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OFFICIAL REPORT
(HANSARD)

Wednesday, April 28, 1999

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Wednesday, April 28, 1999

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I should like to draw to your attention the presence in our gallery of some distinguished visitors. We have with us today the newly appointed Consul General in Winnipeg for Iceland, who is also the Special Envoy for Millennium Affairs, Mr. Svavar Gestsson. He is accompanied by his wife, Gudrun Thorbjarnadottir.

On behalf of all honourable senators, I wish you both welcome to the Senate as guests of the Honourable Senator Johnson.

Hon. Senators: Hear, hear!

ROUTINE PROCEEDINGS

ACCESS TO INFORMATION ACT

LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE—
REPORT CARDS OF VARIOUS DEPARTMENTS ON COMPLIANCE
WITH RESPONSE DEADLINES TABLED

On Tabling of Documents:

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I have the honour to table documents entitled, "Report Card on Compliance with Response Deadlines under the Access to Information Act," prepared by the Information Commissioner of Canada, in response to a commitment made to the Standing Senate Committee on Legal and Constitutional Affairs, for the following federal departments: Citizenship and Immigration, Foreign Affairs and International Trade, Health Canada, National Defence, Privy Council Office and Revenue Canada.

ABORIGINAL PEOPLES

ROYAL COMMISSION ON ABORIGINAL PEOPLES—
BUDGET REPORT OF COMMITTEE ON STUDY PRESENTED

Hon. Charlie Watt, Chairman of the Standing Senate Committee on Aboriginal Peoples, presented the following report:

Wednesday, April 28, 1999

The Standing Senate Committee on Aboriginal Peoples has the honour to present its

EIGHTH REPORT

Your committee, which was authorized by the Senate on Tuesday, December 9, 1997 to examine and report on the recommendations of the *Royal Commission Report on Aboriginal Peoples* respecting Aboriginal governance, 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,

CHARLIE WATT
Chairman

(For text of appendix, see today's Journals of the Senate, *p. 1508.)*

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

On motion of Senator Watt, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

AGRICULTURE AND FORESTRY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE
TO REFER PREVIOUS DOCUMENTATION ON STUDY
OF BOREAL FOREST TO SUBCOMMITTEE

Hon. Nicholas W. Taylor: Honourable senators, I give notice that on Thursday next, April 29, 1999, I will move:

That the papers and evidence received and taken on the subject of the harvest of the boreal forest during the Second Session of the Thirty-fifth Parliament be referred to the Subcommittee on the Boreal Forest of the Standing Senate Committee on Agriculture and Forestry.

PRESENT STATE AND FUTURE OF FORESTRY—
BUDGET REPORT OF COMMITTEE ON STUDY PRESENTED

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

•(1340)

Hon. Leonard J. Gustafson, Chairman of the Standing Senate Committee on Agriculture and Forestry, presented the following report:

Wednesday, April 28, 1999

The Standing Senate Committee on Agriculture and Forestry has the honour to present its

NINTH REPORT

Your committee, which was authorized by the Senate on November 18, 1997 and on November 24, 1998, to examine matters relating to the present state of forestry and the future of forestry in Canada, respectfully 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,

LEONARD J. GUSTAFSON
Chairman

(*For text of appendix, see today's* Journals of the Senate, *p. 1514.*)

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

On motion of Senator Gustafson, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

QUESTION PERIOD

CANADIAN HERITAGE

FOREIGN PUBLISHERS ADVERTISING SERVICES BILL—
ARTICLE IN PRESS—POSSIBILITY OF AMENDMENTS—
GOVERNMENT POSITION

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, my question is based on an article on the front page of today's *Globe and Mail* entitled, "Plan aims to avert magazine trade war." The article states that discussions between Canadian and American trade officials in Washington are leading to a conclusion, and it goes on to say:

> The package is aimed at averting a trade war over Canada's proposed magazine policy and would probably gut Bill C-55...

I should like the Leader of the Government in the Senate to confirm or deny that the results of discussions between Canadian and American trade officials in Washington now taking place will lead to an agreement along the lines suggested in the article, which would, in effect, gut Bill C-55?

Are the conclusions reached in this article valid?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I read as well the article referred to by the Honourable Senator Lynch-Staunton. It is true that there have been discussions on this and a variety of other matters between Canadian officials and representatives of the United States. It is my understanding that Canada has not proposed an alternative to Bill C-55 but, rather, has reinforced our position that the availability of original content for the Canadian market is the underlying public policy objective.

My understanding is that while meetings have been held, further meetings have not been scheduled.

Senator Lynch-Staunton: Honourable senators, as I understand it, the minister cannot either deny or confirm the report in today's *Globe and Mail.*

Be that as it may, during second reading on March 18, at page 2844 of Hansard, the minister told us in answer to a question, "I just said we have no amendments planned nor are any amendments intended." In answer to another question, he said: "I am the sponsor of the bill and, as far as I am concerned, the bill stands as it is."

My question to the minister is: Can he confirm to us that that is still his position and the position of the government?

Senator Graham: Honourable senators, as of today it is, yes.

Senator Lynch-Staunton: As of today?

Senator Graham: Yes, as of today. The members of the committee and senators are masters of this chamber. Members of the committee are masters of the committee. It may be that, as has happened on other occasions, honourable members of the opposition and on the government side wish to introduce amendments. The government may suggest amendments after discussions, but I am not aware of any amendments that may be forthcoming.

In the meantime, the hearings continue, and the committee is doing very good work.

Senator Lynch-Staunton: The committee is doing excellent work. Most of us are now convinced that this bill should be passed as it is. Despite some questions regarding the Charter and WTO, we feel the risk is worth taking, particularly as it has been presented to us as a response to a challenge to Canada's cultural identity. On that basis, I think we should all stand together. When Minister Copps came to the committee on April 13, she said:

> I am looking for a quick and speedy passage of this bill, senators. That is why we are sitting here tonight. I accommodated your changed agenda rather quickly because I would love to see this bill passed as quickly as possible.

That appears to be the government's official position — and one, I trust, that is endorsed by Senator Graham. Therefore, what are we doing proceeding with committee hearings, given the possibility this bill may be amended as a result of the discussions taking place in Washington? Why do we not take a decision on the legislation ourselves and instruct the committee, which is our right to do, go into clause-by-clause study this week, and bring it back next week and pass it. By so doing, Canada will have taken a stand, whereas, according to *The Globe and Mail*, we will, once again, be submitted to the wishes of the American government.

Senator Graham: Honourable senators, I would suggest that the Leader of the Opposition read the list of witnesses that have been scheduled up to and including early May.

Senator Lynch-Staunton: Yes, and there are more to come. There is no question about that. Most of them are irrelevant to the hearings on the bill.

Senator Graham: Why would the Leader of the Opposition want to deny individual Canadians or organizations the opportunity to make representations to this committee? I think that is in keeping with the democratic process, which we hope to follow at all times around here.

