

**THE STANDING SENATE COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL
TRADE**

EVIDENCE

OTTAWA, Thursday, November 22, 2018

The Standing Senate Committee on Foreign Affairs and International Trade, to which was referred Bill C-47, An Act to amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and other amendments), met this day at 10:30 a.m. and, in camera, to give consideration to subject matter of those elements contained in Division 13 of Part 4 of Bill C-86 the bills.

Senator A. Raynell Andreychuk (*Chair*) in the chair.

The Chair: Honourable senators, we are meeting today to continue our examination of Bill C-47, An Act to amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and other amendments).

We do have an excellent panel before us today, but before we turn to the panel I would ask the senators to introduce themselves.

Senator Cordy: Jane Cordy from Nova Scotia. Welcome to our committee.

Senator Bovey: Patricia Bovey from Manitoba.

(French follows - Senator Saint-Germain - Raymonde Saint-Germain . . .)

(après anglais - Sen. Bovey: from Manitoba.)

La sénatrice Saint-Germain: Raymonde Saint-Germain, du Québec.

Le sénateur Massicotte: Paul Massicotte, du Québec.

(anglais suit - Sen. Dean : Tony Dean, Ontario)

(Following French - Senator Massicotte - Paul Massicotte, Quebec.)

Senator Dean: Tony Dean, Ontario.

Senator Oh: Victor Oh, Ontario.

The Chair: And I'm Raynell Andreychuk from Saskatchewan. Welcome to the committee. We have before us, by video conference from Buntingford, England, Martin Butcher, Policy Advisor, Arms Trade Treaty at Oxfam.

Here in Ottawa with us is Ms. Erika Simpson, Associate Professor, Department of Political Science at the University of Western Ontario; and from Pratt & Whitney Canada, Mr. John Saabas, President; and Kenneth Purchase, Director of the International Trade Compliance.

Thank you to all our witnesses for appearing. We'll start with Mr. Butcher. We want to make sure you're on record, but we will hear all our witnesses and then turn to questions from senators. Mr. Butcher, the floor is yours. Welcome to the committee.

Martin Butcher, Policy Advisor, Arms and Conflict, Oxfam: Thank you very much. Thank you for the opportunity to speak to you today.

The protection of civilians and the reduction of humanitarian harm in conflict necessitates preventing irresponsible arms transfers. This is why Oxfam supports universalization and robust implementation of the Arms Trade Treaty. For Oxfam, it is important that all states that have not yet done so should become party to the treaty and incorporated into national legislation. States parties must strictly comply with the treaty, which can help protect civilians in even the most difficult situations by placing international humanitarian and human rights law at the centre of arms transfer decisions.

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

This can be done using a number of different instruments. For example, within the European Union, arms transfers are subject to the Intra-Community Transfers Directive, a lighter-touch regulation which takes account of the economic integration of the EU and the non-sensitive nature of most intra-EU arms trading. For wider transfers, the U.K., for example, has a system of open licensing. In cases where the combination of equipment and the destination is considered less sensitive, multiple deliveries are permitted under a single licence in this system. Companies using such licences are required to keep careful records and are subject to audit-upon-demand by the government.

While Oxfam does have concerns in some cases regarding what the U.K. government considers less sensitive, this does show it is possible to provide for risk assessment and licensing of arms sent to all destinations, in accord with the obligations of the ATT. This is also vital with regard to transparency and reporting, essential components of ATT effectiveness.

Also important is that the scope of the criteria is broad. Oxfam urges Canada to look to good models for criteria and to apply them widely. The EU criteria for risk assessment, detailed in the 2008 Common Position on Arms Exports, are a good start point for effective implementation of the risk assessment before granting an arms export licence required by the ATT.

The EU criteria consider whether proposed export would contravene international commitments, be used for internal repression or where there is a risk of serious violation of IHL or international human rights law, including gender-based violence; provoke or prolong armed conflicts or aggravate existing tensions in the destination country; be used aggressively against another country; adversely affect the national security of the U.K. or allies; be diverted or re-exported under undesirable conditions; seriously undermine the economy; or seriously hamper the sustainable development of the recipient country.

Noteworthy here is that Canada has in fact formally aligned itself to the EU common position, which means that, in theory, it should already be applying these criteria. It would be interesting to know what alignment means in practice for Canada at this point. Even excellent language in national law and regulation is insufficient if a government lacks the political will to properly implement the treaty and is not held to account by Parliament and the courts.

In this regard, reporting and transparency in arms transfers are vital to robust treaty implementation. Oxfam welcomes the amendment to Bill C-47 on the “report to Parliament” section of the EIPA that will require the minister to provide a report to Parliament on the export of military goods for the preceding year by May 31 of each year.

However, the amendment says nothing about reporting on imports, which is required by the ATT, or about the details that the parliamentary report will provide. We would urge that Canada’s arms transfer reports should contribute to the highest possible common international standards in ATT reporting. Good standards would include, for example, Canada reporting the details of both export authorizations and actual exports, currently reporting options under the treaty. Reporting of imports should also be included.

Proper reporting and the transparency it allows are vital to achieving the objectives of the treaty. In particular, a clear line between the legal trade in arms and illicit or grey-market transfers can only be drawn when the full scope of the legal market is known. Transparency makes the diversion of arms into the illicit market much harder by ensuring all legal transfers are done in the open. Canada has an excellent opportunity here to place itself at the forefront of global reporting standards in the ATT.

