• (1420)

So, as senators may know, I have tried for a week or ten days—longer, really—to find a compromise between the position of the minister on the bill and the amendments that are proposed by the committee. I can report that that undertaking is not yet over; it is not dead. I think it is still a possibility. I hope—if honourable senators agree—that Senator Marsden will adjourn the debate and give us at least until next week to see if we can come up with an agreement between the minister and the majority members of the committee. If we can't, honourable senators, we should get rid of it next week and return it to the House of Commons, either with these amendments or, I hope, with amendments that the minister would be prepared to accept.

I hope I have made it clear that I am not speaking for my caucus, I am speaking for myself. My Liberal colleagues are not to take this as an appeal on the basis of my position as deputy leader, but I do not mind if they accept its appeal on its merits—that is up to them.

For those reasons, and between those two positions, I felt that I owed an explanation to all of my colleagues in the Senate as to why I propose to abstain. I believe the bill should be passed without amendments, but at the present time we, in the Senate, operate on the party system, and I do not want to vote against my party.

On motion of Senator Marsden, debate adjourned.

CUSTOMS TARIFF

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Eileen Rossiter moved the second reading of Bill C-118, to amend the Customs Tariff.

She said: Honourable senators, Bill C-118, to amend the Customs Tariff, gives effect to the tariff amendments tabled by the Minister of Finance as part of the budget of February 10, 1988. They have been in effect on a provisional basis since the day following the budget, as is the traditional practice.

The House of Commons has given speedy approval to this bill and I believe that we should do the same. The tariff changes in the bill are of benefit to the Canadian firms and individuals who requested them, and they do not adversely affect other Canadians. These amendments reflect the long-standing practice of amending the Customs Tariff as part of the budget process in order to respond to new problems and needs in the tariff area which require statutory amendments to the legislation.

The package of tariff measures in this bill is quite small compared to most previous budgets. It is, nevertheless, important to those who benefit from the changes. The oil sands industry is receiving duty-free entry for a wide range of equipment it has to import. Farmers will benefit from removal of the duty on steel rods used in the construction or repair of silos. Transportation companies and consumers are the beneficiaries of the amendments which remove the tariffs on certain air compressors and differentials used in motor vehicles. Consumers also gain from tariff elimination on certain model kits. The tariff on burial shrouds is being removed at the request of a synagogue in Vancouver. The blind will benefit from removal of the duty on certain audio tapes which are used to make cassettes.

The bill contains a few technical amendments as well. Most of these are designed to ensure that goods which have been entering Canada free of duty for some time will continue to do so, notwithstanding certain technological changes in the products or other factors which, without corrective action, would result in their reclassification and the assessment of duties on them.

It is important for senators to note that none of the products covered by these tariff changes is made in Canada, so, as I said, the amendments do not have a negative impact on Canadian manufacturers.

In light of these factors, I hope that we can all agree that this bill is a good one and need not be held up. I urge my colleagues to approve it without delay.

Some Hon. Senators: Hear, hear!

On motion of Senator Frith, for Senator Sinclair, debate adjourned.

EMERGENCIES BILL

SECOND READING—DEBATE ADJOURNED

Hon. William M. Kelly moved the second reading of Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

He said: Honourable senators, I rise today to speak to Bill C-77, which has been referred to as the Emergencies Bill. In several respects, this bill is a companion piece to Bill C-76, the Emergency Measures Act, passed by the Senate on March 31 of this year.

The bill before us today finally implements a commitment of this and previous federal governments to replace the outmoded and draconian War Measures Act with more balanced and appropriately safeguarded emergencies legislation.

Everyone in this chamber knows the history of the War Measures Act. It was passed quickly and in some panic in August 1914, as our infant country tried to put itself on a war footing to respond to the conflagration about to consume Europe. It was used to intern suspected "communists" in Canada in the days following the Russian Revolution in 1917, and it was used in one of the darkest periods of our history to intern Japanese Canadians during the Second World War.

The War Measures Act was used most recently in 1970 in response to a perceived "apprehended insurrection" in Quebec. I see no point in dredging up the history of this unhappy period and debating whether the government of the day acted reasonably and properly in invoking the act at that time and under those circumstances.

There are, however, three basic points that I should like to make that spring to mind from that experience. First, whether

or not invocation of the act was required to meet the situation in Quebec at the time, it never should have been used as a pretext for arbitrary arrest and detainment of people in Simcoe, Ontario, or Winnipeg, Manitoba.