CAPE BRETON DEVELOPMENT CORPORATION

CLOSURE OF MINES—PROPOSED CHANGES TO PENSION PLAN—EFFECT ON ELIGIBILITY OF EMPLOYEES

Hon. Lowell Murray: Honourable senators, earlier this week the Leader of the Government in the Senate and his colleague the Minister of Natural Resources, Mr. Goodale, met with representatives of the United Families of Cape Breton concerning the fate of the coalminers and their families in view of the announced decision by the government to close down the Cape Breton Development Corporation.

What is the response of the government to the proposal for changes to the pension plan offered by the government to Devco employees so that a greater proportion of the laid off employees will be eligible? I understand that some 340 of 1,700 employees would be eligible for the full pension.

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, Senator Murray is correct with respect to my meetings, along with Minister Goodale, with the United Families of Cape Breton. Those meetings were held on Monday. I anticipate a further meeting later today and another meeting tomorrow morning with the same responsible group.

I had a meeting three weeks ago with the same group in Glace Bay. I am very cognizant of their concerns. The government has not changed its position concerning the human resources package with respect to early retirement, severance and training. We are listening to these responsible people and we will continue to do so. I do not know whether the package stands as it is at the present time.

Senator Murray: Honourable senators, I did not quite get, or perhaps understand, the last sentence that my friend uttered. The minister stated "The package stands." Do I take it that the proposals for improved pension arrangements as made by the united families and others from Cape Breton are under consideration by the government?

•(1350)

Senator Graham: I would not want to confirm or deny that, honourable senators. There are almost 1,700 employees who would be listed as employees of the Cape Breton Development Corporation. Those who would be affected by a closure at Phalen mine, in particular, would be in the order of 1,100. Of those, if the mine continues, as we hope it will, until the year 2000, some 340 would be eligible for early retirement. Others would receive severance pay and a retraining package. The remainder would continue to be employed by Devco at the Prince mine until that mine is privatized.

Senator Murray: Honourable senators, it appears to be a rather short or perhaps medium-term plan that the government is offering. I hope and trust that the government will consider the proposals for more secure arrangements for those who will not be covered by pensions and who will not be covered by health plans and other benefits but who live in an area which has the highest cancer rates in the country.

CLOSURE OF MINES—RESPONSIBILITY FOR ENVIRONMENTAL CLEAN-UP—GOVERNMENT POSITION

Hon. Lowell Murray: Honourable senators, would the leader also inform the Senate on how the government intends to carry out its responsibility for environmental clean-up? There are over 100 abandoned mine sites in Cape Breton, at least that is how many are known by the authorities. These mines were inherited by the Crown corporation, along with the more recent mining and ancillary operations. All of those, in an environmental sense, are the responsibility of the Government of Canada. The liability is in the hundreds of millions of dollars. The work needs to be done over a period of years.

Is the government considering doing this work under the aegis of Devco or a subsidiary of Devco, whose employees are well informed on these matters and in need of the jobs and the eligibility which the jobs provide for future pensions?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, the government and the Crown corporation Devco are very cognizant of their responsibilities for remedial action. No final decision has been taken with respect to what route will be followed in the remedial process.

Senator Murray: Honourable senators, I take it the possibility of doing this work directly through Devco or a subsidiary of the Crown corporation is still open. That will be very encouraging.

NATIONAL REVENUE

CANADA CUSTOMS AND REVENUE AGENCY— LOCATION OF HEADQUARTERS—GOVERNMENT POSITION

Hon. Lowell Murray: Honourable senators, Royal Assent will be given shortly to Bill C-43, which passed third reading here yesterday. The bill establishes the new Canada Customs and Revenue Agency. My friend will recall that, in the House of Commons, the government accepted an amendment that had the effect of giving the government discretion to establish the national headquarters of that new agency anywhere in Canada.

Has the government made a decision as to where in Canada the headquarters of the revenue agency will be located? If not, when may we expect a decision to be made? Will the minister assure us that Cape Breton is in the running?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, as I understand it, the decision has not been taken. I have made representations on behalf of Cape Breton. I do not know that he would want his name associated with the building that would house the Revenue Canada agency, if it happened to be located in that area.

I know that other parts of the country have made representations as well. I take Senator Murray's suggestion seriously. It would certainly help in alleviating the economic circumstances in that part of the country.

Returning for a moment to the issue of Devco, the Government of Canada, in bringing forth its proposals, as my honourable friend would know, must look at the difficulties in operating a Crown corporation with respect to coalmines. The government of which Senator Murray was a part in 1991 had to write off something in the order of $155 million. In 1996, the government advanced a further $69 million which was to be repaid. As a result of the difficulties that we have had and the announcement made on January 27, the government agreed to write off that $69 million. Then, in order to get Phalen mine to March 31 of this year, the government had to inject another $41 million. To keep Phalen mine going to the year 2000, another $40 million was required.

The government has agreed to write off all those amounts. In addition to that, as I mentioned just a few moments ago, $111 million was provided in the human resources development package for early retirement, severance and training. In addition to those sums of money, the Government of Canada has agreed to inject a new package of $68 million for economic development purposes. That is over and above the flow of money which would go normally into Cape Breton through human resources development. The average each year is approximately $35 million, for a total over four years of $140 million. This is more than the sum that normally flows through ECBC/ACOA at an average of $20 million a year for a total of $80 million. That adds up to well over half a billion dollars.

The government is very cognizant of the difficulties in that particular part of the country. We are listening carefully to the public. That is why I have met with the United Families of Cape Breton in Glace Bay again, as recently as Monday. I expect to meet with them today and again tomorrow morning.

I want to assure Senator Murray, who has a special interest in that particular part of the country and in coalmining, that every possible effort is being made to be fair and to listen carefully to the representations that are being made.

NATIONAL DEFENCE

NATO CONFLICT IN YUGOSLAVIA— RESPONSIBILITIES OF CHIEF OF DEFENCE STAFF

Hon. J. Michael Forrestall: Honourable senators, my question is directed to the Leader of the Government in the Senate.

At a time when it is important that Canadians have and are seen to have good leadership on the questions arising out of Yugoslavia, it is equally important that Canada's military personnel have clear and visible leadership. I have seen much of the Deputy Chief of the Defence Staff in the news media and television and at briefings, and this may be a problem. I have not seen the Chief of the Defence Staff, General Baril, for some time. Is the general well?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, he is both alive and well. As a matter of fact, I saw him yesterday and he is in excellent health.

Senator Forrestall: I am pleased to hear it.

Senator Graham: He is taking his responsibilities seriously. As you might expect, the Deputy Chief of the Defence Staff, who was present at our briefing yesterday, has been designated as a spokesperson for the Canadian Forces. That is why you have not seen so much of General Baril, but I assure honourable senators that he is in complete command and in very good health.

•(1400)

Senator Forrestall: Many people who have been asking over the last four or five days will be pleased to hear that.

