

**GIBRALTAR**

**HOUSE OF ASSEMBLY**



**HANSARD**

**9<sup>TH</sup> JANUARY 1995**

**(Adj 10<sup>th</sup> January &  
27<sup>th</sup> February 1995)**

## REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Eighth Meeting of the First Session of the Seventh House of Assembly held in the House of Assembly Chamber on Monday the 9<sup>th</sup> January 1995 at 2.30 pm.

### PRESENT:

Mr Speaker .....  
(In the Chair)  
(The Hon Col R J Peliza OBE, ED)

### GOVERNMENT:

The Hon J Bossano – Chief Minister  
The Hon J E Pilcher – Minister for the Environment and Tourism  
The Hon J L Baldachino – Minister for Employment and Training  
The Hon M A Feetham – Minister for Trade and Industry  
The Hon J C Perez – Minister for Government Services  
The Hon R Mor – Minister for Social Services  
The Hon J L Moss – Minister for Education, Culture and Youth  
Affairs  
The Hon Miss K M Dawson – Attorney-General  
The Hon B Traynor – Financial and Development Secretary

### OPPOSITION:

The Hon P R Caruana – Leader of the Opposition  
The Hon Lt-Col E M Britto OBE, ED  
The Hon F Vasquez  
The Hon H Corby  
The Hon M Ramagge  
  
The Hon P Cumming

### ABSENT:

The Hon Miss M I Montegriffo – Minister for Medical Services  
and Sport

The Hon L H Francis

### PRAYER

Mr Speaker recited the prayer.

### CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 2<sup>nd</sup> September 1994, having been circulated to all hon Members were taken as read, approved and signed by Mr Speaker.

### COMMUNICATIONS FROM THE CHAIR

#### MR SPEAKER:

May I start the first meeting of the New Year by wishing hon Members and members of the staff a year packed with happiness and the House good progress in its endeavours from now until its dissolution.

Before moving on to the Agenda, I have to make two statements and as I do not wish to give the wrong impression of being over-authoritarian, let me add straightaway that the statements are not meant to be reprimanding but intended to clarify and settle four issues of interpretation that have arisen recently.

The District Officer of the Gibraltar Branch of the Transport and General Workers Union in a New Year statement published in the Gibraltar Chronicle on the 3<sup>rd</sup> of this month, on behalf of the Union, demanded from, I quote "The GSLP Government to lift its ban on demonstrations outside our local Parliament".

Presumably the District Officer is alluding to the area inside the precincts of the House of Assembly as I cannot connect his concern to any other situation. If my assumption is correct such concern is unnecessary as the GSLP Government had nothing to do and has nothing to do with the designation of the precincts nor are demonstrations banned outside our local parliament. To allay such fears wherever they might exist, I can do no better than repeat the statement I made just over a year ago in the House on this same subject and I hope our media will give it extensive coverage to clear any doubts created in the mind of our electors and abroad about the concept of our parliamentary democracy.

The statement read, I quote:

"When this House unanimously confirmed me as Speaker I pledged myself as minder of your privileges that I would ensure that no obstacles or impediments whatsoever would impede you in discharging your duties in the House.

With this in mind, without notifying or being asked by any hon Member but after seeking legal advice, I considered it prudent before the last sitting, to designate the precincts of the House of Assembly as I am empowered to do under Section 2 of the House of Assembly Ordinance.

Hon Members may have noted comments" (at the time) "in the news media arising from my ruling.

In the comments it is recalled that hon Members were once "marooned in the House of Assembly by demonstrators for hours

or having demonstrators on all sides on entering or leaving the House".

It is precisely to prevent a repetition of such an effrontery, that the precincts have been defined. It follows the practice in Britain where both Houses give directions at the commencement of each session that the police shall keep during sessions of Parliament, the streets leading to the Houses of Parliaments free and open and that no obstruction shall be permitted to hinder the passage thereto of Lords and Members. When "tumultuous assemblages" of people have obstructed the thoroughfares, orders have been given to the authorities to dispense them.

It is fundamental to democracy that the elected representatives are not subjected to any kind of molestation that will dissuade them to discharge the duties they owe to their electors without fear or favour.

At the same time it is right and proper for people generally to express their views in public demonstrations in a free society such as ours.

The designation of the precincts in no way deprives citizens of this right. I must make it absolutely clear that the arrangements would apply only on days when the House is sitting or in circumstances where I consider it necessary for it to be implemented. They are free to demonstrate in the area of the pavement on the east side of Main Street about 20 yards from the front of the House of Assembly and on the other three sides of the House of Assembly on the pavements opposite the Piazza.

I am satisfied that the two democratic principles of the privileges of the House of Assembly and its hon Members and the freedom of the people to demonstrate publicly are upheld and that there is nothing whatsoever that treads on civil rights as wrongly commented."

The other statement is to do with a letter from the Leader of the Opposition that I received.

The Leader of the Opposition, the hon and learned Peter Caruana, wrote to me on the 28<sup>th</sup> December of last year when he received official notice from the Clerk of this meeting, questioning the validity of the meeting because in his view notice had not been served with sufficient time in accordance with Section 2(1) and Section 1(3) of the Standing Rules and Orders.

I carefully investigated the matter and I am satisfied that the Clerk followed the practice established, at least since 1978 which is as far back as it has been checked. I pointed out that I was not aware of any hon Member, including the Leader of the Opposition himself, every objecting to this practice. Furthermore, I also noted that in connection with the notice of questions, the same interpretation was given to the relevant rule by members of the Opposition without objection from the Government which in this case is the party adversely affected.

Having verified that notice of the meeting was correctly served in accordance with the established practices, on the 29<sup>th</sup> December I replied to the Leader of the Opposition advising him that I considered the meeting valid. He wrote back accepting my decision but asserting his own interpretation of the Rules.

May I add that whatever my interpretation may be, the established interpretation can only be changed by a resolution of the House.

I received another letter of the same date from the Leader of the Opposition expressing objection to the Clerk, and to the Speaker if he condoned it, withholding the date of this meeting confidentially given to him by the Government, until the official notice was served.

It must be understood that in carrying out their functions the attitude of the Speaker and the Clerk must be one of neutrality

regarding Government and Opposition administrative and political matters and of forthright impartiality with procedural matters.

Clearly the decision of the Government as to when a meeting is to be held is administrative and can be political as well. Consequently if the Government treat the matter as confidential we are obliged to respect it in conformity with our neutrality and the requirements of the standing Rules and Orders as the Clerk correctly did.

The same rule of behaviour is followed with the Opposition such as when they seek advice on a motion they intend to propose or questions they intend to ask for but tactical reasons they do not want Government to know. Indeed, such confidentiality was observed prior to this meeting when the Leader of the Opposition gave notice of their questions in confidence earlier than usual in order to conform to his new interpretation of the rule on notice of questions, with the proviso that they were not to be divulged to the Government before the appointed time. Needless to say confidentiality was kept.

The Speaker and the Clerk have to carry out their functions as servants of the House with the full trust of most, if not all, the hon Members. This necessarily means that they have to be available for consultation and advice in confidence. This essential element of mutual trust could not exist if the Speaker and the Clerk were expected to act as informers for both sides of the House under the obligation that information that comes to them has to be relayed automatically to all Members even if the information is confidential or overheard. Such indiscreet comportment would certainly not be conducive to the balance of dignity and conviviality that rises above political conflicts which so strikingly marks the House of Commons; a healthy political spirit that both the Clerk and the Speaker strive to foster and promote for the enhancement of parliamentary democracy in Gibraltar. It is



therefore my hope that the House will continue to support this established practice of discretion between confidentiality and openness underlying the principle of neutrality in political and administrative affairs and forthright impartiality with procedural matters.

HON P R CARUANA:

Mr Speaker, on a point of order, as I have already stated publicly and Mr Speaker well knows, I acknowledge and respect the rules of this House about which there is nothing that I can do; that I am bound by your ruling. Mr Speaker you have chosen to place in the public domain the contents of a letter that I wrote to you in relation to the Clerk of the House which I had been careful not to place in the public domain. That is a matter for you. What I said in my letter, Mr Speaker, was this, not that the Clerk had abused any privilege, I went a long way out of my way to make it clear that I was imputing to the Clerk no ill motive. What I said was that those who entrusted from the political domain to a man that had to be neutral, information with the specific request not to pass it on to the Opposition are compromising that officer's neutrality because under Standing Orders, Mr Speaker, the duty to give notice of meetings of the House is not a matter for the Government, it is a matter for Mr Speaker's office through the Clerk. Therefore, my contention was, until Mr Speaker made his ruling, that the moment the Government had decided when a meeting of the House should take place and that information was available to your office, your office had nothing to gain by withholding that information from the Opposition unless it is to play ball with the Government's desire to give the Opposition as little notice as possible. That is what I said constituted a breach of the neutrality of the office of Mr Speaker and through him of the Clerk. As to Mr Speaker's ruling that sufficient time has been given, I pointed out in my second letter to Mr Speaker, to which he has not replied, that the Standing Orders of the House use different words when it comes to giving notice to Members and when it comes to giving notice in the Gazette. When it comes to giving notice in the Gazette, Standing Order 1 (3) makes it clear

that the seven days have to be before the day appointed for the House. Whereas when it comes to giving official notice to Members of the House, it only speaks of seven days and therefore I bow to your ruling, well indeed I must bow to all of your rulings, but I can see that whereas it says seven days full stop, it is open to the interpretation that a day might be a period of 24 hours ending with the hour of commencement of the meeting of the House. That Mr Speaker has ruled that that is a matter of practice and I must bow to that. But when the Standing Orders say seven days before the day appointed for the session or meeting, it is not open to that interpretation because seven days before the day of the meeting means that the whole of the seven days must have expired before the day on which the meeting is due to begin and I submit to Mr Speaker, although he has ruled against me and I ... He has not ruled against me on that point, he has never answered me, that in the case of the seven days' notice in the Gazette, Standing Orders make it clear that the seven days must be all of them before the day of the meeting of the House. That is to say, before midnight plus one minute on the day on which the meeting of the House is going to take place. Mr Speaker you have not answered that letter but I think your views on that is implicit in the remarks that you have made in the House this morning. Finally, Mr Speaker, if you will bear with me for just one more point. When Mr Speaker says that this has been established practice since 1978, presumably he means that this point has not arisen because my information, Mr Speaker, is that it has never been the practice of this House for the notice given to the Opposition to be minimised and therefore the occasion for the point to have cropped up will never have arisen. It has never been the practice of any Government before the current members of the Government for the Clerk of the House to be told, "The House is taking on the 7<sup>th</sup> January. Although there is now 10 days between now and then, do not give notice to the Opposition until the 1<sup>st</sup> because the law says we must give him at least seven days' notice and for us that means seven days and not a minute more". Well, as I say, Mr Speaker, it is the prerogative with notice to me, not with notice to the general public in my opinion, to do that. But when Mr

Speaker says that that has been the established practice of this House, it is not the established practice in a factual sense. The point would never have arisen because the question of the Opposition not having been given as much notice as possible has, according to information given to me by people in a position to know, never arisen.

HON CHIEF MINISTER:

Mr Speaker, may I on a point of order make clear that if the hon Member is going to quote sources he ought to name the source because I can tell him that between 1984 and 1988 I found out when the next meeting of the House was going to be due when the Leader of the House at the time decided that it should be held and not as a result of any consultation with me as Leader of the Opposition. He has said in public statements, though not here today, that there was a practice before which I have changed. I have not changed it nor did I complain. I had no problem with the fact that I was given the notice laid down and I was able to work within the notice without a problem. *[HON P R CARUANA: But he was not.]* I was and if he says I was not then I am telling him what he is telling the House is not true and I am inviting him to name the person that has told him, that is what I am saying.

MR SPEAKER:

Order, order. I think this is a matter for me to decide. It is really a ruling that I have to pass and, in fact, I have passed it. I think perhaps I should explain to the hon and learned Leader of the Opposition why I have continued with what was established. I think the Leader of the Opposition must realise and the House must realise that there are two sides to this problem. One is the political and the other one is strictly one to do with the Rules and Orders of the House for which I am responsible. As far as the Rules and Orders of the House are concerned, our research tells without any doubt whatsoever that what the Clerk did on this occasion is what has been done since 1978. Therefore if that is our established practice I cannot change that unless there is a

resolution of the House. The Leader of the Opposition if he wishes to change that Order for whatever reasons he may have, he can certainly do that by bringing a motion to the House in due course. But this is not the time to debate that.

HON P R CARUANA:

Mr Speaker, I accept that. I accept as a matter of fact that what Mr Speaker has just said is entirely correct in the sense that it has been the practice of this House that the official written notice will only be sent on the seven days. But that was not the only notice that was given historically.

MR SPEAKER:

The other thing is whether the Leader of the House wishes to make it know before that or not before that is obviously a matter for him and the Leader of the Opposition to fight it out if he wishes but certainly the Speaker cannot interfere with that because he has no authority whatsoever to do that. So it is up to the Leader of the Opposition to take it up with the Chief Minister if he so wishes. On the other question of confidentiality, I think that I almost thought word for word what the Leader of the Opposition was going to say on this occasion and my statement, I think, fully answers the arguments that he has put forward. In my view, I may be wrong. But I wish that the Leader of the Opposition should realise that both the Clerk and myself are bound by confidentiality otherwise it would be very difficult to work in this House otherwise. And if the Leader of the Opposition or any hon Member wishes to speak to us in confidence obviously it is our duty to make sure that we keep that confidence. The same thing applies to any Minister who wishes to approach us on any matter. Consequently if we are told we are expecting to hold a meeting on such a date, but we want to hold that confidential, it would be wrong for us to go out and proclaim that date before that day. Whether the Leader of the

Opposition thinks it is fair or unfair that he should be given so little time, well that is up to him, again as I said before, to fight it out with the Chief Minister. But we will carry on with the Order of the Day.

TUESDAY 10<sup>TH</sup> JANUARY 1995

The House resumed at 10.40 a.m.

MOTIONS

DOCUMENTS LAID

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

1. Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 22 to 25 of 1993/94).
2. Statements of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (Nos. 3 and 4 of 1993/94).
3. Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 2 to 4 of 1994/95).
4. Statement of Supplementary Estimates No. 1 of 1994/95.

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 5.10 p.m.

The House resumed at 5.27 p.m.

Answers to Questions continued.

The House recessed at 7.35 p.m.

HON CHIEF MINISTER:

Mr Speaker, I beg to move the motion of which I have given notice which reads:

“This House notes that:-

1. All colonial peoples have an inalienable right to self-determination in accordance with Article 73 of the United Nations Charter;
2. the elected members of the Gibraltar Legislative Council issued a unanimous statement in September 1964 stating that the soil of Gibraltar should belong to no one but the people of Gibraltar;
3. Resolution 2734(XXV) of the 16<sup>th</sup> December 1970 makes it clear that in the event of a conflict between the obligations of Member States under the Charter and their obligations under any other International agreement, their obligations under the Charter should prevail;
4. Article 1 of the 1976 International Covenant on Civil and Political Rights which was extended to Gibraltar without qualification states “All Peoples have the right of self-determination, by virtue of that right they freely determine their political status and pursue their economic, social and cultural development”;

5. Article 1 of the 1976 International Covenant on Economic, Social and Cultural Rights which was extended to Gibraltar without qualification states "All Peoples have the right of self-determination, by virtue of that right they freely determine their political status and pursue their economic, social and cultural development";
6. The annual statements on decolonisation by the European Union Presidency before the United Nations Fourth Committee explicitly recognise that all peoples have the right to self-determination irrespective of population size or geographical location;
7. The United Kingdom representative declared before the United Nations on the 3<sup>rd</sup> November 1982 that "It is not acceptable that our clear obligations towards the Falkland Islanders under Article 73 of the Charter should be smudged and blurred into an off-hand phrase about taking their interests only into account. What a far cry from a clear affirmation of the principle of self-determination enshrined in the Charter and in the practice of this Organisation";
8. Her Majesty's Government has, in the case of the Falkland Islands Constitution of 1985, reflected its commitment to self-determination for the peoples of the Falkland Islands by including the following recital "Whereas the peoples have the right of self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law. And whereas the realisation of the right of self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations".

This House therefore declares that the people of Gibraltar have an inalienable right to self-determination and formally requests Her Majesty's Government to take immediate steps to amend the 1969 Gibraltar Constitution Order by Order-in-Council to provide an introductory paragraph to Chapter 1 identical to that contained in the 1985 Falkland Islands Constitution Order."

Mr Speaker, this is not a new matter for this House to express its views on and, indeed, it is difficult to improve on the views that were expressed when the Legislative Council was elected in 1964 which as I mentioned in our National Day Rally last September, was the first time that there was a transfer in our colonial history from the Colonial Administrator to a Government elected by the people of Gibraltar with ministerial responsibilities over civil service departments. The 1969 Constitution built on that situation of 1964 and included the preamble to the Constitution in which you, Mr Speaker, had such a role to play and was, in my judgement, one of the key players in getting us that preamble agreed with the UK. We attach a lot of importance to the preamble and, again, it was your initiative that brought Madam Speaker from the House of Commons recently to Gibraltar to see that enshrined in tablets of stone. But we must not delude ourselves as to just how little the preamble is against the rights we have without a preamble. We are the only colony that has got a preamble to the Constitution, none of the others have it. All the others have got the right of self-determination which is not just the right to veto being handed over to their neighbour, it gives them their right to pursue whatever goal they wish to pursue provided that that goal enjoys the support of the majority of the indigenous inhabitants. Therefore what we cannot allow is that the preamble to the Constitution which was intended to be a safeguard for the people of Gibraltar to reassure them and a reflection of the decision taken in the 1967 referendum becomes the maximum we can aspire to from having been the minimum we are entitled to. The introductory paragraph in Chapter 1 of the Falkland Islands Constitution in 1985 clearly was a reflection of the war with Argentina and clearly shows that the United Kingdom because there was a claim, felt the need to



make its position absolutely clear in the Constitution. It is a complete nonsense to suggest that we are not entitled to self-determination in Gibraltar because of the Treaty of Utrecht. No previous Government of Gibraltar, indeed no previous House of Assembly, Government or Opposition, has ever accepted that argument. It makes it even more of a nonsense with what happened in 1984 with the Brussels Agreement because in the Brussels Agreement the United Kingdom for the first time accepted that sovereignty should be described in the agreement as being made up of two issues in the plural. One issue, the sovereignty ceded under Utrecht and the other issue the sovereignty of the occupied territories. Are all the people in the occupied territories like the Gaza Strip, the guys in the Laguna and Varyl Begg entitled to self-determination because the Treaty of Utrecht does not apply to them according to the Brussels Agreement? Because the UK has agreed in the Brussels Agreement that there are issues of sovereignty and Spain made clear that that meant that there was one issue which was the issue of renegotiating what was given away in 1713 and the other issue which was returning what had been stolen post-1713 and that had been made explicitly clear by the Spanish Government in the European Court case over the airport and it is one of key elements in their arguments that the airport is built on land stolen from them which has never ceased to be part of Spain and which joined the European Union when Spain joined the European Union in 1986. That is the Spanish version of history. Where, therefore, do we stand at the moment in relation to our constitutional development? I have to tell the House that in 1992, shortly after the general election, we made clear to the United Kingdom Government that we had been elected on a manifesto which included the need to bring our Constitution up-to-date particularly in relation to the definition of domestic affairs and international affairs given the impact on domestic affairs of our membership of the European Union. In our view the 1969 Constitution should have been, in fact, reviewed in 1972 when we joined the European Union; from the beginning of 1973 somebody should have done something about looking at the contradiction between the Constitution of Gibraltar which says

that the UK is responsible for foreign affairs and we are responsible for domestic affairs and the fact that increasingly every domestic affair is being made subject to Community requirements which the UK argues with the passage of time are all foreign affairs and therefore the domestic affairs are being whittled down. We have seen the worst example of that today in the demands which we have met of the UK Government in the changes to the Financial Services Ordinance and we have seen how meeting those demands means we are now completely powerless to do anything about it. Whether they appoint people or they do not appoint people now is something we cannot do anything about anymore. So there is clearly a situation today in Gibraltar where the Constitution manifestly is incapable of adequately reflecting the realities of the responsibilities of the elected Government of Gibraltar and the responsibilities of the Foreign Office and the British Government have no intention of moving on this, this is absolutely clear whatever the Foreign Secretary may say when he spoke to GBC after the Hurd/Solana meeting, that they are prepared to listen to anything that I want to put. They will be listening to it but I can tell the House that as far as I am concerned the degree of listening they will do is that it will go in one ear and out the other. That is nothing new, Mr Speaker. In 1976 we had a situation where as a result of three or four years of constitutional discussions in Gibraltar in which I did not take part because I chose not to take part but which was a joint effort between the Government and the main Opposition party at the time, proposals were put to the United Kingdom the result of three or four years of work which were put in the rubbish bin within five minutes of being delivered and that was in 1976. That was the last time there was an attempt to amend the Gibraltar Constitution and therefore the line of the United Kingdom was to say, "You study what you want to do and then you put it to me" which means several years go by "and then I will consider it" which means several more years go by "and then if you have not forgotten all about it then at the end of the day I will come back and give you a totally negative reply", not that frankly what was put to the United Kingdom seemed to me – not having been a participant I do not suppose I had really a right to

pass judgement on it – to be particularly weighty for three years of work. It was a proposal saying that we should have a committee system in the House rather than government and opposition and the British Government said, “You can have that any time you want without a constitutional change”; saying we should have a commitment from the United Kingdom to underwrite our budget in Gibraltar and the United Kingdom said, “We do not want to give you that commitment because that will tie you more to us and smacks of integration”; and the third proposal was that we should have the right to UK citizenship and the UK said, “That is not a constitutional matter, that has to be fought under the UK Nationality Law” and that was the end of three years of constitutional debate. So we do not believe, realistically, that there is the will in the United Kingdom to address the Constitution of Gibraltar and we do not believe that there is the will because there is an unwritten understanding between the British Government and the Spanish Government as to what happens with constitutional development in Gibraltar. When I attended the IMF World Bank Conference in Madrid, as hon Members know, I called on the British Ambassador in Madrid and in the course of that meeting we talked about a number of things including the question of the Constitution and where the future lay and in discussing the Spanish position and the British position I said to him it appeared to me that the Spanish position was one which Senor Solana repeated only a week ago, that we had to stay as a British colony until we were handed over to Spain and became a part of Spain. And it occurred to me, from the statements that the UK makes occasionally, that the British position seemed to be the same as the Spanish position with one caveat, that we had to stay as a British colony until in accordance with the preamble to the Constitution we agreed to become a part of Spain. Therefore the only difference between the two positions was that one said we should be handed over to Spain whether we like it or we do not and the other one said we will not be handed over to Spain whether we like it or we do not, we will only be handed over to Spain when we like it. I can tell the House that the British Ambassador replied that that was a very accurate description of the British position and I have since

written to UK Ministers asking them to confirm in writing what the Ambassador told me in Madrid so that I can tell the people of Gibraltar that that is the British position because the Ambassador seemed to be under the erroneous impression that in Gibraltar we had all been told this very clearly many, many times and that we all knew and understood this, I told the British Ambassador in Madrid that, in fact, I believed that that could be deduced from statements that had been made by the British Government periodically but that they had been made with a message that was so heavily coded and camouflaged that it was very likely that the real message was lost on the vast majority of our people. Therefore in the letter that I have written to the British Government I have told them that the very least they owe us for 290 years of loyalty is to be honest with us and at least to tell us things plainly so that we know what the position really is and what the British Government believe their obligations are and because we have the right to do that and therefore we are entitled to demand that they come clean and they spell things out clearly and then we organise ourselves to change either the view of the present Government or the view of a successor Government. I think it is true that on some occasions in the past, certainly I remember one particular interview with Sir Geoffrey Howe on local television where in reply to a question about self-determination he came very near to saying precisely that – the preamble to the Constitution says we will not be Spanish against our wishes and the only thing we can do is not be Spanish against our wishes and stay as we are. That, in the view of the Government of Gibraltar, and I submit in the view of this House ever since the matter has been debated in this House, is not what the UK is required to do by the Charter of the United Nations. The UK cannot extricate itself from its obligations under the UN Charter by seeking the protection of the Treaty of Utrecht. The honest answer is that it does not want to say things or do things which will create problems for itself with Spain. We can understand they may not like that. That is the honest answer. That is what they should be telling us and not fobbing us off with this nonsense of the Treaty of Utrecht. Let me say, Mr Speaker, that

