



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

BILLS

**Defence Amendment (Parliamentary Approval
of Overseas Service) Bill 2010 [No. 2]**

Second Reading

SPEECH

Thursday, 7 July 2011

BY AUTHORITY OF THE SENATE

SPEECH

Date Thursday, 7 July 2011
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Questioner
Speaker Ludlam, Sen Scott

Source Senate
Proof No
Responder
Question No.

Senator LUDLAM (Western Australia) (16:13): I am really proud to speak to this bill today. I am going to go into a bit of detail about how this has been a very long time coming, about some of this history of this bill and about the reasons why the Australian Greens believe that it is such an important piece of legislation. We on the cross benches do not put a huge number of private senator's bills before this parliament, but this is certainly the most important one that I have carriage of.

Today, we are debating the question of whether we as legislators and representatives of our electorates across this country are competent and able to make the decision about whether or not to deploy Australian troops to theatres of war. This is not about exercises; this is not about routine training. This is about who makes the final decision. Is it this parliament on behalf of the Australian public and on behalf of the families who will lose loved ones when we send Australians into harm's way? Who should make that decision? Should it be this parliament—this chamber and the other place—or should it be the executive? I am very pleased that we are debating this bill today.

The Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2010 [No. 2] has been known colloquially for several decades as the 'war powers bill'. It is about ensuring that a thorough debate is held in our parliament and that formal parliamentary endorsement is given before Australian governments take one of the most grave and serious responsibilities that a government can take: sending men and women to face danger, injury and—as we know—all too often death and to inflict danger, injury and death on others in wars overseas. In recent years, wars have been waged by our country without the support and approval, the deliberation and the consensus of this parliament. That is a mistake that this bill seeks to address.

I expect that as the debate proceeds we will hear from both of the old parties. Maybe I will be accused of being well intentioned. Maybe I will be accused of being a little naive.

Senator Johnston: Yes.

Senator LUDLAM: Bingo; I think we have it. I am interested to point out that what the speakers will be declaring is that they hold that they are not competent or willing to make this decision. These senators have stood on one side of the chamber or another and listened to the stories as defence ministers have informed this parliament—as they have had to over the last couple of years—that another Australian life has been lost. Are we competent to make those decisions? Are we the ones who should be making those decisions? I believe as a representative of the Australian people that we should make these extraordinary decisions on behalf of the nation. If we are not willing to take on that responsibility, what on earth are we doing here and who do we believe is the right person?

It is appropriate to consider the costs associated in not ensuring that a proper debate is held before a deployment, in not ensuring that a war is necessary and legal. People need to understand the costs in lost lives and loss of international standing and credibility and the enormous financial costs of war.

We saw in 2003 what can happen when a handful of people make a decision to go to war in secret, behind closed doors and on a false premise. Australia was involved in an illegal war in Iraq that was justified using evidence later shown to be false. There was no proper debate before sending troops to war in Afghanistan, either. A debate was held more recently on the Afghanistan deployment at the behest of the Australian Greens. Senator Brown negotiated that into the agreement with the government last September because that debate had not been had in the 10 years of that deployment. We found later from the WikiLeaks drop exactly what our leaders think about what is going on in Afghanistan. We found out more from those revelations than from anything that the government or opposition told us in that parliamentary debate.

I agree with the foreign minister, who reportedly said that the Afghanistan deployment 'scared the hell out of him'. It is indeed a difficult, dangerous, bloody and grim situation. This war is not going well. We learned also from WikiLeaks that the Australian Federal Police Assistant Commissioner, Frank Prendergast, noted that the odds were stacked against success. Current training programs are hampered by illiteracy, corruption, drug addiction

and insurgent penetration within the trainee body. All of these things were disclosed by the cables. He believes that a successful police training program will take 20 years to be effective in Afghanistan. None of that was told to this parliament when the debate was had at the behest of the Greens. Ministers and even shadow spokespeople have to put the best face on it: 'Everything is going well; we just need more time. Don't worry; everything's fine. We know best.' And we know that that is not true.