SEARCH AND RESCUE—POSSIBLE RISKS IN DISCHARGING FUEL FROM LABRADOR AND SEA KING HELICOPTERS

Hon. J. Michael Forrestall: Honourable senators, moving not necessarily away from Kosovo but into the area of Canadian Forces equipment, the strong suggestion continues to linger that the procedure for the discharge of fuel from Labrador helicopter 305 probably contributed to the tragic events that occurred.

Could I ask the minister if he has among his briefing notes or whether he could inquire as to whether there are any other indications in defence literature or investigative reports that might suggest that this is a dangerous procedure that, perhaps, should be reviewed? If there are, could he determine for us whether or not an order to that effect has been circulated among the pilots of the Labrador and the Sea Kings as well?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, risk is inherent to military aviation even among the newest and most sophisticated of aircraft. The Canadian Forces take seriously their responsibility to constantly look for ways to minimize all risk. Strict procedures are in place that allow our flight safety personnel to manage risk through constant vigilance and evaluation. That kind of evaluation and assessment is going on constantly.

With respect to the tragic circumstances surrounding the crash in Quebec in October, I am not aware of any reference to a discharge of fuel being the cause of that tragic accident. If I can obtain any more information that is relevant to the question, I certainly would be happy to bring it forward.

NATO CONFLICT IN YUGOSLAVIA—DEPLOYMENT OF GROUND TROOPS IN PEACEKEEPING INITIATIVE—RESPONSIBLE AUTHORITY

Hon. A. Raynell Andreychuk: Honourable senators, following up on the 800 peacekeepers we are sending to Macedonia at this time and on the fact that Minister Axworthy is either on his way or is already in Russia, is it the position of the government that these troops are only there and will be dispatched only under the auspices of NATO?

Hon. B. Alasdair Graham (Leader of the Government): My understanding, honourable senators, is, as indicated yesterday, that up to 800 Armed Forces personnel would be dispatched for peacekeeping purposes under the auspices of NATO at the present time.

Senator Andreychuk: Honourable senators, am I to take from the answer that the government is not taking into account that, perhaps, a UN-led peacekeeping mission would be possible or, perhaps, some other coalition of NATO plus other countries?

Senator Graham: That would be realistic, and I would not want to rule it out, honourable senators. I suppose I am treading into dangerous territory here. The best solution, of course, would be to have it sponsored by the United Nations, but if it is NATO and other allies, then that is something which would be considered, I am sure, by Canada and its allies.

It would be important that NATO maintain command simply to ensure that all the Kosovars are returned safely to their homeland and not just the KLA. That is, perhaps, cutting a fine line.

However, there are inherent dangers in whatever scenario one might consider under the auspices of the United Nations, NATO alone, or NATO with some of its allies. That is why these matters are being considered on a daily basis. Hopefully, through the efforts of Prime Minister Chrétien and others, including the very important mission that Foreign Minister Axworthy is undertaking to Russia later this week, we can find a diplomatic solution to this terrible problem.

Senator Andreychuk: Honourable senators, I hope that the reports in the newspaper, therefore, are incorrect when they state that Minister Axworthy will only negotiate with the Russians on the basis of a NATO-led or at least a core NATO-peacekeeping arrangement.

Senator Graham: I honestly do not know. If I were in the room, I suppose I could tell you. I do not want to preempt or even anticipate the negotiations or the nature of the negotiations that would go on between Minister Axworthy, his counterpart, the present Prime Minister and/or the former prime minister of Russia.

NORTH ATLANTIC TREATY ORGANIZATION

CONFLICT IN YUGOSLAVIA—DEPLOYMENT OF GROUND TROOPS—POSSIBLE VOTE IN PARLIAMENT—GOVERNMENT POSITION

Hon. Gerry St. Germain: On the same subject-matter, honourable senators, are the reports correct that the Prime Minister has indicated that he will not allow a vote on the deployment of ground troops in what some of us already consider to be a theatre of action?

Hon. B. Alasdair Graham (Leader of the Government): My understanding is that the Prime Minister has given an undertaking that if our Armed Forces were deployed for any reason other than peacekeeping, he would return for discussions in Parliament.

Senator St. Germain: Has he stated that there would not be a vote? The minister indicated that it is a decision of the executive. I am respectful of that, but in view of the importance of this issue, the debate should take place across the country.

In British Columbia, the province I represent, the government ruling does not even have the support of a majority of the vote. With 38 per cent of Canadians supporting this government in the last election, I think a vote on sending our men and women into a theatre of action would be critical.

I am sure the government will have the support of the entire House of Commons, as you have our support, but it is a matter of dealing with the decision in the manner in which it has been traditionally dealt with. I ask you that, honourable senator, in the spirit of cooperation, not confrontation.

Senator Graham: It is my understanding that the Prime Minister has not committed himself to a vote. He has indicated that executive decisions have been taken in the past. There are precedents for such decisions. He has undertaken, however, to bring the matter back to Parliament if and when it is determined that these forces should be deployed for other than peacekeeping reasons.

Against the background of the question asked by the Honourable Senator St. Germain, I checked the record in terms of votes that have been taken. From 1950 to 1996, there have been 22 initiatives involving Canadian military personnel overseas. Of these, 17 were debated in Parliament, and of those, five were recorded votes and three motions were agreed to without a vote, five were taken after deployment; three were for the Gulf War, Iran, Iraq, Somalia, and three for deployment.

I want to bring honourable senators up to date on the latest development. I was informed just as I came into the chamber that the Deputy Prime Minister of Yugoslavia, Mr. Vuk Draskovic, has been removed from power.

[*Translation*]

CANADA–UNITED STATES RELATIONS

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

Hon. Pierre Claude Nolin: Honourable senators, Canada and the United States share one continent. We have established a unique relationship in order to develop the necessary economic activity to establish the industrial and technological bases of our mutual defence system.

This relationship, which developed during World War II, was strengthened in 1958 with the signing of the NORAD agreement establishing the North American Air Defence System.

In addition to cooperating in the North American defence system and in NATO, our two countries share the same desire to cooperate in response to any potential threat to the national and territorial security of our two North American countries.

At the end of February, Canada and the United States initiated negotiations for renewal of the NORAD agreement, which is to expire in the year 2001. As was the case with the negotiations on the U.S. International Traffic in Arms Regulations, Canada expected negotiations with the Americans to be difficult. They want the new agreement to include the deployment of a new aerospace defence system against weapons of mass destruction, which would cost in excess of $10 billion to build.

Although Canada is prepared to contribute over $600 million to the setting up of this system, it has indicated two concerns to the Americans. On the one hand, this might be in contravention of the treaty limiting use of the defence system against ICBMs, which came into effect in 1972. On the other hand, this system could trigger a new arms race with China and Russia.

My question is for the Leader of the Government. Over the past eight months, Canada has not been able to change the U.S. position on terminating Canada's special status under their International Traffic in Arms Regulations. This will have an impact on cooperation between our two countries when it comes to developing military and aerospace technologies.

