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Chair

Mr. Dean Allison

Standing Committee on Foreign Affairs and International Development

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•(0850)

[English]

The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)): Good morning, everyone. Pursuant to the order of reference of Wednesday, October 3, 2012, the orders of the day are Bill C-383, An Act to amend the International Boundary Waters Treaty Act and the International River Improvements Act. We are going to look at clause-by-clause consideration. Also, pursuant to Standing Order 75.1, consideration of clause 1 is postponed. We are going to start with clause 2.

Do I have any opening remarks before we get going?

Yes, Mr. Dechert.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thanks, Mr. Chair. I understand there are a number of amendments proposed by the government and by the opposition. I wonder if we might deal with those up front before we go through the bill clause by clause.

The Chair: What do you mean by dealing with them up front?

Mr. Bob Dechert: Before we go through the bill clause by clause. I think it makes more sense to do that because some of them have wide ranging implications for the whole bill.

The Chair: Okay, hold on one second.

Paul.

Mr. Paul Dewar (Ottawa Centre, NDP): I think I need more explanation. Normally when we're doing clause-by-clause consideration, we do it in sequence for reasons that actually are related to Mr. Dechert's comments. Usually the bill is structured in a way that any amendment that you have in sequence would, by design, affect the bill, but if we jump to the end of the bill and bring forward an amendment, it disrupts that sequential arrangement that usually drafters consider.

It's up to you, Chair, but I think we should follow along those lines.

I'm not sure of the rationale here, Bob.

The Chair: Hold on one second.

I don't have a problem discussing any of the amendments if we want to have a conversation, but in terms of going through the adoption of the bill, I think we're going to go clause by clause. I don't have a problem with the discussion if you want to get some things on the table. I think that would make more sense.

Mr. Dechert.

Mr. Bob Dechert: Certainly a couple of the amendments that the government is putting forward are amendments that pertain to the purpose of the bill, and therefore, I think it makes sense to discuss them at the opening of the conversation about the bill. I believe that at least one or two of the amendments proposed by the opposition fall into that category as well.

I think this way might lead to an easier understanding, but we can certainly do it clause by clause.

The Chair: I say once again that I'm happy to have that discussion if we want to raise them right now, but I think as we go through the amendments, we'll go through them clause by clause. If you want to have a quick discussion about some of the things that are being proposed, we can do that.

Mr. Paul Dewar: I'm happy to have a conversation with anyone at any time and then we'll go back to clause by clause.

The Chair: Okay, Mr. Dechert.

By the way, how rude. I do want to acknowledge our guests at the back of the table. Thank you very much for coming today to provide any clarification. You see we've got a discussion going on already and we haven't even started clause-by-clause consideration. Thank you for taking the time to be here this morning. We'll come back to you momentarily.

Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, as the committee will know, there are two existing pieces of legislation being amended by this bill, the International Boundary Waters Treaty Act and the International River Improvements Act. There are two very significant amendments being proposed by the government to add a purpose for the amendments to each of those acts, and that is to prevent the risk of environmental harm.

I mentioned to Mr. Dewar and also to Mr. LeBlanc last week that there is a Supreme Court decision from, I believe, 2006, which suggests that if the purpose of legislation is not entirely clear, some criminal enforcement provisions of the bill may not be enforceable under the Charter of Rights and Freedoms. To ensure that this bill would withstand that kind of a charter challenge in the courts, the government is putting forward amendments to each of the provisions pertaining to each of those two pieces of legislation that I mentioned to add the concept of risk of environmental harm from bulk removal of water. That would be stated as the purpose for the amendments to each of the acts, the International Boundary Waters Treaty Act and the International River Improvements Act.

I think it's also instructive to state that, given the purpose to prevent environmental harm, which I think we all agree with, this also puts it firmly in the nature of an environmental protection bill as opposed to a trade law bill. I know this is something that Mr. Scarpaleggia, for example, was concerned about last week, that some of the legislative amendments being made here might stray some way into trade law and therefore fall afoul of the North American Free Trade Agreement and other treaties. I think making these two amendments will make it very clear to anyone reading the legislation that it's about environmental harm.

The Chair: What we'll do now, as we go clause by clause, is this. I'll obviously give the NDP and the Conservatives a chance to explain their motions and we can have that further discussion at that point in time.

We're going to start. As I mentioned before, we're going to postpone clause 1 because that deals with the title. We'll come back to that. We're going to start on clause 2.

Shall clause 2 carry?

(Clause 2 agreed to)

(On clause 3)

The Chair: We have a couple of amendments by the NDP. We have amendments NDP-1 and NDP-2. I'll ask Mr. Dewar to speak to both of those amendments. We'll have some conversation and go from there.

• (0855)

Mr. Paul Dewar: First, I'll move them.

I move that line 14 on page 2 be replaced by the following—

Mr. Bob Dechert: In my copy, at least, we don't have the line numbers, so perhaps you could just refer to the actual wording of the clause.

Okay, there are some numbers.

Mr. Paul Dewar: It's the fourth paragraph on page 2.

The Chair: Does everyone have a copy of the actual amendments here?

Mr. Paul Dewar: I think we distributed them.

The Chair: There are some references to the line numbers in the amendments.

All right, proceed, Mr. Dewar.

Mr. Paul Dewar: Thank you.

Chair, this amendment would change the passage from "50 000 L of water are taken outside" to "9 000 L of water are taken outside".

