STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

COMITÉ PERMANENT DE LA JUSTICE ET DES DROITS DE LA PERSONNE

EVIDENCE

[*Recorded by Electronic Apparatus*]

Thursday, November 5, 1998

• 1611

[*English*]

The Chair (Ms. Shaughnessy Cohen (Windsor—St. Clair, Lib.)): Today we are continuing our study of Bill C-40, an act respecting extradition, and we have yet another minister before us.

Welcome, sir. I understand you have a statement, and you're accompanied by Darryl Robinson and Alan Kessel from your department and Mr. Piragoff from the justice department, who's spending a lot of time with us these days.

I'll just tell my colleagues I have two questions, and I'm asking them.

A voice: Before or after?

The Chair: I like to get control right away. I sometimes lose control.

Hon. Lloyd Axworthy (Minister of Foreign Affairs): Thank you, Madam Chairperson.

If it's okay with the committee, I'd like to make a few comments in support of a bill that my colleague, the Minister of Justice, has introduced dealing with the issue of extradition.

As you are already well aware, this is a bill that would modernize our outdated extradition legislation, and for that reason alone, just by itself, it is strongly supported by the Department of Foreign Affairs and International Trade. Changes will allow Canada to resume the negotiation of effective agreements on extradition with many of our international partners.

However, the reason I wanted to come here today—and I appreciate the invitation from members—is to emphasize the pressing need for the enactment of the amendments permitting cooperation with the international criminal tribunals and the proposed permanent International Criminal Court. In doing so, I'd like to place the amendments before you in the context of Canada's foreign policy efforts to promote human security and the international rule of law.

[*Translation*]

I will start with the Tribunals. These amendments will enable Canada to fulfil its obligations with respect to the war crimes Tribunals, created by the United Nations Security Council to respond to the atrocities committed in the former Yugoslavia and Rwanda. The relevant Security Council resolutions oblige all member states, including Canada, to put in place legislation for cooperation with the Tribunals. This must include compliance with requests for the surrender of accused persons to the Tribunals, as well as other typical forms of assistance to the Tribunals.

• 1615

[*English*]

With these amendments, Canada will be able to extradite persons not only to states but also to other entities, such as the two tribunals. As members are aware, there is a growing evolution of international machinery to deal with problems of international law, which are not centred purely in the domestic law systems.

Other changes in the legislation will ensure that this cooperation can be effective in its practice. For example, the tribunals do not follow the common-law practice of gathering sworn affidavits in their proceedings. The simplified evidentiary requirements in this bill will bring our practice into line with the practice of others and thereby enable effective cooperative with extradition partners such as the tribunals.

I think one would understand that to use the typical common-law practice of gathering sworn affidavits is a little touchy and delicate if you're trying to deal with a genocide case in some parts of the former Yugoslavia, where victims may not be available and those who know about it are intimidated. Therefore it requires evidentiary evidence from a body such as

the prosecution formation that Justice Louise Arbour was able to provide. Under our present law, we couldn't accept that. Under the amendments, we could accept that and therefore make that kind of process far more effective.

Enacting this legislation for cooperation with international tribunals is a priority for a number of reasons. First and foremost, Canada is subject to international legal obligations to adopt such legislation. Canada's effort to promote a rules-based system of international relations would be undermined if we were unable to comply with the most basic Security Council obligation. Respect for our Security Council obligations is all the more important now that Canada has been elected to a term on the Security Council. Therefore this bill is very timely and time-sensitive.

Moreover, failure to adopt legislation would be inconsistent with the strong support we have given to the work of the tribunals. Canada has provided many forms of assistance to the tribunals. For example, in September 1997 we submitted an amicus brief to the Yugoslav tribunal supporting the power of the tribunal to issue orders for the protection of evidence. In December 1997 Canada provided a package of assistance to the tribunal at The Hague, which included a $400,000 contribution for the exhumation of mass graves, the secondment of RCMP investigators, and the commencement of negotiations for a witness relocation agreement.

We have consistently advocated an active stance by the international community in the apprehension of indicted suspects, and we want to express our pleasure at the progress made in bringing these war criminals to justice. From what I've seen in articles and correspondence from members of the public and interaction with non-governmental organizations, it's clear that most Canadians—there are a few exceptions, but most Canadians—support the work of the tribunal and are very proud of the success of Louise Arbour, the Canadian judge and chief prosecutor, in making the tribunal more effective.

Also, for the information of the committee, just today in fact I wrote letters to the Foreign Minister of Yugoslavia to insist that Justice Arbour and her investigation team be given visas so that they can begin to investigate war crime indictments and circumstances in Kosovo. Up to now the visa that's been given has been a very limited one and didn't allow her team of investigators to go with her.

Again, it's a fairly consistent and long line of initiatives we're trying to take to strengthen the hand of the court itself.

[*Translation*]

This legislation not only addresses our obligations to the existing Tribunals, but also paves the way for cooperation with the International Criminal Court, once it is created.

[*English*]

The International Criminal Court, which received overwhelming signature in the Rome meetings in early July, is the logical progression from the ad hoc tribunals. While the tribunals have marked an important step in the fight against impunity, this ad hoc approach suffers from substantial inherent weaknesses, such as the substantial start-up costs and delays and dependence on Security Council action to establish the tribunals. This reliance on the Security Council can result in the appearance of selective justice.

• 1620 

The creation of a permanent, independent institution will overcome many of these weaknesses and will serve as a far more effective deterrent to the gross violations that we've seen taking place in the massive incidence of internal civil wars in the last decade or so.

The International Criminal Court will deter some of the most serious violations of international humanitarian law, namely genocide, crimes against humanity, and war crimes. It is expected that the court will also facilitate the reconciliation process in the post-conflict circumstance by assuring accountability for actions. It will also, by isolating and stigmatizing the extremists who commit the crimes, make sure they are held responsible for their actions.