Can the Leader of the Government inform us of the status of discussions with the Americans on the NORAD agreement?

[*English*]

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I am aware that negotiations are underway. I am also aware that the Americans would welcome Canada's participation in the aerospace defence system, which has been described in some considerable detail by Senator Nolin. I am not aware that we have made any agreement. Indeed, I believe I can say with verity that we have not. However, I would not anticipate that our relations, trade or otherwise, would be adversely affected by saying no to participation in such a sophisticated aerospace defence system. There are other ways in which we can not only sustain but improve our relations with our neighbour to the south.

[*Translation*]

Senator Nolin: The Americans could go ahead unilaterally with their plans for a space shield, as they did in the case of Canada's favoured exemption from the U.S. International Traffic in Arms Regulations, and further complicate the already complicated 40-year history of military cooperation between our countries?

[*English*]

Senator Graham: Honourable senators, I would not anticipate any serious difficulties arising out of any disagreement. I believe there are discussions as well as disagreements on an ongoing basis, be they in trade or in defence matters. There is always a continuing flow and exchange of ideas, and this is particularly true for defence matters with our NATO allies. It applies to our Armed Forces in exchange of visits. The honourable senator will recall last year when a huge contingent of our allies carried out exercises in Newfoundland very successfully. They not only had the terrain, which was so well used, but experienced the hospitality of Newfoundlanders as well.

Seriously, I would not consider this matter to be a problem. If you were a resident of the Atlantic coast, and you happened to be in Halifax, you would see numerous visits not only by our NATO allies but most particularly by members of the U.S. navy.

Senator Nolin: Honourable senators, the United States has taken a stand. Even if we have 120 days to try to solve the problem concerning trade in arms between our two countries, this matter is very important. NORAD is an agreement between two sovereign countries. We have been a party to that agreement for the last 40 years, and it is up for renewal. If, after 120 days, we are not able to solve the trade concerns the Americans have, what will happen with NORAD? Canadian companies will no longer be able to sell arms to Americans. Is that what we want?

Senator Graham: Honourable senators, perhaps I am a little more optimistic than Senator Nolin. I believe he has a legitimate concern and I am glad he has raised it. As always, I will bring his representations and his concerns to the attention of my colleagues.

Senator Lynch-Staunton: He wants an answer.

Senator Graham: If I had an answer I would give it, Senator Lynch-Staunton.

Senator Lynch-Staunton: Tell him you do not have the answer.

Senator Graham: I do not have the answer, and I believe that is obvious.

Senator Lynch-Staunton: Exactly.

Senator Graham: If you wish to ask a question you can ask a supplementary after I am completed with Senator Nolin.

As I said, there are continuing negotiations. In some cases there is an honest difference of opinion. Hopefully, they will all be resolved. We are all respectful of the importance of NORAD and its surrounding agreements.

Senator Nolin: As the minister knows, the space industry is very important.

The Hon. the Speaker: This must be the last question, Senator Nolin.

Senator Nolin: It will be my last.

We are not only talking about guns and armoured vehicles, we are talking about the space industry, an important industry in Montreal. We feel that the federal government is not taking the concerns of the Americans seriously and, like Senator Bolduc said yesterday, are being kicked in the heels. Finally the Americans decided to hit back. Now we are reacting, and the only thing we have is 120 days to push the problem further. We are very concerned. I hope the minister is also very concerned.

Senator Graham: Honourable senators, I am very concerned. I can tell the honourable senator that the ministers, whether it be the Minister of International Trade, the Minister of Industry, the Minister of National Defence or the Prime Minister, are all very concerned about this matter.

As a matter of fact, just a few weeks ago I had occasion to speak at an event in the Montreal area with Minister Manley. He spoke at that particular time of the aerospace industry that is so important to that particular part of Canada. It is important to the whole country. I am sure that whatever negotiations are underway will be brought to a successful conclusion.

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, I rise on a point of order. My point of order relates to the substance and the clarity of what is before us, and exactly what we are being asked to vote upon.

On rereading the debates this morning, I read carefully, and with interest, the questions that Senator Nolin had put to me. Consequently, honourable senators, my point of order is prompted by Senator Nolin's interventions of yesterday during debate on Bill C-40 and Senator Grafstein's proposed amendment.

•(1420)

In my opinion, Senator Nolin's questions are important, as is Senator Nolin's opinion. After all, this stage of debate is based on the opinion of the members of the Standing Senate Committee on Legal and Constitutional Affairs. The wider chamber relies on the recommendations and the report from that committee for guidance.

Yesterday, in my remarks I said:

> 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.

Those were my words yesterday. In a question to me, Senator Nolin asked and I quote exactly — "she" meaning me:

> 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?

I answered, restating my previous remarks. Senator Nolin then responded:

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

Senator Nolin said that he would not support the use of hearsay. He said that he would not be supporting Bill C-40 if it authorized and sanctioned hearsay, which is not currently authorized in Canada.

Honourable senators, my point of order relates to the contrary information which is currently before this chamber, and to the fact that senators needs some clarification as to the actual content of Bill C-40 and exactly what it is that we are being asked to vote upon.

What I said was a repetition of what had been said previously in support of Bill C-40. I used almost the exact words that the Minister of Justice, Anne McLellan, used when she appeared before the Standing Senate Committee on Legal and Constitutional Affairs, of which I am not a member, and which the Senate's government sponsor, Senator Fraser, used when she addressed the Senate. I was repeating what they had said, honourable senators.

During the meeting of the Legal and Constitutional Affairs Committee held on March 18, 1999, Minister McLellan made many statements about these changes to the rules of evidence. I shall put some of them on the record.

> Bill C-40 is important as well because it will put Canada in compliance with the United Nations Security Council resolutions establishing the international criminal tribunals for Rwanda and the former Yugoslavia.

Continuing on page 63:

> As you will have heard from several witnesses, our current extradition law does not allow the flexibility needed to extradite a fugitive to a tribunal.

At page 63 she continues:

> In addition — and this is the important change — that evidence must be produced in a form consistent with Canadian evidentiary rules. This means that states must produce first-person affidavits, which contain no hearsay, sufficient to meet the Canadian legal standard. Complex cases may require hundreds of such affidavits.

The Hon. the Speaker: Honourable Senator Cools, I am sorry to interrupt you. However, I regret to tell you that I fail to see a point of order. It seems to me that you are simply reviving debate on the fact that you are in disagreement with what was said.

Senator Cools: Not at all.

The Hon. the Speaker: I see no infraction of the rules that has occurred on which I could rule. You are simply having a second debate, which I am sorry to say I am unable to entertain.

Senator Cools: Honourable senators, I am not indulging in a second debate. What I am attempting to say, and I was attempting not to use anyone else's words but the minister's and Senator Fraser's, is that from what I can see, Senator Nolin is saying to the Senate that he has either changed his mind, or he did not know —

Senator Lynch-Staunton: That is not a point of order. It is debate.

