Debates of the Senate

1st SESSION • 36th PARLIAMENT • VOLUME 137 • NUMBER 132

OFFICIAL REPORT
(HANSARD)

Tuesday, April 27, 1999

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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Debates: Chambers Building, Room 943, Tel. 995-5805

Published by the Senate
Available from Canada Communication Group — Publishing, Public Works and Government Services Canada, Ottawa K1A 0S9,
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Tuesday, April 27, 1999

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

BUSINESS OF THE SENATE

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, this afternoon will be a somewhat different afternoon.

The Hon. the Speaker: Honourable senators, order, please, so that we may hear!

Senator Carstairs: Honourable senators, the Minister of Foreign Affairs and the Minister of Defence have agreed to meet with honourable senators in Room 160 at 4:30 p.m. Therefore, as close to 4:20 p.m. as possible, rather than interrupt His Honour if we do not need to do so, we will suspend the session of the Senate in order for those senators who wish to attend that briefing to be able to do so.

We have a vote scheduled in this chamber for 5:30 p.m. this evening. Normally, the bells would commence to ring at 5:15 p.m. for that vote. However, that would only allow 45 minutes for the briefing. Therefore, it has been agreed that the bells will ring at 5:30 p.m. and that the vote will be held at 5:45 p.m., so that there will be a full hour for the briefing with the Minister of Defence and the Minister of Foreign Affairs.

I believe there is agreement in the chamber for that particular proposal.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I should like to ask a question of the Deputy Leader of the Government. Why will the briefing — as welcome as it is — be in the nature of a private briefing rather than a public one? I would feel better if what we are to hear were made public, whereas what we are to be told privately may be in confidence.

For logistical reasons, it will take us 10 minutes to leave this room and go downstairs, and then 10 minutes to get back here, if not more. Why can we not meet the ministers in this room, in a Committee of the Whole, where we will all be in place, have a public information session and feel more relaxed about an exchange of views? If we are to be briefed in private — that is, unless my suspicions are not well-founded, and I hope they are not — I have a feeling it is because we might be given some information that the government would not want made public. I would be very uncomfortable with that kind of briefing.

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I understood that there were three options on the table: One was the kind of briefing that we would have this afternoon, another was by way of a Committee of the Whole, and a third was a reference to the Foreign Affairs Committee. It was my understanding and my conclusion that, generally speaking, senators favoured the kind of briefing that we have set up for this afternoon.

• (1410)

If honourable senators had wanted to proceed by way of Committee of the Whole — and that is not to pre-judge or rule out that possibility in the future, on this or on any other subject — that should have been so stated. My conclusion was that we had a general agreement to follow this route of a private briefing this afternoon.

I wish to assure my honourable friends that the Minister of Foreign Affairs and the Minister of National Defence did not object to a Committee of the Whole. However, it was my conclusion — and I thought there was consensus — that, for now, this is the route we would like to follow.

Senator Lynch-Staunton: Honourable senators, I am not aware that preferences were given to any format over that of Committee of the Whole since, on this side, that was always our main suggestion. The word "private" only came about when we received a memo from the leader's office.

If the ministers are comfortable coming to Committee of the Whole, and the Senate itself is comfortable with that format, surely, unless there is some violent objection, we could agree to that now and carry on under normal conditions, rather than going *in camera* to be entertained on an important topic, information about which should be shared with all Canadians and which should not just be the privilege of a select few.

Senator Graham: Honourable senators, I believe we are a bit too far down the road now to start changing the understanding and the agreement that we had. I talked personally with the Leader of the Opposition on this particular point, and I understand that the deputy leader talked with her counterpart, Senator Kinsella. In organizing this briefing, I was responding to a suggestion made several weeks ago by Senator St. Germain.

I can check the record but I do believe I did suggest that there were options. However, rightly or wrongly, I came to the conclusion that, for now, this was the forum, the procedure, that we had agreed to follow.

Senator Lynch-Staunton: Honourable senators, can the Leader of the Government assure us that, whether we meet privately or publicly with the two ministers, any information they will share with us is information that can be made public?

Senator Graham: Honourable senators, the honourable senator should put that question directly to the Minister of Foreign Affairs and to the Minister of National Defence. I would not expect that Senator Lynch-Staunton will rush out of the meeting this afternoon and tell the press: "You should have heard what we just heard in there!" I do not think that that is his intention at all. In any event, he can put the question directly to both ministers. I presume that everything they will be telling us is in the public domain.

Given the numbers of senators who, it is hoped, will be attending such a session, I did not anticipate that there would be any room for the press. We had not reached any agreement, and it had not been suggested to me that we should have the press present in the room, whether it be newspapers or the broadcast media.

Senator Lynch-Staunton: Perhaps between now and four o'clock, the Leader of the Government would inquire of the two ministers who are invited to appear at this private briefing, and get their assurance that no information will be given which can only be given in private, and not in public. I, for one, would be very uncomfortable attending a private briefing and being given information that I could not publicly ask questions about because I have information which I should not be sharing.

Senator Graham: Honourable senators, it should be perfectly clear, and I agree that it would not be fair for the Honourable Senator Lynch-Staunton to use some information received today to build on a question for the Leader of the Government tomorrow, or on another day. However, I do not understand what his hesitancy is on this particular question at the present time.

Let us take the briefing in good faith. If the honourable senator wishes, I can go and ask both ministers if they will be telling us something top secret that they do not wish to have put into the public domain. I would doubt that very much.

Senator Lynch-Staunton: That makes the format even more mystifying. If everything is to be shared with everyone, let us share it in this room.

Senator Graham: Honourable senators, in all fairness, Senator Lynch-Staunton had every opportunity to suggest that we should be going the route of Committee of the Whole and nothing else. He and I have had several discussions on this particular point. He did not insist on Committee of the Whole. He thought this was a fair start. That was my conclusion. That is why I suggest that we should go ahead and try this format. If honourable senators are not satisfied, then we will try Committee of the Whole.

As honourable senators know, it happens that the ministers are available at this particular time. I do not attach urgency to the matter, but I feel that it is a matter of very great importance. According to the political press, the Minister of Foreign Affairs will be meeting with President Havel in Winnipeg, before going directly to Russia. That information is also in the public domain. There he will attend negotiations with respect to the situation in Kosovo.

Senator Lynch-Staunton: Let us not distort what our discussion was about. We always wanted to have a briefing, and we are delighted to have a briefing, but we had assumed that it would be a public briefing, and we are wondering why the insistence on a private briefing on a matter of such public importance.

Senator Graham: If you wanted a public briefing, complete with all the bells and whistles, cameras and reporters, then you should have made that clear, Senator Lynch-Staunton. My understanding is that this would be a briefing for senators only.

Senator Lynch-Staunton: No, it should be public.

The Hon. the Speaker: Honourable senators, are there any further questions on the business of the Senate for this afternoon?

Senator Carstairs, would you outline again, clearly, what the business is so that we can reach agreement?

Senator Carstairs: Honourable senators, we will suspend the session at approximately 4:20 p.m. The briefing will take place thereafter in Room 160-S. The bells will ring at 5:30 p.m. for a vote on an amendment introduced by Senator Stratton on Bill C-46 at 5:45 p.m.

The Hon. the Speaker: Is it agreed, honourable senators?

Hon. Senators: Agreed.

SENATORS' STATEMENTS

CANADA-EUROPE PARLIAMENTARY ASSOCIATION

MEETING OF ORGANIZATION ON SECURITY AND COOPERATION IN EUROPE IN PARIS, FRANCE

Hon. Jerahmiel S. Grafstein: Honourable senators, last week, as vice-chairman of the economic committee, I attended a meeting of the OSCE Extended Bureau, representing the leadership of the OSCE Parliamentary Assembly, in Copenhagen.

As I had briefly reported to the Senate, the OSCE is deeply involved in the Kosovo question, having sent over 1,400 volunteers as members of the Kosovo Verification Mission, which was withdrawn on March 23 in anticipation of the NATO action. The OSCE has been actively engaged in issues respecting the former Yugoslavia and recently, most particularly, with respect to Kosovo.

The OSCE represents 54 countries that include all former members of the Warsaw Pact and NATO, including the former Republic of Yugoslavia, whose membership is temporarily suspended. The jurisdiction of the OSCE, as honourable senators know, stretches from Vladivostok to Vancouver.

I thought it was important at this meeting that there be a consensus document which could be supported by all members represented. Hence I proposed to the meeting, supported by parliamentarians from Ukraine, Switzerland, Lithuania, Estonia and Georgia, and then, laterally, by France, Germany and the United States, that the leadership of the OSCE Assembly support the statement of the Secretary General of the United Nations, made April 9, 1999, in Geneva.

The distinguished president of the assembly took this consensus as a directive for her to issue a statement that was released following our meeting last Friday, on April 23, in Copenhagen. It stated:

> The President of the Parliamentary Assembly of the Organization for Security and Cooperation in Europe, Mrs. Hella Degn, speaking on behalf of the leadership of the Assembly, which is meeting in Copenhagen today, expressed strong support for the recent statement made by the Secretary General of the United Nations on the crisis in Kosovo.
>
> "The statement by Annan, made on 9 April 1999, is carefully balanced and reflects the deep concerns of the leadership of the OSCE Parliamenatry Assembly." said President Degn, who is also the Chairman of the Foreign Policy Committee of the Danish Parliament. President Degn pointed out that the OSCE is a Regional Organisation of the United Nations which works closely with and assists the UN in areas of crisis within the region.

• (1420)

> "This is a political, economic and human tragedy of astounding scale which will have serious repercussions for many years," Mrs. Degn said, "and involves actions and consequences which the international community has not confronted since the beginning of the Second World War."

President Degn went on to say that:

> "The OSCE area — as well as the entire world — contains many states and regions with multi-ethnic populations that must not be allowed to fall into the terrible circumstances that we are witnessing in the Balkans. We must — the OSCE, the UN, the European Union and all responsible nations — do our utmost to end this conflict and to take measures to prevent other such conflicts from occurring in the future."
>
> "The civilized world strongly condemns the cruel repression and appalling ethnic cleansing that is taking place in Kosovo and calls for the punishment of those responsible" concluded Mrs. Degn, "and I hope that all parties will listen to and heed the urging of the Secretary-General of the United Nations."
>
> President Degn also added that there will be a thorough discussion on the Kosovo crisis at the OSCE Parliamentary Assembly's Annual Session which will take place in St. Petersburg, Russia, at the beginning of July.
>
> The OSCE Parliamentary Assembly is composed of 317 Members of Parliament from 54 countries of the Organisation for Security and Cooperation in Europe.

Honourable senators, I wish to quote briefly from the statement of the Secretary General of the United Nations of April 9, 1999.

The Hon. the Speaker: I regret to interrupt the honourable senator, but his three-minute time period has expired.

Is leave granted to allow the honourable senator to finish his statement?

Hon. Senators: Agreed.

Senator Grafstein: It is important, honourable senators, that I repeat briefly the essence of the statement of the Secretary-General of the United Nations which he made in Geneva on April 9, 1999. It is most cogent in the current situation. In that statement he urged the Yugoslavia authorities:

> ...to end immediately the campaign of intimidation and expulsion of the civilian population;
>
> to cease all activities of military and paramilitary forces in Kosovo and to withdraw these forces;
>
> to accept unconditionally the return of all refugees and displaced persons to their homes;
>
> to accept the deployment of an international military force to ensure a secure environment for the return of refugees and the unimpeded delivery of humanitarian aid, and
>
> to permit the international community to verify compliance with the undertakings above.

