

*Leave of Absence**Tuesday, May 06, 2008***SENATE***Tuesday, May 06, 2008*

The Senate met at 1.30 p.m.

PRAYERS[MR. PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Mr. President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Bridgid Annisette-George, who is out of the country.

SENATOR'S APPOINTMENT

Mr. 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., Ph.D, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. FOSTER CUMMINGS

WHEREAS Senator Bridgid Annisette-George is incapable of performing her duties as a Senator by reason of her 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, FOSTER CUMMINGS, to be temporarily a member of the Senate, with effect from 6th April, 2008 and continuing during the absence from Trinidad and Tobago of Senator Bridgid Annisette-George.

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 May, 2008.”

Oath of Allegiance

Tuesday, 06 May, 2008

OATH OF ALLEGIANCE

Sen. Foster Cummings took and subscribed the Oath of Allegiance as required by law.

**ORAL ANSWERS TO QUESTIONS
(ANSWERS BY MINISTERS)**

Mr. President: Hon. Senators, on the last occasion, a matter arose as to the propriety of the disclosure to the public of answers to questions or information contained in an answer to a question before the answer is presented to the Senate. It remains that a Minister cannot be compelled to answer a question in the Senate. Furthermore, it is understandable that events may overtake an answer. However, Ministers must take care that neither proposed answers nor information requested in the answer are disclosed publicly before being answered in the Senate. [*Desk thumping*]

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the Public Accounts of the Republic of Trinidad and Tobago for the financial year ended September 30, 2007. [*The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]
2. The Public Accounts of the Republic of Trinidad and Tobago for the financial year ended September 30, 2007 (Vols. I and II). [*Sen. The Hon. M. Browne*]
3. The Annual Administrative Report of the San Juan/Laventille Regional Corporation for the period October 01, 2006 to September 30, 2007. [*The Minister of Local Government (Sen. The Hon. Hazel Manning)*]
4. The Animal (Importation) Control (Amdt.) Regulations, 2008. [*The Minister of Agriculture, Land and Marine Resources (Sen. The Hon. Arnold Piggott)*]

Animal (Importation) Control (Amdt.) Regulations

The Minister of Agriculture, Land and Marine Resources (Sen. The Hon. Arnold Piggott): Mr. President, today the Statutory Instruments Committee met and considered the Animal (Importation) Control (Amdt.) Regulations. At the conclusion of its deliberations, the committee decided that there was nothing to which the attention of the Senate should be specially drawn in accordance with Standing Order 68(1).

ORAL ANSWERS TO QUESTIONS

**Tertiary Education
(Grant of Financial Assistance/Scholarships)**

11. Sen. Wade Mark asked the hon. Minister of Community Development, Culture and Gender Affairs:

- A. Could the Minister inform the Senate whether her Ministry has provided financial assistance or awarded scholarships to persons desirous of pursuing studies at universities in Trinidad and Tobago, the Caribbean region and/or internationally?
- B. If the answer is in the affirmative, will the Minister provide this Senate with the following information:
 - i) a list of the names of persons who have benefited from such assistance for the period 2002 to December 2007;
 - ii) the amount of financial assistance provided to each person; and
 - iii) the names of the institutions involved?

The Minister of Community Development, Culture and Gender Affairs (Hon. Marlene Mc Donald): Mr. President, I wish to advise that the answer to that question is not quite ready. I would like to get a deferment for at least one week.

Question, by leave, deferred.

**Ministry of Community Development, Culture and Gender Affairs
(Funding/Grants and/or Financial Support to Organizations)**

13. Sen. Wade Mark asked the hon. Minister of Community Development, Culture and Gender Affairs:

Could the Minister provide the Senate with:

- A. A list of all organizations that have received funding/grants and/or financial support from the Ministry of Community Development, Culture and Gender Affairs during the period January 02, 2002 to December 31, 2007?
- B. Could the Minister also provide the details of the amount provided and for what purpose?

The Minister of Community Development, Culture and Gender Affairs (Hon. Marlene Mc Donald): Mr. President, in response the question No. 13 posed by Sen. Wade Mark, I would like to crave your indulgence this afternoon. This is the answer to the question. [*Holds forth a voluminous document*]

I know that this question has been on the Order Paper since February 19, but it took two and a half months for my technocrats to put it together. I ask that you allow me please to read the entire document. [*Desk thumping*]

Mr. President: Madam Minister, I beg to differ. I think that would be an exercise in futility because you would not have a chance to complete the answer.

I beg the indulgence of the honourable Senate. It was perhaps my error that I allowed the question for oral answer instead of directing it as a written answer. In that regard, I apologize to this Senate and to the Minister. I will direct, however, that you circulate your answer.

Written answer lodged in Parliament Library.

Conduct of the Chief Justice (Legal Advice Offered on)

28. Sen. Wade Mark asked the hon. Prime Minister:

- A. Could the Prime Minister make available the official legal advice offered to him by Dr. Lloyd Barnett, QC and Mr. Mark Strachan, QC from Jamaica and the United Kingdom respectively on which his decision to have the President of the Republic establish a tribunal to investigate the conduct of the Chief Justice?
- B. Could the Prime Minister also provide the Senate with details of the legal costs and fees paid to both Dr. Lloyd Barnett, QC and Mr. Mark Strachan, QC for the said advice?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, the answer to question No. 28 is not approved. We expect to have it on the next occasion.

Question, by leave, deferred.

**Todd's Road
(Status of Land Distribution)**

34. Sen. Wade Mark asked the hon. Minister of Agriculture, Land and Marine Resources:

- A. Could the Minister provide the Senate with the rationale, if any, for the allocation and distribution of the 3,000 acres of land cultivated with citrus located at Todd's Road?
- B. Could the Minister also state whether these lands were subdivided and if so, by whom?
- C. Could the Minister further inform the Senate whether the final distribution and allocation exercise was approved by Cabinet and if so, when?

The Minister of Agriculture, Land and Marine Resources (Sen. The Hon. Arnold Piggott): Mr. President, I am sorry that this answer is not yet ready. I shall endeavour to have it brought to the Senate at the earliest opportunity.

Question, by leave, deferred.

**Securities and Exchange Commission
(Government's Measures to Strengthen)**

42. Sen. Wade Mark asked the hon. Minister of Finance:

Could the Minister state the measures, legislative or otherwise, the Government intends to take to strengthen and support the Securities and Exchange Commission in its efforts to ensure that companies listed on the Trinidad and Tobago Stock Exchange submit annual reports on a timely basis to allow shareholders to be better able to monitor and protect their investment?

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, the policy measures have not been approved by Cabinet and as a result, this question is incapable of being answered at this time.

Question, by leave, deferred

**Ongoing United Nations Development Project
(Computerization of the Licensing Office)**

45. Sen. Wade Mark asked the hon. Minister of Works and Transport:

With respect to the ongoing United Nations Development Project for the computerization of the Licensing Office, could the Minister advise the Senate:

- (i) what is the status of this project;
- (ii) what was the sum of money allocated for this project;
- (iii) how much money, if any, has been spent on this project so far; and
- (iv) whether the project has been abandoned or is there a new completion date?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, question No. 45 to the hon. Minister of Works and Transport has not been approved, neither is question No. 46.

Question, by leave, deferred.

**Public Transport Service Corporation
(Status of Local Agents for Volvo Buses)**

46. Sen. Wade Mark asked the hon. Minister of Works and Transport:

- (a) With respect to the Volvo manufactured articulated buses owned by the Public Transport Service Corporation, could the Minister inform the Senate who are the local agents for these buses?
- (b) Could the Minister also inform the Senate whether those agents have a workshop and spare parts facility in Trinidad?
- (c) If the answer to (b) is in the affirmative, could the Minister state where this workshop and spare parts facility is located?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, question No. 46 is not ready.

Question, by leave, deferred.

**Air Pollution Rules and Hazardous Waste Rules
(Time Frame for)**

55. Sen. Dr. Adesh Nanan asked the hon. Minister of Planning, Housing and the Environment:

Would the Minister indicate a time frame for the Air Pollution Rules and the Hazardous Waste Rules to be laid in Parliament?

The Minister of Planning, Housing and the Environment (Sen. The Hon. Emily Gaynor Dick-Forde): Mr. President, the answer to this question is completed, but not yet approved by Cabinet. Next week it will be ready.

Question, by leave, deferred.

**Employee Injury and Disability Compensation
(Delay of)**

58. Could the hon. Minister of Labour and Small and Micro Enterprise Development state:

What is the reason for the delay in bringing legislation for the Employee Injury and Disability Compensation before Parliament?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, the answer to that question has been approved. The Minister was here last week and, unfortunately, he is not here yet. I expect that he will be here, so we may be able to deal with this later.

Mr. President: We will deal with that at the end.

**Eco-lodges
(Details of)**

59. Sen. Dr. Adesh Nanan asked the hon. Minister of Tourism:

- (i) Would the Minister inform this Senate, how many eco-lodges have been constructed from 2002 to present in Trinidad and Tobago?
- (ii) Would the Minister also identify the location of the said eco-lodges, the local or foreign investors involved and the estimated investment in the said eco-lodges?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, the answer to question No. 59 is not ready. It should be ready in two weeks' time.

Question, by leave, deferred.

**South West Regional Health Authority
(Scrubs)**

60. Sen. Dr. Adesh Nanan asked the hon. Minister of Health:

- (i) Would the Minister inform this Senate whether a decision has been taken for doctors attached to the South West Regional Health Authority to be supplied with scrubs on a daily basis for use outside of the operating rooms?
- (ii) If the answer to (i) is in the affirmative, would the Minister indicate:

- a. whether any cost benefit analysis was done before instituting this measure;
- b. the name of the supplier of the scrubs; and
- c. whether any other health facility has adopted this measure?

The Minister of Health (Sen. The Hon. Jerry Narace): Mr. President, as I indicated to Sen. Dr. Nanan, the answer to this question is not yet ready. I believe it will not be ready for another two to three weeks.

Question, by leave, deferred.

**National Insurance Board
(Actuarial Review Team)**

64. Sen. Wade Mark asked the hon. Minister of Finance:

- A. Could the Minister of Finance inform the Senate whether the National Insurance Board has commenced a special actuarial review to amend the earning class system to increase the number of contributions required to qualify for a retirement pension as well as to reform measures aimed at introducing a single national pension system?
- B. If the answer is in the affirmative, could the Minister inform the Senate when the actuarial review was commissioned and who comprise the membership of that Actuarial Review Team.
- C. Could the Minister further state when the Review Team would complete and submit its report to the Government and to the Parliament?

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, this answer would be ready on Tuesday of next week.

Question, by leave, deferred.

Sen. Mark: Mr. President, I suspect it is an oversight, but several of my questions that were on the Order Paper last week and have not been answered are not on this week's Order Paper. I suspect that it is an oversight by the officials of the Parliament. For example, there is question No. 25 to the hon. Minister of Planning, Housing and the Environment and another to the hon. Minister of Finance.

Mr. President: I suggest that you deal with the Clerk directly. It may very well be that the questions have been deferred for longer than two weeks and she may not have put them in.

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**JOINT SELECT COMMITTEES
(APPOINTMENT OF)
[Second Day]**

Order read for resuming adjourned debate on question [April 29, 2008]:

Be it resolved that the Senate appoint six (6) Members to serve with an equal number from the House of Representatives to enquire into and report to Parliament on Service Commissions with the exception of the Judicial and Legal Service Commission on their administration, manner of exercise of their powers, methods of functioning and on any other criteria adopted by them in the exercise of their powers and functions:

And be it further resolved that the Senate also appoint six (6) Members to serve with an equal number from the House of Representatives to enquire into and report to Parliament on Municipal Corporations and Government Ministries/Statutory Authorities/Enterprises owned or controlled by or on behalf of the State or which received funding from the State of more than two-thirds of their total income in any one year. [*Sen. The Hon. C. Enill*]

Question again proposed.

Mr. President: The speakers were: Sen. The Hon. Conrad Enill, the mover of the Motion; Sen. Wade Mark; Sen. Prof. Ramesh Deosaran; Sen. The Hon. Mariano Browne; Sen. Dr. Jennifer Jones-Kernahan; Sen. Basharat Ali; Sen. Subhas Ramkhelawan; Sen. Cindy Devika Sharma; Sen. Corinne Baptiste-Mc Knight; Sen. Dr. Carson Charles; Sen. Helen Drayton; Sen. The Hon. Bridgid Annisette-George; Sen. Mohammed Faisal Rahman; Sen. Gail Merhair; Sen. Dr. Adesh Nanan; and Sen. The Hon. Conrad Enill who spoke for two minutes and has 43 minutes of normal speaking time left. He was in the process of winding up.

Sen. The Hon. C. Enill: Thank you, Mr. President. On the last occasion when we debated this Motion, it occurred to us that there were sufficient issues that were raised that we needed to clarify and, therefore, in those circumstances, we reflected on the contributions made and really determined that there were two issues that we needed to address.

The first issue had to do with the number of committees. We were recommending two, for a number of reasons. Senators were of the view that it might make more sense, in the context of work distribution, to look at the question of three, rather than two, and we looked at that.

Secondly, there was the question of the chairmanship of those committees. I want to address the issue of the chairmanship of those committees first.

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Mr. President, there is, within our system, a Standing Order that sets out the way in which committee chairpersons should in fact be selected. We take the view that chairmen should be selected by the groups so configured, on the basis of possibly skill, competence and issues that make the committee functional. We have had mixed experiences with chairmanship, because some chairmen view their position to be that of inquisitor, judge, jury and executioner and in the conduct of their activities, with those who come before them, they create that impression. What that seeks to do is to, in a sense, interfere with those who would readily like to provide information, but the manner in which they are being dealt with is not appropriate. Therefore, one of the things that we may want to do, at the level of the Parliament, is certainly set out the behaviour that we consider appropriate for chairmen in the conduct of their business. I think that is certainly one of the things that we have learnt coming out of this.

When the Government proposed, in its last experiment, to support the nomination of Independent Senators as chairmen, we did so for all the reasons that were raised. However, what in fact we found out in the course of this particular experiment, with some exceptions, is that the relationship between the Government and the Opposition is very clear. At best it is adversarial because, by Sen. Mark's own admission, his job is to make sure that the Government looks bad. We have a different view and, therefore, we supported the question of Independent chairmen. But what we have found in that particular experiment, is that if you have information and use the information in a particular way—we have come to the conclusion that the Independent Senators can find themselves drawn into the adversarial nature of the politics, simply because of the information that is available and, therefore, we thought that is not with what was intended. What was intended was that Independent Senators would remain independent in the conduct of their contributions and, therefore, it was for that reason we thought that on this occasion we would do something different.

Mr. President, we are all very committed to the work of the Parliament. We are all very committed to ensuring that, as a young democracy, we build systems and we build into what we do, procedures, and that moves the country forward. In some instances, we get it right and in some instances we get it not so right.

On this matter, as it relates to the question of chairmanship, what we would want to do is, on this occasion, maintain the status quo, which is that we would allow the committee to select the chairmen. There will be a view that the Government has the majority. That has always been the case, but it has not, in the past, prevented us from doing what we consider to be right and appropriate.

I am aware that there is an amendment seeking to buy legislation to put an Independent Senator as the chairman of—[*Interruption*]

Sen. Dr. Nanan: We are firmly of the view that these committees should be chaired by Independent Senators and we ask the Leader of Government Business to reconsider that proposal put forward to the Senate this afternoon.

Sen. The Hon. C. Enill: We have reconsidered it, Mr. President, and we do not believe that we could support that in the way in which it has come forward. We will continue to look at it, but we do not believe that we can support it the way in which it was being proposed.

With regard to the other matter; the one—let me go back. [*Interruption*]

Sen. Dr. Charles: I thank the Minister for giving way. I want to clarify. Is the Leader of Government Business saying that the Government will support the appointment of Independent Senators as chairpersons of committees in actual practice, based on the fact that we can elect these persons as chairmen at the committee level, but does not wish to put the matter in legislation? I am trying to find out the Government's actual policy on that.

Sen. The Hon. C. Enill: The position of the Government is that on the last occasion, that is what we did at the level of the committee. The Government determined that it would support the Independent Senators. That was based on the discussions that took place and the view that was held. That it was the appropriate thing to do. We do not wish, at this point in time, to make that legislative, because we have had different experiences.

Our intention, as I speak now, is that the Government nominees will chair the joint select committees. That is our intention at this point in time. That is our policy position at this point in time.

Again, Mr. President, in terms of full disclosure, it is something that we will be looking at. If it does not work then, we would move to deal with it. I need to say as well that this is not the end of the discussion as it relates to committee oversight.

There is a proposal that has not been fleshed out as yet, as it relates to how we would deal with energy issues. One of the discussions that is currently taking place has to do with the fact that because energy is so important to Trinidad and Tobago, we need to have bipartisan support as we move forward, in terms of energy policy. That is something that is currently under consideration by us and for which we would have a proposal at some point in the future.