This will help to end the cycles of impunity and violent retribution that so often have a corrosive effect on these societies and prevent them from enabling a healing process so that they can start rebuilding after the conflict ends. Recent experience has shown us that without justice, there can be no reconciliation, and without reconciliation, no lasting peace.

Some observers and some countries have had questions about the impact of a permanent institution of criminal justice. To answer these questions, we must have a clear and pragmatic understanding of the intended role of the court.

No one would suggest that the creation of this court will deter all crimes against humanity, just as our own domestic courts cannot possibly deter all crimes within our own borders. However, it is equally clear that a permanent International Criminal Court will be a marked improvement on the status quo, where there is no consistent, permanent mechanism for international justice at all.

The adoption of the statute of the International Criminal Court is a step away from a history of inaction or helplessness in the face of the most serious atrocities and a step towards a consistent response affirming the rule of law and the importance of human security.

The creation of the international court will be a belated but indispensable response to the millions of civilians, women and children, who lost their lives or their health in the many conflicts that have erupted in the past 50 years.

I'd just like to share one statistic, if I could, Madam Chairperson. Since the 1970s, 80% of all recorded conflicts have been conflicts of an internal civil kind, not conflicts across state borders, and 90% of the victims have been civilians, not military people.

I met yesterday with Madam Ogata, who is the United Nations High Commissioner for Refugees. She pointed out to me an interesting statistic: in the last several years, there have been far more murders and violent crimes against humanitarian workers than there have been against military peacekeepers. Yet we have a much better body of law to protect our military people in overseas action than we have for the protection of humanitarian aid workers.

So it is part of this attempt to put in perspective that the requirement we now face, and in which I'm pleased to say Canada has taken the lead, is to establish a new humanitarian regime for the protection of vulnerable civilians against violations, atrocities, and transgressions. Clearly the international court is a key part of that.

The experience of the two tribunals shows us that international criminal justice institutions can be effective with the support of the international community. That's why we lend such strong support to the establishment of the court.

During the preparatory negotiations, Canada galvanized a group of like-minded states into an influential force with a concrete objective in support of a strong court. Canada's role became all the more essential in June 1998, when we were asked to chair the Diplomatic Conference negotiations. I attended both the initial and final stages of the conference to help work with the officials from Canada in developing a court worth having.

I want to use this occasion, if I can, to say that several of the gentlemen with me on the panel were at the Rome meetings and performed an extraordinary act of public service on behalf of Canada in making sure the court came about. All three gentlemen here played a very instrumental role, and I think the committee should take appreciation of them.

 For research purposes only. See SCC notice.

I'm pleased to report that the statute of the court contains many provisions that were long sought by those who advocated the establishment of a strong court—and I perceive Warren Allmand looking over my shoulder when I say that.

Voices: Oh, oh!

Mr. Lloyd Axworthy: These include the automatic acceptance of jurisdiction by state to ratify the statute; a well-defined and limited role for the Security Council; a jurisdiction encompassing internal armed conflicts; an independent prosecutor, subject only to controls internal to the court; and, perhaps in some ways the most important, provisions addressing the plight of women and children in armed conflict. This is the first time violations against women and children will be recognized as a crime against humanity.

• 1625

The statute contains numerous safeguards to protect legitimate national interests. Several provisions ensure that the court will not and cannot be used for frivolous or politically motivated investigations or prosecutions. The court can act only when states concerned are unable to or unwilling to carry out genuine investigations or prosecutions. This means the court will act only where national systems have collapsed or where national authorities are deliberately attempting to shield an accused person from justice.

[*Translation*]

Ultimately, the Court's effectiveness will depend on the degree of support which it receives. The Statute will enter into force once 60 states have ratified it. This is only the beginning. Canada will join other like-minded states in encouraging the widest possible ratification of the States. We must also work to understand and address the legitimate concerns of those States who are hesitant about the Court, in order to ensure that we have an institution which will be credible and responsible.

[*English*]

As you can see, the implementation of this legislation will be an important part of Canada's overall efforts to promote the International Criminal Court. Without these amendments changing the nature by which extradition can be organized and applied to these new international state bodies, Canada's participation in the ratification would be very difficult, if not impossible. Therefore the amendments are essential to promote the ongoing policy and direction we have adopted in the development of a new human security regime and framework in the world into a real law.

I appreciate the occasion to offer my views on the significant dimension of the legislation that is now before the committee.

Thank you very much.

The Chair: Minister, do you have any idea when we'll be in a position to ratify in Canada?

Mr. Lloyd Axworthy: I guess it depends on when you pass this legislation.

Voices: Oh, oh!

The Chair: Mr. Cadman.

Mr. Chuck Cadman (Surrey North, Ref.): I have a couple of short questions. I'd like to thank the minister for agreeing to come and see us.

Most of my questions were actually answered, and I thank you for the presentation. There's just one little one I'd like to ask, and it's about the cost. When it comes to picking up the tab for the extradition hearings when a country requests an extradition, if we're running into a cost of hundreds of thousands of dollars, is that going to be borne completely by the Canadian taxpayer, or will there be some kind of cost-sharing mechanism with the requesting country?

Mr. Don Piragoff (General Counsel, Criminal Law Policy Section, Department of Justice): There's a practice between countries to determine costs with respect to extradition. There's a cost-sharing agreement that countries usually abide by, which is that the requested country assumes the domestic costs for any local judicial proceedings, but the requesting country assumes the costs for transportation.

So in Canada, we assume all of the costs with respect to the judicial proceedings domestically, and the other country assumes the transportation costs. Of course that's reciprocal, so if we make a request to another country, then they will assume all of their own domestic judicial costs, and we just simply pay for the airline tickets and the transportation costs to bring the person back. In the end, because of this reciprocal arrangement, the costs generally work out evenly.

Mr. Chuck Cadman: I told you it was going to be short.

The Chair: Thanks, Mr. Cadman.

Mr. Chuck Cadman: Thank you.

The Chair: Mr. Robinson, go ahead.

