backtrack, will completely shatter all the hopes of victims, hopes raised by the convention.

• (1615)

[English]

The Chair: Thank you very much. That's all the time we have for the first round.

We'll move on to the second round.

Ms. Grewal, five minutes.

Mrs. Nina Grewal (Fleetwood—Port Kells, CPC): Thanks, Chair.

Thanks to our witnesses today for their time and their presentation.

Many countries have not signed the Convention on Cluster Munitions, including Russia, China, Egypt, India, Pakistan, and our close ally the United States. Last week Minister Baird said that he was really stunned that U.S. President Barack Obama had not ratified the convention.

From your knowledge, why have these countries not signed on to the convention? What are their objections?

Mr. Marc Drolet: I would like to complete my answer because I can link your question with what Mrs. Brown was asking me earlier on what we do to try to influence. We have national offices in eight countries. We have an office in Washington, and we do try to convince our American friends to ratify the Oslo accord and the Ottawa convention as well. They are reticent to do that. They have shown that they are not using submunitions and haven't for six to eight years already. I think the major countries are not the ones that are using them right now.

What is really a concern for us are the countries that are using them right now, like Libya and Syria, as mentioned by my colleague. Also, the other concern is that the United States has used these

submunitions in the past and they are still a heritage in Cambodia, in Laos. Thirty years later, those countries are still polluted by those weapons. We can only try to move them, but I think there might be economic interests behind that. By endorsing it in our Canadian law, by sending signals, for instance by funding and adding those financial elements to the law, I think we can signal to our friends and maybe be strong, as Monsieur Garneau was mentioning, and be brave, and show the world that we need to take a lead in that.

Our perspective, as Jérôme was mentioning, is really from seeing the victims and trying to help them through. We can only bring them to the table, have them testify, tell how their lives are being affected, and hope that those people will have the compassion to ratify, sign, and go as far as they can within the spirit of the convention.

Mrs. Nina Grewal: The Canadian Armed Forces often work with the American military in combined operations. While the Americans have not signed the conventions, have they made efforts to kind of address the issue on cluster munitions?

Mr. Marc Drolet: I can't talk from an American perspective. I can certainly hope that from a Canadian perspective we would have the spirit of the convention, which Canada has signed, so we agree in its essence. I think we should send a clear message to our soldiers that they should promote that, as is mentioned in article 21 of the convention, to discourage the use of them. I think that giving a stronger version of this project would encourage our soldiers to do so.

• (1620)

Mrs. Nina Grewal: It is my understanding, as I have said in previous questions, that the United States is not a signatory to the convention but strongly supports negotiations on cluster munitions within the framework of the convention on certain conventional weapons. What is your opinion of this alternative approach to addressing the use of cluster munitions?

The Chair: Just a very quick answer, as we're almost out of time. We have about 30 seconds.

Go ahead, Ms. Chayer.

[Translation]

Ms. Amélie Chayer: Thank you, Ms. Grewal.

I would like to say something about the Convention on Certain Conventional Weapons,

[English]

which you're referring to.

[Translation]

A few years ago, some states took the initiative and hoped that a protocol on cluster munitions would be adopted under the Convention on Certain Conventional Weapons (CCW). The CCW is a framework convention with provisions on the disarmament of certain weapons. However, the negotiations and talks on the protocol took place after the Convention on Cluster Munitions was in place. They were a failure because it was clear for the international community that the standard for cluster munitions was the one set out in the Convention on Cluster Munitions, which fully prohibits their use. Any protocol trying to regulate the use of those weapons under CCW was deemed unacceptable by the state parties to the convention, and as a result, that protocol failed. That was a few years ago, in 2011.

[English]

The Chair: Thank you very much.

Thank you, Ms. Grewal.

We're going to go over to Mr. Dewar.

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

Mr. Drolet, I'm going to start with you and then I'll go to our friend in Geneva.

The convention itself, not the legislation, is intended to completely ban the use of cluster munitions so that we can prevent the horrific damage they do, like the damage referred to in the compelling witness statement we heard from Madam Chayer. I've been receiving tweets. I don't know if my colleagues have also been getting them from people who are affected saying, "Fix this bill". It's compelling, so that's the convention.

As to the legislation, what we're dealing with now is to make sure that the convention is implemented properly. In your view, does this bill completely ban the use of cluster munitions by Canadian Forces personnel?

Mr. Marc Drolet: Clause 11, as it is construed right now, has at least three paragraphs that do not show that.

Mr. Paul Dewar: I want to underline that. We've seen some movement in words from the government. It is important to put what the convention says in the clearest possible way. We've heard goodwill from everyone around this table and from witnesses. The goal is to prevent horrific harm to individuals and human beings, but the challenge we face right now has to do with clause 11, which doesn't completely ban the use of these munitions by our forces.

