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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

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SEANAD ÉIREANN

—
Déardaoin, 2 Márta 2006.
Thursday, 2 March 2006.
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Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

—
Paidir.
Prayer.
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Order of Business.

Ms O'Rourke: The Order of Business today is Nos. 1 to 6, inclusive. Nos. 1 to 3, inclusive, are motions referred to the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights, which has completed its deliberations. No. 1 concerns a proposed regulation to transform the current Rome 1 convention, which is an inter-governmental agreement, into a Community instrument and to modernise certain aspects of it. No. 2 relates to the proposed Council decision annexed to the communication from the Council, COM 2005(648), which proposes that measures relating to maintenance matters be adopted by co-decision of Council and European Parliament instead of by Council in consultation with the European Parliament. No. 3 concerns a proposal which seeks to enable a maintenance creditor to obtain easily, quickly and generally free of charge an order capable of circulation and enforcement without obstacles in the European Union area of justice enabling regular payments of amounts dues. Nos. 1 to 3, inclusive, will be taken without debate.

No. 4, the Criminal Justice (Mutual Assistance) Bill 2005 — Order for Second Stage and Second Stage, will be taken at the conclusion of the Order of Business until 2 p.m. with the contributions of spokespersons not to exceed 15 minutes and other Senators not to exceed ten minutes and the Minister will be called on to reply not later than five minutes before the conclusion of Second Stage; No. 5, statements on public disorder in Dublin city centre on 25 February 2006, will be taken at 2.20 p.m. until 3.20 p.m. with the contributions of groups or spokespersons not to exceed ten minutes; and No. 6, the Sea-Fisheries and Maritime Jurisdiction Bill 2005 — Second Stage will be taken at 3.20 p.m. until 5.30 p.m. with the contributions of spokespersons not to exceed 15 minutes and other Senators not to exceed ten minutes, and the Minister will be called on to reply not later than five minutes before the conclusion of Second Stage. More Senators may wish to contribute to

Second Stage of the Sea-Fisheries and Maritime Jurisdiction Bill 2005, so we will have to see how it pans out. There will be a sos from 2 p.m. to 2.20 p.m.

Mr. B. Hayes: On Second Stage of the Sea-Fisheries and Maritime Jurisdiction Bill, is the Leader proposing that if at 5.30 p.m. there are more speakers who wish to contribute to the debate, it will not conclude.

Ms O'Rourke: Yes.

Mr. B. Hayes: We agree to that.

In recent years our national holiday has been turned into a drink-filled freshers week binge. We have seen terrible instances of drunkenness and disorderly behaviour on the streets of Dublin following the St. Patrick's Day parade. We have also seen a large number of arrests, particularly in the past three years, in Dublin city centre. I endorse calls made yesterday by a number of organisations in this city that off-licence sales be banned for part, if not all, of St. Patrick's Day. The reason I raise this issue on the Order of Business is not only because of the instances which occurred last Saturday where much of the disorder was drink-related but I understand this proposal may require emergency legislation to allow the Government to prohibit off-licence sales in part of Dublin city given the proliferation of outlets in which drink can be sold.

It would be sensible to consider this proposal to prohibit the sale of drink in the area of the parade on St. Patrick's Day to ensure public safety, that the event remains a family-friendly one and that the hooligans and thugs off their faces with drink on the day do not turn our national holiday into a drinking binge. I will repeat that call when the Minister for Justice, Equality and Law Reform comes into the House today. I ask the Government to consider this proposal because it is worthy of consideration.

Over the past year we have seen an explosion in the number of TB cases. Between 2003 and 2004, 437 cases arose. That is a 30% increase over the 12 month period. Would it be possible for time to be made available in the next two weeks for the Tánaiste and Minister for Health and Children to come to the House to address this issue? This country was successful in eradicating TB through the excellent work of Noel Browne and others in the 1940s and 1950s. It would be a shame if TB were to take a foothold again. I ask the Government to also reconsider its decision to close the TB facility at Peamount, which is the only facility in the country where this disease can be treated. While advances in medicine have been made since the 1940s and 1950s we must be vigilant to ensure that TB does not get a foothold here again. I understand from people in the medical world that it takes somewhere between ten to 15 years to eradicate the disease once its takes

[Mr. B. Hayes.]

root again. I ask the Leader to arrange for statements on this issue in the next few weeks

Mr. O'Toole: The situation in the Marino Institute of Education was raised on a number of occasions during the past year. The House should be aware of the fact that recently a supposedly independent report was commissioned and paid for by the trustees and board of the institute, which amazingly found them to have acted absolutely correctly all the way through, which surprised all of us. The reality is that the culture of secrecy continues in the institute. This report, which is supposed to vindicate the board, rubbish the staff and cast aspersions on the Department of Education and Science is not to be made available to anybody, including the Minister for Education and Science. That is completely unacceptable. Irrespective of views on this matter and the rights and wrongs involved, the so-called independent report should at least be published. If it is independent why should it not be made available?

I do not want to delay the House but I would like a debate on this matter. I will hook the case for my request for same on this point. The same group who said that there was no systemic bullying in the institution are the group who settled for a figure approaching or more than €500,000 on all counts on charges of 50 bullying cases. Those two scenarios cannot co-exist. Having settled the case for 50 allegations of bullying and then saying there was no bullying is not acceptable. I do not want to go into any more detail on this matter but a debate is needed.

In 1999 the then Minister for Education, Deputy Martin, mhol sé go gcuirfí ionad oideachais Gaeilge ar bun i mBaile an Bhuirne i gCondae Corcaigh. The idea is that this institution would provide for Irish language schools, Gaeltacht schools and schools which try to teach certain languages, certain aspects of their curriculum, through Irish to have available to them various different texts, which would be developed and provided there, namely, a translation service. It is one of those great ideas with extraordinary synergies, one of the best ideas ever about the Irish language. Everything that would come out of this would be used immediately. Teachers are crying out for it. We have schools in Ireland that are teaching Latin trí Ghaeilge from English language textbooks. That is happening all the time. Four Ministers have dealt with this matter but nothing has happened and I am deeply and utterly suspicious nothing will happen.

This matter has been dealt with by four successive Ministers, former Ministers for Education, Deputies Martin, Woods and Noel Dempsey and the current Minister, Deputy Hanafin. I cannot see any objection to it. One need only consider the moneys being wasted on large institutions such as the National Roads Authority or on Government strategy documents which have to

be translated into Irish. Hard copies of those documents are being provided, while teachers and schools not only in the Gaeltachtaí or gaeilscoileanna but in many schools throughout the country, which might not want to be completely all-Irish schools but want to teach certain subjects through Gaeilge. They would do be able to do so if the apparatus and the text were available trí Ghaeilge.

This is a great idea but, like every other great idea that was ever formed about Irish, if acting on it does not have some impact on the east coast, nobody wants to hear or do anything about it. This would give life to west Cork in that area and new life to the old college in Baile Bhuirne, and it would also provide something which is useful, sensible and progressive. I ask the Leader to arrange a debate on this issue in order that we can discuss it with the Minister for Education and Science.

Mr. Ryan: Ní bhím ar aon-aighe leis an Seana-dóir O'Toole faoi cheist na Gaeilge ó am go ham ach aontaím in iomlán leis an méid a dúirt sé. Tá daoine áirithe ag smaoineamh conas is féidir daoine a chur i gcoinne na Gaeilge. Déanann siad rialacha ar nós gach cáipéis a aistriú go Gaeilge, Gaeilge nach dtuigfeadh duine ón Ghaeltacht. Bíonn téarmaí iontu nach n-úsáidtear in aon Ghaeltacht agus nach dtuigfeadh duine ar bith ansin. Bhí seo mar raic idir mé féin agus an tAire anseo uair amháin mar chuir sé amach scríbhinn i nGaeilge amháin ina raibh focail nach dtuigfeadh duine ar bith sa Ghaeltacht ach amháin na saineolaithe taobh istigh den Rialtas.

Tá sé in am go n-úsáidfeadh na hacmhainní atá againn rudaí dearfa a dhéanamh. Chuaigh duine de mo chlann chuig meánscoil lán-Ghaelach ach go rialta bhí na téacsleabhair as Béarla agus bhí foclóir Ghaeilge curtha le chéile ag an scoil le cabhrú leis na mic léinn. Tá sé in am go mbeadh gach téacs agus ábhar sna scoileanna ar fáil i ndáiríre as Gaeilge.

I am sure many Members heard an issue discussed on the radio this morning. Had we had six months notice of the tsunami, I know the world believes it would have reacted. We have been given notice of the potential for an enormous tragedy occurring in Kenya, Somalia and Ethiopia because of unparalleled drought. There are no human failings here, this is a natural tragedy. To date the world has contributed 10% of what has been promised.

This is not an issue on which I would make any criticism of the Government but I would like the Minister of State with responsibility for overseas development to come into the House, update us on the difference between the promises made and the reality of what has been delivered by many parts of the international community on issues such as this, and give us an outline of how the Government might hope to persuade or shame the international community into dealing with issues such as this. It is an issue on which this

country has enormous moral credibility and it is, therefore, an issue on which we could, and I believe would wish to, give leadership. However, it will be an enormous moral scandal if thousands, if not hundreds of thousands, of people are threatened with death from starvation and drought in a part of the world with which we are familiar and have had long historic links simply because the rest of the world chooses to ignore it. It is an evolving tragedy to which we must and can respond.

I am reluctant to draw the Minister for the Environment, Heritage and Local Government on us yet again but I would like to have a debate on the Indecon report on the funding of local government. Many Members present more so than myself are acutely aware of the needs, priorities and sensitivities of local councillors. I would love to get an answer to why it is that, on the one hand, the Government is prepared to force old age pensioners to pay service charges for privatised refuse services because they cannot get any kind of waiver and, on the other hand, is prepared to say that the owners of holiday homes, by definition the well-off in our country, will not have to pay anything for the water and sewerage services which are provided for many of these houses. It seems yet again that we have a country which is biased towards the rich and the already well-off and against the poor. There is no argument against the principle of imposing service charges on holiday homes other than a desire to protect the well-off people from paying for what they get out of society.

Mr. Kitt: I agree with what Senator Brian Hayes said about the St. Patrick's Day arrangements and perhaps the question of legislation to deal with off-licences and the availability of alcohol. Senator Hayes mentioned freshers week. We could also examine other issues in the licensing trade.

It was rag week in Galway last week. I understand it was entertaining and there was a good programme of events, not all of which were drink-related, but even the students council and students union were amazed that a number of nightclubs opened during the day. If we examine the operation of off-licences, we should also examine the opening hours of so-called nightclubs that can be open all day and night.

Last November we knew about the impending drought in Africa, particularly in Kenya. If we do not deliver the aid that was promised there will be a human catastrophe for the people of Kenya, Ethiopia and Somalia. Only 10% of what was sought under the world food programme has been delivered. The international response should be greater than that. In addition, there have been problems with law and order, including looting and the kidnap of a UNICEF worker. It is time to have a debate on this to try to prevent famine in these countries and live up to our responsibilities. We have a good aid programme

through which over €600 million will be provided this year in overseas development aid.

Mr. Finucane: I support Senator Ryan's call for a discussion on the Indecon report. The report cost €291,000 and it took from 2004 to 2006 to compile the information but the Minister for the Environment, Heritage and Local Government rubbished it straightaway. Everybody knows that consultants would recommend extra funding for local authorities and inevitably, reintroduction of rates, water charges, etc. Coming up to an election no political party will confront such issues.

There is very little within the report but the Minister has told the local authorities to make their administrations more efficient and to seek extra fees from planning charges. Many young people are already being crucified by the planning obstacle race. Let us discuss the report which is supposedly a waste of money. We commission consultants' reports without thinking about where the money comes from to pay for them.

Ms Cox: I would like the Leader to arrange a debate on the results of a recent survey which show that the death rate from cancer among women in Ireland is the second highest in western Europe. The report published this week is entitled, Women and Cancer in Ireland 1994-2001. Will the Leader invite the Tánaiste and Minister for Health and Children in here to discuss this issue?

We have often discussed the fact that BreastCheck operates only in some parts of the country. We need interim solutions before the service is rolled out nationwide in 2008. I suggest that the Minister immediately introduce a system of free referral to a GP and onward referral to a mammography unit, and a mammogram for all women in the BreastCheck target age group who do not receive this service. This would not replace BreastCheck and will not solve the problem but it will do something in the two years between now and 2008.

The Minister should also publicly state that when BreastCheck is rolled out to the rest of the country the age group will be extended, and stop telling women at the upper age limit that they are on the scrap heap and there is no time to put them into the service. We should provide for the safe screening of women in that age group.

The Minister said she is implementing another review of how to implement screening for cervical cancer. That is not good enough. There was a review 12 years ago and still there is no system in place. This needs to be implemented now. We now have a report saying that in western Europe the rate of deaths from cancer among Irishwomen is second only to that of Danish women. That is not acceptable.

Mr. Norris: I welcome the fact that there will be statements on the Dublin riots today. Unfortunately, I will not be able to take part in these but

[Mr. Norris.]

I was caught up in the riot which reminds one how close to the surface unsophisticated emotions are, even in this capital city. It also calls into question the wisdom of holding a militaristic sabre-rattling parade on Easter Sunday. A much better commemoration would be an analysis of the Easter Proclamation in its historical context and a discussion of how many of its ideals have been lived up to. This morning I received an invitation from the Taoiseach's office to attend this military parade, which I have turned down. I shall be attending church. It is Easter Sunday which is about the resurrection of Jesus Christ and not the insurrection of Padraig Pearse.

Mr. Dardis: It can be about both.

Mr. Mooney: It is a proud tradition in this country.

Mr. Norris: Our committee on rendition flights through Shannon Airport has been disestablished by our colleagues on the Government side on the basis there was nothing to examine.

Mr. Dooley: It was never established.

Mr. Norris: Might I turn their attention to today's *Irish Independent*, page 9, and the headline "Watchdog Highlights our Role in CIA Abductions". Our supporting role has been commented on. The watchdog examines one case which I instanced here, namely, that of Abu Omar who was illegally transferred to Egypt—

Mr. Dardis: We have discussed this.

An Cathaoirleach: We cannot have a debate—

(Interruptions).

Mr. Norris: The rabble are making so much noise I cannot hear the Cathaoirleach.

An Cathaoirleach: I do not think the Senator's hearing is that bad.

Mr. Norris: It is quite bad actually.

An Cathaoirleach: We cannot have a debate on Shannon Airport.

Mr. Norris: Can we not have a debate on Shannon Airport?

An Cathaoirleach: Not on the Order of Business.

Mr. Norris: I understand we cannot have one on the Order of Business but I am asking for one because it is important that we discuss this issue. Debate was closed down by certain persons on the Government side. Let us have it in the House,

if we cannot have it in the committee because the case I mentioned has been cited in the report, as has Ireland's responsibility, when it states: "It gives a clear indication that the method exists, together with complex logistical support in various parts of Europe." That includes Ireland. We are fingered and the Department of Foreign Affairs has said—

Mr. Dooley: Senator Norris is adding to it.

Mr. Norris: —it is still an allegation knowing it is a proven fact. It is time the Department of Foreign Affairs stopped lying about this.

An Cathaoirleach: The Senator has made his point adequately and we cannot continue until we have a proper debate on this subject.

Mr. Norris: My friends on the Government side will be delighted with the picture taken in Shannon of the warmonger Bush, with his cannon fodder around him, the poor unfortunate beasts.

Mr. Dooley: The true colours are coming out now.

Mr. Norris: I support Senator Brian Hayes's call for a debate on tuberculosis. This is a very important matter. It was eradicated by a team led by the late Noel Browne but is coming back. There were protests in this House when we closed down the various sanatoria, warning that this was dangerous.

There is also an epidemic of spitting all over the city of Dublin. We need a new campaign. When I was small there were advertisements on buses warning people that they would be fined for spitting. This is very dangerous, not only is it socially unpleasant but it is also a classic way of spreading TB.

Mr. Mooney: I support Senator Ryan and others who have called for a debate on the overseas development aid programme. I have asked for this over recent weeks, specifically in respect of Ethiopia but support the view that we should have a wider debate about the overseas aid programme, and our response to the impending disaster in African countries. This is the view of Senator Kitt who is Chairman of the Joint Committee on Foreign Affairs sub-committee on overseas development and has an intimate knowledge of this area.

Once again, I ask the Leader to facilitate a debate on the Middle East, specifically on what appears to be a growing humanitarian disaster in the Palestinian area. According to a UN report covered in today's newspapers, 153,000 people employed by the Palestinian Authority will suffer if there is a cut in donor aid internationally and if the Israelis continue to hold up over \$60 million in monthly payments to the authority.

The report makes clear that there will be a massive humanitarian disaster if this aid is not

forthcoming, because over 900,000 people in the Palestinian area rely on wages from the Palestinian Authority. There could be a breakdown of water and sewerage services and health care because over half of the budget goes to the Ministry of Health.

I cannot understand why the Israeli Foreign Minister is visiting European capitals justifying the withdrawal of the \$60 million which belongs to the Palestinian Authority, notwithstanding the view we share of Hamas being in government. This is no more than a human rights issue. On that basis I ask the Leader to arrange a debate at the earliest opportunity to establish the Irish position on humanitarian aid and the unilateral Israeli withdrawal of payments due to the Palestinian Authority.

Mr. U. Burke: I support Senator O'Toole's request for the publication of the report into Marino Institute of Education and for a debate on the matter. It is very regrettable to see professional people being bullied out of their positions in any higher level institution or in any other circumstance. The people who have made statements on behalf of the trustees clearly indicated that there was no remorse with regard to what has happened in the college. This is a serious situation in a training college where the students are training in schools where anti-bullying measures are in place.

On another matter, I ask for a debate on the BMW region. A clear inequity has been highlighted with regard to the infrastructure and expenditure in that area as against the rest of the country. A recent report highlights the serious levels of poverty in certain areas of the BMW region. I ask for a debate on the concept of expenditure on infrastructure and the levels of poverty within the region.

Ms Ormonde: I also support Senator O'Toole's call for the publication of the report on the Marino Institute of Education. This saga has been continuing for at least 12 months. I have had many discussions with Senator O'Toole on the matter. Something very negative is happening within the institute which should be brought out into the open. The way the teachers are treated within the college seems to be clouded with a bad press. The Minister should be asked to come to the House for a full debate on the matter.

Mr. Coghlan: Yesterday on the Order of Business I raised the ongoing plight of the people of the Black Valley in regard to the absence of an adequate and proper telephone system. I may not have made it clear then but as I understand it, the committee was unanimous in regard to the number of black spots in the country and it wanted the Black Valley to be a pilot study. The Minister has refused—

An Cathaoirleach: The Senator raised this matter yesterday and is now raising it again.

Mr. Coghlan: In fairness to the Leader, I did not do it justice yesterday.

An Cathaoirleach: The Senator cannot raise the same matter every day.

Mr. Coghlan: I wanted to widen it today because there are a number of similar blackspots throughout the country. With regard to the totality of the situation, I ask the Leader to invite the Minister to the House because he may have an alternative way of solving the problem. The joint committee and the Minister seem to be on a collision course in this regard. I ask that the Leader invite the Minister to the House to have a reasonable debate as to how this problem can be solved for all the blackspots throughout the country.

Dr. M. Hayes: I support Senator Norris in his request for a debate on TB. I am old enough to remember the scourge that TB was before the Second World War and into the 1950s. It would be terrible if this was allowed to get a grip again in our society. The study published seems to show it has appeared among young urban males where the capacity for transmission is so enormous.

I note the Leader has agreed to allow a debate on the report on Our Lady of Lourdes Hospital. I ask her to encourage the Tánaiste not to be stampeded into demands for meeting all compensation in these cases. People are entitled to compensation but doctors and hospitals have insurance as have religious orders. The Government should not be asked to pick up the tab—

Mr. Norris: The taxpayers.

Dr. M. Hayes: I agree, the taxpayers. The Government should be responsible for failings attributed to the State but otherwise not.

Ms O'Meara: I ask the Leader whether she can inform the House if the report by Judge Harding Clark is being circulated to Members. I have not received a copy. If we are to have a debate it would be important that the report be circulated. I ask on behalf of all Members if a decision has been taken not to circulate reports. I can understand that reports are available on websites and there may be a desire to cut down on the use of paper. However, it is important that Members be circulated with reports, in particular when these reports are available to the media and are in the public domain. I suggest that at the least, an e-mail could be sent to Members to inform us of where the report can be found.

Senator Cox raised the issue of women and cancer and I support her remarks. I ask that the issue be extended to question the reason screening for cervical cancer which is currently available in the mid-west region has not been made available nationwide, despite a commitment to do so

[Ms O'Meara.]

which has been in existence for a number of years. Cervical screening is a fairly simple programme to operate compared to the breast screening programme. Considering the point made by Senator Cox about the high national level of cancer among women I do not understand the reason it is not available on a nationwide basis.

Yesterday was work-life balance day. To my regret I did not refer to it yesterday and it occurs to me that it seems to have passed us by—

Mr. O'Toole: That is not true.

Ms O'Meara: I thank the Senator. I ask for a debate on flexible working and the connected issue of child care. This Government has paid no attention to the issue of flexible working in the private sector. While it is available and widely used, especially by women within the public service, flexible working such as part-time work, job-sharing and term-time work is not available in the private sector. As this is an important issue and State agencies invested heavily in the advertising of this day, it should be on the agenda of this House.

Labhrás Ó Murchú: I support Senator Ryan's request for an urgent debate on the imminent humanitarian disaster in Kenya and surrounding countries. The international community will have to live up to its obligation because it will not be able to claim ignorance in this regard. This is a situation which was never experienced before. If urgent action is not taken we will again be watching decaying humanity on our television screens. We will see helpless, dying babies in the hands of their mothers. None of us who want to take a stand and be credible in the world can ignore this situation. It is difficult to understand how we can spend billions waging war for what we say is for freedom and human rights when the greatest freedom and human right of all has to be the right to life itself. The House has a role to play. If we are to retain any credibility in international status and relationships, we must ensure that what is now imminent in that region will not be allowed to happen.

Mr. J. Phelan: I agree with colleagues who have raised the issue of the upsurge in the numbers of cases of TB. It would be useful to invite the Minister for Health and Children to the House to discuss her strategy for combatting that increase. The Minister could also discuss the report on sudden cardiac death which she launched this morning. The report recommended that all young people involved in sport should be tested for susceptibility to sudden cardiac death and the necessity for the distribution of defibrillators to all sporting organisations throughout the country as soon as possible. I would like the Tánaiste to outline her proposals in this regard.

Mr. Quinn: I am old enough to remember the centenary of the Irish Famine back in the 1940s. At the time, we asked ourselves how the people of Britain could have allowed so many Irish people to die. Looking back, however, the amount of realistic information the people of Britain had then was tiny in comparison to the knowledge we have now. Senators Ryan and Ó Murchú spoke about the problems in east Africa, including Kenya, Ethiopia and Somalia. We can see the situation live on television. This morning when I turned on the television I saw live coverage of President Bush's visit to India. I realised that given the knowledge we currently have of what is occurring in other parts of the world, we have no excuse for not taking action on what is happening in east Africa. We can see the dangers that have been so explicitly shown on television. I support what has been said here. We should debate the matter but, in addition, we should get something done about it.

As regards Senator Ulick Burke's call concerning the BMW region, I was embarrassed the other day when I almost ran out of petrol. It was my own fault for letting the fuel run that low.

An Cathaoirleach: What is the Senator's point?

Mr. Quinn: I will explain why I am raising this point. The three petrol stations on the Howth peninsula, which is a fairly large area, have all closed in the last eight weeks and they will not reopen. One cannot buy petrol there anymore. As I drove up the East Wall Road today I discovered that two petrol stations there have also closed. I am a great believer in competition and the fact that the free market will provide the economy with what we need. However, I cannot believe how many of the facilities we have grown used to as part of our normal way of life, particularly in rural Ireland, are going to be lost. If we are talking about losing rural post offices, rural Garda stations and petrol stations — perhaps because of competition—

Mr. B. Hayes: Go to Tesco.

Mr. Quinn: It may well be. We should have a debate not just on the BMW region but on the sort of Ireland we want to see, with societies, communities and villages that in the past had an opportunity to follow a traditional way of life.

Mr. Coghlan: Absolutely.

Mr. Quinn: I am not sure that we have thought through the way of life we are creating in this country.

Mr. B. Hayes: The Senator might have an opportunity there.

An Cathaoirleach: Order, please.

Ms Terry: I welcome the improvements in maternity leave which came into force yesterday and I look forward to further improvements in that area over the coming 12 months. I wish to draw the Leader's attention to an item that appeared on the news last night when a representative of a small business expressed concern that the new maternity leave arrangements will impose a cost on small businesses and that it will lead to discrimination against women. Faced with two young applicants for a job, one male and the other female, an employer will opt for the male because obviously——

Ms O'Rourke: He will not get pregnant.

Ms Terry: ——there will not be the prospect of having to grant maternity leave. This is of great concern to those of us who dealt with the legislation. I ask the Leader to ensure that the Minister for Justice, Equality and Women's Rights will keep us informed of any indication in the market that discrimination is taking place in this respect. Women find it difficult enough to hold down a job while running a household as well. It would be totally unacceptable if discrimination came into play because of legislation improving maternity leave.

I fully support Senator O'Meara's call for a debate on work-life balance and flexible working hours. In that context, we should debate the discrimination which may be creeping in. There was an indication yesterday that this could happen or, indeed, is happening. There are such cases. I ask the Leader to keep an eye on this matter.

Mr. Ross: I find it slightly depressing to hear the number of people who preface their remarks by saying——

An Cathaoirleach: Does the Senator have a question on the Order of Business?

Mr. Ross: I have. I am referring to people who preface their remarks by saying "I am old enough to remember such and such an event". You could probably do so as well, a Chathaoirleach.

An Cathaoirleach: The Senator is correct; I could and perhaps the Senator could, also.

Mr. B. Hayes: From one elder lemon to another.

An Cathaoirleach: I call Senator Ross on the Order of Business.

Mr. Dardis: Who is the father of the House?

Mr. Ross: I wish to make a serious point about the TB situation. As a child, I had TB and was in hospital for quite a long time. It was a depressing time and a lot of people died in beds around me. I would hate to see that sort of situation arise again, particularly concerning children. It was a

real epidemic and, as Senator Norris said, it is an extraordinarily infectious disease. I would like the Tánaiste and Minister for Health to attend the House to state how she intends to prevent an outbreak of TB, which could be very serious and totally unnecessary.

I wish to endorse what Senator Brian Hayes said about the Neary case which is in the public arena. It is important that all those affected should be fully compensated. The Government does not need to rush out, however, and say in a fit of conscience that it is to blame for everything. Others are to blame who should pay the price of what occurred. The Government should not accept the blame for everything that happened in this case. Where the Government is blameworthy it should compensate but others can compensate in other situations.

I am seeking a debate on Aer Lingus. I gather that a decision on the privatisation of the airline is due shortly. I want such a debate because I fear that the decision will be taken outside this House. It will be taken at the partnership talks and there is a coincidence of timing here. The decision, however, should be taken by the Oireachtas and the Government — not by the unions and employers.

Mr. Feighan: Last week, I had a gut feeling that there would be trouble at the march in Dublin on Saturday. I did not raise the matter in the House because of the sensitive nature of the planned march. I also have a gut feeling about the St. Patrick's Day parade. There are many young little monsters and anarchists out there. I support Senator Brian Hayes's call to ban off-licence sales of alcohol on St. Patrick's Day. We must ensure that gardaí receive every support from us. A precedent has been set in this respect and we need to address the matter.