On accountability of government to Parliament in the courts, oversight of arms sales is a job for parliaments. This has been the case in the U.K. for the last 20 years. As the 1996 Scott Report into the U.K. arms-to-Iraq scandal noted, a well-informed parliament has a critical role to play in preventing executive excess. This was confirmed by the 2017 High Court decision in the judicial review brought by the Campaign Against Arms Trade on the arms to Saudi Arabia which, although currently subject to appeal, found in favour of the government, with the court extremely reluctant to overrule Her Majesty’s government when it comes to licensing decisions, and arguing that this is much better a job for the legislature in general and the Committees on Arms Export Controls of the House of Commons, in particular.

They said:

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

The seriousness of the case of arms supplies to Saudi Arabia during the Yemen conflict underlines that parliamentary scrutiny is most necessary in the most difficult cases. Where U.K.-

supplied arms are being used by armed forces who lack the necessary training, targeting capabilities and self-analysis, the role of Parliament is vital.

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

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

The Chair: Thank you, Mr. Butcher.

We're now going to turn to Ms. Erika Simpson for her presentation. Welcome.

Erika Simpson, Associate Professor, Department of Political Science, The University of Western Ontario, as an individual: Thank you, senators. My testimony is written for a general audience on the public record and you have it before you translated. You can read much more quickly than I can speak, and you are experts, so I'm going to suggest that we skip forward to page 6, at the top, which I've marked with my business card.

I will read into the record the following, beginning at the top of page 6.

Many people, especially in the United States, argue that guns do not kill people, that people kill each other; and if people cannot obtain guns easily, they will slaughter each other with swords, machetes and knives. It is true that swords, machetes and knives can wreak havoc, but guns and mechanized armoured vehicles are far more dangerous when placed in the wrong hands.

Recall that in Pakistan, 15-year-old Malala Yousafzai was deliberately shot in the head but miraculously went on to champion education for children and young people. In her Nobel Peace Prize speech she identified guns as part of the problem. "My goal," she said, "was not to get the Nobel Peace Prize but to end the gun violence and ensure that all children have the opportunity of learning."

Like the slave trade, the arms trade is immoral, yet Canada has soared in global rankings to become the second biggest arms dealer to the Middle East on the strength of its massive sale of combat vehicles to Saudi Arabia. General Dynamics's \$13 billion to \$15 billion contract for the LAVs, manufactured in London, where I live and work — and let me mention that I live and work there as a professor, but I'm from Western Canada, Saskatchewan and Manitoba, and so on. I have written a lot of columns on this issue, and it is the largest arms sale in Canadian history.

I have seen officials at the Department of Global Affairs deflect ongoing criticisms of the Saudi deal by retorting that Canada will abide by the international Arms Trade Treaty, the ATT. According to a briefing paper issued by Amnesty International, the treaty obligations will not apply to arms exports to the United States, including in cases where those weapons may be further transferred to other governments and armed groups.

Critics, like Amnesty, point to the U.S. export exemption which began in 1991 — and as you know, all government reports on the export of military goods have deliberately omitted data on military exports to the United States. Critics like me charge that the value of Canada's arms exports to the U.S. exceeds

the worth of all other Canadian arms exports, but there is nothing in Bill C-47 that would force greater transparency concerning all of Canada's exports of military goods and technology to the U.S.

We, the critics, maintain that the exclusion of the Saudi arms deal, as well as Canada's arms exports to the U.S., are major gaps in Canada's proposed treaty implementation. There is also a problem with exempting the Department of National Defence as a Crown agency from the Export and Imports Permits Act. Presumably, DND could technically abide by due process but then transfer military equipment to Saudi Arabia or Afghanistan, for example.

The ATT and Bill C-47 promise to be strong legal instruments to establish robust global rules to stop the flow of weapons, munitions and related items. They should be used to stop people from committing or facilitating genocide, crimes against humanity, war crimes or serious human rights violations.

However, it is difficult to discover whether Bill C-47 allows Canada to exempt its military exports to the United States from government authorization by the Minister of Foreign Affairs. I wonder too about the role of the Crown corporation, the Canadian Commercial Corporation, which plays a central role in exporting military goods to the U.S. and other countries. I think the government's responsibility for, and oversight of, the CCC should be made more explicit in the bill to meet ATT obligations.

Does the 1956 DPSA, the Defence Production Sharing Agreement with the U.S., supersede and permit such exemptions? Moreover, will information on Canada's military exports to the U.S. be subjected to high transparency and common international standards? For example, will Canadian citizens be able to access online information on Canada's military exports to the U.S., as well as to countries that the Minister of Foreign Affairs considers acceptable? Federal access to information forms can take months to fulfill, past 90 days, meaning that academics, journalists, students and others may cease their research too early.

The lesson we learned, especially from the Saudi arms deal, is that we are told by the government that the contract mandates levels of secrecy that are far beyond the normal bounds of confidentiality. Such high levels of secrecy undermine core principles of transparency and accountability, which underpin the Arms Trade Treaty.

To conclude, the Canadian government needs to act more transparently and meaningfully and, as my colleague Martin Butcher has pointed out, beyond the narrowest limits necessary to achieve the full intent of the treaty. Politicians and policy-makers at all levels of government must take stronger action to prevent more grave human rights abuses using guns and tanks.

Honourable senators, thank you for examining these issues and for the courage to make strong recommendations to our federal government.

The Chair: Thank you, Ms. Simpson.

We'll now turn to the two representatives from Pratt & Whitney Canada.

John Saabas, President, Pratt & Whitney Canada: Thank you, Madam Chair. Pratt & Whitney Canada is a proud Canadian business that's been in Canada for 90 years. We are a global aerospace leader working in business aircraft, helicopters, regional transport, general aviation, including cargo, skydiving, missionary work, et cetera, with our advanced turbine engines. We've certified over 100

engine models in the last 25 years, and that's a record in the industry, which speaks to the innovation here in Canada, as well as with our suppliers and partners.