I want to go to Madam Chayer. You mentioned the Red Cross. I want to read something into the record. They gave us a brief and I was quite surprised that, as you said, the ICRC went public with their concerns. The ICRC, for those who don't know, almost never takes such a position. On the ground, they are concerned about what's going on, but they are usually quiet about it.

With regard to the legislation, they say this:

the exceptions in clause 11 are broad and, if adopted as presently drafted, they could permit activities that undermine the object and purpose of the convention and ultimately contribute to the continued use of cluster munitions rather than bringing about their elimination.

In other words, what the ICRC is saying is that, as the legislation exists right now, it could actually work against the intention of the treaty.

First of all, could you give your comments on how unusual it is for the ICRC to comment, and second, do you agree with the statement? Give us your explanation if you agree with this statement. If you don't agree, tell us why.

Madam Chayer.

● (1625)

[Translation]

Ms. Amélie Chayer: Yes, absolutely.

The Cluster Munition Coalition shares the serious concern of the International Committee of the Red Cross. It is true that the ICRC does not often go out of its way to make those types of comments.

When we read clause 11 of the bill, we clearly see that its current wording allows the Canadian Forces to direct or authorize activities prohibited by the convention in joint military operations. It authorizes the Canadian military personnel to expressly request the use of cluster munitions. It expressly authorizes Canadians to use, acquire, transfer and possess cluster munitions. Finally, it expressly allows them to assist others in carrying out prohibited actions. It is therefore a clear violation of the integrity of the convention. In that sense, we share ICRC's concern.

[English]

Mr. Paul Dewar: I was as compelled as anyone by Minister Baird's testimony. He has gone to Laos. He has seen the victims. What we are hearing here is that we have to fix the bill. Clause 11, as we've heard from both of our witnesses, will, perhaps accidentally, undermine the intent of the treaty we signed. I hope that we'll have willing partners on all sides of the table to fix the bill.

Thank you.

The Chair: Thank you.

Thank you very much, Mr. Drolet and Mr. Bobin, for being here. At 10:30 at night over in Geneva, Ms. Chayer, I thank you for staying late today. I see lots of coffee to try to keep you awake there. No, you're wide awake. Okay. Thank you very much.

To our witnesses again, thank you very much for being here today.

[Translation]

Ms. Amélie Chayer: Thank you very much, Mr. Chair.

● (1630)

[English]

The Chair: We're going to suspend for a couple of minutes just to get our next witnesses in and set up.

● _____ (Pause) _____
●

The Chair: We'll get started now.

We have with us the Right Honourable Malcolm Fraser, former Prime Minister of Australia.

Mr. Fraser, welcome. We're glad to have you with us from Melbourne. As I understand it, it's around 8:30 in the morning there, so thank you for participating with us.

We also will have, from Minneapolis, Minnesota, Professor Wiebe, whose testimony we're going to hear momentarily.

Why don't we start with Mr. Fraser?

Thank you for taking the time to join us today. We're going to have you start with your opening testimony, and hopefully we'll get wired in via video conference our next witness and hear Mr. Wiebe after we've had a chance to hear from you, Mr. Fraser.

The floor is yours, Mr. Fraser. You have 10 minutes for your opening statement, please.

Hon. Malcolm Fraser (As an Individual): Thank you very much indeed, Mr. Chairman, and thank you for making time available for me to speak with you briefly.

I asked my office to send over a press article that appeared in 2011, at a time when Australia was passing cluster bomb ratification legislation. I hope you have copies of that because it will save me from going back to it, and I think the arguments there are relevant to what Canada is doing at the present time.

Cluster bombs represent about the most indiscriminate of all weapons. If you want to kill women and children, cluster bombs would be the weapon of choice. If you want a precise military weapon, a cluster bomb is the last thing one would go to, and I can't really believe that in modern warfare cluster bombs are going to be the choice of any civilized power.

The 2008 treaty was a most significant humanitarian treaty, and most allies of the United States have signed on to that treaty—major allies, such as Britain, France, and Germany. The prohibitions in the treaty are emphatic and absolute that cluster bombs should just not be used, but for some reason, the military, especially in the United States, want to keep the power or capacity to use cluster bombs. The United States has not signed on. Of all the NATO powers—I hope it's not an offence to any other country—the United States is the only significant country that has not signed onto the treaty.

The exceptions in the Canadian legislation are substantial and would enable Canadian military forces to use cluster bombs in a much wider range of circumstances if a state not party to the convention, the United States, wanted to use them. But the Canadian exceptions go beyond that because for transport or an activity that would help the United States, there are unprecedented powers in subclause 11(3) of Bill C-6 to help the United States in the use of cluster weapons. The exception is also given to direct or to authorize or to request the use of cluster bombs. I would have thought this really goes to the heart of the convention and undermines it in a major way.