Second, I think the best that can be said of the events in 1970 is that when the government went to the cupboard, the only thing available was the War Measures Act, a very blunt instrument designed, as its name suggests, for wartime use.

The third point resulting from the 1970 experience is that as a practical matter—because of the 1970 experience and the subsequent reaction to it—the War Measures Act will almost certainly not be used again in peacetime, or, at least, it will not be used for anything short of an urgent threat of an insurrection akin to a coup d'état.

In other words, Canada does not have, as a practical matter, access to legislation to define governments' responses to emergencies of lesser magnitude than a pending declaration of war. As such, we stand alone. Every industrialized country in the world and every province in Canada has emergency legislation to allow governments to respond to a range of emergency situations. I think that everyone in this chamber agrees that this lack represents an unacceptable situation that cannot be allowed to persist.

One of the most enduring and fundamental principles of government is *salus populi suprema lex*—the safety of the people is the supreme law. As parliamentarians, we would be derelict in our duty not to correct this anomaly. Agreement that the anomaly must be set right is the easy part. How to do it is fraught with complexities and divergent views.

This is a complex and difficult bill. I have thought long and hard on how best to describe it and have come up with the following two basic objectives that this bill is trying to achieve: The first is to provide Canada with a legislative framework that allows governments to take measured and appropriate, but effective, responses to a host of peacetime emergencies that may occur within Canada. The second objective is to solve the dilemma posed by President Lincoln toward the end of the American Civil War:

> It has long been a grave question whether any government not too strong for the liberties of its people can be strong enough to maintain its existence in great emergencies.

In short, how can we protect the civil rights of citizens while, at the same time, providing governments with effective powers to respond to emergencies?

● (1430)

Let me take those two objectives as foundations for the examination of this bill. As I said earlier, the War Measures Act was designed for use in wartime. Its powers are too blunt, wide-ranging and draconian for use in lesser emergencies. In order to allow governments to make an appropriate response to a host of emergencies, Bill C-77 defines four kinds of emergencies, each with its measured response. The four types are: public welfare emergencies, public order emergencies, international emergencies and war emergencies. These four emergencies fall under the umbrella of "national emergency" as defined in clause 3 of this bill, which reads:

> For the purposes of this Act, a "national emergency" is an urgent and critical situation of a temporary nature that
>
> (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or
>
> (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada and that cannot be effectively dealt with under any other law of Canada.

Honourable senators, let us now look at the bill's definitions of each of the four subsidiary emergencies.

Public welfare emergencies are those peace-time challenges that are brought on by forces of nature—drought, storm, earthquakes, fire, flood—and by man—chemical spills, contagion, major accidents, and so on. Although these emergencies may bring about social disruption and imperil property and the safety of Canadians, there is no threat to the security of the state, and it will usually be isolated in one or a few provinces. Public order emergencies encompass actions by a relatively few people within Canada that endanger the safety and security of Canadians or the security of the state. Terrorism would fall within this category of emergency, and, once again, the emergency would tend to be isolated in one or a few provinces, although there may be a danger that these emergencies could spread.

Questions have been asked, for example, why a terrorist incident could not be handled locally by the RCMP, the local police forces and perhaps by the Special Emergency Response Team under the current Security Offences Act. As the hijacking of the Kuwaiti Airlines' 747 in April demonstrated, terrorists are becoming increasingly sophisticated. It is conceivable that a hijacked jet could fly from place to place in Canada. We have known since 1975 that some terrorist groups have access to highly lethal, chemical, radiological, bacterial agents that could devastate a huge area. Terrorist attacks on electrical, natural gas and telecommunications systems could trigger an emergency, chaos and civil disorder that could be regional, or perhaps even national, in scope.

For these kinds of reasons the Security Offences Act is, unfortunately, inadequate, and more general legislation along the lines of Bill C-77 is required.

"International emergencies" is defined to cover periods of international tension such as the Cuban missile crisis, where a declaration of war may result. The declaration of a state of emergency, less than a full war footing, allows a country to take the civil, military and economic measures necessary to prepare for war, without taking the precipitate and perhaps provocative step of declaring war. Obviously, such a declaration would apply to the entire country. "War emergencies" are those for which the current War Measures Act was designed. Under this bill, such an emergency may be declared only at a

time of war or conflict, actual or imminent, and would, obviously, apply to the entire country.

