

Leave of Absence

Tuesday, December 06, 2005

SENATE

Tuesday, December 06, 2005

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. the Hon. Knowlson Gift who is out of the country and to Sen. Angela Cropper from today's sitting of the Senate.

SENATOR'S APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., PhD, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MRS. JOAN HACKSHAW-MARSLIN

WHEREAS Senator Knowlson Gift is incapable of performing his duties as a Senator by his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOAN HACKSHAW-MARSLIN, to be temporarily a member of the Senate, with effect from 6th December, 2005 and continuing during the absence from Trinidad and Tobago of the said Senator Knowlson Gift.

Senator's Appointment
[MADAM PRESIDENT]

Tuesday, December 06, 2005

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 5th day of December, 2005."

OATH OF ALLEGIANCE

Senator Joan Hackshaw-Marslin took and subscribed the Oath of Allegiance as required by law.

PAPER LAID

Report of the Auditor General of the Republic of Trinidad and Tobago on the Statement of Recovery of Expenses of the Ministry of Energy and Energy Industries for the year ended December 31, 2004. [*The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith)*]

ORAL ANSWERS TO QUESTIONS
Unemployment Relief Programme
(Funds spent)

10. Sen. Sadiq Baksh asked the hon. Minister of Local Government:

Could the hon. Minister provide the total amount of funds spent on the Unemployment Relief Programme (URP) on a monthly basis for the period January 01, 2002 to September 30, 2005?

The Minister of Local Government (Sen. The Hon. Rennie Dumas):
Madam President, I am in the position of having to ask the Senator for a further week. I hope that he could facilitate us with that.

Question, by leave, deferred.

Community-based Environmental Protection
and Enhancement Programme (CEPEP)
(Funds spent)

11. Sen. Sadiq Baksh asked the hon. Minister of Public Utilities and the Environment:

Could the hon. Minister provide this Senate with the total amount of funds spent on the Community-based Environmental Protection and Enhancement Programme (CEPEP) on a monthly basis from its inception to September 30, 2005?

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Madam President, the Minister of Public Utilities and the Environment informs me that the answer is not yet ready and I would like it deferred for one week.

Question, by leave, deferred.

**National Housing Authority (NHA)
(Details of VSEP)**

12. Sen. Sadiq Baksh asked the hon. Minister of Housing:

Could the Minister inform this Senate:

- (i) of the number of employees of the National Housing Authority that accepted the VSEP offered by the Government; and
- (ii) Could the Minister also inform this House of the cost so far?

The Minister of Housing (Hon. Dr. Keith Rowley): Madam President, whilst the Housing Development Corporation Act, No. 24 of 2005, which was proclaimed on October 01, 2005, makes provision for VSEP, no offer has as yet been made to employees of the Housing Development Corporation. Under the circumstances, it is premature to determine the number and cost, as requested at this time.

Sen. Baksh: Could the hon. Minister inform this Senate as to when the National Housing Authority or the Housing Development Corporation intends to offer the VSEP?

Hon. Dr. K. Rowley: Madam President, as was stated here in the Parliament, it is our intention to offer a VSEP at the Housing Development Corporation, and that would be done at the earliest opportunity.

**Jamaat al Muslimeen Abu Bakr
(Re-prosecution of)**

14. Sen. Wade Mark asked the hon. Attorney General:

Could the hon. Attorney General provide to the Senate the reasons, if there are any, as to why no steps have been taken to commence the re-prosecution of the Leader of the Jamaat al Muslimeen, Abu Bakr, in compliance with the order of the High Court?

The Attorney General (Sen. The Hon. John Jeremie): Madam President, the answer to this question involves a response from the Director of Public Prosecutions. That response reached my desk this morning, and I am asking that I be given a one-week deferral, at which time I would be happy to provide an answer to Sen. Mark.

Sen. Mark: Madam President, you know normally I would not do those things, but in the circumstances I would accede.

Madam President: That is very kind of you, Sen. Mark.

Question, by leave, deferred.

**Darul-Islam
(Amount of Money Paid)**

15. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:

Could the Minister state the amount of money paid by the Government or any state enterprise or state agency to the body known as Darul-Islam or any other entity associated with the Jamaat al Muslimeen?

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Madam President, I am advised that the answer to this question is not yet ready, and I seek one week's deferral.

Question, by leave, deferred.

Sen. Wade Mark: Madam President, before I ask this question of the Minister, could I seek your indulgence as it relates to written responses to a number of questions. If you look at the appendix you would see a number of questions, and these questions, you would remember, Madam President, were on the Order Paper since last year. So, I would like you to, at least, give a ruling on this matter, because they have been outstanding.

Madam President: All right.

Sen. W. Mark: Could I proceed?

Madam President: Yes.

**Jamaat al Muslimeen
(Illegal Quarrying in Valencia)**

16. Sen. Wade Mark asked the hon. Minister of National Security:

Could the Minister state what steps, if any, have been taken to deal with the illegal quarrying without a mining license from the Minister of Energy and Energy Industries by armed Jamaat al Muslimeen forces located in Valencia?

The Minister of National Security (Sen. The Hon. Martin Joseph): Thank you very much. Madam President, hon. Members, all of the law enforcement and national security agencies have advised that they are not aware that there are armed Jamaat al Muslimeen forces located in Valencia. The agencies are aware, however, of the issue of illegal quarrying in a number of areas and they are pursuing measures aimed at reducing the level of illegal quarrying at all of the nation's quarries.

Accordingly, on November 23, 2005, the law enforcement and national security agencies conducted a joint operation in the Valencia and Wallerfield areas, targeting illegal operating quarries. That exercise resulted in the arrest of 13 men, none of whom have been identified as members of the Jamaat al Muslimeen. Sixteen pieces of equipment were also seized. Nine of the persons arrested have been ordered by the courts to pay fines or face 30 days imprisonment, and their equipment remained in the possession of the police service, pending resolution of the appeal against conviction lodged by the Director of Public Prosecutions. The remaining four persons who pleaded not guilty were placed on their own bond and are to re-appear on the adjourned dates.

Madam President, you may also wish to note, that during the joint operations at the quarries, no illegal firearms or ammunition were found. The law enforcement and national security agencies have since maintained heavy surveillance of the activities taking place in and around the quarrying areas. Additionally, the Ministry is working in collaboration with the Ministry of Energy and Energy Industries to develop a security plan of action aimed at reducing and eventually eliminating illegal quarrying.

As essential components of this plan, the law enforcement and national security agencies propose to undertake a range of activities including the following: Intensification of joint mobile army police patrols in the affected areas, specifically Wallerfield, Valencia/Toco Road, Aripo Savannah, Sawmill Road in Mora forest, Oropouche Road and Tapan Road; aerial surveillance of targeted areas; covert monitoring and surveillance; establishment of a hotline for the receipt of information on illegal operations.

Thank you, Madam President.

Sen. Mark: Madam President, through you, could the hon. Minister indicate to this Parliament, whether based on those measures outlined, he would expect to see in the future an elimination of illegal quarrying in the Valencia, Tapaná areas?

Sen. The Hon. M. Joseph: Madam President, I had indicated that the Ministry is working in collaboration with the Ministry of Energy and Energy Industries to develop a security plan of action aimed at reducing and eventually eliminating illegal quarrying.

Madam President: Thank you.

Sen. R. Montano: Madam President, would the Minister please explain to this Senate, why it took so long for the Government to move on the illegal quarrying, having regard to the fact that everybody has known for at least the last nine months that this has been going on? [*Crosstalk*]

Madam President: Okay, let us answer the question, please.

Sen. R. Montano: But that is part of my question—having regard to the fact—[*Interruption*] Pay your brain bill.

Sen. The Hon. M. Joseph: Madam President, I do not know if that is a supplemental or that is another question. [*Crosstalk*]

Sen. R. Montano: It flows, Madam President, with the greatest of respect it flows. The Minister said that on a particular date this happened and—

Sen. Seepersad-Bachan: It is more than three years.

Madam President: Please. Minister you do not have the answer to that question? So if the Minister does not have the answer, please. Sen. Mark.

Sen. R. Montano: You do not have any answer, shame, shame.

Sen. Mark: Madam President, could the hon. Minister of National Security indicate to this Parliament, whether he is categorically stating that there are no armed thugs or Muslimeen elements operating in the Valencia area as it relates to illegal quarrying? Could he categorically state to this Parliament that that is so?

Madam President: All right, I think he heard the question.

Sen. The Hon. M. Joseph: Madam President, I answered the question. I mean, if you want me to restate the answer, I clearly answered the question.

Madam President: All right. Can we move on to question No. 28?

Avian Bird Flu

28. Sen. Robin Montano asked the hon. Minister of Health:

Would the Minister please state in detail:

- (a) What steps have already been taken at the date of this question in Trinidad and Tobago to protect the country from an outbreak of avian bird flu?
- (b) What steps are currently being taken at the date that this question is answered?
- (c) What plans are in place to protect this country's human beings and poultry industry in the event that an outbreak of bird flu does in fact take place?

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Madam President, I am advised that the answer to this question is not yet ready, and I seek one week's deferral.

Sen. R. Montano: Madam President, with respect, this is a most important question. The question is: "Would the Minister please state in detail: (a) What steps have already been taken at the date of this question..."

Madam President: Sen. Montano, you do not need to read it, please.

Sen. R. Montano: But, Madam President, the point of the matter is nobody has spoken—

Madam President: Please, please, Senator.

Sen. R. Montano: I am not allowed to ask, right?

Madam President: The Leader of Government Business has said that the answer to the question is not ready and that he is asking one week deferral. There is no way he has the answer here now.

Sen. R. Montano: Madam President, the point of the matter is why is the question not ready, having regard to the fact that this question was filed more than a month ago; having regard to the fact that this is a very serious question. Why is it not ready? You cannot just come and say it is not ready.

Sen. Seepersad-Bachan: Exactly.

Sen. R. Montano: This is extremely serious, this deals with bird flu in the country. What are you doing to protect the country?

Madam President: Sen. Montano, please.

Sen. R. Montano: No, Madam President, what is going on? Why are you asking for the adjournment? Why is it not ready?

Madam President: Minister Saith, we also have some written answers that are due. So if we could try to get some of those written answers, please.

Sen. R. Montano: My question is not going to be told why the adjournment. I am not going to be told why the adjournment or postponement?

Madam President: About?

Sen. Mark: My written responses.

Madam President: Yes, the Minister had said yes, he would try to bring them at the earliest opportunity.

Sen. Mark: Tentative.

Madam President: Well, as soon as possible. Shall we continue, please.

Sen. R. Montano: Madam President, can I get an answer.

Madam President: Sen. Montano, the answer was given. The Leader of Government Business said he does not have the answer and he is promising to bring it next week. All right? So, can we just say it would come next week.

Sen. R. Montano: No, Madam President. With the greatest of respect, at the very least, this Senate deserves to be told why an important question like this is not ready. This is not for me. When I filed this question I was not trying to play politics, I am seriously concerned. There was a batch of feathers imported for carnival bands—

Madam President: We do not want a speech.

Sen. R. Montano: I do not want a speech, Madam President.

Madam President: Senator, please.

Sen. R. Montano: But Madam President, you should at least let me finish.

Madam President: We are all aware of the importance of the question, and I am sure that the Government is also aware. Now, the Government has said that the answer will be ready in one week and that is what we go with. There is nothing—Sen. Montano, the argument is over.

Sen. R. Montano: No! It cannot be finished like that!

Madam President: Please, Clerk, please continue.

Sen. R. Montano: Madam President, I must protest. The answer cannot be finished like that. The Senate deserves an answer, or alternatively, if you would not put an answer then I demand it be put to the vote.

Madam President: Sen. Montano, if you continue—Sen. Montano, please do not let us start today like this.

Sen. R. Montano: I do not want to start today like this, it is done.

Sen. Dumas: Of course you want to.

Sen. R. Montano: Pay your brain bill.

Madam President: Just continue, continue, Madam Clerk, please.

[Clerk continues to read procedure from Order Paper]

Sen. R. Montano: Madam President, I object, because to get the adjournment, the permission of the Senate has to be asked.

Madam President: What adjournment?

Sen. R. Montano: The postponement of the question. To get the postponement the permission of the Senate has to be asked. If this is going to be so and I am not going to get a reply, at least put it to the vote.

Hon. Senator: What vote?

Sen. R. Montano: The question of postponement.

