

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

15TH DECEMBER, 1987

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Nineteenth Meeting of the First Session of the Fifth House of Assembly held in the House of Assembly Chamber on Tuesday the 15th December, 1987, at 10.30 am.

PRESENT:

Mr Speaker (In the Chair)
(The Hon A J Vasquez CBE, QC, MA)

GOVERNMENT:

The Hon A J Canepa - Chief Minister
The Hon Sir Joshua Hassan KCMG, CBE, LVO, QC, JP
The Hon M K Featherstone OBE - Minister for Health and Housing
The Hon H J Zammitt - Minister for Tourism
The Hon Major F J Dellipiani ED - Minister for Public Works
The Hon Dr R G Valarino - Minister for Labour and Social Security
The Hon J B Perez - Minister for Municipal Services
The Hon G Mascarenhas - Minister for Education, Sport and Postal Services
The Hon E Thistlethwaite QC - Attorney-General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon J Bossano - Leader of the Opposition
The Hon J E Pilcher
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon J L Baldachino
The Hon R Mor

IN ATTENDANCE:

P A Garbarino Esq, MBE, ED - Clerk of the House of Assembly

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 19th October, 1987, having been previously circulated, were taken as read and confirmed.

COMMUNICATIONS FROM THE CHAIR

MR SPEAKER:

Gentlemen, before I proceed with the business of the House I would like to take this opportunity to bid farewell to Sir Joshua who has just resigned as Chief Minister and consequently as Leader of this House. Whilst recognising your wish, Sir Joshua, not to have long speeches, I cannot and, indeed, I must not allow this occasion to go unnoticed. You have been in this House since its inauguration as a Legislative Council way back in 1950, a record of Parliamentary service which will be very difficult to equal either in Gibraltar or, for that matter, elsewhere where democracy flourishes. During the eighteen years that I have had the privilege and honour to preside over this House I have always found you to be most courteous and helpful to the Chair. For making the Speaker's task, which is never an easy one, easier, I am most grateful to you. I feel sure that I am expressing the views and feelings of all Members on both sides of the House in wishing you and Marcelle a well earned, long and happy retirement. I have no doubt that as a Backbencher, even if only for the remainder of this Parliamentary term, you will still continue to make a worthy contribution to the work of the House and, indeed, in your full retirement in due course, I am sure you will always continue to have the closest interest in the affairs of Gibraltar. My very best wishes to you on your retirement and may it be a happy and long one, as I have already said.

HON SIR JOSHUA HASSAN:

Mr Speaker, I am very grateful for your kind remarks. There has been sufficient publicity about my leaving so I would rather say very little except to thank you for your kindness and to say that I will look back on my years in the House as very happy occasions in the interests of Gibraltar.

HON J BOSSANO:

Mr Speaker, may I say that I cannot quite express the same sentiments as you have done since my relationship with the Hon and Learned Member have not been quite the same as yours. I have been in this House for fifteen years and he has been the Chief Minister of Gibraltar for those fifteen years and I have agreed with 99% of his decisions in the fifteen years. However, the Hon Member knows that I have never borne any personal animosity towards him and I do, indeed, wish him a happy retirement and I am sure that he will continue to take a close interest in the way things develop in Gibraltar after his retirement. It is always a difficult thing, I think, to adjust to a less active role in all walks of life and I would imagine for somebody like himself who has been at the helm it will be quite a difficult job but I am sure that the Hon and Learned Member will be around for many, many

years and will no doubt remind those of us who follow him how much better he used to do things when he was there when the time comes. May I therefore wish him a very happy retirement and at the same time may I take the opportunity of congratulating Mr Canepa in being named by his Party, Leader, and in being appointed the new Chief Minister and to assure him that, in fact, the Opposition will continue to look to the performance of the Government in the months that are left with the same critical but constructive view and be willing to give its support and identify itself with the Government on matters on which we should be united and that I hope the fact that on previous occasions we have appeared to be closer ideologically than other Members of the House, may augur well for cooperation between the two sides irrespective of which side we each happen to be sitting on in the future.

MR SPEAKER:

I will now turn to you, Chief Minister. I would like to express my congratulations on your appointment. You are the third Chief Minister of this House during my time as Speaker. The burden of Government with its heavy responsibilities now falls squarely on your shoulders. I feel sure that your long Ministerial experience and your time as Deputy Chief Minister will now stand you in very good stead. May I extend to Julie and yourself my heartiest congratulations on your appointment and I feel sure that you will continue to guide and advise the House as you have done as a Minister. My best wishes to you both.

HON CHIEF MINISTER:

Mr Speaker, thank you very much for your kind remarks both at the official level and moreso, indeed, at a personal level. I would also like to thank the Leader of the Opposition for his kind words. I don't want at this stage to say anything about Sir Joshua's retirement, I don't want to steal your thunder, in particular, Mr Speaker, but it is my intention to say a few words to mark the occasion later on this week when I move the adjournment of the House. Thank you very much.

DOCUMENTS LAID

The Hon the Minister for Tourism laid on the table the following document:

The Tourist Survey Report, 1986.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the table the following documents:

- (1) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No. 10 of 1986/87).
- (2) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No. 1 of 1987/88).
- (3) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No. 5 of 1986/87).
- (4) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No. 6 of 1986/87).
- (5) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No. 1 of 1987/88).
- (6) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No. 2 of 1987/88).
- (7) Schedule of Supplementary Estimates No. 3 of 1987/88.

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 1.05 pm.

The House resumed at 3.30 pm.

Answers to Questions continued.

THE ORDER OF THE DAY

MINISTERIAL STATEMENTS

MR SPEAKER:

The Hon the Minister for Labour and Social Security has given notice that he wishes to make a statement. I will therefore call on the Hon Minister to make his statement.

HON DR R G VALARINO:

Mr Speaker, prior to addressing myself to the three motions standing in my name, I would like to make a statement on the comprehensive review of the Supplementary Benefit Scheme and allied matters that was carried out by my Department and which I informed the House would be ready by the end of the year.

2. The matter has been given careful consideration and in Government's view the main problem groups are:-

A - those elderly persons over 65 who are in receipt of Supplementary Benefit because they are not entitled to a Social Insurance Pension, particularly those living alone;

B - those elderly persons over 65 who do not qualify for Old Age Pension or Supplementary Benefit and are therefore in receipt of Elderly Persons Allowance;

C - those persons who are seriously ill or permanently incapacitated who have no income of their own;

D - those non-Gibraltarian husbands of Gibraltarian women in receipt of Supplementary Benefit who are not eligible for benefit because they are foreign nationals;

E - those persons who are precluded from claiming benefit because they have some savings;

F - those single parents whose entitlement is affected by their taking up part-time work;

G - those families in receipt of benefit who may need assistance to cover one-off expenses to buy essential household items; and

H - those EEC nationals who have resided in Gibraltar for over three years who may find themselves unemployed.

Group A - Having regard to the special needs of the more elderly, it is proposed that the weekly rates of benefit of those beneficiaries in receipt of Supplementary Benefit who are over 65 should be increased in line with United Kingdom rates as follows:

	<u>1987 Rate</u>	<u>1988 Rate</u>
Married couple (Over 65)	£48.30	£53.60 (10.9%)
Married couple (over 65 after 1 year on SB instead of 2)	£52.25	£57.90 (10.8%) (includes long-term allowance)

Single person (Over 65)	£27.70	£34.30 (23.8%)
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Single person Over 65 after 1 year on SB instead of 2)	£29.70	£38.60 (29.9%) (includes long-term allowance)
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It is also recommended that the long-term allowance, which is now added to the weekly entitlement, should be payable after the beneficiary has been in receipt of benefit for one year instead of the present two years qualification period.

3. Group B - Taking into consideration the representations made by some of those in receipt of Elderly Persons Allowance, and the fact that it is proposed to increase the weekly rates of Supplementary Benefit for persons over 65 by more than 7%, which is the percentage increase approved for all other social insurance benefits, Government has decided that the present weekly allowance of £17.40 be increased to £20.40, ie an increase of 17%.

4. Group C - The scheme in its present form does not cater for persons who may be severely ill or permanently incapacitated due to accident or illness. However, there are provisions in the scheme for the payment of a weekly allowance of £18.10 to persons over 19 who are severely handicapped since birth. It is proposed that a similar allowance (£19 per week when increased by 7%) should be paid to those unfortunate people who may be seriously ill or permanently incapacitated who have no personal income. This allowance should cease to be payable if the claimant is entitled to a full Old Age Pension when he reaches pensionable age, ie 65 years. If entitled to a reduced pension only the amount which makes up the full pension should be payable.

5. Group D - At the moment the non-Gibraltarian husband of a Gibraltarian woman (unless he is a British Subject resident in Gibraltar for over three years) is not entitled to benefit. If he becomes unemployed and not entitled to Unemployment Benefit his wife may claim Supplementary Benefit for herself and the children but nothing is payable to him or on his behalf as a dependent adult. However, Gibraltarian men may claim benefit for their wives regardless of their nationality. It is evident that the scheme discriminates against non-Gibraltarian males and, therefore, in order to rectify this anomaly, benefit will be paid to male and female spouses of Gibraltarian applicants irrespective of their nationality.

6. Group E - Applicants who have some savings or have received a small gratuity are sometimes precluded from claiming benefit because the amount of their capital assets exceeds the present limit of £1,810 in the case of a married couple, or £1,145 in the case of a single person. In the

United Kingdom the amount of savings disregarded for the purpose of calculating benefit is £3,000. Considering that the amounts prescribed in our scheme are not, by today's standards very considerable amounts, the figure of £1,810 is being increased to the more realistic figure of £3,000. The figure of £1,145 is to be increased to £2,000.

6.(b) The present system of running down the regarded assets is also being modified to take account of family composition. At present the scheme makes no distinction between single persons and married couples with children.

7. Group F - It is the Government's view that single parents should be encouraged to take up employment. It is considered that many lone parents would at least take up part-time work if they were to be better off financially. It has therefore been agreed that when calculating future entitlement to benefit, instead of disregarding £14.40 of their weekly earnings as now prescribed in the Scheme, this should be increased to £25. This would enable some of those in part-time work to supplement their wages with Supplementary Benefit and automatically be eligible to the Single Parent Allowance. The amount of benefit payable will obviously depend on the level of their wages.

In addition to the foregoing, it is proposed that an amendment should be made to the Social Security (Insurance) Ordinance to enable a woman whose marriage has been terminated otherwise than by the death of her husband and who was under pensionable age on the date of that termination, to preserve the right to claim an Old Age Pension on her ex-husband's insurance record, based on the contributions paid by him before the date of termination of the marriage. Thus, a woman who has never been insured or does not qualify with her own contributions for a full pension, may be eligible to apply for a pension based on those contributions which were paid by her ex-husband up to the date of the dissolution of the marriage. It should be noted that similar provisions already exist in the United Kingdom which guarantee certain rights to divorced women.

Government has also decided that electricity and water charges of beneficiaries in receipt of Supplementary Benefit, including other Social Security Pensioners entitled to Rent Relief, should be subsidised in some way by my Department and necessary arrangements will be put in hand in the New Year so as to devise a formula in a manner consistent with accounting principles in relation to the operation of the funded services.

8. Group G - The Family Care Unit of the Department quite often receives enquiries for financial assistance from claimants already receiving Supplementary Benefit. At times, families with many children may need help to cover one-off expenses they may have to buy essential household items, eg a cooker, heater, pushchair, beds, mattresses, etc.

Sometimes elderly people living alone may not be able to afford the cost of a telephone connection or a basic plumbing job or any other essential repair. In the United Kingdom lump sum payments are made to cover such expenses. Government is satisfied that there are persons who may genuinely need this kind of extra assistance and therefore has decided to allocate a sum per annum for these purposes to the Family Care Unit.

9. Group H - As the House is aware, only registered Gibraltarians and British Subjects who have resided in Gibraltar for over three years are eligible to apply for Supplementary Benefit. The Department is of the opinion that Government is vulnerable to criticism and accusations from the European Commission in that our Scheme is discriminating against other EEC nationals, in favour of British nationals. In the circumstances, it is prudent to extend the scope of the scheme to all EEC nationals who satisfy the three year residence qualification.

10. The Government has also decided to increase Family Allowances from the present weekly rate of £5 to £7 as from the beginning of 1988. This will bring it more in line with the current rate of United Kingdom Child Benefit which is £7.25 per week.

Families on Supplementary Benefits would also be helped as they will get an extra allowance of £7 for the first child.

11. The extra cost of all these measures will be in the order of £1.25m per annum.

I would like to take this opportunity to thank the various members of my Department who have been closely involved in preparing this review.

MR SPEAKER:

Perhaps this will be a reasonable time to recess for tea.

The House recessed at 5.15 pm.

The House resumed at 5.50 pm.

HON J BOSSANO:

Mr Speaker, are we going to get an opportunity to ask the Hon Member points of clarification on the statement?

MR SPEAKER:

Yes, I looked at you before I recessed for tea because I felt that you might wish to ask questions.

HON J BOSSANO:

I would like to ask the Hon Member, in the first group where he says 'particularly those living alone' in referring to people over 65 who are on supplementary benefit. What is the distinction between those living alone and those not living alone in terms of the benefits?

HON DR R G VALARINO:

It is simply because as supplementary benefits are means tested, those living alone will receive a lower amount than if they are living with some other members of the household in which case the amount of money they get from supplementary benefits at the end of the week will be higher than if they are on their own.

HON J BOSSANO:

The Hon Member in the statement he has made says that particularly those living alone are a group that is identified. Are we to understand that the rates that he specifies in group A are for those living alone and, if so, what is happening to those not living alone?

HON DR R G VALARINO:

Those living on their own are, in fact, if one turns over to page 2, we are increasing the benefits of beneficiaries in receipt of supplementary benefit who are over 65 in line with the UK and these, as far as I am aware, are people who are living alone and have got no extra dependents, that has gone up. The other thing I would like to say on that as well, is a comment which I made later on in my statement. There are two other things, first of all, the Family Care Unit which quite often receive requests for financial assistance from claimants also receiving supplementary benefit. Sometimes elderly people living alone may not be able to afford the cost of a telephone connection or a basic plumbing job or any essential repairs. The Family Care Unit would be allocated a sum of money to be able to help in this respect because obviously they are living alone and the water heater may go bust and then they could well.....

HON J BOSSANO:

I am asking about the ones who are not living alone, Mr Speaker, that is what I am saying to him. I am saying to him, are the figures that he has given on page 2 the amounts that are going to be paid to people living alone and, if so, what happens to people not living alone?

HON DR R G VALARINO:

I have been informed that the 1988 rate is irrespective of whether they are living alone or not.

HON J BOSSANO:

So this means, in fact, that everybody will be able to claim that as they do in UK now?

HON DR R G VALARINO:

Exactly.

HON J BOSSANO:

So, in fact, the implications of this are that many people who currently are deprived of supplementary benefits because they are elderly people living with their children will no longer be deprived, am I correct?

HON DR R G VALARINO:

Yes.

HON J E PILCHER:

Mr Speaker, in paragraph 11, it says: "The extra cost of all these measures will be in the order of £1.25m". I think it would be beneficial for us if he could give us what this particular measure will cost and I think, as well, in respect of the other measures. You said the supplementary rates are going to be upped, what is that going to cost in a year so we will need to know what that is going to cost in the three months that we have got of this financial year as we will need, I suppose, to appropriate more money for it so I think we will need that information as well.

HON DR R G VALARINO:

Mr Speaker, there are two things you may be asking. You may be asking what these considerations will cost in this quarter of the financial year or you could well ask for a breakdown of each and every single item.

MR SPEAKER:

With respect, at statement time the only questions that can be asked are questions on clarification.

HON J BOSSANO:

We want clarified how the £1.25m is arrived at.

MR SPEAKER:

No, with respect, I think this could well be the subject matter of a debate but the practice of this House has been that only the Leader of the Opposition or the Shadow is allowed to ask questions. I am liberal in these things but we must not debate the statement.

HON J BOSSANO:

We are asking for information, Mr Speaker. We are saying how much will the approved supplementary benefits for over 65 cost?

MR SPEAKER:

If you have not got the information you say you haven't got the information and then it will have to be given at a different time, it is as simple as that.

HON DR R G VALARINO:

Mr Speaker, I should have the information.

MR SPEAKER:

I am afraid we cannot stop the work of the House. Have you got the information?

HON J E PILCHER:

Am I correct, Mr Speaker, in saying that this will have to be included as an extension to the Appropriation Bill at which stage we will obviously be able to debate it? Will we get another opportunity when we discuss the Appropriation Bill or not?

HON DR R G VALARINO:

We don't need to appropriate the full amount, Mr Speaker, because we have got a certain amount of money to tide us over from January to March. Let me give you the additional cost per annum. On the supplementary benefits this is £97,890.

HON J BOSSANO:

I would also like to ask the Minister, he says on page 3: "The present system of running down the regarded assets is being modified to take account of family composition". Can he explain how it is being modified?

HON DR R G VALARINO:

The main thing is that it is the family composition which is going to decide on the running down of the regarded assets. In the paragraph above I gave you an example by saying that a couple would now have a maximum of £3000 whereas a single person would have £2000. At present the scheme makes no distinction between single persons and married persons with children. We are going to work around the factor where children also come into the picture in order to be able to increase the sum which we are going to run out over a period of time. Therefore, a married couple is £3000, a single person is £2000 but a married couple with children could well be over £3000 depending on the number of children. This has still got to be worked out by the Department and as soon as these figures are available I can let the Hon Member know. The main thing is that because the family composition is bigger, obviously, the running down must be a higher sum than just an ordinary married couple who get £3000.

HON J BOSSANO:

I get the distinct impression, Mr Speaker, that the Hon Member is confused.

HON DR R G VALARINO:

No.

HON J BOSSANO:

Surely the running down has nothing to do with the capital sum which is exempt and which is what paragraph 6 refers to, that is to say, the £3000 is not run down, the £3000 is disregarded. The running down is the value as if it were of notional income which is attached to the residual capital. How is that being changed?

HON DR R G VALARINO:

I would have thought it is very simple. What we are trying to do is we are increasing the figure up to £3000 if he has dependents.

HON J BOSSANO:

No, that is not what the statement says. I am seeking clarification on the statement, Mr Speaker, and the statement in paragraph 6(b) is talking about something different. If somebody has £10,000 my understanding of the statement made by the Minister is that at present if a married couple has got £10,000 saved up, the £1810 is disregarded and they are treated as if they had £7200. Now, under paragraph 6, £3000 is going to be disregarded out of the £10,000 and then the £7000 is run down and the system of running down the remainder of the regarded assets is what I am being told in 6(b) is going to be modified. I am asking how is it going to be modified.

HON CHIEF MINISTER:

No, that remains the same, it is 25p per week for every £15 in excess of the ceiling. If the ceiling instead of £2000 becomes £3000 when the beneficiary has got dependents, then he is being treated more generously because the rate of running down is less because there is £1000 more being disregarded.

HON J BOSSANO:

Then the way it is stated here is misleading. The present system of running down is not being modified, that is what I am being told, that in fact all that is happening now is that the floor has been raised and the system continues the same.

HON DR R G VALARINO:

Yes, the wrong wording may have been used in that respect.

HON J BOSSANO:

On page 4 the Government says that it has decided that the electricity and water charges of beneficiaries in receipt of supplementary benefits should be subsidised. How is that going to be done? Are we talking about a percentage of the bill or are we talking about a fixed sum for each individual depending on the level of consumption?

HON DR R G VALARINO:

Mr Speaker, Sir, the aim is that the beneficiaries in receipt of supplementary benefits should be entitled to rent relief and should be subsidised in some way. I am afraid it is too early to say now because what I went on to say was that the necessary arrangements would be put into effect in the New Year which will mean meetings between various Heads of Department to work out a formula which is consistent with accounting

principles and in relation to the operation of the funded services. They will work out the way in which we are going to do this. We cannot go into this part of it more than we have already said at the moment. The principle is there. What we want to find out is how senior members of two departments, say, the Accountant-General and the Director of Labour and Social Security, will be able to devise a scheme in which we can work and they can put forward ideas to the Government who will then decide which way they want this thing to work.

HON J BOSSANO:

I know what that says and I am not talking about the principles of the funded services. My question is very simple. Is it the intention to subsidise a proportion of the consumption or a fixed amount? Surely, that is a matter of principle, not a matter of accounting policy. The accounting policy is how the money is going to be actually fed into the funded accounts. In looking at what the person on supplementary benefits is going to get, is the thinking on the Government's part in terms of a fixed amount or in terms of a proportion of the bill?

HON DR R G VALARINO:

Mr Speaker, no decision can be taken as yet until we get this committee going and they report back to Government.

HON J BOSSANO:

Does the Minister have any idea of how much it will cost if he hasn't decided yet what he is going to provide and, if so, is any part of the £1.25m total cost a figure in relation to this?

HON DR R G VALARINO:

We haven't got an estimate on this one because we don't know what it is going to cost exactly. I have been passed a paper but I am afraid I cannot decipher the writing.

HON CHIEF MINISTER:

Being a former school teacher I can read bad handwriting. There are various options still to be costed. Could I go, Mr Speaker, back to 6(b) because I think we have given a misleading answer, this is the question of running down the system. It is being changed. The balance after disregarding £3000 will be run down by the rate of supplementary benefit that the applicant would have normally been entitled to if he had had no capital assets.

MR SPEAKER:

We will then go on to motions.

MOTIONS

HON DR R G VALARINO:

Mr Speaker, I beg leave in view of the long wording of the motion standing in my name that it be taken as read.

MR SPEAKER:

This is the motion in respect of the Social Security (Insurance) (Amendment of Contributions and Benefits) Order, 1987. Leave is granted.

HON DR R G VALARINO:

Mr Speaker, I am required by the Social Security Ordinance to review annually the rates of benefits and contributions under the Ordinance having regard to the general level of earnings and prices. In determining the standard rate of old age pension for a married couple, this must be fixed at not less than 50% of the average weekly earnings of weekly paid full-time employees in Gibraltar or 33½% for a single person. At the time of carrying out the review, the latest available unemployment survey for October, 1986, gave the average weekly earnings of £143.49. On this basis it is proposed that the standard rate of old age pension for 1988 be £71.70 instead of £67 for a married couple and £47.80 instead of £44.70 for a single person. These new rates represent increases of approximately 7%. All other benefits under the Ordinance will be increased by the same percentage approximately except once again for maternity and death grants which remain unchanged. The proposed increases in benefits are estimated to bring the total expenditure of the Social Insurance Fund for 1988 to £16.8m. This figure includes the cost of Spanish pensions at 1988 rates. I must make it perfectly clear, however, that in reviewing contributions no account has been taken of the Spanish pensioners' entitlement to current rates of benefits, this is a matter which is still under discussion with the UK Government. The value of the Social Insurance Fund stood at £15.66m in April, 1987. This year the increases of contributions have been kept as low as possible although it is still Government's intention to continue the policy of increasing contributions to an extent which will provide a surplus of income over expenditure. It is therefore proposed that the 1988 contributions should be increased by £1 a week for an adult, 50p by the employer and 50p from the employee. In percentage terms the increase represents 6.9% for all adults as against 9.2% last year. As I have previously mentioned in my statement to the House, it is also proposed that the Social Security Ordinance should be amended to enable a woman whose marriage has been terminated otherwise than by the death of her husband, as in the case of divorced women, to preserve the right to claim an old age pension on her ex-husband's insurance record based on the contributions paid by him before

the date of termination of the marriage. The amending legislation is not ready and I propose to introduce a Bill to give effect to this measure at the next meeting of the House. Sir, I commend the motion to the House.

Mr Speaker proposed the questions in the terms of the motion moved by the Hon Dr R G Valarino.

HON J BOSSANO:

Mr Speaker, what I would like is for the Government to clarify, given the answer that we were given during Question Time about the Spanish Sub-fund being exhausted by September, presumably the 1st October. Given the fact that the money comes in on a quarterly basis we were assuming from the answer that we got that what we were being told was that it would cost £2m to provide Spanish pensions for October, November and December. If we are talking about it costing £2m for November and December then we are talking about an annual cost of £10m and not an annual cost of £8m. Perhaps that can be cleared up but, certainly, given that we were told that the Fund was short of £2m for the remainder of 1988, we assumed it would be £2m for three months and not £2m for two months and that therefore when the Hon Member said October he meant the 1st October and not the 31st October. I wish to know whether that calculation has been done taking into account the increases that are being proposed now or whether the additional 7% has got to be added to that £2m?

MR SPEAKER:

Are there any other contributors to the debate?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, the Hon Member did ask a question which arose out of an answer I gave and with your permission I will reply to that before the Hon Minister replies. Certainly the calculations which I gave, the calculations underlying the answer I gave to the Hon Mr Mor earlier today, only took account of the increases which the Minister has announced. We are making up-to-date calculations about the increases next year.

MR SPEAKER:

Does the Hon Member wish to exercise his right of reply?

HON DR R G VALARINO:

No, Sir.

Mr Speaker then put the question which was resolved in the affirmative and the motion was accordingly passed.

HON DR R G VALARINO:

Mr Speaker, I beg leave, in view of the long wording of the motion standing in my name, that it be taken as read.

MR SPEAKER:

I feel sure that the House will give the Minister leave not to have to read the motion.

HON DR R G VALARINO:

Sir, following on the previous motion I am now moving this one which is intended to increase benefits under the Employment Injuries Insurance Ordinance by about 7% as from the 1st January, 1988, in line with the increase in benefits under the Social Security Ordinance. Injury benefit for a man with a dependent wife goes up from £50.47 to £53.97 per week with additions for children. Gratuity on death due to an industrial accident, from £11,430 to £12,230 and likewise for 100% disability for a weekly pension of £43.40 instead of £40.60. The weekly contributions under this Ordinance currently stand at 26p, 13p each from employer and employee. Expenditure on benefits continue to increase and it is accordingly proposed to increase contributions for 1988 by 15%, ie 4p increase to be shared equally between employer and employee. Sir, I commend the motion to the House.

Mr Speaker proposed the question in the terms of the motion moved by the Hon Dr R G Valarino.

There being no debate Mr Speaker then put the question which was resolved in the affirmative and the motion was accordingly passed.

HON DR R G VALARINO:

Mr Speaker, I beg leave, in view of the long wording of the motion standing in my name, that it be taken as read.

MR SPEAKER:

I feel sure that leave of the House is granted.

HON DR R G VALARINO:

Sir, this is the third and last motion in the annual series and deals with unemployment benefit which is in line with other increases in social security benefits which will also be increased by about 7%. The basic weekly rate of this benefit will go up from £33 to £35.40 a week with increases of £17.40 for wife and £6.90 per child. Sir, I commend the motion to the House.

Mr Speaker proposed the question in the terms of the motion moved by the Hon Dr R G Valarino.

HON J BOSSANO:

May I ask the Hon Member, how is the rate of unemployment benefit now compared to the rate for supplementary benefits for people who are under 65 and unemployed? Are we getting a situation where everybody who is unemployed will, in fact, qualify for supplementary benefits because of the increase in supplementary benefits being bigger than the increase in unemployment benefit?

MR SPEAKER:

Are there any other contributors to the debate? I will then call on the Mover to reply.

HON DR R G VALARINO:

Mr Speaker, Sir, in a case where supplementary benefits would be higher than unemployment benefit in this respect, if somebody was out of work and wanted unemployment benefit, if by any chance the social security benefit would be higher than unemployment benefit it would be made up to the social security benefit.

HON J BOSSANO:

My question is, is it going to happen with the changes that have been introduced? That is what I am asking because the figures that have been quoted are for over 65. I imagine that the under 65 are also getting increased supplementary benefits. Are we saying that people who are unemployed will in theory be getting this figure but in practice be getting the supplementary benefit figure because the supplementary benefit figure is higher? That is my question.

HON DR R G VALARINO:

The supplementary benefit figure and the unemployment figure are very similar so it is very unlikely that such a thing would occur but if it did occur then one would take over, presumably, over the other one. But it is very unlikely it would occur because they are very similar in nature.

HON J BOSSANO:

I am sorry, Mr Speaker. The figures that were given by the Minister in his statement when we sought clarification specifically mentions the case of the over 65. Obviously the over 65 do not get unemployment benefit. Are we being told then that, for example, if there is a man of 64 unemployed, he is not entitled to the £53.60 that a married couple over 65 is so what is, in fact, the difference between the two?

HON CHIEF MINISTER:

Mr Speaker, a married couple, assuming living on their own, naturally, a married couple under 65, under supplementary benefits will be getting £47.80. The rate of unemployment benefit is £52.80. The Hon Member should keep in mind that, of course, the supplementary benefit is totally tax free and then they are entitled to rent relief and so forth so I think it is pitched at pretty well the correct figure.

MR SPEAKER:

Has the Minister finished his reply?

HON DR R G VALARINO:

Yes, Sir.

Mr Speaker then put the question which was resolved in the affirmative and the motion was accordingly passed.

BILLS

FIRST AND SECOND READINGS

THE GIBRALTAR BROADCASTING CORPORATION (AMENDMENT) ORDINANCE, 1987

HON CHIEF MINISTER:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Gibraltar Broadcasting Corporation Ordinance be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

SECOND READING

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that the Bill be now read a second time. Mr Speaker, in moving the Second Reading of the Bill I am going to deal in very general terms and then the Hon Mr Perez who I think is the Chairman of the Standing Committee on GBC and has been more closely involved in this matter in recent months, will also be making a contribution and perhaps be dealing in more specific terms than I will. The Gibraltar Broadcasting Corporation have, for a number of years, been considering ways and means of increasing their sources of revenue. One way has been through increased advertising. Another method which the Corporation

has been looking at is the leasing of their transmitters during the time that GBC are not using them. The obstacle to pursuing this matter has been the fact that the GBC Ordinance precludes any other than GBC, with the sole exception of SSVC, from broadcasting from Gibraltar. This amendment to the GBC Ordinance will allow GBC to enter into contracts with organisations who may be willing to transmit within the area from Gibraltar. The Corporation has informed Government that they have received no concrete proposals although a number of organisations have shown an interest. The method of transmission is something for the Corporation to consider, it could be an open transmission or a coded transmission which only subscribers could receive. Any agreement entered into between the Corporation and other parties will be purely commercial and under the control of the Board of GBC. The Corporation would draw up their own guidelines within what is allowed under the Governor-in-Council's directions to the Board of GBC. The Corporation's intention is to obtain as much revenue as possible whilst maintaining the level of the Government subsidy at its present level in order to build up its reserves to undertake the necessary capital expenditure to update its facilities. The facilities provided by the amendment to the Ordinance apply to both radio and television. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

Before I put the question to the House does any Hon Member wish to speak on the general principles and merits of the Bill?

HON J C PEREZ:

Mr Speaker, I would prefer the Hon Mr Perez to make his contribution first. It might be that after he makes his contribution I won't have any queries on the matter.

HON J B PEREZ:

I have no objection in making my contribution now except perhaps that I would have thought it better, for the better running of the House, if I would hear any queries that Hon Members opposite might have.

MR SPEAKER:

Do you wish to contribute or don't you wish to contribute?

HON J B PEREZ:

Yes.

MR SPEAKER:

Well, let us carry on.

HON J B PEREZ:

Mr Speaker, there is, in fact, very little that one can add to what the Hon the Chief Minister has already said except perhaps that I could possibly give a number of examples to illustrate what precisely is meant by the Bill at present before the House. The present position as Members all know is that under the Ordinance the Gibraltar Broadcasting Corporation enjoys a monopoly in Gibraltar for broadcasting. The only exception to that is SSVc or as most commonly referred to, BFBS. However, if, for example, hypothetically, let us say that the BBC were to wish to set up a relay station here in Gibraltar and they wanted to use a frequency which is owned by GBC but which is unused, which is lying dormant, under the present legislation GBC is unable to allow the BBC to use this particular frequency because under the law as it stands the monopoly is, what I would call, very personal and exclusive only to GBC. That, really, is the whole idea behind this amendment. Of course, by doing that it would enable GBC to be able to achieve a greater deal of what we call economic independence and be self-financing and therefore require less Government subvention. That, basically, is the basic principles of this particular Bill. Having said that, I ought to say a few words about why the word 'satellite' has actually been included. I have to say that I think the House, possibly, got the wrong end of the stick at Question Time this morning when we were dealing with the question of satellites because I think somebody mentioned that this actually had a bearing on what the Government had in mind. Well, that, in fact, is incorrect. The Bill at present before the House has really nothing to do with the questions that were asked this morning in connection with satellites. Why have we put in 'satellite'? Well, there is a very simple reason for that and that is that what we have found with GBC has been that throughout the years because of the long time we have had the GBC Ordinance, there have been a number of factors, sort of new technology, which requires amendment to the Ordinance and sometimes on a very minor point, for example, the question of satellite, to have to bring a Bill to the House to put in the word 'satellite' or perhaps in two or three year's time bring in something else, it was thought wiser to put in the word 'satellite' now so in the future if the Government of the day were to decide that, yes, GBC would be able to have satellite transmissions, then there is no need to start amending the law anymore. That is the only point. Really the use of the word 'satellite' in the amendment is basically to allow the Corporation to use this only for programme delivery. Another example, if let us say with the setting up of Gibtel, that Gibtel wanted to bring a particular, I think it is called 'oracle' which is a particular news service which is provided, say, for Finance Centre activities, this is allowed. It would be by

way of satellite, Gibtel or whichever other company is involved, would actually have to pay a fee to GBC, GBC would receive it and would actually broadcast to subscribers and, of course, the subscribers would have to pay a fee. That is the only reason why we are including satellite. But, as I say, the whole idea of this Bill is, in fact, to help GBC. It is something, in fairness to them, which they have been asking for quite some time but there are other matters which, I think, Hon Members opposite are aware that we have been looking at, it is a question of the publication of the Governor's directives. It is a bit of a package which GBC will be obtaining. I think this will help GBC, it will help their finances quite substantially. They have, I know, a number of firms who have shown an interest but, of course, for commercial reasons I don't think I should really disclose what these offers are but this will, of course, put them in a very good situation.

HON J C PEREZ:

Mr Speaker, after that explanation, in principle, we have no objection whatsoever to the Bill and we will be voting in favour. My reservation on it is that we are, in fact, extending the monopoly into these areas to GBC and although there is no question of GBC operating the satellite at the moment, they have a right to do so in the future if they so wish and my only reservation is that they should hold the monopoly for entering contracts with companies and relaying satellite programmes to clients whereas I think the Government knows that there are some firms already wishing to do this and who have approached, I think, certain Ministers on the matter. Other than that we support the Bill fully, we think GBC should be trying to become self sufficient and the more they go down that road the better for Gibraltar and the better for the Corporation itself.

HON J B PEREZ:

If the Hon Member will give way. We are not really extending the monopoly. The monopoly stays for broadcasting with GBC. All that we are doing is we are, in fact, allowing third parties who wish to bring programmes to Gibraltar and have to go through GBC because of the monopoly that exists, we are only allowing GBC to be able to say: "Yes, pay us and we put these programmes". The monopoly remains the same.

HON J C PEREZ:

If there is a station relaying satellite in the Costa del Sol, for example, and there are clients in Gibraltar wanting to receive that transmission, they are actually not broadcasting from Gibraltar, we are receiving in that situation so this would not debar individuals if the Government go down that road in considering satellite discs from entering into contracts with other firms which are broadcasting programmes from outside.

HON J B PEREZ:

But the broadcasting must be done by GBC.

HON J C PEREZ:

No, we are not talking about that. Those people who have satellite television are receiving programmes and some of those programmes can be acquired by paying a particular fee and then it is broadcast from a station nearby which is not necessarily in Gibraltar. It is the same as if you were asked to pay a fee for watching Television Española which you are not. Let us suppose that there is a station outside Gibraltar which has individuals who pay a fee for receiving the programme because the programme is controlled in a way that you can only receive it if you pay a fee. This is not debarred by this legislation as I understand it.

HON J B PEREZ:

It has got nothing to do with it.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON CHIEF MINISTER:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading should be taken at a later stage in the meeting.

This was agreed to.

THE TRAFFIC (AMENDMENT) ORDINANCE, 1987

HON M K FEATHERSTONE:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Traffic Ordinance be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

SECOND READING

HON M K FEATHERSTONE:

Sir, I have the honour to move that the Bill be now read a second time. Sir, the purpose of this Bill is four-fold. The first amendment, which is section 2, widens the number of reasons why the Police may stop traffic in any public

place or street and the main difference is the increase of the number of such happenings by the words 'entertainment or similar happening'. One example of this can be, for instance, the street market which we have in John Mackintosh Square where at the moment traffic could proceed along the north side when the street market is in operation the Police will now be able to close that to traffic. The second amendment, section 3, is to appoint people known as 'traffic wardens' and to give them the same powers to discharge their duty in aid of the Police as the Police have themselves with regard to such functions as are dealing with the movement of traffic etc. The third amendment, section 4, is to increase the number of offences for which a parking ticket or a fixed penalty ticket can be actually applied. At the moment a fixed penalty ticket can be applied to your vehicle if you are creating a parking offence but it is intended to widen the scope of the number of offences. Two offences, for example, would be parking on the pavement or parking at a wide distance from the actual kerb. If you park two feet six away from the kerb right in the middle of the road, that will also cause you to get a fixed penalty ticket. Also in that subsection it will be a defence to the registered owner of a vehicle who gets such a ticket to claim that the vehicle was in the charge of some other person at the time and that he took all practical reasons to stop the other person from creating or committing such an offence and he is given seven clear days before the hearing to assist in the identification of the person who has actually committed the offence. I commend the Bill to the House, Sir.

MR SPEAKER:

Before I put the question to the House does any Hon Member wish to speak on the general principles and merits of the Bill?

HON J C PEREZ:

Mr Speaker, there are two points. One of them is that section 2(b) seems to me to be saying that the Commissioner of Police in the past has not had the power to do a lot of things that he has been doing which is a very great deficiency, may I say, on the part of the Government if this is the case. I am sure that this is legislation which has been necessary since traffic in our roads became a problem. Secondly, the extension of the offences is something which in a normal situation where there are adequate facilities for parking, one might support and approve but, frankly speaking, Mr Speaker, even the Police today will tell you that on many occasions they are turning a blind eye because of the serious parking problem that there is and of the inadequacy of parking areas where people can park their cars at night. We are now in a situation where we are opening up the margin of offences and to date there has been no sufficient remedy being applied to the general problem of parking in Gibraltar and I think

this is wrong, both things must be in parallel. If you are going to say: "Parking offences are going to be widened because we want our streets to be in better order and traffic better regulated", I am afraid the Government has the responsibility to provide parking facilities first. Once those facilities are there, then in order to channel people to use those facilities one would agree with extending the offences in the Ordinance. As it is I am afraid that that section we cannot support, Mr Speaker, if I have understood it correctly.

HON H J ZAMMITT:

Mr Speaker, I think that I may be able to clarify one or two points that the Hon Member has raised. With reference to clause 2(b), let me assure the Hon Member that everything that he mentioned there was there before except, of course, entertainment, so the Police have always had the power to prohibit cars in Main Street, for instance, when there is a Ceremony of the Keys or a parade or any other thing of that nature so the only new thing that has been incorporated there is, in fact, entertainment. On the second issue, let me say that I tend to agree with what the Hon Member has said about parking tickets because of the lack of parking facilities. I think my colleague will accept that I have been a very strong advocate about not increasing the price of the parking ticket purely because there wasn't a place to park as opposed to just making it more difficult to park on a no parking area. In fairness, I think the Hon Member must admit that there have been certain openings in parking facilities. One looks at Queensway and one finds that outside the Camber there is provision for some cars which certainly weren't there before, certainly at the time the parking ticket came into being. Hopefully, with the removal of the coach park there will be another car park at the present tennis courts and slowly there are movements towards providing certain car parking facilities. Whilst I have sympathy with the general views of the Hon Member, I think that in the small area of Gibraltar there has been a small contribution in improving the parking lot which is a problem here and a problem wherever one goes.

HON J C PEREZ:

Will the Hon Member give way? In looking at the parking problem my own view is that the Government has looked at the parking problem in relation to the people coming across the border more than anything else and, therefore, the areas that the Hon Member has mentioned does provide relief to the parking problem during the day for people coming down town into offices and for people coming across the border but, basically, the two sites he has mentioned and the construction of the new car park which is going on, doesn't relieve the real parking problem of people in Gibraltar in housing estates and in habitable areas. I would suggest to

the Hon Member if he, in principle, agrees with what I have said, to delay implementation of this until one is satisfied that there is sufficient parking and one can actually then enforce the Ordinance with a greater degree of confidence that it is enforceable.

HON H J ZAMMITT:

Mr Speaker, again, one would tend to agree but I think that the Hon Member must realise that the parking problem is not a problem just in Gibraltar. I can say, because of my experience in my previous employment, that the Police take a very lenient view of parking in places like estates. I think what we are trying to do is to alleviate the flow of traffic in the main thoroughfares, Line Wall Road being a typical example today which because of the road system one sees that Line Wall Road has become a very important artery in the movement of vehicles. That area certainly needs clearing up. I think it was quite ridiculous to put a £2 ticket on a car because it was a cheap day's parking because once there was a ticket the Police does not end up putting sixteen tickets on the same car and that car almost had a blank cheque to be parked there all day for £2.

MR SPEAKER:

Are there any other contributors?

HON J BOSSANO:

I want to raise two points. It seems to me we are creating a principle where, in fact, an offence can be created by notice in the Gazette.

HON H J ZAMMITT:

Or regulations.

HON J BOSSANO:

The other thing that I want to raise is, I would like to have my mind put at rest about that because in terms of protecting people from the law, if you like, the fact that a breach of the law is something that gets debated in the House before it is made a breach of the law seems to me a good principle and therefore I am not too happy with the idea that people can suddenly be committing an offence and they may not have seen the Gazette and there has not been any public debate about it. That is what it seems to be doing. This seems to me to give the power that something which was not an offence today could be an offence once it is published by notice in the Gazette.

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HON ATTORNEY-GENERAL:

Mr Speaker, if the Hon Leader of the Opposition will give way. The parking ticket offence is, first of all: "The provisions of this section apply to any offence created by or under this Ordinance" - meaning the Traffic Ordinance - "being - (a) an offence punishable on summary conviction, and (b) declared by the Governor by notice in the Gazette to be an offence for the purposes of this section". All the offences were already there in the Ordinance but only certain of those offences under the existing legislation are fixed penalty ticket offences. All we are doing is saying, well, the Governor can say in the notice in the Gazette which of the offences already existing in the Ordinance are fixed penalty ticket offences. We are not creating new offences in the Gazette.

HON J BOSSANO:

So the range of offences is not changed?

MR SPEAKER:

No, the offences created by the Ordinance, it is punishable now by tickets if the Governor provides that it should be so.

HON J BOSSANO:

I thought the Hon Member had given me a different impression when I asked at first. The other point I wanted to ask was, am I right in thinking that without the passing of this Ordinance traffic wardens would not have been able to carry out their duties because it seems to me that we have been told in this House in previous questions that the reason why the traffic wardens were not already working was because it had not yet been decided which association represented them and negotiated for them. It seems to me that, in fact, there was no previous indication that legislation was required to enable them to carry out their duties. Does the fact that they come under this Ordinance and that they have to be authorised to carry out these duties in any way affect the question of the negotiating rights which we were told about in previous meetings of the House in answer to questions?

HON ATTORNEY-GENERAL:

If the Hon Member will give way as to the point on traffic wardens. The existing law is contained in section 87: "The Commissioner of Police may appoint and employ persons to be traffic wardens whose functions shall be to control and regulate traffic at or near school crossings". It was limited to school crossings, the lollipop men, and now it is being enlarged to do general traffic duties. As to the other point I cannot answer the question about negotiating rights.

MR SPEAKER:

Does the Mover wish to reply?

HON M K FEATHERSTONE:

Yes, Sir, just very simply to reiterate to the Hon Mr Bossano, the position is at the moment if you park your car on the pavement you are committing an offence but the only way you can be prosecuted for that offence is for the Policeman to wait there until you arrive and then he takes your name and address and he says 'You are prosecuted for the offence of parking on the pavement'. Now, if that is gazetted as an offence which can have a fixed parking ticket, the Policeman will come along, see that this car is parked on the pavement and will fix a ticket on the car saying 'You have been guilty of the offence of parking on the pavement, you must pay a fixed penalty or, if you wish, appear in Court', etc. The question of the traffic wardens, I think, has been adequately answered by my friend the Hon Attorney-General. Thank you, Sir.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON M K FEATHERSTONE:

Sir, I beg to move that the Committee Stage and Third Reading of the Bill be taken at a later stage in the meeting.

This was agreed to.

THE ANIMALS AND BIRDS (AMENDMENT) ORDINANCE, 1987

HON M K FEATHERSTONE:

Sir, I beg to move that a Bill for an Ordinance to amend the Animals and Birds Ordinance be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

SECOND READING

HON M K FEATHERSTONE:

Sir, I beg to move that the Bill be read a second time. Sir, this Bill is not a very complicated Bill. Clause 2 actually gives the definition of what is an authorised officer who may prosecute in cases of need to do so. Section 3 states that no licence shall be issued to a person under sixteen years of age and that once a licence is issued under the

Ordinance, then the person to whom the licence is issued shall be deemed to be the owner of the dog for all purposes. Section 5 brings in the fact that if a dog is found to be not on a lead then it will be treated as a stray dog and will be impounded. Section 6 and section 7 basically change the amounts of penalties for various offences but in section 25A under Clause 6, I will be moving an amendment that the person who wilfully obstructs an authorised officer in the execution of his duty under the Ordinance is guilty of an offence and is liable on summary conviction to imprisonment for 3 months and to a fine of £200. The intention of this amendment which I will be moving at the Committee Stage is that if you make the possibility of imprisonment six months then the person can opt for trial at the Supreme Court and we feel it would be better if it was dealt with at the lower Court and therefore three months would be the figure to place in its place. I commend the Bill to the House, Sir.

MR SPEAKER:

Before I put the question to the House does any Hon Member wish to speak on the general principles and merits of the Bill?

There being no debate Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON M K FEATHERSTONE:

Sir, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken at a later stage in the meeting.

This was agreed to.

MR SPEAKER:

I feel that perhaps this would be a very convenient time to recess until tomorrow morning at 10.30 when we will continue with Bills.

The House recessed at 7.00 pm.

WEDNESDAY THE 16TH DECEMBER, 1987

The House resumed at 10.50 am.

THE MEDICAL (GIBRALTAR HEALTH AUTHORITY) ORDINANCE, 1987

HON M K FEATHERSTONE:

Sir, I have the honour to move that a Bill for an Ordinance to establish the Gibraltar Health Authority and to make provision for the transfer of Medical and Health Services from the Government to the Authority be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

SECOND READING

HON M K FEATHERSTONE:

Sir, I have the honour to move that the Bill be now read a second time. Sir, this Bill seeks to set up a Gibraltar Health Authority which will be an autonomous authority to run the medical services in Gibraltar. It will free the medical services from the ramifications and exigencies of the present civil service set-up, some people might say from the shackles of the civil service and it will be an autonomous authority regulating its own procedure and working to its own rules and regulations subject, of course, to the ministerial guidance which will be given through the Health Authority Committee with the Minister as Chairman. Sir, Clause 2 of the Bill sets out the actual specifications of what is the Authority, the General Manager, the Medical Advisory Committee and the Minister. Clause 3 establishes the Health Authority which will be a body of persons with the Minister as Chairman, the Administrative Secretary, the General Manager, two registered medical practitioners, one person nominated by the Governor after consultation with the Gibraltar

Trades Council and three other independent persons. They will constitute the Authority and they will take the decisions of the way the Authority is to move. There are certain conditions under which a member will leave the Authority but under normal circumstances a person will be appointed to the Authority for a period of three years. Clause 4 says that the Authority will be a body corporate. That is that it will be able to sue and to be sued, it will have a common seal and will work as any body corporate. Clause 5 states what will be the quorum at all meetings of the Authority, it will be five persons, the Chairman shall preside and in his absence any other person that the meeting authorises. Clause 6 states that it is the duty of the Authority to provide a comprehensive preventive, diagnostic and treatment service in respect of physical and mental health and it also states who will be employed in the Authority specifically

and generally. Specifically, one of the new appointments will be a community physician who will liaise with the Environmental Health Department and work with the Authority very closely. He will be a specialist in community medicine. There will also be a Finance Officer, a Personnel Officer, a Director of Nursing Services, commonly known as the Matron, a Hospital Manager and a Primary Care Manager. They will also employ all other persons that are necessary to the Authority which obviously includes all the different persons who are today making up the Health Services such as nurses, cleaners, clerks and what have you. Under Clause 7, Sir, the Authority shall have the power to carry out its duties under this or any other Ordinance which applies to it and the Authority may acquire any freehold or leasehold property for the purpose of carrying out its functions. The Authority will be able to hold any property, dispose of any property, contract with persons for the supply of goods, services or personnel, erect or equip any buildings, plant, etc, in other words, do all the things necessary for the Authority to perform its functions properly. The Authority may arrange for the discharge of any of its functions by a committee or a sub-committee or an employee of the Authority or by any Government department or any other authority. This is Clause 8 of the Bill, Sir. Clause 9, the Authority will have the right to make its own standing orders and regulate its own procedure. Under Clause 10 a General Manager will be appointed and as is common knowledge now we have a General Manager designate, Mr Ralph Murray, who has been in Gibraltar, to my knowledge, on three occasions and is already doing sterling work with regard to the setting up of the Authority. The General Manager shall hold office for such period and on such terms as may be specified in the instrument appointing him and he shall be the executive officer to the Authority. In the event of his death, illness or retirement, suspension or removal from office, another person may be appointed to act as General Manager. Sir, Clause 11 states there shall be a Management Board which will consist of the General Manager, as Chairman, the Finance and Personnel Officers, the Director of Nursing Services, the Hospital Manager, the Primary Care Manager, the Specialist in Community Medicine, the Chairman and Vice-chairman of the Medical Advisory Committee and the Medical Officer-in-Charge of the Royal Naval Hospital. This will be the day-to-day instrument for running the work of the Authority subject to what is given to them as guidelines by the actual Health Authority itself. Under Clause 12 the Authority shall establish a Medical Advisory Committee, the membership will be comprised of all the medical and dental officers employed by the Authority. They may set up any other committee to give professional or technical advice that they feel is necessary. The Authority shall manage its financial affairs prudently and the intention is that it should live within its financial means, its financial means being provided by a sum of money voted by the House of Assembly for the purposes of the Authority; all revenue accruing from the Medical Group Practice Contributions Scheme; any sums received by the Authority

during that year, and all fees for services such as rooms in the private corridor, use of the laboratory, etc and any other monies which legitimately accrue to the Authority from any other source. The Authority shall establish a general fund into which all monies shall be put. It has the right to establish an overdraft if necessary and the Financial and Development Secretary may make advances for the purposes of meeting capital expenditure. Clause 15 says that proper books of account shall be kept and they will be subject to scrutiny and certification by the Principal Auditor as soon as practicable after the end of each year. The year will actually run from the 1st January to the 31st December. The Principal Auditor with reference to the accounts shall state that he has obtained all the information and knowledge that is required to certify the books as such. Within three months of any financial year the Authority shall prepare and submit to the Governor a written account of its operations for the year and the Minister will lay a copy of such annual report and the audited accounts on the table of the House of Assembly. Clause 16 gives the Authority the power to raise money by any means which are legitimately available to them, for example, they could hold a bazaar or a flag day or something like that if they wanted to buy any specialised piece of equipment which they feel such is the way to do so. The financial year will be from the 1st April to the 31st March, not the 1st January to the 31st December. Clause 18 says the Accountant-General may pay to the Authority all contributions received in each month from the Group Practice Medical Scheme. Clause 19 says that no personal liability shall attach to any member of the Authority. Clause 20 says that if the Authority has failed to comply with the provisions of this or any other Ordinance then it may be given instructions by the Governor to rectify such a fault within a very short time as such. Clause 21 states that no execution by attachment of property shall be issued against the Authority. Clause 22 says that the Authority may be a public purpose as far as the acquisition of land compulsorily. Clause 23 which is most important, Sir, the Authority shall be exempt from all taxes, duties, rates, levies or other charges whatsoever. Clause 24 says that at the commencement of the Ordinance there shall be by virtue of this subsection be transferred to the Authority all property which is at the moment held by the Government on behalf of health purposes. That is that the hospital will be transferred to the Authority, the part at Casemates where the doctors hold their clinics, etc. Clause 25 is a consequential clause which sets out a Schedule of all the various Ordinances which are affected by the setting up of the Authority where the names have to be changed, for example, instead of the Director of Medical and Health Services in certain places, it will become the Chief Environmental Health Officer, etc. All in all, Sir, the Bill is a relatively simple Bill. It has wide powers, it gives the opportunity for Gibraltar to move ahead in the medical field. I commend the Bill to the House.

MR SPEAKER:

Before I put the question to the House does any Hon Member wish to speak on the general principles and merits of the Bill?

HON MISS M I MONTEGRIFFO:

Mr Speaker, we are in favour of this Bill but we would like to see a committee being formed to ensure the implementation of the nursing review. Under Clause 12 of this Bill there is provision for the establishment of advisory committees and therefore I would like to get a commitment from the Minister that such a committee will be formed because we think it is an important contribution to the Gibraltar Health Authority.

MR SPEAKER:

Are there any other contributors?

HON J BOSSANO:

Could I just ask one point of clarification from the Hon Member. I know that the accounts of the Authority eventually reach the House and therefore we have the benefit of hindsight of looking back on how the money has been spent. At the beginning of the financial year, for example, presumably the intention is that by April, 1988, the Health Authority will already be functioning with its own independent budget. What exactly is likely to happen in that situation, that we vote a block amount in the estimates of expenditure in the Government estimates but we don't have a breakdown as to what it is like we have today or is there, in fact, going to be something annexed to the accounts as it would be, for example, with the Funded Accounts, which will give an indication of where the expenditure is going. I take it we are not going to be able to vote things like personal emoluments, etc otherwise the whole exercise of setting an independent Health Authority would be meaningless, really, and I accept that, but I would still like to know what we can anticipate in terms of the control of expenditure by the House rather than of knowing how the money has been spent.

MR SPEAKER:

Any other contributor? I will then call on the Mover to reply.

HON M K FEATHERSTONE:

Yes, Sir. In answer to the Hon Mr Bossano I think the system will be that the Authority will apply to the House for a subvention of £X million etc and will attach an appendix to their application showing how the breakdown of this request for the subvention is made up. This will give the House an opportunity to know exactly in which areas the money is going to be spent. As far as the Hon Miss Montegriffo is concerned, I have no hesitation in saying we will be happy to set up a committee to look into the situation she has requested. May I just add one thing, Sir. It was the intention that the Authority should come into operation on the 1st April but I am informed that the 1st April is a two-fold day, it is both April Fool's Day and Good Friday so it is suggested that the operation of the Authority is started on the 31st March.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON M K FEATHERSTONE:

Sir, I beg to move that the Committee Stage and Third Reading of the Bill be taken at a later stage in the meeting.

This was agreed to.

SUSPENSION OF STANDING ORDERS

HON DR R G VALARINO:

Sir, I have the honour to move the suspension of Standing Order 30 in respect of the Social Security (Family Allowances) (Amendment) Ordinance, 1987.

This was agreed to and Standing Order 30 was accordingly suspended.

THE SOCIAL SECURITY (FAMILY ALLOWANCES) (AMENDMENT) ORDINANCE, 1987

HON DR R G VALARINO:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Social Security (Family Allowances) Ordinance be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

SECOND READING

HON DR R G VALARINO:

Sir, I have the honour to move that the Bill be now read a second time. Sir, as I previously mentioned in my statement to the House, the Government proposes to increase the rate of Family Allowances. The Bill is therefore designed to give effect to this proposal by increasing the rate from £5 per week to £7 per week with effect from the 4th January, 1988. I commend the Bill to the House.

MR SPEAKER:

Before I put the question to the House does any Hon Member wish to speak on the general principles and merits of the Bill?

HON J BOSSANO:

Mr Speaker, the Minister mentioned the question of Family Allowances, of course, in the statement that he made regarding the review that had taken place of the social services. We are not clear whether the implications since we had the indication of the Bill to change Family Allowances and when we were looking at it in isolation rather than in the context of a review of the social security system and subsequently in the Ministerial statement that was made yesterday it was included in that. I think in looking at the social security review it would appear that the main area of need that was identified was that of specific groups, ie the elderly and people with either physical disabilities or problems of single parent families and that kind of thing. It seemed to me that what the Social Security Department had come up with which, in fact, is not unexpected, is that in looking at the social security system there are specific identifiable groups that are in particular need. I think the thing about Family Allowances which doesn't fit in with that strategy is that it is a blanket thing and therefore it was included in the statement the Minister made and yet it doesn't seem to be consistent with the philosophy of directing money to specific identified groups rather than spreading it over everybody. Obviously, there are two schools of thoughts in this, one is to say you either help everybody in the community and you give them £x or you concentrate your help on those who need it most and even if you are spending the same amount of public money you can afford to give more because you are giving it to less people. I think that approach is the approach that we were seeing reflected in the proposals to amend the Family Allowances Ordinance although there are other implications which my colleague will take up and that seemed to be to some extent negated by the argument made by the Minister yesterday in the other area. We would welcome an indication from the Government as to how they see the

position, whether they think one ought to be looking at spending the money in helping everybody, as it were, or in fact adopting an approach of saying, well, we can help the people who need it most more by making it more selective.

HON R MOR:

Mr Speaker, I think that this Bill can be referred to as an Ordinance to introduce the AACR electoral gimmick for the forthcoming elections. Mr Speaker, as far as I can recall I have not seen a single letter of complaint in the press or heard of any specific pressure group which has made a request for an increase in Family Allowances during the four years which I have been a Member of this House. I must also say, Mr Speaker, that I have not heard of a single parent who has made any representation whatsoever in this respect which leads me to ask, if no one has requested it why are we being so generous? The answer, I think, must be that the AACR feel it is a popular thing to do and it is a good gimmick for the elections. Mr Speaker, as always it is a clear sign that this Government never seems to realise what it is doing and this Bill is an example of the carelessness with which they deal with legislation. Mr Speaker, this Bill is allowing for an estimated increase of £291,360, that is, well over £1m to be added to the Family Allowances bill, a 40% increase. Yet as you no doubt will recall, we on this side of the House have been trying to encourage the Government to allow credit for social insurance contributions to all those unemployed persons between the ages of 60 and 65 and after numerous efforts on our part, we managed to get the Government to introduce a formula. But what this formula did, Mr Speaker, was to means test the applicants in such a manner that it produces a situation where very few people actually qualify for these credits. Yet if these credits were given to all those unemployed persons over 60 the amount could well be about £5,000 a year and it is therefore inconceivable how the Government could possibly have resisted our proposals for these credits on the grounds that they could not meet the burden of the cost and now we find that they are quite happy to meet the burden of over £1m without anyone having requested it. Another aspect which appears to have been overlooked by the Government, Mr Speaker, is the fact that we have over 1,000 Spaniards now working in Gibraltar, over 1,000 Spaniards who will be entitled to claim Family Allowances in 1989. As you know, Mr Speaker, the Spaniards have a three-year transitional period during which they are being paid Family Allowances in Spain but come 1989 they will also be entitled to claim Family Allowances here and this will increase the whole Family Allowances bill substantially. It is therefore a sad situation, Mr Speaker, to note that we are denying our own people certain benefits on the grounds that the Government says it is unable to afford the extra cost when they are being so generous in giving substantial increases all around to people who may not necessarily need it. Another problem which arises, Mr Speaker, is as regards our Moroccan labour force. As you know the

Moroccans working in Gibraltar have consistently been claiming Family Allowances and this has, again, been denied on the basis of the cost. I feel that in view of the substantial increase on Family Allowances which the Government is introducing in this Bill, it will now be very difficult to say that you cannot afford paying Family Allowances to them when we have been able to afford such a substantial increase. In conclusion, Mr Speaker, we on this side of the House feel that the Government has not given very careful consideration to the implications of this Bill and we believe that in their desire to offer people goodies because of the coming elections, they are acting irresponsibly. We will, however, be supporting the Bill because we believe our social benefits should not be inferior to those of the United Kingdom or, indeed, to any of the more advanced nations of the world.

HON SIR JOSHUA HASSAN:

Mr Speaker, I would like, first of all, to declare an interest in this Bill. I understand that my wife receives Family Allowances in respect of my daughters but what I am going to say is not directed to the extra £2 that will come into my household, fortunately, it doesn't make any difference. The Hon Member who has spoken is perfectly entitled to draw whatever conclusions he likes about electioneering and so on, that is a fair comment on the part of the other side because if you don't provide something you are stingy and if you provide something you do it because there is an election coming. That is fair comment. But for a member of the Gibraltar Socialist Labour Party to object to people receiving an increase in Family Allowances the principle of which has been allowed in this House and has not been reviewed since 1981 is absolutely ridiculous and then to finish up by saying that they will support the Bill after all the criticisms, more ridiculous still. Then to say a Spaniard will be getting it, but the Spaniard will be paying income tax like everybody else does. What is there about giving the Spaniards or anybody who comes to work in Gibraltar any benefits, as if benefits have got to go all the way from down to the lowest paid workers because the bulk of the people who are going to receive Family Allowances in all spheres of life are the less well-off who have the bigger families perhaps because they haven't got the money to pay for the pill or whatever it is, but the bigger families come always from the more modest families. For a Member of the Opposition to decry that because of the benefit that it will take eventually to Spaniards, first of all, insofar as the difference between the Spaniards and the Moroccans is concerned, they are members of the EEC and whether we like it or not it is a matter for which we have given our consent in this House as to the membership of the EEC until we decide otherwise if ever we do. But to take into consideration, I think is taking prejudice, perhaps it would be much better to concern ourselves as to how much money is spent in Spain and who has a house in Spain and who lives in Spain more

than that the Spaniards who come here to work and pay income tax should get an extra £2 after the first child. That would be a better consideration to look after our money. But to say that and then in the end to say 'We will support it', is just really absolutely ridiculous.

HON J E PILCHER:

Mr Speaker, I think the - I am so used to calling him the Hon and Learned Chief Minister - the Hon Backbencher, Sir Joshua, has missed the point. I think the point made by my Hon colleague Mr Mor and, in fact, by the Leader of my Party, is not that we are against the raising of Family Allowances from £5 to £7 or from £5 to whatever the Government thinks is an acceptable amount or a needed amount by the families in Gibraltar. The point that we were trying to make was that since it is now an accepted fact that by 1989 the Spanish workers will be entitled to full Family Allowance payments, the point that was being made was has the Government quantified how much that is going to mean extra to the people of Gibraltar? It is not a question of the Spaniards getting it, we are talking not of the Spaniards but of any EEC national working in Gibraltar. What the Opposition, Mr Speaker, is saying is, in fact, has the Government quantified what that is going to cost Gibraltar in the future and is it not going to present a problem to the next Government in 1989 which will have to find another £4m on top of the problems that we have already with paying pensions to Spaniards or pensions to EEC nationals. I think that was the point that was being made. I think one has to be very careful of the remarks that one makes on this side because it seems to us that every time we mention something about the EEC there is always a reaction from the other side, somebody jumps up and says: 'What you don't want is the Spaniards to get this or the Spaniards to get that'. That is totally contrary to what we have been saying on this side. We are talking about quantifying the amount of money payable out to EEC nationals as a result of this Bill, this is what we are talking about, Mr Speaker. Of course, because the EEC nationals mainly will be those nationals of our neighbour country because they have direct access into Gibraltar and the number of workers is increasing day-by-day, this is what is worrying us. That is as far as the effect on the amount of money that we are going to have to pay out from the fund. The other pressing point and it is a socialist point, Mr Speaker, is how can the Government defend that we are going to raise the allowances from £5 to £7, pay it to all EEC nationals as, in fact, the Hon Sir Joshua Hassan has said, because they will pay income tax and we have had Moroccan workers here for the past sixteen years who cannot claim Family Allowances although they pay income tax and they have been working in Gibraltar for the past sixteen years and complaining about it bitterly. Is the Government now saying to them: 'Yes, since you are now going to pay income tax like everybody else, we are now going to give it to the Moroccan workers as well' and, if not, what arguments are

they going to use when they get representations from the Moroccan workers, Mr Speaker? If they then give it to the Moroccan workers as indeed they should, if they were socialists as indeed they try and say from time to time, in inverted commas, what is that going to cost Gibraltar in general? That is the point that both the Leader of my Party and the Hon Mr Mor were trying to say. Of course, we will vote in favour of it because any measure that raises the allowances for the people of Gibraltar is an acceptable fact but, of course, I think every person in Gibraltar would want to know whether raising £2 of their own income is going to create a major problem for Gibraltar in two year's time. I think everybody in Gibraltar has a right to know that. Where is the money going to come from, Mr Speaker? We have already had yesterday at Question Time intimations as to our inability by October, 1988, to pay out pensions, etc and now we are saying 'We are going to raise Family Allowances by £2' and that is going to create, again, an enormous bill. Where is that money going to come from and why is it necessary at this juncture, which is the question that the Hon Mr Mor was asking the Government, why is it necessary at this juncture? Whether we believe it is electioneering or otherwise is not the point. The point is why now, where is the money going to come from and have the Government quantified the extent of the cost to Gibraltar in 1989 when we have to pay EEC nationals - and I am talking about EEC nationals - the full Family Allowances? Of course, the other question was, what are we going to do with the Moroccan workers? I think these are the three points that the Opposition want to know before we are satisfied ourselves as to the necessity of this. Of course we are going to vote in favour, it would be ludicrous not to vote in favour. But as a socialist party, Mr Speaker, if we are not convinced although we have to vote in favour I think the message is, if this is going to cost somewhere in the region of maybe £1m in the future, is it not or would the people of Gibraltar not prefer that £1m to be used for other more important priorities? I can mention many priorities - housing, education, many priorities. That is the question that the Opposition are asking, Mr Speaker, and that has not been answered by the passionate intervention of the Hon Sir Joshua Hassan. Thank you, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, it isn't so much on the Government side that we object to being asked questions which we properly try to give answers to, it is the churlish manner in which Mr Mor raised the objection that is objectionable. It was the way that he did it, it is incredible, from somebody who doesn't say a great deal in the House, he is the Shadow Minister for Social Security and when he opens his mouth on a matter like this the way in which he said it was incredible. To try to answer some of the questions. The cost, well, if there are 1,000 Spanish workers or so now in Gibraltar and the total number of workers is 13,000, it is not very difficult to estimate that the cost eventually in

1989 of paying Family Allowances to the children of Spanish workers is going to be of the order of one-thirteenth of the total cost of paying Family Allowances now, projected to 1989. That is not a very difficult calculation.

HON J BOSSANO:

If the Hon Member will give way. That calculation, I am afraid, is wrong, Mr Speaker, because of the 13,000 workers there are already 4,000 who don't get paid Family Allowances who are the Moroccan workers and other nationalities so, in fact, it is now something like 5,000 male Gibraltarian workers and the fact that there are female workers doesn't mean that there are more children because they don't get Family Allowances as males and Family Allowances as females, there are 2,000 married women so, in fact, it is an extra 1,000 which is one-fifth more, a 20% increase.

HON CHIEF MINISTER:

Not necessarily because amongst the Spanish workers also there are women. But, anyhow, that is the way that you can assess the total cost. If the exercise has not been done it is not a very difficult exercise to carry out. Why do it now? Family Allowances have not been increased since 1981. Prior to 1981 we used to have Family Allowances payable to the second and subsequent children and also tax relief being given to all children under the Income Tax Ordinance. We abolished the tax relief other than for the first child and in 1981 we increased Family Allowances substantially as it was then to £5 in order that families would not be worse off always bearing in mind one thing, that to do what has now been done in two successive Budgets, namely, to increase income tax allowances appreciably as we have done in two successive Budgets, is of great interest to families who pay income tax but for the lowest income groups you can increase income tax allowances till kingdom come and if lower income families don't pay any income tax whatsoever because their income is so low, it does not improve their financial position, they get no benefit whatsoever. Therefore the only way that the lowest income groups are going to get a benefit is if every week they see an increased payment by the Department of Labour and Social Security in respect of Family Allowances. So the lowest income families are going to benefit now appreciably from this measure, something that they have not done for about six years. If the Government, and it is the community's money that we are talking about, can find the money to cut in 1986 income tax by about £3½m per year and in 1987 to cut income tax again by a similar amount, that is a total of about £7m in two years, if we can find earlier in the year £2m for GSL and now today another £2m for GSL, a total of £11m, why can't we find the kind of money that we are talking about for an increase in Family Allowances? Why not? It is electioneering. Is it not electioneering to vote in the House today, as we are going

to do, £2m for GSL to keep the yard going or do we allow them to close down? One argument can be used for one thing, it can be used for the other but no one is going to dare to stand up in the House today and say, you may object to the £2m but you are not going to stand up and say: "The Government is appropriating £2m to keep GSL going because it is electioneering", you are not going to say that, I am sure. That partly answers where is the money coming from, from the Consolidated Fund because the Consolidated Fund if it is reasonably healthy for one thing it can be reasonably healthy for the other. Then the question of the Spanish pensioners. The money for the Spanish pensioners is supposed to come from the Social Insurance Fund and if it were to be met from the Social Insurance Fund within a year or two, I think with £15m in the Fund, within two years the Fund would collapse and that is not a bill that we in Gibraltar think that we should pick up. We are going to argue the toss with Her Majesty's Government, we are going to argue the toss with the EEC, if necessary, but Family Allowances is a separate matter altogether. Family Allowances are paid from the Consolidated Fund. In our view it is sufficiently healthy, perhaps an increase is overdue and because the position of the Consolidated Fund has been maintained and has improved during the year, when carrying out this far-reaching review of social benefits that we have now carried out, we thought that we ought to give serious consideration to an increase in Family Allowances, we are able to afford that and hence we are bringing the measure to the House.

MR SPEAKER:

Are there any other contributors? I will then call on the Minister to reply.

HON DR R G VALARINO:

Mr Speaker, Sir, I totally agree with the sentiments expressed by the Chief Minister and his explanation which is totally accurate and pertinent. The only reason that this formula was added on to the last bit of the statement is because families who are on supplementary benefits get an allowance for the first child and this allowance has been therefore increased in advance. This is the only reason why I put it there and no other. I think that answers the Hon Mr Bossano's question. To answer the Hon Mr Mor's argument, I would suggest that this is not an electoral gimmick but I am afraid everything he has said in answer to my statement is an electoral gimmick and I am very sad at the way he has taken advantage of the situation and has made statements which have nothing to do with the Bill and has gone off, indeed, at a tangent. Thank you, Sir.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON DR R G VALARINO:

Sir, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken at a later stage in the meeting.

This was agreed to.

THE INCOME TAX (AMENDMENT) ORDINANCE, 1987

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Income Tax Ordinance be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill seeks to give effect to certain amendments to the Income Tax Ordinance. I think most of them will already be amendments the substance of which the House will be familiar with although they have only now been incorporated in legislation. The first matter in the Bill is concerned with, the first change, rather, concerns approved pension schemes and the Bill makes a number of provisions with respect to the return of contributions to employees who leave employment before their entitlement to a pension provided the rules of the pension scheme so allow and provided it is an approved scheme for the purposes of the Income Tax Ordinance and provided the employee joined the scheme prior to the 1st July, 1987, the return of contributions would not be liable to tax. Where all those conditions are met with the exception of one, namely, the employee joined the scheme after the 1st July, 1987, only 25% of the amount returned would be allowed tax free and the balance would be taxed at 20%. That formula, Mr Speaker, is consistent with the change which was introduced at the time of the Budget in respect of lump sum payments from pension schemes where, if the House will recall, the reason was that the 100% lump sum payment would be allowed for in respect of those schemes which were in existence and where people were already members of them but with effect from the 1st July, 1987, the excess over 25% would be taxed at a rate of 20%. The next major amendment relates to Home Ownership, the Bill will extend Income Tax Relief during the period of construction under a closed market development scheme. 20% of the deposit paid during the period of assessment which should not exceed the entirety of the sum of £2,000, will be allowable. However, if an individual or his wife were

to sell or dispose of the home within twelve months from the commencement of the period of agreement or of obtaining legal title in such a property then the relief allowed under section 26(a) would be withdrawn. The opportunity has also been taken, Mr Speaker, to include a number of minor amendments to the Bill, notably in connection with the circumstances where either spouse may claim the relief rather than simply restricting the relief to one or the other spouse, he or she being the taxpayer. Finally, clause 7 abolishes the existing deduction of £500 in respect of property licenced under the Development Aid Ordinance. This particular measure was overtaken by the changes which were introduced from 1984 onwards whereby a form of tax relief was given generally to home owners, this particular £500 has really been overtaken by both inflation and other legislation. I think that as the memorandum says, Mr Speaker, the remaining clauses of the Bill are, by and large, consequential on the main alterations and I commend the Bill to the House.