Let me now turn to the second dilemma this bill attempts to resolve; balancing a government's requirement for effective action with civil rights of citizens. The current War Measures Act is particularly flawed in this respect. It lacks any real safeguards to protect individual rights and freedoms. Bill C-77 attempts to correct these flaws in the following ways.

Bill C-77 confirms Parliament's pivotal role in controlling developments. The bill requires the government to convene Parliament within one week of declaring any emergency. Once Parliament is in session, the government must describe the actions it has taken and the reasons for those actions. Time must be allocated to debate the subject continuously for three sitting days. Parliament has the authority to negate any motion for continuation of an emergency. Even after Parliament has confirmed a motion for the declaring of an emergency, Bill C-77 provides a mechanism whereby ten or more members of this place, and twenty or more members of the other place, may table a motion to revoke an emergency declaration, and ten hours of debating time must be allotted and the motion voted on.

The bill also requires that an all-party joint review committee of the Senate and the House of Commons be constituted when a declaration of emergency occurs. All orders and regulations relating to the declaration would be referred to Parliament. Any secret orders may be referred to the committee and the committee would have the power to revoke or amend them. Furthermore, the committee would report to Parliament every 60 days during the time in which an emergency declaration is in force or whenever an emergency declaration is continued or revoked.

In these ways, Parliament will have a very effective way to guard against excessive zeal by a government, both by approving the initial emergency declaration and the orders and regulations thereto; and by monitoring the on-going need for an emergency declaration at any time.

Any action taken under Bill C-77 would be subject to full review by the courts and the courts could declare null and void any emergency declaration under this bill.

Whereas the War Measures Act is silent on the question of compensation, Bill C-77 provides for mandatory reasonable compensation to people who suffer loss or injury through its application.

Under the War Measures Act, there are no time limits. Under Bill C-77, precise time limits for the length of any emergency are clearly set out: 90 days for a public welfare emergency; 30 days for a public order emergency; 60 days for an international emergency; and 120 days for a war emergency. After these periods, the government must take action to continue the emergency declaration, if required.

Under Bill C-77, as I said earlier, not only declarations of emergencies but also all orders and regulations are subject to review by Parliament. This is not the case with the War Measures Act. The War Measures Act can be invoked on what the act calls "conclusive evidence," and the action is not subject to contest or review. Under Bill C-77, the government must base its actions on reasonable grounds, and, as I mentioned earlier, those grounds can be examined and contested by Parliament and the courts.

Pursuant to an amendment in the other place, the bill specifies that the Governor in Council cannot order the detention, the imprisonment or internment of Canadian citizens or landed immigrants on the basis of race, national or ethnic origin, colour, and so on.

Honourable senators, there are those who claim that governments should refrain from the use of general emergencies legislation in favour of *ad hoc*, narrowly-focused statutes enacted by Parliament whenever the country is confronted with an emergency situation. In this way, the argument goes, the measures adopted would more likely be linked to the problems involved and the affected parties would enjoy whatever safeguards flowed from a parliamentary debate.

I find this argument difficult to credit on a practical level. I also do not believe this approach would necessarily protect civil rights any better. I think it far better that the government and Parliament put in place a framework to handle emergencies during a time of calm that allows calm deliberation rather than responding *ad hoc* when emotions may well be running high. Would, for example, Japanese Canadians or suspected communists have fared any better through special legislation passed by Parliament during a period of war hysteria? I think not.

Is this bill perfect in its protection of individual rights and property during a declared emergency? It is probably not, but, in my view, this bill goes further in this regard with both substantive and procedural safeguards than analogous emergencies legislation in the United States, Germany, the United Kingdom or Australia. It is certainly a vast improvement over the current legislation.

Will Bill C-77 allow the federal government to respond effectively to emergencies? Honourable senators, in this regard, I have some concern. I think it would be helpful, when this matter goes to committee, that these concerns be aired with the minister and his officials and put to rest.

I am concerned that the bill's requirement for extensive consultations with all provinces affected by an emergency declaration may erode the federal government's ability to respond fully and with dispatch.

● (1440)

In the case of a public welfare emergency, the federal government may not declare an emergency without prior consultation with the lieutenant governors of the provinces that are affected. In the case of a public order emergency confined to one province, a federal declaration may not occur without a request coming from the lieutenant governor of that province.