Madam President: Sen. Montano, your behaviour is becoming extremely unruly.

Sen. R. Montano: What? I have not been given a fair chance!

Madam President: Members, the Government has asked for one week postponement of the answer.

Sen. R. Montano: Division. *[Crosstalk]*

Madam President: Let us, what? Go through the division? They have asked for a division, we have to do a division.

Sen. D. Montano: On a point of order. Madam President, you have ruled that—

Madam President: I know.

Sen. D. Montano: And a Minister cannot be forced to make an answer. It is not a matter that the Senate can vote on.

Madam President: I agree, Senator. It is a practice, I agree and they have asked for a division and we would take the division.

Question put.

The Senate divided: Ayes 15 Noes 8

AYES

Saith, Hon. Dr. L.

Yuille-Williams, Hon. J.

Jeremie, Hon. J.

Joseph, Hon. M.

Montano, Hon. D.

Manning, Hon. H.

Dumas, Hon. R.

Abdul-Hamid, Hon. M.

Titus, R.

Kangaloo, Hon. C.

Sahadeo, Hon. C.

Ramroop, Hon. S.

Hackshaw-Marslin, Mrs. J.

Mc Kenzie, Dr. E.

Ramchand, Prof. K.

NOES

Mark, W.

Baksh, S.

Kernahan, Dr. J.

Montano, R.

Seepersad-Bachan, Mrs. C.

Augustus, R.

Khan, Bro. N.

Ali, B.

Mrs. P. Anmolsingh-Mahabir abstained.

Question negatived.

Madam President: Members, the question would be answered in one week's time. Please continue.

Question, by leave, deferred.

INTERNATIONAL CRIMINAL COURT BILL
[Second Day]

Order read for resuming adjourned debate on question [November 29, 2005]:

That the Bill be now read a second time.

Question again proposed.

Madam President: Those who have already spoken are: Sen. the Hon. Danny Montano, who was the Acting Minister of Foreign Affairs, Sen. Wade Mark, Prof. Ramesh Deosaran, Sen. the hon. John Jeremie, Sen. Basharat Ali, Sen. Parvatee Anmolsingh-Mahabir. Senators, I just want to ask those who would be speaking to please avoid irrelevancies and to stick to the Bill, because I am going to be very stern with that today, thank you.

Sen. Robin Montano: Thank you, Madam President.

Sen. Dumas: Well, you was priming up.

Sen. R. Montano: Would you please just shut up.

Madam President: Sen. Montano!

Sen. R. Montano: Yes, Madam.

Madam President: Please, you do not shout across the floor to anybody.

Sen. R. Montano: I was not shouting, that was an aside.

Madam President: Whatever you said, please do not be telling anybody in this Senate to shut up. Please continue.

Sen. R. Montano: Well, would you ask him to be quiet, I do not appreciate that. Madam President, before I was so rudely interrupted I was going to say that this is the first opportunity I have had to speak in this honourable Senate since the death of my father, and with your leave and bearing in mind that what I am about to say is irrelevant, I would like to ask your permission to say a few words on that.

The first thing I would like to do is to thank all Senators very much for the very kind words that they uttered about my father. I think he was a great man, as far as I am concerned, the greatest man that ever lived. My father—the best thing that I found was a quote from Theodore Roosevelt, which described my father absolutely, and with your leave, I would read it into the record:

“The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strides valiantly; who errs and comes short again and again; who knows the great enthusiasms, the great devotions and spends himself in a worthy cause; who at best knows the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls, who know neither victory nor defeat.”

Such a man was my father; I am very proud of him.

Madam President, if I might turn to the Bill before us today. This is a Bill that at the end of the day, let it be known that we are going to support it. The Bill, as I see it before us has many flaws, and I am going to make a plea from the very beginning, that the Bill be referred to a select committee of this Senate, so that the flaws could be worked out.

The first flaw is that the Bill contains a number of clauses in it which I will point out. I would point out some of them, not all, because if I would spend all the time pointing out the clauses I would be here until midnight. But the Bill contains a number of clauses that infringe the Constitution, and we need to decide as a Senate and I believe this can best be decided in the select committee, whether or not we want to amend these clauses so that the Bill no longer infringes the Constitution, or whether we want to put in the relevant statements that the Bill is passed with the requisite majority. The matter is of great importance, especially having regard to the fact that for example we recently passed the Anti-terrorism Bill. I warned this Senate that I felt at the time that the Anti- terrorism Bill contained provisions that were unconstitutional. Nevertheless we went and passed it without the requisite majority.

If the newspaper reports are to be believed, a legal challenge is about to be mounted in the courts as to the constitutionality of the Bill, or it has been mounted, I beg your pardon. Apparently a challenge has been mounted to the Bill, and a second challenge is coming. My point being, it would be a tragedy if we were not to pay attention and this Bill also, would fall by the wayside because we did not do our work properly in this Senate.

2.00 p.m.

Let me take you through, Madam President. For example, and let me turn in the first instance to clause 8(4) which deals with retroactivity on page 24 of the Bill and clause 8(4) says:

“...applicable date...

- (a) in relation to an offence against section 9, 31st January, 1977; or
- (b) in relation to an offence against section 10, 1st January, 1991.”

This Bill now, because clause 9 deals with genocide and clause 10 deals with murder; extermination; enslavement; torture; rape; sexual slavery; prostitution and so on, the point of the matter here, Madam President, is that the Rome Statute came into being on July 17, 1998. Apart from the fact that retroactive provisions always infringe the Constitution, if you turn to article 11 on page 142 of the Bill before us, which is the articles of the Rome Treaty:

“the...International Criminal...Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.”

And the Statute refers to the Rome Statute, the treaty that establishes the ICC.

You have several questions arising; the first question that would arise in my mind is why is this retroactivity taking place? Is it necessary, because we have not heard from the Government why this retroactivity is necessary and we have not heard why there is this contradiction between article 11 and clause 8?

It would seem to me, Madam President, that there is a mistake here, somewhere. Now, as I have said before, I would really like this matter to go before a select committee, whereby this huge and lengthy Bill can be dealt with in detail. If we were to go into committee on this Bill this afternoon, I can promise you that we would probably be here until tomorrow morning going through this, and even then, we probably would not get it right. Because there are many provisions in this Bill which, in my humble opinion, would require a level of

expertise that has not been made available to us, and there are certain questions that one would want to ask in great detail that would simply bog down a speech such as the one that I am making this afternoon, in details, that are really best handled in committee.

I look, for example, again, at clause 8(1)(c) which says:

“Proceedings may be brought for an offence...”

In clause 8(1)(c):

“(c) against section 9, 11 or 19 regardless of—

(i) the nationality or citizenship of the person accused;”

So, in other words, what this seems to be saying is that charges can be brought whether the person is an American—and we know that the United States has not taken part in this—or if he is a Cuban—we know Cuba is not a signatory here; or Zimbabwe. But clause 9 really deals with genocide only; clause 11 deals with persons being convicted and clause 19, which I would be referring you to later, just says:

“Every person is liable on conviction on indictment...”

to imprisonment for seven years. So you are really dealing with clause 9 alone.

When you look at article 25 of the Bill which is on page 150, it says:

“The Court shall have jurisdiction over natural persons pursuant to this Statute”

And it goes on like this.

So that, what we are talking about here seems to suggest that the crime has to be within the jurisdiction of the court, but the Bill does not necessarily say that. There seems to be some confusion. And then this clause 8(1)(c) does not apply to clause (10); clause 10 deals with a “crimes against humanity”, which is murder; extermination; enslavement; deportation or forcible transfer and so on.

We have to ask the question, why are we only making clause 8(1)(c) applicable to clause 9, which deals with genocide only? While genocide is a heinous crime, why are we not making murder; extermination; imprisonment and so on—because, for example, you realize that the events in Abu Ghraib in Iraq and reported events in Guantanamo Bay in Cuba would fall under clause 8, but they fall under clause 10, but charges cannot be brought under clause 10 which deals with murder; extermination; deportation; torture and all the rest of it.

Sen. Prof. Ramchand: Good point.

Sen. R. Montano: So why? You could not bring an action against the Cubans who lock up people illegally and throw away the key or Zimbabwe or Bosnia under this. The one thing that you can do is genocide. Why? This is something that we need to understand. It does include clause 11 which is war crimes and the penalty. But let me point out something to you, the penalty for war crime is the same as the penalty for murder or in any other case imprisonment for life.

Elsewhere the article specifies that the penalty for murder is life imprisonment, but the penalty for murder here in Trinidad and Tobago is death by hanging. So what is the answer, and I would be coming and showing you a little later as we go through the Bill how there seems to be a conflict and there is something I am concerned about and I will deal with it a little later. That is, you can get locked up for the same crime here in Trinidad and then the ICC can charge you all over again and lock you up all over again, and that breaches the Constitution; that cannot be right.

If we look at, and we go on to clause 12(1)(a), article 20 also applies to the ICC. Clause 12(1)(a) says:

“the following provisions of the Statute apply, with any necessary modifications:

- (i) article 20, which relates to crimes for which a person has previously been acquitted or convicted;”

And article 20 says:

“No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.”

And the court is defined as the ICC, it is not defined as any court. So it means that at least, in theory, a person can face double jeopardy: He can be tried and convicted of a crime here in Trinidad and Tobago which happens to be a crime under this Bill, and then after he has served his sentence, whatever that might be, he could go back and find himself having to face the ICC all over again—double jeopardy, breach of his constitutional rights. That has to be wrong; cannot be right.

It ought to be that a person cannot be tried for the same crime twice and that is to say, if he has committed a crime, because crimes here are going to be the same, for example, murder is the same in Trinidad and Tobago as it is under the ICC, but

it would have to be that either he is going to be tried under our laws or he is going to be tried under theirs. What happens, for example, if a person is charged with murder here and gets off and then finds himself charged for the same crime by the ICC? So he has to go through everything all over again, he is facing double jeopardy.

It is a bit like the case that is going on right now with the airport and with two citizens of Trinidad and Tobago who are facing charges here, all of a sudden, find themselves facing charges in the United States. When I had raised this matter some two months ago, I said, listen I understand this is coming off; I was told no, no, no we have nothing to do with it and then the Prime Minister is reported in the papers as saying, yes, we have been talking to the Americans for the last two years. God alone knows who is right. Was this Parliament misled or is the Prime Minister misleading—

Sen. Jeremie: On a point of clarification. The criminal authorities in the United States take, and can take no direction from any person in Trinidad and Tobago. Our relationship with the United States in criminal matters is governed by an Act passed while you were in office in 1997, the Mutual Assistance in Criminal Matters Act. That Act was passed pursuant to the Harare Treaty and it recognizes that there should be assistance in criminal prosecutions.

Sen. R. Montano: I am grateful to the hon. Attorney General for that bit of learning; except that it does not meet the point. The point is that two months ago I was told something completely different from what the Prime Minister is saying now. And I agree with everything he is saying, I am well aware, but it does not meet the point. This is a case of double jeopardy and essentially, what is happening is that these two citizens at the moment have to face, substantially, the same charges all over again. Now that cannot be right.

Let me look at article 20, which says: “No person shall be tried—“

[*Sen. Jeremie stands*]

No! You have had your clarification already.

“—by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.”

But it should be both ways. The ICC should not be able to charge a citizen of the country for a crime, essentially the same crime that he has been either convicted or acquitted here in Trinidad and Tobago. It is wrong. It is basically wrong. It is an

abuse of the process, and that is my point. Article 20(2) ought to work both ways.

Sen. Jeremie: And I agree with that. The proceedings which are afoot in the United States are taken entirely in the self-interest of the United States. They have absolutely nothing to do with breaches of Trinidad and Tobago's law. This is an American criminal justice system functioning under the President and the Federal Bureau of Investigation, taking criminal action as they must, in respect of breaches of American law. It has nothing to do with Trinidad and Tobago's law.

Sen. R. Montano: Again, the hon. Attorney General, with the greatest of respect has missed the point. Of course! But it is arising out of, essentially, the same actions that they are being tried for down here. And when I raised this matter in the Parliament, approximately two months ago, I was told that the Government had nothing to do with it. And now the Prime Minister comes and says that for the last two years he has been talking to the Americans. Now what is this all about?

Sen. Mark: It is a conspiracy.