Mr. Darryl Robinson (Foreign Service Officer, United Nations, Human Rights, and Humanitarian Law Section, Department of Foreign Affairs and International Trade): I just wanted to add something to that as well.

This summer, cabinet adopted a war crimes initiative recognizing that Canada must not be a safe haven for war criminals. As part of that program, over $1 million has been identified to allow for the extradition of war criminals from Canada. So our cooperation with the tribunals and with the International Criminal Court, once it comes into effect, doesn't involve additional resource implications.

Thank you.

The Chair: Thanks.

Mr. Turp, you're visiting us, and we're glad to have you. I'm going to hold us to some short question periods, because we don't very often have this minister, and I know lots of people have questions. Go ahead.

• 1630

Mr. Daniel Turp (Beauharnois—Salaberry, BQ): I have four short questions.

 For research purposes only. See SCC notice.

The Chair: I'll let you go for a while, but then I might have to come back to you a second time.

[*Translation*]

Mr. Daniel Turp: Before asking my question, Madam Chair, I would like to take advantage of the presence of the officials from the Department of Foreign Affairs, whom we received here in the committee before they left for Rome, to congratulate them and ask them to pass on my congratulations to Philippe Kirsch, who chaired the conference, for permitting the adoption of the Rome statute which created the International Criminal Court. I believe this is a significant event in the history of the international community, and I would therefore like to congratulate you, sirs, on behalf of the Bloc Québécois.

Here's my first question. The Minister said that legislation should be passed to implement the Rome statute establishing the International Criminal Court. Consequently, will there be additional amendments to the Extradition Act when such an implementation statute is introduced in Parliament? Or will the Extradition Act, as it has been submitted to us, be sufficient to implement the act establishing the statute? That's my first question.

In fact, I wonder whether the act will have to be amended once again when we want to pass an act implementing the Rome statute.

Mr. Lloyd Axworthy: First, I believe the elements contained in the bill on the subject of extradition are sufficient. Amendments to other statutes may be required to ensure they are consistent with the Rome statute and the establishment of the International Criminal Court.

Mr. Daniel Turp: Good. My second question is as follows. If it is felt that, in the area of international criminal courts, we were in fact right not to talk about extradition... As you undoubtedly know as well as I, if not better, in the two Security Council resolutions establishing the ad hoc tribunals, and even the Rome statute establishing the International Criminal Court, the word "extradition" is not used in French, but rather the word "livraison", I believe.

Wouldn't you like to establish the same distinction here by not using the word "extradition" when it comes to surrendering to the international courts persons whom we want prosecuted before those courts? The fact is the term "extradition" has not been used in the international documents and instruments. And you know why that is the case: because some countries cannot extradite their nationals, which may perhaps not be Canada's case. However, I would like to know whether it would not be appropriate to make this distinction in this act.

[*English*]

Mr. Lloyd Axworthy: I'll ask Mr. Kessel to handle that one.

Mr. Alan Kessel (Director, United Nations, Criminal, and Treaty Law Division, Department of Foreign Affairs and International Trade): Thank you.

Thank you, Madam Chairman.

In fact Mr. Turp has raised a very interesting point from a legal perspective. We did not want to use the term “extradition”, because that complicated the thinking on the part of some countries that wanted to work solely within the concept of extradition, and if their constitutions did not provide for the extradition of nationals, then they would immediately look at that term and say, “Sorry, we can't extradite”.

The rather neat little way of getting out of it was to not really refer to extradition, but to say “surrender”. So what you have is an obligation to actually surrender those individuals, and you cannot hide behind your domestic constitutional requirements that you not extradite those individuals.

This does allow for those countries that have a problem to find a mechanism to get around that problem. As Mr. Turp will well remember, this is a familiar argument in international law, which many countries with whom we have a continuing battle wish to hide behind. One message that Canada sent out strongly and loudly was, “Change your law. Extradite your nationals. Don't allow them to hide behind your constitutional requirements.”

Mr. Lloyd Axworthy: It's important to point out, though, that the reason this legislation and these amendments are important is to change what we're prevented from doing under the status quo. They deal with third-party international tribunals and change the rules of evidentiary evidence. Those are the two things we need in order to be able to respond to our obligations to the tribunals and eventually to the court.

• 1635

[*Translation*]

Mr. Daniel Turp: Madam Chair, there is nevertheless one thing that bothers me in the implementation legislation and that concerns the publication of extradition agreements. When you compare the new clause 8 of the bill to the old section 7, you see that provision is now being made solely for the publication of multilateral, not bilateral extradition agreements, which are more numerous, and that the tabling of extradition treaties in Parliament is now barred.

Consequently, I would like to know why the publication of bilateral accords is now barred and why the government no longer wishes to continue the practice of tabling extradition treaties in both Houses of Parliament. This matter was recently raised in debates involving Mr. Axworthy in the House of Commons.

[*English*]

Mr. Lloyd Axworthy: We've been through this before, yes.

Mr. Alan Kessel: I wasn't in the committee room before this, so I'm sure if this question has in fact come up. Oh, it has come up? And was it sufficiently answered, or is an additional answer required? I'm not sure what the answer was to that.

The Chair: I think the problem is that Mr. Turp wasn't here.

Mr. Daniel Turp: Yes, I'm sorry.

The Chair: Maybe Mr. Piragoff can....

Mr. Alan Kessel: If you want to answer from the Justice point of view, you can add to it.

Mr. Don Piragoff: Madam Chair, maybe I'll answer, because I was the one who partially answered the question.

The Chair: Yes.

Mr. Don Piragoff: It was a question from Mr. MacKay earlier this week. He raised the question, as Mr. Turp has, as to why there's no longer a requirement that treaties be tabled before both houses of Parliament, in addition to being gazetted in the *Canada Gazette*.

The reason that the deposit requirement was removed from this particular bill is that it is not the procedure used for other treaties that Canada enters into. Generally those treaties are simply gazetted in the *Canada Gazette* or published in the *Canada Treaty Series*.