The amendment, Chair, would address the concern that many have had regarding any potential loopholes in the bill. We heard concerns around scope from witnesses. The 50,000 litres per day from our waters, without going further than just leaving it at 50,000, would be a potential concern around how much could be taken out. We estimate it could be 50,000 litres a day, 365 days a year. You could talk about 18-million litres of bulk water a year being exported simply by a tanker pulling up, as we heard could potentially happen, and taking it across boundary or transboundary waters.

What we thought would make sense is to take a look at what a normal carrier would have, a tanker truck. They're usually over 10,000 litres, and 9,000 litres would deal with that. That's just slightly below the threshold. By setting a limit of 9,000 litres, slightly below the common size of a tanker truck, this amendment would protect the Canadian water resources from people trying to circumvent the act.

It would also stop exports by tanker and tanker trucks and rail cars, which are not explicitly mentioned in this bill. Again, that was something we talked about. It maintains a relationship between the provinces to take primary responsibility for their regulation of smaller volumes of water, so it doesn't touch that. It doesn't interfere with manufactured goods such as beer or drinks, as we discussed, because the definition is already explicit in the bill about those products.

To sum up, this loophole that we believe exists with the 50,000 litres per day, and as I mentioned that would be 18-million litres of bulk water a year, could be dealt with by bringing in a cap of 9,000 litres. I think that's beyond the current expectations in the bill for humanitarian reasons, such as firefighting, or for products that fall under provincial jurisdiction. Those two things would not be affected by this because they're explicit in the bill, that is, the products, and the humanitarian concerns.

That's the rationale for the amendment. I think it's in keeping with the spirit and intent of the bill.

The Chair: Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

We would urge the committee to vote against this amendment on the basis that it is inconsistent with the rest of the legislation. As Mr. Dewar will know, the regulations to the International Boundary Waters Treaty Act use the 50,000 litre figure in several places. That was established in 2002 when the International Boundary Waters Treaty Act was revised. My understanding as to where it came from is that this is the accepted norm for an average truckload of water. Fifty thousand litres is a standard truck size. Nine thousand litres would be a very small truck. As I stated at the outset, the purpose of the legislation—and if Mr. Miller were here, I think he'd agree—is to prevent environmental harm, not to get into the field of commercial and trade hearings with manufacturing.

To also put it in a context that people can understand, my understanding is that 50,000 litres is roughly equivalent to what it takes to fill a backyard swimming pool. It sounds like a lot of water, but we've all been preparing our emergency kits because of hurricane Sandy over the last couple of days and we're supposed to have available two to three litres of water per person per day. We know what that looks like. I know 50,000 litres sounds like a lot, but it's really only the amount contained in the average backyard swimming pool. If this number were to be amended in this provision, it would make the rest of the bill and the regulations inconsistent with other similar environmental legislation that uses the number 50,000. That was established in 2002 to ensure that these kinds of environmental protections are fully within the realm of environmental matters and don't stray into the area of trade law.

• (0900)

Mr. Paul Dewar: Okay.

In fact, the average tanker can, as I mentioned in my comments, take 10,000 to 30,000 litres and easily circumvent this regulation that has been established in the bill. By putting a limit of 9,000...this is legislation, so nothing Mr. Dechert said means we couldn't do it. He's saying that this is somehow not in keeping in terms of referencing other agreements.

This is about the whole issue of ensuring protection of our waters. Simply put, it would be a matter of making it economically unfeasible by doing it this way. As I mentioned, if you have tanker trucks that are in the range of 10,000 to 30,000 litres, there is nothing that would stop anyone from taking water and crossing...for whatever reason, reasons we can't even fathom right now.

If we're talking about real protection, we want to make sure there are no loopholes. I would argue that, notwithstanding Mr. Dechert's comments, putting a reasonable limit and looking at the size of containers—that is why we came up with the amount 9,000 litres—would make infinite sense for it to be put at that level. As I mentioned, this doesn't touch the provincial area nor does it interfere with the notion of manufactured goods at all. There's still explicit language in the bill that protects that.

Again, this is simply an amendment to ensure there are no loopholes. I'm sure we all agree this is about trying to ensure that it's not economically feasible. That was brought up in the witnesses' comments. That's the nature of this amendment, so I hope all members vote in favour of it.

Thank you.

The Chair: Thank you.

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): I'd like to get some information from the experts. It seems like an indirect question but it will help me to better understand.

Let's say you took water across the border in a tanker that had a capacity of 49,000 litres and the provincial government gave a permit to a trucking company to take 49,000 litres of water a day in a tanker. Would that not be trade in water? Would that be considered trade in a water product, such that it wouldn't open the door to bulk water exports because it would be considered a product?

My second question is related. The International Boundary Waters Treaty Act was mentioned and the 50,000-litre threshold. If you were allowing the water in its natural state to leave the country in quantities of 50,000 litres, if you're not using a pipeline, canal, tunnel, aqueduct, or channel, I don't know how you would be transporting it other than through the natural flow. Where does this figure of 50,000 litres come from in the context of the International Boundary Waters Treaty Act? Why is it 50,000 litres?

If you could answer my questions, I think that would help me understand better.

• (0905)

[Translation]

Mr. Martial Pagé (Director General, North America Policy Bureau, Department of Foreign Affairs and International Trade): If we go by what is specified in NAFTA, for a product to

be manufactured, there has to have been a process. That is quite clear for us. So, for water to become a good, it has to be bottled and so on. If it is put into a truck, it remains a bulk system and, in our view, is not a manufactured product. That is the distinction we would make here.

In terms of the 50,000 litres, that is what was established in 2002, probably based on what was necessary on humanitarian grounds.