Mr. McHugh: I agree with Senator Ulick Burke's call for a debate on the BMW region. We receive quarterly reports which indicate high levels of poverty, labour market inequities or infrastructural deficits. That is the way it is in the north west and we do not need any more reports to tell us that. The Government should use mechanisms such as the county and city development boards to address what is urgently needed on the ground. The community and voluntary sectors, which make up part of these new mechanisms, are frustrated because they feel they are being bypassed by the Government and certain Ministers.

An Cathaoirleach: The Senator should not be over elaborate.

Mr. McHugh: There is a tenuous link between the county development boards and central Government. We do not need Ministers coming along willy-nilly and throwing out the goodies at

[Mr. McHugh.]

their discretion. It must go through the local authorities and county development boards.

While we have a central Government based on the British model, we should nevertheless strive towards devolved government at a regional and local authority level.

Mr. Daly: Senators Cox and O'Meara raised the issue of cancer among women. A growing number of men are also suffering from prostate cancer, the early diagnosis of which can have a major impact. If we are to have a discussion on cancer, cancers affecting men should form part of it.

Ms O'Rourke: With regard to St. Patrick's Day, now approaching, Senator Brian Hayes asked if there was a need for emergency legislation regarding off-licence sales, which were the cause of trouble on that day the year before last. He also noted the major increase in tuberculosis among young men of a certain age and called for a debate. Senator O'Toole urged a debate on the situation in the Marino Institute of Education and said the independent report was not available. We can find out if it is. He also raised the matter of the institute for Irish schools in Ballyvourney which was proposed some four or five years ago and seemed a good idea. It was going to aid the gael scoileanna movement in every way it could, and aid all those who wished to be educated through Irish. Senator O'Toole said he thought the project was stymied because it had nothing to do with the east coast, where the power is.

Senator Ryan agreed fluently with Senator O'Toole. He also spoke of the situation in Kenya, Somalia and east Africa in general. He is correct in that we have had notice of events there. I was glad to hear on the radio this morning that Ireland has fulfilled its monetary mission in those areas. Senator Ryan called for a debate on the issue and suggested we could shame the international donors who have not come forward. The Senator also raised the matter of the Indecon report, which is apparently once again floating the idea of service charges and other types of charges to be made by local authorities. He suggested we debate the matter. Senator Ryan also said the owners of holiday homes in this country do not have to pay local service charges. Apparently they do. There is no regulation to say they need not pay those charges so we should seek clarity on that.

Senator Kitt also called for a debate on east Africa. Senator Finucane urged a debate on the Indecon report. I do not know what Government, a year before an election, would go running with unpopular decisions which the Indecon report, if implemented, might involve. The time for such a move is after an election. Senator Cox noted that the suicide rate among Irish women was the second highest in western Europe, after Denmark. She also asked for a full debate on the

roll-out of BreastCheck, and noted the upper age screening limit, which as she said seems to imply that certain people are not worth saving.

Senator Norris called for an analysis of the Easter Proclamation of 1916 rather than a march. He also called for a debate on the use of Shannon Airport by the US military. He spoke of tuberculosis and noted the great amount of spitting, which sounds awful. Senator Mooney called for a debate on the Middle East, with particular reference to the possible withdrawal of aid to Palestine, which could affect 153,000 people, and directly affect all services in the area.

Senator Ulick Burke urged debates on the Marino College report and on the BMW region. Senator Ormonde also called for an urgent debate on Marino College and wishes to get the situation into the open and settled. Senator Coghlan noted that the joint committee seems to have a different view on telephone blackspots *vis-à-vis* the Minister and called for a debate on the matter. The Senator did himself justice on the subject yesterday.

Senator Maurice Hayes urged a debate on tuberculosis. He said there should be no stampede to a redress board and that we must have such boards when we are directly involved in giving or not giving the treatment, or giving it erroneously. He noted there are other parties involved, such as the hospitals and medical staff. Senator O'Meara asked about the report by Judge Harding Clark. I received a rather ambiguous note stating that copies are available in the Department of Health and Children and that the Department is checking to see if it is intended to circulate Oireachtas Members with the report. It should be circulated.

Mr. B. Hayes: Absolutely.

Ms O'Rourke: I would be quite surprised if it were not circulated. It would be completely wrong if we did not get the report. It is downplaying the role of women to suggest the report is not important enough to be given to everybody. We will check on the situation.

Senator Ó Murchú called for an immediate debate on Kenya and Somalia. Senator Phelan noted that a report is being published today on sudden cardiac arrest, which sounds interesting. He wanted to know when we would see a roll-out of defibrillators. As he is aware, many GAA clubs, my own local club included, are now providing them. Apparently they are the miracle needed in that sport.

Senator Quinn asked how we allowed events to happen as they did in east Africa. We should congratulate RTE because its reporter Aoife Kavanagh is currently giving a very vivid report of all that is happening in east Africa. Senator Quinn also referred to the closure of petrol stations. I know one particular group is providing oil, diesel and petrol very cheaply, although that may not have anything to do with the issue.

Last night I too saw the television report to which Senator Terry referred. The comments of the businesswoman involved were quite telling. We were told how paid maternity leave has increased by four weeks, which is quite dramatic and very good to see. The businesswoman — who had thousands of files in front of her — said the situation gave rise to discrimination, with businesses taking on male rather than female staff, because men do not get pregnant and seek maternity leave. An inverted discrimination is involved and people should look out for it.

Senator Ross noted the worrying rise in tuberculosis. He agreed with Senator Brian Hayes about the Neary case and also asked for a debate on Aer Lingus. Senator Feighan expressed worry that something would go wrong on St. Patrick's Day. Senator McHugh asked for a debate on the BMW region and raised an objection to visits by Ministers, who are flaithiúlach when they arrive.

Mr. B. Hayes: Bringing goodies.

Ms O'Rourke: Yes. Who could resist going if one had goodies to distribute? I do not know.

Mr. B. Hayes: Senator McHugh wants to give out the goodies.

Ms O'Rourke: Senator McHugh said that as well as good national government there should be good regional government, where decisions can be taken. Senator Daly raised the need for a full debate on cancer care.

Finally, the mandarins in the Department of Communications, Marine and Natural Resources must have been keeping an eye on the Seanad. A note has arrived from the Department. If at 5.30 p.m., when Second Stage of the Sea-Fisheries and Maritime Jurisdiction Bill 2005 is due to conclude, there are other Members to speak, we will have to extend the time.

An Cathaoirleach: I find it strange that the Department can rule on the Order of Business.

Ms O'Rourke: Quite. We look after our own affairs. However, if at 5.30 p.m. there were perhaps two Members still wishing to speak, and only a further half hour were involved — we would usually try to accommodate a small number of speakers. Let us play it along and see what happens.

An Cathaoirleach: Is that agreed? Agreed.

Order of Business agreed to.

Treaty of Amsterdam: Motions.

Ms O'Rourke: I move:

That Seanad Éireann approves, in accordance with Article 29.4.6° of Bunreacht na hÉireann, the exercise by the State of the

option, provided by Article 3 of the fourth Protocol set out in the Treaty of Amsterdam, to notify the President of the Council of the European Union that it wishes to take part in the adoption and application of the following proposed measure:

a proposal for a regulation of the European Parliament and the Council on the law applicable to contractual obligations (Rome 1), copy of which proposed measure was laid before Seanad Éireann on 12 January 2006.

Question put and agreed to.

Ms O'Rourke: I move:

That Seanad Éireann approves, in accordance with Article 29.4.6° of Bunreacht na hÉireann, the exercise by the State of the option, provided by Article 3 of the fourth Protocol set out in the Treaty of Amsterdam, to notify the President of the Council of the European Union that it wishes to take part in the adoption and application of the following proposed measure:

proposal for a Council decision annexed to the communication from the Commission to the Council calling on the Council to provide for measures relating to maintenance obligations taken under Article 65 of the Treaty Establishing the European Community to be governed by the procedure laid down in Article 251 of that treaty, copy of which proposed measure was laid before Seanad Éireann on 24 January 2006.

Question put and agreed to.

Ms O'Rourke: I move:

That Seanad Éireann approves, in accordance with Article 29.4.6° of Bunreacht na hÉireann, the exercise by the State of the option, provided by Article 3 of the fourth Protocol set out in the Treaty of Amsterdam, to notify the President of the Council of the European Union that it wishes to take part in the adoption and application of the following proposed measure:

proposal for a Council regulation on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations, copy of which proposed measure was laid before Seanad Éireann on 12 January 2006.

Question put and agreed to.

Criminal Justice (Mutual Assistance) Bill 2005: Order for Second Stage.

Bill entitled an Act to enable effect to be given in the State to provisions of the following international instruments relating to mutual assistance in criminal matters: (i) the European

Union Convention of 29 May 2000, the Protocol thereto of 16 October 2001 and the Agreement of 19 December 2003 between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the convention and protocol, (ii) Council Framework Decision 2003/577/JHA of 22 July 2003 concerning orders freezing property or evidence, (iii) the Second Additional Protocol of 8 November 2001 to the European Convention of 20 April 1959, (iv) the Treaty of 18 January 2001 between the United States of America and Ireland, as applied by the instrument contemplated by Article 3(2) of the Agreement of 25 June 2003 between the European Union and the United States of America and done at Dublin on 14 July 2005; (b) to give effect to Council Decision (2002/192/EC) of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen Acquis, in so far as those provisions relate to mutual assistance in criminal matters; (c) to repeal and re-enact, with amendments, Part VII (International Co-operation) of the Criminal Justice Act 1994; and to provide for related matters.

Ms O'Rourke: I move: "That Second Stage be taken now."

Question put and agreed to.

Criminal Justice (Mutual Assistance) Bill 2005: Second Stage.

Question proposed: "That the Bill be now read a Second Time."

Minister for Justice, Equality and Law Reform (Mr. M. McDowell): Ta áthas orm a bheith os bhur gcomhair anseo inniu chun an Bille um Cheartas Coiriúil (Cúnamh Frithpháirteach) 2005, ar togra suntasach reachtuil e, a thiolacadh. Tugann an Bille éifeacht do sheacht n-ionstraim idirnáisiúnta a fhorbraíonn an creat reachtuil atá cheana ann i ndáil le cúnamh dlíthiúil frithpháirteach a sholáthar, ag a dhéanann forlónadh air. Tá Cuid VII den Acht um Cheartas Coiriúil, 1994, a dhéileáilann le comhar idirnáisiúnta i gcomhthéacs cúnamh dlíthiúil fhrithpháirtigh, á haisghairm agus tá a cuid téarmaí á hathachtú maille le leasuithe agus breisithe chun an taithí oibríochtúil atá faighte le deich mbliana anuas nó mar sin a chur san áireamh agus chun na forálacha sna hionstraimí a dtugtar éifeacht dóibh leis an mBille a chur san áireamh.

Ar an gcéad dul síos, is dócha gur chóir dom a insint cad a bhíonn i gceist le cúnamh frithpháirteach i gceartas. Go simplí, cuireann sé ar chumas stát amháin, laistigh dá dhlínse féin, seirbhís a sholáthar do stát eile maidir le riaradh an cheartais sa stát eile sin. D'fhéadfadh sé go mbainfeadh an cineál cúnamh le nithe ar nós imscrúdú a dhéanamh ar choiriúlacht thromchúiseach idir-

náisiúnta, lena n-áirítear fianaise a bhailiú le húsáid thar lear nó doiciméid a bhíonn eisithe ag údarás breithiúnach a sheirbheáil.

Is iad na seacht n-ionstraim a dtabharfaidh an Bille seo éifeacht dóibh: an Coinbhinsiún ar Chúnamh Frithpháirteach in Ábhair Choiriúla idir Ballstáit an Aontais Eorpaigh a rinneadh sa Bhruiséil an 29 Bealtaine 2000, a dhéanann forbairt agus nuachóiriú ar na forálacha láithreacha a rialaíonn cúnamh frithpháirteach idir Ballstáit an AE, agus an Prótocal a ghabhann leis an gCoinbhinsiún sin a rinneadh i Lucsamburg an 16 Deireadh Fomhair 2001; an Comhaontú idir an tAontas Eorpach agus Poblacht na hÍoslainne agus Ríocht na hIorua, arb é sin an tríú ionstraim; Creat-Chinneadh Chomhairle an Aontais Eorpaigh an 22 Iúil 2003 maidir le horduithe a chalcann maoin nó fianaise a thorghníomhú san Aontas Eorpach, an ceathrú ionstraim atá de réir théarmaí an Bhille; an Dara Prótocal Breise a ghabhann leis an gCoinbhinsiún Eorpach ar Chúnamh Frithpháirteach in Ábhair Choiriúla, a dhéanann feabhsú agus forlónadh ar fhorálacha Choinbhinsiúin Chomhairle na hEorpa 1959 ar Chúnamh Frithpháirteach in Ábhair Choiriúla; na forálacha is gá chun éifeacht a thabhairt d'Airteagail 49 agus 51 den Choinbhinsiún a síníodh i Schengen an 19 Meitheamh 1990, ag feidhmiú Chomhaontú Schengen den 14 Meitheamh 1985, agus, ar deireadh; gnéithe de chúnamh dlíthiúil frithpháirteach an Chinnidh ón gComhairle maidir le síniú an Chomhaontaithe idir an tAontas Eorpach agus Stait Aontaithe Mheiriceá ar Eiseachadadh agus ar Chúnamh Dlíthiúil Frithpháirteach, a rinneadh sa Bhruiséil an 6 Meitheamh 2003.

Díreoidh mé ar an mBille féin anois. Sainmhíniú Cuid 1, a chuimsíonn ailt 1 go dtí 10, na príomhthéarmaí atá sa Bhille agus leagann amach na srianta a bhainfidh le cúnamh dlíthiúil frithpháirteach a sholáthar. Diúltófar cúnamh dlíthiúil frithpháirteach i gcás go bhféadfadh cúnamh den sórt sin do char a dhéanamh do cheannasacht, do shlándáil nó do leasanna eile an Stáit, nó i gcás go mbíonn cúiseanna ann lena chreidiúint go ndearnadh an t-iarratas chun gearleanúint a dhéanamh ar dhuine ar chúiseanna a bhaineann le gnéas, creideamh, cine, náisiúntacht, bunadh eitneach, tuairim pholaitíochta nó gnéaschlaonadh. Diúltófar iarratas freisin más dealraitheach go bhféadfadh sé gurb é an toradh a bheadh ar chúnamh a sholáthar ná go mbeadh duine faoi réir ag céastóireacht nó go sárofaí an Coinbhinsiún Eorpach um Chearta an Duine. Tugann Alt 5 éifeacht dhíreach d' Airteagail 4 agus 6 de Choinbhinsiún 2000 agus d' Airteagail 4 agus 8 den Dara Prótocal Breise. Leagann na hAirteagail sin síos an fhoirmiúlacht agus na nósanna imeachta atá le leanúint nuair a bhíonn iarratais á dtarchur agus á bhforghníomhú agus déileáilann siad freisin le bealaí cumarsáide. Foráiltear freisin sa Chuid seo do stáit a ainmniú chun críocha an Ahta agus d'Údarás Lárnach a ainmniú sa Stát. Tugtar éifeacht le halt d'Airteagal 7 de Choinbhinsiún

2000 agus d'Airteagal 11 den Dara Prótagal Breise, a dhéileálann le malartú spontáineach faisnéise ar ábhair choiriúla gan gá iarratas a bheith faighte roimh ré. Aisghairmeann Alt 10 forálacha liostaithe Achtanna eile.

Tugann Ailt 11 go dtí 20, a chomhdhéanann Cuid 2 den Bhille, an bonn chun déileáil le hiarratais ar fhaisnéis airgeadais chun críocha imscrúdaithe coiriúil, lena n-áirítear faireachán ar chuntais bhainc agus faisnéis a fháil ar chuntais den sórt sin. Tugann an Chuid seo éifeacht d'fhorálacha Phrótagal 2001 agus cuireann sé ar chumas na hÉireann éifeacht a thabhairt d'Airteagal 4 de Chomhaontu an Aontais Eorpaigh-Stáit Aontaithe Mheiriceá ar chúnamh dlíthiúil frithpháirteach, a dhéileálann le faisnéis bhainc a shainthint.

Tá na nósanna imeachta maidir le hordú faisnéise cuntais nó faireacháin cuntais a fháil leagtha amach in Alt 12. Is breitheamh den Chúirt Dúiche amháin a fhéadfaidh ordú den sórt sin a dhéanamh, agus caithfidh sé no sí a bheith deimhin de go bhfuil cion déanta nó go bhfuil sócmhainní ag an duine lena mbaineann a tháinig as iompar cóiriúil, agus go bhfuil cúiseanna réasúnacha ann lena chreidiúint go bhfuil faisnéis ag foras airgeadais sonraithe atá de dhíth san imscrúdú.

Foráiltear sa chuid seo freisin go bhféadfaidh Éire faisnéis a iarraidh ar idirbheartaíochta baincéireachta ó stát eile.

Foráiltear in ailt 14 go dtí 16 go bhféadfar iarratas a fháil ó stát eile maidir le faisnéis ar idirbheartaíochta airgeadais. Ar iarratas den sort sin a fháil, féadfaidh an tAire a údarú go ndéanfaí iarratas chuig breitheamh ar ordú faisnéise cuntais nó faireacháin cuntais. Tá na nósanna imeachta ata le leanúint agus an fhaisnéis a bheidh riachtanach chun ordú den sórt sin a dhéanamh leagtha amach in alt 16. Forálann an chuid seo freisin do tharchur faisnéise chuig an stát iarrthach agus gur cion é gan ordú faisnéise cuntais nó faireacháin cuntais a chomhlíonadh.

Baineann Cuid 3, ailt 21 go dtí 28, le tascradh teachtaireachtaí teileachumarsáide idir ballstáit an Aontais Eorpaigh chun críocha imscrúdaithe chóiriúil, dá bhforáiltear in Airteagail 17 go dtí 22 de Choinbhinsiún 2000.

Tá na hailt atá ag baint le tascradh sa Bhille teicniúil agus sách casta, agus ní fhéadfaí sin a sheachaint. Déanfaidh me mo dhícheall príomhfhorálacha na coda seo a leagan amach chomh simplí agus is féidir. Leagann alt 22 den Bhille amach an t-imthosca a bhféadfaidh Éire cúnaimh a iarraidh ó bhallstát eile maidir le teachtaireachtaí teileachumarsáide a thascradh. Ní fhéadfar iarraidh den sort sin a dhéanamh ach amháin sa chás go mbíonn údarú tugtha ag an Aire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí don tascradh faoin Acht um Post-Phaicéid agus Teachtaireachtaí Teileachumarsáide a Thascradh (Rialaí) 1993. Caithfidh na daoine a bhfuil a dteachtairachtaí le tascradh a bheith in Éirinn nó i mballstát, agus caithfidh go mbeidh gá le cúnaimh

teicniúil ballstáit chun an tascradh a dhéanamh. Tá an fhaisnéis a bheidh le tarchur nuair a bhíonn iarratas a dhéanamh leagtha amach freisin. Chomh maith leis sin, forálann an chuid seo go bhféadfaidh Éire iarratais ar thascradh a fháil ó bhallstáit eile i gcásanna airithe agus leagtar amach na nósanna imeachta a bheidh le leanúint nuair a fhaightear iarratais den sórt sin.

Foráiltear le halt 24, *inter alia*, má bhíonn an duine a bhfuil a theachtairachtaí no a teachtaireachtaí le tascradh go fisiciúil sa Stát, nach bhféadfaidh an tAire tascradh a údarú de bhua iarratais ó bhallstát ach amháin i gcás gur cion tromchúiseach a bheadh san iompar atá faoi imscrúdú de réir bhrí an Achta um Phost-Phaicéid agus Teachtaireachtaí Teileachumarsáide a Thascradh (Rialaí) 1993 agus go mbeadh údar maith leis an údarú tascartha a dhéanamh. Leagann an t-alt amach freisin coinníollacha a d'fhéadfaí a chur i bhfeidhm agus déileálann le tarchur teachtaireachtaí chuig stát iarrthach.

Baineann ailt 25 agus 26 den chuid seo le tascradh i gcás nach mbíonn cúnaimh teicniúil ballstáit eile de dhíth chun an tascradh a dhéanamh. I gcás go mbíonn tascradh údaraithe ag an Aire, go mbíonn seoladh teileachumarsáide an duine i mballstát eile agus nach mbíonn cúnaimh an stáit sin de dhíth chun tascradh a dhéanamh, forálann alt 25 go gcuirfidh an tAire in iúl don bhallstát go bhfuil an duine lena mbaineann i gcríoch an bhallstáit sin. Féadfaidh an ballstát toiliú leis an tascradh nó gan toiliú leis. Féadfar leanúint den tascradh fad a bhíonn an cinneadh sin a dhéanamh, ach ní fhéadfar aon fhaisnéis a fhaightear ón tascradh sula mbíonn toiliú tugtha a úsáid mura mbíonn sin comhaontaithe leis an mballstát eile nó chun bagairt thromchúiseach láithreach do shlándáil phoiblí a chosc.

Feidhmíonn alt 26 na forálacha céanna don chás nach mbíonn ár gcúnaimh de dhíth ar bhallstát eile chun teachtaireachtaí a thascradh, ach go mbíonn seoladh teileachumarsáide an duine lena mbaineann sa Stát seo. Sna himthosca sin, cuirfean an tAire ar an eolas agus caithfidh sé nó sí cinneadh a dhéanamh an gceadófar an tascradh nó nach gceadófar. Foráiltear leis an alt seo nach gceadófaí tascradh dá mba rud é nach mbeadh sé indéanta é a dhéanamh i gcomhthéacs baile den sórt céanna.

Cuireann alt 27 oibleagáid ar ghnóthas údaraithe — i bhfocail eile, cuideachta teileachumarsáide nó soláthraí seirbhíse — tascradh a éascú i gcás go mbíonn an duine sa Stát, go mbíonn údaraí tugtha don tascradh ach nach féidir na teachtaireachtaí a thascradh go díreach sa Stát. In imthosca den sórt sin, más féidir leis an soláthraí teileachumarsáide rochtain a fháil ar an trealamh i mballstát eile chun tascradh a éascú, déanfaidh sé é. Más rud é go mbíonn an trealamh ag soláthraí teileachumarsáide chun tascradh a éascú, go mbíonn an duine lena mbaineann i mballstát eile agus nach féidir na teachtaireachtaí a thascradh go díreach on stát sin, ach gur féidir leis an soláthraí teileachumarsáide anseo cabhrú

[Mr. M. McDowell.]

leis an stát sin sa tascradh, ansin beidh ar an soláthraí an tascradh a éascú. Leasaíonn alt 28 an tAcht Seirbhísí Poist agus Teileachumarsáide 1983 trí shocrú a dhéanamh d'fhíneálacha as neamhchomhlíonadh.

Tugann Cuid 4, a chomhdhéanann ailt 29 go dtí 38, éifeacht do théarmaí chreat-chinneadh na Comhairle i ndáil le horduithe a chalcann maoin nó fianaise a fhorghníomhú san AE. Leagann alt 30 amach na nósanna imeachta a gcaithfear cloí leo nuair a bhíonn ordú á dhéanamh chun scriosadh, diúscairt nó aistriú maoin a d'fhéadfadh a bheith ina fhianaise in imscrúdú coiriúil a bhíonn ar siúl a chosc. Tugann ailt 31 agus 32 éifeacht d'Airteagal 4 agus 9 den chreat-chinneadh. Foráilann alt 31 d'ordú caltha agus don deimhniú caighdeánach dá bhforáiltear faoi Airteagal 9 den chreat-chinneadh a bheidh le haistriú chuig ballstát chun forghníomhú a dhéanamh agus leagann sé amach na nósanna imeachta chun sin a dhéanamh. Leagann alt 32 amach na forálacha i gcomhair ordaithe caltha agus deimhniú a thar-chur chuig Éirinn ó stáit eile.

Tá na nósanna imeachta atá le leanúint nuair a fhaighimid iarratas den sórt sin agus na forálacha chun ordú caltha comhair a dhéanamh ag an Ard-Chúirt chun an t-ordú seachtrach a fhorghníomhú leagtha amach in alt 33. Déileáilann an chuid eile den Chuid seo leis an achar ama a fhéadfaidh ordú caltha comhair a bheith i bhfeidhm, a éagsúlú agus a fhoirceannadh, leasú nó iarchur, agus na coinníollacha faoina bhféadfar diúltú d'ordú caltha comhair a dhéanamh. Tugtar éifeacht in alt 38 d'Airteagal 10 den Chreat-Chinneadh, ina ndéileáiltear leis an tslí a gcaitear le maoin chalcátha.

Déileáilann Cuid 5, comhdhéanta d'Ailt 39 go dtí 45, le horduithe do choigistiú agus d'fhorghéilleadh maoin. Faoi alt 40, féadfaidh Éire iarratas a dhéanamh chuig stát ainmnithe ar mhaoin a choigistiú má bhíonn ordú coigistíochta déanta anseo. Foráiltear le hait 41 agus 42 do stát ainmnithe ordú coigistíochta a thar-chur chuig an Stát seo, agus d'ordú coigistíochta comhair a dhéanamh chun an t-ordú seachtrach a fhorghníomhú. Ní fhéadfar ordú coigistíochta comhair a dhéanamh ach amháin de bhua iarratais chun na hArd-Chúirte agus caithfidh an tAire toiliú le hiarratas den sórt sin. Foráiltear freisin d'aon duine a éilíonn go bhfuil leas aige no aici sa mhaoin uirill a dhéanamh maidir leis an gcúis nar chóir an t-ordú coigistíochta a dhéanamh.

Déileáilann Ailt 43 go dtí 45 le horduithe forghéillte, sa stát ainmnithe agus anseo. Leagtar síos an fhaisnéis atá riachtanach nuair a chuireann stát eile ordú forghéillte anseo, maille leis na nósanna imeachta ata le leanúint i bhforghníomhu ordú forghéillte seachtrach. Arís, féadfar iarratas ar ordú forghéillte comhair a dhéanamh, le toiliú an Aire, chun na hArd-Chúirte. Tá foráil déanta d'aon duine a éilíonn go bhfuil leas aige nó aici sa mhaoin uirill a dhéanamh agus tá foráil déanta do dhiúscairt na maoin chun tairbhe an

Stáitchiste ó bhíonn ordú forghéillte comhair forghníomhaithe. Tugann an Chuid seo na forálacha d'orduithe coigistíochta agus forghéillte san Acht um Cheartas Coiriúil 1994 cothrom le dáta.

Déileáilann Cuid 6 den Bhille, a chuimsíonn ailt 46 go dtí 64, le fianaise a thógáil. Tá alt 47 bunaithe ar fhorálacha in alt 52 den Acht um Cheartas Coiriúil 1994 agus leagann sé amach nósanna imeachta maidir le ráiteas fianaise a fháil ó dhuine i stát ainmnithe le húsáid in imeachtaí coiriúla.

Foráiltear le halt 48 den Bhille — bunaithe ar alt 51 den Acht um Cheartas Coiriúil 1994 — d'fhianaise a thógáil ar iarratas ó fhinné anseo agus a úsáid in imeachtaí coiriúla thar lear. Déileáilann an chuid seo freisin le pribhléid finnéithe agus leagann sé síos go soiléir nach féidir iallach a chur ar dhuine fianaise a thabhairt chun cabhrú le cás coiriúil thar lear más rud é nach bhféadfaí iallach a chur air nó uirthi fianaise a thabhairt in imscrúduithe coiriúla anseo nó sa stát lena mbaineann. Má sheastar le héileamh ar phribhléid, ní fhéadfar aon fhianaise a bhíonn tógtha ó dhuine a chur chuig an stát iarrthach.

