SENATE

Tuesday, November 29, 2005

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

CARIBBEAN COMMUNITY (CARICOM) CUBA TRADE AND ECONOMIC CO-OPERATION BILL

Bill to give effect to the Trade and Economic Co-operation Agreement between the Caribbean Community (CARICOM) and the government of Cuba, brought from the House of Representatives [*The Minister of Trade and Industry*]; read the first time.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the University Students Guarantee Loan Fund for the year ended December 31, 2001. [*The Minister in the Ministry of Finance* (*Sen. The Hon. Conrad Enill*)]

2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the University Students Guarantee Loan Fund for the year ended December 31, 2002. [*Sen. The Hon. C. Enill*]

INTERNATIONAL CRIMINAL COURT BILL

Order for second reading read.

The Minister of Labour, Small and Micro Enterprise Development and Acting Minister of Foreign Affairs (Sen. The Hon. Danny Montano): Madam President, I beg to move,

> That a Bill to provide for the prevention and punishment of genocide, crimes against humanity and war crimes, to give effect to the Rome Statute of the International Criminal Court done at Rome on the Seventeenth Day of July, One Thousand Nine Hundred and Ninety-Eight; and for purposes connected therewith or incidental thereto, be read a second time.

Madam President, this honourable Senate is concerned today with enacting legislation to give effect to Trinidad and Tobago's obligations under the Rome Statute of the International Criminal Court (ICC). It will be recalled that at the Third Session of the United Nations General Assembly on Disarmament held in 1988 at the United Nations (UN) headquarters in New York, Mr. Arthur N. R.

Robinson, then Prime Minister of Trinidad and Tobago, proposed that the UN should commence discussion on the criminal responsibility of individuals who act in breach of the relevant norms of international law.

In 1989, the Government of the Republic of Trinidad and Tobago was successful in placing on the agenda of the Forty-Fourth Session of the UN General Assembly, the issue of the transnational character of international crime which affected the ability of States to combat this scourge within their domestic jurisdiction. We called for the establishment of a permanent international court. Diplomatic and political initiatives for the establishment of the ICC, through various fora, were carried out by the Government of Trinidad and Tobago.

These initiatives included overtures within Caricom, submissions to the Organization of American States (OAS), the International Law Commission, and diplomatic missions among other entities. Trinidad and Tobago also participated actively in the work of a preparatory commission for the establishment of the ICC as well as the 1998 UN-sponsored conference in Rome, where the statute of the ICC was adopted on July 17, 1998.

Trinidad and Tobago signed and ratified the statute on March 23, 1999 and April 06, 1999, respectively. These Acts placed Trinidad and Tobago among the first States to do so and demonstrated further its leading role in the establishment of the ICC. In keeping with the provisions of Article 126(1), the Statute entered into force on July 01, 2002. The Statute also entered into force for Trinidad and Tobago on the same date.

The adoption of the Rome statute of the ICC has been hailed as the most important development in international law since the adoption of the Universal Declaration of Human Rights in 1948. The ICC has jurisdiction over matters involving individual criminal responsibility and the judges selected to adjudicate in its chambers must be highly respected in their field of endeavour. Article 36(3) of the statute provides as follows:

"(a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to highest judicial offices.

(b) Every candidate for election to the court shall:

(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in another similar capacity in criminal proceedings; or

(ii) Have established competence in relevant areas of international law…and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;"

Trinidad and Tobago's seminal role in the establishment of the ICC was consolidated further and Mr. Karl Hudson-Phillips was elected to the first bench of judges of the ICC at the first resumed session of the Assembly of States Parties to the ICC, which was held at the United Nations headquarters in February 2003.

The Statute enjoins States parties to enact within their respective domestic jurisdictions, legislation to give effect to its provisions. This is the object and purpose of the Bill with which we are concerned today. The purpose of this Bill is two-fold:

(a) to enable Trinidad and Tobago's court to try offences committed under the statute within the framework of the Trinidad and Tobago legal system; and

(b) to make the legal provisions necessary for the ICC to prosecute cases in Trinidad and Tobago, where the Trinidad and Tobago authorities are unwilling or unable to do so.

The ICC, therefore, is designed to complement existing national judicial systems.

This Bill is fairly voluminous; it is divided into 11 parts and 182 sections. Part I provides for the application of the statute in Trinidad and Tobago. Part II deals with international crimes and offences against the administration of justice. In this regard, it lays out the procedure for the trial in Trinidad and Tobago of the most grievous crimes provided for under the statute. Sections 9 through 11 list these crimes as genocide, war crimes and crimes against humanity. For proceedings involving any other offences under sections 9, 10 or 11, Part II of the Bill applies the general principles of general law as stated in Articles 20 to 33 of the statute.

Senators are reminded that wherever these offences are committed, States are expected to prosecute them. The jurisdiction of the court is, therefore, universal. Persons in Trinidad and Tobago or elsewhere who commit these international crimes, can be tried in Trinidad and Tobago. It will no longer be possible for anyone to commit these crimes with impunity.

Senators will also note that section 13 provides that before proceedings for crimes under sections 9, 10 or 11 are commenced, the Attorney General's consent must be obtained. The rationale for this approach lies in the international character of these treaty-based offences.

I should emphasize here that a decision to prosecute or not to prosecute engages the international responsibility of Trinidad and Tobago under the Rome Statute. Such a decision may have serious repercussions within Trinidad and Tobago, as well as within the wider international community. It should not, therefore, be a decision left only to officials. The view is that the responsibility for initiating this action or declining to act in a particular case, is best left to the Attorney General who, as a member of the Cabinet, shares executive responsibility for concluding and ratifying treaties and constitutionally has responsibility for legal affairs and legal proceedings involving the State.

The Bill also sets out provisions to try offenders who seek to commit offences against the administration of justice. Clause 14 outlines the jurisdiction with respect to offences against the administration of justice for offences set out in clauses 15 to 21. The object and purpose of the proceedings sections is to prosecute those international criminals, officials of the ICC or any other persons who attempt to infringe the provisions of Part II of the Bill thereby impugning the integrity of the ICC.

Part III of the Bill outlines the general provisions relating to requests for assistance from the ICC. The intention of the Bill in this part is to provide for the rendering by Trinidad and Tobago to the ICC the type of assistance contemplated in Part IX of the statute. The types of assistance to be rendered by the ICC and the procedures to be followed are prescribed in clauses 24 through 31 of the Bill.

Part IV, clauses 32 to 80 of the Bill, provides for the circumstances under which the ICC could request the arrest and surrender from Trinidad and Tobago of a person. This Part also deals with issues concerning the provisional arrest, procedures following arrest, eligibility for surrender, surrender, temporary surrender, restrictions on surrender, appeals against determination for surrender, discharge of persons based on an order of the Attorney General and others. These provisions are in keeping with the obligations under articles 89, 90, 91 and 92 of the Statute.

In this regard, section 32(1) identifies the persons for whom the ICC could make a request for arrest and surrender. Section 32(2) provides for the provisional arrest as contemplated by article 92 of the statute. Clause 33(3) outlines the restrictions on surrender and execution of a request for surrender. Clause 33 provides for the Attorney General to notify a judge of the High Court of the request for surrender and request that an arrest warrant be issued. In the event that the person identified is the person in respect of whom the request for surrender is

made, clause 34 empowers a High Court judge to issue an arrest warrant for that person. A High Court judge may also issue a provisional arrest warrant under clause 36, in keeping with Trinidad and Tobago's obligations under article 92 of the Statute.

There is apparently some similarity with the regime for the extradition of fugitive offenders under the Extradition Act. Since the ICC is an international organization, it is not possible to extradite offenders; instead they are surrendered. Importantly, the Bill sets out in clause 43 the circumstances under which a person becomes eligible for surrender to the ICC. This clause also seeks to protect an individual's right against arbitrary arrest. Notwithstanding the provisions contained in clause 43, clause 45 details the circumstances under which the High Court may accept the voluntary surrender of a person.

Clause 55 outlines the limited conditions whereby the Attorney General may refuse to surrender a person to the ICC. One of the main pillars on which the ICC is built is the principle of complementarity. This means that the ICC will only exercise its jurisdiction if the State that is party to the Treaty is unable or unwilling to do so. In keeping with this principle, clause 67 of the Bill allows an individual to appeal on a point of law to the Court of Appeal of Trinidad and Tobago, on the eligibility of his surrender to the ICC.

Part V of the Bill seeks to give effect to Trinidad and Tobago's obligation to cooperate with the ICC other than in areas already stated. The areas of cooperation are listed in clauses 81 to 123 and include, among other things, the identification and location of persons or things, taking evidence, producing documents, questioning persons, facilitating the appearance of witnesses, transfer of persons and search and seizure. It is also apparent that this cooperation is consistent with the international regime for mutual legal assistance in criminal matters.

