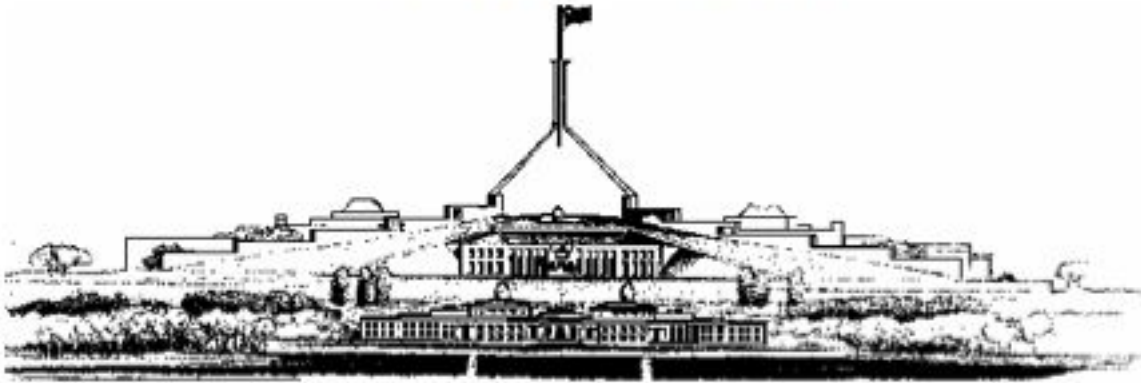




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

Main Committee

WAR CRIMES AMENDMENT BILL 1999

Second Reading

SPEECH

Thursday, 9 December 1999

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Thursday, 9 December 1999
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Questioner
Speaker Kerr, Duncan, MP

Source House
Proof No
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Question No.

Mr KERR (Denison) (10.55 am)—The opposition supports this legislation, the War Crimes Amendment Bill 1999. By way of background, it is useful to put ourselves back into the frame of mind that existed at the time the provisions relating to extradition of alleged war criminals from the Second World War were enacted. It was a period where the world was convulsed with outrage in relation to the atrocities that had been conducted in Germany and in the countries that Germany had occupied—the forced deportation of many millions of people and the extermination of millions in the gas chambers of the Nazi war machine. There was a sense that the world had to enact a framework that would deal with those who had perpetrated such atrocities.

Nonetheless, there was another mind-set that also applied and that was a fundamental distrust of the legal regimes of many Eastern European states. That was because, at that time, those states were part of the larger empire of the Soviet Union or certainly subject to their dominion. It was a widely held view that those regimes were prone to distort historical records and that their legal systems provided no framework that was adequate for this country to respect in relation to those charged with criminal or quasi-political offences of this nature. I only say quasi-political in the sense that they arose out of the conflagration of war. The Soviet regime, having itself lost, I think, something in the order of 20 million dead as a result of resisting a German invasion, was felt to have such an antipathy to those who might be charged with offences that the normal protections of the legal system could not be guaranteed.

In the Cold War climate that I grew up in as a young man, there was still the lasting aftermath of a campaign in Australia to have the Communist Party of Australia proscribed as an illegal organisation and a widely held view that it would have been improper for us to send back to Eastern European countries persons against whom charges even of this nature were made to face trial and the penalties that would have applied in those eastern bloc countries, unless we ourselves formed a view that there was a substantial and probably conclusive case against them.

That was the framework in which the extradition provisions that currently apply were made, which require, before a surrender to another country of a person against whom extradition is sought for these offences, that an Australian tribunal must first satisfy itself in relation to the *prima facie* case that exists against that person. That is a not insubstantial hurdle when we are dealing with very different legal regimes. It is not an insubstantial hurdle even when we are dealing with similar legal regimes that understand a common law system of what actually comprises a *prima facie* case. But when we are dealing with civil law countries—and most of Europe does operate on a civil law environment—the knowledge base to put together effectively an application for extradition is limited. That has been in part the root reason why, in the law of extradition generally, we have moved away from the requirement for the establishment of a *prima facie* case.