Our operations span the entire globe. We have a fleet of 63,000 engines, with 13,000 customers in 200 countries around the world. Pratt & Whitney Canada is a subsidiary of United Technologies, a high-technology corporation based in Farmington, Connecticut. We are one of only four countries in the world — U.S., France, England and Canada — that can compete on making engines for these types of aircraft.

Our commitment and our roots in Canada run deep. We have 13,000 people employed worldwide, 6,000 here in Canada, in professional, research and development, and highly skilled manufacturing positions. We have seven Canadian manufacturing and research facilities across Canada — in Alberta, Ontario, Quebec and Nova Scotia.

We're Canada's fifth largest corporate investor in research and development, spending over \$500 million every year. We fund research chairs at universities from coast to coast, spending over \$12 million annually with university partners, and we have 700 students that come through our doors for work terms and projects every year.

About 90 per cent of our sales and 95 per cent of our fleet operate outside of Canada. Because we're in the business of exporting engines, components and related technical data, a robust yet efficient Canadian export authorization system has been and will be integral to our success.

While exports are important to Pratt & Whitney Canada's business generally, Canada's open border with the United States is fundamental to our continuing success because we rely on the frictionless movement of goods and data between our two countries.

Pratt Canada supports Bill C-47, but we would strongly oppose any effort to impose permit requirements on the export of goods or data to the United States. Obviously, an open border facilitates access to the U.S. market, where 40 per cent of our fleet is flying. But more importantly, an open border is critical to our ability to sell products anywhere because of the tight supply chain links we have with our U.S. partners.

One example is a single turbine blade usually involves five or six shipments back and forth across the U.S. border. A casting made in the United States is based on data that we exported. That casting comes back to Canada, where we do machining operations. It's returned to the U.S. for specialty codings, back for machining, and then ultimately back for inspection and assembly into an engine before it is shipped or exported out of Canada. That's just one part. There are 1,000 parts per engine. We make 3,000 engines per year in our facilities in Canada.

That same cross-border interaction is also true for our suppliers and their sub-tiers. Goods and data are continually crossing the U.S.-Canada border before a part reaches our plant for assembly into an engine.

It's difficult for us to overstate the negative impact that requiring permits for export to the U.S. would have on Pratt & Whitney Canada and our supply chain. Like other modern manufacturers, we don't stockpile parts needed to make our engines. We order the parts to build each engine on demand. If we had to review all of these transactions for permit requirements, much less seek and assign export

authorizations, that would consume substantial resources and dramatically extend our lead times. We're also today experiencing a substantial increase in the processing time for permit applications with the Canadian government. Requiring permits for exports to the U.S. would dramatically expand the volume of work that Canada must process and would likely result in further delays.

Our industry also benefits from licence-free exports and goods and technologies from the U.S. to Canada, and we have a concern that the imposition of licensing requirements by Canada would lead to a tit-for-tat response in which the U.S. imposes similar requirements on U.S. exports to Canada.

In the end, requiring Canadian permits on exports to the U.S. would undermine our competitiveness and confer an advantage to our U.S. and European competitors, while failing to provide, in our opinion, any notable benefits to Canadians or to the world. Thank you.

The Chair: Thank you. We have a long list of questioners, and I'm going to start with Senator Saint-Germain.

Senator Saint-Germain: Thank you. My first question is for Mr. Butcher from Oxfam. Thank you for your presentation.

Your organization considers international humanitarian and human rights laws should be the prime consideration in arms transfer permit issuance, "giving only secondary concern to commercial considerations."

In your opinion, how can Global Affairs Canada fairly balance multiple interests at stake when issuing an export permit — multiple interests being military, strategic, economic, and human rights protection interests?

Mr. Butcher: That's a key question at the heart of observance of the Arms Trade Treaty. The position that Oxfam has laid out is actually the position within the treaty. While economic considerations for jobs — in this case in Canada; most of my work in looking at U.K. exports — are important, they can never outweigh the need to carry out a proper risk assessment and establish whether the criteria laid out in the Arms Trade Treaty have been met, in particular, in Articles 6 and 7 of the treaty, that any proposed transfer is fully compliant with the IHL and IHRL requirements and obligations of the treaty. That's what we mean when we say those have to come first and that the economic considerations must be second. States parties to the ATT with advanced defence industries, notably many members of the European Union, manage this successfully every day.

Senator Saint-Germain: My next question is for Mr. Saabas or Mr. Purchase.

In her brief, Professor Simpson claims:

In future, the federal government needs to be allowed to carefully review any proposed arms exports before granting permits in order to ensure that human rights considerations are seriously taken into account.

According to your experience, do you think that such a proposal can or would undermine the Canadian military sector capacity of negotiating and closing export contracts? What kind of impact do you believe this will have on the industry in a practical way?

Kenneth Purchase, Director, International Trade Compliance, Pratt & Whitney Canada: In our experience, even prior to this bill, this has been taken into consideration, and our view is that's entirely appropriate. We believe it's the government's responsibility to balance those competing interests and ultimately decide on what is the decision and what is the outcome that best aligns with Canada's overall interests. As business people here today, we're not in a position to say what weight should be given to which considerations. That's the role of the government. But we strongly believe, and that's why we support the bill, that Canada needs to take into consideration any factor that it thinks is relevant to determining what outcome is ultimately in the best interests of Canada.

Senator Saint-Germain: Mr. Saabas, do you have something to add?

Mr. Saabas: No, I think there is a second part to that question where you talk about the impact of the Canadian military to operate. It's a global business. I can talk about the aerospace side. There is a lot of collaboration between the United States and Canada on the military side and the open border has allowed both Canada and the U.S. to benefit from the best technologies that we have out there. For the most part, Canada and the U.S. have aligned interests. In our view, making that more difficult would undermine the Canadian military's ability to perform the way they would like to perform.