The Extradition Act, which the minister noted yesterday is a very antiquated piece of legislation—over 100 years old—was maintaining a practice that was not in accord with existent practice concerning other treaties. In order to bring this legislation into line with the current and modern practice of Foreign Affairs, we had to remove the necessity to deposit treaties before the House and simply have them officially published in the *Canada Gazette* or the *Canada Treaty Series*.

[*Translation*]

Mr. Daniel Turp: Why not publish the bilateral agreements? The act now provides only for the publication of multilateral agreements. It previously permitted the publication of bilateral agreements.

[*English*]

Mr. Alan Kessel: I agree entirely with my colleague from the Department of Justice. There also is no constitutional requirement to table, but this is in fact what was done prior, when we didn't have the more modern treaty system that we now have, wherein we actually publish those treaties.

We have reduced the expense of making 800 copies specifically for tabling, but we now have a printed version that comes out and can be made available. As well, we will have electronic versions pretty soon, which will, I hope, be accessed from our treaty base in the department. That's cut out all printing costs, which were quite extraordinary, plus it gives you immediate access to those treaties.

[*Translation*]

Mr. Daniel Turp: But you're not answering my question, which doesn't concern tabling, but rather publication of bilateral agreements. Why are you now publishing multilateral agreements only?

[*English*]

Mr. Alan Kessel: I don't believe any are placed any more, or will be placed any more. It's not our practice to table any of them.

Mr. Daniel Turp: No, no, it's not the tabling; it's the publication. In the previous act, you had a duty to publish all extradition treaties.

Mr. Alan Kessel: Right.

Mr. Daniel Turp: Now, in clause 8, you limit the publication to multilateral treaties only. I don't understand why. If you maintain the obligation to publish, why limit it now to only multilateral treaties?

Mr. Alan Kessel: I can't speak to that particular one, but we do publish all treaties that are entered into by Canada.

Mr. Daniel Turp: Yes, I know, but if you refer to a specific publishing obligation in the act, why not extend it to bilateral treaties as well?

• 1640 

Mr. Don Piragoff: I think it may be a question of how clause 8 is read. One has to read clause 8 in light of the definition of “extradition agreement” in clause 2 of the act.

Clause 8 provides that it is an extradition agreement or the provisions respecting extradition contained in a multilateral agreement. As Mr. Kessel indicated, if it's an extradition agreement, that is a bilateral agreement. A multilateral agreement could contain some 50 articles that have nothing to do with extradition and then maybe two articles concerning extradition.

For example, in some of the conventions that have recently been adopted, there are many articles dealing with things such as drugs—trafficking in drugs, precursors, and manufacture of drugs—and then one or two articles in the convention talk about extradition obligations.

What this says is, because this is an extradition act, under this act, any provisions in a treaty, whether they be bilateral or multilateral, will be published as such in the *Canada Gazette* or the *Canada Treaty Series*. The actual multilateral treaty, however, may be published in its entirety by Foreign Affairs, pursuant to some other authority.

What this is saying is that in respect of extradition, this piece of legislation will make sure that any provisions concerning extradition, whether it be an entire bilateral treaty that is devoted solely to extradition or any provisions in a multilateral treaty that concern extradition, will be published in one of two places, pursuant to statutory authority and mandate by Parliament.

The Chair: Mr. Turp, do you have more questions?

Mr. Daniel Turp: I have one last question.

The Chair: Well, I'll just come back to you, okay? We have a limited time and we have five parties.

Mr. Mancini, did you have some questions?

Mr. Peter Mancini (Sydney—Victoria, NDP): Yes, as always. My apologies for being late.

I have a very brief question. Foreign affairs is not always my area of expertise, but I have a question. The minister may have addressed this in his remarks, and again, I apologize if I wasn't here.

I'll pick up a little bit on what Mr. Turp has said. There are some very good things in this act. My concern, though, is that at some point we are accepting criteria from our partners in terms of extradition, evidentiary rules, and what have you.

Again, it may be my own ignorance, but I look at subclause 9(2), which says that the Minister of Foreign Affairs, with the agreement of the minister, may add or delete from the

 For research purposes only. See SCC notice.

schedule of names. For my own edification, what checks and balances are there to ensure that a state with which we enter into an extradition agreement has the appropriate justice system, something we feel comfortable with in terms of extraditing someone there? I don't know that, and I'm looking for some answers.

Mr. Alan Kessel: You will see that in fact a number of designated countries are in the schedule already.

Two systems of extradition exist currently in Canadian law, and I stand to be corrected by my Justice colleague. One is the system of Commonwealth countries, and we have a system of what's called rendition. Then the other one is the treaty system, whereby we enter into treaties with other countries. What this act seeks to do is make one streamlined system, but it also allows us, in the schedule, not to have to enter into specific treaties with others if we already have a system in place. The schedule acts to help us do that as well.

In terms of determining whether these countries are suitable, we've had a long history in our common-law relationships specifically with these countries, whereby we are happy with that type of law. If Justice has another view of how they would add to that list, then they should feel free to add.

Mr. Peter Mancini: I understand the ones that are already in the schedule. My concern is with the minister's power to add to that schedule, as I read it.

• 1645

Mr. Alan Kessel: Two ministers are involved here: it's the Minister of Foreign Affairs in discussion with the Minister of Justice. The Minister of Foreign Affairs has said on many occasions—and he has made it very clear—that we are very much aware of the judicial systems that are ongoing in various states with which we have relations, as well as of the human rights realities in those states. Those are issues that come into discussion when we look at a state with which we will enter into an extradition treaty or an ad hoc relationship.

The other check of course is the courts and the discretion of the Minister of Justice as to whether to surrender at any point. If the Minister of Justice—and I stand to be corrected again—feels at any point that there are circumstances that would not allow her to surrender an individual to a country, then those are circumstances that she will bring to bear in the final decision on surrender.