Déileáilann Ailt 50 agus 51 le príosúnaigh a aistriú go hÉirinn agus a aistriú ó Éirinn chun críocha fianaise a thabhairt nó chun cabhrú le himscrúduithe coiriúla. Tá na forálacha sin bunaithe cuid mhaith ar na forálacha in ailt 53 agus 54 den Acht um Cheartas Coiriúil 1994. Tá siad leasaithe chun Airteagal 9 de Choinbhinsiún 2000 agus Airteagal 13 den Dara Prótacal Breise a chur san áireamh.

Foráilann Ailt 52 go dtí 57 d'fhianaise a thabhairt trí nasc teilifíse nó teileafóin. Tugann siad éifeacht d' Airteagail 10 agus 11 de Choinbhinsiún 2000 agus d'fhorálacha den sórt céanna in Airteagail 9 agus 10 den Dara Prótacal Breise. Faoi alt 52, i gcás go mbíonn finné i stát ainmnithe agus nach inmhianta go dtabharfadh an finné fianaise i bpearsa anseo in Éirinn, nó nach féidir leis an bhfinné sin a dhéanamh, féadfaidh breitheamh litir iarratais go dtabharfadh an duine fianaise trí nasc teilifíse a eisiúint. Foráilann Ailt 53 go dtí 55 d'iarratas a dhéanamh sa Stát seo ar fhinné fianaise a thabhairt thar lear trí nasc teilifíse agus foráiltear don Aire a iarraidh ar Uachtarán na Cúirte Dúiche breitheamh a ainmniú chun an finné a thoghairm le freastal chun críocha fianaise a thabhairt. Leagann Alt 55 amach an nós imeachta chun fianaise a thógáil agus foráilann, i measc rudaí eile, go gcaithfear an fhianaise a thabhairt de réir dhlíthe an stáit iarrthaigh a mhéid go bhfuil siad i gcomhréir le prionsabail bhunúsacha an dlí sa tír seo. Féadfar an fhianaise a thógáil go príobháideach freisin. Foráilann Ailt 56 agus 57 d'iarraidh a dhéanamh ar fhinné atá sa Stát seo fianaise a thabhairt le teileafón in imeachtaí coiriúla i dtír eile agus leagtar síos leo na nósanna imeachta atá le leanúint.

Déileáilann Cuid 6 le nósanna imeachta maidir le cuardach a dhéanamh i gcomhair fianaise agus foráilann do stát eile iarraidh a dhéanamh ar fhi-

anais. Tá na forálacha bunaithe ar Ailt 52 agus 55 den Acht um Cheartas Coiriúil 1994. Déileáil Alt 59 le hiarratais ó stáit eile ar fhianaise a fháil le húsaid anseo in imeachtaí no imscrúduithe coiriúla sa stát iarrthach. Ní fhéadfar déileáil le hiarratais den sórt sin ach amháin nuair a bhíonn cumhacht cuardaigh ann faoin dlí baile don chion a bhíonn i gceist. Bíonn cuardach fianaise de bhua iarratais den sórt sin teoranta do chásanna lenar féidir piónós de phríosúnacht sé mhí ar a laghad a ghearradh as an gcion sin faoin dlí atá againn agus faoi dhlí an stáit iarrthaigh nó cásanna gur féidir príosúnacht sé mhí ar a laghad a ghearradh as an gcion faoi dhlí na hÉireann agus go bhfuil na cásanna sin a n-ionschúiseamh sa stát iarrthach ag údaráis riaracháin a bhféadfadh imeachtaí coiriúla teacht as a gcinneadh. Tá na nósanna imeachta atá le leanúint nuair a fhaightear iarratas ar fhianaise leagtha amach in Ailt 59 agus 60, faoi mar atá na ceanglais a chaithear a chomhlíonadh chun go bhféadfaidh breitheamh barántas cuardaigh baile a eisiúint chun an t-iarratas a fhorghníomhú.

Leagann Caibidil 2 de Chuid 6 den Acht síos na forálacha a bhaineann le fianaise ceannachta a fháil le húsaid laistigh agus lasmuigh den Stát. Leagann Alt 64 amach na nósanna imeachta atá le leanúint nuair a fhaightear iarratas chun fianaise ceannachta a fháil agus forálann nach bhféadfar fianaise ceannachta a thógáil ó dhuine ach amháin le toiliú an duine sin mura ndán is go mbíonn an fhianaise sin i seilbh na ngardaí cheana féin. Is dochtúir amháin a fhéadfaidh dlúthshamplaí colainne a thógáil, agus is dochtúir nó fiacloir amháin a fhéadfaidh múnla déadach a thógáil. Foráiltear freisin do scriosadh a dhéanamh ar fhianaise ceannachta.

Tá an Chuid seo curtha isteach ar iarratas ó Oifig an Ard-Aighne tar éis cás cúirte nuair, mar gheall ar bhearna dhlíthiúil, nach raibh ar chumas an Stáit cabhrú le stát eile i ndáil le fianaise ceannachta a sholáthar. Leathnaíonn an Chuid seo an fhoráil dhlíthiúil maidir le cineálacha fianaise ceannachta a thógáil chun forálacha dlíthiúla na hÉireann i gcásanna den sórt sin a bheith ar aon dul leo sin i stáit eile.

Clúdaíonn Cuid 7 — Ailt 65 go dtí 76 — na nósanna imeachta maidir le doiciméid a sheirbheáil laistigh den Stát agus lasmuigh den Stát, agus forálann do mhaoín a aiseag don úinéir ceart. Déileáil Ailt 65 agus 67 le seirbheáil doiciméad, agus tá siad bunaithe ar Ailt 49 agus 50 den Acht um Cheartas Coiriúil 1994. Tá siad leasaithe chun éifeacht a thabhairt d'Airteagal 5 de Choinbhinsiún 2000 agus d'Airteagal 16 den Dara Prótocal Breise. Forálann na hAilt seo go bhféadfar doiciméid arna n-eisiúint ag cúirt sa tír seo i gcomhthéacs imeachtaí coiriúla a sheirbheáil ar dhuine a bhíonn i stát eile agus go bhféadfar doiciméid den sórt céanna ó stáit eile a sheirbheáil ar dhuine sa tír seo. Is é an príomhathrú ar na forálacha atá cheana ann ná socrú a dhéanamh do sheirbheáil leis an bpost.

Déileáilann Caibidil 2 den Chuid seo — Ailt 68 go dtí 72 — le maoin ghoidte a aiseag, ag tabhairt éifeachta d'Airteagal 8 de Choinbhinsiún 2000 agus d'Airteagal 12 den Dara Prótocal Breise. Ceadáíonn an Chaibidil seo ordú a dhéanamh sa Stát seo maidir le maoin atá suite i stát eile a aiseag. Ar an gcaoi chéanna, féadfaidh stát eile a iarraidh ar Éirinn maoin sa Stát a fuarthas trí ghnóthai coiriúla a chur faoi láimh an údaráis iarrthaigh. Tá na nósanna imeachta atá le leanúint ar iarratas a fháil leagtha amach freisin. Tar éis iarratas ar aiseag a fháil, féadfaidh an Chúirt Dúiche ordú a dhéanamh go dtabharfaí an mhaoín lena mbaineann ar láimh do na gardaí. Foráiltear freisin do dhuine a éilíonn go bhfuil leas aige nó aici sa mhaoín uirill a dhéanamh maidir leis an gcúis nár chóir aiseag a dhéanamh.

Forálann Caibidil 3 de Chuid 7 den Bhille do sheachadadh rialaithe chun críocha imscrúdaithe choiriúil, agus tugann éifeacht d'Airteagal 12 de Choinbhinsiún 2000 agus d'Airteagal 18 den Dara Prótocal Breise. Foráiltear d'iarratas a dhéanamh chuig stát ainmnithe chun cead a thabhairt seachadadh rialaithe a dhéanamh sa stát sin, agus foráiltear do dhaoine sainithe, lena n-airítear comhaltaí den Gharda Síochána agus oifigigh chustaim agus mail, páirt a ghlacadh i seachadadh rialaithe.

Féadfaidh stáit eile a iarraidh freisin go ndéanfaí seachadadh rialaithe anseo agus go mbeadh daoine on stát sin páirteach ann. Ní dhéanfar aon seachadadh rialaithe sa tír seo, áfach, ach amháin faoi rialú díreach an Gharda Síochána no oifigigh custaim agus mail de réir mar is cuí.

Tugann Cuid 8 den Bhille — Ailt 77 agus 78 — éifeacht do Chonradh na hÉireann agus na Stát Aontaithe ar chúnamh fríthpháirteach, arna leasú ag Comhaontú an Aontais Eorpaigh-na Stát Aontaithe i ndáil le cúnaimh fríthpháirteach.

Déileáilann Cuid 9 — Ailt 79 go dtí 88 — le réimse ceisteanna ilghnéitheacha. Leasaítear Ailt 9 den Acht um Cheartas Coiriúil (Foirne Comhpháirteachta um Imscrúdú) 2004 chun go bhféadfaidh rannpháirtithe ó stáit eile a bhíonn ainmnithe chun críocha cúnaimh fhríthpháirtigh a bheith páirteach i bhfoirne comhpháirteachta um imscrúdú sa tír seo i gcás go gcomhaontaíonn údarás inniúil na tíre a bhunaigh an fhoireann amhlaidh le hÉirinn. Cuirfidh an leasú seo deireadh leis an riachtanas orduithe a dhéanamh agus a chur os comhair an Oireachtais gach uair a dtagann an cheist seo aníos maidir le foireann comhpháirteacha um imscrúdú ar leithligh. Ba chóir dom a rá freisin nach n-athróidh an leasú ról na rannpháirtithe i bhfoirne den sórt sin ar aon slí, ar ról é go príomhá atá beartaithe a bheith ina ról tacaíochta nó comhairleach mura ndán is go gcomhaontaíonn na stáit a bhunaíonn an fhoireann a mhalairt. Tá forálacha ilghnéitheacha eile ann ar nós, *inter alia*, foráil do phíonóis i gcás nochtadh a dhéanfadh dochar d'imscrúdú, foráil do dhliteanas oifigigh chomhlachta chorpraithe agus forálacha cosanta sonraí.

[Mr. M. McDowell.]

Cabhróidh an reachtaíocht seo le feabhas a chur ar fhorálacha do chúnamh frithpháirteach, agus forálfar do chomhoibriú níos leithne agus níos éifeachtaí i gcomhrac na coiriúlachta trasnáisiúnta. Beidh na cumhachtaí méadaithe do chúnamh frithpháirteach dá bhforáiltear anseo úsáideach chun coirpigh a bhrath agus chun coirpigh a ionchúiseamh. Is piosa bunriachtanach reachtaíochta í i saol nach dtugann lucht coiriúlachta airid ar theorainneacha.

Cuirim an Bille faoi chúram an Tí, agus táim ag tnúth le tuairimí na Seanadóirí air a chloisteáil.

Mr. Cummins: Go raibh maith agat, a Chathaoirligh, agus cuirim fáilte roimh an Aire as ucht na horáide a thug sé inniu ar an Bhille. Tá áthas orm a rá go bhfuil Fine Gael i bhfabhar an Bhille. I welcome the Minister to the House. There can be no doubt that mutual assistance between Ireland and other nations on matters of criminal justice is of vital and paramount importance in terms of our role in international co-operation. As a member of the international community and many international and governmental organisations from the United Nations to the European Union, we have a duty to ensure that the long arm of the law can reach across borders to catch those we all believe should be brought to face the rigours of justice.

While there must be controls and structures in place to do this, both to ensure that human rights and basic protections are respected and maintained, and to be certain that our own laws and constitutional provisions are respected, no one could claim that Ireland should not make every effort to contribute to international mutual assistance.

That is why, for example, when personal data is obtained under the convention on mutual assistance in criminal matters between the member states of the European Union, another country may only use this data for specific and limited functions, such as judicial or administrative proceedings covered by the convention and the prevention of an immediate and serious threat to public security. Otherwise, the data can only be used with the prior consent of the communicating member state or of the data subject. These protections and many more like them are very significant and important in securing the trustworthiness of these conventions. That is why Ireland is a proud signatory to the international agreements mentioned in this Bill.

I would like to speak briefly about the convention on mutual assistance in criminal matters between the member states of the European Union, to which I have already referred. The purpose of this convention is to encourage and modernise co-operation between judicial, police and customs authorities by supplementing the provisions and facilitating the application of a number of international agreements. Among them are the 1959 Council of Europe convention

on mutual assistance in criminal matters and its 1978 protocol, the 1990 convention applying the Schengen agreement and the Benelux treaty of 1962.

The convention establishes the conditions under which mutual assistance between EU member states is granted. If Ireland asks Germany for assistance, Germany must comply with the formalities and procedures indicated by us. The convention does not place any importance on the largesse of a country or its political or military clout. As with the basic principles of the EU, each member state is equal before the convention, which gives Ireland great facility in extending its criminal justice muscle.

Furthermore, a judicial authority or a central authority in one member state may make direct contact with a police or customs authority from another member state or, in respect of requests for mutual assistance in respect of proceedings, with an administrative authority from another member state. A spontaneous exchange of information, namely, without prior request, may take place between member states regarding criminal offences and administrative infringements, the punishment or handling of which falls within the competence of the receiving authority.

Mutual assistance can take various forms, from stolen objects, which must be placed at the disposal of the requesting state with a view to their return to their rightful owners, to the temporary transfer of a person held on the territory of a member state that has requested an investigation in the territory of the member state in which the investigation is to take place.

This legislation will allow a witness or an expert in a member state to be heard by the judicial authorities of another member state by video-conference if this is not contrary to the fundamental principles of the requested member state and if all the parties concerned are in agreement.

Controlled deliveries may be permitted on the territory of another member state within the framework of criminal investigations into extraditable offences. They are to be directed and monitored by the authorities of the requested member state. Two or more member states may set up a joint investigation team, the composition of which is to be set out in a joint agreement between the member states concerned. The team would be set up for a specific purpose and for a limited period of time. An official from the member state in which the team is operating would co-ordinate and lead its activities in the territory of that member state. This is a very good provision which is to be welcomed.

Covert investigations may also be carried out by officers acting under covert or false identity, provided that the national law and procedures of the member state where the investigations take place are complied with. This is also an important provision. Telephone communications may be intercepted at the request of a competent authority from another member state. Communi-

cations may now either be intercepted and transmitted directly to the requesting member state or recorded for subsequent transmission.

All of these measures will have the effect of strengthening the arm of the Irish criminal justice system in tackling the increasing, and seemingly unfettered, problem of international crime and criminal elements from abroad. Fine Gael will always support reasoned and fair legislation that increases the powers of the State in an equitable and responsible fashion.

I welcome this Bill and its provisions and Fine Gael will support it. However, I have previously stated in this House that it seems the Government consistently puts on the back burner the passing of legislation to bring Ireland in line with international law or to ratify agreements to which we are a party or a signatory. Although I recognise that this bill was published last year, the agreements which it seeks to enshrine in our law and to which it aims to give effect date from well before that.

The convention on mutual assistance in criminal matters between the member states of the European Union was finalised in May 2000 and its protocol was finalised on 16 October 2001; the Council framework decision dates from July 2003; the second additional protocol to the European convention of 20 April 1959 dates from 2001; the treaty between the United States of America and Ireland came about on 18 January 2001; and the Council decision concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* with regard to mutual assistance was created in 2002. Perhaps the Minister could explain why these matters always take so long to reach the Order Paper. Having said that, I welcome and support this Bill.

Mr. J. Walsh: Cuirim fáilte roimh an Aire go dtí an Teach leis an Bhille seo a phlé. Molaim an tAire as ucht scríbhíne as Gaeilge a léamh ar maidin. Tá dualgas againn mar Bhaill Oireachtais iarracht a dhéanamh an teanga a chur chun cinn agus úsáid a bhaint as an méid atá againn.

Bille tábhachtach é seo, Bille teicniúil le héifeacht a thabhairt do seacht n-ionstraim idirnáisiúnta atá ann cheana féin le cúnamh dlíthiúil frithpháirteach. Cuireann an Bille cumas do stát amháin laistigh dá dlínse féin seirbhís a chur ar fáil do stát eile maidir le riarachán an cheartais sa stát sin agus is ceart sin a dhéanamh.

As has been pointed out by the Minister, the Bill gives effect to seven legal mutual assistance instruments. The case for mutual assistance in the provision of police activities is essential. It is right that within a more unified Europe, where there is harmonisation within the legal framework, we should assist each other, because criminals do not have regard or respect for frontiers and boundaries. They often regard them as a means to escape or delay detection. Therefore, as organised crime and terrorism become much more sophisticated, it is essential that every technique

and support is given to police across the Union to enable them to apprehend and bring to justice those responsible.

There are some parallels between the way we have been developing within the European Union over the past 30 years and what happens in the United States, which is probably a reasonable model to examine. While we have agreed in the past that there should be joint investigation teams, including Interpol — no doubt they will be a very useful instrument in detecting crime — perhaps community policing could play a more central role. In the United States, federal detection agencies play a role as well as state police forces. This approach facilitates the apprehension of criminals, which is something that might be examined.

The main forms of mutual assistance in the Bill are clearly identified. Sensible and practical arrangements such as the provision of financial information, access to bank accounts and making available that information on request, with certain safeguards, is highly desirable. I note that we provide indemnity to financial institutions, which is necessary. It is a useful provision in that we have seen how effectively CAB operates by having access to the resources and assets of various people who cannot be brought to justice for criminal offences, but can be caught on related activities and evidence. On a number of occasions, Senators have drawn an analogy with Al Capone who was never brought to justice in the United States other than for tax offences.

Certain safeguards are built into the legislation whereby the Minister need not accede to a request based on specific grounds relating to sovereignty, security and other interests of the State, and also where there are reasonable grounds to suspect that the request was made for the purpose of prosecuting or punishing someone based on their sex, race, religion, ethnic origin, nationality, political opinion or sexual orientation. These are good precautions which are in line with the European Convention on Human Rights.

It is also possible to refuse a request on the basis of prejudicing a criminal investigation or criminal proceedings in the State. Would that relate specifically to the same offence or to a different offence? In the event of it being a different offence, would the seriousness of crime be taken into consideration in making the decision? For example, if this State was investigating a crime of larceny, could the request be refused if it related to the much more serious offence of murder? Perhaps we can examine the implications of this on Committee Stage.

I note that the hearing of witnesses can be done through video link or teleconferencing, which we dealt with previously in other legislation and which is sensible. It would be foolish not to avail of the technology which facilitates due process within the courts system. The video taping of evidence was introduced to try to eliminate the waste of Garda time, in particular, where gardaí

[Mr. J. Walsh.]

may have to wait in court for a whole day even though the case may not even be called. There is a need to streamline the justice system while not in any way prejudicing the rights of the accused.

The enforcement of orders for freezing property is a practical and sensible arrangement, which works effectively for CAB. Obtaining identification evidence for criminal investigations, both inside and outside the State, is interesting and perhaps poses questions. I note there is an issue of privilege whereby persons cannot be compelled to give evidence to assist in criminal investigations where they would not be compelled to give such evidence here in regard to a similar crime.

We also have within our system the right to silence, which has been debated here on many occasions. In the aftermath of the Omagh bombing, for example, we introduced legislation which removed the right to silence in certain situations or, at least, allowed a judge to make an inference in this regard. I wonder if we are at a stage where we should examine the right to silence in regard to other crimes. Considering it from a practical point of view, if a person is innocent, why should he or she not take the stand and assist the case? There may be instances where innocent people could prejudice their own position but, in the main, the right to silence is exercised in order to avoid being put on the spot in the hope that some bright barrister will get one off the hook. Perhaps we should examine the issue as I am not sure it serves the administration of justice.

Given that there are general discretions for the exclusion of evidence, should there be more harmonisation across the European Union of the various legislation adopted, including our court systems, in dealing with the prosecution of offences? I agree with the right of a person to be represented and cross-examined but, during inquiries in the justice committee, we have come across instances whereby statements taken outside the jurisdiction, allegedly by people involved in the police force, might not stand up in court. It is important that, within a more united Europe, there are no technical deficiencies that would allow people who are guilty of offences to avail of such technicalities. I am aware that the manner in which the statement is taken is paramount.

The Bill includes sections dealing with the position of prisoners and the temporary transfer of prisoners held in custody for the purposes of an investigation elsewhere. These sections provide that no warrant shall be issued unless a prisoner consents in writing to be transferred. What is the purpose of this provision? In addition, prisoners may not be prosecuted or otherwise restricted in terms of their personal freedom in respect of any offence committed before their arrival in the State. I assume "arrival in the State" refers to the time at which the prisoner was transferred to assist in prosecuting the particular offence. The Bill also provides that an assurance will be given

by a requesting state that a prisoner will not be prosecuted, sentenced, detained or otherwise restricted in his or her personal freedom in respect of any offence under the law of that state committed before the prisoner's departure from this State.

I take a simple view on these matters. If there is sufficient evidence to indicate a person has a case to answer, the matter should proceed to court and if the person is guilty, he or she should pay the necessary dues to society. The provisions for mutual assistance are a start. Although some precautions are necessary, we should allow for the utmost level of co-operation to ensure those who are guilty are brought to justice.

I welcome provisions in regard to the extension of joint investigation teams, particularly those relating to the United States. There has historically been, and continues to be, much co-operation between Ireland and the United States and it is eminently sensible to introduce joint investigation teams as part of our legal and policing co-operation. Organised crime, in particular, which is very sophisticated, and terrorism, which is a major threat to society, are areas that must be tackled with the greatest diligence and the greatest level of global co-operation.

We must examine the issue of drugs. So much of crime evolves from direct involvement in drugs or from something peripherally related to drugs. When one considers the difficulty alcoholism poses, are we absolutely correct in making drugs illegal or should there be some controlled way of dealing with them? It is politically incorrect to suggest it but common sense tells us the present arrangement simply does not work and is leading to all types of additional serious crime, including murder. This is an area that must be examined.

Cabhróidh an Bille seo go mór chun coirpigh a bhraith agus chun coirpigh imchúiseaibh. Tá súil agam go leanfaimid ar aghaidh ag feabhsú i gcúrsaí comhoibrithe agus go gcabhróidh leis na forálacha seo tras-náisiúnta san obair sin.

Mr. O'Toole: I propose to share time equally with Senator Quinn.

An Cathaoirleach: Is that agreed? Agreed.

Mr. O'Toole: Cuirim fáilte roimh an Aire agus tá áthas orm gur thosaigh sé an Bhille seo sa Teach seo. Tá sin déanta go minic aige. Is maith an rud é fosta gur thóg sé deis Gaeilge a úsáid i rith an díospóireachta. Tá sin tábhachtach.

Tá an reachtaíocht seo casta, tábhachtach agus cuimsitheach — níl sé léite agam. Rinne mé iar-racht féachaint fríd an rud ach bhí sé i bhfad ró-chasta, tá mé ag brath ar an memo, rud nach mbíonn baint agam leis go minic.

Is cuimhin liom nuair a tháinig mé isteach sa Teach seo don chéad uair, bhí an-díospóireacht ar extráidion. Bhí an-deacrachtaí ag Fianna Fáil faoi seo. Bhí argóintí ar an dá thaobh gan díriú isteach ar an dul chun cinn a ba cheart a dhéan-

amh. Chaith mé mó vóta i gcoinne an reachtaíochta, cé go bhfuil mé i bhfabhar extradition. Mhóthaigh mé go láidir gur cheart *prima facie* case de shaghas éigin curtha thar bhráid cúirte. Bhí mé i gcónaí ar son extradition, bhí mé in éadan safe havens dóibh siúd a rinne whatever ar dhaoine.

Tá reachtaíocht na tíre seo bunaithe ar Westminster. Ag féachaint ar an chód dlíthiúil sa Fhrainc, tá an-difríochta ann. Labhair an Seana-dóir Walsh faoi chiontacht. Bun-phrionsabal reachtaíochta na tíre seo go bhfuil duine neamhchiontach go dtí go bhfuil fianaise curtha os comhair na cúirte agus tá an chúirt sásta go bhfuil an duine ciontach. Ní tharlaíonn sin i dtíortha eile agus tá sin casta.

Tá mé i bhfabhar cad a dúirt an tAire ach ní thuigim conas mar a tharlóidh sé. Bhí mé ag féachaint ar an sliocht ag baint leis an right to silence and the demand to give evidence. Nuair a bhí muid ag plé leis an right to silence cúpla bliain ó shin, dúirt muid go bhfuil an chúirt in ann inference a thógáil dá mba rud é nach bhfuil duine sásta fianaise a thabhairt. Níor chuir muid deireadh leis an cheart ciúnais. Tá sin tábhachtach má tá muid sásta comhoibriú agus fianaise a chur ar fáil do stát eile faoi duine atá ina chónaí anseo. An mbeidh na rialacha céanna ag an duine tar éis dó a bheith curtha don tír eile le fianaise a thabhairt ansin? Má tá ceart ciúnais aige sa tír seo, an mbeidh sin aige sa tír eile? Deir an tAire that a person may not be required to give evidence in a way that would not be legal in this country or the country that he or she is going to. Ní thuigim sin go díreach ó thaobh an taobh eile den scéal. An féidir brú a chur ar shaoránach na tíre seo fianaise a thabhairt faoi dlí na tíre eile tar éis dó nó di bheith curtha go tír eile?

Cuirim fáilte faoin méid a dúirt an tAire faoi fhianaise tríd an fhón agus teicneolaíochtaí teilifíse nó any kind of technology between two countries. Tá mé i bhfabhar na húdaráis i dtíortha eile bheith in ann sonraí baine a chuardach sa tslí céanna agus is féidir sa tír seo. Tá sin tábhachtach ach tá deacracht ag baint leis. Tá an tAire ag iarraidh dul i ngleic le cearta atá ag tarraingt i gcoinne a chéile, an ceart ciúnais ar an taobh amháin agus freagracht fianaise a chur ar fáil ar an taobh eile. The Minister's comhghleacaithe i Kings Inns could go on their pension with this legislation. An deacracht a bheidh ann ná go mbeidh daoine sna cúirteanna go ceann míonna ag iarraidh seo a chur i bhfeidhm.

I would like to hear the Minister's comments on that issue. How can we tie it up? I am in favour of the legislation, although there might be issues which I would like changed or which I would like the Minister to reconsider. Any fair-minded democrat would have to be in favour of what we are trying to do.

Mr. Quinn: I welcome the Minister as I always do because he is one Minister who allocates time to this House rather than delegate to somebody

else. I also welcome the fact this Bill is being initiated here. While I welcome the Bill, it does not go far enough. If we believe the arrangements in this legislation will be enough to cope with the threats our society faces from criminals in the 21st century, we are wrong, although this may be all the Minister is able to do at present. The Minister is a strong believer in subsidiarity and of holding on to and allocating to each country as much decision-making as close to the citizens as possible. We all appreciate that. There are, however, times — this is one of them — when we must question whether that is the right way to go.

Four years ago I met Vaclav Klaus, the former Prime Minister of the Czech Republic who is now President. We had a good debate and I got to know him over a couple of days. I showed my enthusiasm for a united Europe but he talked about his concern having worked for approximately 40 years with a big brother in Moscow. He did not want to substitute the big brother in Moscow with one in Brussels. He was quite against a centralised Europe on that basis.

One of the areas of subsidiarity of great benefit to us is the ability to make decisions in our own country. However, there are times when we must consider that is not nearly enough and that there are occasions — this is one of them — when we need something more. The success of Irish legislation in recent years, including the Criminal Assets Bureau legislation, is the envy of other European countries but it has also been recognised that criminals have been able to move out of Ireland and operate elsewhere. Given the ease with which one can travel and communicate, whether by telephone or e-mail, Irish criminals can live in Spain and Holland which perhaps do not have the same legislation we have.