Sen. R. Montano: Is there a conspiracy? What! I am not going on that. What I am trying to deal with here—this is why I am saying that article 20(2) of the treaty should work both ways. Now, obviously we cannot amend the treaty but we can amend the Bill. Because as far as I am concerned, if we make the appropriate amendments to clause 12 we can correct this injustice that can be perpetrated upon a citizen.

Remember, I am not trying here to protect the guilty. I am here trying to protect the innocent, and we all know that innocent men are accused and charged. Indeed, I read in today's papers of a Government Minister who is protesting his innocence to the moon and back on bribery and corruption charges. As far as I am concerned, I have said it once and I will say it a thousand times; he is entitled to the presumption of innocence, but we know what is going on. We know what the charges are about and we know what is happening there; so that, I am looking to protect the innocent. I have always sided with them.

In clause 12(1) as you can see,

“For the purposes of proceedings for an offence under section 9, 10 or 11”... articles 20, 22(2), 24(2), 25, 26 and 28 apply, but is there any reason why article 27 has been left out? Let me tell you what article 27 says:

International Criminal Court Bill
[SEN. R. MONTANO]

Tuesday, December 06, 2005

“This Statute (that is the Rome statute) shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility...”

Now, why are we not making clauses 9, 10 and 11 apply to that? It does not make sense to me. It may very well be that there is a reason for it. But why? Because if we did that; if we make clauses 9, 10 and 11 apply, it will mean for example, that a President of the United States, or a President of Cuba, or a President of Zimbabwe could be arrested and charged when they land on Trinidad soil. [*Interruption*] Now, have we got the courage to do that? That is another question, but at the very least, it does not make sense to me and unless we hear, no, no, no, we do not want to do that, because that could land us in real hot water, that is all right.

Why is it that you do not want to bring Heads of Government, Heads of State, parliamentarians and government officials? I would be referring you to judges in a little while. We are going to lock up judges if they are corrupt; I agree with that. But why do we want to lock up judges but we do not want to lock up Heads of Government? It would mean that they can get away. Why?

You see, Madam President, again, this is what I am saying; there are too many whys and there are too many breaches to the Constitution. And I want to reiterate that in principle we support this Bill. If there are no changes, we are going to vote for it, understand that. There is no question that you do not have our support; so that my questions must not be read as somebody who is trying to make trouble or trying to do this. What I am trying to do this afternoon is get the law right. All too often in this Parliament, we have since I have been sitting here since October, 2002, on too many instances got the law wrong and I am concerned that something as important as this be got right and be got right now. Which is why again, I come back and say, look, let us go to a select committee. This can be tidied up, questions like this can be answered and we can then decide: Okay, we are going to put article 27 in or we can be told, no, no, no we are leaving it out because we are afraid; or any other reason, whatever the reason is.

If I can go on, and I am really skimming this because you would appreciate that this is a huge Bill; it has 222 pages. Clause 13(2) says:

“a person...may be arrested...but no further proceedings can be taken until that consent (of the Attorney General) has been obtained.”

Again, why? It does not make sense to me. There may be a good reason and when the explanation is given, we will all sit back and say, ah, that is the reason. But it does not make sense. Then, may I refer you to clause 14 which points out that:

“Proceedings may be brought for an offence under sections 15 to 21, if—

- (a) the act or omission constituting the offence...takes place...in Trinidad and Tobago or on board a ship or (plane belonging to) Trinidad and Tobago; or
- (b) the person charged is a Trinidad and Tobago citizen.”

Well, then that means clauses 15 to 21 and they say now clause 15 deals with corruption of the Judiciary.

Well, I agree that if our Judiciary is corrupt or a judge is corrupt and he commits an offence that is chargeable under this, I see no reason why that judge should not be brought into the Bill, in the same way that I do not see why a Prime Minister should not be brought under this, à la article 27. How likely is it—and this is why I do not think we have sort the thing through properly. How likely is it that a foreign judge is going to commit an act that offends this Bill or make an action or an omission that offends this law in Trinidad and Tobago? How likely is it? But we are making a big issue of this. Why?

If we look at clause 16, which says:

“Every person is liable on conviction on indictment to imprisonment for seven years who, in Trinidad and Tobago or elsewhere, corruptly gives or offers, or agrees to give, a bribe...a Judge...”

And every judge who takes a bribe is also guilty.

Why is it only applicable to Trinidad and Tobago citizens or if the action takes place on a Trinidad and Tobago plane or a Trinidad and Tobago ship? What happens, for example, if, let us say a person from Zimbabwe, a corrupt judge from Zimbabwe comes here to Trinidad and Tobago and the ICC wants to charge him? They cannot, because clause 14 has made it quite clear that clauses 15 and 16 do not apply to him. He committed the act complained of in Zimbabwe. The ICC wants to put their hands on him, they cannot put their hands on him; he is here in Trinidad and we cannot get him. Why are we leaving out the corrupt Zimbabwean judge? It does not make sense.

And then clause 17 says:

“Every official of the ICC is liable to imprisonment if he takes a bribe or gives a bribe.”

But again, what this really means is every Trinidadian official of the ICC; it does not mean every official, unless of course, the official takes a bribe here in Trinidad. But all he has to do to get around that, is simply take the bribe in another country that does not apply and then he can come here with impunity. So why are we limiting ourselves? Again, these are questions that can be dealt with, with due respect, in the select committee. It does not mean that we will not necessarily leave this as it is, but certainly the questions are serious questions and have to be answered.

Remember, Madam President, we are here—[*Interruption*] Yes. Which is why I am saying—my learned friend has pointed out to me that this Bill can be challenged in court. We do not want to challenge in court, we really do not. [*Interruption*] I am speaking for myself. I will not feel any gratification, whatsoever, if the terrorist Bill is overthrown by the courts, because as far as I am concerned I was part of this Senate—even though I warned—that passed the Bill. Even though I warned the Senate, look, there is a danger here. So I am saying to the Senate this afternoon, look let us do the thing properly.

When you go to clause 18, which says: “Every person who gives evidence...” but again, you are talking about a Trinidadian. Clause 19, says:

“Every person is liable on conviction on indictment...for seven years who,...or elsewhere, with intent to mislead the ICC, fabricates evidence...”

But this only applies to a Trinidadian or a person who has committed the offence in Trinidad. It does not apply to a person elsewhere. Why? If we are talking of—so in other words, it would mean, for example, let us say that there was an American who was in charge of Abu Ghraib—and we already know we cannot get him, because we already know that it is being excluded. But if by any chance we could get him, we know we cannot get him on this, because even though he intended to mislead the court with false answers: “No, we did not have any, there was no torture in Abu Ghraib”; although the whole world has seen the photographs. There was no torture in Abu Ghraib; which is a misleading statement, if ever there was one, and that is an intention to mislead and the American comes here, you cannot get him on this. You cannot! So, why? Why not?

What we want, Madam President, is an Act, a statute that will make sense, which we can all be proud of, and if it infringes the Constitution and the rights of persons in the Constitution, we want an Act which we can defend and we can say, look, it is right and proper that these things stay in place because of these reasons. At the moment we have no reasoning as to why.

If you look at clauses 20 and 21 you come to the same point that I am making. And if I look, for example, if I move on at clause 32(1), request from the ICC for arrest and surrender, this is under Part IV of the Bill. This part applies to a request made by the ICC “for the arrest and surrender of a person from Trinidad and Tobago...in respect of whom the Pre-Trial Chamber has issued a warrant...or who has been convicted by the ICC of an international crime”.

Questions arise, is this a breach of the Constitution? It certainly appears to be, on the face of it, to be a breach. If we look for example, again, at clause 33, which says:

“If a request for surrender is received, other than a request for provisional arrest referred to in section 32(2), the Attorney General may notify a High Court Judge in writing that it is made and request that the Judge issue a warrant for the arrest of the person whose surrender is sought.”

But again it looks like a breach.

In clause 34, arrest warrant. I am sort of going on a bit because I want to refer you, basically to a lot of these clauses and I would come, for example, to clause 39. In clause 39 I read with alarm that a person who is charged of an offence under this Act is not entitled to bail as of right and may not go at large without bail.

2.30 p.m.

Why? Bail is a common law right and it is based on the principle that a man is presumed innocent until he is found guilty. I agree and I have always agreed that there are certain crimes and certain persons who when charged should be looked at very seriously, and the judge has to weigh the question of the freedom of the individual against the threat to society. But what we have done and a system that we have inherited from the British over the centuries is that basically, a person is presumed innocent until he is found guilty, and therefore, unless there is good reason, that person ought to be allowed bail.

Now the only offences in Trinidad and Tobago that are basically non-bailable at the moment, are those that carry the death penalty and one can understand that. If a person is facing the hangman on a charge whether he is innocent or guilty, he is likely to consider running much more quickly knowing that his life is at stake, than if he is just facing a term of imprisonment. In other countries that have abolished the death penalty, bail for murder, for example, is allowed under certain circumstances.

We see for example, in the United States, where persons accused of murder are let out on bail and certain other persons who are accused of murder are not let out on bail because they are considered a flight risk. But the fact of the matter is that bail is a common law right and in the English speaking world, it has always been recognized as such. So why are we in this instance taking away the common law right of a person which, incidentally, again breaches the Constitution?

Madam President, this needs to be fixed or alternatively—do not believe that we are not open to persuasion, as to yes, we should make no bail for these offences. Certainly, at the moment, speaking for myself, I am against this provision completely, because I have always boasted that I am liberal and a democrat and I prefer to see 10 guilty men go free rather than one innocent man hang. I believe in that principle, but it does not mean that I cannot be persuaded. What it means, is that I would ask you to come to me and I would ask you to persuade me quite seriously as to why I should be part of a Parliament that takes away the common law rights of the citizenry of Trinidad and Tobago. If you can persuade me on this, yes, I would join you. I must tell you though, you must come with a good reason and not with obfuscations or not just to tell me: “Well, that is what the International Criminal Court (ICC) wants.” Because I would say: “Well, they could want anything they like, but we are a sovereign people.”

That is what Independence means. And speaking again for myself and I know that I am speaking for my party now, we are not going to take anything from any foreigners who are going to tell us to do something just because they say it. We might be persuaded to do something if it is seen at the end of the day to be in the best interest of the people of Trinidad and Tobago. I am not convinced that taking away our citizens’ right to bail is in our best interest.

I looked at clause 40 which says:

"(1) If an application for bail is made, the Attorney General shall notify the ICC which may make recommendations to the Attorney General that shall be conveyed to the High Court...

(2) Before rendering its decision, the High Court shall consider any recommendations that the ICC has made, including any recommendations on measures to prevent the escape of the person. "

Now, the High Court must pay attention to the wishes of the ICC. The way I read this and I would be the first to say, I am reading it wrong, but the way I am reading this, it looks an awful lot like the High Court now has to pay attention to the wishes of the ICC and therefore, here, our High Court is giving up its own sovereignty. Why? This provision to me is offensive and, again, explain to me why. I personally have no quarrel with the ICC, I support it. But I do not support the ICC taking away any authority of the Supreme Court of Trinidad and Tobago. I do not agree. Our Supreme Court must be superior to the ICC, and I say that as an independent person, that is to say, a citizen of Trinidad and Tobago who is proud of Trinidad and Tobago's independence. But, persuade me.

If you can persuade me, then I would support it, if you cannot then I would not. You see again, we come back to the fact that this Bill needs a special majority.

Hon. Senator: The court will decide that.

Sen. R. Montano: I beg your pardon?

Hon. Senator: He said the court will decide that.

Sen. R. Montano: Madam President, there was an aside that the court would decide that. Why? Why should we as parliamentarians have to face the indignity and it is an indignity when we know better to go and pass a law that either will be overthrown or is in danger of being overthrown, simply because we did not do our work properly? It does not make sense, especially when we are saying to the Government, "Look, talk to us about this, we can help you fix it."

Madam President, unless of course, all this brouhaha that has been ballyhooed in the press on other matters of, "Oh the Opposition is always obstructionist, and we never do anything", and so on and so forth, unless that is really just a smokescreen and the Government does not want to have Opposition input on the Bills, but simply wants the Opposition to be good little boys and go into the corner. Well this is one little boy who would never go in the corner. *[Laughter]* And when you put me in the corner, I am coming back out, no matter what. I am an independent man; I am a 21st Century man.

