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• (1640)

[English]

The Chair (Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.)): Welcome to meeting number 12 of the Standing Committee on Foreign Affairs and International Development.

[Translation]

Pursuant to Standing Order 108(2) and the motion adopted by the committee on Thursday, October 29, 2020, the committee is beginning its study on the granting of arms export permits, with a particular focus on permits granted for exports to Turkey.

[English]

To ensure an orderly meeting, I encourage all participants to mute their microphones when they're not speaking and to address their comments through the chair. When you have 30 seconds remaining in your questioning or speaking time, I will signal you with this now customary piece of yellow paper. Interpretation services are available through the globe icon at the bottom of your screen.

Colleagues, our witnesses have agreed to make themselves available until 5:45. That gives us a full hour with them. I propose we continue on that basis.

[Translation]

I would now like to welcome our witnesses.

[English]

We have with us from Amnesty International Canada, Justin Mohammed, human rights law and policy campaigner, as well as Stacia Loft, articling fellow. From Project Ploughshares, we have Cesar Jaramillo, executive director, and Kelsey Gallagher, researcher. From the Rideau Institute on International Affairs, we have with us Peggy Mason, president.

Without further ado, we will start with Amnesty International for five minutes of opening remarks.

The floor is yours.

Mr. Justin Mohammed (Human Rights Law and Policy Campaigner, Amnesty International Canada): Thank you, Mr. Chair.

I'd like to begin by acknowledging that I am joining the committee from unceded Algonquin territory in Ottawa, Ontario.

We would like to thank the committee for inviting us, particularly on International Human Rights Day. We wish all of the committee members a happy International Human Rights Day.

Mr. Chair, committee members, as you may know, Canada acceded to the Arms Trade Treaty, or as we will refer to it, the ATT, in September last year, after which it became binding on Canada at international law. It is an important convention that can help prevent the commission of serious international crimes, including genocide, war crimes and crimes against humanity. This is why Amnesty International has campaigned in Canada and around the world to encourage states to adopt domestic laws that fully implement its terms.

Amnesty International is encouraged by this committee's decision to study controls, protocols and policies around the granting and freezing of arms exports. However, we would respectfully remind the committee that these measures are, quite simply, not law. The starting point must be to ensure that Canada's legal framework fully implements all of its international legal obligations under the treaty.

Bill C-47, which amended the Export and Import Permits Act, or as I will refer to it, the EIPA, was introduced to implement the ATT, and it did strengthen Canada's export control regime. However, the legal and regulatory regime that it created failed to fully implement the treaty. Several civil society organizations provided written briefs about these deficiencies to the Senate foreign affairs committee in November 2018, and again when Global Affairs Canada undertook consultations to develop a regulations package to accompany Bill C-47 in April 2019.

Allow me to provide just two examples that were highlighted in those briefs. First, article 6 of the ATT contains an absolute prohibition on certain weapons transfers, such as those that violate UN Security Council arms embargoes or transfers where there is knowledge that the arms would be used to commit genocide, crimes against humanity and war crimes. The absolute prohibition on such exports does not exist in Canadian law.

Second, there are also deficiencies around the U.S. weapons export process. Through the use of a so-called general export permit, almost all U.S. weapons exports are exempted from the review mandated by article 6 and article 7 of the ATT. Such exemptions are not permissible under the treaty.

The consequences of failing to fully incorporate the ATT in Canadian law, as my colleagues will elaborate, is that Canada continues to export weapons where there are significant concerns about the possibility of their use in the commission of serious international crimes.

I'll now turn it over to my colleague, Stacia Loft, to continue our testimony.

• (1645)

Ms. Stacia Loft (Articling Fellow, Amnesty International Canada): Thank you.

Our understanding of Canada's export review process post-Bill C-47 is informed by Global Affairs Canada's final report on weapons exports to Saudi Arabia. The Minister of Foreign Affairs ordered officials to release the document earlier this year. While this exercise in transparency is to be commended, the final report displayed serious gaps in Canada's export evaluation process.

First, the final report improperly suggests that the definition of "substantial risk" should consider whether a pattern of repetitive behaviour can be identified with respect to human rights violations. This is not the correct metric under the ATT. The prospect of risk is, and that's what needs to be considered. While the pattern of repetitive behaviour could be an indicator of risk, it is not determinative of risk. It indicates a higher threshold than the treaty requires.

Second, the final report did not rely on reports authorized by human rights or civil society organizations, which have long documented Saudi human rights violations and possible violations of international and humanitarian law. It was also selective in its treatment of the UN group of eminent experts' report from 2019. Finally, the report made errors in interpreting international humanitarian law. For example, the report is dismissive of concerns about sniper rifles, saying that they are intended to support precision targeting and thus less likely to result in civilian casualties.

While a sniper rifle is a permissible means of warfare, this does not mean that the methods of their use have been compliant. A sniper rifle in the hands of someone using it to target civilians is no less an international humanitarian law violation. If this is the rigour that is applied to questions of international humanitarian law when Canada conducts arms exports, it is undoubtedly lacking.

Why does Canada need a more rigorous export control system, specifically one that fully implements the ATT? The Saudi case is illustrative. Saudi Arabia's human rights record is beyond debate. It is an established violator of human rights both domestically and internationally. These acts all raise questions. If such a record does not constitute a risk of Canadian weapons being used to commit serious international human rights and international humanitarian law violations, then what does?

In conclusion, Amnesty International offers two recommendations for the committee's consideration. I will be brief.