in fact when we have debated the matter in the House in the past, and it has been debated on more than one occasion as I have said, it has been possible to achieve unanimity even when the gap between the two sides of the House was as wide as it was on the day the Brussels Agreement was brought to the House by the then Government to be voted on. Although we in the Opposition were bitterly opposed to the Brussels Agreement the day it was signed and brought to this House as we continue to be today, even though that was the case, it was still possible on the very same day that we had the debate in the House and the House was totally divided on acceptance or rejection of the Brussels Agreement, it was possible on the following day to have a unanimous agreement on the right of self-determination. So it shows that it is possible not to have a bipartisan approach and to have agreement on certain fundamentals and we were able to do it from the Opposition even though we disagreed fundamentally with the Government of the day. In fact, it was on the 13<sup>th</sup> December 1984 that two motions were carried by this House dealing with the subject of self-determination carried unanimously, as I said, and I think it is worth bringing to the notice of the House and the then Chief Minister in supporting the motion that I moved as Leader of the Opposition, used the same arguments as I am using today. He said the point about the resolutions were that the Charter of the United Nations made the interests of the local population paramount. The right of self-determination is paramount. He went on to say, "Gibraltar does not belong to the Spaniards, it belongs to the Crown of Great Britain. I would go further, that even independence so long as the Queen was the Queen of Gibraltar does not affect the Treaty of Utrecht". That was the view of Sir Joshua Hassan in supporting a motion in this House of Assembly on the 13<sup>th</sup> December 1984 on the right of self-determination. Nobody suggested that Sir Joshua Hassan was on a collision course with the British Government for saying something as revolutionary as even independence not being against the Treaty of Utrecht. We warmly applauded from the Opposition as hon Members can well imagine and his response was, "I am very glad to hear that Members opposite are tapping on the table. I have been saying

this for 25 years". Of course, one of the great advantages that Sir Joshua had and I am now close to reaching the position was that he was able to say he had said all sorts of things for 25 years and since nobody else had been around for 25 years nobody to contradict him. At the moment I am limited to 22 years but I am getting there. Mr Speaker, the other motion in the House also on the 12<sup>th</sup> December 1984 again dealt with the commitment in the preamble to the Constitution and the support in the UK for the defence of that position. And it was deliberate that these two motions were brought to the House at the same time because we wanted to send a message to the outside world that the fact that we were divided on accepting or rejecting the Brussels Agreement did not mean we were divided on wanting to be a part of Spain or not wanting to be a part of Spain and that was why we, from the Opposition, brought motions to give the Government the opportunity to be able to say, "Although we disagree with the Opposition about the things in the Brussels Agreement that they are against, that does not mean that we have changed our position on the right of self-determination of the people of Gibraltar or whether the people of Gibraltar want to be a part of Spain or not". We do not and we have never assumed that the Government of Gibraltar in 1984 had changed their position but nevertheless we believed then and we believe now that it was the wrong decision to support that agreement and that we are still paying the price for it and we will certainly not support it. Mr Speaker, the resolution which I am hoping this House will support will go to the United Kingdom Government and we would be fooling ourselves if we believe that they will immediately act to give it effect. But nevertheless the fact that we do it means that we will be able to pursue within the UK Parliament their willingness to act on it or not act on it. The closest we have come to getting the UK to recognise the right of self-determination of the Gibraltarians has been in an answer given by Baroness Chalker in the House of Lords where she actually said there was no doubt that we had the right of self-determination but that there were also international obligations. That, which happened in 1993, in turn produced a formal protest from the Spanish Government to the British Government. In my

first appearance in the United Nations in 1992 I carefully drew a distinction between having that right recognised and actually pursuing the exercise of the right which needs to be done with caution. I think we are all realistic enough not to go in barging like a bull in a china shop but nevertheless we have to be totally uncompromising in changing the fundamental philosophy, idea, argument, call it what we like, that for 30 years has been constantly repeated on the basis that if one repeats something enough times it becomes almost an unquestioned truth however invalid the basis may be and because for so many years Spain has said, "The UK and Spain are in agreement that the Gibraltarians cannot have self-determination, that is the end of the matter". Well, I am afraid that is not the end of the matter. They can be in agreement with whatever they like and that does not alter the Charter of the United Nations and it does not alter our rights and it does not alter a lot of other things. And it is a point in history where it is of particular importance that we should be demanding this right because it could not be more relevant. In the last couple of days the right of self-determination of the people of East Timor that were integrated against their will by Indonesia has been revived, years after they were incorporated into the neighbouring country. The same happened – it has not been translated into reality – but the same recognition of the right has been given to the people of the Western Sahara long after they were made part of the Kingdom of Morocco. In an editorial in the Financial Times on Friday, the Financial Times was arguing that the position in the Russian Federation and the war in the Chechenia Republic raises the issue of the conflict between territorial integrity and the right of self-determination and we are not talking about something that happened in 1704, we are talking about something that happened in 1994. If in 1994 the question is being put do people not have the right to secede? How can we be told we do not have the right to exist because we seceded in 1704? It is complete nonsense and we must not allow that argument to continue to be paraded as if it was an argument that cannot be challenged. Therefore the references in the motion are not just for the sake of substantiating the case for ourselves and for having it in the record in the House of

Assembly but, of course, for its value in pursuing this with our friends outside. That is to say, when we submit the resolution to the UK Government after it has been voted by the House, we will also be in a position to submit it to people we hope will pursue it in the House of Lords and in the House of Commons and in the European Parliament and wherever we want and give them all the references which strengthen our case. As I mentioned in the New Year Message, Mr Speaker, the committee that monitors the implementation of the covenant on economic, social and cultural rights that met in Geneva drew the attention of the United Kingdom to Article 1 following the representations that I made and specifically said that the United Kingdom and all the parties - this is an interesting thing about the two covenants, that in fact Spain is a signatory and a party to the covenant to enter a reservation at the time of ratification no such reservation was entered by Spain or by anybody else in the case of Gibraltar when the covenant was signed in 1976. The UK, for example, entered a reservation regarding the implementation of parts of the covenant in the territory of Hong Kong but not about Gibraltar. China never entered any reservation because China simply does not bother to sign the covenants, that is one of the problems that they have got; here we have got a situation where the covenant says, "The right of self-determination applies to the signatories and to the people in the dependent territory of the signatory, if the signatory extends it to the dependent territory". What happens then if the dependent territory passes under the sovereignty of a state that is not a signatory? That was the main issue and the main reason why there were six Hong Kong delegations addressing this committee. But it is the first time that anybody, any international organ has in fact drawn the attention of the United Kingdom to its international obligation to do this however awkward politically it might be. In the course of this year I expect to have the opportunity of addressing the Committee on Civil and Political Rights where the issue is even more relevant and where, clearly, the passage of this resolution by this House would be something that it will be possible to bring to the attention of that committee as it will be possible to bring to the



attention of the Committee of 24 in July and of the Fourth Committee in October. I am not saying that the moment we manage to persuade all those concerned it means that the decolonisation of Gibraltar is now a matter of technicalities, the real business beings when we have the right of self-determination because then we have to address how do we exercise that right. What do the people of Gibraltar want to do with the right when they have it? And it is not that I am saying they do not have it, I am saying as far as we are concerned they have the right of self-determination; as far as the Spaniards are concerned we do not have it; as far as the United Kingdom is concerned we only have it to the extent that the preamble to the Constitution gives us the veto to becoming Spanish; and as far as the United Nations is concerned I think the resolutions are capable of having the interpretation that Spain has put on them but it is not the only interpretation. Certainly the first resolution of 1964 and it was to that resolution that the Legislative Council of 1964 addressed this booklet which was the reply to the Spanish Red Book which was a massive volume and this was addressed to the Committee of 24 when the Committee of 24 had decided that the UN Resolution 1514 on the decolonisation and the granting of independence to colonial territories and people applied fully to Gibraltar. That was the original position of the United Nations, that it applied fully to us; that we were entitled to independence in Gibraltar but that a dispute existed with Spain and that the UK should sit down and talk about the dispute with Spain and the UK refused to do this in 1964. They refused to do far, far less in 1964 than they are willing to do in 1994. In 1994 they are willing to talk about the issues of sovereignty; in the plural. In 1964 they were not even prepared to talk about a dispute with Spain. I think, frankly, the response of the UK in 1964 which was very, very tough, effectively dismissive, it was effectively to say to the Committee of 24, "Who do you people think you are? This is my colony and I do with my colonies what I like and you are not telling me what to do or not to do". Of course, the UK of 1964 is not the UK of 1994, we all know that. But the net effect of that dismissive approach was effectively to put everybody's back up and drive everybody into a much

stronger support of the Spanish position and Spain had a field day. Today I honestly believe the Committee of 24 is much more sympathetic to our arguments than it has ever been in the years that it has looked at the Gibraltar question. In the course of this month we expect to get to know who the new chairman of the Committee of 24 is going to be and if it is the person that apparently stands most chance of being elected it will be very good news for us in Gibraltar and we will have man leading the Committee of 24 who is likely to publicly demonstrate even greater sympathy for us than the previous chairman from Papua New Guinea. There has been, in 1994, a period when the position has been filled in an acting capacity by the Ambassador from Cuba and for obvious reasons the Ambassador from Cuba cannot afford to be too enthusiastic about Gibraltar but I do not think we will have any problem at all with the new chairman and I think we will be in a position to hear good things from him once he is elected into office which is likely to happen in the course of this month. The 1964 statement issued by the whole of the elected members after the elections to the newly created Legislative Council of Gibraltar and which also was the view of the members that had been in the Gibraltar Legislature prior to the Lansdowne Constitution and was also the view of every candidate in the 1964 Constitution, not only stated quite clearly the commitment and the demand for the right of self-determination, but actually put forward, as a formal proposal, a particular exercise of the form of self-determination; they asked for free association in 1964. So it is nonsense for the British Government to say, "The reason why we cannot respond to self-determination is because we do not know what you want". They knew what the people in 1964 wanted; the people in 1964 did not say, "We want self-determination" but they did not spell it out which is what they accuse us of doing. They said, "We want self-determination and what we expect to do now in 1964 is that between now and the next general election in 1968 we will have negotiated Gibraltar's decolonisation by free association with UK". We all know that did not happen. Is it, in fact, the case that the United Kingdom says no to integration which they have said on more than one occasion even when they have not been

asked, just so that we do not get it into our heads to ask for it; of course if we are going to have direct rule in February that may solve all our problems. With all these pre-emption measures that I have taken they think I am gearing myself all out to stop them and I may actually welcome them with a red carpet. They have said no to independence even though they have not been asked but they have not said publicly no to free association so far. In the last interview that Douglas Hurd gave following the Hurd/Solana meeting he said, "We are prepared to look at any ideas Joe Bossano may put to us on the Constitution but it is not realistic to talk about independence and it is not realistic to talk about integration" but he did not say "it is not realistic to talk about free association". So I have asked him is he in fact saying that free association is not rejected, has never been rejected and if that is a possibility? If it is then maybe we start thinking about it. There is, of course, a fourth option which I have said and we only discovered this after I went to the United Nations in 1992 although it has been there since 1976 but regrettably they did not bother to tell us; and that fourth option was a result of the decolonisation process and a result of the UN Fourth Committee and the UN Committee of 24 accepting the arguments of the administering powers that with the remaining territories if a formula had to be found to decolonise the territory it did not necessarily neatly fall into the category of independence, integration or free association and that therefore for a territory which for historical, geographical or other peculiarities or because the people did not want it because at the end of the day the crucial element in decolonisation is that one is not decolonised unless one is made free and one is not made free unless one chooses the path. So the decolonisation process cannot happen without self-determination. Self-determination is not decolonisation, it is the key to decolonisation. The UK itself has argued that it would be wrong, for example, to impose on 54 people in the Pitcairn Islands independence whether they want it or they do not and that would not be decolonisation and the UK has forcefully said that they consider their charter responsibilities under the UN which is to look after the welfare of their colonial

people to mean that they do not stand in the way of decolonisation and they do not ram decolonisation down their throat. And I believe that they honestly are doing that everywhere except in Gibraltar and I believe in Gibraltar they are not honouring the spirit of what they are required to be honouring because in Gibraltar we come back to the position that in 1967 the people of Gibraltar went into a referendum which I think for most of us gave us the impression that we were taking a momentous decision which was determining our future and getting rid of the problem with our neighbour because we were being asked, "Do you want to be a part of Spain or do you want to stay with the UK on your present terms?" The fact that people said, "We want to stay with UK on our present terms" does not mean that the people in 1967 were saying, "We want to stay as a colony forever and all that we want to be is a colony until we become part of Spain". That is not the right interpretation of the decision taken in the 1967 referendum, although it is an interpretation that one could put on it if one wanted to read the thing, I suppose, word by word. Certainly it seems to me that if we take the position of the UK, the preamble to the Constitution and the 1967 referendum together, that seems to be the position that the UK has taken. And that is the position that the UK has and put particularly to the Committee on Civil and Political Rights the last time they met and which we have to refute. When asked, "What do the Gibraltarians feel about being decolonised?" the reply that has been given is, "No, the Gibraltarians are quite happy to stay as a colony because they were asked in 1967 and 99.99 per cent said they wanted to stay as a British colony". Well, 99.99 per cent would rather be a British colony than part of fascist Spain". There is more freedom in being a British colony than being in Franco's Spain, there is no question about that but that does not mean that the people of Gibraltar said, "We want to be a colony forever" and it is bad for us if that is what is being told to the international committee because that is one of the arguments that lends support to the consistent position of the Spanish Government that we are not a real colonial people because never in the history of colonialism has there been a colonial people that say, "We want to be a colony". Perhaps that

is not quite true. In 1964 there was one particular case which was Anguilla that having been made independent with St Kitts and Nevis seceded from the independent state and had a revolution to go back to being a colony. Perhaps it may be that they felt that the people in St Kitts were worse colonial masters than the people in London, that might explain their position. But there we had at the very same time when we were fighting for our right of self-determination we had what is probably unique in the annals of the United Nations history on decolonisation, a peoples who exercised self-determination to go back to being a British colony from having been made part of a federal independent state. I do not think our people in 1967 were conscious that their decision in the referendum was capable of being interpreted as being committed to a colonial Gibraltar forever more. I think our people were clearly expressing the loyalty and the affection and the links that we have with the United Kingdom which none of us want to dilute or totally break. Obviously when the new Constitution was negotiated in 1968 a number of things were reflected in that Constitution which were explained in the Constitution as being needed because of the circumstances of the time, Mr Speaker. In the letter accompanying the 1968 Constitution it says that because of the amalgamation with the City Council and because of the blockade, a special position has to be retained for the Financial and Development Secretary. We have no problems with the Financial and Development Secretary who is part of our team. But the reality of it is that every other colony has moved in the last 25 years where there is a Minister for Finance in the elected Government. Even colonies that are one-tenth of our size in numbers have already got that far and we have stayed still in theory. The UK recognises that there has been de facto development in the responsibilities of the Government of Gibraltar more than anything else because they have been shedding them, more for that reason than for any other reason. We cannot have a Constitution that is written in 1968 which on paper says one thing, in practice says another and when the UK wants says, "That is what the rules says so on this occasion you are not allowed to do this". But when they do not want to pay the

bill they say, "Well, because we are a liberal Government we are allowing you more freedom to do your own thing". So addressing the inadequacy of the present Constitution is an important thing which we have tried to do since 1992 and which I do not think we are going to do before the next general election, Mr Speaker. I do not think the UK has the remotest desire to see any movement in this area and that they will just play about with words and I think the reason they do not want to do it is because moving on the Constitution would be seen by Madrid as bad faith on the part of the UK because, as far as Madrid is concerned there is a gentleman's understanding – assuming they still believe the people in London to be gentlemen – that there will be no constitutional development in Gibraltar other than in the context of the negotiations that are due to take place under the Brussels Agreement which, as we all know, have not gone anywhere in the last 10 years and we hope will never go anywhere. But I think the Spaniards understand that that is the understanding between the two sides even if one cannot produce documentary evidence to show where it says that.

Therefore the motion that I bring to the House limits itself not to putting right all the things that we think that need to be done to put the Constitution right but to affirming what we believe is the obligation of the UK towards Gibraltar and its people. An obligation which goes beyond the preamble to the Constitution, an obligation which it has as the administering power under Article 73 of the Charter of the United Nations and an obligation which the UK felt there was a need to spell out for the Falklands because of the claim to the Falklands. The reason why it does not exist in any other territory is because there is no dispute in any other territory. The reason why it exists in the Falklands is because the dispute in the Falklands led to a war and the UK felt that for the avoidance of doubt after the war it needed to put in the Constitution its position and its commitment which was, as my motion reflects, something they had stated in 1982 before the UN. And I can tell the House that no argument that I have used and no argument that any previous Government of Gibraltar has used can be stronger than the arguments that have been used

by the representative of the United Kingdom in the UN in defending the Falklands. Well, we are entitled to expect the same defence, without squid and without oil, we are still entitled to the same defence. I believe therefore in asking for the support of the House that is an important step at this juncture, particularly in the light of what I said to the House, that we are not going to see any movement by the UK on the technicalities of the Constitution between now and the general election; that there are important debates when Gibraltar will be considered at least on three occasions in 1995 and that we believe that this motion will assist to get international opinion gradually moving in support of the position of the people of Gibraltar and in undermining the traditional position that Spain has so effectively paraded and that really we need to get the UK to come off that fence; they have got to come clean with us, they have got to put their money where their mouth is and say, "Yes, you are entitled to self-determination, I am required to do it and if Spain does not like it that is too bad" or else they have got to come back to us and say, "No, you will not have self-determination, not because of the Treaty of Utrecht but because the price which I am required to pay to give you self-determination is, in fact, to upset Spain to a degree which I am not prepared to do". They would be doing us a favour, we may not like it but they would really be doing us a favour if they were totally honest with us. The people of Gibraltar are entitled to know where they stand and it is not enough to be fobbed off with the preamble to the Constitution unless they do not want to tell us, "All I am telling you is that you can stay as a colony until your resistance is worn down and you say to me please hand me over to Spain", in which case they will then come out smelling of roses saying, "You see, we never handed them against their wishes, here they are, they wanted it". If that is the true story then let us flash them out into the open, let us face the truth of the position that we have to face as a people and I believe that the position is not one that cannot be changed. I honestly believe that part of the reason why it is not spelt out in those tough terms is because not only would it not be acceptable to people in Gibraltar and it might come as a shock to some people in Gibraltar that that is the real position, but I think that

many sectors of opinion in the UK itself would question whether that was the honourable position for the British Government to be taking. If it is not the position let them make it absolutely clear then even though it may mean they upset Spain in the process. Therefore I commend the motion to the House in the conviction that it is the right thing to do and the right moment to do it and that all I am asking the House is to reaffirm in the clearest possible categorical terms what has been the policy of this House since it was created as a result of the 1969 Constitution and the policy of the predecessor of this House since it was created in the 1964 Constitution. It was the first statement made by the Legislative Council immediately after the elections on the 10<sup>th</sup> September 1964, the right to self-determination and, as I said, they went further they actually said "and we want to exercise that right by having free association". If, in fact, I can get the UK to give me a straight answer as to whether in fact free association is an option, which I doubt, then I will inform the House. I commend the motion to the House, Mr Speaker.

Question proposed.

HON P CUMMING:

Mr Speaker, I do not understand how the Chief Minister can claim that this is the right time to present this motion. At the moment, as so graphically described by the Chief Minister yesterday, Gibraltar finds itself engulfed in crisis where on the one hand we are threatened with re-imposition of the double filter at the frontier which would lose a great deal of income from commerce, Main Street trade the day trippers and so on; many people would lose their jobs in those sectors if this double filter is re-imposed. On the other hand, we are threatened with direct rule from UK and therefore we find ourselves at the present moment in a crisis situation. Therefore, even though this is a motion designed to appeal to the heart-strings of all Gibraltarians, myself included, who are in love with the concept of self-determination, myself also, from the times 30 years ago of this lovely phrase of the soil of Gibraltar belonging to no one but



the people of Gibraltar, and I think that is wonderful. Later on this concept refined a little by the AACR to the phrase "The right to our land" and it is crystal clear to me that there is no way forward in solving the problem of Gibraltar's future inside the Spanish Constitution. That is simply not on because the soil of Gibraltar belongs to us and I am totally in agreement with that concept. Neither can there be any progress until the Spaniards change their attitude towards Gibraltar and recognise the rights that we have accrued by 300 years of existence as a community in this land. To pursue the concept of self-determination at this time of crisis seems to me lacking in common-sense, Mr Speaker, because for this to represent a genuine possibility of progress; the land has to be fertile first for the seed that is going to be planted and it is quite clear from what the Hon Mr Bossano has been saying that far from fertile because he believes – he has just told us – that this will go in one ear and come out the other. So, first of all, the spadework has to be done so that a motion from this House can fall on fertile ground in UK. The timing to me seems totally out of proportion. If one of us had a teenage son who said to us, "I am going off to Willie Salsa discotheque in Marbella" and then does not turn up for four days, comes back hungry, dirty with black rings, irritable because has been high on drugs, low on drugs, high on drugs and he comes back home and one does not know how to deal with it and one is angry and upset; it is not the time for the boy to turn round and say, "I demand now, immediately £20 more of pocket money". It seems to me that we all agree with and that we would all normally support, the timing is completely out. There is a danger of the concept of self-determination becoming the sacred cow in Gibraltar. In many poor villages in India, I am told, the cow is held to be sacred and therefore is free to wander round and eat the crops and break down the huts of people who are very poor but cannot eat the cow, take its milk or make any practical use of it and therefore it goes round causing destruction and absorbing energies and doing harm. We would not want the concept of self-determination to become our sacred cow or a king of hypnotic word that the hypnotist uses to put people into a trance.