MR SPEAKER:

Before I put the question to the House does any Hon Member wish to speak on the general principles and merits of the Bill?

HON J BOSSANO:

Mr Speaker, there are some things we are in favour of and some things we are against in this Bill and one clause that we are unhappy with. Therefore we would not like this Bill to be taken in this meeting of the House, we would like the Committee Stage left for the January adjournment. It will give the Government more time to come up with answers and possibly be able to persuade us. On the provisions regarding the taxing of withdrawal of money from provident funds and from pension funds, we are completely against this. We said so at the Budget time when this was first introduced and we are, in fact, committed, Mr Speaker, to restoring the position. The amount of money involved is infinitesimal. We are talking about legislating for people who have taken up employment since July this year and giving them inferior treatment to all the people who are in employment then. We are talking that out of the 13,000 labour force those unfortunate few who change jobs in the last six months are going to have a new tax put on them against the background of apparent largesse in every other direction defended by the Chief Minister on the basis that if we can afford £2m for GSL, if we can afford this, well, surely we can afford £2m for family allowances and then I would say to him, well, surely we can afford £4,000 or £5,000 which is all they are going to collect in income tax by this amendment. Or is it that that £4,000 or £5,000 is crucial in a tax cake of £24m. Even the Government said this will stop the loss of revenue from increasing in the future, it will stop the loss of revenue from increasing in the future in respect of people who take up employment after July, 1987, and it will stop

it from people who would not pay tax if they lost their jobs and who got their contributions refunded, that is, this affects a very small body of taxpayers and even within the small body of taxpayers we are drawing a distinction between those previously employed and those newly employed. In terms of the amount of money involved it really is probably more expensive in the time we are going to take to discuss the Bill and what we get paid while we are in this House, that it means in terms of revenue for the Government. Let me remind you, Mr Speaker, that we put up a very strong case against this at Budget time and in fact the then Chief Minister accused me of making it an election gimmick because I said we would come in and restore the position retrospectively. He knows that my memory never lets me down when I quote him so if he goes back and checks what he said in Hansard he will see that I am right, Mr Speaker. It seems to me that the Government is proceeding along the road that they decided to take in March without, in my view, taking on board the arguments we have put and certainly without making any attempt to rebut those arguments, that is to say, the Financial and Development Secretary in introducing the Bill has at no stage said why it is that notwithstanding all the arguments we put against it they still think it is necessary. It would be one thing in the context of where you are saying: "Well, look, we are really penny pinching and looking at every source of Government revenue", but against the background where that does not seem to be happening where somehow there is a hidden pot of gold somewhere which we hope to discover after March, it makes even less sense. The important thing about the legislation is that there is this business and I think we cannot get away from the question of the principle of commutation, and therefore I feel, Mr Speaker, that I have to repeat the argument that I put before. It seems to me that when there was this reaction affecting the stevedores' pension scheme which is, frankly, where it all comes from and if the stevedores had not taken industrial action to defend their position, there would not be a two-tier system because it was only when they were successful in protecting themselves from the new legislation that the Government accepted that everybody else suddenly had reserved rights or acquired rights or whatever the terminology is and, clearly, here we have another example of acquired rights. The argument which we have put against this legislation is that if you have got a position..... (one minute not recorded due to fault in equipment) three over eighty for the lump sum. In the private sector you have got half a dozen schemes, no more than that, primarily in the banking sector and particularly good employers, people like Shell and Smith Imossi and Saccone and Speed which are bigish firms and Cable and Wireless, yes, and those half a dozen schemes, in fact, provide a similar pension fund to the civil service pension fund and there it is perfectly reasonable to say to those people: "You cannot have 100% commutation", because it is, in fact, a pension fund which is very fair, it compares favourably with the Government. In fact, in many of the schemes the multiplier is one over sixty so that somebody

gets two-thirds of their final salary for forty years service and they can get one-half of their final salary for thirty years service which is superior to what the Government industrial worker gets and superior to what the MOD gets. Now those people, fair enough, you can say it is not just a question of taxing you, it is a question of saying, if you have got a scheme that gives you that range of benefits and since the benefits are reasonably high, if you were to turn that benefit into a lump sum you would probably finish up with a very, very large capital sum which can then be invested outside Gibraltar and whereas you would be paying tax on your two-thirds of the salary you could quite easily find a way of circumventing that by getting investment advice and drawing in an income which effectively becomes tax free. In fact, you can put the sum into tax free Government debentures and collect a tax free pension and you would be better off by commuting. Not that people tend to do that because people tend to get what is put in front of them and very few of them take the advice. But in theory there is a loophole which says, fine, somebody can come along and collect their two-thirds of the salary, commute that into £100,000, buy £100,000 of tax free and estate duty free Government debentures and finish up with 100% of the salary tax free. I think the thinking originally in revising the question of authorising pension funds was taken into account, the theoretical loophole, and taking into account the proportions of the lump sum and pension that apply in the Civil Service. However, the legislation is not doing that, the legislation is saying to most people in the private sector that they cannot in fact have what amounts to an endowment policy funded wholly or partly by their employer because that is what most money purchase schemes really are. It is a misnomer to say that they are a pension because they bear no relation to the salary since what you are doing is putting money essentially into a savings account and getting tax relief or having it treated as a business expense, the amount of money that you get at the end is, in fact, a lump sum, it is not a guaranteed pension. You are not even guaranteeing a lump sum in many cases other than the contributions that you put in. But the money of that lump sum is the accrued interest on the fund. That is, for example, what happens in the Government owned commercial dockyard. In the Government owned commercial dockyard the scheme says that every year 4% of the salaries bill which will be about one-third of £1m goes into a bank account and that one-third of £1m is allocated proportionately to the eight hundred employees. The Government is going to have redundancies in January, they are legislating to tax the people who are made redundant in January. Do they know that? Do they know that the biggest single group that will be hurt by this new legislation is the group that they made redundant in January in GSL, are they aware of that because if they are not aware of that then they ought to be aware of that. They cannot be bringing one Bill here to say: "We are putting money in the Finance Bill because that is partly to finance the restructuring and the redundancy", and then when we give them the money to put into the pension fund which they will then be able

to get back as contribution, if they actually get it we tax them on 75% of what they get. That would be according to the law a refund of contributions so the Government provides GSL with the money so that GSL puts the money into the Pension Fund, GSL then allows people to get a refund of contribution because they are redundant and that is provided for in the trust fees of the Pension Fund and the Government then comes along: "Ah, but you are going to now hurt my revenue". That is, the Government having provided all the money in the first place say: "I am going to lose revenue so now I am going to have to tax 75% of what you get which is what I gave you". I couldn't think of a less appropriate time to do this than now and I cannot really believe that the Government is aware of what it is doing. If we forget that particular group then we are talking about half a dozen people a year who will be caught by this legislation and those people, frankly, are people who have got the most inferior schemes in Gibraltar. What the Government cannot come along in our judgement and do is to say: "Ah, but you see in the UK this is done". It is done, but it is not taxed a 20%. My understanding is that it is taxed a 10%. But in the UK it is also compulsory by law to provide pension schemes and in Gibraltar it isn't and therefore if you have got a statutory obligation, if the law says to you that you must provide pensions for your employees, then it is reasonable that the law should then go and say, and those pensions might meet this criteria, and those pensions will be tax treated in this way. But there is one single system for everybody because the law should be the same for everybody. You cannot have one law for the people in the public sector and one law for the people in the private sector and one law for the people in good employers and another one for the bad employers and on top of that the law is different whether you took your job on the 30th June or you took your job on the 1st July. That is bad legislating and this is why we are committed to redressing the position and putting it back and we are going to vote against this particular section of the Ordinance for all the reasons we have given today and all the reasons we gave at Budget time. And if we manage to persuade the Government in the light of the arguments we have put then, of course, they will not proceed with this. But I can tell them that they ought to think very carefully, particularly about the immediate impact of this on GSL employees, because it certainly will not endear them to people in the area who find themselves with a redundancy situation and a tax situation both emanating from the same quarter, as it were. Talking about the people who are affected outside, the minority that I am talking about, Mr Speaker, the position is that the individual that gets a refund of contributions, generally, is the individual that has been in the scheme for a short time. From my knowledge of most of these private sector schemes the position is that it is people who belong to a pension scheme or so-called pension scheme. As I say, this money purchase schemes, really, are no more than savings accounts and the amount at the end of the day is used to buy an annuity so you are not really converting a pension into a lump sum according to the rules of commutation. What

you have got is a lump sum in the first place which you can use to buy a pension, which would be an annuity, or you can, in fact, take as a lump sum. That has been the case until now. If we look at that situation, the people who are likely to be able to get a refund of the contributions are people with less than seven years service or five years service in most of the schemes that I am aware of. Most of the schemes provide that when you go past five years or seven years you are not allowed to withdraw the contributions and the thing is frozen. For example, Cable and Wireless is giving its employees the option of having their contributions refunded, in the current redundancy situation in Cable and Wireless. It is not one that they are going to take because it does not make sense to take it. The position is that the amount that they would get in having their contributions refunded is a very, very small fraction of the amount that they would get even by deciding to take a deferred pension in the year 2000. So, in fact, most people would not take back their contributions unless they need the money because it is a bad deal from the beneficiaries point of view. However, if you have got somebody that is taking the money because they need the money, you come along and you tax them on top of it. And if we look at the thing from the possibility of it being used as a tax loophole, let's face it, if we are going to have a situation where the persons that contribute to the fund get tax relief at their marginal rate and when they withdraw the money they get taxed at 20% then again I don't think it is going to happen because we are talking about small numbers and small money but if we are looking at it scientifically intent on closing loopholes, we are opening a loophole with this because if we are looking at it scientifically, clearly, the people who would stand to gain would be the people on a marginal rate of 50%, because you put in your £1,000 and you claim tax relief of 50% and you get £500 and then you take it out and you get taxed at 20%, and you pay £200. So, in fact, people paying tax rates of 20% or below who are the people in the lowest income groups are the people whom this proviso would hurt. If people wanted to use as a loophole to avoid paying tax, contributions to a scheme, let us say a company director in theory could be bothered to go through all this which I don't think they are, but let us suppose they did, he could say to himself: "Right, I am going to set up a pension scheme for company directors into which I will put a proportion of my salary, I get tax relief and even though I am going to be taxed when I take the money out, because I am being taxed at a fixed rate of 20% and I am putting the money in and deducting it at my top rate I will still make a profit, the difference between 20% and 50%". This does not close the loophole for those who are on high incomes and well off, it only closes the loophole for those at the bottom because if you are saving tax at 20% and being taxed at 20% there is nothing in it. I am not suggesting that the reason for being against it is that it creates a loophole for the high paid, I am pointing out that even on that count it can be faulted. What I am

saying to Members opposite is that even if we were looking at it from the point of view of closing loopholes, it doesn't even succeed in doing that and, therefore, I hope that in the light of the arguments the Government will not proceed with this and therefore I am also saying that we should take the Committee Stage in January to give them time to take on board the points that I have put. The other area in the Bill which we are not happy with but we are open to persuasion by the other side if they can convince us of the logic of what is being done, is the question of the allowances on residential property. Some parts of it we go along with 100%. For example, this business of improving and developing a property, I think the drafting of that now makes it much clearer whereas before it didn't and, clearly, we want to encourage people to improve and develop their property because it means that we are giving them tax relief for investing their money in Gibraltar rather than taking it out and we support that thinking. But I think on the question of the allowance for home ownership which is something that, Mr Speaker, we brought to the notice of the Government after we had received representations from people, in fact, at the time people who came to see us in the Opposition were people who had bought flats in Water Gardens, people from a sort of middle range of incomes, white collar workers and having done their calculations on the assumption that they were getting tax relief while they were paying down payments and the block was going up, they then found out that they could not get in until the thing was finished. As I understand it, what the Government is doing is they are meeting that point for so-called 'closed market development schemes'. We don't think that it should be for closed market development schemes, we think it should be available to everybody and we don't see why there should be a discrimination in terms of being able to do that for a so-called 'closed market development scheme' and not for another one. Certainly, the people who came to see us are not from closed market development schemes and in any case since the price is higher in the open market, the need to be given the relief is even greater so if you are looking at people's ability to pay and the tax relief is an important element in deciding the capacity of people to meet the payments, then it is going to be a more important element in areas where the price is not subject to a ceiling than in a situation where the price is subject to a ceiling. If we have understood that correctly then we are not happy with that and we would need to be told why it is that the relief can be given in a closed market scheme and not in an open market scheme. I am referring to clause 5 and subsection 2 of new section 26(a). If we have got it wrong then, fine, we are put at ease on that one but we are not happy with that and we will want to know why the Government thinks they can do it for one and not the other. We also are unhappy about the situation where we are now putting in our legislation the concepts of a closed market development scheme which is in subclause 5 of that same clause 26(a). There it says it provides a definition. The expression 'closed market development scheme' means a scheme

certified as such by the Director of Crown Lands. Right, but where does the Director of Crown Lands get this power to certify things as closed market development schemes? What are the criteria that the Director of Crown Lands has to apply to determine whether a scheme is closed market or open market? The first time the concept surfaces to our knowledge on this side of the House, I mean, the Government does not come along and say: "And now as part of Government policy we have got this new device which is closed market development schemes and this is what the Government proposes to do about it and we have had a debate". That has not happened. This is the first time it appears in any Gibraltar law, to our knowledge, and the first time we heard about it was in the City Plan. It may be a development of the 'Approach to Housing' leaflet which was tabled or circulated in the House but from our recollection of it it certainly was not expanded in that leaflet in the way it is now and in the way that it is explained in the City Plan, because in fact in the City Plan from what we can deduce it would appear that the origin of the concept is not the approach to housing and crown land. The origin of the concept is Jersey and Guernsey because in fact the City Plan talks about a two-tier system of housing existing in the Channel Islands which it does because they are outside the EEC and they can do it and we cannot, but it seems to be modelled on that concept and the idea is that you have two-tier housing. Free market housing which everybody can come and buy provided they can afford it, and protected housing which only residents can buy in order that they are not priced out of the market. There are, undoubtedly, attractions to that but what we question is whether we are able to do it within community law. We have got serious doubts about that and therefore we would need to be told categorically that it is possible under the existing terms of membership in Gibraltar to be able to say: "I will in fact put a price ceiling on a housing development and limit who can buy in that housing development to people who are either Government tenants or on the housing waiting list or entitled to be Government tenants or entitled to be on the housing waiting list and by definition we are excluding a range of people whom we understand under community law are entitled to buy any property in Gibraltar". That is our understanding of the law and it is our understanding of the position as it was explained in this House following the Brussels Agreement when we had to amend a number of our laws to allow Spanish nationals the right to own land and buy property and we were told that this was consistent with the rights, I think it is in the social chapter, where it talks about the right of residents and the right of establishment of workers, for example, and the right of workers to be joined by their families and there it talks specifically of the right to buy property. I think it is something that my colleague has, in fact, brought up previously in this connection. It is one thing as we see it to say: "Well, look, the concept that we are operating is this concept but there is nothing really black upon white and there is nothing in any law", and another thing is that we are going to legislate

now saying there is such a thing in the law of Gibraltar as a closed market development scheme which means a scheme certified as such by the Director of Crown Lands then I would say, right, in what law does it say which are the criteria that apply to such schemes and can the Government give us an undertaking that they have researched the thing and that they know that this cannot be challenged. I know my colleague, the Hon Mr Pilcher, mentioned before we sometimes get an adverse reaction from the Government benches, Mr Speaker, when we make these repeated references to complying with community law and apply community legislation. We feel quite strongly about it because we feel equally strongly about being discriminated against by the community. We feel that consistent with saying we are entitled to be in the EEC Air Liberalisation Package is saying, well, we have to comply with community directives and comply with community law. We think the strength of Gibraltar's case must be that we are in and we are good members of the community, taking our membership seriously, applying our obligations and fulfilling those obligations and insisting and demanding our rights, both, and we, think we cannot do to them what they cannot do to us. What they cannot do to us is to say: "Well, you are in for the bad things and not for the good and we cannot say the converse". This is the approach from this side of the House and we want reassurance on this point before we can support this. There is one element in this Bill which we think is very wise of the Government to introduce which is that people have to refund the rebate that they get if they sell the property within twelve months or they do not take occupation because really otherwise the purchase and sale of houses theoretically would become a method of tax avoidance and therefore if the thing is to encourage home ownership and the property is not occupied by the person that gets the tax relief, then it is right that the Commissioner should be able to recover that money and we support that 100%. But I think there is another element there not on the tax angle but on the closed market development angle which the Government seems to have left open and there is a parallel. Just like you don't want to have a situation and you are putting that right in this Bill where people use home ownership not as an end in itself but as a means to an end, that is, as a way of reducing their tax bill, you don't want to have a situation where you have closed market development schemes and that is used as a way of making capital gains and not as a way of promoting home ownership. And that is happening. There has been one so-called 'closed market development' which is the Vineyards project, nothing else to our knowledge has happened so far which is defined as such. We know of people, and one says good luck to them if they have been able to do it, we know of people who have already re-sold the property that they bought and made a profit of £10,000 and the building isn't finished. If they got tax relief and they have not taken up occupation the Commissioner can get the tax relief back but how can one argue that the land should be given away for £100 in order to make housing within the reach of people of more modest means because we want to give people an opportunity to own

their own home at different levels of income and not just the people who can afford to buy a penthouse for £4m, fine, and what happens is that the people who are given that opportunity at a cost to the public because, that is to say, the Government on behalf of the public as the owner of the land does not get the market price for that land and allows it to go below the market price and then what happens is that, the developer is not allowed to raise the price. That is my understanding. As we understood the lease originally, if the developer raised the prices beyond, then he would have to pay the Government more for the land, he has to pay a proportion of the extra price back to the Government for the land. So, in fact, the Government introduced a penalty in the lease of the land for the development by saying if the developer sells at higher prices, but if in fact all that happens next is that the people who buy from the developer are free to sell at whatever price they want then it ceases to become a closed market development. It is only a closed market development in respect of the developer and the first purchaser. That is the only closed market development in existence and that is the one we are legislating for. There may be or there may not be others in the future. There may be one in Montagu in a few years time or there may not be but we are legislating in 1987 and the only people who can claim this in 1987 and the only closed market development that we are aware of is this one. I know that the concept for example, in the City Plan has been used to span public and private. We think that public housing is a different kettle of fish. If the Government decides to sell Government flats as we have just discovered they are going to do in housing estates with vacant possession, that is not a closed market development. They are the owners of the property and they sell the property to whoever they want on whatever terms they want like any other property owner does. If the Government builds in Engineer House and decides to market those to people who are Government tenants, it is their prerogative because they are putting their money in that building and they are the owners of the building. The concept of the closed market development is not what the Government does with its own property which it is perfectly entitled to do without any special legislation but what the Government authorises developers to do in the private sector and if we are introducing a two-tier system then we certainly are not happy to go along with it without getting a much better explanation and a much better definition by the Government of what they mean by it and how they think it will operate and how they intend to overcome the kind of shortcomings that we can see with the limited information that has been available today and those really, Mr Speaker, are the two points that we would like the Government to give serious thought to between now and the Committee Stage because I don't expect they will be able to give me any kind of detailed explanation on this on the spot. Clearly, anything that they can answer will be welcome at this stage because it is something that we can think over between now and the Committee Stage as well but I understand that they may not be in a position to give me a detailed answer on these matters.

HON CHIEF MINISTER:

Mr Speaker, as I indicated to the Hon the Leader of the Opposition yesterday there is no difficulty about postponing the Committee Stage of this Bill to next month, to January and that will give us plenty of time to consider carefully the points that he has made. It would be useful, I think, Mr Speaker, if your office could make available a transcript long as the Leader of the Opposition's speech has been, if it could be done I think it would be of great assistance to the Government.

MR SPEAKER:

Oh, yes, most certainly.

HON CHIEF MINISTER:

I am not going to say a great deal about the question of provident funds, Mr Speaker, because I am not so well versed in this province but I did understand the distinction that he was trying to draw between the well established schemes of major employers and the others and, as I say, perhaps if we do get a copy of the proceedings I can more carefully read over the points that he is making. On the question of home ownership and the measures that are included in this Bill to try to promote that, there were two things, of course, that we really wanted to do. One was to give income tax relief to those people who are paying for their newly purchased home by instalments as distinct from those who may, say, pay a deposit of £10,000 or £15,000 and then pay for the rest by a mortgage. I think there are precedents in the case of North View Terrace and probably Vineyards where, in fact, people have been required to pay by instalments over a period of two or three years in order to meet the initial premium. I think that other schemes that are coming up probably at Catalan Bay and Montagu may be of a similar nature. We wanted to help those people and at the same time we wanted to have at least an initial penalty against the speculation that is already evident and has been evident in North View Terrace and now in Vineyards so at least through the Income Tax Ordinance we are going to withdraw the rebate if the property has been sold within a specified period of time. I am frankly concerned about this aspect of speculation and, of course, there is no doubt that if the Government foregoes a very large premium on behalf of the community and also puts penalties on the developer, that those who commit themselves to purchase even before they have occupied the property should not be able to speculate and make a bomb out of the whole thing. One shies away from the concept, perhaps, of a capital gains tax because it might frighten many people from investing in Gibraltar but if we are going to define, and we have defined for the first time in this piece of legislation, given some legal standing to the concept of a closed market development scheme, perhaps we ought to think whether some form of capital gains tax should not be introduced precisely

for a closed market development scheme, not for others but certainly for this one but the impression that we might give, I think, is one that we have to think about. Perhaps we shouldn't call it a capital gains tax, perhaps it should be something in the same way as provision is being made for the tax relief to be lost to be foregone in the case of a resale, perhaps there could be some way of meeting this problem. But only, and one must stress, for closed market development schemes which are not intended to be speculative, which are not intended to be for outsiders but are intended for people who have a serious housing problem and who want to continue to reside in Gibraltar. The concept of a closed market development scheme although referred to in the City Plan does pre-date as far as we are concerned in the City Plan because it has been talked about and discussed in the Crown Lands Department shortly after we set up the home ownership unit a couple of years ago. I am informed by the Attorney-General that it is sufficient to have the legislative provision that is being made in this Bill as the necessary statutory backing which is required for the concept, that we don't have to go any further in this respect. I am going to come to the guidelines in a moment, to the definition that the Department uses, but before I do that perhaps I should also say that we are drawing a distinction in respect of the tax relief because there is an element of control by the Crown Lands Department with regard to a closed market development scheme in that at least we are able to monitor what is happening whereas for other schemes, for open schemes, there is no monitoring that the Crown Lands Department can undertake and that is why we are drawing the distinction and giving the relief for instalments to one and not to the other and, as I say, the closed market scheme is designed for local residents and the others are not. Very many are purchased directly by people or by companies and so on and why should we give them any kind of relief. The definition that the home ownership unit is adopting in the case of the closed market scheme is that the Director will certify as a closed market housing development scheme those which are designed by their marketing limitations to benefit only the people eligible to apply for housing in Gibraltar. An application for the Director's certification must therefore include a developer's declaration to this effect and a complete list of all the units proposed in the development together with a list of committed purchasers must be provided to the Director of Crown Lands and a further undertaking which will have to be injected into the agreement to purchase and into the eventual demise. This must ensure that the Department is informed of all transactions involved in the transfer of title or benefit or any such demise. These clauses must be operational from the date of effect of the agreement to purchase to the end of the first year of the term of the lease granted on completion of the works. These are the guidelines which the Department is going to adopt, they are not enshrined in law, they are just guidelines, but the Attorney-General seems to be satisfied that that is sufficient and, perhaps, he can explain his own views on the matter.

HON J BOSSANO:

Did he say eligible for housing or eligible for Government housing?

HON CHIEF MINISTER:

Eligible to apply for housing in Gibraltar.

HON J BOSSANO:

Should that be for Government housing in Gibraltar?

HON CHIEF MINISTER:

For public housing, for Government housing. Yes, of course.

HON J BOSSANO:

And the other thing is does, in fact, that apply every time the house changes hands or only in the initial stage?

HON CHIEF MINISTER:

In the initial stage.

HON J BOSSANO:

Surely, if the Hon Member will give way, the point that I made was that if you have got a situation where you have got a two-tier market which is the difference between the scheme here, as I see it, and the model of Guernsey, in Guernsey, a Guernseyman that buys a restricted market property can only sell to another Guernseyman that can also buy a restricted market property, he cannot sell to an outsider otherwise he would make a fortune because the disparity is enormous. If you have got a situation where the Government says: "Because I am giving you the land free, the potential pool of purchasers is limited to the two thousand people on the waiting list", for example, to get a figure. That means that if independent of any physical limit on the price put by the Government, by the very nature of market forces you are more restricted in what you can ask because the potential number of people that can buy is only 2,000. That is the whole basis of the differential between an open market and a closed market. It is closed because it is closed as regards customers. If all that happens is that the 2,000 can buy and then sell to the 300,000,000 Europeans, what you are doing is you are giving people a printing press to make money.

HON CHIEF MINISTER:

I take the point. I think we have got to give further thought to this matter and we are in time to do something.

HON M A FEETHAM:

Could the Hon Member sent us a copy of the guidelines because I haven't had time to write them as he was speaking?

HON CHIEF MINISTER:

Well, they are recorded in Hansard.

HON M A FEETHAM:

Yes, but it will be some time before we get it.

HON CHIEF MINISTER:

No, I have asked that it be made available soon.

HON J L BALDACHINO:

I am referring to clause 5, Mr Speaker. Is this going to be backdated because if it is not going to be backdated it appears to me that what we are now legislating here is more in favour of the Vineyards project or for the Vineyards homeowners.

HON CHIEF MINISTER:

But it is, it is backdated.

HON J L BALDACHINO:

Is it backdated?

HON CHIEF MINISTER:

Yes. If he will turn over the page and look at the top of page 188, it comes into effect on the 1st July, 1987.

HON J L BALDACHINO:

So this will go back to the 1st July.

HON CHIEF MINISTER:

To the beginning of this tax year.

HON J L BALDACHINO:

The other point I would like to make is that even though we go to the closed market there have been purchases in Gibraltar like the North View Terrace which is completely different to the one of the Water Gardens. In the North View Terrace there were more Gibraltarian buyers and there were more working people who bought houses there. If we don't apply it to all then projects such as North View Terrace will not have the same advantage as closed market projects. The other point is that if we go back to the 1st January, 1987, does that mean that the people who bought houses in the Vineyards project will get backdated all the instalments they have been paying or will they only get part of it? I think that we should go back at least to when they started paying because they were the pioneers otherwise people coming after them will have the advantage of claiming while they won't be able to do that.

MR SPEAKER:

Any other contributors? I will then call on the Mover to reply if he so wishes.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I do not propose to say anything about the closed market development since the Hon the Chief Minister has offered to look into this further, I would simply say on the question of the changes dealing with return of contributions that, and I think the Leader of the Opposition would acknowledge this, the points he made reference of this particular measure were, in fact, the points he had already made, I think, substantially when we discussed the major change affecting pensions in the Budget. I can only acknowledge that he takes a different view although I think for the record I ought to say that whenever one has any change of this nature, inevitably there is a point like the 1st July which becomes perhaps it seems absurd to make distinction at the time when one is legislating for the future and the Government's view is that this is a matter of principle and the principle is that one should not allow tax advantages to affect the contributions, the investment of the money put into the Fund, whatever fund it may be, and also benefits. This is in keeping with the Government's view as to how the changes in legislation should be made. There is certainly nothing to stop any individual still taking advantage of the provisions of Income Tax Ordinance which affect endowment assurance. It is true, as the Hon Leader of the Opposition has said, that some of the extent schemes have strong similarity with endowment policies, they are of that nature, they are not final salary related, they are money purchase, I accept that, but I go back to my point that we are in fact legislating for the future in order to make a change which seems to the Government in keeping with modern conditions.

HON J BOSSANO:

We are voting against because even with what we have just heard from the Financial Secretary we cannot vote for the general principles of the Bill. When the time comes we will vote for some sections and not for others.

MR SPEAKER:

I would suggest then that the Chief Minister should call for a division because otherwise the Second Reading will not be carried.

HON CHIEF MINISTER:

Yes, Mr Speaker. May we have a division on this Bill?

Mr Speaker then put the question and on a division being taken the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammit
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken on the 21st January, 1988, when the House will resume.

THE IMPORTS AND EXPORTS (AMENDMENT) ORDINANCE, 1987

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Imports and Exports Ordinance be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have the honour to move that the Bill be now read a second time and I do not propose to make a speech. It is as short a Bill as it has been my privilege to introduce to this House and I think the explanation given in the explanatory memorandum is all I need say on the matter. I commend the Bill to the House.

MR SPEAKER:

Before I put the question to the House does any Hon Member wish to speak on the general principles and merits of the Bill?

HON J C PEREZ:

Mr Speaker, the explanatory memorandum is quite clear but if that is the only reason why the Government is bringing legislation of this nature to the House then it doesn't satisfy us at all. The fact that Cable and Wireless was exempt from import duty does not justify that Gibraltar Telecommunications should also be exempt from import duty. One could not question what the situation was then unless there is a valid enough reason other than that, unless the Government have actually studied why they want to exempt Gibraltar Telecommunications from import duty and they give a different explanation in the House, at the moment we will reserve our position and abstain on the Bill.

MR SPEAKER:

Are there any other contributors?

HON SIR JOSHUA HASSAN:

Mr Speaker, I understand that throughout the negotiations with either side which was on the same basis as before, it was the understanding that equipment would not be subject to import duty. In this case, I imagine, unlike before, half

the import duty would be payable by the Government so that the Government would be paying import duty on goods which were going to be their own insofar as half of it was concerned. If before and on a non-competitive basis Cable and Wireless did not pay any import duty on their equipment, it is hardly fair to expect a company where the Government are 50% shareholders, that there should be any difference to what the practice was before, in fact, it should be all the more reason that it should be exempt from that and that would only tend to lower the cost of the equipment and reflect finally in the rates and the tariffs of the international communications that we will provide and make Gibraltar as competitive as possible.

HON J BOSSANO:

Let me just say, Mr Speaker, that the fact that something has been done for a long time is not a sufficiently compelling reason. If it is a new outfit it is time to take a new look and certainly we are keeping our options open on this.

MR SPEAKER:

If there are no other contributors I will then call on the Mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Really there isn't a great deal I can say, Mr Speaker, except that on the general principle, really endorsing what Sir Joshua has said, it certainly was part of the understanding throughout the negotiations with both parties, I might say, but certainly as far as the deal with British Telecom was concerned, that the existing privileges, if one likes to use that phrase, would be made available to the new company. There are other examples in the Imports and Exports Ordinance of exemptions, for example, there are import exemptions for equipment of a specialised highly technical nature in connection with what one can call Reuters equipment, perhaps it is the simplest way to describe it, data processing equipment which I think one could say if one makes exemptions for equipment of that nature then one ought to make exemptions for the import of equipment which is in connection with enhancing Gibraltar's telecommunications facilities. I must admit that to a certain extent I am making up general principles as I go along because I started from the assumption that it is a reasonable general principle but I would be quite prepared to give way at this stage if the Hon Mr Perez would wish to stand up and oppose the principle I have outlined.

HON J C PEREZ:

Mr Speaker, I think it has been made quite clear by the Hon Leader of the Opposition and myself that what we are doing is keeping our options open unless the Hon Financial and Development Secretary or any Member of the Government can give another reason other than the one in the explanatory note which does not satisfy us. The Hon and Learned the Back-bencher did say that it was import duty which was in part to be paid by the Gibraltar Government but that is in part. We have other Government owned companies which perhaps do not enjoy the same facility so there is no standard procedure in approaching this matter and we don't see why on this particular occasion because Cable and Wireless enjoyed it which I don't think they should have enjoyed, for a long time because they enjoyed a monopoly in telecommunications that we should grant it to Gibraltar Telecommunications and perhaps lose that 50% of the import duty which we might be able to get. But we are keeping our options open, it is not that we are totally opposed to it on a matter of principle or anything like that but we cannot see that the reason given for the introduction of this Bill is sufficient.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I will only pretend that I was standing up, Mr Speaker, and I have finished my speech. I can sit down.

Mr Speaker then put the question and on a vote being taken the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammitt
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken at a later stage in the meeting.

This was agreed to.

THE SUPPLEMENTARY APPROPRIATION (1987/88) (NO. 3) ORDINANCE, 1987

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to appropriate further sums of money to the service of the year ending with the 31st day of March, 1988, be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. It is much easier for me to speak in favour of Supplementary Appropriation Bills because as the House will know I object to them on principle as Financial Secretary. I see it as one of the main purposes of my job, of course, not to allow Government to spend any more money than they vote at the beginning of the year so the House will understand my concern at seeing a Bill coming forward with such an outrageous amount of money included for supplementary funds. Having said that, I think and I really am trying to agree, there is a clear distinction between the £2m which was included for GSL and the rest of the funds for which the Government is coming to the House for approval. I should mention one point here, namely, that it was thought that this might be the last opportunity for the Government to seek approval from the House for a Supplementary Appropriation both in connection with GSL and in connection with other Government expenditure before a general election. I don't know when the general election is going to be but there really was that possibility that we might not have another House until very late or, indeed, the end of the financial year which would have created difficulties. I mention that and that is all I am going to say on that particular subject, simply because the sums involved, as Members will see from the Schedules, are quite large in total. Excluding GSL we have a figure of over £1m and I think it is fair to say that the departments who have been asked to put forward requests for supplementary funds may have put in, to coin a phrase, the kitchen sink as well as everything

else on this occasion. Normally when the House approves the Supplementary Bill I issue a general warrant authorising the expenditure. On this occasion as a measure of control I don't propose to do that, I propose to issue specific warrants to individual spending departments, to the Controlling Officers, as and when the funds may be required. I say that because I would expect that there may be some considerable underspending compared with the sums which the House is now being asked to vote. I really have no alternative on this occasion because of the exigencies of the Parliamentary system, Mr Speaker. That is all I wish to say.

MR SPEAKER:

Before I put the question to the House does any Hon Member wish to speak on the general principles and merits of the Bill?

HON J E PILCHER:

Mr Speaker, although normally when we come to Bills to appropriate further sums of money we tend to leave it for Committee Stage where, obviously, we are discussing particular aspects of that, we feel in this particular Bill, as will be evident in my contribution, I think, we feel it is necessary to do it on the general principles. However, Mr Speaker, I intend to take up certainly more than ten to fifteen minutes so you may prefer to recess at this stage.

MR SPEAKER:

Perhaps we should then recess until this afternoon at 3.30 when we will continue.

HON SIR JOSHUA HASSAN:

Mr Speaker, I am sorry, I didn't hear what was going on, I thought this was a perfunctory function that we normally deal in the Committee Stage with the supplementary votes. Insofar as I have an element of responsibility I would like to say that sometime before I decided to resign I did ask the Financial Secretary to make sure that any commitments that the Government was making were covered by Parliamentary authority before we left office as a result of the election. Naturally, we were in two difficulties. One was that people should not think that money was there for the giving to departments, on the other hand I did not want to leave a legacy to a future Government to be burdened with having to vote monies on matters on which we had decided to spend and a different Government could think differently. I thought we should assume responsibility and the idea was that all the supplementary requirements were enquired into and it was decided, if I remember rightly, that we should reserve

this vote and make the money available as and when justified in each particular case but that we should not leave, that was my intention, we should not leave this Legislature a legacy to any future Government to have to vote money on matters of which a decision to spend money was taken by this Legislature hence the reason why some were higher than would have normally been the case as they would have had to justify nearer the end of the financial year.

MR SPEAKER:

Nothing has been said on the general principles and merits of the Bill. What the Hon Mr Pilcher has said is that normally they make their contributions at the Committee Stage but that they would like to do so on this particular Bill on the general principles. He said that his contribution was going to take more than ten minutes so therefore he wanted to have an opportunity to address the House after the lunch recess.

HON J E PILCHER:

If I can just explain the point for the Hon Sir Joshua Hassan. In my contribution on the general principles we will be asking the Government to delay the Committee Stage until the meeting of the House adjourned to January and therefore we couldn't do that if we went into Committee and that is why we are going to make the point on the general principles of the Bill to try and convince the Government to leave the Committee Stage until January.

HON SIR JOSHUA HASSAN:

It may be possible in some cases but not possible in others. For example, the GSL money is required to be voted now before the end of the year and therefore we have to discuss that. I don't mind insofar as that aspect of the Schedule which was really produced as a result of the directive I gave before about making sure that the House gave authority for all the money, it is those aspects which are really anticipated, I didn't know then that there would be a meeting in January, I didn't know whether there would be a meeting in January or not. At the time that I required that, it was precisely because I did not want to leave a legacy of monies to be voted by policies decided by this Government. I think that is in the best Parliamentary tradition.

HON CHIEF MINISTER:

The other thing, of course, that should be added is we were trying to avoid bringing two Supplementary Appropriation Bills to the House, one at this meeting and then another one in January.

MR SPEAKER:

Let it be said that there is no reason why at the Committee Stage we should not deal with parts of the Supplementary Appropriation and then the rest of the Committee Stage can be taken in January.

The House recessed at 12.55 pm.

The House resumed at 3.40 pm.

MR SPEAKER:

I will remind the House that we are on the Second Reading of the Supplementary Appropriation (1987/88) Bill and anyone who wishes to contribute to the debate is free to do so.

HON J E PILCHER:

Mr Speaker, in speaking on the general principles of this Bill, I will be speaking directly to Head 25 - Treasury, that is, the vote of £2,036,000 which comes under the Treasury vote but which is clearly the subvention that the Government of Gibraltar intend to give Gibraltar Shiprepair. I think before talking about the point at issue, ie the £2m subsidy, I think there has to be a certain amount of history into the situation, certainly over the past year at Gibraltar Shiprepair Limited and to the different debates that we have had in the House as regards this particular issue. Also, I think, I have to refer to what the Hon Chief Minister said this morning in anticipation of the debate when he said that, surely, the Opposition party wouldn't call the £2m subsidy to GSLP electioneering. Obviously, Mr Speaker, given the Government's record particularly over this past year, there is no need to do any type of electioneering on this particular issue. Until early in this year, January/February of this year, the Government continued to maintain that there was a future for GSL under the present management and under the present conditions. It was only until the middle or late this year that the Government have now decided, in principle, that restructuring has to occur and that they are now taking steps to ensure that the restructuring happens. But I don't, as I say, have to remind the Government that over the past year £4m loan which they gave the company is still outstanding; that in the early part of this year £2m were made available through subscription for shares in GSL; that in October this year we gave GSL £4m of overdraft facilities and that in this House they are now seeking £2m as a subsidy for GSL. Doing rough calculations, Mr Speaker, that is nearly £5m in 1987 as a subsidy one way or another for GSL. As I said before, Mr Speaker, we have had three, maybe even four, main debates on GSL this year during the 1985 Accounts, during the 1986 Accounts, during the voting in February, I think it was, of the subscription for shares of £2m and I think, again, at Budget time. The position of the Opposition party

as regards GSL is more than clear and I dare say the position is one where the two sides differ in what has been the way ahead, certainly since 1984, the split, in fact, came during the elections of 1984 and throughout until the present day. I think it is more than clear that there are two different positions on the matter and even today, Mr Speaker, if we note the questions at Question Time in this particular House where we feel the Government is still distancing itself from the direct intervention or direct policies of GSL, during Question Time we heard that they are still dividing or creating a divisory line between GSL, the company, what Mr Michael Casey is doing, who approves that and, certainly, as far as the redundancies are concerned, again, we have a situation where we have a proposal by GSL which the Government is still studying. I think it is far from clear or, at least, it is more than clear that the position which the Government had maintained over the last four years is still the position to date and that that position runs contrary to the position adopted by the Opposition party, the GSLP, since inception of GSL in 1984, at least the inception of the idea during the elections of 1984. I think on the question of electioneering, on the question of passing goodies on to the people which is a point that was made by the Hon Chief Minister. I think what we need to do, Mr Speaker, is re-ask the question to the Hon Financial and Development Secretary after this House about the balancing of expenditure and revenue. I am sure that we might not get the same answer as we got during Question Time which was that the expenditure would be less than the revenue of the Government. I am not sure that that is still the case after all these bills and after all the goodies that have been given to the people of Gibraltar by the Hon Dr Valarino. That is a different subject. Getting back to the subject matter, Mr Speaker, the reality of speaking during the general principles of the Bill rather than what has been the norm in the past to speak during the Committee Stage is because I feel that the Opposition party finds itself in a dilemma. We are in a dilemma because in the past every time that we have got a decision to make on GSL, particularly on the financing side of GSL, we have had a situation where normally we have abstained, our abstention signifying that we did not agree with the way that the company was being handled by the Government and I think there is no need, as I said before, to go over all the ground as regards why we have objected at any particular point. Most of the times we have abstained because we couldn't vote yes because we didn't agree with the policies of the Government and we didn't vote no because a no would have been tantamount to an admission or a situation where if the no had been accepted by Government it would have meant the demise of the company and the shutdown of the company and therefore a lot of redundancies and a lot of economic problems. Therefore this is the reason that we have always abstained, I say always certainly during this year ever since the Government brought the first £2m for the subscription of shares, we have abstained in the knowledge

that an abstention meant or at least trying to explain that an abstention meant saying no to the way the Government was handling it but in no way saying no to the actual expenditure of the money. Having got to this stage, Mr Speaker, there is, in fact, a different analysis to be made this time because there are two different arguments encompassed in the same vote and there is an anomaly in the arguments being used. We are now at the end of 1987. During the debate on the 1986 Accounts we heard the Hon Financial and Development Secretary say that by the end of the year the operating cost of the company would be £3m in deficit. This, I think, he confirmed during Question Time on Tuesday. I therefore feel, Mr Speaker, that the £2m contains an element which is an element of balancing up the 1987 Accounts of the company. In fact, he intimated this during Question Time when he said that out of the £2m it might be possible to overcome or cancel the £3m overdraft that the company had been allowed in October. Therefore there are two different elements, one element which is part of the £2m goes towards cancelling the deficit and balancing the books at the end of 1987, ie the deficit in operating costs that the company has had even after the £2m subscription on shares even after the company has, to a point, been given a hidden subsidy by the taking over of the Training Centre and even after the £3m overdraft, the company cannot balance its 1987 Accounts and therefore part of the £2m will go towards this particular aspect. I think on this particular point we have to ask ourselves why has the company arrived at the end of 1987 with a deficit of £3m when the anticipated deficit given by the Hon Financial and Development Secretary at the start and, in fact, during the discussion of the 1985 Accounts, the anticipated loss was between £200,000 and £300,000. I think, Mr Speaker, even here the inefficiency of the Government control over the company has had a lot to do with the fact that the company arrives at the end of 1987 with a £3m deficit. If you cast your mind back, Mr Speaker, to the discussions in February or March of this year; if I am not mistaken, when the Government brought the £2m subscription for shares, you will remember that it was made quite clear by the then Hon and Learned the Chief Minister, Sir Joshua Hassan, that there was no question of any of this money being used for salary and wage purposes. He said clearly that these £2m were for operating costs of the company and that the way ahead for salaries and wages was for the company and the workforce to discuss this and to come to an agreement given the profit element that the company had and therefore giving to the workers the amount of money that the company could afford but that at no stage could these £2m be used for this. Mr Speaker, because of this we had industrial problems in the yard with the workforce who claimed a certain percentage of increases in salaries and wages and through June, July and August GSL was again thrown into a situation of industrial unrest because the company insisted, quite rightly, that they didn't have money to pay the cost of the salaries and wages bill which, if I am not mistaken, was somewhere in the region of £3m and therefore there was no way that the company could cede to

the claims being made on them by the Trade Union movement. Of course, after that, we are now in a situation, with hindsight, of knowing that the company did pay £1m, that the company ceded to the demands of the Trade Union movement, logical demands, Mr Speaker, because they were looking at a situation where they were worth an increase in salaries and wages as indeed we argued that in October, and at the end of it the Government paid for that £1m through the £2m subscription of shares, through their hidden subsidies for the Training Centre and, in fact, anything left over we are now going to vote £2m subsidy which if it hasn't been covered already, will be to cover the cost of salaries and wages which is part of the operating costs of the company. Mr Speaker, this is but one more example of how the Government in their inefficiency in running the company have again created another obstacle for the company because all that was needed was to have given the company back in February/March, 1987, the right to spend £1m to meet the salaries and wages bill and that would have happened and it wouldn't have been thrown into a situation of industrial unrest in the yard with all the repercussions that that has for the yard and which we all know about and which has been made very clear by people like Mr Torsten Andersson and we could have avoided all that if the Government at that juncture would have realised that the £1m for wage and salary increases was the right way of going about things. They decided not to, we were plunged into a situation of industrial chaos and at the end of it all, they had footed the bill anyway. That could have been avoided, Mr Speaker, in February/March and although the company would not be arriving at the end of 1987 with a surplus, with a profit and with anywhere near the £200,000 deficit that they said, certainly, the deficit would not be as much as £3m. The part of the £2m that appertains to the balancing of the books for 1987, Mr Speaker, we have no option but to agree with the Government that that has to be paid because if it is not paid then the company would not be able to close its accounts for 1987 and would have to close down and therefore, again, we are forced into a situation that because we don't want that to happen the Opposition party are unable to vote against because the money is needed and have to therefore abstain but in no way can we support a situation where due to Government inefficiency and maladministration, maladministration in two counts. One is because their policy directives have, in fact, in this particular juncture created an obstacle for the company but also the fact that they are still putting that divisory line between them and the company in order to try and get to an election unblemished and for people to think that the fault of the failure of the company falls on the managers or falls on the company but certainly doesn't fall on the Government. Certainly from this side of the House we put the blame squarely where it lies as far as we are concerned and that is on the shoulders of the Government of Gibraltar, Mr Speaker. On this aspect of the part of the £2m that appertains to the balancing of the accounts, we have no option but to abstain on this element. Of course, that is not the full

explanation that has been given to us when the £2m subsidy has been brought to the House. The explanation given, if I am not mistaken, by the Hon Financial and Development Secretary was that part of the £2m, as I explained, was for the balancing of the accounts and the bringing back of the company on its feet by the end of 1987 and clearing all the deficits but also to keep the company running through the restructuring which the Government have now accepted in principle and, obviously, to pay for the redundancies when those occur. However, the Government still are saying to us that they don't know how or when the renegotiation of the Management Contract is going to take place. All that we have heard in this House is that the lawyers of GSL together with the advice of Mr Michael Casey are still looking into the matter and we have only been told that a decision, in principle, is to restructure and to have redundancies in the yard but there is no final decision on the restructuring or on the redundancies. Certainly, nothing at all on the Price Waterhouse Report which we paid dearly for and which has been on the table now for a year and very, very little of it has been done since then. But yet we are asked to vote £2m without knowing what is the future, Mr Speaker, we don't know what is the new concept under which the Government want GSL to function, ie the new Management Contract, we don't know what type of restructuring they are talking about, how many redundancies are going to occur, what is the number of the workforce going to be made redundant, what percentage are going to be kept and certainly and the most important point, we don't know what timetable the Government is talking about. By voting the £2m we are virtually giving carte blanche to the Government to keep operating GSL, perhaps just ticking over without saying when they intend and without giving us a timetable as to when and how that restructuring is going to take place and that is very, very important, Mr Speaker, because every week that goes by it is costing the people of Gibraltar £x-thousands in order to keep the yard running because the yard at the moment is running at an extraordinary loss. We have now finished the RFA's and we have a workforce which we have to pay every week and every single week that the Government doesn't take a decision on the Management Contract and doesn't take a decision on the restructuring and the redundancies is an amount of thousands of pounds that is costing the people of Gibraltar, the taxpayer. Therefore I think, Mr Speaker, before the Government asks this House and therefore the people of Gibraltar, to vote another £2m subsidy for the company, I think that they have various questions to answer. The questions are, obviously, what is the type of restructuring; what is the economic impact of this restructuring; will the company after the restructuring operate at a loss, operate at ticking over, balance itself out, lose money, how much money is it going to lose? All these questions, Mr Speaker, are questions that have to be answered. I suppose at this point in time when they have done it now three or four times during the year it is now standard practice to come to this

House to ask for more money for GSL but I think when we are now on the fifth million, and that is £5m over and above what was given by the ODA both from the £28m and the extra £2.4m, we are now on the extra £5m being paid by the people of Gibraltar and all that we are being told is that the renegotiation is taking place and that the restructuring has been agreed in principle. Well, I feel, Mr Speaker, that that is not enough. I feel that it is not only not enough for the Opposition on this side of the House that has to either vote in favour of the money, vote against the money or abstain because how do we gauge which way to vote if we are not being given any reasons? I think we need to know the timetable of the Government, have the Government decided now that they are going to restructure the company in January? Have they decided to restructure the company in February? Is the money that we are being asked to vote to tide over the company until January/February, how many redundancies? I think, Mr Speaker, not wanting to repeat myself, I think the Government have a duty to come to this House with the answers to the questions that we are asking but, of course, they should have had that statement ready to give the House before they asked the House to vote the £2m. I feel, Mr Speaker, that on this particular aspect the Opposition party would be quite prepared to vote against this aspect of the money and I think it would be accepted and understood by the people of Gibraltar because, really, in voting the money without knowing what the Government intend to do and what the company intend to do with it, we still don't know what the £2m that we paid to the company in subscription for shares have been used for. We know that £1½m have been used for the pension fund which they should have had operating since 1984, we know that all the money that was supposed to be used for operating costs have been used for operating costs because the money that was there for operating costs was being used for other things. I think, Mr Speaker, we have now got to a juncture where the Government have to be more outright in their arguments and more outright in their explanation and presentation of things like that, for us to be able to vote one way or another. What I think we need, Mr Speaker, is for the Government to separate the vote. I think we need in this House to know how much of the £2m is going to close the accounts for 1987 and I think we need to know how much of the money is going to go towards helping the company through the restructuring period and, obviously, know what type of restructuring and what type of redundancies the company and the Government are aiming for and what that is going to cost. What I would want the Government to do if they are going to get our support at all on this one, Mr Speaker, is to separate the £2m that they have put under the Treasury vote, what they should do is put under the Treasury vote for this particular House the amount of money that they have to give the company for 1987 and the amount of money that they need to keep the company ticking over until the restructuring and give us the timetable and the date when that restructuring is going to take place. The rest of the money, Mr Speaker, should be left in abeyance

until the Government can come to this House and tell us and the people of Gibraltar the type of restructuring, how many redundancies, economic impact, etc, and I don't want to repeat myself, and at that stage we will decide whether we can vote in favour or against that money depending on whether we agree with the restructuring that the Government is proposing. But to come to this House and ask us to vote £2m, Mr Speaker, for things for 1987, for the overdraft facilities to be cancelled, for restructuring of the yard to keep the yard running over, to pay for redundancies, I think, Mr Speaker, that is just not on. The Government have to divide and separate those £2m so that we know what we are voting for, how much is for 1987, how much is just to keep the company running over until the end of January or mid-February when the restructuring happens. We find ourselves in that predicament, Mr Speaker, and there is no way that we can do other than abstain if the Government intend to continue with the voting of the £2m under Treasury as it is at the moment. The only way we could look at the thing from a position of being able to study it is if the Government gave us these breakdowns but there is no way, Mr Speaker, that we are going to vote any money in this House or, at least, the Opposition will not help the Government vote any money in this House that is for a restructuring or redundancies when we don't know in what form, shape or timetable that is going to happen. There is only one other matter and that is the matter of the problems related to the subsidy and the rules as laid down by the EEC but I will allow my colleague, the Hon Mr Feetham, who is more of an authority on the EEC than I am, to tackle that aspect, Mr Speaker. Thank you.

HON CHIEF MINISTER:

Mr Speaker, the intention on the Government side is to try to avoid having two debates. I do not propose to speak on the question of GSL at this stage but I will do so in Committee and address myself specifically to that.

HON J BOSSANO:

When are we having the Committee Stage, Mr Speaker?

MR SPEAKER:

It will be after we finish the First and Second Readings.

HON CHIEF MINISTER:

The money involved has got to be voted before the end of the financial year unless we want the yard to close down on the 31st. In other words, the leave that the workers have taken will be permanent.

HON J BOSSANO:

They then become entitled to six months pay which is a very big bill that will be pending for the Government. As far as we are concerned what we are saying is if the Government amends the figure there to what is needed now and removes what is needed for restructuring, we will look at the amount that is being invested in the restructuring when they come and tell us what it is for. It is not an unreasonable thing. In every other item in the Schedule of Supplementary Estimates we have a remarks column that tries to give us some details of why the money is needed and, in fact, we get an expansion of that when we ask for more information. If I were to ask the Government now how much is the restructuring costing and how much is the restructuring going to save so that I can decide whether it is a good or a bad thing to put money in that area, they cannot answer me. If they limit themselves at this stage to the money that is needed to keep the yard going until a decision is taken on the restructuring, we haven't got a quarrel. We may have a quarrel later on but we are not going to quarrel now.

MR SPEAKER:

I think this is, perhaps, anticipating what one is going to have to say at the Committee Stage.

HON J BOSSANO:

The point is, Mr Speaker, that if the Government takes cognizance of the argument and accepts its validity then we will not object to the Committee Stage being taken today and then they can go ahead with it and provide the money for the yard not to have to close and when we come back to the 21st January we can be told: "We are now coming with a Supplementary Bill purely for the restructuring" and they can then explain to us what the restructuring involves and what the yard is going to be and, presumably, demonstrate to us that we are investing money in something which is going to finish up viable, obviously. I am sure the Government will appreciate that when they come to put money to finance the restructuring they will have to demonstrate that they are not throwing good money after bad, that is what people not just in this House but outside will want to hear from them. If that is accepted that means we will then agree to the Committee Stage being taken today otherwise we are not going to give up.

HON SIR JOSHUA HASSAN:

With respect, Mr Speaker, I don't feel there is any question of requiring, if it is necessary, to come tomorrow and do it. I think we are perfectly entitled. I don't know whether the Standing Orders do not allow this Appropriation Bill to be dealt with in the same meeting because otherwise it will be very difficult to allow funds to be provided.

MR SPEAKER:

The Standing Orders are clear. If the House agrees, without exception, to have the Committee Stage on the same day then, of course, there is no problem. If there is abstention or there is opposition then the Committee Stage can be taken tomorrow, it is as simple as that.

HON SIR JOSHUA HASSAN:

I think that having regard to what was said this morning, it is quite obvious that we will need two Appropriation Bills because whatever is not dealt with because it's not urgent such as some of the areas where I mentioned this morning that had been done in anticipation in order to cover expenditure committed by the Government which could be left to the January meeting, we will have to have a completely separate Appropriation Bill because you cannot split the Bill. You have to pass a Bill through all its stages to authorise the expenditure of the money and then rehash another Bill in January with whatever remains. I am not speaking purely on the question of Gibreair, I meant regarding other matters which I explained this morning.

MR SPEAKER:

I understand that there will be no objection by the Opposition on any of the other matters other than GSL.

HON SIR JOSHUA HASSAN:

Yes, I appreciate that.

HON J BOSSANO:

It is a fairly simple thing, Mr Speaker, all we are saying is if in the Committee Stage the Government says: "Right, instead of it being £2m what we need as an on-going subvention as the yard is now is £1½m", then we come back and we look at the £½m when we know what the £½m is for.

HON SIR JOSHUA HASSAN:

I think we are putting the cart before the horse a bit now because, surely, the explanations will come at the time of the Committee Stage. If they are not satisfied with the explanations then they can either abstain for the reasons stated by Mr Pilcher or vote against. We have advanced the stage of the debate in the Second Reading in dealing with this matter and therefore they have chosen to do that, quite rightly, and I am not objecting to it, but you cannot have two bites at the same cherry. That is to say, if we are going to give details, whatever such details may be given will be given in Committee Stage.

MR SPEAKER:

What the Hon the Leader of the Opposition is saying is that their decision as to whether the Committee Stage of the Appropriation Bill will be held today is conditioned to the attitude that the Government is going to take on the GSL money.

HON J BOSSANO:

We are prepared to wait for the explanations until the 21st January, this is what we are saying. The Government then comes and says: "At this stage we will vote £1m or £1½m or £1¾m", whatever it is they need other than the restructuring then we are quite happy to take the vote on the restructuring when we see what the restructuring is but how can the Government ask for money for something that they haven't yet decided? I don't understand it. Or if they tell us that none of the £2m is for the restructuring, fine.

HON CHIEF MINISTER:

But he is quite correct, the Hon the Leader of the Opposition, we don't want to prejudge the cost of the restructuring at this stage, that is why we don't want to put a separate amount. But the fact of the matter is that we judge that £2m is what is required to keep the company going till, say, April and it is a prudent provision to make at this stage to keep it going until then.

MR SPEAKER:

In any event, let us not have a debate within a debate.

HON CHIEF MINISTER:

I would prefer not to rake the matter up. Why should we give the Hon the Leader of the Opposition who as Branch Officer is going to be negotiating on behalf of the Union, why should we give him an indication of the amount of money that is set aside for the restructuring? We don't have to, we needn't, we don't know exactly what it is yet because we haven't taken the necessary decision.

HON J BOSSANO:

I think that what the Hon Member has just said which hasn't been said until now, Mr Speaker, is that the £2m is what they consider is required to keep the yard going until April in its present size without any prior reductions, am I correct?

HON CHIEF MINISTER:

No, there is included an element for restructuring but in any case it is of the order of £2m to keep it going including some provision for the restructuring.

MR SPEAKER:

It is clear that the Government is not prepared to give an undertaking as required by the Leader of the Opposition. Are there any other contributors to the debate?

HON M A FEETHAM:

Mr Speaker, in October of this year I asked a series of questions in the House regarding the implications of certain EEC Directives insofar as shiprepair operations were concerned and why I raised the question was because in July of this year the Hon Financial and Development Secretary made a public statement to the effect that the wage claim which had been submitted by the employees of Gibraltar Shiprepair Limited could not be entertained because it was against EEC Directives. Of course, the purpose of the question in October was to seek information because in the view of the Opposition the EEC Directives which are referred to and you will recall, Mr Speaker, that I named them as EEC Directives No.81/336 and No.87/167, were Directives which derogated Member States from the responsibilities of certain Articles of the Treaty of Rome insofar as the rules of competition was concerned and commercial policy. But in drawing up these Directives the idea was to implement certain guidelines by which Member States could, in seeking derogation, operate in giving aid to shipbuilding and shiprepairing. The answer I got from the Hon Financial and Development Secretary was that the EEC Directives were being complied with by Gibraltar because the Board of Trade had informed him so and the Foreign Office, I think he said, the Foreign Office as well had informed him that we were complying. Of course, you will recall, Mr Speaker, I wasn't satisfied that the answer I was given by the Hon Member opposite met the questions that I was asking but, of course, within the parameters of questions and answers it is very difficult if a Member chooses to give a blank answer to be able to ascertain any more information. The reason why I have brought this again here today in the context of the latest request by the Government to seek funds to give a subvention to GSL is because not being satisfied with the answers that I was given, the latest position, in my view, continues to contravene the EEC Directives and consequently I want to place on record that we are questioning, if we are correct in our assumptions and the advice that we have been able to seek is that we are correct in the conclusions that we have reached, we are questioning that the whole operation of shiprepair in Gibraltar has gone against the whole legal basis of the European Community Directives. The response that I got from the Hon Member opposite was that he couldn't give anything more than say

that we were complying with the Directives because that was the advice given by the Foreign Office but that he could brief me, and any of my colleagues, privately about certain confidential aspects of the operation. Of course, having been given that and having got nowhere else in the questions and answers, obviously I had to accept at that point in time that I wasn't going to get anything else at that meeting and that I should then seek a meeting with the Hon Member opposite and see what other information I could obtain. In fact, the information that I have been able to obtain from the Member opposite in no way allays my fears that, in fact, we have been in contravention of the EEC Directives on.....

MR SPEAKER:

With respect, we are not going to talk about whether we are in contravention or not.

HON M A FEETHAM:

Yes, because we are in contravention. If we vote for this money, Mr Speaker,....

MR SPEAKER:

Precisely, let us talk about the voting of the money and the reason why we shouldn't.

HON M A FEETHAM:

If we vote this money, Mr Speaker, we will continue to be in contravention of the EEC Directives on aid to shiprepair yards. The reason I was given is not something that should be of a confidential nature because let me be quite clear, Mr Speaker, that we will be the next Government of Gibraltar and consequently we are not going to be tied to a situation where for.....

HON CHIEF MINISTER:

You may have to eat those words.

HON M A FEETHAM:

We are not going to be tied to a situation, Mr Speaker, where we are having cotton wool placed in front of our eyes so that crisis after crisis is pushed under the carpet and swept to one side hoping that at the end of the day something will happen that will resolve the problem because, Mr Speaker, the Dockyard was closed because it wasn't a defence requirement and consequently a commercial operation was set up for the reasons that we have all discussed and my colleagues have gone into this matter time and time in this House, to

assist the economy of Gibraltar. Now we are told that we are, in fact, not contravening the EEC Directive because all the money we have been putting into the shiprepair operation is possible because the shiprepair yard had a defence requirement and because it has a defence requirement Gibraltar is derogated from the derogations which means that we have to seek approval from the EEC Commission to do anything in respect of shiprepair. I say, Mr Speaker, that if we have got a defence requirement for the commercial yard then I think it must be made quite clear by the British Government that the shiprepair operations in Gibraltar is a defence requirement because if we are going to continue to subsidise the company because it was set up on the basis that the deal in itself was good and that it was in the interests of the people of Gibraltar and in the end we find that it is a total loss and we are going to continue to pay for it and we are told that the commitment is not as great because there is a defence requirement and consequently the bill that we have to meet is not in conflict with the EEC Directives, I think somebody somewhere had better come clean and come clean quick. It is no good coming to this House and seeking further subsidies which we seriously think is in conflict with the Directive and then us being the next Government finding ourselves that somebody somewhere argues a different line and we come in considering it an economic policy which takes account of the shiprepair and then finding that that policy for some reason, someone in the Foreign Office or the British Government changes its tune because it doesn't like Mr Joe Bossano, perhaps, and find that we have got a problem which they didn't have and they have been able to get rid of the crisis before we come in, Mr Speaker.

HON CHIEF MINISTER:

They are going to make use of us as EEC advisers.

HON M A FEETHAM:

It may well be because I challenge you now.....

MR SPEAKER:

Order, you will speak to the Chair, you will not speak across the House. I will not have any interruptions.

HON M A FEETHAM:

If the Hon Chief Minister spoke on these matters instead of allowing the Financial and Development Secretary then I could place the onus of responsibility on him as the elected representative and not on a civil servant to answer in this House. Therefore, Mr Speaker, if the wage increase in July couldn't be met because it was against the Directive how is it that today we are saying the opposite when it comes

to the £2m subvention? Because that is what we are saying, we are going ahead with it because it isn't in conflict with the Directive. What I would like to place on record and I would like the Financial and Development Secretary to reply to me and the Attorney-General if need be, and if they are not able to give me a reply in detail to the questions I am going to ask I am quite prepared to seek a meeting with them and representatives of the Board of Trade and the Foreign Office so that I can get answers from them if they are prepared to set up the meeting, and that; - should the scheme which set up GSL have been notified and approved in advance by the European Commission? No.2 - should the performance of GSL be reported to the European Commission every six months, on the 1st March and the 1st September? Should the £1m approved in this year's estimates have been approved by the European Commission? Will the £250,000 loan granted in 1986 as aid to meet a wage settlement have to be repaid? Is the refurbishing cost of investment intended to increase shiprepairing capacity in direct and specific conflict with the EEC Directive? Is the element of the £5.5m to cover operating loss in the first two years contrary to the EEC Directive? Does the granting of development aid also require the approval of the Commission? Does the non-payment of rates and the reduced payment of rates on fiscal possessions need to be notified to the European Commission? Is the £2m subsidy in the guaranteed RFA work over the normal commercial price contract related production aid which requires notification? Does the total aid package of £30.3m, which needs to be updated, UK development and £2m Gibraltar Government aid require the approval of the Commission? Does the renting of the facilities at a nominal peppercorn rate constitute a form of aid which distorts competitiveness between Member States and must be accounted for in arriving at the ceiling approved by the Commission? Is it as a matter of policy that this Directive automatically applies to Gibraltar and, if so, why is it different from other EEC Directives? If the Financial and Development Secretary and the Attorney-General are able to reply to them specifically, referring to the Articles in the Directive and are able to substantiate the argument that what we have done complies with the Directive because there is a defence requirement for the shiprepair yard which excludes us from complying with the Directive because there is no mention whatsoever in the Directive on the question of MOD requirement or defence requirement, if the Hon Member is able to reply to these questions satisfactorily in the light of the Directive then the Opposition would be able to rethink its policies but at the moment we will maintain the position from the EEC point of view that everything the Government has done up to now including the setting up of the operation is in conflict with the EEC Directive.

MR SPEAKER:

Are there any other contributors to the debate and the Second Reading of the Bill?

HON J BOSSANO:

Mr Speaker, I would just like to add one point to the question of the EEC Directive as we understand it which is very relevant. Let me say that, of course, to even suggest that I might wish to have information as to the amount that is required for the restructuring because that might be of some benefit in negotiations with the company for the union is complete nonsense because at the end of the day I can assure the Members opposite that the last of the considerations that the union will have in negotiating with the company is what it is going to cost, that will not enter into it at all so they needn't worry about that one bit. Whether it costs £1m or £20m the union will still look at it from the point of view of protecting its members' interests. I think in this House when we are voting public money we are entitled to be given an explanation and I don't think what we were asking for is unreasonable. But I think relating it to what has just been said about the EEC, in fact, the Directive which we had brought to our attention by the Government, it isn't that we went out searching for this Directive, it was the Government that came out with a public statement pointing out its existence and it is the Government that provided copies of it, is very specific. It says in the preamble, before it comes to matters of detail, and this is a Directive of January 1987 replacing a previous one. The previous one allowed subsidies to be given to shipbuilding yards in Europe. What this Directive does is it is proposed to treat ship conversion in the same way as shipbuilding, that is to say, to allow subsidies. It is not appropriate to permit aid to the shiprepair sector - which is what we are - in view of the continuing over-capacity in this sector except for closure and research and development aid. In fact, what is not in conflict with the Directive is money that is provided to the yard to meet redundancy costs or restructuring costs designed to reduce capacity. It is perfectly relevant if we are saying to the Government 'according to the information you have provided us with, you cannot give aid to a yard to meet operating losses, that is specifically prohibited, but you can give aid to the yard to meet restructuring costs, so how much of the £2m is restructuring cost and how much of the £2m is to meet operating losses?' We are certainly entitled because we have sought advice ourselves on whether, in fact, the application of the Directive to Gibraltar means that we have to do certain things and even where it is allowed, for example, even in the area where it is allowed, let us say that the Government came along and said: "We have got a business plan produced by the GSL Board which will reduce the capacity of the yard and in order to assist the yard to survive its over-capacity" - which is what other people are doing in Europe - "the Government is stepping in and giving it money to meet redundancy costs and so forth". Even if that were the explanation it requires the approval of the Commission and the Directive says that if that is what you are doing, if you want to put £1m in that yard to restructure it, you have

to submit your proposals to the Commission to do it. Let them tell us that they don't have to do that either, that they have checked the Directive and that because it used to do RFA work, which is in fact what we were told here, I think, by the Hon and Learned the Backbencher when he was the Hon and Learned the Chief Minister, the last time we were discussing the accounts he suddenly produced this reference to the fact that there was MOD work making it possible for the yard to get money and that that was the explanation. We have searched through this Directive and we can find no reference to it. All they need to do is to be able to give us reasonable answers that make sense and then we won't pursue the matter any further but they cannot just attempt to fob us off with excuses because it won't work and, in any case, as my colleague has said, if we have got a programme for that yard, obviously the programme is partly influenced by whether we need to limit what we do with the yard to what this Directive requires people to do. We certainly don't want to find ourselves in a situation, I think it would be very unfair if the Government knows different, to keep the knowledge to themselves as if it was something that belonged to the AACR, they cannot take it home with them when they go out of office, Mr Speaker, it belongs to the people of Gibraltar, these things.

HON SIR JOSHUA HASSAN:

If.

HON J BOSSANO:

Well, in the Hon and Learned the Backbencher's case no longer if, when. What I am saying is that in looking at the proposals that the Government has, we need to be told that those proposals are not in conflict with this Directive and we need to be told whether we are correct in thinking that what the Directive says needs to be done has to be done and will have to be done by them and will have to be done by anybody else that is there in the future because in looking at the situation we need to be sure that they are acting within Community law and that we would have to act within Community law and that if they are able to guarantee that this has been taken up through the proper channels which seems to be in conflict with the feedback we have had and that, in fact, we have got a blank cheque to do whatever we like which means de facto that the Directive does not apply then, obviously, our own position on that yard and our own response to their proposals of voting in favour or voting against or abstaining or whatever, will be influenced by that factor. We are entitled to be told the truth in this House.

MR SPEAKER:

Any other contributors? I will then call on the Mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I simply propose to deal with the question of the Directives, that is to say, the EEC Directive which has been raised by Hon Members. I did try and intervene when the Hon Mr Feetham was speaking, I don't think that I said - I may have been quoted as having said - but I certainly don't think that I said that the wage claims which were put forward by GSL workers in the middle of the year could not be allowed under the Directives or that they were inconsistent with the Directives. I think that is what I heard the Hon Member saying, maybe I misheard, if so, I misheard.

HON J BOSSANO:

If the Hon Member will give way. I think the position, as we understood it at the time, was that the company approached the Government about the possibility of financial assistance in the negotiations with the workforce and the Government said: (a) as a matter of policy the Government doesn't want to provide the money and (b) even if the Government wanted to provide the money it could not do it because it would be in conflict with the EEC Directive and a press release to that effect was issued by the Government and the Directive was then provided to demonstrate the validity of that argument. This happened in July, 1987, only five months ago, Mr Speaker. The press releases are there on file even if the Members on the other side are short. We are not saying that the Government was saying it would be in conflict with EEC Directives to raise the wages but it would be in conflict with the EEC Directive to provide a subsidy to finance a wage increase.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

What I do remember saying myself and was quoted as having said was that Gibraltar was covered by the EEC Directives on shiprepair and shipbuilding. That is the first thing to get quite clear because Gibraltar is, for the purposes of this particular Directive and, indeed, for the purposes of most things, regarded as a dependent territory of the United Kingdom and therefore is covered by Community law and any representations which are made about or on behalf of Gibraltar or any discussions with the Commission would be primarily the responsibility of HMG. Everything which we have done in this particular context, in the context of the EEC Directives on shiprepair and shipbuilding has been with the knowledge and the advice of the DTI, HMG DTI. I think I would like to make that quite clear, Mr Speaker. Certainly, Gibraltar is covered by the Directives. The point, I think, which the Hon Members have not, perhaps, fully taken on board as a result of the briefing which I did give a short while ago to the Hon Leader of the Opposition and Mr Feetham on this point, it may be that I didn't make the position clear, obviously, I didn't at the time say anything about confidentiality, it wasn't a confidential discussion. I simply

told him that we had discussed this with the DTI, we had told them what it was we were proposing to do and so what we did is with their full knowledge. The relevant piece of legislation is not the Directives in this particular instance, it is Article 223 of the Treaty itself which refers to defence interest and in the view of the DTI it was not necessary to notify the Commission of the various actions which had been taken in Gibraltar with respect to GSL while it was in their view covered by Article 223 which exempted them from the process of notification. That was really the point I wish to make and the point which I am now repeating and while Gibrepair was, in fact, of a capacity and a size with a workforce which could be related directly to the fact that Gibrepair was carrying out defence work and I think an examination of Gibrepair's activities would confirm that, they regarded the situation as being covered by Article 223. The Hon Member may shake his head at that, I can only pass on to this House the advice which we have been given by Her Majesty's Government.

