

*Criminal Code*

legislation any possibility for excusing ourselves or giving any excuse to anyone else so they can claim they were acting on the basis of some matter of lawful sanctions. I am concerned about that phrase and my colleague, who brought this to my attention, the Hon. Member for York Centre (Mr. Kaplan), will be presenting an amendment in this regard. I hope that Members on the government side will consider very carefully that amendment.

I would like to conclude my remarks by commending the presentation of this Bill. I know our Party is fully behind the Bill itself in general. I urge all Hon. Members to consider the amendment which will be made by my colleague, the Hon. Member for York Centre, later on.

**Mr. Howard McCurdy (Windsor—Walkerville):** Mr. Speaker, it is a pleasure to stand in the House today in support of this legislation on behalf of my Party, thereby joining with, I am sure, all Hon. Members in the passing of legislation which allows Canada to fulfil its international commitments by giving legislative effect to the United Nations convention for the protection of all persons subjected to torture or other cruel, inhuman or degrading treatment.

This is an issue which has a considerable history, but not a long history. The concern about torture in this world and the development of a consensus of the need for its elimination really developed rather late. If one looks back to the development of the declaration in this convention, one sees that it first arose during the 1960s and 1970s when there was concern about reports of torture in southern Asia, Africa, South America, eastern Europe and elsewhere.

Giving a more dramatic effect to the concern, there followed the Bertrand Russell tribunal which examined the situation in Chile, Brazil, Paraguay and Uruguay. The tribunal reached the conclusion that torture constituted a crime against humanity. Since that time Canada has been actively engaged in furthering the development of an international system and convention. Its purpose would be the elimination of torture and the punishment of those who inflict torture. It was a part of the special working group of the Human Rights Commission in 1977. It was the first to sign a unilateral declaration in 1982. In 1983, it cosponsored a resolution according the highest priority to the development of an international declaration and convention. The convention which ultimately resulted was open for signature on February 4, 1985, and Canada signed in August of that year. Canada was among the few nations to provide financing to the UN Voluntary Fund for the Victims of Torture. Canada has consistently provided leadership. This Bill is not only a reflection of Canada's international humanitarian and human rights obligations, it also provides a legislative base for the implementation of appropriate sanctions to implement Section 12 of the Canadian Charter of Rights and Freedoms which asserts that everyone has the right not to be subjected to any unusual or cruel treatment or punishment.

The convention calls upon the signatory states to develop legislation which provides for the criminalization of torture, as well as acts which comprise complicity or participation in torture. This Bill does that. Torture is defined as inflicting severe pain or suffering upon persons, or inflicting severe pain or suffering which results from omission, by an agent of government for reasons of punishment, coercion, intimidation or to obtain information. There is another reason for which torture may not be inflicted which is specified, and that is by reason of discrimination. That is included in the convention and in the legislation and certainly calls attention to the widespread use of torture and other activities which inflict pain on a considerable number of people in South Africa.

The first requirement, that is the criminalization of torture of a mental or a physical sort, is provided for in the legislation. The second requirement is that it be given universal jurisdiction. Torture inflicted by Canadians, imposed by Canadians, or torture inflicted by someone who is in Canada, even if that act took place elsewhere, is subject to prosecution. It also covers acts of torture if it occurs on Canadian ships or aircraft and provides for extradition in appropriate cases and, if extradition is inappropriate, calls for prosecution here.

● (1600)

Further, the convention sets out that there can be no justification for torture, that it is not an excuse to state that torture was inflicted by the order of a superior officer. It also provides that if evidence is provided or statements are made by virtue of the pain inflicted through torture, then they cannot be considered as legal evidence in any proceeding.

In those respects the legislation meets the requirements of the international convention in a legislative way. But when one praises the Government for introducing this legislation, which will surely pass, we have to be conscious of the other requirements that the declaration requires to be met. First, when one considers the requirement that acts of torture be prosecuted, that they not go unpunished, let us not reach the conclusion that we refer only to situations that may occur elsewhere. Of course, Canada is not a nation that has been accused of the use of punishment or torture in ways which are condemned in the universal convention or its preceding declaration. However, there are situations in which torture has been alleged although not proved.

If one refers to an additional aspect of the universal convention, it states that member states are obliged to prevent other acts of cruel, inhuman or degrading treatment or punishment that do not amount to torture. All one has to do is recall the situation some years ago at Archambault Prison where it became evident, as it has all too often become evident in the past, that when allegations of torture or mistreatment are made against the police we are faced with extreme difficulty in proving them. We are all too often faced with a situation in which those who are accused of torture, cruel punishment or inhuman punishment, are the very people, the very groups, the very agencies to whom the allegations are