We cannot now say, "Let us strive for self-determination" and suddenly we forget about the crisis that engulfs us which concerns the speed launches and Señor Braña. We had here in the House yesterday an example of how the Hon Mr Bossano can behave when he is challenged in a way that cuts to the quick over the issue of the ex-Attorney-General's house. We saw here an example of frenzied arrogance and defiance and I must say, Mr Speaker, this is the way he has behaved when facing meetings in UK of senior ministers and permanent secretaries then it is not surprising that we find ourselves in the crisis that we do because those actions can only provoke. Relationships between Governments have to be similar to relationships between people, between couples, between ordinary groups and obviously that behaviour only alienates and provokes. So the timing is totally wrong in this motion, not only is the timing wrong but the economy is wrong. In the GSLP manifesto which I have here, on page 1 in bold print it says, "There is no political self-determination with economic viability" and it is at this time of crisis that economic viability has been questioned, when there has been need for the Spanish Foreign Minister and the British Foreign Minister to discuss and debate with priority the fact that in Gibraltar we are entitled to have a viable economy and the reason that it has become relevant is that our economy has become dependent on income from tobacco smuggling and this obviously is not a tenable or a viable situation forever so therefore this matter has to be sorted out and has to be sorted out soon. In the questions that I asked yesterday and were not answered, I asked about the question of the willingness of the Government to ban the speed launches and the question as to whether or not the Government in the long-term, would see the income from the tobacco launches as legitimate and as acceptable and, of course, there was no answer to his. We cannot allow our young people to think that the speed launches are like the merchant navy of Gibraltar, an honourable profession just as though one is in the merchant navy bringing in money from exports and so on because that is not what it is and it is certainly not as the world sees it and it is not something that contributes towards the achievement of self-determination in Gibraltar, on

the contrary, it destroys our chances because they say, "This is how they want to live. Their economy is not viable therefore how can they sustain a situation of self-determination?" In the manifesto of the GSLP which was so confident of the economy, they had put their infrastructure in place in their previous term of office and now they were going to start reaping the benefits of that infrastructure, they were so self-confident about the economy that they were willing, in 1992, to tie the two issues of the economy and self-determination. It is obvious that now they want to dissociate the two and say, "No, it is not necessary that our economy should seem to be viable before we can move forward in a real sense on the question of self-determination". And one then has to task what went wrong? Could they not foresee the obstacles that would be put in their path in achieving a viable economy at least by Spain, if not by Britain? Could they not see that Spain would block every avenue because this is what is being done, why did they think that they could get away with obstacles from Spain? Then by a policy of provocation to UK, having alienated the goodwill of Britain, now there are obstacles from Britain too. Not obviously the same type of obstacles, just obstacles of dragging their feet, of not having a genuine interest in helping, not the Gibraltarians but in helping the Hon Mr Bossano's administration so that he personally has now become an obstacle to economic and political progress in Gibraltar because of the provocation that he has given both to Spain and to Britain. The GSLP then should have foreseen the obstacles that would be put in their path and not expect that the economy would flourish under their policies as, indeed, now we see that it has not. The term "a level playing field" coined, I believe, by the Leader of the Opposition has been taken up on occasion by the Chief Minister – that we should be given a level playing field, that from the beginning it was obvious that that would not be the case. Spain certainly would not co-operate while we did not attend to her claims or sit down at the table with her to any question of a level playing field. And the British Government will recognise our right to go our own way and not to fall in with the plans and cooperate with the Brussels process but I do not see anywhere that they will bind themselves to

wholehearted support of our economy and of our politics when we fail to cooperate with the structures that they have put in place. The playing field must be made level by ourselves, by armed with the preamble to the Constitution obtained for us by our predecessors in politics, we should have made use of the preamble to go into negotiations with Britain and Spain about our future, armed with the preamble that made such a process safe for us and in those circumstances then we could level the playing field and then we could have the fullest degree possible of self-determination recognised.

I have here the Chronicle of the 6<sup>th</sup> January where the headline is, "Caruana offers consensus approach" and just as there is a democratic deficit in the GSLP pushing ahead with the question of self-determination without economic viability because it goes against what they have laid down in the manifesto and therefore represents a democratic deficit. So in the GSLP manifesto "consensus approach to foreign affairs" is not in the GSD manifesto and therefore also represents a democratic deficit. I mention this, Mr Speaker, only as this has been the accusation against me and the cause of this House asking me to leave on the grounds of not what I stood for election for, I just want to demonstrate that both the GSLP and the GSD have departed from their election manifestos on crucial issues and that is perfectly all right.

I believe that oil cannot be mixed with water and therefore the GSD cannot have consensus politics with the GSLP because ideas are so totally different. The GSLP want to pursue a self-sufficiency that dispenses both with Britain and Spain and the GSD are willing to sit down with Britain and Spain and talk. I would like to point out and bring to the attention of this House, Mr Speaker, a short paragraph from the leaflet called "Parliamentary Update" which all members of this House receive as members of the Commonwealth Parliamentary Association and this was received in the last month or so, dated August 1994 – they always come rather late - and the idea is to pass on to Commonwealth countries how democracy is going in the

different nations. And the very last paragraph of this last edition of Parliamentary Update says, "Falklands support" – this is very relevant to the motion, Mr Speaker, because it is about the Falklands Constitution – "Falkland Islands Councillors Hon Bill Luxton and Hon Wendy Teggart pressed the United Nations decolonisation committee on the 12 July to reaffirm the right of self-determination and so impede Argentina's sovereignty claim over the islands" – this is the important part, Mr Speaker – "Despite support from Papua New Guinea, Sierra Leone and Fiji, the committee did not advocate self-determination". So, Mr Speaker, in spite of the acknowledgement of the right of self-determination by Britain in the Constitution of the Falkland Islands, nonetheless in July they have gone to the decolonisation committee, the Committee of 24, and they have been sent away with nothing. In other words, the decolonisation committee is simply a wet rag and not a useful tool for solving the problem of our future and whether or not this recital, as it has been called, is included in our Constitution or not, the reaction from the United Nations to us and our problems is going to be the same. In other words, if Britain accepted to inject into our Constitution the paragraph that is included in the Falkland Islands one, our case in the United Nations and will not progress on that account. It is a great misconception and I believe very wrong of the GSLP to have imbued in the people of Gibraltar the view that the key to our future lies in the United Nations because the United Nations is simply not equipped to deal with this kind of problem effectively. I find it most alarming, Mr Speaker, that the Chief Minister should bring up the example of East Timor as a sort of wonderful thing that the United Nations can achieve. That is to say, after East Timor has their self-determination dead and buried for 25 years without the ghost of a hope of reviving it, the United Nations is still bringing up the question on an annual basis and deprecating the fact in a most weak and futile fashion. We could not have had a clearer international lesson on the weakness of the United Nations in what has taken place before our very eyes over the last few months in Bosnia where the United Nations Security Council which is the only body that can put into effect anything that it wants or believes, has

unanimously wanted to set up a safe haven in Bosnia so that those people who are ethnically cleansed and have nowhere to go could come and take refuge in the safe haven of the United Nations. They would have the soldiers with the blue helmets with weapons to protect them against the Bosnian Serbs and it has become a joke because what was UN safe havens became unsafe – UN-safe, a play on words, that a UN safe meant unsafe because those havens far from being havens the Serbs came in, rushed them all up, bombed them with impunity so the next question is how can the UN take those peace keepers safely away from that area and abandon everybody to their own fate? This is the body that the Hon Mr Bossano wants us to put our faith in to bring the solution to our future and this is to mislead the people of Gibraltar. It is not, Mr Speaker, that I am against the campaign that he has been waging in the United Nations at all. On the contrary I agree with every word that he has said and I think it is great that he should have gone there but what he is doing is hyping up the expectations of the people of Gibraltar of what can be achieved. Certainly it can be used to put pressure on UK and pressure on Spain and to focus international attention on these issues but to expect the resolution can come via that campaign is totally to misconceive what the United Nations is about.

Mr Speaker, in this motion, quoting the section of the Falkland Islands Constitution, it says, "Whereas the peoples have the right ... for their own ends to freely dispose of their natural wealth ...". This is all very well for the Falkland Islanders because the Falkland Islanders do have natural wealth. They have a huge fishing industry that in the last years has taken over, and this I tell the House from having spoken to Falkland Island Councillors in the CPA Conferences, rocketed over the question of squid. There is a lot of squid there which they catch and sell which has augmented their fishing industry which is already very rich. They have, of course, farming and they have now oil reserves. So they have natural wealth to dispose of freely and, of course, we do not have, however much nice things are said in our Constitution, we simply do not have natural resources to dispose of freely for

our own ends and therefore the economic question in Gibraltar becomes absolutely vital. There is a very profound reason, Mr Speaker, why the economic issue has to be addressed seriously first before we can make genuine progress on the question of self-determination and it is simply this. The first freedom that a human being looks for is freedom from poverty and hunger. Of what use is it to a man with an empty belly to have the right and the freedom to vote when he has not got freedom of access to the things that make a quality of life consonant with the dignity of man? So the economic issue has to be addressed with enormous seriousness in regard to progress of self-determination. Therefore it seems to me, Mr Speaker, there is the reluctance of UK to make bold statements about our rights to independence or self-determination without first clarifying the issue of how we are going to live because it seems that in this day and age with Spain totally hostile against us we will never make economic progress. Therefore at this juncture saying to Britain, "Recognise fully our right to self-determination" which obviously must include the right to independence, Britain is saying, "No you are asking me in these circumstances to not only sustain you economically but to protect you militarily on a permanent basis" and this simply they are not prepared to do. In any case, Mr Speaker, the need for constitutional development has been greatly hyped up out of all proportion because the United Nations says that colonial problems should be all solved by the year 2000 is like it saying that East Timor should have its self-determination recognised, that is to say, it falls on completely deaf ears and has very little practical chance of being fulfilled. There is no need for us to take a short-term view about this, this has got to be done now, there is no got to about it because really we can live very comfortably in the present situation which is colonial only in a very technical sense because we are not constrained by the Governor or by the colonial government. It may be that in the exercise of their powers the Chief Minister finds that occasionally that his freedom of action is constrained by the colonial set-up but certainly the man in the street finds no problems with a colonial governor who in fact is not the colonial governors that we used to have who gave the direct rule. It may

be that over the next month we may go back to that situation which is totally different to the colonial situation that we know today which is one of complete emancipation. So it seems to me that there is no hurry to move from our present situation until we can be sure of a better one and certainly there is no case for falling out with the UK on this question at this moment. The truth of the matter is that if Britain gives any hint that it were willing to give up the sovereignty of Gibraltar, in those circumstances there are two claimants; one is Spain and the other is us Gibraltarians. There are, in fact, two claimants and it is true that of those two claimants Spain is the much more powerful with a very weak case and therefore it is so essential that when we sit down to talk to Spain, Britain is entirely on our side as I believe it is willing to be so that the question of power is eliminated so we will sit down with a very good case and as powerful as they are when Britain is on our side so that negotiations can be faced under the Brussels Agreement with a favourable outcome.

I would like to finish, Mr Speaker, with simply a plea. That this motion be postponed until the present crisis solved so that Britain can have no excuse for seeing this as a provocative response to the crisis in which we are enmeshed, as a sort of rude sign to them as the answer to their threats of direct rule or as an answer to their request that the question of the speed launches should be sorted out. For that purpose I would certainly be willing to back this motion at a time when this crisis was solved to prevent it being seen as a provocative response that I believe, Mr Speaker, it actually is because the Chief Minister has already told us that he expects this to fall on deaf ears, that he does not expect it to have a favourable response and therefore it is not a genuine step on the road to self-determination. Thank you, Mr Speaker.



HON P R CARUANA:

Mr Speaker, as the Chief Minister by his words of yesterday has disqualified himself from the possibility of persuading the hon Member who has just addressed the House to reconsider his position and because I consider that the vital interests of Gibraltar require that we do what we can to persuade him to support this motion, I will deal with that vital national interest on behalf of the Chief Minister. For that purpose I will try to deploy my admittedly modest advocacy skills in trying to persuade him from the views that he has expressed publicly before today that his intention is to abstain and not to support this motion. Let me assure the hon Member that as Leader of the Opposition it is not my intention to allow the Chief Minister to forget any crisis that may now or at any time in the future engulf us and I do not consider that supporting the Government on a matter of fundamental importance that unites us all in Gibraltar will enable him or facilitate him or still less constrain me from pointing out to the Chief Minister, as I think I occasionally do, the shortcomings of his policies and the areas in which I disagree with him. There are two points that the hon Member has made which I think give me scope to work on him between now and the moment that I sit down and gives me confidence that I might be able to dissuade him from his abstention. The first is the last point that he has made and that is that whether or not we succeed in doing this, the United Nations will not recognise it. There is a fallacy in that argument which may enable the hon Member to reconsider and that is this, that if we can persuade the Government of the United Kingdom to recognise our right to self-determination, it will then not be necessary or at the very least it will be less important that we are able to persuade the United Nations to recognise that right because primarily the people that have got to vent or give vent or allow us to give vent to our right to self-determination is the United Kingdom and not the United Nations. Therefore if we can succeed in getting the United Kingdom Government as the colonial administrative power to recognise that we have the right

to self-determination, then the need to lobby the United Nations Committee of 24 on the same point or to that end will have been, I would say, almost entirely eliminated. Secondly, the other area of concern that he has is that the timing of this motion and, indeed, the substance of it, he had indicated, is provocative. Well, the hon Member knows that provoking the United Kingdom is neither my political philosophy nor indeed my personal style and that that does not prevent me and will not prevent me from supporting the words of this motion. I hope to be able to persuade him in the course of the next half an hour or so that he can support this motion without any risk ... if the Minister gets bored of course he can do what he has been doing for the last hour which is go and eat fritters in the ante room *[Interruption]* The hon Member I hope to be able to persuade him can rest assured that this is not an act of provocation. The hon Member I fear, confuses differences of approach with differences on substance and on fundamental rights. I have many differences on substance and on fundamental rights. I have many differences of approach with Government Members, even about how I think our right to self-determination should be exercised or how I might think it can best be recognised. It does not prevent me and certainly I would not because of any difference of approach as to the methodology, fail to support a motion the substance of which I support, the substance of which is unquestionably correct and the failure to support which may be seen outside of these shores as lack of total unity on the factual content. Because, of course, when people outside read this motion and are told what the voting pattern was they will not have heard any of the hon Member's arguments as to why he did not support it, they will not be told that really he supports it but withheld his support for technical reasons not connected with the substance of the motion.

Mr Speaker, the Opposition fully enthusiastically support both the spirit and the letter of this motion. It fully reflects the policy of the party that I lead in respect of the Gibraltarians' right to self-determination and, indeed, on other matters. Later I will nevertheless be proposing two amendments, not to change the Government's motion in the sense of changing any of the

Government's words but to expand it. The text of the Chief Minister's motion first recites a number of documents and events which are germane to the ultimate conclusion of the motion, namely the call on the United Kingdom Government to treat us no differently than they have treated the Falkland Islands. Certainly I cannot conceive of any legitimate, and I say legitimate based both in law and in political right and indeed in morality, I can conceive of no reason why we should be entitled to less than the people of the Falkland Islands. Because, of course, as the Chief Minister has indicated, we have in common even the fact that we are two of only three colonies in British colonial history that have been subject to a third party claim, the other one being Belize. So we have in common even that peculiar characteristic. Paragraph 1 of the Government's motion declares, "All colonial peoples have an inalienable right to self-determination". It is now clearly established that that applies to all non-self-governing territories and its peoples and we are undeniably a peoples because if after 300 years we are not a peoples somebody is going to have to put on an imaginative cap and describe us by some other means. If we are not a peoples then what are we? Paragraph 2 of the motion refers to the statement published unanimously by the Legislative Council in September 1964. This pamphlet, an original of which in red the Chief Minister has waved around this morning and indeed waved around on the platform on the last National Day. This statement in 1964 is really enlightened for its time and I think it ought to be and is compulsory reading for most if not all people in Gibraltar. Many of the things that are stated in it are true even today and for that reason, if I can just find my note of what he said, I was gratified to hear the Chief Minister say that it is difficult to improve on the views expressed by the Legislative Council in 1964. A sentiment with which I entirely agree. Mr Speaker, with your leave and really if only to put it on the record of this House, I would like to quote some passages from that booklet which the members of the House of Assembly published unanimously in 1964. Amongst the things that it says are these, and I quote, "The wishes of the people of Gibraltar are to achieve full internal self-government in free association with Britain. This is a comparatively new concept

and the terms and conditions under which it will be implemented require a considerable amount of study and negotiation. By having already achieved a very large measure of self-government, the people of Gibraltar are confident as well as determined that they shall achieve full self-government in the very near future. But they are not prepared to embark on full self-government until they are satisfied that the arrangements under which it is obtained are such as to guarantee their economic prosperity and their international security in the future. They are sufficiently mature politically to run their own affairs and already do so to a very great extent but the future constitutional relationship between the colony and the former administering power is, in the case of Gibraltar, as important to the future welfare of its people as the achievement of full self-government. Other former colonies may have desired only to rid themselves of the status of colony, able and willing as they were to stand on their own economically, politically and militarily as viable, self-sustaining entities. Because of its size Gibraltar is unable to do this without entering into an association with another country on whom the responsibility for guaranteeing the future security and independence of Gibraltar can reliably be laid". Mr Speaker, I believe that that sentiment remains true today and I would echo the words of the Chief Minister that it is difficult to improve on the views expressed by the Legislative Council in 1964. Later on, in the same booklet, the Legco said, "If from a political point of view Gibraltar's present form of status of Crown colony is of no practical consequence in the lives of its people, from the economic point of view that status represents, perhaps paradoxically, their safeguard for the future and one which they will not give up until the guarantees which they seek are negotiated, agreed and formally embodied in Articles of Association with Britain. In the case of large colonies rich in raw materials and other resources, some administering powers have at times been reluctant to grant independence because of the economic losses which such transfer of power has entailed. In such circumstances the Committee of 24 has rightly demanded the immediate grant of independence. To apply this principle to Gibraltar, however, from which Britain derives no revenue but to

whose economy she contributes, would be to relieve Britain from the obligations and responsibilities which she owes to a former colony. Far from releasing the people of Gibraltar from bondage, the Committee of 24 would unwittingly be rendering them a disservice". Mr Speaker, for the sake of completeness, just one more quote, and I continue to quote, "The people of Gibraltar are British but this does not mean that they are English. They live very near to Spain but this does not mean that they are Spanish." That is the end of that quote, I just want to make clear that I am skipping over five lines and I continue with the quote, "While the political aspirations of this community are virtually satisfied and whilst its economic development is rapidly being completed, the people of Gibraltar cannot ever hope to be able to defend themselves against an aggressor, nor can they hope to establish and maintain foreign relations with other countries. These are the two requirements in which Gibraltar has to place its reliance elsewhere. It was for this kind of situation that the principle of free association was intended by the United Nations. The people of Gibraltar do not want to rush into full self-government until the details of the manner in which the British Government will meet these responsibilities on behalf of its former colony have been settled". It then continues, "What Gibraltarians seek from the Committee of 24 is an affirmation of their right to self-determination in free association with Britain, with the terms of such an association to be agreed freely between Gibraltar and Britain and fully implemented at a time to be chosen by the people of Gibraltar themselves". Mr Speaker, a sentiment in that last quotation with which this motion is in no sense incompatible and to which I entirely subscribe. It then goes on, after other paragraphs, there are just five more lines I wish to quote to put on the record, "The soil of Gibraltar should belong to no one but the people of Gibraltar and the people of Gibraltar do not desire to be united with Spain. Part 1 of this publication dealt with the right of a colonial people to end their colonial status by the exercise of self-determination. But emergency from a colonial status is not itself enough if it does not also ensure that the right to self-determination is exercised at the same time and enjoyed securely thereafter". Mr Speaker, as I said before, these

sentiments hold true today and they continue, in my submission to this House, to encapsulate the fears held by many in Gibraltar today. Such people do not, in my opinion, as I do not, dilute still less, betray our aspirations for recognition of right to self-determination anymore than the Legislative Council unanimously did in 1964. The dangers and the need for safety remain the same ones. Hence what I call the existence of differences of approach about how our aspirations can best and most safely be achieved and realised and our future secured. That is what mean when we say that we must work closely with Britain and not relieve Britain of her obligations to us. This is not to be confused, although I realise that presentationally there is a thin dividing line which it is incumbent on politicians to be careful not to tread over on the wrong side of it. This is not to be confused with our efforts to ensure that Britain discharges her responsibility to support and defend Gibraltar's legitimate rights and interests which is what I consider this motion seeks to do in the terms that it is drafted.

Mr Speaker, paragraph 3 of the Government's motion certainly does what is a fact under the resolution of section 2734(XXV), it makes it clear that in the event of conflict between the obligations of a member State under the Charter and their obligations under other international treaty obligations, their obligations under the Charter should prevail. The resolution to which I have just referred and which the Chief Minister recited in paragraph 3 of the motion, also says other helpful things. It says, for example, apart from as I said, saying what the motion says it says, it also says at its paragraph 1, "The United Nations solemnly reaffirms the universal and unconditional validity of the purposes reaffirms the universal and unconditional validity of the purposes and principles of the Charter of the United Nations as the basis of relations among states irrespective of their size, geographical location, level of development or political, economic and social systems and declares that the breach of these principles cannot be justified in any circumstances whatsoever". It also says at its paragraph 4, "The United Nations solemnly reaffirms that states must fully respect the sovereignty of other states and that the right of peoples to determine their own

destines free of external intervention, coercion or constraint, especially involving the use of force, overt or covert, and refrain from any attempt aimed at the partial or total disruption of the national unity and territorial integrity of any state or country". Mr Speaker, paragraph 3 of the Chief Minister's motion raises the spectre of the Treaty of Utrecht and, again for the record, and to pre-empt any arguments that might be put to the contrary, it is just as well to document here briefly what Gibraltar's replies to the argument that the Treaty of Utrecht of 1712 constrains our right to self-determination, what those arguments are. Firstly, the Treaty of Utrecht is in my opinion contrary to what the British Government often assert, it is not the basis of Britain's tenure of Gibraltar. The basis of Britain's tenure of Gibraltar is conquest in 1704. Conquest was indeed the basis of Britain's tenure of much of her empire and that did not invalidate the people's rights to self-determination on decolonisation. Were that so, Mr Speaker, the map of the world would look very different today. Secondly, little reference is made in the context of these arguments to the subsequent Treaty of Versailles in which in exchange for Florida and Minorca, Spain relinquished her claim to Gibraltar. How can it be suggested now therefore that that does not have an impact on the current validity and status of the Treaty of Utrecht. Thirdly, Resolution 2734(XXV) of the 16<sup>th</sup> December 1970, to which paragraph 3 of the Chief Minister's motion refers, establishes in my opinion beyond doubt that whatever the validity is of the Treaty of Utrecht we can argue until the cows come home about that, even if it is entirely valid, it is superseded by the inalienable right of self-determination of colonial people which is recognised not only in the Charter of the United Nations in Article 73 but indeed in the subsequent motions of resolutions of the United Nations and indeed in the covenants to which the Chief Minister's motion also refers. Fourthly, it really is moral, political and intellectual bankruptcy to hold up a 280-odd year treaty as being relevant to anything at all in 1974. In my opinion, and this is the basis of our policy and these state the remarks that I make to the British Government when their officials peddle that line, it really is sheer disingenuity on the part of the Foreign Office. Mr Speaker, I think we are in the happy position of being able to rely on

statements made by the British Government themselves when we describe that upholding of the Treaty of Utrecht as being disingenuous and irrelevant and we can rely on statements made publicly by the United Kingdom's representative to the United Nations, again in a speech made by Sir John Thomson on the Falkland Islands – I am grateful to the Chief Minister for having made this and some of the other material to which I am referring available to me – but in his address to the United Nations on the 3<sup>rd</sup> November 1982, Sir John Thomson said, amongst other things, "Mr President, these debates in the short time I have been here seem often to be proforma things, representatives talking past each other. I interpolate in my speech this morning a short passage to ask you all to compare what the distinguished Foreign Minister of Argentina has said with what I am about to say. I do indeed think that this brings out the essence of the problem. He stressed legally, I will stress natural law and fundamental rights. He stressed sovereignty over land, I stress the rights of the people. I do not in any way mean that we have doubts about our sovereignty, do not in any way denigrate legalism but we must all consider in this modern time we are not talking about the 19<sup>th</sup> century, we must all consider what matters to us all. What is it that the Charter stands for? It stands for the rights of all people and for the rights of individual people. A small people is at stake today but that principle that applies to them is universal". Well, Mr Speaker, it seems to me and there ends the quote from that letter, that really what Sir John Thomson was telling the United Nations is precisely what I am saying now about the Treaty of Utrecht and to the extent that Sir John Thomson denigrated Argentina for taking a legalistic approach as opposed to an approach which recognised and went to the heart of the principles of the Charter, it is that very concept that lies at the root of my rejection of the British Government's persistence adherence to the Treaty of Utrecht which strikes me as suffering from precisely the same intellectual and moral defect as Sir John Thomson was attributing to the position of Argentina in 1982. Mr Speaker, there is also the quote which I take from the Chief Minister's speech to the United Nations of October 1994 as the most easy to hand test of the quote made in the United Nations