HON J BOSSANO:

Will the Hon Member give way? Is he saying that he has also asked whether the £2m included in the supplementary vote which we are discussing at the moment is covered by that same criteria?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Yes, Mr Speaker, I have already acquainted the DTI of that particular proposal which is before the House today. That is really all I wish to say on the general question, Mr Speaker. I commend the Bill to the House.

Mr Speaker then put the question and on a vote being taken the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammitt
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mór
The Hon J C Perez
The Hon J E Pilcher

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken at a later stage in the meeting.

HON J BOSSANO:

I think the Hon Chief Minister said that he intended to give more explanation at the Committee Stage. Is he in a position to do that today if we take the Committee Stage today?

HON CHIEF MINISTER:

Yes.

HON J BOSSANO:

In that case, we remove our objection.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause: The Gibraltar Broadcasting Corporation (Amendment) Bill, 1987; the Traffic (Amendment) Bill, 1987; the Animals and Birds (Amendment) Bill, 1987; the Medical (Gibraltar Health Authority) Bill, 1987; the Social Security (Family Allowances) (Amendment) Bill, 1987; the Imports and Exports (Amendment) Bill, 1987; and the Supplementary Appropriation (1987/88) (No.3) Bill, 1987.

This was agreed to and the House resolved itself into Committee.

THE GIBRALTAR BROADCASTING CORPORATION (AMENDMENT) BILL, 1987

Clauses 1 and 2 were agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THE TRAFFIC (AMENDMENT) BILL, 1987

Clauses 1 to 4 were agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THE ANIMALS AND BIRDS (AMENDMENT) BILL, 1987

Clause 1 was agreed to and stood part of the Bill.

Clause 2

HON ATTORNEY-GENERAL:

Mr Chairman, I have a very short amendment to make to Clause 2 in the definition of "authorized officer". I am afraid we have called him a 'revenue inspector' and it should be a 'customs officer'. It was drawn to my attention, of course it shouldn't be a revenue inspector, we did away with those, I think they are called customs officers.

Mr Speaker put the question which was resolved in the affirmative and Clause 2, as amended, was agreed to and stood part of the Bill.

Clauses 3 and 4 were agreed to and stood part of the Bill.

Clause 5

HON MISS M I MONTEGRIFFO:

Mr Chairman, what would happen in the case of a dog owner whose dog is under his direct supervision but is not held by a leash?

HON ATTORNEY-GENERAL:

Mr Chairman, that is not covered by this particular Bill but immediately on the bringing into force of this Bill rules will be promulgated which will make it an offence to do this. Every owner and every other person having charge of a dog shall at all times cause the dog while in on any street or other public place, (a) to be kept under proper control and

effectively restrain from causing annoyance to any person; to be held by means of an effective lead and to have its registration badge and licence disc affixed to its collar, and any person who contravenes any of those things, Mr Chairman, is guilty of an offence and liable on summary conviction, in the case of the first conviction to a fine of £100 and in the case of a second or subsequent conviction to a fine of £200 and to imprisonment for three months. That will cover the question of the control of dogs. This particular Clause 5 only deals with the seizure of dogs which are strays.

Clause 5 was agreed to and stood part of the Bill.

Clause 6

HON M K FEATHERSTONE:

I beg to move an amendment, Mr Chairman, it is a very simple amendment, it is to remove the words "6 months" and to put instead "3 months", in Clause 6, section 25A, so the words "imprisonment for 6 months" to make it "imprisonment for 3 months".

Mr Speaker put the question which was resolved in the affirmative and Clause 6, as amended, was agreed to and stood part of the Bill.

Clause 7 was agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THE MEDICAL (GIBRALTAR HEALTH AUTHORITY) BILL, 1987

Clauses 1 to 16 were agreed to and stood part of the Bill.

Clause 17

HON ATTORNEY-GENERAL:

Mr Chairman, one very small amendment, it is really to correct a spelling error, it should be in the second line "prescribed" by section 2 and not "perscribed" by section 2.

Mr Speaker put the question which was resolved in the affirmative and Clause 17, as amended, was agreed to and stood part of the Bill.

Clauses 18 to 25 were agreed to and stood part of the Bill.

The Schedule

HON ATTORNEY-GENERAL:

Mr Chairman, I have a number of amendments to the Schedule. In paragraph 2 of the Schedule dealing with the Education Ordinance on page 174 the definition "Authority" means the Gibraltar Authority, of course, it should be the Gibraltar Health Authority. So it is to insert the word "Health" between the words "Gibraltar" and "Authority" in the definition of the word "Authority" in paragraph 2 of the Schedule.

MR SPEAKER:

Are there other amendments to the Schedule?

HON ATTORNEY-GENERAL:

There are other amendments to the Schedule, Mr Chairman. After paragraph 11 to insert three further paragraphs and this is the paragraph on page 175 dealing with the Medical and Health Ordinance. The three paragraphs are as given in my notice of the 11th December.

Mr Speaker put the question which was resolved in the affirmative and the Schedule, as amended, was agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THE SOCIAL SECURITY (FAMILY ALLOWANCES) (AMENDMENT) BILL, 1987

Clauses 1 and 2 were agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THE IMPORTS AND EXPORTS (AMENDMENT) BILL, 1987

Clauses 1 and 2

On a vote being taken on Clauses 1 and 2 the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammitt
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

Clauses 1 and 2 stood part of the Bill.

The Long Title

On a vote being taken on The Long Title the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammitt
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The Long Title stood part of the Bill.

THE SUPPLEMENTARY APPROPRIATION (1987/88) (NO. 3) BILL, 1987

Clause 1 was agreed to and stood part of the Bill.

Schedule

Part I - Consolidated Fund

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I have given you notice of various amendments. I must confess I am always confused about when you want me to introduce these. They obviously do affect the totals in the various Heads and also the subhead.

MR SPEAKER:

First we will amend the Schedule.

Head 3 - Customs was agreed to.

Head 4 - Education was agreed to.

Head 8 - General Division was agreed to.

Head 9 - Governor's Office was agreed to.

Head 11 - Housing was agreed to.

Head 12 - Income Tax Office was agreed to.

Head 13 - Judicial, (1) Supreme Court was agreed to.

Head 14 - Labour and Social Security

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I beg to move that Head 14 - Labour and Social Security, Subhead 10 - Family Allowances, be amended by the deletion of the figures "£6,300" and the substitution thereof of the figures "£84,900".

Mr Speaker proposed the question in the terms of the Hon the Financial and Development Secretary's amendment.

HON J BOSSANO:

We assume this is the cost for three months of the year.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

That is right.

HON J BOSSANO:

Well, we have already voted in favour of the Bill.

Mr Speaker then put the question which was resolved in the affirmative and Head 14 - Labour and Social Security, as amended, was agreed to.

Head 15 - Law Officers was agreed to.

Head 16 - Medical and Health Services was agreed to.

Head 17 - Police

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, this is another item of which I wish to move an amendment. It is Subhead 80, a new subhead under Police, Subhead 80 - Purchase of Security Equipment so there is therefore an addition of £33,700.

Mr Speaker put the question which was resolved in the affirmative and Head 17 - Police, as amended, was agreed to.

Head 19 - Post Office Savings Bank and Philatelic Bureau was agreed to.

Head 20 - Prison was agreed to.

Head 21 - Public Works

HON J C PEREZ:

There is just one point which I believe needs a bit of more explanation. Subhead 62 - Maintenance of Offices and Buildings, the explanation given for the £40,000 extra is redeployment of labour to meet commitments at Bayside. I would have thought that redeploying labour from one point in Gibraltar to another wouldn't cost anything at all unless the explanation is that in redeploying them they have done something extra which has increased the cost of their labour.

HON MAJOR F J DELLIPIANI:

Mr Chairman, as far as I am aware, most of the cost of the redeployment here is to do with very expensive material which has been used in the temporary repairs of the roofs plus a substantial amount of industrial overtime which has had to be carried out.

HON J C PEREZ:

With due respect, Mr Chairman, then it should say materials and overtime, not redeployment because the actual redeployment doesn't cost anything.

HON MAJOR F J DELLIPIANI:

I know that it sounds peculiar that if you take the same men from one place to the other it costs money but it does cost money in the sense that the materials are expensive and there was certainly a lot of urgency because we wanted to make it watertight for the coming winter but the reason might not be a logical one, I accept your criticism.

Head 21 - Public Works was agreed to.

Head 22 - Telephone Service was agreed to.

Head 23 - Tourism was agreed to.

Head 25 - Treasury

Subhead 23 - Rates Refund

HON J BOSSANO:

Can I ask, it says here that it is because of a higher incidence of people applying for the refund. Wasn't the amount of the refund worked on the basis of the people who would pay? Does it mean, in fact, that the collection of rates is higher than estimated if more people have obtained a refund and the refund was estimated on the number of people paying.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, the original figure which was put in for the rates refund was an estimate, that is to say, we didn't assume 100% qualification and, in fact, more people have applied and more people have qualified, that is to say, more people have in fact paid their arrears and therefore have been eligible for the refund, that is one reason. I think that is the main reason, in fact, why the amount sought is more than was included at the Estimates stage.

HON J BOSSANO:

The point I am making is therefore am I right in assuming that the estimate for the collection of rates shown as £7½m will have to be revised upwards because, presumably, when they estimated the refund they estimated the collection, they did both at the same time. If the refund is higher it means the collection is higher, does it?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Yes, Sir.

Rates Refund was agreed to.

Subhead 37(N) - Subvention to Gibraltar Shiprepair Limited

HON CHIEF MINISTER:

Mr Chairman, I think the Hon the Leader of the Opposition is, perhaps, a bit disappointed if he thought that I would be providing for the House some earth shattering information. My intention at this stage was naturally to make a general

statement which would draw attention to the main points, to the considerations which the Government has taken into account in coming to the House for the appropriation of this sum of money. Although we have studied the company's proposals for restructuring, we haven't taken any final decision on the matter. We have, in fact, asked the company for a much more comprehensive analysis. We want this to include a more detailed appraisal of overheads and a review of the utilisation of space and buildings including the use of berths by the shipyard and how this could possibly be rationalised or reorganised. Therefore, Mr Chairman, we see restructuring as being not solely a question of redundancies, we think it should go beyond that. The detailed proposals for redundancies will have to be discussed with the Government in the first place so that we are satisfied that the scale and, indeed, the nature of redundancies is fully justified in terms of putting the yard on a sound footing. Then they will need to be discussed properly and fully with the unions involved. The Government, I can tell Hon Members, is particularly concerned about the possible impact on the employment of Gibraltarians in the yard. At the same time, Mr Chairman, restructuring will run parallel to a re-negotiation of the Management Agreement between GSL and Appledore. A new draft agreement has already been prepared and it incorporates major changes. Once Ministers have considered this draft agreement negotiations between GSL and Appledore should start early in the New Year. We see the additional £2m, Mr Chairman, as representing a further substantial commitment by the Government to the yard given the importance which we attach to the future of the company but it should be understood that whilst the Government is prepared to support the shiprepair yard in terms of providing reasonable scope for achieving viability, it isn't just simply and it should not be regarded as a blank cheque for sustaining losses year in year and year out. I would like, Mr Chairman, to ask and to appeal to all concerned to do their utmost to avoid industrial disputes moreso at this very critical juncture when the whole future of the company is under review, when structural adjustments are necessary, if we are to secure a firmer footing for the company and for the majority of its employees. I think that at this stage, Mr Chairman, it might also be worthwhile for me to make, if only a passing reference, to the future of Gun Wharf which is now settling well, which it is intended will be treated as a separate division of GSL and, possibly, and this is under consideration, as a separate company altogether. Gun Wharf has shown its promise and its relative stability in industrial relations terms. At this stage, Mr Chairman, I don't feel that I am in a position to give more details but, if necessary, and indeed if there has been enough movement between now and then, I would be prepared to make a statement on the 21st January, if it is possible and moreso if it is necessary, when the Government has a clearer picture on restructuring, on the redundancy situation and on the Management Agreement.

HON J E PILCHER:

First of all, Mr Chairman, I will be commenting on that statement but certainly that statement does not in any way answer any of the points that were made during the general principles of the Bill. Without trying to create any situation of discussion or trying to create, again, a situation of dispute on both sides of the House over GSL, it seems to me that that statement is only a blanket over everything that has happened without answering any single point that has been made in the contribution on the general principles. We know that the Government is starting the restructuring but the fact that no decision has been made yet means that every single week that goes by the company, the Government and the people of Gibraltar are losing £x thousands. There is no question that come January a statement will have to be made. What we want to know is what is the time-scale the Government is looking at. Is it going to be in January, in February, before the elections, after the elections? Are they committed to do it before the elections? One point that I was amazed for want of a better word because I think if the Hon Chief Minister looks back to the questions, particularly, in 1984/85 he will, certainly on two or three occasions, arguments in the House at Question Time as regards the use of berths by the company where we maintained that the use of the berths and the crediting of the fees for the use of berths should not go to the company because it was part of the assets owned by the Government and not by the company. This use of berths, again, is a red herring when the Government is now talking about better use of the buildings and the area. Mr Chairman, that does not convince us in any way. We want to know, certainly the time-scale I think is important and I think the Government should give us the information we required on how much money is going to be used for closing the deficits last year and how much money is going to be used to keep the company running until April which I think is what the Hon the Chief Minister said during the general principles of the Bill and what part of that £2m is being earmarked for restructuring and redundancies. This statement of appealing to the industrial workers, appealing to everybody to put the company on a sound footing. Mr Chairman, we have been appealing to the Government for the last four years for them to put the company on a sound footing. I think that statement does not convince us that this is being taken in seriously and the information that we have asked of the Government is the information that we have been provided, we hope, to convince us that it is going to be done within the next couple of months and it is going to be done in a way that will show us that at least something is being done at the moment. All that we have heard after that statement, after Question Time, is the Government renegeing again on their responsibilities as regards the Management Contract, the restructuring and everything and it seems to point to the fact since the Hon Chief Minister said that the £2m is money so that the company keeps running until April seems to suggest that they are going to let the

thing run on until April in the hope that they lose the next election and we will be saddled with what to do with the company. As far as I am concerned, I am not only not convinced but I am appalled by that statement at such an important juncture when we are being asked to vote £2m, Mr Chairman. Certainly, the question of Gun Wharf as a separate entity is something that we said before and that we have to look at in general, ie look at GSL in toto and we may come up, in fact, we have already said that Gun Wharf should be treated separately, as a separate company or as a separate entity of GSL but that is something that has got to be looked in the whole context of GSL and it is not enough to come here today and say: "We are starting the restructuring, we have looked at the draft agreement and we think that everybody should be very good now to bring the company to a sound footing and on top of that we are going to make Gun Wharf a separate entity". That statement goes no way to meeting what the Opposition asked during the general principles or, in fact, goes no way at all in satisfying us that what is happening today is what has been happening for the past four years in the Government benches as regards GSL, Mr Chairman.

On a vote being taken on Subhead 37(N) - Subvention to Gibraltar Shiprepair Ltd the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammitt
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

Subhead 37(N) was accordingly passed.

Subhead 80 - Expansion of Computer Systems was agreed to.

Head 25 - Treasury was agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I beg to move that the figure of "£3,360,672" appearing as the total of Part I of the Schedule be deleted and substituted by the figure of "£3,472,972".

Mr Speaker put the question which was resolved in the affirmative and the amendment was accordingly passed.

Part II - Improvement and Development Fund was agreed to.

The Schedule, as amended, was agreed to and stood part of the Bill.

Clause 2

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I beg to move that in Clause 2 the words "three million three hundred and sixty thousand, six hundred and seventytwo pounds" be deleted and the words "three million, four hundred and seventytwo thousand nine hundred and seventy-two pounds" be substituted therefor.

Mr Speaker put the question which was resolved in the affirmative and Clause 2, as amended, was agreed to and stood part of the Bill.

Clause 3 was agreed to and stood part of the Bill.

Clause 4

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I beg to move that in Clause 4, subclause (1) the words "three million three hundred and sixty thousand, six hundred and seventytwo pounds" be deleted and the words "three million, four hundred and seventytwo thousand nine hundred and seventytwo pounds" be substituted therefor.

Mr Speaker put the question which was resolved in the affirmative and Clause 4, as amended, was agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to report that the Gibraltar Broadcasting Corporation (Amendment) Bill, 1987; the Traffic (Amendment) Bill, 1987; the Animals and Birds (Amendment) Bill, 1987, with amendment; the Medical (Gibraltar Health Authority) Bill, 1987, with amendment; the Social Security (Family Allowances) (Amendment) Bill, 1987; the Imports and Exports (Amendment) Bill, 1987, and the Supplementary Appropriation (1987/88) (No.3) Bill, 1987, with amendment, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Mr Speaker put the question and on a vote being taken on the Gibraltar Broadcasting Corporation (Amendment) Bill, 1987; the Traffic (Amendment) Bill, 1987; the Animals and Birds (Amendment) Bill, 1987; the Medical (Gibraltar Health Authority) Bill, 1987, and the Social Security (Family Allowances) Bill, 1987, the question was resolved in the affirmative.

On a vote being taken on the Imports and Exports (Amendment) Bill, 1987, and the Supplementary Appropriation (1987/88) (No.3) Bill, 1987, the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammitt
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The Bills were read a third time and passed.

MR SPEAKER:

I think this would be an appropriate time to recess for tea.

The House recessed at 5.25 pm.

The House resumed at 6.00 pm.

HON J BOSSANO:

Mr Speaker, I beg to move: "This House: 1. Reiterates the view that the international use of Gibraltar's airfield should be on the basis that no special privileges are accorded to Spanish airlines, passengers with a Spanish destination or the Spanish aviation authorities; 2. Reiterates the views expressed in the resolutions adopted by this House in March, 1984; June, 1985; March, 1986; December, 1986; June, 1987, and November, 1987; 3. Reiterates the view that Gibraltar's right to be included in the air liberalisation package as a regional British airport without pre-conditions should be pursued; 4. Considers the concessions granted to Spain in the joint use of the airport in the proposed Anglo/Spanish agreement to be in conflict with the consistently expressed views of this House and the wishes of the people of Gibraltar; 5. Therefore rejects the terms of the proposed Anglo/Spanish agreement for the joint use of the Gibraltar airport". Let me say, Mr Speaker, first of all, that until the then Chief Minister, Sir Joshua Hassan, gave his interview on GBC we had not thought there was a need to bring a motion to the House because our reaction to the terms of the bilateral agreement between Her Majesty's Government and the Government of the Kingdom of Spain was that it was self-evidently not acceptable and that since it required positive action to implement, we needed to do nothing to stop it being implemented and, in fact, the reaction that I gave the press at one o'clock in the morning when the news reached me about it was that although the deal in itself was something that I would need to study when I got the text, the fact that it was not being imposed was an important step forward for Gibraltar because in other situations, for example, the question of the removal of the frontier guard which was the last previous occasion when the advice of the Government of Gibraltar was disregarded by Her Majesty's Government and we have to assume that on this occasion the advice of the Government of Gibraltar has also been disregarded because we were told in the last meeting of the House by the Hon Mr Canepa, the person who is now the Chief Minister of Gibraltar, that he had told Ratford repeatedly that this business of transit passengers and a terminal and not having to go through customs was not acceptable. So, clearly, Mr Ratford did not take the advice that he got from the Government of Gibraltar. Fine, we have had situations before where they don't take the advice and it seemed to us that by saying 'that is the agreement' and leaving it to us to implement or not implement, the British Government was going some way to recognising our insistence, the insistence certainly that we put to Mr Ratford when he came here, that at the end of the day even if they were saying to us it was in our interest to do A, we were old enough now to decide whether we wanted to do A or we wanted to do B and live with the consequence of a mature and adult decision. And our feeling in all the motions that we have taken in this House was that, indeed, there was a great deal of concurrence in the thoughts on this matter on both sides of the House and that independent of the fact that we feel very strongly

that it was a mistake to support the Brussels Agreement as the Government did and we might differ on that, we could still take a common stand on the question of the airport and have taken a common stand on the question of the airport on six occasions. I also would remind the House that on the first of these occasions, March 1984, it was the Hon Chief Minister, Mr Canepa, who appealed to us on this side not to vote against the amendment that the Government was proposing and we had a motion brought by the Opposition saying that Spain should have no say in the future use of the airport. The bilateral agreement gives them a say in the future use of the airport, there is no question about it because if you are consulting somebody then you are by definition accepting that he has some say. There might be an argument about the degree of say, one might say that this is just a symbolic consultation but the motion said that they should have no say and it went on to say that any proposals for the greater civilian use should be on the basis of mutual benefit and of reciprocity. We abstained on that motion rather than voting against it because Mr Canepa appealed to us about the importance of maintaining a united stand on this issue and it has been Mr Canepa who has said, when we passed the second motion in this House, that it was a red letter day for Gibraltar that we could keep this united stand on the airport in spite of our other differences and in spite of the fact that we were so far apart on the Brussels Agreement. If we come to the motions in subsequent years we have the same situation where the essence of the common position of the House of Assembly was that Gibraltar did not discriminate against Spain, against or for, that Gibraltar would treat Spain in exactly the same way as anybody else. One might say 'we feel resentment towards Spain, we feel that they have been nastier to us than France so we will give greater facilities to the French than to the Spanish airlines' but that was not what the people of Gibraltar were saying through their Parliament. The people of Gibraltar were saying 'we will treat them no better and no worse than anybody else and they are welcome to come any time they want but what they cannot do is come into my house and start laying down the price for me to open the door' which is what they have been trying to do since 1977 when the question of the airport was first raised in the Strasbourg process which the Hon and Learned Member started as Chief Minister with Dr Owen. As I say, Mr Speaker, the motion comes from a position and impression given to us by the Hon and Learned Member who is now a Backbencher when he had not yet become a Backbencher and where, we assume, he was speaking on the basis of not expressing a personal view but on the basis of a change of heart on that side of the House which we frankly took very badly and it was that which made us come to the conclusion that we needed to come here and we needed to put our cards on the table and we needed to say to the other side of the House 'This is too fundamental and too important an issue, you might wish to wriggle your way out of problems in GSI and that is understandable when you have got an election round the corner, but this is something that no Government in the world could ask for a better position. You have got the backing of the Opposition, you have got the backing of the Trade Union

Movement, you have got the backing of the people of Gibraltar. If you are still frightened to grasp the nettle of giving leadership in such circumstances then, frankly, you should not be there because that is what the people want you to do and what you cannot do is go back and confuse people by saying one thing one day and another thing another'. It appeared to us that what the Hon and Learned Member said in London after the interview which was to say he wasn't going to come back here to say to people that they should accept the deal, he knew what the people wanted. He told television in Madrid that he wasn't in Madrid to make concessions. We know that there are concessions and we know it from a very good source, we know it from his Foreign Affairs Adviser who was interviewed on GBC as leader of the new Independent Democratic Party and asked: 'Have concessions been made?' and he said: 'Oh, yes, concessions have been made'. So he might not have gone to Madrid to do that but he has come back from Madrid having done it if he is saying that the deal is a good one. Is he saying that or have we misunderstood him? Well, Mr Speaker, when you were bidding farewell to the Hon and Learned Member you were recalling all his years here and how long you have known him and I am sure that having known for longer than I have, but at least having known him as long as I have, you will know how many, many times he has said he has not said something until I have produced the Hansard of what he had said in which case he has then said that he did say that but that it didn't mean what I thought it meant. I am going to quote what he said and if I have misunderstood it then nobody will be happier than me in Gibraltar today to have misunderstood what he said and to be corrected about my misunderstanding and to find that he is still holding the 'no concessions' banner like he was when he walked out of this House of Assembly, nobody will be happier than me if I find him back behind the banner today. What he said and what gave me the impression that he was in favour is that he was asked specific things. He said that all that he had been asked to do was to consider the deal and he was asked on television what was his advice and he said: 'My advice is that they have a good deal, they have got nothing to worry about'. That is his advice to the people of Gibraltar 'we have got a good deal and we have got nothing to worry about'. Then we should be saying 'yes' to it, we don't need to study it. I can tell the Hon Member that if I am consulted closely on something and if I am flying off to Madrid and flying off to London, I don't need to come back here and wait for the text to study it, I can well understand that Major Dellipiani might still need to be studying it given how late in the day he got it but certainly not the Hon Member who helped to put it together. And when he was asked by GBC, having said that there was nothing offensive and nothing bad for Gibraltar and very much the opposite, why not go ahead? His reply was 'because the people are very sensitive and I don't want it if the people don't want it'. Well, I am afraid that the people don't want it not because they are sensitive and not because they are suffering from a psychosis but because what the people are saying today is what we have been saying here since 1984 and the people have not changed their mind and we haven't changed

our mind. The Hon Member is entitled to have a different view, any Member is entitled to have a different view and any Member of the public is entitled to have a different view and they are entitled to express those views, what they are not entitled to do is to try and make us all believe that black is white, that they are not entitled to do. And what they cannot do is what was done recently and we cannot be told, Mr Speaker, in 1983 'I have negotiated a wonderful package with Mrs Thatcher and if it hadn't been for me we wouldn't have got the RFA work and we wouldn't have got the land and we wouldn't have got the £28m and this is a very generous package and a good one in itself' and we go to an election and we hear what a wonderful piece of negotiation had been done and how well off we are all going to be. Three years down the road we are bust and what do we hear, that the situation is that they had no choice. They were told 'either take it or leave it. Either Appledore and £28m or no £28m if you don't accept Appledore'. That is not good enough, what we cannot have is a situation where we are told in January, 1986 'the deal with the British Government to pay for Spanish pensions is very satisfactory' and what we are told in 1987 is that the money runs out in September, 1988, we have got a £2m bill to meet because the £16½m have now run out and.....

MR SPEAKER:

With respect, shall we come back to the motion before the House.

HON J BOSSANO:

I am coming to the motion, Mr Speaker, because what I am saying to this House and saying to Members opposite is that we cannot have a repetition on the airport of what we had in GSL, on Spanish pensions, on the Brussels Agreement where with the benefit of hindsight, on this one we cannot afford hindsight, on this one we have to have foresight, once it's gone we are not going to be able to get it back. We might have a conflict over saying 'we will not pay the Spanish pensions', we may have to do a rescue operation to get the shipyard back on its feet but once we lose the airport we have lost our biggest bargaining card. We, the people of Gibraltar, not the AACR, not the retired Chief Minister, the people of Gibraltar. This is too important, too serious and too irretrievable and the position, fortunately and happily for all of us, has been that we have been very close on it all the time so why should we now have divisions and doubts when our people are united? It is difficult enough for politicians to agree on anything, on this one where we have been able to agree for four years, why should we start disagreeing now? I have no doubt in my mind that of the Members opposite, the present Chief Minister is the man who has most closely echoed our own feelings on this matter in the way that he has expressed himself in previous motions in this House and therefore it is for us important, not just in relation to the airport, Mr Speaker, but in relation to the respect we have for him as a man of

integrity, that we should be reassured that his feelings on the subject have not changed and that he stands where he has always stood because one hears all these things about mellowing in taking office, I don't now, there are echoes of the fruit that was supposed to ripen which Franco died and never saw ripe and it was still green hanging on the tree when he kicked the bucket and one hears about politicians mellowing when they get into office or when they become Chief Minister and we hope that since the Hon Member opposite has not been Chief Minister all that long he might not have mellowed yet sufficiently to have changed his views on the subject. When the Hon and Learned the Chief Minister as he was then, said in that interview that he was giving leadership, that it was good, that it was satisfactory and he was asked whether the matter would feature in the election and whether he would defend it, he said: 'I am defending it now, it's the best deal Gibraltar could get'. He also said a number of things which remain to be seen including that if we decide to stay out there would be no delays at the frontier which suggests that the Hon Member has got greater faith in the objectivity of Spanish frontier officials than I have, Mr Speaker, and that the maritime thing had nothing to do with the other one. So we have to assume that we are being given a free choice in this matter and that we are not going to be subjected to undue pressures by either Her Majesty's Government or the Government of the Kingdom of Spain and that we are free to choose which way we want to go. And what we say to the Government is: 'We have chosen. We chose in June this year'. Let me just say before I pass away from my comments on my misinterpretation, if that is what it was, of what the Hon and Learned Chief Minister's position was prior to his resignation. I saw the interview on Friday night on GBC television but on Friday morning, even before the interview came out, it seems that the editor of 'The Telegraph' and the editor of 'The Times' also misinterpreted his position because according to the editor of 'The Times', it said that the issue was highly political and that despite Sir Joshua Hassan's blessing for the agreement, the willingness of the Gibraltarians to acquiesce in it is far from certain. So 'The Times' thought he was blessing the agreement.

MR SPEAKER:

That is 'The Times' of what particular date?

HON J BOSSANO:

Of Friday the 4th which is the same day that the Hon Member appeared in the evening on television. And 'The Daily Telegraph' of the same day said: "The outstanding question is what the suspicious Gibraltarians will make of it" - that is us, Mr Speaker - "Sir Joshua decently gave his backing" - that is him, Mr Speaker. I don't necessarily consider myself to be in good company with 'The Telegraph' and 'The Times' given my political inclinations but nevertheless they obviously

misunderstood him as much as I did. Señor Ordoñez misunderstood him even more because he claimed that the implementation was agreed with London - 'pactado' was the word that the Spanish newspaper 'El Pais', also on Friday the 4th, was using quoting Señor Ordoñez and, of course, we saw that reflected in the programme in which Señor Moran participated in Gibraltar where Señor Moran was saying 'Well, this is an agreement between London and Madrid and if London has got a problem in carrying the Gibraltarians with them, well, that is London's problem, it is the village rebelling against the metropolis, nothing to do with us'. I have no doubt of what the statement of Sir Geoffrey Howe said and whether the Spaniards understand that or not, our allegiance and our loyalty to the British Crown and to the United Kingdom in no small measure, Mr Speaker, is based on a belief that they accept and respect the right of democratic choice that we as a people have got and we are proud of that and we are proud of being British because of it and therefore it may be the Spaniards don't understand it but we do and we understand that that is the message from London and we intend to hold London to it. When we applauded in this House in a motion that I brought in June of this year, when we applauded the stand being taken by Her Majesty's Government in Luxembourg and let's face it, most of us didn't know that this was going on. We only found out that we were going to either be left out or left in because the representative of Her Majesty's Government in Luxembourg came out with a press release of which we got a copy sent to us condemning the Spanish Government for using a veto and wrecking the air liberalisation package at the last stage, just when it was about to be concluded and clearly saying this was a complete negation of Community spirit and that the position of the British Government was that they did not consider that there was any legitimacy on the Spanish argument and that if it was a question of entering a reservation such as had been entered when Spain came into the Community in 1986 saying that this was without prejudice to the Spanish views on their claim over sovereignty, if they were afraid that us being included would prejudice their position on sovereignty, then that could be done. But, in fact, we all know that this is not the case. What is it that really happened in June and what is it that has really happened since? What we applauded here in June was a stand taken by the British Government defending our rights as Community nationals and that is what we still have to defend today because if we do something different today what we are demonstrating to Spain and to the Community and to the whole world is that we are not a real people at all, we are a lot of village idiots in Gibraltar who will dance to the tune of the British Government and when the British Government says 'we will not accept the veto, protest', we all come out here and say: 'yes, protest'. And when the British Government says: 'Right, put all your banners away under the table and now queue up to sign', we all queue up to sign like obedient colonial subjects. Well, the British Government, impressed, I believe, by the strength of feeling of the demonstration and I think in the last House we carried a motion which we are seeking to reiterate in this House, applauding the initiative of Action for Gibraltar and the

Trades Council and thanking the representative bodies and the thousands of people who signed the petition and participated in the demonstration. Let us not fool ourselves, those people weren't doing that because they wanted us to object to joint control. Mr Ratford before the demonstration had said the British Government was not happy with joint control. I have already come out publicly in an interview on television saying what Mr Ratford had said to me and saying that it was obvious to me that the reason why the British Government would not accept joint control was because the RAF would not accept joint control, nothing to do with us. It makes no more difference to them whether we want joint control than whether the apes want joint control, it is the fact that the RAF doesn't want it that matters and that is why there will not be joint control. If we had all come out with banners and 14,000 saying 'We want joint control' there would still not be joint control. We don't need the Chief Minister to come out saying, as he did, that he was happy with the deal because it didn't include joint control. It didn't include joint control not because of anything he did or anything we did, it is because the RAF says no and whether it impinges on sovereignty or not is a matter of judgement. Sir Geoffrey Howe may say it doesn't but we have said before in this House, in one of the motions to which I am referring, that it is whether in the view of this House it has implications for sovereignty and that amendment to make it in the view of this House came from the Government not from me. I had brought a motion here saying we didn't want any deal on the airport that impinged on sovereignty and the other side amended it to include 'in the view of this House' and I said 'you are quite right to be suspicious, your motion is stronger and tougher than what I intended, fantastic'. Can Members of this House say to me that one of the clauses is not worrying them in terms of its implications on sovereignty? Can they say to me that that will not be seen as strange by the rest of the European Community when I come to it and I spell it out to them? We have a situation where in June of this year the British Government says 'No, sorry, we will not leave Gibraltar out' and Spain exercises a veto. And we come to this House and we say what we have been saying since 1964 when the British Government issued a White Paper saying 'recent differences with Spain', and said 'we will not sit down and talk about sovereignty' and the people of Gibraltar said 'well done, UK, we will not sit down and talk about sovereignty'. And Spain then said 'right, we hold up your cars for two hours' and the British Government said 'well, we will stand by the people of Gibraltar' and the people of Gibraltar said 'right, the British Government stand by us'. And that has been the scenario and the frontier closes and we applaud their position and the frontier opens and we still applaud their position and in June, 1987, we are saying to ourselves 'we have not changed since 1964' and we are saying to ourselves 'the British Government has not changed since 1964', in June, can we say that in December in the light of this agreement? I submit to this House that we can say to ourselves and to our people whether we have changed but we cannot say any longer that the position of the British Government in this bilateral package is consistent with what

they said in the EEC in June. The thing is here black upon white, a child can understand this, Mr Speaker, it is quite obvious. What Britain found unacceptable in June is a fact today. There is an air liberalisation package from which Gibraltar is excluded. There was a veto in June because Britain would not accept the exclusion of Gibraltar. The Spanish position is 'if Gibraltar is in I use a veto, if Gibraltar is out I don't use a veto'. There is no veto today because Gibraltar is out. It is simple, straightforward and unavoidable. One can make certain allowances for the British position, one can say 'there was a lot of pressure on them, we know that the British Government was the keenest supporter of the air liberalisation package and the Spanish Government the most reluctant' a very unbalanced negotiating position. If you are sitting down with somebody and you have got a long list of claims then you cannot go wrong because if the other side has got nothing and we didn't go in with a list because what we decided was we didn't want to have joint use, period. Having decided that we didn't have a negotiating position. There have been people who have thought that argument was the wrong argument, people, for example, within the Chamber of Commerce were arguing that we should go in to negotiate and we should go in with a negotiating position and, frankly, if we were going to do a deal then we should because you always say 'no' to sitting down and negotiating a package if you have no intentions of accepting any package because it is a matter of principle which is the stand that we have been taking consistently. But if you are saying there are no principles at stake it is a question of weighing up then that is when the standing comes in but when you weigh up you weigh up against a target of what you want and if you go in with a shopping list and you finish up with a basket of groceries you look at the groceries and you look at the shopping list. We haven't got a shopping list, we refused to have a shopping list because when we discussed it we were clear that it was a matter of principle and that what we were talking about all the time was that the international use of the airfield should be on an equal footing for everybody and, therefore, it wasn't a question of saying 'okay, what do I give Spain to take the veto away?' I remember the Hon Minister for Tourism saying in the House that if it's a question of choice of giving them concessions or staying out we stay out and I agree entirely with him. I agreed with him when he said it in November and I agree with him today and I have agreed with him all the times that he has said it outside the House. But we need to be showing that we are still saying it because it is very, very, very dangerous that we should show any weakness at this stage and if we try and patch the issue let us not fool ourselves. We are not having the Spanish press and the British press watching the situation and the British Foreign Office and the Spanish Foreign Office watching the situation just because this is a motion in the House of Assembly and we are so important that we can, by a motion in this House, start World War Three or undo the Gorbachov/Reagan talks. They are watching whether, in fact, we are still under the pressure that we are being put and we are being put under pressure, we are still, in fact, maintaining the

same solid stand that we have until now. It is vitally important that we do not let Gibraltar down. I honestly appeal from the bottom of my heart to Members opposite to realise that this is not a short-term thing which affects either of our parties in the next election, this is not something of two days in an election nor is it something that we could say 'we leave it there and we are going to study it and we put the issue into the future and hope for better times'. Whether we like it or not, for better or for worse, we are the representatives of the people of Gibraltar, the fifteen elected Members now here. There may be in three month's time another fifteen elected Members and they may take a different position but we are here with a clear mandate from the people that have put us here and from the people that followed us in the demonstration and we have got to give the leadership that the people want us to give and if we are seen ourselves to be weakening the people will weaken. If somebody wants to give them a different leadership then let them try and give them one but what we are not entitled to do is when the pressure is on to be seen to be having second thoughts or getting jittery. Nor can we accept the kind of arguments that are floating around that if we don't do this they are going to get difficult with us at the frontier because if we accept that scenario we are abiding to nothing, every time they want something they will be difficult at the frontier. We might as well have done that in 1964 when they first started being difficult at the frontier, we might as well have said 'right, we will start negotiating on sovereignty'. That has been one of our fundamental arguments in relation to the opening of the frontier in 1985, Mr Speaker, twenty-one years later we said 'yes' to what we had been saying 'no' for twenty-one years, no getting away from it, let us not repeat the mistake now. I also feel that it is important in relation to the question of the air liberalisation, to remember that this is part of a process that was already in train before Spain came in. There were already measures adopted in pursuance of measures on the liberalisation to which we were entitled and which nobody vetoed. The fact that we didn't use it doesn't mean anything because, frankly we may not want to use this supposed cornucopia of goods that are going to come in flying from every corner of the globe. Certainly, unless the Chief Minister gets on with that tower in the City Plan, we are going to spend all our lives watching planes taking on and off without even being able to come in or out of Gibraltar if the figures that are paraded of the flights they were going to have from all over the world coming in. The reality is that Gibraltar needs a certain amount of access to the outside world in order to maintain a reasonable level of economic development in Gibraltar. The Campo Area needs our airport desperately, let's be clear about that and we have got the absurdity of the situation that the people who want what we have got are asking us to pay them to help have it, that is the absurdity of the situation we have got. We should have been in a position if we wanted to be nasty of saying 'well, wait a minute, you cannot just come along here and pretend to have use of my airport when you are going to have a situation where 99 flights out of 100 are going to be for

you and one is going to be for me and it is going to be your noise that is affecting my tenants in Glacis and Laguna. What am I getting out of it?' We have never said that, we have been quite happy to have as many flights as want to come in even if all the passengers go to the other side and we only get 1%. But the situation is that, in fact, it is the principle of being entitled to exercise a right whether we choose to exercise it or not, whether we need it or we don't need it because, as I have said before, we were already entitled by previous Directives to put on flights which we haven't put and Spain came into the situation where we were already in other Directives included as a British regional airport. This is why I am saying in the motion that we still need to pursue the matter of our legal rights because the British Government has got the right to keep us out of the liberalisation package, Mr Speaker. The Spanish Government has tried to keep out all its airports, it has kept out Barcelona because it is unsafe, Malaga because it is overcrowded, Valencia because it is economically not viable and so on and so on. If they had had their way the air liberalisation package would not have applied to them not even The Long Title, I don't think. They entered a reservation on fifth level agreements on virtually every cause that they could think of and on top of that, that they are the most reluctant partner who had to be dragged struggling and kicking into the liberalisation package, on top of that they veto it for everybody else and what do they do? They use it as a weapon to get the British Government to shift on us. Well, fine, Britain is our friend and at the end of the day, let us be clear, the people of Gibraltar and the Government of Gibraltar and the House of Assembly of Gibraltar is sufficiently loyal to the British Government - for want of a more inappropriate word - to say 'if it is an embarrassment and if it is a problem and if you are under a lot of pressure from the other ten and you need to leave me out', if Mr Ratford had come along and said, he tried unsuccessfully to convince us of the enormous value of being in and that it was impossible for the British Government to continue to defend the position of June of saying 'no agreement for 300 million people until Gibraltar comes in'. But if he had said to us 'it is not possible to maintain this position and, okay, if you won't do a deal with Spain will you at least agree that Gibraltar should stay out until such time as an agreement is done?' We would have gone along with it for the sake of helping Britain out because Britain has always been able to count on us when they have needed us and we would have been better because Spain was prepared to settle for that in June, that is what brought about the veto and we would have been left with a situation where we are where we are today, outside the air liberalisation package but without any agreement where the field would have been open and if any time in the future a Government wanted to be included in the agreement they would have come along to the United Kingdom and said: 'I am now interested in pursuing the possibility of going into the air liberalisation package and these are the conditions under which I would like to come in. Do you think it is possible for us to reach an agreement with Spain on these conditions?' But this would have been on the initiative of the Government

of Gibraltar looking after the interests of the people of Gibraltar having come to the conclusion that the package was worth having because they had seen it in operation and seen how it was affecting other people and thought that it wanted to come in. And then it would have gone into a negotiating position and if it found that its negotiating position was not compatible with Spanish demands would have said 'okay, then I stay out'. But the problem that we have got today is that even if we say, as I hope we will and as I am sure we should: "We, the House of Assembly, sitting in December, 1987, has to be consistent with everything it has said up to now and say no to this agreement", even after we said that regrettably the agreement is still in existence. I am not saying that regrettably because of people being able to apply or not apply because that doesn't really bother me but because of the inability to negotiate or not negotiate, to change or not change because, again, I am sure Members will realise that when it comes to negotiations at whatever level you negotiate there are certain ground rules that apply and once you have an offer even if it is withdrawn, there is no way that anybody is going to start talking other than on the basis of the last offer that was put on the table, that happens all the time. We have a situation where we have already conceded vital points in this bilateral agreement. I do not want to go into a discussion of the merits of the agreement in detail clause by clause. What I do want to say to the House is that, certainly, even if the point of principle did not exist, if I were to look at this agreement as a piece of negotiation I would say to myself 'Señor Ordoñez wiped the floor with Sir Geoffrey Howe, no question of who won, it wasn't won on points it was a knockout', looking at the merits of the agreement. But I don't need to look at the merits of the agreement because I didn't tell Mr Ratford 'try and do me a good agreement' and then look at what he brought back and say to myself 'well, at least the chap has done a decent job and got me the best possible deal'. I told him 'we don't want a deal, we want Spain to be told that if they want to land in Gibraltar they make an application to the Civil Aviation Authority like any other airline and that when the application comes to Gibraltar the Gibraltar Air Transport Advisory Board will say 'we welcome it', and that is the procedure. That is the procedure anybody else has to follow'. The first clause in the agreement which looks very innocent and when I saw it I didn't realise the immediate implications of it and I asked the Foreign Office what it was and what it implied and they said 'well, we don't understand why the Spanish have insisted on it being there', that was the reaction of the Foreign Office. Well, I understand it. Before the liberalisation package came into effect, Mr Speaker, the position in Europe and, indeed, the position today outside Europe was that there were bilateral agreements and those bilateral agreements provided for exchange of routes and capacity utilisation and those bilateral agreements were concluded by airlines through the Civil Aviation Authorities of the countries of destination. The air liberalisation package changes the system only to the degree that instead of there being bilateral deals

which can still exist as in all Community law provided they are more liberal than the Community system, what you cannot have is a bilateral agreement that is less liberal which I submit the Anglo/Spanish agreement on the Gibraltar airport is and I submit it is contrary to the Treaty of Rome and contrary to the Directive because what the whole purpose of the Community is is to liberalise. You can liberalise more and you can bring down barriers faster but what you cannot do is introduce more restrictive regimes than other people have got. If we look at the situation what do we have? We have a situation where the airline that wants to fly from one Member State to another Member State submits an application to the Authorities of the recipient State. Until the liberalisation package the recipient State could say 'no'. Under the liberalisation package the recipient State may not refuse permission, that is what the liberalisation package does. If they do refuse permission for any particular reason then the rejected applicant can challenge that in the European Court. We look at our bilateral and we find this innocent clause that says that Spanish airlines flying from Spanish airports to Gibraltar require only the permission of the Spanish Authorities which doesn't happen anywhere in the European Community at all. In Britain a plane going from London to Manchester only requires the permission of the Civil Aviation Authority and the liberalisation agreement specifically excludes internal flights. In Spain a plane flying from Madrid to Malaga only requires the permission of the Spanish Aviation Authority and that is excluded from the multilateral EEC agreement. However, if the plane was to go from Madrid to Manchester the Civil Aviation Authority has to give permission but if the plane comes from Madrid to Gibraltar the Spanish Civil Aviation Authority gives permission. That for me is a serious and dangerous implication of sovereignty and we said in this House that we should not agree to anything that in our view, in the view of the people here, in the view of the Gibraltarians, implies something about sovereignty. It may not imply it to the people in the Foreign Office in Britain or in the Community but I think the people in the Community will look at our bilateral and will look at the multilateral. If Britain was so generous, if they felt so great a need to open up why didn't they say to Senor Ordonez: 'Look, Iberia can go to any British airport without the permission of the Civil Aviation Authority. We agree with you that the Spanish Authorities should be able to authorise flights from Spanish airports to any British regional airport, including Gibraltar and then I would say: 'Fine, I am being treated the same as the rest, there are no problems'. But what I object to is that there should be one British regional airport which Spanish airlines can fly to on the authorisation of the Spanish Civil Aviation Authorities which other people do not have that facility. They cannot do it to any other Member State, they can only do it to the Gibraltar airport and that is one of the clauses there and the Foreign Office when I got in touch with them couldn't understand why the Spaniards had wanted to include it. I can only suppose that they wanted to include it because as far as they were concerned

Iberia will not be seen to be recognising that this is British when it flies to Gibraltar and that is why they wanted it there. It may be a symbolic thing, I don't know, but we all know how upset the people of Gibraltar were by the removal of the symbolic guard. How does the symbolic guard compare with the symbolic terminal, the symbolic flights and the symbolic flag on the frontier fence? The people of Gibraltar are clear on what they want and they are clear what they want of us and we have been clear until now on the stand we were taking and we have had a situation where in motion after motion Government Ministers have stood up and said 'the feelings of our people on this issue', and it is something I will remind Members opposite which they have fully accepted previously, that it runs across party lines and, if anything, some of the most vehement opponents of any concessions are amongst the more senior citizens in our community who traditionally have been AACR supporters. I remember when we had the last motion and I came here and I said I had been stopped by twenty people coming between Liptons and the House of Assembly and fifteen of them are your supporters and only five mine and they said to me 'make sure the motion is passed', and they were very happy with the result. When we passed the last motion we rejected, we almost came to a point of no agreement, Mr Speaker, when you in your wisdom intervened and suggested we should have a short break to clear our minds and the happy conclusion of that was that we rejected access for Spaniards to the airport without passing through British customs and immigration and we rejected the construction of another air terminal and we rejected participation in the control of Gibraltar air space. Do they have participation in the control of Gibraltar air space? If we want to find loopholes then we can say 'no'. Do we need to say that if they have to be consulted for flights from third countries to Gibraltar they certainly seem to have some kind of say that they didn't have before, what is it that we are giving them all these things for? To remove a veto which was illegal in the first place. Isn't it transparent what we are doing, giving in to unfair and unjustified pressure when the people are prepared to stand up and be counted and face that pressure? Can we have a situation where the people are prepared to put up a stand and their leaders fail them? I submit that that is not acceptable. And let me say that it isn't just this side of the House that puts these connotations and implications on the deal. Most of the Spanish and British press have seen it and described it in the kind of terms that I am doing. Lord Bethell, Mr Speaker, the Chairman of the British/Gibraltar Group in the European Parliament, wrote an article in 'The Telegraph' in which he said quite clearly that if we accepted joint use then joint management and joint control would inevitably follow. It is a matter of judgement but I believe that his judgement is not unsound because essentially once we take on that slippery slope it is only a matter of time before we get to the place where the Spanish Government wants to get us and when we get there it will not be possible to go back. I can say that Lord Bethell has written to me on the subject and I have spoken with him and with Alf Lomas,

the Labour Leader in the Gibraltar Representation Group in the European Parliament, and I have appraised them of our views and of the fact that we were bringing this motion to the House and they are in no doubt at all about the dangerous implications that these have and Lord Bethell in his letter to me has even without any prompting from me because, in fact, I got his letter before I actually rang him up to discuss it with him, has been acting on the assumption that the position of the House and the position of the people of Gibraltar will be that this is not going to be accepted by us. We have also had some indications from other quarters that it would seem as if the British Government is reconciled to the idea that Gibraltar will say no to this. I am not so sure that the Spanish Foreign Office will take it so lightly, there is no doubt that the British Government would prefer that we should say 'yes', it would be more comfortable but I think much though we love the United Kingdom and much though we would like to help them out of their discomfort there is a limit, I think, to how far we can go and the limit cannot be that we support a deal which manifestly is not wanted which even when the Hon and Learned Sir Joshua Hassan was apparently lending his weight to it, he himself was recognising that, in fact, the vast majority of the people would not want it. Of course, the position that Lord Bethell reflected in the article apart from the quote that I have already given you which says 'if joint use is conceded, joint management and control of airport and air space are only a step or two away', is that his assessment and I assume that he has reason to come to such conclusions by virtue of his contact with people in London, is that some British officials hoped that concessions today will pacify the Spaniards into a more co-operative attitude. 'Such optimism' - says Lord Bethell - 'is hard to justify'. I think all of us would echo that. If that is the optimism and that is the thinking of the Foreign Office, certainly, they might not know the probabilities of these things happening from a very long distance but we, who are on the spot, know that this is total nonsense, in fact, if anything, knowing our neighbours as we do, the more concessions we give them the greater the demands will get, the more confident that they will get of the success, the more they will crawl and that is something that we know because, in fact, we have been neighbours for a very long time. I would also like to turn to the question of the position of the business community which has been, of course, rather silent on the subject lately. It may be because the last time they were not silent they actually got a rather negative response from most sectors including us in this House, Government and Opposition. I find it very difficult that I should put a question in this House asking the Government whether the comments by Mr Seruya and his support for the airport deal were in conflict with the motions in the House and to be told categorically 'Yes, they are in conflict', Mr Seruya was arguing that they were not. He comes out saying that the Chamber supports a fair airport agreement and we all castigate him for it. I ask the Government whether they think the Chamber's fair agreement is in conflict with the

motions of the House and the Hon and Learned Member opposite as Chief Minister of Gibraltar, tells me 'Yes, Mr Seruya is wrong, he is in conflict with the House'. Well, then if he is in conflict with the House the deal done by Sir Geoffrey Howe is in conflict with the House. How can that be in our interest the best deal possible and all the other things? Surely, there is an inconsistency there, Mr Speaker. What did the Chamber say when they were castigated by public opinion, when they had this reaction to the news and, in fact, to some extent rather unfairly because he was saying it to the wrong man anyway, he was talking to somebody who had nothing to do with the deal and nothing to do with the airport, if he had told it to Mr Ratford but, in fact, he got totally the wrong end of the stick and he was talking to the commercial attache of the British Embassy in Madrid who had nothing to do with it. But when there was this reaction he was followed, the news broke out on October the 1st, by the Chamber support, and on October the 14th, trying to placate irate Chamber members, the Chamber came out saying that they stood by the policy adopted in the Annual General Meeting that there had to be a single terminal with all passengers passing through the Gibraltar terminal. We don't have a single terminal with all passengers passing through the Gibraltar terminal, we have got a deal which fails to meet the criteria of the people who were prepared to accept a deal and we have got a deal that fails to make the criteria of this House in its last expression of policy in the last House of Assembly because in the last House of Assembly we rejected the proposals of the Spanish negotiator published in 'El Pais' that there should be two terminals and that one terminal should be for Spanish nationals and one terminal for other nationals and now we have got two terminals, one terminal which is for all nationals on all airlines of all nationalities from all destinations going into Spain. Clearly, by definition if the narrower concept is not acceptable the much wider concept which includes the narrower one is also unacceptable. The deal is rejected because it is in conflict with things that we have said, it is in conflict with the stand taken by the Chamber of Commerce, it is in conflict with the motion signed by 16,000 people saying 'We want no concessions on the airport', it is in conflict with the position adopted by the demonstration and by the Government in its representations to Mr Ratford and by the Opposition in its representations to Mr Ratford and it is certainly in conflict with the position of the Gibraltar Trades Council who, in fact, contacted the Hon and Learned Member in October at the same time as the Chamber came out and he wrote to them on the 5th October saying 'I agree with you on this issue. You are voicing the feelings of the community as a whole. You may be assured that in discussions with the British Government and in making representations to them we have stated that we are representing the views not only of Gibraltar Ministers but of the people of Gibraltar as a whole. Your letter confirms our position'. So the Government of Gibraltar on the 5th October agreed entirely with the Trades Council. The Trades Council position has not changed and I submit the position of the Government of Gibraltar cannot change and whereas as individual citizens

they may have private views which they are free to hold, as representatives of the people they have to reflect what the people want. What the Government cannot do, in our judgement, Mr Speaker, is to say 'I think it is good for you but since you don't want it I am not going to do it'. That is not possible. If you are representing the people then if you think that it is good for somebody you really have to go all out to defend and implement and carry through what is good for them or then to say 'Look, if you want to commit suicide I don't, and you commit suicide by yourselves'. The people of Gibraltar are not intent on committing suicide, the people of Gibraltar are intent on survival and the people of Gibraltar are intent on not being led into a trap and the House of Assembly has got a sacred responsibility in this matter and it must not fail the people of Gibraltar on this occasion because we have been totally united on this stand until now because the sentiments that I have expressed have been echoed more than once by Members opposite and because we have got a special obligation and the Hon Chief Minister, Mr Canepa, has got a special responsibility in giving leadership in this matter with the new role that he has taken on and with the new responsibility that he has taken on and he has got a unique opportunity to demonstrate to us that we have never judged him wrongly in the admiration that we have had for his outspokenness and his integrity and therefore, Mr Speaker, it is to him, above anyone else, that we look for support on this motion. I commend the motion to the House.

Mr Speaker proposed the question in the terms of the motion as moved by the Hon J Bossano.

HON CHIEF MINISTER:

Mr Speaker, I want at the outset of my contribution to dispose of one matter which the Hon the Leader of the Opposition has raised though I will be coming back to it later on when I make reference to paragraph 3 of the motion, mainly the paragraph that deals with Gibraltar's exclusion from the liberalisation package. But the point that I want to deal with is the inconsistency as referred to by the Hon the Leader of the Opposition in Britain's position from the stand taken by Her Majesty's Government in Luxembourg last June to the situation today and in the words of the Leader of the Opposition, I think the way he put it was that what Britain found unacceptable then is a fact today. I want to dispose of this matter at the outset because I am not here to apologise for the British Government and I am not here to give explanations for the British Government. I can only tell the House what I understand as being the underlying reason for that change or for that apparent change in attitude and having disposed of that then I will certainly be speaking entirely on my own behalf. The problem that the United Kingdom had in June was how to ensure that the air liberalisation transport package was approved without the exclusion of Gibraltar and I have reason to believe that the soundings that the British delegation had carried out indicated, the indications were that if the matter went

to a vote by the European Community, the indications were that they would not have a sufficient majority which in the normal course of events would have been a two-thirds majority. In fact, the indications were even more adverse in that the Danish President of the Council of Ministers would have been reluctant to go on a majority vote. So if the President did not allow a majority vote then what effectively would have happened would have been that the threat of the Spanish veto could not be removed and in the context of that, against that scenario, Her Majesty's Government considered that the only course open to them was to negotiate the matter. As I say, that is my understanding of the situation and I am not putting this across in order to in any way nullify or undermine the points made by the Hon Mr Bossano about the change in attitude. Mr Speaker, invariably whenever the Hon the Leader of the Opposition speaks either here in the House or on television he puts across an aura of confidence, a man fully in control of himself, fully in control of what he is saying and totally confident about the rightness, about the correctness of his position and I admire him for this and I think that it is something that every politician should take note of because very often your arguments might be weak but the way that you put them across, if there is conviction behind that, you can strengthen your position immeasurably. This is what I think the Hon the Leader of the Opposition has done with regard to his interpretation of the agreement. But no matter how much confidence he exudes about the correctness of his position as he sees it, the fact of the matter is that the Hon the Leader of the Opposition is not always 100% right and, in my view, in the way in which he has interpreted a number of clauses in the agreement not just today but on television and in other public statements that he has made, he most certainly is not 100% correct. He mentioned that he had sought clarification from the Foreign Office about paragraph 1 of the agreement. I wonder whether he did also seek clarification about other paragraphs of the agreement. Recently we have heard that on a number of occasions he has approached the Governor for clarification on certain aspects of the airport deal and on other matters but I would commend to him, I would suggest to him that he ought to get clarification, if he hasn't done so, not just about paragraph 1 of the agreement but, indeed, about every paragraph in the agreement. And instead of doing that, apparently what he does is a day later or that evening the agreement, I think, was released in Gibraltar the morning of the Thursday when I finished up with Sir Joshua Hassan in Faro, and that evening on television in 'Open Forum' he made a number of statements about the agreement which bear close analysis. For instance, that the agreement already gives Spain a say in the administration and that future use was not only just with respect to flights from within the EEC but from anywhere in the world and that that had to go to a Consultative Committee where Spain will appoint half the members. I think that if he were actually to try to find out what the true facts are he might learn that the real story is somewhat different but then it probably doesn't suit him at this stage to get to the bottom of the true story, he may not want to know. We don't intend, at this stage, to defend the agreement, we don't

intend to reject it at this stage because, very simply, we don't know yet enough about it. But he who is in even greater ignorance than we are, has already flatly rejected it. Let us come on now to this aspect of consultation which the agreement allows for. The agreement allows for consultation over matters involving air services to and from Gibraltar. This is quite necessary, in any event, to avoid the airfield being congested. I stress that this has to do with consultation and consultation is surely about the exchange of information and this has got nothing to do with the exercise of any veto by Spain. The coordination and cooperation arrangements which are envisaged under paragraphs 4 and 5 of the agreement and in the annex, are designed solely to find the best solution to the practical problems of dealing, for example, with such matters as how to process passengers for the same civil aircraft who check in at separate terminals. It has to do with the question of how civil flights would fit in with use by the RAF of the airfield and it also has to do with security. It is intended that the Committee would coordinate the local civil views on these matters. If it were to be necessary and difficulties were to arise, then they would be referred to the higher level Committee, at the level of the coordinators which is mentioned in paragraph 4(2) and it must be stressed that the airfield will continue to be a military airfield and that it will be under RAF control. Neither of these arrangements for consultation gives Spain any control whatsoever over the decisions reached. Let me turn now, Mr Speaker, to the question of the waiving of customs and immigration controls. Hon Members know perfectly well that I took issue on this matter with the statements made by the Secretary of State on television prior to the debate which took place in this House and I have not changed my attitude on this matter. I would much prefer that any passengers landing at Gibraltar airport should be required to go through customs and immigration controls. But I should also inform the House that it is an objective in the development of the European Community internal market that customs and immigration controls at European Community internal frontiers be removed or at any rate be substantially reduced by 1992.

HON J C PEREZ:

Will the Hon Member give way?

HON CHIEF MINISTER:

Well, he has an opportunity later on to speak.

HON J C PEREZ:

Yes, but did the Hon Member know this in November?

MR SPEAKER:

Order, the Hon Member has not given way and that is the end of the matter.

HON CHIEF MINISTER:

The intention is that they be substantially reduced by 1992 and there is a new situation that is going to arise and it is a new situation that we are going to have to contend with and grapple with. The Hon Mr Bossano made reference to paragraph 1 of the agreement and there is in this paragraph a reference to the European Economic decision. This relates only to flights by Spanish airlines originating in Spain and landing in Gibraltar and vice versa. There would be a matching right for British airlines to fly on the same route if they are licensed by the British Authorities and this is set out in the European Economic decision referred to in paragraph 1. There is nothing in the agreement which adds to or which detracts from the routes which are opened up by the decision and this is the information that has been conveyed to me at my request. The question of sovereignty, Mr Speaker. Some people, including the Leader of the Opposition, have said that sovereignty is infringed or that, in the words of the Hon the Leader of the Opposition, it takes away Gibraltar's birthright. The Opposition, I think needs to show very carefully why they believe it to be the case and in the absence of a reasoned argument and I don't think the Leader of the Opposition has addressed himself sufficiently to this aspect of the matter, to the need to give a reasoned argument, he has been quite emotional about it but unless he does so on the basis of a reasoned argument, then I am afraid that such assertions do not necessarily have any basis in fact. It was, in fact, as a result of the British initiative that the no prejudice clauses contained no reference to Spanish rights over the isthmus and these clauses in addition to the substantive elements which there are already in the agreement, fully protect the British position on sovereignty. Sir Geoffrey Howe asserted that in his statement in the Foreign Office when the two Ministers met the press on the night when the agreement was signed in Carlton Gardens and it is, I think, interesting to keep in mind, to remember more so having regard to the remark of the Hon the Leader of the Opposition that Señor Fernandez Ordoñez wiped the floor with Sir Geoffrey, that there was Fernandez Ordoñez next to Sir Geoffrey Howe when Sir Geoffrey Howe was making this statement and, effectively, he had to lump that statement, he did not demur in any way. I haven't heard that he has done so since, I am not aware of any statements made by the Spanish Government challenging that view of the Foreign Secretary and what is more, we only have to recall that, in fact, Señor Fernando Moran said quite the opposite. He agreed with the view of the Secretary of State and he pointed out how unwavering the Secretary of State had been over the years in the need to safeguard and what a champion he was about the rights of the Gibraltarians and British sovereignty over Gibraltar and the isthmus. The House of Assembly resolutions, the petition and the demonstration. We naturally have no difficulty on the Government side in supporting the first three paragraphs of the motion. The only thing is that we have to bear in mind that in historical

terms it is a fact that all these resolutions were passed in the House before the agreement was reached, that signatures were collected before the agreement was reached, that the demonstration was a spontaneous reaction and, indeed, the petition to the six points published in 'El Pais'; that in fact Spain has made definite and major concessions from that position to the one reached in the agreement and that we are in fact, whether we like it or not, in a new situation with a specific agreement to be considered. And what should we do? The first thing to keep in mind is that we are not really required to do anything about it at this stage. We are under no pressure to move in any direction. There is no time limit - we do not have to take a view before the end of the year, before the general election or before the life of this House expires on the 14th February, 1988, which is the latest date by which the House can be dissolved. We don't have to take a view before the general election.

MR SPEAKER:

May I, perhaps, correct you. The latest date by which the House has to be dissolved is the 22nd February which is the fourth anniversary of the first meeting of the House.

HON CHIEF MINISTER:

Even better, the 22nd February, we have another eight days. We don't have to take a view, as I said, before the general election or immediately afterwards. There seems to be a mistaken notion in town, Mr Speaker, that we only have a year within which to decide and I want authoritatively today to say that that is wrong, we are under no time constraint and because we have plenty of time in hand, Mr Speaker, let us therefore use that time. So in the first place, we should use that time in order to get all the information that everyone, not just Members of the Government, not just Members opposite but the general public need to have information in order to arrive at a mature decision after there has been informed debate on the matter. Secondly, and here I come to paragraph 3 of the motion, the question of our being excluded from the air liberalisation package, let us challenge the fact that we have been excluded from the package immediately and in this connection we have already decided to take preliminary advice from a specialist EEC lawyer based in Brussels whose advice we have taken on previous occasions and I have already given instructions and have today approved the draft of a letter explaining to him what has transpired and asking for a preliminary opinion with a view to testing the legality or otherwise of Gibraltar's exclusion, if necessary, in the European Court. Therefore in this connection I will be moving a minor amendment to paragraph 3 that will strengthen that paragraph slightly. If we are entitled to be included and, as we have said, Britain herself took this view in June, then nothing else need arise. In any event, we need to know more about the air liberalisation transport package and how it is going to work. It is being implemented

as from the 1st January, 1988, but in practical terms the effects will not begin to be seen until the summer of 1988. We need to see how it is going to work in practice, we have plenty information on paper as to its main features, I think there was an article in yesterday's Gibraltar Chronicle about some of the aspects of this package but what does it all mean in practice? We on the Government side certainly want time to see its practical effects and so because we have also been given a right to veto the agreement and Spain has had to accept this, by not passing in this House of Assembly the necessary legislation or, indeed, it being a requirement that the new House of Assembly should pass the necessary legislation and for me, personally, this is a course for great satisfaction, I think it shows that our wishes are being respected, it shows that we are being treated as adults, indeed, this is what I consider to be some of the attributes of a situation in which we would be freely associated with the United Kingdom and not a dependent territory. And, secondly, because we want to challenge our exclusion from the air liberalisation transport package, let us keep our options open pending further assessment, pending debate and pending a study of where Gibraltar's interests lie. By all means let us regret the position that the European Economic Community and Spain have forced on Britain and Gibraltar but the whole matter is really too important to rush. I would therefore ask Hon Members opposite to accept that in the same way as the Government would not exercise its majority in favour of the agreement even if it were to dream of accepting it at this stage because it has no right to attempt to bind hand and foot a future Government or the next House of Assembly, the Opposition has no right to try to force through a decision against the agreement at this juncture. Whilst, I would say, that at present there is probably a majority against the agreement, this is certainly my personal impression, what the Hon Member is really trying to do to the minority is to ride roughshod over their views whilst asserting, as he has done, that if at any time in the future there were to be a majority in favour then the minority that he would be a part of would have a responsibility and a right, and I quote his own words as published in the Chronicle 'to fight that sellout every inch of the way'. The Gibraltar Trades Council, too, has already threatened to take industrial action against employers on this matter. I wonder what they would say if there were to be a majority view in favour and if the majority were to be in a position to force their own views by similar militancy. Would they complain that we were living in a Fascist dictatorship? No, Mr Speaker, the minority certainly has a right to have their say but the majority, undoubtedly, has a right to have its way and anything else is today, in four year's time, in ten year's time, a negation of democracy. Anything else is totally undemocratic and therefore to be condemned. In conclusion, Mr Speaker, I want to stress that perhaps the essential difference between Hon Members opposite and us is that they want to lock and bolt every door, bar every window and then brick them all the way up so that there is no way in or out. As with the Brussels

Agreement, as with the closure of the Dockyard, the Leader of the Opposition is once again trying to achieve a ticket to election victory by trying to gain instant popularity through following what he gauges to be majority public opinion. Our view, Mr Speaker, what we are trying to do is that whilst there is probably now only a minority in favour of the agreement, at least that minority has a right to have a small window left open and therefore we on the Government side are going to use our majority to amend paragraphs 4 and 5 to ensure precisely that, for in our view, Mr Speaker, there is no need to rush to say 'no', we just wait to give a considered answer if and when it suits us. I therefore, Mr Speaker, beg to move that the motion moved by the Hon the Leader of the Opposition be amended: (a) by the addition of the words "as a matter of urgency" at the end of paragraph 3, and (b) by the deletion of paragraphs 4 and 5 and the substitution of a new paragraph 4 as follows:- "4. Takes note of the proposed Anglo/Spanish agreement and considers that once the course of action proposed in paragraph 3 above is known and the practical effects of the Air Liberalisation Transport Package can be assessed, a decision should be taken whether the agreement ought to be implemented". Mr Speaker, I have the honour to so move.

Mr Speaker proposed the question in the terms of the Hon the Chief Minister's amendment.

MR SPEAKER:

I must warn Members that they can either take the choice of speaking exclusively to the amendment or generally on the motion but most certainly not to have two bites at the cherry. Of course, the Hon the Leader of the Opposition is quite free to speak on the amendment. It is now 7.30 and I think this is an appropriate time to recess. It will give Members time to study the amendment and reflect on what they wish to say tomorrow. We will now recess until tomorrow morning at 10.30 when the debate will continue.

The House recessed at 7.35 pm.

THURSDAY THE 17TH DECEMBER, 1987

The House resumed at 10.50 am.

MR SPEAKER:

I will remind the House that yesterday evening when we recessed the Hon the Chief Minister, Mr Canepa, contributed to the debate on the motion moved by the Hon the Leader of the Opposition and proposed an amendment. I therefore now invite Members who wish to speak on the amendment to do so. I will give the warning that I gave yesterday evening. You

will not have two bites at the cherry, you either speak on the amendment exclusively or to the motion before the House, you can take a choice, but I will not countenance any repetition. I understand, Mr Pilcher, that you wish to make a contribution.

HON J E PILCHER:

Mr Speaker, I will try, although it is a very thin line between speaking to the amendment and speaking to the motion, but I will try to keep to the amendment and reserve my right to speak on the motion at a later stage. In so doing, Mr Speaker, I have to make certain points which were raised by the Hon the Chief Minister in moving his amendment. I would like to start the same way that he did, Mr Speaker. When Mr Canepa started his intervention he said that he wanted to explain not from a personal point of view because that he did later but from a sort of excuse point of view of how it was that the British position had changed between June of this year and December of this year. Obviously, trying to excuse the logical argument put forward by the Hon the Leader of the Opposition when he said that there had been a drastic change between the position of the British Government in June and the position of the British Government in December. Although we accept his exposé of how the position had changed, nevertheless, Mr Speaker, I think that the British Government did us a disservice inasmuch as, I think they went against what I consider is an unwritten international law. There is an international law which is used in many spheres and that is that you do not negotiate under blackmail conditions. That applies, particularly, in the United Kingdom and, as I say, in all spheres and walks of life because the Iron Lady, the Iron Maiden, has got a reputation, is renowned in having a situation where she will not, whether it's with the Trade Union Movement, with terrorists or even internationally in the EEC, she has never ever negotiated under blackmail and every time that she has been in any situation of blackmail she has always stood her ground. I think, Mr Speaker, it has to be put on record that although we accept the point that was made by the Hon the Chief Minister yesterday that it was a question of the British delegation maybe losing the vote or maybe the air liberalisation not going through because Spain would continue to exercise her veto, that was tantamount to an admission that Spain can blackmail the United Kingdom any time she so wishes over anything that she feels she can force the United Kingdom into conceding over Gibraltar. I am sure that the British Government would not have ceded to that blackmail other than in a situation of a discussion over the Gibraltar question and I think it was quite clear from the interview by Sir Geoffrey Howe, obviously, because that is a normal follow-up of the Brussels Agreement. Having made that point which I think he made himself at the start of his contribution I would like now to take various aspects of Mr Canepa's contribution. I found Mr Canepa's contribution disappointing insofar as the moving of the amendment.

MR SPEAKER:

Which came at the end of his contribution.

HON J E PILCHER:

Well, Mr Speaker, it doesn't really matter since I will be moving an amendment at the end of my intervention and I have the right to speak at the end of that.

MR SPEAKER:

It certainly matters, that is why I told you at the beginning, it most certainly matters whether you are going to speak to the general motion or to the amendment. You said you were going to speak to the amendment. If you are going to speak to the amendment, it is your choice, most certainly, but I would like to warn you.

HON J E PILCHER:

Mr Speaker, I will bow to your judgement at the end of it and if you believe at the end of it that I have spoken to the general motion I will accept that.

