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(HANSARD)

Monday, December 10, 2001

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Monday, December 10, 2001

The Senate met at 8:00 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

FIFTY-THIRD ANNIVERSARY OF THE UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, 53 years ago today, the General Assembly of the United Nations, meeting at the Palais du Chaillot in Paris, proclaimed the Universal Declaration of Human Rights "as a common standard of achievement for all people and all nations."

Up until the very last moment, it was not certain that Canada would number among the 48 states voting in favour of the declaration. On December 7, 1948, a survey of member states indicated that Ottawa would not support the vote. When this was realized, and given the company that Canada would be in among the eight states planning to abstain, such as Apartheid South Africa, Canada fortunately came around.

Today, honourable senators, in Canada, Parliament must work very hard to resist the type of rationalization of the Ottawa of the 1940s, which flirted with not supporting the Universal Declaration. Parliament must become the sentinel for the protection and promotion of human rights and not allow itself to be co-opted in the direction of limiting the human rights of Canadians.

Parliament must also be on guard against those who camouflage the limiting of human rights behind the screen of a new vocabulary that speaks of existential phenomena, which is nothing but a cover to shroud a new flirtation with the limiting or derogation of rights standards that Canadians embrace.

Honourable senators, if there ever was a shibboleth, it is the watchword of human security, the new criterion of those who would seek to permit the limitation or abrogation of human rights. The claim that the right to human security somehow trumps other rights is an error. It is as much an error as the claims of those who postulate that economic, social and cultural rights trump civil and political rights. Rather, honourable senators, there is an inherent, intrinsic unity of human rights. This is the principle that must inform any measure that would seek to limit or abrogate human rights in the name of human security.

In 1948, the General Assembly also decided to prepare a covenant or treaty on human rights to provide the machinery to implement the rights articulated in the declaration. Since 1976, Canada has been bound by the covenant, both on civil rights and economic rights. Of great importance to Canada these days are the provisions of Article 4 of the International Covenant on Civil and Political Rights, which sets out the parameters on any attempt by Canada to limit or abrogate the rights of Canadians. These limits, for example, include the right never to be subjected to torture, and the right to be free from racial, ethnic or religious discrimination, even in times of public emergencies, where the life of the nation itself may be threatened.

The non-emergency, statutory limitations to human rights, such as those in anti-terrorist legislation, are subject to the communication mechanism of the optional protocol of the Covenant on Civil and Political Rights. It is my prediction that Canadians will successfully use this vehicle, and that the currently proposed anti-terrorist legislation will be found to limit the human rights of Canadians, contrary to the international guarantees to which we are bound.

[*Translation*]

MONTFORT HOSPITAL OF OTTAWA

DECISION OF ONTARIO COURT OF APPEAL

Hon. Yves Morin: Honourable senators, you will remember that at our last sitting, I expressed my support for the right of francophones to have access to health care services in their mother tongue, and I applauded the initiatives of the francophone leaders in that respect.

Therefore, I was very pleased on Friday to hear the unanimous decision of the Ontario Court of Appeal regarding the Montfort Hospital. This decision confirms the right of francophone minorities to health services in French.

This legal argument strengthens, if you will, the medical evidence to the effect that health services, whether we are talking about health promotion and protection, diagnosis or therapy, can only be efficient and effective if they are provided in the patient's language.

The decision of the Ontario Court of Appeal was welcomed by our government, as illustrated by the statements of Ministers Stéphane Dion and Don Boudria.

According to Radio-Canada, there is a possibility that the Government of Ontario may, with the support of the Government of Quebec, ask the Supreme Court to overturn this decision.

• (2010)

I am asking Mr. Harris and Mr. Landry to put an end to this legal warfare and to recognize once and for all the fundamental constitutional rights of francophone minorities.

[*English*]

FIFTY-THIRD ANNIVERSARY OF THE UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS

Hon. Michael A. Meighen: Honourable senators, it gives me great pleasure to rise to acknowledge the fifty-third anniversary of the United Nations Universal Declaration of Human Rights, proclaimed on this very day in 1948.

It is important that we mark this day, especially this year, in this country, where we are struggling to find the right balance between the preservation and promotion of human rights while, at the same time, drafting laws that will enable our government, our police forces and other agencies to mount an effective fight against terrorism.

Both Bill C-36, which is before us now in the Senate, and Bill C-42, which is in the other place, curtail certain rights in the name of the fight against terrorism. We, as legislators in this chamber of sober second thought, are called upon to determine whether the government, in achieving its purpose, has successfully protected the rights of all Canadians.

For guidance in our deliberations, we can do little better than take into consideration some of the clauses of the International Covenant on Economic, Social and Cultural Rights, as well as the International Covenant on Civil and Political Rights. Both of these instruments, which proclaim rights that we seek to apply throughout the world, contain clauses that make it crystal clear that, even in times of emergency, certain rights remain inviolate.

Article 5 of the International Covenant on Civil and Political Rights states:

> Nothing in the present Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or their limitation to a greater extent than is provided in the present Covenant.

• (2010)

Article 4 of the International Covenant on Economic, Social and Cultural Rights states that even in times of public emergency there can be no discrimination on the grounds of race, colour, sex, language, religion or social origin.

Honourable senators, we must ensure that, in Canada, even in a time when we feel threatened by terrorism, our basic human rights remain secure.

[Senator Morin]

[*Translation*]

MONTFORT HOSPITAL OF OTTAWA

DECISION OF ONTARIO COURT OF APPEAL

Hon. Serge Joyal: Honourable senators, the unanimous decision brought down by three justices of the Ontario Court of Appeal last Friday, December 7, in the case relating to the maintenance of French-language services at Ottawa's Montfort Hospital involves at least two significant conclusions.

First, the court states that maintenance of the rights of linguistic minorities constitutes the basis of the entire constitutional structure of our country. Second, the recognized constitutional protection of linguistic minorities goes beyond the mere letter of our Constitution.

The implications arising out of these conclusions go far beyond the constitutional theory espoused until now by authors and jurists who have written or spoken on these matters.

I will address the first point, that protection of minority language rights is the basis of the constitutional structure of our country.

This conclusion is based on an analysis by the court of our entire constitutional system. According to the court, our system of government constitutes a rational and cohesive whole. Protection of minority rights is one of the fundamental principles of our constitutional structure.

In other words, the objective of protecting minority language rights must be present not only in the federal structure of our country but also in the way the legislative power is divided between the two chambers of Parliament, indeed in the very composition of our chamber, the Senate, where Quebec is divided into 24 senatorial divisions designed to give the anglophone minority a voice.

This conclusion by the court is an important one in that it raises questions as to how prepared we are to recognize and protect the equal status of both official languages in Ottawa, the national capital.

The second Appeal Court conclusion is that the linguistic rights protected are not limited to those expressly mentioned in the Constitution Act, 1867, or those entrenched in s. 23 of the Canadian Charter, that is, the rights to education.

It has been sustained several times in the past, by eminent jurists moreover, that over and above this protection the provinces might of course add on to this list, but still maintain the ability to repeal it, in accordance with the principle of the provinces' legislative supremacy.

In the case of the Montfort Hospital, I have personally sustained the opposite opinion, as has Honourable Senator Gauthier, in a letter to the Prime Minister of Canada on August 9, 2000, calling upon him to ask the Attorney General of Canada to intervene in the Court of Appeal in support of this fundamental point, namely that the governments' obligations with respect to minority language rights were not restricted to those rights specifically listed in the law.

The Court of Appeal confirmed this conclusion. It ruled that the Ontario government may not impair the present role of the Montfort Hospital, because it is a vital institution for the life and development of the minority francophone community. This ruling by the court is a fundamental development, which will have real consequences for the future of minority official languages communities and for the scope of the role of Canada's Parliament and its judicial institutions.

Honourable senators, we must rejoice over this unanimous decision. It leaves no doubt about the direction our country must take.

RIGHT TO FREEDOM OF RELIGION

Hon. Gérald-A. Beaudoin: Honourable senators, in 1948, the Universal Declaration of Human Rights was proclaimed. It would change values in our modern world considerably. Today, I want to look at one of these rights, the right to freedom of religion.

The right to freedom of religion, guaranteed by paragraph 2(*a*) of the Canadian Charter of Rights and Freedoms, is a fundamental right in a democracy.

There is no state religion in Canada, as the Supreme Court confirmed in *Chaput* in 1955 and in *Big M Drug Mart* in 1985. Freedom of religion has been the subject of a few Supreme Court decisions, particularly as it concerns family law, youth protection, statutory leave, education law, municipal law, tax law and criminal law.

A quick review of the jurisprudence would seem to indicate that the Lord's Day Act violates the freedom of religion. However, a province may impose a weekly day of rest.

This freedom of religion includes the rights of the parents to educate and care for their children according to their religious beliefs. However, this freedom is not absolute. In family matters, it has been decided that the test of the interests of the child overrides the parents' freedom of religion.

Section 2(*a*) of the Charter recognizes the right to state one's religious beliefs openly, without fear of reprisal. As well, pursuant to our international commitments, freedom of religion is interpreted broadly and generously by our courts and limits on this freedom must be reasonable in a free and democratic society, as set out in section 1 of the Charter.

MONTFORT HOSPITAL OF OTTAWA

DECISION OF ONTARIO COURT OF APPEAL

Hon. Jean-Robert Gauthier: Honourable senators, the judgement brought down by the Ontario Court of Appeal regarding the Montfort Hospital delighted me. It took five years of work, with a group from Ottawa-Vanier and the region of Ottawa to save a hospital, which was essential for our survival.

The Health Services Restructuring Commission ordered the closing of the Montfort Hospital, thereby violating section 7 of Ontario's French Language Services Act. Yes, such an act does exist in Ontario, and the commission had not respected it.

According to the Court of Appeal, the Government of Ontario's Health Services Restructuring Commission had not taken all of the necessary measures to comply with the act. By not giving enough weight and importance to the role of the Montfort Hospital for the survival of the francophone minority in Ontario, the commission did not fulfil its mandate in the public interest, according to the judges of the Appeal Court of Ontario.

The court rejected the Government of Ontario's appeal, confirmed the order in guidelines of the commission and referred the whole matter to Ontario's Minister of Health. Now we can only hope that the case will not be appealed.

The Montfort is the only hospital in Ontario to provide a whole range of medical services and training in a French environment. The Court of Appeal also confirmed that the Constitution's unwritten principles, as recognized by the Supreme Court, have a formal and fundamental structural characteristic.

• (2020)

Its principles are those of federalism, democracy, constitutionalism, rule of law and respect for minorities. This decision applies throughout Canada. It will have a significant impact in all provinces.

In addition, the Court of Appeal confirmed that the Health Services Act enriches the language rights guaranteed by the Constitution of Canada in order to advance the equality of status of the use of French as provided in subsection 16.3 of the Canadian Charter of Rights and Freedoms. This decision obviously delighted me, and I share with all French and English Canadians in this country in the victory of December 7.

Honourable senators, I will conclude my remarks by saying it is true that there were some difficult moments. There were difficulties, there is no doubt, but we are proud of our win. We have learned that when you are under attack, you learn to defend yourself.