Afghanistan needs institution building, not incendiary weapons. Afghanistan needs professional police, not police trained by the military, which tends—and history has shown this over and over again—to result in paramilitaries rather than community protectors. Afghan women, their suffering used as a symbol so cynically to justify war, are no safer today. Amnesty International says that women experience more insecurity and risk of sexual violence than during the Taliban era. A June 2011 survey by the Thomson Reuters Foundation showed that Afghanistan was the worst place in the world to be a woman—the worst place in the world 10 years into an occupation. The mission there is flawed.

The majority of Australians want our troops brought home from Afghanistan because they are increasingly aware that the mission is flawed. According to a Lowy Institute annual poll of Australians on foreign affairs issues, support for the war in Afghanistan continues to erode, with 59 per cent of Australians now opposed to Australia's continued military involvement. And the Australian parliament, on behalf of those people, can do nothing about it under the current set-up.

In the last couple of days we have had a shameful and haunting reminder of what it means to go into an illegal war. It means that crimes are committed in our name. I refer of course to the fact that Australia's defence forces have been revealed to have engaged in illegal activities, facilitating illegal detention practices in Iraq, including at the notorious Abu Ghraib prison and in Afghanistan I refer to the fact that an Australian officer was the primary author of the manual for processing prisoners in Iraq. He denied access by the Red Cross to detainees and said: 'The Red Cross call it ill treatment. We call it successful interrogation techniques.' That was a serving military lawyer. That is according to materials extracted under FOI by the Public Interest Advocacy Centre.

The 5 July editorial in the *Sydney Morning Herald* remarked on the implications of the situation with incredibly strong language, something very rarely seen in Australian discourse. The editorial says, 'What is it that we are fighting for? If the purpose of sending troops to Afghanistan and Iraq was to uphold the right of citizens to equality before the law, the rule of law, our submission to the American way was a betrayal of that goal.' This editorial discusses our relationship with the United States without dismissing the importance of the alliance—and I again hope that senators will not waste the time of the chamber by accusing us of having no fidelity to that alliance. That editorial uses words like 'cringe', 'self-abasing', 'willing humiliation' and 'abject submission' and calls for the drawing of firm and polite lines with our ally. It says that our respect for the United States should not require abject submission and that our beliefs help define what sort of country we wish to be.

Exercising our democratic institutions and getting the support of the parliament to send our forces into a war or warlike situation should be one important principle of the Australia way. It would safeguard us from betraying other fundamental principles around the law and respect for human rights. This bill aims to ensure that, as far as is constitutionally and, importantly, practically possible, ADF personnel are not sent overseas to engage in warlike actions and deployments into combat zones without the approval of both houses of parliament. It is a very simple bill and I hope that senators have taken the time to read it. I know that Senator Faulkner has because, at the time that I introduced this bill, he was the defence minister. I can quite happily acknowledge now that I spoke to Senator Faulkner at the time and he told us that there was no support from the government on this bill historically. But he then at least paid this parliament the courtesy of reporting on the situation in Afghanistan. We could tell how much that cost you, Senator. Suddenly you are out attending funerals. You are getting briefings on just how serious the situation is there. You did the parliament the courtesy at least of pausing the rowdy and chaotic nature of the debate, which so often take off in trivial directions in here, by reporting on exactly what Australians were facing in the zones to which they were deployed.

But then the minister sits down and nothing further happens. Maybe we can seek leave to make a short statement of dissent or acknowledgement, but the parliament cannot actually do anything about the situation that we as the representatives of the Australian people find ourselves in. If it is not possible, if we are not competent as legislators to hold this important trust with the Australian people, what is it about us that makes us different to legislators in Denmark, Finland, Germany, Ireland, Slovakia, South Korea, Spain, Sweden, Switzerland and Turkey, where troop deployment is set down in constitutional or legislative provisions? Some form of

parliamentary approval or consultation is routinely undertaken in Austria, the Czech Republic, Italy, Japan, Luxembourg, the Netherlands and Norway.