The Hon. the Speaker: The rules are clear, Senator Cools, that a senator may only speak once to an issue, and you are now reviving a debate. There is no rule that you have cited which is being broken. You are disagreeing with another senator, which is perfectly in order, but not by raising a point of order.

Senator Cools: No, I am not.

The Hon. the Speaker: I am sorry, I cannot accept that as a points of order.

Senator Cools: Your Honour, I am not disagreeing. I am saying that the Chair needs to give some light, guidance and clarity to the questions that we are being asked to vote on here today. I am asking for the Chair's guidance.

The Hon. the Speaker: That is not the Chair's responsibility. There is a motion before us for the reading of a bill. There is also an amendment. Those are the questions before the Senate.

What has been said in debate is not an issue for the Speaker to determine. That is for honourable senators to determine in debate. The rules are clear that each senator is entitled to speak once on every issue, except the mover of the motion. I am sorry, I see no point of order. Unless you can cite a rule that has been broken, I am unable to accept your point of order.

Senator Cools: Very well. Honourable senators, what I am saying is that the committee stage is a stage in the progress of a bill where the bill is properly considered —

Senator Lynch-Staunton: What is the point of order?

Senator Cools: — and then the bill is brought forward to this chamber with a recommendation to vote for the bill as is, or not to vote for the bill as is, and to amend it.

What we have before us is a situation where the committee proceedings have now moved on with a recommendation from the committee to pass the bill without amendment. However, the deputy chairman of the committee has said subsequently that he does not support what is contained in this bill. That is not a question for debate between individuals; that is a question about what is before us.

Senator Lynch-Staunton: That is not a point of order!

Senator Cools: It is a point of order.

The Hon. the Speaker: I am sorry, Senator Cools, I fail to see a point of order in what you are raising. Honourable senators may change their minds, if they wish, on any issue. It is not for me to judge whether they are right in changing their minds or not.

The question before the Senate is clear: It is the motion by the Honourable Senator Bryden, seconded by the Honourable Senator Pearson, for the third reading of the bill, then an amendment motion by the Honourable Senator Grafstein, seconded by the Honourable Senator Joyal. That is the question before the Senate. That question is open for debate. The honourable senator has not cited to me any rule that has been broken. Unless there is leave of the Senate, I cannot accept that you have a right to speak twice on the same subject.

Senator Cools: I am not attempting to speak twice. I know the rules very clearly.

Senator Lynch-Staunton: You are out of order!

Senator Cools: I am prepared to speak at third reading. If people do not wish to hear me, that is fine. I will vote against the bill, that is all.

The Hon. the Speaker: Honourable Senator Cools, it is not a question of honourable senators not wishing to hear you. All senators in this chamber have equal rights. There are no senators who have more rights than others. My role is to enforce the rules.

If a senator rises in this chamber and indicates that a rule has been broken, then it is my responsibility, at the request of the Senate, to determine whether or not that is so. However, there is no indication here of a rule having been broken. Therefore I am unable to accept your point of order, and I must proceed to the next senator who wishes to speak.

Hon. Landon Pearson: Honourable senators, I am rising today as a member of the Standing Senate Committee on Legal and Constitutional Affairs to contribute my thoughts to the debate on Bill C-40, and to explain why I will not be supporting the amendments proposed by Senators Grafstein and Joyal.

Senator Joyal made a fine speech last Thursday, and I have great respect for both Senator Joyal and Senator Grafstein, who have clearly brought forward their amendments on the basis of deeply held principles.

My concern, however, and the reason I am speaking today, is that the principles they are defending so eloquently are not the central principles of this legislation, the principles this house supported at second reading.

As Senator Cools said succinctly in her intervention last week, Bill C-40 is domestic legislation. The deplorable fact that certain American states continue to practice the death penalty, in spite of U.S. ratification of the International Covenant on Civil and Political Rights, is certainly relevant. However, a vote against the amendments is not, and cannot be seen as a vote for capital punishment.

The principles that underlie this legislation are the nature of the judicial and procedural conditions that must be in place in Canada before we extradite an individual to a requesting state or, as this legislation will permit for the first time, to an international criminal court or tribunal. I am satisfied that the bill as it currently exists details clearly what these conditions must be.

•(1430)

I am also satisfied that the minister's discretion, which causes Senators Grafstein and Joyal so much difficulty, is thoroughly circumscribed by the criteria listed in clause 47. These criteria include, in clause 47, that:

> **47.** The Minister may refuse to make a surrender order if the Minister is satisfied that
>
> ...(*c*) the person was under the age of 18 years at the time of the offence and the law that applies to them in the territory over which the extradition partner has jurisdiction is not consistent with the fundamental principles governing the *Young Offenders Act;*

That means no death penalty for kids.

The minister's discretion is further subject to judicial review by a provincial court of appeal and, ultimately, the Supreme Court of Canada.

Up to now, none of the persons we have returned to a requesting state have been executed. Each year, we receive approximately 200 requests and extradite 30 to 40. This is a situation under the current legislation which allows ministerial discretion.

Furthermore, as a question of practical politics, leaving discretion with the minister, in my opinion, actually strengthens Canada's hand in bringing about changes in a requesting state's attitude to the death penalty. Without this discretion, Canada will not have a functioning lever at all.

The second point I wish to make concerning extradition to states that retain the death penalty is that, as far as I know, the inherent right to life has never been considered an absolute principle in law. Killing in self-defence, for example, is accepted as a legitimate defence — one life to protect another.

As Canadian parliamentarians, I believe we have a fundamental responsibility to protect our own citizens. I am convinced that the chances of making Canada a haven for the worst type of killer is a very real one if our Justice Minister has no discretion, and the message goes out that Canada is a safe place to be if one wants to avoid the consequences of a heinous crime. On behalf of my fellow Canadians, and particularly the vulnerable young, I am not willing to take that risk.

With respect to the second amendment, I have little to add to what Senator Fraser and others have said. I am not able to accept that there should be two judicial tracks for individuals living in Canada, no matter what crimes they have committed. The fact that our record of prosecuting people successfully for war crimes has been poor in the past is not a sufficient reason for making it easier to extradite them now.

With the emergence of the new war crimes tribunals and the possibility of an international criminal court, the practice of collecting evidence at the time, or just after the crimes have been committed, is becoming more sophisticated and effective. This will make it easier in the future to prosecute. Furthermore, no matter what the outcome in terms of individual judgments, the process of trying individuals for alleged war crimes, I believe, has raised public consciousness in such a significant way that the trials themselves cannot really be considered failures of justice.

Finally, I should like to say a few words about the issues raised by Senator Cools yesterday. While it is true that the UN Security Council resolutions created the two existing war crimes tribunals, Canada, as a full and committed member of the United Nations, accepted those resolutions and has engaged itself in doing its best to make them an effective instrument of the world's revulsion against these crimes. The proposed international criminal court that is also referenced in the bill will come into being in a different way, as an international treaty. As such, I presume that there will be implementing legislation, which would, I think, be the ideal time to examine these issues related to international courts and tribunals in depth, rather than to do so in the context of this legislation.