We francophones in Ontario, and elsewhere, can defend ourselves. We know how to win with some finesse, but we hope this decision will be final. Enough foolishness!

[*English*]

The Hon. the Speaker: I regret that the time for Senators' Statements has expired.

ROUTINE PROCEEDINGS

ANTI-TERRORISM BILL

REPORT OF SPECIAL COMMITTEE PRESENTED

Hon. Joyce Fairbairn, Chair of the Special Senate Committee on Bill C-36, presented the following report:

Monday, December 10, 2001

The Special Senate Committee on Bill C-36 (formerly the Special Senate Committee on the Subject-Matter of Bill C-36) has the honour to present its

SECOND REPORT

Your Committee, to which was referred Bill C-36, An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism, has, in obedience to the Order of Reference of Thursday, November 29, 2001, examined the said Bill and now reports the same without amendment, but with the appended observations.

Respectfully submitted,

JOYCE FAIRBAIRN
Chair

(*For text of observations, see today's* Journals of the Senate, *Appendix, p. 1103.*)

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

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I move that this bill be placed on the Orders of the Day for third reading tomorrow.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I cannot raise a point of order until we are into Orders of the Day. However, I would like permission to examine the report. If I heard the Clerk correctly, he said that this report on Bill C-36 was being made without amendments, but that there is an attachment. If there is an attachment, I will be arguing that rule 97(4) does not apply, because the senators need to have an opportunity to debate that attachment.

The Hon. the Speaker: We are in Routine Proceedings, as Senator Kinsella observed, and I am in the process of putting the motion. I do not think there is any objection to any senator examining the record. Accordingly, the honourable senator should feel free to do so.

Senator Kinsella: Under what rule?

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

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

[*Translation*]

SCRUTINY OF REGULATIONS

FOURTH REPORT OF COMMITTEE TABLED

Hon. Céline Hervieux-Payette: Honourable senators, I have the honour of tabling the fourth report of the Standing Joint Committee on the Scrutiny of Regulations, which concerns a subsection of the Northwest Territories Reindeer Regulations, and, at this point in the year, I think it appropriate to recommend these regulations be disallowed, as they are not, in our opinion, legal.

[*English*]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

TENTH REPORT OF COMMITTEE PRESENTED

Hon. Richard H. Kroft presented the tenth report of the Standing Committee on Internal Economy, Budgets and Administration:

Monday, December 10, 2001

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

TENTH REPORT

Your Committee has approved the Senate Estimates for the fiscal year 2002-2003 and recommends their adoption.

Your Committee notes that the proposed total budget is $63,900,850.

Respectfully submitted,

RICHARD H. KROFT
Chair

The Hon. the Speaker: When shall this report be taken into consideration?

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

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-46, An Act to amend the Criminal Code (alcohol ignition interlock device programs).

Bill read the first time.

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

On motion of Senator Carstairs, bill placed on the Orders of the Day for second reading two days hence.

[*English*]

THE SENATE

MOTION TO AUTHORIZE TAPING OF SEGMENTS OF PROCEEDINGS FOR PURPOSES OF CREATING EDUCATIONAL VIDEO ADOPTED

Hon. Richard H. Kroft: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*i*), I move, seconded by the Honourable Senator Austin:

> That the Senate authorize the videotaping of segments of its proceedings, including Royal Assent, before the Senate rises for its forthcoming Christmas adjournment, for the purpose of making an educational video.

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

Hon. Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

• (2030)

Hon. Consiglio Di Nino: Perhaps Senator Kroft could give some clarification. Is he talking about today, tomorrow or the next couple of days? Perhaps he can give us some indication of what it is all about.

Senator Kroft: Honourable senators, last year the Standing Committee on Internal Economy, Budgets and Administration approved the production of an educational video cassette about the Senate. The project has advanced to the stage of filming, and I ask today for your agreement to permit a crew of five individuals — a producer, two camera operators, one assistant and their advisor, former Deputy Clerk Richard Greene — into the chamber to film parts of the proceedings. They will be taking raw footage that will be edited for final approval by the Standing Committee on Internal Economy, Budgets and Administration. Their work will be undertaken with utmost discretion and with the least interruption possible to our daily activities.

Providing Canadians with an authentic portrayal of the work that goes on in the Senate, sharing traditions, such as the Speaker's parade, and showcasing the architectural splendour of the chamber will help our fellow citizens gain a better understanding of the Senate as an institution and the contribution the Senate makes to public policy. I urge you to support this. I believe this deserves our support.

The Hon. the Speaker: The motion of Senator Kroft was put and passed. I should ask for leave to continue a proceeding that is not provided for in Routine Proceedings, that of questions from one senator to another. Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Di Nino: Honourable senators, the request is unusual. It is one of which most of us were not aware, and some explanation is necessary for us to be fully informed. Senator Kroft, obviously, was prepared to give an explanation because he read one. Therefore, it is no big surprise, but I asked a question as well. Is this filming to take place before we rise for the Christmas recess? Is the honourable senator talking about tomorrow, the day after or the next day? Could he give us some indication on the process here?

Senator Kroft: Honourable senators, I do apologize for what appears to be an element of surprise here. The filming of the video was discussed and approved by the Internal Economy Committee, but it was some time ago, and, obviously, it is not fresh in the minds of many of the senators, even those who are on the committee.

The intention is to have the video completed in February, which involves getting the recording done now before we break, and it is also an opportunity to take advantage of the many procedural event that will take place, with quite a full house, and even the possibility of Royal Assent. It is an unusual opportunity, a timely one, and one we would be sorry to miss because it would severely delay the making of this educational video. It certainly would give an opportunity to record things that might not otherwise be available. Again, as I said in that note, it will be subject to a full review and editing by the Internal Economy Committee.

Hon. Eymard G. Corbin: Honourable senators, I have a question for the chair of the committee. What assurance can he give us that there will be a significant number of members of the other place in attendance for the event, or will we be submitted to the usual charade of the Speaker and a few acolytes?

Senator Kroft: I presume the honourable senator is referring to the Royal Assent component. If I could give that assurance, I would be claiming powers that far exceed even those of the Internal Economy Committee. Obviously, every effort will be made to present the ceremony well, and a full attendance of the members of this house through this week will be the best assurance of the successful production.

Motion agreed to.

SCRUTINY OF REGULATIONS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO PERMIT ELECTRONIC COVERAGE

Hon. Céline Hervieux-Payette: Honourable senators, I give notice that at the next sitting of the Senate, I will move:

That the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations be empowered to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

[*Translation*]

THE SENATE

NOTICE OF MOTION TO STRIKE SPECIAL COMMITTEE ON SUPPORT FOR LA RELÈVE IN THE ARTS

Hon. Céline Hervieux-Payette: Honourable senators, I give notice that on Wednesday, December 12, 2001, I will move:

That a special committee of the Senate known as the "Special Senate Committee on Support for *La relève in the Arts*" be appointed to examine the role the Government of Canada can play through its own activities and programs and in cooperation with the provinces and with other interested partners, to support the coming generation of artists, arts organizations and art lovers in Canada.

Within the general framework of the negotiations undertaken by the Government of Canada within the World Trade Organization, and the efforts to conclude a free trade area of the Americas agreement, it is imperative that the cultural sector be treated differently and that special measures be considered to protect the original and authentic nature of Canadian culture.

Furthermore, in a world where communications are global, it is important that Canadian parliamentarians gauge the impact of globalization on Canadian culture and examine what the public and private sectors should be doing to promote and consolidate the arts in Canada.

That is why I will be moving that a special committee of the Senate be appointed to examine the important issue of providing support for La Relève in the Arts;

That the special committee consist of five Senators, three of whom shall constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses, to report from time to time and to print such papers, briefs and evidence as may be ordered by the committee;

That the committee have power to authorize television and radio broadcasting or dissemination through the electronic media, as it deems appropriate, of any or all of its proceedings and the information it possesses;

That the committee have power to sit during adjournments of the Senate pursuant to rule 95(2) of the *Rules of the Senate*; and

That the committee present its final report no later than two years after it is appointed.

[*English*]

QUESTION PERIOD

NATIONAL DEFENCE

THE BUDGET—ADEQUACY OF ADDITIONAL ALLOCATION—POSSIBILITY OF NEW WHITE PAPER

Hon. J. Michael Forrestall: Honourable senators, I wonder if we could find enough money to commit to film the Canadian Armed Forces now before it disappears into oblivion.

Honourable senators, my question is directed to the Leader of the Government in the Senate. I must preface it by saying that I am keenly disappointed in the budget and disappointed with the reaction of the government to the positions put forward by the various commanders in their various Level 1 business plans. This year they will be $1.3 billion short. There simply is not enough money to sustain the commitments of the 1994 White Paper on Defence, nor to allow the forces to do anything except structure downward, when, in fact, what they want to do is restructure latterly to provide a better force. In this regard, the Level 1 business plans of the three service chiefs and the Assistant Deputy Minister Materiel state they are $1.3 billion short per year in order to fulfil their government assigned tasks. The Auditor General agrees. The government, knowing that the military is $1.3 billion short of being in the black this year, gave them $1.2 billion over five years. If they are $1.3 billion short this year, next year and the year after that, adding inflation, one can readily see that $1.2 billion spread over five years can mean nothing other than restructuring downward.

• (2040)

Can the Leader of the Government in the Senate give us some indication as to whether the plans for this downgrading are in place? If they are not, what steps is the government taking either to put the plan for this restructuring in place or, perhaps — and I think "perhaps" makes more sense — to present Canadians with a new defence white paper?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator expresses his disappointment, and that, I suppose from his perspective, is reasonable. However, I do not think an increase of $1.2 billion should be sneezed at. I certainly do not think $300 million for new equipment should be seen as anything but a positive enhancement of our military potential. I see $1.6 billion over five years towards emergency preparedness. Yes, that does include the $1.2 billion for the military, but it is important that we have doubled the capacity of Joint Task Force 2, our elite anti-terrorist unit. We have enhanced laboratory networks and the purchase of specialized equipment to deal with such things as chemical, biological, and nuclear threats and warfare. All of this must be seen as a package to make us better prepared for terrorist acts as well as support for the military.

Senator Forrestall: Honourable senators, the Auditor General said to be cautious when we listen to utterances such as that one and to take it with a grain of salt — actually, I prefer an Aspirin.

The military needs $6.5 billion over five years to fulfil its existing shortfall in capital programs, as stipulated and called for in the defence, white paper of 1994. Instead, we have the Leader of the Government praising the government for giving the Canadian military $300 million for capital purposes over two years. To catch up with 1994, $6.5 billion is needed, and this government is offering $300 million over the next two years. I fail to bring the two together and I fail to see anything to applaud in that.

What capital programs are now facing National Defence, or has the government any? I have asked three or four questions, yet I do not get any answers. I may ask 1,000. It would be very pleasant to get one response.

Senator Carstairs: Honourable senators, since 1999, there has been an addition of $3.9 billion in funding for National Defence. They will receive an additional $1.2 billion. The government did not wish to go into a deficit position. It wished to have a balanced budget because that is the wish of Canadians, and I think the government met the expectations of most Canadians. I regret that the government clearly did not meet the expectations of the Honourable Senator Forrestall, but, after all, he does not support the government on most initiatives.