Mr. Francis Scarpaleggia: Yes.

Mr. Martial Pagé: I imagine that is the case, but I would have to check again.

Mr. Francis Scarpaleggia: I think you are right.

Mr. Martial Pagé: For the quantity to be economically viable, someone would have to find a way to draw 50,000 litres per day and keep that water in conditions that would maintain the quality for several weeks, if not several months. That would probably not be possible.

Mr. Francis Scarpaleggia: A year or two ago, there was an interview on radio station 98.5 in Montreal. I do not recall the name of the host.

Mr. Martial Pagé: Was it Arcand?

Mr. Francis Scarpaleggia: Yes. He was interviewing a lawyer. Are you familiar with that interview?

Mr. Martial Pagé: No.

Mr. Francis Scarpaleggia: The lawyer claimed that, according to one of her clients whom she did not want to name, people were already taking water—I imagine it was from the St. Lawrence—and were transporting it in bags, probably for quite short distances and perhaps to irrigate farmland.

That is probably not viable in most cases, but it is a way in which it could be done. But I do not want to labour the point. Thank you for your answer.

Mr. Martial Pagé: Are you aware of that interview, Mr. Gluck?

[English]

Mr. Stephen Gluck (Senior Policy Analyst, U.S. Transboundary Affairs Division, Department of Foreign Affairs and International Trade): Yes, I recall that radio interview. Of course, there was a lot of talk. We even contacted the Government of Quebec about that and followed up and nobody had absolutely any evidence of this actually taking place.

Mr. Francis Scarpaleggia: But it's a plausible scenario. Really, what I'm getting at is that it's plausible, especially around that area of the country where there is farmland in the U.S. on the St. Lawrence. Anyway, it's something I thought I would mention.

[Translation]

Mr. Martial Pagé: We would have to look at the business model because, as soon as you draw water, you are competing with people in the area who could get water at a lower price. By so doing, you are widening the perimeter within which that water could...

Mr. Francis Scarpaleggia: In effect, it becomes an economic argument. You are saying that putting water into a pipeline is not manufacturing a product, but some people do not agree. Last week, Mr. Saunders said that, by putting the pipeline idea into the bill, it was starting to look like a bill on international trade. Basically, it is not all that clear. Pipelines are used to export oil, which is a product traded between countries.

In any event, you have answered my questions. Thank you.

[English]

The Chair: Thank you very much.

Is there any more discussion on that?

I'll go to Mr. Dechert.

Mr. Bob Dechert: Since we have the officials here, I wonder if we could ask them about the use of the 50,000 number in the regulations to the International Boundary Waters Treaty Act, which I understand was one of the concerns.

Also, following up on the questions that Mr. Scarpaleggia asked, if we focus on the amount of 50,000 litres as being the average backyard swimming pool, that gives you a good sense of the amount of water we're talking about.

The purpose of the bill is to protect from environmental harm. We all want to make sure that the bill stands up to any kind of court challenge and it doesn't stray into another area of jurisdiction, that being trade or commerce law. In this case, 50,000 litres is certainly a minimum number above which people could see some environmental harm. Certainly, if what's being extracted is less than the amount in the average backyard swimming pool on a daily basis, when you're talking about the Great Lakes, for example, I think most people would understand that's a fairly small number.

I'd like to hear from the officials on the use of 50,000 litres in the regulations.

• (0910)

The Chair: Mr. Moffet.

Mr. John Moffet (Director General, Legislative and Regulatory Affairs, Department of the Environment): My apologies, but we're actually not able to provide you with details at this moment. We can follow up, perhaps in a few minutes, on precisely how the number is referenced in the IBWTA regulations themselves.

I would like to make a couple of points on the 50,000 number and its relationship to environmental impact that maybe the committee would be interested in.

First, you will recall the point that was made by the experts you heard, from the Munk School, who observed that 50,000 litres a day would be insignificant in terms of the impact on the quantity of water or the flow of water in or out of Canada.

The second point that may be relevant is that the flow of a typical international river would be approximately 1,000 times 50,000 litres a day. Again, it may be reasonable to conclude that the number is a relatively insignificant number related to the environmental impact, setting aside completely any of these trade considerations that we've been discussing.

The Chair: Thank you very much.

Mr. Bob Dechert: I think that's very helpful, actually. Giving the comparison of 50,000 litres to the average flow of an international river, I think, is very helpful.

On that basis, and given that we all agree that the purpose of this legislation is to protect from environmental harm, we don't want there to be any kind of a challenge. I think the provisions of the bill have to be consistent with the concept of environmental harm.

I would urge the members of the committee to vote against this amendment.

Mr. Paul Dewar: I won't prolong this. I only want to challenge the premise of Mr. Dechert saying that the evidence we're hearing, and we're going to have confirmed, is that the threshold is not something that is legally binding in the sense that if we changed it to 9,000, that would in any way, shape, or form affect our obligations. Mr. Dechert is suggesting that somehow this will cause a disruption to the rest of the legislation. I haven't heard that. Maybe someone else who hasn't spoken could clarify that.

We're not talking about moving water for a product. That's been established. We are talking about the threshold of moving water. As Mr. Dechert pointed out, 50,000 litres is the amount in an average swimming pool. We have Great Lakes right now that are under threat with respect to their levels, not rivers but lakes. The last thing I'd want to see is bulk water being taken over the border to fill American pools, for that matter, or some other methods we haven't even considered.