Mr. Purchase: If I could, I would add one additional point, and it's specific to not just Pratt Canada, but to component suppliers. When we compete on a program, we compete on an entire platform. Aircraft manufacturers select our engine, or a United States, British or French engine — that's generally where they come from — and, ultimately, there is no in between. Part of that balancing of considerations has to take into account that we're not talking about simple incremental sales to particular countries that might be of some concern. It's really about the ability to sell anywhere in the world and to have that platform. If our competitors instead select a U.K. or an American or French engine, then, to the extent that some transactions involving a particularly problematic country might be stopped, that victory can be pyrrhic if Canada loses that ability to influence because we're not active in that sector of the industry at all.

Senator Saint-Germain: Thank you very much.

Senator Oh: Thank you, panel, for being here. My question to you is: What is the rationale behind pursuing a new international agreement, rather than pursuing regulation through the commitment of resources, such as our peacekeeping force?

Ms. Simpson: Could you repeat the question, sir?

Senator Oh: What is the rationale behind the pursuing of a new international agreement rather than pursuing regulation through the commitment of resources, such as our peacekeeping force?

Ms. Simpson: Oh, I understand. You're saying, rather than pursue this agreement, we should put more efforts and resources into UN peacekeeping, which Canada has done in Mali and also through NATO through our forces on the ground in Latvia.

We're trying to work internationally according to our reputation in terms of arms experts, as well. So on all fronts, Canada is taking a good stand, but, of course, there are slight changes that need to be made. Did that answer your question?

Senator Oh: Yes.

Ms. Simpson: Thank you.

Mr. Saabas: I would say, senator, that we're here because there's a bill being proposed and our interest is not to make it more restrictive between Canada and the U.S. The decision to invest money elsewhere — as Pratt & Whitney Canada, I don't think we have an opinion on that today.

Senator Massicotte: Thank you all the witnesses for your presentations this morning.

I'll ask my first question to Mr. Butcher. Your suggestion of having more transparency by the minister who would report, somehow annually, to the Parliament relative to all exports, and you're also suggesting imports, which I think is of interest because it's hard to put in legislation. Hard words. If you cause transparency, you get some kind of accounting for it.

Let me ask you a question. If a certain company is going to export a product and it delivers over multiple years, is that one permit or is there a permit for every large shipment made annually? What's the practice, what's the application?

Mr. Butcher: Typically, a licence would be granted at the beginning of the process covering the entire order. An order, say for Pratt & Whitney Canada engines made this year, would be licensed for export this year and then delivery would take place potentially over a number of years. That reporting of the granted licence would be done in next year's report by May 31st, which is why we then say that it would also be good to report on actual exports. If a licence has been granted for the export of, say, 100 aero engines, that would be reported now and then in each year you would report how many engines have actually been exported against that licence.

Senator Massicotte: It's always one export permit, am I correct in saying that?

Mr. Butcher: Yes, yes.

Senator Massicotte: If you look at the wording of that paragraph where the government must consider all the issues, it's very broad. It leaves a lot of discretion, somewhat like your presentation. You've got to depend upon the engagement of the exporting country to apply those policies, because otherwise it's very easy to say it's not a problem. Having said that, what happens if you get a permit and it looks okay, but then you find out two years later that the country or the customer is not — in other words, it's in contravention of the intent of the bill being proposed. What's the authority? What happens there?

Mr. Butcher: Well, in the U.K., the government has the power to either suspend or revoke a licence, so that if a problem arises, it appears to be a temporary problem, that licence can be suspended while that problem is sorted out. If it's a permanent problem, it can be revoked all together.

Senator Massicotte: How about in Canada with the proposed bill.

Mr. Butcher: Sorry?

Senator Massicotte: How about in Canada with the proposed bill, what happens in that circumstance?

Mr. Butcher: I'm afraid — I'll have to have a look at it and come back to you with an answer. I'm not entirely certain.

Senator Massicotte: Is somebody there, can you —

Ms. Simpson: I think what you're driving at is the issue that in 2014 Canada — when we made the deal for the LAVs — the export permit had not been put in place yet, so two years later Stéfán Dion put it in place. The critics are saying that there was a problem with those export permits, that they were not negotiated by our prior existing EPA negotiations. If we couldn't do it then, with the biggest arms sale in history, what is the chance of us doing it properly now? What I think you're driving at is, can we stop the LAVs now? We've exported about 600, could we stop now? Nobody seems to know. Which is interesting, isn't it, that we don't know the answer to your question?

Senator Massicotte: It's quite possible that the supplier, the contract of the supplier is such that he doesn't have that discretion to put an end to it. Nothing stops a country from enacting a law that gives it a discretion that automatically applies to a contractor because they would not take that risk, if that is possible.

The other thing I want to know is, if you had annual reporting of actual exports and imports, does that not try to remedy the problem a little bit? At least you've got accountability, you've got transparency, and the minister then has to say, here's what we actually did. Relative to certain questionable contracts, he has to give an answer as to why they continue to respect that contract. Is that not useful? It gives everybody flexibility to not interfere if there is a problem, like with U.S. transfers.

Madam Simpson, what are your thoughts?

Ms. Simpson: I know the gentlemen from Pratt & Whitney Canada are worried about administration. We live in a computerized age and we can figure out things more usefully. My main argument is that the Canadian commercial organization is supposed to be looking at deals over \$150,000. They're supposed to examine that. They clearly are having some problems with that. We saw that with the Saudi deal. That was embarrassing for us, leaving Minister Dion in a tenuous position. We need to be stricter and more transparent.