Senator Forrestall: Honourable senators, I certainly do not support the government in what it is doing to Canada's national defence ability to meet the directions given to it in 1994.

Can the Leader of the Government answer the following question, yes or no: Will the government be releasing a new white paper on defence because of this traumatic downgrading of the wherewithal to meet even the requirements set out in the existing white paper on defence?

Senator Carstairs: Honourable senators, I have no knowledge about the publication of a new white paper on defence.

We must realize that the concept of war and the whole world structure has, in large part, changed since September 11. That is necessitating expenditures in areas that, I would suggest to you, prior to September 11 were not considered. Those particular issues, namely, security of our borders, security at our airports and security in the air, are all parts of the necessity to make a fresh examination of the real needs of Canadians in order to protect ourselves.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, it being 8:44 p.m., pursuant to the order adopted by the Senate on Thursday, December 6, 2001, it is my duty to interrupt the proceedings to dispose of all questions on the motion of Senator Milne for the adoption of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-7, in respect of criminal justice for young persons and to amend and repeal other acts, with amendments).

The bells to call in the senators will be sounded for 15 minutes so that the vote can take place at 9 p.m. Call in the senators.

The Senate adjourned during pleasure.

The sitting of the Senate was resumed.

• (2100)

YOUTH CRIMINAL JUSTICE BILL

MOTION TO ADOPT REPORT OF COMMITTEE NEGATIVED

On the Order:

> Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Rompkey, P.C., for the adoption of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-7, in respect of criminal justice for young persons and to amend and repeal other acts, with amendments) presented in the Senate on November 8, 2001.

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Kelleher
Angus	Keon
Atkins	Kinsella
Beaudoin	LeBreton
Bolduc	Lynch-Staunton
Cochrane	Meighen
Comeau	Moore
Di Nino	Murray
Doody	Nolin
Eyton	Oliver
Forrestall	Rivest
Grafstein	Robertson
Gustafson	Sparrow
Hervieux-Payette	Spivak
Joyal	Stratton—30.

NAYS
THE HONOURABLE SENATORS

Austin	Kenny
Banks	Kolber
Biron	Kroft
Bryden	LaPierre
Carstairs	Lapointe
Chalifoux	Léger
Christensen	Losier-Cool
Cook	Maheu
Corbin	Mahovlich
Cordy	Milne
Day	Morin
De Bané	Pearson
Fairbairn	Phalen
Ferretti Barth	Poulin
Finnerty	Poy
Fitzpatrick	Robichaud
Fraser	Rompkey
Furey	Setlakwe
Gauthier	Stollery
Gill	Taylor
Graham	Tunney
Hubley	Wiebe—45.
Jaffer	

ABSTENTIONS
THE HONOURABLE SENATORS

Adams
Cools—2.

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

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

QUESTION PERIOD

The Hon. the Speaker: Honourable senators, we resume the proceedings. We are in Question Period with 21 minutes remaining.

FINANCE

THE BUDGET—CASH-FLOW BENEFIT TO SMALL CORPORATIONS

Hon. Roch Bolduc: Honourable senators, my question is for the Leader of the Government in the Senate and it concerns the budget proposal to allow corporations to defer their winter tax installments until next summer. The official justification for this, as given in the budget paper, is that it will provide a cash-flow benefit to small corporations.

Will the government leader concede that the accounting effect of this measure will be to push $2 billion of revenue from the current fiscal year into next year and, in the process, allow the government to claim that it has a balanced budget next year? Is not the real reason for this measure the cash-flow benefit to the government?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, some people obviously see bogeymen where I do not think bogeymen exist. There was a very simple reason for this decision. There has been an economic downturn. Economic downturns usually have greater impacts on small business. In order to give small businesses a bit of a boost, this payment can be deferred. All of the economic forecasts say that, by the second quarter, the American economy will have turned around and will be much more vibrant.

Senator Bolduc: This tax measure is only available for corporations. It does not affect unincorporated small businesses. It will not help unincorporated farmers to make it through the winter. It will not help most fishermen. It will not help those in a professional practice. Could the leader explain why, in the view of the government, this kind of cash-flow assistance is appropriate if one is running a store or a farm or a bed-and-breakfast as a corporation, but not if one is running it as an unincorporated proprietor?

• (2110)

Senator Carstairs: Honourable senators, with the greatest respect, I think Senator Bolduc is aware that more and more people are incorporating. Yes, there are still some small business owners in this country who do not incorporate, but the vast majority of them have decided that they will incorporate for a whole raft of reasons, not the least of which is that it makes for clearer accounting principles and practices. This was relief that the government could readily provide, and it did so.

[*Translation*]

Senator Bolduc: Where does the minister get her statistics to prove that there are more incorporated businesses than unincorporated ones? Come now, that makes no sense!

[*English*]

Senator Carstairs: I think I indicated that more and more were incorporating.

FISHERIES AND OCEANS

ATLANTIC SALMON FISH FARM INDUSTRY—COMPETITION IN UNITED STATES WITH CHILEAN SALMON

Hon. Gerald J. Comeau: Honourable senators, my question is to the Leader of the Government as well. The minister is probably aware that there has been a deepening problem with the dumping of Chilean farm salmon in the United States market that has been developed by Atlantic Canadian fish farmers for Atlantic salmon. The minister may be also aware that these fish farmers were in Ottawa last week to try to get some help from the government. They met with ministers and the Fisheries and Oceans Committee of the other place. They explained how they were losing $50 million annually, which runs to approximately $1 loss for every pound of fish they sell in the United States. We saw there was no provision in the budget for any kind of response to this deepening problem. Would the minister advise us as to whether there has been any discussion on what to do with this deepening problem in Atlantic Canada?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is a serious problem, as the honourable senator has indicated. The dumping is a provision that the government is monitoring very carefully. I would anticipate that there will be further meetings with the interested parties because there have certainly been discussions at this point and, as I understand it, they are ongoing.

Senator Comeau: Honourable senators, the minister is probably aware that approximately 4,000 people depend on this very important fishery, and it used to be a growing fishery. It brings in about $256 million a year in revenue. Of more importance, however, is that it is in those areas that most need that income, the coastal communities and rural areas of Atlantic Canada. As her colleague sitting next to her will know, this is an extremely important industry in New Brunswick. As a matter of fact, they no longer call the provincial department the Ministry of Fisheries but the Ministry of Fisheries and Aquaculture. The minister knows how important it is to the people in that area, and she may be aware that the minister from New Brunswick just this week did say that something had to be done very quickly.

I want to impress on the minister the urgency of dealing with this situation. I am concerned that there is no reference whatsoever to it in the budget.

Senator Carstairs: Honourable senators, as the honourable senator indicated, the meetings with the House of Commons Fisheries and Oceans Committee took place only last week. The honourable senator would recognize that the budget was probably well put to bed by that time. However, that is not to say that the Department of Fisheries is not aware of this issue. They are. It has been the subject of ongoing negotiations and discussions. I can tell the honourable senator that when cabinet meets later this week, I will again raise the matter.

AGRICULTURE AND AGRI-FOOD

THE BUDGET—ALLOCATION FOR FARM COMMUNITY

Hon. Leonard J. Gustafson: Honourable senators, very few farmers are incorporated. There are a few, but very, very few.

The latest federal budget contains no new support for Canadian farmers despite the fact that they have operated at a significant disadvantage compared to their highly subsidized counterparts in the United States and Europe, and they have struggled for the last three years. They were looking forward to the budget, the first in just about two years, and there is no hope there for them. This is a blow to agriculture. This budget is a security measure and offers little in terms of our farmers and the rest of the country. There is a lot of talk these days about security, and our farmers are facing a very serious problem, and here again they have been let down. What answer does the minister have for our farmers in view of this budget today?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, the $500-million program which was announced last year has been continued for the next budget year, and the Minister of Agriculture and Agri-Food is working with his provincial and territorial colleagues, as well as with farm groups, to create a new, integrated and financially sustainable agricultural policy. The government has reaffirmed its commitment to this renewal and this ongoing process. Clearly this has been a particularly difficult time for farm families, and particularly those in the grains and oilseeds industries.

Senator Gustafson: Honourable senators, coming back from the trade talks, the ministers laid out some hope that they would deal with the problems that farmers are facing in regard to the trade situation and in regard to the subsidies paid to farmers in the U.S. and Europe. Again, there is no new money in this budget for farmers. In fact, some of the old moneys that were put in have not been paid out. What kind of a direction is this? Does the government have no regard for agriculture at all?

Senator Carstairs: Honourable senators, I tried to indicate to the honourable senator the government's commitment to continue the $500-million program that was not meant to continue into this fiscal year but will. You can call that no new money; however, it was money that was not going to be there but will be there.

Senator Gustafson: Honourable senators, are we then to conclude that the government will take no additional steps whatsoever to alleviate this situation and deal with this serious problem?

Senator Carstairs: Honourable senators, the honourable senator is well aware that agriculture is a joint federal-provincial responsibility, and that is why I indicated that discussions are ongoing between the Minister of Agriculture and Agri-Food and his provincial and territorial colleagues. However, this decision cannot be made alone by the federal government. There must be agreement in conjunction with the support of his territorial and provincial colleagues.

Senator Gustafson: In all fairness, the discussions have been ongoing for three or four years, and nothing has happened. This is beyond a joke now. Something must be done. This government has had no consideration whatsoever for agriculture. Does the minister see any change coming? There is certainly nothing in this budget.

Senator Carstairs: Honourable senators, a few weeks ago I heard doom and gloom from the honourable senator with respect to the WTO negotiations. They were not going anywhere, and there would be no resolution of the subsidy issue. That issue is now on the table. It will be resolved, and that will clearly be the most impressive thing we can do for farmers in this country.

Senator Gustafson: Do not hold your breath.

THE ENVIRONMENT

THE BUDGET—ALLOCATION OF FUNDS FOR MANAGING SUSTAINABILITY OF GREAT LAKES AND ST. LAWRENCE RIVER BASIN

Hon. Mira Spivak: Honourable senators, the Commissioner of Environment and Sustainable Development raised in a recent report some concerns with respect to the Great Lakes and the St. Lawrence River basin. She identified a number of areas where she felt that the federal government could do a better job of managing flora sustainability in the basin. Her recommendations were targeted at the Departments of Agriculture and Agri-Food, Environment, Fisheries and Oceans, Foreign Affairs and International Trade, Health and Natural Resources and the Parks Canada agency.

Unfortunately, the budget does not appear to direct new funding towards these departments or allocate new funding specifically for the managing of sustainability in this basin. We all know how important that particular basin is to Canada.

Could the Leader of the Government in the Senate give us some explanation for this omission in the budget?

• (2120)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, that entire basin issue is part of the ongoing responsibility of a number of departments. Those departments have all received funding to continue to move forward on this initiative. None of their budgets has been cut in this regard.

Senator Spivak: Honourable senators, in their responses to the Commissioner of the Environment and Sustainable Development, all of the departments agreed with the recommendations. All of these departments pledged to do something to address the commissioner's concerns, depending on the availability of resources. In today's budget, the minister has failed to give these departments the additional financial resources to do their job. Is anything coming up in the near future that will enable these many departments to get the resources to do the job that is so vital to this major basin?