First, Canada should amend its domestic legislation to ensure that it is fully compliant with all of the terms of the ATT. In the interim, the Governor in Council could enact regulations that would give those obligations the force of law.

Second and finally, Canada should reassess export permits where violations of international humanitarian law, international human rights law and gender-based violence have been alleged by domestic and international investigative bodies or by human rights and civil society organizations.

I thank you.

The Chair: Thank you very much, Mr. Mohammed and Ms. Loft.

We will now turn the floor over to Project Ploughshares, also for five minutes of introductory remarks.

Please proceed.

Mr. Cesar Jaramillo (Executive Director, Project Ploughshares): Thank you very much. Thank you for the opportunity to present before this distinguished committee.

Distinguished members of the committee, contrary to government claims, Canada does not have one of the strongest export control systems in the world.

This is not a matter of opinion or interpretation. The annual reports on Canadian military exports prepared by Global Affairs Canada confirm an unassailable fact: Today, most Canadian arms exports help to sustain autocratic regimes, to perpetuate armed conflict or to enable the violation of human rights.

A recent example concerns Canadian military exports to Turkey. Optical sensors produced in Ontario by L3Harris Wescam have been found in numerous other conflict zones including Syria, Iraq and Libya. Most recently, they were used by Azerbaijan in attacks against Armenian targets in Nagorno-Karabakh. These exports pose a substantial risk of violations of human rights and international humanitarian law. In the case of Libya, they constitute a blatant breach of an arms embargo imposed by the UN Security Council.

Canada's suspension of arms exports to Turkey following reports of misuse was welcome and necessary, but if recent history is any indication, it could be short-lived.

This was the fourth time in just over three years that Canada has announced the suspension of export permits to a country accused of violating international law. Two of the incidents involved Saudi Arabia, the top destination for Canadian arms exports, and one of the worst violators of human rights on the planet. Each time the suspension was eventually lifted when the media scrutiny died down. In the case of the Saudi exports, the suspensions did not stop a single export because they only applied to future permits.

The troubling reality is that the Canadian arms industry has become alarmingly linked with disreputable regimes that are engaged in some of the world's most devastating conflicts. We are aware that this view clashes with the carefully crafted government discourse on the high standards of rigour and transparency that purportedly inform Canada's arms export decisions, but the evidence is sturdy and compelling.

• (1650)

The world is taking notice. In September of this year, the Group of Eminent International and Regional Experts on Yemen, mandated by the United Nations Human Rights Council, issued a report that confirmed not only the pattern of human rights abuses by all parties to the conflict but also the role that Canada and other arms exporters to the warring parties have played to perpetuate the crisis.

There is a clear gap between rhetoric and practice around Canadian arms exports. It is high time for strict parliamentary oversight of this important aspect of Canadian foreign policy. A place to start might be the establishment of a subcommittee of the Standing Committee on Foreign Affairs and International Development to ensure compliance with domestic and international law, including Canada's obligations under the Arms Trade Treaty.

I will give the floor to my colleague Kelsey Gallagher.

Mr. Kelsey Gallagher (Researcher, Project Ploughshares): Thank you, Cesar.

Thank you for having us today.

Members of the committee, in recent years Canada has exported large volumes of Canadian-made L3Harris Wescam surveillance and target acquisition sensors to Turkey for use by the Turkish military. These sensors are primarily attached to the underside of aircraft, including drones, and are used to surveil potential targets on the ground. However, they should not be mistaken for mere cameras. The variant of Canadian-made sensors exported to Turkey, the Wescam MX-15D, is also fitted with a laser designator. This component directs munitions toward their targets and is vital to launching modern air strikes.

The majority of Canadian-made sensors exported to Turkey are used on the Turkish Bayraktar TB2 drone and have seen extensive use in combat across several conflict zones. Turkey has also provided them to allied actors in Libya and Nagorno-Karabakh. Turkey's provision of Wescam sensors to its allies is a textbook example of diversion, which is the illicit transfer of weapons systems to unauthorized users. The case of Canadian weapons being diverted to the conflict in Libya is particularly troublesome, as this also constitutes a breach of the almost decade-old UN arms embargo against that country.

Diversion is prohibited under the Arms Trade Treaty, to which Canada is a party. As such, the Government of Canada is obligated under international law to stem the illicit diversion of weapons systems. This would indisputably apply to the case of Turkey. Whereas Canada's temporary suspension of arms exports to Turkey is a step in the right direction, the move is long overdue. According to a UN report published last year, since at least May 2019 Turkey has been diverting drones to Libya, including the Bayraktar TB2, which is invariably equipped with Canadian-made Wescam sensors. These findings alone should have made clear the substantial risk associated with these arms exports.

Given Turkey's brazen behaviour in Libya, it should have come as no surprise to Global Affairs Canada that the same Canadian weapons would also be found illicitly fuelling the war in Nagorno-Karabakh. By all accounts, Turkey's provision of weapons to Azerbaijan substantially influenced the outcome of that conflict.

To satisfy its obligations under international law, the Government of Canada should move to fully cease the further export of such weapon systems to Turkey, or run the risk of non-compliance with the international arms control frameworks it has voluntarily acceded to.

Thank you.

The Chair: Thank you very much.

Our final set of opening remarks will come from the Rideau Institute on International Affairs.

Ms. Mason, the floor is yours for five minutes, please.

• (1655)

Ms. Peggy Mason (Former Ambassador and President, Rideau Institute on International Affairs): Thank you very much for inviting me here today.

Canada needs an independent, impartial Canadian arms export control agency. Since I became president of the Rideau Institute in June 2014, we have been tracking the long and sordid saga of our continuing arms exports to Saudi Arabia, no matter what.