He went on to say:

> Upon the acceptance by the Yugoslav authorities of the above conditions, I urge the leaders of the North Atlantic Alliance to suspend immediately the air bombardments upon the territory of the Federal Republic of Yugoslavia.
>
> Ultimately, the cessation of hostilities I propose above is a prelude to a lasting political solution to the crisis, which can only be achieved through diplomacy. In this context, I would urge the resumption of talks on Kosovo among all parties concerned at the earliest possible moment.

Honourable senators, I intend to give a more detailed report of the OSCE activities and the substance of the meeting in Copenhagen, which is a preliminary to the full assembly to be held in St. Petersburg, Russia, in July.

When the report of our meeting in Copenhagen is available, I will table the same in the Senate and make a fuller exposition.

ROUTINE PROCEEDINGS

BANKING, TRADE AND COMMERCE

STATE OF FINANCIAL SYSTEM—BUDGET REPORT OF COMMITTEE ON STUDY PRESENTED AND ADOPTED

Hon. Michael A. Meighen, Acting Chairman of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Tuesday, April 27, 1999

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

TWENTY-THIRD REPORT

Your Committee, to which was authorized by the Senate on Wednesday, October 22, 1997, to examine and report upon the present state of the financial system in Canada, now requests approval of funds for 1999-2000.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

MICHAEL A. MEIGHEN
Acting Chairman

(For text of appendix, see today's Journals of the Senate, *p. 1490.)*

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

Senator Meighen: Honourable senators, with leave of the Senate and notwithstanding rule 51(*g*), I move that the report be adopted now.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to and report adopted.

[*Translation*]

ADJOURNMENT

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*h*), I move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, April 28, 1999, at 1:30 p.m.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

MEETING HELD IN NIAMEY, NIGER—
REPORT OF CANADIAN DELEGATION TABLED

Hon. Rose-Marie Losier-Cool: Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, the report of the Canadian section of the Assemblée parlementaire de la Francophonie and the related financial report. This report related to the meeting of the APF Education, Communications and Cultural Affairs Commission, which was held in Niamey, Niger, on February 15 and 16, 1999.

[*English*]

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I move, seconded by the Honourable Senator Stewart, that with leave of the Senate and notwithstanding rule 58(1)(*a*):

That the Standing Senate Committee on Foreign Affairs have power to sit at 2:45 p.m. today, Tuesday, April 27, 1999, even though the Senate may then be sitting, and that rule 95(4) be suspended thereto.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to.

[*Translation*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I call your attention to the presence in our gallery of some distinguished visitors. Members of the Association francaise Montréal acceuil are here at the invitation of the Honourable Senator Prud'homme. They are accompanied by Mme Geneviève Gauchard, the wife of the French Ambassador.

Welcome to the Senate, ladies. We are delighted to see that you are interested in our deliberations.

[*English*]

QUESTION PERIOD

HUMAN RESOURCES DEVELOPMENT

AUDITOR GENERAL'S REPORT—EFFECTIVENESS OF NATIONAL CHILD BENEFIT PROGRAM—GOVERNMENT POSITION

Hon. Erminie J. Cohen: Honourable senators, the report of the Auditor General on the study of the National Child Benefit Program was tabled on April 20 in the other place. The National Child Benefit, an arrangement between the federal government, the provinces and the territories, is committed to publishing an annual report and an accountability audit. The Auditor General's report is timely in that it addresses issues of concern at an early stage of implementation. The concern expressed by the Auditor General focuses on the quality and quantity of information the public will receive.

• (1430)

My question is to the Leader of the Government in the Senate. How can the government assure Canadians that they are getting accurate and adequate information on whether the money for the program has been spent for the purposes intended and that money spent for the purpose of alleviating difficulties faced by low-income families is achieving the desired effect and outcomes. In other words, honourable senators, given the large cost of the National Child Benefit, can the federal government demonstrate that it has taken adequate measures to audit the effectiveness of the tax benefit?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, the Auditor General's report indeed had some criticisms in some areas but was very laudatory in others. One of the great checks in our system of government is the work of the Auditor General on programs such as those which have been referenced by Senator Cohen. We also have excellent public servants who monitor the programs on a regular basis, and I have great faith in those people. However, there are occasions when we do not get 100 per cent value for the money that has been allotted, but I wish to assure the honourable senator that every effort is being made by our very outstanding public servants to monitor the program very carefully.

NORTH ATLANTIC TREATY ORGANIZATION

CONFLICT IN YUGOSLAVIA—DEPLOYMENT OF GROUND TROOPS—REQUEST FOR CANADIAN SUPPORT

Hon. J. Michael Forrestall: Honourable senators, I have a question for the Leader of the Government in the Senate.

I ask the minister if his briefing notes or his own personal knowledge are such that he can indicate precisely when Canada received the request for ground forces from NATO?

Hon. B. Alasdair Graham (Leader of the Government): I do not know, honourable senators, whether it was on the weekend or yesterday. It was certainly very recent, because the Prime Minister himself made the announcement in the other place at approximately 12:15 today, after the cabinet meeting of this morning.

As a matter of fact, honourable senators, I have a copy of the announcement. If it is the desire of the Senate to have me table it in both official languages, I would be glad to do so.

Senator Forrestall: That would be an excellent idea, honourable senators.

The Hon. the Speaker: Honourable senators, the Honourable Senator Graham had asked that a document be tabled. Is it agreeable, honourable senators?

Hon. Senators: Agreed.

NATO FORCES IN YUGOSLAVIA—DEPLOYMENT OF GROUND TROOPS—ASSIGNMENT IN MACEDONIA

Hon. J. Michael Forrestall: Honourable senators, considering that this weekend's NATO summit gave a security guarantee to front-line states within the region, I ask the government leader whether the Canadian units being deployed to Macedonia will join other NATO units in responding to incursions on Macedonia's border.

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I am not aware that they will be deployed in that respect. In the initial stages, they will be attached to a British contingent and will do their training with the British. They will be used, in the initial stages, to help in humanitarian efforts.

NATO FORCES IN YUGOSLAVIA—DEPLOYMENT OF GROUND TROOPS—UNITS TO BE ASSIGNED

Hon. J. Michael Forrestall: Honourable senators, is the minister in a position today to indicate to the chamber which Canadian units, and in what numbers, will be involved?

Hon. B. Alasdair Graham (Leader of the Government): My understanding, honourable senators, is that it is a reconnaissance unit of 800 personnel, with 250 vehicles and eight helicopters.

Senator Forrestall: Not Sea Kings, I hope.

Senator Graham: No. They will be Griffins.

FOREIGN AFFAIRS

CONFLICT IN YUGOSLAVIA—POSSIBLE PEACE PROPOSAL—VISIT OF MINISTER TO RUSSIA—GOVERNMENT POSITION

Hon. Douglas Roche: Honourable senators, my question is to the Leader of the Government in the Senate. Last week I criticized the government for not doing anything to end the Kosovo war, and today I wish to commend the government for opening up a diplomatic channel with Russia, as witnessed by the forthcoming visit to Moscow of the Minister of Foreign Affairs. In that context, can the Leader of the Government inform the Senate whether Canada will bring forward, in Moscow, a proposal for a diplomatic solution to the Kosovo crisis through the involvement of Russia and the United Nations?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, as my honourable friend will know, President Yeltsin has appointed former prime minister Chernomyrdin as a special envoy. He has met with President Milosevic. The resulting peace proposal fell far short of NATO terms, but, as I indicated last week, all NATO partners, particularly the United States and Canada, continue to engage Russia. As part of that effort, the Minister of Foreign Affairs will travel to Moscow on Thursday. He will also be meeting with UN Secretary-General Kofi Annan, whose visit to Moscow happens to coincide with Foreign Minister Axworthy's visit. As well, he will be meeting with Russian Foreign Minister Ivanov.

As to the specifics of any proposal, there are proposals that have been made by NATO, the UN Secretary-General, and the European Union. They do not vary too much, except that one of the proposals by the European Community suggested that there be a 24-hour ceasefire, provided the Serbs agree to all of the terms and conditions laid down by Secretary-General, NATO, and, indeed, the European Community.

With regard to the specifics that Minister Axworthy would be bringing to the table in Russia, I am sure that he might have some proposal. It might be something that my honourable friend might wish to explore with Minister Axworthy this afternoon.

CONFLICT IN YUGOSLAVIA—RESISTANCE TO FURTHER ESCALATION IN SUPPORT OF POSSIBLE PEACE PROPOSAL—GOVERNMENT POSITION

Hon. Douglas Roche: Honourable senators, I thank the leader for that response. I may be behind the curve ball as I did not hear the Prime Minister at noon, so perhaps the leader could enlighten me in that respect.

Can we dare to hope that the Government of Canada will resist any further expansion of the war, through either ground troops or a naval blockade, in order to give this new diplomatic initiative every opportunity of succeeding?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, first, with respect to the naval blockade, using NATO ships to interdict oil supplies in the Adriatic Sea is only one of the options that would be examined with our allies. Contrary to reports in the media, no decision has been made on this issue. As such, any talk of Canada participating in a naval blockade is really premature. As we made clear on the weekend, we are looking to ensure that none of the actions we take on this front will harm our relations with Russia.

With regard to the first part of the honourable senator's question, perhaps I could just read the last few paragraphs from the Prime Minister's statement today, which I shall table in both official languages. He said:

> As Canadians also know, the government, together with our NATO allies, is also involved in seeking a diplomatic resolution to this crisis. That is why the Minister of Foreign Affairs is travelling this week to Moscow to meet with Russian officials and the Secretary-General of the United Nations.
>
> I am confident that the military and diplomatic course that NATO is pursuing will, over time, bring a just end to the crisis.
>
> But, Mr. Speaker, I would also like to assure all members that if there is a NATO request to deploy Canadian troops in combat, the House will be consulted before any final decision is taken.

[*Translation*]

NORTH ATLANTIC TREATY ORGANIZATION

CONFLICT IN YUGOSLAVIA—SUMMIT MEETING IN WAHINGTON—IMPOSITION OF EMBARGO ON MILITARY EQUIPMENT AND OIL SUPPLY—POSITION OF THE PRIME MINISTER

Hon. Fernand Roberge: Honourable senators, at the Washington summit last weekend, NATO decided to heighten military action to put further pressure on Belgrade. The Allied governments will put additional measures in place to submit the Belgrade government to heavy sanctions. These measures include more economic sanctions and the imposition of an oil embargo proposed by the European Union last week.

On this occasion, the Alliance asked the Ministers of Defence of the member countries to determine ways NATO could help stop shipments of military equipment and oil, including the initiation of naval operations in the form of a naval blockade of the ports in Montenegro. This measure also received the support of a number of countries in Eastern Europe and of Russia.

Given that NATO does not have a clear position on the imposition of an embargo or a naval blockade, which would not be in agreement with international law, could the Leader of the Government tell us what position the Prime Minister defended in this regard at last week's meeting?

[*English*]

• (1440)

Hon. B. Alasdair Graham (Leader of the Government): As I said, honourable senators, no conclusion was reached. The idea of using NATO maritime assets to interdict Milosevic's oil supplies was discussed on the weekend. All of the allies agreed that cutting off Milosevic's oil supplies would be desirable. Contrary to the media reports, however, the alliance has not taken a position on the use of NATO ships in this role. The NATO decision to proceed with an oil embargo is particularly important in order to ensure that Canadian firms do not become involved in the supply of petroleum-related products in Yugoslavia.

[*Translation*]

Senator Roberge: Could Senator Graham tell us whether the question of imposing an oil embargo against Yugoslavia will be raised in the discussions between the Minister of Foreign Affairs and the Russian mediator, former prime minister Victor Chernomyrdin?

[*English*]

Senator Graham: Honourable senators, I could only presume that that would form part of the discussion. Again, the honourable senator will have the opportunity of engaging Foreign Minister Axworthy on that point this afternoon.