I would also recommend that, sooner rather than later, one of our standing committees study the implications of our commitments under international laws and agreements at some length so that all of us may be better informed.

In the meantime, honourable senators, Bill C-40 is an important bill to modernize our procedures, to enable us to fulfil current obligations that we have undertaken as a supporting member of the United Nations, and to protect our own population. I urge you to support it without amendment.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Would the Honourable Senator Pearson entertain a question?

Senator Pearson: Of course.

Senator Kinsella: Senator, what is your view on the proceedings that are taking place, as we speak, at the United Nations Human Rights Commission, and in particular the resolution that might relate to this matter, which I understand will be decided upon on Friday of this week in Geneva?

Senator Pearson: I understand that there has been a good deal of negotiation and that the resolution currently being discussed would be in conformity with this bill. When it is over, I am hoping to hear from one of your colleagues.

Hon. Jerahmiel S. Grafstein: Honourable senators, I hope that the Honourable Senator Pearson will allow me to ask questions dealing with her comments relating to the international tribunals and, in particular, her comment that it will be easier to extradite because it is now easier to collect criminal evidence.

Will my honourable friend accept the proposition that once we have established an international tribunal, as we have with respect to Yugoslavia and Rwanda when we ratified those two tribunals and approved their rules of evidence, this then becomes an extension of the law of Canada?

Senator Pearson: Honourable senators, that is not my understanding about what happens when we ratify a convention. I take all my experience from the Convention on the Rights of the Child. I am always told that when we ratify a convention, it does not immediately become part of Canadian law. It becomes embodied slowly into our law.

I am not sure how to answer the honourable senator's question. I am not an expert in these matters.

Senator Grafstein: By ratification, I am referring to Canadian legislation that incorporates, by reference, the international legislation of the treaty. My understanding is that when we pass a piece of domestic ratification legislation, we have incorporated it as the law of Canada.

I see Senator Nolin, who is a member of the Legal and Constitutional Affairs Committee, nodding his head in agreement.

Honourable senators, I assume I am correct in stating — and if I am incorrect, I am sure I will be corrected by many of my colleagues in this chamber — that we have incorporated, by reference, the rules of evidence by the international tribunal. We heard an interesting exposé of Senator Cools' views about international tribunals, which are not broadly shared by some of us. However, we now have incorporated in the international tribunals all of the elements of a fair trial, of cross-examination, and all of the elements in the Charter to protect the accused.

We have, in effect, two Charter codes. We have the Charter in Canada, and we have incorporated, by reference, all the Charter-like protections in the rules of evidence in international tribunals because we would not have ratified that treaty unless it conformed to the Canadian Charter of Rights and Freedoms. Would the honourable senator agree with that?

Senator Pearson: Honourable senators, I presume that would be the case. Such treaties would be assessed against the Canadian Charter of Rights and Freedoms, as we are obliged to do with every piece of legislation that passes before us. I do not believe any legislation has come before us related directly to the tribunal. My honourable friend has been here longer than I, so he would know whether it has or not.

Senator Grafstein: Honourable senators, I have been admonished by the Speaker that we are not to speak twice, so I will not impinge upon the rule.

Clearly, in this legislation — and we had this discussion yesterday — the international tribunal is an entity. We would not have made it an entity under this legislation unless we had ratified and accepted it as part of the law of Canada. Hence, perhaps honourable senators could humour me by agreeing with me for the moment.

•(1440)

If I am correct, honourable senators, what we have established for people who are indicted for crimes against humanity is not one set of Charter protections but two; one in Canada and one in the tribunal. In effect, therefore, an alleged war criminal, or a person charged with crimes against humanity, has not one protection but two levels thereof: one at home and one overseas. That, in effect, is the logical conclusion of your argument. In other words, rather than making it easier to extradite, we will have, in effect, provided an endless immunity by using the Charter in a way in which it was never intended to be used to protect war criminals from coming quickly to justice.

Senator Pearson: I think I understand your question now.

I recently attended a conference at which an individual explained to me how he had collected evidence of what he considered to be a war crime committed in Ethiopia. A school had been bombed, and his evidence indicated that it was not accidental but, rather, deliberate genocide.

I was impressed that people and groups are now collecting such evidence, a thing which would not have been possible or thought about during the last world war. That is the point I was trying to make.

We hear about how people in Kosovo are carefully collecting the evidence of witnesses. I thought that would make it easier than trying people for crimes which took place 40 years ago.

Hon. Serge Joyal: I should like to ask the honourable senator a question.

I visited the honourable senator's Web site, and I should like to quote from it as follows:

> In addition to my duties as a senator, I advise the Minister of Foreign Affairs on children's rights.

She goes on to say:

> A good place to start is the UN Convention on the Rights of the Child — the most ratified international instrument in history.

She continues:

> When Canada ratified the UNCRC, to what did it commit itself?
>
> By ratifying the Convention in December 1991, Canada indicated its willingness to be legally bound by the Convention's principles.

I shall quote to you article 37 of the convention:

States Parties shall ensure that:

(*a*) No child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

This is the convention by which Senator Pearson feels we are legally bound.

The honourable senator quoted clause 47 of the bill. It states:

The Minister may refuse to make a surrender order if...

...the person was under the age of 18 years...

Is the honourable senator aware of a decision of the B.C. Court of Appeal dealing with a decision of the Minister of Justice of the time, the Honourable Allan Rock, to surrender two 18-year-old Canadians to the United States where they can be subjected to the death penalty? Is she aware that that decision of the Court of Appeal of B.C. is now under appeal?

I should like to quote a passage from the judgment of the Honourable Mr. Justice Donald. Paragraph 48 states:

[48] The age and nationality of the applicants should have been given the full measure of consideration. The Minister appears to be stating policies to hold back an imagined parade of fugitive murderers to Canada. In doing so he set too high a test for the application of Article 6 of the Treaty.

It is clear. Like the Honourable Senator Pearson, I believe that we are bound by the UN Convention on the Rights of the Children.

The Hon. the Speaker: Will the honourable senator please proceed to his question?

Senator Joyal: How does the honourable senator reconcile the commitment of the UN Convention on the Rights of the Child not to put to death a child under the age of 18 and clause 47 of the bill, which leaves that up to the discretion of the minister? The minister has exercised that discretion in the past, and one such decision was quashed by the Court of Appeal of British Columbia on June 30, 1997. How does the honourable senator reconcile those two positions?

Senator Pearson: On a point of clarification, the young people in the case in question were 18 when they committed the crime. The convention applies to people under the age of 18. Although that may be a very fine line, the distinction exists.

The Honourable Senator Joyal and I differ not so much on principle as on how these things work best. I believe that the provisions of the Young Offenders Act make it acceptable to give the minister the discretion. Senator Joyal thinks that the word should be "shall" and I think it should be "may." That is a difference of opinion.