Article 21.3 of the Convention, I would have thought, as other testimony has indicated, gives all the power to the Canadian military, or to the Australian military, to work with the United States, because that's really what we're talking about, that, is whether allies of the United States can continue to work with them. I make the point that Canada, I think in its wisdom—and that's not meant in a critical sense, but in a praiseworthy sense—had the very good sense to keep

out of the wars in Vietnam and Iraq, which Australia was involved in with America. That's a mark not only of Canada's judgment but also of its capacity for independence in relation to a close ally. Article 21.3 gives us, or you, all the authority we need to work with the United States were we ever to have the circumstances in which the United States wanted to use cluster weapons in the future.

I can't really conceive of any circumstances in which it makes technical or strategic sense, in any likely war that the United States might be involved in, to use cluster weapons. Where they have been used relatively recently, whether in Lebanon or Kosovo or wherever, it has made no sense and has led to a great many civilian casualties.

• (1635)

One of the things that I believe must concern Canada, Australia, and most countries around the world is that as time has passed and military weapons become more and more precise, we've come to a stage where the greatest number of casualties by far are in fact civilians. Wars used to be fought directly between armies and it was armies who suffered the casualties but now it's not, it's civilians. Keeping cluster weapons on the agenda will only exacerbate that point. In this case in particular, because of the characteristics of the weapons, more children will be killed or maimed in future years.

The exception in New Zealand is probably the best worded piece of legislation, which, I'm sure, has been brought in front of you. Australia went backwards, having listened to the United States' objections, I suppose, to the treaty. With all respect Canada's gone a little further backwards than Australia on this issue.

From my perspective over a long period in public life, it seems to me to be contrary to Canadian tradition because, amongst western powers, Canada has over many decades taken an enlightened view of world affairs as expressed in a degree of independence from the United States over a number of issues. That has not affected the closeness of your relationship and has not affected the capacity of Canada to work cooperatively in support of common objectives. But the only reason for the strength and depth of the amendments seems to me, really, to please the United States, and quite unnecessarily.

I indicated that Canada kept out of Vietnam and Iraq. I think many Australians would argue that although you're closer geographically, the second in charge of American troops throughout the Pacific is in fact an active Australian major general. I don't think we should have him there, but we do. That shows the depth of the integration and interoperability of Australian forces with the United States, which I would believe is just as great as Canada's.

So why not ratify the treaty with a New Zealand kind of exception? I mean, article 21.3 gives all the power a country needs to operate with an ally that's not a state party to the convention. Why go beyond that? Why break down the strength of a very good humanitarian treaty that was a major plus for the world?

I'm sure you have all the background needed, ladies and gentlemen. If you wish to ask questions I'll do my best to answer them.

• (1640)

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

We are now going to turn to Virgil Wiebe who is a professor of law at the University of St. Thomas School of Law, coming to us from Minneapolis Minnesota.

Mr. Wiebe, thank you very much for taking the time. We're glad to have you here. We'll turn it over to you for your opening statement of about 10 minutes please.

Prof. Virgil Wiebe (Professor of Law, University of St. Thomas School of Law, As an Individual): Thank you very much for the opportunity to testify today.

My name is Virgil Wiebe. I'm a professor at the University of St. Thomas School of Law here in Minneapolis. I appear in my personal capacity.

As a Mennonite, I've been blessed to walk in the steps of people who have been raising their voices about cluster munitions since the 1960s and 1970s. By 1975, when the Vietnam War ended, the threat from unexploded ordnance like millions of this small "bombie" or bomblet was already becoming clear throughout the region. I commend the written submission of Mennonite Central Committee Canada as it recounts their experience working with people most affected by unexploded bomblets, especially in Laos. In particular, their calls for legislative implementation of positive obligations should be heeded. Also, as a board member of Mines Advisory Group America, I have travelled to Lebanon and seen firsthand the aftermath of massive cluster munition use there.

As a scholar, I followed the Oslo treaty process closely, including attending the final negotiations in Dublin. I then joined a team of scholars and diplomats to write the Oxford commentary on the Convention on Cluster Munitions, published in 2010. I focused my efforts on the history of cluster munition use and article 1 of the treaty. I also contributed to the chapter on article 21 of the treaty.

Now, to get quickly to a few points. First, clause 11 of Bill C-6 is not simply a restatement of article 21 of the treaty, but it veers in the direction of violating both the letter and spirit of the treaty. The provisions of clause 11 are not unquestionably allowed by the convention. They go beyond any other national legislation in implementing protections for national service members. Quite breathtakingly, clause 11 sanctions the use, stockpiling, and transfer of cluster munitions by Canadian Forces in certain circumstances. A written submission I made last week and also an open letter that was submitted to Minister Baird last year by 26 Canadian scholars spelled out how clause 11 goes well beyond the text of the convention, its context, its object, and its purpose.