Hon. A. Raynell Andreychuk: Honourable senators, to follow up on that point, the Prime Minister is quoted in *The Globe and Mail* as saying that all NATO nations decided to impose the blockade to ensure that oil would not be coming in by the other door.

Am I to assume from the previous comments of the Leader of the Government in the Senate that the Prime Minister did not make those statements?

Senator Graham: Honourable senators, I am not suggesting that at all. I am merely saying that all options are being examined.

Senator Andreychuk: Therefore, the statement in the newspaper was correct?

Senator Graham: I have not had the opportunity to read that particular story.

Senator Andreychuk: Could we get a response to that question as soon as the Leader of the Government in the Senate has had an opportunity to see *The Globe and Mail* report?

FOREIGN AFFAIRS

CONFLICT IN YUGOSLAVIA—POSSIBLE PEACE PROPOSAL—VISIT OF MINISTER TO RUSSIA—GOVERNMENT POSITION

Hon. A. Raynell Andreychuk: Honourable senators, could the Leader of the Government in the Senate advise as to whether Minister Axworthy is going to Russia on a Canadian mission, or is it with the consent of and on behalf of NATO?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, Senator Andreychuk could ask Minister Axworthy that question herself this afternoon. However, I do not believe that Canada would take such an initiative in a stand-alone situation. I believe that we would have advised our NATO allies of Minister Axworthy's visit. We have of course supported all diplomatic efforts on the part of other allied nations, and the Prime Minister and Minister Axworthy should be commended for their effort in this respect.

CONFLICT IN YUGOSLAVIA—EFFECT OF NAVAL BLOCKADE—VISIT OF MINISTER TO RUSSIA—GOVERNMENT POSITION

Hon. A. Raynell Andreychuk: Honourable senators, Canada may be assuming rotating command of the NATO standing force in the Atlantic and therefore would have a prime role in the blockade.

Therefore, in discussing the issue of Kosovo with Russia, will the minister include the effect of the blockade?

Hon. B. Alasdair Graham (Leader of the Government): I can only presume, honourable senators, that that would be the case. However, again, I shall leave it to Minister Axworthy to reply directly to Senator Andreychuk on that particularly point later today.

CONFLICT IN YUGOSLAVIA—PLIGHT OF REFUGEES—PROVISION OF ASSISTANCE IN EVENT OF PEACE ACCORD—GOVERNMENT POSITION

Hon. A. Raynell Andreychuk: Honourable senators, I have a final supplementary question. One is hoping for peace in Kosovo in the near future. However, regardless of the outcome, we will be faced with a humanitarian crisis in the Kosovo area. Is Canada currently preparing a plan for assisting in a financial, humanitarian and governmental way?

Hon. B. Alasdair Graham (Leader of the Government): Yes, honourable senators, as a matter of fact we are. In terms of humanitarian aid, I believe I indicated last week that the amount already committed by Canada was in the range of $52 million. Earlier we envisaged accepting 5,000 refugees into this country. We are still prepared to take refugees into Canada on 72-hours' notice. We are ready to live up to that commitment.

Senator Andreychuk: Perhaps my question was not properly phrased, honourable senators. If an accord is reached on Kosovo, massive reconstruction will be necessary. We do not now know on what basis that will happen, of course, but are we, at least in a preliminary way, looking at the eventual needs and the options that may be open to Canada in providing assistance?

Senator Graham: Honourable senators, the answer is very much in the affirmative.

[*Translation*]

CANADA-UNITED STATES RELATIONS

LOSS OF FAVOURED EXEMPTION FROM INTERNATIONAL TRAFFIC IN ARMS REGULATIONS—POSSIBLE TRADE DISPUTE—EFFECT ON INDUSTRY

Hon. Roch Bolduc: Honourable senators, my question is for the Leader of the Government in the Senate. Last week, Senator Kelleher asked a question about the restrictions imposed by the Americans on licenses to export defence products. The Leader of the Government told us that as soon as he left the chamber he would telephone the Minister of Foreign Affairs to find out what the situation was. Can he answer us today?

[*English*]

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I went through the door and I indeed asked the question. I was assured that the matter would probably be pursued at this past weekend's meetings in Washington by not only our minister but other officials. Unfortunately, although I have the assurance that the matter would be raised, I do not have the results. I shall attempt to bring forward a more complete answer as soon as possible.

[*Translation*]

Senator Bolduc: Honourable senators, I am asking the question because this is very important. Last week, *The Globe and Mail* reported that "the satellite industry could be grounded." We also learned that Mr. Axworthy is trying to find new forums with the Americans to settle our problems. The government defined its foreign policy and adopted a different attitude toward the Americans.

Under Mr. Mulroney and Mr. Clark, our government was relatively effective in its relations with the Americans. We were successful with these leaders, we signed treaties and we tried to improve economic relations between the two countries, to the benefit of both sides.

I do not want to make a tirade. However, we seem to be kicking the Americans and bugging them constantly. When it is not Minister Axworthy, it is Ms Copps. The magazine issue is an important one for Canada, with 5,500 jobs and $650 million. It is dangerous for the paper or lumber industry, which employs 87,000 workers and does $13 billion in trade with the United States. In the case of the plastics industry, we are talking about 62,000 workers and $5.8 billion in trade. For the steel industry, it is 34,000 workers and $4.7 billion in trade. For the textile industry, it is 35,000 workers and $1.4 billion in trade.

Americans will lose patience. People will get upset and threaten to go to Washington to try to improve things. Is the minister satisfied with this type of international relations with the Americans? Our prosperity and our security are intertwined. How can we improve this situation? I find it utterly unacceptable.

[*English*]

• (1450)

Senator Graham: Honourable senators, my honourable friend is reading from a different page than I have been reading. Historically, there have always been excellent relationships between the two closest allies on the face of the earth, Canada and the United States. That continues to be the case. Prime Minister Chrétien and President Clinton have an excellent relationship.

Senator LeBreton: On the golf course.

Senator Graham: That is an absurd interjection, Senator LeBreton, and not worthy of you as an experienced parliamentarian. The kind of relationship we have with the United States is not only beneficial to the Americans, but extremely beneficial to Canadians. As a matter of fact, that kind of relationship has helped us to eliminate the $42-billion deficit in this country. It has enabled us to bring forward a balanced budget. It has enabled us to create 1.6 million new jobs in this country since 1993.

LOSS OF FAVOURED EXEMPTION FROM INTERNATIONAL TRAFFIC IN ARMS REGULATIONS—POSSIBLE TRADE DISPUTE—TERMS OF MORATORIUM

Hon. Pierre Claude Nolin: Honourable senators, I am pleased to inform the Leader of the Government in the Senate that a few hours after our Question Period last Thursday, our Minister of Foreign Affairs met with Foreign Secretary Albright. They agreed to postpone for 120 days the revocation of Canada's exemption.

Given that the honourable leader was not aware of the 120-day postponement, could he please call the minister and ask him what are the terms and conditions of that postponement? What can we do with that 120 days to make sure we stop kicking the Americans in the heel?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, 120 days was agreed upon to enable our officials to come to some fair and equitable solution. I had that information last Thursday, and I regret that I did not put it on the record, but I was not asked about it on that particular occasion.

I am glad Senator Nolin has brought this matter to our attention today. He is absolutely right that a moratorium of 120 days was agreed to in order to determine whether a satisfactory solution could be found to the various grievances that may lie on either side of the border.

Senator Nolin: Honourable senators, this is a very serious matter. We have 120 days, or four months, to answer the concerns of the Americans and to present to them regulations to ensure that this will not happen again. Perhaps in the coming

days the minister will enlighten us as to how our government intends to bring this matter to a happy resolution with the Americans.

Senator Graham: Honourable senators, I would be pleased to do that.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I have a response to a question raised in the Senate on April 20, 1999, by the Honourable Senator Douglas Roche regarding the NATO Summit and statements by the government on nuclear policy; a response to a question raised in the Senate on April 13, 1999, by the Honourable Senator James Kelleher regarding the resolution of the interprovincial dispute in the construction industry and the absence of a dispute settlement mechanism agreement on internal trade; and a response to a question raised in the Senate on April 15, 1999, by the Honourable Senator A. Raynell Andreychuk regarding the NATO forces in the former Yugoslavia and the possible arming of the Kosovo Liberation Army.

NORTH ATLANTIC TREATY ORGANIZATION

FORTHCOMING SUMMIT—STATEMENTS OF GOVERNMENT ON NUCLEAR POLICY—REQUEST FOR TABLING

(Response to question raised by Hon. Douglas Roche on April 20, 1999)

At the Washington Summit, members will have an opportunity to discuss issues of common concern, including, if they wish, issues relating to NATO's nuclear policies. At these meetings, formal statements are not issued, rather, discussions occur in a less structured way. Therefore, there do not exist "statements" that Canada will submit to the meetings.

INDUSTRY

RESOLUTION OF INTERPROVINCIAL DISPUTE INVOLVING CONSTRUCTION INDUSTRY—ABSENCE OF DISPUTE SETTLEMENT MECHANISM IN AGREEMENT ON INTERNAL TRADE—GOVERNMENT POSITION

(Response to question raised by Hon. James F. Kelleher on April 13, 1999)

All governments of Canada, federal, provincial, and territorial, are signatories to the Agreement on Internal Trade (AIT). The AIT has provisions to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services, and investments within Canada.

If one province believes that another is acting contrary to its AIT obligations, then that province may invoke the dispute settlement provisions of the AIT. The Agreement provides for the possibility of convening impartial panels to resolve disputes. The federal government is neither an enforcer nor interpreter of its provisions and would only be involved if the parties in dispute requested the assistance of the ministerial-level Committee on Internal Trade — a possible step in the dispute procedure.

In the case of the current Ontario-Quebec construction dispute, both provinces have preferred to address their differences bilaterally probably because a number of the issues in dispute, such as taxation and the enforcement of workplace safety-related measures, lie outside the scope of the AIT.

The federal government has always argued for a stronger and broader internal trade agreement. We should be promoting open markets within Canada rather than erecting new barriers.

FOREIGN AFFAIRS

NATO FORCES IN FORMER YUGOSLAVIA—POSSIBLE ARMING OF KOSOVO LIBERATION ARMY—GOVERNMENT POSITION

(Response to question raised by Hon. A. Raynell Andreychuk on April 15, 1999)

Canada and the international community have refused to arm the Kosovo Liberation Army (KLA), a move that would be contrary to the UN arms embargo. In fact, Canada fully supported the Rambouillet peace plan, which included as a key element the need to disarm the KLA. In signing the Rambouillet text, the Kosovars also committed themselves to this. We would still see disarming the KLA as part of an eventual peace plan.

ANSWER TO ORDER PAPER QUESTION TABLED

FRANCOPHONE SUMMIT—APPLICATION FOR FUNDING—GOVERNMENT POSITION

Hon. Sharon Carstairs (Deputy Leader of the Government) tabled the answer to Question No. 142—by Senator Gauthier.

BUSINESS OF THE SENATE

ENTITLEMENT OF NON-MEMBERS TO PARTICIPATE IN COMMITTEE MEETINGS—POINT OF ORDER—SPEAKER'S RULING RESERVED

Hon. Colin Kenny: Honourable senators, I rise today on a point of order with respect to the disregard by one of our standing committees of rule 91, which deals with the participation of non-members in committee meetings. I feel my complaint is properly raised under the guise of a point of order as, according to Beauchesne's 6th edition, citation 317(1):

> Points of order are questions raised with a view of calling attention to any departure from the standing orders or the customary modes of proceeding in debate or in the conduct of legislative business...