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As it relates to the number of committees, in giving all the arguments, we still believe that our original proposal is one that we are happy with, but we felt that on this particular matter, given the concerns that were raised, we are prepared to support the position advanced by both Members of the Opposition and Members of the Independent Bench, that is to say, that we would support three committees instead of the two. That is what we had originally intended. We do that recognizing, of course, that we may have to make some modifications to the work programme currently in place. But because the view was overwhelming and the sentiments that were expressed suggested that this was better than what we had proposed, we are prepared, on this occasion, to support it and we will so do. [*Desk thumping*] So, that deals with the particular issue.

I want to comment on one other issue that was raised in the debate by Sen. Dr. Charles. He made a very important statement. He said:

“Many years ago, I remember that there was something called accounting to the taxpayer.”

I want to put on record that nothing has really changed, because we have been producing a document that seeks to set out, in the same format and detail, how the expenditure of the Government is being accounted for. We call it something that is slightly different. We actually call it: *Government At Your Service*. We have prepared it as a document that deals with accounting for the resources. We have done it in the context of the Vision 2020 template. The document is prepared in such a way that it is promoting developing innovative people in a nurturing and caring society, enabling competitive business, investing in sound infrastructure in the environment and promoting effective government and pieces of the Government’s plan and it is available.

2.00 p.m.

I just wanted to make that information available. You may wish to comment on the policies and the results of these policies and, therefore, when we talk about Government spending and we talk about some of those issues we can, in fact, see where the resources are being spent.

Sen. Prof. Deosaran: Mr. President, through you, could I just seek clarification? As I understand it, the concession that you are making is reflected in an amendment which I moved, and which should be incorporated into the substantive Motion. So, before we rush into anything further, I want to know whether you are considering amending your original Motion to accommodate the amendment that I made.

Sen. The Hon. C. Enill: Yes, that is what I hoped was communicated. We will support your amendment in the context of what we have discussed.

Mr. President, we can spend the rest of my speaking time talking about lots of things that from where I sit have no value. I think what we were committed to do was to look at this particular issue, and I think we have done that.

During the course of our continuing discourse, we will deal with many of the other issues, but for our part, we will support the question of three joint select committees instead of two, and we will want your understanding in not creating, at this point in time, a legislation that says who we will put as chairman of a committee, something which we believe is dealt with within the Standing Orders of the Parliament.

Mr. President, with those few words, I beg to move. [*Desk thumping*]

Mr. President: Hon. Senators, before I put the question, we have three amendments: the first amendment is by Sen. Prof. Deosaran, a second by Sen. Merhair, which seeks to amend Sen. Prof. Deosaran's amendment and a third amendment by Sen. Dr. Nanan which also seeks to amend Sen. Prof. Deosaran's amendment. Therefore, before I put the Motion, I am going to put each of the amendments, one at a time. I shall put the first amendment first, even though we know that Sen. Merhair's amendment is really just to correct some of the language in it, we are going to put them one at a time.

The first amendment proposed by Sen. Prof. Deosaran reads as follows:

In the first resolution third line:

Insert between the words “on” and “service” the words “Municipal Corporations”.

In the second resolution in the third and fourth lines:

Delete the words from “Municipal” to the end and insert the following: “Government Ministries (Part I) and all Statutory Authorities/Enterprises falling under these Ministries and owned or controlled by or on behalf of the State or which received funding from the State of more than two-thirds of their total income in any one year”.

Add a third resolution to read as follows:

“And be it further resolved that the Senate also appoint six Members to serve with an equal number from the House of Representatives to inquire and report to Parliament on Municipal Corporations and Government Ministries (Part II)

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and all Statutory Authorities/Enterprises falling under these Ministries and owned or controlled by or on behalf of the State or which received funding from the State of more than two-thirds of their total income in any one year.”

Question, on amendment, put and agreed to.

Mr. President: The second amendment proposed by Sen. Merhair reads as follows:

“1. First resolution, third line:

Insert after the words ‘Municipal Corporations’ the word ‘and’.

2. Proposed third resolution, third line:

That the words ‘Municipal Corporation and’ appearing after the words ‘report to Parliament on’ be deleted.

3. The terms ‘Part I’ appearing in the second resolution, second line and ‘Part II’ appearing in the third resolution, fourth line refer to the attached list.”

Question, on amendment, put and agreed to.

Mr. President: The third amendment proposed by Sen. Dr. Nanan is to add a resolution following the third resolution of Sen. Prof. Deosaran and it reads as follows:

“*And be it further resolved* that these said joint select committees be chaired by Independent Senators for the duration of the Ninth Parliament.”

Question, on amendment, put and negatived.

Mr. President: Now, I am going to put the Motion. Senators, please bear with me, because I have to read the amended Motion as I go along here and it reads as follows:

Be it further resolved that the Senate appoints six Members to serve with an equal number from the House of Representatives to enquire into and report to Parliament on Municipal Corporations and Service Commission with the exception of the Judicial and Legal Service Commission on their administration, manner of exercise of their powers, methods of functioning and on any other criteria adopted by them in the exercise of their powers and functions.

And be it further resolved that the Senate also appoint six Members to serve with an equal number from the House of representatives to enquire into and report to Parliament on Government Ministries Part I and all Statutory Authorities/Enterprises falling under these Ministries and owned or controlled by or on behalf of the State or which received funding from the State of more than two-thirds of their total income in any one year.

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And be it further resolved that the Senate also appoints six Members to serve with an equal number from the House of Representatives to inquire and report to Parliament on Government Ministries Part II and all Statutory Authorities/Enterprises falling under those ministries and owned or controlled by or on behalf of the State or which received funding from the State of more than two-thirds of their total income in any one year.

Question, on amended Motion, put and agreed to.

Resolved:

That the Senate appoints six Members to serve with an equal number from the House of Representatives to enquire into and report to Parliament on Municipal Corporations and Service Commission with the exception of the Judicial and Legal Service Commission on their administration, manner of exercise of their powers, methods of functioning and on any other criteria adopted by them in the exercise of their powers and functions.

And further resolved:

That the Senate also appoint six Members to serve with an equal number from the House of Representatives to enquire into and report to Parliament on Government Ministries Part I and all Statutory Authorities/Enterprises falling under these Ministries and owned or controlled by or on behalf of the State or which received funding from the State of more than two-thirds of their total income in any one year.

And further resolved:

That the Senate also appoints six Members to serve with an equal number from the House of Representatives to enquire and report to Parliament on Government Ministries Part II and all Statutory Authorities/Enterprises falling under those ministries and owned or controlled by or on behalf of the State or which received funding from the State of more than two-thirds of their total income in any one year.

IMMIGRATION (ADVANCE PASSENGER INFORMATION) BILL

Order for second reading read.

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. President, I beg to move,

That a Bill to make provision for the transmission of advance passenger information respecting persons travelling to Trinidad and Tobago and for related matters, be now read a second time.

Advance Passenger Information Bill
[SEN. THE HON. M. JOSEPH]

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Mr. President, in light of the global threat of terrorism and other crimes including drug and arms trafficking facing all nations today, it has become necessary to take stringent measures to deal with the protection of our borders and to implement proper security checks for the identity of visitors entering ports of entry of Trinidad and Tobago.

I am sure that hon. Senators would recall that a similar Bill was previously passed in this honourable House, and came into effect on December 27, 2006 as Act No. 29 of 2006, with a sunset clause which expired on June 30, 2007. This Act was passed as part of the security package for the Cricket World Cup held in the Caribbean in 2007.

The Government declared its intention to reintroduce this legislation with suitable amendments to give it permanency when the issue was being debated in the House and this honourable Senate in 2006. This Bill was, in fact, placed on the legislative agenda and introduced prior to the expiration of the Act. However, the Bill lapsed and a new Bill has since been introduced.

The Immigration (Advance Passenger Information) Bill, 2008 differs from its predecessor in that:

1. the sunset clause has been removed;
2. the Act now applies to all maritime vessels, and not only those in excess of 100 net tonnes as provided for previously; and
3. the place of birth has been included in the core data elements. This included information will thereby expedite background investigations utilizing a person place of birth which is fixed as compared to a person's citizenship which may change.

Clause 1 of the Bill describes the short title.

Clause 2 is the interpretation section wherein:

“advance passenger information” is defined as “information in respect of a passenger, crew member or other occupant transported in the vessel”;

“master” is defined as “a person having command or charge of any vessel”;

“Minister” means “the Minister to whom responsibility for national security is assigned”; and

“vessel” includes any ship, boat, aircraft or other floating or airborne contrivance.

Clause 3(1) of the Bill embodies the essence of the advance passenger information system and reads as follows:

“The master of every vessel destined for Trinidad and Tobago, prior to departure of the vessel from the last port of call before Trinidad and Tobago, shall provide to the Chief Immigration Officer the advance passenger information data detailed in the Schedule.”

Clause 3(2) creates an offence and attaches a penalty of \$600,000 on a master who intentionally or recklessly either fails to transmit the data required by subsection (1) or transmits incomplete or false data, the obligation will, therefore, rest on the master as the person in control of the vessel to provide the advance passenger information to the Chief Immigration Officer of Trinidad and Tobago.

Hon. Senators are respectively asked to refer to the list of amendments, and to note that this penalty clause defines the offence as being a summary offence, and the clause would be expanded to allow for a period of six months imprisonment. The reason for this inclusion is that at the committee stage in the other place when the Bill was debated on February 28 this year, the hon. Members on the other side stated that it was unusual not to stipulate a period of imprisonment for such offences. This, therefore, satisfies that concern.

Clause 3(3) provides the Minister of National Security with the discretion to waive the requirement for a master of either a military vessel or a vessel carrying a Head of State to provide the advance passenger information data.

As I said, this Bill was debated in the other place in February of this year and some discussions took place during the committee stage with regard to the penalty clause. Hon. Members on the other side indicated in February that the authority of the Minister of National Security to waive the requirement of the master of a vessel to provide the advance passenger information was too wide of an authority to give to the Minister.

In my contribution, I indicated that the Minister had to have this authority where it was anticipated that a military vessel or other dignitaries of a state were en route to our Republic on an official state visit. To address this issue, Senators are asked to note that the amendment to clause 3(3), as reflected in the list of amendments, proposes to allow for the waiving of the requirement for a master of:

- (a) a military vessel, or
- (b) a vessel on official state business.

The amendment in this manner would confine the Minister's authority to waive the provision of the advance passenger information by the master of military vessels and vessels on official state business.

The details required under the advance passenger information system are not privileged and are subsumed under two headings: the vessel data and the passenger data as outlined in the Schedule to the Bill.

2.15 p.m.

The vessel data includes:

- Traveller's status, this is, if the traveller is a passenger, crew member or in-transit;
- Flight or vessel identification;
- Scheduled departure date and time;
- Scheduled arrival date and time;
- Last place/port of call;
- Place/port in the country of destination where the vessel arrives from last place or port of call;
- Subsequent place/port of call within the country;
- Total number of passengers on board.

The passenger data includes one, the core data elements of the official travel documents, such as:

- Official travel document number;
- Issuing State or organization of the official travel document;
- Official travel document type; expiration date of the official travel document;
- Surname, given name(s);
- Nationality;
- Date of birth;
- Gender; and
- Place of birth.

Two, additional data elements if applicable, such as:

- Visa number;
- Issue date of the visa;

- Place of issuance of the visa;
- Type of other document used for travel; and
- Other document number used for travel.

The duty imposed on the master of the vessel in the Bill, whilst appearing to be onerous, ought to be viewed as reasonable and proportionate to the security threat being currently faced globally. Though this places an additional burden on the master of the vessel, the transmission of this information will ensure speedier processing of passengers whilst being vigilant to potential threats to our security.

This Government places a high value on the protection and the enjoyment of human rights and civil liberties, and as such to ensure that our society is insulated against the threats being faced globally, this measure is necessary for such continued protection.

The introduction of the Advance Passenger Information System (APIS) will help us to identify high risk passengers and crew members who may pose a risk or threat to vessel or craft safety or to national security, whilst simultaneously facilitating the travel of those legitimate passengers and crew members. The APIS will also assist in immigration processing at ports of entry, resulting in significant time savings and reducing lengthy processing of passengers through immigration.

Mr. President, hon. Senators, APIS was first introduced in 1988 as a voluntary programme by which airlines would provide a consolidated manifest of all passengers and crew on a flight. Following the September 11, 2001 attacks, the procedure became a mandatory one in the United States. So important was the Advance Passenger Information System viewed that several other countries to date have introduced legislation giving it effect, namely, Canada, Australia, New Zealand, Bahrain, South Korea, China, Mexico, South Africa, Japan, India and Spain. Similarly, the following Caricom States have also enacted this legislation in a permanent form, Antigua and Barbuda, Barbados, Dominica, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. The only two Member States which have yet to give permanent legislative effect of this nature are Grenada and Trinidad and Tobago.

It is time for Trinidad and Tobago to step forward and take responsibility in its part in dealing with the threat of transnational crime and terrorism. One needs only to remember the fateful events of September 11, 2001 and subsequent terrorist attack on foreign soil to realize the importance of giving effect to this legislation. The Government of Trinidad and Tobago must send a clear and

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unequivocal message to the regional and international community that it is dealing with the severity of transnational crime. We must not be perceived as weak or unprepared for any eventuality; we must be proactive and not reactive.

Mr. President, please permit me to highlight the background of this legislation. In preparation for the hosting of Cricket World Cup, 2007, the Heads of Government at the 27th Meeting of the Conference of Caricom Heads of Government reached an agreement with regard to the establishment of the Caricom single domestic space and implemented a three-pronged architecture for regional security to ensure the safety of the domestic space.

This three-pronged architecture for regional security amongst the domestic space countries as previously mentioned included the introduction of a Caricom special visa. This provided an opportunity for additional security vetting and examination of nationals from a specific group of countries and played a fundamental role in the convergence and management of the single domestic space.

The establishment of the Advance Passenger and Cargo Information System, this facilitated access to the manifest of carriers entering, leaving and moving within the space, and the ability to conduct relevant security vetting of persons before arrival at any port within the space and the establishment of a regional intelligence fusion centre. The signatory member States were now in a position to engage in the real-time sharing of information among the intelligence and law enforcement agencies. This facility greatly augmented the secure communication and joint assessment of national intelligence reports, their fusion to provide a regional perspective on security issues and the development of more informed and predictive assessments.

It was at this 27th Meeting of the Conference of Caricom Heads of Government where Heads of Government further agreed that the Advance Passenger Information System will remain as a fixed arrangement within the region and consequently brought about the establishment of a regional clearing house for the advance passenger information now known as the Joint Regional Communications Centre (JRCC).

The Heads further agreed to the permanency of the Regional Intelligence Fusion Centre (RIFC) at the 18th Intercessional Meeting of the Conference of Heads of Government held on February 2007 in St. Vincent and the Grenadines.

This three-pronged architecture was implemented through a series of agreements, memorandum of understanding and domestic legislation by the nine host guests

States and Dominica. The Caricom special visa was instituted through the Caricom special visa arrangement, whereas the intelligence sharing amongst Caricom member States was advanced through a memorandum of understanding.

The 10 member States comprising the Caricom single domestic space enacted legislation to give effect to the Advance Passenger Information System. As previously indicated however, both Trinidad and Tobago and Grenada passed sunset legislation with respect to this Advance Passenger Information System. This legislation therefore made it obligatory for vessels entering the space to submit advance passenger information.

Indeed, Mr. President, it was ICC Cricket World Cup 2007 that provided the Caricom Heads of Government with the necessary impetus to institute such indispensable security measures which have long been deemed necessary in the face of globalization, especially when we consider that we are part of the Caricom Single Market and Economy, which encourages the free movement of people and goods.

To this end, the Immigration (Advance Passenger Information) Act, No 29 of 2006 came into force on December 27, 2006 and provided for the transmission of advance passenger information. This information can be found on routine entry documents that passengers and crew members must provide upon arrival or departure:

1. the submission of passenger manifest to border security personnel prior to the arrival of the vessel;
2. the processing of immigration pre-screening, and the identification of passengers who may be deemed threats to national security; and
3. the identification of those persons who may be travelling via stolen or lost travel documents.

Mr. President, I would like to take this opportunity to indicate briefly how the APIS system works. As previously mentioned, the information required for the APIS is already voluntarily given either by electronic or manual methods at the time of check in. Let me underscore that, Mr. President and hon. Senators, the information required for the APIS is already voluntarily given either by electronic or manual methods at the time of check in.

All the required information is already indicated in the passenger's travel documents, including visa details. No additional information is required except for a passenger's date-of-birth. This information will be collected from the

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machine readable zone of a person's official travel document. With the introduction of machine readable passports, the collection of the information is as simple as swiping the passport.

This is the information which the legislation requires to be submitted by the master of a vessel. Note that this method complies with the guidelines issued by the International Air Transport Association, the World Customs Organization and the International Civil Aviation Organization (ICAO).

Once the master submits its information, it is received by the Chief Immigration Officer. It is subsequently carefully inspected, together with information gathered from various watch lists, databases and other intelligent sources, which Caricom either operates or has access to, for example, Interpol and other international partners. At this juncture, I wish to categorically state that the APIS is not intended to be used as a method of profiling individuals nor will it be used as such by this Government.