Part VI of the Bill, comprising clauses 124 to 135, provides for the enforcement of penalties in Trinidad and Tobago imposed by the ICC. The enforcement of the penalties would be pursuant to an order of the ICC under article 75 of the Statute. These penalties include fines, forfeiture orders and the transfer of money or property to the ICC.

Part VII of the Bill, clauses 136 to 156, outlines the procedures governing persons in transit to the ICC or those serving sentences imposed by the ICC. Clause 139(1), for example, provides that the Attorney General may inform the ICC whether Trinidad and Tobago is willing to have persons sentenced by the ICC serve their sentences in Trinidad and Tobago. The Bill, in fidelity to the Statute,

recognizes the extradition agreements between States. In this regard, clause 148 contemplates the extradition of a prisoner under the Extradition (Commonwealth and Foreign Territories) Act, 1985.

Article 75 of the Statute recognizes the sovereignty of States, insofar as the circumstances under which the disclosure of certain information or documents would be prejudicial to its national security interests. Such circumstances are reflected in Part VIII, that is, clauses 157 to 165. Part IX, clauses 166 to 172 of the Bill, provides for investigations or sittings of the ICC in Trinidad and Tobago. This contemplates situations where the prosecutor may conduct investigations in Trinidad and Tobago and the ICC itself may decide to sit here to perform its functions under the Statute and its rules of procedure and evidence.

The Statute recognizes the need for cooperation between the States parties and the ICC. Part X of the Bill, clauses 173 to 177, outlines the types of assistance Trinidad and Tobago may request from the ICC. Clause 173, for example, provides for such requests to be made by the Attorney General of Trinidad and Tobago. Part XI, clauses 178 to 182, deals with miscellaneous provisions and consequential amendments as a consequence of the passage of the Bill.

Madam President, it should be noted that the crime of genocide is listed as one of the crimes within the jurisdiction of the Statute as provided for in article 5. This is outlined in article 6. The passage of this Bill will, therefore, make nugatory the provisions of the Genocide Act and, accordingly, in clause 182, is repealed.

Madam President, the Bill before you today is the work of three distinct, separate administrations. It was signed by the previous administration and it is hoped that under this administration it will now become the law of Trinidad and Tobago.

Madam President, I implore the support of all Members of this Senate and I beg to move.

Question proposed.

Sen. Wade Mark: Madam President, the Bill before us, as the hon. Minister indicated in his presentation, is extremely bulky, voluminous and extremely detailed, containing some 182 clauses or provisions. I note that the hon. Minister is acting as Foreign Affairs Minister, so clearly this is not his forte. It has taken him precisely 15 minutes to present a very bulky, extremely complex piece of legislation to a Parliament in which, I am sure, even those who are rapping the desk may not have read or properly absorbed this very detailed piece of legislation.

We were told that this particular piece of legislation spans some three different administrations. Therefore, as the Minister said, he would hope that it would not generate any major departure from its original moorings. The United Nations has stated quite eloquently that people only live full lives in the light of human rights. We can only be assured and, indeed, guaranteed a world of peace and justice if it is grounded in universal respect for human values and human rights.

So today we are engaged in a debate on the establishment, on a permanent basis, of the International Criminal Court. After many decades of indecision, the international community has finally agreed upon the establishment of this international criminal jurisdiction or the International Criminal Court. As the Minister sought to provide us very briefly with the genesis of this particular court, Trinidad and Tobago must take credit for putting on the United Nations General Assembly agenda, some time in 1988/1989, the issue of establishing an International Criminal Court.

The former President of our Republic, ANR Robinson was then the Prime Minister and he got the support of many other States, Caricom that is, and this matter was placed on the Assembly agenda. The establishment of the Treaty of Rome which, as you know, gave effect to this very important institution—and I am very surprised that the United States of America does not support it, even up to this time, as we speak—has given the world an opportunity to bring criminals and there are many criminals roaming the earth committing genocide, committing crimes against humanity, States that are engaged in acts of aggression against their own citizens or citizens of other countries. So rather than allowing the Security Council, which is made up of the big five, determine when criminals like Adolf Hitler and his henchmen should be brought to justice or the criminal forces that levelled and committed genocide in Rwanda and places like Yugoslavia and Bosnia, it was the Security Council of the United Nations that established what is called ad hoc tribunals to try these criminals for crimes committed against humanity. In the case of Rwanda, you would know that almost one million citizens of that country were murdered by the then regime.

The trigger to give effect to this particular call for the establishment of an International Criminal Court had to do with the illicit trafficking of narcotics. I remember Edward Seaga had complained at a Caricom Heads of Government Conference back in the 1980s that certain hooded people with masks, and they were well hooded, appeared before congressional committees under President Ronald Reagan's period and they made all kinds of accusations against the leader

and then Prime Minister of Jamaica, Edward Seaga. They said that he was involved in the drug trade. That caused a lot of disturbance in the region, at that time. Justice was sought, in terms of if you were accusing someone of such grave, heinous activity, that person ought to be brought before some particular international court that was effective, impartial and efficient in exercising its powers, as the case may be.

So the effort that we are engaged in today, in trying to give effect to this Treaty via legislation, I would say is a very historic moment. Because it is the first time in the last 100 years or more, that humankind has decided collectively, with the exception of a few countries including the United States, to have established a permanent international criminal court. That court, as you are aware, is located in the Hague and we are also fortunate to have a distinguished person from this country who has had long years of experience at the criminal bar, in the person of a former Attorney General.

I do not know if the current one in the future may have that opportunity either to be a judge or maybe he will be adjudged by the judges on matters that may be brought against him. Crimes against humanity might be brought against this Attorney General and he would be adjudged before judges. But I know the person whom I refer to is Mr. Karl Hudson-Phillips, who is now a judge at the International Criminal Court. So we have had some very important firsts. We revived that particular issue in 1988 and we got it on the particular agenda. ANR Robinson was the man at the helm at the time. We criticize when they do things that we do not support and if something is done positive in the interest of the nation and the people, we will congratulate them. We have no problem with that. We also want to congratulate Mr. Karl Hudson-Phillips, even though he was the one who was instrumental in bringing charges against the hon. Prime Minister at that time on declaration matters, which I will deal with later on. So even though we praise him now, we attacked him then because he was the person leading the charge against the UNC at that time.

Madam President, that aside, we would say very early that we cannot, as an alternative government, be against the concept or the establishment of the International Criminal Court. [*Desk thumping*] However, we have some concerns. One of the concerns that we have is the domestic machinery being established in the legislation to give effect to the Treaty of Rome. There is where we have some difficulty; it relates to the prosecution, the domestic machinery being established in this bulky and voluminous document to effect prosecution of crimes, whether they are crimes against humanity, war crimes or crimes of

aggression committed by the State against its citizens. We have some difficulty and some concerns.

We find that there are several provisions in this legislation before us that are offensive, that are draconian and, at times, they border on unconstitutionality. This is why I call on the hon. Leader of Government Business, since we are at one with the concept and the establishment of the International Criminal Court, to have a joint select committee go through this particular piece of legislation in detail, so that we can avoid difficulties and charges in the future. I ask the hon. Leader of Government Business to look at this proposal, at our illustrious Attorney General who has been given enormous powers; powers that he does not deserve.

I do not believe the Attorney General really would be in support of some of the powers hoisted on his very slim shoulders by this particular piece of legislation. I think when I explain to you some of these provisions and point out the kind of powers that have been given to a politician, not even an elected one, whether elected or nominated, the powers granted are too huge, too great, too enormous.

I want to know how come section 90 of our Constitution is being ignored in this piece of legislation that deals with the role of the Director of Public Prosecutions and why other judicial officers have not been involved in this particular matter. This is the International Criminal Court. Where is the independence, where is the impartiality, if we are going to have a politician doing things being proposed in the legislation, which I shall shortly point out to you and this honourable Senate?

The problem is that the illustrious Attorney General is a person whom we just do not trust. We just do not trust the Attorney General and more so with the powers being granted to him, it is quite alarming. These provisions might be good for Israel, that is why the Prime Minister went there. They might be good for Malta; "he gone there too". I heard he went to open an embassy in London. But do you know what I saw, Madam President? I was going through some pieces of legislation and I saw that in terms of Scotland, the British Government has the International Criminal Court in law and the Secretary of State is not given that kind of power. I think it was Scotland, if I was not mistaken, because it has its own independent legislature. I think the person they have under the law with responsibility for dealing with the International Criminal Court is the Secretary of State.