Senator Carstairs: Honourable senators, it is clear that the departments have resources; if they choose to reallocate those resources to deal with this issue, they can find the necessary dollars. They have made that commitment, and it is my hope that they will find the necessary dollars within their departments.

Senator Spivak: Honourable senators, has the cabinet decided that these departments should reallocate their resources in order to meet that commitment? Is that a priority of the government at this time?

Senator Carstairs: Honourable senators, the government is committed to meeting the goals that it so indicated to the commissioner.

POINT OF ORDER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my point of order relates to the earlier presentation of the special committee's report during Routine Proceedings by Senator Fairbairn. I have examined that report, which is on the Table. The report contains the signed bill and attachments. Among the attachments is the three-page document that has been circulated to all honourable senators. Therefore, we are dealing with a report with attachments.

When the item was read, we heard part of what was before us, namely, that Bill C-36 was being reported by the committee without amendments. Acting upon that part of what was before the chamber, the Speaker acted according to rule 97(4), which reads as follows:

> When a committee reports a bill without amendment, such report shall stand adopted without any motion...

That is fine. The Speaker was correct as far as it went. If a bill is being reported without amendment, then pursuant to that rule the Speaker is obliged to consider that the report is adopted without any motion being made. Then the senator in charge of the bill will move third reading on a future day, which occurred.

Honourable senators, we have before us the second report of the Senate Special Committee on Bill C-36. I will not get into the issue of change of name; that is another issue. The last line of the report says: "...examined the said Bill and now reports the same without amendment, but with appended observations."

That is the report we have. If we do not pursue this matter, there is no time when the Senate will have an opportunity to debate the report and its appended observations. It seems that what was envisaged by rule 97(5) is what is applicable right now. Rule 97(5) provides as follows:

> When the report recommends amendments to a bill, or makes proposals that require implementation by the Senate, consideration of the report shall not be moved unless notice has been given pursuant to rule 57(1)(*e*) or rule 58(1)(*g*), as the case may be.

If honourable senators turn to rule 58, which is the rule we normally follow when we have a report that is to be debated by the Senate, notice is given and the report is taken into consideration the following day. However, rule 57(1) refers to a special committee, and two days' notice is required.

Honourable senators, I am not so much concerned about the one or two days' notice, which may apply in this case because this is a special committee. My concern is that we have on the table a report that we may not be able to consider in its fullness, if it is not challenged. We will not have an opportunity to adjudicate.

Regardless of how the matter may come down at the end of the debate, we are not able to debate this report in its fullness if we are forced into third reading. Some senators may agree with the observations, others may disagree with them; we do not know. However, we certainly have a right to debate any report that is brought before us. Otherwise, what we are faced with, presumably, is that some senators are of one view in reporting Bill C-36 without amendment, while other senators are of another view.

The committee has done its work. We must now consider the view of all honourable senators. The views of honourable senators can only be ascertained or canvassed through debate. We at least have the right to debate this report prior to the consideration of third reading.

The committee had a choice to report the bill without amendments and did that. Rule 97(4) applies immediately. A motion to adopt is considered to have been dealt with and we are attending a motion for third reading. The committee also chose to report the bill with observations. Therefore, rule 97(4) does not apply, and more probably it is rule 97(5) that applies.

Honourable senators cannot escape the fact that on our Table is a report from a committee that contains a dialogue with observations, recommendations or however one wishes to describe them, and its content and substance. This chamber has a right to debate those observations.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, in the case we are considering at this time, the committee has reported and it is clearly indicated in its report that:

> [the committee] has reported the bill without amendment.

According to rule 97(4), and I quote:

> When a committee reports a bill without amendment, such report shall stand adopted without any motion,

Senator Kinsella tells us that the comments accompanying the report will have no chance whatsoever of being considered.

I do not agree with this, because all honourable senators present during the debate at third reading stage will certainly have the opportunity to consider the comments accompanying this report.

• (2130)

The act of moving on to third reading does not mean we are to set aside the comments accompanying the report. I believe that the procedure that should be followed is the one set out in rule 97(4), namely that the bill has been reported without amendment and we need to move on to third reading.

[*English*]

The Hon. the Speaker: Does any other honourable senator wish to comment?

Honourable senators, the matter seems reasonably straightforward but I would like to take at least a few minutes to consider my ruling. Accordingly, I will leave the Chair in favour of the Speaker *pro tempore* and hopefully return shortly with an answer to the point of order put by Senator Kinsella.

In the meantime, please proceed with Orders of the Day.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we would like to deal first with Item No. 7, second reading of Bill C-44, and then return to the Orders of the Day as proposed on the Order Paper.

AERONAUTICS ACT

BILL TO AMEND—SECOND READING

Hon. Aurélien Gill moved the second reading of Bill C-44, to amend the Aeronautics Act.

He said: Honourable senators, Bill C-44 has its origins in clause 5 of Bill C-42, the Public Safety Act.

[*English*]

Honourable senators, each country can decide which individuals it will allow within its borders. To make this decision, countries normally request information from those presenting themselves for admission, or at least verify the information presented in a passport or similar document. The United States is the first country to impose new data requirements on air carriers. I will use the United States as the example country for the remainder of my comments. However, I caution you that Bill C-44 is written to accommodate the requirement that foreign states be more broadly subject to the safeguards of the bill, not just the United States.

[*Translation*]

In this regard, the United States decided to request that certain basic information on passengers and crew members be communicated well before the flight's expected time of arrival in the United States.

In addition, on an individual basis, the United States will be able to request more detailed information, collected under the heading "passenger file."

As the American legislation requires the new data gathering program be in effect on January 18, 2002, the provision intended to allow Canadian carriers to comply is contained in its own bill, Bill C-44, to permit quick action and compliance with the date.

Honourable senators, Bill C-44 is optional. It imposes no measures on anyone and does not commit the Government of Canada to gather information for communication to the U.S. government. Instead, it allows carriers to provide certain information to a competent authority of the United States within a specified period.

I was pleased to learn, in my briefings, that the Privacy Commissioner had seen the provisions of Bill C-44 as originally proposed and had made certain recommendations to the Minister of Transport.

Following these consultations, an amendment was presented during the review in committee in the other place, and I understand that the Privacy Commissioner gave his support to the amended bill. This amendment does not seek to give new powers to government institutions for the gathering of information on passengers. Ours is a complex and effective legislative system to manage the collection, use and disclosure of personal information in compliance with Canadian values.

The sole purpose of this amendment is to maintain this system and the values that it promotes. This amendment does not seek to restrict government institutions in the collection of information on passengers when such collection is authorized under the act.

Honourable senators, we were asked to proceed quickly. The fact is that the Americans do not need us to pass this legislation. They are prepared to conduct long manual searches of all carry-on and checked baggage that arrives in the United States to follow up on their legitimate concern to ensure the safety of their system, which was at the centre of that unbelievable tragedy. As far as we are concerned, this is not only a matter of speeding things up for our fellow citizens who travel to the United States for leisure or business, which is good for both economies, but also a matter of international cooperation to identify and deter terrorists.

[*English*]

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I certainly appreciate the government's eagerness to get this bill passed as rapidly as possible, and we will not stand in its way at this stage. However, I would like to ask that consideration be given to two or three suggestions. One is that when the committee calls a meeting to assess the bill, it not do so without making sure that all those interested on this side can attend the meeting, unless it is scheduled in the committee's regular time slot. I say that because, right now, we on this side are pressured to not only do double duty but, in many cases, triple duty. We would like a little comprehension on the government side for that concern in order to allow us to give all bills, in committee and in the chamber, the evaluation they deserve.

Second, I am a little concerned about the government's position on this bill because, according to a report from the Canadian Press, "the federal government's controversial air passenger information legislation passed third reading in the Commons even as the government continued efforts to clarify its meaning." There is still some difficulty in the government explaining what exactly the United States wants in terms of information, how much of that information could be made public, and how much of it we would think, despite the Privacy Commissioner's assurances, can remain private.

If honourable senators read the law that was passed by Congress and signed by the President, not only does it require name, address, sex, passport number and so on, but also other information which is not specified. What does that mean? Does it mean dietary requirements, place of birth in the case of a naturalized citizen, the name of your parents, your maiden name? It can go on forever. We must be very careful before we rubber-stamp this bill to make sure that the information to be given is basic information and not information that can be used for purposes other than that for which it is required, meaning security.

• (2140)

Whatever assurances the Privacy Commissioner may give us, there is really little or no privacy left in this world. Let us not kid ourselves: As soon as information is entered into a computer or is written on a piece of paper, it becomes public information. It is as simple as that. At least we must make every possible effort to restrict the divulgence of information given to a first party, otherwise, once that is done, other parties can have access to it.

Our first concern is to ensure that when the committee meets, it is done in consultation on this side so that all of our members of the committee can attend. Our second concern is to ensure that the minister be there to defend his bill, and that he has the information that we require so that when the bill comes back to us, we are not asked to pass it, even as the government continues efforts to clarify its meaning, as was allowed in the other place.

[*Translation*]

Hon. Laurier L. LaPierre: My question is for Senator Gill. I would like to know if the Government of Canada has an act similar to that of the United States, whereby airlines in the United States must provide all necessary information to the Canadian government on passengers arriving in Canada on board their chartered flights?

[*English*]

In other words, do we have the same system here or do we allow the Americans, again, to dictate to us?

[*Translation*]

Senator Gill: Honourable senators, if my information is correct, we do not have similar legislation to that of the United States. We have Bill C-44.

The Hon. the Speaker *pro tempore***:** Is it your pleasure, honourable senators, to adopt the motion?

Hon. senators: Agreed.

Motion agreed to and bill read a second time.

REFERRED TO COMMITTEE

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

On motion of Senator Gill, bill referred to the Standing Senate Committee on Transport and Communications.

AIR CANADA PUBLIC PARTICIPATION ACT

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

The Hon. Fernand Robichaud (Deputy Leader of the Government) moved the third reading of Bill C-38, to amend the Air Canada Public Participation Act.

On motion of Senator Kinsella, for Senator Tkachuk, debate adjourned.

MISCELLANEOUS STATUTE LAW AMENDMENT BILL, 2001

THIRD READING

The Hon. Fernand Robichaud (Deputy Leader of the Government) moved the third reading of Bill C-40, to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect.

Motion agreed to and bill read third time and passed.

[*English*]

FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. B. Alasdair Graham moved second reading of Bill C-35, to amend the Foreign Missions and International Organizations Act.

He said: Honourable senators, I rise to speak to Bill C-35, respecting the privileges and immunities of foreign missions and international organizations. This bill is sponsored by the Minister of Foreign Affairs. It received third reading in the other place on December 4, having been approved by the Standing Commons Committee on Foreign Affairs.

As the title indicates, Bill C-35 amends the Foreign Missions and International Organizations Act, which was enacted in Parliament in 1991. It will be helpful to keep in mind the function of the existing act when considering the amendments.