In particular, it's important to note that article 21.1 and article 21.2 require Canada to encourage other states to join the treaty and to make best efforts to discourage other states from using cluster munitions.

The principles of treaty construction call for a much narrower interpretation of articles 21.3 and 21.4 than is done in Bill C-6. One example of treaty interpretation tools is that names matter. Article 21 is named "Relations with States not party to this Convention." During the negotiations in Dublin the drafts of what would become article 21 were called "Proposals on Interoperability." It was therefore no accident when the final name of the article became "Relations with states not party". The emphasis was not on

interoperability; indeed, that word appears nowhere in the treaty, but on relations with states not party and how to pull them into compliance and even membership in the treaty as well as how to discourage them from using cluster munitions.

Second, existing Canadian law already provides protection for unknowing or unwitting actions by Canadian Forces in joint operations. Last week, General Walter Natynczyk was asked a great question: what would happen to Canadian service members who were in a joint operation and unknowingly or unwittingly participated in the use of cluster munitions if this legislation did not exist? His reply was that:

...Canadian Forces must abide by the law of the land and the code of service discipline applies with criminal law. So therefore that individual or individuals could be subject to prosecution.

With all due respect to the general, I submit that he was wrong. Someone in that situation would not have needed section 11 in order to avoid prosecution. Under both the Code of Service Discipline and the Canadian Criminal Code, offences with the prospect of imprisonment require some *mens rea* element.

• (1645)

My reading of the prohibition section of Bill C-6, in the context of existing Canadian law—and I'm reading clause 6 of the bill—is that a prosecutor would have to prove that the person in question had the purpose, intent, knowledge, or at least recklessness to commit an offence spelled out in clause 6 of the bill. That person would have been protected from criminal prosecution for his or her unknowing and unintentional assistance in the use of cluster munitions under existing law, without the protection of clause 11.

Thirdly, creating exceptions for the use of cluster munitions may have long-term negative effects on the service members who use or assist in the use of cluster munitions. On the one hand, to, as a nation, condemn cluster bombs while on the other hand then allowing some to use them may well create a profound moral dilemma for those persons during and following conflict.

A colleague of mine has studied the early medieval church and how it grappled with this notion of legally sanctioned but morally repugnant acts. It did so by creating elaborate systems of penance following a soldier's return from war. We have similar situations now. Some of those who have used and assisted in the use of cluster munitions have later experienced profound guilt and regret. Some have sought absolution and redemption by engaging in the equivalent of penance, including engaging in unexploded ordnance clearance, even decades after the events in question.

Fourthly, there is state responsibility. Excusing individuals for otherwise criminal activity does not necessarily excuse Canadian state responsibility for acts carried out by a Canadian state organ. Principles of state responsibility attribute to Canada actions by representatives of Canada where Canada maintains direction and control of those personnel.

To conclude, I have learned a few terms from the psychologists and social workers with whom I work.

One of those words is “enabler”, which has been defined as one who enables another to persist in self-destructive behaviour by providing excuses or by making it possible to avoid the consequences of such behaviour.

Through clause 11 of Bill C-6 Canada is enabling potentially destructive and unhelpful behaviour by its allies, like the United States, and maybe even by Canada.

On the other hand, a “psychological intervention” has been defined as a concrete action that tries to introduce some changes in a given situation, usually planned and devised according to some previous theory, and adapted to the here-and-now peculiarities.

Canada’s cluster munition legislation should act as the intervention needed for states not party to the convention. It should embrace article 21 in its entirety and use paragraphs 1 and 2 of article 21 to pull countries like the United States in the right direction.

As for what should be done, I can offer some specific suggestions in response to questions. Many of these responses, I acknowledge, I will take from the written submissions from groups like Mines Action Canada, the Harvard human rights clinic, the Canadian Red Cross, and others.

Thank you very much.

• (1650)

The Chair: Thank you, Mr. Wiebe.

We’re going to start with Mr. Dewar, for seven minutes, please.

Mr. Paul Dewar: Thank you.

I want to thank our guests for providing their time to our committee.

Mr. Fraser, I’m going to start with you.

Correct me if I’m wrong, but you have some Canadian roots. Is that correct?

Hon. Malcolm Fraser: Do I?

Mr. Paul Dewar: Yes.

Hon. Malcolm Fraser: Well, my grandfather came from Nova Scotia.

Mr. Paul Dewar: That’s what I understand. So you’re not that far away, really.

Just to put this in context, I’m with the official opposition. We’re looking at trying to fix the bill because of some of the comments made. I just want to read into the record a comment that you have made:

Canada used to be in the forefront internationally in leading the world in good directions.... It is a pity the current Canadian government, in relation to cluster munitions, does not provide any real lead to the world. Its approach is timid, inadequate and regressive.