Madam President, one of the problems we have with the legislation is the power that is given to the Attorney General. Now our Attorney General is a hardworking gentleman. He has been in office for two years now, since his predecessor went off on a jaunt to a place called London. Do you know why I say to you and this honourable Senate that we do not trust the Attorney General of our country? People have given a new description to the personality of the Attorney General; he is now known amongst the people as "Mr. Political Fix It" for the PNM. Whenever anything is wrong in the PNM, there is Mr. Political Fix It, and I will give you some evidence. [*Interruption*]

Madam President: I have allowed you to go on for a little while attacking—not attacking, but maybe casting aspersions on the Attorney General, but I do not want you to go too far. When you start calling him names like Mr. Fix It, I would prefer that you did not. Let us remember we are talking about the office of the Attorney General.

Sen. W. Mark: I did not call him that. He is a very honourable gentleman. I am simply telling you what town is saying. People are saying to me that the Attorney General is Mr. Political Fix It, not Wade Mark. I see the Attorney General as a highly honourable gentleman.

Sen. D. Montano: On a point of order.

Madam President: I have asked you that it does not go into the records.

Sen. W. Mark: That he is a fix up man? "Not me say so." [*Crosstalk*]

Madam President: I know that Senator. I am simply saying stop casting aspersions.

Sen. Dr. Saith: This is the Senate, not a fish market.

Sen. W. Mark: I glad you know that, because this Bill will eventually come to haunt you, because for these crimes against humanity that I will deal with in detail the PNM and its ministers here and in the other place may eventually end up before the International Criminal Court; for crimes against humanity in this country. [*Crosstalk*]

Sen. Joseph: Then pass it fast.

Sen. W. Mark: I would not deal with that for the moment, I will come back to the Bill. [*Crosstalk*]

Madam President, if you can follow me on clause 13 of this Bill—[*Crosstalk*] If you go to the general principles of criminal law, it tells you all kinds of things about the provisions, et cetera. If you go to clause 12(2) it tells you the purpose of

the articles and makes reference to Trinidad and Tobago, the Statute, if there are any inconsistencies, interpretation, and it goes on.

Madam President, may I just advise you to look at the Explanatory Note. I want you to go to clause 13 and you would see in the legislation that:

> "Proceedings for an offence against sections 9, 10 and 11 may not be instituted"

Of course in Trinidad—

> "in any Trinidad and Tobago court without the consent of the Attorney General."

Where does the Attorney General derive this power to determine? [*Interruption*] No, the Constitution never gave the Attorney General that kind of power. We have strong objection to it. That may be good for Israel, Malta or London; it is not good for the Republic of Trinidad and Tobago.

Clause 13(1) says that:

> "Proceedings for an offence against sections 9, 10 or 11 may not be instituted in any Trinidad and Tobago court without the consent of the Attorney General."

Not the Director of Public Prosecutions (DPP); not a judicial officer. [*Crosstalk*] No, this is just the tip of the iceberg. I go further and explain certain provisions that are equally offensive. I refer to clauses 15 to 21. [*Interruption*] You did not help us very much; you just gave us the Explanatory Note; you did not understand the Bill, so I am now explaining it to you; take your time and be quiet.

Madam President, I refer you to clauses 15 to 21. If you look at the Explanatory Note, it tells you the kinds of offences against the administration of justice that this court would view very seriously and take action. It calls on the Trinidad and Tobago Government to extend its criminal laws penalizing offences against the integrity of its investigative or judicial process to offences against the administration of justice involving the ICC. The offences in clauses 15 to 21 are modelled on comparable provisions in the Integrity Commission and I love these provisions.

I want you to listen to these provisions very carefully. We have to ensure and we have ensured in the legislation that the corruption of a judge, registrar, deputy registrar or official of the ICC is a crime. It is an offence for anyone to attempt to bribe or to try to corrupt a judge or a registrar or the deputy registrar or official of

the ICC. It is also an offence to give false evidence for the purposes of a proceeding before the ICC or in connection with a request made by the ICC. It is also an offence to give or offer or agree to give a bribe to a judge, registrar, deputy registrar or an official of the ICC. It is an offence to fabricate evidence with the intent to mislead. These provisions are sounding quite familiar, but the one that caught my attention the most and I welcome this provision, deals with any conspiracy to obstruct. I think the Minister who has moved this Bill, ought to be familiar with that.

I read in the newspapers where he sought to almost chastise and warn a newspaper journalist not to publish a particular story and if he wants evidence I can bring it here. [*Interruption*]

Sen. D. Montano: Madam President, clearly he is misleading the Senate. He is impugning my motives and integrity and he is completely out of order; he must withdraw that; there is no such evidence. There is no such deal; he must withdraw that.

Sen. W. Mark: Would you like me to refer to the evidence? [*Interruption*]

Madam President: I am not too sure what it is all about, but the Minister is saying that you are imputing improper motives.

Sen. W. Mark: Would you like me to refer to the article in which the statement was made.

Madam President: Not necessarily, I would like—[*Interruption*]

Sen. W. Mark: No, I am not imputing; I can quote if you allow me.

Madam President: Why do you not withdraw that statement and continue with the Bill before us.

Sen. W. Mark: Why must I withdraw a statement of which the public is aware?

Madam President: I am ruling that you do not continue with that line of discussion and that you continue with the Bill before us.

Sen. W. Mark: I have it here.

Madam President: Let us continue with the Bill, Senator.

Sen. W. Mark: It is by Camini Maharaj.

Sen. D. Montano: You see my name there?

Sen. W. Mark: I am taking instructions not from you; I take my advice from the Chair.

Madam President, this is a matter that is of extreme concern to the people of this country. It is a matter that the Attorney General should be also concerned about. We do not support retrospective or retroactive legislation. I am looking at that Explanatory Note, Part II clause 8 of the Bill. If you look at paragraph two in Part II of the Explanatory Note it says:

"On this basis, clause 8 provides for limited retrospectivity as follows:

- persons may be tried for genocide…for conduct that occurred on or after 28th March, 1979...
- persons may be tried for crimes against humanity…for conduct that occurred on or after 1st January, 1991."

How can we have a situation where a Treaty is attempting to direct this honourable Parliament to support retroactive legislation or take action of a retrospective nature? We had an experience here before on that matter, but I would not go into it at the moment; we had an initial encounter with the issue of retrospectivity. The reality is that we have to be very careful, as parliamentarians and lawmakers, when it comes to retrospectivity.

If we go back to 1971, I know of a vehicle, PAN 1010, a Toyota Royal Super Saloon which was purchased by a then high-ranking member of the ruling party and it ended up in the hands of a "fella" called Nankissoon Boodram, better known as Dole Chadee. That was in November of 1983. So if we are going back to 1971, that was a crime for which we have never gotten an independent explanation or enquiry on. [*Interruption*] We must take it to the court? This is a crime for a sitting member of Government who was then the Minister of Energy and Natural Resources. He bought a car, PAN 1010 for three months. [*Crosstalk*]

Sen. D. Montano: On a point of order. On a point of order. On a point of order.

Sen. W. Mark: Three months!

Madam President: Point of order, Senator.

Sen. D. Montano: The Senator is now completely irrelevant; no crime has ever been established with respect to the sale of that vehicle. He is just completely out of order. Clearly he has nothing to say other than to make nonsensical, sensational statements. He must withdraw that!

Madam President: Senator, you are being irrelevant, so please do not continue with that; get back to the Bill.

Sen. W. Mark: Madam President, we are dealing with crimes against humanity. This is what this Bill is about; it is about crime. [*Crosstalk*] Madam President, do not take basket from this gentleman.

Madam President: Thanks for your advice, Senator; I am not taking basket from anybody.

Sen. W. Mark: I used to be there and I can tell you that I was a democrat.

Madam President: I am simply saying to you that you are being irrelevant. Please continue with the Bill, Senator.

Sen. W. Mark: Madam President, I will be guided by your ruling.

I refer you once again to the section that deals with clause 8 of the Bill, where I was speaking to the issue of retrospectivity. How can I be irrelevant when I am dealing with retrospectivity? I was making the point to you that this is a dangerous provision and I was drawing reference to the fact that if you take this retrospectivity to its ultimate and logical conclusion, we can reopen an issue of the sale of a car to a drug lord. [*Crosstalk*] That is the point I am making. What is irrelevant about that? I am guided by your ruling. [*Interruption*] You are always talking about the press; you want to silence the Opposition! You want us to come here and fix your face! We are not here to fix your face; we are here to remove you! [*Sen. D. Montano stands*]

Sen. D. Montano: Madam President, on a point of order. What does that have to do with the Bill?

Sen. W. Mark: I am speaking and you are interrupting me.