MR SPEAKER:

Fair enough. I will allow, most certainly, a fair amount of latitude.

HON J E PILCHER:

In referring to Mr Canepa's contribution, as I was saying, I found it rather disappointing on various aspects. Normally Mr Canepa is renowned for speaking from the heart and, certainly, with no prepared text. It seemed to us yesterday that although from this side of the House the Hon Leader of the Opposition made many points, it seemed to us that in his contribution most of those points were left out because he already had a prepared text and a prepared speech and no account was taken of many points that were made by the Leader of the Opposition in moving the motion. I think the contribution of the Hon Mr Canepa was divided into three parts, as far as I can gauge, Mr Speaker. One was a subtle defence of the deal. Secondly, it was again another subtle political attack on the GSLP, and thirdly, I think what is known as playing to the gallery, he was playing to the public and I think in so doing confused slightly the people of Gibraltar who, I think at this juncture do not require that confusion. I think they require leadership and I think he said that the Hon Leader of the Opposition was very aggressive in moving his motion and very aggressive in explaining the motion and being very logical in so doing and he said, I think, if I am not mistaken, other politicians should learn

from him. Well, I think, Mr Speaker, he should learn from the Hon Leader of the Opposition because his exposé was weak in the defence of his contribution. If I can tackle the third point first, that is, playing to the public. I think he missed two vital points which I think were mentioned ad nauseam by the Hon Leader of the Opposition. Perhaps he didn't miss them, perhaps what he did was slightly twist them. When Mr Canepa was still in London with Sir Joshua Hassan, Mr Speaker, the GSLP in Gibraltar immediately after the deal made two very important statements. The first statement was we welcomed the safeguard that Her Majesty's Government had put in the Anglo/Spanish Agreement giving the right to the people of Gibraltar to veto the agreement. Personally I was very, very satisfied with that and the party was very satisfied and if we cast our minds back to the programme discussion when I was in the programme 'Open Forum' with the Hon Mr Canepa, I am sure he will remember that I said it would be a black day if the preamble to the Constitution only meant that we had to say 'yes' or 'no' when it suited Her Majesty's Government. And on that count, I think, we are very happy that the preamble to the Constitution is now being extended to give us the right to say 'yes' or 'no' at particular points in the history of Gibraltar. I think this was a very important point and one that certainly the Opposition welcomed and welcomed publicly immediately after the signing of the agreement. The second point, Mr Speaker, was one that we made, again, quite clear although we were satisfied with the decision that we had been given the right to veto, we were dissatisfied with the choice that we were given, ie stay in the agreement by signing the deal or stay out of the agreement and out of the air liberalisation package. And we said immediately at one o'clock in the morning of the 5th December when the Hon Leader of my party was interviewed, I think, by one of the Spanish news broadcasts, we said to them we did not accept the legality of leaving Gibraltar out of the air liberalisation package and that we wanted to test that legality in whatever court there was, even if that was the highest court in the international sphere. I think those two points were made very clear by the Hon Leader of the Opposition when moving the motion and I think, to a point, disregarded by the Hon the Chief Minister, Mr Canepa, who seemed to be saying that all that we were saying was 'no' to the deal. If those two points were accepted, I think one question that obviously a lot of people are asking themselves or should be asking themselves certainly at this moment is if the GSLP were satisfied with the veto situation, were satisfied that we could test the legality of the situation in a court before doing anything else, why the motion? Obviously, a lot of people must be asking themselves that. What a lot of people do not know, certainly outside this House, is that we have to give notice for motions and therefore at the same time as we put in our five days notice for questions, we put in the motion. We put in the motion, Mr Speaker, last Tuesday when it was still unclear what the position was as far as the former Chief Minister was concerned and at that stage it was rumoured very strongly that Sir

Joshua was leaving and that the Hon Mr Canepa was taking over. That is the reason why we brought the motion to the House. The reason was that on Friday night, on Friday the 5th of December, Sir Joshua Hassan came on television clearly defending the deal that had been struck between Britain and Spain and the only way that we could react to that was to bring a motion to this House so that the people of Gibraltar clearly understood where both sides stood and I think this was the reason but, of course, it is a bit of a confusing situation because it is as if, and I will try and give an example, it is as if the lion - which I think Sir Joshua Hassan was considered to a point a lion because of the situation of Gibraltar, Gibraltar from a distance looks a lion, if the lion had roared the GSLP had taken up that roar and had gone into the arena with him only to find a week later that the lion was no longer there and now we find ourselves in the arena having pushed the motion forward saying quite clearly we still are against the deal but, of course, Sir Joshua is no longer there and now we get criticised by the Hon the new Chief Minister for saying 'we don't want anything to do with the deal' and for going forward very quickly to try and stop the deal. This would not have happened, this motion would not be here in the House today had it not been for the television interview that Sir Joshua Hassan gave GBC on Friday night because we were very happy on Friday morning to have left the situation lie as it was, ie we were happy and satisfied with the veto and we were happy that what we had to do was take the matter to an international court and, first of all, see what was our legal position and that would have continued to be our position but for the famous television interview on Friday night which made the whole of Gibraltar doubt what was happening to the leadership of Gibraltar and that is why we put a motion here in this House. But, of course, having put a motion and not knowing what was the position of the new Chief Minister we, I think, proceeded with the motion in the knowledge that it was a situation that the whole of Gibraltar needed and wanted cleared up. This was why we proceeded with the motion in the knowledge that perhaps the Hon Sir Joshua Hassan had resigned because of the pressures on him because of his interview on Friday night. I know he said publicly that it wasn't but, certainly, from this side of the House it appears that that was clear. And, of course, it was even clearer given the statement by Sir Joshua Hassan that when he was asked would he and his party defend this at the elections, he said 'well, we are defending it now' and obviously by interpretation if nothing else, if he was defending it now he would defend it at an election. I think that is the reason why we brought the motion to the House. The whole of Gibraltar, Mr Speaker, was shocked and then confused by the interview on GBC. We presented the motion and I want to make this absolutely clear, we presented the motion to get the position of this House clear so that the people of Gibraltar knew what the position of the House was so that, if nothing else, the confusion would end at that stage and at least the different parties would designate their different positions. Having made that point, Mr Speaker, I would like

to turn to what I think was a subtle defence of the deal by the Hon the new Chief Minister, Mr Canepa. We have ourselves studied the deal because another thing that we said in the various broadcasts that we did on Friday was to say that we could not comment on the deal at that stage - this was on Friday the 5th of December - because it was too early and we had just received the text of the deal and therefore on Friday the 5th December we could not gauge what the Anglo/Spanish agreement was all about because like in everything else we take a lot of time and a lot of care to analyse things before we make public announcements. And in so doing we sought certain clarification on certain clauses of the agreement. I will not repeat what was said yesterday by the Hon Leader of the Opposition because that was already said and I feel that that would only be repeating ourselves but it is not as the Hon the new Chief Minister said yesterday that it is a question of looking at the agreement, reading into it what we want to read into it and then aggressively defending it. No, what we will refuse to do, Mr Speaker, is to read the agreement and where it has got white accept that it is black. We might accept that it is not as white as we thought it was, it might be greyish but certainly it is not white or black and I think that is the difference that the Hon the Chief Minister yesterday was trying to, again, play with words and make one thing mean another. We looked at the merits of the deal but when we decided to come to this House we did not want to fall into the error of discussing the merits of the deal because I think most of us on this side of the House, Mr Speaker, are negotiators in one form or another in our walks of life and we know that the moment we start negotiating on the merits or demerits of anything then you are admitting that the principle is that the deal is there and you have to accept it and that is why we felt that it was better, we felt that the people of Gibraltar had already said no and we felt that no way was this deal going anywhere that the people of Gibraltar had not said themselves what they would do. The banner was of 'no concessions' and the subtle defence now is that because our attack was on the interpretation they tried to implant in the minds of the people of Gibraltar that no concessions are no concessions on sovereignty and control. Mr Speaker, no concessions, as far as the majority of the Gibraltarians are concerned, means no concessions at all because if we start playing with words about sovereignty and control what is therefore a concession on sovereignty? Where is the concession on sovereignty? When they take over the airport, when they take over the Port, when they take over other areas or when the Spanish flag is flying from Gibraltar? And even at that stage we can still defend that the sovereignty issue hasn't been ceded because we still have autonomy within Gibraltar. Mr Speaker, it is clear that that is just a play on words, it is the same as control. How can you not have control if you have a say in what happens in the place? I challenge the Government to say to us here and to the people of Gibraltar today that this deal means no concessions whatsoever. Not no concessions on sovereignty, not no concessions on control, to say here that this deal means no concessions.

As I say, I don't want to go into the deal itself but I think by way of explanation to the public, I think certainly the way that the Opposition party sees this is, first of all, the deal tramples on our right as Community nationals, that is the first thing. We have a right as Community nationals and that agreement tramples on our rights. Let us look at the agreement and, as I say, I don't want to get bogged down nor do I want to discuss it because as far as I am concerned the deal is bad. We talk of a joint committee to discuss matters like aircraft handling, services, passengers and, obviously, that is giving Spaniards a say in how we run our services in the airport. We talk of in transit immigration and customs controls. Clearly, totally against the motion that was passed here in the House and, clearly, against the demonstration because if Hon Members opposite cast their hands back, the in transit arrangements, ie the customs and immigration controls were mentioned prior to the meeting and, in fact, I remember walking past the Piazza the previous Sunday when the members of Action for Gibraltar were collecting signatures from the people of Gibraltar and there was one person with a loudspeaker - I don't think it is necessary to mention his name - who was quite ably shouting over that loudspeaker that there was no way that we were going to allow customs and immigration controls other than through the normal method that is being handled at the moment. As far as I am concerned the people of Gibraltar said no to that. They also have a say, whether direct or indirect, on flights coming from a third country, whether they have the right to advise, whether they have the right to veto is not important, they have a right which they have nowhere else in Europe. They have the right to put internal flights with Spanish authority only de facto making Gibraltar a Spanish regional airport under that clause. And if that were not enough, any problems related to the Spanish deal would be referred to the coordinators. Obviously, at one stage referred to the Transport Ministers who were tantamount to signing the deal. If there is any problem in the Coordinating Committee it would go, obviously, to a higher authority. As I say again, I challenge the Government to say that none of those things are clear concessions to the Kingdom of Spain. I think Government are confusing the issue by giving different interpretations. I was flabbergasted yesterday when I heard the Hon Chief Minister say here in the House 'Spain have also made concessions'. Spain have also made concessions where? They have taken the veto away, perhaps that could be the only concession that they have given us. And he was defending the deal, to a point, as I say, very subtly, he was defending the deal by quoting from Señor Ordoñez and we have got to a stage now that we have to defend things that the Spaniards do by using them as saying that there is no right on the sovereignty issue. Perhaps Señor Ordoñez is now changing his position and is saying 'better say that there isn't so that they accept it and then they are going to find out'. But what were the excuses used? One, the committee was there for exchange of information, for processing passengers to the terminal. Is there a need for two Foreign Ministers of two major countries to sit down

and negotiate a deal for exchange of information? If the Hon Chief Minister plays back, because I heard it last night and I had it taped, plays back his contribution, he will find that he said that the committee were there basically to exchange information and for processing passengers to the second terminal. He can go back and listen to the tape or he can read the transcript. He also said, Mr Speaker, in direct contradiction to what he had said in the last House, he used the words this time as regards in transit arrangements that he prefers there not to be any arrangements as far as in transit arrangements ie the customs and immigration controls being kept inside the Gibraltar zone. But he used the word 'prefer' because he said and he was quoting Mr Ratford, he said that by 1992 the European Community would be eliminating or the objective was by 1992 to eliminate customs and immigration controls. Our answer to that, Mr Speaker, is the same answer as we have given on many occasions. We believe in a united Europe, we believe that we are in Europe for better or for worse and we believe that if in Europe there is legislation passed that we might not like, we have to accept that legislation because we accept the good with the bad. But what we are not going to do, Mr Speaker, and we have said this before, no matter how great a Utopian idea the united Europe is, we are not going to allow the united Europe to start in Gibraltar four or five years before it starts anywhere else. That was, I think, the same argument used in the Brussels Agreement, if it is going to be done in January 1986, why not do it in February 1985, but that was ten months. Now we are saying 'it is going to be done in 1992, why not do it in 1987?' I think, Mr Speaker, that argument certainly does not convince us. We have got to look at the merits.....

HON CHIEF MINISTER:

If the Hon Member will give way.

HON J E PILCHER:

No.

MR SPEAKER:

Order.

HON J E PILCHER:

Okay, I will give way, Mr Speaker, because I always do.

HON CHIEF MINISTER:

I said that we had to take account of that. I did not say or imply that because it has to happen in 1992 it might as well happen now. That is twisting my words.

HON J E PILCHER:

Mr Speaker, whether he said it or he implied it, the Hon Chief Minister has to accept that when we are sitting on this side we listen to what he says and we make our own minds up on what we think he said. What he cannot accept is that we think that he said what he wants us to think that he said. I think in the same way that I heard that and in the same way as I interpreted that, I am sure most people in Gibraltar interpreted it in the same way. And he also said something about putting flights into Spain, if I am not mistaken, when he said about Spain having the right to bring aircraft into Gibraltar, he was saying 'well, we also have the right to fly our own aircraft to Spain' the difference being if we want to fly our own aircraft to Spain we have to seek permission from the Spanish authority. He said, Mr Speaker, that the no prejudice clauses at the end of that agreement fully protected Gibraltar's position. I suppose like our reservations on sovereignty protected Gibraltar on the Brussels Agreement. We all know that the reservation on sovereignty didn't protect anything, the Brussels Agreement continues down its path and the deal, if accepted, will continue down this path with or without prejudice clauses. I think the last thing the people of Gibraltar need, Mr Speaker, is this kind of confusion. I think what the people of Gibraltar need is a solid stand on a matter of principle. We might have different feelings or different interpretations of things but I honestly feel that on that side of the House they are as clear as on this side of the House that that agreement concedes concessions. I think the people of Gibraltar need a solid stand on a matter of principle. It is a question, as the Leader of the Opposition said, it is a question of foresight and leadership, not of hindsight, it will be too late if we do not take into account the pressures that can be put on us. We agree, Mr Speaker, that we don't have to do anything now, we agreed on the 5th December, we agree today and we will agree in a month's time or in six month's time that Gibraltar doesn't have anything to do at the moment other than not pass the legislation. But I think the mature decision has to be let us stop selling the deal, let us stop confusing the people of Gibraltar. I think there is one fundamental mistake made by the Government and by the people of Gibraltar that the Hon Chief Minister referred to yesterday as a minority. I think the point was also made by the Hon Leader of the Opposition and that is that a lot of people confuse the airport package with the kind of problems Gibraltar can suffer if they start putting pressure on that frontier. I think that is what is worrying a lot of people but I think the message must be clear that by signing the airport agreement or otherwise that does not prohibit Spain from putting pressure on that frontier whenever it suits them. One thing has nothing to do with the other and I think the message has to go out clearly to those Gibraltarians who feel that if we sign the airport package that means that we are now going to be able to go freely past the frontier in and out, as many times as we feel like it without any obstruction whatsoever and

that couldn't be further away from the truth because having ceded to blackmail, having ceded to pressure, that will be put back on every time it suits the Kingdom of Spain. And another thing which I think is of fundamental importance is that the longer we leave the decision the more problems we will force on ourselves because the longer it is in the air the longer that people will try to pressurise us into accepting it. The other point, Mr Speaker, was that there was a subtle attack on the GSLP as well during the contribution of the Hon Chief Minister. Well, subtle in some areas, direct in others. Subtle because sometimes it was by association of ideas and sometimes direct because he said things like bricking ourselves and barring the windows. I think he played on words, Mr Speaker, particularly on this majority and minority thing that has been going round Gibraltar now for a couple of days following an interview given by the Hon Leader of the Opposition to GBC. Let me quite clearly say for public record, as Chairman of the GSLP and as Deputy Leader of a Parliamentary delegation, that the GSLP, Mr Speaker, accepts fully the democratic principle of the majority accepting or saying what they want and for the people of Gibraltar to have to accept the majority. I will explain the position. The position is that even if the GSLP finds itself in a minority as, indeed, we have found ourselves in a minority during the issue of the White Paper on the closure of the Dockyard when we were saying to people 'the Dockyard will close' and the Hon Chief Minister was saying whilst there are ships floating about it won't close, we were in a minority then. We were in a minority on the Brussels Agreement, we still fought it. We were in a minority on the question of GSL, we still fought. And if we were a minority in this we will still fight it and if that meant losing the elections or losing our position in the House of Assembly it wouldn't matter because we believe in democracy and democracy also means the right of a minority to speak their minds and that is the position which wasn't understood. What we were saying was not that if we are in Government and the majority want something we, the minority, will implement it. What we were saying was that as a minority we have a right to say what we mean. The play on words is that the Hon Chief Minister himself said yesterday that there is a majority of people now who don't want the deal. Of course, leaving it in abeyance means that slowly he can work on the minority to convince the majority and become a majority. If we go today we say 'no' to the deal, if we go in six month's time, in a year's time, in a year and a half, the situation depends on how we play it. It was, and I am sorry to say it, but it was tactical moves on scaremongering, Mr Speaker, which we hadn't seen in the House for a long time but, of course, over the last couple of weeks we have been seeing this tactic of scaremongering. The Hon Chief Minister talked about closing all the doors, barring all the windows, not even allowing ourselves a small window to see through. The Hon ex-Chief Minister in a television interview said as well by association of ideas very clearly 'of course, unless the people of Gibraltar want to commit

suicide', obviously, again a situation where he was clearly leading the people to one school of thought. Many UK newspapers, some associated with the Foreign Office, have been saying that Gibraltar under the leadership of Mr Joe Bossano would be isolating itself from Spain, isolating itself from Britain, and if that were not enough we also have the famous ex-Foreign Affairs Adviser of the Chief Minister saying that we are all a load of Marxists. Mr Speaker, it will no longer work, the GSLP have been here for four years, people now know us, there is no way that anybody is going to be scaremongered into anything and the sooner that is accepted by the other side of the House the better. We, Mr Speaker, respect democracy, we have created our own House of Assembly and our own democracy on the principles of the Westminster system where democracy and the rights of people are respected. We have moulded our system on that so why, Mr Speaker, should we be afraid to speak our own minds? We have to bank on, as the Leader of the Opposition said yesterday, we have to bank on Britain's respect for democracy and if we have to say to Britain 'we, 25,000 Gibraltarians don't want that', I am sure that Britain will respect that. Spain will also have to learn to respect that which she is not doing at the moment. We will have to teach Spain to respect the right of democratic people to determine their future but we won't be able to do it whilst we continue to give them false hopes. If we continue to sign Lisbon Agreements, Brussels Agreements, Anglo/Spanish deals, we will not convince the Kingdom of Spain that we want to defend our own interests because every time we sign a new agreement they see themselves closer to getting their goal which is Gibraltar's sovereignty. But I feel, Mr Speaker, having said all that which I think needed to be said, I am now going to prove to the Members opposite that we are as democratic as they are if not more, Mr Speaker. We believe totally in democracy but we also believe in something else. We believe fervently that Gibraltar under the face of external adversity needs unity, the unity we gave them in June, the unity we gave them in November. The Opposition, Mr Speaker, I am talking about the unity we offered them, us to them. We are going to offer that same unity today because I think our people deserve that. Mr Speaker, I would like to move an amendment to the amendment moved by the Hon Mr Canepa. I will just give some time for Members opposite to read it, this amendment goes a long way to meeting the message that was clear from the benches opposite yesterday, Mr Speaker. The message was one of don't be too hasty, don't say 'no' to the deal because let us give ourselves time. Those sentiments were the same sentiments, as I have explained and as the Leader of the Opposition explained yesterday, are the same sentiments that we issued on the 5th December. Gibraltar has time, we don't have to pass the legislation. Therefore he also asked us to keep all our options open and he also asked us to respect the minority of people who were asking for an assessment of the situation to be made. And all that we have done in this motion is we have added one other safeguard. We have now got the safeguard of keeping our options open, we have now got the

safeguard of being able to assess the situation, we have now got the safeguard of safeguarding the minority and this, Mr Speaker, also safeguards the position of the majority. I would like to move an amendment to the amendment moved by the Hon Mr Canepa to the motion moved by the Hon Leader of the Opposition. The amendment is the deletion of new paragraph 4 and the substitution therefor of new paragraphs 4 and 5 as follows: "4. Considers that no immediate action should be taken on the proposed Anglo/Spanish Agreement and that the results of the course of action in paragraph 3 above and the practical effects of the Air Liberalisation Package should be assessed, and 5. Recommends that if at some time in the future, this House should wish to reconsider the matter, it would establish the views of the people of Gibraltar as a whole by holding a Referendum before taking a decision".

MR SPEAKER:

Order, order. May I only once and I will not do it again, inform the Public Gallery that they are entitled to come to this Chamber to listen to the proceedings of the House. They are here on sufferance, they are not under any circumstances entitled to express any view either by clapping or in any other manner which will entail interference with the proceedings of the House. They are here to listen and nothing else. Members of this House must be entitled to express their views without being inhibited or menaced or threatened directly or indirectly and I will not, under any circumstances, and I will say it once only, have any interference from the Public Gallery. I would not like to clear the Gallery but if I am forced I will not hesitate to do so. I am sure that the spontaneous clapping from the Public Gallery has been a completely emotional reaction and done without thinking but it is a principle of democracy that Members must not be inhibited by anything that happens outside the Chamber, or in the Public Gallery. I feel sure that it has been done unintentionally but I must make clear to the Public Gallery the conditions under which they are allowed to listen to the proceedings of the House. Will you now continue.

HON J E PILCHER:

Thank you, Mr Speaker. As I was explaining, I honestly feel that this and I urge the Government, Mr Speaker, in all honesty and in the hope of being able to come back to a situation of unity, the Government benches said what they felt they had to say yesterday and we on our side have said what we felt we had to say in answer to that but I think at the end of the day, Mr Speaker, as indeed we said in the last House, I think the people of Gibraltar deserve unity from this House and I think this amendment gives what the Government were seeking yesterday which is keeping all our options open but doing it in such a way that we protect all

and every single one of the desires and wishes of the Gibraltarians. The motion would therefore have the old paragraphs 1 and 2 which restates the position of the House of Assembly and of Gibraltar back in November, it has paragraph 3 which we accepted yesterday by the addition of the words 'as a matter of urgency' so we now have that in paragraph 3.....

MR SPEAKER:

May I perhaps suggest that in your amendment 'the deletion of new paragraph 4', would you please withdraw the word 'new'. It is 'the deletion of paragraph 4' as it appears in the amendment.

HON J E PILCHER:

Fine, Mr Speaker, we will delete the word 'new'.

MR SPEAKER:

There is no need to have the words 'new paragraph 4' because it is amending the amendment, it is 'the deletion of paragraph 4'.

HON J E PILCHER:

Thank you, Mr Speaker. We have the same paragraph 3 which is 'Reiterates the view that Gibraltar's right to be included in the air liberalisation package as a regional British airport without pre-conditions should be pursued as a matter of urgency' and we feel that 'as a matter of urgency' only strengthens paragraph 3 and we accept that fully but then we are looking, Mr Speaker, as I was saying, but obviously I hadn't read the amendment so they didn't really know what I was referring to, we have a situation now, Mr Speaker, where it was expressed yesterday and accepted on this side of the House because we also have contact with the people of Gibraltar and there is a minority of people, I think a minority of people, who want to assess the situation first and I think new paragraph 4 all it does is it changes slightly the old paragraph 4 to say 'Considers that no immediate action should be taken' - which both sides of the House have already agreed on - 'on the proposed Anglo/Spanish Agreement and that the results of' - taking the matter up illegally and of assessing the impact which the Hon Chief Minister said we won't find until probably summer 1988 - 'should be assessed'. So that takes care of the worries of the minority. The majority also need to be protected, Mr Speaker, and therefore this is the reason for new paragraph 5. Paragraph 5 says 'Recommends that if at some time in the future this House' - whether it is this Government or a future Government - 'should wish to reconsider the matter' - then it can only do so or it should only do so by going to a Referendum. I

think this gives the majority the protection that they need because I think there is a school of thought which is a valid argument that what we cannot allow to happen is that the issue is clouded either by (a) mixing it up with an election, or (b) by having a future Government saying, and it is not illogical for a Government to be able to say it, that they have now a mandate from the people and that they are going to use that mandate. For example, without wanting to bring back any animosity, the Government did that early in 1984 with the Brussels Agreement. They did not have a mandate to accept the Brussels Agreement but they came here and said 'We have a majority, we are here to govern and we are passing the Brussels Agreement'. And it is not illogical to think that a future Government of Gibraltar could take the same policy with this. I think this gives a safeguard to the majority of people who are still saying 'no', that if there is a change of Government or there is not a change of Government, any decision on this primordial matter will be taken to the people of Gibraltar and the final say on this issue and this issue alone should be put to the people of Gibraltar. I think, Mr Speaker, it is an amendment which gives all the options, accepts all the positions whether majority or minority and is one which will meet the Government's plea to us not to go ahead and cripple everything. Well, the only reason why we went ahead is because we honestly thought that the Government after the interview of Sir Joshua was going to go down that path. But since we now see that it is not, we can come to terms with this, Mr Speaker, and accept clauses 1, 2 and 3 with the small amendment and clauses 4 and 5 gives the minority and the majority the right, Mr Speaker, to be safeguarded for the future. I think the people of Gibraltar, if we pass this amendment, will sigh with relief because at least they will know that whatever happens they will have the last say and they are clear that both sides of the House accept that at this stage nothing has to be done. I think it will also push a message out, Mr Speaker, that the people of Gibraltar will not be pressurised into doing anything that doesn't meet with their acceptance. Active patience, Mr Speaker, is a word that from today, if this amendment is passed, will take on another meaning, a Gibraltarian meaning. The meaning will be "we will actively get on with our affairs and continue to be patient until Spain accepts our right to determine our future and the future of our territory". Thank you, Mr Speaker.

Mr Speaker proposed the question in the terms of the Hon J E Pilcher's amendment to the amendment.

HON CHIEF MINISTER:

Mr Speaker, I am, of course, going to speak purely on the amendment and therefore I will narrow the ambit of what I am going to say. When I exercise my right to reply on the amendment that I moved yesterday evening I will reply to many of the points which Mr Pilcher has raised this morning.

In spite of the assertions which Mr Feetham made yesterday so boldly that the GSLP was going to form the next Government, the indications this morning are that Hon Members opposite are by no means sure that that is going to be the case because if they were really sure that they are going to win the election they would not today be trying to bind the next House of Assembly as to the course of action to be taken because they being in Government and being totally against the deal they would know that they would reject it, so inform the people of Gibraltar, there is no need to hold a Referendum, there is no need to hold anything, you just set your face against the agreement and that is the end of the matter. But the fact is that they are in doubt as to their ability to win the election. They may be afraid that we are, in fact, going to win the election ourselves and then what might we get up to, Mr Speaker, in that situation? So, with two months of this House to go, we pass this amendment and we bind the future AACR Government hand and foot today into the course of action which it has got to follow then. I think they are also prejudging the composition of the next House of Assembly in another way. They are assuming that it is the GSLP and the AACR which is either going to form Government or Opposition and by analogy be the main Opposition party. The fact is that the indications are that there are likely to be other permutations, other parties contesting the election and life is very strange. In the same way as Hon Members opposite wiped the floor with the DPBG who had six seats between 1980 and 1984 and now none of them are here, we don't know what the election is going to throw up, we don't know what the composition of the next House is going to be and what the position and the representation of other parties not in the House today might, in fact, be and what right do we therefore have to talk in an amendment about recommending that if at some time in the future this House should wish to reconsider the matter - this House has two months in which to reconsider the matter, that is all. I am going to reconsider the matter between now and February the 22nd but the next House is the next House, it is the next House of Assembly and it is the next House of Assembly that has got a perfect right to pass whatever motions they want to and when you talk about this House you mean the House that ends its life on the 22nd February. That is what we mean in a motion by 'This House'. Every time there is a general election there is a new House of Assembly, it is not a continuation of the same House of Assembly, it is a new legislature which is entitled to act in whatever manner it considers fit so let us establish that democratic principle at the outset. Our amendment, Mr Speaker, refers to the fact that a decision should be taken whether the agreement ought to be implemented. It doesn't prejudge the nature of that decision, how it should be taken. Hon Members opposite want to bind a future legislature to holding a Referendum. My amendment doesn't rule out a Referendum, my amendment leaves the situation open, it is flexible. A decision can be taken through that mechanism of a Referendum, a decision can be taken through a general election on that specific issue,

it is another mechanism, but I know that the Hon the Leader of the Opposition in one of his earlier interventions said the general election should be about other matters. Yes, I agree, it is about a party programme, of course it is, but if he thinks that the airport agreement is not going to figure prominently in the next election campaign I think he is living in a fool's paradise, in the same way as four years ago there were other issues that came up during the election campaign but the fundamental issue that decided the election was the Dockyard and on this occasion it could well be that the airport agreement is going to figure as prominently or nearly as prominently, together with the Brussels Agreement, as the Dockyard issue did four years ago. I know that practically it may not suit the Hon Leader of the Opposition that that should happen because then he may not feel that he is going to on as strong ground as he would otherwise. So we dispose of the matter, we agree, we take a decision, it is all going to be set aside, we leave it to a Referendum and let's get on with the general election campaign on other matters. That can be a bit too convenient. Mr Speaker, I would like to point out one other thing. In Gibraltar I do not think that it is possible to hold, that's my own personal view I may be wrong and I am likely to change my mind and there are no subtleties involved here, I don't think that it is possible to hold a Referendum on the airport deal alone. The Referendum would, in fact, be a Referendum as to whether you are pro-Britain or pro-Spain, that is the way that it would be interpreted by the people. It would be a choice between Britain and Spain because in any matters to do that affect our interest vis-a-vis Spain the choice ultimately for the people of Gibraltar is that. The fear that the people have is that of being drawn closer to Spain, they don't want that so the choice would be that and therefore the real issue will be clouded. Because, Mr Speaker, our amendment does not prejudice the issue, it doesn't rule out the possibility of holding a Referendum on the matter and because of the constitutional position that this House has no right beyond the two months of its term of office, we cannot accept this amendment and we are going to defeat it, Mr Speaker.

MR SPEAKER:

Any other contributors on the amendment to the amendment?

HON M A FEETHAM:

Mr Speaker, I want to speak on our motion but Mr Juan Carlos Perez will speak on the amendment.

MR SPEAKER:

Most certainly, anyone who wishes to speak on the amendment to the amendment should do so now.

HON J C PEREZ:

Mr Speaker, I am going to limit myself to speaking on the amendment because I might have to intervene at a later stage in the proceedings depending what is said on the other side. I find it rather ridiculous on the part of the Government that they should always try and interpret what the people of Gibraltar interpret things to be. We are being told by the former Chief Minister that the people of Gibraltar cannot take a decision because they are in a state of psychosis. Now we are being told by the new Chief Minister that if he holds a Referendum this will be misinterpreted by the people of Gibraltar. Don't they trust the electorate that put them in Government for the last fifteen years? Is it that they do not consider that the people of Gibraltar have the intelligence of looking at things objectively? Do they think that they have the prerogative to look at things objectively? Mr Speaker, they have the cheek to try and label us as dictatorial, they have the cheek to call us undemocratic and then when we come to this House, when we say 'alright, if what Mr Canepa said yesterday the minority have a say and the majority have their way is true and he is true to his word, let us give the ultimate right to the people of Gibraltar and to the people of Gibraltar alone to take a decision on this fundamental issue where a wrong decision could put at risk the whole of the future of Gibraltar' and Mr Canepa says 'no'. Mr Canepa says that the people of Gibraltar might misinterpret the situation, that the Referendum might not be the suitable way and he tries to narrow the situation to try and make it out to be an electoral gimmick on the part of this side of the House. Well, Mr Speaker, I am afraid that Mr Canepa is certainly looking at it from the wrong perspective completely. If he thinks that what we are trying to do is take the matter of the airport out of the forthcoming elections. We have no fear whatsoever, if the Hon the Chief Minister so desires, to go to the election on this issue any time he wants to. What we are saying is what the Hon Leader of the Opposition said and what he has agreed to in public that it is not convenient - the word 'convenient' is not the right one - that other issues come to play in a general election and that it is right that the people of Gibraltar should have the choice of looking at the performance of the Government and all the other issues that are at stake in a general election. It is certainly not something which we are looking at electorally at all. We told the Hon Member this morning that we are prepared to continue being united and that is why we have preferred to bring a new amendment to this House to try not to divide the House on this fundamental issue of the airport and he comes up and he looks at it all from the narrow point of view of the electoral gain or otherwise that he and his party might have at the next general elections. Mr Speaker, the motion and the issue has nothing to do with that. I am afraid that if we come down to the technicality of the Hon Member of saying that the words 'This House' is something which we cannot put because 'This House' means this House

until the 22nd February and after that it is a new House, then he can change the words if he so wishes and put 'a new House' because we are not forcing or committing anyone with this amendment. We are only recommending to a future House that they should have a Referendum. Obviously, if we recommend it and you recommend it and we are both here in a subsequent House then we are committed by having recommended it already. Is the Hon Mr Canepa afraid of committing himself to a Referendum? Doesn't he believe in what he said yesterday that the majority should have their way? And in any case if he admits already that the majority are against, why should he be so fearful of a Referendum particularly considering everything he said on this subject in this House in the last six or seven motions. He is the one that seems to stand up every so often and accuse the Opposition of being wolves in sheep's clothing. I think that we have seen the real Mr Canepa now that he is Chief Minister, he is a wolf in sheep's clothing, he hasn't meant anything that he said before. It's quite clear from his contribution yesterday and from the refusal to accept this amendment which puts the full decision-making on the people of Gibraltar who are ultimately the ones that need to decide this matter, Mr Speaker.

HON J BOSSANO:

Mr Speaker, the Government have said that they are accepting reiterating all the previous motions in the House. They then bring an amendment which by including the word 'implemented' will clearly signal to everybody in and out of Gibraltar their willingness to implement that agreement and that is how it will be interpreted, whether they intended that or not. We have had today the first example of a new leadership of the AACR under the Hon Mr Canepa and regrettably our expectations that we might see an improvement for the better have been totally shattered because, in fact, it seems to me that he is trying to do the same kind of balancing act as his predecessor has done for so long, without any of the finesse or ability for maintaining a balance that Sir Joshua has always been able to keep and what do we have? We have on an issue on which in spite of our fundamental differences the House has always been able to find a way of reconciling the differences and where we have made an effort between yesterday and today. The Government knows that we are against the deal. The Government knows that we said from the moment it was announced 'We are not taking any action'. When the media interviewed me on this issue, the Spanish and the British media, I said 'No, the House is not going to pass any motion because there is no need to reject something because it requires positive action to implement and since everybody is against it nobody is going to introduce legislation in the House and we, the Opposition, are certainly not going to be asking for it. The deal, as far as we are concerned, is non-existent'. It only became necessary because it appeared to us that the Government, having said they would not implement it, were still recommending its acceptance.

We wanted to clear that position, that is the first and the opening remarks that I made in my motion and which were echoed by my colleague in moving this amendment and we have said to the Government 'okay, we have taken note of your objections to 'rejects' at this stage, we can go along with 'rejects' because as far as we are concerned it is axiomatic, if you reiterate all the previous motions you are rejecting the agreement but you don't want to use the word 'rejects' the agreement, fine. In order to meet your arguments we will come back with an alternative which will not talk about implementing just like we are not talking about rejecting, we are not talking about implementing and we are saying 'reconsidering the matter' and leaving it open to whoever in the future may want to do it'. That was one of the phrases that Sir Joshua used in an interview in the Chronicle - 'whether at some time in the future the people as a whole might think it would be in their interest to accept it'. That is the scenario of a very long-term thing. The Hon Mr Canepa was saying 'people think we have got a year, it is not true, there is no time limit, it might be a year, it might be five years, it might be ten years'. So we are not talking about doing it between now and the 22nd February, we are not even talking about doing it in the next four years. What we are saying is we, the present Members of the House, have got a right to express a view. Does the Hon Member think that the next House of Assembly is bound by the Brussels Agreement? Apparently not. Every House of Assembly is free to do what they like. I would like to see whether he takes that same line in the election campaign because I suspect he is quite likely to come along and say in the election campaign 'We are not going to be able if we get into Government to change the Brussels Agreement'. Well, I will then remind him of what he said in this House that we haven't got the right in this House to make a recommendation to future Members but we have got a right in this House to bind people, even less then. So I will remind him of that when the time comes. What we are seeking to do is not bind unknown future Members of the House but state where we stand ourselves. We, the GSLP, say we are completely convinced that by definition the deal is in conflict with the views of the House and the wishes of the people but if there is a doubt then if somebody were to try and make out that there is a doubt and we need to establish whether the majority agrees with the GSLP or not, then the GSLP is prepared to commit itself to holding a Referendum which the AACR is not prepared to do presumably. Since the AACR is not prepared itself to do it, clearly, it is not prepared to recommend it to anybody else, that is why. It isn't because they might find themselves with a situation where a new House with none of us in it would be bound. The new House with none of us in it would not be bound by anything. The new House would come here and say 'Well, I don't care what those idiots recommended in the last House. The proof that they don't reflect public opinion is the fact that none of them have got re-elected so it doesn't matter what they recommended'. The real reason for opposing that is that it is not that we want to close too many doors, it is that the Hon Mr Canepa wants to leave

himself all possible doors open. When we were discussing the previous motion of this House in November it was the former Chief Minister who was saying that they had to leave a door open and we had a speech from the Chief Minister then saying one thing and from the Deputy saying something else which we all applauded on this side of the House, which we thought reflected the feeling of a lot of people in Gibraltar and we thought that, in fact, the Chief Minister appeared to be slightly out of tune. We now find ourselves where, in fact, the position may be occupied by somebody else but the views that we are hearing are the views of the former occupant, not the views that the occupant had in his former position. So it is, in fact, a very disappointing thing and it will be the first time that the House does not come out with a united stand on the airport and the person that will have failed to rise to the occasion and respond to the wishes for that united stand will have been the Hon Mr Canepa and I would remind him that in the first motion of March, 1984, he was the one that appealed to us for unity and we stood up and said because of his appeal we would not vote against the motion. He has lost that right now.

MR SPEAKER:

Any other contributors to the amendment to the amendment? I will then call on the Mover, Mr Pilcher, to reply.

HON J E PILCHER:

Mr Speaker, there is not much more to be said since the arguments put by the Government benches in saying that they will oppose this amendment are not understood by this side of the House as has been said by my Hon colleague Mr Perez and by the Leader of my party, Mr Joe Bossano. I feel that the intention is one of having a united front and I reiterate that all that the motion is asking for is for this House to recommend that if at some time in the future anybody else felt that the minority and majority was not the same as it is today and was not the same as on that 17,000 or 16,000 strong demonstration, then, Mr Speaker, the only way to test that is not by how many votes they get at an election, is not by how many people express their views to individual Members but by putting it to a test, by calling on the people of Gibraltar to say 'yea' or 'nay'. There is one very important point that was made by Hon colleague Mr Perez which I would like to reiterate. If we, Mr Speaker, feel that we are mature enough and by we I mean the people of Gibraltar, to have a say in our future, then I feel and I believe that the people themselves are mature enough to be able to decide 'yes' or 'no' on any particular aspect. The Hon Chief Minister has always been saying, certainly he has been saying it to me in private, that he feels that we are now mature enough, he talks about free association, self determination, whatever, it requires maturity. What he is saying is that he feels he is mature enough but he is leading a people who are all children. Mr Speaker, of course he said it, he said it by

saying that people couldn't go to a Referendum and decide something on the grounds of what they were being presented, that they would vote for Britain or for Spain. If that is the case how would they vote if Britain publicly and Spain publicly decided that they both want to accept it? I would like the Government to think hard before they vote against this amendment because it does what they asked us to do, leave all the options open, remove the word 'rejects' which they didn't want to have there and produce leadership and a firm stand for the people of Gibraltar which I think they and they alone deserve, particularly after twenty years of fighting off a situation of pressure, Mr Speaker. I am not sure if I have a right to do that or the Leader of the Opposition has to do it but if it is going to be put to the vote I would like a division, Mr Speaker.

MR SPEAKER:

Any Member can ask for a division.

Mr Speaker then put the question and on a division being taken the following Hon Members voted in favour:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The following Hon Members voted against:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammitt

The following Hon Members were absent from the Chamber:

The Hon E Thistlethwaite
The Hon B Traynor

The Hon J E Pilcher's amendment to the amendment was accordingly defeated.

MR SPEAKER:

We now have before the House the question as moved by the Hon the Chief Minister amending the motion moved by the Hon the Leader of the Opposition.

HON SIR JOSHUA HASSAN:

Mr Speaker, I would like to speak on my colleague's amendment and reserve the right to speak in the general debate. I will try to keep the matter separately and not to duplicate and I am asking for your forbearance on my approach to the matter in order that I can later on deal with the matter in a much wider aspect which is the first two clauses of the motion. I am very disappointed at the turn things have taken because by its nature the matter is complicated. The whole question of the agreement over the airport and so on is complicated by its own nature and I had thought that we might make some contribution today and I shall try to do that myself to try and simplify the matters because I find that a lot of people are confused and really cannot understand the issues clearly. I am not surprised and I will try to see whether I can at least elucidate one or two matters on my own. In the first place, I would like to refer to the mention made by the Leader of the Opposition regarding my TV broadcast on the Friday night which has been mentioned and to refer it to what he has said in the course of the amendment that has just been defeated because it seems to me that he has interpreted one in one way and the other in another way and it is the second one that counts. By saying that it was the best deal we could get in the circumstances I did not mean that it was a deal that we should go on and vote in favour, in fact, I said in London I would not use the majority of the House to impose the deal but the deal was good because it had the element of choice. That is what I said and I have said nothing different to that. Having regard to the exchanges that took place and which the Hon Mr Pilcher has accepted or acknowledged, as explained by the Chief Minister, it is in that context that I was saying that and in no other. What I did say was that every town, every city, every person is entitled to commit suicide. I wasn't saying that as meaning that if you don't do that you are committing suicide, what I was trying to attempt to explain and I have done it on other occasions, is the right of the people to determine their future. Whether they do it rightly or wrongly that is a matter for them and that is why I chose that phrase. The reason why I support the amendment, naturally, is because otherwise the action that is recommended to the House could be precipitous, lacking in political maturity and irresponsible. Precipitous because Gibraltar has always been asking for self determination and a bigger say in its own affairs and here, as explained by Mr Canepa yesterday, here we have an opportunity or a departure from that principle which was limited to the preamble to the Constitution to an area which is different and that is the question of the package and I don't think it is any secret that Britain found

itself for the first time in its struggle with defending Gibraltar, with a third dimension which was not there before. Now, you will say, 'Yes, in the United Nations we had quite a number of nations against us'. Yes, but in the United Nations all that happened, even when there was a very vast majority in favour of Spain, was the recommendation of a committee, the Committee of 24, the Fourth Committee and, ultimately, the General Assembly by which the British Government wasn't bound, it just didn't take any notice. It said 'No, we stand by the wishes of the people of Gibraltar, you can decide what you like'. In fact, though it has happened many times subsequently, mainly through the Falklands issue, it is in respect of that kind of thing where the British Government has mainly rejected resolutions of the General Assembly. After the time they refused to accept the first resolution I think the British Government has never, except on one occasion which has nothing to do with Gibraltar, disregarded a recommendation of the General Assembly and we must remember that these resolutions took place at a time when the Labour Government was in office and the Labour Government was a much more, in general terms at the time, a much more committed member of the United Nations than the Conservative Government was, in fact, so much so that they appointed a Minister instead of a permanent representative and that was held by the distinguished Lord Caradon whose voice and whose views, despite the attacks under which he was during those days in the United Nations, was heard with great attention and respect. But on this occasion the third dimension affects the interests of Britain both in its internal affairs and in its international commitment and that is the attempt on the part of Spain to veto the package agreement applied to Gibraltar. It is quite clear that the conflict between Britain and Spain over the air package was not agreed completely because, in fact, it is within the Community that the difference between two Members arose and therefore, of course, in due course defending and I am proud of saying it because it is mentioned so often that it looks as if it is something bad, I am saying and I confirm that I am proud of having agreed to the Brussels Agreement and I think Gibraltar should think and think quite clearly that a lot of benefits have been derived to Gibraltar without losing anything. There was only one action that had to be taken to subscribe to the Brussels Agreement and that was faith in the British Government. The rest was really a process which benefited and has benefited Gibraltar enormously and all the prosperity and all the advantages that Gibraltar is today deriving as a result of normal relations arise out of the Lisbon Agreement first which led to the Brussels Agreement. On both those occasions, on the first occasion jointly with the then Leader of the Opposition and on the second occasion entirely on my own because there was no bipartisan approach to foreign affairs, reservations were made on behalf of the people of Gibraltar about the question of sovereignty. But the agreement itself provides that safeguard and as we heard, from no less than the co-author of the Brussels Agreement the other night on television, Britain has given nothing in respect of sovereignty. I support the

amendment because we have to go into the matter before a choice can be made. On the question of whether there is a majority or a minority, my view and that is only what we can do now, I don't agree with my colleague Mr Canepa that there is such a big majority against the agreement. I think there are quite a number of people who, if satisfied that we are losing nothing by it, are prepared to support the agreement and I know that quite a number of people are confused and haven't made up their minds yet. We can only express our own views and we can all be wrong in our views but ultimately we all express views at election time and until the last voting paper has been counted you don't know what the result is going to be. That is really a matter of judgement and assessment and it is all very well for the Leader of the Opposition to say that on his way to the House of Assembly he was stopped by twenty people of which fifteen are AACR members and they tell him something different to what I am advocating. I doubt that and if it happened to me I would do the same because I have to exercise that element of judgement if I was to express a point of view. But I am not, at this stage, going further than to support the amendment that requires, first of all, to establish our legal rights in this respect and, secondly, to leave the matter until other ingredients of the agreement and matters surrounding the agreement are well established. There is one point that the Hon Mr Bossano said in moving the motion of which I am supporting the amendment on which I think I have to take issue because it is fundamental. He said whether any action at the airport or anywhere, for that matter, impinges on sovereignty, it is a matter of judgement, yes, those are exactly the words the Hon Member used. I have to completely disagree with him. It is not a matter of judgement, it is a matter of law, absolute law, there is no question of judgement on that. It is a judgement of the law but it is not a matter of each person thinking what is an impingement on sovereignty, it is established that it is a matter of law and in that respect I believe firmly and I will say that without any hesitation at this stage, that whether we accept the deal or we don't accept the deal, the deal itself if it were accepted does not impinge on sovereignty. If it had impinged on sovereignty I would have disassociated myself even from the discussions on the matter. As the Hon Chief Minister said yesterday, the statement read by the Secretary of State in the presence of the Spanish Foreign Minister, he said: "Taken together, this agreement will make Gibraltar significantly more attractive to tourists, to businessmen and to airline operators. It should give a further major boost to the prosperity of Gibraltar and the Campo. They clear the way to agreeing cheaper air fares for 300 million Europeans. That is good for Gibraltar, for Spain, for Britain, for the European Community as a whole. These agreements, of course, do not impair British sovereignty over Gibraltar which is fully preserved. I have asked the Chief Minister of Gibraltar, Sir Joshua Hassan, to take this agreement back to Gibraltar so that his Government and people have the opportunity to reflect carefully on it". That was an invitation for us to do what I am suggesting we should do

because I think it is the only fair way of doing it. But then he went on to say: "I hope that Gibraltarians will see the significant advantages of these agreements. Britain is, of course, not in the business of imposing them on Gibraltar. It is for the people of Gibraltar to make their democratic choice and to decide whether or not they wish to benefit from the aviation agreement as well as from the air transport directive". And that, as my colleague said yesterday, was stated publicly before the press at the bottom of the steps of Carlton Gardens on the night in question and there was no defence at all from the Spanish Foreign Minister who was standing next to him. We need more information and we need debate on the matter in due course. The second point which I said was that the proposal was lacking in political maturity, that is why I support the amendment, and that has been, to some extent, already echoed by my colleague Mr Canepa in opposing the other amendment and that is that we are on the eve of a general election and it is no use attempting to prejudge the outcome of a proper exercise of the democratic process. But the extent to which Mr Pilcher went to try and apologise for what created a great concern in Gibraltar about opposing the agreement whether the majority wanted it or not is rather childish. He attempted to maintain that in the process minorities have rights, of course they have rights, they have the democratic right that the Opposition is having now of debating this matter but they haven't got the democratic right to fight inch by inch against a Government that has been elected to do something because they don't like it. That is what my colleague described yesterday, a way towards dictatorship, fascism, communism, whatever you like, but certainly a denial of the democratic process. The Labour Party has been in Opposition now for a long time and is trying to get in but it is not trying to undermine the Government's actions by force, it is going to do so in Parliament. Fighting it inch by inch, as the Hon Member well knows, has created a considerable amount of concern in Gibraltar.

HON J BOSSANO:

Promoted by you.

HON SIR JOSHUA HASSAN:

Promoted by me, no.

MR SPEAKER:

Order, I will not have interruptions.

HON SIR JOSHUA HASSAN:

Mr Speaker, we wait and put up with the tirade from the other side without interruption, they don't like argument, they just talk to each other or interfere, that is not the democratic process, for the benefit of those opposite. I

think the extent to which Mr Pilcher went to explain that shows the extent of the damage that it has done to Gibraltar, the fear that has got into the Gibraltar body politic or, generally, this threat of saying 'we won't even take no for an answer'. Whether as a trade unionist, whether as a politician or whatever it is, it was Mr Bossano who was saying it, it wasn't anybody else. On this occasion I find myself in the comfortable position that having relinquished the leadership of this House, most of the matters that I would have mentioned have already been mentioned by Mr Canepa and therefore I do not want to repeat what he has said but just to emphasise in respect of, in fact, the matter that I had a note of before even the amendment that arose this morning, that all matters connected with Spain create pent-up emotions and it is important for us whilst taking that into account and that is why I have said that people must think with their heads and not with their hearts, that we must take very great care not to pent-up feelings because that is the easiest thing to do. That is not leadership, that is going with the masses where the masses want you to go. Leadership is telling them what you think is right and let them decide. In this respect I would like to disregard the suggestions made by the Leader of the Opposition about treachery and blackmail and all that as complete nonsense, electioneering and cheap demagoguery, all to create fears like all the references to the Brussels Agreement, like all the references to everything that the Government has done well in order to create an aura that what is good is really bad in their eyes in order that they can gain political support. Mr Speaker, I have, I think, done what I attempted to do at the beginning and that is confine myself to the amendment and say that I support it and I would like then later on to take part in the general debate.

HON J BOSSANO:

I am going, Mr Speaker, to speak on the Hon Mr Canepa's amendment, having spoken previously on the amendment of my colleague, Mr Pilcher, and like the former Chief Minister, I am going to confine myself to what Mr Canepa's amendment is about which means I will be able to talk about the Brussels Agreement, demagoguery, blackmail, dictatorial tactics, the elections, all of which.....

MR SPEAKER:

You can speak to what you feel is relevant to the amendment. Should I feel that it is not I will call your attention.

HON J BOSSANO:

But having just had the opportunity of listening.....

MR SPEAKER:

May I, with respect, we are liberal in this House and I will give you the same latitude that I give any other Member.

HON J BOSSANO:

I agree with you, Mr Speaker, because you have always done that and, in fact, I want to answer what the Chief Minister has just said and I am confining myself in answering to the remarks that he has made, presumably in support of Mr Canepa's amendment, so I am going to expose, which is not a difficult thing to do in this House, except that normally the rest of Gibraltar do not get to hear about it and on this occasion they will. It is not difficult in this House, it has never been difficult in this House to expose the total inconsistencies in the delivery of Sir Joshua Hassan because in the area of demagoguery, in the area of innuendo and in the area of scaring people, he is the past master and nobody could ever reach his peak in any of those areas. The statements that I made to which he has just referred where I accused him in attempting to sell the deal and in saying not that it was a good thing because it gave us a choice, it was a very good thing in all respects and he has repeated it several times and I have gone carefully through all the answers he gave and jotted them down and I repeated them in my opening motion. He was selling the deal and in selling the deal he was selling out on all the people that marched behind him up Main Street and if he thinks that leadership means standing up and saying what one feels, which I agree with him it is, then he should have stuck to his guns in the last motion in the last House where he was saying one thing and Mr Canepa was saying something else and he changed position and he was persuaded to go along with the demonstration and he was persuaded to go along with a stand of saying 'no deal' and 'no concessions' and what he has tried to do subsequently.....

HON SIR JOSHUA HASSAN:

On a point of order, Mr Speaker. We are now talking about the first part of the motion and not the amendment.

HON J BOSSANO:

It is not a point of order, Mr Speaker, I haven't given way to the Hon Member, it is not a point of order. I am replying to his contribution which he has just made and he has made in that contribution a reference to what I said on television about him and that is what I am answering. If he hadn't introduced it I wouldn't be answering it and I am telling him that, in fact, if he is willing to go down the road of defending and supporting the deal as he appeared to be doing then and I gave him the benefit of the doubt that perhaps I had misunderstood him, he certainly appears to be repeating

it now when he has just stood up, then he is betraying all the previous motions of the House which we are reiterating today and betraying Action for Gibraltar and the 16,000 and I am telling him to his face not when he is not around. He knows that I have no difficulty in doing that and, certainly, he will find that the GSLP will canvas against that sell-out and that we will do it using every democratic instrument and the Hon Member, let me remind him, did not have a mandate to implement the Brussels Agreement because he withheld information from the electorate in January, 1984, having already given the green light for discussions on advance EEC rights, he withheld that information. In March, 1984, when we had a motion here on the airport the Hon Member amended it to take the words 'Lisbon Agreement' out and put 'Lisbon or any other agreement', in March, 1984, although the agreement didn't come until November. And in November when we voted against it and we asked for a Referendum he denied the people of Gibraltar the right to a Referendum on the Brussels Agreement and when we held a public meeting and held a demonstration he accused us of being undemocratic and extra Parliamentary. We weren't putting any bombs but I can promise him that the democratic process will not be altered by the exercise of a majority which is produced by confusing people, by misleading people and by a propaganda exercise where one day the headline in the Chronicle is 'Mrs Thatcher is in favour of the deal', the next day 'Moran is in favour of the deal', the third day 'Sir Joshua Hassan is in favour of the deal' and eventually, presumably, somebody will get a say who is against the deal. That does not deprive the minority from carrying out legitimate political activity and every inch of the way opposing the implementation of a deal which goes to the very roots of our future by propaganda, by meetings, by demonstrations, by the collection of signatures and the GSLP is committed to that course of action. If the Hon Member thinks that is dictatorial, well, I am surprised that he should think that but I accept that he is the expert on what is a dictator after forty years in Government.

MR SPEAKER:

Let us come back to the debate.

HON SIR JOSHUA HASSAN:

The people must be very foolish.

HON J BOSSANO:

Presumably. Let me say something else about what the Hon Member has said because he comes out with statements with an air of authority. He has said 'it is not a matter of judgement whether sovereignty is infringed or not, it is a matter of law' and who do we have saying this? We have a person who is now a backbencher, who still has difficulties

in adjusting to that new role in the House, who was the former Chief Minister of Gibraltar, who is a QC and who is an eminent expert on law and therefore since I do not have any of those qualifications it might be thought that he is right and I am wrong. Well, all I can tell him is that if it is not a matter of judgement and it is a matter of law, he should have told that to Mr Canepa in the last meeting of the House because before I said it it was Mr Canepa who stood up in this House and said that when it came to the crunch we might have a difference of opinion with the United Kingdom as to whether sovereignty was infringed or was not infringed because it was a matter of judgement and in our judgement it might be infringed and in theirs it might not be infringed and then the British Government would turn round to us and say 'Well, it is British sovereignty that we are talking about not Gibraltarian sovereignty and therefore it is our judgement that matters'. Well, then it is a matter of judgement and not a matter of law. Let me remind him that he voted in favour of a motion in this House which is being reiterated today which said that we should not accept a deal which in the judgement of this House could have implications for sovereignty. One of the motions that we are quoting in this motion, Mr Speaker, actually was amended by the Government, I mentioned that earlier, to include where I said that we should not have any deal that has implications on sovereignty, it was amended to say 'in the judgement of this House'. So, in fact, it is not a matter of law or it may be both, a matter of law and a matter of judgement and there may be a situation where there is a clearcut legal infringement of sovereignty and there may be a situation where one lawyer might think it is and one lawyer might think it isn't, so it isn't that the law is clearcut on that subject because we already know that there are people who argue that free association is an infringement of the Treaty of Utrecht which is a matter of law and there are other lawyers who argue that free association is not an infringement of the Treaty of Utrecht. Judgement enters very much and who the lawyer is does make a difference as to the interpretation of the law. I am just putting that straight because it does show that to dismiss things that other people say is not a very good thing unless you happen to have a good memory and you can remember what you did the last time which is the only problem the Hon and Learned Member opposite has. In every other respect he is a past master but in the one thing that he has never been able to get away with is in remembering what he said the last time but, however, he has said so many things in forty-five years that he can always produce something else which, in fact, puts the record straight whenever he wants it and the Hon Mr Canepa is not in that easy position. Disappointed as we are, having moved between yesterday and today, Mr Speaker, to try and accommodate the views of the Government or the assumption that they are not just concerned about electioneering and that they are not just concerned about whether they wish to jump on the bandwagon of the airport deal or against it depending on how they see the mood when they decide to call an election and that is, I think, the point that we find incomprehensible, we don't see how there

can be an election issue on the airport unless some people in the election are advocating acceptance and some people in the election are advocating rejection. If everybody in the election campaign is against it then it will not be an election issue any more than a Spanish Gibraltar would be an election issue or anything else. We don't think it ought to be made one but we also have made clear and that was my reply to the Hon Member's interview on Friday when I appeared on Monday, we also made clear that if they wanted to make it an election issue let them dissolve the House now, not wait until the 22nd February, tomorrow we go to an election on it if they want, we are not afraid of it. We don't think that is the responsible way to behave and we believe the responsible way to behave is to try and maintain the unity that we have been able to maintain in spite of the fact that we have great reservations about whether they mean what they say in this House judging by their subsequent actions. In a further effort to retain the unity of the preceding six motions, Mr Speaker, I am moving an amendment to the Hon Mr Canepa's amendment and the amendment that I wish to move, which does not go, obviously, as far as recommending a Referendum since they do not wish to recommend a Referendum because they do not want to be held themselves to it and for no other reason, nevertheless seeks to salvage something from the Hon Mr Canepa's amendment which we consider to be extremely dangerous because of the way it will be interpreted. I have made that point before and they have made no attempt to answer it, Mr Speaker, and we said the fact that we are using the word 'implemented' there would be seen outside Gibraltar when reported by the media as, in fact, an amber light if not a green light from the Government benches that implementation is not, in fact, unacceptable to them deep down and that would be consistent with what the Hon and Learned the backbencher has just said that he thinks that there aren't all that many people against it as his colleague seems to think. Independent of how many people are against it outside the House, what we are not able to find out is whether the people on the Government side in this House are against it. My proposal therefore is that Clause 4 should be amended by the removal of the word "once" in line 2 and the substitution of the word "until", and the removal of the word "a" in line 5 and the substitution of the word "no", and then the deletion of all the words after the word "taken". The effect of this would be that Clause 4, as amended, would then read: "Takes note of the proposed Anglo/Spanish agreement and considers that until the course of action proposed in paragraph 3 above is known" - which is the question of testing the legality of the position - "and the practical effects of the Air Liberalisation Transport Package can be assessed" - which is when we have seen it in operation elsewhere - "no decision should be taken". That doesn't commit anybody to implementation or to rejection, it doesn't use the word 'rejection' and it doesn't use the word 'implementation', it doesn't say whether it should be by a majority in the House and it doesn't say whether it should be by a Referendum so it meets all the objections that they have raised so far.

If they don't even accept this, Mr Speaker, then it really means that they are not prepared to come out clean and they are not prepared to say that they really want to implement the deal but they haven't got the guts to do it and if that is the real situation then I think the least they should have the decency to do is to come out and say 'This is where we stand, we may not have majority support, we are prepared to hang back until we think the majority support is there'. But this, in fact, we feel is something they should seriously consider because having passed, since 1984, so many motions unanimously in the House, at this particular critical juncture we would not be serving Gibraltar's interests, Mr Speaker, if we fail to come out with a stand that encompasses the points of view of both sides.

MR SPEAKER:

Do Members wish to have time to consider the amendment?

HON CHIEF MINISTER:

We have had a brief word, Mr Speaker, and we can accept the amendment so we will vote in favour.

Mr Speaker proposed the question in the terms of the Hon J Bossano's amendment to the amendment.

HON SIR JOSHUA HASSAN:

It means the same thing that is why we accept it but if Members are happier then we will accept it.

Mr Speaker then put the question which was resolved in the affirmative and the Hon J Bossano's amendment to the amendment was accordingly passed.

MR SPEAKER:

Any Member who has not spoken to the amendment moved by the Hon the Chief Minister is free to do so. We are now on the amendment of the Chief Minister amending the motion of the Leader of the Opposition. Are there any other contributors?

HON MAJOR F J DELLIPIANI:

Mr Speaker, I am only going to speak once so it doesn't really matter, I am not clever enough to distinguish. Mr Speaker, I always think that I try to speak as honestly as is possible for me to do so. I believe that I am absolutely confused by the Agreement and I don't share the views of the Hon Juan Carlos Perez when he says that he believes that everybody in Gibraltar can decide things objectively. If that is the case he should include me out like somebody said. I am still

confused, I really don't know what to decide and this is why where normally I am very hawkish I am not being hawkish, I am trying to think it through, how does it affect Gibraltar? I don't know, there are so many unknown questions. I must mention a bit of background, Sir, as to why I am thinking this way and why I have not been as hawkish as I usually am. I will start, Sir, with the Brussels Agreement. There is one fundamental reason why I supported the Government of which I am a Member on the Brussels Agreement and that is because I took into account the attitude that Spain has adopted, certainly since 1954, towards Gibraltar. I said to myself and I thought it out, if we depend on Spain opening the frontier because she has become a full Member or was becoming a full Member of the EEC, what attitude would Spain take towards us? And I thought to myself, if we force Spain because of the EEC connection, to open that frontier then the regime they introduce in that frontier would not be helpful to us. If on the other hand we gave them this advance implementation then they would open that frontier with a regime which would be more gracious towards us and that was the fundamental reason why I agreed to the implementation of the Brussels Agreement. The main reason I did not want to force Spain through the EEC, if it was in my power, to open that frontier ungraciously because I took into account the attitude of Spain towards us. And it saddens me to think that even Señor Moran whom we all admire and he was so gentle and kind on the programme on television, that despite his humanity he still thinks that Gibraltar should be Spanish. He has taken no account or very little account of our desire for our own sovereignty because in my mind people might say 'legally it is British or Spanish', I have always believed that sovereignty belongs to the people who live in the territory. It really saddens that a man of that stature has so little regard for us. I am convinced that sovereignty belongs to us and if they, for their pride, and I acknowledge and I accept the Spanish pride, cannot say or cannot accept that this is British, why don't they accept that the sovereignty is Gibraltarian? Surely, that could be a way out to their pride, 'Alright, we have lost Gibraltar, we have fought valiantly to try and get it back, let us accept the realities of this world and give the sovereignty to the people of Gibraltar', if that is the way out for them. It has been mentioned, Mr Speaker, the fact that Britain did not take account of our wishes with regard to the frontier guard because we, as Gibraltarians, regarded it as a symbol of Britain's determination to defend Gibraltar. Needless to say, in my usual hawkish way, I was more disappointed than most people but looking back at the situation that now exists in that frontier where we as Members of the EEC do not have an armed sentry and they on the other side have a full guard of soldiers, it really helps us because it shows the difference of attitude between a Spain which still shows aggressive attitudes towards us and ourselves who have accepted the fact that they are Members of the EEC. I think it is a sad thing for them to have a military guard on the other side, it shows the difference, it accentuates the difference of approach so I am very grateful to the British

Government for not taking account of my wishes. A lot of things have been said on the practicalities of the Agreement and I read with interest a letter from a lady who lives in the same district as I do, in Glacis, where we are affected by the noise of aircraft and it is obvious to me that the more aircraft that fly into Gibraltar the more uncomfortable it will be to live in that area. It so happens that La Linea is also beside the frontier and life would not be very comfortable for the inhabitants of La Linea. I don't know much about flight agreements but I know a little bit about aircraft and there is a move worldwide for aircraft to be developed which are called 'quiet aircraft'. I don't know if we, as Gibraltarians and residents of a town which is so near an airport, will have any say in saying 'well, you can operate as many aircraft as you want from Spain from any airport in Spain to Gibraltar as long as they are quiet, as long as they meet, for example, the noise regulations of the advanced countries of the world'. I certainly wouldn't like to see an increase of aircraft at all hours of the day making life uncomfortable for me. I would be very happy for every aircraft in Spain to be flying to Gibraltar as long as it produces some things but not at the expense of the way I live. I am always surprised at the attitude we Gibraltarians adopt at news from Spain. Everything that is said on Spanish television, Spanish radio, if it's printed by the press, a lot of us seem to accept that as the gospel truth. We give more credence to what Spain says through their news media than what the UK and our own local press give out. Why should it be like that? If the UK Government says one thing and not the Spanish Government, the Spanish press says another, we immediately believe the Spanish press. I find that incomprehensible. It seems to me we like hearing bad news even though they might not be true. I remember the Chief Minister when he came from the United Kingdom, that two journalists came up to him with the views of the Spanish Foreign Office on the Agreement and they had not been made aware by the Spanish Foreign Office that the ultimate decision lay with this House of Assembly whether we implemented the necessary legislation for that Agreement. And Sir Joshua told them that this was a fact, that we had been put in the position to decide on the necessary legislation. The Spaniards didn't believe him so they went back to the Spanish Foreign Office and later on during the course of the night or early morning, they actually telephoned Sir Joshua to apologise for not believing him. It just shows you how even the Spanish Foreign Ministry didn't like the idea that we were being given this power. I just mention it to emphasise that we must be calm, we must not believe everything that Spain says. Spain is trying to sell the product to their own people, obviously, maybe the UK is trying to sell the product to us. I would like to mention, Sir, the question of the Referendum and why I have been trying to think of ways and means of gauging how the people really feel after a period of reflection and I find it almost impossible to put things in a Referendum which makes it that clear, maybe it is because I am confused but I cannot see what kind of wording will

go into a Referendum which the people of Gibraltar will clearly understand what the final result is. I am not clever enough to be able to think of it. What I do say is, and it is obvious to all of us, that Spain has been using blackmail tactics right through. This is a reality. When one goes to the frontier if there are talks there is trouble so there is no question of blackmail. What I want to know from the British Government is if after a period of reflection we decide to go for the agreement, what is Britain going to do to stop that nonsense at the frontier and I don't just mean by protesting and going to the Spanish Ambassador and saying 'You are being naughty boys'. What practical steps will Britain take to stop any future nonsense in that frontier, that is one of the things that will make me decide as a citizen because by then I will only be a citizen of this territory, whether I agree to that agreement or not. Will that be the end? Will she go on blackmailing or will she stop? To me that is important to know because it means that if we give in on this, if we think this is good and Spain thinks it is good, well, next year she will try more blackmailing. When is there going to be an end to this blackmailing and I will only agree if Spain says 'if they blackmail you that way we will take positive steps, not just protesting, positive steps'. I am trying to speak as I feel, I might not be contributing to this House much but I want people to know that I am trying to speak as sincerely as possible.

HON J BOSSANO:

If the Hon Member will give way. He means if we get the guarantee from Britain, I think he said Spain by mistake, obviously Spain is not going to give us a guarantee, it is Britain he means.

HON MAJOR F J DELLIPIANI:

I mean, of course, a guarantee from Britain, guarantees from Spain at the moment don't mean much. In a way it sounds as if I am baring my soul in public which is something very embarrassing for me.

HON J BOSSANO:

You always do, Major.

HON MAJOR F J DELLIPIANI:

I am trying to convey why where normally I am so hawkish I am not so hawkish now, I am mature. It could be that I fear that blackmail will continue and then whether we like it or not, it is my opinion that the standard of living of Gibraltar will go down and because I won't be a Minister come February or March and I am 52 years old and I will find it difficult to find a job and I might even find it more

difficult if the situation in Gibraltar deteriorates, it might be that, I don't know, I hope it is not, I hope that I am trying to speak as objectively as possible. What I am asking this House and the people of Gibraltar is that the decision we take, whatever decision, whether it is yes or no, that the consequential events must be fully realised, whether the consequential events are good or bad, we must not go blindly into anything that we say or do. Let us look at it as rationally as possible. Of course, we don't like the idea of giving in to Spain, we don't like it. If Spain dropped all the claims and her attitude towards us, we would give them more than what they are asking, of that I am sure because they are our neighbours and it is in our interest that La Linea prospers at the same time as us. It is absolutely necessary for two communities so close to each other to prosper at the same time. Mr Speaker, in conclusion, I would like to register and I know I am going to be called anti-trade unionist and capitalist, I cannot comprehend the statement made by the Transport and General Workers Union when they said it doesn't matter what is going to happen, what we decide, they are going to be against it and they will fight against it. That kind of attitude from a trade union I cannot accept and I hope that its members will realise that that kind of statement does not do the union any good. Thank you, Mr Speaker.

MR SPEAKER:

We will now recess until this afternoon at quarter past three when we will continue the debate.

The House recessed at 1.00 pm.

The House resumed at 3.25 pm.

MR SPEAKER:

I will remind the House that we are still on Mr Bossano's motion.