Those are strong words, Mr. Fraser.

Could you please explain why you feel this way about this legislation? Is it just what you put your finger on earlier around clause 11 of the legislation?

Hon. Malcolm Fraser: Yes.

It is because of clause 11, which I would like to see withdrawn in its entirety. I don’t think it’s necessary, for reasons of the powers under article 21.

When you look at clause 11, it gives power to direct, to authorize, even to request the use of—acquiring, possessing, transporting, and endangering. There’s nothing there that is excluded. Why then do all of this when the likelihood of these weapons being used is extraordinarily remote?

I don’t think it’s going to happen. It makes no strategic sense. I can’t think of a conflict in which it would make tactical sense, and I think we should credit our American friends with not wanting to be tactically stupid.

We’re going through all of this for really no reason. A good example is that I used to wish in my younger days that Australia could emulate and do more to support some of the leads that Canada took. Against that long historical background, to see Canada taking this attitude in relation to this particular convention is a great pity.

• (1655)

Mr. Paul Dewar: In light of your comments, it is troubling.

As was noted already in witness statements today, we had our former Chief of the Defence Staff here, and he commented on the interoperability. You were a former prime minister of Australia. You know how this works. You know that when your Chief of the Defence Staff says something, you want to take those comments and incorporate them into your decisions.

You have legislation right now in Australia. You’ve already mentioned that you’ve been in theatre and done interoperability with the Americans.

Is there anything like clause 11 in the Australian legislation?

Hon. Malcolm Fraser: Our legislation is far from ideal. It does not go as far as your legislation.

But the governments that listen to generals don’t always listen wisely. If President Johnson had listened to the CIA analysts in relation to Vietnam, for example, that war would probably have ended much earlier. The massive buildup of American troops, and the lesser, but significant buildup of Australian troops, may never have occurred. President Johnson listened to General Westmoreland, not the CIA analysts.

So when listening to the generals, politicians are still going to make their own judgment. In the end, they are political decisions.

Mr. Paul Dewar: I appreciate your comments on this, because it is a matter of weighing all opinions and then taking the right direction.

Mr. Wiebe, I want to go to you on the issue of article 21.

I think it’s important for our committee to understand what you were saying. In the treaty article 21, sections 1 and 2 are very explicit. They tell us to not only look to enact legislation to ban cluster weapons, but also that it is also our responsibility to focus on other parties not signatories to the treaty to do the same. We heard from our Minister of Foreign Affairs at committee who was very up front. He wanted to see the world be rid of these munitions. We agree.

However, clause 11, as we just heard from former prime minister Fraser, goes the other way. It's interesting. Former prime minister Fraser said that in clause 11 of the bill, you have in essence a direction that would be allowed and almost encouraged to use the very weapons we're trying to rid ourselves of.

So are you telling us that article 21 of the treaty, sections 1 and 2, charges us with the responsibility for enacting legislation that would put pressure on our colleagues south of the border, in the United States, to actually follow us, and not just to accommodate the United States and its military actions?

Prof. Virgil Wiebe: Yes, I would just read a phrase from paragraph 2 of article 21 that says:

Each State Party shall...make its best efforts to discourage States not party to this Convention from using cluster munitions.

All of the exceptions that have been written into clause 11 of the bill don't strike me as the best efforts to discourage states from using cluster munitions. It really seems to me that it not only encourages other states to use them, but also gives a pass for Canadian Armed Forces to use them in situations of interoperability.

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

We're going to move over to Mr. Schellenberger and Mr. Bezan, seven minutes.

Mr. Gary Schellenberger (Perth—Wellington, CPC): Thank you, and thank you to our witnesses today. I have one question about something that's been bothering me a wee bit ever since I realized it. The UN Security Council removed the International Criminal Court's jurisdiction over acts of current or former officials or personnel from states that contributed to the UN stabilization force and multinational force in Liberia, unless a contributing state consents to the ICC exercising jurisdiction.

This was Resolution 1497 of the Security Council in 2003. Nobody voted against it and there were three abstentions. This is an example of international law recognizing the importance of protecting citizens and armed forces from being tried for crimes in precarious situations where they are being sent to aid stabilization and peacekeeping efforts.

Would you argue that the spirit of clause 11 of Bill C-6, which would allow for the protection of Canadian Armed Forces personnel when aiding our allies in joint missions, is any different?

• (1700)

Prof. Virgil Wiebe: I haven't looked at Resolution 1497, frankly, probably since 2003, so I would add that caveat. What clause 11 does is it frankly allows—it really comes close and I think others would say it goes to allowing—Canadian Armed Forces to violate the letter and spirit of the treaty, which says don't use cluster munitions. And there was in West Africa, I believe it was in Sierra Leone, if I'm not mistaken, an instance where some UN forces used cluster munitions and were condemned for that.