These fairly weak co-operation arrangements, namely, the subject matter of the Bill, are as much concerned with preserving the individual turf of different member states as they are with addressing the real problem. The Minister has concerns about this as well. I do not question the sincerity or even the efficiency of the people who must operate these arrangements but they are forced to deal with tools and weapons and to work under systems which are totally unsuited to the size and nature of the task they face.

If one went to America and suggested to people there that they could do without the FBI, they would laugh in one's face. I saw a television programme recently about the Wild West which referred to the Pinkertons. The Pinkertons was a private organisation whereby if people in the Wild West wanted help, they sent for this private company to solve the problem. America has local police forces stretching up to state level but beyond that, nearly 100 years ago, it found it necessary to create a federal law enforcement agency to cope with those crimes and criminals who traversed state borders and who could not be dealt with adequately by the forces of the indi-

[Mr. Quinn.]

vidual states no matter how much those local forces co-operated with each other.

I suggest Europe is in the same position today. We need a European police force and not only more co-operation between the forces of member states. I say that even though I am a strong champion of the principle of subsidiarity. Anything which can be handled better at local level should not be handled at a higher level within the Union. However, subsidiarity cuts both way in that what cannot be handled adequately at local level must be dealt with centrally. I have not, however, thought that through.

I am well aware Ireland's traditional position has been to resist any moves towards integration of the criminal justice system, and I know the Minister's heart is in that as well. Part of our reluctance comes from the nature of our legal system as well as the British one, on which Senator O'Toole touched, as opposed to the Napoleonic code. We have quite a different system to that operated by most of our partners. As a result, I can well understand the reluctance of the legal establishment here to get involved in any integration which would threaten to undermine the system we have and to which we have grown used over the years.

It is wrong to use that housekeeping issue as an excuse not to address this problem. To be blunt about it, it is taking an enormous risk with the welfare and safety of our people. If we succeed in maintaining every last button of our traditional legal system and do so at the expense of leaving the Union as a whole inadequately equipped to deal with the challenge of international crime, particularly terrorism, what will we have achieved? In the current climate, it is not fashionable to suggest anything which involves further integration in the European Union but the urgency of this problem surely demands that we leave questions of fashion aside and address ourselves to meeting the real life problems every country in the Union faces. If we do not face up to these problems, we will expect a 19th century structure to cope with a 21st century problem and we will only have ourselves to blame for the consequences of such a short-sighted approach.

None of us likes the big brother approach of state, Europe or Brussels. However, some time ago I read a book by Rudi Giuliani, the former mayor of New York. He wrote about the benefits of DNA testing all citizens, although I have not thought this through. He said it actually relieved people of suspicion. If they had the DNA of all citizens, people likely to be accused in the wrong would not be accused and it would save rather than trap them. I welcome the Bill, although it does not go far enough.

Mr. Minihan: I welcome the Minister and the introduction of this comprehensive legislation. We have had a flavour for Gaeilge sa Teach. Senator O'Toole started during the Order of

Business highlighting Irish. Then the Minister took us all on the hop by delivering an eloquent speech as Gaeilge which I regret to say I had to read in English.

The war on terrorism is one which cannot succeed if we deal with it purely in military terms. It is a war in which everyone must partake. It will involve business communities, economists, sovereign states and mutual co-operation because terrorism is now an international norm. People who have concerns for their own ideological reasons set about attempting to achieve their objectives by the commission of terrorism. Terrorism dates back to biblical times. We now have a situation where there is mutual co-operation. Terrorists trade with each other and their commodity is terror. We must combat this threat.

Events occur such as those of 11 September in respect to which there is a huge international response. Everybody pulls together and wants immediate action because the international media can now bring terror to everyone's home. It is not only those who were in New York on 11 September but those who watched the tragic scenes on television were terrorised, albeit to a different extent. Modern communications, TV networks, etc., have in a way become a tool of terror. In any war one of the main military components is winning the hearts and minds of the people and using the media to get one's message across. Equally, terrorism has that vehicle available to it now.

In the response to the events of 11 September, everybody in the western world came together to stamp down this terrorism and an aggressive feeling to the effect that "we will deal with it" was evident. However, as people begin to feel more secure as time moves on they question that original commitment. Have they the stomach to be willing to set aside conventions by which we have lived for many years?

Terrorists comprise not a fixed but a movable target and we must learn how to deal with them. One of the ways we must change the way we live is by extending this mutual co-operation between states in order to counteract terrorists' mutual co-operation. The terrorist we see, be it a suicide bomber or whoever, is but the point in the arrow-head, but we must target the people behind the terrorist, those who pull the strings and the greedy business people who have no ideology except to make money who will furnish, support and provide the back-up for their own selfish gains. There are also the ideologues who will be the string pullers. On a smaller scale, in Dublin last week people behind the scenes were controlling and operating events on mobile phones and stirring up young people into trouble; the same happens with terrorists. The Bill will enable this country to play its part on the international stage in co-operating efforts to target the behind the scenes network that provides the mutual co-operation between terrorist organisations worldwide.

The Minister announced the publication of the Bill in 2005. It builds on an existing legislative framework for mutual legal assistance. It provides for the effective co-operation between member states of the European Union and between states worldwide. This is of increasing importance in recent times. It enhances and supplements the existing international co-operation in the fight against terrorism and organised crime. It is not only terrorists but criminal gangs are equally co-operating with each other. The public face of terrorism is the car bombs and the terrorist atrocities we see but it is the faceless network that this legislation sets about addressing.

The Bill will help to further facilitate the detection and prosecution of those responsible for transnational crime. Technology is used in the transfer of funds, in the way organisations do business and in the hiding of moneys. Terrorism is a costly business and must be funded. We must play our part in providing the necessary framework to try to break that chain. Without it and without supply we help in combating the delivery of the terrorist act. We have had our own painful experiences of terrorism and we must live in the aftermath of that and do all we can to stamp it out. This Bill is crucial in building a safer society for everyone not only in Ireland but worldwide.

I am glad the Minister has taken consideration of the views of the Human Rights Commission in finalising the provisions of the Bill. It will always be the case that civil liberty groups will question issues in a Bill such as this but unfortunately, that is the price we pay for the terrorist world in which we now live. We must respond to that threat in a responsible manner. Questions will be asked and the concerns are welcome, and should be listened to and addressed because we must draw a line in terms of what is acceptable to protect the freedoms we have but equally to provide a safe and secure society for the people who live with those freedoms.

Ireland has a good record generally when it comes to protecting the rights of individuals, even during times of trouble, but when difficult decisions had to be made, they were made. We made them in dealing with our own terrorist activities. We are now playing our part in delivering similar hard decisions on the international stage.

Rather than diluting our established norms, we in Ireland should advocate that other countries do the same. We have a distinct voice in the world and can take a position of leadership in areas such as human rights, development aid, conflict resolution and peacekeeping. Ireland has played a huge part in that. We can provide leadership on the world stage in how we have addressed our problems.

Even though we talk about neutrality and it is an issue that raises its head every so often in debates in this House, when it comes to international terrorism and criminality no one can be neutral. That transcends beyond anything to do

with sovereign neutrality. We have a responsible role to play.

Under this legislation we will play our part in the global war against terrorism. We see the face of it with decisions such as those relating to Guantanamo Bay and other decisions that are regularly discussed in this House. I welcome the call by the Minister for Foreign Affairs in that regard.

However, we must also remember that this is evidence of the feel-safe factor having crept in again. Initially there were no questions about Guantanamo Bay, but as people begin to feel safe the pressure increases on those who have to make the decisions to root out these networks. They are pressurised not to bring in certain rules, laws and other legislative measures.

This legislation is necessary and should be welcomed by all. We are playing our part on the international stage by introducing it. Mutual co-operation between terrorist groups using modern technology and business activities to fund their evil commodity of terror for their own selfish gains must be matched by equally co-operative legislative work, which is what we are doing here. I welcome this legislation and thank the Minister for bringing it forward.

Ms Tuffy: I am in favour of the principle of mutual assistance between countries, particularly EU member states, to solve crime. I wish to raise with the Minister a number of points regarding certain sections. He might clarify, if he can, the position and that will enable me to table amendments on Committee Stage, if necessary. These questions came to mind during the debate and they may be considered out of context but they are points I noticed relating to sections 25 and 26, which provide that material can be intercepted from another country before consent to do so is obtained from the other state. Such consent may not be given retrospectively, although it can be given. In that context, it allows the other state to require that we will not use the material intercepted. Why not simply provide that such consent must be given in the first instance? If consent is required, surely it should be applied for before the act of intercepting the material is carried out.

It also provides under sections 25(4)(b)(i) and (ii) that even before consent is granted the material may be intercepted and used. The material could have been used even if that state eventually refuses consent.

Are sections 25(1) and (2) numbered correctly? It is not clear from them whether the person has to be in the other territory. In respect of section 26 the Minister can refuse another state which does something similar on various grounds, including that the offence in question is politically motivated. This raises the question of the provision that can be used before consent is given. The motive for doing so may be political. I would appreciate any

1 o'clock

[Ms Tuffy.]

clarification the Minister can provide on these issues in his reply.

Section 26(5) provides that the Minister can decide the material already intercepted may not be used and can make an order in that regard. What if the material has already been used under the previous provision I mentioned? Could the provision be subject to legal challenge? I hope the Minister received the advice of the Attorney General on that point.

Section 27(d) provides that an authorised undertaking in this State “can facilitate interception of the messages by accessing interception equipment in a member state”. This obliges a company here to do something in another state. Could that be challenged legally here by somebody invoking constitutional or other rights? What happens if the company does not receive the necessary co-operation from the other side or the other company has a problem with this, such as a belief that it is inappropriate to allow that equipment be used for that purpose or that there is a political offence involved? The section envisages two separate companies but given the nature of corporations, it could involve the same company or its subsidiary. Is it possible that the section could be open to abuse in that regard?

Unlike the other sections which contain protections to provide for the Minister’s consent or notices of how something should be implemented, or a procedure being determined in court, there is no such provision in sections 27 and 28.

On a technical point, I note under section 28(6)(a) a fine is specified whereas no amount is given in (b). Does that need to be addressed?

While I have no problem with the Bill in general, it is important that people’s rights are protected. Our Constitution provides for fair procedures in our legal system. Will the Minister clarify the type of material that can be intercepted and what he means by “telecommunications material”? Does that involve the content of phone calls, e-mails and so on?

Finally, I am not sure whether the Cathaoirleach will allow me to proceed with my next question but the Leader says that if a Minister is in the House we should ask any questions that are on our minds.

The Minister will be here for a long time.

An Cathaoirleach: The Senator may ask the question but the Minister will not reply immediately.

Ms Tuffy: He does not have to reply.

There is an appeal on the Minister’s desk about Kunle, a student from Palmerstown. I made inquiries about the course he is doing in Greenhills College. It is a one-year course in engineering technology which will give him a FETAC qualification. He will finish his last exam on 12 May this year.

An Cathaoirleach: I am not sure that is relevant.

Ms Tuffy: I wish to put one very quick point to the Minister.

An Cathaoirleach: The Senator may put a point on the Bill.

Ms Tuffy: Will the Minister allow the student finish the course and then review the position? If, arising out of this course he gets a place in an institute of technology, or if he gets a job here, the case can be reviewed further. He is in the middle of doing a course and the Minister feels strongly that people should receive an education and complete their qualifications. That was a factor in his original decision. I would like him to consider this case again. The student is mid-way through a course that will provide further opportunities. Will the Minister let the student complete his course at which point a decision can be taken?

An Cathaoirleach: I wonder if individual cases should be mentioned.

Mr. Cummins: The Senator was looking for mutual assistance.

Mr. Kett: I welcome the Minister to the House. For a moment I was going to take his excellent lead and speak as Gaeilge but I decided to perfect the English first, the better part of valour. I welcome also the fine Bill the Minister has placed before the House. It gives greater effect to existing domestic laws by offering mutual assistance for ourselves, our European partners and others in the fight against terrorism and organised crime. It will also facilitate better detection and prosecution.

There is worldwide recognition of the need for a co-ordinated and concerted effort to aid the detection of, and fight against, organised criminals and terrorists. We know these people do not uphold the sanctity of human life or tolerate differing views. Our response must be to protect and uphold those values and ensure we face down terrorists and give our people and society in general a better way of life.

Globalisation has brought many economic benefits but because it is easier to cross borders it has also allowed the evil of terrorism to grow. We have a duty as a member state of the United Nations and the European Union to enact legislation that brings us into line with other states and enables us to respond to terrorism. Unfortunately, we have had to face down terrorism on this island for many years but perhaps because of that we have better domestic legislation to deal with the threat than many of our counterparts in Europe. That threat, however, was posed by indigenous groups and our legislation needs a broader dimension. We have enacted many fine

Bills under the watchful eye of the Minister in terms which have provided that broader dimension. In hurling parlance we are doubling on that work today by further enhancing the legislation.

I refer to the Criminal Justice (Terrorist Offences) Act, the Proceeds of Crime (Amendment) Act, the Criminal Justice (Joint Investigation Teams) Act and the Criminal Justice (Illicit Traffic by Sea) Act. Many of these Acts challenge the drug barons and are useful instruments for dealing with these people. We know how little value they place on human life as they destroy it daily. The actions of terrorists in America, Madrid and London serve to show us exactly what we need to do, and how diligent and effective our legislation must be.

The link between poverty and global security cannot be overstated. Poverty is the ultimate endemic threat. If the Government can maintain its resolve on globalised terrorism and tackle poverty in the same way, then it will have an additional aid in the fight for global security. The majority of atrocities are carried out by secret organisations, hell bent on undermining the governments of the world and peaceful co-existence. Their ability to gain recruits is often born out of the type of economic and social justice which is upheld in some countries. Such recruits are often drawn to political movements or terrorist organisations in which they achieve a self-worth which they do not perceive themselves to possess in their existing situation which is often one of poverty. It may be necessary to define "poverty" before we go about tackling it.

This island has many examples of people who have found self-worth at the right end of a gun and the difficulties encountered by these people dealing with normal society in more peaceful times when they are no longer regarded as the hard man with the beret or the uniform.

This Bill provides for the provision of financial information such as bank transactions to other states for criminal investigation purposes and this is to be commended as an excellent element. The Criminal Assets Bureau was enabled by legislation to put pressure on drug lords and their organisations and to take on the criminals and fight them effectively. There have been many instances of the success of the Proceeds of Crime Act whereby the ill-gotten gains of these warlords have been confiscated, including a recent example in County Donegal. This legislation also forced many so-called astute drug barons out of the country; unfortunately they found their way to sunnier climes in Spain and other places from where they are plying their trade and supplying the Irish market. It may be because they are exclusively supplying the Irish market that the Spanish authorities are not taking too much notice of them which is unfortunate. This Bill and the existing legislation is helping to track down these individuals and to confiscate their ill-gotten gains whether here or in another country.

The Bill contains protections for the individual and for the security of the State. It states that assistance can be refused when it is believed it would be likely to prejudice the sovereignty and security of the State or would be contrary to public policy. It also protects the individual in that assistance can be refused if there are reasonable grounds for doubting the reasons for the request. The question of civil liberties has been utmost in the Minister's mind and his legislation has always been fair-minded and protective of those elements which require protection. I wish the Bill well.

Dr. Henry: I apologise to the Minister for not being present in the House for his contribution. I do not think the public understands that Members of the Oireachtas are supposed to be in three places at once. As we all know, to be in two places is quite simple but when it comes to being in three places, it becomes a little more difficult.

I welcome the legislation and it will have my support. I am concerned it will not address two areas but I would be comforted to know if it did. Complaints of corruption in African governments are frequently made. I go to Africa quite often and I have heard complaints there that if the wealth of those Africans who are described as being corrupt — and they are not all described as being politicians — was not taken in so readily by European countries and by America, it would be much easier for those who want to control the situation in African countries to do so. During a recent visit to Nigeria I was informed that people buy a considerable amount of property here with what they described to me as money which has been given for favours. I was told by them that they would not have half as many immigrants trying to come into Ireland if that money was invested within Nigeria to improve the employment situation. I am doubtful that this legislation will help that situation as it would seem that this money comes here directly and not through other European countries.

I have been told this in other countries besides Nigeria. There are constant reports of billions of sterling, dollars and euro coming out of Africa and being secreted in property and in the banks of European countries and America. I hope this legislation could deal with this problem but I do not know if that is possible.

I refer to another area where I am unsure whether this legislation will be of assistance. I spoke at a conference in Edo state organised by the governor's wife, Her Excellency Eki Igbinedion. She has organised an initiative to try to stop the trafficking of women and children from Nigeria. The children in general are trafficked to other states in Africa for use as cheap labour but the women are trafficked to Europe. She is bringing girls back from Europe but has faced opposition to this initiative from the parents of the girls who were very grateful for the remittances and were not asking how the money

[Dr. Henry.]

had been earned. She informed me it would be a great assistance if Ireland could take action regarding women entering the country on false passports. The Minister has spoken on this issue. These women often do not realise what they are getting involved in. Eki Igbinedion has set up skills centres in Benin city to educate women and help them find better types of careers.

Apparently it has become essential for Dublin's adult tourism industry to have clubs where naked women dance. I regard it as amazing that we all managed for years without them but it seems they are essential now. I doubt if girls from Dublin are dancing in front of the neighbours. Any raids on these clubs show that ten out of 15 girls are non-nationals without the required work permits. Some of these people are coming through other European countries.

Could we make a concerted effort to put a stop to this criminal activity, which is now the second most lucrative form of crime after drug dealing? Dealing in human flesh is shocking. It is not remotely amusing that we have people coming in here, supplied by the Russian Mafia, from Moldova and through Albania to Italy. It is an appalling trade. It is going back to slavery again and it is extraordinary to think that we should have any involvement in it. If this legislation could be used in any way to address that matter, it should be done. If such action were taken, great gratitude would be expressed not only by me and others in this country but also by those in other countries from where these people are being sourced and shipped.

Dr. Mansergh: I agree with the cogent points made by Senator Henry. Whether they are dealt with in this legislation or otherwise they are well worthy of the Minister's attention.

I welcome the Minister to the House. I also welcome the legislation before us. I am not a great expert in the fields of justice and security but I wish to express my political support for the importance of the fight against crime, including terrorism, as well as improving the security of our people and our country. In the modern world one is dealing with extraordinarily sophisticated communications, financial networks and ease of transport from one jurisdiction to another. If crime is becoming globalised, therefore, one must also globalise the means of fighting it. That is easier to do when countries share the same democratic values. There are safeguards against the abuse of power in the legislation but, by and large, we are dealing with countries in the European Union that share our values.

Having read the legislation, it seems that quite a lot of it will, in practice, concern Irish citizens wanted for criminal offences who have fled the country to reside abroad. We should not tolerate what the tabloids used to call the "costa del crime". Wherever people hide they should be

extraditable and their assets should be retrievable.

In this sort of debate much time used to be taken up by the finer concerns of civil liberties. It is not that I regard civil liberties as unimportant but the right approach is to address clear abuses when they occur — hopefully they will be few and far between in this jurisdiction — rather than pulling one's punches legislatively because of remote and theoretical fears.

I was struck by what my colleague, Senator Kett, said about the association of poverty and crime. I have always been intrigued by the fact that when there was a huge amount of absolute poverty — not just relative poverty — in this country in the late 1950s and early 1960s, it was historically the time when crime levels were at their lowest. I am afraid that crime is also related to opportunities to make wealth illicitly. Undoubtedly, in a society such as ours, there are infinitely more opportunities today to make illicit wealth than perhaps was the case 40 years ago.

Democratic governments must not allow small organisations, bands or gangs to usurp their authority. There is quite a lot of that going on. One can argue the merits or demerits of the authorities allowing a parade last Saturday but the duly constituted, democratic and lawful authorities decided to permit it. It was not for anybody else to decide that it should not take place. In the world of crime and paramilitaries there are people who see themselves as some kind of shadowy parallel authority which, in some instances, decides what is legal or illegal. They do so not according to international or Irish law but merely according to their own imaginary doctrines. I know the Minister does not need much urging in this regard but it is important to uphold firmly the values of democracy and the rule of law *vis-à-vis* anyone who would challenge them.

Minister for Justice, Equality and Law Reform

(Mr. M. McDowell): Gabhaim buíochas don Teach as ucht an díospóireachta seo. Bhí sé mar phléisiúir dom an Ghaeilge a chloisteáil sa Teach. Cé nach bhfuil mé chomh líofa le Baill den Teach, caithfidh mé úsáid a bhaint as an teanga náisiúnta sna Tithe agus an teanga a choimeád beo agus láidir i gcúrsaí náisiúnta an Stáit.

Many points have been made in this debate and it would not be open to me to answer many of them fairly or squarely. For example, Senator Tuffy raised a number of technical points the answer to most of which lies in the basic convention texts from the European Union and elsewhere. We will come back to those points on Committee Stage.

Senator Cummins asked how it is that we have taken this long to get this far. The legislation has been delayed in order to allow for the provisions of three instruments in 2003 to be given effect to in the Bill. They are set out in the Bill. There is also the question of priorities. My Department is currently dealing with 14 pieces of legislation in

the criminal law area while 27 EU, UN and Council of Europe instruments are being negotiated. Some of these coincide or overlap, so it is difficult to know whether one should constantly come in with a series of one-off Bills or wait until one has some work accumulated and attempt to deal with a number of instruments in the same area. Second Stage debates in each House take up a lot of legislative time and with regard to mutual assistance the view taken was that it was sensible to wait for an accumulation of instruments to be dealt with in one legislative package. That is what we have tried to do. Moreover, considering the staff numbers in my Department and the number of draftspersons in the Office of the Attorney General, it is not easy to marshal all the resources all the time to produce instant responses to international instruments to which we are party. Nor have I mentioned legislation which I hope this House will shortly see, such as defamation, land law and civil partnership Bills, which are constantly being worked on in different parts of the apparatus of State. One must be a little patient at times although I know that is difficult.

Senator Kett made a good point echoed by other speakers here today. We live in a totally different world. For most of us here, in our lifetime travel was a rarity and those who in any society could expect to travel, apart from migratory travel, were a small elite. We are now in a world of mass transportation. People can move here and there with the greatest of ease. We are also in a different political climate in that people are entitled to travel in a way in which they previously were not. An Irish person is entitled to go to the "costa del crime" or wherever and buy a villa there, which was not possible in the past. There is migration of capital, of enterprise and of workforces. We live in a totally different world and must bear in mind that criminality will transform itself to accommodate and avail of the opportunities which this vastly different globalised transient world affords it. That is our context.

Senator Quinn raised some interesting points about this legislation and said it did not go far enough. His fundamental point is that the legislation seems to be a patchwork of individual responses put together in response to individual issues. For example, within the European Union he sees an analogy with the situation which exists in America. He sees a big political space or area where activity is taking place and he queries if it is possible or even remotely practical in this day and age to live as isolated member states in a European Union.

Senator Quinn made the point that there is now a fashion against integration, or at least a question mark hanging over it for the past couple of years. I acknowledge the force of a number of points he made but ask for the following to be taken into the balance. When one creates a European continental system and all the power the

European Union potentially has, then unless one has countervailing mechanisms which are effective, and not just on paper, and a shared concept of the rule of law, and an absolute sense of shared values and methods which are universal, that is a very dangerous enterprise. It is not stated often enough in Ireland that to create a massive European superpower which is not as rooted as the American superpower is in democracy and the rule of law, and with a shared commitment to those values of everyone in the political community which is the United States, would be very dangerous. I ask this House to consider whether we feel the same sense of ownership of the European Court of Justice, or the court in Strasbourg, as the American people do of their Supreme Court and their legal system. The answer must be that we do not. Whether we will or not is different, but we do not.

While one can on occasion be frustrated by different legal systems in the European Union, I do not want to throw the baby out with the bath water. In this country, as in a number of others, we have a constitutional system based on the rule of law, namely, the common law, adversarial justice system involving a Judiciary which is radically different in some respects from the judiciary in a Napoleonic system in being an arbitral Judiciary, a third pillar of the State, manifestly independent of this House. A judge's job is not a career job one takes up at the age of 20 and proceeds upwards to the top like a diplomat in Iveagh House, rather we confer, on people chosen in their 40s, 50s and 60s, huge power to strike down Acts of our Parliament, with one judge sitting one afternoon in a High Court in Dublin.

That is the system used by the Americans, Australians, Canadians and New Zealanders, and to some extent is the one used in the United Kingdom, on which our system and the American system were modelled. When crisis came in democracy in the dark days of the 1930s, when everyone was fleeing from liberal democracy and even the notion of the liberal economic order was regarded as *passé*, to be thrown aside and when, after the 1920 Wall Street crash, everything was in the valley of darkness, it was the common law system and the rule of law which were the only bulwarks against fascism and totalitarianism of every kind.

People may argue it one way or another but it is a curious fact that even if one looks at countries like India, and our own, it is this hugely powerful judicial influence in a society which has kept it from falling into the hands of one extremist movement or another. If one looks at the Western hemisphere, is it strange that north of the Rio Grande, whatever that area's faults, democracy is deeply rooted, and south of that river the area has been in non-stop crisis for the past 200 years. I make this point to emphasise that we have something here of immense value and should never be tempted to throw it away unnecessarily

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in order to further the interests of legal efficiency, unless we are equally clear that what we are creating will guarantee us the rights which were the bulwark against despotism and totalitarianism in the past.

Regarding the European project, I believe in the partnership rather than the strongly federalist-integrationist view, but however it develops, it is certain that it could be immensely dangerous unless built solidly on durable, workable, proven systems of accountability and counterbalance because, in the past, Europe has not been signally successful at resisting movements which have got out of hand.

The difference between the experience of the United States and that of contemporary Europe is that in the United States, when the founding fathers went about their business in the late 18th century, even with different variations they had one society, one language, one set of fundamental beliefs even if there were sectarian differences of a small kind among them, and one system of law. That is what they started with. In Europe, we started with a diverse history and language. Most politicians in Europe still cannot understand each other when they speak at a public meeting. They certainly do not understand each other's history, to the same extent as did the colonialists who turned into republic builders in north America.

I am conscious that Europe as a project in the early years of the 21st century is radically different to the building of federal America in the later years of the 18th century. That is not to state that I am hostile to the European Union project. I believe it is unhistorical to see it in the context of an emerging United States of America. If Europe ever moves towards deeper and greater integration, it will do so along a different path. It is unhistoric to view Europe as a parallel with the United States model.

In Europe, we have arrived at the view that we will not have legal uniformity and that the systems will not be the same across Europe. To the maximum possible extent, we will engage in mutual recognition. In the United States, a court is a court and a jury is a jury. There are differences between states but at least a lawyer from one state can walk into a court in another state and know exactly what is happening, even if it is not conducted in precisely the same way as in his or her home state. Czechoslovakia is different to Ireland. It has administrative courts and administrative fines. In some societies, justice is mainly paper driven while in Ireland and Britain, our system is underlined by a direct confrontational adversarial trial process with oral evidence.

My position is not conservative. However, it is cautious in one respect. Senators spoke about the right to silence and inferences being drawn from silence. We must marry our system and concept of rights and values with those of others through the principle of mutual recognition, not through approximation and harmonisation. Our system is

not capable of being diluted slightly so as to arrive at the same system as the Napoleonic code. It is not a matter of a little tweaking it here and there to make both systems more or less the same. The systems are fundamentally different in some respects. Senator Kett kindly recognised that what I attempt to do in all legislation I bring before the House is to preserve our concept of constitutional rights, but nonetheless make it compatible with other systems.