These exports have continued despite heinous internal repression in the Saudi kingdom, state-planned assassinations potentially reaching onto Canadian territory and, the ultimate black eye, a UN human rights expert report explicitly naming and shaming arms exporters, including Canada, Iran and the U.K. for "helping to perpetuate the conflict" in Yemen and the almost incalculable human suffering it has engendered.

Alas, there is much more.

As you have heard, Project Ploughshares has exhaustively documented evidence of Canadian drone technology exported to Turkey being used in conflicts in Libya, Syria and Iraq. The allegations of Turkey transferring this equipment to armed groups in Libya, contrary to a decade-long UN Security Council-imposed mandatory arms embargo, are particularly shocking.

Then there is Nagorno-Karabakh.

We have seen a cynical pattern of Global Affairs suspending new export permits under the glare of media scrutiny, announcing an internal investigation and then lifting the suspension when the media hype dies down, all the while in most cases continuing the actual exports anyway under existing permits.

The Global Affairs report justifying the lifting of the latest Saudi arms permit suspension even argued that despite repeated calls by UN experts for all countries to cease their arms exports, Canadian arms were somehow not implicated. This in turn led to the UN expert group in their next report, the September 2020 one, to explicitly name Canada. Never, as a former ambassador, did I ever imagine seeing the name of Canada in such a report.

I ask the question: What is the point of Global Affairs investigating itself?

There is an obvious conflict of interest, because Global Affairs Canada is pursuing two contradictory policy objectives: enabling sales of weapons to foreign buyers on the one hand, and adhering to international and national obligations designed to protect human rights and international security that require strict limits on those sales on the other. In addition, when the minister announces an investigation by Global Affairs, he or she is really asking officials to determine whether they gave him or her bad advice the first time round. How likely are they to do that?

The new regulatory framework in place that allowed Canada to accede to the Arms Trade Treaty puts hard legal limits on the discretion of the minister to approve exports, but the problem is not these provisions as written. The problem is the law as applied or, more accurately, as not applied.

How can the Government of Canada be compelled to act in accordance with Canadian law? Currently, the only recourse citizens have, aside from the court of public opinion, is to take the Government of Canada to the Federal Court, but such legal proceedings are lengthy and expensive and necessarily after the fact. That is why we need a new independent agency to impartially administer our arms exports in full accordance with Canadian and international law.

The arguments in favour include no conflict of interest on the part of the administrators between trade promotion and respecting human rights UN arms embargoes and other Canadian legal obligations; officials not being asked to review their own past recommendations; and independent, expert legal opinion based on all available evidence, together with other requisite expertise guiding the decisions. Also, a House of Commons committee could be mandated to provide parliamentary oversight, as recommended by Project Ploughshares here today. The ultimate benefit for elected officials is that of taking the domestic politics out of the equation.

In the meantime, there are two immediate steps that Global Affairs can take to improve its current dismal record. One, begin consultations on the creation of an arms-length advisory panel as promised in April 2020 and, two, mandate an independent expert legal opinion on compliance with Canada's international legal obligations as an integral part of the current Global Affairs export permit application process.

Thank you very much.

• (1700)

The Chair: Thank you, Ms. Mason.

We will now go to our first round of questions. This is a six-minute series.

Mr. Chong, the floor is yours.

Hon. Michael Chong (Wellington—Halton Hills, CPC): Thank you, Mr. Chair.

I'd like to talk about the authorities under the Export and Import Permits Act. I'd like Ms. Mason and the witnesses from Project Ploughshares to comment on this. My understanding is that a number of years ago these authorities were delegated into Global Affairs, below the ministerial level, and that several years ago, those delegated authorities were revoked and they were put back into the minister's office.

Do you have any information on that, Ms. Mason, Mr. Jaramillo or Mr. Gallagher?

Ms. Peggy Mason: I was involved in the last update to the export control guidelines in 1986, under the Mulroney government. At that time, unless they were very uncontroversial, the export permits had to go to the minister's office. As far as I'm aware, there has been for quite some time a requirement for the minister to approve the permits.

Hon. Michael Chong: Is there anybody from Project Ploughshares on this?

Mr. Cesar Jaramillo: The minister used to have almost full authority to authorize any and all exports to any destination regardless of the human rights record of the recipient.

Recently, as part of Bill C-47, which is the legislation that was getting Canada ready to accede to the Arms Trade Treaty, that changed in a positive way. There is something now called the substantial risk clause, whereby in the risk assessment if Global Affairs Canada determines there is a risk or misuse of a certain export, the minister not only has the option but indeed the obligation to deny such exports. We are now in a much stronger position.

As my colleague, Peggy Mason, from the Rideau Institute said, that is the law. There remains a gap between the law as written and the law as implemented. It is the implementation of the law where we see severe shortcomings.

Hon. Michael Chong: To be clear, your understanding is that the authorities are no longer delegated and that they are with the minister.

Mr. Cesar Jaramillo: That is correct. That is our understanding.

Hon. Michael Chong: I have a quick question to follow-up on that.

Do we know what happened with the risk assessment conducted by Global Affairs officials in respect of these arms exports to Turkey? Do we know what the conclusion of that risk assessment was? Was it to recommend that the permits be approved or to recommend they be denied?

Ms. Peggy Mason: I'll respond first. So far as we are aware, it is still ongoing. We actually haven't heard anything. The last we heard of the investigation was The Globe and Mail report on October 30.

Hon. Michael Chong: I'm not referring to the investigation. I'm referring to the original risk assessment that would have been conducted by officials before the minister signed off on the permit.