Madam President, we then turn for example to clause 42(1). Although it does not spell it out, basically, it says that the High Court can put a person in another place for the time being, that is more appropriate if the person's life is at risk or his health is undesirable. In other words, basically without saying it, we are talking about house arrest here. Well, speaking for myself, and again only for myself, I have always thought that this house arrest is not necessarily something that we should frown on and perhaps it is something that is desirable. But if we are going to do it, if we are going to make house arrests effective for this, why can we not do it for the rest of our citizenry in other matters? In certain circumstances the High Court can say, okay, "Mr. John Smith"—I am making up that name in case there is a John Smith in the world—"you know, we do not consider you necessarily a risk, but you should really stay in jail, but you have a bad heart and so on, so we would put you in your house."

I do not have an objection to that, in principle, but what I do object to, is that, why we are treating somebody charged under this Bill differently, from how we would treat our own citizenry in other matters. Why?

Madam President: 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. W. Mark*]

Question put and agreed to.

Sen. R. Montano: Thank you very much, Madam President. I would not be long. In fact, I am surprised that time has gone the way it has, I thought I would be shorter. Clause 43(6)(a) and (b), eligibility for surrender, states:

"Notwithstanding subclause (3)...

(a) the person to whom the proceedings relate is not entitled to adduce, and the Court is not entitled to receive evidence to contradict an allegation that the person has engaged in conduct that constitutes the offence for which the surrender is sought; and

(b) in the case of a person accused of an offence, nothing...require evidence to be produced or given at the hearing to establish,...that the trial of the person would be justified if the conduct constituting the offence had occurred within the jurisdiction of Trinidad and Tobago."

Why? This sounds very much like the American system of a grand jury.

Madam President, under the American system of a grand jury, a grand jury consists I believe, of about 20 persons and they go into a room with the prosecutor who produces evidence that he wants you to have. The defendant is not allowed to go in the room; the defendant is not allowed to have his lawyer in the room; the defendant has no idea what is going on; he has no idea who is giving evidence against him. He does not know anything about that at all. And speaking with leading American criminal lawyers, they say that they advise their clients that under no circumstances if you are a person who is under the gun, as it were, do you go into the grand jury room, because when you go in, you go in there unprotected and there is no lawyer there to protect you. There is no judge to protect you. The man in charge is the prosecutor. Now this sounds very much like that.

Why do we want to do that? Why do we want to prevent a system that we have, which allows a defendant to adduce evidence that might show his innocence, or might show that the case is weak and ought not to be brought? Why do we want to do that? I would object to a grand jury type system. Remember, I had told you earlier about being punished twice.

Madam President, I refer you to clause 52(3):

“Nothing in this section affects the ICC’s power to direct that any sentence of imprisonment that it imposes is to be cumulative on a sentence imposed under Trinidad and Tobago law.”

In other words, a person can be charged in Trinidad and Tobago for the same crime; go to jail for example for seven years and then when he comes out of jail, he can be charged again by the ICC and he can be put in jail again for the same crime. That cannot be right. It really cannot be right and it really can happen, whether it will ever happen of course is another issue. But the issue is that it can happen and it ought not to be allowed to happen.

Madam President, we are here—I have said it once and I have said it a thousand times—the only purpose for Government is to make life better for the people. [*Desk thumping*] There is no other purpose. Why do we want to do things to our citizenry like this? All the rules of natural justice, all the morality, all the spirituality in the world dictates that a person should not have to face double jeopardy; he must not face a trial for the same crime twice. You do not hang a man twice, and that is the point.

International Criminal Court Bill
[SEN. R. MONTANO]

Tuesday, December 06, 2005

Madam President, I could go on and refer you to clauses 108, 112 amongst other clauses, but hopefully, I have made the point this afternoon. Hopefully, the message has been received. We will support this Bill. The Bill is seriously flawed. We understand the principle; we understand the philosophy behind the Bill and that is what we support.

What we want to do though, we want to make sure that when this Bill comes to a final vote, that we put up a Bill that we can all be proud of, and one that can and will withstand any constitutional challenge that any bright lawyer might want to make. That is the point. If we do it right, then we would go home, we would go to bed and we would have known that we have done our duty to the people of Trinidad and Tobago. If we do it wrong, all that is going to happen is that—and I promise you, sooner or later we are going to be faced with the embarrassment of having to explain to the ICC why a person cannot be held under this Bill and why the Bill was struck down, all because we refused to do it right.

Madam President, I beg that we go to a select committee. I am ready, willing and able to serve on that committee and I would do anything I can, to have this Bill passed in a proper form. This Bill, if it is passed in its present form this afternoon, will not be right.

Thank you. [*Desk thumping*]

Sen. Prof. Kenneth Ramchand: Thank you very much, Madam President. I am afraid that I only have time to make a very brief contribution, so let me say at the outset, that I support the suggestion that there should be a select committee of experts going over this Bill, looking particularly at two questions, the question of sovereignty and jurisdiction on the one hand and the question of the rights of the Trinidad and Tobago citizen under the Constitution.

It is a long Bill and I did not have time to read all the clauses, but I am quite satisfied that as an act of caution, we should examine it clause by clause to make sure that the sovereignty and jurisdiction are retained and that the rights of the citizen under the Constitution are not being violated. This Bill has taken a long time to come to the Senate and I understand some of the background to it and therefore, I want to congratulate the Government for their act of courage in bringing it, in spite of opposition that we need not speak about here. [*Desk thumping*]

From the beginning, the proposal for an ICC has met two kinds of resistance, people who say it would be toothless and people who say it would take away from the sovereignty of individual States. Those are the two arguments that have been made against it, but there can be no doubt at all, that the world needs legislation to deal with the transnational criminals and transnational crimes. I just want to read into the *Hansard* that it is not flattery, it is not self-praise, but Trinidad and Tobago, and in particular Mr. ANR Robinson, has played a decisive role, (a), in keeping the idea alive at a time when everybody was opposing it and, (b), in finally leading to the creation of the court. I think people should have no doubt about this, and if I may sound my own trumpet, there is a collection of essays I edited called *Presidential Papers and other Essays* by Mr. Robinson, in which there are about 15 articles that traced the progress over a life time of his thinking, about the necessity for an International Criminal Court.

Madam President, one of the things that Mr. Robinson has been saying all along from his earliest utterances about the court to a very recent one, is the need for an operative international criminal code and I see that as something that we would have to work towards with the ICC. What he says is:

“There has been no discernible movement from the international community to construct an operative international criminal code or to create an international criminal jurisdiction, centered on an international criminal court. It can be considered that what is absent from the various proposals is a more comprehensive list of international crimes amenable to the jurisdiction of such a court.

Under such an approach, the international criminal responsibility of persons who engaged in international crimes, such as illegal drug trafficking across national frontiers could be determined. Similarly, it is only by this approach that the international criminal responsibility engaged in illegal transfer and/or use of prohibited persons and/or substances which cause unnecessary human suffering can be determined for the purpose of juridical adjudication.”

Madam President, I am saying that although I welcome the Bill, I understand there are limitations in the range of crimes that it can now cover. The prime movers—the Trinidad and Tobago delegation—when they slipped the proposal at the United Nations, those 13 out of 15 countries had as a major interest, drug offences. In order to get this thing onto the table, they had to add the other crimes and hide the drug offence and present it in such a way that the matter was not debated but sent forward to a technical committee.

Somewhere along the road, the interest in drug trafficking and drug interdiction as an international crime fell out of it and so we have a Bill which is dealing with genocide, crimes against humanity, war crimes and international crimes. So a major gap in it is the question of drugs, and of course, another major omission has to do with crimes against the environment. It is very obvious why those two elements are not in the Bill. There are large countries which would not accept the jurisdiction of an international court when we try to tackle them for their crimes against other people's environment. It is very hard, but if we are interested in the ICC, I think these are areas that we have to be working on to increase the jurisdiction of the court to deal with those issues. I am happy to say that the present Bill allows us to prosecute Mr. Blair for activities in Iraq. Because America has not signed, we cannot prosecute Mr. Bush; but Mr. Blair is now vulnerable and I really hope that some country will make moves.

Sen. Seetahal: Somebody might arrest you.

Sen. Prof. K. Ramchand: Me? Ha, ha! Well, at least I would not be put on a hit list.

Madam President, another thing that interests me about this Bill is something that Mr. Robinson had said early in the arguments for it. What he was saying in short, is that at the present time we have no way of bringing either heads of governments and holders of high office to account; or very rich people who can suborn and, by money, avoid justice in their own country. One of the advantages of an international criminal court is that it opens up, since nobody is exempt, the possibility for dealing with these kinds of criminals. Madam President, that is another reason why I welcome it, that certain exempt persons will no longer be exempt.

Madam President, I really have to move fast. There is an area of conflict on which I seek clarification. We are subscribing to the Rome statute. Clause 6(1) states:

“The provisions of the Statute specified in subsection (2), shall have the force of law in Trinidad and Tobago in relation to the following matters:”

Now, I want a select committee to look at this Bill because I think there may be contradictions and conflicts, and I am giving an example of what I think might be a contradiction or conflict:

“... shall have the force of law in Trinidad and Tobago in relation to the following matters.”

And under matters:

“the enforcement in Trinidad and Tobago of sentences of imprisonment or other measures imposed by the ICC...”

If you go to clause 6(2) it states:

“Subsection (1) applies in relation to the following provisions of the Statute:

(a) Part II ...

(b) Part III ...”

And then we go over. It applies to Part VII which relates to penalties. So at this point in the Bill, we are saying that whatever the Rome Statute says is what we go by. But if you go to clauses 9(3), 10(3) and 11(3), unless I am reading it wrong, it is saying 9(3), 10(3) and 11(3), all three of them say, if the offence involves the wilful killing of a person, the same as the penalty for murder.

So in Trinidad law the penalty for murder is execution. According to the Rome Statute, the hardest thing you get is the life sentence. So, in my layman’s understanding, this is a conflict that a layman can be aware of, but I am sure that a committee of experts in the law might be able to find other contradictions. I feel it is worth searching the clauses for that.

Madam President, the next issue—I am not going to go into it—is the role of the Attorney General. I quite understand that the Attorney General is representing the State and has to deal with these matters, but what I have a question about, is that a prosecution cannot take place without his consent. So as I understand it, a country may refer a matter to the ICC, it goes through the process of whether there should be an investigation. Yes, there has been an investigation until they come to the point where they say, we are ready, we want to prosecute. At that point, they have to get the permission of the Attorney General. I wonder if that is necessary or if that is implicit in the Rome Statute. I wonder if other countries that are signatories have put it in quite the same way. But there was another reason why it seems to me that this question is important.

According to the Rome Statute on the matter of issues of admissibility, we are told that having regard to paragraph 10, “the court shall determine that a case is inadmissible where the case is being investigated or prosecuted by a state which has jurisdiction over it, unless the state is unwilling or unable genuinely to carry out the investigation or prosecution”. So the question of a state dragging its feet over carrying out an investigation or a prosecution arises and it may very well arise when somebody acting under the provisions of the Rome Statute, lays information to the prosecutor.

Article 15 says:

“The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.”

It is not a country referring the matter. As I read this, as a citizen, I can write to the prosecutor laying information and saying, "I suggest that this be investigated".

3.00 p.m.

If the Attorney General is in cahoots with the State that is trying to protect somebody, I do not want the Attorney General to have the power to say no. Why should the consent of the Attorney General be necessary if a prosecution has been initiated by information brought forward by a citizen? That is a question I have with respect to powers of the Attorney General.

Madam President, I really have to leave immediately. I thank you for giving me the opportunity to make these few scattered points.

Sen. Dr. Jennifer Kernahan: Madam President, the Rome Statute dated July 1998, which established the International Criminal Court in Hague, Netherlands, in spite of the legal defects pointed out by my hon. colleagues, Sen. R. Montano and Sen. Prof. Ramchand, in my understanding, is one of the most powerful instruments available to the defenders of peace, freedom and justice in the unrelenting struggle against fascism and dictatorship anywhere in the world, including Trinidad and Tobago. Later on in my contribution, I will ask some questions about some of the provisions in the Bill and the role of the Attorney General, vis-à-vis, the courts, in my limited understanding as a non-legal person.

First and foremost, I believe as Sen. R. Montano said, this legislation is important if we in Trinidad and Tobago are to conform to the imperatives internationally to punish and prevent international crimes. History has shown that the most bloody fascist and dictatorial oligarchy regimes in any country, be it Europe, Africa, America, Latin America and even right here in the Caribbean, have almost, without exception, usurped power and imposed regimes of genocide and terror and perpetrated nefarious acts against humanity on behalf of a small clique which has only one objective. This objective is always the rape and plunder of the economic and natural resources of the countries in which they operate and they do this by suppressing any form of opposition, be it political, trade union or civil organizations.