HON M A FEETHAM:

Mr Speaker, I listened very carefully to what the Hon Member, Major Dellipiani, said because the Hon Member always speaks, as he says, from the heart and I think he tends to symbolise the average person in Gibraltar who at times, be it with emotion and, perhaps, without the full knowledge of what is happening and I think he himself said that he was confused, that is what the Hon Major Dellipiani said. I go a long way with the sentiments in general that the Hon Member expressed but I have to differ with him that as far as I am concerned, I am not in the slightest bit confused about the issues that we are discussing here today. I am, of course, very disappointed at the developments since yesterday because having gone against our motion on rejecting the deal, the Government has also gone against our compromise offer of recommending

the matter being put to a Referendum. I think I ought to make it quite clear that their final acceptance of an amendment to their amendment to our motion may have avoided disunity in the House but I think also it is quite clear to the outside world that we are already compromising on the situation. I think that that is the difference in the approach of the Government and the Opposition. Last night somebody called me at home and said that he had listened to the debate very carefully and that my colleague the Leader of the Opposition, Joe Bossano, had defended very ably the consistent views of the Opposition. But he also said that the Hon Chief Minister, Mr Canepa, had defended the soft approach to the problem equally well. I say this because up to that point in time I thought that was a fair comment to make but the emphasis on the comment, of course, is that the comment in differentiating between the Leader of the Opposition and the Hon Chief Minister, is made on the wrong premise. The difference between both of them is, Mr Speaker, that the Hon Chief Minister's approach will lead to Gibraltar losing the initiative once again. Of course, Mr Speaker, we will have to take legal action for having been deprived of our legal rights, of course the people of Gibraltar may or may not, through an election or through a Referendum, decide on the issue finally. The Hon Leader of the Opposition said that on the very night that the deal was made known in Gibraltar. But those are not the issues that we are supposed to be discussing here today. What we the elected representatives are supposed to be discussing here today is whether what we have in front of us is what we have previously said in the last five years was not acceptable to the people of Gibraltar and this House. That is what we are supposed to be discussing here today because if it is not and we leave it in abeyance by not rejecting the deal then what will be interpreted outside Gibraltar is that we are defending it and that is what divides the Government and the Opposition and that is the difference in approach, Mr Speaker, by both sides of the House. Of course, it is not possible, in the context of the airport issue that the Brussels process, the Lisbon process, should not come into the fore because it is an extension of that process. I believe, Mr Speaker, that we need to regain the initiative which we lost with the Brussels process. We need to call it a day because the process pushed us into negotiations with the rules drawn up by Spain and Britain whose national and inter-related interests are different to ours, Mr Speaker, and in some cases in conflict with our interests. The vital recognition which emanates from the airport deal, in my view, is not just that the choice option is a recognition that we have the right to reject or accept but that Britain has learnt, Mr Speaker, that the negation to the people of Gibraltar of the right to accept Brussels and as the result of the process since, has produced an increasing hostility to the whole process as the demonstration clearly showed recently. And to have imposed another Agreement on the people of Gibraltar would have meant, I say it with all sincerity, that there would have been public disorder in Gibraltar because enough, Mr Speaker, is enough and I think the right

of choice also symbolises that situation for the people of Gibraltar. We now have to call a spade a spade and take the initiative and do so from a position of principle based on legal rights not on pre-suppositions but on legal rights. To do so is not, as the Hon Chief Minister has said, to lock up our doors, brick up our windows and live in a cocoon, but to tell the European Community that we will not be the instrument of blackmail, that our rights are not to be sacrificed, that we wish to continue to meet our obligations to Europe, to NATO through Britain and that far from desiring to live in a cocoon we were forced to do so for eleven of the fourteen years that we were members of the European Community because we were defending ourselves against fascism. For eleven years of our fourteen years under siege we were European Community members, Mr Speaker. Far from wanting to live in isolation, we want to live as partners in the Community with Spain in a spirit of cooperation and goodwill, contributing with each other's assets to the development of each other's economy, not because we are forced to, not because we are being undermined to doing it, but because it is the only way that civilised nations can act. That is why I believe we will only take the initiative and place it back in the hands of the people of Gibraltar when we reject the deal, Mr Speaker, and proceed with the necessary safeguards to defend our legal interests. I do not intend to go into the details of the bilateral agreement or the deal as it is commonly known, I do not intend to do that because I do not recognise it because to me it is an instrument, the deal is an instrument of a negation of my legal rights, of my democratic rights afforded to me as a European citizen and I will stand on that basis and that is the position that I will defend from now on, Mr Speaker. Incidentally, a right and obligation which we accepted on the 1st January, 1973, and a particular right on aviation which we have had since July, 1983, when the European Community under Directive 83/416 of the 25th July, 1983, was introduced regarding the procedure concerning the authorisation of scheduled inter-regional air services for the transport of passengers, mail and cargo between Member States. Under this Directive we obtained the right to apply for authorisation to put flights to regions of other Member States excluding Spain who was not a member. This gave air carriers greater scope to develop markets and could thus contribute to the evolution of inter-Community network. That, Mr Speaker, was the first step towards liberalisation and Spain accepted it on accession on the 1st January, 1986. As civil aviation was not expressly excluded, Community legislation in that field, both past and future, automatically applied to Gibraltar. In my opinion, Mr Speaker, Spain had already recognised that the Gibraltar airport was a British regional airport since it did not object to the Directive in force at the time of accession nor entered a reservation. That is why this House welcomed the stand of Her Majesty's Government in June of this year because our position was watertight. In my view, therefore, the issue with regard to the airport being built on the isthmus had already at that stage been technically conceded by Spain.

So watertight, in fact, Mr Speaker, that Her Majesty's Government was saying it could not accept the application of the aviation package to Gibraltar if it was to be subject to the successful outcome of the bilateral talks with Spain on Gibraltar/Spain air services. The British Government were saying 'we will not accept that the air package should be linked to a successful conclusion on the discussions between Britain and Spain on air services'. Spain, on the other hand, Mr Speaker, were insisting, the House will recall, that the package could only apply if those bilateral talks were successful and if the EEC took a further decision to apply the package to Gibraltar. That is why Spain applied the veto, because Britain defended our legal right. The Community legal advisers, Mr Speaker, had already said at that point in time that Community law on civil aviation did extend to Gibraltar. That is why we welcomed Her Majesty's Government's position, that is why the people of Gibraltar were right in demanding no concessions. It is now a matter of fact that if these were the respective positions, Mr Speaker, then Spain has clearly come out on top. I believe it is our obligation to the people of Gibraltar to recognise the mistakes that have been made since the Lisbon/Brussels process began otherwise we will continue to be sacrificed to Anglo/Spanish national interests. The indications for those who wish to see them are there in our recent history clearly showing that since Brussels Britain although our best friend is doing its best to appease Spain whilst protecting British vital interests in the area of trade and military considerations. It may be defensible, Mr Speaker, for Britain to be doing that but it cannot be done at the expense of fundamental and legal rights which as far as we are concerned is the essence of democracy and on which the force of law is a major consideration in that democratic process, Mr Speaker. It is not enough to draw comfort, as some Members opposite appear to be doing, in repeating that Britain is not accepting joint control of the airport because I believe sincerely that it is also doing it because they are protecting their own interests because in my view there cannot be joint control whilst there are military interests involved with regard to the airport and whilst Spain is not fully integrated into the military structure of NATO. If it will happen later, Mr Speaker, when circumstances change, time will only tell. Having therefore put the point of our legal rights, Mr Speaker, and should Britain have not negotiated a bilateral deal above our heads in the context of giving Brussels a fresh impetus, it would have been perfectly feasible and, indeed, very desirable to have entered into discussions on the development of the services of our airport for the benefit of Gibraltar and the Campo Area because it would be irresponsible for any politician worth his salt not to accept that where there can be mutually beneficial agreements that will result in economic growth, that it would be nonsensical and therefore against the interests of the community not to take and accept that sort of process. Nobody more than us accept that it is vital that we defend our interests effectively because if we do not defend our economic interests

effectively we will never be economically independent, Mr Speaker. That is the approach to have followed and I believe the approach which will have to follow once the deal is rejected and it will also permit negotiations from a position of equality and from a position of strength and trust, that is the atmosphere that has to be built. That is why we will always maintain from this side of the House that the Brussels Agreement was a shortsighted policy insofar as the interests of the Gibraltarians are concerned because it pre-supposed certain things and above all, Mr Speaker, because it gave Spain an edge it did not have before. Mr Canepa in the last meeting of the House said, when we were able to agree on a united front, that we had all saved our election deposits at the next elections. I shared that sentiment at the time but I am afraid, Mr Speaker, that having seen his response since yesterday I no longer share that sentiment and Mr Canepa and I are beginning to drift further and further away from each other.

MR SPEAKER:

For the purpose of good order, I will remind the House that we are still on the amendment as moved by the Hon the Chief Minister. Would it perhaps be preferable to get that one out of the way and get down to the main motion or would you rather speak generally now?

HON CHIEF MINISTER:

Mr Speaker, I prefer to get rid of any element of acrimony right at the beginning and therefore I will deal with the last comments of the Hon Mr Feetham. First of all, I have never in this House and I hope that I will never in this House use anything that is said to me in private behind those doors, here in the Chamber. What we say, views that we exchange, comments that we exchange in private are private and they are not within the realm of public debate. The remarks that I made after the last meeting of the House about saving our deposits, I made that remark in private and if it is in private, if it is not here, it remains private. I think that in the same way as with journalists one expects journalists to keep a certain code of ethics, likewise Members in the House here when we are in public we quarrel with each other, we debate with each other with a greater or lesser extent of acrimony, but when we are speaking to each other usually as friends because we can still remain friends, we may go in what we say a little bit further than what we would say in public and we expect such confidence to be reserved and that comment that I made to the Hon Mr Feetham was a private comment. I didn't say that here, publicly, in the House.

HON M A FEETHAM:

You said it here.

HON CHIEF MINISTER:

No, I didn't say it in the course of the debate, check the Hansard and see if it is there, it was a private remark. That we are drifting further and further apart, I said the other day in 'Panorama', in an interview, that Mr Bossano and I, the differences such as they are were naturally likely to be sharpened by the struggle for power, this is natural. I will remind Mr Feetham that the people who elected him to be on that side did not vote for me, they voted for him and our loyalties lie to a different group of people. My loyalties since I was ten years old when I couldn't vote but since 1963 since I have been a member of the AACR, my loyalties have been to the AACR and to the people who vote for me. If in the exercise of my responsibility towards them I have to drift further apart from Mr Feetham, well, I think it is just too bad, it is just indicative of the fact that we do sit on opposite sides of the House and not on the same side. And, at the end of the day, each of us has got to follow the course of action and take the decisions that we consider to be in the best interests of the people that we represent and of Gibraltar but at the same time respecting each other for having different points of view. Beyond that, I don't think we can go. I was a little bit surprised, Mr Speaker, and in exercising my right to reply I am going to be dealing mainly with a number of points made by Mr Pilcher because he did direct himself quite directly to my contribution yesterday evening and I am going to answer a number of the points that he made, but I was somewhat surprised that he should have felt that he needed to spend at least ten minutes almost apologising for bringing the motion to the House. Well, he doesn't have to, I think there is no need for that, it is perfectly right and proper. I think that it is a very useful exercise, in any case, that this House should have debated the airport agreement as we are doing now less than two weeks after the Agreement was signed. I think if it had otherwise gone by default people might have felt that we were failing in our responsibilities to the electorate in not debating the matter so he doesn't have to apologise. I don't have to reply to all the points made by the Leader of the Opposition, I replied to some of them because other people on this side of the House are going to take part in the debate and because some of the points were not directed exactly at me, in fact, they were going further back to the time when Sir Joshua was responsible and I knew that because they were directed at Sir Joshua and although he has stepped down as Chief Minister he has not been struck dumb as you have seen already today and when we revert to the full motion he intends to take part and make a contribution there and no doubt Sir Joshua himself will be answering many of the points which the Leader of the Opposition raised. Mr Pilcher said that I had made a subtle defence of the deal. In fact, he described virtually everything that I said yesterday as being underlined by subtlety. I don't know how many times he used the word, quite a few, I think it run into double figures, and I honestly never dreamt that I was capable of such subtlety. He said that Spain can blackmail the United

Kingdom at any time. Surely not, I prefer to go along with the way that Major Dellipiani put it. Major Dellipiani said that Spain would use such tactics, yes, I have no doubt that Spain is going to use those tactics in the European forum whenever she can. Not that she is always going to succeed and, indeed, we saw how in the European Parliament a few weeks ago they did not succeed, they failed, they were defeated and I would attribute that defeat in the European Parliament to the fact that we had been to Strasbourg in September, that our visit had caused such a fuss, we had had so much publicity and the British Members of the European Parliament having been alerted in September to the kind of tactics and the lobbying that the Spanish MEP's undertook then, were prepared this time round and they themselves lobbied support and were successful in blocking the Spaniards. So let us not imagine that the Spaniards are always going to succeed in blackmailing Britain, they will use those tactics but they can also be thwarted. I don't have to make any defence of the deal be it subtle or otherwise. I think I made my position quite clear yesterday evening and I am going to repeat what I said. I don't intend to defend or to reject the Agreement at this stage. It would be pointless if I were to do so, I would then be pre-empting the motion that we are debating today and the result of the exercise, the course of action that we are proposing for ourselves. I don't agree that there is necessarily any pitfall in discussing the merits of the Agreement in this House as Mr Pilcher seemed to think. I think it is better that it should be discussed in the House when we can reply to each other and debate the matter than to do what the Hon the Leader of the Opposition did and he did precisely that on television within a few hours, he made bold assertions as to his interpretation of the Agreement. I think that it is ridiculous, Mr Speaker, to think as the Hon Mr Pilcher seems to think, that matters to do with the practical arrangements involving the movement of passengers at the airport, that those matters are going to be referred to the Secretary of State and to the Spanish Foreign Minister as if they had nothing else to do, just to sit around and wait until they are referred from the local committee up to the coordinators and on to them. I am sure that the work of that coordinating committee at local level would not have to go beyond the level of the coordinators. Good heavens, what are we on about to think that the two Foreign Ministers, it is bad enough on one occasion that I remember one of them having raised the matter of the importation of Bimbo bread into Gibraltar at the level of the Secretary of State, but that they should have to deal with such practical arrangements, I think, is sheer nonsense. Mr Pilcher then went on to say that in respect of flights from Gibraltar to Spanish airports the difference was that approval was required from the Spanish authorities. Well, so what? So would any Spanish airline wanting to fly to Gibraltar require approval from the British authorities. The fact of the matter is that Governmental authorities have to be consulted, they don't have the right of veto because ultimately it is the CAA that grants the licence, but the

Governmental authorities have got to be consulted. We, in Gibraltar, are consulted even though air communications is not a defined domestic matter, nevertheless we are consulted. There has been a recent application from British Airways to fly London/Gibraltar/Casablanca and the Government of Gibraltar has been asked for its views, it has been consulted by the CAA on the matter. What are we going to do, get Yogi Bear to fly all the way from Gib to Madrid and when they are 10,000 feet above say 'Hello, Madrid Air Traffic Control, we are here, may we land please?' Of course, there has got to be consultation with the Spanish authorities but that is all that it means. It doesn't mean that there is a right to a veto. Then, finally, Mr Speaker, the point that Mr Pilcher made, his insistence that we were scaremongering. If we are scaremongering what has the Gibraltar Trades Council and the TGWU been doing? What do their threats amount to? What do the remarks of the Hon Mr Bossano amount to, remarks without any underlying subtlety? If what we do is scaremongering, I don't know how what they do, how it can be described. In conclusion, Mr Speaker, there are two points that I want to stress. Firstly, to repeat what I said yesterday about the fact that there is no time limit. There is a letter in the Chronicle this morning in which the view which seems to be generally widespread in Gibraltar is expressed once again that all we have is a year. That is wrong and I should like to explain what the relevant paragraph of the Agreement, in fact, means. The last paragraph of the Agreement, paragraph (8) says: "The above arrangements will come into operation when the British authorities have notified the Spanish authorities that the legislation necessary to give effect to paragraph 3(3) above is in force or on completion of the construction of the Spanish terminal, whichever is the later, but in any event not more than one year after the notification referred to above". As far as the Spanish air terminal is concerned, I cannot conceive the Spaniards building an air terminal before they are notified that the legislation has been passed otherwise they are going to have a white elephant there for many years to come. So the operative thing is a year after the British Government notifies the Spanish Government that the necessary legislation has been passed and everything is now in force for the arrangements to be implemented. So it is a year after that and if this House doesn't take any action over a period of time for that to happen, if the legislation is not passed in this House then the year doesn't come into effect and therefore the period in reality is an unlimited period. It is up to us in Gibraltar to determine how long that period is going to be. Finally, Mr Speaker, in view of the fact that our having accepted the minor amendments of the Leader of the Opposition and the fact that he moved them were indicative of the fact that they are going to accept our amendment, I would like to say that the message that at least should go out from this House in adopting the motion is that it is a positive approach, it is not a negative approach nor is it a defensive approach, it is a positive move on the matter and one that need not disquiet in any way people in Gibraltar. Mr Speaker, I commend the amendment to the House.

Mr Speaker then put the question which was resolved in the affirmative and the Hon the Chief Minister's amendment, as amended, was accordingly passed.

MR SPEAKER:

We now have before us the Hon the Leader of the Opposition's motion, as amended. I will remind the House that the only Member who has spoken directly to that motion is the Hon the Chief Minister, other than Mr Bossano moving it who has got the right of reply. I invite any Member who wishes to contribute to the debate to do so.

HON M K FEATHERSTONE:

Mr Speaker, one aspect of the airport deal, one facet which I think is of great import is that the decision has been left to the people of Gibraltar and this we must accept and we must proclaim at every opportunity is a great victory for our status. We have reached adulthood, that we were to be the arbiters has been accepted by Britain and by Spain and that is something that is really worthy of great rejoicing, that Spain has accepted that Gibraltar has the final say in this matter. It is very interesting to see there is no truth in those Jeremiahs who said that the deal would be imposed on us by a Governor's decree. That was a lot of newspaper talk and it goes to show that you cannot believe all that you read in newspapers. Sir, it is up to us, we can say yea or nay but a decision of such import cannot be made lightly, we need to know all the facts, all the ramifications which can ensue from a rejection of the deal or its acceptance. Rejection may bring difficulties to Gibraltar, may mean we are the isolated man of Europe, on the other hand it may not. An acceptance of the deal, some people say, would bring a wider atmosphere to Gibraltar's commercial life that we would have to see and consider very carefully. First, we need to know the legal position and until this is established we should make no move. Time is on our side. We do not have to make up our minds today, we do not have to make them up tomorrow or even next week or next month. We can wait six months if we like or even six years, time is entirely in our hands. If the legal position goes in our favour and Spain and Britain will comply with it because we all know that sometimes legal decisions are made and the European countries do not follow them to the letter, they interpret it often the way they like, but if Spain and Britain will comply with it, there may be no need of a deal at all, we will have achieved what we want by legal means. If we lose the legal battle then we will need to weigh the advantages and disadvantages of the deal and make our choice. The amendment has given us time, we will need to reflect long and deeply before we decide. Let us trust that we or our successors will eventually make the best decision in the interests of Gibraltar and its future.

HON J C PEREZ:

Mr Speaker, there is no doubt at all that what the Hon Mr Featherstone has said about the choice element in the deal is one which satisfies all Members of this House, in fact, the first reaction from any political party came from the Leader of the Opposition himself on the night that it was announced. The fact that we have the choice element in front of us is good if we are not afraid to use it. The reluctance of Members opposite to clearly define themselves on this issue is one where for once the British Government says 'alright, you are mature enough to take a decision', and you are afraid to take it.

HON CHIEF MINISTER:

What decision?

HON J C PEREZ:

What decision, whether you implement the airport deal or you don't. Mr Speaker, there is no doubt that there is a reason for this. The Hon Major Dellipiani himself said that he was confused about the whole issue and I am not surprised that he is confused. With all the swings and roundabouts that Members opposite have been doing, particularly the former Chief Minister, on this subject, I am not surprised that he might be confused. In fact, perhaps the statement by the Hon Sir Joshua Hassan that the people of Gibraltar were in a state of psychosis reflected the view of the state of his party and not the people of Gibraltar as a whole because the contradictions are present even today. Mr Speaker, in reiterating the first two parts of the motion which we support completely, they are rejecting the deal today because they are saying the same thing that they were saying in November when we rejected the parts that are contained in the deal today. Yes, Mr Speaker, the situation is every time more confusing because Members opposite don't know exactly where they stand on this matter. We have got a situation where we have to water down the motion so that Members opposite are happy to have a unanimous motion and it is the best we can do and we shall have to be satisfied with that. But let us not come and say that we are neither defending or rejecting the deal like the Hon Mr Canepa says and then he goes on to say 'well, your interpretation of that part of the deal is not how you say it, it is how I say it', and he goes on and defends the clause as a good one instead of the interpretation that we were given. He doesn't need time to think to say that we are wrong but he says that everybody else needs time to say whether other clauses are given one interpretation or another. The contradictions have been surfacing over and over again in this debate, Mr Speaker, and it is regrettable that people looking at us from outside should say 'well, once they have been given a choice of taking a clearcut decision, once the British Government has accepted

the maturity of the people of Gibraltar to take a decision', that we should be making so many excuses for delaying the day when we take the decision and how we take it and looking at things which we were not even prepared to look at in November. Mr Speaker, when the Hon Mr Canepa stood up in this House and talked about his disagreement with the Secretary of State about his interpretation of transit passengers, he was not saying that he would prefer not to have it like he said this morning. He was saying that he was totally opposed to it, yesterday, I think it was. He said 'I would prefer not to have it' suggesting that we might be able to live with it today whereas three weeks ago he wasn't prepared to live with it. What has changed so dramatically, Mr Speaker? The logical consequence of going and fighting our legal case would have been to come here rejecting the deal and fighting it because we do not accept the position which was described by Major Dellipiani himself as one of blackmail and putting us under pressure and everything else. In fact, Major Dellipiani's contribution left much to be desired because he even got himself into the position of saying 'if I could get some assurance that they won't bother me at the frontier', well, without looking at the deal, without looking at the consequences which is what the rest of the Government is saying, 'let us look at it', he said 'I might be prepared to say yes to the deal even if it means granting concessions'. That is creating a very dangerous precedent. The message going to Spain is 'Look, if you put pressure we will succumb so put on more pressure and we shall succumb more and more'. That is the message, it is a sign of weakness, Mr Speaker. But given everything that has happened here, given the negative attitude of the Referendum and everything else, it is the best we can do and, regrettably, although it is the best we can do, this side of the House would have been much more satisfied with a more clearcut position which is the one that this same House has been taking for the past four years in the seven motions passed. Thank you.

HON G MASCARENHAS:

Mr Speaker, without doubt the airport Agreement has become the most important issue to face Gibraltar, certainly, in recent years. Once again the people of Gibraltar are having to walk what I like to think of as the psychological tightrope that we have been having to walk for so many years, certainly since 1954 when the eternal Spanish claim took on a turn very much for the worse. But we are certainly talking about many developments, long developments, protracted developments and no developments throughout a span of very nearly thirty years and we don't appear to be able to see the end of it and sometimes the people of Gibraltar don't know whether they are coming or going. But can we be blamed in any way for this? I don't think we can be blamed for being suspicious, for being apprehensive or for being downright distrustful whenever anything concerning the Spanish claim to the Rock surfaces and therefore we cannot be blamed for anything that

we feel might or might not have a bearing on the future of Gibraltar. We have lived through the experience and through the incidence and through the vicissitudes, the ups and downs of the situation and I think only the people of Gibraltar are in a position to be the best judges of our destiny. Of that there is no doubt in my mind, for better or for worse it is a marriage of our emotional selves and our thinking selves. For these reasons I think that it is easy to say no to the Agreement, very easy. I don't find it difficult at all as a Gibraltarian. But having regard to the wider issue, I think that Mr Bossano said yesterday that Señor Ordoñez had wiped the floor. The Agreement cannot be totally black or totally bad in that respect. If it was a victory for British diplomacy having regard to what the Spanish Government wanted, I think there is no doubt about that. Mr Bossano also hit the nail on the head when he said that the British Government were in a position of desperately wanting the Agreement whereas the Spanish Government were in a very comfortable position of not wishing to have the Agreement throughout Europe for their own reasons and I think those reasons are very clear. I don't have to tell the Hon Leader of the Opposition how difficult it is to be in a difficult negotiating position, he knows all about that but it explains the reasons for the Agreement in itself. I won't go into the details of why the British Government are so keen which I would say are very obvious to the majority of people, Britain is a nation which exports passengers, let me put it that way, and Spain is a receiving nation and therefore, obviously, it is in the interest of the British Government who are going to carry the passengers and it is not in the interest of the Spanish nation who are going to receive the passengers, that trend has been reversed in recent years or attempts have been made at that. It has to be seen in the light of that context and whether we like it or not the important thing to have come out of that Agreement is that we have the right of veto and we have that choice and it explains the necessity of the Agreement. What a pity that our population is not more numerous, that our territory is not larger or that our resources are not greater and perhaps the situation would be completely different. But perhaps because of that, because we are very small, it is more equitable therefore that we should have that choice at the end of the day and we exercise that choice as we wish to exercise it and as we consider it to be in the best interests of Gibraltar. Therefore, Mr Speaker, at this moment in time I do not consider it to be a matter for this House of Assembly, for a decision to be made whether we accept the Agreement or we don't accept the Agreement. I think the Hon Mr Juan Carlos Perez has missed the point, speakers on this side have tried to maintain a consistent line, we believe very, very firmly that the time is for reflection, that we have the time available and therefore we should reflect on the Agreement and not say no for the sake of saying no because we feel that we should say no because we are Gibraltarians first and foremost. If we say no to the Agreement right away we might be entering a situation whereby we ourselves are taking the clock back to 1969 and my own view is if it is

Gibraltar's will that that should be so, so be it, but let us reflect. The Hon the Chief Minister said yesterday that it was an approximation to free association. Well, I like to think of it in that way as well, the age of maturity and a relationship which is based freely between two States, one big, the Mother Country as some people call it, and the colony. Mr Speaker, I must stress that this is a time for reflection for all of us and we should take advantage of that fact to our benefit and take the initiative when we choose to take the initiative. Firstly, how the European package is going to function and how it is going to develop, it might fall very, very flat in the months to come. That is a possibility that exists, there are a lot of national rivalries between the Member States and the thing could fall flat. Secondly, we have to pursue Gibraltar's legal right to be included in the package and that is essential. For these reasons, Mr Speaker, I commend the amended motion to the House.

HON R MOR:

Mr Speaker, perhaps we should congratulate GBC for having said at half past one that the motion had been passed unanimously. I would like to deal with a specific point which was brought up yesterday by the Hon Chief Minister. Before that, perhaps on the question of the airfield I can speak with a little more knowledge about the technicalities which surround an airfield than most Members in this House for the simple reason that I worked in the Control Tower of the Gibraltar airport for twelve years between 1958 and 1970. In fact, Mr Speaker, I think it was in 1967 or 1968 when I was summoned to the office of the Senior Air Traffic Control Officer and I was asked to translate a NOTAM, a NOTAM is a short abbreviation of Notice to Airmen, which was signed by one named Francisco Franco, Caudillo de España, and in this NOTAM, Mr Speaker, it said that a prohibited air space was being declared all around Gibraltar and that no British Military or NATO aircraft could overfly Spanish territory if they were coming to Gibraltar. These restrictions are still being applied today, Mr Speaker, and no doubt will continue as long as we do not accept the deal on the airport. Mr Speaker, the way that the Gibraltar airfield operates as regards flights to Gibraltar is that because of the limitations of space, because obviously there are restrictions on the capacity of the airfield to take on aircraft, any aircraft which intends to land at Gibraltar, apart from scheduled flights, of course, which they already know are coming, must first of all ask permission to land, they must ask permission to land at Gibraltar at least twenty-four hours beforehand. It is then up to the airfield authorities, that is, the Senior Air Traffic Control Officer, to grant this permission. This is the system which is recognised under the ICAO, the ICAO is the International Civil Aviation Organization and which applies to airfields with restricted space such as ours. It is therefore nonsensical, Mr Speaker, I would say, for the Hon Mr Canepa to defend there being

a joint Anglo/Spanish Committee to coordinate the movement to and from our airfield because quite obviously.....

HON CHIEF MINISTER:

If the Hon Member will give way, Mr Speaker, because it is important. I was talking about movement of passengers on the airfield. I wasn't talking about movement of aircraft, movement of passengers on the airport itself. I didn't deal with the question of Air Traffic Control.

HON R MOR:

Mr Speaker, in any case, Sir Geoffrey Howe in his interview on GBC, referred to having a joint Anglo/Spanish Committee which was necessary to coordinate the safe conduct of aircraft. Well, that in itself is nonsense. I don't think Sir Geoffrey knew what he was talking about because already the coordination exists. As you may be aware the whole world is divided into flight information regions and in the case of Spain there are three different flight information regions which are Seville, Madrid and Barcelona. Because of our geographical position we come within the Seville flight information region and all flights which come or leave Gibraltar must be carried out in coordination with the central control which is at Seville. It is, I believe, Mr Speaker, superfluous to talk about any Anglo/Spanish Committee to coordinate any of the controlling or whatever you want to call it. If the Hon Member didn't refer to that Sir Geoffrey Howe definitely did. Mr Speaker, I think that is the only point I wanted to raise.

HON H J ZAMMITT:

Mr Speaker, I have tried after listening to all the arguments put forward here, to take note of what was said to try and be as pragmatic as one can be on this issue basing myself on the fact that those Members on both sides of the House who have belonged to GATAB know how difficult it is to understand air communications which is a very difficult subject to try and grasp and more so when it affects you personally or affects your country or your particular area. I would like to start, Mr Speaker, by saying that as phlegmatic as we say we are, as educated as we say that we are, having been brought up under a British system of education, nevertheless we are latins and therefore democracy seems to have found greater difficulty to function in latin orientated countries because of our emotional way of being. I think that we can show, certainly as leaders, that although we are latins and we have very strong emotions on very many strong issues, we do like to think carefully and we do like to be slightly above those countries that have not had the privilege of being brought up the way that we have been brought up and therefore coming to an honest conclusion by trying to put our thinking caps on and not react with our

hearts which, unfortunately, tends to be the case in very many of these countries that one has seen emerging from situations similar to ours as colonies, now independent countries or states, and who still find themselves unable to govern themselves mainly through their own inability of being able to reason. May I say from the beginning, Mr Speaker, that I will not give the impression, I hope, of supporting or rejecting, let me say that very, very clearly. I say that for a number of reasons. One is, that even us and I refer to the elected Members of the House, require clarification on some points. One heard the Hon the Leader of the Opposition this morning saying that he himself had to ask for clarification on paragraph 1.

HON J BOSSANO:

No, Mr Speaker, if the Hon Member will give way. I think paragraph 1 is written in simple straightforward English that doesn't require clarification. I asked for an explanation as to what it was doing there, not clarification of what it meant.

HON H J ZAMMITT:

I am sorry, I used the word clarification instead of explanation, but he had to ask for an explanation. I am sure people would like to have the matter, whether it is clarification or explanation or both, put clearly before them to understand. I think that the circumstances surrounding the whole package, the deal, is one which has been mentioned and I do not want to be repetitive, that we haven't got to charge at it like a bull at a gate, we can take our time, we can reflect and people must know everything there is to know with the pros and the cons. I would ask, Mr Speaker, in all sincerity, who the dickens knows anything here about the air liberalisation of Europe? And the answer is none of us, Mr Speaker. I am afforded as Minister for Tourism a number of leaflets and information and I can honestly say that I do not understand it fully, it requires an awful lot of explanation. There is an awful lot of talk going on about it, an awful lot of talk which I don't know if it's true but we are talking about a number of passengers on cheap fares. If Spain has opted to keep out their touristic airports as she has, she has opted to stay out and we all know why. Those of us that are closely involved know why. But the general public doesn't know why Málaga, Alicante, Barcelona, Tenerife and Mallorca are out and one knows that Spain did not want the deal to go through because, of course, they are already suffering great competition for Iberia to have to face even stronger competition within Europe. But Mr Public does not know and understand these legalities or arrangements which we have to put calmly in front of them for them to decide. Mr Speaker, very many say it is a matter of principle. I agree and there is a price to pay for principle. I am a great believer in that but Mr Public must realise what the

price to be paid is whether in saying no or whether in saying yes. Let us look at it, let us really be analytical, let us be serious. One of the things I do like at the end of the day is that at least we can leave this House, Mr Speaker, with a sense of agreement because at the end of the day all of us, all the elected Members, do want the best thing and the only thing which is a united front on the Gibraltar we would all like to see. Let us be quite sincere, let us be honest about it, let us stop having digs because there has been an awful lot of contradiction which I would not like to pick on now because one does not want to pick bones at this particular stage. I think the best way forward is for us to put the matter before the people with total clarity and let them decide but let us not hide, let us not in an attempt to say no or yes not bring out every single fact. I say this because it has been mentioned this morning by my colleague Major Dellipiani about the frontier situation. What Spain can do, what Spain cannot do or what Spain should do are three different things and nobody knows the Spaniards better than us and we have had them at our doorstep for the last three hundred years so let us not try and kid ourselves that 'they can't do this, this wouldn't be allowed'. Mr Speaker, I think we are on the right track now, I think we should just have time for reflection, keep it cool and, of course, the whole thing has come about because it has all happened within the last month, from a massive demonstration to two very important meetings full of emotion, full of a tremendous amount of sayings in the press, radio and television, even offensiveness which antagonises people and which injure people and I can say that because I am criticised by my own colleagues because I listen an awful lot to another station. But I can tell Members and probably they didn't listen to it, to what was said in the early hours of the morning by Cadena Ser when GBC closed down. They were saying: "Well, England has contracted a pact with Spain and Sir Joshua Hassan must accept he is a colonial and he must do as his colonial masters say". Well, Mr Speaker, three hours later they didn't come out and say "sorry, the colonials are the ones to decide". They didn't and, of course, some people have been worried about it and this is why I think that at this stage, of course, the popular thing to say for us politicians, which is easy, is to say no, but that is not thinking with your head as Sir Joshua himself has said. I think we have to be careful. They may have hurt me, they may have hurt you, they may have hurt a number of people but we have to think of Gibraltar as a whole and the people as a whole and the future of Gibraltar and we have to be calm, cool and collected and show leadership which I am sure we will do, Mr Speaker. Thank you, Sir.

HON J L BALDACHINO:

Mr Speaker, after listening to speakers from the other side, it is no wonder that the Hon Major Dellipiani is confused because they are all confused. The Hon Mr Zammit said that who knows about the air liberalisation of Europe, but that is not the question, Mr Speaker. What is in question is whether we are giving concessions to Spain by agreeing to

the deal made by Sir Geoffrey Howe and Señor Ordoñez, that is the question. It is not a question of whether the air liberalisation is good for us or bad for us. We should be included as of right in the air liberalisation package so you cannot join one thing with the other. What we are considering is whether the Agreement or the deal over the airport of Gibraltar gives no concessions to Spain and as far as I understand it, I am quite clear on that, Mr Speaker. The Hon Member opposite seems to need time for reflection to decide if there are concessions or not. It is not a question of whether it is good for us or not, the point is are there concessions? They haven't admitted yet that there is some element of concessions there and that is what they should come out saying. Of course they are confused. The Hon Chief Minister in 1984 said: "Have we in the AACR agreed to any concessions that effectively undermine the position of the people of Gibraltar?" And I say to this House and to the Hon Chief Minister, Mr Canepa, that if he defends this deal, there are concessions in this deal which the people of Gibraltar have already manifested against in the mass demonstration that we had. This is what we are talking about, Mr Speaker, and I would like to clarify another point to the Hon Chief Minister because the Hon Chief Minister and I think my Hon colleague, Mr Mor, did not explain what the Hon Member had said and maybe I can. What he said was, in defending or what appears to be defending because we don't know, are they defending the deal or are they not defending the deal, I am still not too sure. I know what our position is and my position is 'no' to the deal but they don't know yet. What the Hon Member said and I suppose he was defending one of the clauses, was that you couldn't have an aircraft flying over Madrid and saying 'I am here, I am going to land'. That cannot happen, it cannot happen today, you don't need to have it written down, it is air communications law that before you leave a place or a take-off, outbound, an aircraft must ask permission of the intermediate authorities which is Seville. And we have had in the runway, when they had the restrictions on the air space, a passenger aircraft waiting for hours before they could have this permission. So you don't need to have any agreement, that is a different thing. If you have something else in the Agreement it means something else, it doesn't mean that at all. They are confused and I don't understand how they need clarification of an Agreement which the Government was party to. How did they sit down and negotiate something and they don't know what they have been negotiating? We need clarification on that, we need clarification because they negotiated, I don't sit down and negotiate something and then I come out and I don't know what I have negotiated. They need reflection, reflection on what, on what they negotiated, so that somebody else can give them an interpretation of what they negotiated? Of course you don't want to go to a Referendum because if you go to a Referendum you have to defend your position. You are for it or against it and we are quite clear. If we go to a Referendum tomorrow, whether we are in a majority or in a minority, we will go for no deal. You don't want to go to

a Referendum because it is comfortable to sit on the fence like they have always done, Mr Speaker. The leaders of the people, the Government of Gibraltar, today are showing no leadership at all. 'We will wait and see', wait and see for what? Why have we now reached the position that we have to make a deal on the airport? Because it is part and parcel of the Brussels Agreement, that is why. The Hon the former Chief Minister laughs but it is part and parcel of the Brussels Agreement, Mr Speaker. And as it is part and parcel of the Brussels Agreement let us and the people of Gibraltar not have any illusions about it. Until the Spaniards get what they want and that is up to the Lighthouse and the Spanish flag up the Rock, the restrictions at the frontier will never be taken away. They will always use that to blackmail us into accepting anything and for that reason I say no to the deal.

HON SIR JOSHUA HASSAN:

I certainly know that there is one Member opposite who is confused and that is the last speaker. Completely confused because he is talking about the Agreement and what he has voted in favour of, is that we should find out a little more about the air liberalisation transport package, not about the Agreement. The Agreement we know, it is about the package we want to know so he is confused, he doesn't know what he is talking about nor does he know what he is talking about when he talks about it is all Brussels. It has nothing to do with it. The whole matter could well have been discussed within the EEC context by Spain blocking it as she did and it would have remained the same, so that is all nonsense. There are only two points I want to make. There is another one in which it is obvious that people don't know what they have voted for because the Hon Juan Carlos Perez said that we had to have a clearcut decision I thought the decision was what we had voted for which is to look at the liberalisation agreement and find out about it. If people had their minds made up before, that is a matter for them. Insofar as the question of previous resolutions are concerned, I explained at the last meeting my interpretation of both the demonstration and the reason why I took part in it and I said this: "What we say is we are prepared to consider ways which having regard to the views of the people of Gibraltar, we are prepared to consider in which better and more profitable way use can be made of the airport for the benefit of Gibraltar" - this is at page twelve of the Hansard that I was given - "I have always said and I am not afraid to say that I will look at any agreement or the Government have to look at any proposed agreement on the merits of it, how it affects Gibraltar, how it affects our commitment, how it affects the airport, how it affects sovereignty and how it affects the people of Gibraltar. I would like to make that clear". Well, that is perfectly clear. The last point I want to make on the general debate is that the question of the final agreement to which too much has been spoken about and the concessions made on both sides to reach an

agreement, it is quite obvious that the Spanish Prime Minister who is a committed European and uses every opportunity to stress the importance he attaches to Europe, must obviously have an influence in order to be able to make sure that an agreement was signed which, as far as we were concerned, was far away from the agreement that they originally suggested.

HON J E PILCHER:

Mr Speaker, I don't need the Hon and Learned Sir Joshua Hassan to tell me what we are voting here in the House, we know that. What I also know is what we are not voting. We are not voting to reject the deal which was our initial proposal and we are also not voting in favour of a Referendum because they have already voted against it so I know what we are voting and I know how the Opposition has had to come down slowly from our position of strength, which we still have, in order to carry - not carry, I think carry is the wrong word - drag the Government benches with us so that, at least, we should have some semblance of morality coming out of this motion, Mr Speaker. If the Hon the Chief Minister bothers to read the motion as, indeed, he will - I will leave that to the contribution of the Hon Leader of the Opposition - he will find that, in fact, we have got a motion that says different things and contradicts itself at one point and another. I know, Mr Speaker, what we are voting and I don't need the Hon the ex-Chief Minister to tell me what we are voting. I will tell the Hon the Chief Minister that the feelings expressed by my Hon colleague Mr Baldachino, who is not confused, I share totally. The fact that we have come to an airport deal is a direct consequence of the Brussels Agreement and it is clear because it is not that the Hon Pepe Baldachino is saying it, it is not that the Hon Joe Pilcher is saying it, it is that the Rt Hon Sir Geoffrey Howe said it on television, that is the reality. Mr Speaker, the Hon Minister for Tourism said "We know what Spain can do, we know what Spain could do, we know what Spain should do". That is pointless, it's neither here nor there. What we want in this House and what the people of Gibraltar want to know is what Gibraltar can do, what Gibraltar could do and what Gibraltar should do and I hope Gibraltar will do in the future under the leadership of another Government, Mr Speaker, because there is clearly no leadership at all from that side of the House. And, again, I reiterate the point made by my Hon colleague. It is nonsensical, Mr Speaker, to come to this House more than two weeks after the signing of the Agreement and not to be in a position as a Government should be. I am not saying that the Government should have come to this House, that is a matter of policy, either rejecting or otherwise the deal but they should have come to explain the deal which they signed. What we have here and I won't go into the deal and I said so already why I feel that any thinking person will accept that this is a concessions deal and will not accept it but I would like to make three points. The Hon Chief Minister shows quite

clearly that he either has not read the deal or does not understand it. I said this morning in my intervention, Mr Speaker, that I can read something and I might think it is white and be convinced it is grey but I cannot be convinced it is black. I said this morning three things, one was that according to this deal the Spanish authorities would have, and I have got notes that I made this morning, Mr Speaker, intervention whether direct or indirect on flights from a third country, the right to put internal flights with Spanish authorities only and the fact that this was a Spanish regional airport and also that all of these could be referred to coordinators. The Hon Chief Minister stands up and tries to play down that statement by saying how ridiculous I was being in saying that if there was a disagreement between passenger control that this would be taken up to the coordinators and the Secretary of State. I did not say that, I was referring to what the Agreement says. I will read those three parts of the Agreement to the Hon Chief Minister. The first part - "The aeronautical authorities of the two sides will hold regular consultations about all questions relating to the development of the civil use of the airport including those related to the establishment of new services to third countries" - English, black upon white, a clear definition. It might be slightly out but that is clear black upon white, clear English, and if not let somebody explain to me what it means. If the Government are going to come here and say that we have got the interpretation wrong they should have brought the true interpretation and not waffle with childish and ridiculous remarks about our not understanding. The fact that Spanish airlines have a right to come into Gibraltar and the fact of making this a Spanish regional airport. I will read again from the text of the Agreement: "Permission for Spanish airlines to operate services between airports of the Kingdom of Spain and Gibraltar under paragraph 1 of article 6 of the draft EC decisions on capacity and market access will be given by the Spanish authorities". Again, clear. There might be a difference of interpretation. And the third point which is the first point that I made about the coordinators which the Hon Chief Minister in his wisdom said that I was talking nonsense about the coordinators meeting to discuss all these things, it says: "The arrangement in paragraph 4(1)" - 4(1) talks about the coordinating committee and I won't go into that - "will be kept under review by the working group on civil aviation questions established in 1985" - it could be the date of the Brussels Agreement, I am not very sure. Of course, it is the Brussels Agreement Civil Aviation Coordinating Committee, of course it follows from the Brussels Agreement but I digress - "under the auspices of the Anglo/Spanish coordinators. This working group will report regularly to the coordinators". And if that were not enough, it says: "The reports" - which are going to be passed on regularly from the joint coordinating committee - "will contain any recommendations for further cooperation in the use of the Gibraltar airport". That is the Agreement, I didn't sign it, the Anglo/Spanish Agreement. Mr Speaker, the Government can come here and say 'We think this Agreement is bad, we think that even though this is

bad for Gibraltar we want some time to think about the economy', they have a right to do that. What they don't have a right to do is to sit on the fence and confuse everybody in Gibraltar into thinking that this Agreement is a good Agreement for Gibraltar because it is not. It is not only concerned with concessions, it goes much, much further than that. The Spaniards, Mr Speaker, Señor Ordoñez is not saying that this doesn't have implications for sovereignty as the Hon Chief Minister wanted us to think. An article in 'The Sunday Times' of the 6th December said: "Spain believes it has won an unprecedented diplomatic victory in the agreement reached with Britain last week". It goes on to say: "The atmosphere in the Foreign Ministry in Madrid is described as euphoric because according to its experts the deal implicitly recognises Spain's sovereignty over the isthmus". I don't use it in argument that there is or there isn't infringement of sovereignty, I am arguing it against what the Hon Chief Minister said that Senor Ordonez had said that it didn't have any implications on sovereignty. I think, Mr Speaker, this is what the Government should have come here to explain to the people of Gibraltar. This is what the Government today should be doing, explaining what this means and my Hon colleague was right. They were part of that negotiation, if nothing else because they were both there, the present Chief Minister and the former Chief Minister, both were there. The people of Gibraltar are entitled for people to come to this House and say 'This is what the Agreement means, this is what it is and this includes concessions or doesn't include concessions' and then the Government give a leadership if those concessions should or should not be given, given the economic impact of Gibraltar. But that is not what they have done, Mr Speaker.. What they have done is similar to what they always do and that is sit on the fence, and hope and pray that the thing either goes away or that they can use it somehow politically to get back into power and I am sure that if they got back into power having said today no to a Referendum, I have no doubt in my mind that this would go the same way as the Brussels Agreement went, it would be implemented a few months after the Government were returned to power. I also have a couple of other points I would like to make, I won't take up too much of the House's time because I think everything that needed to be said has been said. I would just like to remind the Hon Chief Minister because as the Hon Leader of the Opposition said, I think perhaps it is a question of memory, perhaps it is a question that they are so immersed in what they are doing at this moment that they forget what they said a week ago, two week's ago, three week's ago. I would like to remind the Hon Chief Minister of the 'Open Forum' programme when he said "the price with a 'c' we will never pay irrespective of what Spain wants, we do not put a price on our homeland" or words to that effect because I don't have the kind of memory to be able to quote him word for word but I can go back and show him the video that I have at home and he was defending because it is when my Hon colleague mentioned the price that I suddenly remembered his play on words with price with a 'c' and prize with a

'z'. And he said quite clearly that no price could be put and what he is saying to the people of Gibraltar now, what they are all saying except for the Hon and Gallant Major who is confused, is 'let us reflect'. But let us reflect on what? What he is saying is 'let us reflect to see what it costs us and then we can put a price with a 'c' on the Agreement'. That is what they are saying and that, Mr Speaker, is not what the people of Gibraltar want. Another point which I would like to bring to the attention of the Hon Chief Minister and although it has not come from him, I think it came from the Hon Major Dellipiani, was the fact that he said - and I am not here to defend the position of any Trade Union Movement or the GTC - but I would like to remind the Hon Chief Minister that one of his Ministers has said that it is disgraceful for a union to say that they would fight the deal irrespective of what the people of Gibraltar wanted. May I remind the Hon Chief Minister that in the programme 'Open Forum', when he was asked 'What are you going to do?' He said 'Well, we will fight it legally', and when he was pressed he said 'Well, if we cannot find any other means we will turn to the GTC for them to stop it'.

HON CHIEF MINISTER:

If the Hon Member will give way. I said that in the context of the supposition that the deal was going to be imposed on us, against the background that there were indications that the deal was going to be imposed on us but we have a free choice and I would like him to remember that point.

HON J E PILCHER:

Mr Speaker, I accept that we have a free choice and I am glad for it but it is just that we cannot have a situation when we say different things to different people at different times. I think, Mr Speaker, this is one of the failings of politics. If you asked an ordinary man in the street to give you a definition of a politician he would say 'a dishonest person' - and I am going to qualify that by what I am going to say - 'a dishonest person that never says what he means' and that is the definition. People sitting across the way in Government benches are politicians in the way that the definition of politicians have meant for the ordinary man in the street until, Mr Speaker, the GSLP came to the forefront. Because we, Mr Speaker, as my Hon colleague said, we since 1983 said 'we will call a spade a spade and if there is something to be told then it has to be said'. And if that puts us in a minority and keeps us out of Government so be it, we are honest and we defend what we believe in. A couple of matters, as I say, just to round off, Mr Speaker. One, I wasn't apologising for bringing the motion to the House. I was just explaining the reason and the events that have led us to bring this motion to the House. Perhaps we would have brought it to the House anyway but I think I explained that enough this morning and there is no need to expand but one point to be made clear is that we don't apologise for

bringing things to this House because we feel that this is where matters of interest in Gibraltar should be discussed and I am glad that we have live broadcasting of the House because it is not only presented here but it is presented outside Gibraltar for those who care to join in with their radios and listen to us. The Hon the Chief Minister has always been clear and to the point and this is why the Hon Leader of the Opposition in moving his motion looked towards the Hon new Chief Minister to say what he meant which he didn't and that is why we were disappointed and that is why I kept using the word 'subtlety' because subtlety is sitting, Mr Speaker, on the right of the present Chief Minister, that is, the past Chief Minister. The point that I was trying to make about blackmail succeeding, I think is a point that has been made already by the Government benches themselves, saying yes or no to the airport deal will not prevent the blackmail situation but I think, again, the Hon Chief Minister misleads the people of Gibraltar when he says that the Spanish motion in the European Parliament which referred to the airport deal was defeated. It was defeated, Mr Speaker, but it was defeated because it was not supported by the British delegation on the grounds that a bilateral agreement was being discussed and asked the UK delegation to vote against it because if it was passed it would destroy the bilateral agreement. That was why it was defeated, if not we would have lost that one as well. I am surprised that the Hon Chief Minister dares to mention the fracas of the visit of this House of Assembly to Strasbourg or Brussels or wherever it was. It was a fracas and it showed how powerful the Spanish delegation is in Brussels, Strasbourg and anywhere related to the EEC. I think the present Government has done a disservice to the people of Gibraltar by coming to this House and saying 'I am neither going to defend or reject the deal'. As the Government, they should have come to this House to defend or reject it even though, as the leaders of the people of Gibraltar they could have said 'the deal is bad, we feel that we cannot accept it at this moment but we want a, b, c, d, e, f, g', and they could have chosen that path to convince the people of Gibraltar. But this pussyfooting around which is confusing not only their own Ministers but confusing the rest of Gibraltar, it is not a question that people don't know, it is not like the Hon the ex-Chief Minister saying that there are more people that want it than don't, it is not that, Mr Speaker, it is that there are more people and more people by the day confused because they will not be told by the Government of Gibraltar what they should be told by the Government of Gibraltar. What was the deal that they negotiated or, at least, helped to negotiate with Sir Geoffrey Howe initially and then Sir Geoffrey Howe with Spain and whether this deal had the blessing of the Hon the past Chief Minister when it was signed. Mr Speaker, I have on various occasions challenged the Government to come out and say whether all that we are asking or all that I asked of them is to stand up and say whether the deal was good or bad for the people of Gibraltar who manifested themselves in the demonstration just before the meeting. I have sat here for

two days or ever since the motion started and I don't know what the position of the Government is. One Minister is confused, the other one does a study on the psychology of the Gibraltarians - the Hon Mr Mascarenhas, the other one says he is cool and pragmatic, the other one says we have to rejoice, the other one talks of reflection and goodwill in the Christmas period. It is total confusion. How do they expect the people of Gibraltar to stand behind one banner any more. If tomorrow there was a 'no concessions' banner downstairs where would the members go? I would like to end, Mr Speaker, on the point made by the Hon Mr Mascarenhas, that on reflecting about the agreement, maybe they were saying to Gibraltar yes to free association, that was certainly a new one. My answer to the Hon Mr Mascarenhas is if I were sitting in HMG today I would say to the Hon Mr Mascarenhas 'You are not going to get free association because free association, like you say, means that there is a certain maturity in your people that we have to accept'. The AACR by saying 'no' to a Referendum have said to the people of Gibraltar "You are not mature enough to know what you want" and, therefore, Mr Speaker, that negation to the people of Gibraltar of a Referendum really shows the true colours of the Government sitting opposite. Thank you, Mr Speaker.

MR SPEAKER:

If there are no other contributors I will call on the Hon the Leader of the Opposition to reply to the debate.

HON J BOSSANO:

Mr Speaker, the motion that I brought to the House was not as the Chief Minister seemed to think, one about which my colleague was making apologies for or allowances for but one which we had thought, until today, was unnecessary and, in fact, even though the Government may think that we have had a good exercise in debating this issue, we don't think that it has been a good exercise because what it has exposed is that the position of the governing party is not as strong as we had assumed it to be by reference to the stand that they had taken previous to today in the other six motions. To that extent the strength of unity on this issue is not the same after the passing of the motion as it was before the passing of the motion. And it is not true to say that because we are getting closer to an election the differences between us are going to be sharper and, as he said, there is no reason why we shouldn't continue to be friends as we have been for many, many years. We joined the House together in 1972 and the Hon Member knows that I have always felt that we were closer to each other in our thinking and in the way we did not shy away from blunt speaking and that I thought was something that would make it easier for us to be able to understand each other and to work together on issues on which both parties thought the same. I was under the impression until this motion, in fact, that both parties

thought the same on this issue. Let me say that we could have been throughout in all the preceding motions and, indeed, on this one, we could have been on the attack against the Government on the basis of their having compromised Gibraltar's position under the Brussels Agreement and we chose not to. We chose instead to deal with the airport issue, particularly after the situation of the position of the British Government in June of this year which chose to deal with the situation on the basis that we could have a joint common bipartisan position on the airport even though we did not agree on the Brussels process. The offer to join forces with the Government was made and the Chief Minister at the time said that he would look at it and he chose never to take it up. Therefore, as far as we are concerned, the only people that have had an input into this agreement is them and they are the people who should need to study it least because they were in Madrid and they were in London. But when my colleague Mr Baldachino told the Government just now that this was the result of the Brussels Agreement the Hon. and Learned the Backbencher seemed to disagree. Well, I don't see how he can disagree with that. Let me read to the House what the joint declaration says, Mr Speaker. The joint declaration says: "Taking into account the joint communique agreed at Brussels on the 27th November, 1984, which established a negotiating process between both countries aimed at overcoming all the differences...." and then it goes on to specify the bilateral air agreement. So, clearly, the bilateral air agreement is the child of Brussels. No? Well, that is what it says here, I will read it again. "The Minister of Foreign Affairs of the Kingdom of Spain and the Foreign and Commonwealth Secretary meeting in London on the 2nd December and taking into account the joint communique of Brussels on the 27th November, 1984, have reached the following arrangements....." and it specifies the arrangements. We haven't laid emphasis on that but let us not say that the arrangements have nothing to do with the Brussels process when both Sir Geoffrey Howe and Señor Ordoñez who made the joint declaration say it has. It says "Taking into account".

HON SIR JOSHUA WASSAN:

If the Hon Member will give way for one minute, I don't like to interrupt him. I didn't say that, what I said was that Brussels or no Brussels there would have been the problem that has been solved that way.

HON J BOSSANO:

Well, let me tell the Hon Member why we don't agree with that interpretation. We don't agree that Brussels or no Brussels there would have been the problem, first, because this specifically links it to the Brussels process and, secondly, because before the Brussels Agreement was reached, in 1983 there was an EEC Directive of inter-regional flights whereas now the new EEC Directive deals with category 1 to

category 1 flights and cut to regional flights, in 1983 there was a previous one prior to the Brussels Agreement and prior to Spanish accession where we were included as a British regional category 3 airport entitled to put on flights within 400 kilometres using aircraft of less than 70 seats and nobody could object and Spain came into the Community accepting we were part of the previous stage of the air liberalisation package and they intervened between the first stage and the second stage using the 1984 Agreement and using the right to a veto gained by them on January, 1986. It is quite clear that we were not in the same position in 1983 as we were post-1984. And the argument that Spain used in June in Luxembourg has an element of validity. What the Spaniards were saying to the other European Community Members in Luxembourg, Mr Speaker, was: "Wait a minute, here I have been since 1984 trying to persuade the British Government to do a bilateral agreement with me on the Gibraltar airport and you are going to come along in 1987 and include Gibraltar with all rights in the air liberalisation package and then what am I going to be left with to negotiate bilaterally? Effectively, since the process started in 1984, if you include Gibraltar in the multilateral agreement you leave me high and dry". At the time the Hon and Learned Member opposite was arguing, he argued it publicly, that the Spaniards were wrong in that interpretation because the wider agreement supercedes the smaller agreement. So, in fact, the smaller agreement was the Brussels Agreement and the wider agreement was the EEC Agreement. So he cannot say now that the Spaniards were not using the Brussels Agreement, they were using it specifically and clearly. What did Britain say to that? The British Government issued a statement on the 6th July, 1987, in Brussels in which they said: "We have made consistently clear that we are prepared to continue talking to Spain about issues relating to the use of the airport, that is to say, the process of Brussels". They were prepared to continue with that - "But we cannot accept that the application of the aviation package to Gibraltar should be subject to the successful outcome of these talks". It has been made subject to the successful outcome of the talks. "Spain does not have the right to veto the application to Gibraltar of her rights within the EEC" - Spain has used that veto right or no right. This is why we are saying to the Government, if we agree on that analysis and we have agreed with that together until July, surely, we cannot now be saying 'we are going to test whether we are right but if we are not right we are going to start thinking of implementing the deal', and what we can do even less and I know that I said some harsh things about the Hon Member in the interview that followed his interview on Friday the 5th December when he came back, but he has to understand that, frankly, he left me totally flabbergasted, I couldn't believe my ears, Mr Speaker, when I heard him. I had heard his interview in London and his interview in London, as far as I was concerned, left me quite happy. It seemed to me that the Chief Minister - and he was still the Chief Minister and still talking for the Government, as far as I was concerned - the Chief Minister had said in

London that his position was quite clear, he knew what the people of Gibraltar wanted, the people didn't want the deal and if the people didn't want the deal he didn't want the deal and that he stood by the motions of the House of Assembly. That is what he said in London and I was quite happy with that. When he came back and he was pressed on television, he may not have intended that it should be seen the way it was seen but he cannot get away from the fact that if one is sitting watching him being interviewed and they say to him "Will you defend the deal?" and he says "I am defending it now". "Is it a bad deal?" He says: "Well, the Spaniards were making a lot of demands, they were demanding all sorts of things and the demands have been considerably reduced". He was asked: "What is it that you are telling the people of Gibraltar?" He said: "My advice is that they have a good deal, they have nothing to worry about, there is nothing offensive, nothing bad for Gibraltar, very much the opposite". Why do we need to study it? Why is it that the other seven Members of Government need to study a deal that the former Chief Minister says is a good deal, we have got nothing to worry about, there is nothing offensive about it, nothing bad for Gibraltar, very much the opposite. And he was asked: "Well, if it is all those things why don't you go ahead?" and he said: "Because the people are sensitive". And he was told: "Well, surely, the people want leadership" and he said: "I am giving leadership, this is very good, it is very satisfactory". Well, if it is all those things and we reacted to that, we said 'if it is all those things we will go to the House and let the Government of Gibraltar tell us in the House that it is all those things and that they think that those of us who are against it, who may be in the majority, are wrong' but they have made a judgement on it. If they have not made a judgement on it and if they have not studied the consequences of the deal then they cannot say any of those things and the Hon Member was still Chief Minister when he was saying it and he knows that he cannot express private views in an interview even as a Member of the House. There is a political responsibility in that people will obviously pay more attention to the things that he says and assume that if he is saying it is a good deal it is because he has done his homework and if he comes back from London and he has been involved in London and involved in Madrid they will assume that he is in a better position than anybody else. That is why we reacted angrily and felt let down by the things that he said and that is why we felt we had to come to this House to get the facts straight, to get the Government to take a clear position. Unfortunately, we have not had the result we had hoped for because, in fact, the Government is not prepared to say 'it's a good deal' and it is not prepared to say 'it's a bad deal'. All that they are prepared to say is that they need to study it longer. Well, we get back to the original position then, the position in July when, clearly, it was stated that Spain had no right to a veto and that therefore the position of the British Government in defending Gibraltar was that we had a legal entitlement

to be there. And, in fact, the statement issued in Brussels on the 6th July goes on to say: "It has been clear since our accession that Community law on civil aviation does extend to Gibraltar". Of course it is clear, we were included in the 1983 Directive. This was confirmed by the Community's legal advisers. We all know that because, in fact, Mr Ratford told us in The Convent so they must have told the Government. And Mr Ratford said to us and I repeated it on television subsequently: "There is no doubt in Britain's mind about the legality of the position of Gibraltar. The political realities are a different thing and even if you have got legal rights there is a lot of pressure being put on everybody". As I said at the beginning, what we were saying to Mr Ratford was: "Fine, if that is the situation you have got and you have got a lot of pressure from ten Member States and we are holding that thing up, then, if necessary, if you feel there is no other way out, leave us out but don't land us in a deal which leaves us no room for manoeuvre". Well, I am afraid that advice was not taken. In fact, what they have done is they have landed us in such a deal and then they have given us Hobson's choice, they have given us a very difficult choice and they have called our bluff. They said: "Right, you want to have a day out by going to La Almoraima or to the Fair and you all come out with your Union Jacks, you have your little demonstration outside The Convent and you upset our civil servant. Alright, here is the package, now let us see if you have got the guts to stand up and be counted and say 'yes' or 'no' and live with the consequences". And the reality is that we are saying back: "No, we don't have the guts, we want free association, we want to be treated as adults but don't let go of my hand because I get dizzy". That is the message we are sending back unfortunately and it is not a message we would have liked to have sent back. I have said to the Hon and Learned Member many, many times, he knows that, when we have been to London, when we have been in different situations abroad and we have had a chance to talk together, I have said to him that he could always count on me to put aside party differences and stand side by side with him to defend Gibraltar's interests whenever he felt the moment came. The reality is that the moment never comes however black the thing gets he always says: 'Let's wait until there is a way out', because I suppose he always feels that it is better to fight to live another day and the fight never arrives. But the reality is that now we have been left holding the baby and it is quite obvious to us that the Government is holding it like a piece of jelly without knowing what to do with it. Given that situation, what have we got in front of us which we are going to vote now? We have got a motion which, first of all, reiterates that the airport of Gibraltar should be open to international use in exactly the same way as every other airport. That is to say, we want the international use to be on the basis that no special privileges are accorded to Spanish airlines, that is what we say we want. We haven't said we are either for or against the agreement, that we are not saying, we are saying what

we want. Is the first paragraph in conflict with the Agreement or not? Does the Agreement give special privileges to Spanish airlines? Well, the answer is yes, it does. Spanish airlines can fly from Spain to Gibraltar without seeking the permission of the British Civil Aviation Authority. They cannot do that to any other British airport, only to the Gibraltar airport. Yes, it says that; the Hon and Learned the Backbencher shakes his head, I will read what it says: "Permission for Spanish airlines to operate services between the airports of the Kingdom of Spain and Gibraltar under paragraph 1 of article 6 of the EEC Agreement", and paragraph 1 of article 6 is the one that says that you have to go to the Member State and ask their permission, that does not apply to Spanish airlines flying from Spanish airports. It applies to every other airline from every other airport so there is a privilege accorded to Spanish airlines. It doesn't say here 'all airlines', it says here 'Spanish airlines' specifically given a privileged status. That is one element. We then go on and we are only in the second line of the motion we are all in favour of, we don't want to give special privileges to passengers with a Spanish destination. Are we by any chance in this Agreement that we haven't yet decided whether to say yes or no to, giving any special privileges to passengers with a Spanish destination, I wonder, Mr Speaker. Shall we peruse the Agreement to see if we can discover anything in it about passengers, and what do we find? That passengers from any country flying in any aircraft of any company and of any nationality - the only thing they have left out is helicopters - whose destination on disembarking is any point on the territory situated north of the frontier - I suppose they don't say Spain because if they accepted that Spain was on the other side of the frontier they would be accepting it isn't on this side so they said the territory north and we go along with that. We are now the territory south and they are the territory north, we are no longer Spain and Gibraltar in this Agreement. Could it be that we need to have a legal interpretation of whether the territory north is Spanish territory or not? Is that where the Government isn't sure that there is a conflict? Do they need to have legal advice on that? Could the QC in their ranks advice on this matter? Clearly, we are saying we don't want passengers with a Spanish destination north of the frontier fence to have special treatment and the Agreement requires us to give that special treatment. Do the Spanish Aviation Authorities have any special privileges? Well, the Agreement says that the Spanish Authorities have to be consulted, there has to be regular consultations between the Aeronautical Authorities of the two sides, that is, the British and the Spanish because the two sides are not Gibraltar and Spain, the two sides are Britain and Spain, those are the two sides in the Agreement. The British have agreed that the Spanish Aeronautical Authorities will have regular consultations about all questions of the use of our airport including services to third countries. So after this Agreement if we want to discuss a service to Casablanca, that has got to go to the Committee which has got the authorities of the

two sides, until now we don't need to do that. Are we giving special privileges to the Spanish Aviation Authority? I would submit we are because we don't have that for the Moroccan Authorities and we don't have it for the Portuguese. Gibraltar Airways has now got a request for a flight from Gibraltar to Faro, they don't have to have a joint committee with the Portuguese Authorities for that. They go through the normal EEC procedure of submitting an application which the Portuguese Authority can accept or reject. That is just paragraph 1 which is going to be carried unanimously, I am happy to say. In paragraph 2 we reiterate what we said in March, 1984, that Spain should have no say in the future use of Gibraltar's airport. We reiterate what we said in June, 1985, and in 1986. We reiterate what we said about our right to be included in the EEC Agreement without any agreement with Spain. We reiterate what we said about anything that in our opinion could be construed or might have the implication or give the impression of any effect on sovereignty, that is out. The Hon the Chief Minister was talking about me bricking things up, we have unanimously bricked up the thing, doesn't he know that? Doesn't he understand that every time we put a motion here which he not only voted in favour but defended with the same vigour and the same emotion and the same sentiments as I am doing today, he has taken that line in every other previous motion, he was doing the bricking, I was putting the brick and he was mixing the mortar for me. No? Well, I think he was, he should go back and read the Hansard. He would be surprised to find what kind of person he used to be before he was elevated to the throne. We are not rejecting the deal but we are reiterating that in November we rejected the proposals in 'El Pais' and the proposals in 'El Pais' included access for Spaniards to the airport without passing through British customs and immigration and the construction of another terminal and that we rejected so we are now rejecting it for a second time although we haven't yet made up our mind whether we are going to reject it for all the other nationalities because I would submit, Mr Speaker, to those Ministers on the other side who wish to escape from their state of confusion by the exercise of logic, a highly attractive discipline I assure Hon Members, that if you have got a situation where you rejected that Spaniards should not have to use customs and immigration and now you have got an Agreement that says 'neither Spaniards nor any other nationality has to use customs and immigration' and the Government is saying that they haven't yet made up their mind about whether they are going to accept it for all nationalities or reject it for all nationalities but they are prepared to vote in favour of repeating the rejection for the Spaniards if you deduct (a) from (b) you are left with a situation that what they haven't made up their mind is whether the other people will be allowed to go into Spain without going through customs or immigration but definitely the Spaniards will not be. So if we take logically the clause that we are going to vote in favour reiterating the November motion and the possible acceptance of rejection of the bilateral Agreement, what we are saying is the implication

is that what the Government is considering is whether the best course of action would be to go and say to Spain: "Well, we stand by the motion of November therefore the Spaniards with Spanish destination will still go through customs and immigration but every other nationality other than Spaniards will be allowed to go through without going in", but not through the second terminal, no, because we are rejecting the second terminal. Well, not really because we rejected the construction of another terminal and this is a second terminal north of the frontier and that introduces a new complication which deals with geography amongst other things. But, clearly, we are reiterating positions which in our view eliminated the need for the motion, that is the whole point. By taking the Government through each of the clauses that they still support they will then understand why we felt that there was no need for us to reject the deal because axiomatically a priori the deal had been rejected by this House and consequently what the British Government had done, and let me say that that was one particular story going round allegedly emanating from a Government source that the British Government were being so clever with their British diplomacy of 200 years that what they had succeeded in fooling the Spaniards was in doing a deal which removed the veto in the knowledge that we were going to say no and then there would be no deal. That was one of the stories going round before the deal was struck. Obviously, my reaction when interviewed by people before the deal was struck was that I couldn't understand what Sir Geoffrey Howe and Señor Ordoñez were spending so many hours discussing because I couldn't see what there was for them to discuss which was compatible with all the motions we had passed. I think, Mr Speaker, that we find ourselves in a situation with the deal which, in fact, the Chamber of Commerce correctly pointed out. When Mr Seruya came out the Chief Minister in a radio interview said that he obviously didn't know what he was talking about because the public reaction to his proposals were quite clear and we had this business of the directors resigning. And the Chamber of Commerce subsequently said: "At present nobody has to the Board's knowledge presented a Gibraltarian view. To wait until a settlement is made over our heads is to leave matters too late as has occurred on other issues". A settlement appears to have been made over our heads because although the Government of Gibraltar was involved in the process we know that Major Frank Dellipiani only found out what his Government had been involved in two days after everybody else had it on their desks because it never got to him. Therefore we have a situation where the Chamber was wrong in taking that line because that line was in conflict with the line that the House took and the line that the people took but they are certainly correct now if now we are going to have to say to ourselves 'the choice that we have got is either accepting or rejecting a deal which we have had nothing to do with and which we have not ourselves introduced on the basis of the things that we want out of that deal'. This is a point that, again, there has been no response from the Government on. The fact that we have been maintaining this line consistently in the House doesn't mean that there

is no alternative to this line, Mr Speaker, there is an alternative and it is a defensible alternative for those who want to defend it. Just like the Party for the Autonomy of Gibraltar which never got any support still had a line that they defended year after year and it is legitimate to say 'I believe we should sit down and negotiate a deal with Spain', it may not be my view, it may not be the view of Members opposite but it is a view that can be defended. And then you go to Spain and you say: "I am interested in doing a deal with you on the airport and these are my conditions. What do you want?" And you sit down and you judge what you have negotiated and you say "Well, no, the price is too high, the price" - with a 'c' - "is too high for the prize" - with a 'z'. But what we have got now is a price - with a 'c' - for the removal of a veto, that is all we have got in exchange and that is why we have to say no. We have no choice and we cannot study it and look at the merits of it. I agree that before we decide to leave the air liberalisation package we should study the air liberalisation package, I don't disagree with that because we might not want to be in it. There seem to be an awful lot of people who want to get out of it so why should we be thinking of how much do we have to pay to get into the club that everybody wants to get out of? I agree that before we all rush to join the EEC liberalisation package we should study very carefully what the implications for Gibraltar are. But I think studying the implications of a bilateral for Gibraltar doesn't require any great thought, it is quite obvious what it is all about. We cannot be swayed in that consideration, Mr Speaker, by worries as to Spain getting nasty if we don't go along with the deal and putting restrictions and the standard of living going down which is one of the areas mentioned by Major Dellipiani. I can understand that that is a real worry, there are people who are thinking about that but we cannot follow that road for all the reasons that Government Ministers have put because if we demonstrate fear in that direction then they will be turning the tap on and off constantly and our lifeline, our standard of living will be on a thread which they can threaten to cut any time that is why we cannot do that. So, in fact, if we are going to have to make a stand it is better to make a stand with the airport still under our jurisdiction than with half an airport. If we are going to make a stand let us make a stand at the frontier not at the lighthouse. That is why we cannot even take that into consideration and, of course, if the Hon and Gallant Major feels that he has difficulties in obtaining employment at the age of 52 with his planned retirement from the House and I can understand those worries because I know many people in that situation, all I have to tell him is that that is due to the bad economic policies of the AACR administration. When the GSLP is in Government he will find he will have plenty of employment opportunities. The position, Mr Speaker, that we have adopted is not as the Hon Chief Minister thought, an off the cuff reaction to this deal without considering the pitfalls and it is not a question of having made bold

assertions on the Moran programme. I know that he was away and I know that he had agreed to come but there were other Ministers here who chose not to come to the Moran programme and, clearly.....

MR SPEAKER:

No, with respect, that is a new matter.

HON J BOSSANO:

I have made a note, it is point 8 on my page and he said that I made bold assertions on the Moran programme and that I was reacting immediately to the deal.

MR SPEAKER:

That is a different matter, but the reason why others didn't come is not relevant.