I'll end. I'm curious what Martin is going to say. I know he's thinking.

Mr. Butcher: Yes, I absolutely agree that the proper accountability relies on transparency and transparency relies on reporting. So the treaty requires reporting of imports and exports each year, and there is a provision at the Conference of States Parties each year in August for a review of reports that have been submitted. In many countries it works very well as well, as I've said in my statement, for parliaments to scrutinize after the event, but to scrutinize reporting on an annual basis. All of this contributes to effective arms transfer controls.

Senator Massicotte: Just one minor issue of practice in the industry. We were told yesterday that countries signing up on the treaty is that the process allows for each country to amend the treaty as it sees fit, and that is okay. In other words, 99 countries have signed up for this thing so far, but you may

have 99 different forms of engagement and apparently that is okay, which is inconsistent with normal treaties where everybody must sign off the same document. Is that the case?

Mr. Butcher: Almost. Everybody signs the same treaty, but in the case of the Arms Trade Treaty, it provides a framework against which national legislation may be built. Yes, there are many different ways of building that national legislation that are compatible with the treaty. There is even a second layer in the European Union so that the common position on arms exports in the European Union is compatible with the Arms Trade Treaty, and then the member states of the European Union all build national implementation legislation based on both that common position and the Arms Trade Treaty, but those national legislations all differ to some degree.

So there are different ways of doing it, but as long as you meet the requirements of the treaty that's fine.

The Chair: I'm just going to take the liberty of pursuing just that point for more clarification.

Most international treaties are signed and then the ratification comes, and every country has a capability pursuant to its constitution as how they ratify and implement; therefore, there's a lot of discretion in that. There is a reporting mechanism in this treaty. The difficulty is, is there an implementation strategy that is international to determine whether the implementing legislation in the countries meets the expected standards of the arms treaty. My understanding, that is not built in. It is left to the goodwill of those who have signed on, that they will comply with the treaty fully. It is a subject, particularly with academics, of debate, whether that implementing legislation really meets the full requirements of the ATT. I don't see anything unique or different in this treaty than others. That's the conundrum then, the need for a parliamentary oversight.

Mr. Butcher: I would say that that's partially correct. There is now within the structures of the Arms Trade Treaty a provision between the Conference of States Parties for a working group on implementation to meet made up of states parties to the treaty. Anyone that wants to attend that body makes recommendations to the Conference of States Parties each year. So there is now a formal process amongst states parties to the treaty to evaluate national implementation mechanisms and to make recommendations for their strengthening and to ensure a certain amount of commonality at least between those mechanisms.

So where four years ago when the treaty entered into force there was no mechanism like this, in the last couple of years that mechanism has been put in place.

The Chair: It's still a persuasion mechanism, though?

Mr. Butcher: Yes.

The Chair: Rather than the ICC that I know about, International Criminal Court, very few of the international treaties have full consequences for states that are international instruments. All we have at the moment is this reporting mechanism. Hopefully we can influence each other and that is the state we're at in this. So I'm correct about that. It was just a reporting and a recommendation, not a consequence, just a persuasion?

Mr. Butcher: Yes, that's true. Yes.

The Chair: Thank you. I thought I read it wrong.

Senator Bovey: I want to thank you all for your presentations.

Dr. Simpson, you've obviously spent a long time doing a lot of research on this. I have a question for you from your research. I'm wanting to know a little bit more of your insight into the CCC. I read Minister Carr's letter to the CCC. He asked, and I quote, for a review of the corporations':

...risk assessments and transaction due diligence to ensure that human rights, transparency, and responsible business conduct are core guiding principles for the CCC.

The minister asked that this review be conducted in the context of the signing of the ATT and he asked for a report by the end of November, and of course we're not at the end of November yet.

I wonder if you have any idea of where that review stands now? Do you know what the current guidelines for the CCC brokerage sales of weapons abroad are in regard to human rights at this time? How will Bill C-47 affect the operations of CCC, if at all?

Ms. Simpson: Okay.

The important role of the CCC remains unacknowledged and unchanged.

The ... (CCC) —

As you know.

— is a Crown corporation that plays a central role in exporting Canadian military goods, especially to the United States. The terms of the DPSA obligate the CCC to act as the prime contractor for U.S. Department of Defense contracts valued above a threshold, currently set at U.S. \$150,000. The CCC also arranges arms exports to other countries, including recent record contracts for the LAVs ...

So the CCC, its role has to be made explicit in the ATT and also in Bill C-47 alongside the procedural changes, which is what we're talking about, to ensure that its operations meet ATT obligations. As I mentioned before, there was a whole issue, the CCC not adhering even to existing EIPA regulations regarding the LAVs, so the permit was not even issued until 2016.

Let me end with some comments. Canada is a member of more international organizations than any other country in the world. We abide by the highest standards in the nuclear non-proliferation treaty regime, we abide by the Chemical Weapons Convention. We abide by the Biological Toxic Weapons Convention to the highest degree. So when we start talking about watering down and maybe making our participation less kind of ethical, when we start saying, "Oh, let's look" — we won't be looking at what we're exporting under DND, we won't be looking at what we're exporting to the United States. Let's just think about U.S. trade and so on. The rest of the world looks at us. They look at the Saudi Arabia issue and they follow. They will follow and they will do what we do because we are seen around the world. We pay our UN dues on time the first day of January.

So if you want to water it down and you want to skate out of this, it's your responsibility. You are the people who we turn to for oversight on these important issues, not us; you're the senators. Thank you.

