GOVERNMENT ORDERS

[*English*]

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ACT

MEASURE TO ENACT

The House resumed consideration of the motion of Mr. Hnatyshyn that Bill C-58, an Act to provide for the implementation of treaties for mutual legal assistance in criminal matters and to amend the Criminal Code, the Crown Liability Act and the Immigration Act, 1976, be read the second time and referred to a legislative committee.

Mr. Speaker: When the House rose at 1 p.m. the Hon. Member for Thunder Bay—Nipigon (Mr. Epp) had the floor.

Mr. Ernie Epp (Thunder Bay—Nipigon): Mr. Speaker, I appreciate the opportunity to pursue the subject matter of Bill C-58 which we all recognize deals with the possibility of mutual legal assistance in criminal matters between Canada and any other country of the world with which Canada has a treaty or, as Clause 6 of the Bill allows, with any other country with which an agreement is made. I suggested that this deserved some exploration in order to clarify the reasons for concern that my colleagues and I in the New Democratic caucus feel about this Bill, and that will lead us later this afternoon, I expect, to oppose it when the question of a vote actually arises.

The Minister of Justice (Mr. Hnatyshyn) in introducing this Bill this morning observed that it was not or did not provide a code of mutual legal assistance. That particular phrase from his speech caught my ear. Because of the dangers involved in relations between countries with different legal systems and different standards of procedure in the areas of policing and the judiciary, Canada may find itself caught up in abuses of the legal process, something which I want to pursue this afternoon.

With the knowledge of Canadians over the last several years there is reason to ask some of the following questions. I was reminded in thinking of this matter of the concern that arose when the royal commission to investigate the alleged presence in Canada of war criminals, the Deschênes Commission, came to the question of whether or not it should consider evidence in its deliberations which was located within the Soviet Union or countries of eastern Europe in which the Soviet Union has a great deal of influence. The reason for that concern was of course easy enough to understand.

The royal commission was empowered to look for Nazi war criminals. It was clear that in the profound ideological divisions that prevailed in Europe in the 1930s and the 1940s there were people in various countries who made alliances with Nazi Germany for their own political purposes without necessarily becoming guilty of crimes against humanity or laying themselves open by their actions to charges of being war criminals. Of course, there was the very real possibility that these nationalistic or right-wing activities which were so repugnant to the Soviet Government, or to the communist party in various countries, might open these persons, if they were resident now in Canada, to the possibility of a hunt by the Soviet authorities or by the Soviet secret police to try to get at them. Of course, the concern was that evidence might be fabricated and put forward for consideration by the Deschênes Commission or, conceivably, by the Canadian Department of Justice for use against these persons.

This was a concern which arose in the deliberations of the royal commission. Given that this was a royal commission headed by a notable jurist of the Province of Quebec, Mr. Justice Jules Deschênes, this was a concern with which the Justice dealt in a most impressive way. Having considered the matter carefully, he put forward a number of points which evidence, testimony or documents, whatever it might be, being put forward out of the Soviet context would have to pass before it would be considered by his commission. One could presumably construct that that is what should be applied before it was considered by the Department of Justice, which is now considering these matters.

I know particularly that the commission required that it be allowed to examine the original documents which were to be the basis for charges against persons of having taken part in war crimes. There was a requirement that witnesses be examined under Canadian rules of evidence. That was a matter of attempting to impose on the proceedings in the Soviet Union or other countries, in addition to countries in western Europe where we may expect the rules of evidence to be more compatible, the rules of evidence that prevail in Canadian courts. Canadian judicial procedure needed to operate there, if there was to be an appropriate and proper gathering of evidence.

• (1520)

Third, there was a requirement that the Soviet judicial authorities allow the video-taping of all the proceedings that may occur in this context.

There were a number of other conditions, but I note these first three particularly as evidence of concern which Mr. Justice Deschênes recognized as requiring response from his commission in order to ensure that any proceedings for the investigation of charges against persons in Canada, or any potential laying of charges against such persons, would be sure to be proper and based on genuine evidence and not based on fabrication.

I expanded on this a little, because here we have a clear case of concern expressed by Canadians in such a manner that most of us, if not all of us, can understand their political concern. It found response from a noted jurist who was operating in the public spotlight, although much of his deliberations were in confidence when it came to individuals. The response by Mr. Justice Deschênes deserves recognition in the House of Commons as we look at the potential operation of Bill C-58.