Ms. Peggy Mason: Again, that's an excellent question about which we know nothing, because that really is the—

Hon. Michael Chong: We don't either. That's why I'm asking.

Ms. Peggy Mason: But there's another aspect to this. That is the fact it was against the backdrop of a full embargo by Canada.

Hon. Michael Chong: I understand that.

Why did the government, on April 16, I believe, change its suspension of all arms exports to Turkey?

Ms. Peggy Mason: Officials will have to answer that question because no public information has been given.

Hon. Michael Chong: We haven't got it either. That's why I'm asking the question.

In Project Ploughshares' report, I noted that Canadian military exports to Turkey rose from \$4 million in 2016 to \$152 million last year. I know you don't know exactly the makeup of that, but is it safe to assume the vast majority of that are these optical systems from Wescam industries?

• (1705)

Mr. Kelsey Gallagher: Yes, that is our understanding. We can judge that by looking at the annual report on military exports tabled annually on May 31. The majority of exports to Turkey are under ECL group 2 category 2-15, which relates to optics, imagery and that sort of thing.

Hon. Michael Chong: I would like your expert opinion on this. How much of a game-changer were these drone systems in the recent conflict in the Caucasus? Were they a minor player in what happened, or did they create a significant change in the balance of power in the region?

Mr. Kelsey Gallagher: They were widely reported to be. At least the drones they were used on were, because the majority of the reporting was on the drone, the Bayraktar TB2. The TB2s provided by Turkey to Azerbaijan were widely reported to be a game-changer. They have allowed Azeri forces to strike farther than they could very quickly, and Armenian forces, to my reading, didn't really have much of a chance to defend against them. From the outset this created a shift in the conflict.

Hon. Michael Chong: Thank you.

Ms. Mason, do you have a comment, a view or an expert opinion on these drones in the recent conflict?

Ms. Peggy Mason: I would just echo what has been said by Project Ploughshares representatives.

Hon. Michael Chong: Thank you.

The Chair: Thanks very much, Mr. Chong.

The next round goes to Dr. Fry, again for six minutes.

Go ahead, please.

Hon. Hedy Fry (Vancouver Centre, Lib.): Thank you very much.

I must say that all of your reports are very detailed. They speak about legal obligations, especially when we look at Turkey, which continues to divert arms sales, and it is prohibited from doing this. I am not trying to say that Canada has nothing to do with it, but what's the role of those NATO countries that continue to allow Turkey to violate the ATT? Do you believe—somebody who knows the innards of this thing, like Ms. Mason, can tell us—that Canada is not able to do anything because the other NATO members, and you mentioned the U.K. and the U.S.A., are putting pressure on them to keep the status quo and to okay the violations for various geopolitical reasons?

Can somebody answer that for me? It's a loaded question. I don't know the answer because none of us knows what's going on here, but can you tell me something, Ms. Mason, about how that would work internally to NATO? Then Mr. Jaramillo can respond.

Ms. Peggy Mason: Thank you very much.

First of all, I don't know of any such pressure, but the far more important point is that it's entirely beside the point. Canada has legal obligations, which it freely entered into, with respect to the Arms Trade Treaty. It also has obligations that have been imposed by the UN Security Council when we're talking about arms embargoes. It is the responsibility of the Canadian government to adhere to and fully implement Canadian law. As a practical point, NATO countries are all over the map with respect to Turkey, but the main point is that each country has the sovereign obligation to fully implement its obligations under its national law and international law. There's no way you can excuse it or say, "Somebody pressured me to not follow Canadian law."

Mr. Cesar Jaramillo: Thank you, Dr. Fry. That's an excellent question.

We often hear from NATO members, not just in this instance but in general, about the need to maintain military interoperability. That is often giving us a blanket reason for these dubious transactions, but as Ms. Mason said, that is no excuse whatsoever for failing to uphold the law. The Arms Trade Treaty and domestic Canadian law make no exemptions for military interoperability or for any other reasons. Canada is obligated to uphold the law, as are other countries that may also be encouraging behaviour. The poor behaviour of other states does not excuse Canadian poor behaviour, to put it another way.

• (1710)

Hon. Hedy Fry: Thank you.

You talked about the need to amend domestic law with regard to the ATT. What are the amendments you think we should be making? I thought the law was specific already in keeping with the ATT, but should our domestic law be amended even further? How do we keep domestic politics out of it?

Again, one knows what happens at question period when somebody gets up and asks the question and everything becomes a political minefield and the waters get muddied as opposed to our looking clearly at our legislation and at our obligations. When you look at Bill C-47, how do we amend that? Should it be amended? What are the next steps we should take to ensure...?

You talked about an arm's-length watchdog group that is going to be clear in terms of its legal obligations, its legal arm's length, etc., and that is something that could happen. How do you escape that political minefield that occurs in the House of Commons when you take this to the House, you look at voting and then everyone plays games with it? What can one do? I am asking this question not because I'm being partisan at all, but because I do not want Canada to have its name muddied internationally with our not living up to our obligations. What should domestic legislation look like?

Ms. Peggy Mason: Thank you.

The first part of your question was with respect to comments that had been made. They were made by Justin Mohammed at Amnesty International, specifically about the fact that Bill C-47 to allow Canada to accede to the Arms Trade Treaty actually did not implement all of the obligations of the Arms Trade Treaty. I would like to turn it to him to answer that part.

With respect to the arm's-length agency, I'm making a radical proposal here in traditional terms.

Hon. Hedy Fry: Yes, I know.