Mr. Don Piragoff: Mr. Kessel talked about the front-end checks, before a country is designated, and he alluded to the reasons for refusal. This is an issue that Minister McLellan spoke on extensively yesterday. Clause 44 of the new act puts a mandatory obligation on the minister not to surrender if she is satisfied that surrender in a particular case would be unjust or oppressive, having regard to all the circumstances, or that the request for extradition is really made for the purpose of persecution. So in those situations, even on a case-by-case basis, there is a safeguard where the minister is able to refuse.

Actually there are two safeguards. The first safeguard is the assessment undertaken by Foreign Affairs and Justice with respect to whether a country should be on the list. And of course once a country is on the list, there's also a safeguard on a case-by-case basis before a person is actually surrendered.

Mr. Peter Mancini: Okay, thank you.

The Chair: Thanks, Mr. Mancini.

Mr. MacKay.

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC): Thank you, Madam Chairperson.

I want to thank the minister and his personnel for being here as well.

The last line of questioning leads into a more general question I had with respect to information exchange and requests. I would presume that in some instances, Mr. Minister, your department would be the first one contacted. Similarly, this bill, in my opinion, puts more discretion into the hands of the minister than we've seen in the past. It takes it perhaps somewhat out of the hands of the judiciary, which, for obvious reasons of political climate and perhaps a broader perspective, I tend to agree is a good thing that this bill does.

However, I'm just wondering what your impressions are, Mr. Minister, as to the level of exchange of information and the need for your department to relay the background scenario of the requesting country to ensure that the justice minister is going to be completely informed on things such as political climate, human rights realities, and perhaps the state of relations between Canada and the requesting country.

Mr. Lloyd Axworthy: I'd like just to provide a small correction, Mr. MacKay. The first request goes to the justice minister. They will then ask us to make an assessment through our diplomatic services and assessments, and then we will provide that information to the minister along the way.

Mr. Peter MacKay: But I'm presuming that the requesting country wouldn't necessarily know that they were supposed to request through the justice department. I'm presuming that they wouldn't be aware of this act.

I can see that you would refer it immediately to the justice department.

Mr. Lloyd Axworthy: Yes. If country X wanted to request an extradition from Canada, they might go to our embassy or high commission and ask how to do it. If there's a treaty in place, that sets out the procedures without any exception, but in other cases, we would give them advice. But it would have to go to the minister first.

Mr. Alan Kessel: There's constant discussion between states that are looking for assistance. They don't just drop things in our lap. They will call up. They will say, “We have a case right now of someone we're looking for. We understand the individual is in Canada. What do you need from us? How can we do this? How can we expedite it?” And we'll provide them with the information they need. Either we will put them directly in contact with Justice, which will give them the exact rules to follow, or if in fact we do get a mailing in from an embassy, we will help direct them to the right recipient.

• 1650

Mr. Peter MacKay: The clauses of the bill do in a number of instances refer to the Minister of Foreign Affairs, so again, my question is, do you anticipate that with this new piece of legislation, there will be a requirement for closer contact between your department and that of the Minister of Justice?

Mr. Lloyd Axworthy: I can assure you, Mr. MacKay, that on these issues, we almost live together.

Voices: Oh, oh!

Mr. Peter MacKay: I presume so.

The next question I have for you is with respect to other countries moving in a similar direction. From your personal experience—your travels and your foreign affairs efforts—do

 For research purposes only. See SCC notice.

you see this happening within our international community?

Mr. Lloyd Axworthy: One thing that is propelling a much stronger demand for the facilitation of extradition is the impact of drugs, terrorism, and international crime cases. A number of covenants are coming into effect or are being negotiated in these areas. As you all well know, these are not domestic problems. So much of what happens now is in the international systems and networks.

In order to be able to do the apprehension, there's a very high and increasing level of sharing of information amongst police forces, intelligence groups, foreign ministries, and agencies such as the Solicitor General and Justice, which deal with these matters with their counterparts. As a result, there's a recognition that if we are to be party to these signatories.... I spent a lot of time talking about the international court itself, but you can use exactly the same application in emerging covenants dealing with the drug trade, international crime, and terrorism. Exactly the same requirement would be made.

So I do see, Mr. MacKay, a much stronger interest. There are states that are reluctant to join in, sometimes because of the source of the problem. But that's where in part the International Criminal Court would be effective, because it would give a broader sense of jurisdiction.

Mr. Peter MacKay: Thank you.

Thank you, Madam Chair.

The Chair: Thanks.

Mr. DeVillers.

Mr. Paul DeVillers (Simcoe North, Lib.): Thank you, Madam Chair.

I have a couple of questions concerning the certification of the record, contained in clause 33. I think yesterday or the day before, Mr. Piragoff's answer concerning that certification was something to the effect, if I understood correctly, that by extracting a certification from the extradition partner, some accountability can be held there.

I'd like to ask the Minister of Foreign Affairs what that accountability might be if it were proved that there was a false or inaccurate certification. What would be the accountability of the extradition partner, which Mr. Piragoff was referring to? How would you hold a partner accountable in that case?

Mr. Alan Kessel: That's a very interesting and difficult question. Well, it's not so much difficult as it is a matter of how to influence people. That's what foreign affairs is all about: the subtle pressures you put on governments, the international accountability you can elicit from actors that don't want to act in the same way as we want them to act. We saw in the case of landmines that we managed to manoeuvre many countries in the world to act in a way that they maybe did not want to act.

In this very same type of situation, countries are very reluctant to be called into contempt for something they have done or said. Embarrassing governments is about as far as you can go in terms of diplomacy and in terms of the international sanction you can bring to bear, because they see that if they're seen as a pariah state, a lot of other things happen: the trade drops off and the tourists stop, because suddenly they wonder, “If I go over there, am I going to be thrown into jail?”

• 1655

States won't, of their own volition, put themselves into that situation. If they are being held accountable to the minister, they will say they're playing by the book.