Madam President: Both of you are on your feet! [*Crosstalk*] Senator, please, will you get back to the Bill and do not tell people about fixing their faces.

Sen. W. Mark: All right; sorry about that. I would like you to rule on this matter; when I am on my legs speaking, I take strong offence to anyone from that side making the point that we are here simply to be sensational. We are paid by the taxpayers to expose this Government; we are paid by the taxpayers to expose this Government! We are paid by the taxpayers to get rid of this Government and wherever we see acts of indiscretion taking place, we are to draw to the attention of the Parliament, through you, and to the public of this country! They believe we must come here and be what, “peewats”?

2.30 p.m.

Sen. Jeremie: You accepted money under false pretences.

Sen. W. Mark: "No, no, no, you doh talk yuh know, you doh talk you know." Okay.

Madam President: Sen. Mark, speak to me.

Sen. W. Mark: This Attorney General should be charged with an offence entitled conspiracy to obstruct justice in this country.

Sen. Joseph: That is a serious accusation.

Sen. Jeremie: He is out of order.

Sen. W. Mark: He should be charged for that.

Sen. Joseph: He has to withdraw that.

Sen. W. Mark: But did you hear what he just said, Madam President?

Madam President: Senator!

Sen. W. Mark: You heard what he said? I hope you will rule on what he said.

Madam President: What did he say? He simply said that you were imputing improper motives.

Sen. W. Mark: No, he went further. He said I received money under false pretences.

Sen. Jeremie: I never said that.

Sen. W. Mark: That is what you just said. Go to the record and you will see that. That is why I said that he should be charged for obstructing justice in this country.

Madam President: Senator, will you please sit!

Sen. W. Mark: You must not make those statements against me. He is a "Johnny come lately"—

Madam President: Senator, I am on my feet!

Sen. W. Mark: Sorry about that, but deal with this Attorney General.

Madam President: I am going to deal with you, Senator, because you have imputed improper motives against the Attorney General.

Sen. W. Mark: And he has imputed improper motives against me.

Madam President: He was not on his feet speaking—

Sen. W. Mark: Madam President, he spoke, and that is why I responded.

Madam President: Senator, will you get back to the Bill, please?

Sen. W. Mark: Yes, thank you.

Madam President: And I do not want any more of this carrying on.

Sen. W. Mark: Madam President, I would ask you to get the Attorney General, warn him when I am on my legs I need total silence. [*Laughter*] No interruption from the Attorney General, none, and I seek your protection in that regard, Madam President.

Madam President: I would expect the same of other speakers—

Sen. W. Mark: Yes, Madam President, you know I will try my "endeavour" best.

Madam President: Yes, I know you would indeed.

Sen. W. Mark: Madam President, I am simply saying if I am wrong—this Government seems to be very thin skinned. They are very warm below the skin, Madam President, or should I say cold.

Madam President, I was just asking and engaging you in this particular section of the Bill that deals with conspiracy to obstruct, to prevent, pervert and/or defeat the course of justice, and I have a right as a Member of Parliament to raise an issue.

Madam President, I want to refer you to an article that dealt with a similar situation and I would like to know what is taking place with this matter because we are talking about crime against humanity, and about an International Criminal Court.

Madam President, I refer you to the *Sunday Express* May 08, 2005 on page 5 which reads as follows:

"Narace on the phone to Dansook, PNM protects its own"—

Sen. D. Montano: Madam President, Madam President—

Sen. W. Mark: "PNM protects its own"—

Sen. D. Montano: On a point of order.

Madam President: Senator, you are getting in the habit of not sitting when somebody stands on a point of order.

Sen. W. Mark: Sorry. "Don't get your blood pressure high, Ma'am." Sorry about that.

Madam President: May I hear the point of order, please?

Sen. D. Montano: I am familiar with that article, it has nothing to do with this Bill and under section 43(2) of the Standing Orders, I beg to move that this Senator no longer be heard. [*Desk thumping*]

Madam President: I do not know what the article is about, since I did not read it. But Senator, if it has nothing to do with this Bill—

Sen. W. Mark: "But Madam President, you ain't give meh a chance."

Sen. D. Montano: I moved a motion.

Sen. W. Mark: Madam President, this gentleman said he has moved a motion.

Madam President: And your motion is that he not be heard. Do you want me to put that to the Senate?

Sen. D. Montano: Yes, Madam President.

Madam President: Hon. Senators, there is a motion on the floor that Sen. Wade Mark be no longer heard. All those in favour?

Sen. Dr. Saith: Madam President, before you vote on the motion, may I suggest we take a five-minute recess and let us cool a bit.

Madam President: All right, I think I would go with that suggestion because I think things are getting a little heated for absolutely no reason at all. So we will in fact take 10 minutes recess and return at 2.45 p.m. and by that time, I hope that we will be a bit cooler on this whole matter.

2.35 p.m.: *Sitting suspended.*

3.02 p.m.: *Sitting resumed.*

Madam President: Hon. Senators, I met with the three leaders: the Leader of Government Business, the Leader of the Opposition and the Leader of the Independent Benches and we discussed this matter and the Government agreed that it will withdraw the motion that was on the floor, and Sen. Mark will continue with the remaining time of his contribution.

Sen. Mark, during the remaining time I ask that you stick to the Bill before us and avoid irrelevancies.

Sen. D. Montano: Madam President, I beg to withdraw the motion.

Madam President: Hon. Senators, the Member has withdrawn the motion. Is that satisfactory to everyone?

Assent indicated.

I also wish to indicate that the Senator's time was just up as we were getting into all that argument.

Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. S. Baksh*]

Question put and agreed to.

Sen. W. Mark: Madam President, in fact, I thought I was about to begin my contribution. I want to indicate that there are certain provisions in the legislation that require some adjustments and changes.

I would return to the point that I was on earlier, but I would not be as controversial as you would like me to be. I want to return to this point, but before I do so, let me ask the Attorney General this question, through you, Madam President. The provision in clause 22 talks about the consent of the Attorney General and the Minister of Legal Affairs. We do not have such an office in the Republic of Trinidad and Tobago so maybe that is a typographical error, or does it mean where the word Attorney General occurs, it means the Attorney General and not the Minister of Legal Affairs?

Sen. Jeremie: Sen. Mark, let me restrain myself from pointing out to you that the Explanatory Note is in no way intended to derogate from the provisions of the Bill itself which provides for the Attorney General. A Senator of your longstanding must be aware that the provisions of the Bill take precedence to the Explanatory Note. But as I am on my feet, if you will just allow me the opportunity to correct certain statements which you made about the role and function of the Attorney General in relation to the legislation, I would just be one second.

You seem to confuse the role of the Attorney General in relation to domestic law prosecutions. Now, that power is a controversial one, but you have to marry

the terms of sections 76 and 90 of the Constitution to arrive at what role the Attorney General has in relation to prosecutions if any, that is domestic law prosecutions.

Madam President: One second is up.

Sen. Jeremie: I crave your indulgence for one more second; Ma'am, this is an international document—

Madam President: Attorney General, no, you will take up too much of his time, and you will get your opportunity afterwards to speak.

Sen. W. Mark: Thanks very much, Madam President. You will get your opportunity, AG, do not worry, on your time you will have the time to educate me and yourself at the same time.

Madam President, I want to refer you to clause 33(1) of the actual Bill which says:

> "33(1)…the Attorney General may notify a High Court Judge in writing that it has been made and request that the Judge issue a warrant for the arrest of the person whose surrender is sought.
>
> (3) The Attorney General may, if he thinks fit, refuse to notify a High Court Judge under this section.
>
> 34. After receiving a request under section 33, the High Court Judge shall issue a warrant in the prescribed form for the arrest of the person…"

It goes on:

> "35(1) The Attorney General may, at any time, by notice in writing, order the cancellation of the warrant."

I do not know from where the Attorney General gets his power. He is not a judicial officer of the court as I understand it—and I may be corrected, Madam President—he is a politician, and it is not the Director of Public Prosecutions (DPP) who is carrying out his responsibility, it is the Attorney General and I take strong umbrage to clause 35(1).

Sen. Jeremie: On a point of clarification—

Sen. W. Mark: "Nah, nah, nah, Madam President, he disturbing meh man." He could clarify that in his time, Madam President. So these are the areas, and wherever we see the Attorney General we say that it should be deleted. I want to advise that a provision be placed whereby when the Attorney General receives

those requests, he must channel them immediately to the DPP or a judicial officer. I do not believe that the Attorney General should have that power. It does not matter if it is this Attorney General, our Attorney General, or somebody else's Attorney General. I do not believe that the Attorney General should have this kind of power.

Madam President, throughout the legislation the Attorney General's name is cropping up all the time and he has too much power under the International Criminal Court legislation.