This was something that was clearly established, and we heard it from one of Mr. Dechert's colleagues, the concern over the potential to move millions of litres of water annually, if you add it up, from our country across the border. What we're simply putting forward here is a way to ensure that it's not going to be feasible for people to do that. Again, I haven't heard any evidence to suggest that this would affect agreements we already have, nor in any way, shape, or form disrupt the intent of the bill that Mr. Dechert is underlining here in terms of the environment. It's not about product.

• (0915)

The Chair: Mr. Dechert.

Mr. Bob Dechert: I'll try it one more time.

As I mentioned at the outset, there is concern that unless the legislation is entirely consistent to indicate that the purpose of the bill is to protect against environmental harm, that some enforcement provisions of the bill might be subject to challenge on the basis of the Charter of Rights and Freedoms. Setting a maximum number for removal of water at what is less than one-fifth of the size of the average backyard family swimming pool, in my mind and I think in the minds of a lot of people and probably in the minds of justices, is reasonable, when you think of the average transboundary river having a flow of more than 1,000 times the amount of 50,000 litres per day, and you think of the size of the Great Lakes, etc.

It is hard to imagine that removing a maximum of less than the capacity of the average backyard swimming pool would cause great environmental harm and it would throw the entire legislation into doubt, in terms of whether it was really about environmental protection or some form of trade restriction. Further, my understanding is that this is a number that was established and is generally accepted as being the size of one truckload. In everyone's mind it is less than the amount that would make any kind of operation of this sort economically viable.

On that basis I urge the members to oppose the amendment, and I ask you to call the question.

The Chair: All right. If there's no more discussion, I'll definitely call the question.

We'll start with NDP-1, though. I'll do that first and then I'll do NDP-2.

(Amendment negatived)

The Chair: I'm assuming all the discussions have taken place. I think we had fulsome discussions on both NDP-1 and NDP-2, so if there's no more discussion, I'll call the question on NDP-2.

(Amendment negatived)

(Clause 3 agreed to)

(On clause 4)

The Chair: We'll move to clause 4 on which we have a proposed amendment by the Conservatives in the form of G-1. If everyone would turn to G-1, I'd like someone from the government side to make that proposal and we'll go from there.

Mr. Bob Dechert: This is the definition. This is clause 13. Are we on clause 13, Mr. Chair, just to make sure I have my notes correct?

The Chair: We're on clause 4, which deals with section 13 of the act.

Mr. Bob Dechert: Section 13 of the act. We're asking to add to the opening provision a subsection 13(0.1) with the wording:

The purpose of this section is to prevent the risk of environmental harm resulting from bulk removal.

The rest of the wording would remain the same. As I mentioned in my opening remarks, the purpose of the entire legislation, and the reason it's being dealt with here and it's not a matter of trade law, is it's about environmental protection in the international realm. This is why the bill is before the Standing Committee on Foreign Affairs and International Development.

The purpose of this bill is to ensure that very large amounts of water are not removed to the extent that they would cause environmental harm. In our view, that would make it less likely for this legislation. If someone were to be charged with failing to comply with this act and was facing a criminal or quasi-criminal penalty under the act, in our view, putting this language into the bill would make it more impervious to that kind of a challenge. Therefore, those enforcement mechanisms would stand, and the bill would have some real teeth.

● (0920)

The Chair: Thank you very much.

Is there any other discussion on this?

Go ahead, Mr. Dewar.

Mr. Paul Dewar: Thank you, Mr. Dechert, for that.

Do we have expert witnesses or advice on this to open it up a bit more? The fact is this is a private member's bill, and Mr. Miller didn't bring this forward. That's fair enough because it's somewhat technical. I'm just wondering if any of our witnesses would care to comment, or is this something that is outside their purview?

Mr. Bob Dechert: I just wanted to clarify that Mr. Miller did state, when he was here last Thursday, that he was in agreement with these amendments.

The Chair: Are there any comments?

Go ahead, Mr. Moffet.

Mr. John Moffet: I'll just emphasize what Mr. Dechert said. The amendment would clarify the reason for the prohibition, which is to focus on avoiding risks to environmental harm resulting from permanent loss of water from Canadian ecosystems. It's just a clarification that would influence any interpretation of any of the prohibition, or anything that has to do with the prohibition.

The Chair: Thank you very much.

Mr. Dewar.

Mr. Paul Dewar: Mr. Chair, I am glad to see that the government is considering things with respect to being charter-proof. That's welcome behaviour. It doesn't always happen.

I also want to note that there's a schedule at the end of the legislation as to what waterways we are speaking of. I encourage the government to continue down this path of protecting as many waterways as they can for the environment. As we know, there has been a departure from that in domestic policy with the amendments we are looking at in the budget implementation bill. If this is indeed what the intent is, to ensure there is protection environmentally of our waterways according to schedules that are fulsome, I would encourage they follow this behaviour. I would encourage them to amend their own budget implementation bill with respect to the Navigable Waters Protection Act.

The Chair: That may be a little out of scope of what we are talking about now.

Mr. Paul Dewar: It is absolutely relevant to water.

The Chair: Are there any other comments on G-1? I will call the question, then.

(Amendment agreed to)

The Chair: Thank you very much. I will move on.

Shall clause 4 carry as amended?

(Clause 4 as amended agreed to)

The Chair: I will move to clause 5.

Shall clause 5 carry? All those in favour? Those opposed?

(Clause 5 agreed to)

The Chair: Thank you very much. We're going to move to clause

Mr. Bob Dechert: Mr. Chair, if I could just a question. Did we vote on the amendment to clause 13 which deals with section 2 of the International River Improvements Act?