In instances where passengers have no machine readable passports, the information will instead be entered into the system as part of the normal check in process for the production of a boarding pass. All this legislation serves to do is to make it mandatory for such information to be supplied to border control.

Mr. President, I would like to take the time to clarify certain misconceptions that there may be with reference to the APIS, the difference between APIS and PNR. I wish to clear up any confusion there may be between this API system and what is referred to as the Passenger Name Record System or PNR system that is used in other international jurisdictions.

This PNR system includes more extensive data than what is requested under the API system. The PNR data includes reservations and itinerary information that is personal, intrinsically more intrusive and revealing and is regarded to be at the heart of public concern over data protection. I wish to state categorically, that the Bill being presented here today does not seek to illicit this sort of PNR information.

In line with ICAO recommended practices, APIS collects basic biological information from travel documents that under normal circumstances would be customarily made available to immigration officers upon arrival to the country. The only difference is that it is now provided in advance, so that processing can take place prior to arrival.

Memorandum of Intent and EU/US Agreement: When this Bill was initially debated in the Senate in November 2006, there was considerable debate on an MOI between Caricom and the United States. The MOI is the operational protocol

that seeks to establish how the association between Caricom and the US will operate with regard to the screening of passengers using US databases. This operational protocol is still the subject of negotiation. The issue of the EU/US agreement was also given much attention on the first occasion that this Bill was debated here in the Senate.

2.30 p.m.

Mr. President, I would like to take this opportunity to inform the hon. Senators here that the protocol negotiations were placed on hold pending the outcome of the negotiations for a new agreement between the US and the EU, such an agreement will help to guide Caricom's discussions with the United States. There was in fact an agreement signed between the European Community and the United States on May 28, 2004. This agreement, however, had to be denounced by the EU as a result of the judgment delivered by the European Court of Justice on May 30, 2006. It was however replaced by an interim agreement between the EU and the US on October 19, 2006 which thereby expired on July 31, 2007. This interim agreement has since been replaced by a new long-term agreement which will be valid for the next seven years, thus providing for a considerable period of certainty and longevity.

Sen. Ali: Mr. President, through you, Mr. Minister could you tell us whether the EU agreements are for APIS or for PNR because I am under the impression there is a PNR agreement which was signed in July 2007.

Sen. The Hon. M. Joseph: My understand, it is PNR and EU information.

Sen. Ali: So there is no APIS agreement between EU and USA, is that what you are saying?

Sen. The Hon. M. Joseph: I am not sure; I will have to find out. I must at this point in time, reiterate that the APIS legislation would be independent of any relationship with any third party and will simply supply a legislative framework for the operation of the Advance Passenger Information System.

Third party access to Advance Passenger Information: This question was raised with regard to the Memorandum of Intent with the United States and is being dealt with in the context of the operational protocol that I previously mentioned. Rest assured that the information is not going to be passed on to any third party. The information is to remain for the specific use of Trinidad and Tobago and only Trinidad and Tobago to be used for security law enforcement and border purposes.

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The other issue was mistaken identity: Indeed we cannot guarantee that the APIS will be completely free of generating false positives as there are no doubt individuals who will possess the same name. However, the system itself cannot be held responsible as false positives may be produced even without the system in place based on information in the possession of immigration authorities. There has been only one such instance of a false positive in the earlier operational stages due to incomplete information contained in the database. The inclusion of the date of birth and place of birth information fields required by APIS will help to minimize the risk of false positives.

Returning nationals: Returning nationals may also be considered by border patrols as persons of interest. The plot uncovered to blow up the John F. Kennedy Airport terminal and fuel lines which came to light on June 02, 2007, unmistakably reveals the advantage to be gained by our Immigration Department in having advance passenger information at their disposal, whether it pertains to nationals or non-nationals.

Allow me now to divulge some of the general successes that we have had with the advance passenger information system today. During the period February 01, 2007 to May 15, 2007 the Joint Regional Communication Centre which you will recall is the regional clearing house for the advance passenger information screened more than 22,000 flights entering and crossing the single domestic space and evaluated over 35,000 passengers daily from air and sea carriers. During this period a total of 2,833,474 passengers were vetted against the following watch list.

The Caricom Watch List and Accreditation System which integrated a comprehensive lists of persons of interest, the Regional Watch List was populated by regional law enforcement and border security officials; the United Nations Watch List and the Interpol Watch List which comprised databases on missing and wanted individuals—

Sen. Prof. Deosaran: Minister, could I? I am sorry to interrupt you, Sir, but you used a very interesting phrase, if perhaps you could clarify. What defines a person of interest?

Sen. The Hon. M. Joseph: A person of interest, hon. Senator, would come from the databases which that I have just referred to. Whether it is a Caricom, whether or not it would have been Interpol; it would have been based on intelligence and it would have been based on intelligence and the basis of discussions and interfacing with various countries, including the countries—during Cricket World Cup it would have included the countries that were participating in the

games. So all of the countries that would have been participating in the games prior to Cricket World Cup would have engaged in discussions with respect to intelligence from the Caribbean, et cetera, so that they would have able to generate these particular databases, whether or not it is the Interpol database, whether or not it would have been the UN database et cetera. Okay?

The United Nations Watch List and the Interpol Watch List which comprised database, as I was saying on missing and wanted individuals, kidnapped or abducted children, criminals, stolen vehicles and valuables and stolen and loss travel documents. During that same period the JRCC recorded over 600 hits against Interpol and also the CORS watch list.

Based on agreed protocols to address hits the JRCC submitted the information to law enforcement and border security agents prior to the arrival of the vessels at the designated ports of entry; this lead to refusal of entry, repatriation and/or detention of persons depending on the reason for placement on the watch list. The advanced passenger information system was able to track the movement of persons of interest and where necessary prevented their movement through the Caricom region. it also expedited clearance for low-risk and risk-free travellers. The system also provided the necessary support for national and regional intelligence agencies.

Mr. President, I will like to take the time to highlight a few specific successes we have experienced utilizing APIS. Note that the information provided is of a general nature for security reasons:

- The identity of a Saudi Arabian and a Russian wanted for fraud, they were deported and handed over to the country of departure;
- to stop two hired assassins travelling to country A to murder a potential target, both were arrested and charged;
- to identify a group of Nigerians who were using Caricom special visas for human trafficking—they were arrested by an international partner;
- to detect and deport a pedophile rapist in the region during Cricket World Cup, 2007;
- to stop a known terrorist from travelling to propagate his form of Islam—this individual was deported to the country of origin;
- to identify and arrest unknown drug trafficker who was travelling through the region conducting this illegal activity.

These detections were achieved using advanced passenger information screened against a compiled watch list from Caricom, Interpol and the UN.

For those who wish to say that we have no need for an API system, I would like to highlight some benefits available to passengers, carriers, airport authorities and the Government of Trinidad and Tobago:

- **Passengers:** for legitimate passengers, time is saved while they undergo normal arrival procedures and total clearance time will be significantly reduced.
- **Carriers:** the API system will also provide an opportunity to offer an improved service to carrier customers as well as enhancing carrier security. Additionally, it will assist in ensuring that passengers carry valid travel documents required for admission to the destined country because if they do not possess same the carriers can be exposed to stiff penalties for transporting passengers that are not properly documented.
- **Border control agencies:** The API system will also provide enhanced enforcement capability achieved through advanced notification of the arrival of potential offenders. API permits a thorough and meticulous screening of inbound passengers to be accomplished, targeting those passengers that present the highest risk and allowing for the faster processing of low risk passengers. It provides for more effective allocation of border control and law enforcement resources.
- **Airport authorities:** It is a catalyst for greater interagency cooperation at both the national and international level. It also assists the growth in passenger traffic being accommodated through improved use of technology.
- **The Government of Trinidad and Tobago:** The introduction of this legislation will also serve to benefit national security, public safety and the economic well-being of the country and will also seek to prevent disorder and crime. Additionally, it will serve to strengthen this country's public image both nationally and internationally.

In this regard I must mention Interpol Secretary General Mr. Roland Noble, who in addressing the United States Senate Judiciary Committee's Subcommittee on Terrorism, technology and Homeland Security told his audience that what the Caribbean had achieved was nothing short of amazing in terms of the work done to secure its borders for hosting the world's third largest sporting event.

To conclude, Mr. President, no one today can doubt the need for governments to guard against unwelcomed visitors who seek to threaten national security. In light of the greater passenger numbers in scheduled and chartered flights, as well as cruises, the

proliferation in organized criminal activity throughout the region, the increasing international threat of terrorism, human and drug trafficking and arms and ammunition smuggling and the pivotal role that the Ministry of National Security has to play in safeguarding the points of entry into the country, I would like to reiterate that the passage of this legislation will ensure that Trinidad and Tobago has the additional benefit of the safety net provided by the advance passenger information system and that we join the rest of the region and the world in this effort.

With those few words I beg to move.

Question proposed.

Sen. Wade Mark: Thank you very much, Mr. President. May I before addressing this very important matter before us, record on the Opposition Benches our concern and extend our prayers and solidarity with our former senatorial colleague Sen. Prof. Julian Kenny and his family who are obviously undergoing a great deal of trauma and discomfort as a result of the kidnapping of their daughter Philippa Talma last Friday. I would like to appeal to the Government and particularly the Minister of National Security to provide and increase the supply of the necessary resources that are required by the security services in order to deal with, and to avoid as much as possible the development of such ugly incidents in our Republic which result in unnecessary dislocation to both the affected individuals and their respective families.

Today we are dealing with a Bill on advance passenger information. I think the time has come for us to focus on gathering advance intelligence in our country in order to provide the citizenry with greater safety, security and comfort.

2.45 p.m.

Mr. President, let me say from the very outset, that we in the UNC Alliance are committed to the promotion of law and order and the upholding of the rule of law. We are also committed to the provision of laws which will protect, secure and safeguard all of our citizens from internal and external aggression and assaults, however, it is very important that we strike a delicate balance to ensure that the citizen's fundamental freedoms and human rights are never compromised, sacrificed or unnecessarily undermined. Therefore, the Bill that is before us today needs to strike that balance between the invasion of people's privacy and the provision of that information to other parties on the one hand, and the protection and safeguarding of the citizens' fundamental human rights and freedoms.

Mr. President, Act No. 29 of 2006 which was assented by His Excellency on December 27, 2006 expired on June 30, 2007. We have been informed—and the Minister must tell this country whether in light of the expiration of this law in June of 2007, whether that law is still being effected, still being implemented and enforced, because it is our information that even though the law is no longer the law, we understand the Government of this country is still effecting the measures in the legislation which, obviously, is illegal, it is unconstitutional and it is a violation of the rights of the citizens of this country. So I would like the hon. Minister to indicate to this Parliament when he is winding up, whether that is taking place.

Sen. Joseph: Thank you very much, Sen. Mark, for giving way. Mr. President, hon. Members, APIS legislation is not in force because the law expired, so that to say that the measures associated with APIS legislation are in fact being implemented, is inaccurate to say the least.

Sen. W. Mark: That is the information that we received and if you are now as National Security Minister telling this country that this law is no longer in force because it expired on June 30, 2007, we will take it.

Sen. Joseph: Because the airlines are not required by law to provide the advance information. It is not provided.

Sen. W. Mark: I needed clarification based on the information I obtained. I do not trust this Government. [*Interruption*]

Sen. Dr. Saith: We do not trust you either.

Sen. W. Mark: I would imagine that is why. Mr. President, the right to privacy of information is enshrined in the Constitution of our republic and it is also further reinforced by the Immigration Act, Chap. 18:01.

I want to remind Members of this honourable Senate that under sections 4 and 5 of the Constitution, the citizen's first right is the right to privacy. That is the first right including liberty, privacy, and they are not supposed to be deprived of that right unless it is through due process of the law. This legislation, which was sunset legislation in the first instance, is now about to be made legacy or permanent legislation, without the appropriate and necessary constitutional majority that is required because of the invasion of people's privacy.

In Europe, Canada and North America, there are privacy laws that no government will be able to tamper with the private personal data of citizens easily. If we look at the Constitution, citizens are entitled to protection of their

personal data and information due to the privacy provision in the Constitution. So if you are going to make information available to third parties, then you are violating the citizen's fundamental rights as enshrined—and I do not agree with the Minister that this is not privileged information and people already give it voluntarily, either electronically or manually, and therefore, it is no big thing. That is not true, that is misleading the country. So the first argument that we have is that this law in its present form violates section 4 of the Constitution so this matter requires a specific constitutional majority. That is the first leg. The second leg is when we go to the Immigration Act and we look at section 12(5) it reads:

- "(5) An immigration officer shall not disclose directly or indirectly, to any person except—
- (a) the Minister or a person authorized by him to be privy to the information or;
 - (b) a member of the Immigration Department, any information obtained by virtue of the provision of this Act."

An immigration officer including the Chief Immigration Officer shall not disclose directly or indirectly any personal information that he has come upon as a result of us providing that information to him when we are leaving our country. Therefore, it is almost impossible for us to be told today, that information will be transmitted, because that is what it is going to be. We do not know how confidential that whole process is because the Government of Trinidad and Tobago does not have on the statute books any privacy legislation to deal with the protection of people's personal data. There is no law in this country that has that—even though, Mr. President, under section 4 of the Constitution, we are entitled to privacy and that is a fundamental right. What the Government should have been doing, is translating that provision of the Constitution into personal data legislation to protect the rights and freedoms of the people.

I have indicted to the Government that both in terms of the Constitution, as well as the Immigration Act, section 12(5), it says that the data must be protected and the integrity must be protected. This is not public information, this information can only be given to the Minister and he must have good reasons for wanting that information on national security grounds. Therefore, nothing in this legislation before us, inputs any protection for the privacy of individual personal data, nothing in this legislation. All we get from the hon. Minister is "ol' talk" and empty promises and assurances, his Government will not do, his Government will not do that. We do not want to know what the Government will not do; we want laws to safeguard the rights of the citizens of this country, otherwise the Government can do anything as they have shown their capacity over the period of time to so do.

Mr. President, whilst the Bill is short in terms of clauses, the clauses that are contained therein, are very serious and they do have far-reaching implications for the citizenry. I am glad that the hon. Minister raised the question of some misinterpretations and he spoke about the wider context, because this Bill has to be seen in its widest possible framework. It is a fact that after the 2001 World Trade Centre assault, the Government of the United States made moves to strengthen its national security—and who can be against the Government of the United States for doing so. We support them taking such measures.

Mr. President, one of the ways that they sought to provide greater protection to their citizens, is through a process of information gathering. Because you know, information is the virtual heartbeat of any functioning democracy and information is very important and that is what would determine whether you live or you die in countries like America and in the Middle East. You need to have advance information and it is in that context that the United States decided to advance all sorts of agreements throughout the world, involving several countries in several regions in order to accelerate the provision of information.

This Advance Passenger Information System did not come about by accident, this Government was dancing to the drumbeat of the United States, and therefore, it is useful to examine this measure in the context of the Caribbean region, as well as the European Union. As the hon. Minister said, it deals with the Caricom Single Market and Economy and we were fooled into believing in the last Parliament that this was all about World Cup Cricket 2007. They fooled and misled us into believing this, and this so-called Advance Passenger Information System came as a cover in order or they used World Cup Cricket as a cover to introduce this particular measure.

3.00 p.m.

Mr. President, we discussed at length the issue of the provision of personal data because it has implications. Personal data protection is a serious matter throughout the world; that is why the European Union and the European Court of Justice ruled that the agreement which was arrived at earlier, in May 2004, was illegal and unconstitutional because it violated people's fundamental rights in Europe.

We need a safe harbour to house personal data. We have not been given any assurances by the hon. Minister of National Security that there is such a safe harbour to protect our personal data; none has been given to us. Therefore, we need to ensure that both the collection and control of this personal data, in an

increasingly technological and electronically driven environment, are given utmost protection. Your personal data, my personal data, must be given the utmost protection. It cannot be given to any Tom, Dick and Harry for whatever reasons.

This is a sovereign and independent State; we are not a satellite of any other country, including the United States of America. Therefore, we have to ensure that the data which is collected by the Government is used for the purpose for which it is being claimed they want it. It is not to be kept for longer than is necessary. There must be strict guidelines for using and applying the personal data of any citizen in this country. Worse than that, we are sharing the personal data of citizens of this Republic with third countries, whether it is Caricom or the United States of America. How can you take people's personal data, share it with some other third party and come here and tell this Parliament and the country that is "no big ting", that is not privileged information; that is a voluntary thing that we give all the time? That is not the truth.

We are concerned about this question of personal data and the protection of it. We have not been given any assurances by the hon. Minister about the data to which he has referred. If you look at the Bill you would see that Part II of the Schedule deals with the personal passenger data that you, I and everyone else would be required to provide, which the Minister said we already provide. If we already provide it, why are we providing it again? There is a purpose; you must be honest and tell the country the purpose.

Sen. Joseph: It is advanced information.