I share Senator Quinn's impatience that this may seem to be a series of *ad hoc* responses to individual situations. That is so. However, if we are to have an FBI for Europe, who will be in charge of it? To whom will it be answerable? What court will control it? When it steps out of line who will bring it back? Many countries in Europe have, in the past, found they were not in a position to do so because their systems did not have at its heart notions such as *habeas corpus*, an independent Judiciary, separation between the Legislature and the Executive and the right of the Judiciary to bring all of the organs of state, particularly the Executive and policing, firmly under control. Those are the fundamental issues we must consider at some length.

I have strayed from the substance of what we are dealing with but I felt I should do so because Senator Quinn had taken the time to make the point that perhaps this was radically insufficient. I sometimes share his sense of frustration when I deal with these measures. However, I sound this counterpoint to the attractive tune he played. While we must get our act together, what we put in place must be robust, workable and compatible with our values.

The Bill is immensely complex and, I regret to state, will take up much of our time on Committee Stage teasing out issues such as those raised by Senator Tuffy. I look forward to that debate. In the modern world, there is no substitute for providing ourselves some basis on which to request assistance from foreign states, be they in the European Union or not, and conversely, to afford those foreign states our co-operation. When I started at the Bar, I heard about letters rogatory at criminal law lectures but I never believed they happened. Now, they have become commonplace. The real problem is that we must build into our legal, political and administrative culture this absolute obligation to be open to our moral obligation to assist other systems of justice, similar and dissimilar to our own, to function. Otherwise, we create difficulties.

Senator Henry raised a couple of points. She mentioned the question of corruption. Proceeds of crime in Ireland, regardless of whether the crime took place outside or inside Ireland, are subject to the Criminal Assets Bureau. However, building up evidence to prove that a corrupt minister in a particular country received those assets and placed them in Ireland is more difficult. More law must be made and more conventions must be put in place to stamp out corruption, such as mak-

ing it unlawful for Irish banks to handle the proceeds of corruption abroad or for Irish people to corrupt others or take part in corrupt activity abroad. Some of us may have heard today about the terrible famine in Kenya, and listened to the stories about where much of the money sent by international donors went and how it did not reach the people who should receive it.

The other point raised by Senator Henry was that of trafficking. We have an elaborate code to combat trafficking, particularly regarding people trafficked for sexual exploitation. I fully agree with Senator Henry and I do not use the term “the sex industry” because I do not believe sex is capable of being industrialised. It is not the proper subject of commercial exploitation. That is my view. I claim to be a liberal. On occasion, we make it a commodity in a way which is foolish.

I have major problems with places such as Stringfellows opening in Dublin. However strict the conditions laid down by a judge in a licence application, there will be copycat bodies. Who will police this? Are the gardaí to spend their time checking whether people make physical contact with each other or what they do on these premises? If prostitution does not travel in the same coach on the same train as the commercialisation of sexuality, it is linked a few coaches back. I wonder whether we do ourselves any favours in this regard. When prostitution comes, organised crime is a few coaches back. When the train of commercialised sexuality leaves the station, prostitution comes a few coaches behind and in the guard’s van comes organised crime. That train should not be allowed to leave the station. I hope I have said enough, and that being as irrelevant as I have has kept the House happy.

Question put and agreed to.

An Cathaoirleach: When is it proposed to take Committee Stage?

Mr. Kett: Next Tuesday.

Committee Stage ordered for Tuesday, 7 March 2006.

Sitting suspended at 1.50 p.m. and resumed at 2.20 p.m.

Public Order Offences: Statements.

Minister for Justice, Equality and Law Reform (Mr. M. McDowell): I am grateful for this opportunity to address Senators on the disgraceful behaviour of a small thuggish element who brought shame on themselves in Dublin on 25 February.

A demonstration had been organised by the victims’ group FAIR, families acting for innocent relatives. This organisation is composed of persons who have lost a number of family members at the hands of republican subversives. FAIR claims to represent some of the victims of so-

called republican paramilitarism. The summary of the Garda report detailing its planning for the demonstration is appended to my contribution and has been distributed among Members.

While I may not agree with most of the positions adopted by FAIR, particularly as they relate to the efforts of the Irish and British Governments to bring about lasting peace and a return to democratic norms in Northern Ireland, I will uphold the right of the victims of violence to present their points of view in a peaceful and democratic manner. The stated object of the march was to highlight the plight of victims to the people of Dublin and to the Government here. The agreement with the Garda was that there would be no sectarian music of any kind and there would be no paramilitary flags displayed. Union and Ulster flags, however, were to be carried and victims’ families could display pictures of loved ones who had been killed. The parade was supported by the Orange Order; however, members of that order were not to parade in their colours.

It is a fundamental right in a democracy that citizens can demonstrate publicly and peacefully. This was not allowed to happen last Saturday. As Senators will have witnessed on television screens and in newspaper photographs, the right to assemble peaceably — a right guaranteed by Article 40 of our Constitution, which also guarantees the right to freedom of expression — was denied to fellow Irish men and women, even if they might resist that description of themselves. It matters not a whit that many of us here would be in profound disagreement with the politics of the people in question. The very essence of democracy is that all voices can be heard.

I can only repeat in the strongest possible terms — and I know that Senators will join me in this — my outright condemnation of the subversive, sectarian and anti-democratic element which brought such mayhem to the streets of our capital. They will be pursued and brought to justice. The Garda Commissioner has told me that very careful investigation is ongoing as regards all the evidence available, particularly the CCTV footage, to identify the culprits and participants and to bring those who have not already been arrested, to justice.

I believe the House will also agree there were scenes of outrageous fascist behaviour as regards foreign immigrant workers, both on the streets and in shops, who were attacked very viciously on a random basis, simply because of the colour of their skin. We cannot and will not allow witless thugs to decide who has civil liberties in our society and who does not. Their behaviour was the antithesis of true republicanism, it subverts our Constitution and it cannot be tolerated. Aside from placing the public in danger and damaging property, a propaganda victory of sorts has been handed to those who for their own reasons seek to portray our society as intolerant and ungenerous. This, of course, grossly misrep-

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resents the position of the vast majority of people in this jurisdiction who wished the parade to proceed without trouble.

Questions have been raised as to whether it was right to let the parade go ahead but the right to demonstrate peacefully has long been a tradition. Indeed, it would be unusual if some form of demonstration did not take place on any weekend in our capital. In the vast majority of cases, such demonstrations proceed without incident. Various manifestations of the so-called republican movement, which in fact traduces genuine republicanism, regularly demonstrate in Dublin.

When gardaí were made aware of the proposed march, they initiated a process of working closely with the people involved so as to allow it to take place safely and with the minimum of disruption. No Member of this House could argue that the Garda Síochána should have maintained, on the basis of the available information, that the march be cancelled. To do so would have set at nought the rights of the people involved for the sake of a quiet life. In dealing with this matter, the Garda Síochána had to take difficult decisions to reconcile competing requirements, including, deciding on the day that it would not be safe for the march to proceed as proposed and making alternative arrangements for the marchers to demonstrate outside the Houses of the Oireachtas.

The response of the Garda Síochána to the sudden maelstrom of violence which engulfed Dublin city centre has been a focus of debate. I am happy to rehearse the comments I made in the other House on Tuesday — as Minister for Justice, Equality and Law Reform I am politically accountable for the Garda Síochána and I stand four square behind our gardaí, the preparations they made and the actions they took. I stand behind every member of the force who had to deal with the events as they unfolded and who performed with bravery and forbearance in the face of a vicious assault. There has been no suggestion that gardaí used untoward violence on any person or involved any innocent bystander in their operations. I would like to take this opportunity to again convey to the injured gardaí and their families my wishes for a speedy recovery and gratitude for their courage.

I hope that the publication of the Garda plans for the demonstration has put an end to any ill-informed speculation that gardaí had somehow failed to prepare for Saturday's demonstration. A comprehensive operational policing plan was put in place and, while lessons should and will be learned from the way events unfolded, I have full confidence in the Garda's preparations. Given the information available in advance of the march, it is not clear to me how the Garda could have behaved differently. If a ring of steel had been prepared, with a three-person deep escort for the march and the closure of streets, pubs and shops, that would have defeated the purpose of the march and, as Senator Maurice Hayes has

noted, could have had the counter effect of creating more appetite for violence and confrontation.

The decision was made by the Garda authorities to take a relatively low key policing approach, in which every opportunity would be given to allow the event to pass off normally and peacefully. The demonstrators were to be allowed to process through the capital, just as the small number of anticipated counter demonstrators were to be allowed their right to protest. The policing plan for the day provided, however, for a significantly higher number of gardaí than would normally be deployed for a protest march on the scale envisaged.

The number of people, the hostility and naked aggression faced by gardaí was unexpected. The Garda, from open and other sources, were aware and prepared for opposition to the FAIR demonstration and, in particular, the intention of Republican Sinn Féin to mount a peaceful counter demonstration. There was no credible intelligence, however, that extreme violence would be used or that so many others would become involved. One of the questions that the Garda investigation into these confrontations will seek to answer concerns the level of pre-planning and co-ordination involved in Saturday's trouble. If it transpires that extreme political elements orchestrated the dreadful scenes of last weekend and planned the vicious attacks that saw petrol bombs launched at Garda officers, then once again they will have been guilty of shaming themselves and of setting back the cause of Irish unity. That Republican Sinn Féin declined to engage with gardaí preparing to police the demonstration or give any advance information as to its intentions in carrying out the counter protest was despicable and should be condemned by all shades of opinion in this House. We have only one police force and it is the duty of every citizen to cooperate with it. Nobody has the right to withhold information from the Garda Síochána or to act in secrecy in matters of this kind.

As is normal practice, a full debriefing will now take place with personnel from each of the sections involved in the operation, in which the evidence will be studied and statements collated. Video footage taken by gardaí and others will also be carefully examined. A review of the operation will be undertaken in the context of how future events might be handled and appropriate actions will be taken. The Commissioner will consider all aspects of the operation and will report to me on any requirements for the future. I am confident that any ensuing lessons will be learned. Saturday's events suggest risks which will have to be addressed in terms of other the events that will take place in the capital in the near future.

We should not be distracted from the central feature of this shameful episode. It was a vicious attempt to prevent democratic protest in our city streets by people who do not understand what

republicanism means or what the green, white and orange tricolour — our national flag — stands for. This House must send the message that Irish people have taken an historic step by overwhelmingly endorsing the Good Friday Agreement, which is based on the principle of reconciliation rather than polarisation and division. We all desire an island of tolerance, mutual respect for differing traditions and, above all, peace. A small rabble, however vicious and cowardly, will not deter us.

Mr. B. Hayes: May I share my time with two of my colleagues so that I will speak for four minutes and my colleagues for three each?

An Cathaoirleach: Is that agreed? Agreed.

Mr. B. Hayes: I welcome the Minister to the House and thank the Leader for organising this debate so rapidly. The Minister stated that he has the responsibility to stand four square behind the Garda Síochána with regard to last Saturday's events. However, that is not only the responsibility of the Minister for Justice, Equality and Law Reform but also of the Houses of the Oireachtas. The Garda Síochána is not a creature or arm of the Government. It was established under statute dating back to 1924 and any amendment to this legislation must pass through these Houses. Thus, it is demonstrably a matter for all shades of political opinion in this and the other House to stand four square behind the Garda in terms of last Saturday's appalling events.

The Minister rightly condemned the actions of Republican Sinn Féin and, in recent days, I have noted an inability on the part of that tiny organisation to clearly state that people with information on the riots should come forward to the Garda. It must be condemned for that inability and, as long as it refuses to tell its supporters and other apparatchiks that it is unacceptable not to cooperate with the Garda, it must remain outside the political norm.

We owe a debt of gratitude to the gardaí who stood by the Republic despite intense provocation. Every shade of political opinion on this island has a right to march from Parnell Square to Leinster House. In this Republic, it is the traditional route used by a group of people who wish to ensure their voice is heard. It is as important for these people to be able to march outside the GPO as any other group. I am worried about the fact that a virulent neo-nationalism has taken hold in this country, largely due to the rise of Sinn Féin in recent years. Perhaps, we could revisit this issue at a later date.

A vacuum has been created for many young people. As members of the political process, the constitutional parties of this Republic have left this vacuum in existence to be exploited by those who trade in a new revisionist form of history which seeks to justify every act carried out over the past 35 years. Weasel words have been

uttered by those who should know better and provocative comments have been made. Ill-tempered remarks were made in the House yesterday about the bigotry of the Orange Order. This is not the time for such comments. We must show leadership where this vacuum has been created.

In respect of the upcoming St. Patrick's Day festival, will the Minister consider banning the sale of alcohol from off-licences in the vicinity of the parade in Dublin? Much of what took place last Saturday was drink-fuelled. On the Order of Business this morning, I raised the possibility of banning the sale of alcohol from off-licences in the run-up to the parade as a way of ensuring that the parade remains a family occasion, the city remains a space for families and the parade remains a celebration of our national feast day, as opposed to turning into the kind of drink-fuelled binge we witnessed last Saturday and on previous occasions.

I wish the gardaí well, particularly those injured as a result of this outrage. We have a responsibility to stand behind the gardaí and ensure this outrage never occurs again.

Mr. Feighan: I also condemn the thugs who brought shame on our capital city and the flag. People state that the troublemakers brought shame on themselves but these people have no shame and do not care whether they bring shame on themselves. Unfortunately, the thuggish elements in our society had a platform from which to attack democracy. We must ensure that these people will not get the same platform on 17 March 2006.

I am very concerned that there will be a repeat of last Saturday's trouble. These people will be fuelled by drink and perhaps to a lesser extent, by drugs. What provisions have been put in place by the Minister to ensure there will be no further outbreak of trouble on St. Patrick's Day in our capital or some of the major towns around the country? I am worried that copycat violence may occur and that these thugs and neo-nationalist criminals will simply look for any excuse to cause trouble. I hope gardaí will receive the proper resources with which to deal with the threat of such trouble. The Minister will receive the complete support of everyone in this House to ensure this year's St. Patrick's Day is incident-free. I am worried about a possible outbreak of copycat violence so soon after this unfortunate incident. I stand firmly behind the Garda and everyone who monitored last Saturday's march.

We must ask ourselves questions because we can learn from this incident. We should possibly ask ourselves questions about co-ordination among those policing the march and the intelligence available to them. Perhaps gardaí should examine their own conduct. Is it possible to police a march with inadequate intelligence? We must do more to infiltrate these groups of vicious thugs and ensure there is no repeat of the trouble caused by them.

Ms Terry: I thank the Minister for coming to the House at such short notice to allow Members to voice our concerns about what took place on Saturday and pay our compliments to the gardaí on the way in which they managed last weekend's riots. The riots brought shame on us all. The people who caused such mayhem represented our country. The trouble was seen by visitors to Dublin and people across the world on television. The trouble brought shame on all of us at a time when we thought bridges had been built and progress had been made with regard to our friends in the North.

I give my full support to the Minister and the Garda in their efforts to ensure gardaí are given the resources to tackle this type of violence so it does not recur. Despite their preparations, gardaí could not anticipate that such an event would take place. We must wipe out the element in Irish society which seizes any opportunity to create trouble. We must eliminate this element in every town and village in the country and make it clear that this type of behaviour will not be tolerated.

This violent behaviour begins with anti-social behaviour. We witnessed something on our streets which we never want to see repeated. We support the Minister and gardaí in their efforts to do whatever is necessary to combat this type of behaviour so we never again see petrol bombs and other missiles being thrown at gardaí and witness the force being treated with such contempt.

I share my colleagues' concerns about the St. Patrick's Day parade or any other parade which could be held in the future. Once violence on the scale of that which occurred on Saturday occurs, it is likely to recur. The young people involved in the violence appear to get a buzz out of it. The people behind the violence or those who know people involved in orchestrating the violence, should come forward. We have heard certain people on the radio claiming they know who was involved in the violence. These people should have the courage to name those involved but they obviously do not have the courage of their convictions even though they claim to be in positions of authority in certain organisations. We can see that they will hide behind their organisations, which should not be tolerated. Therefore, the Minister, and particularly gardaí, have our full support.

Mr. Brady: I wish to share my time with Senator Jim Walsh.

An Cathaoirleach: Is that agreed? Agreed.

Mr. Brady: I thank the Minister for his remarks, which show how the vast majority of people, particularly those in Dublin, feel after the events of last Saturday. I also wholeheartedly condemn the scenes we witnessed in O'Connell Street and throughout the city last weekend. The naked violence and hatred displayed by a very

small and unrepresentative group brought shame on Dublin people.

During the week, some commentators laid the blame for the trouble on a small group of disaffected young people from the north inner city, which is wrong.

Ms O'Rourke: It is wrong.

Mr. Brady: The men I saw on O'Connell Street were adults and their accents were not those of Seán McDermott Street. The men with the ear-pieces and mobile phones were grown men. I look forward to the investigation and its results. It would be interesting to go through the names and addresses of those involved in the trouble.

I know some of the gardaí who were injured on Saturday. I am aware of the amount of consultation and planning that went into policing the march. The Garda could not have planned for the trouble because it was hidden and secret, but organised. The results of any investigation must be examined very carefully.

If anything good emerged from last Saturday's events, it might be that it opened people's eyes to what some of these groups are capable of. On one hand, millions of euros of taxpayers' money is poured into improving O'Connell Street and our capital city and attracting people to it, but on the other hand, the people behind the trouble do not care about the harm they cause and the effect they have on our economy, people and capital city. As the Minister noted, marches and protests are held in Dublin on most weekends, all of which pass off peacefully. It is unacceptable for certain people to hide behind so-called republicanism and use it as an excuse to cause mayhem and anarchy. We must take a stand in this regard. The events of last Saturday might open people's eyes and give us an idea of what we are up against.

I commend the gardaí and Dublin City Council for the way they handled the situation. I visited the area early on Sunday morning and Dublin City Council staff were still clearing up. The council had the area almost back to the way it was before the violence took place. The gardaí protected the people to the best of their ability. When one considers the naked violence that took place, it is a tribute to their training and professionalism that no one was killed.

I look forward to the results of the investigation. While we must take these issues seriously, we should not be afraid or worried about holding other events in the future. In a democracy, everyone is entitled to walk the streets without fear.

Mr. J. Walsh: I would like to join with all those who condemned the unfortunate events that arose in O'Connell Street on Saturday. It brought shame to those involved and did nothing for the image of this part of the island where there was potential to do good, which I regret.

In regard to the march itself, I know from my contacts with people in Northern Ireland that

people on both sides of the divide have suffered much hurt which will take a generation or generations to forget. I recall more than 20 years ago a very fine Unionist politician coming to New Ross for a twinning ceremony. Something he said remained with me. He asked that the pupils from the schools in the two towns should spend time with each other and stay in each other's homes so they would not make the mistakes we made. It said a lot about the whole history of the island. A short while afterwards, I discovered how hurt he was when a brother-in-law of his who was in the RUC was shot dead by the IRA.

There have been inquiries here into various instances where loyalists, and I have no doubt British security forces, were involved. We do not know how far up the political chain it went but people at reasonably high levels were implicated in these events. We are aware of the hurt felt 30 years later by the relatives of the victims of the Dublin and Monaghan bombings and the people in Northern Ireland who were killed as a consequence of that collusion. It is right and proper that people from both sides of the divide are fully facilitated in expressing their anguish in order to bring some sort of closure to what has happened to them.

I join Senator Brady and other Senators in congratulating the gardaí on the restraint they showed under the leadership of assistant commissioner Al McHugh, who is a fine police officer. They were correct in the approach they took. While there was some unjust criticism of what happened a few years ago on May Day, on this occasion their restraint beggared belief, for which they should be commended. I fully understand how the extent of the violence was not anticipated. Previously the gardaí had the use of water cannon and so on. This type of equipment should be sourced by the gardaí so that they can take effective action in such circumstances.

There are lessons to be learned from what happened on Saturday, one of which is whether to allow counter-protests in close proximity to sensitive marches. There are also lessons to be learned by the republican movement. We have had 30 years of violence and I have always felt that killing fellow Irishmen was never a route to achieving the objective of a united Ireland, which most people on this part of the island would share. If anything, it was counter-productive. We should have learned from this that there should be tolerance in society and we must take a much more pluralist approach to accepting divergence of opinion so that we can ultimately achieve an Ireland of which we can all be proud.

Unfortunately, the events on Saturday has handed a propaganda victory to the extremists on the other side of the political divide. It is regrettable that we may have missed an opportunity to influence people who may have travelled to the South for the first time to feel it is a country which is totally at variance with their viewpoint

of one that was born and built out of prejudice and so on. This is an opportunity lost.

Republicanism and the unity of Ireland is a noble aspiration, but it must not be contaminated by thuggery or any kind of loutish behaviour. We must give it credibility and gain support for it. The Good Friday Agreement has brought a lot to this country. However, it is important to recognise that because it is a compromised agreement, it is not a perfect document. Therefore, we must allow those who see the peace as just a step to an ultimate objective to make their protest and voice their opinion, but it must be done in a peaceful and dignified way and within the law.

Mr. O'Toole: I am pleased to have an opportunity to contribute to the debate and I appreciate the Minister's presence here. I disagree with many of the comments that have been made. I was disillusioned that within one hour of the events that took place last week we were either blaming the Garda or calling for the resignation of the Minister. That demeans politics.

I would make one plea — the Minister and Senator Walsh are as guilty as anyone in this regard — about something that angers me. If I am at home having a peaceful weekend and I hear thugs being described as republicans I feel a surge of anger. I understood from school that republicanism was where Protestant, Catholic and dissenter shared the same space and engaged and interacted with each other. The idea of describing these thugs as republicans is unacceptable. It would be better to call them fascists, neo-Nazis or something else. If they described themselves as Australians, would we accept it? They are merely taking on a proud title for which people in this country have fought over generations. These people are anything but republicans.

I chaired the liaison group for Co-Operation Ireland in this House, of which Senator Maurice Hayes is a member. We recently experienced something similar in a non-violent

3 o'clock way. One of the few places in Northern Ireland where one cannot distinguish between Catholics and Protestants is at a race meeting. The Down Royal race meeting had bomb scares on the last three occasions. I recently suggested to the manager of the Down Royal racecourse that a group of politicians from the South should attend the event on the next occasion. We resent and reject not allowing people to engage in events. I will be writing to Members regarding the Ulster Derby in Down Royal which will be held on the last Saturday in June.

I am aware why Senator Brian Hayes asked that pubs and off-licences be closed on St. Patrick's Day. While I know he is well motivated, I do not want the Minister to do so. I would like him to ask people to control their drinking. I do not want the Minister to close the pubs. Let us disgrace ourselves once more if we must. We will

[Mr. O'Toole.]

eventually get it right and learn to control ourselves.

I do not want an inquiry into the events of last Saturday. Instead, I want to know why a large proportion of our population apparently believes this march should not have taken place. Why have we produced several generations who do not understand the importance of protest and the right to demonstrate, and that our *raison d'être* for some 800 years has been to secure these rights? This question is more important than the rocks on O'Connell Street. The day we prevent free speech is the day it is all over.

Why have people like me, an educationalist, failed to inculcate the quality of tolerance in others? Although I do not normally quote clerics or well known Catholics,—

Mr. B. Hayes: Senator O'Toole would certainly do so.

Mr. O'Toole: —Cardinal John Henry Newman said the first quality of an educated person is tolerance.

Ms O'Rourke: Cardinal Newman was a different type of fellow.

Mr. O'Toole: Where is this tolerance? We have failed as politicians to inculcate an acceptance of diversity and difference in our community. There is no longer any space for difference. I would like to have an understanding of this deficiency because we could then solve the other problems. We can remove all the stones from O'Connell Street but that will not deter those who wish to riot. To mention another tenet of Catholicism; once one has decided to do it, one has already committed the sin.

There is one important lesson we can learn from this. Although I hate discussing private conversations, I refer to a private discussion I had with the Minister two years ago on the importance of 1916. I repeat what I said then, namely, it should not be merely a military commemoration. Those who fought in the GPO were poets, trade unionists, socialists, grocers, merchant princes and so on. The O'Rahilly, Ceannt, MacDonagh, Pearse — these were representatives of all sides of Irish life and should all be remembered.

On this day 84 years ago in the other House, a Fianna Fáil Deputy calumniated and detracted from the reputation of a decent RIC man who looked after Roger Casement in his hour of need in Tralee RIC barracks. This man, who had assisted in the foundation of the new Free State police force and was based in Boyle, County Roscommon, was destroyed on the record of this House. He did not survive the attack and had to leave the State, never to return. He was one of those decent Irish Catholic nationalists who were members of the RIC. My own county of Kerry gave more people to the RIC *pro rata* than any

other county. We must remember that these people suffered for us. They were charged with imposing the law but were pulled in two directions at once. Many were in favour of home rule but still worked for the State as it was. They saw the change taking place in Westminster and wanted it implemented according to the law of the land.

There are many aspects of 1916 and of the events of last week that we must consider. I agree that 1916 should be commemorated and that the military should be involved. I would be very unhappy, however, if only the military were involved. That is not the intention of most people. We must reflect the Ireland that has developed since then in all its aspects. I defy anybody — although I see a historian, Senator Mansergh, in our midst — to define the various groups who were active in the rising, including Cumann na mBan, the Irish Volunteers and so on. Who can do so?

The changes that are required are attitudinal. Why do we in this country no longer understand that words are important? There is a difference between nationalism and republicanism and we must ensure people understand that difference. There are still people in Leinster House, not necessarily in this Chamber, who firmly believe that the words “cherish all the children of the nation equally” are contained somewhere in the Constitution. I met one such man, who was elected by the people, last month. He holds this belief despite the fact that his own party, along with every other party, has spent 80 years ensuring they never were included.

This is the time to show we have grown up, are tolerant, understand the importance of difference, and can reach out and provide space for those with different views. A pluralist society is not one where there is space for everybody. It is a place where the engagement between different groups is positive.

Dr. Henry: I applaud what Senator O'Toole has said. For those of us who want a united Ireland, it is important that those who believe this march should not have been allowed realise there will be far more marches of this nature when we have a united Ireland. They will be coming down here a great deal more and now is as good a time as any other to get used to them. If they only come once a year now, when they are coming once a month it will seem far more normal.

Mr. Minihan: I welcome the Minister and thank him for participating in this debate so speedily. His speech and, more important, the brief from the Garda Commissioner clearly put to bed the claims that there was a lack of planning or thought in regard to this parade. We all rightfully agree that the right to demonstrate peacefully is a fundamental principle of the democracy in which we live. The essence of that democracy is the right of victims of violence to parade.

Why was this parade so different from the many other parades that pass through O'Connell Street? It is clear preparation went into it and that there was liaison with the groups involved. Based on this, the Garda made an operational decision on how to proceed. I contend the "soft hat" approach was correct. We do not need rings of steel around parades passing through O'Connell Street. As Senator Maurice Hayes correctly observed, such an approach could have led to the opposite of what we wished to achieve. I join previous speakers in condemning Republican Sinn Féin's refusal to co-operate with the efforts to prepare for the parade.

To those who say the parade should not have gone ahead, I ask what the political consequences of that decision might have been. What message would have gone out by a refusal on the part of the State to allow these people to march? We pay a price for our freedom and democracy in that we must stand by the institutions of the State when decisions are made to allow people protest or parade on the streets of our capital.

The questions I have in regard to the violence that took place are "Who?" and "Why?" The "who" are the people we have already identified and who will be identified. I hope the Garda will bring them to account for their actions. The amount of CCTV footage and other material available should ensure perpetrators come before the courts. A more important issue is the "why". Why were these people stirred up into such violent behaviour? It is in the examination of the "why" that I hope we will get some clear answers.