The Chair: No, that's coming up.

Mr. Bob Dechert: Okay, we haven't got there yet.

The Chair: Because there are no changes to clauses 6 through 9, I would just group those together.

(Clauses 6 to 9 inclusive agreed to)

The Chair: We're now going to move to clause 10. I believe we have an amendment, which is NDP-3, if you would like to turn to it.

I will get Mr. Dewar to propose this amendment and then speak to it before we vote.

Mr. Paul Dewar: You will be happy to note, Mr. Chair, that this doesn't require a long explanation. It is simply to amend the legislation so that there will be a review within five years. This is common practice.

In light of the fact that there are so many changes happening environmentally, there's a lot of concern around any legislation that has to do with environmental impact, as Mr. Dechert has mentioned. In keeping with the kind of accountability that is required in legislation, there should be a review in five years, so that we can look at all the things we discussed in committee around potential loopholes or not and ways in which this could be strengthened, if need be, by government.

Simply put, it's in keeping with a process of accountability to have a look at it in five years, which is reasonable. I've certainly been on committees where we've passed legislation that's reviewed in three years. It's a change to the act, so that it would be reviewed in five years.

• (0925)

The Chair: Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, unfortunately, once again the NDP amendment is inconsistent. It's inconsistent with other environmental legislation. My understanding is that the 10-year review of the enforcement provisions of the act is consistent with the review requirement which was added by the Environmental Enforcement Act to nine environmental statutes, including the International River Improvements Act.

If we were to make this amendment, we'd have a situation where the environmental provisions only of the International Boundary Waters Treaty Act and the International Rivers Improvements Act would be subject to a five-year review, but other aspects of those two statutes would be subject to a 10-year review. Then, of course, the Department of the Environment, which is responsible for doing that review, would have this one standing alone as an outlier with a five-year review period, and nine other statutes would have a 10-year review period.

It just doesn't make sense from a standpoint of consistency. If that's the NDP policy, they should bring forward some kind of private member's bill to amend all similar legislation to ensure there

is a consistent review period. On that basis, I would suggest that the committee should oppose this amendment.

Mr. Paul Dewar: I'm actually not sure what Mr. Dechert is referring to in terms of the environmental overview here. We're actually talking about an issue of national security when we're talking about water. Absolutely, we're at the foreign affairs committee and there's a reason that this bill was brought to the foreign affairs committee. If it was solely environmental, I believe it would be before another committee. If that's the case, is Mr. Dechert suggesting that the government is not willing to have oversight and accountability on new legislation, as is often the practice in this place and certainly in the House of Commons when we're bringing in new legislation to see if it's working or not?

As to how this would affect other agreements and statutes, with respect, I don't think that's relevant. If the government wishes to, we can review any legislation. For Mr. Dechert to try and cover by way of circuitous rhetoric, I think is unfortunate. The government is really saying they're not willing to be accountable to review things on the environment front and that's unfortunate.

The Chair: Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: My question is again for the experts. I take Mr. Dechert's point that many environmental bills, I guess all environmental bills now, by virtue of the EEA would be reviewed every 10 years. Would that include SARA, the Species At Risk Act?

Mr. Bob Dechert: I'm not sure about that. Perhaps the officials can answer.

Mr. Francis Scarpaleggia: I take Mr. Dechert's point that the International River Improvements Act is to be reviewed every 10 years. Assuming there is a conflict between this bill's requirement to have it reviewed every five years and the clause in the International River Improvements Act to be reviewed every 10 years, and the International Boundary Waters Treaty Act to be reviewed every 10 years, if there's a conflict, could this not supersede the requirements of the other acts?

In other words, we go with the five years, we review the whole act in five years even though the International River Improvements Act requires a review every 10 years. Could this not trump that?

My other question has to do with timing. If the International River Improvements Act is to be reviewed every 10 years, that would be 10 years from when, and this is five years from when?

I'm not clear on what it all means. If it's possible that the five-year review of this trumps other considerations and this whole bill could be reviewed in five years, then I would have to agree with Mr. Dewar that this is a very important piece of legislation and deserves a review in the shorter term.

That's really what I'm trying to understand. I understand Mr. Dechert's point. We want legislation to be consistent, but I'm just not sure what's possible.

•(0930)

Mr. Bob Dechert: If I could clarify my point, Mr. Chair, which is if you read proposed section 42 as it's set out in the bill, it's a review of proposed sections 24 to 41 of the act, I believe, after 10 years. That's just those sections of the act, not the whole piece of legislation. That's the point I was making. You would have a situation where the government is required to review part of a statute, not the whole statute, in five years, and then the rest of the statute in 10 years. That's inconsistent.

If it's NDP policy that statutes be reviewed every five years, that's a policy they may wish to put forward, but I would suggest they put that forward in a separate bill. The purpose of this bill, as we've been discussing here today, is environmental protection. We don't want to disturb the other elements of this legislation that have been properly debated in previous Parliaments and are there for a reason. It wouldn't make sense to come up with a new review period for some sections of these statutes when there is a standard that is set in other legislation.

Perhaps we could hear from the officials on this point.

The Chair: Mr. Moffet, did you have a response?

Mr. John Moffet: I'll start by repeating that I think the important clarification Mr. Dechert provided here is that proposed section 42 in the bill focuses only on a review of the enforcement-related provisions of the bill, proposed sections 24 to 41. This provision is a mirror of the provision that was introduced in the Environmental Enforcement Act three years ago, which required precisely the same 10-year review of the new enforcement provisions that were introduced by the Environmental Enforcement Act into nine other environmental statutes.