Sen. W. Mark: On October 26, 2006, the Secretary of Homeland Security, Mr. Michael Chertoff, and the Prime Minister of this Republic signed a memorandum of intent between the US Government and Caricom. That memorandum of intent (MOI) was signed one month before we debated it here. It was designed to implement an advance passenger information system for World Cup Cricket 2007.

Mr. President, do you know what is sad about it? We say that information is the heartbeat and oxygen of any democracy. To date, this Government has not tabled in this honourable Parliament neither the operational protocols that the hon. Minister made mention of, nor the memorandum of intent that the Prime Minister of this country signed on behalf of Caricom, because he is the Chairman of security matters in the region and the Homeland Security Secretary. Why has the Government not been able to make this document available? The more you hide things, the more things come to light. The hon. Minister of National Security must tell this country.

This memorandum of intent between the United States Government and the Caribbean Community was designed to deal with the issue of advance passenger information. That was the purpose of this particular memorandum of intent. I made mention of the need for us to be very careful with this particular piece of legislation and where it was taking us. In the memorandum of intent between the Government of the United States of America and the Caribbean Community, it is stated very clearly in the document that was signed by the hon. Prime Minister and all the Caricom heads in St. Kitts and later in October 2006, that the main objective is to set out a framework for the initiation of a collaborative arrangement to facilitate the review of API data transferred to member State participants of this MOI.

That was the purpose of the memorandum of intent. I think the Government should be honest enough to tell this country what drove them to bring this legislation here. This legislation did not come because the hon. Minister of National Security felt a need to have advance passenger information given. It came as a result of a memorandum of intent that was signed between the governments of the region and the United States Government.

When this was signed, we were told in 2006 that it was for World Cup Cricket. Of course, the Minister had indicated in his contribution that they may have had to come back, but we insisted, at that time, there was no coming back here. You came here and said that the purpose of this legislation was to ensure there was safety and security for the citizens of this region during Cricket World Cup 2007. That has come and gone; now we are being told by the hon. Minister that we must live on with legacy legislation that would witness a virtual permanent invasion of our privacy and our way of life.

You know what is frightening about this memorandum of intent? I call on the Government and the Minister of National Security to table in this Parliament, for public consumption, the operational protocols. We want to see the operational protocols. In this particular situation, one of the very frightening provisions of this particular MOI that the Minister referred to is that it permits advance passenger information data to be transferred to the government of the United States of America.

Mr. President, our personal data, which is protected by the Constitution through privacy, is now going to leave the Chief Immigration Officer's hand and end up in the State Department. It talks about the United States Government. The US Government is made up of the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA) and the Homeland Security Department. Where

would your personal data—not you, Sir—but the citizens' personal data, end up; in the CIA; with the CIA; with the FBI; with the Homeland Security Department? Why are we allowing another country to dictate our pace of development?

I am not saying that we do not have security concerns; we do have security concerns. We will always support the Government in terms of bringing laws to protect the rights of the people against external or internal aggression, as I said earlier. But when it comes to a situation where the Government has agreed voluntarily to take the data that the hon. Minister referred to—

Mr. President, before you leave Piarco Airport to travel to Jamaica or the United States of America, before that plane could leave the ground, your data and my personal data are already transmitted electronically to the Jamaican Government and simultaneously to the US State Department through a database that has been established in America. They are both watching to see if I am X person who they say is a terrorist or if they could profile somebody to categorize him as a Muslim extremist if he carries a name like "Noor Mohammed Ali". So here we have a situation where a third party is being given access to personal data that belongs to you, that is protected by the Constitution, that is protected by the Immigration Act of this country. This data is being channelled to a third party.

One of the provisions of the agreement that this Government arrived at with the Government of the United States was to permit advance passenger data to be transferred to the Government of the United States. It is in the memorandum of intent; they signed. Why the US? The governments of the region did not only agree to permit API data to be transferred to the US Government, but they also allowed and gave them the authority to review this personal data.

We might view this in a very light-hearted manner, but there are implications for the citizen's fundamental freedoms and human rights. That is why this legislation, in its present form, is illegal and unconstitutional. It cannot be passed in its present form. If you are taking my data and giving it to the American government to review it, then that is an invasion of my privacy rights that I am entitled to under section 4 of the Constitution; you must, therefore, pass this Bill with requisite constitutional majority. That is what you need to do if you really want to live up to this memorandum of intent.

We have not seen all the protocols that the hon. Minister referred to. We have not seen the details of these protocols. But here you have the Prime Minister of our country signing off on a memorandum of intent that is designed to give away our personal data to a third party, and they have not consulted us. They have now come back to consult us, and we are being told to support it with a simple majority.

Mr. President, this is a very serious matter that has legal and constitutional implications for our country and for the citizens of this nation. I think the most important aspect of this legislation before us today is the whole question of protecting the personal data of the citizens of this country. That is the critical issue we are debating here today, and whether the Government has the authority, with a simple majority, to take my personal data and give it to a third party. That is the issue before us today.

3.15 p.m.

Mr. President, I believe that this matter is so serious that even the European Union in its confrontation, or I should say, in its differences with the United States Government which resulted in the European court striking down the whole question about personal number—PNR, I think it is Personal Name, I cannot recall the full acronym. Oh, Passenger Name Record, Mr. President, and the European Court of Justice ruled it out of order and illegal.

Mr. President, I want to bring to your attention that in the recently concluded agreement that was signed between the European Union through the European Commission and Cariforum and the Dominican Republic, which is Caricom and the Dominican Republic, there is a particular chapter, chapter 6 of this agreement which we have signed off on and agreed to. Here we are dealing with a Bill to provide API data, and here we, the Government of Trinidad and Tobago, recently signed off on an agreement between the European Union and Cariforum and under Chapter 6 of this agreement entitled Protection of Personal Data, I will read what it says.

To show the conundrum and confusion that is taking place, we are bringing a Bill to Parliament to provide advanced passenger information and the Government of Trinidad and Tobago just signed off an agreement that is attacking that use in the way that we are debating today. Let me share with you what the Government of Trinidad and Tobago agreed to and I quote:

- “1. The Parties and the Signatory CARIFORUM States, recognizing:
 - (a) their common interest in protecting fundamental rights and freedoms of natural persons, and in particular their right to privacy...”

Here it is the Government of Trinidad and Tobago is signing off on the rights of people's privacy with respect to the processing of personal data, “in particular, their right to privacy with respect to the processing of personal data,

- (b) the importance of maintaining effective data protection regimes as a means of protecting the interests of consumers, simulating investor confidence and of facilitating transborder flows of personal data,
- (c) that the collection and processing of personal data should be accomplished in a transparent and fair manner, with due respect accorded to the data subject,

agree to establish appropriate legal and regulatory regimes, as well as appropriate administrative capacity to implement them, including independent supervisory authorities, in order to ensure an adequate level of protection of individuals with regard to the processing of personal data, in line with existing high international standards.”

It goes on to say:

- “2. The Signatory CARIFORUM States shall endeavour to implement the provisions...as soon as possible and no later than seven years after the entry into force of this Agreement.”

Mr. President, so what is going on here? Here the Government has signed off and the European Union is saying what it is bringing here today is wrong. This is wrong, Mr. President. This is what the European Union is saying. So this legislation is not worth the paper it is written on, because this Government has to implement its agreement with the European Union and under the principles and general rules of Article 3 says:

- “(vi) restrictions on onward transfers—as a matter of principle, further transfers of the personal data by the recipient of the original data transfer should be permitted only where the second recipient (i.e. the recipient of the onward transfer) is also subject to rules affording an adequate level of protection;”

Where is this adequate level of protection, when you transfer my personal data to another source? Where is the law that provides me with comfort that my personal data will not be used by the United States Government for any other ulterior motive? Where is the protection? There is no protection here.

We are talking about transparency and the transparency principle is also advanced here. It says:

- “(iii) ...individuals should be provided with information as to the purpose of the processing...”

Do you tell the people in Trinidad and Tobago why you are processing them?

- “and the identity of the data controller in the third country...”

We need to know who the data controller is.

Mr. President, it is written in black and white as an Agreement—protecting personal data, and we signed off to that, and they are saying that I must know the identity of the person in the third country who is looking at my data. That is what the Agreement says. Right now you are giving my personal data, or the citizen's personal data to a third party nameless and faceless, but we know they are located in the United States of America. So what? Are we hostages, Mr. President? Are we part of a hostage-taking arrangement where we do not know the identity of the individual who is collecting our personal data, and he is using that data to do whatever he wants? That is illegal, it is unconstitutional! You cannot do that here.

Mr. President, imagine the European Union has to protect our rights by telling the Government of this country how it must go about ensuring that the people's rights are not trampled upon and it is in a chapter called "Protection of Personal Data" and I can go on and on, but I will make a copy available to all Members of the Senate.

Mr. President, this Government is an embarrassment to the citizens of this republic. A government that is prepared to sell out the rights of the citizens to a third party without any laws to protect them is one that is not worth being in office. How can you justify to a country and its citizens this kind of sell-out of the personal data of the citizens of this country?

Hon. Senator: The UNC supports the legislation.

Sen. W. Mark: The UNC supports the legislation? We are in the Upper House. [*Laughter*] They are in the Lower House.

So Mr. President, I am suggesting to this honourable Senate that we do not treat this matter very flippantly; this is a serious matter we are dealing with. We are advancing on this side that the culture of protection of personal data is largely absent in the legislation, in the region and in this country as a whole, and we are calling on the Government to establish explicit legal instruments along the line of the European arrangement in order to safeguard the personal data of the citizens of this Republic. Before you can pass this legislation, bring protection of personal data legislation that will entitle persons to privacy so we would know who is tampering with our information.

The Government has no legal infrastructure in place to protect personal data and, therefore, I think the time has come for us to place this matter on the front burner; no longer must it be on the back burner. We believe what the Government is doing is really putting the cart before the horse. Before this legislation should have come to this Parliament, it should have been preceded by personal data and

privacy legislation to protect the rights of the citizens of this country. We in Trinidad and Tobago protect jealously our fundamental rights and freedom, we guard them jealously. We will get rid of you the day you attempt to undermine the rights of the people.

Mr. President, sometimes the question is being asked: How does this advance passenger information system really work? We are told that it is designed to protect the country against terrorists, criminals, organized elements and mafia groupings and so forth, but how come so many criminals are getting through the cracks in this country? I am seeing how a terrorist is defined in the legislation which we passed some years ago, and what is taking place here with jacket and tie and briefcase-carrying individuals. You have to ask yourself who is the terrorist, who is the criminal in this country, and whether this advance passenger information system is working at all, because it seems like many people are getting through the cracks and doing whatever they want.

I think the Government must tell us. When a government takes a decision to sell out the rights of the citizens, is that government a terrorist government or a criminal government? I do not know. When a company can leave Malaysia and get a five-year sweetheart agreement to quarry our industry and take at the end of that period a billion dollars, is that a fair system? How did they get into the system here, Mr. President?

We heard some of the success stories outlined by the Minister during the period. In 2003, an Al Qaeda operative passed through this country with a Trinidad and Tobago passport and remained for a few days and we did not know we had an Al Qaeda operative in Trinidad and Tobago. Therefore, as far as we are concerned this Bill before us ought to be looked at again by the Government.

Mr. 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. Dr. A. Nanan*]

Question put and agreed to.

Sen. W. Mark: Mr. President, we are worried. When and where will it end? Today we have before us Schedules, Part I and II and we talk about the core data elements of official travel document number et cetera; what is the next stage or phase of this?

3.30 p.m.

I do not share the optimism of the Minister of National Security. I do not believe it is going to stop there. I think it will go a step further. I think that the real dangers that are attached to this measure are yet to come, and even though the hon. Minister referred to profiling and said that this legislation is not about profiling and that the Government will not do this and that, the Minister of National Security can give no such assurances because he is not in charge of anything. He is a puppet of the United States government! That is what he is! And this Government, for all intents and purposes, seems to be riding according to the waves set by a foreign government.

We believe that profiling of passengers will eventually come. It is just a matter of time. If we allow this to go, it is only just a matter of time before we go from these simple core elements; data that is being requested here, to what is called profiling of persons on religious and ethnic grounds. They are doing it already. This could lead to discrimination against honest, legitimate, decent and law-abiding citizens. Does the hon. Minister know whether the United States government has data-protection regulations and institutions to adequately protect citizens' rights? Is he aware of it?

According to this Bill, it would be left to the government of the United States to determine who will be able to enter this region on a permanent basis from here on end and who will not be able to enter this region, because the watch list that is provided by this regime to the Government of the United States will allow them to determine and advise this Government who is a terrorist and who is not a terrorist; who is a threat and who is not a threat. Maybe that is the reason they are selling out all our national patrimony. I understand—and I want the Minister of Finance to tell us—the FCB, which Sen. The Hon. Piggott worked so hard to build, is now on the chopping block; is out to be sold. I do not know. I want to get answers.

We believe that the current Bill, even though the Government is seeking to have it established on a permanent basis, if you want something permanent, come with a constitutional majority. This Bill represents the thin edge of the wedge. It is merely the first stage in the invasion of citizens' privacy rights by a weak and genuflecting administration. We believe that the second phase is to come very shortly, and the second phase is what will deal with personal information. That is what the hon. Minister said does not exist now and he rightly pointed out that there is a distinction between the API and the PNR. I agree with him. But do you know what? He did not take us down the road. Down the road is the danger.

Do you know what the United States government is doing in some countries? I have nothing against the United States. I have problems with anybody attempting to usurp or subvert our sovereignty as a Republic. [*Interruption*]

Mr. President: As you have struck that note, I have been giving some thought to something that you said a few moments ago when you referred to the Minister as the puppet of the United States. In that regard, what you are, in fact, saying is that he has willingly agreed to subvert his oath of allegiance to this country to be a servant of the United States. I think that that is highly improper and I so rule that it would not be allowed and it should be struck from the record.

Sen. W. Mark: I will be guided.

Hon. Senators: Apologize! Apologize!

Sen. W. Mark: You need to apologize to Rowley first! You are the man who said Rowley is a “hooligan”, and you should apologize first! Anyway, Mr. President, let me continue.

Mr. President: Senator, while I did not ask it, in the context of this Chamber, I think it is fitting to ask you to withdraw and to apologize. [*Desk thumping*]

Sen. W. Mark: Mr. President, I believe that the next stage of this matter—they are very, very jittery when you speak the truth. [*Laughter*]

Let me continue. I believe that the next stage is that they will want to know your airline seat number; they will want to know how many times you have travelled before; they will want to know one’s diet; they will want to know one’s political persuasion; they will want to know one’s trade union membership; one’s history of missing flights; one's frequent flier miles, or even one's e-mail address. This is what is going on here. Therefore, this Bill is really the child of the Memorandum of Intent and the Memorandum of Intent is designed to transfer personal data information to a third party and the third party happens to be the United States of America government. [*Interruption* I am not like you, you know. You have double citizenship. I am a citizen of this Republic alone! I do not have any citizenship of Barbados either.

We are calling on this Minister to state categorically that it has no intention of entering into any agreement with the United States government to provide information on citizens beyond what is required in their normal travel documents. What is required is what you and I know and, therefore, the Government of this country must, first of all, give a commitment and an undertaking to pass privacy

legislation to protect the rights of the citizens of this Republic. We are not in favour of the present arrangement that exists and we are calling on the Government, first of all, to deal with the arguments I have advanced.

The first argument, just to summarize as I close: it is our view that this Bill in its current form violates and breaches section 4 of the Constitution, particularly section 4(1). We are of the strong view that this Bill is in conflict with the Immigration Act, Chap. 18:01 particularly section 12(5). We are also of the view, in those circumstances, that this Bill is illegal and unconstitutional. It requires a specific constitutional majority to have effect. I believe this Bill can be and will be challenged in the courts at the appropriate time if this Government does not decide to go with a constitutional majority today.

It is our view that it is passing strange that the Government of this country could have signed off a few weeks ago on an agreement with the European Union on the protection of personal data of citizens of this country and in the region, and come with legislation that is doing precisely the opposite. How can we be so contradictory in what we do? It does not make sense. So I think the Government has to think through this very carefully. I think the Government should withdraw this measure. Go back to the drawing board, look at what you have just signed on to, the protection of personal data, and see all the provisions in this particular chapter of the agreement that provides protection to the citizens of this country.

All I ask of this Government is put your country and your people's interest always first. There are times that you will have to make compromises, but this is not the time. Therefore, I call on the Minister of National Security to table in this Parliament, one; the Memorandum of Intent for every Senator to see. I think that the operational protocols ought to be tabled here so everybody can see. I believe if we have to have a meaningful debate on this very important piece of legislation, Senators must have before them the relevant information so that they can make an informed judgment and decision on the way forward.

I thank you very much, Mr. President. [*Desk thumping*]

Sen. Basharat Ali: Mr. President, I am very pleased to make a contribution to the Bill before us, the Immigration (Advance Passenger Information) Bill, 2008. It seems not so long ago that we did the sunset legislation with the same title, basically, and the debate on that was November 2006 and, of course, that lapsed by June 2007.

