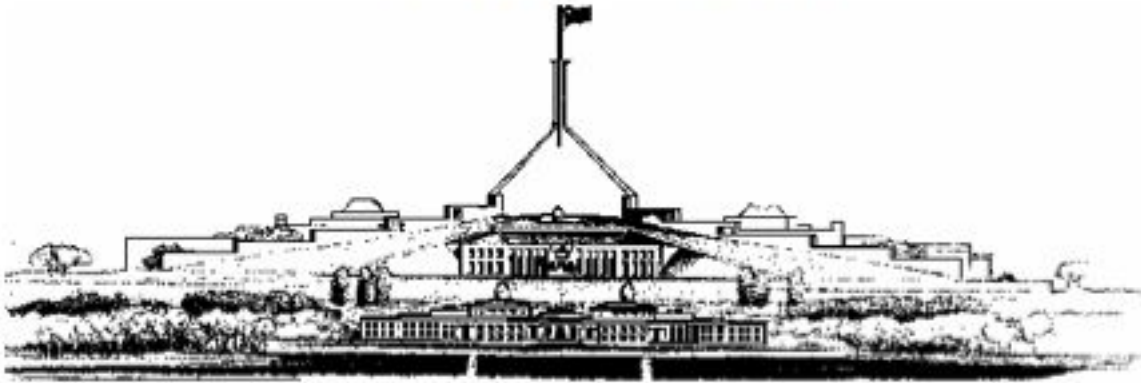




COMMONWEALTH OF AUSTRALIA

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
Page 13396
Questioner
Speaker Thompson, Cameron, MP

Source House
Proof No
Responder
Question No.

Mr CAMERON THOMPSON (Blair) (11.39 am)—I think we all agree that we do not want to see Australia a haven for war criminals. The War Crimes Amendment Bill 1999 that we are debating here today will lead to the repeal of section 22 of the War Crimes Act. That will mean there will no longer be any need to establish a prima facie case prior to the extradition of people overseas for trial on issues in relation to alleged war crimes.

One of the important principles involved is that international boundaries should not allow a person to evade criminal justice. One of the things that is referred to again and again in the literature surrounding this legislation is the fact that over the years we have seen, across the world, closed borders. Those closed borders, and the lack of ability to view proceedings behind those borders, have resulted in and facilitated fairly lurid media headlines from time to time when it has not been possible for a trial to proceed because of allegations occurring on one side of the boundary and people existing on the other side of the boundary.

For example, I refer to some of the headlines that have gone before in the *Australian Jewish News* such as that on August 27 this year. It said, 'Nazis in Australia: too late, says expert', and the article refers to media revelations that Australia secretly recruited known SS members, former Nazi storm-troopers and Nazi party members to work here as scientists and technicians after World War II. The same article states:

Not every German was a Nazi and not every Nazi was a war criminal.

But there is in that kind of a lurid presentation of the details a clear imputation that some of those people may have been involved in war crimes.

What is a war crime? I will not go into all the details here. A war crime is defined in sections 6, 7 and 8 of the War Crimes Act. I am quoting here from an article by Gillian Triggs:

A serious crime is a war crime if it was:

(a) committed:

(i) in the course of political, racist or religious persecution; or

(ii) with the intent to destroy in whole or in part a national, ethnic, racial or religious group, as such, and

(b) committed in the territory of a country when the country was involved in a war or when the territory of the country was subject to an occupation.

War is defined by section 5 to mean war 'in so far as it occurred in Europe in the period beginning on 1 September 1939 and ending on 8 May 1945'.

That basically sets out what the War Crimes Act is dealing with, but I can go on into the article by Gillian Triggs and look at the consideration of people where, as I stated earlier, the allegations involved activities that were alleged to have occurred on the other side of borders that were for some time closed. I want to refer now to a case involving Mr Polyukhovich and the article by Gillian Triggs. She says:

Mr Polyukhovich was seventy-two when, on 26 January, 1990, he was charged with nine offences (later amended to eighteen) alleging the murder of twenty-four men, women and children and of having been knowingly involved in the murder of 850 Jews in the Ukraine between 1941 and 1943. The day before he was to appear in the Adelaide Magistrates Court committal proceedings, Polyukhovich was shot in the chest and wounded. This delayed proceedings but did not cause them to be terminated.

A little further on in the article she says:

Polyukhovich was committed to stand trial in the Supreme Court of South Australia on two charges relating to the killings of six people.

In other words, *prima facie* evidence was found to exist in that case—that is, *prima facie* evidence as established within the Australian judicial system.

The subsequent trial of Polyukhovich in the Supreme Court of South Australia came to an abrupt end when the indictments were quashed for lack of evidence. Apparently the court was not satisfied as to the credibility of the witnesses and was not prepared to allow such evidence as there was to go to the jury.

That case indicates an example in which *prima facie* evidence was found to exist. What we are dealing with here is the idea that it is not necessary to find *prima facie* evidence, and that is certainly the case in all other matters apart from allegations of war crimes. In all other matters, dealings between international authorities occur because of extradition treaties on which there is no necessary evidence at all. All that is needed to be established is that there is a domestic law in Australia—in other words, an extradition agreement with that other country—and that there is an allegation and a request from that country for that to proceed.