We have nine statutes, including the International River Improvements Act, not including the Species At Risk Act, that now have a requirement that their enforcement provisions be reviewed every 10 years. Some of those statutes also have another provision that calls for a review of the entire act, but that's only the case for two or three environmental statutes at this point in time.

The Chair: Okay.

Mr. Dewar.

Mr. Paul Dewar: I just want to further clarify that notwithstanding the government's argument here, there is already a schedule for a 10-year review. On this provision that the bill has right now, is it written such that it would be in sequence with the review, or is this going to be when the bill is brought into force?

Mr. John Moffet: This provision would essentially add this 10-year review requirement to the IBWTA. I think we already have this provision for the IRIA. It would add this provision and it would be triggered on the date that the section comes into force, as it says. It wouldn't be concurrent with the other 10-year reviews. It would be 10 years from the time that this provision comes into force, which presumably would be, if this bill passes, upon royal assent.

Mr. Paul Dewar: Chair, I think that's very important, in light of the argument that was attempted by the government. The way this is, if passed and proclaimed, it will start a new schedule separate from the argument that Mr. Dechert made. I'm simply saying that's great, let's do that, but let's have a five-year review, which is in keeping

with the practice of new legislation. That's why I think a five-year review makes sense. I don't think it creates any inconsistencies and I think that's a cogent reason for supporting it.

•(0935)

The Chair: Is there any other discussion? Then I will call the question on the proposed amendment, NDP-3.

(Amendment negated)

(Clauses 10 to 12 inclusive agreed to)

(On clause 13)

The Chair: We're going to move to government amendment G-2. I will turn it over to Mr. Dechert to propose that and to speak to it.

Mr. Bob Dechert: We're talking about the definition of "boundary waters" in clause 13. The clause proposes amending section 2 so that "transboundary waters" would have the same meaning as in the International Boundary Waters Treaty Act.

To go back to the changes that were made to clause 14, which is why I wanted to deal with this out of order, that drafting convention requires amendments to the International River Improvements Act. The first is to change the definitions of "boundary waters" and "transboundary waters" to make them consistent.

Perhaps, Mr. Chair, we could ask the officials to give us some guidance on this point.

The Chair: Mr. Moffet, do you want to take it?

Mr. John Moffet: I believe Mr. Dechert has referred to two amendments to clause 13. The first would simply amend the definition of international river improvement and add the single word "pipeline". The purpose of that amendment would be to clarify that a pipeline would constitute an improvement for the purpose of the International River Improvements Act. Thus, the pipeline would require a licence in the same way that a dam or a canal or reservoir, etc. would. We believe that this is implicit in the definition but there is no harm in clarifying this fact.

That's the first amendment.

I apologize. I didn't completely follow things. Did you also move the second amendment? Do you need me to speak to that?

Mr. Bob Dechert: My notes suggested that they should be dealt with together. Maybe I'm misreading them. If not, then we can just deal with this first amendment.

The Chair: We'll deal with the first one. We'll get to the next one very shortly.

Is there any other discussion on that?

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 13 as amended agreed to)

(On clause 14)

The Chair: We're now going to move to clause 14, and amendment G-3. I'll ask everyone to turn to G-3, and I will ask Mr. Dechert to speak to that.

Mr. Bob Dechert: The first change, Mr. Chair, makes it clear that the prohibition is for the purposes of potential risk through environmental harm resulting from a loss of water.

The second change avoids redundancy in new prohibitions introduced by Bill C-383. The amendment accomplishes this by replacing the words “non-boundary or boundary waters” in clause 14 with terminology that is consistent with that proposed in clause 4 of the bill for the International Boundary Waters Treaty Act. Clause 4 of the bill amends the International Boundary Waters Treaty Act to prohibit the bulk removal of boundary and transboundary waters and the taking of that water outside the Canadian portion of the water basin.

To avoid redundancy, the new prohibition in the International River Improvements Act should also focus on linking of all waters not covered by the International Boundary Waters Treaty Act, in other words, all waters other than transboundary and boundary waters. To accomplish that, we are proposing to amend clause 14 to use the phrase “neither boundary waters nor transboundary waters” to replace the current language, which is “non-boundary or boundary waters”. It's adding the transboundary part. This amendment would eliminate the redundancy between the two acts.

The third and final proposed change in clause 14 clarifies that the new prohibition applies only to an improvement that increases the annual flow of an international river at the border. This clarification is necessary to respect provincial jurisdiction in water management, while still ensuring that international rivers are not used as a conveyance to transfer additional water across the international boundary.

Perhaps we could ask the officials to clarify those amendments again.

● (0940)

The Chair: Are there any comments?

Go ahead, Mr. Moffet.

Mr. John Moffet: Thanks, Mr. Chair.

Mr. Dechert described three amendments. I'll speak to them in a slightly different sequence, if I may.

The first amendment would clarify the purpose of the new prohibition in the International River Improvements Act, precisely the same new purpose that the committee just agreed to add to the IBWTA prohibition, so it's having the same purpose: focused on environmental harm associated with the prohibitions in both acts. That's the rationale for the first amendment.

The next amendment—I'm going in ease of description here—would clarify that the prohibition in the International River Improvements Act applies to activities that have the effect of increasing the flow of an international river at the border. There are some activities that provinces might undertake on an international river that might affect the flow of that river within the province, within Canada, for example, pooling a river to facilitate hydroelectric activity.