So I would like to raise a few points, some of which were raised by the hon. Minister, and go through this in the context of the APIS, which I choose to call it and in the context of some other matters like the PNR. I note that the Minister has

said quite clearly that they are separate things, but I think we are being either naïve or disingenuous if we say that, because the one that precedes APIS is the PNR. That is a fact, because you cannot travel without having made a booking, whether it is singly or in an organization, and that is where the passenger name record comes in.

So that is the first item that goes into any computer system, from the agent with whom you deal and into this overall system, whether it is Sabre, Amadeus, World Span or Galileo; those are the worldwide distribution systems. So your data—and much more data than is required for APIS—would be already in a computer. Once you have confirmed your reservation, et cetera, you are permanently there until, I do not know when. I think we are being—I hope we are not naïve, but I do not think I am.

I would like to bring to the attention of this Senate, something with respect to the United States on this matter of the PNR and APIS, and it comes from a gentleman who has visited Trinidad and Tobago, Mr. Cherkoff. Mr. Michael Cherkoff was giving testimony before the House Committee on Homeland Security and this was on September 05 last year, according to my information, and in his testimony he had one item called “Protecting Against Dangerous People”. I would like to read that because I think it is quite important that we understand the context between APIS and PNR. He said:

“The first of these priorities deals directly with individuals who seek to enter this country and do us harm.”

Then in a section here, it is called: “Expanding our Perimeters/Intercepting our Enemies Overseas.”

3.45 p.m.

“In response to this threat, our strategy begins by expanding our perimeters so that America’s actual borders are not our first line of defense. Our aim is to intercept dangerous enemies abroad, before they reach our borders.

In order to do this, we need relevant information about travellers. To that end, this July, we reached a Passenger Name Record (PNR) agreement with the European Union in which the EU agreed to continue to provide our Department access to pertinent data from airlines on passengers taking transatlantic flights to and from the EU. We also collect this information on arrivals from other regions as well.

And just last month, responding to a recommendation of the 9/11 Commission, we enhanced our Advance Passenger Information System (APIS) by publishing a final rule requiring international air and sea carriers to provide Customs and Border Protection (CBP) passenger manifest information prior to boarding, rather than when planes are already in flight, and cruise ships are underway.”

This is the most significant paragraph:

“Obviously, our PNR and APIS initiatives work in tandem. With both of these types of information, combined with the Automated Targeting System for Passengers, we have identified overseas passengers who have posed a real danger and prevented them from entering our country.

Since 9/11, PNR data have helped us significantly in combating potential threats.”

This is the person who was here with the MOI at that time in 2006, when we were talking. This is where the connection is between PNR and APIS. Although APIS looks quite innocent, it is not so innocent after all. The final thing about that is there were many hiccups with the EU on this subject, because although an agreement was signed it went to the Court of Justice there and they put it down. Subsequently and apparently, an agreement has been signed.

This comes from the Passenger Name Record (Wikipedia):

“In July 2007, a new controversial PNR agreement between US and the EU was undersigned. A short time afterwards the Bush administration gave exemption for the Department of Homeland Security for the arrival and departure system and the automated target system from the 1974 Privacy Act lifting concerns from State watch lists about the protection of EU citizens’ data.”

That was the basis of negotiations between EU and the US. The EU said that they would not have that unless you can give them a guarantee that their citizens will be protected. This argument was raised by Sen. Wade Mark. I think that it is worthwhile looking at in the future.

During the debate in November 2006, there were some issues that were not settled to my satisfaction from comments made by Senators. One was the distinguished former Senator, Dr. Eastlyn Mc Kenzie who referred to this in the debate. She said:

“...during the August holidays, the Government recognizes that there is an increase in travel and...has been leasing planes from other countries. In 2005, it leased from Simba Airlines...the Scandinavian country...”

It had a very good experience with them. She continued:

“...the Tobago Express Board leased a plane which was registered in the United States of America. Because of the United States of America’s registration, there were different rules and it had to have this same advance passenger information, and wanted you to book in advance, have your ticket confirmed and you bought your ticket. So therefore, you could not do as Mr. Titus and I do on the Airbridge now.”

Her concern then was that the aircraft was often travelling with empty seats. This is very significant. She recalled that once five persons’ names were taken off the list. She said:

“I want to say that probably by looking at the names they found that they did not know them. It is not Thomas, it is not Joseph, it is not Mark, it is not Mc Kenzie—we do not know these names. They sound like Bakr, Ali and Mohammed therefore, they were suspect and those five passengers were denied the opportunity from travelling on that special aircraft although they had bought their tickets.”

This was a domestic flight from Crown Point to Port of Spain, to Piarco. People booked on it and they could not get on because when they transmitted this information to the USA they said that those persons could not get on. It is not so long ago. This question was posed to the hon. Minister and he said that it was a United States aircraft and they were protecting their crew and plane. We would have to look at that in the future, within our borders we cannot have a plane which will travel so that there is freedom of movement and no citizen would be able to travel and wait for Tobago Express with a spare seat. This is a domestic flight and it has no concern with America except that the plane is registered in America. I know that was one of the issues. I went back to *Hansard* to what the Minister said.

Opposition Senator Raziah Ahmed had an issue. She raised the case in 2004, of a well-known musician, Cat Stevens who had changed his name to Yusuf Islam and was travelling between London and Washington in 2004 and was pulled off the flight in Maine and returned to the United Kingdom. A well-known musician changed his name and he was sent back to Britain because his name was Yusuf Islam. [*Interruption*] Some people say that he is Muslim. That is one of the propaganda spread by his opponent.

Hon. Senator: Barrack Obama. Muslim!

Sen. B. Ali: He has a Muslim middle name, but it does not make him a Muslim unless he says that he is a Muslim.

Sen. Ahmed gave another telling example. It said:

“On January 2, 2005, Rahinah Ibrahim, a mother of four children, a PhD student at Stanford University, was prohibited from boarding an aircraft departing from the San Francisco International Airport. She was told that she was on the No-Fly List and arrested. She is not a terrorist, nor does she have any link or relation to any terrorist. She was just a foreign student here in the United States trying to fly home.”

Having gotten out of handcuffs she went back to her home in Malaysia. There her visa was duly cancelled. She was not able to continue her studies.

I do not think that there was much reaction from the hon. Minister on that one. He went on to talk about false positives and people with names like Adnan Gulshair el Shikrijumah of Al Qaeda and Khald Shaikh Mohammed, et cetera. I am reading from *Hansard* dealing with your response in the winding up of the debate.

Sen. Joseph: Thank you for giving way. As I indicated, one of the new features of this new legislation is including date of birth in the APIS information because that is designed to reduce the possibility of the false negatives. As I had indicated in the previous legislation, you had citizenship and since that could change—as an attempt to reduce the possibility because it could happen—it was to introduce the date of birth element in the data field.

Sen. B. Ali: Thank you, Hon. Minister.

Let me go on to speak about APIS which is before us. I do not have any problem with it. I voted for it in 2006 and I would vote for it today. It is interesting that we and our population have very little information on it. I went on the Caricom website and downloaded what appears to be a slide presentation and it is useful for our people to look at it and then they would understand what it is about. This slide presentation speaks of APIS, the process; the screening capability; Interpol persons; database; additional capacity; support for the vetting of false positives and alert and advisory services to assist regional board and management agencies.

It gives us the key APIS functions. The Caricom APIS is about integration with regional border control systems and the capability to receive API information; process against watch lists; exchange information directly with border controls systems and authorities and to collect and analyze passenger data which can be used for statistical analysis of movement of persons.

The next set of slides dealt with Caricom watch list. I will not go through it. It said that they received data from the Caricom countries and that approximately 50,000 records have been added and presumably, there is an international terrorist watch list in that system. The purpose of the watch list is to provide to regional law enforcement and national security entities a single continuously updated list of persons of interest and action to be taken if detected to assist with border security. The watch list has been compiled using input from special branches and they needed to broaden the scope to include all regional immigration authorities; customs and excise authorities; other law enforcement groups and national security that maintain watch lists of persons of interest to the region.

They had given examples of watch list processing. If you go there you would see the photographs. In this one there is a photograph. In addition to all the data that we expect this one gives the occupation and there is a photograph. There was a comment on the major marijuana traffickers between the Caribbean and the United Kingdom. Similarly, for each person, presumably of interest there is bio data. Here it is given in codes so I cannot tell you. That is what the Caricom watch list is about. It is worth looking at.

4.00 p.m.

Then I come to something I heard for the first time reading the press release of the Caricom Community Secretariat on the occasion of the Conference of Heads of Government of the Caribbean Community Secretariat Special Meeting held on April 04 and 05, 2008. They spoke in this one of the Regional Intelligence Fusion Centre. I had not heard that name before. I do not know if anyone has heard it before. Apparently it is based in Trinidad. Is it based in Trinidad, hon. Minister? That is what I read somewhere else. The other one mentioned is the Regional Communications Centre, which is based in Barbados. This is the Fusion Centre and it is where you have capability for search.

They keep a person record. It is most interesting that under "Person Record" they now have "Race" as one of the items. In this particular one, they have "Negro" under "Race". I thought we did not use that term again. I would like to know what other races are in the system. I could see other things from using my computer mouse. There are all kinds of things. There is also a picture of a gun.

All of these things are interesting and I am glad I found this because it gave me a feel for what the search is about, especially when I read somewhere else that RIFC is based in Trinidad. The Minister is not shaking his head "yeah" or "nay" He is the big intelligence man. Here, again, there are person reports and subject profiles in the whole list.

I recommend that those who want to learn about these things go to the Caricom website and download this. I am not sure I will do this again. I got it by chance. The Caricom Intelligence Management System provides for managing the system: provides powerful tools for search, analyzes the track and maintains the integrity of the information at the RIFC. I am not sure where that is.

The interesting one to me is "other projects". Here, we heard the Minister speak about the Caricom visa system and then the Caricom Travel Card System. The third thing is an Advance Cargo Information System. I am of the impression that this has not yet been done. I thought when I heard the Minister's presentation that he mentioned it. I would like to know the timing for that.

In the press release, they did say that they agreed that an Advance Cargo Information System would be put in place and that discussions would continue with respect to the Caricom Visa, the Caricom Travel Card in the single domestic space. This is from the release on April 05, one month ago. That is a very interesting thing.

I would be very interested and I am sure my colleague will be too, in the Advance Cargo Information System because of his association with port facilities. There is a Regional Integrated Criminal Records Management System and another one called Advance Passenger Processing, ACISAPP. What is that? I do not know. Perhaps the Minister would brief us on some of these things so that when we go out from Parliament, we will know what these things are because people ask us what we do here.

Those are the things that I have seen from APIS and I thought they were of interest. I am particularly interested in cargo systems. I saw scanning of cargo as one of the items with respect to the drug trade. It was a recommendation quite recently from the United States Drug Enforcement Agency.

On the question of ships, in terms of the APIS, we speak about passengers on ships and cargo vessels. I would like to be assured that the crew is also subject to APIS quite distinct from the immigration aspect of it. I would like to ensure that all crew members of vessels are treated with the same respect as passengers so that they are screened. They are an important part of the whole process. We have to depend a lot on cargo, so we have to know that there are good crews. The last time I spoke of ISPS, which is the code under which our maritime vessels operate. I will not go there this time.

I have to raise another matter and that is the question of how much we are profiled. I have been at the receiving end of profiling for a long time now. It goes back before 9/11. The first time I was profiled was in March 1980. It was at La

Guardia Airport. I was coming from Tokyo on a flight. I was on the business of the State. I was in the process, with my colleague, of getting together the pre-investment work for the first methanol plant. We were on this flight travelling first class. My colleague was surnamed Sharma, like Sen. Cindy Devika Sharma. He was not as good looking and did not have long hair. He had curly hair. He was East Indian, I believe.

We arrived, after 14 hours flying, at La Guardia. Of course, the airline made sure that your baggage was there. I got an easy passage and went to the men's room. The next thing, apparently someone was following me into the men's room. By the time I came out, they were telling my colleague to put our bags separately and took them into this inspection room. I could not understand what was happening. I had been cleared. My only conclusion was—at that time people were being screened for drugs—if you were coming from the Far East, it was for heroin or opium. That was the only thing.

We went into this little room and I said nothing. My colleague had his bag and briefcase completely searched; down to the little pill he had. By this time, the customs officer realized that he was on the wrong trail and he started a conversation. He started talking about Carnival in Trinidad. I said not a word to him for the whole time until we left. I felt violated because we were two people dressed in our business suits, travelling first class. We were not travelling in jeans. That was probably the problem. We were targeted, but we did not have anything.

I say we were targeted specifically because three months later, in June 1980, I alone was travelling and the very same thing happened at La Guardia. I was stopped there and the same customs man came up to me and I stopped him. I said: I hope that this is not a repetition of what happened three months ago. I explained to him what happened three months ago. He said: I am sorry, and he let me go, but he was going to put me through the same procedure.

This is profiling of people who do not have a certain appearance. Up to today we do not know what caused the profile. He said we looked nervous. After 14 hours on a plane, you should be nervous.

My more recent profiling was in September 2002 at Miami Airport when I was boarding a flight to Toronto with my wife. We were early and had a three-hour wait. When we were ready to board, they pulled us aside and it was the same problem. Take your belt off! Take this and that off! Empty your handbag! There were just two of us and one old lady in a wheelchair. The only thing I know about the lady is that she was wearing an orhni. I do not know if you all know what an

orhni is. It is a covering for the head. I presume she was a Muslim from Guyana. So, targeted, and profiled on the basis of your name. I am always fearful that I may have to change my name one of these days. Mr. President pronounces my name properly. I will take him with me next time.

One final point on the same question of how certain people are treated, and that is extradition. I refer to extradition proceedings at the JFK Terminal on fuel lines. I would not say much except to say that I took the time to read what that detective said.

Sen. Seetahal SC: [*Inaudible*]

Sen. B. Ali: Why can I not talk about it?

Sen. Seetahal SC: Mr. President, I am just advising my friend that when a matter is sub judice, still in the courts, that matter has gone to the Privy Council and is pending before the courts, questioning the evidence at this stage might prejudice the fair trial of these accused.

Mr. President: I think we ought to be take advice from counsel in that matter. I am not that familiar with it, but we should be as cautious as possible and stay away from it.

Sen. B. Ali: Thank you, Mr. President, I was not going to delve into evidence, but Mr. Raffique Shah, writing about these gentlemen who were in the extradition proceedings, said that they were doing “S” talk. That is what it was. They were doing “S” talk and got themselves into that mess. I claim to know something about aviation and fuel does not explode as they said.

I know something about aviation turbine fuel. I have done a lot of work on aviation turbine fuel and it does not explode as was said there. If someone asks me to go on a witness stand to say so, I will say so. There are opinions from the United States in the press here. We cannot speak about it, but they can say what they want. On one CNN interview, they said that a former NTSB Inspector said that it is highly unlikely this would happen. That is my opinion on jet fuel. Jet fuel and aviation turbine fuel will burn; it will explode, but people do not know that the biggest hazard for jet fuel is water. If you have a little moisture in a jet fuel tank in an aircraft or in a storage tank and it is not properly treated, then it is static electricity, which can cause it to explode.

My colleague has advised me, but my comment is that: Is this another case of weapons of mass destruction that started an unending war in Iraq? [*Interruption*] That may be conspiracy; I do not know. That is my view.

4.15 p.m.

Mr. President, I support it but I know we cannot say that we are not tied with certain people. We have an MOI. It is probably operated. I do not know. I would not like to know. We have had this MOI for one and one-half years. At least, we are putting into place what we consider to be a law. I think that we really need to consider, when we are dealing with such matters, the question of privacy of our citizens and to fight for it, like they fought for their position. They said no and they went to the court for justice. We need to take the same kind of position when we have to deal with such matters.

Thank you, Mr. President.

The Minister of Health (Sen. The Hon. Jerry Narace): Mr. President, I rise to support a Bill to make provision for the transmission of advance passenger information respecting persons travelling to Trinidad and Tobago and for related matters. This Bill seeks to make provision for the transmission of advance passenger information of persons travelling to Trinidad and Tobago.

I am only going to intervene to make a few brief comments, with regard to some of the comments made by my friend, Sen. Mark. I would like to inform him, through you, that it was at its 24th Meeting held in Montego Bay, Jamaica in 2003, that the Conference of Heads of Government of the Caribbean Community were challenged to promote a system of regional security. I also want to remind him that it was at the 27th Meeting of the Conference of Caricom Heads of Government that Heads of Government further agreed that the advance passenger information system would remain as a fixed arrangement.

This piece of legislation, initiative and this central tenet, is really important to fulfil the realization of the Caricom Single Market and Economy. There are several initiatives that are required as we move along that realization, economic space and single economy. There are several pieces of infrastructure that are required so that we can create the region that we want to create.

I would always remember the words of a very good friend on the other side, Sen. Annisette, who said that it is important that we move the shackles that keep us insular and colonial and that we should look towards creating a region that is autonomous and can meet the challenges that we face.

As we look around the world, I have said before—blocs are being created. People are coming together and, therefore, Trinidad and Tobago cannot do so in an insular fashion. The Caricom Single Market and Economy is important to every citizen in this region.