I have no doubt that the amount of co-ordination that was behind this violence is where the real problem lies. We will find answers by looking to the string-pullers and the smirky-faced puppeteers who orchestrated these people and wound them up. I heard on RTE Radio during the week about an e-mail from a teacher in Dublin who claimed young people were recruited outside schools on the Monday before the parade. Those less than 18 years of age were particularly targeted and were guaranteed a fight if they were to come to O'Connell Street on Saturday. These recruiters are the puppeteers who sat in the comfort of their own living rooms on Saturday night and observed the job had been well done and that they had achieved their objectives. This is the most important issue that we as politicians and society in general must address. There was evidence of this also in the riot that took place at a soccer match in Lansdowne Road some years ago. Again, the violence was orchestrated by those behind the scenes who were pulling the strings.

I compliment the gardaí on their courage, patience and tolerance. What started with verbal abuse quickly moved on to physical abuse, of which we have seen the pictures. The gardaí place themselves in these situations daily but on Saturday, they showed all of what is good and professional about their chosen career and the job

they do for the people on a regular basis. Looting, car burning, petrol bombing and violence occurred on the streets of Dublin as a result of what was triggered. We need to get those who set up that trigger. Shame was brought on the name of the republic. As a result of television coverage in the US, I received a call on Sunday asking what had happened in Dublin.

The Minister said there will be a Garda debrief. Operationally, I am sure gardaí will learn from it and that future events will be arranged and organised accordingly. However, we must also debrief ourselves. People have called for a public inquiry but I do not believe we need one. We need a public debate and this House must lead that debate. Given the profile of those involved in the rioting, we have a responsibility to educate and to counteract what is now being fomented in our society. We do not want that, as it is not the vision of Ireland held by the majority of people. We have a responsibility as politicians and I hope the Government will consider how we can encourage that public debate to educate our young people that this is not the way to go.

No one wants a return to the scenes we witnessed a number of years ago when there were regular parades in Dublin which required a huge Garda presence and military support. That is not the society in which we want to live. I hope our courts send out a clear message to the people and the international community when those involved in last Saturday's riots come before them, that we will not tolerate this behaviour. I wish a speedy recovery to gardaí injured last Saturday and congratulate the Garda on a job well done in difficult circumstances.

Ms O'Meara: I welcome the Minister. This is an important debate, particularly since we have had a few days to consider the events of last Saturday. A core issue, which was raised by other speakers, is the right of FAIR to march down O'Connell Street. Nobody in this House would deny it that right but some believe it should not have that right. That is a core issue for us and for our democracy and for the type of society to which we are committed. Everybody has spoken about a tolerant and diverse society but there is a solid view among some, which does not express itself often and which keeps fairly silent, that this organisation should not have come here last Saturday. That view is represented in sectarianism, racism and in an intolerance of diversity in Irish society. It is a view Members of this House would not share.

I echo what Senator O'Toole said. At what level have we, as politicians, educators, parents and communities, failed to bed down and inculcate the values of democracy, tolerance and diversity in this society? What was revealed last Saturday was frightening. We can say it was a small group of thugs and so on but it was organised and led. We know that element exists in every town in Ireland.

[Ms O'Meara.]

There are issues which have not been resolved. We do not have normality yet and we are some distance from a situation where FAIR or any group from the North can peacefully march down O'Connell Street. We do not know if that day will ever come but what can we do to work towards it? While it is important to condemn what happened last Saturday and learn lessons from it, we also need to be responsible for what we have not done. There is a level of complacency. We believed that because the Good Friday Agreement was passed by such a large majority, we had somehow reached a point of tolerance and diversity and that we had moved forward. We wanted to think we had moved forward but what happened last Saturday is evidence that, at some level, we have not, for which we need to take responsibility.

One of the most sickening scenes I saw on television was these thugs with the tricolour wrapped around them, which I saw around the time of the local elections in my town. This type of republicanism has turned into sectarianism, thuggery and violence, although I know the Minister has worked hard to reclaim republicanism for democracy, which is important for us to do. I am not sure a military parade on Easter Sunday will achieve that and I ask the Minister and the Government to listen to what Senator O'Toole said. We must look at the signals we are sending.

I refer to the Garda management of the event. I have read the briefing supplied and I am grateful for it. It looked as if the gardaí were not prepared for what happened last Saturday. A good friend of mine and her brother were in O'Connell Street last Saturday and they said they were afraid for the safety of the gardaí before the riot squad arrived. As Senator Minihan said, they adopted a soft cap approach. That is fine but the question must be asked as to whether they and our democracy were exposed. Lessons must be learned from this experience.

Ms Tuffy: I join in the condemnation of the actions of the rioters and I support the response of the Minister and the Garda. Many people have asked whether the riots could have been foreseen but it is easy to be wise in retrospect. Although there is obviously something latent there, this has never happened before and I was surprised by it. One must ask why it is happening now and who these people are. They are not representative of most Irish people and of republicanism in Ireland. These are issues at which we need to look as it will mar our enjoyment of events such as the 1916 celebrations. We will need to look at crowd control measures of the type we examined in London with the Minister where they have had to deal with this type of thing in the context of football matches and so on. There is a need to move ahead with the civilianisation of the Garda.

I refer to the debate on republicanism. The Labour Party is a republican party founded by

James Connolly. Two of his children were Members of the Seanad — his son Roddy was also a Labour Party Deputy and his daughter Nora Connolly was nominated to the Seanad by Fianna Fáil, although she was an Independent Senator. James Connolly was also an internationalist and his republicanism was tolerant and inclusive. When people write about Connolly, they all say he looked for common ground with people, even with those who differed with him. He would have been the exact opposite of those who rioted on Saturday.

I wish to take up a point my colleague, Deputy McManus, made about the 1916 celebrations. We need to make it an inclusive celebration. When we celebrate 1916, it should be a celebration of the ideas of the people involved, particularly those of a man like James Connolly who was such a humane person and whose ideas were based on equality and so on. We need to celebrate everyone who was involved in 1916. I come from a republican background and the reason I studied history in college was that I was interested in the 1916 Rising. However, I agree all those involved in 1916, including the people in the British army, should be remembered in our celebrations. That is the type of approach James Connolly would have taken. That is what it should be about. We will take republicanism back from people who are narrow and sectarian in their approach by promoting a republicanism that is about ideas, tolerance and so on.

Sea-Fisheries and Maritime Jurisdiction Bill 2005: Second Stage.

Question proposed: "That the Bill be now read a Second Time."

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): I commend to the House this major reform Bill, the Sea-Fisheries and Maritime Jurisdiction Bill 2005, as passed by Dáil Éireann on 22 February 2006. The Bill comprehensively updates and restates, in convenient format, the current statutory framework for sea-fisheries, which dates from 1959 and is spread over seven Acts. When enacted, the Bill together with the Fisheries (Amendment) Act 2003, which provides an independent licensing and appeals system for sea-fishing boats, will represent a very significant achievement by the Government in modernising the law to help secure a sustainable future for the vital sea-fishing sector of the economy and the local communities which depend on it. Sustainable sea-fisheries are dependent on best practices in fisheries management and control and the main provisions of the Bill have been crafted on that fundamental principle. I will return to the sea-fisheries aspects shortly and deal with them at some length. The Bill, as will be noted from its Title, also replaces in up-to-date terms the three Maritime Jurisdiction Acts, also dating from 1959, and provides

a clear statutory basis for the exclusive economic zone of the State, which underpins the exclusive fishery limits of the State, in accordance with Part 5 of the United Nations Law of the Sea, as set out in Schedule 2 to the Bill.

With Dáil approval, provision is made in section 84, for the first time in Irish law, for a definition of “contiguous zone” — that is the area between 12 and 24 nautical miles offshore from baselines — in accordance with Article 33 of the United Nations Law on the Sea. This provision is being made to set the foundations for further legislation, by the relevant Ministers, for enhancing the power of the State to protect archaeological objects in the contiguous zone, as well as to prevent infringements of customs, fiscal, immigration and sanitary laws within the national territory and territorial seas of the State, as specifically provided for in Articles 33 and 304(2) of the United Nations Law of the Sea. For the convenience of the House, I have had revised and published a detailed explanatory and financial memorandum to reflect the Bill as extensively amended and passed by Dáil Éireann on 22 February 2006.

The Irish sea-fishing industry has changed fundamentally since 1959 when small boats making short trips predominated. Nowadays, there are many multi-million euro businesses with large Irish boats operating in far-away regions, and there are large non-Irish boats fishing in the waters around Ireland and often landing their catch in Ireland. Sea-fishing is now substantially regulated at EU level through the Common Fisheries Policy. The Fisheries Acts need to be modernised to take account of those developments and realities and, in particular, to fill certain major gaps in the law, as identified by the Supreme Court in judgments in 2003 and 2005, as regards the detailed implementation of the EU Common Fisheries Policy.

As the House will be aware, the EU Common Fisheries Policy was substantially reformed in 2002 with increased emphasis on concerted actions to safeguard sea-fish stocks and to secure sustainable sea-fishing activity throughout the EU as well as beyond it. The Supreme Court impugned certain secondary legislation designed to give effect to EU sea-fisheries obligations for lack of cover in the current Fisheries Acts. Those judgments are far-reaching in their application and not, therefore, confined to the Fisheries Acts or the Department.

Section 14 of the Bill fills the gaps identified in section 224B of the Fisheries (Consolidation) Act 1959 by enabling detailed ministerial regulations to be made to apply the full range of EU requirements throughout the whole area to which the EU Common Fisheries Policy applies, and not only within the 200 nautical miles exclusive fishery limits of the State, or only specifically against illegal fishing or attempting to fish illegally, as section 224B stands at present. Section 15 fills the gaps identified in section 223A of the 1959 Act

by specifically enabling detailed ministerial regulations to be made to supplement the EU Common Fisheries Policy where the State has discretion as to the particular measures to be adopted as, for example, in the case of lobster fisheries in coastal waters. The current text of sections 223A and 224B of the 1959 Act is set out in Appendix 1 and Appendix 2 to the detailed explanatory and financial memorandum published with the Bill as passed by Dáil Éireann.

In the interest of proper regulation, pursuant to the Government’s 2004 White Paper, *Regulating Better*, sections 12 and 13 streamline the arrangements for allocating and managing the State’s sea-fishing quotas and sea-fishing effort entitlements. Sections 74 to 80, inclusive, revise and bring together the law dating from 1894 relating to the registration of sea-fishing boats. Section 100 reduces unnecessary bureaucracy by exempting from compulsory registration as a ship under the Mercantile Marine Act 1955 any sea-fishing boat of less than 15 m in length overall which is registered in the statutory register of fishing boats or is formally exempted from such registration. Any other matters arising in regard to that Act are a matter for the Minister for Transport since 1 January 2006.

For the convenience of all concerned, section 97 contains the full up-to-date text of the law relating to sea-fishing boat licensing, incorporating the changes made by section 53 of the Maritime Safety Act 2005. As a further overdue clean-up of the Statute Book, section 4 of and Schedule 1 to the Bill provide for the repeal of obsolete, spent or superseded provisions of 16 Fisheries Acts and seven other Acts, the earliest four dating from 1455 to 1516, long being obsolete but still on the Statute Book.

As I highlighted, best practices in sea-fisheries management and control are essential so as to safeguard the future of sea-fisheries. The sea-fishing sector has to act responsibly so as to protect stocks against overfishing and to maximise the value of catches through product and market innovation. The law must provide sufficient deterrence against activities which threaten the long-term sustainability of sea-fisheries and the communities which depend upon them. The EU Common Fisheries Policy specifically requires all member states to have dissuasive penalty regimes.

The Bill, as substantially amended by Dáil Éireann, represents a balanced approach to penalties for illegal fishing, with larger boats liable to higher fines than smaller ones. The automatic forfeiture of gear and catch on court conviction of offences, which is a feature of Irish law for decades, is a potent deterrent and must substantially stand. Dáil Éireann, however, on my recommendation, modified section 28(6) and the current law to the extent that it will be for the court to decide on summary conviction of a person for a sea-fisheries offence for the first time whether to order

[Mr. N. Dempsey.]

the forfeiture of fish and fishing gear; if forfeiture is not ordered the court is obliged to explain why.

I am committed to building sustainable sea-fisheries and to strengthening control of these fisheries and I believe it is necessary to support this with penalties that are dissuasive. I will commit to continuing to work for a level playing field in the EU so that penalties across the board for sea-fisheries offences are at levels that are a deterrent and dissuasive.

Section 31 of the Bill is an important new provision which aims to capture the ill-gotten gains arising from illegal sea-fishing and should effectively deter such activity. The court will decide the issue in any case, with the guidance of the detailed provisions of the section. The section is a necessary addition to the suite of statutory provisions for the imposition by the courts of fines and forfeitures and may be used even if it is not feasible to take court proceedings for an offence of illegal fishing. Measures such as these are needed to safeguard fish stocks and allowable catches for the law-abiding and should commend themselves widely.

Chapter 5 of Part 2 of the Bill, and the related Schedule 3, provide for the establishment and functions of an independent statutory sea-fisheries protection authority to improve the enforcement of sea-fisheries law and food safety law relating to fish or fishery products. The comprehensive provisions were inserted on Committee Stage in the Dáil and are modelled on those for the Commission for Communications Regulation and the recently established Railway Safety Commission.

Novel provisions are included in Chapter 5 of Part 2 for the establishment of a statutory sea-fisheries protection consultative committee, representative of the sea-fishing and seafood sectors and other relevant interests. This will serve as a two-way forum between the sea-fisheries protection authority and those sectors and interests, and for readily-accessible complaints procedures to which persons aggrieved by enforcement action taken by, or on behalf of, the authority can have their complaints considered by an independent third party. The sea-fishing and seafood sectors in particular have welcomed these provisions.

The proposed sea-fisheries protection authority will be responsible for enforcing the EU Common Fisheries Policy in the State and I aim to proceed with its establishment as quickly as possible after the Bill becomes law. The authority will engage the current departmental complement of 38 sea-fisheries protection officers as well as the additional 45 now being recruited, and also such additional experts from other statutory bodies as may be required and available from time to time to meet particular seasonal or locational enforcement needs. This will ensure better, cost-effective enforcement arrangements.

There are other new provisions in the Bill relating to sea-fisheries matters, namely, the substan-

tive sections 98 and 99 which are designed to clarify the law and benefit the law-abiding, in light of evolving needs and circumstances. Section 98 is intended to prevent competitive distortion due to non-compliance by some sea-fishing enterprises with taxation obligations. The section imposes tax clearance requirements for the grant of sea-fishing boat licences, because licensing provides access to a valuable public resource. Tax clearance is a requirement for the grant of taxi licences for that reason. The section will be commenced by ministerial order as soon as necessary consultations on the matter have taken place after the Bill is enacted.

Section 99 clarifies the scope of ministerial policy directives to the sea-fishing boat licensing authority or appeals officers, to include a specific reference to measures to control and regulate the capacity, etc., of the sea-fishing fleet and the rational management of fisheries. The detailed directives already in place have been duly presented to both Houses of the Oireachtas as the 2003 Act requires and are available on the Department's website www.dcmnr.gov.ie.

The Bill also makes important changes in the Fisheries (Amendment) Act 1997 for the benefit of well-run aquaculture businesses. I refer to section 101 of the Bill. There is a continuing significant development of aquaculture, within the statutory framework provided by the Fisheries (Amendment) Act 1997, as refined by the 1998 and 2001 Fisheries Acts.

The period since the enactment of the 1997 Act has, overall, been one of significant growth and development for the aquaculture sector, and the value of its output in 2004 was some €98 million. It is now a key component of overall seafood production and is generally recognised as having the capacity to play a critical role in the economic life of many coastal areas. The objective must be to ensure that the sector's further development is on a sustainable and environment-friendly basis. The regulatory framework established by the 1997 Act is central to the achievement of this objective, and the proposed changes to that framework are designed to enhance its operational effectiveness.

It is proposed that licence renewals may be granted for the continuance of well-run aquaculture operations of long standing, without the renewal, in all cases, having to be formally effected before the licences in question have expired. It may not be possible in every case to have all the necessary site inspections, water and other analyses formally completed before a particular date. In such circumstances it would be unfair to disrupt efficient well-run operations on what would be something of a technicality. It is proposed, therefore, that a licensee who has applied for a renewal of his or her licence will be able to continue to operate, subject to the terms and conditions of the licence, until a decision is made on the renewal application.

Furthermore, I am relaxing the blanket provisions for terminating a licence if I am satisfied that the operations could not commence within two years, as currently required, or have been suspended for a continuous period of two years, for bona fide reasons, such as illness on the part of the licence holder, fish health or environmental conditions. This is not a charter for people to acquire licences speculatively in the hope that after some years they can assign them to a third party. On the contrary, where licensed sites are not being used, the licences will be revoked and made available to others who are willing and able to operate the sites more productively.

The opportunity is also being taken to facilitate the reduction of licensed sites and licensed production, and the use of novel or experimental equipment, subject to appropriate conditions. The problem mainly arises in bottom culture where substantial portions of licensed sites may prove to be unsuitable for cultivation. At present licence holders wishing to reduce the size of their licensed areas, and benefit from a proportional reduction in licence fees, are obliged to go through the licensing process anew. This is neither necessary nor appropriate, but it should be open to a licensee to request the reduction of the licensed area or the permitted production. Similarly, the activation of the full licensing process where a licensee wants only to use novel or experimental equipment for the purposes of the aquaculture allowed by the licensee is unduly onerous.

Accordingly, the proposal is that the Minister will be able to authorise this at the request of the licensee, but only where no greater environmental or visual impact would result. While these changes relating to aquaculture are essentially technical in nature, I hope they will streamline the licensing process and enhance its effectiveness. Aquaculture production is primarily intended for human consumption and food safety considerations must therefore prevail. I confirm that my policy will continue to be to ensure that all aquaculture operations are properly conducted.

Section 102 is an important new provision designed to safeguard Exchequer revenues, by preventing the build-up of arrears of charges for services provided at the five State-owned fishery harbour centres, and allow the fishery harbour centres to continue to meet customer needs which are not confined to the sea-fisheries and aquaculture sectors.

The core of the Bill is an important suite of provisions to strengthen sea-fisheries law and improve enforcement arrangements in order to safeguard sea-fish stocks for sustainable fishing and rational management. The Bill also usefully clarifies the law relating to sea-fishing boat licensing and registration, and aquaculture, for the benefit of those businesses. Additional safeguards are being provided in the Bill for Exchequer revenues and needed service provision at the five

State-owned fishery harbour centres for the sea-fishing and aquaculture industries.

The Bill provides an up-to-date legal framework for the sea-fishing and aquaculture industries to develop their businesses properly and I wish them well. I am committed to working to deliver a sustainable sea-fisheries sector. The proposed new legislative framework I commend here will ensure that we have a strong fishing industry that guards against illegal fishing and will, in the long term, drive the delivery of prosperous, thriving coastal communities on a sound, sustainable foundation.

Looking to the future and following the delivery of the necessary restructuring through the €45 million scrapping scheme, there is every reason to be confident that fishing will continue to provide the economic backbone to many remote rural coastal communities. Balanced regional development will also be secured. The industry has potential and significant progress is being made on giving the necessary protection to the resource.

Stock recovery plans have been agreed for key whitefish stocks around Ireland such as cod and hake. There is a general determination to make inroads into the protection and rebuilding of stocks flowing from the reform of the EU Common Fisheries Policy in 2002. Recovery of such stocks is planned within three to five years generally and can then be the basis of a sustainable, vibrant and economically-sound fishing industry. I will continue to work at EU level for the degree of commitment and actions that we are delivering to ensure a level playing field and a sea-fisheries regime which guarantees sustainable fish stocks for the future.

I commend the Bill to the House.

Mr. McHugh: Ba mhaith liom fáilte a chur roimh an Aire inniu. I welcome the Minister to the House. I was unsure whether I was listening to the Minister for Justice, Equality and Law Reform or the Minister for Communications, Marine and Natural Resources because there were many references to law and reform in the Minister's contribution.

I am pleased to have the opportunity to speak on the Sea-Fisheries and Maritime Jurisdiction Bill. Having listened intently to the debate in the Lower House I do not intend to cover issues which have been extensively debated by my Dáil colleagues. I wish to make some observations and ask the Minister to clarify some points. I was amused to hear the Chairman of the Joint Committee on Communications, Marine and Natural Resources, the Minister's party colleague, Deputy O'Flynn, refer to this Bill as a "Civil Service Bill from Fisheries Lane". While he paints an amusing picture, it gives rise to serious concerns regarding the drafting of this Bill. Consultation with those most affected by the Bill was not an issue during its drafting.

[Mr. McHugh.]

Coming from County Donegal, I fully appreciate and understand the critical role which fishing plays in coastal communities. Large areas of County Donegal would cease to exist if it were not for the fishing industry — I refer specifically to Greencastle and Killybegs. It is known only too well in County Donegal that viable alternative employment opportunities are decreasing by the year. In the opinion of a large number of my constituents, this Government appears to have written off the fishing industry. Some fishermen in County Donegal have referred to the Department as being the Department against the marine rather than the Department with responsibility for the marine. This does not reflect well on the Department but it is the Minister who must take responsibility for his Department and its civil servants.

We have witnessed the debacle of the pelagic weighing regulations in Killybegs in the past 18 months. It seems that interpretation of EU regulations by Irish administration has cost that town hundreds of processing jobs. This Bill is similar to the weighing regulations fiasco in that there has been reference to European regulations and misinterpretation of the same. This is a domestic issue and we cannot point the finger of blame at anyone else.

The crux of this debate has been whether or not minor offences should be dealt with by administrative penalties. This is when the issue of interpretation raises its head. A total of 86% of European offences are dealt with by administrative sanctions. The EU fisheries Commissioner, Joe Borg, has stated he would prefer administrative sanctions. The most recent report from Brussels on the serious breaches of the Common Fisheries Policy indicates over 9,000 serious offences committed across Europe in 2003. Those figures suggest a major problem across the EU in conforming with all the regulations as set out in the Common Fisheries Policy. The number of offences committed in Ireland was 100, a little over 1% of the European total. This is noteworthy considering the recent press coverage of the industry. These figures are indicative of what I know from personal dealings with fishermen, that our industry is no better or no worse than any other in Europe.

In the European context which is how this problem should be regarded, the question remains why fishermen are being criminalised for minor offences. These fishermen are dealing with thousands of pages of EU legislation on each fishing trip. I acknowledge that mistakes are made and deliberate mistakes must be punished. I reiterate the Fine Gael position in this matter as articulated by my colleague and party spokesman, Deputy Perry. Fine Gael does not condone overfishing and it agrees that serious offences must attract serious penalties. There is a need to take a common sense approach but it is unfortunate that common sense has been lacking in this

debate. Despite the fact that only 1% of EU fishing offences are committed by Irish fishermen, it seems now that Ireland will be the only country in Europe not to administer fixed penalties or administrative sanctions. I fail to see the logic behind this position in particular, for minor offences and valuable court resources could be saved by a reduction in the number of fisheries cases ending up in court.

As on previous occasions the Minister remains determined to continue regardless of what everybody else thinks. If newspaper reports are to be believed, up to 15 of his party colleagues made a desperate last minute plea to have him change his mind but this was to no avail. The Chairman of the Joint Committee on Communications, Marine and Natural Resources, Deputy O'Flynn, and his colleagues, Deputy O'Donovan, were eventually begging the Minister to change his mind. I wonder how much of their concern was for the fishing industry or whether they had one eye on the election. The reaction from coastal communities around the country at the next election will be very interesting.

This Bill is being pursued by the Minister in the name of conservation of fishing stocks. I have been informed by fishermen that there has been a fleet of ten foreign freezer trawlers catching up to 1,000 tonnes of mackerel per day off the Irish coast in recent weeks. I have also been informed that these vessels are discarding the same quantity of smaller grades of mackerel. These allegations merit a major investigation but I question whether such efforts are reserved for Irish owners. I have no problem with control and enforcement in order to protect our fishing stocks but I have a problem if that level of control is not afforded to everyone in our waters. I am informed that Irish fishermen witnessed up to six or seven Norwegian boats in Irish waters when Irish men were being told they were no longer allowed to fish in those grounds.

The submission to the joint committee by the Naval Service was very telling. Ireland is clueless as to the bottom line for quota restrictions pertaining to foreign vessels operating in our waters. We are also clueless as to the effort levels of these foreign fleets. This is proved when the EU Commission has initiated proceedings against the Minister's Department for failure to submit the required effort data. When my colleague, Deputy Perry, recently queried the former Minister of State, Deputy Gallagher, on his knowledge of the effort levels of foreign fleets, the response was far from reassuring.

It is an outrage. Ireland has the most productive fishing grounds in Europe. As I stated yesterday in my contribution to the debate on drugs, I have been informed by a certain person that more drugs than fish are coming through our harbours. The Minister will quote statistics from the Naval Service regarding the boarding of foreign vessels but I am informed that these freezer ships receive nothing more than courtesy calls

from our control resources. Recently quoted figures put the value of catch for Irish fishermen at €200 million and the value of catch by foreign vessels in Irish waters as €2 billion. I shudder to think what is the value of the illegal catch taken by foreign trawlers, given the quality rather than the quantity of the boardings.

A true assessment of the situation in Irish waters is required, to enable us know who is catching fish, what they are catching and what are they allowed to catch, which is more important. This assessment should be carried out and we will discover who are the main players in this fishing business. It may be as the Minister suggests that there is a small group of Irish fishermen but there is a larger group of foreign fishermen. The fishing industry must not be sacrificed because Irish fishermen are visible while foreign vessels continue to rape our waters with no control imposed.

The one positive element derived from this debate is that many more people now realise that fishing is a very valuable industry for coastal communities. These communities face harsh challenges and they need our help and political support. However the Minister and the Government have failed to provide that support. Fine Gael when in power will provide that support and is committed to having a full Department of the Marine.

Given the very public debate that has raged, it is amazing there was no consultation with the stakeholders prior to the drafting of the legislation. Lessons can be learned and if we are to introduce laws that will impact on people's livelihoods we must take their views on board. How more serious an impact could legislation have than making a criminal out of someone? I find it particularly troubling that nobody saw fit to discuss this Bill with the fishermen before it was drafted. It could have saved everyone a huge amount of energy and resources. It is no wonder there were 220 amendments to the original Bill, over 100 of which were tabled by the Minister.

For future reference let us take a leaf out of the United Kingdom's book. The British authorities are also examining the possibility of modernising their fisheries legislation. The relevant UK Minister has launched a consultation process which is open to all stakeholders and which will result in the drawing up of a list of offences to be covered by administrative sanctions. I would welcome a response from the Minister, particularly on the perceived scale of fishing activities by foreign vessels off our coasts.

There is a perception among our fishermen, their families and fishing communities generally, that the Department is not working for them. They feel it is intent on working against them by introducing restrictive regulations that will forcibly drive them out of the industry. There is a feeling of fear among our fishing communities. As a Donegal man from the coast I am only too aware of what is going on in Greencastle and Killybegs, including hard work, personal invest-

ment and large mortgages fishermen have taken out to upgrade their vessels. In addition, they received grants from Europe and from An Bord Iascaigh Mhara only to be told that tonnage quota reductions were to be introduced down the line.

Fishermen put together comprehensive business plans, forecasting how much fish they would be taking in, to show the banks they could repay mortgages on boats. Some fishermen are currently not in a position to pay back their mortgages. One fisherman told me yesterday that his blue whiting quota will only extend to four months this year. This is a complete anomaly because the same fisherman is watching Norwegian vessels passing every day with fewer restrictions and, consequently, larger quotas than their Irish counterparts. The same can be said for many UK fishermen who have bigger quotas.

One of the main points of contention fishermen have regarding this legislation is that their fishing gear can be confiscated for small offences. This ridiculous situation is equivalent to drivers having their cars confiscated if they travel at 85 km/h in an 80 km/h zone. That is the case in the fishing industry where minor infringements will be punished by confiscating fishermen's gear. It is not good enough. The Minister is not in tune with fishermen who work day and night at sea trying to earn a crust, while the Department does nothing to ease the hardships they must endure.