Honourable senators, rule 91 of the *Rules of the Senate* states:

> A Senator though not a member of a committee may attend and participate in its deliberations but shall not vote.

On February 25, 1999, I wrote to the Clerk, asking him to take appropriate steps to inform me of any meetings of subcommittees of the Standing Committee of Internal Economy, Budgets and Administration, and to ensure that I received all agendas and documents to be circulated at those meetings. As both a former chair of one of the Internal Economy Committee's subcommittees, and as a former chair of the main committee itself, I am interested in following the work of that committee, and might want to attend from time to time — as might other senators who are affected by its decisions.

Honourable senators, as long as I have been here, the practice of the Senate has always been to put out a public notice of all duly constituted meetings of the Senate committees and its subcommittees, even if these meetings are held *in camera*. The reason for sending these notices is to respect of spirit of rule 91, which says that any senator may attend any committee meeting.

May I say in passing that it is an admirable rule of the Senate, one that demonstrates the equality of all senators, be they senators who support the government, senators who support the opposition, or independent senators, of which there are a growing number.This is the way in which we have structured our committees: Every senator has the right not just to attend but to participate in the proceedings of any committee or subcommittee.

This rule does not exist in the other place. There, non-members of committees may attend the committee meetings but, according to Standing Order 119, the House itself or that particular committee may order otherwise.

No such procedure exists in this chamber. The Senate would need to suspend rule 91 to order that a senator who is not a member not attend the Senate committee meeting.

Because of rule 91, our customary mode of proceeding has been to send out notices of all duly-constituted committee meetings via the Committees Directorate committee notice system. I submit, honourable senators, that this traditional practice has not always been followed by some of of the subcommittees of the Internal Economy Committee in recent months.

As an indication of this, I refer to a letter sent to all senators on March 25, 1999, by the chair of Internal Economy, concerning decisions of the Subcommittee on Senators Services and Facilities. This letter shows that, clearly, there had to have been a meeting of this subcommittee in order for them to adopt reports and submit them to Internal Economy. However, there had been no notices circulated of those meetings.

In passing, let me say that notice did appear on the cumulative list of Senate committee meetings — which we call the "white sheets" — on Wednesday, April 21, 1999, giving notice of the *in camera* meeting the next day of the Subcommittee on Finance and Budgets of Internal Economy. I thank the committee for issuing this notice. However, I believe that there is an obligation — and that is what I should like the Speaker to rule upon — on Internal Economy to publish such notices of all of the meetings of all of its subcommittees.

Some may say that this is a committee matter, and that it is up to each committee to decide how it wishes to proceed. I disagree with that point of view. Rule 91 clearly states that all of us have the right to attend any committee meeting. Each committee cannot be permitted to decide whether or not it wants to notify non-members of its meetings. By the same token, we cannot know whether a meeting is taking place unless a notice of that meeting is circulated.

• (1500)

It may be that the Internal Economy Committee has endeavoured to give some sort of dispensation to its subcommittees not to issue notices of its meetings. I cannot say that this is a fact since I cannot divulge the substance of *in camera* meetings. If that were true, however, I would like to know what authority the Internal Economy Committee had to make such a decision.

Honourable senators, I would appreciate a Speaker's ruling on this matter. It appears to be a continuous breach of order by the Internal Economy Committee. I believe it is in the interests of all senators that this matter be resolved as early as possible.

May I also say, in passing, that once a Senate committee is meeting, no senator can be asked to leave that meeting without the senator's consent. It is important that we remember that we all have a right to attend any meeting.

The Hon. the Speaker: Does any other honourable senator wish to participate on the Point of Order?

Hon. Bill Rompkey: Honourable senators, I would be interested in the Speaker's ruling on this question. The committee feels that it has acted with propriety, and will continue to do so.

We have recently re-established subcommittees. There were some subcommittees years ago but they had not been in effect for some years. We decided that it would be better for the effective running of the committee to re-establish those subcommittees. We in the main committee imposed no constraints. The subcommittees are allowed to meet whenever it is convenient. We gave them those instructions on the assumption that this would facilitate, rather than hamper, their work, and therefore the work of the committee.

Honourable senators, there are many meetings going on around here. We must build in some flexibility for subcommittees to fit their time into the agenda. That can be difficult to do now that we have more meetings.

I feel that what we have been doing is in accordance with the rules. I will be interested in your response. Of course, over the past year or so, the notices for all meetings of the Internal Economy Committee have gone to senators. Senator Kenny will know that, because he has attended meetings of the committee although he is not a committee member. He has been taking part in our deliberations. Any meeting of any committee is open to any senator. Meetings of the Internal Economy Committee are open to any senator.

No decisions are taken in subcommittees. It is important to say that subcommittees are not decision-making bodies. Subcommittees are a forum in which to formulate policy, to look into policy and to make recommendations to the main committee. If a senator wishes to participate, there is adequate opportunity to do that at the committee level. Any recommendation made by a subcommittee does not foreclose the opportunity for any senator to make a point or to participate in deliberations, or to influence the committee to his way of thinking.

These subcommittees are set up to facilitate our work. We feel we are operating within the rules, according to the best advice that we have had. We have not done this lightly or without regard to advice. I will be interested in hearing the response of the Speaker.

The Hon. the Speaker: Does any other honourable senator wish to participate in the discussion on the Point of Order?

If not, I thank Senator Kenny for raising the matter, and I thank Senator Rompkey for his comments. There is certainly an interesting point here. Rule 91 is clear that any senator can participate. On the other hand, the practice has been that committees are responsible for their own procedure and are masters of their own procedures within committee. There is here an imbalance, I suppose, between rule 91 and that past procedure. The matter deserves proper consideration so that all senators will know exactly where they stand. I will take the matter under advisement.

ORDERS OF THE DAY

EXTRADITION BILL

THIRD READING—MOTIONS IN AMENDMENT—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Bryden, seconded by the Honourable Senator Pearson, for the third reading of Bill C-40, respecting extradition, to amend the Canada Evidence Act, the Criminal Code, the Immigration Act and the Mutual Legal Assistance in Criminal Matters Act and to amend and repeal other Acts in consequence,

And on the motions in amendment of the Honourable Senator Grafstein, seconded by the Honourable Senator Joyal, P.C., that the Bill be not now read a third time but that it be amended:

1. in clause 44:

(*a*) by replacing lines 28 and 29 on page 17 with the following:

"circumstances;

(*b*) the conduct in respect of which the request for extradition is made is punishable by death under the laws that apply to the extradition partner; or

(*c*) the request for extradition is made for"; and

(*b*) by replacing lines 1 to 6 on page 18 with the following:

"(2) Notwithstanding paragraph (1)(*b*), the Minister may make a surrender order where the extradition partner requesting extradition provides assurances to the Minister that the death penalty will not be imposed, or, if imposed, will not be executed, and where the Minister is satisfied with those assurances.".

2. in Clause 2 and new Part 3:

(*a*) by substituting the term "general extradition agreement" for "extradition agreement" wherever it appears;

(*b*) by substituting the term "specific extradition agreement" for "specific agreement" wherever it appears;

(*c*) in clause 2, on page 2

(i) by adding after line 5 the following:

""extradition" means the delivering up of a person to a state under either a general extradition agreement or a specific extradition agreement.";

(ii) by deleting lines 6 to 10;

(iii) by replacing line 11 with the following:

" "extradition partner" means a State";

(iv) by adding after line 15 the following:

" "general extradition agreement" means an agreement that is in force, to which Canada is a party and that contains a provision respecting the extradition of persons, other than a specific extradition agreement.

"general surrender agreement" means an agreement in force to which Canada is a party and that contains a provision respecting surrender to an international tribunal, other than a specific extradition agreement.";

(v) by replacing lines 20 and 21 with the following:

" "specific extradition agreement" means an agreement referred to in section 10 that is in force.

"specific surrender agreement" means an agreement referred to in section 10, as modified by section 77, that is in force.";

(vi) by replacing lines 29 to 31 with the following:

"jurisdiction of a State other than Canada; or

(*d*) a territory.

"surrender partner" means an international tribunal whose name appears in the schedule.

"surrender to an international tribunal" means the delivering up of a person to an international tribunal whose name appears in the schedule."

(*d*) on page 32, by adding after line 6 the following:

"PART 3
SURRENDER TO AN INTERNATIONAL TRIBUNAL

77. Sections 4 to 43, 49 to 58 and 60 to 76 apply to this Part, with the exception of paragraph 12(*a*), subsection 15(2), paragraph 15(3)(*c*), subsections 29(5), 40(3), 40(4) and paragraph 54(*b*),

(*a*) as if the word "extradition" read "surrender to an international tribunal";

(*b*) as if the term "general extradition agreement" read "general surrender agreement";

(*c*) as if the term "extradition partner" read "surrender partner";

(*d*) as if the term "specific extradition agreement" read "specific surrender agreement";

(*e*) as if the term "State or entity" read "international tribunal";

(*f*) with the modifications provided for in sections 78 to 82; and

(*g*) with such other modifications as the circumstances require.

78. For the purposes of this Part, section 9 is deemed to read:

"**9.** (1) The names of international tribunals that appear in the schedule are designated as surrender partners.

(2) The Minister of Foreign Affairs, with the agreement of the Minister, may, by order, add to or delete from the schedule the names of international tribunals."

79. For the purposes of this Part, subsection 15(1) is deemed to read:

"**15.** (1) The Minister may, after receiving a request for a surrender to an international tribunal, issue an authority to proceed that authorizes the Attorney General to seek, on behalf of the surrender partner, an order of a court for the committal of the person under section 29."

80. For the purposes of this Part, subsections 29(1) and (2) are deemed to read:

"**29.** (1) A judge shall order the committal of the person into custody to await surrender if

(*a*) in the case of a person sought for prosecution, the judge is satisfied that the person is the person sought by the surrender partner; and

(*b*) in the case of a person sought for the imposition or enforcement of a sentence, the judge is satisfied that the person is the person who was convicted.

(2) The order of committal must contain

(*a*) the name of the person;

(*b*) the place at which the person is to be held in custody; and

(*c*) the name of the surrender partner."

81. For the purposes of this Part, the portion of paragraph 53(*a*) preceding subparagraph (i) is deemed to read:

"(*a*) allow the appeal, if it is of the opinion"

82. For the purposes of this Part, paragraph 58(*b*) is deemed to read:

"(*b*) describe the offence in respect of which the surrender is requested;" and

(*e*) by renumbering Part 3 as Part V and sections 77 to 130 as sections 83 to 136; and

(*f*) by renumbering all cross-references accordingly."

Hon. Anne C. Cools: Honourable senators, during third reading debate on April 14, Senator Grafstein quoted Minister of Justice Anne McLellan's remarks at a Senate committee about Justice Louise Arbour's support of Bill C-40. Upon reading that debate, I noted that some senators were unclear about the nature of debate in Parliament about judges, both critical and non-critical debate.

Having studied this matter thoroughly, I wish to add one authority's words about criticism of judges to that debate. That authority is Lord Hartley Shawcross. I shall quote him quoting Lord James Atkin. Both upheld the British traditions of criticism and self-criticism.

In Lord Shawcross' 1959 report entitled *Contempt of Court,* he wrote, at page 14:

> On the other hand, we feel strongly that fair criticism of judges should not be discouraged. Lord Atkin, giving the judgment of the Privy Council in *Ambard v. Attorney-General for Trinidad & Tobago*, said:
>
> > But whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way...
> >
> > Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.