The purpose of the clarification is to say that the focus of this prohibition is on preventing activities that would result in an increase

in flow across the border. We're not trying to interfere with this prohibition, with the jurisdiction of provinces to alter water flow within their boundaries. That provision is just a clarification of the intention of that prohibition.

Is there a question on that? Do you want me to stop?

The Chair: Sure.

Mr. Scarpaleggia, and then Mr. Dechert.

Mr. Francis Scarpaleggia: This is very interesting, because what we're saying here, as I understand it, is that it will be okay for a province to pool water for a hydroelectric dam even if there are environmental consequences. We're sort of contradicting the fact that we're trying to minimize environmental consequences. Then we're saying, well, let's go to the border, and if you're increasing the flow at the border, which would obviously be for the purpose of exporting water, that would be prohibited.

On the one hand we're contradicting our desire to minimize environmental consequences, and on the other hand, it seems again like a trade bill, if you follow me. I'd be interested in your comments on that.

● (0945)

Mr. John Moffet: Mr. Chair, I think it's important to emphasize that neither of these statutes is designed to provide comprehensive environmental protection associated with waters in Canada.

Jurisdiction over waters in Canada is shared federally and provincially. Provincial governments have considerable jurisdiction over the management of water within their own territories. The federal government asserts its jurisdiction over those waters in a variety of ways, not just through these two statutes but also, for example, through environmental assessment requirements, through the Fisheries Act, and other statutes. These are not the only two statutes associated with environmental impacts of water quantity and water flow in Canada.

Similarly, the amendments proposed in Mr. Miller's bill and the amendments proposed by the government through Mr. Dechert are not intended to expand the environmental scope of these two statutes. They're simply intended to clarify and make effective the specific focus of these two new prohibitions, which are focused on avoiding the potential environmental impact of increasing the flow of water out of Canada into the United States. Through these amendments we're only focusing on that particular environmental impact.

As to the trade implications, again I'll come back to the first amendment that we discussed both for the IBWTA and the IRIA. The primary focus of the prohibition is on preventing that environmental risk as opposed to addressing or regulating international trade in some way.

The Chair: Is this it to this point, or do you have a different point?

Mr. Bob Dechert: I have a small clarification to make, but perhaps Mr. Schellenberger should go first.

The Chair: Yes, thanks.

Mr. Schellenberger.

Mr. Gary Schellenberger (Perth—Wellington, CPC): I'm wondering if this will make any difference. There's talk that over time there's been a channel deepened in the St. Clair River, which is an international river, which may or may not have helped to significantly lower the water level in Lake Huron, Lake Michigan, and Georgian Bay. Would this amendment stop something like that or make it more prevalent? It seems to have happened on the American side of the St. Clair River. It's probably to make sure lakers travelling up the lake can get through, but it seems to have happened without anyone knowing. Would this stop something like that? If you dig out a channel, it lets more water run through, so it is moving water.

[Translation]

Mr. Martial Pagé: Sir, if I recall the matter correctly, the International Joint Commission studied the situation and concluded that there had been no effect on water levels. I would have to check my notes, but I think that the matter has been studied by the International Joint Commission.

The intention is a little different. It is not in order to capture massive quantities, but, as you say, it was to facilitate shipping traffic. So it is not the same kind of activity. I do not think that this legislation would affect that sort of thing. I think that it is a different area. I really do not see any connection.

I really believe that the International Joint Commission has looked into this specific matter. Unfortunately, that is all I can tell you about it.

• (0950)

[English]

The Chair: Thank you very much.

Mr. Dechert, do you have a point of clarification?

Mr. Bob Dechert: Yes, I have a point of clarification that I failed to mention earlier, Mr. Chair. In our original version of the amendments, we referred to inserting the language into section 5, which I understand is currently vacant in the statute because it was amended at some previous stage and former section 5 was deleted. In consultation with the Library of Parliament it was suggested that it would be better to put these amendments into section 4 of the statute. The nomenclature has changed from five to four.

The Chair: Thank you for that clarification.

Is there any other discussion on amendment G-3?

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 14 as amended agreed to)

The Chair: We're now going to move to amendment G-4, which I believe is another proposed amendment.

Mr. Bob Dechert: I can't find amendment G-4, so you're going to have to help me out.

The Chair: It's on page 7 of the handout. It's the last proposed amendment.

Mr. Bob Dechert: Right.

I believe I referred to this earlier, Mr. Chair, when I talked about the amendments to the definitions of "boundary waters" to make

them consistent. To give effect to the changes that were proposed to clause 14, the drafting committee requires minor consequential amendments to the International River Improvements Act. The first of these consequential amendments is to add definitions for the terms "boundary waters" and "transboundary waters" to section 2 of the act. We propose to make this change through a motion to amend clause 13 of the bill. I also mentioned the changes to clause 14.

I believe Mr. Moffet was speaking to them at one point, but may have been interrupted before he completed his discussion of the changes to the definitions of "boundary waters" and "transboundary waters". Perhaps I could ask Mr. Moffet to clarify the point I was trying to make earlier.

The Chair: Before we move that, though, I've been instructed by the Library of Parliament that this amendment seeks to amend section 7 of the International River Improvements Act. *House of Commons Procedure and Practice*, second edition, states on pages 766 and 767 that: ...an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill.

Since section 7 of the International River Improvements Act is not being amended by Bill C-383, it is inadmissible to propose such an amendment. Therefore, my ruling is that the amendment is inadmissible.