If you would like me to go back and take a look at Resolution 1497 and examine your question a little more closely, I could get you a written response if you'd like.

Mr. Gary Schellenberger: That would be great if you could do that. I appreciate it.

Prime Minister, do you have a response?

Hon. Malcolm Fraser: Just briefly, I can't recall and maybe never read the resolution in 2003, but in trying to advance the premises of the convention, are we going to say that the combined persuasive powers of Canada, Britain, France, Germany, and Australia could not persuade the United States that they also should join this convention, because there are plenty of generals in the United States who would say that this is military nonsense, that it's a most indiscriminate weapon, a weapon that angers civilians. And, of course, if the United States said they were not going to use these weapons, then our problems would disappear immediately.

In regard to the importunities of the International Criminal Court, I think if you're worried about getting caught up in that, I'm not too sure that the International Criminal Court would regard clause 11 as giving an adequate defence in the face of very large numbers of civilian or child casualties.

Mr. Gary Schellenberger: Okay, thank you.

I'll pass it over to my colleague, Mr. Bezan. Thank you.

Mr. James Bezan (Selkirk—Interlake, CPC): Thank you, Mr. Chair, through you I want to welcome our witnesses and thank them for their testimony today.

To both our witnesses, Mr. Wiebe and Mr. Fraser, under our Westminster style of Parliament and governance system, do you guys believe in the supremacy of Parliament in drafting legislation?

Hon. Malcolm Fraser: Well, I do, yes. It's the government's job to work for Parliament.

Mr. James Bezan: And under international conventions such as what we're discussing here today, it takes the Canadian Parliament to actually bring into force the convention under Canadian law through a bill in the House, correct?

Hon. Malcolm Fraser: Yes. I would agree.

Mr. James Bezan: I've been listening to the debate today so far, and I'm getting a little concerned that we're looking at clause 11 as an area that empowers the Canadian military to contravene the convention.

What I see is that clause 11 is providing legal defence and definition to members of the Canadian Forces so that they can follow through with part 3 of article 21, to ensure that what they do in interoperability is fully defined and legally defensible in the event that they get pulled in front of a criminal court here in Canada, in front of the Judge Advocate General within National Defence, or even at the international level through either the international humanitarian court or the International Criminal Court.

Don't you also see that this is about providing some definition to what interoperability is?

I look at Canadian and Australian navies participating in a joint exercise with our American counterparts. Let's say we have an Australian frigate and a Canadian frigate providing protection to a U. S. aircraft carrier that's moving through the South China Sea and that may have cluster munitions on it. The way everybody has been talking here, everyone on a Canadian frigate or an Australian frigate would then be in violation of the convention and possibly up for charges under the Canadian Criminal Code if we don't define what is interoperability.

Hon. Malcolm Fraser: I wouldn't have thought that really is the case, and article 21, part 3, I believe gives all the powers that are needed to enable reasonable cooperation with a non-state party. But what's the point of ratifying a convention and then putting so many exemptions in it that you're really destroying the purpose of the convention?

When you're saying that a Canadian officer can direct, or authorize, or request, you're really saying that the Canadian officer can totally destroy the purpose of the convention. Clause 11 goes so far... I mean, Parliament is not meant to pass contradictory legislation. In this case, on the one hand it's saying yes, we like the convention, it's good, but on the other, we're not quite sure and we're just going to ignore it in a very wide set of circumstances.

I think you're also totally overestimating the likelihood of the United States using cluster munitions. I defy anyone to define "reasonable circumstances" in which there's going to be a reasonable military weapon, in a day and age when the whole thrust of military technology is to achieve more sized weapons, more accurate weapons.

• (1705)

The Chair: Thank you, Mr. Fraser.

Mr. Bezan, that's all the time we have.

We're going to move over to Mr. Garneau for the last round.

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

If I could try to follow up on the questioning of Mr. Bezan and Mr. Schellenberger and summarize why clause 11 is a problem. It goes beyond simply protecting Canadians serving in joint operations with other forces who might use cluster munitions, and it actually allows them to propose and authorize the use of cluster bombs when they're working with those other states that are not party to the convention. That's the difference. It's more than just protecting them because they happen to be in joint operations; it allows them to actually propose the use. That is the issue that we're discussing here in relation to the interpretation of convention article 21.

My first question is for Mr. Wiebe.

You mentioned the letter to Mr. Baird you co-signed about a year ago along with other people such as Earl Turcotte, who was Canada's chief negotiator. You stated very clearly that you believe the bill falsely interprets article 21 in the convention—which is what this is all about—as an exception to the ban on cluster munitions. Instead, you said in the letter that article 21 is meant only to clarify what Canada can still participate in—that it can still participate in combined operations with countries not party to the treaty so long as we continue to respect article 1 of the treaty, which states that every

signatory will "never under any circumstances" use cluster munitions.