Interestingly, Lord Shawcross, one of the great minds of the century, also addressed the need for judges' own vigilance against judges' own encroachments and excesses. He wrote, at page 7:

> It was said in *Scott v. Scott* by Fletcher Moulton L.J....
>
> > The courts are the guardians of the liberties of the public and should be the bulwark against all encroachments on those liberties from whatsoever side they may come. It is their duty therefore to be vigilant. But they must be doubly vigilant against encroachment by the courts themselves. In that case it is their own actions which they must bring into judgment and it is against themselves that they must protect the public.

Honourable senators, this debate reveals that Bill C-40 deserves more study, particularly since it proposes a totally novel proposition previously unknown to Canadian law. This novelty is the proposed extradition to non-states, to entities, to international tribunals, to Justice Arbour's tribunal, of persons — possibly Canadians — who are alleged to have committed war crimes.

This is interesting because, to date, Canada's record of prosecution of war criminals was inglorious. About Justice Arbour's tribunal — the United Nations International Tribunal on Rwanda and the Former Yugoslavia, this entity, this novel extradition partner — the question lingers as to why those two countries, Rwanda and Yugoslavia, were selected. Why not Somalia? Why not South Africa? Who knows? And why those time-frames?

• (1510)

I note that on March 18, 1999, Minister McLellan told the Standing Senate Committee on Legal and Constitutional Affairs:

> If my colleague the Minister of Foreign Affairs were here, he would tell you how important this is to him. In fact, he pressured us in the Department of Justice to get our drafting and consultations done and get this before Parliament.

Minister McLellan informs that Bill C-40 was driven by the Minister of Foreign Affairs, Lloyd Axworthy. Yet, I note that, curiously, Minister Axworthy did not appear before the committee. I would have thought that his testimony was essential to consideration of this bill. The progress of this bill without his contribution, unfortunately, diminishes its credibility, particularly as it seems to be his brainchild.

Honourable senators, the Minister of Justice, not the Minister of Foreign Affairs, told us that Bill C-40 is necessary for Canada to honour its international obligations. What obligations are these, obligations about which senators are uninformed, totally unconsulted, and obligations which are unelaborated?

The opinion of Parliament and the Senate is never sought when the Canadian government and the Minister of Foreign Affairs makes these commitments. The Minister of Justice told us that this new global, this new international, world orderdesires this bill, even though the Parliament of Canada has had no role in the development of Canada's foreign policy in this new world order. The Senate has never debated the creation, constitution, and operation of these two international tribunals, or Canada's role. This is most unsatisfactory. These international agreements, their binding nature, their impact on domestic law, their impact on Canadian sovereignty, and on the sovereignty of the Parliament of Canada, are begging the attention and opinion of Parliament and the Senate.

Honourable senators, the activities of the Department of Foreign Affairs are largely conducted not under statute like most ministries but under the Royal Prerogative of Her Majesty in external affairs. Most senators would agree that this notion of unlimited ministerial power, derived from the Royal Prerogative, unconsulted and undebated by Parliament, is untenable in today's new international order.

The Minister of Foreign Affairs' current powers are a relic from a previous era, when those powers over external affairs were held and exercised by the the Colonial Secretary in Imperial Britain. The role of foreign affairs minister is in need of modernization and Senate examination, particularly as, according to Minister McLellan, the United Nations Security Council

seems to mandate, to command the Parliament of Canada. To the extent that this new international world order appears to be international government by non-elected, non-responsible individuals, mostly civil servants, it is critical that the Senate hear from Minister Axworthy.

Senator Grafstein quoted Minister McLellan at the Senate committee hearing of March 18. Minister McLellan said:

> Bill C-40 has attracted strong support from the current Chief Prosecutor, Louise Arbour. Despite what may have been suggested, it is clear that Canada's obligation, as mandated by the Security Council, is to take the necessary measures under domestic law to implement the provisions of the UN resolution and the statute of Rome, including the obligation of states to comply with requests for assistance or orders issued by the tribunals. Thus, if the court submits a request for the arrest and surrender of a person in Canada, for prosecution, Canada must be in a position to arrest that person and surrender him or her to the tribunal.

Honourable senators, I noted that Senator Grafstein provided senators with copies of his correspondence with Justice Arbour. To the ensuing debate here, I would add that Justice Arbour has been actively and publicly engaging in propaganda and rallying public support for her political position on many international matters, including Bill C-40, the new International Criminal Court and even the United States' position on this court. I shall give some examples.

On May 6, 1998, Shaughn Butts wrote of Justice Arbour's support for Bill C-40 in *The Edmonton Journal* article entitled, "Tougher rules in the works; Changes to extradition laws aimed at war criminals," saying:

> Justice Louise Arbour, an Ontario Court of Appeal judge who is currently chief prosecutor at the International War Crimes tribunal in The Hague, has accused Canada of lagging behind in its international obligation to help bring suspected war criminals to justice.
>
> She said Tuesday she's pleased Canada will be able to transfer alleged suspects.
>
> 'There was a terrible void in Canadian legislation,' Arbour said in an interview from the Australian capital of Canberra.
>
> 'I think having a structure in place will avoid what otherwise would have been a terribly embarrassing situation for a country like Canada.'
>
> The pressure hasn't only come from The Hague.

A month later, she expressed support for the proposed International Criminal Court in a piece authored by herself in a June 26, 1998 commentary in *The Globe and Mail,* entitled:

> Friends and foes of a world criminal court: ON TRIAL/ Two Americans take opposite views on whether the U.S. should support the establishment of an international court to judge perpetrators of genocide. The Canadian prosecutor for a United Nations war-crime tribunal fully supports such a court — with provisos.

These headlines are informative, strategic, and instructive. Justice Arbour's piece, in her own hand, under that commentary's headline was itself entitled, "Needed: strength and independence." This article laid out her political opinions on the proposed Permanent International Criminal Court in her own vision, including her concept of universality.

Justice Arbour is quite public about her political support. She is very strategic about where, and for whom, she places it. In this instance, she places it against the United States of America's position in its non-support for, its opposition to, the proposed court. In the former article, she agitated for Bill C-40; in the latter, she agitated for the International Criminal Court in her own vision.

As we know, Justice Arbour became a major political, strategic, and public influence in the political events as they led up to the meeting in Rome and the formation of the International Criminal Court. Her political rallying is increasing, not diminishing, honourable senators. Now she wants an army at her disposal — this is a judge! In a February 28, 1999 *Calgary Herald* article, "Troops need to assist tribunal, says Arbour," David Paddon reported:

> Arbour sees her tribunal as a precursor to a permanent International Criminal Court championed by Canada. But she said there are still many hurdles to overcome, including the unwillingness of the United States to back the court.

Justice Arbour herself is quoted as saying:

> In Kosovo, even if we could complete investigations without getting access, we'll never get anybody arrested there unless and until there are international troops on the ground...

Again, in a March 6, 1999 *National Post* article by Steven Edwards entitled, "Peacekeepers should hunt war criminals: Arbour," Justice Arbour is quoted as proposing an unprecedented use of peacekeepers. She declared:

> ...the need for international criminal justice to form an appropriate partnership with peacekeeping operations.

Steven Edwards added:

> She called for 'explicit and robust' language in any peace agreement between ethnic Albanians and Serbs that would authorize NATO peacekeepers to pursue tribunal indictees.

Then, on April 21, 1999, in *The* Ottawa *Citizen*'s article entitled, "Prosecutor collects evidence of atrocities from Kosovo: Arbour vows to build cases quickly to ensure convictions," Aileen McCabe reported:

> Ms. Arbour said she needed 'unprecedented support' if she hoped to do her job 'in a time frame that will make it relevant to the resolution of...conflicts of the magnitude of what is currently unfolding in Kosovo.'
>
> British Foreign Secretary Robin Cook told reporters that his government had authorized the handover of British intelligence material to the International War Crimes Tribunal.
>
> Noting it was a $rare step' to release such material, he said British officials were collating intelligence information on 50 separate incidents in Kosovo that would be provided to Ms. Arbour when it was ready.

Justice Arbour plans prosecutorial time-frames determined not by curial needs but by political outcomes, in this instance a resolution of the conflict in Kosovo. These statements of and about Justice Arbour are self-explanatory. The righteousness or unrighteousness is not the issue. The fact is that such activities are not contemplated by Canadian law. The Judges Act of Canada does not intend nor contemplate a Canadian judge's involvement in, or in support of, a clash of arms. The sword is not for the judges," as we remember Alexander Hamilton wrote in *The Federalist* in 1788.

• (1520)

Honourable senators, Louise Arbour's activities as world strategist, world director, world legislator, world diplomat, world judge and jury, world general, world commander of armed troops, world peacekeeper, world politician, world propagandist, and world publicist are not consonant with the Canadian concept of judicial office. They are not consistent with our Judges Act, even as it was amended by Bill C-42 in November, 1996, to meet her personal situation and her personal career opportunities. In fact, her international activities are not consonant with the Canadian concept of public office of any kind, neither political, judicial, diplomatic or —

The Hon. the Speaker: Honourable Senator Cools, I wish to remind you that attacks on judges are not permitted in this house. Indeed, attacks on people who are not in a position to defend themselves are not permitted in the Senate. I have been listening to you carefully, and it seems to me that you are almost bordering on accusations, which I do not think are proper in this house.

Senator Cools: Honourable senators, as I said before, everything that I am saying is consistent with the rules of this chamber and the rules of Parliament. In addition, we are speaking about a particular bill in which this particular judge has declared quite an interest.

As I was saying, honourable senators will recall that, during debate of Bill C-42, I stated that no member of Parliament should be pressured into a vote by any judge, directly or indirectly, or by the personal career aspirations of any judge. I had said that if any judge is so animated by such concerns, drives or ambitions towards a political role, either in domestic or international affairs, then that judge should surrender judicial office and seek political office. Having said that, I then voted, albeit reluctantly, to grant Madam Justice Arbour special permission by retroactive legislation to legitimate three Orders in Council and her assumption of that United Nations position months previous to Parliament's voting the statute authorizing her to do so.

Honourable senators, we were assured that she would confine her role to a prosecutorial quasi-judicial function. She has not done so. Justice Arbour should resign from the bench.

The Hon. the Speaker: Senator Cools, I am sorry, I cannot accept the statements that you are making. It is very clear within the *Rules of the Senate* that, if senators feel that an honourable judge has not been following proper practice, there is a procedure whereby we can deal with that, but I do not believe that the kinds of statements you are making are acceptable in this chamber. I regret that. I would ask you to cease that type of statement, and indeed to withdraw the last one that you made that the judge should resign. I do not think that that is a proper course in this chamber.

Senator Cools: Honourable senators, perhaps I could clarify, then, on what rule it is that this particular intervention is being made. What rule of the Senate can be cited that I am violating?

The Hon. the Speaker: There is a very long-standing rule that we cannot make personal attacks on judges in this chamber. If there is a determination that a judge has acted improperly, there is a motion that can be made, and that is the proper way to proceed, but not by accusations in this chamber. I cannot accept those. If you persist, I will be unable to have you recorded in this chamber.

Senator Cools: Honourable senators, Canada is now in a unique situation in the former Yugoslavia, in that Canada now, by its NATO attacks, is an aggressor combatant, a peacekeeper, a prosecutor and a chief witness, all simultaneously, in the same clash of arms, the same theatre of war.

As chief prosecutor, carrying the title and trappings of the office of judge, Justice Arbour is publicly perceived as the chief judge of the tribunal, not as a prosecutor. This is not an attack, Your Honour. I am relating what I am reading in the newspapers daily.

The Hon. the Speaker: Are you citing from a specific newspaper? In that case, I would ask you to quote.

Senator Cools: I have been reading this matter for quite some time. This is not a particular quotation, but I am told —

The Hon. the Speaker: I am sorry, Honourable Senator Cools, if it is not a specific quotation, I cannot accept it as a statement in this chamber.