An important tenet of the CSME is the free movement of labour and services. In order for us to have the free movement of labour and services, it means that we must have the free movement of service providers. Therefore, Trinidad and Tobago and other member States would have people who are coming to our borders and we must do all we can to ensure that while we benefit from the service of increased supply, and the single economic space, we also protect our borders.

More than that, as in the case of World Cup, this initiative allowed someone who wanted to go through the entire region, to get a visa in one place abroad and, therefore, did not have to go through all the trouble.

I plan to be very brief. I heard the very distinguished Senator imputing improper motives to my colleague and I take strong objection to that. He said that this Bill is about pandering to the United States. This Bill, I repeat, has been signed by eight member States. It was signed by Trinidad and Tobago and Grenada, not in a permanent way. We are now seeking to do that. This Bill is a regional decision. This Bill arose out of the region to see how we can best improve the lot of all the citizens of this region. As a result, being a signatory to a treaty and having a treaty obligation, we proceeded to treat with this matter.

The gentleman who made that comment, Sen. Mark, omitted to tell this Senate when the region was having problems with the Shiprider Agreement and it felt that it could have had better negotiation with the United States, the government to which he belonged, it was one of their first acts, signed the agreement without any consultation. They are in the habit of doing that. There was the Costa Rica Agreement which would have been a Costa Rica/Caricom Agreement but they rushed off and tried to do a Trinidad and Tobago/Costa Rica Agreement. That agreement would have been illegal. When he makes the point that Trinidad and Tobago, the Minister or whoever he is alluding to, is pandering, it is really a treaty obligation.

He speaks about the protection of data. In order to get a visa for the United States, one has to be fingerprinted and information must be given before. You can give all the information and not get the visa. When you travel to the United States, outside of this agreement, you have to give all the information upon arrival at the JFK. In fact, you have to give the information at the airport and if all the information is not there, you would not be issued a boarding pass. The matter about data is really an alarmist position that is dishonest. This information is very simple information and I need not repeat it. [*Interruption*]

Sen. Mark: Dishonest? On a point of order. I know my colleague. I am not a dishonest person. I might be anything else but not dishonest, please.

Sen. The Hon. J. Narace: He is really seeking to mislead the Senate. It is misleading. When we look at countries with APIS, we would realize that many of the developed countries such as Canada, Australia and the United States subscribe to these systems.

I rose to say that when we try to not support important pieces of infrastructure such as this piece of legislation, what we are seeking to do is curtail and retard the progress of the Caricom Single Market and Economy. That is what we are seeking to do. This will prevent many persons from being allowed to move freely. It will retard it. As we seek to create free movement in the entire region for everyone, we would need important pieces of infrastructure such as this.

As I have said, I did not intend to make too much of an intervention but merely to reiterate some of the benefits of this piece of legislation.

I also want to add that Trinidad and Tobago is a member of the World Customs Organization. I also want to put on record that this organization, which was established in 1952, is an independent intergovernmental body, whose mission is to enhance the effectiveness and efficiency of customs administration. All this seeks to build the kind of infrastructure that we want to build.

This argument is an international framework of trade and customs. The information is provided only for law enforcement authorities. It is on a strictly need-to-know basis. It shows the international community that Trinidad and Tobago is committed to the enforcement of the drugs and arms trade.

I can go on with all of the information that will assist in making the point that this piece of legislation is important to the jobs that this region requires for the development of the Caricom Single Market and Economy, as we pursue that single economic space.

I thank you, Mr. President.

Mr. President: Hon. Senators, it is 4.25 p.m. I suggest that we suspend the sitting for the tea break and we come back at 5 o'clock.

4.25 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

[MR. VICE-PRESIDENT *in the Chair*]

Sen. Mohammed Faisal Rahman: Thank you, Mr. Vice-President. I rise today to make my contribution to the Bill to provide for advance passenger information.

I would start by saying that the mask is off and the charade continues. The first time this Bill manifested itself in this country, the Government agreed to a sunset clause which, to my mind, as it turns out today, was a device deception. It was always the intention of the Government to implement the API on a permanent basis and this has come to light today. [*Interruption*]

Sen. Dr. Saith: The sunset is rising.

Sen. M. F. Rahman: Pardon? Anyway, it has now shown all its pretences, in terms of intent. It is intended now to be a permanent fixture. Not that it is necessarily a bad thing, even though I share all the sentiments which my comrade, Sen. Mark, has expressed today, regarding this proposed legislation.

Unfortunately, the book *1984*, which deals with Big Brother, has become a reality in our lives here today. We now have to be looking over our shoulders and paying regard to what Big Brother expects of us. We do live in a global village. We have come to understand that very clearly and, perhaps, the problems that we face in this regard are inescapable. Is it not possible that we can have a degree of honesty when we are bringing measures of this sort for legislation to be passed? Could we not say that there is a need for US security and that we are being asked to cooperate so that the United States of America can maintain its secure borders?

The more the Minister of National Security spoke on this matter today to reassure us, the more it became clearer to me that we are operating as a transmitter of information to the supervisory body of the United States of America, which is examining these lists that are forwarded to it.

We do not have any database; Trinidad and Tobago has no database; the Caricom area has no database of terrorists and global operators of mayhem. If we are now trying to develop such a list, I would say yes, but you do not develop such a list by embarking upon collating a world census of travellers. You can have 22,000 passengers per week, as the Minister mentioned, but getting all those names does not provide the list of the potential or real terrorists, drug dealers and brigands that we are trying to find. We are fooling ourselves.

There is no amount of API that can provide us with the information that we are seeking. We are importing tonnes of haystacks to look for one needle. This is the reality. The good Minister agrees remarkably. We are importing tonnes of

haystacks to look for one needle. If we could be told that we have been provided with Interpol, FBI, CIA and British database of known and established terrorists, then we could have a purpose in asking for an API to be transmitted by the captain of every vessel.

5.05 p.m.

As it is presently, we are demanding information trying to establish draconian fines. We want to charge the hapless captain of an aircraft who runs by his own tight schedule, \$600,000. He is not in charge of collating that information. He has to depend upon other persons to give him that information. The Bill does not even say by which means he is supposed to provide the Chief Immigration Officer in Trinidad with this voluminous amount of information on an instantaneous basis. It does not state by what means of transmission. How is it deemed to have been transmitted adequately, so that he should escape the fine? Now, we do not only want to charge him, but we are adding a jail clause. We are going to make a felon of the man.

Mr. Vice-President, we are playing tag along with the United States of America, but we are getting a lot more enthusiastic about the job that they have given to us than they themselves want us to have.

In the memorandum of agreement, it is proposed that the captain of commercial aircraft and vessels, which is not an unusual expectation. Our Bill seeks to make every sea-going craft, the captain to be charged \$600,000. I do not know if this is a device that we are trying to institute to be able to pick up with the little illegal immigrants that some of those pirogues are depositing on our shoreline, but I do not see any evidence of that.

Presently, a yacht or a pirogue bringing in a passenger for any reason is in deadly trouble. This Bill calls for supervision of every ocean going vessel. This is draconian in an unbelievable way. Not only have we taken up the little baton, but we have picked up a whole lot of stuff to run along with. We want to please Uncle Sam so much that we have to make it look as if we are so enthusiastic that we are going to jail people left, right and centre to be able to get into his good graces. I do not see that we are doing ourselves or the people that we are trying to deal with any service here at all.

Mr. Vice-President, the whole question of the API demands the prerequisite of having data that we do not have. If we were to set about to get databases—we have a Joint Regional Communications Centre (JRCC) that is churning out and putting through this information at a fast rate to see who are the criminals that are running that show. We do not even know where that is.

We know that we have established a Caribbean Court of Justice in Trinidad and a body that has come in to Trinidad to look after toxic waste—and we know where these things are sited. This JRCC is a shadowy entity. We do not know where it exists, who runs it, who are the personnel, who is paying for them and what is going on. It could be a name that has been given to us, so that we would simply toe the line and grab all this information and shunt it off to them.

Mr. Vice-President, do you know that in this present electronic age, what we are doing by providing all this information to this shadowy entity, is making it available on the World Wide Web through hacking—the system of hacking into computers and getting information. We are actually collating a whole set of information to give the world movement of people, so that any organized criminal entity can sit in their office and hack into the JRCC data and find out exactly who is going where, which plane to blow up, where to catch this guy, where to kidnap this other fellow and where to assassinate this other guy.

I was exchanging emails with a certain gentleman once and, suddenly, I got an email from another party whom I do not know. He told me that he has been reading the people exchange. Your emails come to me—I do not know how my emails go to him. I am certainly under scrutiny by somebody somewhere. He said: “You chaps should get together and discuss this matter”, and I said: “Who are you?” I have been exposed to being hacked and tapped into for information I did not venture to give out.

We are seeking to establish with this API, a system that can be violated, and we are actually going to be facilitating the ungodly to get information of a very sensitive nature. If we had the Cold War going on, the other side—whichever that was—would be very happy to have this sort of developing going on, because then they could have information about everybody whom they needed to keep tabs on. This is a very serious security risk. When we are seeking to secure ourselves with the API we are, in fact, exposing all of the people from whom we are getting information, to a far greater danger. I believe this is something that is extremely important for us to bear in mind.

Mr. Vice-President, this is also an age of identity theft—I am sure that everybody here has heard about identity theft—and transmitting this machine-readable information from your passport gives your identity away to that new cadre of criminal that is operating electronically, to take your information and to tap into your most private data. I can almost guarantee you that within three to five years, there is going to be an explosion of identity thefts in the entire Western area in which this sort of information is now being transmitted so very carelessly.

The European Union, which objected to the API information that was being demanded by the United States of America, would have had extremely sound ground for objecting to this proliferation of personal data.

We are embarking upon collaborating in disseminating information of a sensitive nature that does not only expose dignitaries and high profile people, but also ordinary people to having themselves totally violated economical and physically, and we have not given a thought on this matter. To me, this is extremely important.

Now, the advance passenger information which the hapless captain has—now, a captain's job is not an easy one. He has his own worries to see about like the security of his aircraft; the security of his passengers; and the deadlines he has to meet. I do not know how he is going to be able to manage in transmitting this information, and in what manner to the immigration office in Trinidad, but he has a very unenviable task.

I used to be in the travel business, and I have seen the most horrendous misspelling of names. We are not only dealing with the English names like John Smith and Harry James, but we are dealing with Arabic names, Chinese names, Russian names and all sorts of names. I have seen this even on the Pakistan airline. A passenger manifest with names that are so garbled and misspelt, I do not know how you are going to make heads out of tails. If you have been able to get any result out of the API for the last experiment well, I tell, some very good fortune was attending to you, because you are dealing with ordinary ticketing clerks.

My name is Rahman; R-A-H-M-A-N. and you would not believe how many persons have a problem spelling my name, and do not talk about the Mohammed and Faisal. It is ridiculous! Every time I have to repeat how to spell my name. If you go to get a birth certificate or anything, the clerk writes it down the wrong way. This is not a small matter.

What this API is doing is entering us into an area of extreme confusion. We are going to have a comedy of errors, and we are going to have false identification which would be the order of the day. This is a debacle that we are really embarking upon, and this is entirely separate and apart from the points that my colleague, Sen. Mark, has clearly established. These are problems that are facing us when we go willy-nilly into this compliance mode.

Again, we have a situation where legislation is being prioritized that has nothing really to do with our economic or social development. We are looking to

provide everybody with security, and the most insecure nation in the world today—we are heading for number one in murder—is Trinidad and Tobago.

I remember the Minister of Health was very proud to say that there was a time when everybody wanted to run away from Trinidad, but now everybody wants to run toward Trinidad. The unfortunate fact is that the people who are running toward Trinidad are landing up here as prostitutes and illegal immigrants. *[Interruption]* This is very interesting, and this is why we need the API.

Last week or the week before when we were here discussing the problems facing the Government with security companies not registering themselves—you cannot touch them and you do not know where to find them. My dear respected Sen. Lezama, listen carefully.

When people come as illegal immigrants through the back door, you do not know about them. The API does not help you. Do you understand? You do not have these people diligently and very punctiliously registering themselves as proposing to land on your shores. They are coming through the backdoor and this is what is going on.

What is going on here presently in this country is that we have Nigerians and Colombians coming in. It is amazing the number of illegal immigrants that are flooding to Trinidad. Do you know why? In some of these countries, the operators of illegal migration are advertising that in Trinidad and Tobago there is a minimum wage of US \$10 an hour. In Ghana, there are newspaper ads advertising that we are paying US \$10 minimum wage. So, they are paying their \$5,000 or \$10,000 whatever it is, to get on to a boat to land them in Venezuela so that they can come across here by pirogue, so that they can come to this land of plenty. This is the type of people that are flocking to Trinidad now. They are coming for fools' gold.

I know the Minister in the Ministry of Finance is very willing to open our doors to global immigrants, and we can scarcely feed our people. *[Interruption]* You mentioned this earlier. You said that we want to be too parochial; we want to keep everything; and we want to lock up the country. *[Interruption]* Let me keep the floor.

We cannot even accommodate all of Caricom. Do you want the whole of Caricom to come? Well, brother, you have to leave this country fast. We do not even have the means to accommodate them. The point that I am making is—relating it back to the API—that we have a situation of total insecurity in this country right now where we have illegal immigrants that we have no control over.

5.20 p.m.

The unfortunate thing is that when these people are discovered and being sent back, there is no attempt to identify or prosecute the people who brought them here in the first place. The Colombian prostitutes are here; okay we line them up; some police officers violate them and then we ship them back to where they came from, but nobody makes any effort to find out which was the boat they came on, so we could get a \$600,000 off the master of the vessel; that is one of the provisos.

There is no question about it, the API is intended to facilitate the United States of America; it has nothing to do with Trinidad and Tobago or Caricom security. Trinidad and Tobago or Caricom security is an impossible proposition since almost all of us are circled by water, and even Guyana can be accessed over land. So, there is no security with the API. This is why I said earlier that the charade continues; the mask is off but the charade continues, because we are continuing to pretend that this API has relevance to Trinidad and Tobago. I do not know what is the cost to us because you do not get this kind of work done for nothing. This is costing Trinidad and Tobago money and I do not know under what subhead we are charging it out, because this is definitely doing somebody else's work.

If there is a virtue in collaborating with the United States of America and I would not doubt, because we are on their doorstep and if terrorists pass through here, go up there and blow up something, we are going to have a fallout; we know that. But could the Government not come with an honest proposition and say this API is to collaborate with Uncle Sam and give them some help to protect their shores and borders; nothing for us, but we have to give a little to get a little? I would not have a problem with that, but as it is right now we are setting out to violate the rights of people globally, including our own people, without any reciprocity for the United States of America by the way, because they pelt their deportees down here like nothing. They do not tell us in advance, here are your advances of deportees coming for this year. No, they land here and as one of my friends said earlier, could be a Trinidadian who went to the United States at age two and when he comes back to Trinidad he knows nobody and the only people waiting to greet him are the ungodly who want to recruit him and say come join the band. So, we have a situation here where the API as proposed is totally useless to Trinidad and Tobago and to Caricom.

Come and tell us that we want to pass this law for Big Brother; we want to cooperate with Big Brother; we want to do our little part. Okay, we will cooperate; we will get a constitutional majority as we are going to violate people's

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[SEN. RAHMAN]

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rights a bit on constitutional things and so on. We probably would say okay, okay, because if we were on that side we probably would have to do the same thing ourselves. What you are doing to us here is insulting our intelligence. We might look stupid, but we are not really stupid; we are playing stupid. [*Laughter*] Looks are deceiving.

I want to say that API is a joke of official delusion; it is a mis-focus of diligence, meaningless in effect and futile as policy. It is not setting out to accomplish the truth. It wants to help Big Brother; then help Big Brother, do not fool us. [*Laughter*]

I want to repeat, Mr. Vice-President, before we forget; that this matter of making obligatory on all ocean vessels—how is it phrased here? “in effect, every little craft”—puts at risk all the yachts; all the pleasure crafts; all the different little— It is going to put a very huge administrative burden upon the police. I do not know if the police are going to be directly involved or whether it is immigration, but you should revert, if you insist upon this API, to the commercial aircraft and commercial craft. Why do you want to make it all water craft? Why do you want to make it so hard, so that even the little yachties coming in; he alone coming in; he did not declare himself on time, in advance by some sort of electronic transmitting system. As soon as he lands on the ground, "ah ha, we catch you", \$600,000 and so many months in jail. You are not going to improve your yachting facilities in Trinidad after a bit, it is going to fall down.

I will say this, one of the things that struck me and I will want to go through the Act bit by bit, is this, this Act is being called the Immigration Act, 2008. I want to say that while immigration comes under national security, there is a more appropriate subheading. We do have a section under national security to do with internal security. If this Bill is to be presented at all, hopefully modified with some amount of honesty attached to it, it should not be called an Immigration Bill; it should be called Internal Security Bill. Something under the same national security heading but more appropriate, because it is not really something that has to do with the immigration aspect; it has to do with the security aspect of our country.