HON J BOSSANO:

What I am saying is that the Government had an opportunity to have somebody else there who could have put me right if I was entering pitfalls and making bold assertions although I doubt that they would have been in a position to do it since they don't seem to have made up their mind even by now and a long time has elapsed. But it wasn't just a question off the cuff, I was, in fact, confident at that stage that I was reflecting the collective views of the House and I could not have thought at that time because there had been no indication that anybody on the other side would have taken a different line from mine, I thought quite frankly, Mr Speaker, that what I was reflecting was House of Assembly thinking not GSLP thinking in that programme in relation to the Agreement. I thought everybody was clear on it. It is, of course, the position that in terms of consultation the Government, we thought, was in Madrid and in London in order to be able to influence the situation or to make clear that what was being discussed was going to be turned down here and we thought that that had been made clear. So if it was up to us to say yes or no it cannot be on the basis, as the Hon Mr Featherstone was saying, that that might imply we are the isolated man in Europe. How can we even consider as legitimate that we should be told in July by Her Majesty's Government, and I won't repeat what they called Señor Esquerria for opposing the deal, but everybody knows how tough the British press was on him, how can we be told then that Spain is the isolated man in Europe for vetoing us and we are now the isolated man in Europe for not giving in to blackmail to have the veto removed. That is not acceptable and we cannot accept that that is what British democracy is all about, that we have got a choice and we are free and we can exercise this choice but heaven help us if the choice we exercise

is not the one they want us to. On that premise we couldn't defend in this House the principles and the traditions and the links with UK. I think we have to assume that we do not run that risk and we do not run the risk of ostracism for exercising basic rights and if we are going to be told differently let it not be insinuated, let it be said so openly. I also think, Mr Speaker, that when the Hon Mr Mascarenhas was referring to the wider issues he accepted the point that I had made that Spain had the upper hand in the negotiations because at the end of the day if we go through the EEC air liberalisation agreement we find that the only country that has actually opted out of two clauses is Spain where they say 'our airlines will not use fifth level agreements' and nobody can use them in Spain. And it is clear, as the Hon Mr Zammitt mentioned, that they seemed to have left more of their airports out than anybody else. Of course, they were on a no lose situation, either they gave up the veto and got into the EEC but got a foothold in Gibraltar or they didn't get a foothold in Gibraltar but they blocked the EEC liberalisation package, either way they won an advantage, that put them in a very, very strong bargaining position and it is not that we have to be unsympathetic to the very tough negotiating position that Britain found herself in but that is, again, not a consideration for us. We can understand it, we can understand how and why they got where they got to but we cannot allow it to influence what we have to decide now, where do we go? Therefore, although it is a valid argument it is not a valid argument by reference to the thinking and the consideration that the Government says is required. The fact that that tough negotiating position was the background to the deal doesn't make the deal better or worse. It may explain why it is bad but it cannot make it better, it may make us understand why Spain got more out of it and Britain very little out of it but it doesn't make it more palatable and more acceptable and therefore given that the Government's argument has been until now that they are not yet ready to take a decision, I submit to the Hon Mr Mascarenhas that valid as the point is, it is not a relevant point in consideration of the merits of the Agreement. I am just looking, Mr Speaker, to see if there are any other points, before I round up, that I haven't covered from the submissions of Members. One other thing that I haven't previously quoted that the Government did prior to this, is the statement issued by the Hon Mr Canepa as Acting Chief Minister on the 27th July where he said that.....

HON CHIEF MINISTER:

Mr Speaker, isn't that new material?

HON J BOSSANO:

Well, let me just say what it is and then you will know whether it is new material or not.

MR SPEAKER:

Yes, but you can only raise matters in reply which have been raised in the debate.

HON J BOSSANO:

I am talking about the support given by the Government of Gibraltar to the Bland application.

MR SPEAKER:

Well, that hasn't been dealt with at all in the debate.

HON J BOSSANO:

Let me just say what the relevance of that is to what has been said. I think that is an indication, Mr Speaker, that on the 27th July the Government of Gibraltar, remember that this was Bland's request for a flight to Frankfurt which is an EEC airport covered by the air liberalisation agreement, Mr Speaker, and remember that this is after the air liberalisation agreement was vetoed and the Government of Gibraltar at that stage had, in fact, adopted a stand of saying 'we support and defend the right of Gibraltar to be treated as a British airport even without the liberalisation'.

MR SPEAKER:

I will stop you there and I will say that I will allow you to continue provided you give an opportunity to the Chief Minister to say anything he would like to say on the matter.

HON CHIEF MINISTER:

The only thing is, Mr Speaker, that the Hon the Leader of the Opposition is in the happy position of preparing his ground beforehand and then he catches me by surprise and I don't have an opportunity at this stage of looking into the matter in the same way as he has had because he knew that he was bringing the matter up. I think it is new material but it is a matter for you, Mr Speaker, and I bow to your ruling. But at the end of the day after so many hours of debate to bring up a matter such as this, I think he could have brought it up yesterday and he would have had a reply, if not from me he would have had a considered reply from one of my colleagues.

HON J BOSSANO:

Let me say, Mr Speaker, it is not an important point and, in fact, it was a point that I was making in the Government's favour so I am quite happy to drop it. So if the Chief Minister doesn't want me to say it I won't say it.

HON CHIEF MINISTER:

In that case I bow even lower to the Speaker's ruling.

MR SPEAKER:

Order, then we will leave it out.

HON J BOSSANO:

I did bring a number of important points at the beginning and I have not had any answers to any of them, Mr Speaker, and they have all spoken after me so I don't think the argument that they would have been able to answer that one is valid but in any case, it was not a criticism of the Government, it was in fact a point in their favour saying they were taking a line of supporting the new route independent of the air liberalisation package, to show that they could still do that even now. Even while we are doing all the other things I submit that the Government has already demonstrated that it is able to give support to promotion of the greater use of the airport and that is an important part of something that can be pursued which would, I think, strengthen our position and which I commend the Government to do independent of the things that we are agreeing in this motion. I would also like just to clarify, Mr Speaker, that the reference that my colleague made to this question of what was a jocular remark by the Hon Chief Minister after the last debate, and I think he made it here, in fact, he crossed the floor to us and he said it here when there were quite a few of us around, that had we not been able to reach agreement on the last motion they might have lost the deposit, or words to that effect. Clearly, let me say that we know that things like that are said in a spirit of not being taken seriously and nothing that we have said is intended to abuse any private or confidential information or embarrass Members on the other side. Members know that this is not our way of carrying on and therefore nothing should be read into it. I believe that therefore, Mr Speaker, we have gone through the arguments and we have come up with a final version of a motion which comes, as far as we are concerned, having demonstrated the inconsistencies that there would be into arguing that (1), (2) and (3) do not clearly say no to the Agreement and that (4) says maybe no and maybe yes. As far as I am concerned, the fourth paragraph of the motion to which I have not yet referred, says that no decision should be taken on the air liberalisation package. It has removed

the word 'implementation', for us it was an important consideration because as I said previously, we didn't want anybody to assume that we were saying 'the possibility of it being implemented is being retained by the House or by the Government'. We are saying 'no decision should be taken'. By implication we are rejecting it, we submit, in (1), (2) and (3) and, clearly, if we succeed in the legal test that we are including 'as a matter of urgency' in paragraph (3), the question of considering the Agreement does not arise because if the reason for considering the Agreement is to get into the liberalisation package and we find that we can get in anyway, why should we consider the Agreement? So, in fact, we are coming as close to rejecting it as we can without spelling it out. That is our estimation of where we have been able to reach a joint position. And let me just make one point, I am glad that Hon Members are able to support this without any worries about whether we are binding a future House of Assembly because, in fact, before we recommended that the House in future should not take a decision without a Referendum and now we are telling the House not to take a decision, we are not making a recommendation, we are actually deciding that no decision should be taken and, clearly, we don't mean between now and the 21st January, we mean now and until the whole process is finished and we were told before that the practical effects of the liberalisation package cannot be assessed until the summer comes. So the last paragraph, in fact, seeks to bind the new House of Assembly beyond summer but I am glad that they have no reservations anymore on that and that they can vote in favour.

Mr Speaker then put the question in the terms of the Hon J Bossano's motion, as amended, which now read as follows:

"This House:

1. Reiterates the view that the international use of Gibraltar's airfield should be on the basis that no special privileges are accorded to Spanish airlines, passengers with a Spanish destination or the Spanish aviation authorities
2. Reiterates the views expressed in the resolutions adopted by this House in March, 1984; June, 1985; March, 1986; December, 1986; June, 1987, and November, 1987
3. Reiterates the view that Gibraltar's right to be included in the air liberalisation package as a regional British airport without pre-conditions should be pursued as a matter of urgency
4. Takes note of the proposed Anglo/Spanish agreement and considers that until the course of action proposed in paragraph 3 above is known and the practical effects of the Air Liberalisation Transport Package can be assessed, no decision should be taken".

On a vote being taken the question was resolved in the affirmative and the motion, as amended, was accordingly passed.

The Hon the Attorney-General and the Hon the Financial and Development Secretary were absent from the Chamber.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn to Thursday the 21st January, 1988, at 10.30. In doing so, Mr Speaker, there are two things that I want to do. In the first place I am sure that we can all rise above two days of intensive and if not heated at least warm debate, in conveying to you, in the first place, Mr Speaker, to Hon Members opposite, to the Clerk and the staff of the House, the Usher and our Secretary, the greetings of the season, my best wishes and those of my colleagues for a very Happy Christmas and a very peaceful New Year. If I may, with your indulgence, Mr Speaker, I said at the beginning of the meeting that I preferred to say a few words at the end of the meeting about the political career of a man and his era, namely, Sir Joshua Hassan. I know that he doesn't want any valedictory addresses about him but I honestly do not feel that I can allow such an occasion as this one to go by without paying some small tribute to him. I was jotting down a few bare statistical facts - over 45 years in local politics, over 42 years as an elected representative of the people of Gibraltar, the first City Council after the war in 1945; over 40 years as leader of the AACR; over 37 years as a Member of this Legislature, 37 years as a Parliamentarian; over 20 years as Chief Minister of Gibraltar, 15 of those years consecutive. I doubt, quite frankly, Mr Speaker, if anyone in the future will ever be able to match that record. It is clear that neither the Leader of the Opposition nor myself, given our age now in our late forties, can ever get near to that achievement. And although I don't want to say much about Sir Joshua's qualities and his achievements, I think one thing is undeniable. Sir Joshua would have made his mark in politics outside Gibraltar, I think he would have made his mark in politics certainly in the United Kingdom. I have no doubt that he would have reached the House of Commons, of that I have no doubt whatsoever and I think that reference has been made to that by others, by notable Parliamentarians in the United Kingdom and in the Commonwealth. Within the confines of Gibraltar, perhaps it is a case of paraphrasing the words of Mark Anthony when speaking of Caesar and when he asked the question: "Whence comes such another?" Mr Speaker, I have the honour to move the adjournment of the House.

MR SPEAKER:

In doing so I thank the Chief Minister for his greetings. I join you in wishing all the Members and the staff and, as I always do, the media who sit with us from day to day and the people of Gibraltar generally, of course, a Happy Christmas and a prosperous New Year.

Mr Speaker then put the question which was resolved in the affirmative and the House adjourned to Thursday the 21st January, 1988, at 10.30 am.

The adjournment of the House to Thursday the 21st January, 1988, at 10.30 am was taken at 6.10 pm on Thursday the 17th December, 1987.

THURSDAY THE 21ST JANUARY, 1988

The House resumed at 10.45 am.

PRESENT:

Mr Speaker (In the Chair)
(The Hon A J Vasquez CBE, QC, MA)

GOVERNMENT:

The Hon A J Canepa - Chief Minister
The Hon Sir Joshua Hassan GBE, KCMG, LVO, QC, JP
The Hon M K Featherstone OBE - Minister for Health and
Housing
The Hon H J Zammit - Minister for Tourism
The Hon Major F J Dellipiani ED - Minister for Public
Works
The Hon Dr K G Valarino - Minister for Labour and Social
Security
The Hon J B Perez - Minister for Municipal Services
The Hon G Mascarenhas - Minister for Education, Sport and
Postal Services
The Hon E Thistlethwaite QC - Attorney-General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon J Rossano - Leader of the Opposition
The Hon J E Pilcher
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon J C Perez
The Hon J L Baldachino
The Hon R Mor

IN ATTENDANCE:

P A Garbarino Esq, MBE, ED - Clerk of the House of
Assembly

PRAYER

Mr Speaker recited the prayer.

MR SPEAKER

I understand that the Hon the Chief Minister is slightly
incapacitated. Don't stand, that is precisely what I am
saying.

HON CHIEF MINISTER:

With your leave, Mr Speaker, and without wishing in any
way to show any disrespect to the House, I would be
grateful if I be allowed to address the House from a
sedentary position.

MR SPEAKER:

Most certainly.

DOCUMENTS LAID

The Hon the Financial and Development Secretary laid on the
table the following document:

Schedule of Supplementary Estimates
No.4 of 1987/88

Ordered to lie.

MOTIONS

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move in the terms of the
Motion standing in my name: "That this House considers
that:

- (a) the liability to pay Social Insurance Old Age
Pensions to Spanish pensioners at current rates
under Community Law could not have been avoided
by amending local legislation;
- (b) the Gibraltar Government took all reasonable steps
to obtain the necessary derogations from the EEC in
respect of the additional liability;
- (c) the commitment to Spanish pensioners is totally
unrelated to the Brussels Agreement;
- (d) the additional cost of the commitment for 1988,
estimated at £2m, is a matter for negotiation
with the British Government in the light of the
information to be contained in the Actuarial Review
which is expected shortly;

- (e) the commitment beyond 1988 is a matter for negotiation with the British Government once the Report of the Joint Study Group has been submitted,

and consequently deplores the recent statements made by the GSLP in the news media, as confusing and misleading to the public".

Mr Speaker, having regard to the line that was taken by the GSLP in recent Press statements, I felt that it was necessary to introduce a motion in this House which would offer a proper opportunity to discuss the question of Spanish pensions fully and thereby clarify the issues involved. In our view, the GSLP, although understandably opportunistic, have been confusing and misleading the public on a matter which is far too serious and too complex to be confined simply to bold, pre-electoral exchanges in the news media. The whole issue of Spanish pensions is a major financial and political problem which merits close public attention and scrutiny, and which cannot just be fed on speculation or misinformation.

I shall start, Mr Speaker, by giving some background information which may, in part, prove repetitive to this House, but which has to be reintroduced in order to ensure that the matter is discussed in its proper context. Successive Governments of Gibraltar have been alert to this problem since the early 1970's even during the time of the Peliza administration. A series of attempts were made up to 1984 to resolve it by negotiating payment of a lump sum to Spanish pensioners - in effect through the Spanish Government in order to discharge the obligation. These were made during the course of Ministerial contacts and meetings of officials at working party level. We maintained this position throughout the process leading to the Lisbon Agreement in 1980 and subsequently in 1982 when all the indications pointed to the re-opening of the frontier. Indeed, it appeared all along that the Spanish Government were prepared to consider such an arrangement. At any rate, they never dismissed it and agreed in December 1978 to take away the proposal. But they never came back on it. As the House will recall, all negotiations ended as attempts to re-open the frontier were repeatedly aborted in the wake of major political change in Spain. Up to 1982, the matter was therefore being dealt with exclusively on a bilateral basis and on the understanding that the liability was to be resolved by a 'lump sum' formula.

By 1983, with the advent of the Socialist Government, it became clear that Spain had gained a fresh and fast impetus in its attempts to join the EEC. This brought to the fore the possibility that the payment of pensions to former Spanish workers would have to be met in line with Community directives, that is, these pensions would have to be met at current rates and not just at pre-1973 rates which was the rate at which they were then being paid to all those who become eligible by moving out of the Campo Area. At our request, Her Majesty's Government made representations to the EEC Commission in September 1983. The initial meeting with Community officials was followed up by a number of other meetings as a result of which British officials presented a formal case proposing the following two alternatives as a solution to the problem:

- (a) that the Spanish authorities should assume payment of pensions to Spanish pensioners on payment by the Gibraltar Government of an agreed lump sum which would be assessed actuarially to meet the liabilities as they stood under current legislation; or,
- (b) in the absence of such an arrangement, that the Treaty of Accession should recognise that the terms of Article 10 and 94 of Regulation EEC 1408/71 would apply to those pensioners who were not enjoying the benefit of those provisions prior to accession, only to the extent that the Gibraltar authorities would continue to pay the pension entitlement as it was before Spain's accession, together with any increase in pension awarded in Gibraltar from the date of Accession. In other words, payment of pensions at frozen rates together with any increases awarded from the date of Spanish accession onwards.

In effect, both alternatives formally sought a derogation from Community regulations. The formal response from the Commission was submitted in March 1984 and concluded that:

- (a) the effect of Community provisions required that from the date of accession, Spanish pensioners be accorded equality of treatment and not be discriminated against on grounds of nationality;
- (b) the obligation which would fall on Gibraltar at the date of accession would require it to review the amount of pension due at that date and to revise it so that, taking account of the insurance record of each pensioner the pension paid from that date would be of

an amount equivalent to that paid, on the same date, to a Gibraltarian with the same insurance record who has not suffered any previous interference or interruption in payment; and

- (c) that the proposed solution under (a) above, and this is that Spanish pensioners be accorded equality of treatment and not be discriminated against on grounds of nationality, that was a matter for negotiation between Spain and the United Kingdom.

The Commission rejected any derogation from the principles involving equality of treatment and non-discrimination which formed precisely the objects of the derogations sought.

In the event and this is very important, the Gibraltar Government received legal advice expressing grave doubts as to whether the payment of a lump sum would discharge the liability to individual beneficiaries. Even if the legal difficulty could have been overcome, any settlement would have had to be on the basis of current rates of benefit if it were not to be open to challenge by any individual pensioner before the Gibraltar or European Courts.

It was evident by then that the matter would not be resolved on a bilateral basis; that the EEC would not contemplate granting Gibraltar the necessary derogations; and, that there was no recourse open to us by way of amendment of Gibraltar legislation. Gibraltar was left with no other choice but to look to Her Majesty's Government to consider financing the liability. The formal submission was therefore made in August 1984. What followed was a series of protracted correspondence and negotiations with the British Government through the Secretary of State and with FCO and ODA Officials regarding the extent to which Gibraltar would contribute to meet the liability. Our approach was clear and consistent and can be summarised in the press release which we issued on the 3 December 1985, following an exchange on the matter in the House of Commons, and which stated:

"Gibraltar Government Ministers have made it clear to the British Government that, while Gibraltar is prepared to meet its moral responsibility in full, and has accordingly offered to contribute the total amount paid into the Social Insurance Fund by Spanish workers plus accrued interest (a total of £4.5m), their view is that the ultimate responsibility lies with the British Government"

At the same time, we reiterated our view that the Spanish Government should acknowledge its responsibility on the matter. At the end of December that year, the British Government finally agreed to contribute a total of £16½m over 3 years, as against our contribution of £4½m, to meet the total bill estimated at £21m over the period. At the end of December of that year, Mr Speaker, shortly before Spanish accession on the 1 January 1986, the agreement reached was without prejudice to the position of either Government on the matter.

I will not dwell on the nature of our discussions with the British Government culminating in the December 1985 Agreement other than to say that they proved to be so difficult that at one stage, as the Minister for Overseas Development, that was at the time Mr Timothy Raison, revealed in the House of Commons on the 9 December 1985, we were offered a contribution for only one year, which naturally we turned down out of hand. Our views are on record and are unchanged. What I would like to clarify is the reference to the Brussels Agreement reached the year before. The GSLP have argued in their recent press statements that the commitment to pay current rates of pensions to the Spaniards is related to the Brussels Agreement and, also, that it was only after the Agreement in November 1984, that the Gibraltar Government first publicly announced that they would pay revalued pensions in January 1986. This is incorrect and misleading. As I have already explained, the Gibraltar Government were aware of the possible pensions commitment well in advance of the Brussels Agreement. It is also clear that prior to that Agreement, that is in March 1984, the European Commission had ruled that there could be no derogation from that obligation. The commitment was there, Brussels or no Brussels Agreement. The Brussels Agreement made no reference to Spanish Pensions and the matter was only dealt with in the context of enabling legislation which ensured that there would be no advanced implementation of the rights which the Spaniards would acquire on accession. Furthermore, in answer to Question No.138 of 1984 on the 30 October 1984, which is prior to the Brussels Agreement, the Hon Mr Mor asked, and I quote, "Mr Speaker, can Government confirm that once Spain joins the EEC, Spanish nationals who are entitled to an Old Age Pension because of their pre-1969 contributions record will have to be paid at the current rates and not a frozen pension as at present?" The Minister for Labour and Social Security replied and again I quote "Mr Speaker, under the current provisions of EEC legislation, Spanish nationals who are entitled to Gibraltar Old Age Pensions because of their

pre-1969 contribution record, would become entitled to be paid at the current rates". Mr Speaker, I think it is important to note at this stage, that there was no suggestion from the Opposition about any possible changes to the law to avoid the liability, nor was there any attempt made to find out whether a derogation had been sought. Nor did they do so a few months later in January 1985 when the Minister for Labour and Social Security made a statement in this House explaining that there would be no advanced implementation of Spanish pensioners' rights to current rates of benefit and that they would acquire these rights only as from the date of Accession. Indeed, Mr Speaker, I would ask how the Opposition can reconcile their views on the need to amend legislation to avoid the liability when on the 28 January 1986, the Hon Mr R Mor, in presenting a motion on the matter of Spanish pensions said and I quote "let me make it quite clear, Mr Speaker, that the GSLP is not in any way against the Spaniards getting their pensions at whatever rates are mandated by EEC law, but what we cannot agree to and completely oppose is that one single penny of the contributions of the workers in Gibraltar should go towards paying for these pensions". On this issue, in particular, I think Sir, that I have shown without a shadow of doubt, that the Opposition have been misleading the public.

It has been suggested that the Gibraltar Government should have settled the Spanish pensions issue as a pre-condition to its agreement to the Brussels process. We were negotiating such a settlement prior to the Brussels Agreement, but we continued our negotiations beyond it, in good faith, and in the knowledge that the British Government would assist Gibraltar honourably. We are not in the business of pointing a gun at the British Government. We were not going to budge on our position because we had, and still have, a responsible and defensible case, and this was made clear right through the negotiations. Whether that approach was right or wrong is a matter of judgement. In our view, our honest and responsible approach on both the Spanish pensions issue and the Brussels Agreement does not weaken in any way our position for the future. I believe that in considering the Spanish pensions liability for the future, both the British Government and, in particular, the British Parliament, will give due weight to this, and it will recognise that if Gibraltar has to resort to taking a rigid stance, it will not have done so as a threat, or as a barter for anything, but because of the justification behind its moral and political views. Or does the Opposition consider that we should have said "We will support Brussels, if you pay for the Spanish pensions". And tomorrow what? "We will support the Airport

Agreement, if you pay for the construction of 500 housing units". There is no carrot, or stick, as far as we are concerned, when we take our stand on the issue of Spanish pensions. We said we would pay the £4.5m which the Spaniards had put in, no strings attached, and we will talk later. But let there be no misunderstanding, we have already made it clear what our position will be, and I will be explaining that in response to the Hon Mr Mor's motion which we intend to support subject to an amendment which will be consistent with what we have said publicly and which, I hope, the Opposition will agree to.

This brings me, Mr Speaker, to the additional commitment, which is estimated at £2m for this year, and to the liability in future years. The additional commitment this year arises because the number of Spanish pensioners is higher than was estimated at the time of the 1985 Agreement. This could not have been foreseen. It also arises, in part, because of the effects of annual increases in benefits, as required by 1977 statutory formula, applicable to the higher numbers involved. The Government's approach on this is that we should await the Actuarial report which will shortly be submitted and then discuss the matter with the British Government as part of the negotiations which are due once the report of the Joint Study Group, looking into the whole of the commitment for the future, is submitted. This will have to be done during 1988, before the current agreement expires at the end of 1988.

This is not to say, Mr Speaker, that we prefer to tackle the problem piecemeal, selling hostages to fortune. In our negotiations during 1984 and 1985, Her Majesty's Government made it clear that they could not enter into any commitment beyond three years ostensibly, if for no other reason, because of certain technical considerations binding them as a Government in contributing funds from the Overseas Development Aid Vote which, apparently, is the only vote from which funds to Gibraltar could be made available. We cannot brush that aside, nor can we ignore that the British Government itself has to work within certain budgetary constraints or parameters. We have to recognise also that it is problematic for them to justify a contribution to Spanish pensions from a budget vote that has rather different policy aims. That is their problem, naturally, but I must mention this in order to clarify the reasoning which set the basis for an initial three-year agreement. There has been some play made of the fact that the British contribution tapers down, whilst Gibraltar's increases, and that, in accepting that, the Gibraltar Government could be committing itself to an

increasing liability in the future. The only reason why we accepted an increasing contribution over the three years was to maximise the interest accruing on the Spanish sub-fund during the period. What happens beyond 1988 is a separate matter altogether. I will however, Mr Speaker, explain clearly and categorically what, if we are returned to Government, will be the Gibraltar Government's position for 1989 onwards during the course of the debate on the Hon Mr Mor's motion. It will then be seen that we are not deploying tactics or clutching at straws, but simply reiterating the stand that we took when we defended the existing 3-year agreement in the debate on a motion in this House publicly one year ago, and which we spelt out before then, in our confidential discussions with the British Government.

Before I conclude, Mr Speaker, I would like to clarify a general misconception about the nature of the liability to Spanish pensioners. There are some 6,000 Spanish pensioners. Of these, only some 700 to 800 are in receipt of full pensions at current rates. The remainder have only obtained an entitlement to a reduced pension. Let no-one be misled into thinking that we are paying all, or most, Spanish pensioners the same level of pensions as are enjoyed by the majority of Gibraltar contributors. I want to lay stress on this because I very often meet people who are ignorant about these facts. Compared to Gibraltarian pensioners, the majority of Spaniards are receiving pensions at reduced rates because they have got an inferior record of contributions given the years when they did not pay because of the withdrawal of Spanish labour.

Although Spanish pensioners are treated in exactly the same way as Gibraltarian pensioners, having regard to their average record of contributions, most of them were in fact unable to make a full contribution precisely for the reasons that I stated a moment ago, namely, that their labour was withdrawn when the frontier closed and therefore they were unable to keep up a full record of contributions. The other question which is often asked is how Spanish pensioners can be entitled to so much when they only contributed at 1s 5d per week. The answer to that is how is it that a Gibraltarian pensioner is entitled to so much if he only contributed at 1s 5p per week. The answer is that there are Gibraltarian pensioners who also contributed at 1s 5p per week and who are in receipt of full pensions at current rates. Naturally, the number of these is dying out because workers contributed at 1s 5p during the period from October 1955 to January, 1968. But people get pensions out of a Social Insurance Fund in

accordance with the contributions that they made at the time when they were making them and, naturally, workers contributing 30 years ago were contributing at a rate far below the rate workers are contributing today but that does not influence in any way the level of pension to which they become entitled when they reach pensionable age. This is generally normal practice with any social security or pension scheme and, in fact, it is of some interest to note that the average pension level enjoyed by a Spanish contributor is just below £27 per week. I hope, Mr Speaker, that the House will appreciate the extent to which efforts were made to resolve the problem. We looked at ways of amending the law; we repeatedly offered to pay a lump sum to discharge the obligation; we sought derogations from the EEC; we did not seek to barter a way out with the Brussels Agreement but opted for a responsible approach reaching an agreement with the British Government which did not prejudice our position beyond 1988 and we are now awaiting technical advice and information before pursuing negotiations for the future commitment that arises. Let me make it clear that whatever the technical advice, whatever the size of the commitment, we will not be prepared to pay, and I stress, I repeat, we will not be prepared to pay or to have Gibraltar paying for the consequences of the hostile action taken by the Spanish Government culminating in the closure of the frontier. It would be the height of irony, if not irresponsibility, if the Gibraltar Government were to assume payment for all, or most, of the commitment to resolve a problem which was created by the Spanish Government and which was aimed at destroying Gibraltar economically. We have told those in London, Madrid and Brussels, and we shall tell them again. The problem is unique and our case is a totally defensible one. I hope that this motion will have clarified a number of matters and that there is no misconception about the strength of Gibraltar's stand in the past and for the future. I have deplored the statements made by the GSLP because they failed to take cognizance of the facts and to treat this matter responsibly. Having told them the facts, I will seek to explain to them, in response to their own motion, how to pursue a responsible line. Mr Speaker, I commend the motion to the House.

Mr Speaker, proposed the question in the terms of the Hon the Chief Minister's Motion.

HON J BOSSANO

I do not know what the Honourable Member opposite could have made of the behaviour of the Opposition in 1969 on this matter had he been here then but, clearly, if he thinks that we are irresponsible and opportunistic I can well imagine

he would have been even more critical of the stand taken by the AACR when it was in Opposition in 1969. I know the Honourable Member was not here, that is why I am saying I wonder what he would have made had he been here. Both of us joined afterwards. But, certainly, if he goes back and reads what happened then, he will find that they ridiculed the idea of trying to make a lump sum payment which he now says and has said previously, in fact, the AACR itself is trying to do. At the time that the Peliza administration was in office, the idea of giving away £4m to the Spaniards was ridiculed inside the House and outside the House by the AACR which was then the Opposition party. So, clearly, the governing party today takes one position which is in sharp contrast to what it did when it was in Opposition in 1969 and it remains to be seen whether they revert back to their bad old ways shortly after the election this year when once again they will occupy this side of the House. So, in fact, this motion is an attempt to put the record straight and find a solution to the problem facing Gibraltar? I think not, Mr Speaker, this motion to me is quite extraordinary because it is tantamount to a censure motion on the Opposition by the Government which no doubt the Government will be able to carry with its in-built majority. I do not know what Standing Orders say about the official members voting in censure motions against the Opposition, I believe that Standing Orders only envisage situations where they are not supposed to vote in censure motions against the Government.

MR SPEAKER

What the practical results are is another matter but certainly Government are as entitled as the Opposition is to bring motions on any matter.

HON J BOSSANO

I accept that, Mr Speaker, but I am sure you are much more experienced than I am in these matters, but I will certainly be interested if you could quote an example where the Government censures the Opposition in a motion because as far as I am concerned the parliamentary practice of a censure motion is that if it is successful, there is a convention that the Government then resigns and calls an immediate general election. We are quite happy to resign and call an immediate general election if that is what the Honourable Mr Canepa wants us to do. The analysis in the motion starts off by saying that the legislation in Gibraltar could not have been changed and the mover of the motion has ended by saying that they tried to change the legislation. Well, he has not quoted when they tried to change the legislation or how they tried to change the legislation and to my knowledge they have never tried to change the legislation. It is no

good the Government saying to the Opposition we have not told them how to change the legislation. Our job is not to tell them how to change the legislation, our job in this House is to point out that they are not doing their work properly and that there are things they could have done which they did not do and the connection between the Brussels Agreement and Gibraltar's ability to escape this liability lies precisely there. As far as we are concerned, having announced in the context of the Brussels Agreement that the Spaniards would get paid revalued pensions in January, 1986, and our understanding of the position is that they were seeking to get them paid before and that was resisted by the Government, we cannot see how you can say to somebody "I am going to pay you in January, 1986", and then change the law so as not to have to pay them. Once you tell them you are going to pay them then you are caught, Mr Speaker. Had the Brussels Agreement not been there the Government of Gibraltar could have been saying to the British Government, and it is not pointing a gun at anybody's head, they could have been saying "Look, I cannot afford to pay them and, therefore, either you tell me how this is going to be paid or I am going to change my laws so that I do not have to pay". They could have done that up to December, 1985, if the Brussels Agreement had not been there in November, 1984. They had a chance to do it until November, 1984, if they were going to accept the Brussels Agreement. We do not want them to accept the Brussels Agreement, we did not want them then and we do not want them now but the very least they would have done for Gibraltar had they decided it was a good thing to accept was to ensure that if the Government of Gibraltar accepted the commitments in the Brussels Agreement the British Government was accepting the commitment to pay the pensions. I do not think it is an unreasonable thing for a Government to do once it has decided it is going to accept something. We would not have asked the British Government to foot the pensions bill in exchange for the Brussels Agreement because we were against the Brussels Agreement and we are still against it, Mr Speaker. But if they are in favour, I do not think anybody would have criticised them in Gibraltar if they had come back and said: "We have accepted the Brussels Agreement but look what we have obtained in exchange". I do not think the Honourable Member opposite should make a big thing out of the fact that they did not do that, they have done it. I am sure their supporters would have welcomed that but they did not do it and therefore that was something that could have been done by the Government and which they failed to do to protect Gibraltar. In saying that the legislation could not have been changed, we say to the Government now that it is they who are being opportunistic and it is they who are doing a pre-electoral stunt because by putting that there in order, presumably, to try and show us to be wrong they are

effectively weakening Gibraltar's position because they are saying to the outside world that we could not have changed the legislation and if we could not have changed it in the past it must follow, de facto, that we cannot change it now. We have taken advice on this matter and the response that we have had is that the legislation could have been changed prior to Spanish entry but we are still not clear whether the different formulae that we have put forward for advice could still be used, it seems that some of them definitely could not be used, it seems that some of the others might be used. But let me tell the Honourable Member opposite what is manifestly a very simple formula. Section 10A which was introduced in this House in 1973 and amended in 1974, of the Social Insurance Ordinance, contains two clauses and in all the debates we have had in this House on the subject it is clear that the entitlement to revalued pensions arises out of the application of regulation 1408 in the interpretation of Section 10A. It is quite obvious that when Section 10A was drafted in 1973, which is when we joined the Common Market, the last thing that was in the minds of those who drafted Section 10A then was that there was any connection between Section 10A and Regulation 1408 because otherwise they would have realised that the way that Section 10A was drafted was a total nonsense because the first part of Section 10A says that in order to get pension increases from 1973 on you have to be a resident of Gibraltar and we have just passed a European Communities Ordinance which says that residence of the EEC is synonymous with residence of Gibraltar, so effectively when we legislated making it a qualifying condition that you had to reside in Gibraltar, the qualifying condition effectively should have read that you had to reside in the European Community. I am sure that from 1973 until 1976 there must be at least 20 or 30 Gibraltarians who might have been living in Germany or in France whom we do not know anything about who never claimed anything and who, in fact, were entitled to revalued pensions and were not getting them. I can tell the House that all they need to do is to remember what happened in 1985 when we changed our laws because of the Brussels Agreement and we discovered that our laws on family allowances was in fact in conflict with community law, but nobody had thought of it because in practice how many Gibraltarians or how many community nationals with children in other member states, how many cases of people claiming and being refused? But if members would look back at that debate they will recall, and it is recorded there, that I pointed out that I personally knew of examples of people who had sought to obtain family allowances in Gibraltar and had been told the children had to live in Gibraltar and in fact that is how the law was interpreted until somebody sat down and said "what happens when Spain comes in to the EEC", and when they looked at what happened

when Spain came into the EEC they suddenly discovered that there were all sorts of things we were doing which we should not be doing but which nobody has ever challenged because the odds against somebody being entitled to that benefit and claiming it and being denied was one in a thousand. So if we look at that situation we have a situation where our law in 1973 says "In order to get increases in your pension from now on, you have to reside in Gibraltar which means in 1973 you have to reside in the Common Market, which means in 1986 you have to reside in Spain. If we know that from 1973 to 1986 and we do not remove that clause, we cannot blame anybody except ourselves because what would have been the consequence of removing the residential qualification? Well, it would not have been in conflict with 1408 because 1408 says that you cannot pay one pension to people who live in one part of the EEC and another pension to people who live in another part of the EEC. But provided you pay them the same pension wherever they live it is not discriminating, so if we had not had that residential qualification there, if the law had been amended to delete the residential qualification what would have happened would have been that those Gibraltarians who qualified because of residence and not because of contributions would not have been entitled to the higher rate of pension. That is what would have happened. How many Gibraltarians are there like that. A handful? So what do we do? We pay them in our way and we are not discriminating because we have done that with elderly persons pensions and we have done that with retirement pensions. We are paying people retirement pensions and we are paying them without any law, and it is done administratively under the Supplementary Benefit Scheme and we are talking about fifty people who are getting retirement pensions. I am just giving the Government one example of one way it could have been done. Can they tell me that they tried that and they were told it could not be done? Because the advice that we have got is that it could have been done provided it was applied irrespective of nationality. And that it could have been done at any time. I am not sure whether it can still be done because that would now mean terminating payments that people are already in receipt of, and we have had this question of acquired rights before in this House and it is an area where, certainly, we are not sure whether it can be done any more or not. But it certainly it could have been done then and it could have been done any time up to 1986 as far as we are concerned. The other condition in Section 10A in 1973, Mr Speaker, was that people had to pay 104 stamps in the three years before they retired in order to qualify for the higher rate. That was altered in 1974 and it was altered in a Bill brought by the Honourable Mr Canepa who argued when he brought the amending legislation to the House as Minister for Labour that it was unfair because there might

be the odd individual who left Gibraltar at, say, the age of 61 and therefore when he got to 65 he had not contributed for the last three years before he retired and he might be in the UK or he might be somewhere else and he had not contributed and therefore it would be unfair to deprive somebody of the higher rate of pension because he was not the last two years out of the last three. So, in fact, Section 10A was amended in 1974 to remove that possible unfairness and although he says this thing has been under study since 1970 by successive Governments in all of which he has served, of course, by amending it he opened the door even wider to the Spaniards because, in fact, the amending legislation was that they had to pay for two years since 1970. If somebody was claiming retirement pension in 1988, as the law stood in 1973 before his amendment, they had to have paid two years between 1985 and 1988, where with his amendment they had to pay two years between 1970 and 1988. Well, obviously, it is much easier to meet the qualifying condition of two years out of 18 than of two years out of three. We were told by the Honourable Attorney General when we had the debate in this House about the changes in legislation in the Brussels Agreement, in the Committee Stage of the debate, that Section 10A was not in conflict with community law and provided the legal basis for entitlement to revalued pensions because the Spaniards on the 1 January 1986 would be able to meet the qualifying conditions of Section 10A, either on the grounds of residence or on the grounds of contributions made in the European Community or in Spain after entering. That is vitally important in an analysis of this problem. Vitally important, Mr Speaker, because I have already shown that the question of residence could have been eliminated legally, not in conflict with community law and at relatively little cost. We would then have been left with the requirement of 104 contributions and unless the House was misled by the statement made in 1985, the contribution conditions had to be met by Spanish workers who had left Gibraltar contributing 104 weeks either in the community, which could have been because they had gone to work in France or Germany or wherever or in Spain after entering. If they had to meet a contribution condition in Spain after entering, there is no way they could make 104 contributions before January 1988, because there would have had to be two years elapsing between entering and the time for them to make 104 contributions. None of that applies because the first part of Section 10A is residence in the community and therefore once you qualify under residence in the community, the other clause is disregarded and the advice that we have got is that because Section 10A says either residence or 104 weeks, it effectively covers everybody, it does not exclude anybody. If it had been "residence and", then it would have been a completely different situation so I think, Mr Speaker, I have clearly demonstrated that Section (a)

of the motion is incorrect and I shall propose an amendment to remove the word 'not', because the reality is that it could have been avoided by amending local legislation and the Government is wrong in saying it could not have been amended. Let me say I have just given the Government one example of the way it could have been amended. We have tested a variety of different formulae purely against the criteria of conflict with community law, nothing else, to find out if we could have done it before Spain joined. And the answer that we have been given is that the proposals we have made, some of which would have meant a more complicated method of calculating, let me give the Government an example. It is perfectly compatible with Community law to have a system of payment of pensions which gives a lower weight to a contribution the further back it is, so that in fact you belate the entitlement to a pension by a kind of pointage system so that the most recent contributions which are at a higher level have more points than contributions made 20 years ago. There is nothing in conflict between community law and that system. The only thing that is of course that the system has to be applied to everybody, the only thing that the community law says is that you cannot have a weighting system just for Spaniards or just for Frenchmen or just for anybody else, but if you have a weighting system which effectively means that a gap in your contribution record between 1969 and 1985 reduces your eligibility to a pension on the reduced scales then, de facto, the biggest group would be the group that was absent from Gibraltar before that period but, de jure, it would be irrelevant whether it was a Spaniard removed because of the Spanish frontier or a Gibraltarian emigrating to Australia and therefore it would not be in conflict with Community law. We are investigating, as I have said, whether it is possible to do that now that we know that it is not in conflict with Community law against the background of the fact that there are pensions already in payment and whether if it was introduced now we could actually introduce it for the people who are already in receipt of these pensions or whether it would have to be limited to future claimants. The second paragraph of the motion says the Government took all reasonable steps to obtain the necessary derogations from the EEC. Well, we have not said that the Government did not take the necessary steps to obtain derogations. We have never suggested they obtain derogations. What we have said throughout was that they should have taken the steps to remove from us the liability we have because of our legislation without seeking derogations. What I think the Honourable Member opposite has failed to answer in relation to that paragraph is what we questioned him on with the statement that he made publicly when he said that in fact derogations had been sought at the highest level by the British Government in 1985, that is what

his statement said and that the delay in reaching an agreement with the British Government until December, 1985, was partly due to this question of derogations being sought. Well, he certainly has not mentioned anything about 1985 in his submission today and he certainly did not mention anything about 1985 and 1986.

HON CHIEF MINISTER:

That date in the Press Release was a typing error, it should have been 1984.

HON R MOR

You were not misleading then.

HON CHIEF MINISTER

When you mislead you do something deliberately, when you make a mistake and you admit you have made a mistake you are not misleading.

HON J BOSSANO

Mr Speaker, the point is that if there is a statement from the Government saying that derogations have been sought in 1985 of which we know nothing and we come out publicly saying: "Why were we not told this before?", we do not expect to have to wait until I have stood up and questioned it. If they had come out immediately saying it is a typing error, it is not 1985, we would not have questioned the matter any more. Until this moment we were expecting to be told when the derogations were made in 1985 because we knew about the 1984 ones. We knew about the 1984 ones because we were in the EEC committee when Mr Hannay came along and informed us that there was nothing that could be done because the regulations on social security was fundamental to the Treaty of Rome and that you cannot obtain derogations from the fundamental precepts of equality and not discrimination and free movement. Those are fundamental to the EEC, so they might have sought the derogations but the information we had from the experts in the Foreign Office was that it was just for the sake of trying because it was really a non-starter. If in 1985 something different had been done, after the Brussels Agreement, then, fine. We would have had to see and certainly would have lent credibility to the argument of the Government if they had said here that even after the Brussels Agreement they had still gone to look for derogations because that would have supported their argument that even after the Brussels Agreement something could have been done to safeguard Gibraltar's position. In fact derogations were sought before the Brussels Agreement, that is why the date is important.

After the Brussels Agreement nothing was done by the Gibraltar or the British Government to get out of the liability of paying. All that has happened after the Brussels Agreement has been to try to persuade the British Government to foot the Bill and the reason we have been given today that it was the British Government's reluctance to pay for more than one year is the reason that we were given in the debate in 1986 but it is not the reason in the Press Release the Government put out. The motion, in fact, deplores the recent statement made by the GSLP. Let me say that of course we have no objection to the Government quoting the GSLP as a party because they will find that in our case anything that the GSLP says as a party in a Press Release is the same as everything that the members of the House say in the Opposition benches. We say the same things and we mean the same things. I am not very sure when you have a situation, Mr Speaker, where I make a party political broadcast and I am answered by the executive of the AACR saying one thing, the next day by the Council of Ministers contradicting what the AACR have said. Obviously, if I wanted to bring a censure motion here it would have to be two, one censuring the AACR for the things that they say and a different one censuring the Government of Gibraltar for the things that they say which are in conflict with the things the AACR say. But in their case they do not need to do a double act, one will suffice. We are here defending the position of this side of the House and of the party we represent in the House because we stand for the same things and we defend the same policies. The steps, therefore, that the Government took to obtain derogations, we have no quarrel with Section B, we think they took whatever steps could be taken and that it was a non-starter but there is no harm in trying and now that we know that nothing was done in 1985 and that in fact all that happened was, what we already knew about and what the Honourable Member has mentioned before in this House, although in fact, in this House he said 1983 and not 1984. When we brought the motion to the House in 1986, he told us that the derogation had been sought in 1983, and in the Press Release we have been told in 1985 and now we are told that it is, in fact, in March, 1984, and since we are being given a specific date, we assume that he is now talking from having checked the records. The next point, Mr Speaker, is that it is totally unrelated to the Brussels Agreement. Let us not forget that the Spaniards were seeking the application of European community rights as a condition for the implementation of the Lisbon Agreement and that the Government of Gibraltar and the then Opposition were united in arguing publicly that there should be no advance implementation of EEC rights. And when the Spaniards were seeking advanced implementations of EEC rights they included in their demands the Spanish pensions. In November, 1983, I think it was on the 15 November, 1983, the then Chief Minister, the

now backbencher, Mr Speaker, the Honourable and Learned backbencher, went along and told the British Foreign Secretary and he could explore this business of advancing EEC rights in exchange for the advance lifting of the restrictions. This was not known by the electorate when we had an election four years ago, it was revealed in the House at the time of the Brussels Agreement and it was revealed by the Government on the basis that it showed that the negotiations with Spain had not been a short term overnight thing, it had been something that had been taking place for a year. But the Government went to an election in the knowledge that they were talking to Spain about advancing EEC rights, in the knowledge that included in the Spanish demands was the question of the Spanish pensions, in the knowledge of the cost of the Spanish pensions and in the knowledge of the fact that we would never manage paying. None of this was publicly known, people were not given an opportunity to debate this publicly or vote on it. I am talking about history, this motion is about history and about apportioning responsibility. We are quite happy to debate the matter in the House as we are doing now but we brought the motion to the House in 1986 to debate this matter. The only reason why we have responded in public has been because the AACR choose to answer a party political broadcast in which we are perfectly entitled to point out our views on the Spanish pensions by setting off a chain reaction which, in fact, in a number of aspects were in conflict with the things we have been told in the House by the Government. We believe that there is clear circumstantial evidence that the room for manoeuvre of the Government of Gibraltar was curtailed by the Brussels Agreement and to that extent the commitment to the Spanish pensioners is, in fact, intimately related to the Brussels Agreement, that is to say, if the Government of Gibraltar, as I have mentioned earlier, had said they would not pay before January, 1986, which we believe they were doing, that is, the Spaniards wanted it before and they were saying no, but they said they would pay the higher rate of pension in January, 1986, I do not see how any Government morally, having agreed to pay in January, 1986, could come along in 1985 and change the laws so that they did not have to pay. What we are saying to the Government is, if in the context of the Brussels Agreement you have accepted that there is nothing that can be done to remove Gibraltar's liability, which is what you are still saying now, you say that in March, 1984, you had tried to get derogation and pay them, you have been told by the Commission that there has to be equality of treatment from day one with no discrimination on nationality and that is what you are told in March, 1984, then in November, 1984, when you come to the Brussels Agreement, you say: "Wait a minute, on the present system no discrimination on nationality is going to cost me £7m a year. I want to know who is going to pay the £7m? Because if there is not anybody with a cheque book to

pay the £7m, in fact, what I am going to do is, I am going to change my legislation so that there is no discrimination on nationality that does not cost me £7m". If we do not do that before you agree to come to this House and introduce legislation and defend the Brussels Agreement, morally, you cannot do it afterwards. I think the Government of Gibraltar was put in a situation where even if they had not thought of it before, it was too late to think of it afterwards. Let me say that the next section is totally unacceptable. The Government is saying to us that the additional cost of the commitment for 1988 estimated at £2m is a matter for negotiation with the British Government. We do not accept that it is a matter for negotiation with the British Government. We think it is a matter for the British Government, period. Because if it is a matter for negotiation with the British Government then, presumably, what you are going to negotiate is whether they say £100,000 and we pay £1.9m or we pay £100,000 and they pay £1.9m, vice versa. That is what negotiation is about, negotiation implies a willingness to pay part of the £2m. What else does negotiations mean to the Government? Does the Government really think that negotiations means sitting down and saying "I am not giving anything, let us negotiate". And a year later, you are still saying: "I am not giving anything, let us negotiate". And they are the ones who say that we are too obstructive that we are not reasonable and they are the reasonable ones and they do not point guns at peoples' head. I think that the British Government would think that the gun would be pointed at them if we passed a motion in this House saying it is a matter for negotiation with the British Government and then when we sit down to negotiate with the British Government, we say: "Well, my negotiating position is that I do not pay a penny. What is yours?". Presumably, they say: "My negotiating position is that I do not pay a penny", so what happens then? What happens then is that come October, a pensioner will come along with his pension book and goes to the Labour Department and says 'I want to collect my pension'. And what does the Director of Labour and Social Security say? "Well, look, I am waiting for the Chief Minister of Gibraltar and the Foreign Secretary to reach agreement that they are going to pay, meanwhile can you please sit down and we will find out who is meeting your pension". Is that what is going to happen? Or will that pensioner with that pension book be entitled to go along to the courts in Gibraltar and say: "Look, I have got here the equivalent of a promissory note which says I am entitled to £60 per week and they will not pay me and there are £15m in the kitty so I am suing". So while we are discussing with the British Government, payments would have to be made as the thing stands at the moment. This is no solution for Gibraltar, this is an extremely dangerous thing to say. And how is it,

Mr Speaker, I would ask the Honourable Member opposite, how is it that he is quite happy to commit a future Government to negotiating with the British Government and that causes no problems and yet on the airport issue we could not even recommend a referendum to a future Government. Here we are telling the Government of Gibraltar that they have to negotiate with the British Government what proportion of the £2m is paid by the British Government. Why do we have to do that in this case and why should we commit somebody else to doing something else. We will not go along with that. We certainly find it even more objectionable that it should be in the light of the information contained in the actuarial review because if it is in the light of the actuarial review, then all that we can say, Mr Speaker, is that the Minister of Labour has been deliberately misleading the House for the last three years. For the last three years, Mr Speaker, every time the Minister of Labour has stood up in this House to raise social insurance contributions, what has he told the House? He has told the House that the money that is being increased for social insurance contributions is for the local fund and for local pensioners and none of it is to pay the Spanish pensions, has he not said that? He is on record as having said that, year after year. Does the Government not realise that the actuarial review will show the surplus created by the contributions that he has raised and the actuarial review will not be able to distinguish between what part of that money is for local pensioners and what part of that money is not for local pensioners. What the actuarial review will say is, in the light of the fact that there is now £15m, you can afford so much, but there is £15m because of the increases that he has brought into the House, and he brought the increases into the House saying none of it would be taken into account for the payment of Spanish pensions, so we cannot allow it to be decided by the actuarial review because if it is decided by the actuarial review he will be made out to have been a liar in the commitments he has given the House. I suggest the Honourable Member opposite, the Minister for Labour, should vote against that clause even if he does not vote against the rest. As far as we are concerned we were told by the Government that the last actuarial review before the question of the Spanish pensions, came to the conclusion that we should increase contributions faster than benefits so that we created a situation, Mr Speaker, where the income from contributions was sufficient to meet the cost of benefits without having to use up investment ink, that was the last recommendation of the last actuarial review and that was the reason why the contributions were altered. They were altered and every time they were altered, we were told this will not have any effect and this money will not be used and it will not be decided on this money how the pensions to Spaniards would be made. In fact, the Honourable Member opposite in January, 1986, when we

brought the motion to the House, in defending the Government position said that he was not bothered about seeing the actuarial review because the Government's position quite frankly was that independent of the money that there was in the kitty they had a position that it was a question of not having a liability or a moral obligation to meet these pensions. That is what the Honourable Mr Canepa is saying. He said, 'I am frankly not worried about seeing it and even after today's debate I am not going to ask for it'. Well, he was not going to ask for it after the January, 1986, debate and now he is telling us that the negotiations have to be in the light of the information contained in the actuarial review which, presumably, he has changed his mind about and he is now going to ask for it because if he does not see what is in it then he cannot carry out what Clause 8 of his motion says. We now come to the last part of the motion which talks about the commitment beyond 1988 and again he says that it is a matter for negotiation with the British Government once the report of the Joint Study Group has been submitted. Well, on this we differ and on this we differed in 1986, and the Honourable Member opposite cannot simply brush aside the stand that the GSLP is taking on this matter as understandably opportunistic and pre-electoral because it is a virtual word for word repetition of what we said in January, 1986, and in January, 1986, even the Honourable and Learned Chief Minister of the time was not predicting an imminent election, that did not happen till 1987. So it was not that we were doing it in 1986 because we were expecting an election in 1986, and we are not doing it now because we expect an election now. We are saying the same thing now as we said then. We told the Honourable Member in 1986 that he should have changed local legislation. He thanked us, Mr Speaker, for giving him an opportunity to round up on behalf of the Government and he did not question that point, he did not challenge it, he did not say in 1986 the legislation could not have been changed as he is saying now. We told him that in our view the British Government should have been told quite clearly that not a penny of local money should have been put, and what did he say. He said that the Government considered that there was a moral argument for paying 700 people who reached retirement age in 1969 and that the cost was £1½m. Fine, this is what we are seeking to do with the other motion. As far as we are concerned the other motion is quite simple, the other motion is a statement of policy which we have been challenged by the AACR to make. It was the AACR in their communique who said that we should come clean and say where we stood. We have no problem, we said it in 1986, we are saying it now. Not a penny above the £2½m. That is our position. They are the ones who have to come clean now and tell us whether they are prepared to say where they stand or whether they are going to say it is a matter for negotiation after the report of the Joint Study Group, that is

coming clean? Well, I suggest that the AACR should then come out with a communique saying the Government of Gibraltar should come clean, if that is their response of the situation. I therefore cannot understand how the Government can in that analysis come to the conclusion that anything that we have said in the news media is confusing and misleading to the public because, in fact, Mr Speaker, everything we have said in the news media is something that we said in January, 1986, when the mover of the Motion replied on behalf of the Government after we said it. He did not consider any of it then misleading or confusing to the public. As we have pointed out at least one of the elements in the statement that he made which was the typing error of 1985, we found confusing and misleading because we thought that that meant that there had been a subsequent attempt to change the situation before December, 1985, when agreement was reached with the British Government. When that agreement was announced by the Government of Gibraltar, it was described as one which was a source of great satisfaction to Gibraltar, the £16½m. We challenged it then, we challenged that analysis then. It is not that we do not think that the Government has not got the right to be self-congratulatory about what it obtains. Of course, they have the right to be self congratulatory and we have the right to criticise them for not doing enough. And that is not to be irresponsible, and that is not something that should be deplored, that is what parliamentary democracy is about? So what is the Government saying, that they do not want to have an Opposition in Gibraltar, that the Opposition in Gibraltar should not disagree with the Government? That the Opposition in Gibraltar is not here to question and expose the shortcomings of the Government? Is that how they behaved when they were in the Opposition? Is that how they intend to behave because if that is how they intend to behave then, certainly, we shall have a very easy ride when we win this election when they are in Opposition. We expect them to do a job conscientiously and honestly and in fact to find fault with the things that we do in Government and tell us where we are wrong, it is a perfectly legitimate role and therefore it is complete nonsense for the Government to censure the Opposition and the party that we represent on this matter. I am therefore, Mr Speaker, moving a series of amendments to the Honourable Member's motion which will seek to put the record straight. In Section A, as I have already mentioned, I propose to amend that Section by the deletion of the word 'not'. The first section says that the liability could not have been avoided by amending local legislation. Our advice is that it could have been amended by amending legislation and, therefore, the first section of the motion is inaccurate, factually incorrect. The Honourable Member has said that it was attempted and he has not said when or how it was attempted. He wants us to

tell him how it could have been amended. Well, we are giving him one example and we are telling him that there are more than one. He said that they attempted it, let him tell us when they attempted it and how they attempted it and on what grounds it was brought up and by whom. Because, certainly, I can tell the Honourable Member opposite in all the time that we were on the EEC Committee when this matter was discussed, it was never considered and the committee, if the Honourable Member will recall, stopped functioning because we pulled out of it when they went ahead with the Brussels Agreement on the grounds of having agreed to advance EEC rights, what were we doing sitting in a committee with terms of reference designed to avoid having to grant EEC rights in 1986, and here we were finding ourselves with the Government of Gibraltar agreeing to advance them to 1985. But before that point was reached or the Brussels Agreement, we were not told in that committee anything other than that the explanation by Mr Hannay that we could not have legislation here which effectively was in conflict with regulation 1408 and consequently whatever we did here had to be compatible with 1408. And it is in that light that we are talking about, we are not talking about derogations and therefore we are not seeking to alter Section B. We accept that the question of derogation was investigated and the necessary steps about obtaining possible derogations were taken and the chances were very, very low and we were told that they were very low. We do not accept that the commitment to Spanish pensions is unrelated, on the contrary, in our view, Mr Speaker, the commitment to Spanish pensioners is related to the Brussels Agreement and limited the Government of Gibraltar's possibilities to avoid this liability and we shall amend that accordingly. In Section D, we propose an amendment which would effectively say that the additional cost of the commitment for 1988 estimated at £2m is a matter for the British Government and not 'is a matter for negotiation with the British Government', and we certainly would want to delete all reference to the actuarial review because if it is going to take into account the actuarial review, it has to take into account the strength of the reserves created by the increased contributions which we were promised by the Minister for Labour that would not happen and we voted in favour of those increases on the basis of that promise. I think that reference would effectively be against the commitment that he gave, which I am sure he gave in good faith at the time. As far as E is concerned, Mr Speaker, we do not think that it should be a matter for negotiation with the British Government once the report of the Joint Study Group has been submitted. We think that the commitment for 1988 we must say is a matter for which Gibraltar cannot accept responsibility and leave it at that. We cannot accept the responsibility beyond 1988. We have not

got the money and that is what we are, in fact, saying in the other motion. So if we are saying that the commitment beyond 1988 is a matter for which Gibraltar cannot accept responsibility, that is compatible with our stand that once the £4½m is finished that is the end of the story as far as Gibraltar is concerned. Mr Speaker, in the final clause, obviously, we cannot accept that the recent statements have been misleading and confusing to the public, in fact, presumably, if there had not been my original statement regarding the pensions we would not be debating the matter today here, so since we are putting forward amendments which are not seeking to convert this into a censure motion but as I have said to the Government if they wish to give us a commitment, here and now, that the House will be dissolved today and an election would be called, then we are quite happy to go along with that but if that is not the case then we think this to be treated as a motion on the basis of the factual accuracy of its contents and therefore we would seek to substitute for the word 'deplores' the word 'welcomes' the recent statements made by the GSLP in the news media as helping to inform the public of the true facts. I will now move the amendments of which I have given notice.

MR SPEAKER

Can the Honourable Member give me the amendments?

Mr Speaker proposed the question in the terms of the Hon J Bossano's amendment.

HON CHIEF MINISTER:

Mr Speaker, I think it is a matter for regret that the proceedings of this House are interrupted by more than 5 minutes. I think it shows some lack of courtesy for Members of the House that that should happen whilst the Honourable the Leader of the Opposition actually writes out his amendments. Surely, he could have brought the amendments to the House this morning and have them typed and circulated to Honourable Members.

HON J BOSSANO

I wanted to listen to what he had to say before I amended anything.

HON CHIEF MINISTER:

Mr Speaker, although I am not standing, I am not giving way. I think this is not conducive to good business, instant Opposition. If that is how they would conduct themselves in

Government, instant Government, I shudder to think what is going to happen. Of course what the amendments attempt to do is naturally to change the whole meaning and thrust of the motion and I will reserve my position to reply in detail if I feel that that is necessary when I exercise my right to reply to the points that he has made. But there is one matter which I consider to be rather more fundamental and which I do want at this stage to reply to in detail and that is the amendment that appears to be most innocuous which is the one in paragraph (a) where he seeks to delete the word 'not' and thereby asserting that we could have avoided, by amending local legislation, the liability to Spanish pensioners. He says that they are doing this based on legal advice that they have taken. We have taken legal advice on this matter over the years, not just from within Gibraltar but from outside and it is a nonsense, I think, to say that the legislation could have been changed prior to Spanish entry. I say that because what you cannot do when you amend social security or social insurance legislation is that the effect of that should be contrary to EEC social security regulations. When they are contrary to EEC Social Security Regulations then those regulations are overriding and they will therefore nullify the effect of what you are doing. In 1983, when all the problems of Spanish accession were being discussed with officials from the Foreign Office and with the International Division of the Department of Health and Social Security in the United Kingdom, their view was abundantly clear that the obligation to pay Spanish pensioners at current rates as from the date of accession was inescapable. It was they who advised that it was quite in order to revoke the provisions of the non-contributory Social Insurance Benefit Ordinance before the date of accession, the one that made provisions for the elderly persons pension, in order to avoid any possible claims from previous Spanish workers for benefits. They said that this would not create any problems because the scheme was non-contributory and the Spaniards had no legal entitlement to benefits but the same, however, did not apply to any change in the Social Security Ordinance itself because it is contributory, because people have earned entitlement under the Statutory Scheme in respect of the contributions that they have made over a period of time and that therefore any attempt to amend this legislation with a view to depriving Spaniards of the rights they would acquire on accession would be regarded as discriminatory. So local legislation could not have been amended to minimise the effect of Spanish accession on pensions. It would have been impossible to classify Spanish pensioners any differently from other Gibraltarians or any Community nationals who paid the same level of contributions during the same period of time. The Honourable Member said that after 1973, because of the amendment that I myself introduced during 1973, Gibraltarians, let us say a small

number of them in Germany, were entitled to revalued pensions. Quite so, because residence in Germany or in any other EEC member state was synonymous with residence in Gibraltar. But that would not be the case for Gibraltarians who were resident in Switzerland, in Australia, in Austria, either then or now. In so far as the Spaniards are concerned between 1973 and the end of 1985 their position was likewise but then, of course, after 1985 residence in Spain is synonymous with residence in Gibraltar. Had we revised or had we removed the residential qualification, all that you could have done would have been to pay everyone at the same rate whether they were in Gibraltar, in the EEC or in Spain and you could do that as I have explained was done in the case of the elderly persons pension because that was based purely on a residential qualification and not entitlement as a result of a contributory scheme. Once people have earned a statutory entitlement, then the view that the Government has consistently taken based on the legal advice that it has received, is that it could not stand for the test of challenge in the courts either in Gibraltar or in Europe. The amendment about the two years out of three of contributions after 1973 was specifically framed with a secondary objective of ensuring that, for instance, Moroccan workers, would be entitled to future increases in pensions. Let it also be said, Mr Speaker, that the amendments which we brought to the House in 1973 had the full support of the House at the time. Of course no Opposition has the duty to tell the Government how to do things, but what no Opposition which supports a measure can do is to avoid responsibility for voting for that measure and the Honourable Member himself, the Honourable Mr Bossano, consistently did that throughout the period in question and you cannot years later with what is the benefit of hindsight to him or he himself shirk responsibility for the manner in which he himself voted in the past. The question of the commitment to the liability to the Spaniards being unrelated to the Brussels Agreement, Mr Bossano said that at the time, in November 1984, what we should have said to the British Government is, 'who is going to pay?'. The result has been, in effect, immaterial because all that we have paid is what the Spaniards contributed, that is all that Gibraltar will be asked to pay during this three year period. Therefore, the position remains the same. You still have the position that you had in November, 1984, arising again during the course of 1988, who is going to pay for the remaining liability and you can take a stand in that situation without any difference, without any detriment to the Brussels Agreement because in any case the Brussels Agreement was overtaken by actual Spanish accession in 1986 and therefore everything that the Brussels Agreement brought about in February, 1985, would have happened in January, 1986, and therefore the liability to the Spanish pensioners would have

been a reality regardless of the Brussels Agreement. With regard to the additional £2m cost during 1988, of course it is a matter for negotiation, and there is no question of a willingness to pay part of it because you are prepared to negotiate because the reality is and the main reason for this deficit is the fact that the information, the number of Spanish pensioners could not be that accurately assessed at the end of 1985. It was impossible and now that the information is clearcut because it is known, we are fully entitled to go back to the British Government and say; "Look, had we known then what the position was, if the figures had not been x Spaniards to whom we have a liability but x plus a thousand, in the same way as you took x into account in arriving at the contribution that you have made for the last three years, you would have taken x plus a thousand into account, and there is no question that the British Government would have shirked that. Our contribution would have remained the same, £4½m, but there is no question of weakening our position at all, and in any case.....

HON J BOSSANO

Will the Honourable Member give way on that point.

HON CHIEF MINISTER:

I think the Honourable Member can now exercise his right to reply to the actual amendment itself and will have an opportunity to do that shortly because speakers on this side of the House are going to, by and large, concentrate their contributions during the course of the general debate and we will have very little more to say on the amendments that he has put. Again the additional £2m which will fall due as from October, 1988, for the last three months of 1988, is inevitably going to form part of the negotiations about what is going to happen at the end of 1988, so of what greater consequence is what happens after October, 1988, for the three month period October, November, December, than what is going to happen after January, 1989, when the position is much more serious. The Gibraltar Government could take the view in January, 1989, that because it has not reached a satisfactory agreement with the British Government, it is not going to pay, with all the consequences that that may have. Alright, it does not pay and then we will see what happens. The matter will be fought in the court or what have you. That position can also be adopted in October, 1988. You do not give people for that reason books for the nine months and we will talk about the other three months in October, so because the two are going to be inevitably the two issues of October 1988 and January 1989, the two are going to be discussed and approached together over the next few months, there is no

need to separate the two and the position is in no way bigger. Obviously, Mr Speaker, the position of the Government on the amendments is that we will be voting against them in order that the effect of our motion is not nullified.

MR SPEAKER

Are there any other contributors to the debate on the amendment? Does the Honourable the Mover to the amendment, the Leader of the Opposition, wish to reply on the amendment?

HON J BOSSANO

I regret to say, Mr Speaker, that the Honourable Member opposite has made no attempt to defend the position of the Government in this issue in relation to any of the arguments that I have put.

MR SPEAKER

He has certainly said that he will be making a contribution if he considers it necessary.

HON J BOSSANO

He has brought the motion to the House, we have listened to his arguments, we have moved amendments and it is not instant opposition because as far as I am concerned, no doubt, if they wish to amend our motion they will do what they always do which is to produce instant amendments. I have yet to recall one motion that I have brought to this House since 1972 where the Government gave me prior notice of any amendments they intended to move, they have all been instant, so I do not know what he is moaning about. They do it all the time, Mr Speaker. It is just the first time that the Opposition is doing it because it is the first time since 1972 that the Government has moved a motion against the Opposition. There is no precedent for it and obviously we wanted to listen to what he had to say before we moved any amendments and the amendments have been moved by me after listening to his arguments in support of what has been put. Let me say that in saying they are going to defeat our amendments, the Honourable Member opposite has not explained why and I cannot believe that with his background in this particular legislation it is out of ignorance or that he does not understand it. It is true to say that he brought the legislation here introducing Clauses 10A in 1973 and 1974, in fact, the 1974 amended legislation was passed without debate, nobody spoke, it was just passed on the basis of the information then available to Members of the House which clearly in any

situation is inferior to the information available to the Government and the Government presented the 1974 change as quite an innocent move and he has now mentioned that it was to protect the Moroccan workers. It is not just a question of benefit of hindsight. The Honourable Member tells us that they are going to vote against the removal of the word 'net' and they are doing so because innocent though it may seem, effectively it negates what they are saying. That is right, we are saying they are wrong. The reason why we are saying they are wrong is because they themselves are admitting it, in their defence of their position. Has not the Honourable Member just said that he brought legislation to this House amending the Social Insurance Ordinance, introducing new qualifying conditions in 1974 after we were in the European Community. Does not Section 10A introduce new qualifying conditions, yes or no? He says, yes, it introduces for the first time a requirement that you have to pay 104 stamps in order to be entitled to revalued pensions, that was done after being in the EEC. If it was done in 1974, it could be undone any time after 1974 or new conditions could be put otherwise what he did in 1974 was in conflict with community law and we are being told it was not in conflict with community law. He has said that we cannot bring in any legislation which conflicts with Regulation 1408 because 1408 is superior to national legislation. We know that, we accept that, that is why we are not quarrelling with the question of derogations. We are not disputing the superiority of community law. What we are saying is that just like in 1974, he was able to bring a Bill to this House saying 'people must either reside in Gibraltar and for Gibraltar 'read European Community', although that was not appreciated at the time by anybody in the House or mentioned, but for Gibraltar read 'EEC'. If you do not reside in the EEC, you then have to pay 104 stamps in the EEC, because it is 104 stamps in Gibraltar and for Gibraltar again read 'the EEC' so under the community requirements for aggregation and apportionment, which is the methodology used by Member States to take into account contributions throughout the community, what the Government did in 1974 was to introduce a limitation for persons not residing within the EEC or for persons not contributing within the EEC to revalued pensions. Suppose the residential qualification had not been introduced in 1974 or suppose the residential qualification had been removed in 1985, it would have meant that people who did not qualify because of their contribution record would not have got the pensions. We are saying to the Government that if they go back and get professional advice, they will find out that there is nothing incompatible with community law in either not having introduced that criteria in 1974 or in having removed it subsequently, and the effect of that would have been that then the requirement that would have

had to be met would have been 104 contributions under the legislation of a Member State. According to the statement made by the Attorney-General on behalf of the Government on the 15 January, 1985, he said; "In my view the period of insurance for residence in EEC countries or in Spain after accession. That is the important thing which is not the answer. What is the point of standing here and saying to the Government; "That is a vitally important thing", and it is completely ignored, as if we had not said it. We are saying, if it is in Spain after accession, then how could people count their contributions in Spain before January, 1986. No answer from the Government. What is the Government's answer to that, because if the Government's answer to that is the answer we were given in January, 1985, then we are saying to the Government had they removed the residential qualification, that in itself would have been enough because in 1986, people would not have been able to count their contributions within Spain, they would have been able to count their contributions in UK or in France and if a Spanish worker left Gibraltar in 1969 and did two years of work in France and paid 104 contributions in France, he could then come along to the Labour Department and produce documentary evidence of his French insurance record and that would enable him to qualify for revalued pensions. That, in law, he was entitled to do before Spain went in, let us be clear about that, because we have already accepted, the Government has already accepted our contention that if Section 10A was not in conflict with community law then Section 10A had to be 104 contributions in Gibraltar or anywhere in the rest of the EEC and it does not depend on the nationality of the individual, it depends on whether the individual is within a Member State or outside a Member State and therefore a Spaniard contributing in France is entitled and a Gibraltar contributor in Australia is not entitled, nothing to do with nationality, that is why it is non-discriminatory, and therefore people were entitled to claim prior to joining the EEC on the basis of their EEC contributions, but is the Government telling us that the 4,000 Spaniards that have claimed revalued pensions have been asked to produce their insurance records in community countries? It is news to us if they have done it, we certainly have not heard of it happening. The Government is simply saying they could not do it and that they tried to do it. We tell them to tell us if they tried to do it, as they claim, when did they try to do it and how did they try to do it. What was the amendment that they tried to make to the local legislation which they were told they could not do. Their answer is that they have been told by the International Department of the DLSS in the UK that we could not have legislation here which was in conflict with community law. We know that, we are talking about legislation that is not in conflict. Are they saying that it is impossible to amend the Social Insurance Legislation without being in conflict? Of course it is not impossible, we did it in 1974, how can it be impossible. So if in 1974, they came along and they said; "You need 104 contributions

to qualify for revalued pensions", why was it possible to have a condition of 104 and not a condition of 500, or a condition of a 1000 or of any other figure, why, what is the answer? They have not got an answer. What they have got is a majority of one until the end of their term of office, and that is all that they can do, what they can do is what they always do in this House, they say; "We are right because we say we are right and the proof that we are right is the fact that the majority of one enables us to do it". They do not attempt to answer any of our arguments, they do not intend to give us any rational explanations and therefore, Mr Speaker, in a way, what is a negation of respect for this House is not to produce an amendment to their motion after listening to them but we spend an hour here and it is like talking to a brick wall because it goes in one ear and out another. That is what is a waste of time because to try and persuade this Government by rational analysis of the problem is a complete waste of time. This is lack of respect for the House, the House should be a forum where we can discuss and if we put an argument that they have not heard before, they come back and they answer the argument we put and they have not done it and because they have failed to do it, what they will be exposing themselves is for the reality of the accusation that we make against them, that they have failed to take the action that could have been taken, they have failed because they did not realise it at the time or because they were ill advised or for whatever but they did not do what could have been done and whether it can still be done or not we are not entirely sure of but, certainly, if it can still be done we will do it and it is not a question, Mr Speaker, of saying what difference does it make when it comes to the other point which again the Honourable Member has attempted to defend and failed and the one that I wanted to interrupt him on to give him an opportunity to clear up the conflict between what he is saying now and what he has said previously in the House. That is the only reason why I wanted to interrupt him, to give him a chance to clear up a conflicting statement that he was making. Of course he has got the final right of reply or somebody else can answer it. The reason why the £2m for 1988 is different is very simple. When the Government debated this here in this House in 1986, when they announced the deal with the UK, and we are not talking about hindsight, I am talking about two years ago, before it happened, we asked the Government what is the position if the bill is more than £21m, that was not hindsight, they had not paid anything yet. We were pre-empting the problem that we have got today. And what did they say; "We are discussing with the British Government". We cannot be told two years later, "we are discussing with the British Government in October". That is what we were told in January, 1986, that they were discussing with the British Government and here we are two years later still in the same position. We asked them at the time; "Is the £164m a proportion of the bill. Is the British Government committed to pay 70% or 80% and the answer was, no.