but I think it is worthy of being placed on this record here, in which, according to the Chief Minister – and I have no reason to doubt him – the United Kingdom representative told the United Nations 30 years ago, “My Government does not accept that there is any commitment under the Treaty of Utrecht binding us to refrain from applying the principle of self-determination to the people of Gibraltar. My delegation completely rejects the attempt by the Government of Spain to establish that there is any conflict between the exercise of self-determination by the people of Gibraltar and the provisions of the Treaty of Utrecht and the United Kingdom Government has never given any contrary assurance to Spain or anyone else.” Finally, Mr Speaker, there is the quotation from the United Kingdom’s representative’s statement to the Special Committee of the United Nations on the 16<sup>th</sup> October 1964 in which he says, “My Government’s policy will continue to conform with the principle of self-determination. My Government does not accept that there is a conflict between the provisions of the Treaty of Utrecht and the application of the principle of self-determination to the people of Gibraltar”. Mr Speaker, for all those reasons both as a matter of principles to whether the Treaty of Utrecht applies or does not apply in this age and even if it does apply whether the United Nations Charter overrides it and even if the United Nations Charter does not override it as to the fact that the British Government has historically upheld principles which support our right to self-determination notwithstanding the Treaty of Utrecht. For all of those reasons I think it is right and fair that the people of Gibraltar in general and this House in particular should assert that we have a right of self-determination notwithstanding the Treaty of Utrecht and that it is not acceptable for the British Government to maintain that our right to self-determination is by that Treaty curtailed, which I think is the last formula of words that the British Government deployed to place the Treaty of Utrecht in context of our right to self-determination. Mr Speaker, paragraphs 4 and 5 of the motion deal with the two Covenants of the United Nations in 1976, the one dealing with Civil and Political Rights and the other dealing with Economic, Social and Cultural Rights. The references that I want to make to that are

the following: In Article 1(3) of both those Covenants because in the initial parts of it both the Covenants are actually the same, they repeat the same formal language until they get the substance of it, it says, “The states parties to the present Covenant including those having responsibility for the administration of non-self-governing and trust territories shall promote the realisation of the right of self-determination and shall respect that right in conformity with the provisions of the Charter of the United Nations”. The words on which I highlighted are “The states parties to the present Covenant including those having responsibility for the administration” because what that means is that the Covenant applies also to parties that do not have responsibility for administration of non-self-governing territories and that includes Spain. Therefore what that means is that unquestionably by her ratification and adherence to this Covenant, Spain has accepted, if she did not already have it under the Charter which I would argue she did, but certainly in this Covenant Spain has accepted to be bound in the case of Gibraltar to the principle of self-determination even though she is not a party with responsibility for the administration of a non-self-governing territory. It is interesting also to not and I will try not to repeat the point made by the Chief Minister which was that there were no qualifications made either by Spain or by Britain in relation to Gibraltar. And really it is not open to Britain to now argue – I do not know if she would seek to try but if she did seek to try to argue – it would not be open to her to argue that she never addressed her mind to the need for reservations because there are reservations entered by Britain about the most ridiculous issues in the Covenant. There are reservations entered by the British Government, for example – and I do not want to bore the House with the details of those reservations, they are all printed there – one of the provisions of the Covenant is the right to be sure that people who cannot afford to pay for their own legal representation available. In other words, one of the provisions of one of these Covenants is that there will be a legal aid system. In the case of certain of her territories which she listed in the reservation, Britain entered a reservation to the effect that in the



case of the British Virgin Islands, the Cayman Islands, the Falkland Islands, the Pitcairn Islands Group and St Helena and her dependencies, she was entering a reservation about her need to provide free legal aid to people who could not afford it because of the shortage of legal practitioners available in those islands to render such service. *[Interruption]* Well, if it occurred to somebody in the Foreign and Commonwealth Office to think of such an esoteric point when it came to making the reservations that Britain had to make into these Covenants, it really beggars belief that with something as real and as active and alive as the Gibraltar problem was in 1976 it occurred to nobody in the Foreign Office to make a reservation about a matter which would have been much more serious and much more significant than any of the most trivial matters in respect of which the British Government had entered reservations. Mr Speaker, paragraphs 7 and 8 of the Chief Minister's motion is taken from the Falkland Islands Constitution. It is worthy of note that those words were not invented by the British Government. The words in the Falkland Islands Constitution repeated at paragraphs 7 and 8 of the motion are drawn directly from the two Covenants of 1976. This is not intellectual thought process on the part of the British Government, the words that we seek to incorporate were drawn by the British Government word for word, I suppose so that no one could quarrel with the fact that they had got them there because if anybody had objected to the fact that the British Government were writing these words into the Falkland Islands Constitution Britain would have turned round and said, "All I am doing is complying with my obligations under the Covenant and I am actually employing precisely the very same words to do it". I can think, Mr Speaker, of no adequate argument based as I said at the outset either on legality, on morality, or on any other criteria that entitle the people of Gibraltar to less rights than the people of the Falkland Islands and to a lesser degree of recognition of those rights by the Government of the United Kingdom. Our rights as a people are whatever they are by the application of natural law and international political principles. They are not established; they are not determined; they are not subject to the fact that there is a third party that claims

sovereignty of our land. The existence of such a third party claim, Mr Speaker, does not decide what our rights are, we do not have rights regardless of what somebody else chooses to do. Of course, the fact that somebody else chooses to have a claim to our territory whilst not deciding what our rights are in law, might well create practical difficulty in exercising those rights. It might even have to be taken into account and into consideration but it does not alter the substance of what our legal rights are themselves anymore than the existence of Argentina's claim alters, in the opinion of the British Government, the rights of the Falkland Islands as they have now been recognised by the British Government. We are therefore entitled to the same rights and to the same degree of recognition.

Mr Speaker, I am now approaching one of the amendments that I propose to move. The Chief Minister has himself sensibly, in my respectful submission, recognised that there is a difference between the existence and recognition of rights and the exercise of those rights; they are different things. The first is theoretical and stands by itself and is not affected or subject to or by the second. No one should think, Mr Speaker, that in calling for such recognition of our rights we are signalling a wish to break our links with Britain, indeed I am gratified to hear the words of the Chief Minister in which he said earlier today, "Our links with the United Kingdom which none of us want to dilute or totally break". A sentiment to which I entirely adhere. No one should think that in calling for the recognition of our rights to self-determination we are signalling a wish to break links with Britain nor indeed, and this is equally important in my submission, a wish to relieve Britain of her obligations to Gibraltar especially in terms quoted by the Legislative Council in 1964 and which I have already quoted nor even, Mr Speaker, that we seek to confront Britain in a hostile sense. After all when Britain made the declaration that she did in relation to the Falkland Islands, when Britain included in the Falkland Islands Constitution the words that we are now seeking to ask Britain to incorporate in ours, she was not inciting the Falkland Islanders neither to seek independence nor to confront Britain and therefore I rely on that. If Britain gives to the

Falkland Islanders' words (a), (b) and (c) either she was then inciting the Falkland Islanders to confront Britain and to seek independence or alternatively seeking those words, the effect of those words is not to impute such sentiment to the people to whom those words are given and if it is not applicable, if that sentiment is not imputable to the Falkland Islanders it cannot and should not be imputed to the people of Gibraltar simply because we seek the same words and the same recognition as Britain has given to the Falkland Islanders. Mr Speaker, Government Members know that the approach that my party favours to the recognition of our right to self-determination by the Government of the United Kingdom is precisely the one that the Chief Minister himself eluded to in his address and that is the lobbying of British political public and journalistic support so that we can bring Britain on side in this matter. We do not favour the engagement of Great Britain in a confrontation which we may not be able to afford to lose but I hasten to add that I draw a clear distinction between engaging Britain in a political confrontation and in firmly asserting our rights, in firmly calling upon the British Government to recognise those rights, in getting the British Government to state categorically what her position is in relation to those rights and thereafter by whatever political means is available to us especially in the United Kingdom, seeking to put pressure on the British Government to recognise those rights. Mr Speaker, in order to ensure that the position that will be taken by this House today is not misrepresented, misinterpreted, misused – I suppose I should say abused – by those that have shown an ability in the press in recent days of manipulating Gibraltar's position for their own purposes, in order to ensure that that does not occur, in order to ensure that Gibraltar is no more sending a signal of desire to confront Britain than the Falkland Islanders had ever shown and in order to ensure that we continue to adhere to the very sensible sentiments expressed unanimously by the Legislative Council in 1964 and to which the Chief Minister has himself this morning subscribed, I propose the following amendment as the first of two and to which the Chief Minister has himself this morning subscribed, I propose the following amendment as the first of two that I will seek to bring. Mr Speaker, I will introduce a typewritten text of both my amendments separately and with my second amendment I will

give the motion retyped with the two amendments built in so that hon Members can see how the motion would read with the amendments in them. Mr Speaker, this amendment is intended to make absolutely clear to everyone who may read this motion outside of our shores and who may not be as familiar as we are with the nitty gritty that they should not misrepresent our plea for recognition of our right to self-determination with some sort of bellicose confrontation or some desire to dilute the links with Britain which the Chief Minister has himself said he wishes neither to dilute nor break. What I would propose is not as a new paragraph 9 because that would break the fluidity of the Chief Minister's call, if I put it as a new paragraph 9, but as a new paragraph 8, in other words, tucked in between existing paragraph 7 and existing paragraph 8. If I tuck it in at the end it will not flow on from what the Chief Minister calls for and which I am willing to support. I suggest, Mr Speaker, an amendment asserting the following statement to be included amongst all the statements that the Chief Minister's motion includes, "Like the Falkland Islanders, the people of Gibraltar wish to maintain close political, constitutional and cultural links with the United Kingdom;". In other words, let us make it clear that there is nothing inconsistent or incompatible between our call for a recognition of our right to self-determination on the one hand and the fact that "we do not wish to dilute or totally break our links with the United Kingdom" to quote precisely the words of the Chief Minister earlier in this debate. Mr Speaker, I would sincerely hope that hon Members can support this motion which given the well-known views of the Falkland Islanders and given the views of the Members of this House as confirmed by the Chief Minister this morning, represents a statement of fact and not a statement of comment ...

MR SPEAKER:

Could the Leader of the Opposition please say exactly where he wants to include that? Is it before "Her Majesty's Government"?

HON P R CARUANA:

Mr Speaker, I had proposed that that was inserted after existing paragraph 7.

MR SPEAKER:

This is the point. Carrying on with paragraph 7 or would it be included at the beginning of paragraph 8?

HON P R CARUANA:

No, it would be a new paragraph numbered 8 and the existing paragraph 8 would be re-numbered 9.

MR SPEAKER:

So therefore you must put 9 in the amendment.

HON P R CARUANA:

Mr Speaker, the formal notice of amendment will make that secretarial observation. Mr Speaker, that is that.

Mr Speaker, I would now like to take this debate slightly beyond the terms of the Chief Minister's motion, beyond the mere assertion and call for a recognition of our right to self-determination. How do we give expression to our rights? How do we give expression to those rights of self-determination once we have had them recognised? The Chief Minister has already this morning recognised the difference between the two. Britain's position with which we disagree and I presume the whole House disagrees, is that there can be no constitutional development or decolonisation without Spain's consent. That is what Britain's position boils down to. That as I say, Mr Speaker, is a position with which this House, I would hope, unanimously disagrees but it is the reality of Britain's position, there it is nevertheless. Spain certainly also exists, she is there, she is a reality to us, she will

always be our neighbour, we must always live side by side with her as a neighbour, she is larger and more powerful than us and that is a physical reality that will always be the case. Therefore, Mr Speaker, this leads us to the principle expounded by the Legislative Council in 1964 with which I think everybody in this House must still agree and I requote it, "But emergence from a colonial status is not of itself enough if it does not also ensure that the right of self-determination is exercised at the same time and enjoyed securely thereafter. But they, the people of Gibraltar, are not prepared to embark on full self-government until they are satisfied that the arrangements under which it is obtained are such to guarantee their economic prosperity and their international security in the future". For these reasons it appears to be common ground between Government Members and my party that a process of dialogue with Spain will actually be necessary. We are agreed also that preferably and indeed essentially, if it is to be successful that process of dialogue, that such a process of dialogue must give Gibraltar its own adequate representation. All of these principles have been fully recognised by the Government Members. Mr Speaker, this is the impressive booklet produced by the Government and delivered to the United Nations by the Chief Minister on the occasion of – I do not think it was his last one – his last but one address to the United Nations. At paragraph 9 of the booklet, the Chief Minister tells the world and the United Nations in particular, "The Brussels Agreement is seriously deficient in that it is a framework for discussion of the differences which the United Kingdom and Spain may have over Gibraltar. It does not provide for discussions of the differences which Gibraltar in its own right may have with Spain" – indeed with the United Kingdom or with both – "The Gibraltarians are also expected to form part of the delegation of the colonising power from which it seeks its own decolonisation". It is an implicit recognition by the Chief Minister that there are differences between Gibraltar and Spain in addition to our differences with the United Kingdom that need to be addressed in a process of dialogue with Spain. At paragraph 14 of the same booklet, Mr Speaker, the Chief Minister says, "Gibraltar recognises that the exercise of its right of self-determination may be constrained and

may require a process of dialogue with the United Kingdom and with the Kingdom of Spain". Those words are perfectly clear, Gibraltar recognises that the exercise of its right of self-determination may be constrained and may require a process of dialogue with the United Kingdom and with the Kingdom of Spain. Mr Speaker, those words are clear and it is a recognition of the very point that I have made that the Government Members have ... and if that were not enough, evidence that really Government Members agree with the principle that my amendment is about to enshrine. In his address to the Committee of 24 of July 1993 the Chief Minister told the Committee in his speech, unlike these which was just pamphlet distributed, he actually said in the text of his speech, "We recognise at the same time that there is a disagreement, indeed a dispute, with Spain which places constraints on our ability to exercise our rights and that these constraints have to be addressed by a process of dialogue in which we are entitled to recognition of our separate identity as a people". Mr Speaker, it brings me to the text of the second amendment which in my opinion does nothing more than to reflect the common ground between us on both sides, the exercise of our right to self-determination although I would admit and I would with pleasure concede not the recognition of the right but the exercise of the right requires that process of dialogue. Mr Speaker, at this point I would like to distribute to Government Members both the text of this second amendment separately and the text of the whole motion as it would read with those two proposals. Mr Speaker, the text of the amendment – and I am trying to make time so that the Chief Minister has it in front of him at the same time that I am reading it but I may not be able to make enough time for that – as follows, "And calls upon the Governments of the United Kingdom and Spain to enter into direct dialogue with Gibraltar with a view to agreeing a future status for Gibraltar in accordance with the aforesaid principle of self-determination". Mr Speaker, what this amendment seeks to do is to obtain recognition and to call for the recognition of the fact that that process of dialogue which Government Members have already recognised must take place, has to take place under the umbrella, under the guiding

principle, that the principle that guides that dialogue is our right to self-determination and that the structure of that dialogue must be direct dialogue with the Government. The Chief Minister is on record as saying that he would negotiate directly with Spain. He is on record as saying that he is quite happy to take part in a process of dialogue and I think by linking in a motion, hopefully unanimous of this House, dialogue with our right to self-determination we are bringing together both the strands which both sides of this House are agreed are the strands of our blueprint for the future. One is the recognition of our right to self-determination we are bringing together both the strands which both sides of this House are agreed are the strands of our blueprint for the future. One is the recognition of our right to self-determination and secondly, it is the fact that a process of dialogue is necessary but that that process of dialogue must recognise as its guiding principle our right to self-determination and therefore nothing else and thirdly, that that must be direct dialogue with the representatives of the people of Gibraltar. Therefore, Mr Speaker, the result of that amendment is that we assert our right to self-determination, that we call on Britain to recognise that right in our Constitution, that we call for tripartite dialogue on Gibraltar's future status and that the overriding principle for such dialogue and for our future status must be our right of self-determination and no other principle. I believe that as amended the motion creates a comprehensive platform, indeed, a blueprint upon which all of Gibraltar can unite for the future and I commend, Mr Speaker, my amendments to the House.

The House recessed at 1.00 p.m.

The House resumed at 3.15 p.m.

MR SPEAKER:

We will go back to the amendments and I think it would be better, in fact, that is what I am going to do, to put one amendment first and then the other one in the order that we shall have the new paragraph 8 first. I think that to get into the stream again I suggest that perhaps the Leader of the Opposition would

just like to finish up on the first amendment and then I will put it to debate if he has anything more to say and then when we take the vote on that we go to the second amendment and the same procedure can be followed.

HON P R CARUANA:

Mr Speaker, really I had completed my address. In order to get the debate moving again I suppose all that I can say is go back to my opening words addressed to the Hon Mr Cumming and hope that some of the arguments that I deployed and, indeed, some of the observations that I made and perhaps also even my amendments, might have had the effect on him of allaying some of the fears that had driven him to express the view that he intended to abstain and not support the motion. I would urge him to reconsider that position, not in order to give the Chief Minister any satisfaction or any comfort but in the interests of Gibraltar and as a Gibraltarian.

Question proposed.

MR SPEAKER:

The debate is now open and I will put it to the vote when the debate on this particular issue is finished. But I must draw attention to the House that they can only address themselves to the amendment and therefore anything else would be irrelevant and I will stop it.

HON P CUMMING:

Mr Speaker, I have been quite impressed with these two amendments of the Leader of the Opposition. I did say on television on Friday when I was asked by Stephen Neish whether I would reconsider the question, I said that I would be reconsidering it to the very last moment because I realise this is an important issue and self-determination is a question dear to my heart too. Nonetheless I feel, as I have already said, that the

question of defiance and using this as an answer to the present crisis is an issue that will do damage to Gibraltar. Nonetheless I also take on board the remarks of the Leader of the Opposition where he has said that also the other thing can do damage by implying that there is a lack of unity on the question of self-determination amongst people outside Gibraltar who will not know the reasons why. So that in any case, Mr Speaker, what I would like to say about this amendment is that I find that it will be reassuring to a large group of Gibraltarians who feel very insecure about the question of the link between self-determination and independence and this will go a long way to reassuring that group of people that it is not a question of cutting links with UK that are dear to a very large section of our community and to myself as well. We are going to have a chance to talk again on the second amendment, is that right?

MR SPEAKER:

You will have a chance to talk on the second amendment when we come to it, yes.

HON CHIEF MINISTER:

Mr Speaker, the Government will support the first amendment. I will say what we feel about the second amendment when we come to vote on it. Let me say that the people of Gibraltar, like the people of the Falkland Islands, believe factually wish to maintain close political, constitutional and cultural links with the UK and therefore we are saying something we all know and the reason for saying it is to avoid other people attempting to twist the motion and give it a meaning it does not have and never had. Therefore I accept the point made by the Leader of the Opposition that there are people who will twist it unless we take pre-emptive measures. So I take it that he is taking a pre-emptive measure with this particular amendment. Of course we want to make clear that maintaining close constitutional links with the United Kingdom does not mean maintaining the existing Constitution otherwise there would be little point in talking about



self-determination or anything else. It means not severing them totally and the degree to which they will need to be maintained can only come from future constitutional development. It is, in fact, the case that the paragraph quoted by the Leader of the Opposition from the booklet produced in 1964 where he talked that the people of Gibraltar do not want to rush into full self-government until the details of the manner in which the British Government will meet these responsibilities on behalf of the former colony have been settled. He quoted that particular sentence which is on page 10 of the booklet. I think what he forgot to mention when he quoted was the heading of that paragraph which is "Defence and Foreign Affairs". So let us be clear that what the elected members of the Legislative Council were saying in 1964, "We do not want to rush into full self-government without first having sorted out that the UK will retain and discharge defence and foreign affairs". It was not in any other area that they were talking about, in that particular area and I do not think anybody in Gibraltar has ever suggested that indeed we wish the United Kingdom to forsake its responsibility for our defence or indeed suggested that we are of a sufficient size to be able to set up our own international network to handle our own foreign affairs although, of course, there are small territories that have taken their own seat in the United Nations in the last 18 months and there are more and more of them all the time. But nevertheless at no stage has the GSLP in looking at constitutional change suggested that and, indeed, if hon Members remember the specific reference in the 1992 manifesto of the party, they will see that there it says that when we are looking at putting to the United Kingdom proposals for constitutional change we are talking about the United Kingdom retaining its existing responsibilities for foreign affairs and defence. So what we said in the manifesto of 1992 is virtually identical to what was said in 1964 by the elected members and it was in that context that the elected members were talking about not rushing into full self-government. Of course, we can hardly be considered to be rushing into anything when here we are talking about the same thing 31 years later without having progressed one millimetre, never mind rushing anywhere.

Because it is not the exercise of self-determination we are still struggling for, we are struggling for the recognition of the principle. It is an incredible thing that 31 years after we were behaving as if we already had it because essentially though I think the most significant thing about the position in 1964 and the position in 1994 is that, in fact, the members of the Legislative Council in 1964 clearly reflected in this booklet their understanding that in 1964 at least the UK accepted the principle of self-determination. The Committee of 24 might not, Spain might not but at least the UK did. It seems to me that we today, 30 years later, are trying to recover that position, to get back to where we were in 1964 and then we are entering into the serious ground of exercising self-determination, developing a new constitutional relationship with the United Kingdom, developing a constitutional relationship with the European Union, hopefully producing a way of living in harmony with our neighbour, but all that is in the future. I have to say that whereas we have no problem in saying "The people of Gibraltar, like the Falkland Islanders, wish to maintain close links with the UK", I am not sure it would be true to say "The UK wish to maintain strong links with the people of Gibraltar like they wish to maintain them with the Falkland Islanders". I do not think the converse is true regrettably because the statements that the Leader of the Opposition was quoting from the statement made to the United Nations by the United Kingdom representative in 1982 spoke about the relationship between the UK and the Falkland Islands, the responsibilities of the UK for the Falkland Islands, the respect for the rights of the Falkland Islanders in terms which I only wish were applied to us in 1994 or had been applied to us in 1992. But I believe that in 1964 there might well have been a situation where this booklet was produced at least without the opposition of the UK Government, of that I think we can be fairly confident. If they did not have a hand in putting it together, at the very least they did not oppose it. In 1964 I do not think, if we look at the signatures there, there were great revolutionaries around wanting to upset the United Kingdom Government by doing what was accurate and what was true then and is true now, so it is not that there is anything there that any of us need to have any

reservations about subscribing to and I think it is good that we ought to be able to say to the rest of the world, "We have been consistent in the line that we have taken irrespective of the many changes that have taken place in the political arena in Gibraltar, we are still consistently saying the same thing and still consistently determining that our right cannot be denied to us" and that is a good thing to be able to have that pedigree. But it seems that today it is suggested that saying what was said 30 years ago might upset the UK today but it did not upset them 30 years ago, Mr Speaker. That says something about how the UK has changed in the intervening 30 years and not how we have changed. Therefore I do not think the same considerations apply to the other amendment and I will explain why we view the other one differently but on this one I am happy to say we welcome and support it.

MR SPEAKER:

If no other Member wishes to speak I will call on the mover to reply on this amendment.