Ms. Peggy Mason: It's not actually radical when you consider the kind of world we live in now with the kinds of challenges and the kind of "new think" we need. It's not actually that radical at all. It's just radical for the old-time diplomacy at Global Affairs.

If an independent agency has the final decision-making, then parliamentarians wouldn't be implicated in it. The report would go to Parliament and they could debate the report. They could debate whether or not there should be new legislation and so on, but the individual decisions would be made by the independent agency.

An example, if you recall way back to the 1980s, would be the tainted tuna scandal, which led to the minister losing any right to

override the findings of inspectors. Ultimately, that led to taking things like food safety out of Agriculture Canada, which was promoting food, and putting it into a separate discrete agency—the Canada Food Inspection Agency—which has that mandate.

That was done in 1997. It's not that we can't do these kinds of things. It's just that with diplomacy, sometimes in those areas these things are made to seem more difficult than they actually are.

The Chair: Ms. Mason, I'm afraid we'll have to leave it there. Thank you very much.

Thank you, Dr. Fry.

[*Translation*]

The floor is now yours for six minutes, Mr. Bergeron.

Mr. Stéphane Bergeron (Montarville, BQ): I am going to continue in the same vein, Mr. Chair.

We have certainly seen that the Minister of Foreign Affairs has significant powers, even though those powers are clearly delineated. We have seen that the minister was actually looking to be not the only one with the monkey on his back, so to speak.

We saw it in the lifting of the moratorium on arms sales to Saudi Arabia when, right in the middle of the lockdown caused by the pandemic, the Minister made that decision, which came as a surprise to basically everyone.

I took the opportunity to communicate with the Minister and he told me that he had received a relatively independent report that showed that we could move forward. So I asked to see that report. To my great surprise, it was an internal Department of Global Affairs report, clearly designed to support and legitimize the lifting of the moratorium.

The report described human rights abuses, but argued that, basically, the abuses were inadequately documented. We have heard that argument a lot in recent weeks from Global Affairs Canada, and we are sick of it.

The minister added that, apparently, he had surrounded himself with a kind of committee of the wise, to advise him in these kinds of circumstances. Personally, I have seen not the slightest trace of this committee of the wise. Did I miss an episode?

Are you—I am talking to all the witnesses—aware of this so-called committee of the wise that is giving the Minister information and advice about the decisions he has to make on Canada's arm sales?

• (1715)

[*English*]

Mr. Cesar Jaramillo: Thank you for the question.

If I may address it briefly, we were taken aback by the lifting of the moratorium to Saudi Arabia, even if it was along the pattern of “no matter what” in terms of arms sales to Saudi Arabia. Like you said, it was a decision taken in the middle of a pandemic. It was taken nearly two years after the brutal assassination of Jamal Khashoggi by Saudi authorities at the consulate in Istanbul. It was taken shortly before Canada joined the United Nations Security Council to appeal for a ceasefire and shortly before Canada lost its bid for a seat at the United Nations Security Council. Taken together, there is something to be said about the rationale for this ill-advised decision when the risk of exports to Saudi Arabia are clear and present.

I would echo the words of Ms. Mason earlier, when she said these arms exports seem to be a deal no matter what, whereby every possible red flag has been raised and the government consistently continues determined to honour this ill-fated deal.

Ms. Peggy Mason: I wonder if I could jump in, too, on a couple of things.

Reference was made to wise men. That's an announcement that the minister made that he was going to establish a group of independent experts who would advise, but that hasn't been done yet.

A reference has also been made to what kind of an investigation actually goes on. I think we should look at the Turkish example, where, within weeks, The Globe and Mail got an independent reporter on the ground to go and take pictures in Armenia of the equipment in question, demonstrating clearly that it was Canadian Wescam technology. When Global Affairs was asked if they had sent anybody, they hadn't. Then they were asked if they were going to send anybody to check it out, and they wouldn't commit to it.

The reports say that they don't have any evidence or that there hasn't been any evidence on the ground that they could find, but so far as we can tell, they don't even make an effort to find that evidence. They certainly don't accept the documented evidence presented by international organizations like Amnesty International, Oxfam and so on.

Mr. Justin Mohammed: If I might just add one further comment on the question of the final report that is being raised, I think it's important to recognize, first, that as a matter of Canadian law, the discretion around the analysis that's to be conducted—if you look at section 7 of the Export and Import Permits Act—does leave that with the minister. The idea of having some kind of committee advise the minister may be academically interesting, but we have no details about what the minister intends to do with that information and how exactly it will intersect with his obligation under the terms of the EIPA, the Canadian legislation.

The second thing to mention about the final report is that this is our first insight into the substantial risk test, which is something that my colleague had mentioned. I would encourage committee members to have a look at the annex to that report because it does talk about how Canada is to interpret it. That's our first indication as to how officials are interpreting the question of substantial risk. If you look to the annex of that report, you'll notice that there are entire sections that are blacked out and that we don't have any more understanding about how exactly the government intends to use this criteria. As my colleague has already pointed out, the final report

itself has many troubling references to the notion of repeated use. That is not the risk analysis that is envisioned by the ATT or, for that matter, by the EIPA in Canadian law.

• (1720)

[*Translation*]

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

[*English*]

The final series in this round goes to Mr. Harris, again, for six minutes, please.

Mr. Jack Harris (St. John's East, NDP): Thank you very much.

Thank you to our witnesses for your evidence on this very crucial topic. We have, of course, the obligations under the ATT and obligations under the legislation, and as has been pointed out, there are some differences. There's something I'd like to ask, though, before I get to that.