We have seen in the history of these countries that I have named ample evidence. We have seen the Pinochet regime in Chile; the Marcos regime in the Philippine; Fujimori in Peru; Papa Doc in Haiti; Forbes Burnham in Guyana; Idi Amin in Uganda and Eric Gairy in Grenada. These were regimes that looted their respective countries and, in the process, destroyed any vestige of the democratic process. They have murdered and tortured hundreds of thousands of innocent civilians, political opponents, trade unions and so on. The underlying truth here is that none of these dictators have emerged from this process as poor men. They have emerged from this process of genocide, torture and acts against humanity as very, very rich men. They are counted among the multimillionaires and billionaires of this world. That is the whole reason for the process.

I listened to my fellow Senator, Sen. Anmolsingh-Mahabir, last week when she spoke about the need for this sort of legislation to curb the aggressiveness of human nature, but it has very little to do with human nature and very much to do with the desire for wealth and power by these people. People of the Third World who have been victims to this sort of international crime: genocide, rape and torture, now have a very powerful instrument to persecute and prosecute these perpetrators, wherever in the world they may be found. I think that is a step forward for humankind and we must be happy that the ideas and fundamentals of this international legislation came, not only from the Caribbean, but from Trinidad and Tobago.

Another unassailable truth is that many of these dictators have been openly supported, in terms of arms, armaments, intelligence and technology to perpetrate their acts of genocide, by some of the most powerful imperialist countries in the world, including the United States of America. These fascist and genocidal regimes have been supported, in spite of their criminal acts, because it is a situation of “you scratch my back, I scratch yours.”

International capital is given free rein to plunder the resources of these countries; to oppress their workers, to extract the maximum amount of wealth from the country. The small oligarchic cliques are rewarded with the fact that people turn a blind eye to their excesses and to their looting of these countries. So it is a win-win situation for these two, international capital and the small oligarchic cliques in these countries. It is no wonder that powerful forces in the world have opposed the establishment of the International Criminal Court (ICC), because it affects the interests of these two groups, the international capitals and the small oligarchic groups of genocidal maniacs who support international capital and, in the process, get rich themselves.

In spite of this reality, however, President Fidel Castro always affirms that a better world is possible. The State parties to the Rome Statute, apparently also believe that a better world is possible, in spite of these horrifying realities, hence, this legislation is recognized by the United Nations as an instrument to prevent and punish war crimes and acts against humanity.

The Preamble to this statute says that the parties to this statute are united in the common beliefs that all people are united by common bonds; that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity and that such great crimes threaten the peace and security of the world. All State parties to the statute are also determined to put an end to impunity for the perpetrators of these crimes and they are resolved to guarantee lasting respect for the enforcement of international justice. Basically, I have paraphrased the Preamble, but the last part is extremely important. I will quote it in its entirety:

"...reaffirming the purposes and principles of the Charter of the United Nations and that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations."

We in Trinidad and Tobago are signatories to this statute and, therefore, we have a responsibility to face and acknowledge the violation of these principles that have been perpetrated against our sister Caricom country, Cuba, over the last 45 years.

Being a signatory to the Rome Statute and bringing this Bill to the Parliament, we have acknowledged that we have a responsibility to protest any and all forms of genocide, acts against humanity and war crimes without regard to the identity of the perpetrators of these acts. I submit that being signatories and being committed to this Bill by itself binds us to these moral positions.

In this Bill before us, there are definitions of genocide under the section "International Crimes" on page 24. The definition of genocide is given as follows:

- "(2) For the purposes of this section, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
- (a) killing members of the group;
 - (b) causing serious bodily or mental harm to members of the group;

- (c) deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group; or
- (e) forcibly transferring children of the group to another group."

Under this definition of genocide and being aware of the allegations and the facts associated with the aggressions perpetrated against our sister Caricom country of Cuba over the last 45 years, how do we as a nation, as a people, intend to respond, given this instrument that has been placed in our hands after the passage of this Bill through Parliament? Where do we go next? This is very important, because we have the whole question of Cuba/Caricom relations; the question of the Torricelli and Helms Burton Acts that are before the world at this moment. How is Caricom going to respond to the extra territorial provisions of these Acts which involve imprisonment of businessmen, non-nationals of the United States?

In fact, one Trinidadian businessman who is right now a national of Canada is actually imprisoned in the United States for exporting certain products to Cuba, which by American law are illegal if they consist of more than 10 per cent of any product produced in the United States. So we already have a Trinidadian by birth being prosecuted under these extraterritorial Acts imprisoned in the United States. In the context of the Cuba/Caricom relationship, it is logical to expect that more of these atrocities and aggressions would take place against businessmen from Trinidad and Tobago who are interested in doing business, as allowed by the United Nations International Charter, who will be doing business with Cuba.

Madam President, I was referring you to the definition of genocide as given in this Bill and to the allegations made over the years by Cuba of acts of genocide by perpetrators armed, financed and supported by the United States. Let me refer you to just a couple of these allegations. We will have to address these allegations now in the light of being a signatory to the International Criminal Court and the statutes therein. I refer to:

"Key address by Commander in chief Fidel Castro Ruz, President of the Republic of Cuba, at the opening of the great combative people's march to oppose terrorism. May 17, 2005...

Similarly from the very first years of our triumph, armed groups were spread throughout the length and breadth of our land killing farmers, workers, teachers and literacy teachers, burning houses and destroying agricultural and industrial facilities. Acts of sabotage with white phosphorous and explosives were carried out against our country's population and economy. Our ports, merchant and fishing ships were subject to constant attacks. Diplomatic legislations and personnel abroad were the targets of attacks with explosives and firearms.

Diplomats were killed, vanished or maimed. Passenger planes were blown up before they took off or in midair like the Barbados airliner on October 6, 1976, full of passengers whose remains lie beyond recovery on the bottom of the sea, hundreds of metres deep."

This is significant, especially this reference to white phosphorous being used in Cuba. This issue of white phosphorous also surfaced in the news recently. It had been alleged that white phosphorous was used as a form of chemical warfare against the people in Iraq. This was denied by the US, but subsequently information by army personnel revealed that it was white phosphorous, contrary to the allegations initially that it was just used to mask operations and so on. Revelations showed that it was used deliberately by army personnel as a form of chemical warfare. This rings a bell.

Just last week it surfaced in the international arena that chemical warfare, white phosphorus, was being used against the people of Iraq. So when President Castro makes his allegations of white phosphorous being used in Cuba, we can no longer take it as propaganda, "ol' talk" and just attempts to tarnish the international image of this country. We have to take these things seriously now, because we are seeing allegations and proofs surfacing in other countries.

Under the definition of genocide in this Bill, it is clear that we have acts, as elaborated in the document I just read from, which are committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group". Cuba constitutes a national group and these acts described by President Fidel Castro over the years, were clearly acts of genocide perpetrated by the US and its terrorist gangs against a sovereign Caribbean country.

I personally am happy that we have this Bill before us, because it now gives us criteria, definitions and so on in order to judge the perpetrators of these acts which have been going on with impunity for over 45 years and without recourse to justice. At this point in time, I am happy that there is an International Criminal

Court where under this very Bill signatories can apply to the court for justice in relation to these acts. Perhaps a lot of these acts might go unpunished, because of the date that this statute came into effect, but there are acts of genocide still taking place in a lot of countries in the world that would be caught under the Rome Statute.

I just looked at clause 9 which deals with genocide and I want to look at clause 10 which states:

"(1) Every person is liable on conviction on indictment to the penalty specified in subsection (3) who, in Trinidad and Tobago or elsewhere, commits a crime against humanity.

(2) For the purposes of this section, '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;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international laws;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence..."

It says in (h) which I think is extremely important for us in Trinidad and Tobago:

- “(h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the ICC;
- (i) enforced disappearance of persons...

- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health."

This clause has special significance for the people of Trinidad and Tobago. It has special significance for we of the UNC, civil groups and for the media in this country, because the category I have just described are the defenders of peace, justice and freedom and we are engaged in a battle against the tide of creeping dictatorship, which is being perpetrated by this Patrick Manning regime in this country today.

Armed with these precepts and concepts in the Bill before us, I ask the hon. Senators and the people of this country: How do we judge, how do we understand, how do we prevent and punish the work of armed paramilitary forces which have played a vital role in the imposition of this regime on the population and have been allowed to operate, with impunity, in this tiny country of 1.2 million over the last four years? That is the reality.

The Minister of National Security identified over 60 gangs and 600 gang members. These are armed gangs. They do not go around with cutlass and knives; they are armed with guns and, in effect, they are being allowed to operate with impunity. They are not being prosecuted; they are not being hounded down; they are not being jailed or isolated from the population. The bigger question though is who has armed these gangs and why. I asked myself this question; a missing piece of the puzzle fell into place when Sen. Prof. Ramchand mentioned that the international politics was not able to get the whole question of international drug traffickers into the Rome Statute. When we ask these questions, it seems that they are not relevant.

What does the introduction of guns and, maybe, drugs and the ensuing carnage that happens in the streets have to do with international crimes? It seems a far-fetched connection. When Sen. Prof. Ramchand indicated that the persecution of the international drug traffickers was deliberately left out of the Rome Statute, it occurred to me then that was the reason. If they were included in the Rome Statute, then we would be able to point a finger at the importers of the guns, drugs and cocaine in this country and when we apprehend them, not this Government, another government that is committed to apprehending these criminals, then we would be able to also charge them for crimes against humanity on an international scale.

When you put guns into the hands of people who you know are going to use them to kill other people, to fight, to protect turf and their drugs, in fact, you are promoting murder and extermination of the civil population. That population is a national population, because it says in subclause (h):

"persecution against any identifiable group or collectivity on political, racial, national, ethnic grounds..."

So if the persecution against international drug traffickers was part of the statute, then we could finger them for persecution against a national population, which is what is happening in our country. So we have hundreds of youths, over 305 to date, who have been exterminated in the East-West Corridor, due to the fact that unseen, bloody, genocidal hands have put guns in the hands of these youths for a specific purpose, to wipe each other out defending drugs and turf, and there is nothing anybody can do about it, because they hide behind the corruption and complicity and there is no international crime, as such, which would catch these people. We still have a lot of work to do, because as Sen. Prof. Ramchand indicated, these are an immense part of the international problem. Perhaps later on these statutes would move to include this group.

Given this instrument we have in our hands, how do you judge the crime of kidnapping that has been escalating in our country over the past four years, given the fact that under crimes against humanity, crimes directed against an ethnic, cultural, religious, political, racial, national or gender, are defined as crimes of humanity? When I look at the whole question of the escalation of kidnapping in our country and given the Rome Statute and the Bill before us, I can see any citizen making a case for crimes against humanity being perpetrated, under our very noses, against an ethnic or racial group. There are three criteria for this case: One of them is if it is committed as part of a widespread or systematic attack and it is directed against any civilian population. How do we judge systematic, one year, two years, three years or five years? Are we going to wait 10 years to decide that this is a systematic attack against a political racial group in the society that has borne the brunt of kidnapping for ransom?

For this year alone, we have had 54 cases of kidnapping for ransom and 95 per cent of the victims belonged to a particular ethnic group in the society. The other criterion is whether it is widespread. When are we going to decide whether it is widespread, after four years, 10 years or 15 years? Right now we are seeing different areas where these acts have been perpetrated. We are seeing that it is systematic, over four years, and it is increasing. Kidnapping for ransom in 2003 was 51; in 2005, up to now, we have 54, and we are almost to the end of the year. Kidnappings

generally have gone from 160 in 2003 to 205 in 2005, so far. I was talking about whether it was widespread, and I was looking at the addresses of the kidnappees.

There are addresses like Carapichaima; Princes Town; Tabaquite; Biche Village; Maraval; Glencoe; Chaguanas; Aranguez; Longdenville; El Socorro; Trincity; Petit Valley; Cumuto; Wallerfield; Goodwood Park; D'Abadie; Blue Basin; Gulf View; Curepe; St. Ann's; Debe; Tunapuna; Westmoorings; St. James; this is widespread. So we have the criteria, given the definition for crimes against humanity. It is systematic; we have seen this going on for over four years and increasing; it is all over the country and is directed towards a particular racial group.