HON P R CARUANA:

Mr Speaker, very briefly, certainly I endorse the point made by the Chief Minister in that reply that the fact that we say that we want to maintain links with Britain is not to suggest that the nature of the relationship does not need to be modernised which may be reflected in an alteration in the characteristics of that link. I was careful to accommodate that point when I drafted the amendment which hon Members will see says, "The people of Gibraltar wish to maintain close political, constitutional links" and not "to maintain the existing links" or even "the links" which could have been misinterpreted to have meant "the current links". In other words, we all of us recognise it would be stupidity in the extreme to have made that point in a resolution which calls for self-determination, the two things would not have been mutually compatible. Therefore it is implicit in the wording of the amendment that there is certainly a recognition that the

characteristics of the link, at the very least, have got to be modernised. Mr Speaker, the Chief Minister sought to restrict the ambit and the scope of the words that I quoted from the 1964 booklet from the Legco by pointing out that I might have forgotten to point out that the heading was "Defence and Foreign Affairs". It is true that one of the quotes that I read out this morning came under that heading but the following quotes do not nor did the members of the Legco in 1964 limit themselves in asserting that the British Government had obligations nor did they limit themselves to defence and foreign affairs. In the first main paragraph of the book before the headings "Political Aspects" and "Economic Aspects" and "Defence and Foreign Affairs" before that appears, (page 6 of the booklet) members said at the time "But they are not prepared to embark on a full self-government until they are satisfied that the arrangements under which it is obtained are such as to guarantee their economic prosperity and their international security in the future. They are sufficiently mature politically", etc and then it goes on to say, "Other former colonies may have desired only to rid themselves of the status of colony, able and willing as they were to stand on their own economically, politically and militarily as viable self-sustaining units. Because of its size Gibraltar is unable to do this without entering into an association with another country on whom the responsibility for guaranteeing the future security and independence can reliably be laid". Further on under the heading "Economic Aspects" – because there are three headings: "Political, Military Defence, and Economic", - the members of the Legco then said, "If from a political point of view ..." etc, "... from the economic point of view that status represents, perhaps paradoxically, their safeguard for the future and one which they will not give up until the guarantees which they seek are negotiated, agreed and formally embodied in Articles of Association". Mr Speaker, I do not mean to emphasise by this any great difference in what has been said now except to assure, Mr Speaker and hon Members that nothing of the words and sentiments that I attributed to the members of the Legco in 1964 in my address this morning turns on the fact that the essence of what I was saying came under the heading "Military

and Defence” because in fact the same point is made under all three headings and the three different quotes that I have quoted each come under one of the separate headings. Mr Speaker, I agree also with the point made by the Chief Minister that we are now trying to recover what was in effect the position in 1964 in respect of the British Government’s recognition of our right to self-determination. That must be correct and the evidence of that is in the marked changes that there are in the public utterances of the Foreign and Commonwealth Office as between what it says now about our right to self-determination and what, for example, was said by the British representatives at the United Nations, not about the Falkland Islands but about Gibraltar, 30 years ago. I quoted this morning what he said. I am not going to waste the House’s time by quoting it again, but basically they were clear and unambiguous statements that then the British Government first of all recognised the right to self-determination for the people of Gibraltar, did not consider that the Treaty of Utrecht curtailed it as they now say and clearly there has been a shift away from the 1964 position. Mr Speaker, further proof of that change of position and that lack of consistency between 1982 and now comes in one quotation from the speech of Mr Thomson, the UK representative in 1982, about the Falkland Islands which I omitted to quote this morning but which I would now like to quote to put it on the record so that Hansard of this debate is complete, because I think it applies equally well to Gibraltar, and he said, “But of far greater significance ...” - than who occupied the Falkland Islands first, whether it was a Frenchman or an Argentinian or a British - ” ... for consideration of the Falkland Islands by the General Assembly now in 1982 are other facts, the fact that a permanent settlement was first established in the islands in 1833 and the fact that the settlement has continued ever since to the present day. These 149 years of continuous peaceful settlement have led to a vigorous, firmly rooted community stretching back to six generations of people who know the Islands as their only home. Though it is a small community it has its own distinct culture, it has its own educational, social and political institutions and this afternoon two democratically elected members of the Falkland Islands

Legislative Council will be testifying on behalf of the Falklanders to the Fourth Committee.” These facts have profound consequences and, Mr Speaker, all of that can be applied with a vengeance to Gibraltar except that we do not go back 149 years and six generations. We go back 280 years and many, many more generations than that. Therefore gratified that Government members are going to accept the first amendment and I await to see what their views will be on the second amendment when they are expressed.

Question put on the first amendment. Agreed to.

MR SPEAKER:

So we go on now to the second amendment. If the Leader of the Opposition would like to introduce it.

HON P R CARUANA:

Mr Speaker, I consider that I have adequately introduced my amendment during my address this morning and I therefore hand over the floor to any other hon Member who wants to address the house on it.

MR SPEAKER:

So the amendment is open to debate and discussion.

HON P CUMMING:

I particularly like this amendment, Mr Speaker, for a variety of reasons. I think that it reassures not only a group of Gibraltarians but it also reassures the United Kingdom and Spain and therefore reduces the defiance effect of a motion of this type produced now, as I have indicated before as an answer, as it were, to the crisis that we are in. It brings to me, however, another problem with the underlying motion if this is not added because it has made clear to me that even though the motion

reads very nicely there is something lacking to it and what is lacking is the concept enclosed in this amendment. Because one thing is to say, we have the right of self-determination agreed to but how are we going to put it into practice and enjoy it? It reminds me of remarks made about our airport which as a British MOD airport leaves something to be desired because in a war situation it could only be used by a Briton if Spain agreed, for practical reasons and not for anything else, because it only takes one person a few yards away in Spain to lob a hand grenade over the fence and put the airport out of commission. So for practical purposes it cannot be enjoyed unless Spain agrees. So the right to self-determination granted to Gibraltarians can be granted in theory but to enjoy self-determination put into practice – and I use the word “enjoyed” in the ordinary sense like a man who eats a cake and enjoys it – because Spain would find ways that if it were granted we would not enjoy it and then there is no point in going down that road. This amendment adds that very practical thing which I advocate, not because I am pro-Spanish or even because I am less anti-Spanish than other members of this House, but for sheer practical purposes that without Spain's agreement and UK's agreement we could not enjoy the right of self-determination. We could not put it into practice in Gibraltar for our enjoyment. If, Mr Speaker, this is added to the motion before us, I feel that then what we have is a very complete and valuable document which becomes a blueprint for our future which would be acceptable, I think, in every quarter of Gibraltar. Therefore, Mr Speaker, certainly if the House saw fit to accept this amendment I would add my vote to it.

HON CHIEF MINISTER:

Mr Speaker, the Government will vote against this amendment. Let me explain why we believe, in fact, that the agreement contradicts the analysis made by the Leader of the Opposition in his original contribution to the motion before he moved the amendment. The Leader of the Opposition said that there was clearly a dividing line between what we were trying to do which was to get recognition for the acceptance of the principle of self-

determination and what would follow once that principle had been accepted by the United Kingdom that is the one that has to accept, not Spain. As far as we are concerned, we are not a Spanish colony. Obviously we know that if Spain said to the United Kingdom tomorrow, “We do not mind Gibraltar being independent” the UK would say, “We do not mind Gibraltar being independent”. We know that because that is what the UK has said in the UK Parliament. That does not mean we accept that we are already a Spanish colony and we already have to negotiate with Spain to be decolonised and therefore the real negotiation and the real colonial power is the one in Madrid and the British have only got to come along and rubber stamp whatever we negotiate with Spain, it does not mean that. Therefore this motion is addressed to Her Majesty's Government and in our view it would be wrong in a motion which ends by giving nine reasons why this should happen and then goes on as a result of those nine reasons to call formally for our Constitution to be amended and then goes on to call formally for the UK and Spain to enter into negotiations with Gibraltar on the future status for Gibraltar. Well, that does not follow from the preceding nine reasons. It might follow from the UK accepting the motion and saying, “You want self-determination, we will give you self-determination but what are you going to do with it? If you want to do something with it then the only thing you can do with it is to make it, if you like, the starting point of any negotiations on the future status of Gibraltar”. We consider that the danger of the proposal of the Leader of the Opposition, and I do not for one moment want to suggest that it is something that he has done deliberately to undermine the effectiveness of the motion, on the contrary, but he may not have realised the danger. The danger is, of course, that when we are talking about signals, just like we accepted the preceding one so that nobody could dispute the signal we were sending and nobody could argue that we were wanting to sever our links with the UK, we might be putting something now that is capable of being distorted and being represented as us agreeing that to carry out the amendment in paragraph 9, the whole of paragraph 9 with the new element needs to be fulfilled almost as if the UK wanted to go ahead by

Order-in-Council and put in the same clause as in the Falklands, that would only happen if the new amending paragraph was being fulfilled. Clearly that is not the intention but by bringing it in at this stage and in that juncture we believe that where we have to measure every word and look at everything with a magnifying glass to make sure that we are not putting ourselves in the position of being misreported in the neighbouring country as giving Spain a say in our affairs, we do not think this is the appropriate place for this to have it. Let me say that in addition to that, it seems to be, Mr Speaker, that if what the Opposition Member is suggesting here means what it seems to mean and he has talked about there being common ground between us on the need for dialogue with Spain, he said, "Preferably dialogue which would give Gibraltar its own separate voice". Well, we do not say, "Preferably". What we have said and I told him that recently when I met him in a function that we subscribe to the concept of tripartite talks with an open agenda and we do not claim the copyright. We accept that it was Dr Joseph Garcia who first came up with that definition and we subsequently said that that was something we would accept. So it seems to me that there is no problem if we all subscribe to that, we all subscribe to that but we do not think we can subscribe to that and subscribe to the Brussels process. We think one is an alternative to the other. We do not think they are both possible and therefore if we want to "Call on the Government of the United Kingdom and the Government of Spain to enter into direct dialogue with us with a view to agreeing a future status for Gibraltar in accordance with the aforesaid principle of self-determination" once we have established that the aforesaid principle of self-determination does apply to us, at least as far as the UK is concerned, then it can only be, as far as we can see, on the basis that we also call on the Government of the UK and the Government of Spain not to proceed with the dialogue they are engaged in which we do not support which is a bilateral dialogue which claims to be a dialogue about achieving a new status for Gibraltar not on the principle of self-determination but on the principle of the resolutions of the United Nations. Therefore, again, we are saying we cannot vote for this particular amendment. We do not

think it really is something that is consistent with the rest of the motion. We think it is a separate issue from the introduction into the Constitution of Gibraltar of the principle of the right to self-determination but certainly if the Opposition Member wants at a future date to come along with a motion along this rejecting the Brussels process and putting this in its place we will give it serious consideration.

MR SPEAKER:

If no other Member wishes to speak I will call on the mover to reply.

HON P R CARUANA:

Mr Speaker, I accept that the final paragraph does not follow from the preceding declarations previously 8, now 9, after the first amendment. I do not agree that it is inconsistent with it and I accept that it does not follow in the sense that I said when I introduced it that I was seeking to expand the ground covered by the motion beyond the simple assertion of our right to self-determination and called for it to be recognised in the way that the motion calls for. It therefore should come to the Chief Minister as no surprise that the paragraph does not follow. The question is not whether it follows, the question is whether it is inconsistent. I do not think it is inconsistent, he believes that it is inconsistent. We must agree to differ. What I was looking to do was to kill the two birds with one stone so that the British and the Spanish Governments would know the essential characteristics that dialogue which is capable of addressing the central issue in Gibraltar, what characteristics such dialogue would have to have. It has to be direct dialogue with Gibraltar and that it has to be under the aegis, under the overriding principle that the future of Gibraltar is to be resolved and determined by the people of Gibraltar in accordance with our right to self-determination. Frankly, I find it odd in the extreme that the Chief Minister, unless he does so for reasons of pure party political strategy, that he should vote against an amendment which calls for less than he



has already publicly stated he would do. Because he has said publicly that he would negotiate directly with Spain. Well, what is he going to negotiate directly with Spain? That is what he is quoted as having said in the immediate run-up to his recent visits. I do not remember if it was in the occasion to Madrid to the IMF or to Seville when he addressed the Club God knows what. That is what he is attributed as having said, that he was willing to negotiate directly with Spain. And I am sorry to hear the Chief Minister say that by calling for direct dialogue with Gibraltar and linking that dialogue to the question of self-determination, I am truly sorry to hear him say that we would be sending dangerous and wrong signals because if that is true, which I do not think it is, but if it is true then I regret to say that he has already done Gibraltar a considerable disservice because what did he possibly mean when he told the United Nations, "We recognise, at the same time, that there is a disagreement indeed a dispute with Spain, which places constraints on our ability to exercise our rights and that these constraints have to be addressed by a process of dialogue in which we are entitled to recognition of our separate identity as a people". That is exactly the same. I can understand that the Minister for Government Services is feeling a degree of discomfiture but he nevertheless is required.... [HON J C PEREZ : Will the hon Member give way?] ...to sit there patiently until I have finished. The fact of the matter is that the amendment which I have proposed and which the Chief Minister says he cannot support because it sends a false signal, says no more than he told the world at the United Nations when his mission was precisely to secure recognition of our right to self-determination. I say that he is guilty of gross hypocrisy now in coming and saying in this Chamber that that sends the wrong signal on the question of self-determination. And as if that quote from his speech to the Committee of 24 in July 1993 were not enough, he circulated to the whole of the United Nations in glorious technicolor with a lovely photograph of only himself on the front of it in which he told the United Nations that he had gone to visit and to address in order that it should recognise our right to self-determination. He did not tell them the need for dialogue with Spain is inconsistent with our right to self-

determination and might send the Spaniards the wrong signal that this is a Spanish colony. No, he did not tell them that. What he actually told the United Nations was "Gibraltar recognises that the exercise of its right to self-determination may be constrained and may require a process of dialogue with the United Kingdom and with the Kingdom of Spain". And I am at a loss to find any valid intellectual pretext under which the Chief Minister felt quite safe and secure in saying that to the United Nations when he was directly addressing the question of self-determination and now have the gall to tell me in this House that for me to say exactly the same thing is capable of sending false signals to Spain that we have become a Spanish colony. I condone the Chief Minister for that lack of consistency in his argument and I regret that for reasons which cannot be based, cannot given what I have just read, because if not for anything else the Chief Minister is reputed for his consistency of views and therefore his refusal to back this amendment cannot be based on the content of my amendment which is no different to what he has told the world in the past.

Question put. On a division being called the following hon Members voted in favour:

The Hon Lt-Col E M Britto  
The Hon P R Caruana  
The Hon H Corby  
The Hon P Cumming  
The Hon M Ramagge  
The Hon F Vasquez

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 L Moss  
The Hon J C Perez

The Hon J E Pilcher  
The Hon P Dean  
The Hon B Traynor

The second amendment was accordingly defeated.

HON P R CARUANA:

Mr Speaker, as a point of order I would question whether this is an appropriate motion on which the non-elected Members should cast a vote. Frankly I do not think it is any of their business.

MR SPEAKER:

As far as I am aware the ex-officio Members according to the Constitution are only not allowed to vote on a question of confidence or no confidence.

HON P R CARUANA:

Yes, indeed, but I think there is the matter of dignity apart from the rules of this House.

HON CHIEF MINISTER:

Mr Speaker, let me say that I am proud that two expatriate officers of the Government of Gibraltar are going to vote in this motion in support of the self-determination of the people of Gibraltar and therefore if it is a matter of dignity then I can say that the Government are very proud of its two officials, all of us.

MR SPEAKER:

So now we come back to the original motion, as amended, and Members who have already spoken cannot speak again and Members who have not spoken may now speak. If no Member wishes to speak then I will call on the mover to reply.

HON CHIEF MINISTER:

Can I just say, Mr Speaker, the amendment we have just defeated by the Opposition Member, I thought, I do not know why he got so irate, I had made it a point of stressing that I was not suggesting that he had any improper motive in wanting to send the wrong signal to anybody but that we had to be careful that it was not twisted. so let me say that notwithstanding the fact that he got so irate, I still want to put it on the record that I still believe he was not intending to do anything to undermine the motion that we have in front of the House.... [HON P R CARUANA: *Nor does it have that effect.*] Well, it is a matter of judgement whether it does or it does not. The point that I make, Mr Speaker, is that it is not the right place for it, as far as we are concerned, but that we are prepared to consider what the hon Member is putting forward but if he is going to say that the Government of Gibraltar, in any case, are being hypocritical in rejecting the amendment at this particular motion because it is exactly the same as I have said before and he is going to quote what I have said before, then he has got to quote the whole of it. When he quoted from this booklet which has only my picture on the front and not his, and I do not see why not, I think I am better looking than he is, at least my wife thinks so. [HON P R CARUANA: *Obviously.....*] Let me say that when he is quoting me as saying as he is that we are prepared to enter into this tripartite dialogue.....

HON P R CARUANA:

Mr Speaker, I have to object on a point of order. The Chief Minister is addressing the question of the amendment which we have disposed of. That is the subject on which I am entitled to the last word. You have said that you will disallow anything that is irrelevant. This question has arisen on the amendment, not on anything else and therefore this is something that he should have said, indeed, he did say when he addressed the

amendment. He is not entitled to cover this ground again. What he is in effect taking, contrary to the rules of the House, is a right of reply to my final reply on my amendment and he is not entitled to do it.

MR SPEAKER:

Well, I think that in fairness an opportunity should be given to clear one or two points which obviously indirectly is concerned with the motion that we are now discussing. For although you may have mentioned it en passant, it is necessary to point out now, as I see it from the point of view of the Chief Minister, that there is a relation of what you wanted to put in the motion with the present motion as it stands now. I agree that he should not expand too much, but I think it is fair that he should have a word on it.

HON P R CARUANA:

Yes, Mr Speaker, and I agree and the usual parliamentary device to enable somebody who has already had his last word on a matter but nevertheless wants another one is to ask the final speaker to give way which I would gladly have done. But the rules that Mr Speaker carefully explained to us a few moments ago about who could now speak and who could not, applies to everybody in this House. Therefore I note with interest Mr Speaker's very lenient ruling in favour of the Chief Minister in this case and I hope that he will be equally lenient with me when I have need of a similar facility.

MR SPEAKER:

Let me tell the Leader of the Opposition that I have been lenient with him on many occasions and that I will continue to be so because I think there are certain matters that, perhaps if one goes strictly by the rules, cannot be cleared. But I agree on the other point that he must not extend too much on this.

HON CHIEF MINISTER:

Can I just make clear that, in fact, when the hon Member chose to interrupt me and I gave way, I had in fact finished dealing with the point on the amendment and I was going on to quote when he interrupted me the thing that he said in his opening remarks when he spoke on my original motion. It is just that he did not let me finish because of his interruption. Mr Speaker, the notes that I made before he moved the amendment, I have not answered those points. He stood up and he made a number of quotations waving this, he has waved it now for the second time and I accept that when I was admiring my own photograph it was in relation to the amendment we have just defeated but I finished with that bit now. I am now going to the inside, I have moved from the photograph and what he was just interrupting was the statement that he made at the beginning when he quoted me in support of the original motion in relation to the things that I had said here and in the United Nations. I accept that he has repeated some of that in his last intervention but that was not the first time he said it. He said it in his opening remarks and I had made notes on my pad when he made his opening remarks. And what I am saying is that when he quoted me originally he did not finish the quote of paragraph 9 from this particular paper which he handed to me because, in fact, the last sentence which he conveniently did not quote was, "This bilateral agreement" - which is the Brussels Agreement - "is therefore a denial of the right of the people of the territory to negotiate its future with its own voice". So he cannot say there is common ground between us and therefore as he was saying initially, it is possible to move forward into a position where we are accepting the realities of the existence of Spain because I have said so without saying that I have said so as a way of saying to the United Nations, "We reject the Brussels Agreement". The hon Member seems to have forgotten why I went there and I did not go there, Mr Speaker, in 1992 and in 1993 for no reason at all and simply to press our case for self-determination. What sparked off my presentation to the United Nations was, in fact, the statement produced by the administering power through the Secretariat which said, "The

Government of Gibraltar are boycotting the Brussels Agreement without any further explanation", and what I was doing in the United Nations, part of which he has quoted, was to say to the United Nations, "This is not us being negative." - which is the way it was being presented - "This is us having solid arguments because we consider that consistent with the principle of self-determination if we accept that there are practical problems of implementation then the practical problems of implementation can only be addressed by accepting that there are three sides to this particular equation and not two sides". We are all in agreement that there are three sides. The UK is in agreement that there are three sides. Frankly, I think that if in Gibraltar we are totally solid on that we stand a better chance of getting it than if we are not totally solid on that but I accept that it is a matter of judgement whether one should be taking a totally inflexible position, that it has either got to be tripartite talks or no talks or whether one should take a different line. The Opposition Member can have one view and I can have another view but the quotes that he has made of the statements that I have made whether he was quoting from the United Nations, whether he was quoting from the Gibraltar Chronicle, whether he was quoting from the leaflet that we produced, were all quotes which are all made in that context and against that background. Just like the quotes that he made of the other paragraphs of the booklet in supporting the motion, of the Legislative Council of 1964, of course in 1964 the members of the Legislative Council were saying, "Before we rush into full self-government we need to tie up a number of ends. We need to tie up what is going to happen with defence, we need to tie up what is going to happen with our foreign affairs and we need to tie up what is going to give us a sustainable economy". In 1964, 75 per cent of the economy was MOD. That is what was being said in that context. So when, Mr Speaker, in my opening remarks on the motion I said it was difficult to improve on the statement that had been made in this booklet about the right of self-determination which the Opposition Member welcomed when he spoke, welcomed the fact that I said it was difficult to improve on this, it does not mean that the party in Government subscribe to every single word that

there is here. Quite obviously they got some things badly wrong here because what they said here was, "It is fully expected that the final formal achievement of self-government will take place during the life of the next legislature, between 1964 and 1968". We were supposed to be decolonised by 1968 for heaven's sake. Well, they must have fully expected it, I do not think anybody else did. If they fully expected it it was because they were encouraged by the British Government to expect it and certainly that is not the situation we face today. I will give way to the hon Member.

HON P R CARUANA:

I am grateful to the Chief Minister for giving way to me because it relates to a point that he is about to move off and really it is just for clarification. The Chief Minister says that I conveniently failed to put the quotation about dialogue in the United Nations in the context of his point that his objection to Brussels was because it was bilateral. I think he does me considerable injustice. The very first line that I quoted, in other words, I began my quote with the words, "The Brussels Agreement is seriously deficient in that it is a framework for discussion of the differences with which the United Kingdom and Spain may have over Gibraltar". If I had wanted to exclude that point I could have started at the next sentence which is the point that I wanted to make. Therefore there is no question of my having excluded from my quotation the context in which he has made those points in the United Nations. However, it is precisely because I knew that his objection to Brussels at the United Nations was almost limited to the question of the bilateral nature of the talks and to the fact that the talks did not give us our own voice, it was precisely to accommodate that point that I was careful to draft my amendment which he has now defeated, by asking for direct dialogue with Gibraltar which I think almost anyone can see means dialogue with Gibraltar represented by its own Government on behalf of itself otherwise what does direct

dialogue with Gibraltar mean? Therefore I do not accept that I have misquoted anything, Mr Speaker. I think it is unfair and, indeed, far from failing to quote it I have attempted to accommodate the Chief Minister because it is common ground that we sought to find in my own drafting of the amendment. I am grateful to the Chief Minister for giving way so patiently.

HON CHIEF MINISTER:

Well, Mr Speaker, after all the things he called me when I voted against it, if all that he can accuse me is of being unfair to him then I cannot be such a bad guy after all. All I can say is I did before we voted against his amendment and I assume I can say something about the amendment now since he has just interrupted me. All that I said when we voted against the amendment was that we were not prepared to support the amendment to this motion in this particular instance because it seemed to be linking it by coming immediately after an amendment to our existing Constitution.... Can the hon Member imagine somebody in the Falkland Islands being asked before we put to the United Kingdom that the Falkland Islands Constitution should include the respect for the right of self-determination of the people of the Islands, can we also have in the same breath and in the same sentence a call for talks between Stanley, Buenos Aires and London? Anybody doing that would have been lynched in the middle of Stanley. All I am saying is if he wants to put that and he wants to put it in the context of a substitute of Brussels which he now admits is the context in which we have used it, then let him come with a substantive motion calling on the British Government to terminate the Brussels Agreement and substitute in place the Caruana Agreement and then we will give the matter serious consideration. That is my invitation to him. So that is all I have done in respect of the amendment.