If we are serious about weeding out undesirables from coming to Trinidad—and what comes to mind is Sen. Basharat Ali's example of how Trinidadians could not travel from Tobago to Trinidad because they were on a United States aircraft. That is something that really opened my eyes and I said to myself, what a thing you are putting yourself into. Let us come back to the point I was making.

If we wanted to be serious about containing illegal immigration there is a very, very easy route to go that will solve all of the problems that we are seeking to overcome right now. This API thing is a last minute rushing business that prosecutes innocent people and criminalizes the innocent men. We have many embassies in various parts of world and when we do not have embassies, we have embassies that act on our behalf.

Sen. Baptiste-Mc Knight: No.

Sen. M. F. Rahman: Sen. Baptiste-Mc Knight says no; well then, we should. And if anybody wants to come to Trinidad—it is very simple—let us establish the requirements for a visa, so you do not have departing today, you are arriving tomorrow and we have to scramble to see whether you are what you call it, not *persona non grata*, we establish a visa system; we can even pay the United States of America to let their embassies approve our visitors on a particular basis and only to exclude on the basis of terrorists or criminal record. *[Interruption]* We are already colonized.

This API is a form of re-colonialization; we are doing this for Big Brother. What I am saying is this, if you want to establish an API where the information has to come from every yacht, every pirogue and you are going to charge people \$600,000 and you cannot even process this information as you would like to; have your country issue visas to visitors, and you have months of notification before the people arrive and you simply do not give visas to the people that you do not want to.

As it is right now, we have opened our non-visa requirements to Commonwealth citizens as far as I know, but if Commonwealth citizens suddenly become the risk area where terrorists are coming; if you have Pakistani immigrants coming as potential terrorists, then we have to close that loophole. But with a visa system—and the API acknowledges the visa matter. The API legislation *[Inaudible]* presented has reference to visas. Visa is not a foreign device; we have visas for Trinidad and Tobago. So, if you want to weed out people who are suspicious and dangerous to the country, let it be established on the basis of a visa application, then you know that this person would not be coming; then you do not have to worry about whether he is going to come so you can tell Big Brother, because he is not coming.

I will tell you, there is also the possibility of getting notification through the International Air Transport Authority (IATA) for all incoming airline passengers at the moment of ticketing being accomplished. Everybody who travels by aircraft today, uses IATA as the clearing house and there is absolutely no reason why we

could not have IATA submit to the nations of the world—for the sake of the security in which they themselves are interested—the names of passengers with whatever legitimate information you may want of them coming to these shores. That way you have two weeks and three weeks notification; you do not want to have re-colonialization with a visa system. Okay, let us do it through IATA. But the whole system of the API is a proposition that is a pre-collapsed idea. This API is going to spawn all of the dangerous things I told you about when these databases are hacked and information is being strewn all over the place as to who has gone where and what country of the world.

Now, it is interesting, we have the United States of America receiving this information from us, being able to tell our Trinidad nationals that they cannot travel from Tobago to Trinidad, but have we ever shared in any security risk list that the United States of America has prepared for itself? Is it that we give information for them to screen to give it back to us and tell us who can do what? I really am not too sure but I understand, any aspect of fairness or nationalism that the API has proposed generates, so that our people can say that yes, we are sharing in an equal venture with a very large country, but nevertheless being treated with the same amount of dignity and consideration.

Mr. Vice-President, let me just run through this Bill very quickly, because there are a couple of points we should—The Bill states that:

"A master who intentionally or recklessly—

(a) fails to transmit the data..."

Even though he was supposed to transmit that data when he was in a foreign country, before he even smell Trinidad atmosphere.

"is deemed to have committed an offence in Trinidad and Tobago..."

I am a little confused about that. How could you have committed an offence in Trinidad and Tobago before you leave your port of departure to come to Trinidad and Tobago? You may want to phrase this: "is deemed to have committed an offence under Trinidad and Tobago law and liable upon here to a fine of—" and you want to add your bit of jail term. This is something that needs being addressed.

Sen. Joseph: Thank you very much for giving way. Let me just indicate the jail term came as a result of discussion in the other place and it was on the recommendation of the former Attorney General who indicated that it was necessary in order to provide that. We got a lawyer and it was in agreement in the Lower House. So, when you say, "before you add your little jail term" it is inconsistent with the law from; what I understand, that there is always either a fine and court term.

5.35 p.m.

Sen. M. F. Rahman: Okay, you have clarified the fine and the jail “ting”, but you have not clarified how an offence could be committed in Trinidad and Tobago before you leave to come to Trinidad and Tobago; that is the aspect I am pointing out to you.

“The Minister may by Order waive the requirement for a master of a vessel...”

I want to repeat: Make this commercial vessels alone, so you do not run into this tremendous trouble of having to police every little yacht and every little pirogue that comes around Trinidad and Tobago’s shores.

Mr. Vice-President, I believe that I have raised sufficient concerns. [*Laughter*] I know the hon. Minister does not intend that in the way it should be intended, but I believe he recognizes that I have raised many points that should come back to you for reconsidering of this matter of the API, which has been presented under the cloak and guise of a Trinidad and Tobago piece of legislation, that is really a United States of America government piece of legislation.

I thank you, Sir.

Sen. Dana Seetahal SC: Thank you very much, Mr. Vice-President. My first issue in respect of this Bill before us is to deal with the suggestion of unconstitutionality which has been raised by at least two speakers.

The Bill, in essence, at clause 3 really seeks to require vessels that are coming to Trinidad and Tobago to provide our Chief Immigration Officer with certain advance passenger information; so if you are a ship, you are a plane and you are coming to this country, you are required to provide that information.

There is nothing in the Bill about providing information outside. People should read that Bill again if there is any doubt, it says:

“The master of every vessel destined for Trinidad and Tobago,”—meaning you are coming to Trinidad and Tobago—“prior to departure of the vessel from the last port of call before Trinidad and Tobago, shall provide to the Chief Immigration Officer the advance passenger information data detailed in the Schedule.”

So, Mr. Vice-President, Trinidad and Tobago really is gaining information under this Bill. Somewhere else there might be some practice where we give information, but certainly not under this Bill. If we are gaining information about people coming into this country how can there be a breach of the rights of the citizens of Trinidad and Tobago?

Sen. Browne: Thank you.

Sen. D. Seetahal SC: Now, the right that was referred to was the right at section 4 of the Constitution which is the fundamental human rights section, in particular, section 4(c) which talks about respect for:

“the right of the individual to respect for his private and family life;”

That right, just to make it plain, cannot be affected where persons coming in to Trinidad and Tobago are giving the authorities in Trinidad and Tobago their information. Okay? So there is no question in my view and anybody's view who is looking at this, that this Bill or the provision, which is really clause 3, is unconstitutional.

Now, what may be of concern to some is the memorandum of intent between the government of the US and Caricom which has been referred to by Sen. Mark and Article IV of that memorandum says:

“Each Member State participant to this MOI, reiterates its intention to—

- a) promptly enact, or confirm the existence of laws which—
 - i. mandate commercial air and sea carriers to provide prior to departure for or from that Member State as the case may be, the API data,”

So there is this Memorandum of Intent and it says member States to the MOI which include Caricom states and the United States should provide to each other data from persons who are travelling on commercial air.

But this MOI talks about departure for or from the member State. So under the MOI, normally you would, when people are leaving give information to other countries and when they are coming into the country you can request.

However, we have only passed or are attempting to pass legislation—I should say—for people coming into Trinidad and Tobago, so there can be no breach of any constitutional right. It may be that were we to subsequently pass legislation which demands that information goes out, then there would be an issue, maybe, and that is when you would need to look at that. My view is when that time comes or if it is being done under executive prerogative right now, that we need to look at laws to protect persons' privacy in this country. We need to look at data protection.

So, I repeat that this Bill has nothing which affects persons' privacy rights; were we to bring before this Parliament legislation which gives our authorities the right to send out information, then we would have to pass laws to protect persons' rights, but that is not yet before us. If persons in this Parliament know of

executive prerogative by which this information is going out, then that matter should be brought, clearly, to the Parliament and the Parliament should be persuaded to enact legislation to protect our citizens' rights to confidential information. However—at least one of my colleagues had made the point—that information that we are talking about—advance passenger information data—is really the kind of information that you give in your landing card. Really!

Hon. Senator: “Yeah”.

Sen. D. Seetahal SC: It is really the same thing what I am seeing here. What effectively we are talking about is to give it before you actually land, so that is the only difference.

Persons have also talked about the violation that they feel and so on. My colleague, Sen. Ali raised the point of between Trinidad and Tobago there was this incident where Sen. Dr. Mc Kenzie talked of where persons, if they are travelling from Tobago to Trinidad in this ship registered in the United States had to disclose information. Now, I do not think that that can be blamed on this Bill or any other law. What that requirement would have stemmed from was United States law and United States law would deem a ship registered in the United States, United States territory, so too would an airplane and so too would Trinidad and Tobago law under the civil aviation laws. If you are travelling in a Trinidad and Tobago plane, and even if you were in the air space, or in Barbados, or wherever, you would be in the country of Trinidad and Tobago.

So, the reason for that requirement to which Sen. Ali referred, was because it was a US ship and undoubtedly in the United States there is this advance passenger information requirement because of the September 11 situation. What we have to do, if we want to ensure that we do not have a repetition of that, is not hire United States—I think they have gone to Europe now.

There was another incident, I think, referred to by one of my colleagues, but I cannot remember it at present, but I will refer to it if I come again. I also want to point out that in the United States, right now when you land you have to give your finger prints, you have to have your photo taken and 90 per cent of persons of East Indian descent are now targeted “SSSS”. I do not know what it means but it is obviously special security search something, because it happened to me five times out of six times in 2004—

Hon. Senator: “Hmm”.

Sen. D. Seetahal SC:—when I was a guest of the United States government. I figured because they cannot differentiate between someone who looks like an Arab terrorist and somebody who is of East Indian descent and that is the problem

or the risk we take when we want to go to the “Big Apple”. Fortunately, I have to say New York City is the only city that did not pick me out, probably, because they are accustomed to seeing a lot of us. So, that is the problem if we want to go to a country that has—so they consider—many security risks and they do seem to have it. Up to recently I read of some bomb being placed by some government office again.

Mr. Vice-President, my colleague, the gentleman Senator who spoke before me said [*Laughter*] that there was a question of illegal vessels bringing in Colombians and so on, and how would this Bill cover them because they will have to disclose lists of people. I want to point out to him that any persons who have come to this country illegally would be breaching the Immigration Act and they would be subject to all sorts of different other penalties, so that would not matter or they would not fall under this. We are talking about persons coming into the country legitimately, and I dare say, yachties who already have to declare to the customs, ought not to find too much of a problem with declaring to the Chief Immigration Officer before they land in Trinidad and Tobago.

Because, Mr. Vice-President, it is very easy for these small planes—I saw one land in the Queens Park Savannah yesterday actually, but I think it was a local plane. In any event there are a lot of small planes and small craft interceptors or light interceptors that come into this country—a lot of them through the Godineau River and places like that—and they are the ones which bring in a lot of contraband. So, I think we need to, definitely, include them under requirements. We need to know who are these people coming into this country other than a true commercial flight, because it is probably more likely that you will have people coming in too for illegal reasons in these smaller vessels.

So I will then turn to the actual Bill. In relation to clause 3(1)—and clause 3, is really the only substantive clause in this Bill; it is a one clause Bill as it were—there is the requirement that the master of the vessel provide to the Chief Immigration Officer the advance passenger information. My view is that the connotation of the word, “provide” sounds like in person or as if he was here. If one looks at clause 3 which talks about,

“A master who intentionally or recklessly—

(a) fails to transmit the data...”

I wonder why clause 1 did not speak of transmitting to the Chief Immigration Officer, that is:

“The master of every vessel destined for Trinidad and Tobago, prior to departure of the vessel from the last port of call before Trinidad and Tobago, shall—”

transmit to the chief officer. I wonder.

It suggests to me that that might be the more accurate term and probably the drafters might want to look at it, consistent with clause 2, because one would imagine that this would have to come by way of fax or some such way. If you are penalizing that person—

[MR. PRESIDENT *in the Chair*]

If you are penalizing the master for failing to transmit the data, it would seem to me that the requirement in clause 3 would be to transmit it, not to provide it, because then you would have to say:

“A Master who intentionally or recklessly—

(a) fails to provide the data...”

That is really for consistency.

Now there are two issues raised, but the question of it being deemed to have been committed in Trinidad and Tobago, whether the phraseology is entirely correct might be an issue and we may want to look at the Terrorism Act to consider this, because in the Terrorism Act, the—I do not know what the actual drafting was, but it dealt with persons committing offences outside of Trinidad and Tobago being liable to be prosecuted in Trinidad and Tobago. When the first Bill came before us last year, I had raised then with the Government, how could you have an offense being committed or at least how can you enforce an offence when it is committed abroad? At that time we were talking about the same thing and there was no deeming position which is why now I believe there is the deeming provision because otherwise how would you enforce it.

5.50 p.m.

At the time I was told, I remembered vividly, that we are doing what everyone else was. ‘Yeah’, but we cannot enforce anything. Now, that is the way we must have jurisdiction in Trinidad and Tobago in order to prosecute. How do we have it by deeming it to be committed in Trinidad and Tobago? Whether or not the drafting might be preferable and the way it is suggested by Sen. Ali, is something to look at because that might be neater. It is just a question of neater drafting.

The Minister, the promoter of this Bill also indicated an amendment in which the penalty section should be different and where persons would now be liable on summary conviction to a fine of \$600,000 or six months. What we have before us

is no indication of where the matter will be tried. At least, it makes it clear that it would be tried in the Magistrates' Court. I find that a fine of \$600,000 or six months is kind of ridiculous to say the least.

In the Summary Courts Act, where a person fails to pay a civil debt, the alternative is six weeks imprisonment. Other than that, there is listed in section 68 of the Summary Courts Act where a penalty is between zero and \$500, the alternative shall be three months or so. You will find much legislation saying, for example, the maximum penalty for a person who uses obscene language, et cetera, is a fine of \$200 or two months. You will say, okay; you pay \$200 or you are liable to two months imprisonment. This is not exactly what we are seeing here. We are saying it is \$600,000 and six months. I am enquiring what is the alternative to the fine part if you were to be given a fine of \$300,000 and two months. Do you realize that there would be no alternative to the fine itself? The only alternative would have to be what is in the Summary Courts Act, which is six weeks. I think that is something that needs to be cleared up because as it stands, if a person is fined, the magistrate says \$100,000, it never happens, I dare say.

Usually, when an Act—except for the Integrity in Public Life Act which was a weird phenomenon—is first being enforced, the court never gives a serious penalty. So probably, a magistrate might say let it be a fine of \$50,000. There is no alternative to that in the bill, so what would the magistrate have to read into it? There would be arguments everyday in court as to whether that alternative \$50,000 could be 6 months, or if it is that you said \$600,000 and six months. Should we look at an appropriate—. Here you have not even said, “or six months”, you have said, “and six months.” That issue needs to be looked at.

Mr. President, it is actually another oddity. For example, I do not know if anyone here knows the penalty for litter. Probably, the Minister in charge of the environment may know. The maximum penalty is \$10,000 or six months imprisonment. You are creating an anomaly. You have a fine here of \$600,000, but your maximum jail term is the same as for littering. That needs to be looked at as alternatively, for most traffic offences if you are convicted of driving carelessly and dangerously, I think that it is six months if you are convicted. We amended the law here to be something like 12 months, and all kinds of arbitrary little offences carry a six months penalty. For consistency, that needs to be considered between this week and next week. I am sure that we can get it right in terms of how that is stated, or you may want to lower the penalty. If in fact that is US \$100,000 which you are looking at and which is consistent with the US law, one needs to look at an alternative.

Thank you, Mr. President. [*Desk thumping*]

Sen. Dr. Jennifer Kernahan: Thank you, Mr. President for the opportunity to contribute to this Bill to make provision for the transmission of the Advance Passenger Information respecting persons travelling to Trinidad and Tobago and for related matters.

The essence of this Bill is demonstrated in clause 3(1) of the Bill which says:

"The master of every vessel destined for Trinidad and Tobago, prior to departure of the vessel from the land of port of call before Trinidad and Tobago, shall provide to the Chief Immigration Office the advance passenger information data detailed in the schedule."

Clause 3(2) says that:

"(2) A master who intentionally or recklessly—

- (a) fails to transmit the data required by subsection (1); or
- (b) transmit incomplete or false data,

is deemed to have committed an offence in Trinidad and Tobago and is liable to a fine of six hundred thousand dollars."

This is the essence of the Act before us and this essence of the Bill is that all vessels coming to Trinidad and Tobago must transmit in advance, information on the passengers.

This is the second time incarnation of this Bill in the Senate. This Bill came to the Senate on November 07, 2006, under the guise then, of instituting a security mechanism in the Caribbean Community, consisting of nine countries, for the purpose of securing a single space for Cricket World Cup 2007. The Minister then, as today, made a case for API based on threats of terrorism, drug trafficking and the need for border security and so on, and he then announced that the Bill would have a sunset clause.