You've elaborated on that view. I'd like to hear what you think would be the consequences of Canada misinterpreting this clause.

• (1710)

Prof. Virgil Wiebe: I think the consequence would be that it would not allow Canada to play the very important role of trying to encourage my country not to use cluster munitions. I think it would be setting a bad example for implementing legislation where that's required in other countries who are party to the treaty. It would create some of the problems I talked about in my comments, which is that on the one hand Canada is saying these are horrible weapons and then on the other hand allowing for members of the Canadian Armed Forces to even use these. So those are some of the concerns I would have about clause 11 beyond the borders and the service personnel of Canada.

Mr. Marc Garneau: If I can summarize, to my interpretation at least, it seems to remove our moral authority to lecture other people and try to get them to act the way the convention wants them to act.

Mr. Fraser, thank you for being with us. The approach taken by New Zealand is the one that you seem to favour, versus the one that has been taken by Canada or even by your country, Australia. Can you summarize very quickly why you think that one hits it on the head?

Hon. Malcolm Fraser: They really rely on article 21.3 in a very effective way, and they're happy with that. Their forces are small and their chance of operating in a cluster munitions environment are even less than Canada or Australia's, but I can't see why we shouldn't all rely on 21.3.

There's very little moral authority in the world and the point I made, in a different way a little earlier, is that through much of the post-war period Canada has been a moral voice in the world and one that has, I think, done a great deal of good. I hate to see Canada doing something that diminishes its moral authority, especially in a world in which moral authority is in such short supply.

Mr. Marc Garneau: I have one last question for you. I'm asking you this based on your experiences as a politician, as the prime minister. It's hypothetical, but do you think Australia's relationship with the United States, of which you're a strong ally as we are, would be diminished if Australia had taken a position in its legislation that was more akin to the New Zealand position?

Hon. Malcolm Fraser: My experience with the United States precedes being prime minister, because I was army minister and defence minister during the unhappy Vietnam era.

It is quite simply that the United States does not respect people who meekly—or whatever way one wants to put it—accept or accede to U.S. wishes or requests. They respect much more a partner that has a point of view, that can argue for it with validity and with strength, and they're much more likely to listen to that partner and that partner will have much more influence.

I think we diminish influence over the United States by accepting the kind of exceptions that we did in Australia or the far greater exception that is before the Canadian Parliament in clause 11.

We're not serving our major ally well by going down this track.

Mr. Marc Garneau: Thank you, sir.

If I have any time I'll pass it on.

The Chair: You're almost out of time.

We're going to have bells shortly. My question is can we go back for one round each with the Conservatives? Would that be all right? It will still give us 20 minutes to get over there.

So why don't we just get right to it, then? We have Mr. Allen and Mr. Goldring for five minutes, and then I'll finish.

Mr. Goldring first. Go ahead.

• (1715)

Mr. Peter Goldring (Edmonton East, CPC): Thank you very much.

Thank you very much for appearing before us.

Mr. Fraser, I used the analogy last week of the real-life circumstance in Korea. Of course, I believe in that immediate theatre there were Australian troops as well as New Zealand troops, but it was in the Kapyong region. It was Colonel Stone with the Princess Patricias who was at the verge of being overrun by thousands of Chinese at the position he was in. The position got so untenable that he literally called down an artillery strike on his own position.

Under a scenario like that I could quite well imagine that given the circumstances, he'd be more than prepared to take anything from air or artillery that was available under those circumstances.

That's one concern that I have when we have our military being involved on what I call the front lines more and more, whether it's in Afghanistan or in Korea, not having that option of emergency to be able to deal with the circumstance. It's limiting the lives and health not only of our soldiers but also in that area of the American soldiers as well, too.

I'm not sure, as Mr. Garneau had said earlier, that the Americans would want to be hamstrung in that particular scenario by having a partner there that was going to make things conditional when you're in an emergency circumstance. Certainly any effective command in any region cannot have confusion or hesitancy happening.

But more so than anything, I'm looking at this article 21 as being more party state definitions than it is individual definitions, where clause 11 is certainly personal protection for that individual. Then I refer back to that scenario, that real-life scenario. He who called in that artillery strike was not at high command. The high command would be at the general position. This was a colonel. It may very well be a sergeant calling in that air drop or that artillery support.

Canadian soldiers, as well as many professional army soldiers, are taught to be independent thinkers and to act when the circumstances demand that they act professionally and immediately. So it's easy to say that on high the parties have come to an agreement, but I really

feel you need this individual protection for the men and women who are actually there on the front lines. What is your opinion on that, Mr. Fraser?

Hon. Malcolm Fraser: There are two points there.