To get back to the original motion let me say that in 1964 when the Government talked about the economic aspect, and it is quite obvious, we have said it before, we all agree that one thing is to

have the right of self-determination which we are trying to ensure is properly recognised and acknowledged and another one is to make use of it. In making use of it, even in 1964 the economic aspect featured as a major consideration that had to be taken into account. Therefore the Members said, "Under the impetus of imminent self-government" - which did not happen - "urgent measures are being taken to change the basis of the economy of Gibraltar so as to lessen its dependence on external factors and enable Gibraltar to become economically viable". Lessening its dependence on external factors can be taken to mean lessening its dependence on MOD and can be taken to mean lessening its dependence on the goodwill of the neighbour who could close the tap any time they wanted to put economic pressure on us and therefore lessen our freedom to exercise our right to hold views which might displease them. Therefore, a sustainable economy for Gibraltar cannot simply be the result of asking people in Spain what it is they want in order for them to permit us to live because that is not finding a way of making Gibraltar lessen its dependence on external factors. That is a way of capitulating to external factors. Clearly, as I think was reflected in some of the answers we have given in the questions, we are in that scenario of being subjected to external factors. We saw that very clearly in the detailed explanation I gave Opposition Members of what has been happening with the financial services industry. We have a situation where by developing alternatives, whether it is a shipping registry, whether it is banking and insurance, whether it is company registry, whatever it is, at the end of the day obviously we cannot have a self-sustaining economy which has no trade with anybody in the world, not even the United States can do that anymore. We are living in a global economy and we have to trade with the rest of the world. We are quite happy to see trade with our neighbour but we have to be careful that the trade with the neighbour does not reach a level where we are susceptible to that trade being used as a political weapon and then we change the dependence of the MOD for dependence on the neighbouring country which would be an extremely dangerous thing for us to do. We are clearly seeing the lack of goodwill in the neighbouring country in that it has



used consistently its position in the European Union to put pressure on the United Kingdom to make life difficult for us to develop alternatives. We believe that this is connected with making it less likely that we will have an economy which is not dependent on external factors. We are as committed today as the Legislative Council was in 1964 to developing a Gibraltar which is economically viable. Clearly the members of the Legislative Council had high expectations in 1964 that Gibraltar would become economically viable and politically self-governing within a matter of years and here we are, 31 years later, and frankly with still some way to go. But nevertheless it is only if we are able to build on solid foundations and getting the recognition of the principle of self-determination accepted by the United Kingdom, I think, is an important milestone, one frankly which we should not have to be fighting at this point in our history but we have to. It has fallen upon us, I think, to get the thing now solidly guaranteed because we can no longer take it for granted as it was taken for granted in 1964 because it has been doubted when it was not being doubted then. I honestly believe that if all that the United Kingdom can come back in reply to this motion is to say that by enshrining the right of self-determination in our Constitution they would be in breach of the Treaty of Utrecht, I believe that view is capable of legal challenge and that it would not be sustained. Therefore, notwithstanding the fact that we have not been able to accept the second amendment of the Leader of the Opposition, I hope we can still count on his support for the unamended motion and that we will be able to put it to the British Government. I commend the motion to the House.

HON P R CARUANA:

Mr Speaker, we are clear that the motion we are now voting on is the Chief Minister's original motion as amended by my first amendment.

MR SPEAKER:

That is right.

Question put on the motion, as amended. On a division being called the following hon members voted in favour:

The Hon J L Baldachino  
 The Hon J Bossano  
 The Hon Lt-Col E M Britto  
 The Hon P R Caruana  
 The Hon H Corby  
 The Hon M A Feetham  
 The Hon R Mor  
 The Hon J L Moss  
 The Hon J C Perez  
 The Hon J E Pilcher  
 The Hon M Ramagge  
 The Hon F Vasquez  
 The Hon P Dean  
 The Hon B Traynor

The Hon P Cumming abstained.

The motion, as amended, was accordingly carried. It read as follows -

"This House notes that:-

1. All colonial peoples have an inalienable right to self-determination in accordance with Article 73 of the United Nations Charter;
2. The elected members of the Gibraltar Legislative Council issued a unanimous statement in September 1964 stating that the soil of Gibraltar should belong to no one but the people of Gibraltar;

3. Resolution 2734(XXV) of the 16th December 1970 makes it clear that in the event of a conflict between the obligations of Member States under the Charter and their obligations under any other International agreement, their obligations under the Charter should prevail;
4. Article 1 of the 1976 International Covenant on Civil and Political Rights which was extended to Gibraltar without qualification states "All Peoples have the right of self-determination, by virtue of that right they freely determine their political status and pursue their economic, social and cultural development";
5. Article 1 of the 1976 International Covenant on Economic, Social and Cultural Rights which was extended to Gibraltar without qualification states "All Peoples have the right of self-determination, by virtue of that right they freely determine their political status and pursue their economic, social and cultural development";
6. The annual statements on decolonisation by the European Union Presidency before the United Nations Fourth Committee explicitly recognise that all peoples have the right to self-determination irrespective of population size or geographical location;
7. The United Kingdom representative declared before the United Nations on the 3rd November 1982 that "It is not acceptable that our clear obligations towards the Falkland Islanders under Article 73 of the Charter should be smudged and blurred into an off-hand phrase about taking their interests only into account. What a far cry from a clear affirmation of the principle of self-determination enshrined in the Charter and in the practice of this Organisation";
8. Like the Falkland Islanders, the people of Gibraltar wish to maintain close political, constitutional and cultural links with the United Kingdom;

9. Her Majesty's Government has, in the case of the Falkland Islands Constitution of 1985, reflected its commitment to self-determination for the peoples of the Falkland Islands by including the following recital "Whereas the peoples have the right of self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law. And whereas the realisation of the right of self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations".

This House therefore declares that the people of Gibraltar have an inalienable right to self-determination and formally requests Her Majesty's Government to take immediate steps to amend the 1969 Gibraltar Constitution Order by Order-in-Council to provide an introductory paragraph to Chapter 1 identical to that contained in the 1985 Falkland Islands Constitution Order."

HON CHIEF MINISTER:

Mr Speaker, I beg to move a motion of which I have given notice that:-

"This House -

- (a) notes the resignation of the Hon Miss M I Montegriffo as Mayor of Gibraltar;
- (b) wishes to express its gratitude to the Hon Miss M I Montegriffo for her untiring and devoted service to the people of Gibraltar in the performance of her civic functions as Mayor of Gibraltar;

- (c) in pursuance of the provisions of Section 78 of the Constitution of Gibraltar elects the Hon Robert Mor as Mayor of Gibraltar with effect from 1st February 1995".

I regret that the Hon Miss Montegriffo is not here today for this motion but, of course, the record will show that certainly from the point of view of the Government we are convinced that she has discharged her obligations as Mayor of Gibraltar in a way which has been consistent, I think, with her predecessors all of whom and, in particular I think, the Hon Abraham Serfaty who had the post for a number of years and, in fact, there was some controversy about his continuing as Mayor of Gibraltar when he ceased to be a member of this House and the Government of the day felt that it was compatible with the requirement of the Constitution that the person had to be a member of the House when he was appointed and it did not follow that because he ceased to be a member of the House he automatically ceased to be Mayor. And we frankly took the view, in the Opposition - the GSLP part of the Opposition let me say, not the other Opposition - that the Constitution was capable of having that interpretation put on it and that, in fact, since the person concerned was doing a good job, was popular and met the requirements of the position to everybody's satisfaction, why should we want to change it then? I cannot say, perhaps you are better equipped than me, Mr Speaker, to explain why it was that when the negotiations on the Constitution took place it was considered necessary that the position of Mayor should be limited to members of the House but that is how it is. I think one motion that we want constitutional changing is enough for one day so I will not seek, at this stage, to change the Constitution in this particular respect. We will see what happens with the one of the self-determination before we come up with more constitutional changes. Certainly the position of Mayor of Gibraltar, clearly since the disappearance of the City Council, does not have the executive functions it has. I have always thought that one of the things about the constitutional change that brought about the disappearance of the municipality was that in some respects there was less of a devolution of

power to Gibraltar than previously because under the 1964 Constitution, if we look at the area of reserve powers which is so topical nowadays, there was no reserve powers in relation to the municipality and that was a very big chunk of the public sector of Gibraltar. So in 1969 whilst we were talking about greater devolution of power, at the same time by making all the municipal functions part of the central government, we actually placed a constraint on the freedom of the elected Government which was not there previously in the municipality where they had much more ability to do as they saw fit without reference to the United Kingdom being able to veto anything. The Mayor, therefore, I think, having lost those activities, now has a pure ceremonial and civic role but an important one, I think, if for no other reason because one of the things that the Constitution did was it created the concept of the City of Gibraltar. The City of Gibraltar came into being with the 1968 constitutional negotiations and therefore to the extent that being a city is a preliminary step to being a city state, then I think it is important that there should be a civic role of the City of Gibraltar and that that role should be one that we maintain alive and that there are things that are important that need to be done which I think would not really fit in with departmental functions of any of the departments of the Government of Gibraltar which today primarily have, what are considered to be, central government roles in nation states in a way that perhaps it does not always make a lot of sense in a place as small as Gibraltar but that is really what we have. So I think Mari Montegriffo in doing her job in that particular area has done it and obtained the level of affection from the people with whom she has been in contact that I think Abraham Serfaty had in his days and that I am sure that the Hon Robert Mor will continue in that tradition which I think has been true of all the Mayors of Gibraltar that we have had in the past but Mari, I think we all recognise, has been doing a particularly good job. I am sorry she felt that it was really something that she had done a fairly long stint and that she really wanted to pass the responsibility on to someone else and we discussed it in the Government and we felt that we really could not ask her to carry on shouldering the task if she felt that

it needed to be handled by someone else and that is the only reason, basically, why we had to take this step. We would have preferred, had we been able to persuade her, that she would have carried on at least given that there is not that much longer to go of this particular term of office. The matter would have been reconsidered after the next general election. I commend the motion to the House.

Question proposed.

HON P R CARUANA:

Mr Speaker, the Chief Minister has regretted the Hon Miss Mari Montegriffo's absence from the Chamber and I regret it also for two reasons. The first is because I understand the reasons for her absence are to do with illness in her family. The second is because I thought that I had the opportunity to force a member of the Government to vote with the Opposition, an opportunity which her absence deprives me of. A matter of some frustration! I agree with the sentiment expressed by the Chief Minister when he questions whether it is necessary or indeed desirable that the Mayor should be a member of this House. My own personal view is that it would be better if the Mayor were not a member of this House and that that function, which is entirely ceremonial and symbolic, important though it is, it is nevertheless ceremonial and symbolic, were performed by some leading citizen who did not bring to the office any taint, although I bow to the previous Mayor, she did manage successfully to insulate her office from the taint of politics. But that is a matter of personality and it is not impossible that there might be a Mayor who would be not quite as effective as the Hon Miss Montegriffo was in separating her mayoral functions from the fact that she is in the cut and thrust of politics. So my own view is that the Constitution could helpfully and to advantage be changed although certainly the Chief Minister does not have the legislative power to do it, may I hasten to add, that the Constitution might be changed to introduce that amendment. As to whether the Constitution of Gibraltar is capable of being interpreted to mean when it says,

that the Mayor of Gibraltar must be a member of the House, that that can be interpreted to mean that he only has to be a member on the date of his election and that if he subsequently loses his place in the House he loses his constitutional entitlement to be Mayor, as to that point I disagree with the Chief Minister. At the time, as a recently qualified lawyer when I used to worry about things that were probably not very important such as this one which I no longer do, I remember forming the view from which I have not departed that actually the Constitution was not capable of that interpretation and that I had always found that position to be anomalous and, indeed, incompatible with the provisions of the Constitution. But I think for the reasons that the Chief Minister has himself outlined, it was unlikely that anyone was going to be moved to seek a declaration from the Supreme Court to unseat Mr Serfaty who was indeed both popular and successful. Mr Speaker, the second reason why I regret the Hon Miss Montegriffo's absence from this House was the fact, as I indicated, that I thought she might vote with the Opposition on an amendment that I propose to introduce. Because whereas the Chief Minister says that the Hon Miss Montegriffo had tired of her job and that for that reason wished to give it up, she may have tired of her job, I do not know, but certainly the explanation that she has given both to me and to others in my earshot is that the reason why she had asked to be relieved is that she found the burden of having to attire herself, in other words, being a lady and ladies not liking to wear the same dress repeatedly at social functions, she had grown to find the financial burden to her personally of her wardrobe given the frequency of the social functions that she had to attend, she found that a financial burden. A position which the Hon Mr Mor will not find himself in because I suppose that he will not mind wearing the same suit repeatedly for his social functions, but nevertheless an understandable position for a lady Mayor to take and, indeed, one which if it subjected her, as she said to me that it did, to financial burden that she felt unable to continue to bear, I think given the enormous hard work and indeed the untiring and devoted service of which the Chief Minister's motion speaks, I think it would be mean of this House and indeed mean of this

Government not to enable Gibraltar to continue to benefit from her untiring and devoted service to the people of Gibraltar by voting her a small and appropriate allowance from which to defray her mayoral expenses. Therefore, Mr Speaker, I would like to propose an amendment to the Chief Minister's motion which I do not suppose will enjoy the Government's support but I was lead to understand might have enjoyed the Hon Miss Montegriffo's support but alas.... [*HON J L BALDACHINO: Mr Mor's support.*] Indeed it might now enjoy the Hon Mr Mor's support, that would be partial support from an unexpected quarter.

Mr Speaker, in moving this amendment I understand that I cannot by this motion commit the Government to expenditure and that is why I call upon the Government and the resolution does not itself vote for an allowance but the motion leaves the Chief Minister's motion intact. In other words, it continues to express its gratitude to the Hon Miss Montegriffo for her untiring and devoted service to the people of Gibraltar but adds a new paragraph (c) as an additional paragraph in the following terms: "(c) calls upon the Government to grant the Mayor an appropriate allowance to enable the Hon Miss M I Montegriffo to continue with her untiring and devoted service to the people of Gibraltar as Mayor". Mr Speaker, in proposing that amendment I know that I am not committing the Government to excessive or significant expenditure. I understand that we are talking in the hundreds of pounds and that in the context of the overall budget and public expenditure and, indeed, given others that have allowances, certain office expenses, I do not see why the Mayor who does such an important job as the Chief Minister has just finished explaining to us all, should not have a small allowance with which to defray mayoral expenses. Therefore, Mr Speaker, without meaning the slightest disrespect to the Hon Mr Mor who I am sure would discharge the office of Mayor with admirable dignity and efficiency and without meaning any disrespect or casting any aspersions on his nomination for Mayor, I commend my amendment to the House.

Question proposed.

HON CHIEF MINISTER:

I take it that the effect of the hon Member's amendment is to seek that the Hon Miss Montegriffo should continue as Mayor. That seems to me the purpose of the amendment because if we were to accept that we should consider giving a grant to the Mayor of Gibraltar, then that would not mean that it would enable the Hon Miss Montegriffo to continue with her untiring and devoted service because the Hon Miss Montegriffo has resigned and her resignation has been accepted and she is now not the Mayor of Gibraltar. So the Opposition Member is seeking to amend the motion to require the Hon Miss Montegriffo to continue as Mayor of Gibraltar. [*HON J C PEREZ: To be reappointed.*] Well, that is what it says. It says to enable her to carry on and I am saying irrespective of whether there was a grant or there was not a grant, it is no longer possible for the Hon Miss Montegriffo to carry on. Therefore that becomes irrelevant in the sense that we have discussed her wish not to continue and we have accepted it and she is not here to say herself but there would be no difficulty in her correcting the misleading impression the Opposition Member has if she was here. In fact, if she was here she would vote against this because she is not wanting to carry on anymore and that has been agreed. So we cannot accept an amendment to the motion requiring the Hon Miss Montegriffo to continue when she has no desire to continue and we have no desire that she should continue and I do not see how he can require us to carry on with her as Mayor. That is a totally separate issue from whether a grant should be made to the Mayor's office or not. Certainly we would not accept that the grant should depend on the sex of the incumbent. [*Interruption*] The purpose of the grant is to enable her to carry on. The Opposition Member is not proposing an amendment that the grant should be made to anybody else. That is what he has moved. He has moved an amendment which removes the appointment of my hon Colleague Mr Mor and instead asks us to give a grant to the Hon Miss Montegriffo to enable her to carry



on. That is what the motion says, that is what the hon Member is asking us to do and we cannot accept that. The motion, Mr Speaker, as I understand it, is a motion deleting existing paragraph (c) and substituting new paragraph (c) and in new paragraph (c) we are told having noted that she has resigned we are giving her a grant to get her to rescind her resignation, presumably. Well the answer is her resignation is not up for auction. She has resigned, we have accepted it, she is not the Mayor, we need to appoint a new one and we are appointing a new one. If the hon Member wants to put a proposal to give a grant to the new one, the new one will consider it. Since the grant is for the attire and he seems to have a more up-to-date suit than I have, I do not think he needs one. Maybe he will want to give me a grant for me to buy a new suit. Certainly I am aware that the Hon Mari Montegriffo felt on more than one occasion that she had to go dressed in different ways to different functions but I told her that there was this mayoral robe and a hat which was there permanently available to be drawn on and it seemed to me a perfectly suitable attire for a Mayor or Mayoress for all occasions and it does not need replacing. One just brings it out of the wardrobe, one puts it on like an old duffel coat and then is put back into the wardrobe. It seems quite a suitable way of doing things and in consonant with the difficult times in which we live when we have to look carefully after every penny. So certainly the Opposition Member has recognised that he cannot, in fact, propose charges on public funds. Let me say that, of course, within the estimates of expenditure there is a sum of money to meet expenses of the mayoral office but they are expenses dealing with people that have to be serviced, as it were. Guests that come to Gibraltar and have to be entertained, people who get given mementoes of Gibraltar and that kind of thing. They are not for personal expenses of the person holding the office. Frankly we feel fairly strongly on this as the Government and therefore we will not propose any changes in that direction. We think the system that has been there since 1969 has served us well and we have to have very good reasons for changing things and we have not been persuaded. So we will be voting against the amendment.

MR SPEAKER:

If no other Member wishes to speak I will call on the mover to reply.

HON P R CARUANA:

Mr Speaker, I am distraught to hear that the Chief Minister is not going to support my amendment. But just to put most of what the Chief Minister has said right, the amendment does not seek that she should continue as Mayor. The amendment simply eliminates the reason that she has said to me is the reason why she has tendered her resignation. It does not say, "And that the Hon Mari Montegriffo is Mayor now because we have given her an allowance whether she likes it or not" but if this motion were passed and the Government Members were to honour the call of the motion and make an allowance, presumably the Hon Miss Montegriffo could be persuaded to withdraw her letter of resignation especially since the Chief Minister, I am told, although I enter the serious and important caveat that I have not heard him say this myself, but I am told that he is on public record as saying that he would accept the Mayor's resignation only when somebody else had been appointed in her place. So that as we speak she is still the Mayor and therefore free to withdraw her resignation if that is what she wanted to do given that the reasons for her resignation had been eliminated. As to the point about the estimates, well we would happily vote for a supplementary estimate, indeed, there is a Supplementary Appropriation Bill going to be considered later on in this sitting and I would gladly sponsor an amendment to that to raise an additional several hundred pounds to enable the Government to have a head or an appropriate sub-head under "Mayoral Expenses" to cover this small expense. I do not know what the Chief Minister meant when he said that she would have the opportunity to correct my misleading impression. I hope that he did not mean that when I say that the Hon Miss Mari Montegriffo has told me this he thinks that she did not tell me this, she has

told me more than once in fact. The one occasion that I can remember is as we entered the top floor of the Holiday Inn, as we entered into the seminar room together I think, although on this I might be mistaken, but I am almost certain that it was on the occasion of the European Movement annual meeting or some other recent meeting that took us all, Government and Opposition, to the top floor of the Holiday Inn. In fact, we were standing between the lifts and the door of the seminar room when she took me to one side to tell me that she had submitted her resignation because of the very reasons that I have stated and that the Chief Minister had expressed a disinclination to acceding to her request. He can, of course, think that I am investing all of this, if that is what he wishes to believe but certainly I have neither a propensity to lie nor even an imagination to colour it with so much detail even if I did have the propensity to lie. His final point, Mr Speaker, is that the grant does not depend on the sex and nor contrary to what he has said, although I accept that the amendment has taken him by surprise and he has not had time to marshal his thoughts properly on it, the proposed grant is not personal to the Hon Miss Montegriffo because she is a woman, it "calls upon the Government to grant the Mayor an appropriate allowance to enable the Hon Miss M I Montegriffo to continue with her service". In other words, *[Interruption]* Yes, I will give way if he wants when I have made my point. But if what the motion says that if we made an allowance to the Mayor - he will not be able to respond to me if he does not listen to me - the Hon Miss Mari Montegriffo would be able to continue as Mayor because her objection to carrying on as Mayor will have been addressed to her satisfaction. Therefore with the greatest of respect to the Chief Minister, I do not think any of the reasons that he has given to attack the technicality of this amendment are valid ones although, of course, I hear that he does not want to do this. What he is now saying is entirely consistent with what others have been saying for some time and, indeed, what many people in Gibraltar, not just me, have known are the real reasons for her resignation and which, of course, the Chief Minister has not thought fit to inform the House of this afternoon.

HON CHIEF MINISTER:

Is he giving way?

HON P R CARUANA:

Yes, I am giving way, I beg his pardon.

HON CHIEF MINISTER:

Obviously he had collected his thoughts between the time he told me he was giving way and the time he was ready to sit down. Mr Speaker, it is quite simple. It is not that I have not been given enough notice by the Opposition Member to know how to react to this. It is that what I have got in front of me is a motion that notes the resignation which means it accepts it as far as I am concerned. *[HON P R CARUANA: No.]* So what we are doing in noting the resignation in our original motion is we are putting in on the record that she has resigned, that it has been accepted and that it is being noted. We thank her for her past services because she is not carrying on. *[HON P R CARUANA: No, no.]* Yes, this is the motion I have brought to the House. I am talking about my motion which he seeks to amend. *[HON P R CARUANA: It does not say past services. I can thank somebody for their continuing services.]* But it is my motion, not his. *[HON P R CARUANA: But it does not say past.]* I am explaining to him what it says and what it says is that it notes the resignation. *[HON P R CARUANA: Not accepts the resignation.]* Of course it does not say it accepts, it notes the resignation because the resignation has been accepted by the Government to whom it has been given and not by the House. The Hon Miss Montegriffo did not send a letter to Mr Speaker resigning as Mayor, she sent the letter to me and we have accepted it in the Government and we have come to the House recording the fact that she has resigned and that is what the House is doing, it is noting that she has resigned. The second paragraph follows from the first and is expressing the gratitude for the services obviously performed

until she resigned. It cannot be her continuing services otherwise we would not have noted that she had resigned. So it is the Opposition Member who engages in semantics. I suppose it is something to do with his professional training that he catches out the lawyer on the other side by trying to say this is in the past tense and not in the future or it notes instead of accepts. *[Interruption]* Vital, that was a slip of the Foreign Office but I would expect the hon Member to do better than the Foreign Office. The third paragraph, it seems to me therefore, is calling on us to grant the Mayor an allowance to enable the Hon Miss Montegriffo to continue. And I am saying to the Opposition Member, if we were to grant an allowance the Hon Miss Montegriffo would not continue. That is what I am saying and therefore if that is the purpose of the exercise then it would not be achieved and that appears to be the purpose of the exercise because he has not said, "calls on the Government to grant the Mayor an allowance irrespective of who the Mayor is". It is in order to enable the Hon Miss Montegriffo to continue. Well, that would not be achieved so there would be no point in accepting his proposal since that is the purpose he wants to achieve.

MR SPEAKER:

If the Leader of the Opposition has nothing more to add.

Question put.

The following hon Members voted in favour:

The Hon Lt-Col E M Britto  
The Hon P R Caruana  
The Hon H Corby  
The Hon P Cumming  
The Hon M Ramagge  
The Hon F Vasquez

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 L Moss  
The Hon J C Perez  
The Hon J E Pilcher  
The Hon P Dean  
The Hon B Traynor

The amendment was accordingly defeated.

MR SPEAKER:

So we now go back to the motion and hon Members who have not spoken yet can do so.