In the case of a public order emergency, the lieutenant governors of the provinces affected are to be consulted before or after the declaration.

In the case of an international emergency, or a war emergency, the lieutenant governors in council in each province must be consulted to the extent that the federal government believes "it is appropriate and practicable to do so in the circumstances."

In this context, I must ask: What does "consultation" mean? What happens, in this context, if, after consultation, one of ten provinces opposes the action, or five out of ten oppose, or nine out of ten oppose? Furthermore, what effect will this bill's requirement for extensive consultation have on the so-called emergency doctrine?

Simply described, the emergency doctrine is the ability of the federal Parliament unilaterally to exercise concurrent or exclusive jurisdiction over matters that otherwise would fall within exclusive provincial jurisdiction in order to respond to an emergency situation.

Government officials inform me that this provision is entirely workable—and therefore I believe it is—on a practical basis, and that what is meant is that the federal government would be required to at least "notify" affected provincial governments prior to the declaration of an emergency.

If that is what is meant, I trust that this intention and understanding will be aired during the committee hearings so that it can appear on the record for reference later on, should questions arise as to whether the federal government honoured the letter or spirit of the legislation in its consultations with provinces prior to or after the declaration of an emergency.

Honourable senators, let me make it clear what I am saying. I am not proposing an amendment. I simply think it is worth the time and effort to explore this matter and have the record clearly set out what was intended by this wording. I think that would be the purpose of the committee to which we refer this bill.

I am also concerned about an amendment agreed to in the other place, which now appears in Bill C-77 as subclause 59(3). The clause would permit only one house—the Senate or the House of Commons—to revoke a declaration of an emergency. This obviously is a major change from the requirement for agreement of both houses, as the bill was originally drafted.

This was presented to me as something of a victory for the Senate. The problem, to my mind, of course, is that this clause is a two-edged sword. Obviously, the House of Commons can revoke a declaration without the involvement of or approval by the Senate, as well as the Senate's revoking a declaration without review or approval by the House of Commons.

I also wonder about the constitutional precedent that we are setting here. We have a bicameral Parliament. Our Parliament speaks as a Parliament only when both houses agree. What precedents are we setting when we allow one house alone, and independently, to revoke a declaration that has been approved by both houses? What impact is this precedent likely to have on our constitutional fabric? Have these implications been considered, and are they worth whatever benefits are foreseen? I wonder.

I wonder whether, in our haste to replace a manifestly "bad" or "deficient" act with a far better one, we are giving too much away or setting precedents that will return to haunt us later. As the "chamber of sober second thought," they are issues that, I believe, should concern us, and I strongly urge the committee and all honourable senators to turn their minds to them and to receive assurances from the minister and his officials.

Honourable senators, I want to see this bill passed, because I think it represents a vast improvement over the current situation. I also want to see it passed during this Parliament, because it would be a shame to waste all of the effort that has gone into this bill and the substantial progress made to date.

The simple fact is that Canada requires balanced legislation to allow the federal government to respond appropriately and effectively to emergency situations. I think we all agree with that proposition.

I do have some concerns, however, about the legislated requirement for federal-provincial consultations and the ability of one house to revoke an emergency declaration. In committee I will be looking to the minister and his officials for assurances on these matters. Having said that, I think that the "fundamentals" of the bill are right.

Honourable senators, I commend this long overdue and important bill to your careful attention.

Hon. John B. Stewart: Honourable senators, I wonder if Senator Kelly would consider two questions.

Senator Kelly: Honourable senators, I counselled with Senator Stewart—whom, I must say, I respect and fear—and reminded him that if he were going to ask me a question, and he asked for my permission, my answer was going to be "no." He will have a chance to ask questions in committee, surely.

Senator Stewart: There was an assertion in the honourable senator's speech, and I wanted to be sure that he meant what he said, because I could hardly believe that he meant it seriously. But if he wants to leave it on the record, I will not object.

Senator Kelly: In that event, I have no choice but to answer "yes." I will try to answer the honourable senator's questions.

Senator Stewart: As I understood the honourable senator, he said that the statute that would eventuate from this bill would give us a situation that would parallel that which prevails now in the United Kingdom. I ask him if that is true with regard to the provisions of the bill concerning international emergencies and war emergencies. I believe his statement is inaccurate on that point. It is a very important statement, because it helps sustain the legitimacy of the bill.