Senator Joyal: The honourable senator will understand that the difference between "may" in clause 47 and "shall" is life. In one case, the minister prevents the imposition of the penalty on people under the age of 18. Under clause 47, the minister "may."

The Hon. the Speaker: Honourable Senator Joyal, will you proceed to your question, please? I cannot allow you to continue with your comment.

Senator Grafstein: Rule 37(4) allows for questions and comments.

Senator Joyal: Would the honourable senator agree that a provision that would at least establish some parameters for citizens under the age of 18 would be a better assurance that we are serving the international covenant?

Senator Pearson: I believe that the assurances in the bill are adequate. That is where we disagree.

Senator Kinsella: Would the Honourable Senator Pearson share with us her view on the appropriateness of the ratification process that this country has fallen into over the last number of years? That process speaks directly to the issue with which we are faced here, which has been apprehended by our colleague Senator Joyal.

During the government of Prime Minister Mulroney, the UN Convention on the Rights of the Child was ratified by Canada. That ratification was the result of consultation between the provincial and territorial governments and the Government of Canada. Pursuant to the old labour conventions case, the Judicial Committee of the Privy Council of the U.K. ruled that that is how we had to operate when international obligations affected federal and provincial jurisdiction.

Does the honourable senator think that Parliament should be directly involved in the ratification by Canada of international treaties which lay upon us, under international law, these kinds of obligations, such that when a bill of this type is before us, we in Parliament know directly, because we were directly involved in the ratification process of the standard-setting?

Senator Pearson: That is a very interesting question. I have been thinking about that a lot myself, because one of my concerns for a long time has been the low awareness level about some of our international conventions. This would have been the case with the covenants and all the things that we have ratified. However, I am not an international lawyer so I do not know how those things must happen. I would need a great deal of advice in order to be able to answer that question.

•(1450)

I agree with the honourable senator. I think that the larger the number of us who know what is contained in these conventions, the more effective the conventions will be in relation to public attitudes. However, I do not know how to do that.

Senator Kinsella: Would the honourable senator share with us her expertise on the International Convention on the Rights of the Child, in particular with respect to the provision that the execution of a child is explicitly proscribed by the international convention? Is it or is it not explicitly proscribed?

Senator Pearson: Yes, it is.

Senator Kinsella: Is it not also true that in the Vienna conventions relating to international law compliance, Canada is bound by that general framework, as well as by the ratification of the conventions and the obligations that we have assumed? The Mulroney government ratified the UN Convention on the Rights of the Child. Consequently, is it not true that Canada has assumed direct obligation not to allow the execution of children by virtue of the children's convention? In addition, the Geneva Convention on the Application of International Treaty Law is accepted by Canada. Therefore, it is clear that Canada is obliged to take all necessary measures to ensure that capital punishment will not be executed upon children, is it not?

Senator Pearson: Honourable senators, I think the —

The Hon. the Speaker: Honourable senators, I should like to point out that the time has expired. Is leave granted for the honourable senator to continue?

Hon. Senators: Agreed.

The Hon. the Speaker: Please continue, Honourable Senator Pearson.

Senator Pearson: Honourable senators, when we ratified the convention, we certainly undertook that within the territory of Canada there would be no capital punishment of children under the age of 18.

The degree to which our obligations as signatories to the convention go in other countries is, again, a question of international law, with which I am not too familiar. When the United States ratified the Covenant on Civil and Political Rights, what did they do about the issue of capital punishment? The honourable senator would know more about that than I would.

Senator Kinsella: They stated a reservation.

Senator Pearson: The point that I have been trying to make with respect to Bill C-40 is that it is domestic legislation. I think the bill instructs the minister to take all necessary measures with respect to children under the age of 18. That instruction is found in clause 47(*c*). That is my view.

Senator Kinsella: I thank the honourable senator for that reply. Does the honourable senator accept that it is a Canadian value that is accepted in law, as well as philosophically, that capital punishment is an evil that Canadian society rejects?

Senator Pearson: Yes.

Senator Kinsella: How, then, can we justify clause 47 of this bill if our categorical value is that capital punishment is an evil?

Senator Pearson: Honourable senators, when combating an evil, you try to find a way in which you can influence the individuals, or the countries, or the states that are committing that evil, to change their minds. By taking away the discretion of the minister, we would remove from Canada any capacity to influence at all.

Like many women, I am rather pragmatic about these things. I would like to see Canada retain a capacity to argue and negotiate. My understanding is that in the cases that we have undertaken on extradition, that is what happens, namely, there is discussion between the parties. If there were no discussion, we would have zero influence on American attitudes toward capital punishment.

Senator Kinsella: What is the honourable senator's view as to the appropriateness of legislators consulting with judges on legislation?

Senator Pearson: Honourable senators, it is perfectly legitimate to have an *in camera* session, as we did when we sat on the Committee on Child Custody and Access. We also had an *in camera* session with judges. I thought that was entirely appropriate because we needed their advice, and so on. In a structured context of that sort, it was an entirely appropriate activity.

Hon. Lois M. Wilson: Honourable senators, my understanding is that the international covenants and conventions are not policy options to influence, but they are legally binding instruments. Furthermore, one of the jobs we must do is align Canadian law with the commitments that we have made internationally.

I have been told, for example, by the Dean of Law at McGill that Canadian courts, let alone our judges or the public, hardly ever invoke the UN covenants and conventions. They look upon them as policy options, not as legally binding obligations.

Is it not the job of legislators to pass legislation which will help reconcile domestic law with the legally binding law to which we have committed ourselves internationally?

Senator Pearson: Honourable senators, I think we have already done that with respect to the convention on the rights of the child. We have already done that with Bill C-27, which was the law about sex tourism, et cetera, in which we cited the preamble to the convention on the rights of the child.

I tend to agree that our judiciary and legal community, and so on, have been rather slow, overall, at incorporating and referencing our covenants and other obligations. Those of us who are concerned about this are making a great effort to raise awareness and knowledge. UNICEF has just produced an excellent text, aimed at lawyers and judges, and so on, on how to use the convention in domestic legislation.

As a legislator, certainly I have tried in those things with which I have been involved to reference that insofar as it is possible. The issue that we are talking about involves a disagreement on the most effective way to promote our obligations. That is my position. In the general sense, however, it is something that we should be doing as much as possible.

Senator Wilson: Honourable senators, if it is obvious that we have done that with respect to the UN Convention on the Rights of the Child, why is it that we are unwilling to do it in this instance, knowing that law is a great teacher?

Senator Pearson: It is not appropriate in this particular instance, honourable senators. In the text, the minister is instructed that she must take this into consideration when she is asked to extradite. I do not see what you could put in the legislation itself. If you put in a preamble about all the conventions, which one would you single out? I do not quite agree with what I think is the implication of your question.

Hon. Joan Fraser: Honourable senators, would the Honourable Senator Pearson entertain two more questions?

Senator Pearson: Certainly.