When we consider the needs for extradition, under the Extradition Act 1988, which will become the relevant act once section 22 of the War Crimes Act is repealed, there are protections in place. I want to refer in particular to the protections given to the Attorney-General. Before someone can be extradited, the Attorney-General has to be satisfied that there is no extradition objection in relation to the offence; that on surrender to the extradition country the person will not be subjected to torture; and that, where the offence is punishable by a penalty of death, special circumstances apply.

The Attorney-General must consider one of the following alternatives: one, the person will not be tried for the offence; two, if the person is tried for the offence, the death penalty will not be imposed on the person; three, if the death penalty is imposed on the person, it will not be carried out. Further, the Attorney-General can satisfy himself or herself that a special assurance has been given in relation to the person. I am not covering all the specific details, but the Attorney-General also has discretion to consider that the person should be surrendered in relation to the particular offence.

The international principle is that extradition proceedings have no function in determining whether someone is guilty or innocent. They are simply an administrative matter. Is the person concerned liable under our law to be surrendered up to another country to face trial? In other words, do we recognise their law and do they recognise ours? That is the basis on which an extradition agreement exists or does not exist.

In the past there have been questions about whether people extradited to Warsaw Pact countries, under the former Warsaw Pact, would be provided with a fair trial. We have all heard allegations—it is probably a clear fact—that under those regimes there were political juntas and military juntas conducting show trials. There would be real concern in the mind of the average Australian that those things would have been occurring. However, since the collapse of the Soviet empire and the break-up of Yugoslavia, many ex-Warsaw Pact nations are now moving towards the mainstream in terms of their governance and in terms of their legal system.

I think we would all have seen the notes that have been issued illustrating this bill which list a number of countries from that area. Is there any reason why we should not develop extradition agreements under our law with those particular countries? Can we establish those agreements? I would submit that we should be setting up those agreements. As I said, those borders have been an impediment for years to the proper review of people's behaviour or crimes alleged against them. Now is the opportunity to clear the air on those issues. Therefore, obviously I commend this bill.

We would have to establish an extradition treaty with those nations before we would be obliged under our law to give up someone. I had a particular look at some of those ex-Warsaw Pact nations. I asked myself, 'What other ones are there, apart from the ones listed as moving down this path? Are there some recalcitrant ones?' Obviously there are. For example, what is the position with Serbia? Would Australians in general like to see someone extradited to Serbia? I think many people would be concerned about that. Clearly that is not going to happen because we do not have any extradition agreement with them. We have nothing within our domestic law that would require an Attorney-General to give up someone for trial in Serbia.

As these nations move towards the mainstream in terms of their governance, then we can make these agreements and we can then see justice done. Where there is an allegation made, it can be followed down the burrow. People can then determine whether there is a case to answer under the appropriate regime, and the decision can be made.

There have been some examples. In 1997, Latvia sought documents regarding alleged genocide and war crimes by Mr Kalejs during the Second World War. It is possible that Latvia may seek to extradite Mr Kalejs when it has completed its examination of all this material, and an extradition treaty would facilitate that. By removing this requirement for an examination of prima facie evidence in such a case, Australia is clearing the way for such a thing to occur.

Another example occurred when Lithuania sought information from Australia on alleged war crimes by Antanas Gudelis of Adelaide. A report in the *Australian Jewish News* of 30 July 1999 says:

Mr Gudelis, 87, immigrated from Germany with his wife 50 years ago and became an Australian citizen. He is suspected of the mass murder of civilians in the Lithuania town of Kupiskis during World War II.

The article goes on to say:

Mr Gudelis was previously investigated by Australia's Special Investigations Unit (SIU), but prosecution did not proceed. The SIU was set up in 1987 following allegations of alleged war criminals . . . It investigated a number of cases of alleged war criminals under the War Crimes Act 1945.

Four cases were referred to the Director of Public Prosecutions, but none was successfully prosecuted before the SIU was closed down by the Federal Government in 1992. The government has been criticised since then for lack of political will on the issue of alleged war criminals living in Australia.

I think this legislation puts an end to that kind of criticism.

Dr Theophanous—Why?

Mr CAMERON THOMPSON—Because it provides the opportunity for these people to be tried in areas where these things are alleged to have occurred. It is reasonable for people to continue to actively question the government on this issue because it is a very emotional one, but I do think that by opening the door for scrutiny overseas by the very people who are making the allegations, and by not keeping this impediment of prima facie evidence, Australia is coming to a position that is workable. I would be interested to hear what the member opposite has to say about that.

It is a situation that is difficult. It has raised tremendous expectations in the past, only to have them dashed. I do not anticipate that that sort of thing is going to stop in future just because we do this, particularly so many years after the fact, but the point is, steps are being taken.

I would like to reiterate that the end of the communist era means that these issues can be opened up to scrutiny. They can be tried in an environment which Australians would have trust in and would believe to be accurate. It means that the system in those countries is increasingly transparent. We in Australia need to facilitate the flow of justice in relation to these very emotional issues.

As I said, this bill opens the way for that to occur. I welcome the support that has been forthcoming from members opposite in relation to it. It is important that such an emotional issue does not degenerate into a point scoring exercise. On the whole, that kind of temptation has been avoided in the past, and I hope that will continue to be the case in the future. I commend the bill to the Main Committee.