Senator Housakos: My question is addressed to Mr. Butcher and Ms. Simpson, and it has to do with Canada's I think attempt constantly to balance our principal foreign policy in regards to human rights, while getting our fair share of the commercial potential benefits that are out there, billions of dollars in potential trade. Of course when you're trading in the areas of security and weaponry and technology of this sort, it's also very often used for security, not necessarily always for the conflict. When you have strong security, it very often prevents conflict.

So my question to both of you is: What's the balance? How do we do those two diametrically opposed things or perceived diametrically opposed things and not hurt our economy and the thousands of jobs that are affected by it?

Mr. Butcher: It's a series of judgments that all countries who are party to the ATT make on a regular basis, and it's something which has proven possible in the past few years since the treaty entered into force, something which has been supported by industry in many countries.

For example, here in the U.K. one of the leading industry advocates for the treaty over the past 10 years comes from Rolls-Royce, a direct engine competitor with Pratt & Whitney Canada. They've provided someone to the British delegation, both to the negotiation of the treaty and to the Conference of the States Parties who has strongly supported the treaty, as does BAE Systems, one of the world's biggest defence companies.

It has proven possible to balance both commercial interests with what are in the end political interests. Nobody wants to be seen to be providing arms for torture, for the massacre of civilians, for completely inappropriate uses. This in the end is why countries like the U.S. haven't become a state party yet; the U.K., and France, all of which are major arms exporters were very happy to participate in the negotiation of the treaty and, at least in the case of the U.K. and France, become states party to it.

Senator Housakos: Ms. Simpson, would you like to add to that?

Ms. Simpson: On the balance, yes, it is very difficult to make decisions. And like Andrew Scheer, our Conservative leader, it has been very difficult for me in London to talk about the Saudi human rights violations, which I began writing about in 2014. I realized that thousands of jobs in southwestern Ontario do depend on drones, on arms exports, on LAVs. I'm not sure that it's as many jobs as they claim, and I say that because of people who have written to me who said they have a short-term contract at General Dynamics. It's not the 3,000 jobs that they're claiming. So I can't find that out, but I know my boss, my editor said there's not as many jobs or LAVs as it seems. So we don't know. It's not transparent. That's the problem, we don't know.

I am very sympathetic to the situation of workers, but we have to abide by human rights considerations around the world, otherwise we're going to have more killings and more embarrassment as MBS who's only 33, continues to reign in Saudi Arabia. So we're stuck until 2028 unless the prime minister pauses. This is the whole issue Senator Massicotte is bringing up about the export permit, can we stop, how do we stop it? That's not clear to me. Thank you very much.

Senator Housakos: My next question really has to do with foreign aid. Canada, of course, is a participant when it comes to foreign aid in a number of developing countries around the world. What mechanisms do we have in place to be able to confirm that none of those dollars end up getting rerouted and being used for military purposes that go on by various forms and get rerouted into war zones? No one's really touched on that issue, that foreign aid can be used as a weapon at the end of the day, and we provide foreign aid to many countries around the world. Do we have any mechanisms in place and strings attached to make sure the funding is being used for what we think it's being used for?

Ms. Simpson: The major beneficiary of our aid and development for the last few years under the Harper regime was the Afghani government, and we've just learned that there's a great deal of corruption. The U.S. is concerned, as is Canada, about the levels of corruption and where that money has gone. Has it built schools or is it building madrasahs? I understand that you are concerned.

The United Nations has agreed on the sustainable development goals, which will cost hundreds and hundreds of millions of dollars, so we do need oversight. That gets back to our original point, which is that we need strong regulations, strong oversight, in order to ensure exactly what you're saying, that the arms are not sold to young teenagers who use drugs to kill other people.

So it's our responsibility, or more your responsibility to tell you the truth, senator, so thank you.

Senator Dean: Professor Simpson, you make strong arguments in favour of the application of export permits to sales and transfers to the U.S. Certainly Mr. Butcher has said the same thing. We hear equally strong arguments from Mr. Saabas about the access, competitiveness and other issues associated with extending those permits. It would seem to me that a bridge between those two positions lies somewhere in the reporting world. You've touched on this, Professor Simpson.

I don't know whether this was amended in the House of Commons, but the annual reports contemplated in the bill would be specific to those areas where there had been an export permit issued. So I take it from that the reporting requirements would not extend to transfers to the U.S. Am I correct in that?

Ms. Simpson: I think that you're correct, but I am not a lawyer. When I read Bill C-47, the evidence of the brokering control list, it goes on about the bill of commercial invoices admissible in evidence in any prosecution in this act.

Senator Dean: I'm just looking at section 27.

Ms. Simpson: You're on 27.

Senator Dean: I'm not a lawyer, so we're in good company. In any event, assuming that I'm correct and that the overarching reporting requirement wouldn't capture U.S. transfers, presumably minimally, you'd want to see captured U.S. transfers.

Ms. Simpson: That's exactly it.

Senator Dean: What else would you like in the world of reporting while we're on this subject? We might then ask if there are concerns about reporting from a commercial aspect.

Ms. Simpson: The concerns on reporting involve the exports to the U.S., the export through the Department of National Defence, and whether that would supercede or somehow get around it, and also the role of the Crown corporation, the CCC. Then mainly it's DND and the exports to the U.S. and the oversight of the minister because that's another issue that people are saying is we're relying on the judgment of the Department of Foreign Affairs and the minister.

Maybe, Martin, you could comment on that because that's a little bit different too, that we're putting it all in the judgment of the one department. I don't know if in the U.K. you have more oversight.

Mr. Butcher: Yes, in the U.K., the decision whether or not to issue an export licence relies on advice from a number of departments. In every case, the foreign office, the Ministry of Defence, and the business department will give an opinion. In some cases relating to transfers to less-developed countries, the Department for International Development will also give an opinion. Those are collated in a unit where those departments work together to allow the foreign secretary to then make a decision. So it is a cross-government decision, bearing in mind all different kinds of interests in making a decision.