Mr. Bob Dechert: Perhaps Mr. Moffet could comment on that.

The Chair: Sure.

Mr. Moffet.

Mr. John Moffet: Thanks, Mr. Chair.

Just to clarify, Mr. Dechert referred to a suite of amendments, three amendments, all of which would affect the definitions and therefore the scope of the new prohibition in the International River Improvements Act. The first of this suite of three would amend clause 13 of the bill, which is a part of the bill and I think would therefore be within the scope of the committee to look at. The second of the suite would amend clause 14, which again is within the scope of the committee's review. The third one, however, is the one that would amend section 7 of the act, which has not been amended by the bill, and therefore subject to your ruling and the consensus of the committee, it may be outside the scope of the committee's review.

I think the first two of the three are amendments to clauses that were introduced in the bill itself.

• (0955)

Mr. Bob Dechert: Could I ask Mr. Moffet, what would the effect be if the first two amendments were made and the third one to section 7 was not made? That would obviously leave some inconsistency in the statute. Could you comment on that?

Mr. John Moffet: The government has suggested all three so that there is a coherent set of definitional provisions that would provide clarity as to the scope of the prohibition. The third one would enhance the coherence of that suite of definitional amendments.

The Chair: Actually, if I rule on an amendment, there's no debate. The only other option is to challenge the chair, in terms of response.

Mr. Bob Dechert: Mr. Chair, could I propose something? If the fact is that Bill C-383 doesn't include an amendment to section 7, can we not propose an amendment now? I think we all agree we want the bill to be consistent and the definitions to be consistent. Could we not propose an amendment now supported by the committee to include section 7 in Bill C-383 for the purposes of this amendment?

The Chair: From a process point of view, I wouldn't normally suggest this, but the first process is you need to overrule me if that's going to be the case.

Mr. Paul Dewar: The rules are straightforward. With all due respect it's ruled out of order and we deal with that first.

The Chair: The process is if you want to challenge the chair, that's the only option you have to move forward on the particular rule.

Mr. Bob Dechert: I would love to challenge you, Mr. Chair, but I will pick my fight and do it on another occasion. We'll accept your ruling.

The Chair: Okay. Thank you very much. We'll leave it at that then.

Go ahead, Mr. Dechert.

Mr. Bob Dechert: May I propose a further amendment to Bill C-383?

The Chair: You can, but you'll need to challenge me first.

Mr. Bob Dechert: I agree with that challenge.

We'll propose a fresh amendment to amend section 7 of the statute, which currently is not part of the bill.

An hon. member: Are you trying to move the same amendment?

Mr. Bob Dechert: Correct me if I'm wrong, but my understanding of the ruling is that we couldn't propose to amend something that isn't the subject of the bill. Now I'm proposing we amend the bill to include section 7 as part of the bill.

Mr. Paul Dewar: You're trying to do the same thing. What's the difference?

Mr. Bob Dechert: He had to deal with the bill as it currently sat at that time.

Mr. Paul Dewar: He can't. The bill's not finished yet.

The Chair: Once again, just for clarification, the only way to move forward on this is to challenge the chair on my ruling, if you still want to have that included.

Mr. Bob Dechert: I think what we're going to end up with, Mr. Chair, is a situation where, because of an interpretation of the rules for amending statutes, we're making inconsistent amendments to the statutes, which seems to me to be a perverse kind of result.

The Chair: Go ahead, Mr. Dewar.

Mr. Paul Dewar: Mr. Chair, let's situate ourselves as to where we are.

There was a ruling that was accepted just seconds ago. I think it's pretty clear that there are no further amendments that can be made. You can put forward other amendments but you can't reintroduce an amendment that has already been defeated. I think the option is for the government to come back with a piece to clean up the legislation.

That's been done in the past. No one is going to be shocked that this kind of thing has happened. We would carry on and pass this bill, and be it through scrutiny of regulations, or some other method within our process this could be addressed. But I don't see how we can go back to something that's already been ruled out of order as we are sitting here right now as we go through the bill. It's just not the way we do things.

•(1000)

The Chair: Okay.

Mr. Bob Dechert: Mr. Chair, I think we need to hear from the officials on the impact of having this inconsistent definition in the statute.

The Chair: Okay.

Mr. Moffet.

Mr. John Moffet: I take it we're only talking about the proposed amendment to paragraph 7(1)(b) of the act. I think the view of the government is that this would be, if I could put it in colloquial terms, nice to have, but not necessary to have. The key scope amendments were the two to clauses 13 to 14, which would clarify that the prohibition in the IRIA would address those waters not addressed by the prohibition in the International Boundary Waters Treaty Act. The goal is to have two separate consistent prohibitions without any overlap because otherwise you have statutes that overlap one another. That was the purpose of those two.

This third amendment, as I said earlier, would make the entire definitional regime more coherent. It's something that if we were drafting from scratch I think government officials would recommend. I think the earlier two amendments can stand on their own without this amendment.

Mr. Bob Dechert: On that basis, Mr. Chair, I would withdraw the third amendment.

The Chair: It's already been defeated, so we're good.

I'm going to move forward then and call clause 15.

(Clause 15 agreed to)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall the schedule carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: Thank you very much.

That completes the clause-by-clause study on Bill C-383.

I want to thank our officials from DFAIT and from the Ministry of the Environment. Thank you very much for taking the time to be here today to clarify and help us work through some of those issues.

With that, we are going to suspend the meeting and give our witnesses a chance to go. We will come back to look at the report.

Thank you very much.

[Proceedings continue in camera]

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