The existing legislation is the federal law that provides for the special legal status in Canada of representatives of foreign states and of international organizations. The act can be divided into two parts: The first one deals with the legal status of foreign missions to Canada, such as embassies, high commissions and consulates; the second deals with the legal status enjoyed by international organizations such as the United Nations or the International Civil Aviation Organization in Canada. It is this second aspect dealing with international organizations that is the main subject of the amendments contained in Bill C-35.

For centuries, international law has required the granting of special legal status, privileges and immunities to foreign diplomats and consuls to ensure that the representatives of a foreign state are not unduly influenced by the authority of the receiving state. During the past century, international law has developed special rules relating to the status of international organizations. As states began to conduct more and more of their international affairs in the context of multilateral organizations such as the United Nations, it came to be accepted that such activities gave rise to the same need for immunities that existed when the same issues were dealt with on a purely bilateral basis, through embassies.

The existing legislation takes the privileges and immunities of the United Nations, which is Schedule III of the act, as a model. It then permits the Governor in Council, by order, to grant similar privileges and immunities to any international organization. In 1991, the Foreign Mission and International Organizations Act amalgamated the pre-existing Diplomatic and Consular Privileges and Immunities Act and the Privileges and Immunities (International Organization) Act.

For many years following the Second World War, therefore, Parliament has given the Governor in Council the capacity, by order, to grant privileges and immunities to international organizations. Examples of orders that have been passed under the existing legislation or pre-existing acts include orders granting privileges and immunities to the United Nations, the International Civil Aviation Organization, the North Atlantic Fisheries Organization, the Commonwealth Secretariat, and many others. There was also an order passed for the 1988 G7 summit in Toronto and, of course, for the Halifax summit in 1995.

The main purpose of Bill C-35 is to modernize the part of the act governing the granting of privileges and immunities to international organizations and their international meetings. The bill will enable Canada to comply with our existing commitments under international treaties, as well as fix several technical inadequacies that have been detected since 1991.

Honourable senators, allow me to turn to the bill's core proposal, which is to amend the legislative definition of international organizations.

• (2150)

Several years ago, the Standing Joint Committee on the Scrutiny of Regulations adopted the formal view that the existing definition permits orders to be made under this act only for international organizations that are created by a treaty. This was despite the fact that orders had been made in the past for non-treaty based organizations. Therefore, we have the odd situation where, for example, the Sommet de la Francophonie is covered by the act as there is a treaty relating to L'Agence and la Francophonie in that case, but the Summit of the Americas and the G8 are not.

[Senator Graham]

The change to the definition of "international organization" makes it clear that Canada can grant privileges and immunities by order to the Organization for Security and Cooperation in Europe, the G8, and other international organizations that are not established by treaty but are integral to the conduct of Canada's international relations. This amendment reflects the development in the conduct of international relations over the last several years whereby international summits are held by non-treaty based international bodies such as the G8 or the G20. The amendments also represent a timely clarification, since Canada is scheduled to host the G8 summit in Canada in Kananaskis, Alberta in June of next year.

The proposal in this bill that has generated the most discussion adds a provision designed to codify the common law with respect to the powers of the RCMP in providing protection and security to international governmental conferences that are held in Canada. It should be noted that the government has agreed to an amendment that was proposed in the other place in the Standing Committee on Foreign Affairs and International Trade, making clear that the RCMP can enter cooperative arrangements with the provincial and municipal police in sharing the responsibilities for providing security measures.

The government is clear in its intention to give a statutory base to the powers exercised by the RCMP when providing security for the proper functioning of an intergovernmental conference, and when providing security and protection to persons attending the conferences, including internationally protected persons.

I want to emphasize, honourable senators, that the government has no intention of either broadening a police power or infringing on the lawful demonstration of protesters. The proposal reflects the authority that police already have in common law and in statute.

I would like to provide one of the reasons for proposing such a provision in this bill. Shortly after the Summit of the Americas held in Quebec City last spring, a court challenge was launched in the *Tremblay* case, alleging that the perimeter fence was an inappropriate security measure. The Quebec Superior Court held that the fence was authorized by law, and that it did not breach the Charter. Given that Canada will be hosting international summits in the future, the government considers it useful that this law be given a statutory basis. The amendment has been carefully drafted in light of the common law and statutory duties conferred on the police to keep the peace, to protect persons — including internationally protected persons — from harm and to protect persons engaged in lawful demonstration from unlawful interference.

Any security measures taken by the police will be subject to Charter scrutiny and must be justified as reasonable in the circumstances. In other words, any police measure that limits a Charter right, be it freedom of expression, freedom of assembly or whatever, must be justifiable in a free and democratic society.

Honourable senators, I should like to speak briefly about the proposal in this bill to clarify that the Order in Council for an international organization or meeting exclude the obligation to issue a minister's permit to allow entry to Canada of persons who fall within the inadmissible classes under the Immigration Act. If there is a concern that this will give easier access to Canada by criminals, I assure you that international organizations and their meetings will be subject to the careful screening procedures already in place, and that the regular consultation between the departments of Foreign Affairs, Citizenship and Immigration, CSIS and the RCMP will not be bypassed. An Order in Council for international organizations and their meetings provides for immunity from immigration restrictions, not from the immigration formalities.

I now wish to comment briefly on several of the other proposals under Bill C-35. This bill will allow the government to extend privileges and immunities to international inspectors who come to Canada on temporary duty in order to carry out inspections under the Chemical Weapons Convention and the Agreement with the Preparatory Commission for the Comprehensive Nuclear Test Ban Treaty Organization. The Chemical Weapons Convention requires that inspectors be granted diplomatic privileges and immunities similar to those accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations. For example, under the Chemical Weapons Convention, a team of inspectors should receive the exemption from customs duties when they import specialized technical equipment for their use in the conduct of their duties.

The problem is that neither the implementing legislation nor any other Canadian legal instrument can, at present, provide the privileges and immunities up to this level to these inspectors. As a temporary arrangement, privileges and immunities have been provided by an Order in Council that provides less extensive privileges and immunities. This means that Canada could be criticized as not being in full compliance with the treaties. Therefore, it is the government's obligation to resolve this situation as soon as possible, and this bill does just that.

The bill also enables us to grant privileges and immunities to permit missions accredited to international organizations, such as the International Civil Aviation Organization located in Montreal. The bill also provides a remedy to the specific situation where the Canada Customs and Revenue Agency can reimburse the goods and services tax to individual representatives of the International Civil Aviation Organization member states but not to the actual mission offices of member states accredited to that international organization. By enhancing our relationship with ICAO, these amendments will improve the ability of Montreal and other Canadian cities to service the headquarters of international organizations operating their headquarters in Canada.

I might note that, apart from the foreign policy reason for such efforts, there are significant economic benefits that such offices bring with them. A 1988 study by the Group Secor commissioned by Montréal International estimates the economic return of international organizations located in the host city of Montreal to be approximately $184 million net for 1997.

Montreal is not the only Canadian host city, of course, which benefits from the presence of international organizations. Vancouver hosts the Commonwealth of Learning Secretariat and Halifax hosts the North Atlantic Fisheries Organization.

Another amendment of a technical nature will clarify the law with respect to the importation of goods for foreign missions. The right of diplomatic and consular representatives to import goods for personal use, including alcohol, is provided under the Vienna Convention. However, an earlier federal statute, the Importation of Intoxicating Liquors Act, states that the exclusive right of importation of alcohol rests with the provinces. In light of this apparent conflict, it would be useful to clarify and emphasize that importation for the official use of foreign representatives falls under the Foreign Missions and International Organizations Act and not under the Importation of Intoxicating Liquors act.

The existing act provides that Canada can provide certain privileges and immunities to political subdivision offices of foreign states like Hong Kong on a reciprocal basis. Legal analysis has raised the issue of whether the provision under the act is sufficiently clear. The provision in question may be interpreted as requiring that Canada have a provincial office operating in the foreign state receiving privileges and immunities before Canada can extend privileges and immunities to an office of a subdivision of that foreign state in Canada. This interpretation would mean that privileges and immunities would have to be withdrawn from a foreign state political subdivision office if Canada does not have, or no longer has, a provincial office in that foreign state. As this is not an interpretation that reflects the original intent of the provision of this act governing the granting of privileges and immunities to political subdivisions, this bill would clarify and ensure that the federal government may extend privileges and immunities at a consular level to political subdivisions of a foreign state such as Hong Kong even if Canada does not presently have a provincial office in that foreign state.

• (2200)

With respect to countermeasures, Bill C-35 contains an amendment which will authorize the Minister of Foreign Affairs to make time-limited orders under the act that will provide the legal framework needed to authorize the detention of diplomatic goods in response to infringements of the Vienna Conventions by foreign states in the area of customs clearance. For example, the amendment would provide the Canada Customs and Revenue Agency with the necessary authority to detain the diplomatic goods of a foreign state mission whose government had chosen to improperly detain the diplomatic goods of our Canadian mission abroad.

A final amendment to this bill is to add a provision to the act to enable the government to issue certificates proving to courts the status of individuals, foreign missions or international organizations covered by the act. The authority to issue certificates of status already exists in common law. However, it would be useful to codify this common law authority in keeping with the federal government's approach of respecting both the civil and common legal traditions of Canada.

In conclusion, the bill to amend the Foreign Missions and International Organizations Act will allow Canada to live up to its international obligations to grant privileges and immunities to international organizations. The amendments will enable Canada to continue to safely host important international events and summits in Canada.

In clarifying the statute with respect to the granting of tax privileges to accredited missions of international organizations headquartered in Canada, the bill also enhances Canada's ability to host important international organizations such as the International Civil Aviation Organization.

This bill will be given careful scrutiny at the appropriate time by the Standing Senate Committee on Foreign Affairs. Honourable senators, I urge your support for this legislation.

On motion of Senator Stratton, debate adjourned.

[*Translation*]

CANADIAN COMMERCIAL CORPORATION ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Céline Hervieux-Payette moved that Bill C-41, to Amend the Canadian Commercial Corporation Act be read the second time.

She said: Honourable senators, I am very pleased to have the opportunity to speak on second reading of Bill C-41, to Amend the Canadian Commercial Corporation Act.

I wish to take this opportunity to tell you about the corporation and the bill, and then address some of the specific issues raised during examination of the bill in the House in order to pre-empt those questions here in the Senate.

Honourable senators, as you may know, the corporation has served Canadian interests very well ever since it was first set up by the Government of Canada in 1946 to help with international rebuilding efforts following World War II. The corporation is especially well known for its role in supplying defence and aerospace requirements of other governments, especially the U.S. Department of Defense — its biggest customer.

With the signing of the Canada-U.S. bilateral treaty, the Defense Production Sharing Arrangement (DPSA) in 1956, the CCC became the official agency through which U.S. Department of Defense contracts were processed for the supply of Canadian goods and services to meet U.S. defence requirements.

In 1960, the CCC signed a similar agreement with the National Aeronautics and Space Administration (NASA) to accept contracts on the same basis as other U.S. government buyers. The CCC is continuing to play a key role on behalf of Canada as we respond to the demand for the goods and services needed to win the war against terrorism.