I ask our national community: What are we going to do? What is our position? Are we going to wait until 10 years have passed and thousands of persons have died to wake up and say, "Oh, shocks, you know we have thousands of crimes against humanity being perpetrated against people of this country?" Is this how it started in Guyana, for example, that people took it very lightly, made a lot of politics out of it and it was disregarded, because they were of a different ethnic group or because, "Dem people have money; dey could pay, no problem;" because of all these cavalier attitudes?

When are we going to wake up and realize that we are existing in an escalating stage of crimes against humanity being perpetrated against a particular ethnic group in this country that fits the definition as given in this Bill brought by the Government? What is the Attorney General doing about it? What are we doing about it as a community or as a nation? These things have a way of escalating; of spreading to other groups. We have seen it; people have a little shop or parlour and a "fella" decides that he could extort a \$5,000; this is what has been happening over the last four years. People have disregarded the crime spree; people have disregarded the kidnapping; they thought it was curious and strange and this is where we have reached; 150 kidnappings over the last year.

We have other aspects of the definition. We have torture and rape involved in this process, as defined in the Bill. These are all aspects of the kidnapping of members of this particular ethnic group under our very noses. We have talked about enforced disappearance of persons. We have 10 people who have been kidnapped and never heard from again. When are we going to wake up as a civilized society and say, "Stop, no more"? We have to use every instrument at our disposal to nip this problem in the bud, because we have an escalating situation of crimes against humanity happening right below our very noses. When are we going to wake up? In the year 3000, when it involves another ethnic group?

Madam President, 10 nationals of this country who, according to this Bill, have had crimes against humanity perpetrated against them, because they have disappeared. On February 10, Chris Elves of Valsayn East was kidnapped and he is still missing. On March 17, Kalipersad Maharaj of 57 Plover Street, Lange Park, Chaguanas was kidnapped; he disappeared; enforced disappearance of persons.

Sen. Dr. Saith: Relevance!

Sen. Dr. J. Kernahan: This is a Bill that you brought to Parliament. You are saying that this is a crime against humanity and that the Attorney General has all the powers under this Bill. Every page in this document refers to the Attorney General. We can appeal to the International Criminal Court and bring these kidnapers to justice, if you have the political will to hold them.

We have Terence Dick from Longdenville who was kidnapped on April 03; he is also a disappeared person, and people are talking about relevance; it is horrifying. We are talking about citizens of this country, bread winners many of them, fathers, sons, who have left loved ones behind in disarray; their lives have just stopped since these vicious acts were perpetrated against their families. People are talking about relevance, with this Bill before us.

Madam President: You are on a very thin line.

Sen. Dr. J. Kernahan: Crimes against humanity deals with enforced disappearance of persons. The Attorney General has the responsibility under the Rome Statute and this Bill which he has brought to Parliament, to deal with these acts of disappearance. [*Desk thumping*]

We are talking about Pretam Singh who disappeared on June 30, from Aranguez; [*Desk thumping*] Kevin Henry, August 05, from Enterprise in Chaguanas; Anil Singh, Bournes Road, St. James, on October 04; Samdaye Rampersad, Mendoza Street, San Juan; Jade Solis of Glencoe, Tamana, the latest kidnap victim, on December 04. This is widespread; this is systematic and it is perpetrated against a particular ethnic group in this country. Any citizen can bring a serious case to the International Criminal Court against this administration for harbouring kidnapers who have committed acts of terrorism and crimes against humanity. It is a clear case. [*Desk thumping*] It has nothing to do with relevance or irrelevance. It has to do with people's lives and future; with children who are growing up traumatized because of the conspiracy that this Government is in with these people.

I want to quote from an article in the *Sunday Mirror*—December 06, 2005.

Sen. Dr. Saith: December 06, 2005?

Sen. Dr. J. Kernahan: Yes; they have a mistake here. Today is the 6th?
[*Crosstalk*] The headline of this article is:

"TnT - the control centre for EU drugs"

People who are victims of these crimes have a serious case against the Attorney General and the Government. It is not the UNC saying so, remarks like these are being made by experts and people monitoring the society. This article is by Darius Figueria, a drug expert and author of *Cocaine and Heroin Trafficking in the Caribbean*. He was talking about an interdiction of 1.7 metric tons of cocaine that took place. At the end of the article he said:

"The abiding lesson of the interdiction of Passy Island is not the size of the interdiction, but the reality that the drug lords rule in Trinbago with impunity.

The people of Trinbago must note that the cocaine interdicted is but a bucket.

Moreso, as a people, we must note the firepower of the weapons seized along with the cocaine. Therein lies the nexus between gun crimes, the illicit drug trade and the murders in Trinbago."

This has tremendous implication. What is he saying when he speaks about the drug lords ruling with impunity in Trinidad and Tobago? Is he saying that we do not have an Attorney General? Is he saying that we do not have a criminal justice system? Is he saying that we do not have police who are concerned about these issues? Is he saying that we do not have the prisons that will keep these persons behind bars? What is the implication? It is not me saying so, but persons who are studying these issues and problems. This is the importance of this legislation before us.

The Attorney General, as the representative of the Government and the person charged with responsibility for executing this Bill before us, has the responsibility to bring these perpetrators to justice and try them in local courts. There is enough evidence that they can be tried in the International Criminal Courts of Justice.

Madam President, I refer to a couple of the articles in this Bill also. As a layperson, I have some questions with respect to the relationship between the Attorney General and the courts. In our context, if we have a situation where there are learned commentators who say that drug lords and kidnappers operate with impunity in this country, then there are very grave repercussions for the type of

role the Attorney General is given with respect to getting cases or even making a case against citizens before the ICC.

Clause 33 says:

"If a request for surrender is received, other than a request for provisional arrest referred to in section 32(2), 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."

It also says in subclause (2) that he must also send a copy of the request and supporting documents. Surprisingly in subclause (3) it says:

"The Attorney General may, if he thinks fit, refuse to notify a High Court judge under this section."

I find this clause and others, contradictory; and other Senators have referred to them as such. As Sen. Prof. Ramchand has asked, why should the Attorney General be given such wide powers in refusing to allow for the arrest, surrender or prosecution of persons who have been accused of crimes against humanity, genocide and so on? I find it strange. I want to know why that is so.

It goes on in clause 34 to state:

"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 if the judge is satisfied on the basis of information presented to him that:

- (a) the person is suspected of being in Trinidad and Tobago or may come to Trinidad and Tobago; and
- (b) there are reasonable grounds to believe that the person is the person to whom the request for surrender from the ICC relates."

It goes on to say in clause 35:

"The Attorney General may, at any time, by notice in writing, order the cancellation of the warrant."

So what is the purpose? In clause 34 you have the judge being satisfied that, based on the information before him, this person is suspected of being in Trinidad and Tobago and is the person for whom the request for surrender was made. It does not say here that the AG has to give any reason for his cancellation of the warrant. Out of the blue, he can just cancel the warrant. In clause 35(2) it says that if the AG orders the cancellation of a warrant, the warrant ceases to have effect

International Criminal Court Bill
[SEN. DR. KERNAHAN]

Tuesday, December 06, 2005

and any person arrested under the warrant must be released, unless the person is otherwise liable to be detained in custody. I find that alarming. [*Interruption*]

Madam President: 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. W. Mark*]

Question put and agreed to.

Sen. Dr. J. Kernahan: Thank you, Madam President. I do not understand why the Attorney General could order the cancellation of a warrant after the case against that person has come before a judge who, based on the evidence before him and on the information, would have issued a warrant. It seems very arbitrary to me. I believe this is the concern of many Senators who spoke before. I think these issues must be looked at in more detail by the legal minds and decide what is happening here.

What is interesting to me in clause 36(2) is that a warrant may be issued even though no request for surrender has yet been made or received from the ICC. As a lay person, I am very interested in this particular subclause, because it seems to imply that we do not have to wait for a warrant from the ICC to issue a warrant for the arrest of a particular person, if we have enough evidence that the person is guilty of international crime under this statute. This is where I believe the Attorney General and interested parties can act to deal with criminals guilty of international crimes. I think this point was also made by Sen. Prof. Ramchand when he said that he did not understand, if he brings evidence before the local courts, before a judge, why the Attorney General can arbitrarily strike down this particular action.

Madam President, clause 37 goes on in the same vein with respect to a provisional arrest warrant. It says in clause 37(3):

"On receipt of the report under subsection (1), the Attorney General may, if he thinks fit, order that the proceedings be discontinued."

Under subclause (A), if the AG orders that the proceedings be discontinued, he may cancel any warrant of arrest or order the discharge of any person arrested under the warrant. It says under subclause (5):

"The Attorney General shall notify the High Court of any action taken under subsection (3) or (4)."

Why should a High Court judge be notified by the Attorney General of discontinuation of any action, when in the case where a judge has seen it fit to issue a provisional warrant based on the information before him. The arbitrary nature of these actions is very disturbing. It seems we are giving with one hand and taking back with the next. I do not understand why these clauses are couched in this manner, why the Attorney General has so much power on this issue.

We are saying this in the context of the fact that political commentators are alleging that drug lords and other criminal elements in the society are operating with impunity, implying that the criminal justice system is turning a blind eye to these people. At the same time, you have Attorneys General who can arbitrarily strike down any application for the bringing to justice of international criminals. What are we doing? We are spinning top in mud. We want to pretend that we are part of the Rome Statute, that we are acceding to it, but really and truly we are negating all the intentions of the Rome Statute with respect to bringing international criminals to justice.

It is not surprising to me; this is the modus operandi of the PNM, smoke and mirrors. You give with one hand and take it back with the next; this is how they operate all the time. We have seen countless occasions when they have brought budgets to this Parliament and they give you \$40,000 with one hand and take back \$60,000. This is what is happening here.

You are pretending to comply with the International Criminal Court; a lot of smoke and mirrors, but the reality of the clauses in the Bill gives the Attorney General absolute power, even over the High Court judges, to discontinue proceedings and warrants and to release personnel. That is funny; fishy, unacceptable and it makes nonsense of the Rome Statute, as far as I am concerned. I am a layman, I do not know anything about the legal aspect, but my grandmother always said that sense make before book. So as a layman, I do not understand how this could be acceptable and, apparently, I am not the only one. Other Senators before me have made these same remarks in other ways.

Bail was identified as a serious problem, in terms of the constitutional question and I totally agree. Under clause 38, we have a number of provisions here with respect to the provisional arrest warrants. These proceedings cannot proceed in the High Court until the AG gives notice in writing stating that the request for the surrender of the person has been transferred to the AG, specified in clause 25.

“(b) Pending the receipt of the notice from the Attorney General, the proceedings may, from time to time, be adjourned.

- (c) The High Court shall set a date by which the notice is to be transmitted to it, which must be a reasonable time...
- (d) If the High Court does not receive the notice within the time fixed by the High Court under paragraph (c), and does not extend that time under subsection (2), the High Court shall discharge the person.
- (2) The High Court may, from time to time, in its discretion extend any time fixed by it under this subsection."

How long is the High Court going to keep extending the time under which it can delay the proceeding pending receipt of a written notification from the Attorney General? It seems to me that this is against natural justice. If the Attorney General decides to sit on this issue for two years, would the High Court have to keep postponing this matter for two years until it gets a response from the Attorney General? This is against natural justice, as far as I understand it. I am sure that the High Court, as it says here, would discharge that person eventually without the proper notification.

These are some of the issues that I find central to this Bill. I think that the principles, content and substance of the Rome Statute have been sabotaged in this Bill. This Government is a government of smoke and mirrors. It is deceitful and it wants to pretend to the international community that it cares about international crimes, but our citizens know differently. Our citizens have attested to the complicity of this Government in a lot of illegal goings on in this country and this Bill actually supports that, because it gives the Attorney General total power, whether we like it or not; whether the people are guilty or not or whether the High Court likes it or not. That is the essence of this Bill.

I believe, along with my senatorial colleague, Sen. R. Montano, that this Bill must go before a joint select committee of Parliament; that hon. Members must go through this Bill clause by clause to ensure there are no breaches of our Constitution and if there are breaches, that it has to be passed with the required majority and that the total power of the Attorney General, even over the High Court of Trinidad and Tobago, is curbed, so that the essence and intent of the Rome Statute is fully reflected in any Bill passed by this Parliament.

I thank you.