Senator Cools: No one here can name a single judge on that tribunal.

Honourable senators, human beings have been killing each other in fratricide for millenniums, and even in this decade. This tribunal is about selective political decisions, selective prosecutions of people for selective political purposes.

Honourable senators, I oppose the political use of curial judicial tribunals and the political uses of judges and courts. This court is of questionable origins and of uncertain jurisdiction. It was created by the Security Council of the United Nations, not the General Assembly. By Justice Arbour's close liaisons with the NATO leaders, the tribunal has now taken on the sound and the appearance of a NATO tribunal, a NATO curial instrument, assisting and supporting a military operation. It is unprecedented. I submit that this court itself will be the first victim. We should be expecting momentarily some action from this court directed towards Canadian and American soldiers, as they certainly shall also be accused of war crimes, perhaps by Russia.

Honourable senators, Senator Grafstein's amendments do not improve this bill. Presuming a purity of the UN tribunal, they do not speak to the central issue, which is the extradition to a non-state extradition partner, to an entity, to these tribunals. Many countries, member states of the United Nations, wish the Anglo-Saxon legal tradition, the common law tradition of Canada, to be weakened. Bill C-40 does that, as, for example, clauses 31 to 37, which alter the rules of evidence, admitting hearsay as evidence and permitting the use of non-sworn documents.

This extradition to non-state entities is so novel that it deserves better examination. The definition of "entities" is wanting. These entities are listed in the schedule of the bill. The Foreign Minister must tell us how this entity, a newly-minted extradition partner, will meet the standards that we in Canada can call due process. For example, does this entity tribunal guarantee an accused, once charged with an offence, a right to trial by judge and jury? Does this entity tribunal guarantee the right of an accused to know his or her accuser? Does this entity tribunal guarantee accused persons the right to cross-examine their accusers or other witnesses? Honourable senators, these are basic rights in criminal proceedings.

What are sealed indictments? Does this entity tribunal guarantee an accused the right to legal counsel of choice, culturally, racially and linguistically? Does this entity tribunal protect the security of the witnesses called by the defence? The Foreign Minister should come here before us and tell us about the workings of this tribunal and due process.

We should also invite witnesses such as Mr. Ramsey Clark, former attorney general of the United States of America, whose personal record in obtaining prosecutions of white murderers of black persons in the southern United States was legend. He is currently an international criminal lawyer who works on extraditions to this tribunal. We should hear from him. In addition, there are many Canadian lawyers, including Tiphaine Dickson, Charles Roach, Michel Marchand, John Philpot and others, who are defence counsel before this tribunal. We should hear from some of them.

Honourable senators, because of the controversies surrounding the war and around these many difficult issues, because of the consistent publicity around some of these issues, I sincerely believe that this bill should not go forward without our hearing from the Minister of Foreign Affairs. The Minister of Justice has told us clearly that it appeared to be his brainchild. I would ask senators to consider deeply, sombrely and seriously, asking Mr. Axworthy to explain some of these deep and troubling rules. It is simply not good enough for us to exist in a state of vanity. Honourable senators should know the issues.

• (1530)

The Hon. the Speaker: Honourable senators, before I hear further senators on this matter, I should like to refer you to Beauchesne, page 150, citation 493(1). It reads:

> All references to justices and courts of justice of the nature of personal attack and censure have always been considered unparliamentary, and the Speaker has always treated them as breaches of order.

The citation continues:

> (3) The Speaker has traditionally protected from attack a group of individuals commonly referred to as "those of high official station."...
>
> (4) The Speaker has cautioned Members to exercise great care in making statements about persons who are outside the House and unable to reply.

Hon. Pierre Claude Nolin: Honourable senators, I am sure the honourable senator will take a question.

The senator referred to clauses 31 through to 37 of the said bill. She said that if we were to pass the bill as is, we would authorize and sanction hearsay, which is not authorized in Canada. Can the senator be more specific, please?

Senator Cools: Yes. This was dealt with in committee proceedings. I was trying to say that many terrible things go on in the world that are beyond the reach of due process. When one moves to due process, one must follow rules very carefully. There must be proper notice, proper debate, proper exchange, proper opportunities to cross-examine, et cetera.

I have followed some of these proceedings, and I have spoken to people who have concerns about this tribunal. One of the concerns seems to be that legal standards, the common law tradition, and standards in Canada are simply too high. It is said that in order to accommodate other nations of the world, we should begin to lower them.

For example, clause 34 states:

> A document is admissible whether or not it is solemnly affirmed or under oath.

The mere fact that this entire section of the bill is entitled "Rules of Evidence" means that there is an alteration happening to allow Canada to satisfy other countries. That is what I was driving at. I understand that many other countries do not have the affluence to afford the standards that we have. My point is that if we must alter those standards, we should first have much more study.

Senator Nolin: The senator must be very specific. She says that we would allow hearsay. Of course, I would not support that.

If you read clause 32(1), you will see that this bill respects the rules of evidence in Canada. There are three exceptions, and in those three exceptions there is no reference to hearsay.

Senator Cools: I was not suggesting that the word "hearsay" was used. I am saying that that is the result. My point is that if there is doubt on these questions, we should hear from further witnesses on them.

Hon. Jerahmiel S. Grafstein: Honourable senators, I have a question on procedure. The Leader of the Opposition in the Senate chided me several days ago when I rose to make some comments and then ask my questions. I was later referred to the rule which specifies that one can make a comment as well as ask a question.

I should like to address a question to the Honourable Senator Cools.

The Hon. the Speaker: Honourable senators, the time period for questions has elapsed. Is leave granted to continue?

Hon. Senators: Yes.

The Hon. the Speaker: Please proceed, Senator Grafstein.

Senator Grafstein: I am having a little difficulty following the thread of Senator Cools' argument. It strikes me that much of her argument is directed toward the new tribunal that has been established but has not yet been ratified, and is not part of this particular bill. Senator Cools made reference to Rome and a recent statement of the minister. The government was directly involved in the establishment of the new tribunal, which has wider application than just to Yugoslavia and Rwanda.

I am confused. Do the senator's comments relate to future as well existing tribunals?

Senator Cools: I would be quite happy to clarify that for the Honourable Senator Grafstein. This is not something from my imagination. The bill itself says that. In Part I of Bill C-40, on page 2, under the definition of "State or entity," it says very clearly "an international criminal court or tribunal." That is already in the bill.

There are some other interesting things in that section. The definition includes, under (*c*), "a colony, dependency, possession, protectorate, condominium." Paragraph (*d*) says "an international criminal court or tribunal."

At the end of the bill, in an obscure section entitled "Schedule," it says:

> The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations...

and it goes on to name both Rwanda and Yugoslavia. It even cites the resolutions of the Security Council which called them into existence.

However, the definition in the bill goes further than the Rwanda and Yugoslavia tribunals. I believe that, in the testimony, they refer to the newly formed international criminal court as well.

Senator Grafstein is shaking his head, but I am only citing what is on paper.

Senator Grafstein: I do not mean to debate the issue, but I believe that it is clearly stated that the schedule applies to the two existing tribunals, not future ones.

I should like to address a more fundamental question. The honourable senator has raised the fundamental question of the international and domestic legitimacy of the existing tribunals, which are for Rwanda and Yugoslavia. In effect, the honourable senator is suggesting that there should be no international tribunals at all dealing with matters affecting crimes against humanity, such as genocide.

If in fact that is the honourable senator's position, is it also her position that these matters should be left completely to domestic jurisdictions such as Canada to deal with?

Senator Cools: Honourable senators, I am saying no such thing. I am saying, first, that I do not like ad hoc tribunals. I am opposed to the concept of ad hoc tribunals.

If we are to be able successfully to tackle these enormous questions, then it should be done on a non-selective basis, and the rules should apply to every single person and to every single country.

I have done a great deal of reading on the establishment of the tribunal for Yugoslavia and for Rwanda. This tribunal was established by a vote of the Security Council, not the General Assembly of the United Nations. It is anyone's guess as to why those two particular countries were chosen and not others. That is what is wrong with those tribunals. It is a selective prosecution. Once people are into the process of selection, who knows who gets chosen?

Senator Grafstein, in a way, you are assisting my point. We have not heard enough on the functioning of this tribunal. We have not heard enough about the standards of due process under which this tribunal is working. We have heard nothing about the operations of this tribunal. Does an accused have the guarantee of a judge and jury? Does anyone here know? We are about to pass a bill to extradite people from here back to this tribunal. Perhaps Senator Beaudoin knows the answer to this. Does that accused person, on arrival wherever, have the right to a trial by judge and jury? Can that person cross-examine their accusers?

Senator Grafstein: Yes.

Senator Cools: Does that person have the right to choose their own counsel?

Senator Grafstein: Yes.

Senator Cools: Which authorities came before us on the bill and told us that? Were these questions put to those authorities?

Senator Grafstein: It is in the rules.

Honourable senators, I am trying to follow the honourable Senator Cools' logic. In effect, she is arguing that the Nuremberg trials were ad hoc, as she defined it, and therefore illegitimate.

Senator Cools: No, I did not argue that at all, but thank you for the opportunity. Today you are my best friend, Senator Grafstein.

Nuremberg is a great example. In the Nuremberg case, you are talking about a justice of victors over the vanquished. Nuremberg is a different kettle of fish. The Allied countries that were prosecuting took their evidence. This is the point that most people miss. They had the evidence, and they got their evidence from the files of the German government after they won the war. In this particular tribunal, there is no such thing.

Quite frankly, many people have questioned the Nuremberg tribunal, and much about it was questioned. As a matter of fact, Senator Grafstein, the gentleman that I just quoted, Lord Shawcross, was the Attorney General in England at the time, and he was in charge of the Nuremberg prosecutions for the United Kingdom.

The fact is that in these situations with Rwanda and Yugoslavia, there has been no peace or victory. You are dealing with ongoing conflicts. There is no victor; there is no vanquished. You are therefore reducing it to a selective process, and who decides?

I do believe there should be an international criminal court, but we are a long way from having that, especially if we continue to travel on this road. Do you not think, honourable senators, that it is about time we had some debate in this chamber about these issues? I read about it daily everywhere, and I hear the minister repeat it. I read the proceedings, because I was away. The minister reiterated, and I put it on the record again today: The Security Council of the UN is mandating us. We must meet our international obligations. Do you not think, honourable senators, at this time when we are told that these agreements are binding, that the Parliament of Canada should have some involvement in determining what the obligations of Canadians are to these international bodies and to the UN?

I was in Brussels last week, and I heard a great deal of debate on this matter. I also heard what the Russian delegates to the conference had to say. I assure you that they do not see life at this point quite as we do.

I know there is a sense of vanity that comes into this. Canada has been extremely successful and has done a lot of good work, no doubt, but I do not think we should be overtaken by vanity. It is time for us to bring some of these issues into our purview and to study them.

Out of curiosity, can anyone here give me the name of a single judge of that tribunal?

Senator Mahovlich: Right here! Clarence Campbell!

Senator Cools: I am impressed, Senator Mahovlich. Can you give us another one?

The point is that we are not well acquainted with this subject-matter. Hundreds of thousands of people are being affected by this.

We want justice to be done, but we must be crystal clear that when we are ensuring that justice is being done, we are not adding to or creating new problems. Of course what happened in World War II bothers everyone. What happened in Rwanda bothers everyone. It is beyond our comprehension. I say to you, we could just as easily have chosen any other country. I am quite in agreement with the Americans on this. We must watch that the reaches of these systems will not reach over here to try to take some of our soldiers and then turn around and charge them with war crimes. Let us understand that the arguments frequently shift, depending on which side you are on. In this instance, we are on the side of NATO, but I think the Russians would say something quite different.