We're talking here, in the case of Turkey, about drones and drone technology. We know that we don't need to see, by your own analysis, patterns of violations to establish a substantial risk, just a substantial risk itself. Does the drone technology per se involve a substantial risk of violations of international human rights obligations, or obligations under the treaty? I invite you all to have a quick yes or no on that because I think that in some cases it's regarded as being a violation. It's surely the case with Libya, where it's an embargo situation—yes, of course—but does that have to be assessed on a country by country basis, or does it have to have serious end-user requirements or knowledge before it can be assessed?

Perhaps we'll start with Amnesty International.

Mr. Justin Mohammed: Thank you for the question, Mr. Harris. My colleagues, I think, from Project Ploughshares and potentially Rideau Institute will have more to say.

One thing I would just mention that's important in that connection, particularly in the Turkish context, is article 7(7) of the ATT, which talks about the notion that even after an export has been granted, the state party should then continually renew the information as more of it comes out. I think that's one of the useful pieces that would come in, in the Turkish context.

Mr. Jack Harris: That's a subsequent question that I want to get into. That is part of the requirements of the ATT but it's not a part of Canadian law, so I think that's something important.

To Project Ploughshares, would your representatives tell us whether you think the drone technology itself is.... Obviously it's subject to significant human rights violations, but would you consider it to be a weapon that particularly exposes substantial risk?

Mr. Cesar Jaramillo: Yes, it is, with the caveat that exports need to be assessed on a case-by-case basis. The technology alone paints part of the picture, but you need to look at the nature of the recipient and any related precedents that would paint the full picture around risk.

Mr. Jack Harris: Thank you.

Mr. Kelsey Gallagher: Just to add to that, I would agree. This is a case-by-case basis, but it is exported as a weapon and it certainly is a weapon.

Once again, just to touch on a point I made earlier, this technology is critical for the recipient to be able to launch modern air strikes. Without these, the drones that Turkey was using in Libya, in Nagorno-Karabakh, in Syria and in Iraq, would be incapable of launching modern air strikes as we know them.

Not only are these exported as weapons but they should be seen as proper weapons due to the capabilities that they bring to the table.

Mr. Jack Harris: Of course, they also have the ability to hover or stay on point and identify targets for ground forces or other artillery forces as well, so they can be implicated in other violations even if they're not directly engaged in attacks that themselves violate international human rights obligations. I think that's another factor about drones that's been brought to our attention.

Mr. Kelsey Gallagher: That's correct.

Mr. Jack Harris: That satisfies me on that.

I am concerned about the idea of requiring states to reassess an existing permit when new information becomes available. In October of 2019, when Canada suspended the arms export permits to Turkey—just the granting of new ones, as you pointed out, but not interfering with existing permits—we were told that there were already 15 permits in existence, covering as many as 60 cameras, including replacements if they happened to be damaged. That wasn't interfered with at all.

It appears that these cameras were still being exported, even after the further suspension in April 2020 of arms exports to Turkey, under the previously granted permits.

Can I ask you whether that in itself would be a violation of the Arms Trade Treaty per se, as opposed to Canadian law in particular?

I would direct that to anybody who wishes to answer.

• (1725)

Ms. Peggy Mason: Could I jump in first?

Mr. Jack Harris: Yes, Ms. Mason.

Ms. Peggy Mason: The most basic part of an export permit is an authorization to specific users for specific purposes. If either of those conditions is breached by diversion to an unauthorized user or an unauthorized use, that is a breach of the terms of the export permit. Therefore, the government has the full authority, and actually the obligation under the ATT and Canadian legislation, to stop further exports.

Mr. Jack Harris: Do you mean even under existing permits?

Ms. Peggy Mason: Yes, that is even under existing permits. In fact, this business of keeping existing permits going is very unusual. All of the other countries—and with respect to Saudi Arabia, most of our allies—have actually suspended the exports.

Belgium, for example, doesn't export the turrets that go on Canada's armoured vehicles, the LAVs, to Canada because Canada will export them to Saudi Arabia. There's a blanket prohibition on

Belgium exporting those turrets to Canada so long as the situation is what it is in Yemen and Saudi Arabia.

This business of Canada saying that it has a moratorium, when it really doesn't because it's only new, future permits, is really very troubling. It's not the standard practice of others.

The Chair: Ms. Mason, we'll have to leave it there.

Thank you very much, Mr. Harris.

We will now go into our second round. The opening series of that round, for five minutes, goes to Mr. Morantz.

Mr. Marty Morantz (Charleswood—St. James—Assiniboia—Headingley, CPC): Thank you, Mr. Chair.

Thank you all for being here today.

In my short time in Parliament—I was elected in October of 2019—and attending these committees, I don't think I've heard a more damning round of testimony from witnesses regarding the behaviour of our government, a government that prides itself on its transparency in all aspects of its conduct.

It strikes me that this is really the root of the problem here, because we don't know why the export permits for the latest round of the Wescam drones to Turkey were approved. We do know that there was a conversation with the Prime Minister and President Erdogan in late April, and after that permits were approved.

What I'm struggling to understand is that we know there was an issue with diversion already. These Canadian drones wound up in Libya over a year before Canadian drones that were sold to Turkey also wound up in the Nagorno-Karabakh conflict. If risk assessments are to be taken seriously, how is it possible that the federal government would approve the sale of these drones to Turkey again, knowing that Turkey had already, as a NATO ally, violated the terms of the agreement by diverting technology to Libya?

Maybe Project Ploughshares could have a go at that one first.