Senator Kelly: Honourable senators, I believe I said that we started out far behind those countries mentioned and that this measure puts us ahead. I did not regard any part of this as being in parallel with any of the countries I mentioned.

Senator Stewart: Does the honourable senator realize that there is nothing on the statute books of the United Kingdom

comparable to our War Measures Act as of this date, nor has there been for years?

Senator Kelly: Yes, I am aware of that; but I am also aware—as I think we all are—that even though the War Measures Act sits as part of live legislation for the moment, we are also aware, from a practical standpoint, that it would not, under any circumstances, be used—I am sure, because of history—for anything other than for war emergency, and therefore effectively it is just as dead.

Senator Balfour: What about the Official Secrets Act?

On motion of Senator Hicks, debate adjourned.

[*Translation*]

COASTING TRADE AND COMMERCIAL MARINE ACTIVITIES BILL

SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator MacDonald (Halifax), seconded by the Honourable Senator Barootes, for the second reading of Bill C-52, An Act respecting the use of foreign ships and non-duty paid ships in the coasting trade and in other marine activities of a commercial nature.—(*Honourable Senator Langlois*).

Hon. Léopold Langlois: Honourable senators, this bill amends the Canada Shipping Act with respect to the coasting trade in Canadian waters. As honourable senators know, I am sure, the present legislation on the coasting trade in Canada is contained in Part XV of the Canada Shipping Act. Its provisions, dating back to the 1900s, forbid ships not flying the British flag to take part in Canada's coasting trade. Bill C-52 will therefore replace Part XV, which will be repealed.

The legislation will reserve the coasting trade for ships flying the Canadian flag and will broaden the scope of the laws on the coasting trade to include from now on: (i) all commercial marine activities within 12 miles of the Canadian coast; (ii) all commercial marine activities related to resource exploitation or exploration and to passenger transport within 200 miles of the coast.

However, some exceptions must be mentioned: First, hydrocarbon-drilling platforms; second, fishing vessels covered by the Coastal Fisheries Protection Act and oceanic research activities for the Department of Fisheries and Oceans.

Third, passenger ships with facilities to accommodate 100 persons or more for the night.

Fourth, ships operated or financed by a foreign government which has sought and received permission from the Secretary of State for External Affairs to conduct research activities in Canadian waters.

Fifth, vessels helping ships in distress.

Sixth, rescue operations more than 12 miles from the Canadian coast.

An exemption procedure similar to the existing one to allow foreign registered ships to take part temporarily in the commercial activities covered by the act is included in the new Act.

Fines up to $25,000 per infraction are provided for violations of the law. The act will be enforced by the persons named for this purpose by the Minister of Transport.

Enforcement procedures are provided to permit the detention and possible sale of a vessel. Safeguards have been provided to protect the privacy of the crew's quarters.

Motion agreed to and bill read 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 Phillips, bill referred to the Standing Senate Committee on Transport and Communications.

• (1450)

[*English*]

WAR VETERANS ALLOWANCE AND CIVILIAN WAR PENSIONS AND ALLOWANCES

GOVERNMENT CONSIDERATION OF AMENDMENT OF LEGISLATION—DEBATE CONTINUED

Leave having been given to revert to Order No. 8:

Resuming the debate on the motion of the Honourable Senator Marshall, seconded by the Honourable Senator Phillips:

That, in the opinion of this House, the government should consider the advisability of amending the *War Veterans Allowance Act* and Part XI of the *Civilian War Pensions and Allowances Act* in order to provide for the payment of an allowance, as defined under each of those Acts, to any Canadian veteran or qualified civilian of World War I, World War II or the Korean conflict, or to any widow or orphan of such a veteran or qualified civilian as defined in those Acts, whether or not such veteran or qualified civilian, widow or orphan has resided in Canada at any time since either of those wars or the Korean conflict, as the case may be; and

That, within 120 days after the adoption of this resolution, the Leader of the Government in the Senate should consider the advisability of tabling in the Senate the response of the government to this recommendation.—(*Honourable Senator Marshall*).

• (1500)

Hon. Jack Marshall: Honourable senators, I do not want to spend a great deal of time on this subject today, because I introduced an inquiry in a similar context in December of 1987 and spoke to it extensively on March 1, 1988. I can eliminate many of the recommendations that I would otherwise have made, because they are all contained in my address of March 1. What I want to outline today is what happened after I gave notice of this motion on April 19.