We asked then; "Why is it then that they give us £16½m and if it is more than £16½m it is more and if it is less it is less", and the answer was, yes. Our understanding of the position of the British Government is that the British Government considers it has an agreement. We have said this publicly in our Press Release. The Government has not given us an answer on this one. Are we right or are we wrong? Are we misleading the public in saying that or are they misleading the public in withholding that information? Are we right in saying that the British Government holds the view that they have an agreement with the Government of Gibraltar that expires in December, 1988, and that they are committed by that agreement to see whether they make a contribution and if so how much the contribution will be from 1989 on, but that the agreement that they have with the Government of Gibraltar to which they are holding the Government of Gibraltar is that before December, 1988, they put up £16½m and if the situation had been that the bill had come to, say, £20½m, suppose the situation had been less than estimated, from what we understand of the British Government's position is that the £16½m would still have been provided. They would not have come back and said; "Since you only needed £16m, I am keeping the other £½m". So the British Government is saying; "I am giving you £16½m and you are footing the rest, which is estimated at £4½m but whether it is more than £4½m or less than £4½m that is your problem." We want the Government to tell us whether we are right or we are wrong, whether that is the British Government's view or it is not the British Government's view. No good saying it is a matter for negotiation when they already know that the position of the British Government is that it is not negotiable. And if that is not the position, we have said publicly that we understand that to be the position. We certainly think that it is consistent with previous statements so it is not a question of putting it all in. The only reason why the Government wants to put it all in is because they have been caught in a situation where there is a £2m shortfall and it is all very well for the Honourable Member opposite to say come October whoever is there gives instructions to all these Spaniards that they do not get paid. And then let them sue us. But have they not taken legal advice on that? Because the legal advice that we have got is that unless we can change the legislation which they say we cannot before October, come October the Spaniards will be able to sue effectively and win for non-payment of pensions because there is money in the fund and even if the money in the fund was exhausted the Social Insurance Ordinance says that if there is not enough money in the Social Insurance Fund, there has to be advances from the Consolidated Fund, so what are they talking about not paying. The only thing, of course, is that if they use up all the money for Gibraltar before then there will not be any money in the Consolidated Fund either. Mr Speaker, the more they try and cover up the mess that they have made in this area as they have in so many other areas, the more they stand exposed and, no doubt, the greater the problem

that the people of Gibraltar will be faced with in trying to rid themselves of the mess that they leave behind.

Mr Speaker, then put the question and on a vote being taken the following Hon Members voted in favour.

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The following Hon Members voted against.

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammitt

The following Hon Member abstained.

The Hon B Traynor

The following Hon Member was absent from the Chamber.

The Hon E Thistlethwaite

The amendment was accordingly defeated.

MR SPEAKER

Perhaps this is an opportune moment to recess until this afternoon.

The House recessed at 1.00 pm

The House resumed at 3.45 pm

HON SIR JOSHUA HASSAN

In the first place, I would like to say that my colleague, Mr Canepa, has dealt with the main matters the historical background of this to which I bear witness having regard to the fact that I was so intimately connected with the matter throughout the period and he has stated the facts, they have been researched and having done the research I bear witness that the position and the effort made in connection with our attempts to find a solution long before had been made without results and there are one or two other points that have been made by the Leader of the Opposition which I would like to mention. In the first

place, I cannot see how this debate can weaken our position. I thought Hon Members opposite were very much in favour of open Government and when a matter of this nature is aired, I think it must be to the benefit of everybody. What can we lose by discussing the matter of stating our facts. We are saying nothing new to the British Government because all along, the whole time since this problem arose, we have disclaimed responsibility for this heavy burden that arose as a result of Spanish accession to the European Economic Community. There are two aspects of it and the British Government naturally says; "Your legislation compels you to pay". Fair enough, but we say our legislation gives us the burden because you in the exercise of your sovereignty have agreed to pay to enter into the Common Market and therefore that is the direct result of your exercise of your sovereign right of concluding treaties with other countries and as a result of which Gibraltar suffers and if Gibraltar suffers as a result of an action that you take in the exercise of your functions of foreign affairs in general, we should not be made to pay more than is fair and reasonable and the outline of what is fair and reasonable has to some extent been stated by my colleague and we have said it before, but he has already indicated that in the next motion there will be an element of further explanation of what we consider to be fair and reasonable. I really do not think that we can lose anything by airing this matter and at least putting it in the concept in which it should be. Certainly nothing that is said here can be of any surprise to anybody, not in the Foreign Office, not the British Government, not, I presume, in Spain so long as the facts are stated correctly. Again, I do not think that it should be taken, or that there should be any compunction about whether this is a vote of censure on the Opposition. It is not a vote of censure, the Opposition feels censured because the motion is geared to the fact that they have misrepresented the situation. They say, no, naturally, that is why we are discussing the matter, but I think my colleague has made a case in that respect which clearly states that. The other aspect of this, too, is the question of the legislation. At the time of the discussion of the Dockyard, Mr Hannay was described to us by the Prime Minister as the man who knows everything that there is to know about the European Economic Community. They sent the top man here at the time and I do not think that he was limited to listening in respect of Europe, he listened to the Government, he listened to a wide spectrum of the community, he listened to the Chamber of Commerce and he listened to the Opposition, so that the feeling of Gibraltar, the general feeling, might well be considered to be unanimous. The point is that, of course, in the end the failure to carry out what we wanted him to carry out landed in the desk of the Government and not of anybody else who had made representations because nobody else has the responsibility to cope with the situation. We have consistently adopted a very clear and firm stand on this matter, even the moral and political issues involved, as well as the financial enormity of the problem. We never

advertised what we were doing and the efforts that we were making loudly to gain popularity, we never chose to take a strong line because we were able to have a showdown with the British Government or because we wanted to take some form of revenge on the Spanish Government. We looked at this issue in terms of the huge financial burden which was being put on the Social Insurance Fund and, in effect, on Gibraltar to resolve a problem which at its root was created, and whilst I said that it was the responsibility of the British Government, as between ourselves and the British Government, of course the root of the problem lay in the Spanish Government having withdrawn the labour force and having closed the frontier. But that is a matter of responsibility between the Spanish Government and the British Government. We have no representative in Spain, we have no function in our foreign affairs other than to advise in matters that affect Gibraltar. In the wider spectrum that was a matter for the British Government but in fact the root of the problem was the Spanish Government which was of course at that stage limited but it was later magnified no end by Spain's entry into the Common Market helped and approved by one of the Member States. And not only approved but, in fairness, in the general concept of Europe, welcomed. The question of getting Spain and Portugal into the Community following the political changes in Spain was something in which in the general concept of Europe all free nations were interested. That it carried with it a number of problems, of course it did, and one of them is the one that we are discussing now, and that some people were made more victims than others in the process, that is also true and we were the ones that were most the victims of it as we are discussing now though, of course, we still say that that was the responsibility of the British Government. On the other hand, we could not ignore the right of individual contributors, the Spaniards who have been the victims of the hostile tactics of the fascist Government of Spain and therefore it is unique, I think, you cannot separate the political from the social nature of the problem or from the financial consequences. It is regrettable, most regrettable that the Spanish Government, although showing a measure of understanding as Sr Moran did at the Geneva Conference, he said; "I know that this is a consequence of our joining Europe", and I think it is quoted generally, and it is known, I am not revealing anything that was not made public, "I know that it may be too heavy a burden". I can assure Hon Members opposite that we made the best of that in our discussions with the British Government, that even the Spanish Foreign Minister had stated at Geneva that he realised that this brought the increase in pensions, something which he thought I think his remark was, "it may well be beyond the means of the Gibraltarians". That kind of sympathy is very good as an argument but it does not produce anything in respect of the solution of the problem unless, of course, they had been prepared at some stage to take an interest. They took a very detached interest to say; "Well, that is the responsibility of the British Government and the responsibility of our entering". I think anybody who is an observer of the

Spanish media is well aware of the expectation that they have of their membership. One would have thought by the way in which the millions are bandied about on television that they have put ten of whatever it is and they want to get twentyfive out of it and yet they say that they are suffering from being members of the Common Market. As I said, the Spaniards or at least the Spanish Foreign Minister at the time showed a measure of understanding and sympathy for the problem but they have shown no intention, no magnanimity, not even an approach, an understanding of the situation beyond those passing remarks. However, despite all the difficulties, it was not an easy fight and I would not like certainly for the next few years to reveal some areas of conflict of the last stages of the negotiations leading to the final offer of £16½m which was then considered to be what was required after we put in the £4½m of the Spanish sub-fund. My colleague has referred to a statement made in the House of Commons by the Minister of Overseas Development, Timothy Renton, where he had been magnanimous enough of offering us a year and later on that was increased. I suppose a year was considered to be £7m. That was magnanimous, they increased later on to £9m until something else happened and then in the end it was £16½m. I can assure Members opposite that whatever point of view one may take as to that, to get £16½m of British tax payers money into the fund is no easy matter however much we think they have to give us and however much they may be justified in giving us. Anyhow, that was a situation of an impasse, it was, as always, an interim arrangement for three years. I think, everybody thought the question of the £2m is something completely separate which has come up in the practical application but if we cast our mind back to the days when we were negotiating, in fact, the figures were provided, presumably, by our own people, we were all in the honest belief that the pensions were worth about £7m a year 7 x 3 is 21, we have £4½m or £6½m in the balance. I do not know what would have happened if it would have been £6m or £8m but that is how it happened and it is only now in the last nine months or so where it has become clearer that it is not enough. When my colleague, the Chief Minister, mentioned the question of negotiation, first of all, if you have to discuss the matter with somebody else and particularly if you are expecting money from them, you can hardly go as he says with a gun and say: "We want the rest of the money for the pensions". We have to start discussions. As Members opposite know, at the time of the three year agreement, it was decided that there should be an enquiry into what was going to happen after 1988 and that has been going on for some time. In fact, I think a report is due any time, but whatever may be recommended there, there was this commitment to say "Well, this is a three-year interim arrangement, what is going to happen in the future?". Those are the negotiations and also in this situation of the £2m difference it is bound to be the same. You just cannot go and call at the Foreign Office and say: "Look, we are short by £2m, come back next week and collect it". As the Honourable Mr Canepa said, the manner in which the money was

offered was really done, there was no intention to increase the commitment, the commitment was there of how the £16½m was contributed, how it was tapered off was done at our suggestion because the way it was done was in order that you could get the most out of the payments that were made, I think six monthly, and we could get some interest on that. There was no hidden motive behind the way in which the money was given. There was £16½m and we got it tapered in the best way that suited us and not for the presentational purpose of the British Government washing their hands of the problem. That is a fact which I have lived through and which I can bear witness. It was in our interest to get the highest amount at the beginning in order to be able to get some interest as the payments were made because all the money was not being dispersed and this provided some interest which helped the fund. Anyhow, despite the difficulties of all those situations, in the end, up to now, the British Government expressed their sense of honour and commitment by producing the balance of what we said and this is something that has to be remembered, the agreement was made and they contributed on the basis, difficult as it was and limited in time as it was, the three years was accepted that we were putting the money that we only said we would put, £4½m there was nothing more that we were prepared to put into it and the fact that they paid the difference was an indication that at least they took note of what we were prepared to pay and paid the difference. What was very disappointing in another sense is the view taken by the European Economic Community in 1983 and 1984. Although in objective terms one must accept their rigidity in insisting on equality of rights and non-discrimination, I have always thought it difficult to accept that they should have remained so silent in seeking a solution. I am talking about the European Community as a whole. How many problems have the formation and the development of the EEC created to individual Member States over the years? How much money, by the billion, is poured in to find solutions to check imbalances to compensate. When Member States such as France and Spain quarrelled over trade quotas the EEC compensated, and look at the recent problem over fishing rights in Moroccan waters, how quickly the Community has provided some relief to the Spanish fishing fleet. That is what the Community is there for, to avoid the imbalance, to prevent or to cure temporary imbalance the longer term view of the higher principles and ideals of the Community. Every time there is an apparent injustice, as Lord Plum said, "This is the price that you have to pay for the benefit of all", leaving us waiting there for half an hour. The question of approaching the EEC on this matter is covered in the terms of reference of the Joint Study Group and I think that that is something that will have to be explored again and quickly. It is the sort of problem that calls for a European solution particularly if there is to be credibility in the spirit and the thinking behind the creation of a united Europe. Is it not better to try and argue it out again and again with the EEC than to run the risk of having the EEC itself determining responsibilities because the

matter ends up before the European courts as it probably will have to if no solution is found. I refer to this because I have always held the view that in future negotiations and discussions with the British Government we should press the EEC lines promptly. We have done so but I think that we should continue to do so. The door was shut in 1984 by the EEC and we have to conclude an agreement with the British Government. I would not be surprised if officials in London, Madrid or Brussels tried to push it back squarely into the ambit of British/Gibraltar relations to sort it out but we must put the necessary political pressure and then let us put it to the test what the British and the Spanish Government have to say on the matter and I think in that respect the concern expressed by all sides whatever the attitude of any particular side in the course of the debate, might finally be of benefit. Just one more point and that was on the question of legislation. I do not know and in fact because it was not felt that this matter would take part of the debate and I am not talking for the Government, Mr Speaker, or rather for the legal side of the Government, that is the Attorney General's business, I think we have had his advice before, but in my view, my personal view, any attempt at legislating to try and avoid our legal responsibility locally would be found to be ultra vires the European Community, whether it was done now or whether it was done before. Every attempt to do that would have been found to be in breach of the regulations regarding the responsibilities and the directives of that. Mr Speaker, there are a number of points that have been raised by the Leader of the Opposition, which I am sure my colleague and Leader, Mr Canepa, will dispose of in his reply. Thank you.

HON J E PILCHER

Mr Speaker, I feel that there is not a lot more to be said on this particular motion. I think it was covered, certainly by the Leader of the Opposition this morning. However there are small points that need to be made in the contributions of the Honourable and Learned Sir Joshua Hassan and certainly a couple of points which I would need to make to highlight the confusing and misleading events in this House which further confuses and misleads the people of Gibraltar, Mr Speaker. I think the Honourable Sir Joshua started off his contribution by saying something about whether we did not like the debate whether we did not like to have to debate. I did not really get the point that he was trying to make. Let me just say that, certainly, on this side of the House, Mr Speaker, we believe totally in parliamentary democracy and debate and in fact, it is a question that sometimes frustrates us as, indeed, it frustrated the Leader of the Opposition this morning, to stand up and make a contribution for half an hour or forty minutes and as if that had been said in the middle of the wilderness because not one single point was answered when the Honourable the Chief Minister contributed in the amendments to the motion. It is not really fair to wrap up and answer points brought in the amendment in his closing debate.

in the general motion because that, I feel, is contrary to the parliamentary debate system where at that stage we will no longer have the right to reply, but I will be going back to that very shortly. Mr Speaker, I still find the situation terribly confusing from the Government's point of view. We are quite clear what the Opposition is saying and I think we are quite clear and I think everybody is quite clear of what the GSLP position is and I do mention the GSLP position and the Opposition because they are one and the same thing as mentioned by the Honourable Leader of the Opposition this morning and that is that again we have heard from the Honourable and Learned Member that the Government still disclaim their responsibility to pay anything over and above the £4m in the Spanish sub-fund. However the back bencher then continues to talk about.....

HON SIR JOSHUA HASSAN:

If the Hon Member will give way. What I am trying to say is that we hold and we maintain the Government of Gibraltar is not directly responsible morally, whether legally internally morally, for the payment of the difference in the payment of the pensions, that is what I have been saying.

HON J E PILCHER

I am just trying to remind the Members of the Government opposite that only a few hours ago, they voted against an amendment or part of the amendment that read that the commitment beyond 1988 is not the responsibility of the Government of Gibraltar. They voted against that about two hours ago. That was one of the amendments as moved by the Honourable Leader of the Opposition. This is, Mr Speaker, what I am referring to about the confusing elements where they, the Government of Gibraltar, continue to say clearly that they disclaim their responsibility that the Government of Gibraltar, that the people of Gibraltar, do not have a responsibility to pay over and above the £4.5m which was the sub fund that was set up for the Spanish workers and continue to say in the next breath that they have to start discussion and negotiation with Her Majesty's Government, not only about the £2m but about the £7m per year from now until, I think, the year 2005 or 2006. Moreso when the Honourable and Learned the ex-Chief Minister stands up and says that he would like to be able to tell the people of Gibraltar how difficult it was for him to be able to get that agreement for £16m in three years and wants us to believe and we believe that it was very very difficult to get money out of the British Government. In the same breath as his Chief Minister today is saying to us that we have to go back and discuss it with the UK Government as if he was not paying attention to the fact that he was himself a witness of how difficult it is going to be today to get the UK Government not only to give us the £2m for the over-expenditure in 1988, because I think the Leader of the Opposition certainly made the point that we have through our network obtained the definition that certainly until the end of 1988 the agree-

ment entitles the Gibraltar Government perhaps to go back after 1988 but that £2m they will not make themselves responsible for. We would like to have an answer of whether that is the position or not the position as understood by the Government of Gibraltar. You see, Mr Speaker, there are two different elements in the same argument and they keep using one and the other when it suits them and then they have the audacity to say to us that we are electioneering. We are not electioneering, our policy has been the same since 1985, in the debate in 1986, throughout 1987 and in 1988, but the position of the Government is the one that has changed because today it is the popular thing to say that it is not the responsibility of the Government of Gibraltar because that is what the people of Gibraltar are saying today. Just as much as today or, in fact, yesterday it was popular to say that if a referendum is required over the airport deal we will have one, when a month ago the Government voted in this House against it. That is, Mr Speaker, where the electioneering is coming from. It is not coming from this side of the House. We take the matter seriously, we come to this House not to electioneer but to present our clearcut policies and our alternatives as seen by us since 1984, Mr Speaker. What I would like to find out, and I think what the people of Gibraltar would like to find out is exactly what the position of the AACR Government is because on the one hand we are told again by the Honourable and Learned Chief Minister that perhaps we will have to stop paying pensions after 1988 and in the next breath we are told we have a legal requirement to do it. Can we stop paying them? We, Mr Speaker, are quite sure, and I do not say this disrespectfully to the expertise of the Honourable and Learned Chief Minister, that if we are able and we were able, we might not be able to do it today, but we would have been able to do it previous to 1985, to have changed our legislation in 10A and change the residency clause or to have had a system under Clause 10B. We might not be able to do it today and that, Mr Speaker, would not have been in conflict with Article 1408 of 1971, because they did it in 1974. In 1974 they changed the legislation three years after Article 1408 was first published. If they did it in 1974, surely, they could have done it in 1984. What, certainly, they could not do, and this is the point made this morning, is changing after 1985 because they had already given tacit approval through the Brussels Agreement to the setting up of revalued Spanish pensions. And again that might not have been spelt out in the Brussels Agreement black upon white. As we all know, Mr Speaker, that was brought up I think even in the Strasbourg process, it was certainly brought up in Lisbon and certainly was part and parcel, as far as the Spanish Government was concerned, of the Brussels Agreement. So after 1985 it was not possible to do it and today it is even more difficult although we on this side of the House do not believe it is impossible to do it. Mr Speaker, coming to the general motion and talking particularly about paragraphs (d) and (e) of the motion, we do feel and we have said so clearly and we say so clearly again and in fact there is a motion under the name of my colleague the

Honourable Mr Mor where we actually clearly state what the position of the GSLP is now, three years ago and next year and that is, Mr Speaker, that it is not the responsibility of the Gibraltar Government to pay anything other than the £4.5m which is the Spanish sub-fund which is already being paid and certainly it will be exhausted by October of 1988. The Honourable and Learned ex-Chief Minister also spoke about the motion of censure on the Opposition and he said that we were playing the thing up because it was not really a motion of censure. I would like the Honourable and Learned ex-Chief Minister but particularly, I think, the Honourable present Chief Minister, because I think he is an avid follower of politics, particularly in the UK whether there is any precedent of a Government bringing a motion deploring, this is what the motion says, "and consequently deplores the recent statements made by the GSLP in the news media". I think, Mr Speaker, what really happens is that at this stage in the game the AACR really believe they are the Opposition. That is why they are bringing motions of censure against the Government, which is us, by the way. It seemed at one stage, Mr Speaker, that the Honourable and Learned ex-Chief Minister was going to actually censure the EEC, the Community, but he did not go as far as that. Coming back to the general motion, I think the question of why the legislation was not changed before 1985, the Government seemed to be saying that they had tried to change it, this is all news to us, and certainly not something that we were aware of and I think this needs an explanation, but it needs an explanation not only to this side of the House, it needs an explanation for the people of Gibraltar and I think with all respect to the Honourable and Learned ex-Chief Minister, saying that he feels that we could not do it is just not enough. I am sure that as far as the Honourable and Learned ex-Chief Minister is concerned he must accept that his expertise does not lie in that side of the law. On the question of it not being negotiable until 1988, I think this is a point that I have to make, and this is the fact that even after 1988 we have heard how difficult it is to get money out of the British Government but we have already a precedent where we have already entered into an agreement with the British Government in 1984 where we were told if things go bad we can go back to the UK Government for more money, and that is in Gibraltar. We were told clearly in Gibraltar, we can go back if we have difficulties. Well, we went back and because of what the Honourable and Learned ex-Chief Minister is saying, because Her Majesty's Government does not like giving away pennies, let alone pounds, we were told quite categorically no, we were given £2.4 or £2.3 which was the overspend on the capital side which CDA had already agreed, and we were not given a penny more. Does the Honourable and Learned ex-Chief Minister and the Honourable present Chief Minister believe that we at this stage are going to get £10m from the British Government for the next twenty years? And if that, Mr Speaker, is the answer, seeing that the Honourable and Learned ex-Chief Minister is saying no, then we are not in the same position today as we were three years ago.

HON SIR JOSHUA HASSAN:

If the Honourable Member will give way, what I am saying is that no Government will commit itself twenty years ahead because no Government is in office all that time.

HON J E PILCHER

Mr Speaker, the point I was trying to make is that the position is not the same today. Four years ago or three years, in 1985, we had not started paying out Spanish pensions. We still had £4.5m in the sub fund, we still had a negotiating position. How can the Honourable Chief Minister today say that we are in the same position now as we were three years ago? We are not in the same position. We have no longer any money left in the Spanish sub-fund, we have now a legal liability, certainly of acquired rights because people have already been getting their pensions for the past two years and I think that our negotiating position has been weakened tremendously. I think, Mr Speaker, the Government of the day, the AACR Government, did Gibraltar a disservice in accepting that agreement because it gave us a tacit responsibility of Spanish pensions. Had we said three years ago what we are saying today and what we said three years ago, which is that our responsibility should not go beyond that £4.5m and stuck to our guns then, we might have had a problem come 1 January 1986, but not as big a problem as we are going to have come the end of December, 1988, Mr Speaker. There is just one other point that I would like to end by saying, it is a point to do with the censure part of the motion where I think because it was admitted this morning by the Chief Minister that perhaps our reaction to what he said, certainly about the Spanish pensions and the derogations, was a result of a typing error which I think he only discovered a month after because we have been issuing press releases back and forth for the last couple of weeks, but if that was the case then I think he could not deplore us for having misunderstood him and now he is deploring us for trying to mislead and confuse everybody else. The record of the AACR administration, and of the AACR Government, Mr Speaker, does not allow the people of Gibraltar to believe any longer that we are confusing anybody. The confusing and misleading of anything is done by that side of the House. Let me remind the Honourable Chief Minister and the members of his Government about different confusing and misleading remarks, certainly over the last years, the New Year message of the ex Chief Minister a year ago, when we were going to have elections in 1987.

HON CHIEF MINISTER

Mr Speaker, on a point of order. What has the New Year's message or the date of elections got to do with the subject we are discussing?

MR SPEAKER

Only if it is related to the matter, otherwise it is

certainly not acceptable. You will most certainly speak to the motion.

HON J E PILCHER

I am speaking to the motion, Mr Speaker, the Government in their motion has said that they deplore the GSLP for confusing and misleading the public. I am saying that you do it on everything else and certainly we have not done it on the issue of Spanish pensions. Mr Speaker, certainly the record of the AACR as far as confusing the public.....

MR SPEAKER

Well, let us forget the records.

HON J E PILCHER

I have nothing else to add, Mr Speaker.

MR SPEAKER

I am delighted to hear that. Are there any other contributors to the debate? I will then call on the mover to reply.

HON CHIEF MINISTER

Mr Speaker, it is extraordinary how an Hon Member like Mr Pilcher can stand up in the House and say that the Opposition keep on making points and that we do not answer them. He should have listened a little bit more carefully to my opening address this morning when what I was doing precisely was anticipating the points that were going to be made later in the debate and, indeed, answering the points which the Opposition had been making during the course of party political broadcasts and press releases on the matter. But I am going to answer him straight away on some of the points that he has made. First of all, he says that I have stated that we were now in the same position as three years ago. I did not say that. What I said was that in January, 1989, we will be in the same position as in October, 1988, and that the two matters will come up for negotiation later this year and they are going to be wrapped up together. I did not say that we are now in the position in which we were three years ago, we are not in that position.

HON J BOSSANO

Mr Speaker, we have asked the Hon Member if we could get an answer on that point three times. Can he tell us does the British Government say as we have said publicly is our information, and if we are wrong we would like you to tell us that we are wrong or that they have different information does the British Government say that the only thing that they are willing to discuss with the Government of Gibraltar is what happens after 1989 because as far as they are concerned there is an agreement with the Government of Gibraltar up to December. Because if that information is correct what the Hon Member has just said is wrong. They

are not in the same position, they are in a position to talk about 1989 onwards but they are not in a position to talk from 1989 backwards. That is our information, we have asked three times for an explanation from the Government whether they have been told that or not.

HON CHIEF MINISTER

I have no doubts, Mr Speaker, that we are fully entitled to raise in the course of the negotiations which are going to ensure following the report of the Joint Study Group and having regard to the fact that the three year agreement ends at the end of this year, I have no doubt that it will be quite right and proper to bring up the question of the £2m deficit as from October, 1988, and that inevitably, given the experience that I have of the manner in which the talks proceeded, the negotiations with the British Government during 1984 and 1985, the two are going to be wrapped up together. Certainly if I lead the next Government of Gibraltar I will wrap up the two together and I will take a stand in anticipation of October, 1988, let alone January 1989. Mr Pilcher then asked; "Are we going to get £100m from the British Government?" My answer to that is, are we going to pay £100m over the next fifteen years, are the people of Gibraltar going to pay? We are not and if we are not somebody had better start thinking about who is going to pay because we are not. We have not got the capacity or the resources to do that. So he has got part of the answer to his question. Again, that we do not answer the points made. The Leader of the Opposition and he himself now this afternoon has continued to assert that the question of Spanish pensions is related to the Brussels Agreement. I explained ad nauseam this morning and in great detail that this was not so and I was doing that again in anticipation of the arguments that the Opposition were going to make. Did they want me to repeat the same points again when I was speaking on the amendments of the Honourable Mr Bossano? Does he want me to repeat the same points now when I am exercising my right to reply? Surely, it is not necessary. The ground was covered fully and totally this morning. There is no need for any further repetition in answering the same points ad nauseam on the other side that the two are related, they are not related.

HON J E PILCHER

Will the Honourable Member give way?

HON CHIEF MINISTER

I am at a disadvantage, Mr Speaker. All they have to do is to stand up like Mr Bossano did five minutes ago and they have the floor.

HON J E PILCHER

I think it is fair to say that we have not asked the Honourable Chief Minister to answer the point of the

Brussels Agreement. He has made what he considers to be his position and we have made ours and we disagree.

HON CHIEF MINISTER

Alright, let us agree to disagree and do not expect me to keep on coming back.

HON J E PILCHER

Mr Speaker, I am not expecting him to come back. What I am saying is that that point is clear. The point that he has to come back to is the point when he said that he had tried to change legislation and had not been able to and we feel that we do not know when he tried it, how he tried it and whether he has answered the fact that after 1971 he changes in 1974, why could he not do it in 1985?

HON CHIEF MINISTER

Again, Mr Speaker, I dealt with the point when I was dealing with the amendment and I am going to deal with it again. It is I think the most important and crucial matter, whether the law could have been changed or not, and that is why I have brought a motion to the House. What really sparked it off was the point that Honourable Members were saying that the law could have been changed. Other matters I could have dealt with by press releases but that is what really sparked off this debate and my bringing the motion here. Both of them have made much play about the missed opportunities to amend local legislation and thereby minimise the liability towards Spanish pensioners. Mr Bossano said this morning that they had taken legal advice, I think they also made the same statements in a press release, correct me if I am wrong. Later on he spoke about professional legal advice on the matter. But what remains to be seen is what is the status of that advice, what analysis that legal advice carries. They do not tell us but we have told them the basis of our legal advice. The Gibraltar Government has been grappling with this problem for some fifteen years. Is it that the advice that they have received now is superior to the advice that the Gibraltar Government has received all along? The British Government has had full knowledge of the size and the intricacy of this problem over the same period. Our officials foresaw the difficulties and they sought technical advice both actuarial and legal, both locally, in Gibraltar, and in the United Kingdom. Experts, specialists in the field were working on this matter on a day to day basis, that is what the people in the International Division of the Department of Health and Social Security and in the FCO are doing. They have been handling this matter on our behalf and they are the specialists in the field. Sir Joshua Hassan then spoke about Mr Hannay and it is true, I remember the Prime Minister calling Mr Hannay in when we were discussing with her the problems of Spanish accession, and saying; "Mr Hannay, not only does he know everything that there is to be known about the EEC, he knows everything

that there is not to be known about the EEC". That, coming from the Prime Minister herself. That she should be able to make a statement like that about a specialist adviser on EEC matters, we are not talking about the Chief Minister of Gibraltar, we are not talking about a local councillor or a mayor, we are talking about the Prime Minister of one of the most important countries in the world, saying something like that about an individual, about an official. That is the calibre, that is the measure of the calibre of the people from whom we have been taking advice. Who do the Opposition take advice from, or is this again a repetition of their economic plan. We have taken legal advice, they say, so all their followers bow down to the Ayattolah and say 'Amen', he has spoken, and therefore that is the end of the matter. Mr Bossano is the expert on income tax, he is the expert on Gibraltar, he is an expert economist, now he is the expert on pensions and he says 'we have taken legal advice', that becomes gospel truth and nothing can challenge that. That is exactly the same kind of tactics that I deprecated during the debate on the airport agreement. He does it far too often, he can fool his followers, he is not going to fool us, I can tell him. He is not an expert on every field that is discussed here much as he pretends and he might get the impression that he is. Without knowing the status of their legal advice, I have explained to them now ad nauseam the calibre of the people that we have got advice from. Again, I told them about the advice this morning and I am going to repeat it. The experts in this field in the DHSS and the FCO handled the matter on our behalf in consultation with officials here in Gibraltar and naturally in consultation with Sir Joshua and myself because we were intricately involved in the matter. Time and time again we were reminded of the legal commitment and the fact that it was inescapable, that was the advice. "You have a legal commitment, you cannot get away from it. We have sought derogations from the EEC, you cannot have the derogations". That is the advice and if there had been scope for amending the local legislation without infringing community law, why should not then that option have been put forward in the same way as it was put forward over the non-contributory benefits to which I referred earlier. Why should they give us advice and say; "Look, you had better do this because there is a danger that Spanish beneficiaries could claim entitlement", they do it for one thing but they will not do it for another, why? For some personal quirk or other, why should a distinction be made in the advice which they gave. They need not accept such advice if they did not want to. The advice was given, the point was made, we acted in accordance with that advice and we amended the legislation that we were told we could amend, that is the responsible position for Ministers to act when you are in Government and if you do not want to act in that way, then you get separate legal advice from people who are supposed to know about these matters or you ignore the advice with all the consequences that that can entail. But what really strikes me is, why is it that the Honourable Mr Bossano has chosen to raise this particular matter of whether the law could have been

changed beyond what it, in fact, was now? Why did he not query, let alone make any suggestion on that specific issue in 1983, in 1984 or in 1985?

MR SPEAKER

Order, order.

HON J BOSSANO

It is a false statement, Mr Speaker. In the meeting of January, 1985, page 71.

HON CHIEF MINISTER

Mr Speaker, I want to make it clear that I am not giving way to the Opposition. I hold the floor and I will not give way.

MR SPEAKER

I would like to hear what is the point of order.

HON J BOSSANO

Yes, the Honourable Member asks why I have not said it before and I am quoting Hansard of the 15 January, 1985.

MR SPEAKER

Order, it is not a point of order, it is a point of personal explanation which you are entitled to make.

HON J BOSSANO

The Honourable Member is accusing me and he is factually incorrect because he says that I have not raised the matter before and when the Attorney General gave the explanation that he gave in January, 1985, on the 15 January, when the House was changing the legislation because of the Brussels Agreement, I stated then that in the light of the explanation given by the Attorney-General, we did not accept that there was a legal obligation to pay in 1986 and I was not saying it after it had been paid, I was saying it a year before any payment was made so the Honourable Member is wrong, it is not the first time I have put in this argument.

HON CHIEF MINISTER

They did not take legal advice then, Mr Speaker. He was expressing a view, his own view, but one can stand up in the House and disagree with any expert view that is put across but you have to substantiate that and today to say that they have taken legal advice now when that was something that they could have done earlier. But of course for other reasons, probably, it did not suit them to do that earlier.

Again, I am accused for having said that supposing the final bill had been more than £21m, and I did say in January, 1986, that if the final bill is more than £21m, we will discuss it with the British Government. The British Government had the objective immediately after that agreement was concluded, of having a study carried out, which is the one that the Joint Study Group has been making, and that that could be concluded within a period of six months. By the middle of the year, in fact, that was one of the reasons, I think, why at one stage the offer of a British contribution of £6m, I think it was, and we were expected to put a film in, was made for just one year because they thought that the whole study could be wrapped up within a period of six months. If they were saying that the deliberations of the Joint Study Group could be concluded in a period of six months, it was against that background that I could say: "Of course, we are going to discuss the matter with the British Government, if it is more than £21m we will have an opportunity to discuss that after the report of the Joint Study Group has been submitted; "But let me tell Honourable Members that it took more than six months not for the report to be submitted, because even now it has not been, but even to agree to the terms of reference took a great deal more than six months and therefore they never got started until 1987. That the Government and the AACR say and make conflicting statements. I do not know whether Honourable Members opposite are either not human but, whether they are machines that never make mistakes or whether they are infallible, perhaps Mr Bossano, instead of standing for the next prospective Chief Minister may be making a bid for the next Pope. The only contradiction lies in the fact that in the AACR press release, the word 'negotiations' was used whereas here in the House I have stated that what we were having with the Joint Study Group were 'discussions', that was the only difference. That the person who drafted when I spoke to him over the telephone and told him what the position was of the Joint Study Group and I used the word "discussions", he must have made a note and instead of using the word discussion, he used the word negotiation.

HON J BOSSANO

Another typing error?

HON CHIEF MINISTER

No, not a typing error. I have proved today that Honourable Members opposite are also in conflict and that there are contradictions between what they say here in the House and what their party says either in a party political broadcast or a press release, that is when I quoted directly from what Mr Mor had said in the debate about the commitment, the legal commitment to the Spanish pensioners. That statement that he made is not in consonance with the press releases that the Opposition have issued recently. And, finally, Mr Speaker, this dismay and this surprise about

what an extraordinary move it is on the part of the Government to bring a motion to the House. First of all, it is not a motion of censure. I do not take it as a motion of censure, we do deplore that misleading statements are made but we are not censuring the Opposition. But who has said that the Government has got to sit back year after year in this House and dance to the tune of the Opposition? Government usually brings a motion to the House to amend a piece of legislation, the Licensing and Fees Ordinance is amended by motion, have brought motions to amend the Social Insurance Ordinance, to note the Principal Auditor's Report, but there is nothing unusual in what we have done in the normal realms of parliamentary practice and neither is it contrary to standing orders. What is different is that in other parliaments, such as in the United Kingdom, in the House of Commons, the Government has got backbenchers who support the Government and who are able to introduce a motion for debate on matters that might very well welcome debating. We are in the position today that had we wanted to, we could have asked the Honourable Member to move the motion so there would have been nothing peculiar about that, we would have been taking advantage of the fact that we have a backbencher. But in a system such as ours, where the likelihood is that Ministers, members on the Government side are going to be Ministers, you do not have the flexibility that there is in other Parliaments and therefore in my view the Government is entitled to bring a motion for debate on any subject that it wants to have discussed. It would also be peculiar if one Government Minister were to ask the question of another Government Minister and that we have not done but, again, there was a time in this House when there had been a backbencher and that backbencher had assisted Government Ministers by clever supplementaries in eliciting the right sort of answers from the Government, the kind of answer that could have confounded the Opposition questioners. There is nothing peculiar in what we have done, I think that it has given the House an opportunity to debate the matter, what is wrong with that? It has led to another motion from the Opposition, we are not quibbling about that. We are fully entitled to have that debated and I think that it is more beneficial in the exercise of our democratic rights than we should bore the public with continuous exchange of Government press releases. Let me say that I do not shirk any opportunity to debate the matter. We have debated it here today and I am prepared to have it debated elsewhere and I look forward, indeed, to the opportunity of discussing and debating the matter with Honourable Members opposite during the election campaign. Mr Speaker, I commend the motion to the House.

Mr Speaker then put the question and on a vote being taken the following Hon Members voted in favour.

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan

The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammitt

The following Hon Members voted against.

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The following Hon Member abstained.

The Hon B Traynor

The following Hon Member was absent from the Chamber.

The Hon E Thistlethwaite

The motion was accordingly passed.

BILLS

FIRST AND SECOND READINGS

THE MERCHANT SHIPPING (AMENDMENT) ORDINANCE 1988

HON CHIEF MINISTER

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Merchant Shipping (Amendment) Ordinance, 1988, be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

SECOND READING

HON CHIEF MINISTER

Mr Speaker, I have the honour to move that the Bill be now read a second time, it seems I am going to have a belly-full. Sir, the principal purpose of this Bill is to amend the existing legislation so as to enable Her Majesty's Government in the UK to extend to Gibraltar the following International Conventions.

- (1) The International Convention of standards of training, certification and watch-keeping for seafarers, 1978.

- (2) The International Convention for the safety of life at sea, 1974, what is termed the SOLAS Convention, and the various amendments and protocols to that Convention.

- (3) The International Convention on loadlines, 1966, and

- (4) The International Convention for the prevention of pollution from ships, 1973.

As Honourable Members know, the legislation has had a long and somewhat difficult period of gestation, extending as far back as late 1983. The Bill which is now before the House can be divided into three parts, namely,

- (a) Those clauses which relate to the extension to Gibraltar of the four International Conventions to which I have already referred,
- (b) the revision of the existing legislation relating to Wireless Telegraphy on ships, and
- (c) the various clauses which increase the penalties for offences under the Merchant Shipping Ordinance.

To deal now with the parts of the Bill that deal with the extension to Gibraltar of the four International Conventions. Firstly, Mr Speaker, I want to direct the House's attention to clause 4. This clause extends to Gibraltar the provisions of,

- (a) The Merchant Shipping Certification of Deck Officers Regulation of, 1985, of the United Kingdom,
- (b) The Merchant Shipping Certification of Marine Engineer Officers and Licensing of Marine Operators Regulations, 1986, of the United Kingdom,
- (c) The Merchant Shipping Certification of watch-keeping Regulations, 1982, of the United Kingdom and
- (d) The Merchant Shipping Tankers Officers and Ratings Regulations, 1984, of the United Kingdom.

The application of these four pieces of United Kingdom legislation will enable the International Convention on Standards of Training, Certification and Watchkeeping for seafarers of 1978 to be applied to Gibraltar. In addition, this legislation will have to be supplemented with two further pieces of subsidiary legislation, namely, the Merchant Shipping Navigational Watch Ratings Regulation, 1988,

and the Merchant Shipping Engine Room Watch Ratings Regulations of 1988. These two additional pieces of legislation have been prepared and will be promulgated in the near future. The next clause which I would like to draw attention is clause 21. This extends to Gibraltar the Rules and Regulations contained in the International Convention of safety of life at sea, 1974, and the various amendments and protocols of that Convention. Thirdly, clause 22 of the Bill, extends to Gibraltar the provisions of the Merchant Shipping Loadlines Act of 1967 of the United Kingdom, and the Loadlines Rules which were made under that Act, to Gibraltar. This clause will enable the International Convention on Loadlines, 1966, to be extended to Gibraltar. Fourthly, clause 32 of the Bill extends to Gibraltar the provisions of the Merchant Shipping (Prevention of Oil Pollution) Regulations of 1983 of the United Kingdom. This particular clause will enable the International Convention for the Prevention of Pollution from Ships, 1973, more colloquially known as the 'Marple Convention' to be extended to Gibraltar. To deal now, Mr Speaker, with the part of the Bill which relates to Wireless Telegraphy on ships. Clause 20 repeals the whole of part 3 of the existing Ordinance entitled 'Wireless Telegraphy on Ships'. The legal requirements with regard to Wireless Telegraphy on ships will be contained in subsidiary legislation to be known as the Merchant Shipping Radio Installation Regulations of 1988. These Regulations will also be promulgated in the near future. They will deal with,

- (a) DHF Radio Telephony
- (b) Radio Telephony
- (c) Radio Telegraphy, and
- (d) Radio equipment for life boats and survival craft.

Many of the clauses in the Bill and Schedule 4 of the Bill increase the penalties for various offences under the Ordinance. The increase in penalties in most cases is substantial but nevertheless in line with the penalties imposed by the United Kingdom legislation. Not unnaturally certain amendments have to be made to the United Kingdom legislation in order that such legislation can properly apply to Gibraltar and these amendments are contained in the new Schedule 3 to the Bill which appears on pages 15 to 20 of the Bill. The remaining clauses of the Bill contain consequential amendments. The House will recall that on the 11 February, 1987, it passed the Merchant Shipping (Amendment) Ordinance of 1987. This Ordinance, amongst other things enabled the Captain of the Port, as Registrar of British Ships, to refuse, strike off and cancel the registration of any ship on the Gibraltar Register which did not comply with the requirements of the International Conventions. This legislation was brought into operation on the 30 July, 1987, and simultaneously with the coming into operation of that Ordinance, the Merchant Shipping Excluded Registration Order of 1987 was promulgated. This order imposed the duty on the

Captain of the Port to refuse to register ships more than 15 years old unless the Governor specifically approves the registration in a particular case. The effect of this legislation has been two-fold. Firstly, the surge of vessels coming on to our register has been stopped as numerous enquiries have been turned down. Secondly, owners have been made aware of the stricter control and powers of the Registrar for those that do not comply. Since the 31 July to date, or rather to the 14 January, last week, only six merchant vessels have been accepted on our register and at the 31 December, 1987, the register stood at 106 vessels with an aggregate gross tonnage of 2.6 million tons. The passing of this legislation will give respectability and acceptance to Gibraltar registered ships worldwide as they will be issued with full Convention certificates. Sir, the passing of this legislation will, I trust, bring to completion the task on which we embarked four years ago after the visit to London of the then Deputy Governor, the Captain of the Port, the then Crown Counsel, who today is the Attorney-General, and myself, on ship registry matters and the subsequent decision that we took on the United Kingdom Department of Trade consultative document to go for full registry status. Sir, I commend the Bill to the House.

MR SPEAKER

Before I put the question to the House, does any Honourable Member wish to speak on the general principles and merits of the Bill?

HON M A FEETHAM

Mr Speaker, as you are well aware, the Opposition have on a number of occasions discussed and questioned Government policies insofar as the Merchant Shipping Ordinance was concerned and, indeed, in 1987 we opposed the amendment, the merchant shipping amendments of 1987, on the basis that what Government were doing was approaching a very important issue as the Merchant Shipping Ordinance was, on a piecemeal basis. Today, it would be wrong for the Opposition not to support the Bill, so the Opposition will be supporting the Bill but on the other hand we would like to make clear that we do not agree with the last statement made by the Honourable Chief Minister that with the passing of this Bill the process insofar as the Merchant Shipping Ordinance in Gibraltar is concerned is brought to completion, and I would like to explain the reasons why we take that view. Having said, therefore, that we are supporting the Bill, I think it is important that we distinguish between what is happening today insofar as this Bill is concerned and what, in the view of the Opposition, should be done to give the Gibraltar Shipping Registry the importance that we attach to making the port of Gibraltar a port of repute. What the Bill is doing in effect is pre-empting the passing of the Merchant Shipping Act in the UK and attempting, and we welcome it, being ready for the time when the Merchant Shipping Act is passed in the UK. I would like to question that under the Merchant Shipping Act when it is passed, the Shipping Registries are

going to be categorised into five different categories. It is therefore a question of under which category the Gibraltar Ship Registry is going to be classified, one, two, three, four or five, whichever will depend on the importance that we, through our local legislation attach to making the Gibraltar Shipping Registry a reputable registry. Just before I continue with that line of thought, I would just like to say that I came across the other day a report on Port state control - I am just trying to emphasize the importance of having a reputable Shipping Registry - a report on Port state control which outlined the list of countries having more than 10% of the ships inspected and detained for serious safety deficiencies. The highest was Malta with over 37% and second was Gibraltar with over 20%, so whilst we are moving in the right direction in meeting our international obligations, there are a number of things that have to be done for us to be able to say that we have got in Gibraltar a first class shipping registry. As far as we are concerned, the matter has not been brought to a conclusion. I would like to draw the attention of the House, Mr Speaker, to the Merchant Shipping Acts of 1970 and 1979 which gave the Department of Transport powers to make regulations on the manning of UK registered ships to the extent that it appeared necessary in the interests of safety. These powers relate not only to what we are doing today insofar as certifying officers and doctors, in fact, in UK it went as far as doctors and cooks, but also to other seamen of any description as may be specified in the regulations which were introduced and therefore there is still an important element of an area which needs to be looked at in terms of manning of ships registered in Gibraltar. What the Opposition is saying is that the same regulations which were introduced in the UK as outlined, I think it would be of importance to the members opposite, particularly the Attorney General, if he were to take note of a notice published by the Department of Transport, M1178, which is manning of merchant shipping registered in the UK, which gave guidelines on how they look at the problems and how they reached agreement insofar as their ships are concerned and that the same guidelines, broadly, ought to be introduced in Gibraltar and applied by the Captain of the Port. I am talking about Merchant Shipping Notice No.M1178 of which I will give a copy to the Honourable and Learned Attorney General when I have finished my contribution. If we, insofar as money is concerned, introduced this sort of approach then we would not only be meeting our international obligations but we will be going a long way to reassuring the National Union of Seamen, for example, even the shipping organisations, that we are thinking seriously about a reputable Shipping Registry in Gibraltar. The other thing that I think we would need to do is to look at what other regulations ought to be introduced and I am talking about statutory regulations which cover other matters such as navigation, ship construction and equipment in Gibraltar Registered ships. Again, I will like to draw to the notice of the Honourable and Learned Attorney General Merchant Shipping Note No.M1265 and I will let him have a copy at the end of my delivery, and whilst I would accept that the

regulations contained therein cover a wide area of shipping registry, there are particular regulations in there which I think on closer scrutiny we ought to introduce in Gibraltar in support of our shipping registry. For the record, Mr Speaker, I am talking about Regulation 3 on crew - I will hand all this over to the Attorney General - on dangerous goods, on fire and life saving, on loadlines, navigation and collision regulations, occupational health and safety, oil pollution. Incidentally, there are a number of regulations here, one of which we are, in fact, passing in this House with this Bill but there are others which we have not given any attention to, I assume, because they have not been brought to this House. There is a number of regulations which we will need to look at on the radio and navigational equipment and construction, equipment and tonnage. When I pass this over to the Honourable and Learned Attorney General and if we are serious about what we really mean by bringing this to a satisfactory conclusion and aiming for a top category registry, then I think that going on the lines which I have explained and looking at these regulations and guidelines as a basis for adapting to Gibraltar, I think that we can then say, Mr Speaker, that we have brought the whole question of the Merchant Shipping Ordinance in Gibraltar to a satisfactory conclusion.

HON CHIEF MINISTER:

Mr Speaker, there are two points. First of all that whatever material the Honourable Mr Feetham, makes available we will naturally be only too happy to look at. There is one point that I want to make, and I think that the Hon Mr Bossano will confirm to his colleague the truth of what I am saying and that is that I have never liked to have my words twisted in the 15 years that I have been a member of this House or to have words put into my mouth. I am sure the Hon Mr Bossano will remember that I never used to allow Mr Peter Isola to get away with it and he was fond of doing it quite often and I would never let that go by because I try to be as precise as I can be, as any politician can be about what we say. I do not like to eat my words but I do like to be as precise as possible and therefore I can tell the Hon Mr Feetham that I did not say, as he has stated, that the process of amending the Merchant Shipping Ordinance had been brought to an end. That is not what I have said. What I said was, and I repeat, that the passing of this legislation brings to completion the task on which we embarked four years ago when we visited London and then we took a decision. When the Department of Trade issued a consultative document to the dependent territories, we took a decision to go for full registry status. That is the task which we embarked on four years ago and I think that at this meeting of the House we have brought that task to a conclusion. I am not saying that it is the end of the road by any means but we had specific targets and specific objectives that we set ourselves in December, 1983, and after the general elections of 1984 the Government took certain decisions as a result of our visit to London and I think that these decisions have with the legislation brought to the House today and what is going to be promulgated in the near future, brought that task to completion.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON CHIEF MINISTER:

Mr Speaker, I beg to give notice that Committee Stage and Third Reading should be taken at this meeting, and if the Opposition so agree, later today.

This was agreed to.

THE COURT FEES ORDINANCE, 1988

HON ATTORNEY GENERAL

Sir, I have the honour to move that a Bill for an Ordinance to make provision for matters affecting the payment of court and similar fees, to repeal the Fees (Collection) Ordinance, and to provide for matters incidental thereto, be read a first time.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a first time.

SECOND READING

HON ATTORNEY GENERAL

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, the Fees (Collection) Ordinance which came into operation on the 16 June, 1984, requires that all fees payable by law at the Supreme Court, in the Court of First Instance and in the Magistrates Court in respect of legal proceedings in those courts and that all fees payable on deeds, wills and other documents lodged in the Supreme Court and all fees payable on searches or requisitions for searches shall be payable by means of stamps. Consequently, Mr Speaker, the fees payable, for example, on the filing of an affidavit in the probate registry in the Supreme Court looks something like this, Mr Speaker, where there are stamps and stamps Fees of £192 on this document had to be paid by means of stamps. Thirty eight £5 stamps and two £1 stamps, plus all the inconvenience certainly in my Chambers, make out a payment voucher, get a cheque, endorse the cheque, take the cheque to the bank, get the money, go to the Post Office, get the stamps and then stick them on and the procedure has become almost impossible. Some documents, this is just an example, have four and five pages of stamps, just containing stamps, all of which have to be checked, all of which have to be entered in the court books and in 1988 it is a ridiculous waste of time. Mr Speaker, this Bill does away with the requirements that these fees be paid by way of stamps and in future the fees would be paid in cash or in cheques acceptable to the Registrar of the Supreme Court so this Bill, Mr Speaker, moves us out of the 1880's into the 1980's, and for that reason, Mr Speaker, I heartily commend the Bill to the House.

MR SPEAKER

Does any Honourable Member wish to speak on the general principles and merits of the Bill?

HON J BOSSANO

We support anything that makes the service more efficient and gives a better service to customers. I can only suppose, Mr Speaker, that if it is from the last century, the Government must have been studying this problem for the last hundred years.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON ATTORNEY-GENERAL

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken at a later stage in this meeting.

This was agreed to.

THE SUPPLEMENTARY APPROPRIATION (1987/1988) ORDINANCE, 1988

HON FINANCIAL AND DEVELOPMENT SECRETARY

Sir, I have the honour to move that a Bill for an Ordinance to appropriate further sums of money to the service of the year ending with the 31st day of March, 1988, be read a first time.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a first time.

HON FINANCIAL AND DEVELOPMENT SECRETARY

Sir, I have the honour to move that the Bill be now read a second time. As is customary on these occasions I do not propose to make a speech, simply to point out that this is a Bill the substance of which, that is to say, the increase in respect of the pay supplement, would normally have been brought before the House in the what I think is generally known as the pre-budget meeting by which time the information is available. Unfortunately, the information was not available at the time of the December meeting of the House so it could not be brought at that stage.

MR SPEAKER

Does any Honourable Member wish to speak on the general principles and merits of the Bill?

HON J BOSSANO

We do not normally speak on the general principles but of

course one of the things that was said at the last time when we had a supplementary appropriation was that the Government did not want to leave uncovered liabilities and that therefore they were bringing forward whatever they could sensibly anticipate was going to be needed. At the last meeting of the House, the only controversial item was the question of whether the £2m that was provided for GSL was sufficient to meet the requirements of the GSL restructuring exercise and whether in fact more would be needed. I would have thought that by implication since the Government is telling us that they are now bringing an Appropriation Bill to meet requirements that they have established exist but of which we were not aware of in December, one would deduce from that that they have now been able to establish that GSL does not need any more money between now and the end of the financial year. Can the Financial Secretary confirm that this has now been checked and established because it was something that was raised at the last meeting when we suggested that it might be better to defer part of that vote for this House if the Government was going to be better placed to give us an explanation as to whether the money was needed and what for they tell us now that they will not be needing any more money before the end of the financial year given the turn of work that has been done on it since the last House.

HON FINANCIAL AND DEVELOPMENT SECRETARY

The Government will not be asking the House to vote any more money before the end of this financial year in respect of GSL, Mr Speaker.

HON J BOSSANO

Presumably because the House is not going to meet but that is not the question I am asking. In the last House we were asked to vote for £2m and the Government told us they could not give us more information because the information was not available then and they could not defer the vote because the money was needed urgently in December. That is what we were told the last time. We are asking now, since we have now got a new Appropriation Bill and since they are not making any further provision, can they confirm that it means that the £2m we voted is sufficient to last GSL until the end of the financial year?

HON FINANCIAL AND DEVELOPMENT SECRETARY

I think, Mr Speaker, all I can say is that the discussions which are continuing, the exchanges with the company, have not suggested in any way that more than the figure which was voted in the December session of the House, would be needed before the end of this financial year.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY

Sir, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken at a later stage in the meeting.

This was agreed to.

The House recessed at 5.20 pm.

The House resumed at 5.50 pm.

COMMITTEE STAGE

HON ATTORNEY-GENERAL

Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause: The Income Tax (Amendment) Bill, 1987; the Merchant Shipping (Amendment) Bill, 1988; the Court Fees Bill, 1988, and the Supplementary Appropriation (1987/88) Bill, 1988.

This was agreed to and the House resolved itself into Committee.

THE INCOME TAX (AMENDMENT) BILL, 1987

Clause 1

HON CHIEF MINISTER

Mr Speaker, I would like to make a general statement at this stage. Hon Members will recall that during the debate of the Second Reading of this Bill, the Hon Mr Bossano made a number of points, he said that he wanted to consider the Bill, carefully and we asked your staff to make available a Hansard of the debate at an early stage. This was done and for which I am grateful and it has enabled the Government, with officials, to have a close look at the points which the Hon Mr Bossano made. I am going to deal at this stage with the points that were made on home ownership and the Financial and Development Secretary will then deal with the question of the contributions to pension schemes and in particular I think two points that were made. One was how the Vineyards Purchasers Association were going to be affected by the arrangements on closed market development scheme and the instalments that they had paid and, secondly, the fact that the guidelines that would be used by the Director of Crown Lands were not specified, they were not included in the Ordinance and therefore they were merely going to be administrative guidelines. We have looked carefully into the position of the Vineyards Development. Hon Members will recall that Clause 5 what it does is to extend the relieve of the initial deposit under Section 26A of the Ordinance to first time home buyers during the period of construction of their homes. In the case of the deposits paid by prospective owners under Phase I

of the Vineyard Development, this commenced after the 30 June, 1986, and it consisted of an initial deposit of 10% of the selling price, plus 15 instalments amounting to 1% of the final cost of the flat during the construction period. I understand that payments have now ceased and that payment of the remaining 75% will become due when the flat is completed. This is expected to be the middle of this year. The allowance of £2,000 under Section 26A cannot be exceeded in total so that when 75% of the selling price is due, the allowance of £2,000 can in fact be given in the taxpayers code for 1988/89 as no allowance has been given previously. There is no real need, in fact, to consider Vineyard as a closed market development scheme as in any case the assessment for 1986/87 which could incorporate 20% of any payments made during the year ended 30 June, 1987, will probably not be issued until the middle of 1988 at the earliest, and whether the Vineyard becomes a closed market development or not the taxpayer will not lose entitlement for in practice they could not reap any benefit before the 1 July, 1988, but what can be done is to leave it for the Vineyard Purchasers Association to decide whether they want to be considered as a closed market development scheme and we are therefore moving an amendment, a necessary amendment, to make that alternative course of action possible and the Attorney-General has given notice on my behalf of the amendment which I will be moving after Clause 5 at the end of that sub-section, the provisions relating to the criteria to be adopted given them therefore statutory effect by including them in the Bill.

Mr Speaker, I beg to move that Clause 1 of the Bill, be amended by the deletion of the figures "1987" and the substitution therefor of the figures "1988".

Mr Speaker put the question which was resolved in the affirmative and Clause 1, as amended, was agreed to and stood part of the Bill.

Clause 2

HON FINANCIAL AND DEVELOPMENT SECRETARY

Mr Chairman, as the Honourable Chief Minister has said I have been asked to comment on the points which were made during the Second Reading debate by the Honourable Leader of the Opposition with particular reference to the pension provisions. I have read his comments in the Second Reading debate and also in the discussion on the Government side, subsequently. I am anxious, naturally, not to make political points in my contributions at this stage. I shall try not to do that although I think it may be a little bit difficult. I think a great many of the points made by the Honourable the Leader of the Opposition apply to the changes which were introduced in the Budget affecting the tax treatment of pensions rather specifically to the amendments which are the substance of this Ordinance, namely, those concerned with the returning contributions. It is inevitable, I think, that my comments will likewise go over the ground which have, in fact, already

been covered in the debates of the Budget. But if I can take the comments of the Honourable Leader of the Opposition, I think they fall into, or at least I have represented them to myself as falling into three categories, three main criticisms. One, that there is discrimination in this sort of measure between some beneficiaries and others, that is to say, one has a cut-off point. We are legislating for people who have taken up employment since July this year and giving them inferior treatment to all the people who were in employment then. I think he has made the point but if I could take them in the order in which they appear, I think this is inevitable with any taxation, whether one is introducing a new allowance or withdrawing one. The change is bound to discriminate between those who have been or have not been enjoying the facility up to the time the change is made. Usually in the case of changes in taxation this is at least ameliorated by the universality of the effect, that is to say, if everybody is affected by a change in taxation then there is, I suppose one could call it equality of misery. With some tax changes, however, I think this is one of them where the expectations for a good many years of personal planning may be affected, it is necessary to have some regard to this and minimise the effect. That is what the changes introduced in the budget were intended to do. There are, I understand, over 150 corporate pension schemes and something like 200 personal pension schemes in operation in Gibraltar. The Government felt that it would be wrong to legislate with retrospective effect than to penalise all those members of additional schemes or of existing schemes whose expectations over a number of years would have reached a certain point. They could have a 100% lump sum target. The amendments to the Income Tax Ordinance were introduced so as to preserve that expectation for those people who were members of existing schemes. It is not for me to comment on the politics of this decision but I can certainly think of other instances where the same principle has been followed in the United Kingdom when a tax reform has been introduced. The second point is that as the position of all existing members of approved schemes which provide for 100% lump sum payments was preserved this way it follows, this is another point that the Honourable Member pointed out, that the revenue effect to the change will initially be very small indeed. I agree that is so and it cannot be argued that there is a great amount of money at stake now nor could it be justified on the grounds that the Government is raising revenue, that was not, however, the purpose of the amendment. The real purpose of the amendment is that it is, I think, a point of principle, whether it is desirable to make this tax reform or not, and I appreciate that there may be a different view on this. This brings me to what I think myself is probably the nub of the objection on the part of the Honourable Leader of the Opposition and Honourable Members opposite to this whole change and when I say this whole change I am referring not so much to return of contributions but to the notion of taxing a lump sum. The Honourable Member drew a distinction between those in the private sector, good employers such as Shell, he mentioned Smith Imossi and Saccone and Speed, where it might be reasonable to deny the beneficiaries of the pension schemes

100% commutation because these schemes are salary related, like the Gibraltar Civil Service scheme or the United Kingdom principal Civil Service pension scheme. I think, if I may quote from the Honourable Members own comments, the legislation is saying to both people in the private sector that they cannot, in fact, have what amounts to an endowment policy funded wholly or partly by their employer because that is what most money purchase schemes really are. It is a misnomer to say that they are a pension because they bear no relation to the salary since what you are doing is putting money into a savings account etc, etc. I accept the distinction which the Honourable Member draws between money purchasing schemes and final salary related pension schemes, I accept that point, but I do not agree and neither may I say do those in the pensions and insurance industry whom I consulted on this, that it is correct to call the one endowment policy and the other a pension scheme. With due respect to the Honourable Member and the comments he made, I think this understates the difference and also of course it ignores, this is quite an important point, the different tax treatment which is given in the case of an endowment policy and the pension scheme. I owe it to the Honourable Member to expand on this comment in view of the points he has made. In the case of an endowment policy, we are talking essentially of two features one, an element of life insurance, that is to say, if you die before maturity, there is a lump sum, it is a form of life insurance, that aspect. Secondly, of course, there is the return made by the Life Company to investing the premiums which are normally paid to the individual in the form of reversionary bonuses and then terminal bonuses on maturity. In the pension scheme there is far greater flexibility both as regards the contributions and the benefits payable in various circumstances, benefits which moreover cover many more circumstances than those covered by a life policy and, therefore, an endowment insurance. With a personal annuity contract, the individual can decide and with a group pension scheme trustees will in effect sign on behalf of a group of individuals whether the contributions will be flat rate or salary related and also whether and when and at what stage contributions ought to be increased from time to time and, indeed, whether the scheme should be, in effect, final salary related. They are, in fact, much more flexible arrangements than simple endowment insurance, indeed, with an endowment policy there are in effect two parties to the contract, the insured person and the insurer. In the case of an approved pension scheme, the employer, the employee, the trustees and the company which is effecting the pension scheme. These differences quite crucially, I think, extend to the different tax treatments of endowment policies and pension schemes and I think this is perhaps the most important point. In both cases the contributions are allowable against tax but the similarity ends there. Both the employers' and the employees' contributions will be allowable against tax in the case of pension schemes. In the case of contributions to an endowment policy, the question of an employer's contribution does not normally arise. It could arise, there is no reason why an employer should not

take out an endowment policy for one of his employees, as one might take out a policy on the life of one's wife or a close relative. But the premium paid by the employer in those circumstances be a benefit in kind. It would be allowed as a deduction to the employer, taxable deduction, and in theory at any rate, is taxable in the hands of the beneficiary, that is to say, the employee, although of course the employee could then probably claim relief under Section 33 in respect of the premiums unless, of course, he already had other life policies which took him beyond the allowable limit of 1/6th of his income. One reason why an employee will probable not chose this particular path and would in most cases though not in all cases choose the pension scheme option, is because of the other main difference in tax treatment. This, really, is the essence of the distinction and the rationale of the Government's decision to tax lump sums in the hands of the beneficiaries in future. If you or I take out an endowment policy, Mr Speaker, the lump sum which we are eventually given on maturity will have paid tax in the hands of the insurance company at the corporate rate. That is to say, the interest which is earned on the investment by the company would have been taxed and this is not true of the return on investments made by the company in the case of approved pensions schemes. This is the essential difference, whether they are personal pension schemes or annuity contracts or corporate schemes such as, for example, the stevedores scheme which was subject to discussion earlier in the year. Those investments are not taxed and it follows as surely as day follows night or as day is different from night, that the returns in the form of the final handout, the final pay, should that be a lump sum, are much greater in the case of a pension scheme than in the case of a maturing endowment policy. When I say much greater, broadly speaking, I am talking about a factor of 100%, that is to say, an insurance company will quote twice as much for a pension scheme as for an endowment policy. This really brings me to the rationale on the whole tax reform. In short, that is the reason for not allowing 100% lump sum pensions free of tax. The contributions have been allowed, have been taxed deductible, the investments in the pension schemes have been allowed free of tax, it is reasonable in those circumstances for the individual who is earning a pension and having benefitted from his tax advantages, to take a substantial portion of the maturing pension in the form of an annuity, after all he will, this is the rationale behind it, such an individual will in most cases still be taking advantage of the services of the Government, services of the community and therefore it is not unreasonable to expect him to contribute in some way by means of tax, to those services, services provided by Government as any other citizen. That, in short, Mr Speaker, is the rationale for it. As I have said it is not my position to defend the politics of it but I felt I owe it to the House to give what has been a rather lengthy explanation. There are some changes which we have considered to the particular provisions in this income tax ordinance affecting return of contributions. I think, by way of introduction, I ought, perhaps, to comment on the points made by the Honourable Leader of the Opposition in relation to GSL

employees. The Honourable Member asked the Government, "Do they know that the biggest single group that will hurt by this new legislation is the group that they made redundant in January in GSL? Are they aware of that, because if they are not aware of that, then they ought to be aware of that". This is not our understanding of the situation, Mr Speaker. The position of GSL employees will really be as follows. Those who might as a result of the restructuring proposals be made redundant and might withdraw their contributions to the GSL pension fund will not be caught by the provisions in this Ordinance for taxing in return of contributions. The Commissioner of Income Tax will regard all those employees of GSL who were in employment prior to the 1st July, 1987, and provided, of course, they have made contributions retrospectively in respect of their employment, he will regard them as being exempt from the tax of return of contributions. There is one very final point, I am sorry for standing on my feet so long, Mr Speaker, but this is the question of the rate of tax. I think the Honourable Leader of the Opposition pointed out that in the United Kingdom the rate of tax is 10% on return of contributions. We have so phrased the legislation as to make the effective rate of tax 15% because of the particular formula we had used was that any amount in advance or in excess of 25% will be taxed at 20%. I think that comes out at an effective rate of 15% or 16%. On reconsideration, Mr Speaker, the Government has decided that it is prepared to lower the rate to 10% and it is not necessary to frame this particular part of the Ordinance in the terms in which it is now expressed, namely, the incentive of 25%. I have an amendment which I would like to circulate to Honourable Members which will quite simply say that the tax on the rate of return of contributions will be at 10%. I do not know whether I need to explain the technicalities of the amendment. As Honourable Members know, any changes to the Ordinance are in two parts. First of all, you have a substantive part and then you have a charging part so the bit where it says what the rate shall be comes later, namely, in 37B. That is why the first amendment is rather a curious one.

MR SPEAKER

That is why you are proposing Clause 11 to be amended. Any contributors?

HON J BOSSANO

We support the deletion and we will vote in favour of the deletion and we will oppose the introduction of the new rate of 10% because, in fact, we do not agree with what the Government wants to do and we think it is a decision which requires a political decision and we politically are against it. It is not that we do not understand the arguments, it seems to me that all that has happened since the last House is that the Government having studied the arguments have, as it were, attenuated the effect of their measure to incorporate the arguments that they were using and therefore

the measure is less lethal than originally intended but still insufficiently good to satisfy us and therefore we are against it and we shall vote against it, but we will of course support the deletion in Clause 2.

Mr Speaker then put the question which was resolved in the affirmative and Clause 2, as amended, was agreed to and stood part of the Bill.

Clauses 3 and 4 were agreed to and stood part of the Bill.

Clause 5

HON ATTORNEY-GENERAL

It is quite a lengthy amendment as set out in my notice, Mr Chairman, of the 20 January. The first amendment, if you wish me to go through it, Mr Chairman, is to the new Section 26A2, at page 190; to omit the words "a house or a flat is purchased" and substitute the words "a person who is eligible to apply for Government housing in accordance with the Housing Allocation Scheme, as revised in 1987, made under the Housing (Special Powers) Ordinance, enters into an agreement to purchase a house or a flat".

MR SPEAKER

Does any Hon Member wish to speak on the proposed amendment?

HON J BOSSANO

The amendment itself is something which we welcome because it specifies what was previously, one assumes, in the mind of the Government but not stated black upon white. That was one of the arguments that we used the last time, that if you gave discretionary powers to the Director of Crown Lands to certify what was a closed market development scheme and we did not think it was good legislation that somebody should have to guess what would satisfy the Director of Crown Lands or that the Director of Crown Lands in theory should be free to vary those criteria from one application to the next. Since it is the first time you are including the expression "closed market development scheme" in the law, we felt it ought to be defined so that we knew what the Government meant by it. The only previous reference that we have seen to this as we said in the last meeting of the House was in the published City Plan, so it is now clear and we are therefore, in principle, in favour of the fact that it should be set out in the law. However, we ourselves are not entirely sure whether the two-tier system is desirable in Gibraltar and whether we would want to perpetuate it which was the other point that I made in the debate. There were really two things, one was, we have said; "if there is going to be an open market and a closed market, there should be absolutely crystal clear definitions of what is closed and what is open so that everybody knows where they stand. My second argument was, can we have a closed market development and are we not in conflict with community law? And that the amendment does not answer because it seemed to us that conceptually the

closed market thing came from looking at the way Jersey and Guernsey have tried to protect local residents from competition for housing by excluding new people coming to the islands from being able to buy certain properties and consequently there are properties that only Jerseymen can buy and which can only be sold to Jerseymen, as it were, and there are properties which anybody of any nationality can buy provided they get the residence permit. Our argument is that having looked at community legislation, it seems to us that under community law we are required by community legislation, as the Honourable Member opposite was saying earlier in relation to the pensions. In relation to the pensions we have been told in a previous motion in this House that if we are legislating something which is in conflict with community law then, in fact, the legislation that we pass here is unenforceable because community law supersedes it. Can we be told categorically that the Government has looked at that aspect and that the Government is completely satisfied that this cannot be challenged as being in conflict with community law because having read community law on the subject it appears to us that a community national that takes up residence in Gibraltar has got the right to buy property on the same basis as a native of Gibraltar and that discrimination on the right to buy a home in Gibraltar on grounds of nationality is not permissible. Therefore if the closed development is a closed development because a person is not allowed to buy it unless he qualifies for Government housing and we are then saying that only a person that is a Gibraltarian goes on the Housing Waiting List, then it seems to us that we are making it a condition of this law that somebody should act in a way which breaks community law and I do not see how we can do that. We are not satisfied that it can be done. Secondly, we are not satisfied that it ought to be done even if it was not a matter of community law. We would like a view on whether it is or it is not, but independent of that I think I have to say that we still would wish to reserve our position independent of that issue because purely on economic grounds, as it were, on the grounds of the promotion of home ownership and so forth, we are not ourselves sure in our own minds that the best way to go about it is to have a two-tier housing market. We are not clear ourselves on that, we think it requires much more thought and the Government has not really put up a very strong case for doing it. As far as we are concerned the only time that we have really had any kind of explanation about a two-tier market was in this legislation. If you are introducing a new system which gives certain privileges to certain categories of citizens and denies them to other categories of citizens, we ourselves feel that there have to be very powerful arguments for doing that. As a matter of general principle we would say to ourselves that we believe that if you give certain tax advantages for home ownership, then you do it to everybody. If you are going to give it to some and not to others we need to be persuaded by much more powerful arguments that have been put forward so far. But as I said initially Mr Chairman, as far as the amendment being moved by the Attorney-General now is concerned, we welcome that because it does clarify the position of what it is that the Government is trying to

do and therefore we think it is a good thing for everybody in Gibraltar to understand the law better as a result, even though we might in principle not be in agreement with the law itself and we might want to change it in the future. We will support the amendment purely for those reasons but I think I need to make clear that when the time comes we shall be abstaining on the amended motion, because we have not made up our minds finally and because we would like clarification on the EEC dimension.