Senator Fraser: First, I should like to read a passage from the draft resolution presented by Germany on behalf of the European Union to the United Nations Commission on Human Rights. It is quite a long resolution, and quite strongly worded, but the paragraph that interests us is paragraph five, which states that:

> The Commission requests states that have received a request for extradition on a capital charge to explicitly reserve the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting state that capital punishment will not be carried out.

Given that that resolution is being put forward by the European Union, all of whose members, as I understand it, have abolished capital punishment and are strongly opposed to it, would that not constitute fairly strong recognition by the international community that there is, in law, discretion available in this matter? While we would all hope that the whole world would move towards the abolition of capital punishment, in the meantime reality must be taken into account.

•(1500)

Senator Pearson: Yes, Senator Fraser, I would agree with your understanding of what that resolution says. I would also state that I believe that Bill C-40 is in accord because we reserve the right, as it states, to refuse extradition.

Senator Fraser: My second question is a follow-up to Senator Grafstein's question about his second amendment; that is, his amendment on extradition to tribunals.

If I follow his argument, he is saying that because the tribunals have strong Charter-like protections, strong guarantees of judicial process, we therefore do not need to exercise full due process to people who are being requested for extradition to those tribunals, but we extradite to countries that also have very strong constitutional or other guarantees of due process. I think for example of the United Kingdom. As Senator Cools has reminded us, its common law system is a monument of civilization. France, and indeed the European Union countries in general, have such guarantees. The United States, whatever we may think of its death penalties, has rock-ribbed guarantees of due process.

Would the senator comment on this question: If we accept that the mere existence of due process justifies fast-tracking, in that case ought we to fast-track to everyone instead of just to tribunals?

Senator Pearson: Honourable senators, I still feel very uncomfortable with the idea of two tracks. As we have described it here, it should be adequate. The fact that there will be double protections is great; so much the better. I just hope that the way in which people are able to garner evidence will be more effective than it was in the past.

However, that is a practical question for the prosecutors and the investigators rather than a question of procedure for us here in Canada. I just do not think we should fast-track a judicial process for one group of people, whatever they have done, in spite of the guarantees at the other end.

On motion of Senator Andreychuk, debate adjourned.

[*Translation*]

PRECLEARANCE BILL

THIRD READING

Hon. Rose-Marie Losier-Cool moved the third reading of Bill S-22, authorizing the United States to preclear 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.

She said: Honourable senators, I would like to address a few concerns raised during debate of this bill at second reading.

Bill S-22, the preclearance bill, would lay the legal groundwork for preclearance operations in Canada but, more important still, it would pave the way for new approaches to managing a border that sees some of the richest and most dynamic trade in the world and supports one of the largest bilateral air transportation markets.

Following the signing of the Open Skies Agreement between Canada and the United States, air traffic increased 31 per cent, and the number of non-stop flights to the U.S. increased to 84. Preclearance played an important role in achieving the objectives of the agreement. Preclearance allows American federal agencies to inspect within Canada travellers and goods destined for the United States.

The agreement on preclearance in air transportation reached in 1974 by the two countries made American preclearance services in Canadian airports official. In 1998, 9.3 million travellers passed through American preclearance. The preclearance bill was introduced to respond to three new facts that have arisen since the signing of the 1974 Agreement.

The 1982 Charter of Rights and Freedoms accorded Canadians new rights. The rapid increase in cross-border movement of people and goods requires border inspection services be adapted. Finally, technological progress makes it easier to target travellers at risk, to obtain prior information on passengers and to streamline procedures. The preclearance bill defines how Canadian law applies and sets out the rights and obligations of travellers, the power of American clearance officers and the information that airlines must provide.

In addition, it establishes a basis for reworking the agreements on border clearance of individuals and goods travelling by air and other means of transportation. It is an exceptional legislative text that accords the Americans a set of limited powers within the context of Canadian law.

The preclearance bill is designed to conform as closely as possible to the current provisions of the Customs Act and Canadian case law. Canadian sovereignty will be maintained in preclearance areas. The rights of travellers will be protected in these areas by the Charter of Rights and Freedoms, the Canadian Bill of Rights and the Canadian Human Rights Act.

[*English*]

U.S. officers will only be authorized to administer the civil components of U.S. laws that are directly related to the admission of travellers and the importation of goods to the U.S., while the application of these laws will be subject to Canadian law. U.S.-administered laws will apply to customs, immigration, public health, food inspection and plant and animal health. Any actions performed in a preclearance area that is criminal in nature will be dealt with by Canadian authorities.

Preclearance officers will be able to conduct frisk searches, detain passengers for transfer to Canadian authorities, examine and seize goods, and impose monetary penalties. They will not be allowed to conduct strip searches or more intrusive searches.

This bill represents roughly two years of negotiations with the United States government and a balancing act of marrying the legal regimes of our two countries. The border process involves civil, criminal and administrative enforcement. The preclearance scheme is a hybrid which allows the U.S. to enforce civil and administrative matters, with Canada enforcing criminal matters.

[*Translation*]

The Senate Committee on Foreign Affairs found that the bill has the support of the Canadian air industry. It has also recognized that the preclearance arrangement will be instituted with full reciprocity in the United States. Amendments have been made to the text in response to certain recommendations by the Canadian Bar Association.

Thus, one amendment was proposed relating to false statements. The dissuasive measure in this connection will now apply only to the traveller himself or herself, and not to third parties that might be associated with the statements made by the traveller. The traveller must have made the false statement knowingly, and it will be punishable solely on summary conviction. Amendments have also been proposed in order to indicate clearly that the decision to detain or search a traveller cannot be made solely on the basis of his or her refusal to answer the questions asked.

[*English*]

•(1510)

We have also passed an amendment which will provide further assurance that Canadians' rights are not being compromised. That amendment requires that a review of the provisions and operations of the act be reported to each House of Parliament within five years.

[*Translation*]

Canada does not yet have any preclearance facilities in the United States, but the bill will not be enacted until the two countries have signed a reciprocity agreement.

In short, this bill is bringing our border into the 21st century. It clarifies the powers conferred upon the U.S. authorities and protects the rights of travellers under Canadian law. Travellers arriving in North America from Europe and Asia will be better served. There will be greater consistency at the preclearance points, and at border crossings on both sides, with a view to controlling illegal activities.

[*English*]

The Hon. the Speaker: If no other honourable senator wish to speak, I will proceed with the motion.

It was moved by the Honourable Senator Losier-Cool, seconded by the Honourable Senator Ferretti Barth, that the bill be read the third time now. Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read third time and passed.

BUSINESS OF THE SENATE

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, since it is now close to 3:15 p.m., and committees are scheduled to sit this afternoon, I believe there is agreement on both sides of the chamber that we now adjourn.

The Hon. the Speaker: Is it agreed, honourable senators, to leave matters where they are and proceed to adjournment?

Hon. Senators: Agreed.

The Senate adjourned until tomorrow at 2 p.m.

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