What is it about us as Australian legislators that we think we are not competent to step up and take responsibility for the bloodshed and misery that we would find ourselves in the position of having to duly authorise at some time? I think it is an act of absolute cowardice to avoid taking responsibility, as we do in here on other matters every day on one side of the chamber or another, knowing full well the consequences of the vote that we are taking.

The relative maturity of the debate in the UK on the war power—and the invasion of Iraq was vastly more costly in terms of British than in terms of Australian lives—has resulted in several thorough inquiries and a new parliamentary convention whereby the executive commits to trigger a debate leading to a resolution of the parliament before a deployment is undertaken. So in the Westminster parliament—the origins of our own legislature—they are having a debate of vastly greater maturity to that which we have been subject to here in Australia, and they have changed. I think they have had a far more honest conversation with themselves about the disaster of Iraq and the ongoing misery in Afghanistan.

The bill before us was considered by the Senate's Foreign Affairs, Defence and Trade Legislation Committee, which reported in February 2010. Unfortunately, despite receiving 31 public submissions, the majority of the committee declined to hold any public hearing to consider the legislation. It considered there was nothing really new to add to the debate.

Legislation seeking parliamentary input into decisions to send our troops to war was first put forward in the Senate in 1985. That is how long it has been, not since the debate begun, but since this parliament has had the instruments necessary to change this. It was put forward in 1985 by the former Australian Democrat Senator Colin Mason. In his second reading speech he pointed to the history of Australia's involvement in the Vietnam War. Not only was the parliament not consulted in the deployment of Australian defence personnel to fight in Vietnam but, as Senator Mason pointed out at the time, the Australian public were blatantly lied to by the government of the day—it sounds familiar doesn't it?—who stated that the deployment was in response to a call for help from the government of South Vietnam. The truth, of course, was completely different. It was a request for support that came from the government of the United States. Four hundred and ninety-two members of the ADF, including 187 conscripts, were killed in that war.

When that bill was debated in this chamber on 17 April 1986, the then minister, Gareth Evans, said that the government sympathised with its underlying philosophy but the practical difficulties inherent in its application were such that it could not be supported. The bill was later reintroduced by Senator Mason's successor in New South Wales, Senator Paul McLean, and remained on the Senate's *Notice Paper* throughout the 1990s. Similar legislation was reintroduced in the names of former Democrat Senators Bartlett and Stott-Despoja in March 2003, a week after the Senate quite clearly voted against the decision to commit Australian troops to war in Iraq.

There is something interesting. A resolution was passed and the executive took absolutely no notice of it whatsoever. That is why we need this bill. The Labor and Liberal parties combined in the Senate to vote down a motion from Senator Bob Brown for a Senate committee to examine the legality of the government's deployment of troops to Iraq, the likely implications for international law of this action and what mechanisms could be used to require parliamentary consent for deployment of ADF personnel to hostilities overseas. We now know that the justification for providing Australian troops and assets to the Iraq invasion was, just as with Vietnam, a calculated deceit, driven primarily by a desire to provide political cover for the United States government's military agenda.

When this legislation was debated by the Senate on 10 February 2005, which I think was the last time it was subject to any kind of debate in this place, former Labor Senator Linda Kirk expressed concerns about ambiguities in legislation, whilst some senators who spoke against the bill simply relied on supporting the Westminster tradition—which has now changed—to justify the status quo. Others asserted that there were definitional uncertainties as to how the bill would operate in practice. The majority Senate committee report tabled on the inquiry into this bill in February of last year, which was undertaken by the foreign affairs, defence and trade committee, said something interesting:

... while wholeheartedly supporting debate in Parliament on any anticipated, proposed or actual deployment to overseas warlike operations—

which is the phrase that is used in the bill—

the committee cannot endorse this proposed legislation. ... the bill leaves too many critical questions unanswered ... while well intended—

there's that phrase again—

the bill may have unforeseen and unfortunate consequences that need to be identified and resolved before further consideration could be given to proposed legislation.