As a member of the Opposition, maybe I am missing something and have got it all wrong. Perhaps my hearing is impaired but those are the arguments I have heard from members of the fishing industry. They say that interaction between the Department and fishermen is poor and communication is non-existent. That serious problem needs to be addressed. If one positive thing has emerged from this debate it is that fishermen are willing to stay in the industry but they need support, assistance and encouragement in order to do so. That is the cry from fishermen and their families in coastal communities.

Just before leaving his previous portfolio, the Minister of State, Deputy Gallagher, announced a massive injection of money for infrastructural improvement at Greencastle pier, which is to be welcomed. Is it not anomalous, however, to invest in such infrastructure when ultimately we will not have the boats to land fish stocks? It does not make sense to impose further fishing restrictions when fishermen have millstones around their necks having invested in upgrading their vessels and the State is investing in infrastructural projects along the coastline. That is the crux of this debate.

I know I have digressed somewhat from the main picture but the Bill does not amount to good regulation of the fishing industry. I will continue to voice my concerns and opposition to the ethos of criminalising fishermen who are trying to earn a living for their families and their communities. The legislation is a contradiction in terms

[Mr. McHugh.]

when it comes to planning the future of the industry.

Three weeks ago, every local newspaper in Donegal was carrying an average of 20 reports on criminal activity in the county, including burglaries and shootings. A range of such activities is occurring in the county but all this Government is concerned about is criminalising fishermen who want to earn money and reinvest it in order to keep coastal communities alive.

As the Minister is aware, Donegal is different. We came up with the tourism logo "It's different up here". It is different in terms of infrastructural

4 o'clock deficits, labour market anomalies and the lack of jobs. The only thing that is keeping us alive in Donegal is the construction industry. The Minister referred to sustainability but everyone in Donegal knows that the construction industry is not sustainable in the long run. We are seeking alternatives, one of which is on our doorstep and staring us in the face — it is the fishing industry. The Minister does not come from a coastal community and, being a Meath man, he may not be able to empathise with such communities, although I mean no disrespect to Meath people. The Minister should commence a proactive, open line of communication with fishermen from Castletownbere to Greencastle.

Mr. Kenneally: I also wish to welcome the Minister to the House. To date, this measure has prompted widespread debate at the Joint Committee on Communications, Marine and Natural Resources. Many stakeholders have attended that committee to give their views on the proposed legislation. The Bill has been extensively aired in the Lower House and there has been much media coverage. It has provoked a wide debate within the fishing industry itself. It is not often that so much publicity is afforded to a piece of legislation, although the Finance Bill does attract a large number of speakers, albeit for a short period. The Bill before us, however, seems never to have been out of the public eye. That must tell us it is controversial legislation and I believe parts of it are flawed. I have no problem with the Bill *per se* and the necessity for it but I am deeply unhappy with some sections of it. I have already made it clear to the joint committee and I repeat now that it appears to me there are elements in the Department of Communications, Marine and Natural Resources who want to wipe out the fishing industry and force people off our waters and away from their livelihoods. Why this should be so I do not know; they have no feel for what is one of our oldest trades and sustainers in this country.

The computer sector for instance is cosseted and comforted at every turn, but there was little talk of that particular industry when fishing was keeping body and soul together in this country as far back as famine times. In one area of my own

constituency, up to 3,000 people were employed in the hake fisheries two centuries ago. Let us not dispense with all our history just to satisfy a few city-bound civil servants.

One of the most extraordinary measures I have seen in any legislation since I became a member of the Oireachtas in 1989 was in section 41 of the original Bill, which referred to a seafood control manager who would be answerable not to the Minister of the day but to the Secretary General of the Department. This was a blatant attempt to sideline the Minister as much as possible. I know this measure has changed since, because of comments and suggestions I and others have made about it, but it tells us something of the mentality of the people we are dealing with, who could draw up such a piece of legislation in the first place. It was totally undemocratic and I am terribly unhappy with the mindset of some of the people involved in the Department.

We were told originally that this legislation had to be enacted by 31 December 2005 or we as a country would be in deep trouble with the European Union and would face even greater fines than at present. This is because of the outcome of the Browne and Kennedy cases, but we must remember that those particular cases have implications for other Departments as well — to which the Minister referred — and I do not see them getting as worked up as this Department.

Any EU penalties to be imposed will relate to what went on beforehand and are only arising because of the mismanagement of the Department for many years. There was no effective control on the fishing fleet at all by the Department and it was grossly inefficient in supplying data to the European Union. Essentially it was not doing its job. However, the Department was very effective in one area, namely catching the small fisherman, and the kindest thing which might be said about that is that the Department was choosing soft targets. It was taking the easy way out.

When the commander of the Irish Naval Service came before the joint committee, I took issue with him because I was aware of an incident that had happened a few days previously at Portally Cove, a few miles from Dunmore East. A man there was hauling a few lobster pots and not only was he approached by the fisheries officers in their own vessel, but an Irish Naval Service ship was there too. That was overkill and the Irish Naval Service would have been much better employed out at sea catching the people who were doing real and substantial damage to our stocks.

I put this to the commander and he said that if the Irish Naval Service is requested to assist, it will. This is total nonsense, as the fisheries officers would have been more than capable of dealing with what was obviously a minor incident. It appears to me that in official circles there is no real will to go after the real culprits who are wreaking the greatest damage.

This piece of legislation is an attempt by the Department to cover up the inadequacies within its system for a long time. The bigger boats and the super trawlers are causing the damage, not the individual small boat owners who take what can only be described as a handful of fish in a season. The Department and its agents out on the water need to get their priorities right, but as in so many facets of our lives, it is the weakest and most vulnerable who take the hit, those who can least afford it financially, or who have the least advice and defence available to them. I hold no brief for the big boys who are visiting as much wrong on the small operators as they are on the fishing industry as a whole across Europe.

There has been a great deal of debate about the constitutionality or otherwise of the introduction of administrative sanctions. The position is that the punishment for commercial fishermen does not fit the crime, whereas the punishment for angling and other leisure fishing does fit the crime. I should not use the word "crime" in that context at all because one of my biggest concerns is that we are making potential criminals of honest, hardworking small-time fishermen, when it is the bigger operators who are at fault.

Not too long ago, a person could go through life without ever attracting the official attention of the Garda or other law enforcement agencies. Now we have to look over our shoulders every day of the week as more and more simple acts have been made criminal offences. Now it seems taking a handful of fish from the water can turn a law-abiding citizen into a criminal and a bankrupt overnight. That cannot be right. There seems to be something very basic about this, particularly in the year when we are about to celebrate the anniversary of our first steps towards freedom, self-determination and the principle of cherishing all the children of the nation equally. Perhaps it is only a pious aspiration after all. Certainly some fishermen might be led to believe that.

I know of one fisherman who, a couple of years ago, was found with a couple of salmon which he had caught illegally. Tough luck — he should be dealt with for that — but what was his penalty? He was fined €300, his nets were confiscated and he lost his licence, which deprived him of his livelihood and income for three years. After the three years, when he applied to the fisheries board to have his licence restored, he was refused as there is a limit of 173 such licences in the Waterford district. All of those had been taken up and his only chance of getting his licence back in the future is if someone is caught in a similar situation. It is like the sub on the sideline hoping the centre-forward will break his leg so that he can get a place on the team.

Even a lorry driver caught drink-driving will almost automatically get his licence back after a year or two. This is not exactly equality, is it? One can compare that unfortunate professional fisherman to the angler who caught a similar few salmon illegally. He received an on-the-spot fine

of €80, but he did not lose his job as a carpenter, fitter, doctor or, as we are told, one of those buying up stretches of fishing water, the legal profession. We can almost compare the treatment of those unfortunate fishermen with the starving peasants in the middle ages who had the temerity to hunt the king's deer to feed their children and were lodged in prison for their efforts to maintain their families.

SI 297 of 2003, a copy of which I have with me, was introduced to bring in administrative sanctions for inland fisheries. The Attorney General who approved that document at the time is the same Attorney General who, according to some reports, says that cannot be done today. I cannot understand why there should be a constitutional problem about this today. This is not just a case of the left hand not knowing what the right hand is doing, it is that the left hand does not seem to know what the left hand did a short time ago.

We already have administrative sanctions in the fisheries area. I realise that the Minister, Deputy Noel Dempsey, said at the joint committee that a constitutional issue was not involved, but some of the statements that have emanated from his Department and elsewhere have cast doubt on the matter and we need to have this clarified. The fishing industry faces major problems. We must create a sustainable industry while protecting vulnerable stocks. Nobody condones over-fishing or has a problem with severe measures being introduced for those who are severely flouting the law, nor do I. The Department has been aware of these people for many years and has done nothing about it, but those fishing in a small way are the ones who are hardest hit because they are the easiest to catch.

There should be a proportionality and fairness in this Bill but, unfortunately, there is not. I realise an attempt has been made to bring in graduated penalties and that has to be welcomed, but we need to go a step further. I will give some further examples of recent occurrences. I am aware of a fisherman who had a couple of boxes of fish over his quota a few years ago. He was dragged through the Circuit Court, convicted and given a criminal record. The whole exercise cost him in the region of €30,000. Before he went into court, he had a clean record, but the judge had no discretion under our laws and the man emerged a criminal.

I usually agree with mandatory sentencing, particularly in the case of those thugs who tried to take over Dublin city centre last Saturday. I am concerned judges will be too soft with them because they are not subject to mandatory sentencing. However, that is a subject for another day. If mandatory fines in this matter were listed on an administrative basis it would solve this problem.

I am aware of a letter sent by a member of the legal profession to the Chairman of the Joint Committee on Communications, Marine and Natural Resources, Deputy O'Flynn, in which

[Mr. Kenneally.]

details were given about a fisherman who operated out of Howth on a particular occasion in extremely poor weather conditions and, unfortunately, whose wife was ill at the time. He was also short a member of the crew and was fishing in a relatively small 50 ft vessel. Everything about the man's nets and catch were legal and everything else was totally above board. However, on his return to port on the day in question the vessel was boarded by fisheries officers. Unfortunately, due to his difficulties he had failed to fill out his log book fully. While some log book offences can be very serious, this was a minor technical matter. However, the case had to be taken to the Circuit Court. The State brought in its solicitors and barristers and this man had to do the same. He was convicted and, as a result, his gear and catch were confiscated and a heavy fine totalling €50,000 was imposed on him, which did not include the cost of the State's legal team.

The solicitor pointed out to the Chairman that on this occasion, the judge's hands were tied. The Oireachtas had sent out the message that the judge must deal with the man in a non-discretionary fashion, which meant the penalty imposed on him exceeded his net income for the previous year. That cannot be right. I am reminded of feudal days when the king's deer were as inviolate as a handful of salmon in the hands of a professional fisherman today. Our hands are not tied. We make the law and it is essential to take the right action when we have the chance to do so on this occasion.

Picture a situation in any other facet of Irish law where a man gets what amounts to €100,000 punishment. He would have to be a major criminal and a danger to society. I know many fishermen who could be subject to those penalties and who are otherwise the most law-abiding people one could find. Attempts are being made to bring some of these offences within the ambit of the District Court. However, there is an upper limit to what the District Court can deal with and the confiscation of gear means that almost all of the cases would be above that limit, and we are back to the Circuit Court again.

Administrative sanctions are used throughout almost all of Europe and the British recently published a proposal for their administrative system. As a member of our committee, I travelled to Brussels a couple of months ago to discuss our proposals under this legislation with interested parties and get their views on it. Commissioner Borg is on record as favouring administrative sanctions. We met with his *chef de cabinet* who made it quite clear that is the preferred option. We were also told the Commission could not impose its will on Ireland and it is a matter for ourselves.

I raised with him the situation we have at present, whereby Irish fishermen are treated differently to foreign fishermen in our ports, in that a judge must confiscate Irish fishermen's

gear if they are found guilty. This is not the case for foreign fishermen. He told me that was a matter for our domestic legislative process, which is fine. However, when I put it to him that we reverse it and confiscate the gear of foreign fishermen and not Irish fishermen, he told me the EU would have to intervene and could not allow it to happen. This proves our regulations, as currently designed, are weighted against our own people.

The Minister indicated that once this legislation is enacted, he is prepared to sit down with fishing representatives and draw up a list of administrative sanctions. However, he has not given any commitment that they will be implemented. He promised to give it serious consideration and that is to be welcomed. The Minister has the opportunity to do so now, as he could meet with representatives of the fishing industry between now and either Committee or Report Stage. Part of his reluctance to do so may be that he would have to return to the Dáil with any changes made. However, he would have cross-party support in the Dáil for any alterations agreed with the fishing industry and little time would be needed to put through the amendments.

I am unashamedly on the side of small fishermen in this instance and if there is any humanity in the departmental officials and the Minister to whom they are supposed to be subject, this situation will have to change and the entire area of criminality in the fishing industry reviewed forthwith. I hope the Minister will take on board some of the points I made and both right a serious wrong and prevent further abuses.

Mr. O'Toole: I welcome the Minister to the House. I know the Bill has been discussed at length inside and outside the Houses and everywhere else. I accept the changes made in the Dáil are an attempt to move in a particular direction. I put my hands up and state I come from a biased position. I remember in the nights of my youth watching families of fishermen stand along the quay wall in Dingle wondering whether they would return. I remember major drowning incidents occurring every couple of years.

Something has gone wrong and I want to go back to the root from where all this came. I was in Dingle last August and I spoke to a friend who was in my class in school. He owns a boat which was tied up. The Minister knows why it was tied up, which was to do with the quota. As we were there, two big Spanish trawlers came in to land a catch. One would want to see and feel the way it affected the fishermen to whom I was speaking. They were not able to fish while the Spanish trawlers were able to come in with large quotas.

Two weeks later I was standing in the fishing village of Port-Vendres in France, approximately 10 km north of the Spanish border. I was trying to speak with two French fishermen who had two large half-deckers. We could see a large fishing boat in the harbour. I tried to ask some questions

about it and the French man shook his hands and stated it was Spanish. It was exactly the same in France as I had seen a week earlier in Dingle. Huge Spanish trawlers come in and scoop up everything while the local fishing industry is destroyed.

When I was going to school there were approximately four times more local boats in Dingle than there are now. That is the reality. Why does it happen? We have a duty to understand the culture of these people. I want to put it in that frame rather than go through the detail. The point made by the Minister on criminalisation is correct. The point made by Senator Kenneally is equally correct. What level of crime do we mean by this big word?

I regret and object to the way this matter has been personalised against the Minister. It does not help anybody. It is not right and I have objected to it in arguments on this issue. I am sure that when the Minister was growing up in County Meath he and his brothers may have gone into the wrong orchard and come home with a lot of apples. Children would not do so now. The same thing happened in Dingle, although there were not that many orchards. However, there were a good few places where a fellow could tickle a salmon and take it home. It might be looked forward to. Looking back with wisdom 50 years later, was it a criminal act? I did not think of those people, myself among them, as being criminals at that time of our lives. I want to examine the attitude which we are discussing.

I disagree fundamentally with the point debated over and back about the constitutionality of administrative sanctions. The Minister made reference to it in his speech. I will point to other matters in our legislation, such as the way a doctor, lawyer or teacher can be struck off and penalised professionally and the way in which members of the accountancy profession can be penalised and fined by their profession without going to court. This is because it is done by a domestic remedy or process which has a legislative base and which in some cases has an appeal access to the courts. This should have been dealt with in that way. I note the Minister's point that in summary cases a District Court judge must explain why her or she decided not to forfeit the gear. I wish the Minister luck. He may be the only man in the history of the State who can tell District Court judges what to do. What will the Minister do if they refuse? I cannot see how that would work.

My sympathy is with the fishing communities of which I am part. I recently cast a wry smile over a comment by Mr. Ken Whitaker, a national icon who is rightly held in the highest respect. I had this discussion with him some 30 years ago. The question is why we are in this mess. It did not begin on the watch of the current Minister or his predecessor. We have been trying to cope with this problem for 40 years. We lost the game in Brussels in 1973 and every Minister for the

marine and agriculture since then has been trying to win back some ground. In my 20 years here I have time and again defended Ministers who have tried to do that.

Where did it go wrong? Mr. Whitaker might look back at some events. The deal we did in 1973 was negotiated during the 1960s and early 1970s on the basis of the first and second programmes for economic expansion, which were put together by the Minister's illustrious former leader Mr. Seán Lemass and his equally illustrious Secretary of the Department of Finance, Mr. Whitaker. I suffered through those two programmes for economic expansion during my first year of economics at UCD with Dr. Garrett FitzGerald many years ago. These superb programmes covered the development of every aspect of Irish life and Mr. Whitaker was part of that.

The year after he retired he wrote a book in which he told how he took up fly fishing when he retired from the Civil Service at 65 years of age. When I met him I said it was a pity he had not taken it up 20 years earlier because fishing is the one aspect of Irish life that is ignored in the first and second programmes for economic expansion on the basis of which we did our negotiations for Europe. That is the source of the problem and only by returning to that point can we resolve it. Our fishermen have been hammered since then.

The Dublin attitude to fishing is rightly based on book learning. I must query some of the statistics I see, for example this year's mackerel quotas. Fishermen on the west coast told me there was an extraordinary run of mackerel from Scotland down to the Blaskets. Why can we not have up-to-date figures? Can the Minister rely on the figures he receives? Either they are not factually based or people are dreaming. We must examine this issue. In terms of Ireland's background and coastline the quotas are destroying us. We must take action on this and give space to fishermen.

I grew up among fishermen and went to school with their children, some of whom went on to fish, and I can say they are the most awkward people in the world. I am not saying I would be any different if I was reared in a milieu where I had to listen to the weather forecast to know whether I could go to work. Would any of us be any different? Generations have lived with their lives and work continually at the mercy of the elements. Although they do not take kindly to people interfering they have to put up with it and have shown a willingness to change, perhaps not as quickly as people might like them to, and have accepted the need for regulation and quotas.

Part of the problem is that fishermen are not sufficiently involved in the decisions. In other countries the fishermen are involved in the policing of salmon stocks, regulation and the fishing period. Although regulation and restriction is required, stopping fishermen at sea from netting salmon is not necessarily the way to deal with the salmon issue. In Canada a certain number of salmon are required up-river to replenish stocks

[Mr. O'Toole.]

and feed wildlife. Rather than having quotas, which are cumbersome and difficult to police, or dates which are taken out of the air, people may not fish for salmon until the agreed stock level is reached. Why could we not trust the fishermen and do that here?

As most salmon go up the smaller rivers, could the Minister have these rivers examined? Could people examine the second run of salmon in the year when low levels of water in small rivers prevent many salmon from swimming up-stream and replenishing stocks? Practical action must be taken. We do not need an involved argument about what is happening with the salmon run in Kilkenny. Action must be taken on small rivers all over the country.

We should ask the fishermen how this can be done with a certain level of administrative penalisation and summary conviction as in the legislation for those guilty of serious crime. The examples the Minister gave on the airwaves were criminal acts. I have no problem with doing what must be done to deal with those people and nor do Senators Kenneally and McHugh. If we put the word "serious" before "crime" we have serious crime producing serious criminals. I agree with the Minister on that but we must help the smaller operators and those working day to day and week to week for a living.

I am glad the Minister has simplified the registration process although I have not examined the details. Previously it was a nightmare and many people will welcome the change. Before now it was as easy to register the QEII as a half-decker, so that will help.

There is not enough technical support on new species for the deep-sea fishing industry. I recently read about the various species and despite my reasonable knowledge I saw fish whose names and shapes were unknown to me. Is enough work being done to present new opportunities to the fishing industry? Aquaculture, which the Minister mentioned, needs a push to make sure fishermen fishing at sea can also have aquaculture interests. That has not happened to date but we need to promote it to add consistency to fishermen's incomes.

We must examine the green wellington and tweed brigade. While aspects of fish farming may not appeal to people from Dublin 4, it is a real opportunity and must be progressed. There are developments in places, such as Oileán Cléire, and fish farming for species such as turbot is being researched. There is a future there as well that needs to be looked at. Senator Kenneally and I were talking about the buying out of licences issue, which I find extremely sad. I do not want to see the industry die. I want to know how we can make it work. I know the Minister is motivated by that, as well. There is a certain block in this regard, however. I am upset by what is happening to fishermen. I do not deny the Minister is well motivated, but I believe the pro-

jected outcome is wrong. My thinking on this is along the lines being advocated by Senators McHugh and Kenneally. Can we find the right balance? I believe we have missed it.

This is a difficult ministerial brief and it should not be personalised. People must accept that the Minister is doing what he believes to be right in this. I ask him to soften his approach, as well, to see how we may ensure that people working in fisheries as well as the industry itself are protected. We also need to look at what may be put in place to help them. Proactive steps are needed to put additional opportunities in place. Can we do that? How can we make it work? Numerous people cannot get through the bureaucracy. Senator Kenneally gave an example as regards legal costs, etc. In the last Seanad, Senator Tom Fitzgerald, who was born and reared a fisherman, had stories every week about matters that were annoying him in this regard, about somebody going into the wrong port, for instance. If one is on the wrong side of the Dingle peninsula in a "sou'wester", it is much easier to go into Fenit than Dingle, or wherever. If someone goes into the wrong port, however, suddenly he or she is in breach of the law. There is a lack of consistency and flexibility in dealing with this matter.

Finally, the Minister will not be short of support as regards bolstering the fishing industry. I believe the industry is getting the wrong end of the stick from this piece of legislation. I appeal to him to soften his view on it and to approach it from three levels rather than two. He has achieved something good in softening his approach in the other House. Another step is needed, however — the introduction of an administrative process that has a legislative base and which facilitates access to the courts by either side, if that did not work out. I believe this is possible and there is parallel legislation in place to facilitate such an initiative. I ask the Minister to consider it.

Mr. MacSharry: I join with others in welcoming the Minister to the House. As I do not bring any pioneering aspect to the table in terms of this legislation, I shall be brief. I am in agreement with Senator O'Toole in disagreeing with the manner the debate on this matter has been personalised against the Minister. That is wrong. In general I admire the conviction with which the Minister goes about whatever aspect of legislation he is putting through the Houses of the Oireachtas, in this Department, indeed, as with others. That is to be admired. I recall effigies being burned outside houses and sub-machine guns to protect against rioters etc. over the years as regards somebody to whom I am quite close. I have seen all of that. The conviction with which the Minister goes about doing things should be admired and acknowledged rather than condemned for the sake of it.

In the context of this Bill there is much that can be welcomed. The debate has not focused

sufficiently on such issues. There is much in the Bill to do with the basic and most important aspects of the fishing industry, conservation and sustainability. These are two objectives to which all Oireachtas Members are committed. Anything that enhances conservation and sustainability is to be welcomed. In general terms, if one is doing nothing wrong, one has nothing to fear. That is a fair statement to make. However, while I understand the Bill had to be introduced and certain matters had to be refined, and while I acknowledge penalties must be put in place, I find it hard to understand why they must apply for the most menial of infringements — I will not call them crimes. Senators McHugh and Kenneally, as well as Members of the other House, have mentioned that the book should be thrown at the person who is systematically involved in abuses or consistently over-fishing. With the legislation as it is, however, I do not believe we have had any regard for basic human error or the fact that for the smaller fisherman there is a huge cost to compliance with regulations. Senator Kenneally gave a very good example with the half-decker man whose wife was ill, who was a man down and did not get the log book filled out. As a result he was €50,000 down and out of commission for three years. We have a responsibility to people such as this, whom we are neglecting somewhat in this legislation. While the Bill is introducing much that is necessary, to resort again to the cliché, there is more to do. When we look at the rest of Europe and see administrative sanctions being applied, it is difficult to understand why this cannot be done here. I have yet to have someone explain to me why it cannot be done. I have read the transcripts of this entire debate in the Dáil and I am as confused now as to the answer as I ever was.

I appeal to the Minister to revisit this issue. Senator Kenneally has suggested that it might, perhaps, be done between Committee and Report Stages in this House and I would welcome that, if possible. The approach generally to legislation such as this should, and can only be done, successfully with the appropriate level of consultation. While I cannot agree with Senator McHugh that there was no consultation, clearly more was needed, because far too much of this debate has been carried out through the media and I do not believe anyone has benefited from this. It has led to misinformation on all sides and the personalisation of the debate; which is highly regrettable for everybody.

Consultation between Committee and Report Stages with the introduction of appropriate amendments at this point would be very welcome. Deputy O'Flynn referred to the proposed legislation as a real Civil Service Bill, without practical application, clearly designed by somebody in an office rather than someone who knows the industry. As somebody who spent many years in the beef processing and export business, which is similar in a way, I witnessed an enormous amount

of post-tribunal regulations being introduced where abuses were found. In my opinion this was over-regulation. Is this a similar example of major overreaction where the maximum possible penalty is imposed for any wrongdoing? Like the speeding ticket, it is easier to catch a person with a camera on a dual carriageway where one could land a jumbo jet than the serial speeders who are involved in accidents and getting killed in the middle of the night.

I am concerned that many smaller operatives such as the half-decker fisherman we heard about earlier, are being penalised because of administrative and small infringements whereas the big guys are getting away. These are the people we want to get and we should certainly throw the book at them. I appeal earnestly to the Minister to look at the introduction of administrative fines rather than staying with a one-size-fits-all solution, which is not necessary. I was interested in Senator McHugh's point as to the causes of the scenario we have today, where he intimated the problems went right back to 1973. That is certainly interesting. One wonders if we might have a better system today, if the clock could have been turned back.

In terms of the establishment of the independent authority, will the Minister please clarify the situation as regards its appointment? It is a good idea and its independence is important. Will the authority be staffed by Department officials and how will they be appointed? I appeal to the Minister to clarify some of these issues and, if possible, to revisit them.

Mr. Finucane: I welcome the Minister to the House. When I was my party's Dáil spokesman on the marine, the former Minister for Marine and Natural Resources, Deputy Woods, was described by the *Marine Times* as a hero in County Donegal because of his plans for the expansion of the fishing fleet. At that time, fishermen were encouraged to fish for deep water species in order to sustain the expansion of the fleet and provide opportunities to upgrade vessels. Since then, some 25% of the fleet has been decommissioned. Therefore, we spent money on the scheme's expansion as well as on decommissioning the fleet. I often wonder at the level of logic within the marine sector.

I met with fishing organisations on many occasions and consider them responsible in their approach and in the way they represent their membership. They must be frustrated with lack of consultation by the Minister in advance of this legislation because these organisations know the industry better than many in his Department. Staff of the latter are more familiar with the various regulations that emanate from Brussels and the complexity of the Common Fisheries Policy. The situation here is in contrast with the UK, where fishermen were closely consulted on legislation.

[Mr. Finucane.]

This Bill should be recognised as flawed and hurried legislation. Subsequent to its introduction, 222 amendments were brought, of which 100 were from the Department. The Minister was profiled favourably in the media on this issue because of the sins of a small minority in the marine sector who made it easy for him to advance the Bill without having to heed the vast majority involved in what we all know is a hazardous and expensive occupation.

I closely followed this Bill as it passed through Committee and Report Stages in the Dáil, where representatives of marine constituencies empathised with fishermen and reflected their concerns. To a certain degree, the members of the Select Committee on Communications, Marine and Natural Resources demonstrated independence of mind in articulating their concerns on the criminalisation of fishermen arising from this legislation.

Fishermen have a right to be disappointed. I will not rehearse a history lesson on the late 1970s, when fishermen believed themselves sold out at EU level. Every December, a charade takes place wherein conservation people recommend acceptable quotas to the Minister and horse trading ensues in Brussels. In fairness to the industry, its representative organisations show solidarity with the Minister at EU level. However, the quotas continue to shrink.