Mr. Paul DeVillers: They won't take you seriously.

Mr. Lloyd Axworthy: It's interesting to watch the play out of the Lockerbie case. Libya, which has for a long period of time been isolated, primarily because of its stand, is now in active negotiation to have the people who have been charged with terrorism tried in a court, for exactly the reasons Mr. Kessel talked about: they were paying a very substantial price for their exclusion.

Mr. Paul DeVillers: The second question is one that maybe I should have asked Mr. Piragoff earlier. There's an apparent inconsistency, in my view, anyway, between paragraph 33(3)(a), where we accept that the certification of the extradition partner is sufficient under the law of the extradition partner to justify the prosecution, and the duty that's imposed on the Minister of Justice under clause 46, where it says the minister “shall”, not “may”, refuse to make a surrender order if the minister is satisfied that it's barred by statute in the extraditing partner's law.

If we accept on the one hand the certification and then impose on the other hand a duty on the minister to verify prescription period, etc., I see that as a little bit of a contradiction.

Mr. Don Piragoff: Paragraph 46(1)(a) is a recognized exception or grounds for refusal that exists in almost all extradition treaties. It also exists in the model UN extradition treaty. It's a standard ground of refusal to indicate that—

Mr. Paul DeVillers: Yes, but it's a question of law in the extraditing partner's country, and under subparagraph 33(3)(a)(i), we're accepting the certificate as being the state of the law.

Mr. Don Piragoff: Oh, okay. You will note that subparagraphs 33(3)(a)(i) and 33(3)(a)(ii) are disjunctive. That is because some countries are able to certify that the evidence is sufficient under their law to justify prosecution. That's basically a common-law standard.

The United States, for example, would certify under subparagraph 33(3)(a)(i). The United States could not certify under subparagraph 33(3)(a)(ii), because in their constitutional system, they never know whether the evidence is legally obtained until they get to court. They have a court hearing to determine whether or not evidence was legally obtained and whether it will be admitted or not. That's why that's disjunctive.

Mr. Paul DeVillers: But in order to sign the certificate under subparagraph 33(3)(a)(i), the person signing that certificate would have to say it's not statute-barred, whereas under paragraph 46(1)(a), we're asking the minister to satisfy herself that it's not statute-barred. Would she have to rely entirely on that certificate? Is that the position she'd be in then? Or would she make her own inquiries?

Mr. Don Piragoff: She'd be relying on any other evidence with respect to the foreign law under paragraph 46(1)(a). Clause 33 is really talking about the evidence—the evidence is sufficient to justify a prosecution. What would bar the prosecution is another law in the foreign state that says there is a statute bar.

And of course it may be the fugitive who brings forth that evidence. The state may say they have evidence to justify a prosecution, and the individual will then, in the extradition hearing or to the minister, bring forth the fact that there's a limitation period and the limitation period has run out. So this really permits a situation where the state may not tell us, but the fugitive may tell us this.

The Chair: I know the minister has to go shortly, and I know Mr. McKay has a great question.

 For research purposes only. See SCC notice.

Mr. John McKay (Scarborough East, Lib.): The extradition case that has caught the newspaper headlines lately has been that of General Pinochet. If I may suggest that General Pinochet is in Ottawa for medical treatment as we speak and Spain has requested an extradition, the question I have is how will this legislation be treated any differently from the present state of affairs? Is there any difference between an extradition request to a state as opposed to a tribunal? Is there any impact on the claims for diplomatic immunity or state immunity vis-à-vis the tribunal as opposed to the state?

• 1700

[*Translation*]

Mr. Daniel Turp: Good question.

[*English*]

Mr. Lloyd Axworthy: Let me just first say, to use the old parliamentary response, it's a hypothetical question.

Voices: Oh, oh!

Mr. John McKay: Yes.

Mr. Lloyd Axworthy: Nevertheless I'm prepared to try it. And I want to couch it, because there is a case before the House of Lords in Great Britain, which we clearly don't want to comment on, although it's of great interest.

The legislation in the U.K. governing extraditions is different from the regime that's being put forward today. In terms of this definition of "act of state"—

Mr. Daniel Turp: That's in another....

Mr. Lloyd Axworthy: Well, it gives a distinction as to the question of whether or not he was there providing a state-type service or representation. But that's for the courts to decide in this case.

Let me just put it this way. If a committee in Parliament were so well advised as to pass this legislation, Mr. Pinochet would be well advised not to come to Canada.

Mr. Daniel Turp: Why?

Mr. John McKay: Yes, why? That's the operative question: why?

Mr. Lloyd Axworthy: I just answered the question. That's the answer.

Voices: Oh, oh!

The Chair: Mr. Lee, and then we'll let the minister go.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

This statute, Mr. Minister, purports to lay the groundwork to lift a Canadian out of Canada and put them outside the country, outside the reach of our charter. This statute creates a framework that will allow the government to lift a Canadian out of Canada and put them outside Canada. That's my starting point.

For the next point, I hope to follow on the point of Mr. Mancini and Mr. MacKay. The international initiatives have in fact been collective action targeted or intended to produce benefits for individual human rights and collective human rights internationally. I applaud that and I'm not second-guessing that, but here in Canada, each of our citizens has the benefits accorded to them under the charter. Whether they're good guys or bad guys or whatever, they're still entitled to the Charter of Rights. So when the extradition process machinery is put into play, it is our state that will collectively reach out and commit that Canadian and surrender them abroad.

I say the charter comes into play. We all know it does. Even though we applaud the international collective action, our charter accords individual rights.

So when the Minister of Justice makes his or her decision, as has already been pointed out, it is critically important that the charter rights of that Canadian be taken into consideration after the hearing process and in deciding whether or not to surrender the person. The Minister of Justice would generally be unfamiliar with circumstances in other countries that might bear on a Canadian's charter rights.