I would also add, with regard to Canadian transfers into the United States, I wasn't suggesting that every single individual transfer needs to have a licence. Indeed, the open licensing system that we have does apply to some transfers to the United States. The U.K. exports parts for U.S. F-16 aircraft, and in those cases it will say: You can export to the United States these particular components for a number of years, and then reporting on that is done annually and retrospectively.

But it's a very open licensing system, indeed. The administrative burden is very light, but it does comply with the Arms Trade Treaty and does allow then for reporting against that licence.

Senator Dean: Could we give Mr. Saabas an opportunity to comment?

Mr. Saabas: Thank you, senator. There is reporting available through customs. Every time things go back and forth across the border, there is a customs document. There is the ability to get reporting. And as Mr. Butcher said, there are some countries where we require export permission for our products. The same thing. It's a joint government decision between Defence, Foreign Affairs, administrative industry, all of that. That process is very similar.

I would say between Canada and the United States, we're very much aligned with who we think we want to play with, who we don't want to play with. The volume of parts that go back and forth is an administrative burden. Profitability of a Canadian company is not something to take for granted. The road is littered with people that were profitable and no longer are. We work hard to be cost-effective and quite honestly, if the U.S. turns around to say if they need export permits to send to us, we have little leverage.

All our products are dual use, civilly certified products that go on civilly certified airplanes. The fact that some of those uses may end up in the military on a helicopter or whatever is there, but the preponderance of what we do is commercial. And we feel strongly there are reporting mechanisms through customs. There is enough control, alignment between Canadian the United States, in terms of our end goals. And those countries where Canada has concerns, we do have an export permit process we go through and we follow, and we look at the end use.

And to the comments earlier, if the end use is being violated by the customer, we stop shipping. We stop the shipments. There is a mechanism to control them. As Mr. Purchase said earlier, when you're in the game, if somebody behaves poorly, you control the parts the ability to keep those parts flying or not flying. Canada being in the game and strong in the aerospace industry has been good for us. All the other engine competitors we compete against are in England or France or the U.S. So they all play by slightly different rules as well.

France is more forward leaning when it comes to supporting Russia or China or any of those countries whereas in Canada, we have more stringent controls. Our view is that there are controls in place in Canada that prevent us from going to those countries we don't want to be working with or have questions about. The amount of time we spend with customs and customs paperwork back and forth clearly shows what goes back and forth across the border. Staying competitive in a world where you're competing in a global market is what keeps Canadian aerospace strong, \$500 million a year invested back into the business because we can be profitable and play in a world market.

Senator Dean: Very quickly on section 27, which now excludes from the annual report to Parliament, if I'm reading it correctly, reporting on transfers to the U.S., would it be a concern to you if that reporting of transfers to the U.S. was in some way incorporated into the requirement to report to Parliament?

Mr. Saabas: Again, there is a customs back and forth. So that information is available.

Senator Dean: I understand.

Mr. Purchase: I think it would depend on how that information was generated, if it's generated from existing customs documentation, we don't see an issue. The challenge is if it requires permit applications, even if it's limited to a relatively small proportion of the transactions. To give you context, we currently process — including data and physical goods — between 3.5 and 4 million export reviewable transactions per month. The simplicity with which things can move across the U.S. border allows us to do that in a reasonably efficient manner. I understand that it's just administration and there's sometimes a view of, "Well, with computers surely we can automate things." It is not as straightforward at that.

The logistics, the little details of how things move from one place to the next are what kill you at the end of the day. We live in Montreal. We have an early winter this year. One of the annual traditions in Montreal is people complaining about how long it takes to get their streets cleared of snow. It really flows from a lack of appreciation of what goes into the logistics of doing something like that. I live in the plateau. There are no driveways. Everybody parks on the street. But as somebody who designs, implements, oversees and enforces systems, you gain an appreciation of all the things that have to happen correctly in order for that to get done at all. I think sometimes we're so used to the ease with which we can do things, buying things on Amazon or whatever, we assume it's simple to do that and it's not.

It's a miracle that they're able to clear the streets in the time they do, and our ability to process the volume of transactions that we do while safeguarding and ensuring our compliance to all of our obligations to the Canadian government is a huge task and nobody really sees the effort that goes into it from behind.

The Chair: Just for senators, and perhaps our witnesses, originally when the bill was filed by the government, the report to Parliament stated as soon as practicable after December 31 of each year, the minister shall prepare and lay before Parliament a report of the operations under this act for that year. So it would be operations which exclude the U.S.

In the other chamber, it was amended to “no later than May 31 of each year, the minister shall prepare and cause to be laid before each house of Parliament a report of the operations under this act,” which was the original. But it was added at that time “and a report in respect of arms, ammunition, implements and munitions of war that were exported in the preceding year under the authority of and in accordance with an export permit issued under subsection 7(1).”

Therefore, I think we need the government officials and the minister to explain to us how they perceive this amended change and to what extent the reporting will now be changed. It’s very clear that the other one is just the operations of the act. They’ve added these words and accepted them. We need the government officials to explain its implementation and what they believe it means for our deliberations, I think.

Senator Cordy: Thank you very much to each of you for being here and contributing to our study on this important bill.

Yesterday and today we heard a lot of talk about the balance that’s needed. You’re looking at human rights, child soldiers and the countries in fact do a risk assessment before they sign any contracts or give out permits.

We also heard the challenges of doing deals with Middle Eastern countries because it’s a challenge, and you’re trying to get in to help some Middle East countries but — I don’t want to be critical of any country here. I’m trying to find words carefully. But you’re trying to find a country to deal with and that country is certainly not pristine, but you’re picking the best just to get into the area to make things better.