Sen. Dumas: He is a judicial officer.

Sen. W. Mark: I am suggesting that the DPP be the person responsible for this task, or somebody of a judicial nature, not the Attorney General. The Attorney General is a politician and you cannot have a politician dangling and interfering with the rule of law and the administration of justice. I am suggesting, with respect, that all where the Attorney General's name appears, we delete that name or say; when you receive it as the Attorney General, immediately transmit the request to the DPP or a judicial officer. That is what I respectfully suggest to the honourable Senate.

Madam President, because of the nature of this piece of legislation and the dangers it can pose—we want an International Criminal Court, we are supporting that. We are supporting the concept and its establishment. What we have difficulties with is the domestic machinery that is being put in place for prosecuting crimes under this Bill. We do not believe that the Attorney General is the person for that role, he should be removed. That is why I suggested to the Leader of Government Business because of the delicate, sensitive, and important nature of this piece of legislation, it should be referred to a joint select committee of both Houses of Parliament so we can get it right. We do not want to have a Bill that at the end of the day, although we support it in principle, the provisions would be very undemocratic and draconian, and therefore, I would like to respectfully suggest that it be done.

Madam President, if you go to clause 101 of the Bill, Search and Seizure, and I want you to follow this carefully because when I speak, people get jitters. When Wade Mark speaks in this Parliament they get jitters.

Madam President, read this one with me. It says:

"101(3) If the Attorney General gives authority…"

Now, he is giving authority.

"for the request to proceed…"

That is the request to have somebody search or something seized, property or whatever. He is giving that order.

"he may authorize a police officer, in writing, to apply to a Judge for a search warrant under section 102."

Madam President, this clause conflicts with section 90 of our Constitution. The only person I know under the laws of our country who can give that kind of authorization to charge people, to seize things and take action, is the Director of Public Prosecutions. That is what I know. I may be wrong but somebody can correct me. How can the Attorney General get all that power? From where did he get it? This is an International Criminal Court and the Attorney General is supposed to be above that court in terms of the administration of its provision and the administration of justice. And, therefore, I looked through this Bill and almost every clause if you turn to clause 112(1), the Attorney General must give authority for the request for the assistance in identifying.

In clause 113(2), the Attorney General may give authority for the request to investigate the conduct by a prosecutor.

In clause 114, the Attorney General can refuse a request. Imagine, the Attorney General!

Clause 115(1) the Attorney General may postpone the execution of a request for assistance under this Part.

Madam President, from where did he get all this power? Give the power to the Parliament. I prefer that power be given to both Houses of Parliament than to give it to one person. Why must we give that power to the Attorney General, and as I told you, I do not trust him.

If you go to all the clauses of the law, 124 and 125, one sees the Attorney General's name is repeated throughout the legislation. All I am saying to you is that we will support this legislation in principle. We support the concept, the establishment of the court, we do not support the draconian provisions giving the Attorney General so much power.

We call on the Senate, through you, to have this matter referred to a joint select committee of the Parliament where we can go through this legislation properly. There are a number of issues that I want to raise in this matter, one matter in closing which I want the Attorney General to answer.

Madam President, we would like to know from the Attorney General whether there is a conspiracy to massively cover up an attempt to execute certain provisions of the law involving a number of top-ranking Government officials who we learnt from the newspapers have all been involved in a conspiracy to obstruct and pervert the course of justice in this country.

We know their names and we know that some of them sit in this Chamber, and we call on the Attorney General to tell the population whether there is a conspiracy hatched at Whitehall, Cabildo Chamber and Henry Street to at least cover up and prevent the office of the Director of Public Prosecutions from proceeding with certain charges against top-ranking Members of the People's National Movement Government; some of them in this Chamber, some of them in the Ministry of Foreign Affairs, some in the Ministry of Energy and Energy Industries—one resigned, another is a councillor in the Mayaro/Rio Claro Corporation.

We would like to know from the Attorney General, if he is part of any conspiracy to pervert the course of justice in this country. I would like him to answer that.

Sen. Jeremie: Madam President, I am happy that at last the Senator has allowed me some time to speak. I would only be a minute, literally.

Madam President: The Senator has finished.

Sen. Jeremie: The answer to that is definitely 100 per cent no. This Government is committed to the highest principles of integrity in public office; it is the first time in over five years that we have had a Government that is thus committed. [*Desk thumping*] I do not think that it lies within your mouth to come here today to make accusations in respect of this Government.

Sen. Mark: I just asked a question.

Sen. Jeremie: The answer to that is no. [*Crosstalk*]

Sen. Prof. Ramesh Deosaran: Madam President, this document of over 200 pages is one of the most remarkable documents to come on the international scene in the last 15 years. The reason for that has been enunciated by the Minister who presented the Bill and also articulated in some part by Sen. Mark.

Madam President, it is a document which should gain appropriate regard in terms of dealing with what has been a rising phenomenon across the world, genocide especially, in certain parts of the world, and I need not call the names of those countries.

We have already witnessed the scenarios and the brutal massacre of tribes running into thousands, and such matters cannot escape the national community. I think it is appropriate to strengthen the hands and the legal apparatus of all international agencies starting from the United Nations with novel approaches such as this to deal with such crimes against humanity. So we are about a humanitarian cause this afternoon and I wish to lend my support to the Bill except with certain reservations I will make, or in certain issues for which I will ask for clarification from the hon. Minister.

Madam President, this document attests to the growing trend, not only for economic globalization, but for judicial globalization also and that is where we now find ourselves and it is in this context that the Attorney General has been implicated, in terms of the constitutionality of his role and the relevance of the provisions that are indicated here.

Madam President, this document is so sophisticated, in fact, so much more sophisticated than our own local laws especially with regard to the condition of the prisons and sentencing, and the conditions to ensure integrity in the administration of justice. The document really should inspire us to follow quickly in bringing the regulation and the legislation affecting our prisons, affecting sentencing and judicial integrity in line.

It is really a challenge for us that we should accept with both hands. I refer in particular, to article 106 which speaks about prison conditions because you cannot hold anybody and throw them into prison without having some kind of proper supervision over the conditions, and I think this Bill will help ensure that the conditions in our prisons—whatever we may do or not do—improve to internationally acceptable standards. Something we have been ignoring for many years with one excuse after another as if nobody is responsible for the drugs or weapons that get into the prisons. Everybody is passing the buck as it were.

In fact, I was very surprised when a junior Minister brought in a briefcase a set of weapons to demonstrate what is happening inside the prison as if nobody is responsible. He is responsible and rather than complaining, he should also provide a quick solution with some kind of punitive measures invoked, but we wait and see. That is the kind of culture in which we find ourselves.

3.25 p.m.

That is why I would commend this legislation for the challenge it presents to us for us to improve our own standards, starting with the prisons.

Article 106 states quite clearly that:

> "The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners."

Even though the sentence is passed by the international court, I still think implicitly it requires such conditions to exist in our own local jurisdictions. Section 2 in that same article reaffirms what it has said, and I need not elaborate, but just to point out that our prison conditions need to be revisited and those conditions, if they seem to be inhumane and incompatible with international treaty standards, this whole country would be held responsible.

The other aspect of sophistication which I would like to draw to this honourable House and the Government, in particular, resides in articles 103 to 106. It deals with sentencing. I do not know if it is an enigma, but in the local jurisdiction we have on the statute books the death penalty for certain offences, but in the International Criminal Court there is no such penalty. We have to do one thing or the other with our local jurisdiction, because it would seem as if you have a better chance—an offender, that is, who is accused of genocide or crimes against humanity—to go to the International Criminal Court where the sentence is, at least in theory, lighter than the sentence you would get here.

The other enigma we face is that the death penalty in this country is almost dead itself. It has been in suspension for a long time for different reasons which I need not get into, but we have to clean up our act. Is this country now prepared to abolish the death penalty or not, or have it on the law books with such embarrassment to public policy? We have it on the law books, and I think we must clean up that ambivalence and bring ourselves in line with this particular International Criminal Court or reaffirm the death penalty on the books and give reasons for so doing as well.

The other area of sophistication from which I believe this country could benefit in the spirit of the International Criminal Court is the range of anti-corruption laws that have been drawn up to ensure judicial integrity. We do have certain provisions that would ensure judicial integrity, starting from the common law and in other different pieces of legislation which apply to everybody else. But since judges and officers of the court carry such special responsibility, the International Criminal Court and the legislation which supports it, have seen it fit to organize special provisions, both as a deterrent and for punitive measures against judicial misbehaviour. That is outlined in clauses 15 to 17 of the Bill and

it is useful for this country to follow the example if only as a deterrent to our own judicial officers without, of course, casting any aspersions. We are merely taking the necessary precaution so as to lift the bar of principle.