HON R MOR:

Mr Speaker, let me say that I hate to disappoint the Leader of the Opposition, I will obviously not be voting on his side. Even on this particular motion my intention is, before it is decided whether I should be worshipped or not, to abstain. Obviously the reason for my abstention is not that I do not agree with the motion but rather on the basis that the last paragraph of the motion seeks to elect me as the next Mayor of Gibraltar and I personally feel that it would be immodest and presumptuous of me if I were to vote in favour of bestowing an honour on myself. So I therefore consider, Mr Speaker, that it is far more gentlemanly and honourable of me to abstain on the motion for this reason.

Mr Speaker, as you know we all have our own individual peculiar styles and if I may I would like to cast your mind back to the year 1960. 1960 was the year that I joined as a conscript the Gibraltar Defence Force, the GDF at the time, and in fact I left the Gibraltar Regiment, the change of titles officially took place during that time. What I have never forgotten, Mr Speaker, apart from my army number which nobody ever forgets, was a short

reference I got when I left the army. Every serviceman gets a reference when they leave the services and in my case this short reference read, "An intelligent lad who in a quiet and calm way performed his duties satisfactorily". *[Interruption]* It is relative, Mr Speaker, because as you may have gathered by now that reference was signed by Major Robert Peliza. Today, almost 35 years later, I know, Mr Speaker, that your views about my calmness and behaviour have not changed and it is pleasing to note that there seems to be firm consistency on both our sides. But let me tell you, Mr Speaker, that as regards my calmness I can assure my hon Colleagues, on the Government side, very much concur with your views although I can tell you that there are times when they tend to describe my calmness in far less diplomatic language. I am not sure whether I do have the right qualities to be Mayor of Gibraltar but what I do know is that my hon Colleague, Mari Montegriffo, has demonstrated excellent qualities during the six and a half years she has been Mayor of Gibraltar. I can only say that I entirely and absolutely agree with all the sentiments that have been expressed in the House about her performance as Mayor of Gibraltar. Indeed, I think she has set a high standard that she has made it extremely difficult for me and indeed for anyone else to reach the level of respect and admiration which she has acquired during her term of office as Mayor. Perhaps my only personal tribute to Mari can only be that if at any time in the future I am ever described as having been nearly as good a Mayor as Mari Montegriffo was I would consider that to have been a great achievement on my part. Finally, Mr Speaker, let me say that unlike Dick Whittington I have never heard tintinnabulation calling for me to be Mayor of Gibraltar. I can only say that serving my fellow Gibraltarians is something which has always been very close to my heart and if the motion is carried I will endeavour to give my utmost dedication and the best of my ability to the task of being Mayor of Gibraltar.

HON P R CARUANA:

Mr Speaker, that must render the first acceptance speech before an appointment.

MR SPEAKER:

If no other Member wishes to speak I will call on the mover to reply.

HON CHIEF MINISTER:

I do not want to add anything else, Mr Speaker.

Question put on the motion. All hon Members, except the Hon R Mor who abstained, voted in favour. The motion was accordingly carried.

MR SPEAKER:

May I add my congratulations.

HON R MOR:

Thank you.

The House recessed at 5.15 pm.

The House resumed at 5.40 pm.

## BILLS

### FIRST AND SECOND READINGS

#### THE HEALTH PROTECTION (IONISING RADIATION) ORDINANCE 1995

HON J E PILCHER:

I have the honour to move that a Bill for an Ordinance to confer powers to provide for the protection of the health of the general public, workers and persons undergoing medical examination or treatment against the dangers of ionising radiation, and thereby to transpose into the national law of Gibraltar Council Directives 89/618/Euratom, 80/836/Euratom, 84/467/Euratom, and 84/466/Euratom be read a first time.

Question put. Agreed to.

#### SECOND READING

HON J E PILCHER:

I have the honour to move that the Bill be now read a second time. Before I do that, Mr Speaker, which I did not do in the earlier motion of the Government because I thought that it was too serious a matter to interrupt the proceedings to reprimand the Leader of the Opposition but I feel I have to put on record that it is disingenuous on his part not to have kept up with the appropriate terminology in line with the greener philosophy of today's nature and I am sure the Hon Mr Lewis Francis, had he been there, would have kicked him when he said that he would kill two birds with one stone. Mr Speaker, I think that that is something which the hon Member should be very careful because obviously it upsets persons like myself.

Mr Speaker, the purpose of this short enabling Bill is to provide a means to transpose into the national law of Gibraltar four

Directives adopted under the treaty establishing the European Atomic Energy Community. The Bill confers upon the Government of Gibraltar regulation making powers sufficient to transpose the four Council Directives on the protection of the various matters relating to the public, workers and the protection of patients and also the protection of the public in the event of a radiological emergency. It is intended that the detailed regulations will be made fully to transpose the four Directives into national law shortly after the Bill comes into effect. Regulations to be made will relate to the following matters: the protection of the health of persons at work against dangers arising from ionising radiation; the protection of persons undergoing medical examinations or treatment from unjustifiable exposure to ionising radiation; the protection of the health of persons, other than those already mentioned, against the dangers arising from ionising radiation; and informing the public about health protection measures to be taken in the event of such a radiological emergency. The principal effects of the regulations to be made under the Ordinance will be to prescribe measures for restricting exposure or risks of exposure to this radiation including systems of work to provide for the assessment of hazards arising from work with ionising radiation and for the preparation of contingency plans for application in the event of an accident. To provide for the assessment of doses of ionising radiation received; to provide for the classification of specified categories of persons; to make provisions for information, instruction, training and advice. Also to impose duties on employers, employees or others and to require notification of proposed work with ionising radiation and to exempt specified bodies or persons from prohibitions or requirement imposed under these regulations. The regulations, Mr Speaker, will also make provision for the control of medical or dental examinations or treatment involving exposure to ionising radiation; provide for instruction and training of practitioners and ancillary staff and provide for the establishment of a body to give advice on the medical aspects. Finally, it is intended that regulations will be made to make contravention a punishable offence. As I have indicated, this enabling Bill is designed to achieve the



transposition into national law of Community Directives. Gibraltar has a duty to effect transposition, it is one of the obligations obviously of our membership. Certain costs will be involved, indeed, the question of cost has been and will continue to be one of our major considerations. However, we have taken care to impose the lowest possible expense of operators in the private sector and the regulations have been designed to require as little modification as possible to existing good practice. We are also making arrangements to keep public cost of such activities as monitoring the performance of operators and their equipment to the lowest possible level. I commend the Bill to the House.

MR SPEAKER:

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

HON LT-COL E M BRITTO:

Mr Speaker, as the Minister has said in his presentation of the Bill, we are dealing with four European Directives, essentially with three because one of them is a very short amendment to one of the other three so in reality we are dealing with three Directives. The main two deal with safety standards for health protection of the general public and the workers against ionising radiation and the second one for the protection of persons undergoing medical examination and treatment and these are covered, essentially, in general terms on pages 146 and 147 of the Bill in front of us. Conveniently the two Directives are split up across both pages. There are two aspects of this Bill, Mr Speaker, that are a little bit of concern to Opposition Members and we would appreciate an explanation from the Minister to enable us to vote in favour of these particular clauses though we will be supporting the Bill in principle as a whole. The first is on the question of the definition of ionising radiation as contained in clause 2(5), at the top of page 149. The majority of the Bill is of the dangers arising from ionising radiation. There are quite a number of definitions contained in the Directive 80/836 and of all

these definitions only one of them has been included in the particular Bill but the definition, as included in the Bill, is different to the definition as included in the original Directive and being a highly technical matter on which neither the Minister nor myself are experts on, I appreciate that it might not be possible for the Minister to give an exact explanation on why the definition is different. But it seems to me on the limited research and information that I have received on it, that it would be worthwhile investigating and explaining why there is a difference because it seems to me that the definition as contained in the Bill is narrower than the definition as contained in the Directive. In other words, the definition in the Directive defines ionising radiation as radiation consisting of photons or of particles capable of producing ions directly or indirectly. Whereas on the Bill we lose photons and particles and these are substituted instead by gamma rays or x-rays or corpuscular radiations. My information tells me that gamma rays and x-rays are made up of photons or of particles. So instead of having the generalised subatomic particles contained in the original definition, we now have more constricted items in the new definition. But I profess to give no further information on something on which I am not an expert except to ask....[HON J E PILCHER: *He sounds like an expert.*] I have devoted a little bit of time to researching the subject but in the short time available to me I am unable to give anything more concrete than that except to make one further point. In the definition it says gamma rays, x-rays or corpuscular radiations. In fact, x-rays are corpuscular radiations and I understand that gamma rays are corpuscular radiations as well so the word "or" immediately presents a contradiction. I, again, profess no further information and knowledge of what I have given already except to say that if there has been a change and if it is there for a specific purpose maybe the Government can tell us why it has been changed to see whether we can support it or not. The other point, Mr Speaker, is on the exemptions mentioned by the Minister contained in clause 2(2)(h) and clause 2(4)(g) where in legislation that is designed to protect the health of workers and of the general public in one Directive and also in the case of patients undergoing medical treatment in the other

Directive, it seems to us strange, to put it mildly, that there should be a need for exemptions. We understand that there is provision for national legislation when passed by governments of the member States to improve provisions for exemptions or otherwise in the national interest but in the particular legislation that we are dealing with and if we look at specifically paragraph (h) at the top of page 147, when we are dealing with dangers to life arising out of radiation we fail to see why there should be a need to exempt any person or persons or bodies from regulations which are there designed to protect from danger to life or to general health. We would appreciate an explanation from the Government of the intention of that exemption so that we can then decide whether we can support it or not. The same request for explanation applies to paragraph (g) at the bottom of page 148 where such exemption can be applied to the Crown or to persons in the service of the Crown. It could possibly be that the original exemption has been put in with the intention of exempting MOD personnel or members of the services but even if this is so, in this day and age where members of the services are suing the national Government for effects to health arising out of nuclear research back on Bikini Island years ago. It still seems to me that there is cause for care in making exemptions for people to suffer from danger from radiation which exemption cannot come back at a later stage in making the Government liable for having made such an exemption. I leave that to the Government to give us an explanation as and when we come to the Committee Stage. The third point, Mr Speaker, is that although the basis of the skeleton for the regulations has been gone into in great detail in respect of two of the Directives, in other words, the one dealing with the health of the public and of workers, the other one in case of people undergoing medical treatment, except for one single line in clause 2(1)(d) about informing the public about health protection measures to be taken in the event of a radiological emergency. In other words, the contents of Directive 89/618, there is no further provision in the Bill for the basis of a skeleton for such regulations to provide such information. There are two annexes, annex 1 and annex 2, and there is in the Directive the skeleton for such information that

needs to be provided. I appreciate that the Directive is aimed principally at accidents arising from nuclear stations, and that sort of order, but it is also aimed at other possible accidents of a minor nature and in this respect I would remind the Government of visits to Gibraltar by nuclear submarines which carry nuclear reactors and of the possibility of nuclear weapons on ships or aircraft visiting Gibraltar and such an accident in one of these particular occasions could fall well within the scope of this Directive. One final smaller point, Mr Speaker, in clause 2(3)(a) on page 147, there is again a minor variation from the original Directive in about medical practitioners. It reads in the Bill, "any such examination or treatment is made or administered by or under the direction of a medical or dental practitioner". Whereas in the original Directive the wording is under the responsibility rather than the direction and, again, it may have been thought necessary for us in Gibraltar for the medical practitioner or dental practitioner directly there being responsible rather than being responsible overall for the examination that is being carried. We would appreciate an explanation why there has been a difference in this particular case. Thank you, Mr Speaker.

HON CHIEF MINISTER:

I want to make two general points, Mr Speaker. One is, in relation to the number of Bills we have got before the House. One of the points made by the Leader of the Opposition earlier on was that one Bill had 144 pages and that they had had insufficient time to study it. Other than the Trade Licensing Ordinance which is important from our point of view to get right because there are indications of possible infraction proceedings under Community law against the existing Trade Licensing Ordinance and unless we correct it we feel we could be very exposed and therefore we want to put it right as quickly as possible now that we have been given advice on the nature of the arguments about the existing law which we have always thought was Community proof but which we have always known was only Community proof until somebody decided to challenge whether it was Community proof. The one on the creditors of the

Bank of Credit and Commerce which, again, we want to move quickly on because we want to protect the people that stand to gain from the distribution and where we have had representations made to us that they might be disadvantaged if we did not make special provision to have the UK law covering that insolvency. And the one on the appropriation of supplementary funding which we might need to meet some departmental requirements. We are prepared to leave any of the others for the adjourned meeting to take the Committee Stage if the members of the Opposition request that that should be done in any other Bill. The group that we are looking at now are four atomic Directives which might bring direct rule if they explode. They are part of the good government of Gibraltar we are being told and this has been drafted by the expert that the United Kingdom has provided at their expense after the September meeting, I think he came in October or November, because one of the things that the Government of Gibraltar has been saying in areas such as this where in theory it may be very important to do something but in practice it is not that we have been suffering since 1980 from nuclear holocausts in Gibraltar unprotected, that is not the case. So it is not that for 14 years we have been without a nuclear shelter. Devoting resources to this means taking them away from something else. As the Government of Gibraltar we have to decide within the limits of our resources which is the things that have to be given priority and they are not necessarily the same as the things that the UK gives priority to. They offered, in September when I was in London with the Foreign Secretary, to give us help at their expense. They had offered help before provided we paid for it, as far as I am concerned that is no help at all. If I have got to pay to bring extra manpower to Gibraltar to draft legislation then I can do that any time by going into the market and buying legal expertise. Help for me means giving us somebody seconded to us where what we meet basically is the accommodation costs and they continue to be on the payroll of the UK Government and that is now happening and therefore some of the clearing of the backlog is the result of that. The view taken on the application of Community law by Her Majesty's Government is, of course, that

we cannot legislate for the Ministry of Defence. Therefore any areas which are taken out of the contents of the application of Community law in Gibraltar are areas which are MOD land. So any accident that happens on MOD land then presumably it does not matter if we all get shrivelled in the ionising radiation or if it matters, presumably the UK law already applies in MOD land. But in terms of what is a defined domestic matter and what is not a domestic matter, we are told that we cannot pass legislation in this House which applies within the area of the Ministry of Defence. I certainly always remember that if there was an incident or whatever, the Gibraltar Security Police used to act within the perimeter and then at the fence they handed over the person to the Royal Gibraltar Police because the jurisdiction of the Royal Gibraltar Police only went up to the point of the dividing line of the fence when it was MOD property. I have always known that to be the case but in this specific instance, for example, I can tell the Opposition Member that where there are provisions in the Ordinance for any rules to be made to exempt any activities, none of those will be exemptions governing employment in the Crown in the capacity of the Government of Gibraltar. Any such exemption will be exemptions that the MOD require for their land and their activities and their employees where presumably their rules, they claim in any case, have already been in existence based on UK law which they apply within MOD property in Gibraltar and which they therefore say are already complying with such Community requirements. All I can tell the hon Member is whether I agree with it is irrelevant, that is the position.

HON LT-COL E M BRITTO:

If the Chief Minister will give way. I take entirely on board what he is saying but if we cannot legislate for what happens on MOD territory then it follows that there is no need to make exemptions for our laws which presumably it follows, do not apply within MOD territory. So why do we need the exemptions?

HON CHIEF MINISTER:

Well, presumably we need the exemptions so that when we put a particular requirement in place, the requirement explicitly states that this does not apply to such a particular area or to such a territory or to such an activity. All I can tell the hon Member is the reason why it is there, he has asked for the explanation, the explanation that I can give him is that the UK seconded law draftsman has put it there at the initiative of the UK Government, not the Government of Gibraltar, in order to make sure that the position of the Crown in its military capacity is protected as and when required. That is the explanation. Clearly it is not one that I am going to go to war on, there are many other things I will go to war on without that one.

HON P R CARUANA:

No, certainly it is not a matter upon which anybody need to go to war so long as it is clearly understood and would it be clearly understood because of course the Directives themselves do not give power to make exemptions. The power to make exemptions, if it exists at all, must flow from the general principle that countries are allowed to derogate from their Community obligations. I think the exceptions are national defence or public health. I cannot remember what all the general principles exceptions are, and therefore it should be clear that now that it has been established in the European court that countries can be sued for failing to give citizens the protection that would have been accorded to them by a Directive if it had been transposed into national law which must also mean adequately transposed, that there can be no possibility of the Government of Gibraltar being liable for any injury caused by any, perhaps, civilian employee of the Ministry of Defence who is exempted from the application of these regulations.

HON CHIEF MINISTER:

I can tell the hon Member that it is clear that the Government of Gibraltar cannot be sued at all, that is the position. We do not have locus standi and therefore if we refuse to transpose anything it is the UK Government that are sued and if we transpose it inadequately it is the UK Government that are sued and that is the basis upon which the UK Government feel they have the right to require us to do this because they claim that if we do not do it they have to face the music, irrespective of whether the initiative for doing it came from them or came from us. The House will remember my uneasiness about the writ across of the Financial Services Commission that the argument that the UK used was that because the UK has to defend the licence in the European Community as a European Union licence from the member State UK, although there is nothing in Community law that says they must have the majority of people in the Commission appointed by the Foreign Secretary, I think not in the Community law that requires them to do that, in order to be able to feel safe with the responsibility that they have to vouch for the licence, their demand is that we allow them to appoint the majority. We finished up accepting that and I asked for a commitment in writing that this would not have a writ across into every other sphere and we got that in writing, for what it is worth which I published and I read in the House for the record from the Chancellor but, of course, one can see the argument which was, in fact, part of the analysis that we have been making since 1992 about what does the list of defined domestic matters mean. If we have a Community Directive that talks about the quality of the air that we breathe and the quality of the water that we drink and the contents of the food that we consume and the batteries that we put in our tape recorders and all of those... *[HON P R CARUANA: And they have not yet harmonised taxes.]* And they have not yet harmonised taxes, yes. And all of those are foreign affairs as opposed to domestic affairs under the Constitution of 1969, what is left of domestic affairs? We are then effectively in a situation as if we were integrated without the benefits of being integrated because we have lost a level of



autonomy that we achieved in 1969 but we are still required to pay the bills. That has been the essence of the argument that we have been putting to the United Kingdom since 1992 saying to them, "We are not accusing you of wanting to regress Gibraltar constitutionally, we are saying the practical effect of your definition of the demarcation of responsibilities is a regressive one". With every year that we are in the European Union we are whittling away and their argument is, "In the European Union we have all sacrificed some of our sovereignty to the central government". But, of course, every national government has sacrificed sovereignty to the machinery of Brussels in which they have a say because before the Directive becomes a Directive the 12 Governments agree it in a parliament that reviews the Directive to which they vote which we do not. Of course, this is not just transposing the Directive, we had the added problem that they have not really accepted subsidiarity between us and London to the extent that they demand subsidiarity between London and Brussels. So we are then reduced not just to transposing the Directive which we accept, but also transposing it in the way that people in London feel it needs to be transposed in order to protect them which we might not feel is needed. We are not even able to go direct to the Commission which we think will be preferable and say to the Commission, "We have got this problem in Gibraltar." We cannot think that people in the Commission are so unreasonable that if we say to them as we have said, for example, in an area such as this. The latest Directive is 1989 but the oldest one is 1980 - "Let us suppose you have got to have a situation where there is a requirement for inspection of facilities. If you have got the Atomic Energy Commission of the United Kingdom sending out inspectors on nuclear installations because the law of the UK does not extend to Gibraltar, that person may not have jurisdiction in Gibraltar but unless we come to some arrangement you surely cannot expect us to set up the Gibraltar Atomic Energy Commission when the only possible nuclear installation is on MOD land and you tell us we cannot go on MOD land, then what do we want it for? The only possible danger is in your land, you tell us we have no say in that, we have to do it on the civilian side of Gibraltar. On the

civilian side of Gibraltar we do not really think that there are serious risks. Obviously we do not want to have our people at risk whether they are workers or passers-by or anybody else." But in anything that we do as a Government when we are doing it with limited resources, we have got to take sometimes a judgement of saying, "How real is the risk? How infrequent is this?" I remember in another related which shows the kind of problem we have been facing in this area which is important because these are four of the things on the 50 list, these are four of them. There was one which I am not sure now whether it is still on the list or it has finally disappeared which was the trans-frontier transportation of hazardous waste. I had meetings with the Cabinet Office in London a major row over and I was saying, "We do not produce hazardous waste. We do not have the kind of manufacturing facilities in Gibraltar which generate hazardous waste as defined which is not domestic waste, which is not urban waste, which is pollutants of the result of heavy manufacturing industries. So we have none that we would transport into Spain. If we had it they probably would not take it anyway. They do not have any they want to send to us and if they had it we would not take it because we would have nowhere to dispose of it so why should anybody sending it to us? So there cannot be any trans-frontier transportation. Can I prohibit it? Instead of having somebody sitting at Four Corners waiting for the hazardous waste to appear which is never going to appear, let me make it a criminal offence to transport hazardous waste across the frontier. Since I know it is never going to happen then I can say, "I have gone beyond the requirements of the Directive which says I must inspect it to actually prohibiting it". They would not accept that as a sufficient way to implement the Directive. Fortunately since the Community is now producing a draft Directive saying that members should prohibit it altogether because they are not satisfied that the original Directive requiring it to be inspected was sufficiently foolproof because it is quite obvious that there are bits of Europe where for the consideration one can get anything across any frontier that one wants. So they are now moving in that direction and we should have no problem and I do not think that is on the list anymore. So effectively what I am



saying to the hon Member really the best way to deal with any queries is that we do not take the Committee Stage today and that we take note of all the points they raised in the Second Reading and then we come back with whatever explanations we want and certainly if there are things that at the end of the day we are not happy with, we are prepared to take the line of saying, "We will not accept it". But I think hon Members need to know that this is on the list.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the Mover to reply.

HON J E PILCHER:

I think there is very little, Mr Speaker. The Chief Minister has covered the majority of it because basically we are just transposing the law as has been drafted by the legal expert brought from the UK. The three minor explanations that have already been given; the first one I think was the definition of ionising radiation. The only thing I can say there is that we have been advised that the regime implemented in Gibraltar is the lightest that would comply with Community requirements so that is very likely to be the explanation. On the exemptions, it is the Ministry of Defence which I will only say, Mr Speaker, operates like any other military force within the regulations enforced by the country. So it is not that the Ministry of Defence do not have their own regulations, they have their own regulations but one has to exempt them because one cannot have a parliament telling a military force how they need to operate their own firearms. The third one was the direction as opposed to the control. I am advised that it is the same thing legally whether the person is in "control" or is "directed", at the end of the day, is exactly the same thing.

HON P R CARUANA:

If the Minister would give way before he sits down. I accept that this House cannot acquire quickly enough or that indeed it is the business of parliamentarians to become experts in the subject matter of all the bits of legislation that come to the House. On the other hand, I am not prepared to condone the practice whereby the source of the drafting is what decides whether this House performs a legislative function or not. Therefore the fact that this legislation has been drafted in London is not for me a good reason why this House should say, "Well therefore we will wave it through on a wink or a nod because there cannot be anything wrong with it". If we adopt that practice then, in effect, we are delegating our hard earned legislative constitutional function to others and I think it would be a dangerous precedent to do that. So I, for my part, and indeed the Opposition for their part, are going to make whatever efforts they can not to obstruct the passage of legislation, as we do not do with any legislation whether it is EEC Directive transposition or local government political legislation, but we are determined to have some sort of legislative input, some sort of probing role in all legislation that is brought to this House whatever the need for it is, whoever has drafted it and whether or not it is on a list or it is not on a list. Therefore I welcome the offer of the Chief Minister to delay the Committee Stage of this Bill until he is able to report back to the House on the perhaps entirely misinformed and unfounded queries that the Opposition have raised but they still deserve attention and therefore the Committee Stage ought not to be taken at this sitting.