Honourable senators, the role of the CCC is not just about supplying defence-related material, however. It has a growing reputation today for its success in negotiating contracts to supply the non-defence procurement needs of the United States, governments of other countries, and international institutions such as the United Nations, and its related agencies.

Today, 30 per cent of CCC's business is in sectors like information and communication technology, environmental services, transportation and consumer goods, for example. There is significant potential to do much more in these non-defence areas of international public procurement markets. Annually, more than 30 per cent of its business is now being conducted in more than 30 countries in addition to the United States. The international public sector marketplace is huge. It is estimated to be in excess of $5 billion U.S. annually. It holds tremendous potential for Canadian exporters, including for small and medium size exporters. The Corporation is an important instrument in the government's trade development agenda. It is a full participant in Team Canada Inc. and a valued partner of many Canadian companies in the international marketplace.

The Corporation supports Canadian exporters in three unique ways. It provides specialized international sales and contracting services; a government-backed contract performance guarantee on behalf of Canadian suppliers to foreign buyers; and access to commercial sources of funding for Canadian companies that need pre-shipment working capital to finance exports.

The Canadian Commercial Corporation provides exporters with a unique capability to access government procurement markets. It can help Canadian exporters do more business in the international marketplace. This is because CCC's backing, contacts and know-how translate into a significant advantage in identifying, qualifying for and winning new business in this competitive, specialized market. This role is important in fulfilling the government's objective of creating high quality jobs and spurring wealth creation here at home.

Honourable senators, we want to make sure that CCC has the tools and the operating structure it needs to help Canadian exporters exploit the significant opportunities that exist in the huge public procurement market. The CCC is finding its resources are being stretched and it needs new tools to do its work and enhance its services. This is why Bill C-41 is now before the Senate for consideration.

Bill C-41 updates the Canadian Commercial Corporation Act in order to make necessary changes to the Corporation's governance and operating procedures, as well as to give it new tools to serve the needs of Canadian exporters in a commercially responsible way.

The bill proposes three changes: separating the positions of chair of the board of directors and president of the Corporation; permitting the charging of fees for service on CCC's non-Defence Production Sharing Agreement (DPSA) business; and authorizing the Corporation to borrow funds in the commercial market.

As you can see, these amendments are very important not only to Canadian exporters, but also to the CCC as they will help the Corporation become more self sufficient and more commercially oriented.

While these changes may be essentially administrative and non-controversial, honourable senators, I would take this opportunity to pre-emptively address some of the concerns which I expect some of my colleagues in the Senate may have about the CCC.

Honourable senators, I think one of the first thoughts which might strike my colleagues is that the CCC is not well known. While this may be true relative to its higher profile sister crown financial institutions — the Export Development Corporation (EDC), and Business Development Bank (BDC) — the CCC is actually well known and appreciated amongst its key clientele in the aerospace and defence industry.

• (2210)

Last year, more than 1,700 exporters accessed CCC's services and it facilitated more than 5,500 contracts and amendments. This is not the records of an unknown crown corporation. Additionally, the CCC has a growing profile among companies in the non-defense sector which bodes well for its revenue generation prospect following implementation of its fee for service regime which will occur once this bill receives Royal Assent.

Honourable senators, given the high percentage of business it does with respect to facilitating exports on behalf of Canada's aerospace and defense industry, senators may wonder whether the CCC follows Canada's military exports controls policy. I can assure you that the CCC ensures that Canada's military export controls policy is followed as appropriate before facilitating a transaction on behalf of Canadian exporters.

Our military export controls policy applies to the export of all military equipment specifically designed for military use and includes a special inter-departmental consultation when a non-OECD country is the buyer. An export permit is not issued if the sale is to countries which pose a threat to Canada or its allies; are involved in or under imminent threat of hostilities; or are under UN sanctions.

An export permit is also denied if a country has a persistent record of serious human rights abuses, unless there is no reasonable risk that the goods might be used against the civilian population.

As a crown corporation, wholly-owned by the Government of Canada, CCC is required to adhere to Canada's defence and trade policies and other international obligations. Given that we have just watched the bill to Amend the Export Development Act, Bill C-31, pass through these chambers, it is very likely that the senators will also be equally interested in the CCC's ability to reflect Canadian values on corporate social responsibility in their international transactions.

As a crown corporation, the CCC is responsible for monitoring Canadian government policies on human rights and sustainable development, and is required to adhere to Canadian obligations. We are satisfied that the Corporation adequately undertakes this responsibility, but we realize that more can be done. The government is working closely with CCC to develop a comprehensive strategy which will leverage the special influence the corporation can have in international transactions. The strategy will also build on what the corporation has already achieved.

In recognition of the importance of corporate social responsibility, the corporation has already taken some steps to integrate corporate social responsibility considerations into its operating environment. CCC officials are part of a government-wide group that is encouraging and facilitating dialogue with the private sector on promoting codes of socially responsible conduct. Additionally, consistent with its commitment to incorporate social responsibility, CCC contracts now include a clause prohibiting the use of bribes or unethical business practices in other countries.

In 1999, the CCC announced its sponsorship of an award for corporate social, ethical and environmental performance at the annual International Cooperation Awards. The award is presented to a company that exemplifies the following: has a corporate code of ethics, systematically integrates local community stakeholders in project decision making and builds appropriate community support systems into the design and implementation of a project in a developing country.

Furthermore, management has introduced an Environmental Review Framework for the review of capital projects deemed to have potential environmental impacts. CCC's Environmental Review Framework is patterned on the one originally adopted by the Export Development Corporation.

CCC officials are working with colleagues at home and abroad to make sure this policy reflects the leading practices of Canada and our international competitors.

In summary, honourable senators, it is essential that all public and private sector institutions evolve over time in order to remain relevant and effective. This is particularly the case with the Canadian Commercial Corporation, which operates in an ever-changing and highly competitive global marketplace. This legislation will ensure that the Corporation is responsive to the needs of Canadian exporters, particularly small and medium-sized enterprises.

Overall, the amendments contained in Bill C-41 will strengthen CCC's capacity to deliver the specialized services that have spelled success in export markets for thousands of Canadian companies and that have helped produce high quality employment for Canadians throughout the country for many years. I urge all senators to support it.

[*English*]

On motion of Senator Kinsella, for Senator Meighen, debate adjourned.

CLAIM SETTLEMENTS (ALBERTA AND SASKATCHEWAN) IMPLEMENTATION BILL

SECOND READING—DEBATE ADJOURNED

Hon. Jack Wiebe moved second reading of Bill C-37, to facilitate the implementation of those provisions of first nations' claim settlements in the Provinces of Alberta and Saskatchewan that relate to the creation of reserves or the addition of land to existing reserves, and to make related amendments to the Manitoba Claim Settlements Implementation Act and the Saskatchewan Treaty Land Entitlement Act.

He said: Honourable senators, I rise this evening to address you on second reading of Bill C-37, which is the Claim Settlements (Alberta and Saskatchewan) Implementations Act. Bill C-37 can perhaps best be described as another important step in the ongoing process of fulfilling Canada's historical obligations to Aboriginal people; obligations that in some cases date back more than a century. For this reason alone, it deserves our careful attention and, I believe, our full support.

While it is true that all stakeholders involved in this legislation, including the First Nations of Alberta and the First Nations of Saskatchewan, the Government of the Province of Saskatchewan and the Government of the Province of Alberta, endorse and support Bill C-37, it is important that I outline to you this evening some of the more pertinent factors of the bill.

By way of background, Bill C-37 arises out of specific commitments made to two First Nations in Alberta, the Alexander First Nation and the Loon River Cree First Nation. In 1998, these two First Nations signed treaty land entitlement settlement agreements with Canada and the Province of Alberta that included a pledge by Canada to recommend to Parliament legislation that would facilitate the process by which lands are added to reserves.

[Senator Hervieux-Payette]

Bill C-37 fulfils these commitments, honourable senators, but in another way, it does a great deal more. With the approval of First Nations and the affected provincial governments, this proposed legislation has been structured in such a way that it may benefit other claims settlements in both Alberta and Saskatchewan, including settlements that may be negotiated in the future.

I also wish to make it clear that the mechanisms and processes that would be established by Bill C-37, although innovative and forward-looking, are not completely new to Canada. In fact, this proposed legislation is patterned on Part 2 of Bill C-14, the Manitoba Claim Settlements Implementation Act, which was enacted by Parliament in October, 2000 to facilitate claim settlements in the Province of Manitoba.

• (2220)

To fully appreciate the need for this legislation, it is important to first understand the historical grievances that Canada is addressing in Alberta and in Saskatchewan, as well as the problems that are being encountered. The solutions proposed in Bill C-37 will then make, I am sure, a great deal of sense to you.

Between the years 1874 and 1906, Canada signed Treaties 4, 6, 7, 8 and 10 with First Nations in Alberta and in Saskatchewan. Regrettably, for one reason or another, many of the First Nations who signed or adhered to these treaties did not receive the amount of reserve land promised to them.

Understandably, this has been a source of anger and frustration among First Nations people in the two provinces. Long after these treaties were negotiated and signed in good faith, many of the affected communities are still waiting for their full land entitlement.

In fairness to the current government and to the Provinces of Alberta and Saskatchewan, a genuine effort has been made in recent years to resolve this historical injustice by providing additional reserve lands to First Nations with treaty land entitlements. Toward this end, a total of 36 First Nations in the two provinces have either signed individual treaty land entitlement settlement agreements or are covered by a broader framework agreement in the Province of Saskatchewan.

For the past several years, federal and provincial officials have been working closely with these First Nations to help select and purchase various parcels of land and to process these lands into reserve status. At the same time, federal officials have been doing this same type of work for 13 specific claim settlements in Alberta and Saskatchewan that include commitments to expanded reserve lands.

Some treaty lands and specific claim settlements agreements have been fully implemented to date, but as I noted earlier, many have not. In fact, 1 million hectares, in excess of 2.5 million acres, are yet to be added to reserves as a result of claim settlements in Alberta and Saskatchewan. Additional reserve expansion commitments are expected in the future, as more claims are settled.

What exactly is the problem? Why are settlements not being implemented more quickly? Quite simply, the processing of land into reserve status is mired in legal and technical problems. That brings me to the primary objective of Bill C-37, which is to facilitate that process.

This will be done in two ways. First, the current practice of conferring reserve status through an order from the Governor in Council will be replaced under this bill. This proposed legislation will empower the Minister of Indian Affairs and Northern Development to set apart as reserves any lands that are selected by Alberta and Saskatchewan First Nations under claims settlements. This authority will help shorten the time needed to approve additions to reserves and will avoid taxing the Order in Council process.

While the time required to obtain an order from the Governor in Council is sometimes not insignificant, a far more difficult issue is the need to accommodate existing third-party interests when processing land selections.

This is where Bill C-37 proposes the biggest changes and will have the greatest impacts in terms of expediting the process.

Although Canada has clear obligations to First Nations people, it must also respect the rights of third parties that have existing interests in lands that may be selected for additions to reserves. Existing third-party interests on any prospective reserve land must either be bought out and cancelled by agreement with the third party or accommodated in a manner that is acceptable to Canada, to the third party and to the First Nation involved. I know honourable senators will agree that this is a fair and responsible policy.