Sen. Dr. Eastlyn Mc Kenzie: Madam President, I personally support the Bill and on the last occasion I asked some questions which I hope will be answered today. I would like to say how much I support what Sen. Anmolsingh-Mahabir, Sen. Ali and Sen. Prof. Ramchand said previously congratulating former Prime Minister and President, Arthur Napoleon Robinson, for his foresight and persistence in bringing about this measure.

I would also like to congratulate our representative on the court Senior Counsel Karl Hudson-Phillips. I do not know how to term it, whether it is a contradiction or the faith that these people have in us that we have a representative in the court and we have not signed. We do not actually have the Bill passed in our jurisdiction. So I think that we are all in favour of supporting the Bill, but, again, certain Members have reservations and I also would like to voice my opinion with that.

The call for the Bill to go before a committee, whether a joint select or special select, is a good measure. I say this not because of queries, but because of the type of education we get when Members sit and explain why this is so and why they have this clause in this type of way. I hope that in the absence of such a measure, the hon. Minister in winding up will give as much as he could in terms of answers to some of the queries and doubts that we have.

I have also sought comments from people outside of the Parliament on certain measures and I am satisfied with the explanations I have been given, because of their legal expertise and experience in measures of this kind. I understand that because this is a statute and we have already signed to it, there is very little we can do to change the conditions expressed in the statute. What we have to look at are the laws we would try to pass to have the statute enacted.

There are three things that I would like to ask: one, whether the supporting agencies that will have to support the implementation of the statutes, if the Government had any discussions with them. For example, you have the prisons, because according to article 68, the criminals, if you want to call them that, have certain rights and privileges and, as such, our standards will have to meet international standards, so we cannot arrest people under the International Criminal Court and just keep them in a dog house for a prison. This is one of the questions I would like to ask, whether the supporting agencies to have the Bill enforced, if we have had any discussions with them; whether our prisons are ready; whether our judicial system is ready.

I would like to ask the hon. Minister in his winding up, if he could allay our fears about breaches in the Constitution. Secondly, I would like to ask about one clause contradicting another; we saw that reference being made by Sen. R. Montano earlier. I hope that in the winding up, Mr. Hon. Minister, you would be able to clear up these doubts in our mind. We must support the Bill, because we have signed the statute and we have a representative from Trinidad and Tobago on the court.

The next thing is that I would have hoped that our representative would have seen the Bill that we have brought to the Senate and that in cases where he would have thought there was anything amiss, he would have pointed those measures out to you so that the corrections could have been made before the Bill was brought. I pointed out one little omission on page 26, I hope that the Attorney General would have pointed it out to you. It looks like a typographical error.

4.00 p.m.

Madam President, I support the Bill and would have liked to have it go to a select committee, but I understand the urgency and the fact that we already have someone sitting in the court and we are tardy in actually enforcing and bringing the Bill in the form of an Act.

Thank you.

Sen. Brother Noble S. A. Khan: Thank you, Madam President, for allowing me to share some thoughts on this—like many of my colleagues, if not all—in support of what is before us, but there are certain things in it I would like to share some thoughts on. The opportunity does present itself because we are talking about international, we are talking about criminal, we are talking about court, and we are talking about Bill, the International Criminal Court Bill, 2005.

Madam President, permit me to extend my appreciation and respect for Mr. Robinson who had so much to do with this, and like the other speakers, add my bit to it.

I, too, would like to recall one of my experiences in which I had a short conversation with the late Mr. Montano. He was a gentleman for whom I had the highest respect and I can talk of two examples to show that was the example to which I had alluded before—when he was the Ambassador—being part of the diplomatic service, part of the international community.

In a short talk now, Brazil is one of the massive countries of the world and he was there representing a small country and in that discussion, listening—because when you are dealing with these men you listen to them—he had made the point and it had stuck with me from that time to now, and I think it will always remain. He had made the point that no matter what it is, how big they are, how much they have, there is nothing for nothing in the international scene and I think that is one thing we should always pay recognition to.

The other thing, on the lighter side when, in the first set of negotiations that the government had at that time with the Civil Service Association, now the Public Services Association (PSA), I was the representative for the clerical officers' section which was a very big section and Mr. Montano was the Government Minister on the other side. And I must say at that time—I do not know if leading that section, we had asked for too little—that all we had asked for in the negotiations we were able to get and I always remember him on that too. It was a statesmanly and very great experience for me.

So those were two experiences I personally had with him besides, of course, which all of us know about are the sterling contributions which he had made towards the elevation of our nation.

The points I would like to touch and on which I would like to deal to some extent—and if you will forgive me too because there are linkages and I can possibly link them when we talk about the relationship with the court of the United Nations and things like that—are the human dilemma we may find ourselves in when we think in terms of sanctions that do exist and when particularly the big nations of the world bring these sanctions to bear.

I would like to make two references to Haiti and Iraq. I am not speaking of the present state, but to show a progression that has led to the present state which they are now in. When they had brought sanctions, to my mind, that was purely political and the end of it politically and where health goods were denied as part of trying to bring nations into a form of channelling of what these superior nations would have liked it to be.

This is a great injustice and a great crime in my view because you are thinking in terms of denying people things like medicine and economic goods which have a negative feedback to the nations and I am sure you will agree with me, Madam President, that the people would be affected most likely by these sanctions were it not for the political leaders or those who occupy seats of power.

The question then arises: Who then will suffer? The poor persons, our womenfolk, and when I say our women I am talking about the universal level, our children. And I am sure we can recall from the press the negative effects that these have brought. How then could we relate that with the legal system we have before us? How could you justify it? Of course we could think in terms of strategic and institutional consequences when these collective sanctions were initiated and how they affect particularly the nations that are on the other end of what we may term the economic well-being.

It will raise questions of ethics and morals and then we could possibly link that to where would our ethics derive. Would they come from our faith-based systems? Would they come from the atheistic areas? We have seen one of the great bastions of that crumbled and gone the way of all flesh, but still there are vestiges that remain. These are some of the things that come to my mind when we bring law which seems to have within a total face that does not recognize the human personality in it when we bring these examples I have shown that have occurred even before the war that was foisted on Afghanistan and Iraq.

The question of the role of the United Nations—because I see this document also makes reference to the role of the United Nations, and relationships of the court with the United Nations. This again brings to bear the evolution of the United Nations and also the role of the big nations playing within the United Nations insofar as war is concerned. I do recall that when it was put forward to do the invasion of Iraq, the question arose and I know that we in Trinidad and Tobago and the group to which I am a member are totally opposed to war as any conflict resolution option particularly in the early stages and there was quite a bit that could have gone before war was foisted on that nation because again, who suffers?

I am sure that within recent times if we had looked at the television, we would have seen the gross destruction of human life: women and children, the whole country being devastated. In Trinidad there is a saying: “Do so ain't like so.” If others, or even if these people were capable of that because if we were to look at recent history or within the last hundred years or so, many of these gross negatives foisted upon humanity were not done by the people at the lower end, they were always between themselves or from the North coming to do these things.

Would our law address this, or is it contained in this? It speaks about genocide and these are some of the things when we look at what is before us if we allow this consciousness in ourselves to be informed it will make our law making just a dry thing, of not giving it the human face which it should have.

Of course, you may have heard of the just war. I am sure all of us might be aware of this and for my own historical background, I do recall somewhere about in the 3rd Century or thereabout, I think it was in North Africa where between the people who symbolize peace, the Messiah, the Prince of Peace, among his followers that this concept of the just war was coined even between the coreligionists at the time and this continued to persist in this way. How will we address that?

Of course, I would say he never proposed that or the system never proposed that. It is because men who captured the system, who used the system, or claimed to use under the system of these great men have been able to bring this to bear and I would think that this Bill before us—and even within recent times in the Vulcan States we have seen this thing erupting again and this might be instructive to us from two ends.

Something that we could succumb to, which I would like to think is the way we should go, where our experiences in these areas which we have been able to evolve as a people for which I think we could give ourselves some credit, could use to share with the rest of the world, because though we are small, all the elements that the big nations have which they seem not able to face, we have been able to overcome some of them to a great extent.

You may recall, Madam President, that I have said in the past that there is a role for us to play. I am sorry that the hon. Minister of Foreign Affairs is not here but I think he is committed to that, to deepen that process of our sharing our experiences on the international scene. Perhaps, this is a good example of it which we have today and have established over a period of time because as we have mentioned before the origins of this Bill have some connection with our own small island here.

I have touched on the question of our vulnerable groups, particularly our women and children when these conflagrations break out because they are the first to collapse under these genocides and these kinds of things because we have seen the example of what has taken place within recent times, even in some of our own life time what has taken place in Germany and within more recent times in the Vulcan States, and the East European States. So one may think that this law will, to some extent, help to address questions that are before us.

The question of institutional innovation which I think will emerge out of this is one that we will definitely have to give consideration to, and for ourselves also to make it very clear of the strategic usefulness that we could make to bear possibly in the area of the economic intervention.

We have heard very often that question of the money laundering and I think these are some of the easier things that could be mentioned, but might be very difficult to follow up like the drugs and those types of crimes. These are some of the things we like to think in terms of.

I would also like to think in terms that very often between nation States many of our boundaries, even our own Trinidad and Tobago, have been set in pattern before us by the old colonials, and if one can think in terms of what took place when Trinidad and Tobago came together, it was because of the poor economic situation of Tobago at the time within the century before this one and we were brought together.

Even from that time, the question of justice and fair play between two islands, even from colonial times, I do not think fairness was shared even in some of our own minds. Maybe it was the big brother syndrome in relation to Tobago, but if one were to be honest and think in terms of what is our position today because as I understand it, much of this vaunted wealth that we have flowing into our country now is because of what is ours, that might be closer to Tobago, then if there were two separate islands you would have found that the matrix would have been different.

So if today, as I have said before, inferring at that time when things were bad, they brought Tobago to us and for many decades people had the mind that they were a drag on the economy. Many of us would have heard that, and even seen and experienced it in relations that exist between the two islands. But we are dealing with a noble people and your heart is big and one would think in terms that even in the fair share concept of a decent relationship, there would be obviously need to have implications in our Constitution too. So this law that is before us again revised all these feelings and brings to bear many of the things that in a modern-day State one should think in terms of addressing.

The question of Guyana too, the international connection, the whole idea of the border disputes in the past which I think our country has touched on when I think that things were allowed to lay at rest for some time and Trinidad and Tobago had a hand in that under our late revered Dr. Williams, the father of the nation.

Within recent times too the question of rogue States has arisen and I wonder if this document touches that. You hear questions of—with respect to these nations like North Korea, Iran and people are pursuing a path which they themselves with self-determination are following the United Nations and the innate constituted feelings that nations and people should have to develop themselves in a way that they

would like it once it meets certain requirements. There are members of the United Nations, who I think would be abiding by some of the concepts that guide us and what redress this international law gives in dealing with these people when particularly in this day and age of powerful States dictating how you should go. Can we legislate for that? How would that inform us as a people?

We have always heard it said and I have mentioned it before: “When your neighbour’s house is on fire, watch yours.” And there are things we should have to watch insofar as when we as a people are moving forward. Conflicting norms—one would think that the international scene in relation to ethnicity of religions, even of language groupings, claims for separation, all these are things that this causes to come out. I have touched to some extent on the sovereignty of territorial integrity and independence of the State and the principle of self-determination.

On a little lighter side, and more serious, earlier we had questioned the international movements which happened instantly—communication. I must say that recently, the Minister of Health took the initiative with respect to feathers which is very important for us especially at this Carnival time that is coming up, and as an old mas’ person, I still have a keen interest in it. The question of feathers is one that can be used for decoration and beauty. We are not unaware that some people may use it to feather their own nest too. I am alluding to what was heard earlier in the Senate as the bird flu thing. So this has international implications.

Madam President, with these few words I would like to take my seat and indicate to you that I am in support with what has been expressed here; that a small committee go through the law in detail and come back.

Thank you and God bless.

Sen. Sadiq Baksh: Madam President, I join the debate on the Bill before us in supporting the legislation generally, but to point out to the Government and to request that it look at this particular matter: the possibility of establishing a joint select committee to look at it.

The main reason for that, I understand that this Bill was patterned after the New Zealand model. Having had this Bill patterned from that model, we should note that in New Zealand there is no written constitution and as such, there may be certain clauses in this Bill that cause serious conflict and violation with our written Constitution, the Government should pay some attention to that.