The fact of the matter is that the day is over in this land when a minister can act like a former king and use the Royal Prerogative to avoid coming to Parliament. That is one of the reasons that I put such an emphasis on the minister's testimony. I think what the minister has to tell us is critical and vital, and we should call him.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I have a question.

In your remarks, you made reference to the testimony which you believe the Minister of Foreign Affairs could give to the committee. If you feel strongly that the Minister of Foreign Affairs has valuable testimony to be proffered to assist honourable senators in their deliberation on this bill, have you given consideration to moving a motion to refer the matter back to the committee so that the Minister of Foreign Affairs could be heard?

Senator Cools: I have not given much thought to any further action. Remember, I was away. When I came back, my attention was called to this matter. I read the debate. Immediately on reading the debate, I went to the committee proceedings. I found it curious that the Minister of Foreign Affairs did not come before the committee, even though the Minister of Justice told us in her testimony that it was of great importance to him, and that he was the one who had pressured her to act.

I think that is a decision to be made collectively by all of us. I am still trying to figure out what I will do with this. I have a secret place in my heart that says that, on any bill, the responsible minister should come before us to defend his bill and to tell us how and why he arrived at it. Some of these questions could be answered quite easily. It is quite a simple matter, and I will think about it.

• (1550)

Senator Kinsella: Senator Cools, when we arrive at the stage of examining a bill and new questions or issues are brought to the fore, we have had several new issues raised in our debate at third reading on this bill. It would be a shame if we were not to seize ourselves of some of those new issues. We must give careful consideration to the process that we would follow, whether or not these issues that have been raised by Senator Joyal, Senator Grafstein and Senator Cools are issues that we just ignore, and go forward with blinders on. On the other hand, are we to take these issues seriously? Are we to give them the kind of reflection and concern that I am sure the honourable senators mentioned themselves feel about them?

The intervention of His Honour earlier in the debate was helpful. I agree with him. That guidance which we are given by Beauchesne is very important. However, in the debate earlier, Senator Cools, the matter of the consultation that took place between Senator Grafstein and Madam Justice Arbour was raised. You have alluded to Madam Justice Arbour. We heard, and we see in the testimony from the committee, that the Minister of Justice and the Attorney General had been consulting with Madam Justice Arbour.

My question to you is: When you focus on what the parliamentarians are doing in approaching members of the bench, as opposed to the way you are coming at it, do you have any advice for us?

Senator Cools: I wish to thank the honourable senator for that question. I shall be thinking about whether or not I will move a motion to refer the bill back to committee. Obviously, I could not do it until the debate moved on a bit; however, I will be considering that.

There is so much nonsense and stupidity repeated in today's community that quite often it no longer seems to be the stupidity that it is. Often, one must do a great deal of work to sort out the dos and do nots, the shoulds and the should nots, and so on. Quite often, what we are talking about is non-substantial. However, what we are dealing with here is a bunch of issues, first, that enough of us simply do not know enough about. That is not because we are bad or insufficient, but because we are all burdened in so many different ways, and we are all so very busy on many different fronts because the workload here is enormous and there are many different issues before us.

Every day when you open up the newspaper, Senator Kinsella, there is another article citing Madam Justice Arbour. We cannot deny that. That is in the public realm. Second, I have read these rules, and I would be prepared to move a motion to look at this point. However, in my mind I did not personally attack Madam Justice Arbour. If we remember, during debate on Bill C-42, that was one of the questions that was raised by a member on your side, a member who raised the issue of this persona travelling with the rubrics and the trappings of office because one does not shed them. I argued, if you will recall, in that vein.

I am attempting to say that these problems are so enormous that we are in danger of being engulfed by them. It is time for us to wake up and smell the roses, because Canada is no longer in its innocence, as it used to be across the world.

Honourable senators, when I went to an international conference a few days ago, I was amazed at the low place to which our country has fallen. I did not know that because my mind is still back in the years when Canada led on this and that, and England led, and so on. We have an opportunity, as senators, to study the issues. In addition to having an opportunity, we have a duty.

I have read all of this. I know the sections. I am well acquainted with the Judges Act. I have read every single Judges Act for the past 100 years going back to 1867. I have read every single intervention on this floor, and on the floor of the other place, about judges. I know that I am within my rights.

Healthy criticism is desirable because our discussion square should not be silent; real pluralism means to bring forward your views and let the debate go on. Let us talk and let us have an exchange. Quite often people tell us to be restrained. They do not mean restrained, they mean silent.

We have an opportunity here. I will give the honourable senator's proposition some serious thought. I do think that the Minister of Foreign Affairs has a duty to come before the Senate and tell us about this bill and the impact it will have on the country and on the international scene.

On motion of Senator Pearson, debate adjourned.

[*Translation*]

COSTAL FISHERIES PROTECTION ACT
CANADA SHIPPING ACT

BILL TO AMEND—SECOND READING

Hon. Fernand Robichaud moved that Bill C-27, to amend the Coastal Fisheries Protection Act and the Canada Shipping Act to enable Canada to implement the agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks and other international fisheries treaties or arrangements, be read a second time.

He said: Honourable senators, once Bill C-27 is passed Canada will be able to ratify the UN fisheries agreement on the conservation and management of straddling fish stocks such as cod and turbot in the Northwestern Atlantic and highly migratory fish. The UN Fisheries Agreement was reached in 1995 and Canada was one of the first countries to sign it, on December 4, 1995.

This agreement is aimed at solving the problem of overfishing on the high seas, which jeopardizes many unregulated species. Overfishing beyond the exclusive economic zone is a concern for a large number of countries including Peru, Chile, and Argentina, and at home, in Canada, on the Grand Banks of Newfoundland, of course.

[*English*]

The problem of over-fishing in international waters has been on the Canadian government's agenda for more than 20 years. UNFA must receive 30 instruments of ratification before it comes into force. Thus far, 21 ratifications have been received. This agreement will allow mechanisms to be put in place to establish and strengthen conservation and management measures.

Bill C-27 amends two acts: First, the Coastal Fisheries Protection Act, an act to regulate fishing by non-Canadians in Canadian waters, to manage and protect non-migrant species on the continental shelf beyond Canadian fishing waters boundaries; and, second, the Canada Shipping Act, an act regulating the activities of Canadian vessels in all waters and foreign vessels in Canadian waters.

UNFA provides guiding principles for the conservation and management of straddling and highly migratory fish stocks, including the use of the precautionary approach, the compatibility of measures applied inside and outside coastal states' waters to minimize pollution, waste, discards and by-catch. We cannot put too much emphasis on the implementation of strict and precise regulations to enforce such principles when fishing vessels do not respect the agreement and, therefore, compromise our Canadian resources.

• (1600)

The agreement requires flag states to ensure that their vessels comply with measures set out by regional fisheries organizations, whether they are members to such organizations or not, and to ensure that they do not engage in activities that undermine the effectiveness of these measures.

UNFA offers a strong compliance and enforcement regime, a regime which allows states other than the flag state to take action, such as boarding and inspecting a vessel flying the flag of another state that is party to UNFA, without prior authorization of the flag state, to ensure that the vessels are complying with conservation and enforcement measures developed by regional fisheries organizations.

For Canada, this means that a vessel flying the flag of a state party to UNFA may be boarded by Canadian enforcement officers, without prior consent of the flag state, to verify that the vessel is complying with the fishing measures adopted by a regional fisheries organization to which Canada is party, such as the Northwest Atlantic Fisheries Organization, or NAFO. UNFA then provides that if a serious violation to the fishing measures is found, the information officers must notify the flag state. The flag state has three days to respond to this notice. After a flag state has been notified, three scenarios are possible under the agreement.

First, the flag state may respond by consenting to Canada taking additional enforcement action against the vessel, including bringing the vessel to port and continuing its investigation. Second, if the flag state responds with appropriate measures to investigate and take enforcement action, then the enforcement officers would turn over the vessel to the flag state for further action. Third, if the flag state does not respond within the three-day period, or fails to investigate and take enforcement action, if the evidence so warrants the enforcement officers may remain on board the vessel and continue their investigation.

[*Translation*]

For Canada this means these provisions will permit Canadian enforcement action against vessels flying the flags of states taking part in the United Nations Fisheries Agreement whether or not they are also members of the Northwest Atlantic Fisheries Organization. The agreement also makes provision for compulsory and binding dispute settlements concerning the interpretation or application of the UNFA itself.

Under both the United Nations Convention on the Law of the Sea and the UN Fisheries Agreement state parties may choose, at the time of signature, ratification or accession or, thereafter, from among the International Court of Justice, the International Tribunal for the Law of the Sea and either general or special arbitration.

There will be strict and specific enforcement action in order to resolve to the extent possible the problems of overfishing on the high seas. In the past, despite our efforts to protect straddling and highly migratory fish stocks, the progress made by NAFO, and the adoption of the United Nations Convention on the Law of the Sea, there was still overfishing in the Northwest Atlantic outside the 200-mile limit.

This contributed to the decline of straddling fish stocks, including cod and certain flatfish, including turbot. In 1989, Canada launched a massive campaign to end overfishing in the Northwest Atlantic. In 1990, we organized a conference, the main theme of which was fishing on the high seas.

This conference brought together specialists from the main coastal nations, whose primary goal was to develop more effective guidelines and regulations for anything having to do with fishing on the high seas. At the 1992 United Nations Conference on Environment and Development, Canada won international support for a conference dealing exclusively with the conservation and management of straddling and highly migratory fish stocks.

This Conference ended in August 1995 with the adoption of the UN Fisheries Agreement, and the signing began in December 1995.

It is very important to point out that States have a strict legal responsibility and must take the necessary measures to ensure that their vessels comply with conservation and management measures.

They must also control their vessels through licences, authorizations and fishing permits, in compliance with procedures adopted at the subregional, regional or world level.

In this bill, the provisions relating to regulations and enforcement measures are very clear. The participating states must ensure that the vessels flying their flags comply with the measures by having them inspected, by immediately conducting a thorough investigation when an offence has been committed, by demanding the necessary information, and by ensuring that any indicted vessel does not take part in high seas fishing operations until the sanctions have been executed.

Honourable senators, with this bill it is clear that our priority is to establish clear, accurate and effective rules to do our utmost to fight high seas overfishing, which is partly responsible for the significant drop in fish stocks that has affected fishers and communities along the Atlantic Coast.

We must not allow our Canadian resources to be threatened in this manner. This is why it is important that the States that ratify the UNFA undertake to fish responsibly in order to respect the basic premises of the Agreement, in particular to ensure the conservation and management of straddling and highly migratory fish stocks. The adoption of Bill C-27 is certainly one of the essential steps in preserving and restoring valuable fish stocks.

Adoption of this bill and ratification of the UNFA will allow vigorous and credible promotion of its principles and values here and throughout the world.

We cannot put right the errors of the past, but we can take action to do what is best for now and for the future. By working with our international partners, we can ensure sustainable management of stocks for the benefit of future generations.

Honourable senators, I therefore urge you to pass this bill so that Canada can take the necessary action to ratify the UNFA.

[*English*]

Hon. C. William Doody: Honourable senators, I should like to offer a few comments relative to this piece of legislation.

This bill has had a long and difficult journey in trying to find its way to the Senate. It was proposed in December of 1997 and has had several transformations and incarnations in the other place. Eventually, it was changed into the vehicle that is now here before us. However, I think the principle of the bill is the same: It is an attempt to put some conservation into effect in terms of the straddling fish stocks, particularly on the East Coast.