Mr. Cesar Jaramillo: We don't know the details of the risk assessment, but I would emphasize that we do know without a doubt that they have been diverted. I want to emphasize the point that this is not a matter of opinion, speculation or interpretation, or that we're trying to stretch the perceived evidence. This is a watertight case. They have been diverted period, full stop. In fact, we're surprised that the investigation is taking so long and that they haven't come back with a decision of what's going to happen.

You are right. This should have been caught at the risk assessment stage because there was a precedent, and these exports that have now been found in Nagorno-Karabakh should never have happened. The only conclusion we can arrive at—we've been following the Committees on Arms Export Controls for more than 30 years, and we've attended every conference of the Arms Trade Treaty—is that we have a very flawed risk assessment process. Anyone who doubts the notion that we have a flawed risk assessment process should ask him or herself how we can be selling arms to Saudi Arabia, one of the worst violators of human rights on the planet. How come we're selling arms to Turkey, which is known to be diverting these weapons, and not have a flawed risk assessment process?

These incidents have set the bar impossibly low.

• (1730)

Mr. Marty Morantz: It's clear. I mean, the writing was on the wall after the diversion to Libya. It's just very curious. Maybe we'll get the minister back at some point to ask him how that happened. It's a real curiosity.

Just out of curiosity with this whole issue of diversion, Turkey's a NATO ally. I suspect they're not happy with us because we stopped issuing export permits at this point. How widespread is the problem of diversion? How do other countries deal with it? Is Turkey the only country that we know is doing it, or are there other NATO countries that are buying arms and selling them to other conflict areas?

Mr. Kelsey Gallagher: Diversion isn't necessarily super uncommon, and it has negative impacts. The proliferation of weapons obviously has negative impacts and is a fuel for conflict. However, other countries, allies of Canada, have gone above and beyond to try to stem the threat of diversion. We've seen some positive examples of how to do this in other state parties to the ATT.

An example we could look at is the regime of post-shipment verification. For instance, Germany and Switzerland have an instrument kind of baked into their authorization. When they're authorizing export permits, there's a clause essentially where, if risk is interpreted, then officials from the country exporting the weapons can go to the recipient and essentially check in and do an on-site investigation to make sure that everything is sound. That is one step that Canada could take immediately to bridge this knowledge gap.

As my colleague Cesar was mentioning, this was an abject failure in Canada's risk assessment. If civil society can dig up examples of diversion occurring from Waterloo, Ontario, then certainly Global Affairs with umpteen times our resources could also do so.

Mr. Marty Morantz: Thank you.

Those were my questions, Mr. Chair.

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

The next round goes to Mr. Fonseca for five minutes, please.

Mr. Peter Fonseca (Mississauga East—Cooksville, Lib.): Thank you, Mr. Chair, and thank you to our witnesses for joining us.

My understanding is that under the ATT, the minister must review the individual permit and the intended end use and user. If

there is evidence of the stated answers to things not being the case, such as diversion, the minister then has grounds to suspend.

That's exactly what happened in Nagorno-Karabakh. I'm going to ask Mr. Jaramillo to say whether or not that's what happened in Nagorno-Karabakh.

Mr. Cesar Jaramillo: Yes, Mr. Fonseca. Thank you. That's a good point.

As I said in my opening remarks, we have been here before, where the government, faced with increased media scrutiny, announces a suspension. I will remind the members of this committee that this was not an instance of the government being proactive in identifying this diversion in Nagorno-Karabakh. This is a result of civil society and media pushing and making these allegations come to light. We didn't see any proactivity there.

In reaction to the media scrutiny, four times in the past three years, the government announced similar suspensions. Three out of the four—and the fourth is still pending—have reverted to the permits being reinstated. Every time, the suspension coincides with heightened media scrutiny and when the media attention dies down, the government reinstates the permits. This is a matter of fact. In the past three instances, they have reinstated permits to Saudi Arabia and to Turkey after the first announcement that we would not sell them anymore.

We're at the fourth instance, so we have to take this suspension with a grain of salt. This is not a matter of bad faith. It's simply looking back at the recent precedents. Every suspension is eventually reinstated. We hope this one sticks, but there are two lessons here. First is that the government was not being proactive. It was faced with this evidence that was put before it. Second, every similar occasion in recent years has not held. It has resulted in going back to the exports being reinstated.

We hope this is not the case with the latest announced suspension.

• (1735)

Mr. Peter Fonseca: Mr. Jaramillo, I hear you, but the minister suspended them on October 5, and the Globe article—the media, as you are saying—came out on October 30.

Mr. Cesar Jaramillo: I don't have my dates in front of me.

Mr. Peter Fonseca: Those are the dates I have.

Mr. Cesar Jaramillo: Right. I can't make an educated comment on that because I don't have my timeline in front of me. There have been several media reports and there have been reports by civil society related to the arms sales.

Mr. Peter Fonseca: I'm just trying to clarify the timeline. That was the timeline.

Also, Mr. Jaramillo, earlier in some of your remarks to some of the other questioners, you mentioned that we're in a better position today. Can you expand on that?

Mr. Cesar Jaramillo: Yes. One of the great benefits of the legislative process called Bill C-47, leading to Canada's welcome accession to the Arms Trade Treaty, was the substantial risk clause and the two words "shall not". As a result of this inclusion of the substantial risk clause, it is not optional.

It used to be that the government had an obligation to consider certain factors, but as long as the factors were considered, the minister could basically authorize exports anywhere. Now, the minister has a legal obligation. If a human rights trigger is identified, then the minister "shall not" authorize those shipments. We are in a stronger position now, because the minister, again, has the obligation to deny certain export permits.