If, on the other hand, the Government feels that it does not need to take that into consideration we will support it, but we are of the opinion that this would need a special majority because of certain clauses in the Bill that come into conflict with our written Constitution.

Madam President, we recognize that our country played an important role in the establishment of the International Criminal Court and we are very proud of that achievement. Based on that, we do not wish that sometime in the future in Trinidad and Tobago that someone should take this matter to the courts and then find it being virtually shut down in the country in which it had its birth. It is based on that, that I join this call for the Government to recognize that.

Thank you very much.

The Minister of Labour, Small and Micro Enterprise Development and Acting Minister of Foreign Affairs (Sen. The Hon. Danny Montano): Thank you Madam President, I will start where the last speaker left off on the question of the constitutionality of the Bill before us.

Allow me to assure this honourable Senate that there are no clauses of this Bill that infringe our Constitution. Of that the Government is very certain, and we are very confident that even if the Bill is challenged in a court of law like the Extradition Act which was challenged, the challenge will fail, and we are very confident of that.

I will now deal with some of the contributions. Sen. Bro. Khan, first of all let me thank you for the very kind words that you expressed about my father. I do not want to make a debate on that this evening, but certainly, as my brother said, we are very proud of him and thank you very much for your kind words.

Your contribution was very philosophical. You spoke about sanctions against countries and what could be done to the countries which impose them because it is a question really of this threshold as to when it becomes a crime against humanity, and that is very much an issue and I agree with you that is one of the reasons some larger countries have not signed on to this agreement. But just for the record, that does not exempt them from the international treaties and arrangements within the jurisdictions of the countries that have signed on to the treaties. They are still exposed if they enter the territories of States that have signed on to the treaty and have passed a law that is similar to this one. It is an interesting argument, and, of course, one that had started many years ago and I do not really want to get into it.

The threshold is that we have established it, or as it has been established in the treaty, and in the Bill in front of us it is reasonably clear at this point. There may be issues that will arise at some point in the future but we believe that the Bill is as comprehensive as it needs to be at this time.

Sen. Dr. Mc Kenzie asked about breaches of the Constitution and I will deal with that further. She asked specifically if the Government consults with the agencies that are involved in the process specifically the courts and the prisons.

Just allow me to say that it is not normal for the Executive when proposing legislation necessarily to consult with the courts and prisons. The courts manage their affairs pretty much by themselves. The prisons are definitely an arm of the Executive and as such, we manage the prisons to our own standards and we do not necessarily make them as comfortable as they might be in other jurisdictions. We maintain our own standards in that regard.

Sen. Dr. Kernahan raised one point that was raised by Sen. Prof. Deosaran, and that was kidnapping and whether that could be seen as a crime against humanity under the Bill and what was the Government doing. It is an issue, and kidnapping is a most serious crime in our country today and I do not think that anybody could downplay its seriousness.

However, it is difficult to classify kidnappings, as they are taking place in Trinidad and Tobago as crimes against humanity. It would have to be perpetrated by either an individual or a concentrated organized group of individuals with a specific intent against another group of individuals. And whereas there is a certain concentration of kidnappings among a certain sector of the society, there is no such evidence that would suggest that the perpetrators are either one individual or a concentrated group of individuals at this point. I have no such evidence in my hands.

Madam President, to deal with the contribution of Sen. Mark, I had to go over it and get the *Hansard* to find out what he said, and after reading 17 pages of it I found that there were at least 11 occasions when he was in flagrant breach of the Standing Orders which led to a lot of the confusion last week. He really only had one point and that was the issue that has been raised by other Senators as to the powers of the Attorney General.

Madam President: Senator, I think it is a good time to take the tea break. You have had seven minutes and when we return, you will continue. We will return at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.03 p.m.: *Sitting resumed.*

Madam President: Minister, you may now continue.

Sen. The Hon. D. Montano: Madam President, before the tea break I was referring to the contribution of Sen. Mark and the lack of substance in it, really. We spent so much time listening to it—an hour—and really and truly only one point was made. There were so many flagrant breaches of the Standing Orders and with all due respect, it is our joint and collective responsibility to maintain the dignity and order of this honourable Chamber.

I would just like to contrast the contribution the Senator made with that of his colleague, Sen. R. Montano who, in fact, made an excellent contribution this afternoon without any breaches of the Standing Orders. He was cogent, persuasive, articulate and it is my job now to try to deal with some of those issues. But the point is that the contribution of Sen. R. Montano, even though it was shorter in duration than that of Sen. Mark, was far more effective and really does the job of Senators, that is, to counsel, to warn, to raise red flags and to challenge what the Government is doing. I think that he did it quite well.

Let me deal with some of the issues because many of the technical issues that were raised by many of the other Senators were encapsulated in what Sen. R. Montano said, so I would just like to deal with some of the points that he raised. The first thing he talked about was the issue of retroactivity and I just want to deal with that issue. Sen. Dr. Mc Kenzie had raised it last week as well. Clause 8(4)(a) deals with the issue of genocide and takes the issue of genocide back to 1977. What that is really doing is that the Genocide Act as we now have it, was, in fact, passed in January 1977 and is now being repealed by clause 182. All this is really doing is establishing the fact that there is continuity between that piece of legislation and this one, so it is not really retroactive. What it is merely doing is saying that the Genocide Act would, in fact, be encapsulating or capturing all the deeds of genocide back to 1977. So we do not want to lose that. So by not losing it we are saying that it is retroactive, but it is not, because we are not changing the state of the law as we know it.

With respect to clause 8(4)(b) which deals with crimes against humanity, again this does not have specifically to do with the treaty but the fact of the matter is that we are already bound by UN resolution of January 1991 that established the tribunal on Yugoslavia to deal with the crimes there, and this is bringing it into

our law for the first time. But we are bound by that because that is a UN Security Council Resolution. So that is the effect of that. So, again, there is no real breach of our Constitution because we are bound by that in any event.

In clause 12 of the Bill, the issue was raised and the point being made was that there was a case of double jeopardy, that you could be tried twice for the same crime. That is not what will happen under this Bill. In article 1 of the treaty, it sets out very clearly that the International Criminal Court is to be complementary to our national system of laws; not in substitute of, but complementary to. The jurisdiction of the court really comes into play only when the State that has the individual is either unable or unwilling to prosecute. At that point only the ICC would then say: "Surrender him to us and we will prosecute." It is not, "in addition to", because there is another article in there that says he cannot be prosecuted twice for the same thing. So there is no question of anybody being prosecuted twice for the same crime. So this is a question of, what is called, complementarity.

Also, in clause 12, the question was raised as to why article 27 was left out. There was no need to include it because it was captured in Part III, clause 6(1) and (2) and, therefore, it is not excluded. Heads of State are by no means excluded from the authority of this legislation. So there is no question of that at all.

Clause 13 deals with the question of the consent of the Attorney General. I think that this is a clause that has been widely misunderstood. In no way does it usurp the authority of the Director of Public Prosecutions. What is likely to happen is that the ICC would probably alert the central authority here and say: "Listen, there is a person by the name of so and so in your jurisdiction and he has done all of these crimes and we want you to prosecute." The Attorney General has no right on his own to initiate the prosecution of anybody. He cannot do that, even if he were to try. Let us assume, for the sake of argument, that he decided that he was not going to talk to the DPP; that he was going to try to prosecute by himself, he goes to court and says: "Here is all of this evidence; send out a warrant for his arrest and let us prosecute him", he cannot do that. The DPP is the only person in our law who can prosecute anybody. The Attorney General has no such right to prosecute anybody. What he does have, and the right that he has been given in this case is that, as I talked about a second ago, if the State, through the Attorney General, decides that it is unwilling or unable to prosecute, he can then say: "No" or "Yes, we will prosecute".

So that he must be brought into it because he is the point of contact in all of these international affairs, not the DPP. The DPP's responsibility is for the public interest. The Attorney General has a wider national and international interest and, therefore, putting the DPP in this role would be completely inappropriate. I hope I have dealt with that to the satisfaction of Senators.

The other question was the issue of prosecution under clauses 15 to 17, the bribery and corruption issues of judges, and that sort of thing. It is limited in scope because article 70(4) of the treaty limits the jurisdiction of those crimes. That is why it is limited there. It is not limited arbitrarily by our law; it is limited by the treaty. So that deals with that issue. The other issue in clause 39—and, again, this was one of the so-called arguments that was used, that it was against our Constitution. It says that he does not have the right to bail. That was slightly misused in the argument. What the clause says is that the accused is not entitled to bail as of right. In other words, he cannot just be guaranteed bail. It does not take away his right to ask for bail; it does not deny him the right to get bail; it merely means that it is not an automatic situation that he will get bail. He must apply and the normal circumstances of whether a judge would grant bail or not would apply. It does not change the existing state of the law.

In clause 40, the issue was made that the High Court was giving up its sovereignty by referring a bail issue to the ICC. In other words, the High Court is to ask the ICC: "Well, what are your thoughts on the issue of bail? What is your advice?" The suggestion that was made was that the High Court was giving up its sovereignty. The High Court is not giving up its sovereignty. It is still for the High Court by itself to decide whether it should grant bail. It is simply seeking information that it might not have, that it can use in the making of a decision as to whether or not to grant bail. It in no way takes away or lessens the power and sovereignty of our courts. It does not do that at all.

In clause 43(6) much was made on the issue of the evidence not being presented at the hearing for surrender and it was likened to a hearing in the United States with a grand jury. The fact of the matter is that it is exactly the same process that would happen if someone is to be extradited. In this case, as I said when I presented the Bill, the ICC is, not a State and, therefore, a suspect cannot be extradited; it must be "surrendered." But essentially the process is the same, and the hearing involved is not an evidentiary hearing to determine the guilt or innocence of the person, it is only to determine whether or not, in fact, the proper process has been gone through in the charging of the person and that the State or the institution in this case that is seeking the surrender or the extradition of the

individual, is a State or an institution whose legal system we have accepted as being similar to our own; not identical, necessarily, but at least similar to our own, where there are not abuses of personal freedoms and that sort of thing.

That, in a normal situation, is evidenced by the fact that there would be a treaty. In this case we have a treaty with the ICC and with other countries and, therefore, we know, based on the treaty, that the process of the legal system that would be used by the ICC is one that we would accept for ourselves. Therefore, the hearing is only to determine whether the process was fair, not as to whether there was sufficient evidence to prosecute him or not. That is a matter for the foreign State or the foreign institution.

The Senator talked about clause 52(3) and the cumulative sentencing and he was tying this to the other one, saying that there was double jeopardy. That is not so. If you look at clause 52, it talks about where a person is being surrendered before his sentence is finished, and in those circumstances another sentence can be added on. The intention of that is to attempt to prevent situations where someone, say, for instance, Saddam Hussein, is given just a slap on the wrist and he is given six months in jail, in which case the ICC may request him to be surrendered to be sentenced by them to serve a proper sentence. That is the purpose of that clause. There is no question of double jeopardy.

I think I have dealt with all the points in front of me. When you look at the issues and when you understand the legal thinking behind it, you will see that there is no further need to second-guess this piece of legislation. There is no need to send it to a committee of any kind other than the committee at the end of this session. Therefore, I submit this for the consideration of hon. Senators.

I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 10 ordered to stand part of the Bill.

Clause 11.

Question proposed, That clause 11 stand part of the Bill.

Sen. D. Montano: Madam Chairman, clause 11(4) is actually clause 11(3). It is just a typographical error.

Question put and agreed to.

Clause 11 ordered to stand part of the Bill.

Clauses 12 to 182 ordered to stand part of the Bill.

5.30 p.m.

Schedule ordered to stand part of the Bill.

Preamble.

Question proposed, That the Preamble be approved.

Question put and agreed to.

Question put and agreed to, That the Bill be reported to the Senate.

Senate resumed.

Bill reported, without amendment; read the third time and passed.

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Madam President, I beg to move that the Senate do now adjourn to Tuesday, December 13, 2005, at 1.30 p.m. at which time we will debate the National Lotteries (Amdt.) Bill.

Madam President: Hon. Senators, before we take the Adjournment, there is a matter to be raised on the Adjournment by Sen. Seepersad-Bachan.

Sen. Seepersad-Bachan: Madam President, the Minister has asked for another week.

Madam President: I was unaware.

Sen. Seepersad-Bachan: She made the request this evening and I thought that you were aware of it.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.35 p.m.