I find that language and the nuances in there really interesting. The foreign affairs, defence and trade committee majority representation by the old parties did not say this was a bad idea. It said there were ambiguities and questions. It said this was difficult but it did not go ahead and propose any of the answers. It did not seek to push the debate or pursue it any further but it did not actually write the idea off because of course you could not, as legislators signing up to a committee report like that, tell the parliament, and through the parliament our constituents, that we were not competent to take that responsibility. Of course the committee did not do that.

So, starting 25 years ago, right through until a Senate committee examined it last year, there were repeated comments expressing sympathy for the intent of the bill while alleging practical problems with the content. Let's go into those details. The committee said the proposal should be examined carefully by various government departments—but, of course, the committee did not want to hold a public hearing to hear from them directly.

Since I have been a member of the Joint Standing Committee on Foreign Affairs, Defence and Trade—and I will be staying on as a full member of the committee—I have received many letters, submissions and accounts from former soldiers and current serving defence personnel that have helped me better understand what, in my first speech, I put only in terms of financial costs. There are other enormous costs. There are open wounds in the lives of many Australians who have experienced the wars in Afghanistan and Iraq. As a parliament and as a society we must get better at supporting the people who return from war damaged and we must take responsibility for the people whose lives are ruined. There are such enormous costs.

The debate on who should be empowered to send Australian men and women to war is an enduring and persistent one. While it has been underway for decades now, each decade has brought lessons and experiences to inform and deepen the debate—and the sequence of unfortunate decisions leading Australian Defence Force personnel to be engaged in an illegal war in Iraq has I think prompted a renewed sense of its relevance. What I hope senators will address during the course of the debate, before it is adjourned later this afternoon, is that this bill is not intended to take out of the hands of the ADF the power to advise the executive. I am not asking parliament to take strategic decisions about how a deployment should occur and where assets should go. These are military decisions. We in the parliament are charged with making political decisions and we will leave the military decisions to the experts.

But the decision whether or not to deploy is not a military one, in my view. The parliament does not need to be fully informed of operationally sensitive information that would disadvantage us if an invasion or some form of deployment were to take place. That is a key distinction that I hope I am able to leave with senators as this debate gets underway. We are not seeking to usurp the power of the ADF or to look over their shoulder as these decisions are undertaken. But the decision whether or not to deploy is surely not a military one. We do not live in a military dictatorship. We do not live in Burma or North Korea. These are political decisions and we have to be prepared to take the responsibility.

When the minister stands in the parliament to tell us about the latest death of a soldier in Afghanistan, we fall silent. But we very rarely hear about the deaths of those who are not Australian soldiers—the enormous number of civilians killed accidentally or, as it is called, collaterally. We do not ever pause and reflect on that because it would paralyse this parliament if that were to occur. If we paused every time an Afghan civilian was killed, there would be no time to legislate. So we do not do that.

The last thing I would like to leave with the Senate is that we are not seeking to take decisions on operational matters out of the hands of the ADF. We are not seeking to have parliament briefed on sensitive defence issues that would give our purported enemies the upper hand. That is not what this bill seeks to do. This bill seeks to empower the parliament. If it is appropriate for this parliament to spend days and days debating all the matters we are employed to come in here and take responsibility for—such as aircraft safety regulations, livestock exports, road safety and health—why on earth are we happy to delegate away our responsibility on the most serious

decision a decision maker can make: the deployment of Australians into hostile situations from which they might not return? All I am asking for is the opportunity to have that debate in here.

Finally, I think we need to change the way we make these decisions. As other democracies have evolved, subjecting the war power to a democratic process has become routine. It is even in the United States Constitution. As one of this bill's strongest and most prominent advocates recently said—I am speaking of our dear Harry Evans, the former clerk—it's chances may appear to be slim at present— (*Time expired*)