The extent to which this will continue to be implemented remains to be seen.

Mr. Peter Fonseca: Thank you.

Ms. Mason, the United States under President Donald Trump decided to withdraw from the ATT. It was never ratified through the U.S. Senate. What are the prospects for a greater universalization of the ATT in the near term and in the long term?

Ms. Peggy Mason: It will be interesting to see what happens with the incoming administration, although it is the Senate that would have to approve. That might be difficult. It's important, though.

I think we should bear in mind that on at least three occasions, Congress, on a bipartisan basis, voted to stop American arms exports to Saudi Arabia. It was only President Trump's veto that stopped that. The United States, with respect to Congress, wanted to stop arms exports to Saudi Arabia.

There may not be a likelihood of the United States ratifying the treaty. It's unlikely to get through the Senate. However, that doesn't mean there isn't a lot of pressure in Congress to act in accordance with the international legal obligations.

Mr. Peter Fonseca: Thank you.

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

[Translation]

Mr. Bergeron, you have the floor next and you have two and a half minutes.

Mr. Stéphane Bergeron: I will try to keep this short, Mr. Chair.

First, as for the cameras for the Turkish drones, I believe that the die is cast, in that some of us heard from the lips of the Turkish ambassador to Canada that Turkey has developed its own Turkish technology in manufacturing its drones. They now no longer need Canadian technology, which, actually, they probably copied.

I want to go back to a statement that Ms. Mason made in a brief submitted to the Senate committee examining bill C-47. She stressed the need to prevent abuses of commercial confidentiality.

One of the reasons that we are meeting is precisely that, at a hearing with officials from Global Affairs Canada, the answer to a number of the questions we asked was that they could not answer them, because of commercial confidentiality.

In your opinion, Ms. Mason, how can we get round this difficulty that we as parliamentarians are always faced with when the time comes to discuss these matters with representatives of Global Affairs Canada?

• (1740)

[English]

Ms. Peggy Mason: Thank you very much for that question.

This is another area, I regret to say, of abuse by Global Affairs, the abuse of the term "commercial confidentiality". The OECD actually has a definition of commercial confidentiality and it is really narrowly construed to relate to factors to do with pricing and competitiveness of bids. Therefore, that should certainly not prevent the lion's share of the information being given to parliamentarians and to the public for that matter. That was used, of course, with Saudi Arabia. We weren't allowed to know anything. It wasn't just that it was commercial confidentiality, allegedly it was a term of the agreement.

One thing I want to note right now though that doesn't get enough attention is that, in the report lifting the export suspension, the latest report, the April 2020 report on Saudi Arabia, the minister had one good thing to say and that was that the renegotiated contract with Saudi Arabia removed the penalty. The word is "eliminated". It eliminated the penalty if the export breaches the authorized use of the authorized end-user.

It also said that much more information could be given about the contract, so all in all you should be able to get a lot more information.

[Translation]

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

[English]

The final series of questions goes to Mr. Harris for two and half minutes.

Mr. Jack Harris: First of all, I think you've all said you don't have a lot of faith in the assessment process carried out by Global Affairs Canada and also commented on the lack of transparency about who's doing it. We don't know even know how many resources are given to this task it seems. The solution proposed by Ms. Mason and the Rideau Institute is that there ought to be an independent agency to do these assessments.

Is that something we would be following in some other country's footsteps in doing, Ms. Mason, or would that be something where we would be breaking new ground, as we have done, of course, in other areas of international arms issues such as the landmines issue and others?

Ms. Peggy Mason: I haven't done an exhaustive review, but certainly I think it would be fair to say that among western countries this would be groundbreaking. This would be something where Canada would be leading the way in demonstrating that we don't just say we believe in a rules-based international order, but we actually implement and we put our money where our mouth is.

So far as I know it would be groundbreaking, but I want to emphasize that I did mention at the very end an interim step that the government can do immediately. If they say they are complying with international law and Canadian law, then they should have no problem with this. That is to add to the existing process the requirement for an independent expert legal opinion, and the question would be "Will this proposed export be in compliance with Canada's legal obligations under the ATT?"

That's something we could do immediately. That would be a start towards getting the idea that this has to be based on evidence and on expert legal opinion.

Mr. Cesar Jaramillo: If I may, I agree with Ms. Mason.

Also, in the interim, as I said earlier, our recommendation is that this very committee could establish a subcommittee to be apprised of these matters, because the risk assessment process is indeed flawed. It is reactive.

Mr. Fonseca, this is from September 22, in the Globe, "Canada accused of breaching obligations under the Arms Trade Treaty". That was before the decision was made. Already in September this was in the media, which points to ad-hoc risk assessment.

Mr. Jack Harris: I think my time is up.

The Chair: Yes. Thank you.

Mr. Jack Harris: We would love to have another hour with you. We'll have to get you all back.

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

[*Translation*]

Colleagues, that brings us to the end of our meeting and almost to the end of this year in Parliament.

[*English*]

On our collective behalf, I would like to thank our witnesses for sharing their expertise and their insights with us this afternoon.

● (1745)

[*Translation*]

I would also like to thank our wonderful House of Commons team: our clerk, our analysts, our interpreters, our technicians and our pages.

[*English*]

To my fellow members on the committee and to our teams, thank you for your service and for your collaboration. I would like to wish you, your loved ones and all Canadians the very best for the holiday season. Happy Hanukkah, merry Christmas, happy Kwanza and, very importantly, a healthy, happy and successful new year.

With that, the meeting is adjourned.

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