It states quite clearly in clause 15(1):

"Every Judge is liable on conviction on indictment to imprisonment for fourteen years who, in Trinidad and Tobago or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for himself or any other person in the respect of an act—

(a) done or omitted by that Judge in his judicial capacity; or

(b) to be done or to be omitted by that Judge in his judicial capacity."

So the International Criminal Court has helped us in a sense to formulate specific legislation in order to deter any judicial officer from becoming or thinking of becoming corrupt. So the other articles go along in that light, leading to witnesses, bribing witnesses, bribing jurors or any other officer of the court. The legislation, to me, is quite apt, specific, and it does carry an appropriate penalty. So what it is saying here, very interestingly, is that although it is an international treaty in a sense, there is still local provision applicable to Trinidad and Tobago to deter judicial officers from committing any kind of corruption.

At this point I feel obliged to recall, briefly, the history of this International Criminal Court and more so in the spirit of fervent nationalistic pride. I recall the gentleman whom we all know, His Excellency Arthur Raymond Napoleon Robinson, who really took a great leap with the idea, and with blood, sweat and tears, as it were, pushed this notion from idea into practice through the corridors of the United Nations. It is always pleasant to celebrate success but we must always remember that many a time such success, in particular the one that went with the implementation of the International Criminal Court institution, does not come easily.

I can tell you—and Mr. Robinson himself has told me so and I have already researched the issue to verify what he has told me—it was not an easy path even in Trinidad and Tobago to get the idea from the bureaucracy of government at a certain time onto the international agenda, and when Mr. Robinson recites that story, it would fill you with sadness once again to know how sometimes our own people could treat our own people, as it were. Of course, I say no more but it is always a remarkable thing to observe when you speak about crimes against humanity, how man's inhumanity against other men can be exemplified in other ways.

In noting Mr. Robinson's role in this, I also take note of the fact—and the very bothersome fact—that the United States has shown great unwillingness to become part of this great mission. They do have reasons. One of the reasons being, that they are afraid that some countries would jeopardize the safety and welfare of their soldiers who are sent on peace missions, as it were. There are other reasons but perhaps that is the most significant one that might be relevant to the debate today. But I would like to suggest and encourage the United States that there is no need for such great fears because in the provisions in the Bill there are sufficient checks and balances; there are sufficient roads to appeal, even to review the Bill after seven years and to make appropriate amendments if the experience of one or other States suggests that there is need for such amendment.

I think it is very unfortunate, in my very respectful view, that the United States has reserved its position on this Bill. I think there is a lot for the United States to gain by being a partner in this international mission. It would certainly enhance the prestige, the international reputation of the United States and it will, in fact, give the International Criminal Court further muscle in dealing with recalcitrant States across the world.

The role of the hon. Attorney General was mentioned several times, in particular by Sen. Mark, and I think it is a matter that merits some attention. But in my respectful view and from what little I know about these matters, it seems to me that when you are dealing with international treaties and you look at the role of the Attorney General in clause 76, he really represents the country, for that nominal reason, and with the obligations under the International Treaty, I believe we have no choice in the matter, unless, of course, which brings me to the other issue, if we want to change these things. Well there is a way to do it. It is called, "change the Constitution". If you want to expand the role of the Director of Public Prosecutions who really has local jurisdiction more than international obligations, the latter falling into the lap of the hon. Attorney General, well let us put it on the agenda properly. But I do not think it makes much sense to hammer down the Attorney General for carrying out what, in this context, is really a public duty that is constitutionally valid.

Further than that, it occurs to me, and perhaps I am subject to be advised further, but if you have given the Attorney General just recently similar powers in a larger sense, in the Anti-terrorism Act, in terms of extradition and other rules, because he represents the Government, the State, the country, well I do not see why you could not allow the same to apply here, except that there is something else I have not heard, or I have not heard an argument that would justify removing

the Attorney General from the legislation, because the legal infrastructure that we have does provide for the Attorney General to play this role. If we want to make a change, there is a route to do so, but I do not think it should be done in the way that it was done this afternoon.

There is a point that produces some worry to me, in that if you look at clause 10(2) on page 25, it says:

> "…a 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
>
> (a) murder;
>
> (b) extermination;
>
> (c) enslavement;
>
> (d) deportation or forcible transfer of population;
>
> (f) torture;"

And it lists, "deprivation of physical liberty". The reason I am worried about this is if you look at article 6, it describes genocide—that is page 133—to mean:

> "…'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as;"

And (b) states:

> "Causing serious bodily harm or mental harm to members of the group;"

The reason I am saying so is because it seems to me there is a trend in kidnapping to target a certain ethnic group in the country and I think it is a matter that the Minister of National Security should investigate with the intelligence he has, to see whether, in fact, this group is being targeted because, to me, the proportions are getting way out of reasonable accommodation. I say so with no ulterior motive except to point out to the Government that there seems to be something sinister underlying the trend of kidnappings, seemingly targeting one ethnic group more so in this country, and I think it is a matter that needs attention.

The reason why, if it is causing mental harm, as article 6 says, there is mental harm done to the Indian community in this country in terms of the insecurity when young people going to their businesses are being snatched in front of their business houses; children are being snatched in front of their doors in the

company of others. The word "liming" has disappeared from practice in this country; something we used to enjoy, because there is mental harm done to certain sections of this national community.

I need say no more except to cast a warning and to hope that the responsible Government does some proper analysis on this, especially with the technology it has, and let the country know that perhaps there is nothing to fear and there is nothing malicious. Because if there is, I think the Government has to act very quickly because an entire part of our national community feel themselves in jeopardy. I support the Bill, generally, and the unity that we had two weeks ago, I hope it continues between the Opposition and the Government side in fighting matters of crime and dealing with the national security.

Thank you. [*Desk thumping*]

The Attorney General (Sen. The Hon. John Jeremie): Madam President, I thank you for this opportunity to speak on the International Criminal Court Bill which is before us this afternoon. I had not intended to speak on the legislation but certain comments were made in the course of the contribution by Sen. Mark which spoke to the role of the Attorney General under the proposed law. What I propose to do, very briefly, is to take us through the evolution of the office of the Director of Public Prosecutions. I will spend just a few minutes on that; I will turn to what the Constitution actually says about the provisions which relate to the powers of the Attorney General and those of the Director of Public Prosecutions, and then I would turn to the Bill which is before us.

Prior to 1962, that is, in this country, the Constitution did not provide for an office of the Director of Public Prosecutions, so that there was in the office of the Attorney General complete power with respect to prosecution and the defence of civil proceedings. He had—to use a word which is now current—the power plenipotentiary. That was changed in 1976 and there is a useful book by Gardiner, *The Law Officers of the Crown,* in which the author chronicles the evolution of the office of the DPP in the United Kingdom. What he said in that book was that the office of the Chief Prosecution Counsel in the United Kingdom arose out of a fear of domestic political-driven prosecutions. That is important to note. So that in England there was this fear of domestic law political prosecutions. So that you removed the politician who was supposed to, at that time, wear a political hat and a judicial hat; you removed that judicial function from him and you placed it largely in the hands of the Crown Prosecutions Service. That is what Gardiner says.

In our 1976 Constitution we made provision for the DPP and I turn briefly to the relevant section. Section 90 provides that—and the opening words are significant because section 90(1) provides as follows—and I hope that my learned friend is listening, but he is not, as usual, and at points like this. It says:

> "The provisions of this section shall, subject to section 76(2), have effect with respect to the conduct of prosecutions."

So that takes us back to section 76(2). Sen. Mark is ignoring me, but I will read section 76(2).

Sen. Mark: I am listening to you.

Sen. R. Montano: Go ahead. We are doing something here but—

Sen. The Hon. J. Jeremie: Section 76(2) provides as follows:

"The Attorney General shall…be responsible…"

and I left out section 79 because that deals with the power of the Prime Minister to make appointments—

> "for the administration of legal affairs in Trinidad and Tobago and legal proceedings for and against the State shall be taken—
>
> (a) in the case of civil proceedings, in the name of the Attorney General;
>
> (b) in the case of criminal proceedings, in the name of the State."

So under the provision which speaks of the powers of the Attorney General, the DPP's powers under section 90 are made expressly subject to the powers conferred by the Constitution under section 76(2).

Now, section 90 goes on to state explicitly what are the powers of the DPP. Those powers are not relevant for our present debate because they speak to domestic law and that is a critical point of distinction. So that even if there can be an argument—

Sen. Seetahal: May I ask a question?

Sen. The Hon. J. Jeremie: Yes, sure.