Let me, in summary, list the main elements of Bill C-37. It will empower the Minister of Indian Affairs and Northern Development, rather than the Governor in Council, to confer reserve status on lands. It will introduce better, more commercially certain ways to accommodate third-party interests during the addition to the reserve process. Though I have not alluded to this in my remarks thus far, the proposed legislation will make minor language amendments to the Manitoba Claim Settlements Implementation Act to improve the application of that legislation and keep it consistent with the similar provisions that will apply to claims settlements in Alberta and Saskatchewan. It will amend the Saskatchewan Treaty Land Entitlement Act to clarify which pre-reserve designation powers will apply in different circumstances in Saskatchewan and to deal with release issues surrounding provincial obligations that have been met stemming from the Natural Resources Transfer Agreement for the Province of Saskatchewan.

Honourable senators should also be aware of some of the things that Bill C-37 does not do. For example, it does not give effect to any treaty land entitlement or specific claim settlements in Alberta or Saskatchewan. Nor does Bill C-37 affect in any way a First Nation's ability to tax on-reserve third-party interests. This proposed legislation does not provide for or permit the expropriation of land or third-party interests in that land for reserve creation purposes.

In other words, while the overriding objective is to facilitate the transfer of lands to reserve status, this bill also confirms and even enhances important principles of Canadian law that protect third-party interests.

I mentioned earlier that there is a strong consensus in Alberta and Saskatchewan that the new powers and processes set out in this bill will provide a solution to the delays in fulfilling claim settlement agreements in both provinces. In fact, all key stakeholders have endorsed this proposed legislation and advised the government that they wish to see it moved forward as quickly as possible.

As is the current practice, this bill was developed in close consultation with the affected First Nations, the Federation of Saskatchewan Indian Nations, treaty organizations in Alberta, and the provincial governments of Alberta and Saskatchewan. All parties were provided with drafts of the proposed legislation and their feedback resulted in several improvements to the bill. As well, the Treaty Land Entitlement Committee of Manitoba Inc. has endorsed the proposed amendments to the Manitoba Claim Settlements Implementation Act.

Honourable senators, it falls on us to take the next step to facilitate the resolution of long-standing grievances that have blemished Canada's relationship with First Nations in the provinces of Saskatchewan and Alberta. We have here a bill that meets everyone's needs. Bill C-37 will help Canada fulfil its historical obligations to First Nations people. It will foster economic development and create jobs in First Nations communities across Alberta and Saskatchewan. It will protect the rights of third parties that hold interests in lands to be added to the reserves.

Honourable senators, I urge your support of this very important piece of legislation.

On motion of Senator Kinsella, for Senator Johnson, debate adjourned.

POINT OF ORDER

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, before proceeding beyond Orders of the Day and other business, I will rule on the question raised earlier today by Senator Kinsella relating to the second report of the Special Committee of the Senate on the Subject Matter of Bill C-36.

I thank Senators Robichaud and Kinsella for their comments and their help with respect to whether the motion of Senator Carstairs that the bill be read the third time at the next sitting is in order, or whether it should be set down for third reading two days hence.

• (2230)

Honourable senators, the practice here has been that when a committee reports a bill without amendment, we immediately proceed to third reading. I refer you to Bill C-11, an immigration bill dealt with by the chamber on October 23 of this year. It was reported back with observations but without amendment, and it did proceed to third reading, as Senator Carstairs has moved with respect to Bill C-36. Another example dates from June 22 of last year, being Bill C-473, a bill dealing with electoral district names. It was treated in the same way.

An issue was raised by Senator Kinsella in terms of the comments creating a substantive part of the report which required additional time for preparation so that debate on those observations could be full and complete. Senator Robichaud pointed out that there is no impediment to using the observations in terms of debate at the third reading stage. Accordingly, I do not find that a compelling argument.

Going specifically to the rules, the rule that Senator Carstairs is relying on in making the motion to proceed to third reading, the committee on Bill C-36 having reported the bill without amendment, is rule 97(4):

> When a committee reports a bill without amendment, such report shall stand adopted without any motion, and the Senator in charge of the bill shall move that it be read a third time on a future day.

There is then the question of whether that rule or rule 97(5) would be applicable. That rule refers to a report that recommends amendments, which this committee report did not do. That particular rule refers to two previous rules, 57(1)(*e*) and 58(1)(*g*), one of which provides for one day's notice, the other for two days' notice. The question becomes whether rule 97(4) or 97(5) is applicable.

The question of the committee on Bill C-36 being a special committee was raised as a possible reason for the application of rule 97(5) and not 97(4). However, I believe that matter is resolved by the definition of "committee" in section 4(b)(i) of the rules, which defines "committee" as meaning, in part, a special committee.

Accordingly, honourable senators, I do not find the argument that the motion to proceed to third reading on one day's notice is anything but in order. That is my ruling, honourable senators.

[The Hon. the Speaker]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

EIGHTH REPORT OF COMMITTEE—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Joyal, P.C., for the adoption of the eighth report of the Standing Committee on Rules, Procedures and the Rights of Parliament (amendments to the Rules—Senators indicted and subject to judicial proceedings) presented in the Senate on December 5, 2001.—(*Honourable Senator Nolin*).

Hon. Jack Austin: May I inquire of Senator Nolin when he will speak to this report?

The Hon. the Speaker: The motion to stand is not a debatable motion.

Is leave granted, honourable senators, for Senator Nolin to respond?

Hon. Senators: Agreed.

Hon. Pierre Claude Nolin: Probably this week.

Order Stands

[*Translation*]

TRANSPORT AND COMMUNICATIONS

BUDGET—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the tenth report of the Standing Senate Committee on Transport and Communications (*budget—Examination on issues facing the intercity busing industry)*, presented in the Senate on December 6, 2001.—(*Honourable Senator Bacon*).

Senator Bacon moved the adoption of the report.

Motion agreed to and report adopted.

[*English*]

LA FÊTE NATIONALE DES ACADIENS ET DES ACADIENNES

DAY OF RECOGNITION—MOTION—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Léger:
>
> That the Senate of Canada recommends that the Government of Canada recognize the date of August 15 as *Fête nationale des Acadiens et Acadiennes*, given the Acadian people's economic, cultural and social contribution to Canada.—(*Honourable Senator Bryden*).

Hon. John G. Bryden: Honourable senators, I rise to speak briefly on behalf of Senator Losier-Cool's motion that the Government of Canada recognize August 15 as the Fête nationale des Acadiens et Acadiennes. The contribution that has been made by the Acadian people to the province of New Brunswick is a great one in various aspects of the life of our province: in its public life, in its business life, in its culture, education, and throughout the fabric of our province. The uniqueness that is New Brunswick is very much because it is home to two groups of equal citizens: anglophones and francophones; Acadians and descendents of Loyalists, English, Scots and Irish, who were welcomed by our Aboriginal communities, a mixture which has since been leavened by somewhat of an influx of other cultures through recent immigration.

Much of the sizzle in the steak that is New Brunswick, the bouquet in our wine, the joie de vivre, is Acadian. The cohabitation in the home that is the Province of New Brunswick has enhanced the lives and the opportunities of both anglophones and Acadians. New Brunswick is the only officially bilingual province in Canada. Over time, that status has contributed huge advantage to the young people of New Brunswick of both anglophone parentage and francophone parentage in that there is great concern on the part of parents of both Acadians and of anglophones in New Brunswick that their children have the opportunity, through total immersion and second language training, to be able to speak well and understand well both of our official languages.

• (2240)

The advantage that that gives to our citizens in a global economy is significant. There are a limited number of places, certainly in the developed world, and perhaps in the entire world, where one can speak both English and French and one or the other of those languages is not a second language in that country.

The advantage has been primarily to anglophones, but the advantage that has accrued to Acadians was most evident after the Acadian Congress a number of years ago when Acadians from all over the world came to the Province of New Brunswick. They were amazed at the institutions of Acadian culture, education, hospitals and social services that existed in that province. Acadians were proud of their status, their institutions and what they had accomplished. It was indicated to me by a number of people who were present and intimately connected with that event that many of the Acadians in New Brunswick found themselves the envy of Acadians elsewhere in the world.

Honourable senators, I should like to speak personally about why my family and I have a huge affection for the Acadian people and Acadians that are friends of ours. I live in a little piece of New Brunswick that is an island of anglophones in a sea of francophones. My family came as immigrants from Scotland in 1929. We lived in a place called Little Shemogue. We were the newcomers to a situation where by far the majority of people in our area were French-speaking and Acadian, and we were all dirt poor.

On many occasions my mother told this story to my five brothers and me. During the 1930s, my mother was very ill. As a matter of fact, it was believed that she was dying. There were no services then. A woman by the name of Marie Duguay came from Duguay's Point, which is probably 2.5 to 3 miles away from our farm, walked every day through the winter, snow, slush and spring mud of that country road to our house and sat by my mother's bed. She made tea and she sat with my mother every day for weeks and months. Every day, before she left, she would take my mother's hand and she would say, "You pray in your way and I will pray in my way, and God will not take you from your sons." My mother recovered. She never forgot that kindness, and she made very sure that her sons never forgot it, either.

Also at that time, there was a cooperative movement that started at Great Shemogue. Who started the cooperative movement? Father LeBlanc, the French Catholic priest of Shemogue, and the Scotsman, as my father was called. One was the president and one was the secretary, and they worked together to form this cooperative movement that helped to ease the poverty that existed during that time in our province and in our country.

When times were tough and we could not afford to pay the schoolteacher in Little Shemogue, we could not go to school there. However, we were allowed to walk the extra mile, which made it three miles, to Great Shemogue. We attended the Catholic school there that was run by teaching sisters. As a young boy, I remember a teaching sister bandaging the blister on my heel, which I got because the gum rubbers wore on the back of my foot as I walked to school in the spring. Those things are part of a person's fabric, and there are stories like this on both sides.

Honourable senators, I will finish by speaking about an event that occurred a couple of years ago. The conference of l'Organisation internationale de la Francophonie at Moncton, which was a huge success, was an example of the Acadians, the Province of New Brunswick and Canada being proud of having such a successful event. The director general of that event was Fernand Landry. The next summer, far too soon, he died. The Acadians lost a champion; I lost a best friend with whom, a week before his death, I had talked about the mysteries of life and death, the magic and eternity of love and hope, and the wonder of the lives that each of us, as sons of the province of New Brunswick and the nation of Canada, had had nurtured, and the country and province that had nurtured us both.

Honourable senators, the legacy of Marie Duguay, Fernand Landry and thousands of Acadians like them should be marked by making August 15 la Fête nationale des Acadiens et Acadiennes.

Hon. Senators: Hear, hear!

On motion of Senator LaPierre, debate adjourned.

• (2250)

INVIOLABLE RIGHTS

INQUIRY—DEBATE ADJOURNED

Hon. Terry Stratton rose pursuant to notice of December 5, 2001:

> That he will call the attention of the Senate to the fact that even in times of crisis or emergency, certain values and rights are to remain inviolate.