Honourable senators, why did Bill C-27 take so long to reach us? At first I thought it was merely a matter of priorities and sloppy management in the handling of government business in the other place. It could very well have been the debate or the ongoing friction, as it were, between the Department of Fisheries and the Department of External Affairs. In this particular case, read "international trade" for "foreign affairs" when it comes to the fisheries questions. Issues are often strongly influenced by the priorities or plans or intentions of the bureaucrats and the ministries governing foreign affairs and trade.

• (1610)

That feeling of mine was reinforced by a letter that I received from the icon of environmentalism in the other place, Mr. Caccia. When Mr. Caccia was soliciting support for the executive position on the Canadian European Parliamentary Association, he wrote a letter to the members of Parliament saying:

> Fisheries is an unresolved item on the Canada-European Union agenda. It was raised in a forceful way by Daniel Virella, an MEP from Spain, when visiting Canada in September. The concern is the content of Bill C-27 which Lloyd Axworthy discussed recently in Brussels. We face here a dispute which requires parliamentary attention. Canada's fine reputation abroad has been damaged by this issue. It can be restored with a concerted effort and political will.

It seems to me that Canada's "fine reputation in international affairs" might very well have been damaged in the eyes of some European nations, in particular the Spaniards. I can assure you that Canada's reputation has not been damaged in any way by Atlantic Canada's efforts to curtail the piracy and brigandage which has been carried on, on the East Coast of Canada, for such a long while.

That is why I am appalled that it has taken Canada so long to become a signatory to what is called the New York Agreement. It has taken us from 1992 until now to get the ratification legislation before us. It needs 40 signatures. My honourable friend across the way tells me that we now have 21 signatures. That is encouraging, and it would be interesting to know which countries have signed on and which have not. It is always interesting to know who your friends are when you are in positions of responsibility such as those with which we are entrusted here.

Nevertheless, the Europeans are concerned about this matter. They have gone to the trouble of circulating a memorandum in which they raise all sorts of problems. It is a fairly comprehensive document and it deserves the attention of the Fisheries Committee when this bill comes before them, as I hope it will.

I do not mean in any way to discount lightly the concerns of the Europeans, but I cannot help but emphasize again that their concerns are not necessarily completely parallel with the concerns of the people of Canada and, in particular, the people of Atlantic Canada. I know that the spectre of that Spanish trawler, which was arrested a few years ago when Brian Tobin was the Minister of Fisheries here, still rankles and still upsets them to a large degree. This sort of legislation goes some way toward making the incursion of illegal fishing into the international zone of the 200-mile economic zone somewhat more difficult for such as the Spaniards to pursue. It certainly does not go far enough in terms of the jurisdiction that Canada and other like-minded countries should try to exert in the international zones.

The thought that the fish will respect the international zones any more or less than the foreign fleets or, indeed, our own fleets up until recently, is ludicrous. It is painful to watch the deadly slow speed of our negotiators and international negotiators as they are trying to come to what everyone can see is a reasonable end to this matter. The conservation, belatedly, is long overdue. That is the end point, and it must be addressed, and properly so.

Speaking of conservation, it would be appropriate at this time to mention the affairs raised by the recent Auditor General's report in which he talks about the conservation concerns with the shellfish industry on the East Coast. We should look at the questions that he raises in terms of surveillance and the enforcement of the rules, in terms of monitoring of offshore, onshore, dockside and landings. The limited amount of enforcement that is available is enough to raise a great deal more concern. I would hope that the Fisheries Committee might find time to ask the Auditor General to appear before them and give the committee some detail as to what the situation is at the present time.

It is rather sad that the Auditor General has to bring fisheries problems to the attention of the Parliament of Canada, rather than the committees or the houses of Parliament being given the authority, the resources and the means to look at these things for themselves. When the debate is between the Government of Canada and the Auditor General of Canada, there is obviously something wrong with the system somewhere, and the members of Parliament read about all this sort of thing in reports from bureaucracies.

Make no mistake about it, the Auditor General's department is another bureaucracy. I now understand that he has more employees than the Department of Finance. No one suspects that the Department of Finance is a shrinking violet when it comes to building bureaucratic mechanisms. That is not true in this regime, any more than it was in any previous regime.

The danger with the Auditor General's bureaucracy, if I may be so bold, is that he has this tunnel vision of measuring everything in value received for dollars spent. Although that may be an admirable objective when it comes to corporate Canada, I dearly fear that this country of ours would long have ceased to exist if value for money spent was a guiding principle for every government program that was ever introduced, especially when it comes to Atlantic Canada and Quebec, and some parts of western Canada. I feel that good management is certainly a necessary part of program administration, but the bottom line must be the well-being of the people of this country of ours.

I thank my friend opposite for having brought this bill to our attention. I am sorry that we did not receive it a long time ago but I am sure he brought it to us as quickly as he could. I look forward to having it referred to the Fisheries Committee, and we will get some further information there at that time.

The Hon. the Speaker: If no honourable senator wishes to speak, I will proceed with the second reading motion.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Honourable Senator Fernand Robichaud, bill referred to the Standing Senate Committee on Fisheries.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, is it appropriate that I now leave the Chair so that we may attend the briefing?

Hon. Senators: Agreed.

The Hon. the Speaker: We will return for the vote at 5:45 p.m.

The sitting of the Senate was suspended.

• (1740)

The sitting of the Senate was resumed.

CANADA CUSTOMS AND REVENUE AGENCY BILL

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, seconded by the Honourable Senator Bacon, for the third reading of Bill C-43, to establish the Canada Customs and Revenue Agency and to amend and repeal other Acts as a consequence,
>
> And on the motion in amendment of the Honourable Senator Stratton, seconded by the Honourable Senator Cohen, that the Bill be not now read a third time but that it be amended, in clause 54, on page 17,
>
> (*a*) by replacing line 10 with the following:
>
> "**54.** The Agency must develop a program"; and
>
> (*b*) by deleting lines 13 and 14.

The Hon. the Speaker: Honourable senators, the question is on the amendment of the Honourable Senator Stratton.

Is it your pleasure, honourable senators, to adopt the motion?

Motion in amendment negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Andreychuk
Balfour
Beaudoin
Bolduc
Cochrane
Cohen
Comeau
DeWare
Di Nino
Doody
Forrestall
Ghitter
Gustafson
Johnson
Kelleher
Kelly
Keon
Kinsella
Lavoie-Roux
LeBreton
Lynch-Staunton
Meighen
Murray
Nolin
Rivest
Roberge
Robertson
Rossiter
Simard
St. Germain
Stratton—31

NAYS

THE HONOURABLE SENATORS

Adams
Bryden
Callbeck
Carstairs
Chalifoux
Cook
Cools
Corbin
De Bané
Ferretti Barth
Fitzpatrick
Fraser
Gill
Grafstein
Graham
Hays
Hervieux-Payette
Johnstone
Joyal
Kenny
Kolber
Lawson
Lewis
Losier-Cool
Mahovlich
Maloney
Mercier
Moore
Pearson
Pépin
Perrault
Poulin
Prud'homme
Robichaud (*L'Acadie-Acadia*)
Robichaud (*Saint-Louis-de-Kent*)
Roche
Rompkey
Ruck
Sparrow
Stewart
Stollery
Taylor
Watt
Whelan
Wilson—45

ABSTENTIONS

THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: The question now before the Senate is on the main motion. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

Motion agreed to and bill read third time and passed, on division.

• (1750)

PRECLEARANCE BILL

REPORT OF COMMITTEE ADOPTED, AS AMENDED

On the Order:

> Resuming debate on the motion of the Honourable Senator Stewart, seconded by the Honourable Senator Adams, for the adoption of the tenth report of the Standing Senate Committee on Foreign Affairs (Bill S-22, authorizing the United States to pre-clear travellers and goods in Canada for entry into the United States for the purposes of customs, immigration, public health, food inspection and plant and animal health, with amendments), presented in the Senate on March 24, 1999.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, the debate on Bill S-22 has been very informative. I believe we have all learned more about this bill from the comments made and the questions asked of the honourable senators who spoke, in particular Senator Stewart and Senator Andreychuk.

Significant amendments were made to the bill in committee, and that speaks to the credit of the committee. The amendments brought primarily speak to the protection of Canadian sovereignty in the preclearance area, but there remain some questions around that issue. For example, if a traveller refuses to answer any questions asked for preclearance purposes, the preclearance officer may order the traveller to leave the preclearance area. This is a decision for the preclearance officer, not a decision that the traveller can take.

Further, third parties entering the United States through Canada for immigration purposes may be denied access into the United States. If they are refused entry, then they become the responsibility of Canadian authorities. Some feel that it is a little unclear as to what will then happen to such persons.

Honourable senators, concern was also expressed that Canada might become a conduit for people trying either to get into Canada or into the United States, either as refugees or as immigrants. If the United States turns them down, then Canada may accept them, and they will have effectively jumped the waiting queue. Also, there may not be the capability to perform preclearance services in both of Canada's official languages. That is a concern for those of us who come from bilingual jurisdictions, and who are very sensitive to this issue on a national basis.

Honourable senators, while I see the importance for Canada to have such a bill, and the argument, I believe, was a convincing argument made for the implementation of preclearance, there are some areas that may develop as we gain experience. I had thought, honourable senators, that I might bring in a type of "sunset clause," but I have been convinced that in order to achieve the purpose that I would have, namely, to provide a situation where we learn from the experience that we would have with the bill, it might be more helpful to proceed otherwise.

Therefore, I have decided to add an amendment that would have the effect of providing that the minister undertake a review, after five years of experience with the bill, such that these kinds of eventualities that might occur could be addressed by such a review.

MOTION IN AMENDMENT

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Therefore, honourable senators, I move, seconded by the Honourable Senator DeWare:

> That Bill S-2 be not now read the third time but that it be amended on page 12,
>
> (*a*), by adding, after line 11, the following:
>
> "FIVE YEAR REVIEW
>
> **39.** Five years after this act comes into force, the Minister shall cause an independent review of the Act and its administration and operation to be conducted, and shall cause a report on the review to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the review is completed,"; and
>
> *(b)* by renumbering clause 39 as clause 40 and any cross-references thereto accordingly.

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I believe that what Senator Kinsella wishes to do is amend the report. We are at report stage, not third reading. He would be amending the report to make that further amendment, and we would be in full agreement with that.

Senator Kinsella: You are correct.

Senator Grafstein: I have a question.

The Hon. the Speaker: Perhaps we should deal with the motion so that we have something before us. At the moment, there is no matter before us.

Honourable Senator Kinsella, you heard the deputy leader. Are you in agreement that we will amend the report of the committee through this vehicle?

Senator Kinsella: Yes, that is correct.

Hon. Jerahmiel S. Grafstein: I received, as no doubt Senator Kinsella received, a letter from the Privacy Commissioner laying out his concerns about this bill. Do I take it, then, that the concerns of the Privacy Commission are subsumed by the proposed amendment?

Senator Kinsella: Yes, honourable senator, and I believe that, in accordance with the recommendation coming from the Privacy Commissioner, should this bill become law, the time line would be roughly the same.

The Hon. the Speaker: If no other honourable senator wishes to speak, I will proceed with putting the motion in amendment.

Is it your pleasure to adopt the motion in amendment, honourable senators?

Hon. Senators: Agreed.

Motion agreed to and report, as amended, adopted.

The Hon. the Speaker: When shall this bill, as amended, be read the third time?

On motion of Senator Carstairs, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

BUSINESS OF THE SENATE

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I believe there is agreement on both sides, in that it is almost six o'clock and there are a number of committees which wish to sit, that all other items on the Order Paper stand in the order in which they are at the present time, and that an adjournment motion would be acceptable.

The Hon. the Speaker: Is that agreeable?

Hon. Senators: Agreed.

The Senate adjourned until Wednesday, April 28, 1999 at 1:30 p.m.

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