Sen. Seetahal: Through you, Madam President, since the Attorney General has raised the powers of the DPP as subject to the Attorney General's responsibility for the administration of legal affairs, I was just wondering if he would not mention how the case of the DPP against the AG of Fiji reconciled these two, because it is reconciled in that case, which says that administration of legal

affairs has nothing to do with criminal prosecutions. I know it is in relation to domestic matters; I am not dealing with that point now, but just for the clarity of all of us.

Sen. The Hon. J. Jeremie: That case was cited in the Dhanraj Singh case which dealt with the issue of a pardon in questionable circumstances by the DPP. I would prefer not to engage in a discussion on the fine constitutional line between the powers of the Attorney General and the DPP, but all that I would point out is that the Constitution itself envisages that those two offices are to have a very close relationship and that I suspect that we have. I would predict we have not heard the last on litigation involving this section. So that is how I deal with the first instance decision of the court in Fiji which is perhaps the only case which stands up in defiance of this, and the expressions in the Constitution of Fiji were worded in slightly different terms.

If I could turn to the International Criminal Court Bill, which is one that concerns us this afternoon, all the DPP's powers are in here. I will begin by looking at clause 176, that is the "Mutual Assistance in Criminal Matters Act, 1997 applies to requests", and following from that, clause 177, the "Extradition…Act, 1985 applies to requests for surrender". This is in the context of requests made by the Attorney General under clause 173 to the ICC for assistance. I started off with these provisions although they do not chronologically follow the provisions cited by Sen. Mark, to illustrate a point. That point is this: Wherever treaty, that is to say, international law, comes into it, it is the Attorney General who has power in relation to these matters, and for a very simple reason. Ever since my friends passed the Mutual Assistance in Criminal Matters Act in 1997, they would have recognized that the Attorney General liaises with his colleagues in foreign jurisdictions and is privy to information which is not generally available throughout the system.

So that when a request for assistance comes pursuant to the 1997 Act, which was passed according to treaty by my learned friends on the other side, it is the Attorney General and the office of the central authority which is located in the office of the Attorney General, which processes these requests. Why? Because the Attorney General is the functionary in international law, whatever the position might be in domestic law, and I say that there you have some difficulties of construction. We can argue about that, but I believe that we have some difficulties of construction even in respect of the constitutional provisions in domestic law. But there can be no difficulty with respect to what happens in the international arena and that was recognized by my friends on the other side when they enacted

the Mutual Assistance in Criminal Matters Act of 1997 and they accorded the office of the Attorney General the role of the central authority, which processes every single request for assistance in relation to prosecution of criminal matters. These relate to search and seizure—quite draconian powers—and there is even the discussion afoot, as we speak, as to whether or not this jurisdiction should be extended to take in summary extradition. But I come to that in clause 177, because the relevant Act is the Extradition Act of 1985.

So that you have the Mutual Assistance in Criminal Matters Act, 1997 and the Extradition Act of 1985 again enacted pursuant to international cooperation. Extradition does not exist in the context of Trinidad and Tobago alone. We live in a global village where crime has no boundaries and we are required to provide persons at very little notice to our partners in the other territories. Now every single matter under the Extradition Act falls under the Attorney General. The DPP has absolutely no role to play there, and for the same reason, that when you are dealing with extradition; when you are dealing with international treaties. When you are dealing with mutual assistance requests in criminal matters, the person that the Attorney General in the United States contacts is not the Director of Public Prosecutions, who is in charge of local prosecutions; in charge of what happens on the ground; in charge of who has murdered who; what stresses he has to deal with on a daily basis in terms of getting matters done before a six-month expiration period, he looks to someone who can be held accountable in the international arena. The DPP is entirely a function of the Constitution. Whatever else he might be, he has no executive authority to bind the State.

I started with that point to put in context the other provisions which relate to the powers of the Attorney General, and they are contained in Part VIII of the Bill. Clause 157 deals with national security issues and clause 163, which mentions the powers of the Attorney General, states that the Attorney General must take into account ICC's ability to refer matters to Security Council.

How on earth can that power be given to a Director of Public Prosecutions? Likewise, the power contained under Part VII which speaks to the Attorney General making removal orders in respect of prisoners to the ICC, which is no different from his extradition powers and his powers in relation to the Mutual Assistance in Criminal Matters Act. Now, under clauses 94 and 97, which deal with—that part is Part V, again it speaks instructively to domestic procedures for other types of cooperation. And I ask the question: Cooperation with whom? It is foreign States. The DPP is incapable of cooperating with foreign States. The

infrastructure is not there. The Attorney General speaks to his colleagues in foreign States. Clauses 94, 95 and 112 similarly, fall by the wayside.

3.55 p.m.

In relation to Part V, the request for arrest and surrender; the issuance of a warrant; cancellation of a warrant—the provisional arrest warrant is a creature of the extradition law. It already exists on the books. In relation to a treaty matter all that is sought in this legislation is to duplicate the powers he has in relation to the extradition procedures.

In relation to Part II—I have come from the back forward because that places in context the comments which Sen. Mark addressed. He is ignoring me now because he is getting complete responses to his questions. I know him by now. He makes his sound bytes for the media and when the substantive responses are here, he hopes that the press has fled by 4.30 p.m. He is busy in chat.

Clauses 13 and 22 are headed "Consent to Prosecutions for International Crimes" and "Consent to Prosecutions for Offences Against Administration of Justice". In relation to prosecutions and the consent to prosecutions, the Attorney General's request is a condition precedent because the Attorney General is likely to be in possession of information which is given by our colleagues in relation to matters which are likely to come before the International Criminal Court (ICC).

In closing, the legislation before us speaks to international crimes, genocide and the like. It has absolutely nothing to do with domestic legislation.

Sen. Dr. Mc Kenzie: Madam President, may I ask the Attorney General to comment on the question of retroactivity in some of the clauses.

Sen. The Hon. J. Jeremie: I am not prepared at this stage to comment on that because it will require some study. Perhaps, the Minister who is piloting the legislation will speak to that.

That is my contribution. I thank you for hearing me before the tea break.

Sen. Basharat Ali: Madam President, I wish to make a short contribution on the International Criminal Court Bill which is before us. I will confine my contribution to matters relating to the statute. I do not have the competence to deal with the Bill before us. I leave that for discussion among the legal luminaries in the Senate.

I spent a fair amount of time trying to understand the statute knowing that it originated from our country. I went through a number of steps to acquaint myself with the content of the statute so that I could comment on it. I found out how this

statute came into force. It required 60 members to ratify the original statute and July 01, 2002, is the date which we have heard. I looked at this in the context of the members and I am pleased that a number of States have agreed to be members.

My concern was that two States did not intend to be members of the ICC. On May 06 the United States of America advised the Secretary General that they did not intend to become a party to the treaty although they signed it on December 31, 2000, in adoption. Before the statute came into force the United States of America opted out of membership. The other country that opted out of membership was Israel and their notification to the Secretary General was on August 28, 2002, after the statute came into force.

What was even more troubling was the fact that the two parties, Israel and the United States of America not only opted out but they also signed a treaty dated August 04, 2002, which was intended to protect their nationals from prosecution in the International Criminal Court. According to the information available, the signatories were the then Foreign Minister of Israel, Shimon Perez and then US Under-Secretary of State for Arms Control and International Security, Mr. John Bolton who is now the United States of America Ambassador to the United Nations. His appointment occurred in a controversial way in that he did not have the approval of the Senate. His appointment went through during a Senate recess straight to the United Nations. He is not a popular appointee of the United States of America because the Democrats had objected and filibustered to prevent a vote in the Senate on this matter. These two parties signed this treaty and they contend that it is consistent with article 98(2) of the treaty which says:

> "The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender."

These two States seemed to have signed the treaty to frustrate any effort on the part of the International Criminal Court to take action against their nationals.

In the news they said that the United States of America had plans to conclude similar agreements like this treaty with a large number of countries actively pursuing discussions to this end, according to a statement from the Embassy of the United States of America in Tel Aviv.

I think we remember September 2003. It was a September to remember. It was then the United States of America started to lobby the Caricom States for exemption from prosecution of their nationals, specifically their servicemen by signing agreements. We remember that some Caricom States had indicated their willingness to do so. They were Guyana, the Bahamas, Grenada and St. Lucia. I am not sure where Jamaica stood in that. The breakfast with President Bush to which our Prime Minister and the Prime Minister of Barbados were not invited—they said that they wanted to stay with the terms and conditions of the ICC. These States that gave the indication that they were willing to sign an agreement were doing so, I think under the threat of cutting off of military aid by Washington. The United States of America withdrew its intent on this exemption because they intended to take it to the United Nations.