This is probably not going to come up again, unless it comes up in the other place, but I am asking you and your ministry to provide us an assurance here today that your ministry, now and in the future, would be fully capable of knowing what's going on abroad for purposes of according full charter rights to all our Canadians in the process, whereby communication is given to the Minister of Justice so that he or she can make a proper, fully informed decision. That's pretty critical. That's very important.

Mr. Lloyd Axworthy: First let me point out something that is important to recognize. When we're talking about cases that would be tried under international law in the tribunals or courts, these are matters of last resort.

• 1705

It was very clear in the construction of the International Criminal Court in Rome that if a jurisdiction is pursuing the action through its own court system, subject to its own rules, then the international court will have no application. It is a way, in international law terms—and Mr. Turp, correct me if I'm wrong—of having a horizontal delivery of the law, where you use the domestic court system to deliver an expression of a crime against humanity.

So in a case where, say, a Canadian was charged with a violation, an act of genocide in some action somewhere, as long as the Canadian courts and the judicial system here were undertaking that case, there would be no reference to an international system. So there is that very clear safeguard.

If it's a case simply of a direct criminal action, where a Canadian is charged with murdering somebody in another country and comes back to Canada, they are apprehended, and the country asks that they be extradited to go through their system, those conditions are generally asked about, Derek: the protection they would have in prison and the kinds of charter rights that would apply. Those are the kinds of negotiations and discussions the Minister of Justice, plus our own department, would have with the country requesting the extradition.

Mr. Derek Lee: And you feel your department now would fully serve that purpose and would continue to?

 For research purposes only. See SCC notice.

Mr. Lloyd Axworthy: Yes.

The Chair: Thanks.

Can Mr. Maloney ask one question?

Mr. Lloyd Axworthy: Sure.

Mr. John Maloney (Erie—Lincoln, Lib.): It's just a quick one, Mr. Minister, through you to your officials.

Clauses 74 and 75 deal with transiting through Canada from a surrendering country to a receiving country, and clause 76 deals with an unscheduled landing. Are clauses 74 and 75 used to any great extent, given the fact that we have really only one land border neighbour and given the fact that transportation is generally by air when someone's being extradited from country to country? Do we need this clause at all?

And if a person were in fact in transit through Canada, is there anything to prevent them applying or to allow them to apply for refugee status while in transit, and what would you do?

Mr. Don Piragoff: I can answer the first question. Given our geographic location, there are not that many flights that fly over Canada going elsewhere, other than of course between Canada and the United States or Canada directly eastward or westward. However, some airports, such as Gander, do serve as a refuelling spot for flights coming from Latin America to Europe. They fly up the North American coast, stop in Gander, and then continue on to Europe, or vice versa. That would be a situation where there could be a transit spot.

Mr. John Maloney: And my other question about refugees?

Mr. Don Piragoff: With respect to the refugee claim, that is a question you might want to ask CIC officials, and I believe they are testifying next week. It's their act. I would be guessing, and I don't want to mislead you.

Mr. John Maloney: Thank you.

The Chair: Minister, thank you.

I'm wondering if officials could stay for a few minutes, because I know we have some other questions.

Thank you very much, sir.

Mr. Turp.

[*Translation*]

Mr. Daniel Turp: I believe there is a translation problem in clause 9. You should reread the French version of that clause carefully because it doesn't say the same thing as the English text.

[*English*]

Subclause 9(1) reads:

> The names of members of the Commonwealth or other States or entities that appear in the schedule are designated as extradition partners.

[*Translation*]

In French, it reads "les membres du Commonwealth". It should read "les noms des membres du Commonwealth" because that's completely different. You'd have to add a lot of names to the list, or else the partners on the list would not be all partners, according to the French version. I believe this must absolutely be corrected so that not all members of the Commonwealth are concerned. I don't believe that was the intent.

Second, why is there no mention of the death penalty in subclause 40(3), whereas it is mentioned in subclause 44(2)? It seems to me it would also be appropriate to refer to the death penalty in subclause 40(3).

• 1710

So it could read: "The Minister may seek assurances from the partner that the death penalty not be imposed on the person he wants to extradite, before extraditing him." As you know, this has been the subject of a number of references to the Supreme Court and the European Court of Human Rights.

Is there a reason for not mentioning the death penalty in subclause 40(3)? Otherwise, I would suggest that you add it. I believe that would be an improvement to the bill.

[*English*]

Mr. Don Piragoff: The reason no particular issue is mentioned is that assurances can be sought for any one of a number of things, including non-imposition of the death penalty, but we've also had other situations where we've asked for assurances with respect to the type of sentence or the trial. There was a recent case last year where we sought certain assurances with respect to the ability to monitor the trial and other issues.

Not all assurances that we might seek are necessarily directed to the death penalty. So this is a general clause that says that in fulfilling any of the conditions that might appear in clause 44, the minister can seek an assurance. Of course one of those might be the death penalty, but it might also be some other aspect that the country is able to assure us about.

[*Translation*]

Mr. Daniel Turp: I understand, but I believe it would be important to refer specifically to the death penalty in subclause 40(3) so that partners clearly understand that Canada will never agree to surrender anyone if it does not receive assurances that the death penalty will not be imposed on that person.

This is somewhat different from subclause 44(2) because that clause concerns the refusal of extradition. Canada may want to extradite in certain cases and to obtain assurances in order to do so. This is one way of being able to extradite, of not necessarily refusing if we receive assurances regarding the death penalty. To make a point, Canada is opposed to the death penalty and, if I'm not mistaken, the National Defence Act is even going to be amended in this respect. So I believe it would be useful to add it to subclause 40(3).

My last question concerns the enumeration of reasons in clause 44(1)(b):

 For research purposes only. See SCC notice.

...race, nationality or ethnic origin, religion, political opinion, sex or the person's position...