HON ATTORNEY GENERAL

Insofar as the EEC dimension is concerned, it is, as the Honourable Leader of the Opposition knows, a difficult piece of legislation insofar as Gibraltar housing is concerned. It is quite clear from the amendments that we have made to the Lands Titles Order that any EEC national can purchase land in Gibraltar. But then we have the equally difficult problem about how the Housing Allocation Scheme which is mentioned in this particular clause fits into community regulation, I think it is 1612. You have had my views on three times in this House on that. We defend the Housing Allocation Scheme which allows the eligibility for housing in Gibraltar to go to people who have been registered in the register of Gibraltarians and to persons who were not registered in the Register of Gibraltarians but have a right of permanent residence and also British Dependent Territories citizens through their connections with Gibraltar. We have had this out in the House on several occasions and it is not easy to have to reconcile it with community legislation but we have said and I have said more than once in this House, it is something which is so fundamentally important to Gibraltar that we would fight it and fight it and fight it again to do our best to ensure that the public housing stock of Gibraltar goes to Gibraltarians and not to community nationals in general because I cannot imagine a worse situation, Mr Chairman, than Frenchmen, Spaniards, Germans and the like, as community nationals, coming in and taking priority in our housing list over Gibraltarians who were born here, who have been registered here, just because the community national coming in manages to get more points on the housing list. It is difficult, we think that there is a reasonable argument for saying it is within community law and we are prepared to fight that argument to win the day because we think it is terribly important to Gibraltar.

HON J BOSSANO

I am afraid the Honourable Member has skilfully avoided giving me an answer and I cannot let him get away with it. I am not suggesting to the Honourable Member that the few houses that we have available for people on the waiting list should be distributed to Spaniards, Frenchmen, Portuguese et al. In fact, if they all joined the waiting list I would imagine they will still be there in 10 years time like we all are. That is not what we are talking about, we are talking about an amendment to the Income Tax Ordinance which gives tax treatment for home ownership to people who are

able to apply for Government housing. I am not questioning whether the Housing Allocation Scheme is an infringement of Community law because we are not discussing the Housing Allocation Scheme and that is not a scheme which exists in any of our laws. I know that the explanation that the Hon Member has given now and that he has given before is that even if it is contrary to Community law, he is prepared to defend it because housing is such an important area and obviously because the AACR is building so few houses that the Hon and Learned Attorney-General has got to keep the few that there are available for Gibraltarians and I agree with him. However, my question is, since we are legislating now not only about the right to apply for public housing but the right to purchase, and there is specifically in the legislation of the Community a specific reference to the right to buy, it is about the right to buy that I am seeking an answer. If we are saying to somebody that he may not sell to someone who is not on the waiting list, are we not limiting the right of people to buy property in Gibraltar in a scheme which we call restricted and we are restricting it by reference to a definition of the category of people, can that restriction be sustained? That is the question. I am saying that even if the restrictions can be sustained we may wish not to do it for other reasons but we want to know in any case, since that question has not been answered to our satisfaction, whether in fact in his view we have got the right in Gibraltar to build houses for sale which we can say will only be sold to Gibraltarians. Can we do that?

HON ATTORNEY-GENERAL:

This is the point I have been trying to make, Mr Chairman, because it does come down to the validity of the Housing Allocation Scheme.

HON J BOSSANO:

Mr Chairman, what I am asking him is, independent of the fact that the Government, in renting council houses as a landlord may be able to select the tenants and it can select the tenants by birth or by colour or by income or by whatever criteria and that criteria might be challenged or not be challenged which is one issue which is not the issue we are questioning at the moment. Can a private developer say 'I am now going to build houses exclusively for Englishmen which nobody else can buy or exclusively for Frenchmen', can he do that under Community law or does, in fact, the law of the European Community say that any Community national has to have the same right to buy property in any Member State as a national of that Member State?

HON ATTORNEY-GENERAL:

That is what our law says in the amendment we made to the Lands Title Order. We gave community nationals the right to purchase land in Gibraltar so they do have a general right to purchase land. All we are saying here is that the landlord can only sell or dispose of the property in a closed market development scheme to somebody on the Gibraltar housing list.

HON J BOSSANO:

I am aware of that. Perhaps I am being very obtuse in following the Hon Member's argument. It seems to me if he tells us that we have changed the Lands Titles Order to say 'anybody can buy property in Gibraltar.....

HON ATTORNEY-GENERAL:

Other housing schemes.

HON J BOSSANO:

Other housing schemes, this is what we want. What I want is a categorical statement from him that we are entitled within Community law to require a particular developer in a particular development to sell to a particular class of purchaser. In fact, we can say to somebody tomorrow: 'this is a piece of land for development and the conditions of the tender are that the property may only be sold to people with the following characteristics', be those characteristics that they are on the waiting list or that they are tall or that they are short or they have got brown eyes or whatever. Can we, in fact, introduce a limit of the class of purchasers to which a property may be sold without being in conflict with what he has told us we have already done which is to give people a general right to purchase? If he says we can do that then, fine, that is his view and it satisfies our concern that we were acting in a way which could be challenged effectively. But I am also saying, independent of that, that we ourselves think that much more thought has to be given to the development of this two-tier market which is a concept recently introduced by the Government and which we are not entirely sure we want to support because we think more thought has to be given into its economic consequences, generally, as to what we want the private sector market to be like.

HON ATTORNEY-GENERAL:

The Hon Leader of the Opposition may contend with, I think, the position taken in this, is defensible in Community law because of the peculiar situation. It is a very complex subject.

MR SPEAKER:

In other words, you are saying it can be put to the test.

HON ATTORNEY-GENERAL:

It can be put to the test because it is important that certain houses only go to people on the waiting list and for that reason we have got to try and defend it.

HON J L BALDACHINO:

Mr Chairman, but once we have a closed market development, for example, or somebody builds houses of a closed market, can he then revert to an open market if he so wishes or does that remain a closed market for the duration?

HON ATTORNEY-GENERAL:

I think it must remain within the closed market situation. If you look at the various criteria the Director of Crown Lands has to be satisfied before issuing a certificate and that the purchaser, lessee or other person acquiring such house or who has entered into a legally binding commitment not to sell, grant a lease or otherwise dispose of such house or flat except to a person eligible to apply for Government housing under the Housing Allocation Scheme. It is the best we could do to try and maintain the closed market development so that the person cannot go out to sell in the open market.

Mr Speaker then put the question which was resolved in the affirmative and the amendment was accordingly passed.

HON ATTORNEY-GENERAL:

That Clause 5 be further amended though we have been discussing this, Mr Chairman.

MR SPEAKER:

There is no need to read it.

HON ATTORNEY-GENERAL:

It is exactly the point we have been discussing.

HON J BOSSANO:

We will be abstaining because as I explained, Mr Chairman, we agree with the amendment but the original concept we are not very sure about, we still think this two-tier system will not work.

Mr Speaker then put the question and on a vote being taken the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammitt
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The amendment was accordingly passed and Clause 5, as amended, stood part of the Bill.

Clauses 6 to 10 were agreed to and stood part of the Bill.

Clause 11

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I beg to move the proposed amendment which I have circulated to yourself and to Hon Members, namely, that the proposed amendment to Section 37B of the principal Ordinance shall be replaced as I have circulated.

Mr Speaker then put the question and on a vote being taken the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammitt
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
the Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

Clause 11, as amended, stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THE MERCHANT SHIPPING (AMENDMENT) BILL, 1988

Clauses 1 to 33 were agreed to and stood part of the Bill.

New Clause 34

HON ATTORNEY-GENERAL:

Mr Chairman, I have given notice of an amendment to add a Clause 34. It is purely a legal amendment so it should be inserted immediately after Clause 33 and before Schedule 3. Schedules 1 and 2 are in the principal Ordinance and this is the purpose of this new Clause, that the Ordinance is further amended by inserting immediately after Schedule 2 the following new Schedules.

MR SPEAKER:

Will you read your amendment.

HON ATTORNEY-GENERAL:

The insertion of the following new Clause 34 as follows: "34. The Ordinance is further amended by inserting immediately after Schedule 2 the following new Schedules - Schedule 3, as printed, Schedule 4 as printed but to be amended when we come to Schedule 4.

MR SPEAKER:

I think we have got to deal with the proposed new Schedule 4 now and then the new Clause 34 will read, and that is what I was suggesting before, 'as printed in the Bill', as circulated in the amendment.

HON ATTORNEY-GENERAL:

Schedule 4 as circulated if you please, Mr Chairman.

Mr Speaker then put the question which was resolved in the affirmative and new Clause 34 was agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THE COURT FEES BILL, 1988

Clause 1 was agreed to and stood part of the Bill.

Clause 2

HON ATTORNEY-GENERAL:

Mr Chairman, to amend Clause 2 to omit the words "sections 4 and 5" and substitute the word "section 4".

Mr Speaker put the question which was resolved in the affirmative and Clause 2, as amended, was agreed to and stood part of the Bill.

Clauses 3 to 6 were agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THE SUPPLEMENTARY APPROPRIATION (1987/88) BILL, 1988

Clause 1 was agreed to and stood part of the Bill.

The Schedule was agreed to and stood part of the Bill.

Clauses 2 and 3 were agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to report that the Income Tax (Amendment) Bill, 1988, with amendments; the Merchant Shipping (Amendment) Bill, 1988, with amendments; the Court Fees Bill, 1988, with amendments; and the Supplementary Appropriation (1987/88) Bill, 1988, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Mr Speaker put the question and on a vote being taken on the Merchant Shipping (Amendment) Bill, 1988; the Court Fees Bill, 1988; and the Supplementary Appropriation (1987/88) Bill, 1988, the question was resolved in the affirmative.

On a vote being taken on the Income Tax (Amendment) Bill, 1988, the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammit
The Hon E Thistlethwaite
The Hon B Traynor

The following Hon Members abstained:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon Miss M I Montegriffo
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The Bills were read a third time and passed.

MR SPEAKER:

We will recess now until tomorrow morning at 10.30.

The House recessed at 7.00 pm.

FRIDAY THE 22ND JANUARY, 1988

The House resumed at 10.45 am.

MR SPEAKER:

We will continue with Private Members' motions.

PRIVATE MEMBERS' MOTIONS

HON R MOR:

Mr Speaker, I beg to move that: "This House considers that Gibraltar has no further obligation to contribute to the cost of revalued Spanish pensions beyond the £4.5m from the Spanish sub-fund and that any further payments is a matter for Her Majesty's Government to agree with the Government of the Kingdom of Spain". Mr Speaker, the question of Spanish pensions was extensively debated in this House on the 28th January, 1986, that is, almost two years to the day. On that occasion you will no doubt recall that the reason why the Opposition had brought a motion to the House was because an agreement had been concluded in December, 1985, whereby the British Government was providing a certain amount of money and we were putting up that part of the fund which belonged to the ex-Spanish workers and as you know, Mr Speaker, the British Government put up £16m and we put up £4m so that made up the £21m which were expected to cover the years between 1980 and 1988. At the time the Hon and Learned Sir Joshua Hassan thought that this agreement was a matter of particular satisfaction, that is how he described it in his New Year Message. But we, on the other hand, thought that the agreement failed to adequately protect the interests of the people of Gibraltar. That was the reason why we brought the motion at the time because we believed that the agreement failed to protect the interests of the people. Mr Speaker, if I may go very briefly over what was the scenario at that time. If I may go briefly over what was being said and what was being debated both here in this House and, in fact, in the House of Commons. On certain occasions the question of Spanish pensions was raised in the House of Commons at the time and I would like to start by referring to a debate which took place in early December when the British Parliament was discussing the Spanish and Portuguese Accession Bill. I have here, Mr Speaker, a copy of the contribution which Mr Albert McQuarrie made during that debate and I think it is interesting to note that he made reference to a written question which had been asked earlier by Mr David Young to the Foreign and Commonwealth Office. The question was as to who would be responsible ultimately for the payment of Spanish pensions. Mr McQuarrie quoted the reply given by Mr Tim Eggar, which was: "Under Gibraltar law and under European Community Regulations responsibility for payments of pensions rests with the Gibraltar Government. We are having discussions with the Gibraltar Government about how this responsibility will be met". This question was answered on the 2nd December, 1985. Mr McQuarrie pointed out and, as we all know, that this reply had provoked a reaction from the then Chief Minister of Gibraltar who issued a press release which read as follows: "I have just been informed of the answer given by Mr Tim Eggar to a parliamentary question by Mr David Young regarding the ultimate responsibility for the payment of social security pensions to Spanish nationals working in Gibraltar before the closure

of the frontier by the Spanish Government". Sir Joshua then went on to say and I think, Mr Speaker, this was, in fact, quoted yesterday here by the Hon the present Chief Minister: "Gibraltar Government Ministers have made it clear to the British Government that while Gibraltar is prepared to meet its moral responsibility in full and has accordingly offered to contribute the total amount paid into the Social Insurance Fund by Spanish workers, plus accrued interest" - a total of some £4.5m - "their view is that the ultimate responsibility lies with the British Government". In fact, the statement Mr McQuarrie, again, quoted this as well, later on it said: "we reiterated previous oral suggestions that the Spanish Government might be asked to acknowledge some responsibility in this matter". Mr Speaker, as you can see, the motion which I am presenting today is, in fact, no different to what the Hon and Learned Chief Minister of the time was saying, that is, that Gibraltar has no further obligation to pay for Spanish pensions beyond the £4.5m of the Spanish sub-fund and that any further payments is a matter for Britain to agree with Spain since they are both in some way responsible for our situation. Spain caused the problem in the first place by withdrawing the labour force and Britain, as the EEC Member State, failed to secure Gibraltar's position before Spain's entry and, of course, we on this side of the House also apportion blame on the AACR Government on this since as you know, Mr Speaker, the GSLP has been pressing for derogations to be sought since 1980. But in this debate in the House of Commons there was also a contribution by Mr David Young and in concluding his speech Mr Young said: "In agreeing to the accession of Spain and Portugal, it is the duty of the House not to neglect the rights of 30,000 British citizens in Gibraltar who look to us as their one safeguard. I ask Hon Members to remember that it is Her Majesty's Government who have negotiated the Accession Treaty, not the Gibraltar Government. I hope that the Minister of State will not dodge those essential issues as his Right Hon and Learned Friend did earlier".

This was in fact a direct reference to Sir Geoffrey Howe who had, as Mr Young said, dodged the issue of Spanish pensions when he was answering questions earlier on. In fact, Mr Speaker, Sir Geoffrey Howe had been asked earlier by Mr Alfred Morris: "The Right Hon and Learned Gentleman spoke of the importance of this legislation for relations between this country and Spain. He said nothing about the important issue of the pensions that will be payable to Spaniards who worked in Gibraltar up to the time when the frontier was closed. He must know that it is an issue of the first importance to the Government of Gibraltar. It could cost them £7m a year for the next 15 years. Can the Right Hon and Learned Gentleman give them any sort of assurance before he concludes his

speech?" To this, Mr Speaker, Sir Geoffrey Howe replied: "The Right Hon Gentleman was right to raise that question. It is clear that the financing of those obligations is a matter of interest. The Government will make a significant contribution for the first year from the date of Spain's accession to assist Gibraltar to meet its obligations while negotiations continue about future years. I shall say something more about Gibraltar later". What Sir Geoffrey Howe said later about Spanish pensions, Mr Speaker, was in fact disappointing and was also, in fact, what brought about the remark that he was dodging the issue. Because there was no doubt that he was avoiding making references to the issue and had to be interrupted by Mr James Pawsey - Mr James Pawsey, if Members will recall, was out here some time ago - and he said that it was clearly unfair that the 30,000 people of Gibraltar should bear the burden of the amount involved to meet these pensions and that he thought the Gibraltar Government were looking for a rather better deal than that. All Sir Geoffrey Howe said, Mr Speaker, was "With regard to pensions it must be remembered that the workers in question contributed to the Gibraltar Pension Scheme for a number of years and, like other workers who contributed in the same period, are entitled to benefits which match those payable to people who live in Gibraltar. That is the pattern with which we are dealing and I have nothing to add to what I said earlier about this topic". This, Mr Speaker, was the scenario at the time. It was clear that several Members of Parliament in the United Kingdom were expressing concern at the problem of Spanish pensions on the one hand and the British Government was attempting to avoid the issue. To us, on this side of the House, Mr Speaker, it was an indication that the British Government were not prepared to accept responsibility for the payment of these pensions and, clearly, what was obvious then and we believe it is still obvious, that the British Government is expecting the full responsibility to be taken up by the people of Gibraltar. Mr Speaker, we were in for quite a surprise when in his New Year Message Sir Joshua Hassan had said that the agreement was a matter of particular satisfaction. We believed then, Mr Speaker, and we still do, that the agreement, as I mentioned earlier, failed to adequately protect the position of Gibraltar because we believe, of course, that the matter should have been settled long before Spain joined the Community and if that was not done then we would expect the British Government as a member EEC State to accept the responsibility. Mr Speaker, I will therefore come to the motion which I have referred to earlier on and which I moved in this House in January, 1986. As you will no doubt recall at the time I expressed some doubt as to the value of the Spanish Sub-fund which was then calculated to be £4.5m and the reason why I had expressed doubt was because I had reason to believe that the original figure should have been £3m and not £4m and I had come across, Mr Speaker, a statement which had been made here in this House in 1970 and which had, in fact, mentioned the figure of £3m. I am obviously not going to go into that again, Mr Speaker, because with

the passage of time it is very difficult to be able to clarify how those figures were produced although as you may remember, the Hon Financial and Development Secretary did attempt to give an explanation during that debate. At the time I also referred to a statement made by the then Chief Minister of Gibraltar, Major Bob Peliza, who was trying to reach a settlement whereby the monies due to the Spaniards then was being handed back and he did, in fact, say that an acceptable settlement was possible in his statement. It is a pity, Mr Speaker, that the AACR who were then in Opposition were opposed to this arrangement otherwise we may, obviously, have not been discussing this today and Gibraltar would have been rid of this problem. However, Mr Speaker, it is interesting to note some of the things which were said then and which relate to the motion which is before us today. In his contribution the Hon and Learned Sir Joshua Hassan once again reiterated the Government's position when he said: "I would state that the Government's own position on the matter for the future is as clear as it has been throughout. Neither the Government nor anyone can commit Gibraltar to the enormous burden which this problem represents. We consider that the ultimate responsibility rests on the British Government". On the face of it, Mr Speaker, it appears that the Government's position was still as firm as when their previous Government statement was quoted by Mr McQuarrie, that is, that we should not be called upon to provide any further money beyond the £4.5m. In fact, Mr Speaker, when my Hon Colleague, Joe Pilcher, was saying to the House during the debate that what we wanted the Government to continue was with what the Hon Mr Canepa had been saying here and outside the House, that they would not pay out a single penny of Gibraltar taxpayers' money, the present Chief Minister interrupted and said: "We say that today". That was in January, 1986. However, Mr Speaker, the solidly firm stand which the Government appeared to be taking was somewhat shaken by the Hon Mr Maurice Featherstone when he came out surprisingly by saying that he felt Gibraltar had a commitment to meet the pensions of those Spaniards who had qualified for pensions before 1969 and, as you know, Mr Speaker, there are over 700 of them. However, it was not only the Hon Mr Featherstone who said this but this position was, in fact, endorsed by the Hon Mr Canepa himself who said that in 1989 we have a moral and legal obligation to pay for those pensions. He said that we should not have any liability towards those Spaniards who had not yet reached 65 in 1969 and were withdrawn as a political weapon to harm us but that we had an obligation to pay the others. Mr Speaker, although I suppose that at face value it may well sound a reasonable attitude to show, I suppose it could also be argued that those Spaniards who were used as a political weapon, as the Hon Member has said, those same Spaniards who had not yet qualified for pensions in 1969 formed the base with their social insurance contributions from which the money would have come to pay for those others who had already retired. In fact, Mr Speaker, by withdrawing this labour from Gibraltar, Spain had actually taken away the means by which

Gibraltar could have honoured the payments of the pre-1969 Spanish pensions. As I say, Mr Speaker, I believe this could also have been used as an argument but what I find incredible is that the Government should have come out with such a statement right at the outset of negotiations over who was going to pay beyond 1988. I think, Mr Speaker, that this clearly shows the lack of ability of this AACR Government when negotiating anything on behalf of Gibraltar. Mr Speaker, to say publicly how far you are prepared to go before you start negotiating is very much like showing your hand in a poker game before the betting starts. The British Government must have been delighted to hear this, Mr Speaker, because quite obviously they would then have started negotiations from the basis that the Gibraltar Government was already prepared to pay up £1.5m for the payment of Spanish pensions. Mr Speaker, we were asked by the Government to come clean on the issue of Spanish pensions and this we have done with this motion we are presenting today. We would also ask them to come clean and explain how is it that they are committed to look at Gibraltar's capacity to contribute towards meeting the cost of Spanish pensions beyond 1988 according to the terms of reference of the Joint Study Group. Under these terms of reference, Mr Speaker, in paragraph 2 it says: "To assess the capacity of the Gibraltar economy to contribute towards meeting the liability after the end of 1988 taking into account the Gibraltar Government's financial and economic policies". Mr Speaker, we asked the Government in Question No. 188 of 1987 on the 6th July last year: "In view of the improved economic climate are Government now ready to proceed with the reduction of the age of entitlement to 60 for male social security pensions?" In their reply, Mr Speaker, they said: "This is not a matter which is directly related to the general economic climate". We would be interested to know how is it that in the case of Spanish pensions this is related to our economic potential and yet in something of benefit to our own pensioners it is not. Mr Speaker, as I said before, the wording of this motion is very much in line with the position that Gibraltar has been taking all along as regards the payment of Spanish pensions. We believe that this is an issue which should have been resolved long before now and long before Spain joined the EEC. We believe that Gibraltar should have no further commitment beyond the £4.5m and that Britain must accept responsibility as the Member State and, equally, we feel that Spain is also answerable for having created the problem in the first place. As has been said before, Mr Speaker, we were the victims of Spain's aggressive tactics and yet we are now being asked to pay a price for this. And the price we would pay would be deficiencies in our education system; deficiencies in our housing; deficiencies in our medical and social services as well as affecting the general development of Gibraltar. We believe that Britain's position today is still very much the same as expressed by Mr Tim Eggar in December, 1985, that is, that it is Gibraltar's responsibility and they are

still maintaining a firm position on this. Spain, obviously, will also maintain a firm position by saying that they are entitled to these pensions and so I believe that we must equally be as firm and we must also take a very firm stand on this. We should not be asking, Mr Speaker, the people of Gibraltar to pay a price for the failure of the AACR Government and that of the British Government in having sought derogations for Gibraltar at the appropriate time. Mr Speaker, I commend the motion to the House.

Mr Speaker proposed the question in the terms of the motion as moved by the Hon R Mor.

HON CHIEF MINISTER:

Mr Speaker, in setting the scenario as it was in the debate in the House of Commons back, I think, in 1985, Mr Mor mentioned a number of MP's who took part in that debate and who did so on a rather well-informed footing because they had formed part of a CPA delegation that had come out to Gibraltar and who had discussed the matter, I am sure with the Opposition certainly, they certainly discussed the matter with us in the Government at great length and we were able to impart to them a great deal of information on the issue. In fact, the remark that Mr David Young made in the House of Commons that it was Her Majesty's Government who had negotiated the Spanish Accession Treaty is precisely the point that Sir Joshua Hassan made yesterday in his contribution that it is the actions of the British Government in pursuance or in respect of its international obligations when Britain signs international treaties that had created the problem for the people of Gibraltar. Alfred Morris had also come to Gibraltar on that occasion and, indeed, together David Young, Albert Morris and another several MP's who expressed concern, noted that Her Majesty's Government were attempting to avoid the issue. In fact, at the time of that debate I think they were trying to wash their hands off the issue beyond the first year. I think their attitude was: 'Let us get the pensions paid during the first year, once they start to be paid we have got the Gibraltar Government committed' and we were not going to fall for that. If you compare the line that was being taken during that debate in the House of Commons, the concern that MP's were expressing, if you contrast that with the agreement that was finally reached in December, 1985, on the brink of the 1st January, 1986, I think it is full proof of our success in the negotiations, proof of the fact that we pushed the British Government much, much further than what they would have wished to go on the matter and that is the reason why Sir Joshua Hassan, Chief Minister at the time, expressed some satisfaction at the result of the agreement because the negotiations had been extremely difficult at official level. With the Secretary of State, they had been difficult and not by any means bereft of acrimony, a great deal of acrimony arose during the course of those discussions, on

those negotiations. Mr Mor then went on to make the point that the AACR should have agreed to what the Peliza Government had in mind. As I recall it, I was not a Member of the Opposition, but as I recall it, Major Peliza made a statement in the House. The then Leader of the Opposition, Sir Joshua Hassan, reacted to that statement and the reaction was not a positive one but why on earth should that have stopped the Peliza Government from going ahead with what they had in mind escapes me. There was no bipartisan approach on foreign affairs then so why couldn't that administration have taken the initiative, even if the AACR did not agree with them, of going ahead with that proposal?

HON J BOSSANO:

I think the Hon Member is wrong in that particular date of which we have a copy, Mr Speaker. There is a reference to the fact that because it was a matter of foreign affairs both Government and Opposition were being consulted by ME on the proposals.

HON CHIEF MINISTER:

Of course, they were being consulted by the Governor on behalf of the British Government about the proposals but there was no requirement that there should be a bipartisan approach because there was no agreement between the then Government and the then Opposition that this matter or any matters to do with foreign affairs would be approached on a bipartisan basis in sharp contrast to what happened between 1977 and 1980 when Mr Xiberras was Leader of the Opposition, during the time of the so-called Strasbourg process and later on when Mr Peter Isola was Leader of the Opposition between 1980 and 1984. There there was a bipartisan approach and if one of the two parties to that agreement did not go along with a proposal then it could not be pursued. But the Peliza Government could have pursued it. But let us assume for one moment that, in fact, the AACR had been in agreement with the approach. Who is to say that the Spanish Government of the time and at the time in 1970 Franco was still very much at the helm, would have gone along with that proposal. In 1978 we know how a democratic Government in Spain much better disposed towards Gibraltar already, was not prepared to do so and what likelihood could there be of securing agreement precisely from that regime that had caused the problem by withdrawing Spanish labour as a hostile act against the people of Gibraltar. I think that that point anxious as Mr Mor might be to pin the blame on us for not just for what happened in 1984 and 1985, he wants to pin the blame on us for what happened in 1970, how far back can you really go? I think, Mr Speaker, I have demolished that point without a shadow of doubt. I said during the course of the debate yesterday that the Government would spell out what its position was in respect of the liability beyond the £4.5m

contribution from the Spanish fund. I also explained that if Gibraltar had to take a rigid stance on the matter it should do so responsibly and on the merits of the case. Our position, in fact, has not changed from what we put to Her Majesty's Government in 1984 and 1985 and what we publicly stated in a debate on this matter in January, 1986. I myself explained then, Mr Speaker, that it was important, in my view, to draw a distinction between the benefits payable to Spanish contributors who were withdrawn in 1969 and those who had become pensioners by the date of the withdrawal. What I was saying was, what I am saying now is that the position of people who were working in Gibraltar, who were contributing to the fund and who were withdrawn as a hostile act by the Spanish Government before they became pensioners, the position of those individuals is different to the position of the much smaller number of persons who had already earned entitlement to a pension by 1969. Who had earned entitlement at any time between 1960 when pensions were first payable and 1969, who had worked in Gibraltar, who had contributed to the fund many of whom were no longer working in Gibraltar and therefore could not be used as a weapon in order to undermine the economy of Gibraltar. Therefore, Mr Speaker, I quote from Hansard of that debate at some length as to what I said because it is the view that I continue to hold today. Quoting from Hansard I said: "What of the future? I will deal with that in a moment. We only agreed to that amount which belongs to the Spanish pensioners. That is the position that we take and I have stated publicly on more than one occasion here in the House and elsewhere that I did not agree that a single penny from current contributions should go towards" - I am adding a word or two here and there not to change the meaning of it but so that it reads better in correcting the actual verbatim record - "should go towards meeting the cost of pensions for Spanish workers who were withdrawn in 1969. Who were withdrawn to do us economic damage, to injure us but what perhaps has never been debated in this House is the position not of the Spanish workers who were withdrawn in 1969 but the position of those Spanish workers who had worked in Gibraltar prior to 1969, who had contributed to the Social Insurance Fund since 1955 and who had become pensioners prior to the Spanish labour force being withdrawn in 1969. In respect of these people we must draw a clear distinction between the two categories, that is, people who contributed from 1955 to the day when they reached the age of 65, somewhere between 1955 and 1969 and who were already pensioners; they had already earned a pension and very likely a full pension and the other category that were withdrawn. And they were withdrawn through no fault of their own but as a weapon to harm Gibraltar. And I say to the British Government and to the Spanish Government and to the Community that whatever legal or moral commitment Gibraltar has towards those people has been cancelled by the harm that they have done us". By 'those people' I am referring to the workers that were withdrawn. And because I maintain that the people of Gibraltar have got to be compensated in economic and in social terms for the harm that was done to us. The two cancelled each other and I will say later on how I think

that that problem should be addressed and dealt with. But I think we have got to accept that in the same way as the people that are contributing to the fund today, the workers of today, in the same way as they are footing the bill for other pensioners, for Gibraltarians and others other than the Spaniards who contributed in the early years, no more and no less than those Spaniards who had reached pensionable age, in the same way as we are paying for their pensions we should also pay for the pensions of those Spaniards who were not withdrawn" - that is the end of my quotation. That, Mr Speaker, is a consistent line of argument. We have argued that we could not make any contribution because of the enormous financial burden arising from the damaged cost to Gibraltar's economy by the closure of the frontier and the distorting effect which that hostile act created for the Social Insurance Fund. We should not thereby disclaim Gibraltar's obligation to those Spaniards who obtained their entitlement before the frontier was closed. Gibraltar's position on the matter would, in our view, gain more respect and understanding. It is certainly more defensible than saying that we will only pay out what the Spaniards put in. There are now some 400 to 500 such pensioners and it is estimated that the current commitment is running somewhere between £1m to £1.5m per annum, but I think it is important to underline that it is, in fact, a diminishing commitment for this particular category of Spanish pensioners are the eldest of them and will therefore, naturally, be dying, as they have been, at a faster rate than the majority of Spanish pensioners. Consistent with that line, Mr Speaker, I am proposing that the motion be amended by adding after the words "the Spanish sub-fund" the following words: "other than in respect of those Spaniards who were already in receipt of pensions prior to the closure of the frontier in 1969". Mr Speaker, I commend the amendment to the House.

Mr Speaker proposed the question in the terms of the Hon the Chief Minister's amendment.

HON J BOSSANO:

Mr Speaker, I am speaking at this stage just on the amendment. We are voting against the amendment. When the Hon Mr Canepa made his original contribution in January, 1986, two year's ago, which he has been quoting from today, he invited us to consider that position and, in fact, to take a bipartisan approach on it basically because he was saying that it would be helpful if both the Government and the Opposition agreed that that was as much as we were prepared to pay which he told us at the time, surprisingly enough, came to £1.7m a year because there was something like 700 entitled pensioners but that the figure obviously would be declining because they were people who were fairly elderly already having been 65 in 1969. In subsequent questions, in fact, the figure that was given, I think, was in excess of £1.6m in 1986.

The first year that people got full pensions we asked how much did the full pensions come to which was the people who were entitled to the pension and the figure was there were about 700 people and the fee was £1.6m. We responded to that request from the Government in a press release issued by the Party after considering the arguments that had been put in 1986 and our position was that we did not accept that there was a particular responsibility for those people then and we don't accept that there is a particular responsibility for those people now. Let me say that had we thought in January, 1986, that we had the responsibility for paying the £1½m, the logic of that position would have required us to say the £1½m that we have paid in 1986 and in 1987 and that we are going to pay in 1988 is not something to which the British Government is contributing with their £16½m because we are accepting that it is our responsibility solely. Why should it be our sole responsibility to meet that £1½m in 1989 and it has not been in 1986, 1987 and 1988? If in 1986, 1987 and 1988 we have put for those three years £4½m and the British Government have put in those three years £16½m it is obvious that we couldn't have been paying exclusively the part due to the people pre-1969 because that in itself would come to more than £4½m when you take into account that we were already paying frozen pensions to the rest. If you accept the logic of the position that the Government is putting to us and we are saying in 1989 the pensioners in respect of which there is an amendment, ie that there is an obligation in Gibraltar to meet the cost of the Spaniards already in receipt of pensions prior to the closure in 1969, if we are saying that today and if the Hon Member was saying it in 1986, there would have been no argument for saying to the British Government that they must make a contribution towards these pensioners. That is what the motion is all about. The motion is about whether we pay any money at all now that the £4½m is finished or the British Government pays the money now that the £4½m is finished. If the Government of Gibraltar says they are prepared to meet the cost of this group without any contribution from Britain, logically they should have been prepared to meet it already without any contribution from Britain but they haven't done it, they have included it as part of the £21m. In fact, it seems to me that the motion that the Government wishes to put forward, the proposal in their amendment, effectively negates the argument that they used initially with the British Government of saying 'the British Government must put up £16m' which includes paying for this group for which we are now saying we are responsible. We have already stated in 1986 that this is not acceptable to us and, in fact, as my colleague said in his opening remarks, we think it is very unwise of the Government to go along into a negotiating situation which has not yet started saying 'we are already accepting a £1½m liability and we are already accepting for this group'. It is quite obvious that if there was any prospect of the British Government having been willing to pay for this group that prospect no longer exists given

the fact the British Government knows that the Government of Gibraltar is willing to pay for it. We believe that the Government of Gibraltar should not accept giving one single penny beyond the £4½m. That is what we said in 1986, that is still the position today and that is what the motion was seeking to get the House to say unanimously. It is obvious that there are two different positions and it is obvious that that position of paying for the £1½m for those 700 Spaniards who are pre-1970 is something that in the future will only materialise if the Government can get support for that because they will have to include that as their position in the election manifesto that they put forward and get the public to support that idea and we will have to put the opposite. There is a clear division on this issue. Therefore, Mr Speaker, having cleared up that position, let me just say one other thing before I sit down because really all I stood up is to make clear that we are opposing this. Subsequent to 1986 and I have been trying to find the questions but I am afraid I haven't been able to get my hands on it at short notice, subsequent to 1986 when the Hon Mr Canepa made that statement in the House in answer to a question of mine the Hon and Learned Sir Joshua Hassan, then Chief Minister and not backbencher as he is today, stated that this was not the policy of the Government of Gibraltar and that the Government of Gibraltar was not, in fact, committed to this position because he wasn't going to have his hands tied before he started negotiating with the British Government, the point made by my colleague. Presumably, since then, since that statement was made by the then Chief Minister on behalf of the Government of Gibraltar the position has changed and the Government of Gibraltar has now taken a formal policy decision to which they are bound, that they are prepared to commit £1½m from the Social Insurance Fund to meet this extra cost. Obviously that commitment is being made by the Government now in anticipation and without the benefit of the knowledge of the Actuary's Report. I have to say to the Government that we need them to state, having taken a policy decision, that they are prepared to commit this fund whether in fact the Actuary has been asked to do his review of the fund in the knowledge that the fund will be meeting £1½m for 700 pensioners who were entitled before 1969 because you cannot bring an amendment to this House and ask the House to vote on something and have the Actuary doing a study of the money in the fund on the basis that we haven't got this commitment. I need them to tell me that having taken a policy decision that they are prepared to give this money, that the Actuary in the report has already had included in his brief and in his terms of reference this cost because the report of the Actuary will recommend what is the level of contributions that will be required to meet the level of benefits on certain assumptions. As we have understood it from the Minister for Labour the assumptions of the last Actuary Report was based on frozen pensions for Spaniards and the contributions that we have been paying in the last four years and the increase have been based on frozen pensions to Spaniards. I want really, Mr Speaker,

having said that we are against it, I want since the Hon Member has got the right of reply on the amendment that he has moved, I want him to clarify for me whether, in fact, in the light of the previous answer given by the previous Chief Minister, Sir Joshua Hassan, to a question of mine that it was not the policy of the Government of Gibraltar, it was the view, if you like, expressed individually by Mr Canepa at the time in 1986 but that that was not the negotiating position of the Government of Gibraltar vis-a-vis the British Government and whether the fact that the amendment is being moved implies that it is now the position officially and formally. That a policy decision has been taken and therefore since they are now negotiating on the premise that they are willing to pay this and publicly stating it, that the Actuary has been told this so that in the Actuary's Report, that we are all expecting to materialise within a few weeks, this will be taken into account. We were told that the Actuary's Report would be ready early in 1988, Mr Speaker, and the discussions in the previous motion with the British Government were supposed to be in the light of the Actuary's Report.

MR SPEAKER:

Does any other Member wish to contribute to the debate on the amendment proposed by the Hon the Chief Minister?

HON DR R. G. VALARINO:

Mr Speaker, I wish to speak on the amendment. Mr Speaker, I fully support the amendment moved by the Hon the Chief Minister. I must again emphasise what the Chief Minister has previously said that whatever the size of the commitment, the Government will not be prepared to pay for the consequences of the hostile action taken by the Spanish Government culminating in the closure of the frontier. In fact, if I may quote from Hansard, I said: "Sir, I cannot accept that the agreement entered into with Her Majesty's Government for meeting the cost of paying Old Age Pensions to former Spanish workers fails to protect the position of Gibraltar. The Government has a certain commitment to the Spanish pensioners who reached pensionable age before 1969 and, even without accepting that it is obliged to pay those pensions at current rates of benefits, it has been established that the extent of the commitment amounts to £4.5m. That is the amount which the Gibraltar Government has undertaken to contribute towards the cost of Spanish pensions over the next three years and, as has already been stated publicly, the Gibraltar Government has reserved its position as to what will happen in the future". I thus firmly believe that the ultimate responsibility for the additional cost for this commitment must be placed fairly and squarely on the shoulders of the British Government whilst reiterating the view that at the same time the Spanish Government must acknowledge

its responsibility on the matter. This is reflected in the latter part of the original motion as moved by the Hon Mr Mor. I feel that today we have made our position very clear, the position of the Government. It has been placed on record for the future and I am, indeed, sorry that the Opposition is unable to support this amendment in order that a unanimous decision would have been reached on this motion. Mr Speaker, in conclusion, I would like to say that the point raised by the Hon Gentleman on the Actuary's Report will be raised and tackled by the Chief Minister in his next intervention. Thank you, Sir.

HON R MOR:

I would like to speak on the amendment. Mr Speaker, the Government is saying that they have divided the Spanish pensioners into two groups. One group which already should have been paid a pension in 1969 because they were over 65 and the other group, those which had not yet reached pensionable age ie those which the Government is saying were withdrawn as a political and hostile action. Mr Speaker, the point I made before seems to have been missed by the Government because what we are saying is that the way that a pension scheme works is not that the contributions that one is paying are given back at the end when you retire, but the way it works is that the present day contributors are contributing to those who are already pensioned off. We had a situation in 1969 when the Spanish pensioners of those days, those who were already getting a pension, were being paid by the contributions of the other Spanish workers working at the time. By withdrawing those Spaniards the Spanish Government was taking away the means by which we could have been paying them and therefore I cannot see that Gibraltar should have any commitment in that sense, Mr Speaker.

MR SPEAKER:

I will now call on the Mover of the amendment to reply.

HON CHIEF MINISTER:

The very last point made by Mr Mor, Mr Speaker, that by withdrawing those Spanish workers the Spanish Government was removing the means by which we could finance the commitment to those Spanish workers who were already pensioners. I don't think that it is an entirely valid one in this sense and if those Spanish workers had not been withdrawn they would have had a better contribution record during the intervening period between their being withdrawn and their reaching the age of 65 and therefore you could say that their contributions would have gone to financing a higher commitment to pensions at a higher level in order to finance the pensions of those Spanish workers who were already pensioners prior to 1969.

I don't think it is an entirely valid one and that is not certainly how the scheme necessarily works. I would like to clear up the point about the Actuary's Report and to state that certainly the Report of the Actuaries should not take into account the point that we have made here today about the approach that we take to those persons who were pensioners prior to 1969. That was a view which I had at the time, I don't think that the Department will have given the Actuaries any directive, it had no business to do so, to look at the question of Spanish pensioners differently to what it had done so in the past, in other words, on the basis of frozen rates. What has happened, Mr Speaker, is that I have previously expressed personal views on the matter, these have now been discussed by the Government and in the context as a result of having to take an attitude, an approach to Mr Mor's motion, we have discussed what line we should take and we have come up with what now constitutes as of this moment Government policy. This is now the policy of the Government. I think I should correct Mr Bossano because I mentioned it in my earlier intervention and perhaps he didn't get the point but we are no longer dealing with 700 pensioners. I was making the point that, in fact, it was a fairly rapidly diminishing commitment so much so that today, say, in three or four years after the point first arose in 1985, at the time of the negotiations with the British Government part of the information which the Department of Labour and Social Security were providing to us in the context of the negotiations was precisely how many persons there were in that category and at that time it was over 700 but the number has now diminished to between 400 and 500. And that is a far more rapid rate of diminution than is otherwise the case with pensioners. Even the number of elderly persons pensions has not decreased at the rate at which this particular category of Spanish pensioners has decreased and the reason is obvious. Anybody who reached pensionable age prior to 1969 is today a very elderly pensioner and therefore rapidly dying off. But the point that we are making is, Mr Speaker, what is the difference between Gibraltar and other pensioners who contributed at the same rate - one shilling and five pence as it was between 1955 and January, 1968, in January, 1968, it went up to four shillings or twenty pence - what is the difference between those pensioners who contributed at the same rate and who may have the same number of contributions, who are Gibraltarians or other nationalities and Spanish pensioners of that same period contributing at the same rate equal amounts and equal number of contributions? The only difference that I can see is one of nationality, there is no other. The Social Insurance Fund and today's workers are paying for the pensions received by the same group, the same category of non-Spanish pensioners who became pensioners prior to 1969. Those persons who are Gibraltarians or other nationalities who were already pensioners prior to 1969 and who are alive today are having their pensions which are being received for a couple over £60 a week, for

a single person over £40 per week, they are being received at amounts vastly beyond what could have been envisaged at the time when it is remembered that pensions first started to be paid out in 1960 at the rate of two pounds and two shillings a week. As I say, it is the workers of today who are financing with their contributions that commitment way beyond the amount of money that was put into the Fund by those pensioners when they were in employment, when they were in employment, when they were workers and way beyond at today's value of the amount that was contributed by those workers. That is the point that we are making. It is a point that we think has got validity, certainly in moral terms it has got validity. There is a clear division on this issue as Mr Bossano has said and if we are returned to Government they from the Opposition will not support us if we take that line in Government. I think that I should also inform him that if we are in Opposition, if the position is reversed and they are in Government, we may not be able to support the line that they take and therefore instead of a united approach from this House on this crucial issue, there will be a divided approach. Obviously from the Opposition benches we would do nothing to undermine the position of the then Government but if they were to run into difficulties we would just sit on the sidelines and not actively support them in the course of the negotiations as we otherwise would. If they were to support this amendment and if in Government they were to take that line we would actively support them because we are convinced about the moral rectitude of that position and about the responsible attitude that it represents and I think that it is a perfectly tenable position to take in any negotiations with the British Government one from which certainly no Gibraltar Government should budge and should not be prepared to go beyond. I think I ought to make the position clear so that when the time comes we know where we stand. Mr Speaker, I commend the amendment to the House.

Mr Speaker then put the question and on a vote being taken the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The following Hon Members were absent from the Chamber:

The Hon Miss M I Montegriffo
The Hon H J Zammitt
The Hon E Thistlethwaite
The Hon B Traynor

The amendment was accordingly passed.

HON M A FEETHAM:

Mr Speaker, very briefly, in fact, just to make three points on what has been said because the matter has been debated in full in the motion that was in front of the House yesterday and the arguments of the Opposition have already been put forward by my colleague, Robert Mor. Much has been said about obligations to Spanish workers in relation to the Social Insurance Fund but I think very little has been said about obligations and rights of the contributors to the Social Insurance Fund as a whole. This is not a matter exclusively which affects Spanish workers, it is a matter which affects contributors to the Social Insurance Fund as a whole. In relation to this then there are just three points which I wish to record in Hansard. That is, the fact that the British Government has accepted contributing to meeting the cost is in my view a recognition that, in fact, they did not take proper steps to protect the interests of the contributors to the Social Insurance Fund post-1970. I think that from that point of view if we are interested in defending the interests of the contributors to the Fund we must say to the British Government that the liability lies with them and not with the Government of Gibraltar. Also much has been said about the EEC regulations in defence of what has happened. Just let me say one point, when we talk about the hostility of the Spanish Government, which is a fact, let me relate that to the EEC Regulations 1408/71. The purpose of that Regulation is, in fact, the protection of migrant workers so as to promote freedom of movement and equality of treatment that is the purpose of Regulation 1408 of which much has been said in this House today. But the act that prevented equality of rights and the act that prevented the question of indirect or direct discrimination was done by the Spanish Government and it is the Spanish Government's move which has prevented the proper introduction of EEC Regulation 1408 apart from the fact of the hostility act against Gibraltar. They are responsible for having denied the Spanish workers of their legal rights. So far as the moral obligations are concerned, in relation to the contributors of the Social Insurance Fund in Gibraltar we have already met our moral obligations in the light of everything that has been said insofar as the Spanish workers. In our view to exceed that moral obligation to the Spanish contributors, to make the payments that we are already embarked on doing is, in fact, unfair to the present contributors which is in direct conflict with EEC Regulation

1408. Therefore when we are looking at this problem let us not look at it from a parochial point of view but let us look at it from the point of view of applying EEC Regulation 1408 insofar as the rights of contributors in general and not one sector of the contributors insofar as the Social Insurance Fund is concerned, that is to say, Spanish workers. Let us look at it across the board and then we shall see, in fact, who have got moral obligations to defend. Therefore the position of the Gibraltar Government should be and should have been to say that if we are going to have to come to a decision where we are not bound to meet beyond the \$4.3m that is the position that the Gibraltar Government should have taken instead of having negotiated the three year agreement. In the same way as I am saying that the British Government's willingness to contribute is a recognition of the failure to protect the Fund, that same argument will surely be put to the Gibraltar Government for the stand they are making. I think in a negotiating position what the Hon Chief Minister is proposing already by accepting some obligation is, in fact, weakening the position of the Gibraltar Government. Therefore, Mr Speaker, I think that having made those three points let us look at this exclusively and strictly how it affects the contributors in general and not just Spanish workers.

HON M K FEATHERSTONE:

Mr Speaker, I think the motion, as amended, has given us a much more responsible position in our approach to the British Government when we suggest to them that they should meet the cost of the pensions of those Spanish workers who were withdrawn in 1969 as a weapon to force us into economic ruin. If I were a UK negotiator and Gibraltar were to come to me and say: "We expect you to pay all the pensions of Spanish workers including those who had qualified in 1967, 1968 and up to 1969", I as the UK negotiator would say: "You are asking a little bit too much. You must face up to your own responsibilities and you must meet them properly". It is very interesting to consider what would have been the position of, let us say, a refugee Spaniard who was of pensionable age in 1967 and was living in Gibraltar. He would have received his pension all through the years 1969, 1970, all the way up to 1985 when the other Spanish pensioners came into the orbit. It is not that we are avoiding our moral responsibilities, it is a moral responsibility to meet those persons who had legally qualified before 1969 and we would be in a much stronger position by saying: "We are willing to meet that commitment" if we were to go to a European Court, an EEC Court over the question of our non-ability to pay the Spanish pensions to those persons who had been withdrawn. The motion, as amended, Sir, is a far stronger and far more responsible motion and I commend it to the House,

HON J E PILCHER:

Mr Speaker, again I will be brief, I do not want to be in a position to repeat what has been already an extensive debate both yesterday and today about the question of Spanish pensions. It seems to me that the Government has shifted its position yet again over the last three years in this particular aspect. We are now being reminded ad nauseam by the other side of the House, Mr Speaker, about the responsible position that we have to adopt. Let me say immediately that we are losing sight of one, I think, primordial situation and that is mentioned, again, by the Hon and Learned ex-Chief Minister because it seems to me that there has been a shift of position between the AACR position as led by the Hon and Learned Sir Joshua Hassan and now by the Hon Mr Canepa. At the end of 1986 the Hon and Learned the ex-Chief Minister, Sir Joshua Hassan, was talking also about not losing sight of one major factor which was the ability of Gibraltar to pay for the Spanish pensions. Obviously he was referring to the ability of Gibraltar to pay in general for the whole of the Spanish pensions but also for the chunk of the pensions, ie £1.6m which was the element which now the Hon the present Chief Minister is saying we have a moral obligation to. But, of course, having the moral obligation and not having done the homework on what that would cost the present contributors, we might be talking about the fact that perhaps present contributors once the Actuarial Report is out would be called upon to pay another £4 or £5 a week in order to meet that commitment. Is this the responsible position and are we not losing sight of the reality that it was because, as the Hon Minister said, a hostile action by what was then a hostile Government in closing the frontier and in prejudicing their own workers and their own residents in not being able to collect this pension that we find ourselves in the predicament today. This element obviously was not taken into account because had the frontier not closed these people would have obtained their pensions, the other workers would have continued to provide contributions and the Social Security Pension Fund would obviously have been increasing at the rate to be able to cope with that £1.6m. Obviously we would not be at the stage that we are today or we were in 1985 when there had been a break of seventeen years, those workers had not been accounted for and we come to the end of 1985 with a commitment to pay pensions with only a Spanish sub-fund of £4.5m and a fund in the pension scheme which is only geared towards paying for the workers that were in Gibraltar working at the end of 1985. That is the real problem. I think it is farcical to talk about our moral responsibility when the moral responsibility should have been one exercised by the Spanish Government in 1969 by not having closed the frontier, not to have prejudiced their own workers, that is the reality. That is one question, certainly on the responsible aspect. I think my colleague,

Mr Feetham, very ably tackled what about the morality of our workers? What about the morality of our people who have spent sixteen years under siege only to find that at the end of that siege they might be called upon to pay more social insurance contributions to pay for the people who were not here and contributing for the past sixteen years but that today we are going to have to pay? The EEC and it is also within these Regulations, quote "moral obligations", and certainly I think we have a major case of 25,000 being morally obliged to pay pensions for Spanish workers that were not here for sixteen or seventeen years and that is a moral situation. I think the most important one which was mentioned by my Hon colleague, Mr Mor, initially and that is a question of negotiating ability. If the Government of Gibraltar really believe that it is their moral obligation to pay this £1.6m, surely in the negotiating process when we all heard yesterday the Hon and Learned ex-Chief Minister saying how tough the negotiations were, well then this would have been an element that could have been left to the actual negotiation and at least if we found ourselves in dire straits we could always say: "We will pay for that". I am not saying that this should be the position but looking at it from the AACR point of view if they have already accepted that this is an obligation, which we don't accept from this side of the House, their negotiating position would have been much stronger had they not mentioned this at all and kept it up their sleeve in case the negotiations were, as undoubtedly they will be given the last negotiations in 1985, very very tough negotiations. But to come out today and say that as from today because this is a motion that will be passed today, the position is that they are morally obliged to pay for that £1.6m how on earth are they going to go back to the UK Government at the end of 1988 and say that they want the £2m, which is the differential between the £21m and the £23m. The UK Government will say: "I will now take into account the part that you feel is your moral obligation" and that will be more than £2m so at the end of it they are now even going to lose the £2m by what they consider is their own moral obligation. If I were a UK negotiator that would be my position. They have accepted a moral obligation and having accepted it today they have accepted it today forever more and also today retrospectively since 1986 because the argument being used today is exactly the same argument, on the moral basis, that should have been used in 1986. I think on the negotiating side they have certainly weakened the position of the negotiations and done Gibraltar a disservice because they have actually admitted that £1.6m since 1986 is the moral obligation of the Government of Gibraltar as seen by the AACR.

HON CHIEF MINISTER:

If the Hon Member will give way. First of all, it is not £1.6m, that was the figure in January, 1986. Today the numbers are lower and therefore it is closer to £1m than to £1.6m. There is no question of accepting liability back to 1968 because these people continued during the period between the closure of the frontier and the accession of Spain to the Community in January, 1986, they continued to receive pensions at frozen rates so we discharged our obligation to them. If therefore he divides a figure of £1m or slightly over £1m by 13,000 workers in Gibraltar today he will see that the figure that he has mentioned of £4 to £5 increase in weekly contributions is grossly exaggerated. The increase in contributions would be between employer and employee, more like £1.50 than £4 or £5, it is a vast difference.

HON J E PILCHER:

Well, whether it is £1.50, £2, £3 or 50p.

HON CHIEF MINISTER:

No, it is not £3 or £4, let us be accurate, this is an arithmetical matter.

HON J E PILCHER:

Mr Speaker, I will not be drawn into the argument of whether it will be £1.50, I said £1.50, £2, £3 or 50p. What I said and I repeat, the issue is not how much we will have to pay. The issue is that we consider that the Government of Gibraltar have a moral responsibility to the people of Gibraltar and the people of Gibraltar first and in exercising that moral obligation we have to look and we have to be as firm as my Hon colleague said, we have to be as firm in this as the UK Government is going to be and as firm as the Spanish Government is going to be. By trying to look at all our moral responsibilities to everybody else we are doing the people of Gibraltar a disservice. That, Mr Speaker, is the message which I think is quite clearly coming from this side of the House.

MR SPEAKER:

Are there any other contributors to the debate?

HON J BOSSANO:

Mr Speaker, this is not an issue of morality and we are not here elected by the people of Gibraltar to look after their souls or their consciences, but their pockets. It might be different in the future but at the moment none of the Members of this House has stood on that particular ticket, as far

as I recall, from the last elections. If the Government is concerned about morality and moral obligations they have been seriously remiss on that count in respect of our own elderly people in Gibraltar because what about the moral obligation to civil servants who have been deprived of a civil service pension because they have been out of the service for a few weeks or a few days. Isn't there a moral responsibility which we have brought to this House before and the Government has answered that the moral responsibility doesn't enter into it. That is the Pensions Ordinance and that is the Pensions Ordinance and if people lose twenty years of service and the Government knows who we are talking about because they are people working close to them and people who have written to them and people who have written to us and the Government's position has been that morality doesn't enter into that. It is a matter of law and the law cannot be changed. What about the moral responsibility to the people getting elderly persons pensions.....

MR SPEAKER:

No, no, you can make a point on morality but let us not go into details.

HON J BOSSANO:

The point that I am making and this is my speech on the motion.....

MR SPEAKER:

Yes, I do realise that.

HON J BOSSANO:

And I have spoken only and exclusively on the amendment before and here we have got a motion before the House which puts on Gibraltar and the Government of Gibraltar and the people of Gibraltar a responsibility that is defended purely on moral grounds. There are other contending bidders.

MR SPEAKER:

Yes, but what I am asking you is not to go into the details of the others.

HON J BOSSANO:

One of the others are the people who were left out of the social security scheme because the Government chose to put a £500 limit and people who were not able to join afterwards because they were beyond a certain age and people who have been making representations for as long as I can remember and the Government was arguing for years in this House that

they could not be included in any way because that would destroy the whole principle of the social insurance fund and to bring them in would put a burden on the fund that the fund couldn't meet. What has been happening to the fund, Mr Speaker? I will tell the House what has been happening to the fund. In 1976 and in 1975 the fund had reserves to cover the benefits for something like seven years. When the Government said that the fund couldn't afford to reduce the pensionable age from 65, when the Government said that the fund couldn't afford to allow people in who had been left out, the fund had enough to cover benefits for seven years and by 1982/83 the cover was down to two years and a few months. And the Actuaries then said that the cover was getting too low for the benefits and that therefore we had to increase our social insurance contributions to restore the cover and to ensure that there was enough money coming in from contributions and that is the argument that the Minister for Labour has used here in the last three years, since the last election to justify increases every year. Well, in 1985/86 we were talking about a situation where the Gibraltar pensioners and all the other social insurance benefits came to £6m and the reserves were £14m which provided a cover of something like two years and four months if we ignore the £1½m of Spanish pension costs. If we include the £1½m of Spanish pension costs then the cost rises to £7½m and the cover drops to one year and eight months, the lowest in the history of the pension fund without accepting any kind of moral obligations. This is why I asked the Government whether in fact the Actuary had looked at accepting this liability and clearly the Actuary could not have looked at it because we have been told it is Government policy as from this moment. As my colleague has pointed out the previous answer I had from the previous Chief Minister was that he wasn't making that the Government position because he wasn't going to have his hands tied to having accepted any level of liability. His position then was our position now that as far as we are concerned it is not one penny over the £4½m and that is our position and we are not prepared to be budged from that and we think they should have joined us in taking a common stand on that position. I don't see why it is better to be united about being willing to give £1m a year away than to be united about being willing to give nothing away. Why couldn't we have been united on the original motion? Why do we have to be united on the amended motion? After all until today the Government was not fully committed to that position because until today it was a possibility that they floated and that they wanted our reaction to and we gave them our reaction two years ago. What other argument has been put to justify the position of the Government of Gibraltar? The morality of the issue I have already dealt with, the reaction of UK? Well, surely, if UK was going to say, as Mr Featherstone claims, Mr Speaker, it is a little bit too much that we expect them to pay for the people who had a pension on contributions paid before 1970 and who had already retired in 1970, why didn't they say it is a little

bit too much in 1986? Because in 1986 of the £7m, £1.6m is the group that he says we are morally responsible for and Britain isn't and £5.4m is the group which he says we are not morally responsible for and Britain gave us £6m in 1986. So Britain gave £6m of the £1.6m in 1986. Obviously if the British reaction was not that in 1986 why should it be in 1988? It certainly will be now because he has already told them what they need to say. But, of course, we have already and we still insist on saying that there was an alternative open to us because we could have said to the British Government: "If you think it is a little bit too much to ask you to pay for it then we will go back home and change our law and then nobody will have to pay for it". We have already established that, in fact, although the Government initially claimed to have tried to change the law and to have been advised against it, it has subsequently materialised that they had not thought of changing the law because nobody had suggested it to them. We intend to pursue this matter because, in fact, since the Hon Member in his winding up part of the amendment said that it would be better if we had a situation where irrespective of the result of the elections we were both taking the same position, we invite him to commit his party to supporting the position that we are proposing which is better for Gibraltar. This is that when we come in we say to the British Government: "We don't accept we have got any liability at all and since your position throughout has been that you don't have to give us the money because it arises from our laws in Gibraltar that the entitlement is entitlement under the Social Insurance Ordinance of Gibraltar, we are now changing the Social Insurance Ordinance of Gibraltar and we will introduce legislation to change it", and we will expect the AACR Opposition to support us and that we take a united front in saying: "Either you foot the bill or we change our laws". Certainly the first aspect of the Social Insurance Ordinance we state publicly now we will change and which we think they should have wasted no time in changing and they should certainly have taken the opportunity to change in this House, is the aspect which I mentioned in the previous motion, Mr Speaker, where it says that if the money runs out of the Social Insurance Fund it has to be advanced from the Consolidated Fund. At the very minimum they should take immediate steps to protect the Consolidated Fund and we are now saying publicly that that is the very minimum we will do the moment we are in, remove that clause so that at least only the £15m in the Social Insurance Fund are at risk if we find we cannot change anything else. Our advice is that although we are in this House taking a policy decision today which is going to be carried by Government majority and we were proposing ourselves taking a policy decision as we said already at the invitation of the AACR. It was the AACR that invited us to come clean and we have come clean and now they come clean and they are prepared to put £1m up and we are not and we will have to see which the people of Gibraltar would like to see happening but, independent of that, the situation is, as we understand it, as the law now stands

it is not a question of the Government talking about it being £1m a year then, presumably, for the last two months or the last three months of the year they are talking about £1m. What we are talking about is that the Government on the basis of the policy statement made here today and on the basis of this motion, would be prepared to pay £1m out of the £2m shortfall for 1988 since they are prepared to accept that level of commitment as being morally right. Forget that the £1m will go to everybody, you could argue that the £1m would be to pay for 1988 for the pre-1970 pensioners and the £1m would be to pay for the rest. But, in fact, if the position is reached in October that the British Government says as we understand is their position and as the Government has avoided giving us a straight answer on so far: "We are not paying anything for 1988, the commitment we gave you was £16m and whatever the cost is over that that is your problem". The Government cannot say in October, 1988: "We will pay Spanish pensioners until the £1m runs out and then we carry on paying everybody else but not Spanish pensioners" because that is discrimination on grounds of nationality which is morally wrong, they have just told us it is morally wrong. In fact, when the 4,000 people turn up and the £1m is finished the other £15m in the Fund is there and nobody within the existing law, as we understand the law, nobody within the existing law, no politician can direct the Director of Labour and Social Security in Gibraltar to withhold payment from people who have got a valid claim within the law complying with the qualifying conditions to meet that payment. If somebody comes along and says: "I am entitled to my £60" the Labour Department cannot say: "I am not giving it to you because the GSLR says not a penny" or "I am not giving it to you because the AACR says not a penny over £1m", the law will need to be changed for that to be stopped. Therefore if the Government of Gibraltar believes the law cannot be changed they haven't got a bargaining position at all. They have already put on the table £1m but, in fact, the limit at the moment under the existing law is not £1m. The limit under the existing law is £25m because the limit under the existing law is the £15m in the Social Insurance Fund and the £10m in the Consolidated Fund and the first thing we need to do is take protective action. Pre-empt a negative reaction and protect ourselves and if we don't need to use the protection, well, fine, we have lost nothing by having it. That is the first step that needs to be taken. I think Mr Speaker, the Government has told us that the last situation was one of acrimony and they have also told us that the terms of reference of the Study Group which will determine how much Gibraltar contributes or will advise how much Gibraltar contributes and how much the UK contributes, were difficult to get agreement on and that the Study Group took a very long time to set up because it was difficult enough to get agreement on the terms of reference, terms of reference that we would not accept ourselves and terms of reference that we have publicly criticised and terms of reference which, as my colleague has pointed out, are clearly in conflict with the motion

we have just passed. Because as stated by the then Chief Minister in answer to Question No.251 of 1986 on the 3rd November, 1986, the terms of reference were to estimate the expenditure until the liability is extinguished and to assess the capacity of the Gibraltar economy to meeting the cost of the liability after the end of 1988 taking into account the Government's financial and economic policies. First of all, the terms of reference preclude the cost of the £2m before the end of 1988, whatever Mr Canepa may say that it will be all discussed at the same time. The fact is that these terms of reference prevent a statement from the Study Group about contributions before 1988. Clearly it was not envisaged that anybody would be making any further contributions in 1988, this is about what happens in 1989. The policy that we have got today about the £4m would normally have been for what happens in 1989 but we know that the £4m run out before and therefore we know that there is a separate and clearly immediate issue that has to be tackled then before we get to this stage. But given that the policy of the Government of Gibraltar is now that they are willing and accept that they have to meet from the local economy and from the Social Insurance Fund an additional liability which has been put by the Hon Member opposite as £1m, and he may say '£1m is only £1.50 a week', £1m may only be £1.50 a week but £1m is more than we give our 600 elderly persons who don't get anything from the Social Insurance Fund, £1m is more than that. Are we saying that the Government is now satisfied that the economy of Gibraltar has the capacity to contribute an extra £1m a year? Because if they hadn't done that then, in fact, it is a nonsense to say 'We have got a moral responsibility to do something' when, in fact, they have already agreed in 1986 that the responsibility that they are accepting is contingent upon our capacity to pay not our moral obligation to pay. We have already got a policy which we have been critical of as being insufficiently protective of interests and now the Government comes along with a motion which protects us even less. Because at least you could argue on the basis of the 1986 position that by reference to our capacity to pay and by reference to our financial and economic policies you would not be placed in a situation where the cost will be too high. You could then argue that independent of whether there was a moral responsibility or not you would only pay £1m a year if it could be demonstrated that we could pay £1m without too much hardship. But if it was demonstrated that we couldn't pay the £1m we didn't have to, we had a basis for saying 'no'. We have lost that basis so now we have got a situation where if you take the two positions, that is to say, the terms of reference of the Study Group and the policy announced by the Government today, it means that we are caught both ways. If our economic capacity does not allow us to pay £1m we have to pay £1m because it is our moral responsibility and if our economic capacity allows us to pay more than £1m then we forget our moral responsibility and we pay more than £1m. The Government of Gibraltar couldn't have done a better job than if they were negotiating on behalf of the British

Government - thank you very much, with friends like that who needs enemies? We don't want their support in the future, Mr Speaker, thank you very much. We are doing the negotiating, with policies like these and arguments like these we wouldn't get past the starting line. It is a wonder they ever got £16½m, no wonder they were so satisfied with it. We believe that once again in the handling of this issue and by the motion that has been amended by the Government, instead of taking the most strong position available to us what we are seeing is the Government shifting its ground. That is to say, they started and the Hon Member is saying 'he is going back a very long time to go to 1970'. The only reason why we had to go to 1970 is because we looked at how they behaved in Opposition and we look how they behave in Government and therefore, frankly, I know that the Hon Member has said that should the position be that when this has got to be decided after the elections they are on this side of the House, they will not support a Government of Gibraltar that doesn't want to give any money.

HON CHIEF MINISTER:

We may, I did not say 'will'.

HON J BOSSANO:

Is he saying that they may be on this side or that they may be supporting the Government, which of the two is it? Should they be on this side will they support us if we are saying 'no' to giving any money? They say now that they will not be supporting that position. That is the position they were advocating themselves from this side in 1969 and 1970, that is the point of reminding them of that. That what we are proposing to them now which is to say we will not give a penny more than £4½m is, in fact, consistent with what they were proposing to Major Peliza which was to say 'what a hare-brained idea it is to give away £½m to the Spaniards. Whoever thought of that bright idea'. That is what they said then, fine, we are saying to them 'probably we would have agreed with you had we been here and not with Major Peliza but if you are going to give anything at all then it is better to give £½m than to give £4½m and if you are already committed to giving £4½m then at least stick at the £4½m and don't go up now from £4½m to £5½m and then whatever may come after that'. As far as we are concerned the position really is very clear, they have been shifting their ground and their ground today is one which puts Gibraltar in a weaker bargaining position than it was before and after this motion it has been weakened further because before this was an idea, as I have already said, and now it is a policy of the Government which the Government cannot retract from, they have got no choice in the matter. They have now undermined their own position and they have undermined their position in both motions. They have undermined their position in the

original motion by saying the law could not be changed and we are going to prove to them that it could. We are going to prove it to them and we hope that it may still be possible to change it because that will be very good news for Gibraltar and they should be glad if, for no other reason, as individual taxpayers and as individual contributors to the Social Insurance Fund. We will be looking after their money as well, Mr Speaker.

HON SIR JOSHUA HASSAN:

How good.

HON J BOSSANO:

We are very good. I hope he will vote for us if he thinks so, now that he is a backbencher he has got more freedom. Therefore in a situation such as the one we find we would agree with the Government, frankly, that it would be preferable in situations like this if instead of having to react as we have had to react, for example, the Government was critical of us for not bringing the matter before to the House in 1986 when we brought the motion after the agreement was announced. If the Government thinks it is a good idea to have a joint position or to explore the possibility of a joint position, the initiative has to come from those people who are in Government, it cannot come from us. It is not up to us to go knocking on their door and say: "Are you negotiating with anybody and is there anything we can do to help you?" No, if they think that they are clear in their own position and they want to go their own way, I have always said to the Government, I said it on the issue of the airport and I said it on a number of other issues, Mr Speaker, as far as I am concerned because that is our philosophy and that is how we will behave in Government, we believe that they have got the responsibility and they have got the right to carry that responsibility alone. But what they cannot do is embark us on a particular road and then say that we should join what they have decided on their own and that is how they have dealt with the situation throughout and because they have dealt with it throughout they have dealt with it very badly and this is finally the last nail in the coffin of the policy of the AACR on Spanish pensions which puts an additional burden on the people of Gibraltar which, hopefully, we will be able to extricate them from in a few months time.

HON SIR JOSHUA HASSAN:

It is quite clear if I ever had to be convinced I was convinced today that Mr Bossano loves the sound of his voice. I wonder what all the radio listeners bored stiff with such repetitive stuff will be thinking of the broadcasting of these proceedings. I am only going to make two very small points. First of all, when we talk about morality, of course

there is an aspect of morality in everything that the Government does but in this case it isn't morality alone, it is insofar as we are concerned a strict legal liability according to the Laws of Gibraltar and it is no use saying that we haven't changed the law because if we had changed the law now it would have been held ultra vires because it is contrary to the rules of the Common Market and if one is in conflict with the other the Common Market law prevails over the local law not only in Gibraltar but throughout the Community. Those two points are the most important points relevant to this matter.

MR SPEAKER:

If there are no other contributors I will call on Mr Mor to reply.

HON. R. MOR:

Mr Speaker, I regret very much that my original motion should have been amended as has been done, or rather demolished. What the AACR is saying to us is that they believe that they are going to adopt a policy whereby they are going to accept a liability to pay the pre-1969 Spanish pensioners and that that will be a diminishing liability so eventually what they are saying is that in a few years time they would have nothing else to contribute. I think the question we have to ask is who then is going to contribute? Are they expecting really that the British Government is going to contribute? Mr Speaker, if I may refer once again to the contribution that Mr McQuarrie made in the House of Commons when they were discussing the Portuguese and Spanish Accession Bills, in the last paragraph he said: "It is not good enough for the Government to say that they are doing something to meet the problem of the payment of £7m per annum. No one in Gibraltar can accept that approach. The British taxpayer should not be asked to subsidise £11m over fifteen years". In fact, Mr Speaker, the British position was coming out clear, that they are not going to ask their taxpayers to pay. How is the Government going to defend that position? Mr Speaker, I think it is really a matter of regret that the Government, as the Hon Leader of the Opposition was saying a few minutes ago, that the Government should be shifting their position. The British Government has maintained a strong position against that, if we may say it like that, but the Spanish Government will, of course, be adopting a similar strong position and that is why I was trying to emphasise before that we should still maintain, we should keep on maintaining a strong position because otherwise we are likely to lose out in the end as has been the experience. In fact, Mr Speaker, the experience that Gibraltar has had on the negotiating ability of the AACR Government was even pointed out in their own motion yesterday when in paragraph (b) they were saying that the Gibraltar Government took all reasonable

steps to obtain the necessary derogations from the EEC in respect of the additional liability. Quite obviously we haven't got the derogations and the Government failed in securing this, Mr Speaker, and consequently we have to oppose this motion because the position of Gibraltar is not being protected in the manner that we would like to see it. Thank you, Mr Speaker.

Mr Speaker then put the question on the Hon R Mor's motion, as amended, which now read as follows:

"This House considers that Gibraltar has no further obligation to contribute to the cost of revalued Spanish pensions beyond the £4.5m from the Spanish sub-fund other than in respect of those Spaniards who were already in receipt of pensions prior to the closure of the frontier in 1969 and that any further payments is a matter for Her Majesty's Government to agree with the Government of the Kingdom of Spain".

On a vote being taken the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon G Mascarenhas
The Hon J B Perez
The Hon Dr R G Valarino

The following Hon Members voted against:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon R Mor
The Hon J C Perez
The Hon J E Pilcher

The following Hon Members were absent from the Chamber:

The Hon Miss M I Montegriffo
The Hon H J Zammitt
The Hon E Thistlethwaite
The Hon B Traynor

The motion, as amended, was accordingly passed.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I now have the honour to move that this House should adjourn sine die.

MR SPEAKER:

In proposing the motion and without wishing to give grounds for unfounded speculation, I think I can safely say that there is a likelihood that this Fifth House of Assembly will not meet again before it is dissolved in accordance with the provisions of our Constitution. I would therefore like to take this opportunity, perhaps slightly prematurely, to bid farewell to all Members and, indeed, to thank you all for your cooperation and assistance in making our proceedings at all times orderly and dignified. To all Members who intend to contest the forthcoming elections I wish good fortune, to those of you who have decided to call it a day I wish all the very best in your new fields of responsibility.

Mr Speaker then put the question which was resolved in the affirmative and the House adjourned sine die.

The adjournment of the House sine die was taken at 12.45 pm on Friday the 22nd January, 1988.