I have a concern about our relationship with Israel in that we do not have full diplomatic relationship with Israel. In Parliament in the other place, the Opposition was questioning the purpose of the Prime Minister's visit. Not much came out of it except maybe to discuss crime.

The Leader of the National Alliance for Reconstruction sounded a warning to our Prime Minister with respect to keeping the company of Israel who is a target for terrorism. Last Sunday there was an interesting article by Lennox Grant, headlined, "Next year in Jerusalem the Gospel of Patrick." It was a tongue-in-cheek commentary on our Prime Minister's visit with Ariel Sharon who has left the Likud party and gone to "Kadima" which is the Hebrew word for forward. They are going forward, I do not know with whom. I do not know what will come out of our Prime Minister's visit to Israel if he went to talk about crime.

Like the commentator Lennox Grant, I was intrigued by the sound byte from our Prime Minister about the Israeli Air Force armed helicopters and his initiation of discussions with the Israeli Government to see whether we could not have a transfer. What this transfer was, I do not know. Is the transfer to lease these armed helicopters and if so, is it a wet lease? We have experience in wet leasing inter-island boats and commercial aircraft. Maybe, the intent was to wet lease military helicopters from Israel. We do not have the expertise within our defence force so it looks to me that this kind of equipment would be outside their scope. Who are the targets? These are precision arms aimed at the removal of specific targets not necessarily within Israel, but the neighbouring places.

I think that the Government may have bought some time on this issue because we expect new elections in Israel. In the long run Mr. Sharon may not be there as

the Prime Minister of Israel. Our other partner in crime prevention and detection, the United States of America has a good record in anti-terrorism, but their record is not wholesome with respect to human rights preservation. When we look at events in Guantanamo Bay we should be quite concerned. Last week the United Nations declined a visit to Guantanamo Bay Prison Camp because of the refusal of the United States of America to allow private interviews with the detainees. It gives one the impression that there are matters to hide. I am not making any assertions. This is the position with respect to this country that has opted out of the ICC to which we are fully committed.

I believe that the provisions in the statute are well done and there is preservation of the rights of people who might be prosecuted under it. I do not see the fear that the government of Israel said that there might be political motivation in having a prosecutor there to carry out certain activities against their country. As far as I can see there is provision for the pre-trial chamber, the trial chamber and the appeal chamber in the system.

I do not have anything to say on the Bill itself. I will leave that to my other colleagues. I will end my contribution with a quote from the Declaration of the just concluded Commonwealth Summit in Malta:

> "States must ensure that measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law."

Thank you.

Sen. Parvatee Anmolsingh-Mahabir: Madam President, thank you for allowing me to make a contribution on the International Criminal Court Bill. Probably the best response to atrocities lies in a prudent and well-thought-out combination of various approaches seen not as alternative but as a joint reaction to the appalling sufferings we are obliged to witness every day, with a deep sense of indignation of man's inhumanity to man.

Let us not forget that international criminal law is a branch of law that more than any other, addresses human folly, human wickedness and aggressiveness. It deals with the darkest side of our nature and the way societies organize themselves to stem violence and viciousness as much as possible. Clearly, given the magnitude of the task no single response may suffice. Instead a broad array of responses each tailored to the specific circumstances is needed to fight international criminality effectively.

It gives me great pleasure to take part in this debate. The Bill before us also represents the fruits of the enlightened statesmanship and diplomacy of one of our visionary sons, the former Prime Minister and President of our Republic, His Excellency, Mr. Arthur Napoleon Robinson. In a way, Mr. Robinson was ahead of his time because of what he did. In the face of widespread opposition at home, including government circles, he acted as a catalyst to push forward the process to establish the International Criminal Court. This was an expression of his uncanny insight that led him to appreciate that the international community was in the process of rejecting the old values of sovereign state and state immunities that went with that concept. There was a need to curb the aggressiveness and the base instincts of humanity in an unregulated international setting.

The emergence of the International Criminal Court indicated to him that precedence was being accorded to multilateralism especially when globalization and functionalism endangered the relevance of and reduced the future of the nation state. Unilateralism and the use of force were being progressively replaced by an emerging body of universal values. Too many crimes committed against humanity were being hidden from the censure of international exposure by tenets of state immunity and all kinds of "isms". The cornerstone of Trinidad and Tobago's foreign policy since Independence has been the adoption and pursuit of a legal based approach to international relations.

When this nation became a member of the international community in 1962, it was during the height of the bipolar cold war. As a small state, we could not get involved in the settlement of disputes by the use of force. That is why we became a member of the Non-Aligned Movement. In 1967, we supported the Malta initiative to write a new constitution for the use of the ocean that would be based on laws and norms and not on the fact that might is right. We rejected the notion that he who had more cannon would claim greater ocean space. Today we have a new Order for the oceans based on justice and equity. That is an expression of the new international morality and a new public order for the ocean.

The participation of Trinidad and Tobago in the Rome statute establishing the International Criminal Court must be viewed against this brief exposé of the essence and moral foundations of Trinidad and Tobago's foreign policy stance. That decision is consistent with our normative approach to the international relations that was the essence of the Non-Aligned Movement. The International Criminal Court is the expression of a normative approach to the eradication of crimes against humanity and war crimes adopted by the international community.

I fully support the incorporation of this statute in our legislation. We must not be diverted in our determination to prosecute and bring to justice those individuals who hide under the cover of a new state immunity to commit political crimes and atrocities of genocide, of crimes against humanity and war crimes. We cannot be made to subscribe to the outdated and immoral aspects of "victor justice". That is a hangover of the approach to international relations.

Our former President, His Excellency Mr. Arthur Napoleon Robinson ignored the potential pressures of both the drug lords and super powers and "attacked with full force" in his crusade that he waged to bring the International Criminal Court to fruition. I congratulate him. The Bill does not infringe on our sovereignty. The International Criminal Court will only become involved when our courts fail to bring to effective justice those individuals who have committed crimes that fall under the purview of the International Criminal Court. The statute would have the effect of putting pressure on our local jurisdiction to prosecute those brutal offenders, since our failure to do so will involve automatic involvement of the International Criminal Court in our jurisdiction. Accordingly, there are punitive and deterrent aspects of the Bill.

You may be aware that the concept of state sovereignty is progressively being eroded by the regionalism, integration movement and globalization. Some states want to reap the economic and technological benefits of the borderless trading system but are unwilling to subscribe to the consequent demands of international community justice. The International Criminal Court represents the convergence of the international community on at least three emerging norms of international law relating to genocide, war crimes and crimes committed against humanity. This is the international mechanism established by the community of nations to enforce international standards against those individuals that breach internationally agreed values, that is to say international criminality.

Trinidad and Tobago is a plural society and you will appreciate the plight of those citizens who feel victimized by the kidnapping menace that appears to target victims of a particular ethnicity. The International Criminal Court represents a check and balance against this type of crime against ethnic minority or majority. I refer to page 24, clause 9(2) of the Bill before us. I refer to those causing serious bodily and mental harm to members of a group.

Were this type of conduct to escalate, the State would be under obligation to gather evidence to determine whether a prima facie case has been established. One of the most serious drawbacks to the implementation of international norms as opposed to national norms is the lack of implementing or an internationally

agreed cohesive agency. The International Criminal Court is that cohesive agency on the three crimes mentioned, genocide, war crimes and crimes committed against humanity. The scope for implementation is therefore greater.

4.25 p.m.

Madam President, you will recall that the Security Council, although empowered to use force to settle international dispute and to remove threats to international peace and security, is very much dependent on the resources of member states. Indeed, without armourments of war, justice will not be dispensed by the Security Council. However, I am not unduly perturbed. I believe that with the acceptance of the International Criminal Court there would emerge in the near future a consistent and uniformed practice of international jurisprudence on the prosecution of crime, genocide, war crimes and crimes against humanity. I can envision the International Criminal Court assuming the legal status of fundamental norms of which no derogation would be permitted even by those states who chose in their aggressive and expansionary interest to opt out of the international consensus that is now emerging, and which would bind them eventually.

Madam President, the International Criminal Court is one giant step forward for mankind towards the establishment of a coherent system of international relations. Trinidad and Tobago must be a part of this expanded system of international jurisprudence, because it has in its foreign policy rejected the use of force, aggression and man's inhumanity to man as a means of dispute settlement. The peaceful resolution of the disputes and the achievement of international consensus and accord are of overarching importance to us all.

I thank you.

ADJOURNMENT

The Minister of Public Administration and Information and Acting Prime Minister (Sen. The Hon. Dr. Lenny Saith): Madam President, I beg to move that the Senate be now adjourned to Tuesday, December, 06, 2005 at 1.30 p.m. at which time we would continue the debate.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.27 p.m.