He said: Honourable senators, it gives me great pleasure to rise this evening to speak to the inquiry that I set down last week. I stated then that today I would call the attention of the Senate to the fact that, even in times of crisis or emergency, certain values and rights are to remain inviolate.

The timing of the commencement of the debate on this inquiry is especially noteworthy because, earlier this evening, the Special Committee on Bill C-36 presented its report, reporting Bill C-36, the government's so-called proposed anti-terrorism legislation, back from the committee unamended, except for observations.

When we think of the protection of civil rights or civil liberties, we usually turn our minds to countries that live under oppressive regimes. When we think of the application of the international covenants that protect human rights in the global community, we do not even contemplate how these covenants might be either applicable or relevant in Canada.

However, given Bill C-36 and its companion bill, Bill C-42, still in the House of Commons, it is time for us in Canada to take stock of the protection of civil liberties and the applicability of the various United Nations international covenants.

Our theme tonight, and as we continue the debate, will be that there are some human rights that are so precious that they cannot be derogated from by legislation even in the case of declared emergencies.

Therefore, in this time when we are faced with proposed legislation that could compromise these vital human rights, we must be ever vigilant to ensure they remain inviolate.

Honourable senators, those who speak after me will elaborate on those rights and the protections they affect.

Hon. Donald H. Oliver: Honourable senators, I wish to begin my remarks on this inquiry by thanking Honourable Senator Stratton for calling the attention of the Senate to the issue of human rights around the world. In the scheme of the way things worked on our side of the Senate, I was supposed to put this inquiry down last week, but I was unable to do so because I was attending IPU meetings in New York City. Meeting with members of the Inter-Parliamentary Union from all over the world in New York was, indeed, a very moving event for me.

As honourable senators can imagine, with the devastation of September 11 just a few blocks from where we were meeting and the war in Afghanistan and the hostilities raging in the Middle East, the informal discussions certainly concentrated on the scourge of terrorism that seems to have invaded every aspect of the world we live in today.

Many of the countries present, Canada included, of course, are either updating existing laws that were designed to fight terrorism or are drafting entirely new laws to meet the sophistication of the terrorists at the beginning of the 21st century.

There is a view that if each country passes laws that are tough enough and insulates its borders from immigration or the acceptance of refugees, all will be well, or, at least, the awful acts of September 11 will not be visited upon such country.

Lost in most of this debate is the fact that anarchy and terrorism have always been with us. Lost in this debate, for the most part, is the realization that some human rights or civil liberties are so overarching, as already stated tonight by Senator Stratton, that they should never be diminished by any legislative response to terrorism.

I was particularly touched by a speech given by our Governor General, Adrienne Clarkson, at the awards ceremony for the Canadian Journalists for Free Expression on November 8. The theme of her speech was that people who believe the world changed on September 11 do not know their history, do not know the struggles of people over the centuries to be free, to govern themselves, to have a decent standard of living, and to be free from discrimination and persecution.

The struggle against evil did not begin on September 11, nor will it ever end. In that speech, she quoted from one of history's great freedom fighters, Aleksandr Solzhenitsyn, who said the following:

> If only there were evil people somewhere, insidiously committing evil deeds, and it were necessary only to separate them from the rest of us and destroy them.

But the world does not work that way. The distinction between good and evil cuts across cultures, countries and human beings.

Therefore, it is with a sense of history that we must pause during this time when governments want to be seen to be acting to root out and to punish terrorists and to reflect on the true values of our society as they have been written down over the years. We must remember the rights and freedoms that have been fought for and which, from time to time, have been trampled upon by leaders or governments pursuing their own agendas at the expense of the freedom and rights of others.

The struggle to find the balance between the preservation of our freedoms while still equipping the agents of our government with sufficient tools to effectively combat terrorism has preoccupied all of us in Parliament for the past several weeks. Bill C-36, which is before us, and Bill C-42, which has yet to come to us, limit our rights.

In determining whether the limitations on these rights are proportional to the end being sought or, indeed, are valid at all, we have many international covenants that may be consulted.

The International Covenant on Civil and Political Rights makes it clear, in Article 4, that there are certain rights from which there can be no derogation, certain rights that, no matter what the circumstances, remain inviolate.

Article 4 states:

> In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

• (2300)

Therefore, honourable senators, even in times of public emergency which may strike at the heart of the nation, laws cannot be passed that discriminate on the grounds of race, colour, sex, language, religion or social origin. This is the filter through which must pass both Bill C-36 and Bill C-42, as well as any other legislation brought forward by this government that is supposedly aimed at fighting terrorism but which, potentially, limits rights or discriminates on the basis of these protected grounds.

As well, clause 2 of Article 4 states that there can be no derogation from the rights set out in seven articles of the International Covenant on Civil and Political Rights. The articles that contain these inviolate rights deal with the right to life.

Article 6 (1) states that:

> Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7 deals with torture. It reads:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 8 prohibits slavery, slave trade and servitude.

Article 11 states that:

> No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Article 15 condemns retroactive criminal law — making an action criminal which, when originally done, was legal.

Article 16 states that:

> Everyone shall have the right to recognition everywhere as a person before the law.

This ensures that, even in times of emergency, a government cannot treat someone as a non-person in law.

Finally in this list of rights that cannot be diminished under any circumstances is Article 18 by which:

> Everyone shall have the right to freedom of thought, conscience and religion.

All of the articles that I have quoted contain rights so fundamental that they cannot be diminished, derogated from or taken away, even in times of declared public emergency.

In Canada, we are not living in a state of emergency, even though we are being asked to pass laws that give the police, government agencies and the government itself extraordinary powers. We must also realize, as we have been told, that these extraordinary powers will be with us for a very long time.

As we review Bill C-36, the anti-terrorism bill, this week, and Bill C-42, the public scrutiny bill, in the new year, we must be ever vigilant to ensure that the legislation is not only in compliance with the Charter of Rights and Freedoms but also, honourable senators, in conformity with our obligations under international human rights covenants.

Hon. A. Raynell Andreychuk: Honourable senators, 53 years ago today, the Universal Declaration of Human Rights was adopted by the United Nations General Assembly. Today, being International Human Rights Day, provides us with a timely opportunity to give sober reflection to the state of human rights in our country.

The ongoing challenge of maintaining a just state of law in Canada belongs to all of us who live here. It is the responsibility of every Canadian to fight for the preservation of the rules of law that have been developed since the birth of our nation and to mobilize our greatest resistance against any attempt to undo the gains that we have made thus far. Every one of us must take on this great responsibility in order to ensure that each and every individual counts, and that each and every individual is valued as a human being worthy of dignity in our society and before the courts of Canada.

The Universal Declaration of Human Rights begins, in its preamble, by stating:

> Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...

In this way, the declaration underscores that recognition of the inherent dignity of all human beings, as well as our equal and inalienable rights, is the necessary vehicle that will bring us to a world of freedom, justice and peace.

During this moment of reflection on the state of human rights in Canada, we should ask ourselves where we stand now and what future challenges we will have to meet.

Canada plays an important leadership role in the field of human rights within the international community. As a representative democracy, we have given our leaders the responsibility to ensure that the state respects all rights that we believe to be inviolable. Through such mechanisms and instruments as our Parliament, our courts, our Constitution, civilian agencies that act as watch dogs and the like, we have built a system of checks and balances to ensure the respect of human right in Canada and to ensure that no one is above the law.

We have earned our commendable human rights reputation in Canada in part because we strive to guarantee that every individual who appears before the courts matters. Regardless of who the person is, or where they are from, all have the same rights before the law. The rule of law in Canada ensures that the rights of the minority are not unduly effaced by the will of the majority.

We have matured our criminal justice system over the years in a manner such that the paramount concern of the court is to find the delicate balance of meting out justice while respecting the rights of the accused. We have developed concepts of procedural fairness, due process and fundamental justice, all in an effort to ensure that the rights of the individual are not trammelled by the state when it seeks to redress a harm suffered by society.

In the context of criminal law, the Canadian Charter of Rights and Freedoms seeks to protect the individual from irreparable harm caused by actions of the state. Every day we are faced with the ever-present challenge of balancing a variety of competing forces within society. My right to liberty must be weighed against my right to security. Freedom of expression may offend society's right to be free from hate-mongering. The continual friction caused by the competing forces of individual rights and the will of the state is not lost in either the Universal Declaration or the Canadian Charter of Rights and Freedoms.

Article 30 of the Universal Declaration states that no group or person can invoke any right of the declaration that would permit any activity or act aimed at the destruction of any of the rights and freedoms set out in its text. The Canadian Charter also recognizes that no right is absolute, and that a balance must be struck among the competing interests between state and citizen. It states in its first section that all Charter rights and freedoms may be derogated from, so long as such derogations can be demonstrably justified in a free and democratic society.

The Supreme Court of Canada, in the *Oakes* case, has elaborated a test whereby such interests of society are weighed in relation to the rights of the individual. The balance will tip in favour of society's interests if it can be proved that the law that allows for such derogation meets a pressing and substantial objective, and that the means employed to do so are rationally connected to the problem to be remedied, minimally impair the right that is being infringed and are proportional to the problem at hand.

In Canada, as anywhere else in the world, the health of our human rights depends on a constant diligence to attain a degree of proportionality when evaluating the competing interests of both the individual and the state. The state does not trump the individual. One right does not trump another.

As the members of the global village are drawn increasingly closer together through new technology, more efficient means of transportation and through an increased understanding of distance, new challenges inevitably come to the fore.

• (2310)

It is natural that we may feel overwhelmed by the new problems we face. In reaction to this, there seems to be a movement afoot in Canada that seeks to loosen the system of checks and balances in order to confront the seemingly overwhelming threats of today. Such a movement must be resisted. We must not be left with the legacy legislatively that legitimizes the exercise of power unfettered and unaccountable.

Where loss of individual rights occurs, it, the authority, must be held to account by scrutiny and vigilance from another body, namely, the legislative branch, or an independent body or the courts. In a democracy, one does not police oneself. The rule of law must incorporate not the use of power absolutely in a given situation, but the use of power fairly and justly on some objective test.

As William Pitt so astutely observed in 1783:

> Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves.

Any call to barter away certain fundamental human rights in exchange for security must be approached with great trepidation. Heed must be taken to the sober voices of people such as Nadine Strossen, President of the American Civil Liberties Union, who stated that her greatest fear is:

> ...that too many members of the public will embrace the government's call to give up some freedom in return for greater safety, only to find that they will have lost freedom without gaining safety.

Canadians have every right to seek a greater measure of security; however, we cannot trade away rights in exchange for greater security, for we will end up with neither. A sober reflection on the present point to which our country has arrived in the area of human rights is cause for celebration. On this Human Rights Day, we can set our accomplishments in striking a just balance between the rights of the individual and the collective interests of society. These gains could not have been arrived at without the dedication and commitment of those who fought the hard-won battles that have brought us to where we are now.

Finally, we must maintain an unwavering commitment to continue to pursue to find the correct balance between the competing rights that every person can claim under the Universal Declaration of Human Rights.

I call on all senators in the coming days to carefully weigh what others have given us in this society.

On motion of senator Kinsella, debate adjourned.

The Senate adjourned until Tuesday, December 11, 2001, at 2 p.m.

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