In this debate, I immediately questioned the creditability of the Minister after having painted such a picture of the dire need for such a Bill. Why would you want to say then, "Well, it is just for World Cup and it will have the sunset clause?" We made the point then that clearly, the original intent of the Bill could not have been to have a sunset clause. The reason the Minister was forced very quickly to make such a statement, is that he wished to delink the question of the API from the Memorandum of Agreement with the United States and the Members of the Caribbean Community. Sen. Wade Mark had pointed out at the time that it was purely to facilitate the security concerns of the United States and Homeland Security and it had nothing to do with our concerns in our security and sovereignty.

Having said that, it is clear that we are debating this Bill today because what we understood then, pulls through. The Bill was clearly never originally intended to have a sunset clause. It was intended to be permanent legislation and it is clearly linked to the memorandum of intent between the Government of the United States of America and Member States of the Caribbean Community.

Today, Sen. Mark made the point in his presentation that we are concerned with security issues in the Caribbean and Latin America. What we are saying today, as we said then in the first debate, is that our security issues must be resolved in the context of respect for our sovereignty as a people; respect for the sovereignty of the peoples of the Caribbean islands and the multi-cultural, multi-ethnic and multi-racial profile, that we have in our beautiful islands. Our security issue concerns strategies and must be based on respect for fundamental human rights of our people.

What came out very clearly in the debate this afternoon, is that there are serious concerns of our Caribbean citizens of racial, ethnic and religious profiling. There are also serious concerns with respect to profiling persons based on their political ideology and whether or not you agree with wars of aggression being waged by the United States of America in countries like Iraq, Afghanistan, and so on; whether or not politically, you are in sync or agree with the low intensity wars that are being waged everyday in Latin America; and whether or not the profiling, targeting and harassment are also based on whether or not you are opposed to the hypocrisy of the United States, with respect to how they deal with terrorists and terrorist elements.

For example, Posada Carriles, known international terrorist who murdered 72 people in a conspiracy to down an aircraft off the coast of Barbados—a plane which left Trinidad, went to Barbados and was on its way to Cuba. In spite of all the API, profiling, and insults that we are subjected to as Caribbean people, this gentleman having broken from prison in Venezuela walks free in Miami and he is a convicted murderer and a known international terrorist. You are profiled and targeted based on your opposition to this sort of hypocrisy, and this is not restricted.

A couple weeks ago, I was privileged to attend a conference in Venezuela of the “World Peace Council”. One of the presenters of that conference was a Peruvian presidential candidate in their last election for president. He told the conference that he travelled subsequently to the United States and he was actually held and imprisoned in the United States for over 16 months. It was something like that if my memory serves me right, on the charge of being a communist. These things happen to real people in the 21st Century.

Many people have given testimony, my colleague here. When you travel through the Caribbean and pass through Miami, they want to know if you have been to Cuba. They want to find out where you have been and where you came from. They target you for harassment if you come from Cuba and Venezuela. These are the issues that we have. They have their issues with respect to border security, but we are sovereign people.

We have to understand that although we will collaborate in a principled manner with any State with respect to ensuring that our peoples are free from terrorist attacks, secure to travel and move around, we have to do it on our terms. I am saying that our problem with this API legislation is one about which I am not convinced. We are not convinced that we are doing this on our terms. In fact, we are doing it in the context of a whole range of issues which has not been properly brought to this Parliament and I will deal with that later on.

Some of the issues that we need to look at very carefully, were raised by Mia Mottley, who was then the Chairman of the Caricom Security Sub-committee and Deputy Prime Minister of Barbados. On July 10, 2006—I will read some of this article because it will highlight very clearly some of the concerns that we have today. This article is courtesy Jamaica Information Services, a Jamaican Government organization and the headline is: “Free Movement for Caricom Nationals during Cricket World Cup 2007.”

6.05 p.m.

It says in the second paragraph:

"On the final day of the 27th Regular Meeting of the Heads of Government in St. Kitts and Nevis...leaders agreed to the implementation of an extensive and sophisticated security plan for the event, that should not exceed US \$13 million.

Trinidad and Tobago and Jamaica will contribute US \$2.5 million each; Barbados, US \$2 million and the other six countries participating in the World Cup will provide US \$1 million."

Mia Mottley was quoted as saying:

"...Caricom nationals would also be subject to an 'electronic vetting in relation to the passenger manifesto submitted by airlines or cruise ships prior to departure'."

Clearly that was the advance passenger information that she was referring to then. She went on to say:

“The vetting process would be conducted in collaboration with the United States government, which would allow access to its ‘advance passenger information system’, Miss Mottley disclosed. To this end, representatives from the US government signed a Memorandum of Understanding with Caricom during the annual summit on Thursday (July 6).”

Clearly, it was no secret at the level of Caricom that there would be very close collaboration in vetting this advance passenger information with respect to the US; they would be vetting the information.

Mia Mottley said it:

"Miss Mottley explained that the advance passenger information system 'will allow us to determine who should not be allowed entry, even before the cruise ship arrives at the point of destination'."

Another point that she made, which should give us pause, was that:

"Domestic and regional watch lists will also be generated to include persons who have been deported to prevent their entry into the community. The security plan will also feature the setting up of a Caricom Intelligence Shared Network (CISNet), which is being financed by the Government of Trinidad and Tobago."

I find it strange that CISNet, which is being financed by the Government of Trinidad and Tobago, was not mentioned in the Minister's presentation of the API. The API is just part of a whole framework of other instruments that are being implemented right now in terms of the security of the Caricom region, in collaboration with the US, based on the memorandum of agreement.

When the Minister of National Security made the point very vehemently today in this Senate, that there was no question of sharing information with a third party and that this API would be kept within the Caricom region, this is not what one understands from the CISNet framework. Sen. Seetahal SC made the point that based on the Bill before us it says nothing about having to divulge information, but we have to look at what is before us in the context of the whole framework agreement of CISNet, because API is just part of it.

In every heading and every aspect of this CISNet proposal, which is being financed by the Government of Trinidad and Tobago, you see where information will be shared. I want to look at the framework outline of the Caribbean Intelligence Sharing Network. The headline here is "Systems of Platforms". There are a number of systems that we are paying for and that we are financing in the Caricom region with respect to how we deal with security.

One is the Caricom Intelligence Sharing Network (CISNet); then you have the Caricom Automated Watchlist Management System (CAWS); then you have the Advanced Passenger Information System (APIS); then you have Caricom Intelligence Management System (CIMS), and then you have other regional projects. So, clearly, what is before us today is just the tip of the iceberg. The Advanced Passenger Information System is just part of the whole security network and systems that are being set up in Caricom in collaboration with the United States of America, based on the memorandum of intent.

Mr. President, to understand the Minister's contribution today and the disingenuous way in which he presented information, we simply have to go to what is said in these documents and the explanation for all these different systems that are part of the whole framework. We just have to look at the first heading, "What is CISNet?" It is:

"A secure messaging and collaboration to facilitate the exchange of intelligence information and to foster a closer working relationship among the various stakeholder security agencies throughout the region."

So when the Minister said that information would not be shared with third parties, the whole concept of this system is to share and exchange information, not just among Caricom members but, clearly, to third parties, as we would see later on.

If we look at another section, "Producing Actionable Intelligence", it says that you need standardization of a number of things:

"Analysis techniques

Tools for data analysis and presentation..."

And most importantly, in the context of what the Minister said today:

"Operating procedures for the exchange of information

Platform for data exchange and collaboration"

This is what the system is about: to collect and exchange information, to establish operating procedures for the exchange of information and to provide a platform for data exchange and collaboration. So why did the Minister give us the impression that this would not take place? This is the concept of the system.

This system was designed to be so sophisticated that you have a whole section on CISNet online collaboration, where you can:

"Conduct online meetings anytime, anywhere...participants can meet, collaborate and share information, applications and documents in a secure interactive environment.

Provides an integrated audio and video conferencing infrastructure to deliver a complete conferencing experience."

Very sophisticated systems are being set up to share information and, clearly, that information will be shared with a third party based on the memorandum of agreement before it. Why are we being told otherwise? Why are we being given the impression that it will happen otherwise?

I want to go to another aspect of this document that the Trinidad and Tobago Government is apparently financing. We are talking now about the Caricom watch list. What is the purpose of this watch list?

"...to provide regional national security entities with a single continuously updated list of persons of interest and action to be taken if detected to assist with border security."

"Who are these persons of interest?" Sen. Prof. Deosaran asked. Clearly, persons of interest to the United States of America will not necessarily be persons of interest to us, outside of the obvious persons, of course: the drug traffickers, pedophiles and traffickers in humans. As I made mention before, different countries have different political interests, different histories and different priorities. Is it that we have given up all our integrity and rights to define who our persons of interest are, and we would just depend on what the United States defines as persons of interest? Would we target and harass these persons? Remember that we have a history of that.

When Kwame Ture, (Stokely Carmichael) was an activist in the United States of America in the 1970s, he was a citizen of this country, and under the Eric Williams regime we banned our own citizen from coming back to his own homeland. So we have a history of "drinking bush tea for other people fever". That was the point we made in the last debate; that we ought not to be doing that. Therefore, we ought to be very clear, as Sen. Prof. Deosaran asked: "Who are these persons of interest, outside of the obvious ones?"

There is no document before us that defines who we think are persons of interest or who we would refuse entry to in terms of political ideology, ethnic origin or whatever. We have to define these things and bring them to the Parliament. The Minister ought to bring these issues to the Parliament, because the API is just the tip of the iceberg. They are going to come with API today, very innocuous, "Other countries are doing it; it is important to facilitate the flow of passengers and to understand who is coming into your country"; but that is not the issue.

The issue here is that we are setting up an elaborate system; all kinds of technology are being used to define persons of interest, to define unwanted persons, and we have no idea if this will eventually work against our sovereignty, our right to object to certain things, to object to what is happening in the world, to object to foreign policy by other governments. We could easily find ourselves on those lists. The same persons who are sitting in this Parliament passing this legislation today and defending it, could find themselves as persons of interest because they express a certain point of view. We have to be very careful about that.

There is another interesting part of this document before me. It is a whole system of issues that we are taking up here. We come now to the advance passenger information system:

"Passenger screening and tracking of the movement of persons"

It is not just a question of screening passengers, as the debate has been centred around this afternoon; it is a little more sinister than that. It is screening and tracking of the movement of persons. We said that in the last debate; this has some very sinister connotations. Who are these persons who will have access to this database of your movements, that we would be sharing this information with, based on the memorandum of intent before us? Why are they interested in tracking the movements of persons?

Does it mean that if I leave Trinidad and Tobago to go to Venezuela or Cuba, somebody would want to know; somebody would want to be able to say, "Well, you have been to this and that country and you have probably spoken to this and that person"? My colleague brought up the issue of Big Brother watching you; we are exactly in that mode.

This may not necessarily be in our interest in terms of what we want for our people. Do we really want this? Is it our idea to track persons, like hunters, like hunting dogs? Do we necessarily want to track our citizens? It may be in the interest of Homeland Security to track persons who they feel might be inimical to their interests, but is this what we want to do? Why are we financing this? This is the question that we have to ask this afternoon. These are some of the issues that the Minister of National Security should have raised with us this afternoon.

Under API this is what it says, and in the context of what the Minister presented, it is very different. I quote:

"Intelligence an important input into effective border security

Border control can benefit from:

VISA screening

APIS screening

Feedback mechanisms required to ensure that information discovered at any one point is filtered through to all relevant parties."

The Minister said that this was something we were doing for ourselves and we were not sharing it, but it says differently here. This explains API:

"Feedback mechanisms required to ensure that information discovered at any one point is filtered through to all relevant parties."

We have the memorandum of understanding before us.

6.20 p.m.

So clearly, all information at any point in time will be filtered. It says so clearly, that is what it is for. It will be filtered back to the relevant parties because we have a memorandum of intent to that effect. Mr. President, there are some very interesting issues, and this is the Caribbean Intelligence Sharing Network (CISNet) which is being financed by the Government of Trinidad and Tobago and the Minister of National Security came to talk about API, the tip of the iceberg, one of the factors in the whole framework in all the systems they are putting in place and he did not tell us about anything else.

Put it in the context, if you want to talk about API, put it in the context of what the Caribbean Intelligence Sharing Network is about to do or what it wants to do. Be upfront, this is what my colleague said, be honest. Why can you not ever be honest, upfront and straightforward and tell the people what is happening. Do not give us little snapshots of the picture. [*Desk thumping*]

Sen. Joseph: Thank you very much for giving way. Mr. President, obviously the hon. Senator did not listen to what I said, because in response to Sen. Prof. Deosaran who wanted to find out how the information from APIS was going to be utilized, I talked about the Caricom watch list, the regional watch list, the United Nations watch list and the Interpol watch list.

I also indicated outside of a memorandum of intent with the United States Government and I am going to respond, but there is nothing with respect to the United States Government because of the fact that there are certain issues that still have not been cleared up. So to say that I was deceptive, obviously somebody was not listening. [*Desk thumping*]

Sen. Dr. J. Kernahan: Mr. President, I never said that the Minister was deceptive. I said that he did not give us the whole story in the context, I said the Minister should have mentioned—*[Interruption]* No, the Minister never told us that CISNet was up and running and we are paying for it and he implied that information would be kept within the corridors of Caricom and so forth, and that is not so. It is set up to share, collaboration and devolution to other third parties.

Mr. President: I think you should be very careful of how you impute improper motives to the Senator. The Minister has just made a statement that is very clear to me, and I think you need to take what he has said and leave it there. I think to challenge him on that now is to be contrary to the Standing Orders, so you need to accept what he has said and move on.

Sen. Dr. J. Kernahan: Mr. President, I am only going based on the notes I have before me with respect to what the Minister said, I cannot go on anything else.

Mr. President, we have a CISNet of which API is a part and under border security issues, it gives a number of points; that you have the ability to screen persons at point of entry into member States, you have the capability to screen passengers before travelling to the region, which is the API; issue, then you have to have sharing of information via border control systems between member States, and this is where the sharing of information comes in and which is what I take note with the Minister where he said that information would not be shared by a third party.

You have to have capability to disseminate critical operational information in real time—that is the whole point—and interaction with regional intelligence. So every aspect of this operation of which API is just a tip of the iceberg, you have this huge very technological advanced database and collaboration systems information and video conferencing in real time as things happen, as people come. As the information comes in, it goes out; information in/information out and we are saying, as Sen. Mark made the point that we have a concern for protection of personal data and information and we are not sure that we are properly protected by giving the wide scope of this CISNet technology and given the commitment and the memorandum of intent which is before us.

Under Advance Passenger Information System, listen to the level of technology we are going to use here to provide information. It utilizes a data exchange platform which can accept API data and process it against any watch list: US, Interpol, Caricom, et cetera. The system will be able to receive regional

APIs process and disseminate them to individual countries, screening capability, Interpol persons, Interpol, SLTD, additional capability, support for vetting of false positives, alert and advisory services to assist regional board of management agency.

So, Mr. President, we are moving ahead very fast, at a very rapid pace and the Parliament has not been apprised of all the ramifications of what is before us. We have been given a Bill with three clauses and look at the document that is before us and the context in which we must take this Bill of three clauses.

This administration always comes to this Parliament saying we have a very simple Bill before us, let us wrap it up quickly and go home. Everything is simple, let us wrap it up and go home, and if you do not do your homework, if you do not understand what is going on and if you do not read between the lines and do your research, you wrap it up quickly and go home to your detriment. This is what is happening here. Look at the level of the system that we are implementing here and they come with three clauses and the most innocuous clauses in terms of what is happening here.

Hon. Senator: Innocuous, what does that mean?

Sen. Dr. J. Kernahan: And as other Senators have said this afternoon, even these clauses they have leave much to be desired in terms of the types of fines that people are being charged whilst the master, the one who is responsible for this, when he does not actually take information.

Even these three clauses, Mr. President, are defective. It is interesting when we go to another aspect of CISNet and they tell us what is being done right now that the people of Trinidad and Tobago are paying for. We are establishing capability for border control systems to receive "API hit information on passenger manifest", "consolidation of passenger information record." What does that mean? You are keeping databases on individual passengers and their record and movement, where they come from, where they are going, so you are actually building databases on persons. Is that what it means?

Another sinister capability is "regional assessment of passenger movement for trend analysis." So they want to know the trends in terms of if Sen. Mark goes to Cuba, Venezuela, North Korea or if he travels to the Ukraine, they need to have this database of Wade Mark to ensure that they can track him. Those are the words they use; to track passenger information and the other one is visitor tracking. I find these words very interesting, visitor tracking. This is what API is for.

The Minister of National Security in collaboration with the United States Government is establishing—

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I beg to move that this Senate do now adjourn to Tuesday, May 13, 2008 at 1.30 p.m., where we would continue this debate, and with time permitting deal with Government Business, Motion No. 2 on the Order Paper by the Minister of Agriculture, Land and Marine Resources.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.31 p.m.