There is a hold-over in this area which still remains on the statute books. It is now thought appropriate to, in a sense, align the provisions that relate to extradition for the general run of criminal offences with those that we will now be enacting with respect to alleged war crimes. That will facilitate more readily the surrender to countries which were formerly part of the Soviet bloc, including Latvia, Lithuania and Estonia, of persons who are asserted by those jurisdictions to be in Australia, if any such assertion is made, and against whom they assert evidence is available to establish proof of guilt in relation to atrocities that occurred during the Second World War.

My briefing to date from the department is that no intention to file an extradition application currently stands. But it may well be that, over time, these provisions are exercised. I know that my colleague from Melbourne Ports has put questions on the *Notice Paper* in relation to a Mr Ozols and he has raised this matter with me. It may well be that the authorities in the country where he is alleged to have been a significant and senior participant in a number of atrocities may feel it appropriate to seek such extradition. There may be others. By changing the law in this manner we do facilitate that.

There are always arguments that ought to be taken seriously with respect to those who have come to Australia after World War II that amongst those persons were some who were not seeking to make a new home in Australia

as a result of circumstances which we would all regard as perfectly understandable and justifiable but who, it is asserted, had been involved in these atrocities. In those circumstances, I think the whole Australian community would want to see those persons brought to justice, whether in this country or overseas.

Of course, when we did have the regime that formerly applied—that is, the *prima facie* regime—when the former Labor government came to office and was confronted with substantial allegations that there were persons living amongst the Australian community who had been involved with these events, the response that was then made was to establish a special investigation unit which was resourced to assess those matters and to prepare them for prosecution. A number of prosecutions did take place.

For a variety of reasons the basis upon which the SIU was established was that, rather than facilitate extradition, the trials should take place in Australia. That, in itself, gave rise to a whole series of complexities. Perhaps that was a bad decision, in retrospect. It is easy to be wise in hindsight, but perhaps it was a bad decision because of the difficulties in bringing witnesses to Australia and in establishing proof of materials held on files in those countries which were then still subject to Soviet domination.

A whole range of other such issues did make those trials particularly difficult and, as history will show, either acquittals or discharges for reasons of ill health or the age of the accused meant that we obtained no convictions. I must say that I do not think that outcome has stilled the disquiet amongst those who suffered at the hands of the Nazi war machine. Perhaps there are still some living amongst us in this community who should be better placed on trial and account to history for the actions they undertook.

The opposition is content to support these changes. We accept that the international legal circumstances in respect of both the former Soviet Union and the states which were subject to it have changed and that we should apply the same regime to those extraditions as apply in other areas. That is not to say that somebody charged with an extraditable offence is entirely without some opportunity for an examination of the matters alleged against them. There are a series of processes, often much litigated already in this country, where people are made subject to extradition requests. The extradition requests are subject to a range of discretionary matters in the end which the minister must consider before a surrender is made.

So it is not as if a case cannot be made either administratively or later at a political level to the minister that a surrender request must be acceded to if there are some circumstances wherein it is asserted that the legal regime in those countries is still not appropriate to enable a fair trial. There may indeed be some argument advanced to that effect in respect of particular matters. Nonetheless, I think the generality of this legislation is now most appropriate, and it indeed fits with the way in which the international community has seen appropriate to regard extradition and, as importantly, reflects the continuing abhorrence by the Australian community of the Holocaust and those who gave rise to it.

With those remarks, I indicate that the opposition does support this legislation. As I said, there are many things that perhaps with hindsight we might reflect on in relation to the conduct of matters previously. But it is not an area where I am content to say, as some amongst the Australian community do, that these are events in the dim, distant past which should be allowed to fade from memory. To the extent that properly based evidence is available to establish the fact of willed participation in these terrible events, I do not believe we, as a parliament, should ever stand in the way of the proper trial and punishment of such persons.