I have seen the sophisticated naval system in operation in Haulbowline. That system and the way in which Irish fishermen are penalised cause frustrations because the Naval Service does not board the vessels from Spain and other countries which fish in Irish waters. I empathise with that frustration, understand the difficulties of fishermen and fear that the costs and degree of control involved in modern fishing will drive people out of the industry.

I have before me a letter from the Foyle Fishermen's Co-op in County Donegal, which believes the Department to be anti-fishermen and, when I look at this legislation, I agree. Many Fianna Fáil Deputies have also spoken strongly on this matter, including one representative of a constituency in the south west who expressed his difficulties in voting for the legislation. While I understand the difficulties that arise from breaking the Whip, I was surprised that Members did not risk them. Ironically, two people who were put outside the party because of Shannon related issues are now Ministers of State. Therefore, as one is not necessarily cast into oblivion for breaking the Whip, Members who wanted to make a principle stand on this issue should have adopted that approach.

The Minister of State, Deputy Gallagher, had extreme difficulties with this legislation, as he might, given that fishermen in Killybegs and Greencastle are his constituents. For many years, fishermen in Killybegs saw great potential for the town if a decent harbour could be constructed. They have the harbour now but I am not sure whether they have still have a fishing business.

Fishermen feel they are being criminalised by this legislation. Deputy Perry contrasted the fines in other European countries, which suggest that we are top-heavy in the penalties applicable here in that they often do not reflect the scale of the offence. The Department described the situation in France but we should put that in context. The fines faced by the French Government result from its complete disregard for a 1991 ruling, which forced the European Union to flex its muscles. The spin placed in the media is that we will risk heavy European fines if we do not introduce this legislation but, given that Ireland faces no multi-million euro fines, I am interested to learn from where the Minister is coming. His Department could be criticised for not presenting annual information to Brussels. A considerable amount of marine legislation has been passed but it is the first time in all my years in this House and the other House that I have seen such bitterness, resistance and concern in respect of legislation.

The Minister of State has set his face against those who oppose this legislation and is determined to persist with it. He knows the concerns voiced by members of his own party. I know of the concerns of fishermen in respect of this legislation, about which they are rightly worried. This legislation will not be favourably regarded in the future. It is a bad day for the Department.

Mr. Daly: I welcome the Minister of State to the House and wish him well in his new post. I had a very quick read through the Bill, which represents a voyage of discovery for me. Practically every page of the Bill mentions an authority, a consultative committee, a vote registrar or a complaints officer. The appeals mechanism set out in the Bill for those with grievances is not very clear. Overall, I support the Minister's efforts to conserve fish stocks. It is in the long-term interests of fishermen to work with the Minister in this regard. I wish to put on record that the vast majority of fishermen do not wish to see the law flouted. They are unhappy about people indiscriminately breaking the law and exceeding fishing quotas because, ultimately, they will suffer, while the individuals who are guilty of these offences will probably have left the industry at that stage.

The legislation is slightly confusing. It proposes to create an authority. I will not dwell on the fines and prosecutions. Prison sentences have not served to deter fisheries offences. I cannot recall an instance where a fisherman was jailed for fisheries offences, although I can recall an instance where a fisherman who was due to be prosecuted refused to sign the bail bond and was imprisoned as a result. However, there is very little evidence of fishermen being jailed for breaching the law. I am not sure prison sentences work as a deterrent and I do not know whether they are used. It would be better to remove prison sentences from this legislation and introduce a regime based on co-operation between fishermen and the enforcement authorities to ensure fish stocks are protected, conserved and managed for the future and

the long-term benefit of the fishermen themselves.

Under this legislation, the authority is to be composed of one person, with the possible addition of two other members. However, one person could be responsible for dealing with these very complex issues. The authority should not be comprised of between one and three members. The number of people on the authority should be far in excess of this. It would be far better if the authority comprised the same number of people as that found on the consultative committee.

The relationship between the consultative committee and the authority appears to be contradictory in almost every section of the Bill. What is the purpose of having a 14-member consultative committee and an authority comprised of between one and three members and a situation whereby it is unclear as to which body directs the other? Is it the authority or the consultative committee which has the final authority?

Overall, the situation is very confusing and administratively inoperable. It is an attempt by the Department to push responsibility away from itself and the Minister and onto the consultative committee, which comprises 14 members, and the advisory committee, which has between one and three members. The staffing should be reversed. It would be better to have a small consultative committee and a large authority with the latter dealing with the issues involved in this affair.

There has been an attempt to move responsibility away from the Minister of the day and place it on an administrator, who already appears to have a position and is named in the legislation. The organisation of the succession is very complex and the Minister would do well to re-examine the matter. Amendments to this provision will be tabled on Committee State unless it is dealt with.

I am disappointed that an opportunity has been missed to establish a training regime for the fishing industry. Such a regime would involve training in the handling of fish, the management of catches and training in new technology, equipment and facilities available throughout Europe. The establishment of an expert training committee to be attached to the authority should be included in the legislation. Very little training has been provided, particularly in the handling of catches from the point where a fish is caught to when it is landed in port. Fish caught by Irish fishermen have been landed in ports in other countries but have commanded a very low price because they were badly handled up to the point where they were put on the market. We need a proper training facility for the handling of fish and to teach people, particularly young people, how to get maximum benefit out of available technologies. This is extremely important for the development of the industry. New technology is present in every area, including fishing. The provision of training in new technology should be included in this Bill.

How does the Food Safety Authority of Ireland dovetail with the new arrangements? The Food Safety Authority of Ireland Act was introduced in 1998. What will be the relationship between the people designated under this legislation as having responsibility for food safety and food safety officers, and others with responsibilities under the Food Safety Authority of Ireland Act? There is the potential for conflict between two separate agencies. Will the Food Safety Authority of Ireland Act be amended to take account of this Bill? The responsibilities relating to food safety provided for in this legislation represent an unnecessary duplication as responsibilities for food safety are already provided for in the Food Safety Authority of Ireland Act.

I will deal with several other points on Committee Stage as they are technical matters which must be clarified to avoid future conflict and indecision. I see the need for this Bill as traditional fish stocks are now under severe pressure and a management regime must be established. The primary responsibility for the management of this country's fish stocks lies with fishermen, rather than administrative officers, authorities or consultative committees. The responsibility lies with the people who benefit from fishing and whose future and livelihoods depend on it. If we continue along the road on which we are travelling, fisheries will be closed, as happened in the 1970s and 1980s, and jobs and incomes will be lost in the fish processing industry.

I support the concept of conserving and managing fish stocks. The vast majority of fishermen are fully conscious of their responsibilities. Some technicalities in the Bill, which represent a minefield of confusion, should be clarified.

Dr. Henry: I wish to share time with Senator Norris.

An Cathaoirleach: Is that agreed? Agreed.

Dr. Henry: I welcome the Minister of State to the House and I welcome this Bill.

The fishing industry has changed totally in recent times. Most of the fishing is not carried out from small wooden hulled boats, with a handful of men going out on short trips, but from multimillion euro vessels, some of which are fishing as far down as the African coast. These enormous vessels are the ones that are causing the damage. The small vessels had to go to the wall a long time ago and exist in much smaller numbers than was the case in the past. While it is still a dangerous occupation for the men who work on these boats, it is not the same for those fishermen who work on large seaworthy vessels, which is welcome. The people who are causing the trouble are the ones who have disregarded the rules for decades. People who have false holes in ships are landing in other ports and do not mind in the least that there must be confiscation of tackle, the fish catch and gear if they are found to be in breach of the

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[Dr. Henry.]

regulations. They are so well off, they can afford to do the same thing all over again.

Senator MacSharry said that it would be great if we could turn back the clock. Indeed, that is the case. However, we would have to turn it back a long time to when Irish fishermen were disadvantaged during the negotiations for entry into what was then the European Economic Community. At the time the Common Agricultural Policy for farmers gained at the expense of fishermen with the Common Fisheries Policy, which has been recognised for a long time.

There will be no fishermen if there are no fish. I do not know if Members read a book called *Cod* on the situation that developed on the Labrador Bank off Nova Scotia. These were some of the richest fishing grounds in the world. For hundreds of years, fish came even to Ireland and down into the Caribbean from the Labrador Bank, where many Irish people had settled. They had abundant fish supplies until approximately 40 years ago when the overfishing began. The cod were gone from the bank about 20 years ago and they have not returned. It has not been restored. The fishermen in that area have no fishing and the situation in Newfoundland is almost the same. We could end up in the same situation if legislation such as this is not introduced.

It would be great if we could get our other EU partners to be as serious about enforcing their legislation, because it is a problem in our waters. However, it would be very difficult for us to say that they should enforce their legislation when we have not done so with our legislation. As I have never been a fisher person, I find it difficult to understand why all the small and under-sized fish which are caught here must be thrown back dead into the Atlantic and the Irish Sea, whereas they are thrown back alive from fishing vessels in the Baltic? Perhaps the Minister will clarify the issue in his reply. I welcome the Bill and I will support the vote on it.

Mr. Norris: I am grateful to my colleague, Senator Henry, for making some of her time available to me. Like her, I am not a deep sea fisher person. One of the benefits of the Seanad is that we can listen to speakers. During one of the first debates to which I listened here, former Senator Tom Fitzgerald from Dingle spoke very effectively and knowledgeably about the issue, and just now, we listened to Senator Daly, who was a Minister in this area. It is always worthwhile listening to people in this House who have this kind of expertise.

I agree with Senator Daly that prison is not a good idea. The reason is that I do not think prison is a good idea, full stop, except for people who need to be contained because of the damage they do to society. I do not see why criminals should get a berth at the expense of taxpayers. I use the word "criminals", even though some of the people operating in the fishing industry do not like the word, but that is what they are. I will put some of the evidence on the record today. I

welcome the fact that tax clearance certificates are required. The Minister said in his speech that taxi drivers are required to have them so why should trawlermen not have them also?

I would be very much on the side of the trawlers I saw out in Howth and in Greystones when I lived there. They were family operations and the kind of boats described by Senator Henry. However, I was in Greystones 30 years ago which was a different period. We then had the depredations of the Spanish, but we can no longer blame the Spanish fishermen. As Senator Daly said, it is our own people who are causing the problem.

I would like to draw attention to a letter from the universally respected Dr. TK Whitaker. He wrote to *The Irish Times* on 9 February as follows:

The Department's quota/tagging system enables it to limit the annual catch of wild salmon in line with scientific advice on conservation requirements — a responsibility it has failed to discharge in each of the past four seasons. Commercial quotas have been appointed well in excess of scientific advice.

I made this point but the Minister brushed it aside. He did not accept it, but it is the truth. Dr. Whitaker closes his letter by saying:

Continued disregard of scientific advice must, however, lead inevitably to such a depletion of stocks that, as has happened when other species of Atlantic fish have been threatened, a total ban on fishing has to be imposed for a period, no compensation being payable.

Further procrastination can only hasten the disappearance of a unique national resource.

This is not a partisan person scoring political points. It is someone who has proved that he has the welfare of the citizens and the country's economy at heart.

I said I would put on record some information about criminality. We had a series of cases within the last year, probably one of the worst in Scotland. As a result, we may be facing fines of up to €40 million, because of greedy people with big trawlers. I recall when some of the huge trawlers were being built. The *Celtic Dawn* was a good example. Everyone welcomed it because it showed that we were in line with new technology and so on, but it was banned from European Union waters. It then skedaddled off to the coastline of western Africa where these types of boats ruined the fishing trade, and we complain because we have people from these countries whom we describe as economic refugees. We helped to make them economic refugees.

The landings in Scotland were at Peterhead. It is believed that Irish vessels illegally landed 6,000 tonnes of mackerel last year and up to 35,000 tonnes in 2003 and 2004. This is not just individual little trawlers, it is the big boys, which is selfishness, greed and an utter lack of regard for the resources. This did not happen just in Scotland. There was another illegal landing of fish, believed

to be worth €500,000, in Rossaveal, County Galway. Gardaí stated that they believe 15 trucks were used to cart away this ill-gotten booty. While they were doing so, two of their number were on the quayside trying to disable the closed circuit television cameras which had been installed by the fishery protection regime to prevent precisely this type of occurrence or, at least, to ensure those who are engaged in this illicit trade were apprehended and charged. The fisheries officers who took part in the follow-up investigations the following day had to get Garda protection in broad daylight. Is this not criminality? How can we say it is anything else? Let us not defend the indefensible. Luckily, the attempts to sabotage the CCTV cameras and destroy the video tapes were unsuccessful. This evidence is with the Garda and I sincerely hope these people are brought to court and treated severely, but I do not think it is in the taxpayers' interest to send them to jail.

It is worth noting that, if the European Union judges that there has been a breach of our quota, we will be penalised. There is a strong possibility that the mackerel quota, for example, which is 48,000 tonnes this year, will be reduced by 40,000. Who will be damaged by this? Again, it is not the pirates but the ordinary decent fisherpeople and trawlermen who will suffer.

The Minister is right to introduce this legislation. In the light of the Browne and Kennedy cases in the Supreme Court, it was inevitable the law must be amended. Criminality is taking place and I urge the Minister to adhere to the severe provisions in this Bill and not to be abashed at using the word "criminality". Such behaviour is criminal, it should be labelled as such and the perpetrators should be shamed. They are damaging our resources and the livelihoods of decent, honest fisherpeople.

Dr. Mansergh: I did not initially intend to speak in this debate. I defer to the far greater knowledge of those who have handled fisheries policy or live in constituencies where fisheries are a major issue. I decided to contribute because it seemed, in the course of the debate, that the Minister, who is now represented by the Minister of State, Deputy Browne, needed more political support than he was getting. I have an admiration for the Minister's willingness, in several capacities and Departments, to take tough, necessary and unpopular decisions. One calls to mind, for example, Part V of the planning and development legislation, which was unfortunately watered down in application by many local authorities. It needs people of courage like the Minister — I have come across some such in the local authorities — to insist legislation is applied and to take on vested interests. Similarly, it was he who took on the issue of the dual mandate, an action that was unpopular with many politicians but correct for our democracy.

Mr. Norris: Hear, hear.

Dr. Mansergh: That decision was implemented by his successor.

Today's edition of the *The Times* of London informs us that France has been fined £40 million "for years of ignoring the club rules". This relates to the punishment applied to that country for its continual disobedience of EU laws against catching undersize fish. Much of the debate on this legislation seems almost to take place in a vacuum, as if we are not members of the European Union and need only be concerned with tailoring the legislation to suit the interests of the fishing industry. It is an industry I greatly respect, particularly its presence in Senator McHugh's county of Donegal.

The Government must accept its responsibilities in this area. When one is in Government and there is the prospect of heavy fines if the correct action is not taken, it is not simply a question of doing what will maximise one's votes. It is sometimes necessary to take actions that are unpopular and may cost votes. In practice, however, people who take the correct action tend to be respected and do not lose nearly as many votes as one might believe.

In my would-be constituency of Tipperary South, all the representations I have received are in the other direction. I have had much correspondence on the need to stop salmon drift-net fishing and the potential of such a change for tourism. In an e-mail I received today requesting a meeting, the author observes that a "rehabilitated river shore would be a great asset to local tourism interests". The e-mail goes on to state:

It is no use just stopping the offshore interceptory fishery whose arrest can be blamed on the EU. Having stopped the offshore drift-nets, we then need to mind the rivers, and in my view, as a major part of this, we need to have a national salmon rehabilitation scheme heavily involving second level gap year students in a science environment project under the auspices of the Department of Education and Science.

There are other interests which have not been heard much in this debate. The Government must strike a balance between different and conflicting interests. It cannot simply side wholesale with one interest and abandon others. This is what governance is about.

Much has been made in this debate about the EU negotiations in the early 1970s. The reality is our fishing industry at that time was underdeveloped. Even though one can argue that we, in common with Britain, gave away, or were forced to give away, some of our expansion potential, the reality is that the fishing industry has expanded and modernised hugely in the last 30 years and is now far more productive. The notion of a fishing industry that is stymied and stagnant does not fit the statistics.

In debate, I deprecate attacks on civil servants and Departments which suggest their interests and corporate identity are somehow separate from and possibly even opposed to their Minister. There is a good convention that the Government

[Dr. Mansergh.]

takes responsibility, not for every last detail but in matters of strategic policy. The Government and Department are one and the same.

I support the Minister in his endeavours. I accept from listening to the debate that there may well be scope for further improvement and refinement on Committee Stage but I have no doubt the legislation is necessary. Senator McHugh will find as his political career progresses that nettles must be grasped sooner or later.

Mr. Lydon: I welcome this necessary Bill. Fishing is an important part of the economy but for many years it has not received the same attention from Government that was afforded to other sectors. This harks back to the time of the negotiations with Europe when our catches were calculated on the basis of historical catch. We seem never to have seen the light of day since.

Much discussion has centred on the fact that if we do not pass the Bill in its present form, Ireland may be faced with multi-million euro penalties. Some members of the fishing industry have dismissed this premise. Today, however, we discover France has been ordered by the European Commission to pay a penalty of €57 million for failing to comply with a ruling to upgrade its fisheries control system. We must upgrade our laws and keep them in tune with developments.

There is no doubt some fishermen have been guilty of overfishing. However, the majority of fishermen I have known over the years are decent, honourable people who work hard and obey the law.

The Minister has the experience of advice from experts but the only experience I have is growing up in a fishing town, Killybegs, which used to be called Ireland's premier fishing port. Sadly, due to over-regulation of all kinds, it is no longer the town it used to be. Many people have been laid off from the fishing industry. People outside the industry think a boat goes out, catches fish and that is the end of it but it is not. There are spin-off industries, including fishing processing, fish-meal and so on. Catching the fish is only part of what is involved; it is a large industry. All of south west Donegal from where I come depends on the fishing industry. There have been many job layoffs in the county, north and south. If the fishing industry goes, we will be completely finished. That is a fact.

There are so many rules and regulations governing fishermen that it has become almost impossible for them to operate. I refer to rules of landing at night. Does one think for one moment that a boat laden with fish off the Faroe Islands or elsewhere can steam into Killybegs and arrive at a particular time? That is not the way life at sea works. I invite the Minister and others to go aboard a trawler and go out to sea to see just what it is like.

Despite what Senator Mansergh said, I believe there are some in the Department of Communications, Marine and Natural Resources who seem

to more interested in oppressing the fishing industry rather than promoting or fostering it. Most people have no idea of the difficulties of fishing life. There is always danger when a fisherman puts to sea. Tragedy can occur even in calm weather but in heavy weather, the danger becomes very real. Fishermen are not like farmers, teachers or accountants; they do not have soft jobs. They are more like soldiers or firemen who put their lives on the line over and over again. When they go out, or are caught in heavy weather, life becomes difficult. I have known many people over the years who have sailed out from Killybegs on a calm day never to sail back again because they were lost at sea.

There are two issues, and perhaps they were settled during the debate in the Dáil. If not, we can deal with them. It should be possible for a system of graded sanctions to be put in place. The punishment should fit the crime. Such a system appears to exist in the UK and in other countries of the European Union and I cannot understand why we cannot implement one here. Does the Minister really believe that an automatic consequence of a conviction in the Circuit Court should be the confiscation of gear? That is a heavy penalty for a fisherman to pay. I am not sure if that has been modified but if it has not been, there is no doubt it should be.

Fishermen face other difficulties as well. Large foreign vessels fish in our waters, some of which supply the Japanese market. They cast the smaller species of fish overboard which is a terrible waste. The Government seems unable to do anything about this. Do we have any control over foreign vessels fishing in our waters? Senator Norris mentioned huge landings of fish in various places.

Another difficulty fishermen face is that for many weeks during the winter time or when there is bad weather, boats lie tied up in the harbour. When the weather improves, they go out but at that stage they must work around the clock to try to catch up. It is not like a five day per week job — fishing does not work like that. These people work hard and they face enough regulations to keep them going for a month of Sundays.

The Bill is necessary and I believe it is generally welcomed by the fishing industry. It does not matter what area of life one is in, one cannot break the law. If we continue to overfish, as has been done all over Europe, stocks will become depleted and there will be nothing left for future generations and we cannot allow that to happen. I welcome the fact the Minister is prepared to meet members of the fishing industry once the Bill is enacted to discuss ways in which the industry can develop into the future, which is important.

This Bill is not the be-all and end-all; it is a start. It has been modified slightly since it was published and will perhaps be slightly modified further. It will provide a blueprint for the future. If the Minister meets the members of the industry, he can, in many ways, help to develop it. If we over-regulate this industry out of existence,

we in Donegal — I do not know much about Waterford, Wexford or elsewhere — we will end up with no jobs. That is an important issue.

Minister of State at the Department of Communications, Marine and Natural Resources (Mr. Browne):

The Minister had to leave as he has a meeting with the EU Environment Commissioner, otherwise he would be here to respond. I thank Senators for their contributions. Although I was not in the House, I listened to some excellent and some fiery contributions. That has been the tone of debate since the Bill was published. There has been 20 to 25 hours of debate between the other House and this one.

The Bill has resulted in a discussion which is, in many ways, welcome because the fishing industry affects us all. I come from a coastal county in the south east next to Senator Kenneally's and I listened to Senators McHugh and Lydon and other Senators who come from coastal counties. It is important that they put their views on record. At the same time, the Minister had a job to do in introducing Bill. As Senators will see, he has made many changes along the way and has accepted many amendments.

I wish to deal with a few of the issues raised. Senators Mansergh and Norris raised the issue of inland fisheries and the salmon tagging system, the operation of which Senator Norris questions. When the tagging system started four years ago, the quota was 230,000 tonnes while this year, it will be down to 106,000 tonnes. In fairness, the Department has moved towards achieving the figures in the scientific advice but at the same time, we must strike a balance between anglers, the importance of tourism and the livelihoods of families living on our coastline. Some decisions will be taken in the next couple of weeks in this area. No matter what decisions one makes on an annual basis in regard to the salmon tagging system, people are generally not happy with them. We have, however, given a commitment that we will achieve the figures contained in the scientific advice by 2007 and that remains our aim.

Senator O'Toole talked about his childhood memories and the different types of boats, including the smaller ones. Generally, the smaller boats have been replaced by a number of larger ones. This has tended to be the case not only in fisheries but in agriculture, retail and so on. Larger boats are now part and parcel of the fishing industry. When Senator O'Toole was young, the national catch was approximately 20,000 tonnes while today quotas are ten times that level at 200,000 tonnes. We have moved on and we have a reasonably modern fishing fleet which bears no comparison with that in the past.

I would like to think that during my term in the Department over the next 15 months until the general election, we will look at the operations of the fishing industry. The EU is reducing quotas all the time and it is important we have a system in place in regard to decommissioning so we would reach a system whereby the number of

people involved in the fishing industry would match the quota and families would be able to make a viable living from fishing. We cannot have quota reductions while the fishing fleet remains the same size. I hope that, through dialogue and discussions, the Minister and I, together with representatives of the industry will be able to sit down together in the coming weeks and months, far away from any agitation or disharmony, and make decisions on how best to develop our fishing industry. It is still an important industry in terms of job creation in rural Ireland and we want it to ensure it develops.

Senator Henry referred to the large vessels operating in our waters. However, many of them operate outside our waters in the coastal waters of Mauritania, Morocco and Peru and in other far distant waters. Enforcement of the legislation was raised by a number of speakers. The Minister and I met the Commissioner a few weeks ago and we strongly pressed the point that if we are to get our house in order in terms of our industry, it is important that the EU would also get its house in order in terms of ensuring that if other member states break the law, they would be called to heel by EU and we would have strict enforcement of law in this area across the EU.

The proposed sea-fisheries protection authority was raised by Senators MacSharry, Kenneally and McHugh. Three people, including the current sea-fisheries officer controller, will be at the helm of that authority. The authority will engage the current departmental complement of 38 sea-fisheries protection officers as well as an additional 45 personnel, which will bring the total complement to almost 100. Furthermore, additional experts from other statutory bodies will be brought in, as may be required and available from time to time, to meet particular seasonal or locational enforcement needs. This proposed authority is to be welcomed and we will ensure it is adequately staffed. It is no secret that the lack of staff and resources in the Department down through the years has caused some of the problems we face. The provision of an increase in staff from 38 to almost 100 is welcome and will ensure that the authority will be able to deliver a proper service in this area.

The issue of discards was raised by Senator Lydon, in particular, and others. We should not delude ourselves that this practice is only happening in other fishery waters, it is happening here. However, Ireland has pressed at European level for an observer programme for all larger pelagic vessels, which would require observers to be placed on these vessels. We are pursuing this matter at European level and will continue to do so. We will also take it up with the Minister for Defence, Deputy O'Dea, to ascertain what further actions the Naval Service or the Air Corps can take in this regard.

The Bill represents a major updating and consolidation of sea fisheries and other laws dating back to 1959 and, in some respects, to some time prior to that. By clearly providing comprehensively for the implementation of the requirements

[Mr. Browne.]

of the EU Common Fisheries Policy, the Bill signals the need for proper conservation and management of sea fisheries which are under serious challenge.

The Bill has been developed significantly since it was initiated in Dáil Éireann and now comprises 104 sections and three Schedules compared with 71 sections and two Schedules initially. The largest addition relates to provisions for the establishment and functions of the independent statutory sea-fisheries protection authority.

The Department is committed to seeking the sustainability of sea fisheries, particularly in terms of the coastal communities who depend on them. We again call on the sea fishing industry and its representatives to work closely with us in developing appropriate strategies to achieve this. Nearly all the Senators who spoke make the point

that sitting down with the representatives and engaging in dialogue and discussion is the way forward.

I regard the attacks on civil servants as unacceptable. Ireland is threatened with the imposition of serious EU fines. We have had incidents of illegal fishing and there were Scottish incidents involving 40,000 tonnes of mackerel, which if it had been processed here would have created a significant number of jobs in Donegal and in other parts of the country. The evidence exists that some fishermen are operating outside the law. It is unfair to make attacks on civil servants. We want to bring about a situation where we have a viable fishing industry with fishermen operating within the law.

I thank all the Senators who contributed and I look forward to working with them on Committee Stage.

Question put.

The Seanad divided: Tá, 32; Níl, 13.

Tá

Bohan, Eddie.
Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Daly, Brendan.
Dardis, John.
Dooley, Timmy.
Fitzgerald, Liam.
Glynn, Camillus.
Hayes, Maurice.
Henry, Mary.
Kenneally, Brendan.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.

MacSharry, Marc.
Mansergh, Martin.
Mooney, Paschal C.
Morrissey, Tom.
Moylan, Pat.
Norris, David.
Ó Murchú, Labhrás.
O'Brien, Francis.
Ormonde, Ann.
Phelan, Kieran.
Ross, Shane.
Scanlon, Eamon.
Walsh, Jim.
Walsh, Kate.
White, Mary M.
Wilson, Diarmuid.

Níl

Bannon, James.
Bradford, Paul.
Burke, Paddy.
Burke, Ulick.
Coghlan, Paul.
Cummins, Maurice.
Feighan, Frank.

Finucane, Michael.
Hayes, Brian.
McHugh, Joe.
O'Toole, Joe.
Phelan, John.
Terry, Sheila.

Tellers: Tá, Senators Dardis and Moylan; Níl, Senators Cummins and McHugh.

Question declared carried.

An Cathaoirleach: When is it proposed to take Committee Stage?

Mr. Dardis: Next Tuesday.

Committee Stage ordered for Tuesday, 7 March 2006.

An Cathaoirleach: When is it proposed to sit again?

Mr. Dardis: At 2.30 p.m. next Tuesday.

The Seanad adjourned at 5.50 p.m. until 2.30 p.m. on Tuesday, 7 March 2006.