This list is not necessarily consistent with the list contained in the Canadian Charter of Rights and Freedoms or in Canada's international commitments such as the International Covenant on Civil and Political Rights. Where does this list come from? On what is the list of reasons in clause 44(1)(b) based? I would suggest you extend the list to include all the reasons contained in the Canadian Charter of Rights and Freedoms or in the International Covenant on Civil and Political Rights. It is incomplete in its current state. In particular, it does not include sexual orientation, a new reason which has just been added to the Canadian Human Rights Act. Can you explain to me where this list come from?

[*English*]

Mr. Don Piragoff: I can repeat the answer the minister gave to a similar question yesterday. The origin of the grounds for refusal with respect to persecution, in paragraph 44(1)(b), is directly from the United Nations Model Treaty on Extradition, which was adopted by the General Assembly of the United Nations in 1990. It is the most complete list where there is clear international consensus as to the types of grounds upon which countries are willing to have extradition refused on the basis of persecution.

• 1715

Nevertheless, I think both the parliamentary secretary, in her speech at second reading, and also the minister directly yesterday did say that if, for Canadian purposes, Canada wished to have broader grounds of exclusion in paragraph 44(1)(b), she was interested in hearing the views of the committee.

[*Translation*]

Mr. Daniel Turp: Perhaps one final remark. Can you supplement the Minister's answer regarding Pinochet?

[*English*]

Voices: Oh, oh!

The Chair: He'll never know.

[*Translation*]

Mr. Daniel Turp: No, but I'm speaking to his officials.

Just for the information of committee members, the great debate in England, in the U.K., concerns the scope of the legislation governing state immunity. If Mr. Pinochet wants to be granted immunity, as provided in that statute, here in Canada, the equivalent of that enactment will not protect Mr. Pinochet because it covers only the head or sovereign of a state in the performance of his official duties. So he could not invoke Canada's State Immunity Act, which I believe was passed in 1982.

However, if he couldn't invoke that act, as he seems to be able to do in the U.K., would he be subject to extradition under Bill C-40?

Let's say we're talking about another former head of state instead of Mr. Pinochet.

[*English*]

Mr. Alan Kessel: I'm always reluctant, when my minister tells me a question has been answered, to answer the question.

Voices: Oh, oh!

A voice: Good answer.

Mr. Alan Kessel: I can just simply reiterate what the minister has said, which is that the issues that are faced in the U.K. arise from U.K. legislation, which is different from Canada's. The question of whether a person's act is an act of state would have to be addressed by the courts, and we would not wish to prejudge what the courts would say.

But the new legislation would permit extradition where the crime occurred in a third country.

Mr. Daniel Turp: What about Fidel Castro?

Mr. Alan Kessel: I'm hearing my minister's voice again.

Voices: Oh, oh!

The Chair: Let's not go there. His minister has big ears. It's just curious, though, that he wouldn't.... Well, never mind. It's a gratuitous comment.

Mr. Daniel Turp: He made his point.

The Chair: Mr. Mancini.

Mr. Peter Mancini: Speaking of being curious, I am curious. Clause 35 does not require proof of a signature. A document purporting to have been signed by a judicial, prosecuting, or correctional authority or a public officer can be admitted without proof of signature or official character of the person. I'm just curious as to why we would not require proof.

Mr. Don Piragoff: This is becoming a standard clause in most extradition treaties, not to require extra pieces of paper to simply say that this signature is the signature of a particular judge or a particular official. To a large extent, if countries are entering into treaty relationships, they're entering into the relations because there's mutual trust among one another.

Of course it's always open to the fugitive to question and to say that the document is not genuine. That can be raised to the minister as being a particular concern. That's something the minister could look at.

Mr. Peter Mancini: We don't do that for our own lawyers in Nova Scotia. We require proof of who you are.

Okay, thank you.

The Chair: Do you have another question, Mr. Turp?

Mr. Daniel Turp: Could I just make a comment? Earlier, when we discussed tabling the treaties, you said it's a practice that has become moot or outdated.

 For research purposes only. See SCC notice.

The Chair: Obsolete, I think.

Mr. Daniel Turp: I would disagree. It's not that it's outdated, because the treaties that are tabled in Parliament, I understand, haven't been the extradition treaties—and they should be. You're eight years late in tabling extradition treaties. You have a legal obligation to do so, and you haven't obeyed that legal obligation for the last eight years.

• 1720

Today I talked to one of your colleagues at the department about this, and I think he admits that that hasn't been done, but there's no delay in the actual legislation, so you might not have totally disobeyed the law.

And for social security agreements, there's also an obligation to table legislation.

If you wanted to put an end to this practice—and eventually, I guess, you'll want to do it for social security agreements—you'd be going against a new practice in Commonwealth countries. In the U.K. itself, New Zealand, and Australia, most treaties are tabled now. They are tabled because other Commonwealth jurisdictions consider it is now important that treaties be tabled in Parliament for the benefit of legislators, although they don't have to approve them.

So I think it's quite a bad idea to remove this obligation from this legislation, which was one of the only legislations where it was an obligation on the part of the government to do so. That's bad for transparency and democracy.

In any case, you'll see: we'll have to come back to that obligation to table legislation soon enough, because we'll all want to have all treaties tabled in the House, as it happened before. That practice stopped in 1990, except for extradition treaties, although it hasn't been done.

I would suggest you think that over. You might want to leave the obligation in this act. And when you draft new acts where treaties are involved, you might want to put in the obligation to table them before Parliament.

Mr. Don Piragoff: I'll raise your concerns with the minister.

Mr. Alan Kessel: I appreciate what you said about the actual tabling of those documents, and I can look into it with our treaty registrar to see which ones have or have not been tabled as yet.

We also in fact haven't been undertaking extradition treaty negotiation for at least five years now, in anticipation of a new act. We're so far behind in terms of our normal rate of treaty negotiation that it would be absolutely terrific if we could get this act going, which would allow us to start up again our extradition treaty negotiations with other partners who've been insisting that Canada do that. However, we've indicated that we cannot, pending this act being passed.

Thank you.

The Chair: Thank you very much.

Thank you, gentlemen, for your assistance today. We stand adjourned.