We also heard yesterday that security is unpredictable. Things can change from one day to the next and because of that, the bill allows the minister to have discretion.

Going back to Senator Massicotte’s comments earlier, sometimes the contracts are signed and everything is relatively fine, and then six months or a year-and-a-half into the contract, things start to change. The challenge is if it’s in the law that these contracts can be revoked quite easily, that certainly would be challenging for businesses, unless it’s something exceptional.

I think it would affect the whole bidding process, because if it’s tenuous and can be changed, then I would think businesses would have to, on the front end, load the cost of it just in case things happened.

How do you deal with the unpredictability of security, getting your contracts and permits and ensuring a somewhat stable environment to carry out those contracts?

Secondly, in terms of the Middle East, how do you deal with it when you get a contract for the Middle East and you get a permit to deal with the Middle East? If security overall is unpredictable, the Middle East would be absolutely unpredictable.

Mr. Saabas: Thank you, senator. When it comes to contracting for our engines, we have very stringent clauses about export controls and international trade compliance that are built in. If rules change on there, we have the ability within our contracts to stop shipping or stop providing parts under those circumstances.

If customers violate the end use statements that they've provided to us as part of the permit application, we have the ability in our contracts to stop shipping or not ship to them. We make that very clear. In the last eight or nine years, that has become predominant in our contracting. I would say I think that's a clause for all aerospace players, quite honestly, like Rolls-Royce and Safran, Williams, GE and Honeywell.

That part we've addressed by saying we're always going to be in compliance with international trade rules for Canada and the United States, in our case.

When it comes to the Middle East, we always operate within what the law allows us to operate. If there's no restriction to go, we'll apply for a permit, we'll work there and go after it. If the rules change or if the Canadian government decides they want to have different rules for a country in the Middle East, our role is to comply. We don't make foreign policy. We just try to live with what the law allows us to do and market ourselves worldwide.

Senator Cordy: Mr. Butcher, you spoke about the EU criteria that was established in 2008 and common positions. You said it was just a framework and it was adapted by each of the EU countries individually. Is there a no-trade list that would be across the board with all EU countries, or does each EU country determine their own list of whom the aerospace industry can or cannot deal with?

Mr. Butcher: There is indeed. It's called a denial notification system. If a country approaches one member state of the European Union and asks for a transfer of arms or equipment and that is refused, the member state of the European Union is then obliged to explain to the other member states what it's done and why the refusal was made. Then other member states don't undercut that refusal by then issuing the equipment.

To answer your first question, changes of the kind you're describing that I've talked about, aren't made lightly or capriciously by governments. They don't want to undermine their own industry, but sometimes circumstances force change. When, in 2011, the Arab Spring happened, the U.K. reviewed every single export licence that had been issued to a destination in the Middle East and North Africa and ended up revoking 150 of them.

A little while later, when the Morsi government in Egypt was overthrown by General Sisi, the member states of the European Union got together and decided that because of the security situation they would actually embargo the Egyptian security forces for equipment that could be used for internal repression. Several companies, in the Czech Republic, notably, have big contracts to supply small arms to Egyptian interior security forces.

These changes do happen and, as Mr. Saabas said, companies have to adapt to them but those aren't changes that are made lightly by governments.

Ms. Simpson: Regarding our arms sales to the Middle East, I think the whole world is watching on the international stage what an effective counter-argument would be, which is what President Trump is

saying, no matter what happens. In situations like Khashoggi, the journalist, whatever happens, we will continue to sell. He's saying all they will do is give the money to other countries.

He, like generations of arms dealers before him, is telling us exactly how to think that way and saying to forget it, it doesn't matter what happens. We will still continue to trade and we would be punishing ourselves if we did that, he says. Look at how the world is looking at that because, believe me, I do not think he's meeting approval on that issue. The same goes for Canada. Martin Butcher is correct: it would not be a decision that would be taken lightly. It would be a serious decision.

Senator Cordy: I agree.

The Chair: We're over time, but Senator Massicotte says he has a 30-second question.

Senator Massicotte: I just want to remind Mr. Butcher that I think you're going to send to us in writing, if you wish, those countries which allow a nominal contract whereby the end user contravenes the original intent. You're going to send that to us and you'll name which countries of the G20 allows foreign elements, whatever the exact the wording is. Can you send that to us?

Mr. Butcher: Absolutely. I can do that soon.

Senator Massicotte: The other comment, Ms. Simpson, is that we talked about the annual report to Parliament. As you know, people are saying that the information currently available is still inadequate, which means that the report to Parliament seems to be inadequate. Could you review that and say why is it inadequate and to what extent it is inadequate, given the information people are looking for?

Ms. Simpson: As Madam Chair said, and also Senator Dean, it is regarding the wording which you have just read into the record of 27 annual reports. We now know it will be May 31. It's simply confusion about what will be reported on. Will it be amounts more than \$150,000? Will it be amounts that are under the DPSA that will be amounts under DND? There's confusion, of course.

Senator Massicotte: Could you send us what you'd like to see?

Ms. Simpson: I don't know, because I don't know what would be reported on. That would be the Ministry of Global Affairs that would have to report.

Senator Massicotte: Could we get a copy of the last report submitted to Parliament?

The Chair: We'll see. Thank you.

I'd like to, on behalf of the senators, thank all our witnesses today. It certainly has helped us to focus on the issues that we need to address in examining Bill C-47. It's been helpful from the various perspectives. On behalf of the senators, I thank you for taking the time.

Mr. Butcher, the video worked all the way, so that's a compliment to the technology at your end, as well as ours, today.

Witnesses, thank you.

(The committee continued in camera.)