The first point is that the United States had 600,000 troops in Vietnam and was beaten. They're not going to put an army on the mainland of Asia ever again. We might have a war with China, and if they side absolutely with Japan, that's highly likely.

Korea is out of the act compared to today's circumstances. We had people there, as you did, and a lot of them suffered severe casualties, but it was a different war, a different time, in different circumstances. Modern technology and modern weapons have made the Korean experience irrelevant to today.

The second and, I suppose, more substantive point is that article 21.3 quite specifically gives protections to the individuals you're concerned for, and I would also be concerned for. The military personnel or nationals of state parties are individual men or women. It's not just a state party or the army or whatever, it is the individuals who make it up that have the protection under those words.

Prof. Virgil Wiebe: To echo the Prime Minister, I would just read briefly from our commentary on this very point:

What Article 21 should allow in these situations, therefore, is for a State Party and the members of its armed forces to call in a strike delivered by a State not party in an international operation even if there is no guarantee that cluster munitions will not be used. Military personnel would thus not incur penal sanctions for the use of cluster munitions by others as long as they do not exercise effective control over the tactical decisions following their request for support.

So other states have considered this and haven't found it necessary to come up with the very broad exceptions that clause 11 has.

One of the difficult challenges that you as policy-makers and those who enshrine the laws of armed conflict have, is that even in those difficult situations, even in the fog of war, there's no excuse for violating the law of armed conflict or violating treaty obligations related to inhumane weapons.

• (1720)

The Chair: That's all the time we have.

We're going to finish with you guys.

Mr. Paul Dewar: I want to be in hot pursuit, as they say, of what happens sometimes in these events and round tables.

I want to build on what Mr. Wiebe was saying, because article 21.3 of the convention allows for military co-operation in operations with states not party to the convention.

In essence, there was a rationale for this in the treaty. It intended to allow military personnel, in our case Canadian personnel, to operate alongside personnel from countries, in our case the United States, who may use—albeit are “not likely” to, according to Prime Minister Fraser—cluster munitions and at the same time not allow Canadian personnel themselves to expressly order the use of those munitions. That's the essence of article 21.3, which is what you're saying, Mr. Wiebe, right? Does that capture it?

Prof. Virgil Wiebe: I think that's right.

Part of the issue is effective direct control not only on the choice of munitions but over the operation, as I understand it.

Mr. Paul Dewar: We're trying to fix the bill, I'll be very blunt with you, for the reasons we've talked about.

In terms of an amendment, if you saw article 21.3 put into the bill, in other words take out clause 11 and put in article 21.3 in a legislative form, would that not capture the essence of what I think is the government's concern?

In other words, take it right out of the treaty, put it into the legislation, and then calm the concerns that some have within government about interoperability.

Prof. Virgil Wiebe: I suppose that could be one way to do it.

I'd also recommend to you page 7 of the Mines Action Canada written submission, where it draws upon the implementing legislation for the Ottawa treaty. That's one option. In the Harvard submission on page 10, there is some suggested language as well that's an alternative. It talks about "mere participation". Those are some options to consider. The Canadian Red Cross in its submission on page 4 also has some very specific suggestions about clause 11.

Mr. Paul Dewar: Thanks for that.

I just want to get from you as well your comment on our taking article 21.3 out of the treaty and putting it into the legislation. Then, what is guiding us—that is, the treaty—would certainly be explicit and not divert us from what we see in the legislation presently.

Prof. Virgil Wiebe: That can certainly inform whatever else was in the legislation, certainly.

Mr. Paul Dewar: Okay. Thank you.

Prime Minister Fraser, I thank you for taking the time. I see that you're passionate about this, and I thank you for that as well.

Can you make just a quick comment on what you think this would do to treaties and their implementation if we were to leave clause 11 in the legislation before us?

In other words, it's not just about this particular treaty. What could be the effect of this legislation on other treaties?

● (1725)

Hon. Malcolm Fraser: Well, I think it would be a very bad example, because you would have legislated for the treaty but put in exceptions that virtually nullified the treaty. I think it is a bad precedent, bad practice, bad parliamentary practice.

I also think, and I'm sorry if I'm impertinent in saying this, that it's contrary to Canada's tradition of well over 60 years.

Mr. Paul Dewar: It's not good for our reputation, in other words.

Hon. Malcolm Fraser: It's bad for your reputation, yes. It reduces your moral authority.

Mr. Paul Dewar: Thank you very much.

The Chair: To our witnesses, Mr. Fraser and Mr. Wiebe, thank you very much for taking time.

I know, Mr. Fraser, you came in at 8:30 in the morning. We appreciate that.

With that, the meeting is adjourned.

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

SPEAKER'S PERMISSION

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

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

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

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

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

PERMISSION DU PRÉSIDENT

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

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

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

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