HON J E PILCHER:

Mr Speaker, we will take note of the comments made by the Hon Col Britto and we will bring the matters at the adjourned meeting under the Committee Stage. I commend the Bill to the House.

Question put. Agreed to.

HON J E PILCHER:

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

# THE SHIP AGENTS (REGISTRATION) (AMENDMENT) ORDINANCE 1995

HON M A FEETHAM:

I have the honour to move that a Bill for an Ordinance to amend the Ship Agents (Registration) Ordinance be read a first time.

Question put. Agreed to.

## SECOND READING

HON M A FEETHAM:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill results from the experience of the board created under the Ship Agents (Registration) Ordinance 1987 to regulate persons wishing to carry on business of ship agent in Gibraltar. Let me say at the outset, that what I intend to do is to give a general explanation for the reasons why the amendment is coming through today and as well as going through the different clauses and the different amendments so that it will give time to Opposition Members if they wish to make any comments, they can do so today or at a later stage in the meeting because it is not going to go through all the stages today. So I will do this during my present speech. The experience of the board, Mr Speaker, has been that it has been unable to look at the general standing of a person seeking to be registered as a ship agent. It is obviously important to Gibraltar that anybody carrying out the activities of a ship agent does it in a way designed to improve the reputation of Gibraltar as a port and the concern of the board has been to be able to satisfy itself that

persons seeking registration and actually carrying on the activity, do so in a fully competent and professional manner and that those members of the profession who are carrying on the business properly are not disadvantaged by people who, without adequate office facilities, staffing and resources, try to compete unfairly to the disadvantage both of clients and the reputation of Gibraltar. In clause 2, Mr Speaker, we are inserting a new subsection in that section of the Ordinance dealing with the actual constitution of the board. No provision was made in the original Ordinance to show when the board was quorate. The insertion is only a straightforward arrangement to ensure that the board is only quorate when it has present the chairman or at least two members. The introduction of the amendment to section 6 is intended to ensure that the board can properly satisfy itself about the capacity of applicants and agents. The amendment to section 8 is consequential upon the amendment to section 6. Clause 5 and the amendment it contains to section 9, again reflects the experience of the board particularly where it has allowed registration of an agent on the basis of the qualification to be an agent of one of the directors of a company. The board then found that it had no powers to ensure that it was advised if the directors of the companies changed and then had no power, for example, to impose a condition on the registration, that the new directors should they themselves be qualified. Clause 6 and its amendment to section 10 is a further reflection of the experience of the board and the board was anxious to be able to have the power to grant a conditional registration, for example, that the applicant be registered when he had complied with a necessary pre-condition. The experience of the board has been that people have registered as a ship agent, then have failed to, in fact, carry on the business and the concern in the proposed amendment to section 11 was to establish that the person being registered does, in fact, carry on the business and does not, by his continued presence on the register, possibly preclude others being registered when, in fact, he is not actually providing a service. The amendment to section 11(2) is merely the transfer of a fine described in monetary terms to a fine described by a level on the standard scale. Clause 8 amends section 12, first of

all, to increase the size of the bond which is necessary. The purpose of the board is to ensure that a person commencing work as a ship agent could always meet liabilities when they might have in Gibraltar on behalf of a ship. It has been the experience of the board that a bond is in fact worthless and that particularly where a person seeks registration as a ship agent had no long-term connection with Gibraltar, it might be more appropriate to require a deposit. This will be permitted at the discretion of the board. Clause 9(a) makes an amendment consequential to the amendment to section 6 of the Ordinance. In clause 9(b) the proposed new section, in section 13 of the Ordinance, is to define what constitutes carrying on the business as a ship agent to show that a ship agent is in fact conducting the business. The amendment to section 15 is to bring the ship agent's registration line both in line with the Dock Work (Registration) Ordinance and the provisions in that Ordinance in respect of an appeal. The amendments in clause 11(a) are a translation of monetary amounts in levels of the standard scales of fines. The amendment in clause 11(b) is to introduce what is now a standard provision where we are concerned to ensure that the persons responsible for conducting the affairs of a corporate entity are themselves responsible. The amendment to section 19 contained in clause 12 transfers the regulation making power from the Governor to the Government, the registration of ship agents being a defined domestic matter. Regulations, Mr Speaker, once these amendments are put into place, will be produced under the Ordinance in consultation with the board. And I should say at this juncture also as a result of whatever representations may be made by affected parties or Opposition Members or any other association that may have an interest in the workings of the board as it may affect their livelihood. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON F VASQUEZ:

Mr Speaker, the Opposition will be supporting this Bill as enhancing the powers of the Ship Agents Board in their task as supervising the activities of ship agents in Gibraltar. The Opposition recognise that this is essential for the proper administration and supervision of ship agencies in this jurisdiction which in itself is important for the protection of the reputation of the port in Gibraltar and we recognise that it is essential that ship agents are, indeed, properly regulated. Certainly it has become apparent over the last two years that the Ordinance, as presently drafted before these amendments, is to a great extent inoperative, it is toothless and it leaves gaping holes, the best example of which is the question which the Minister has already identified, that relating to directors of these companies that are registered and then disappear as soon as the companies obtain registration and virtually leaving very little link between the company and this jurisdiction. We agree, Mr Speaker, that it is essential that the board is given teeth, for example, in requiring information in support of an application; the board has to have all the proper information before it on the application for a licence and must have the powers to demand that such information be brought before it. In applying conditions to the granting of a licence, we also think it is important the board have the power to grant conditional licence; and also in general investigating the affairs of ship agents, for example, in requiring the disclosure of how many ships any particular ship agent is dealing with. For those reasons, Mr Speaker, it is the intention of the Opposition to support the Bill. Certainly the Bill, as drafted, appears acceptable. In itself it is not a guarantee that the Ordinance will be properly implemented and, particularly, it is not guaranteed that there will be no ministerial interference in the operation of the board in future. It is essential that when the statutory bodies are set up by Ordinances in Gibraltar, that they be allowed to operate independently and whatever the Bill says, obviously, there is no guarantee of that. It is to be hoped, Mr Speaker, that the board will be allowed to operate independently, exercising its

discretion and exercising its own knowledge and experience of the business in carrying out the functions that are allocated to it by the Ordinance.

There is one comment that will be made and I may discuss it with the Minister in relation to the drafting of clause 8 which did not seem clear and that relates to the question of the bond or the deposit. The wording as chosen refers to the substitution of the bond of £15,000 to be substituted by the wording, "£20,000 bond or depositing an equivalent amount (the choice of which to be determined by the Board) to the account of the Government of Gibraltar". That is section 12(b) of the Ordinance. There is a quibble, Mr Speaker. It is not clear from that wording when it says "enter into a bond in the sum of £20,000 or depositing an equivalent amount (the choice of which to be determined by the Board)". It is not clear whether the choice is whether or not it is going to be a bond or a deposit or whether it refers to the amount. I assume that the intention is that the board will have the discretion of deciding whether an applicant would be required either to enter into a bond or make a deposit of £20,000 but there is a discretion to say, "In your case we will only look for £5,000". I think the £20,000 is sacrosanct and with that end in mind I think the drafting would be clearer if it read, "enter into a bond in the sum of £20,000 or depositing this amount" - as opposed to "an equivalent amount (the choice of which is to be determined by the Board) to the account of the Gibraltar Government". That I think will make it clearer, Mr Speaker, that the discretion relates not to the amount of the payment but as to the nature of whether it is a bond or a deposit. It is a small point but I think it clarifies that section as to be amended.

There is one final point, Mr Speaker, generally in relation to the Ordinance which has come to my notice and which the Government may wish to take into account. There does appear to be a deficiency in the drafting. It may not be terminal but it certainly caught my eye and perhaps the Government draftsman might wish to consider this. Clearly section 8 of the Ordinance envisages companies registering as ship agents. Section 8

specifically refers to the fact that bodies corporate are eligible for registration which is fair enough. Basically the Ordinance envisages either persons or companies registering as ship agents. The Ordinance then goes on to make various provisions in relation to ship agents but refers to them only as persons and specifically I would refer to sections 13 and 11. Section 13 of the Ordinance, which is an important section, which entitles the registrar of ship agents to strike off persons from the register says, "The Board shall direct the Registrar to delete the name and particulars of a person from the register on the ground that..." etc. It does not refer to companies, it only refers to persons. Section 11 similarly, which is also an important section, deals with the powers of the board to require information. It says, "The Board shall have the power to require a person registered under this Ordinance to supply to the Board information", it does not mention companies. I am aware that, in fact, the Interpretation and General Clauses Ordinance says, "In this Ordinance and in any Ordinance, and in all public documents, unless the context otherwise requires a "person" includes a body corporate". But the difficulty that I have identified is that it may be argued that since the Ordinance itself distinguishes between companies and persons, that it may be possible to argue that in fact sections 11 and 13 do not apply to companies that are registered as ship agents. I know the legal draftsman has just passed the Ordinance to the Minister, if my interpretation of the Ordinance is wrong in that respect I will be glad that it is but perhaps that is a problem that should be looked at because it certainly would appear that if Sections 13 and 11 do not appear to corporations that are registered as ship agents, then clearly there is a deficiency in the drafting and care should be taken to ensure that in fact the Ordinance applies to all ship agents be they corporate or individuals.

Other than those comments, Mr Speaker, I have nothing to add and certainly it will be the intention of the Opposition to support this Bill.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the mover to reply.

HON M A FEETHAM:

Mr Speaker, I have no problem with taking on board what the hon Member has said. I have certainly no quarrel on the question of the deposit or to define it more clearly in line with what the hon Member has said. I will also take on board just to make it absolutely sure that persons and corporations are the same thing as far as the ship agents is concerned. Since we have got time now until the Bill comes to the Committee Stage, we will be able to answer the hon Member more explicitly then.

Question put. Agreed to.

HON M A FEETHAM:

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

#### THE DRUGS (MISUSE) (AMENDMENT) ORDINANCE 1995

HON ATTORNEY-GENERAL:

I have the honour to move that a Bill for an Ordinance to amend the Drugs (Misuse) Ordinance be read a first time.

Question put. Agreed to.

#### SECOND READING

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. This Bill and for that matter the following two Bills are part of the Government's fight against drugs and drug trafficking. On the front page of this week's Panorama the House will see, Mr Speaker, that the effect of the Bills are well summarised, which says, "Tough new laws against money laundering and drugs. Wide powers and stiff penalties". The main provisions in this Bill, firstly the introduction of the concept of schedule substances and, secondly the introduction of provisions dealing with offences on ships and thirdly the transfer of various functions from the Governor to the Government. Let me tell the House that concerted action against drug trafficking within the European Community was stimulated from the late 1980's by a report of the European Parliament Committee of Inquiry into the drugs problem in the member States of the community. This emphasised that measures to combat an international network of criminal organisations had themselves to be taken at international level with the common strategy and rigorously co-ordinated legal measures. So European Community itself, Mr Speaker, became involved in the negotiations leading up to the Vienna Convention and signed the Convention on the 8th June 1989. The Community has undertaken to do whatever it can to comply with its Convention obligations and this was reiterated in a statement in June 1991, "Action taken by the Community has included a Directive on money laundering - 91/308/EEC and regulation dealing specifically with the drugs issue - Council Regulation EC No. 3677/90." This regulation aims to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances. The Community recognised that it should take action against the trade in what is known as precursors. That is to say, substances frequently used in the manufacture of drugs and psychotropic substances. That is precisely what the Government seek to do in this new Part IIIA



to the Drugs (Misuse) Ordinance. This in turn is based partly on article 12 of the Vienna Convention. Article 12 contains various measures to deal with the precursor problem including the very general requirement that parties take such measures as they deem appropriate to prevent the diversion of substances to illicit purposes. Scheduled substances are substances that have either become a partly controlled drug or used in a process creating the controlled drug and these scheduled substances are set up in a new schedule 4 to the Ordinance. The equivalent provisions, Mr Speaker, in the United Kingdom on which this part of the Bill is based are to be found in the Criminal Justice International Co-operation Act 1990. In particular section 12 dealing with the manufacture and supply of scheduled substances. It was obviously enough, the purpose of that Act in the United Kingdom to enable the United Kingdom to implement the 1988 Vienna Convention against illicit traffic in narcotic drugs and psychotropic substances. The proposed new sections 11A and 11B in the Bill are based on sections 12 and 13 of the United Kingdom Act and these new sections operate to regulate and control the manufacture, transportation and distribution of specified substances so as to prevent their diversion for the unlawful production of a controlled drug. And this, in effect, is implementing the requirements of articles 3, 12 and 13 of the 1988 Vienna Convention. The scheduled substances, as I have said, are particularised in schedule 4 and they appear in one of two separate groups: Table I lists precursors, for instance, lysergic acid, that is to say, essential chemicals used in the creation of certain controlled drugs such as LSD. Table II specifies other chemicals which may be widely used in industry, for instance, acetone but which are used as re-agents or solvents in the process of manufacture of a drug. Mr Speaker, the other major area dealt with by this Bill is the introduction of provisions concerning offences on ships. These are the proposed new sections 11C dealing with offences on Gibraltar registered ships; 11D dealing with ships used for illicit traffic and related provisions; 11E dealing with enforcement powers; and 11F dealing with jurisdiction and prosecutions. These provisions are Gibraltar's response to article 17(1) of the Vienna Convention

which asked member States for full co-operation to suppress illicit traffic by sea in conformity with the international law of the sea, including requesting the assistance of other member States to suppress the use of a vessel, this is article 17(2), by boarding it or searching, that is article 17(4). Criminal sanctions apply in respect of any persons on board a Gibraltar ship or a ship of a party to the Vienna Convention. These sanctions we can see from the proposed section 11E(2), dealing with enforcement powers, may not be enforced in respect of a ship of a Convention state beyond Gibraltar's territorial limits unless that Convention state is requested the assistance of Gibraltar. Again, the equivalent provisions in the United Kingdom legislation from which these provisions have been adapted are to be found in sections 18, 19, 20 and 21 of the Criminal Justice and National Co-operation Act 1990. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON P R CARUANA:

Mr Speaker, the Opposition recognise that this Bill is one of a package of three currently before the House, all of which are concerned to give effect in the laws of Gibraltar to all or part of the provisions of the European Union Directive to which the Attorney-General has referred and also to the Vienna Convention to which he has also referred. There are principles, therefore, which arise in relation to all three Bills but so as not to take more of the House's time than is necessary, I will deal with those general principles that are common to all three Bills when I come to address the Second Reading of the Drug Trafficking Bill. But there are one or two points of principle that arise specifically in relation to this Bill with which I need briefly to deal at this stage.

The first is that in creating the new section 11C of the Drugs (Misuse) (Amendment) Ordinance related to offences on Gibraltar registered ships and specifically in section 11D, it seems to me that this is a section that will enable the police and customs in Gibraltar to prosecute those that use fast launches registered in Gibraltar for the purposes of the carriage of drugs if it is possible to find evidence which would stand up in a court of law of that fact. So that leaving to one side for now the question of the transportation of ordinary tobacco in fast launches registered in or based in Gibraltar, should there be any future instance of drugs being carried in such launches across the Straits of Gibraltar, as has been alleged by some recently, then we now have in our laws provisions that would enable; in other words, there is an element of extra-territoriality here in the sense that if it can be shown that a Gibraltar registered fast launch has been used for the carriage of drugs from Morocco to Spain, that makes it an offence in Gibraltar because if that carriage had taken place in Gibraltar it would unquestionably have been an offence. Therefore, Mr Speaker, one looks forward to the use of this legislation as a mechanism to protect Gibraltar's name from allegations arising from the use of Gibraltar registered fast launches for this purpose.

Mr Speaker, the other point of principle that arises has nothing to do with drugs. There is a general and constitutional point which arises from clause 11 of this Bill and which has nothing to do with drugs and it flows from the application to section 18 of the principal Ordinance and deleting in that section the reference for "Governor" and substituting the reference for "Government". In this particular instance I have a general grievance about that formula in that I think... *[Interruption]* No, no, my grievance is not that it transfers powers from Governor to Government which, on the whole, in matters which are clearly defined domestic matters, I do not object to except that I think that the Government is not a sufficiently well defined legal entity upon which semi-judicial capacities can be bestowed. My understanding is that in most of these instances even in the United Kingdom where the status of the Government is different, powers are bestowed on particular

Secretaries of States and not on the Government. Who does one sue on judicial review? Who does one sue on a declaration if there has been an abuse of the enabling, if one wishes to allege that regulations are ultra vires, that there are problems? But that is not the point of my objection, I have made that point before, it is on the record and I am not going to make it every time nor have I made it in relation to the other. I raise that particular objection in relation to this particular amendment to section 18 which is clause 11 of the Bill because I think, presumably inadvertently, there is a usurpation by the Government on a subject which is not a defined domestic matter and which I think is sensitive. The effect of substituting the phrase, in section 18, "A police officer, revenue officer, or other person authorised in that behalf by a general or special order of the Governor" and substituting therefor "A customs or police officer or other person appointed for this purpose, either generally or specifically, by the Government" is to give the Government the power to direct police officers when the Government have no political or constitutional responsibility for the police. That point did not arise before because the power to nominate vested in the Governor, who does have constitutional responsibility for the police and I do not think that the current state of our Constitution - this is an aspect which might at some future stage be changed, if it were to be changed it would be changed in a way which would introduce safeguards as well as transferring powers to the Government - but as the Constitution now stands I am not certain that the Government can reserve to themselves powers to direct a police officer to do anything because it is simply not a defined domestic matter. I think, Mr Speaker, that point only arises in relation to that one because it happens to be the nomination of a police officer. Mr Speaker, subject to those points the Opposition will support the principles of the Bill.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the mover to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, as far as the Leader of the Opposition's first point is concerned, I take that point on board. I think it is very likely that these new provisions could be used for prosecutions in the situation that he outlines. Of course, one still has the practical problem that it may well be that although the vessel or ship is registered in Gibraltar and although it may have been to Morocco, it is not necessarily coming back to Gibraltar so one has the practical problem of gathering together the evidence, but certainly in terms of theory it is possible, I imagine, for prosecutions to be launched under these new provisions in that regard, whether they work in practice will remain to be seen.

Mr Speaker, as far as the Leader of the Opposition's second point is concerned, I must say I am not entirely sure which section he was referring to, was it section 18?

HON P R CARUANA:

Mr Speaker, I was referring to clause 11 of the Bill amending section 18 of the principal Ordinance which starts at page 52 of the Bill and then carries on at the top of page 53.

HON ATTORNEY-GENERAL:

Yes, I take on board the comments made by the Leader of the Opposition in that regard and perhaps that is a matter that could be addressed at the Committee Stage.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

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

## THE IMPORTS AND EXPORTS (AMENDMENT) ORDINANCE 1995

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

## SECOND READING

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the object of this Bill, as stated in the explanatory memorandum to the Bill, is to amend the Imports and Exports Ordinance, 1986, again to give, in part, effect to the Vienna Convention. The amendment introduces the concept of scheduled substances into the Ordinance by inserting a definition of those substances by reference to the proposed new schedule 4 to the Drugs (Misuse) Ordinance and then going on to provide by amendments to sections 15 and 80 of the Imports and Exports Ordinance, 1986, that the importing and exporting respectively of scheduled substances is an offence in the same way that the importing and exporting of a controlled drug is an offence and by providing for consequential penalties. I commend the Bill to the House.

MR SPEAKER:

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

HON P R CARUANA:

Mr Speaker, only to repeat what I said before that nothing specific arises in this Bill which does not also arise as a matter of principle in the next Bill which we will consider, the Drug Trafficking Bill, and therefore I will leave my comments on the principles to that. But I would like to take this opportunity to make an observation on the record that applies to all of these Bills and that is as follows, that helpfully I think for the economical use of the time of this House, the law draftsperson who happens at the moment to be the law draftsman, has helpfully given me some days advance notice of the printing errors or what the Government maintains are printing errors and I have been able to accept that they are printing errors and there is therefore a letter which was sent to me. I indicated that they were all acceptable as printing errors and I understand that on the basis of that a letter has been addressed to Mr Speaker. Mr Speaker, the Opposition's agreement as to what constitutes a printing error and what does not constitute a printing error depends on such a letter being written to you and placed officially on the record. What I try to do is to avoid an argument as to what constitutes a printing error or not after the event. In other words, after the debate in the House I cannot find that a Bill has been changed and then be told, "But that was only a printing error". In other words, we are all agreed that it is a mechanism that is necessary to save time wastage but it is done on the basis that the only printing errors that will be permitted as printing errors are printing errors that have been recorded in writing, in a letter addressed to the Speaker, at the time that the House considered the legislation and nothing subsequent to it. On that basis I have been very happy to go along with this technique which I can recognise saves an awful lot of time. I just wanted to make clear that the door is not open subsequently to the debate in the House to further change the green paper at the time that it is being printed as the white paper on the basis that it was only a printing error.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the mover to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, there is nothing I wish to add at this stage, thank you.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

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

#### THE DRUG TRAFFICKING OFFENCES ORDINANCE 1995

HON ATTORNEY-GENERAL:

I have the honour to move that a Bill for an Ordinance to consolidate and amend the Drug Trafficking Offences Ordinance 1988 and to give, in part, effect to the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on the 20th of December 1988 and Council Directive 91/308/EEC be read a first time.

Question put. Agreed to.

## SECOND READING

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. Mr Speaker, there are a number of alterations to the existing law in this proposed Bill. Firstly, a court will no longer be obliged to embark on a Drug Trafficking Offences Ordinance inquiry in every case where a defendant appears to be sentenced for a drug trafficking offence. In some cases, especially where the defendant is not resident in Gibraltar, it is almost impossible to put the present statutory provision into practice. It would involve making enquiries in another country, in some cases where the judicial authorities of that country may be reluctant to respond. The new provision in clause 3 simply means that the procedure will not automatically come into play, as it does at present, but only if either the prosecutor asks the court to proceed or the court itself thinks it should proceed even though the prosecutor has not asked. The whole drug trafficking benefit inquiry, that is the determination by the court whether the defendant has benefited from drug trafficking or the determination of the amount involved, can in future be postponed where the court considers it requires further information before determining whether the defendant has benefited or determining the amount to be recovered. Although in my view clause 4 of the Bill that makes this provision is really only spelling out powers that the Supreme Court already has in its inherent jurisdiction, it is very useful to have the matter put beyond argument. It is giving a statutory sanction to the practice that has developed in the courts, in any event, that the determination can be postponed for six months or, if the defendant appeals against conviction, for three months after the date on which the appeal is determined. The practical reason for this approach is that there is little point in carrying out a major enquiry into whether or not a defendant has benefited from drug trafficking until he has been convicted. Certainly carry out some preliminary enquiries but one could find that the financial investigation teams of either the Royal Gibraltar Police or

Customs could do an enormous amount of work on this question of whether or not the defendant has benefited only to find that he is acquitted or succeeds on appeal and then there will be a huge waste of effort and resources that could be better put into another enquiry. For this reason I must say that perhaps some reservations about specifying three months as the appropriate period after an appeal ruling, the point is simply that one does not want to waste time and resources on this type of enquiry until one is certain the conviction will be maintained. Even though a conviction is obtained in the Supreme Court so the prosecutor may then consider a benefit inquiry is justified or at least that there was more justification for such an inquiry than when the criminal proceedings was still just pending and a conviction not yet obtained, if the matter goes on appeal it may still be appropriate to allow that postponement of the benefit determination for six months from the appeal ruling. The third major and very important alteration to the law, Mr Speaker, is this. There have been a number of court decisions, particularly in the United Kingdom, which have ruled that when the court determined whether a person had benefited or determined the amount to be recovered, then the criminal standard of proof applied. In other words, the court held it had to be convinced beyond reasonable doubt. Clause 3(7) of this Bill provides that the standard of proof shall be then applicable in civil proceedings. The standard in civil proceedings, for the interest of the members of the House, has been stated in this way. It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say, "We think it will probably will not" the burden is discharged but if the probabilities are equal it is not. The fourth point is this, Mr Speaker, under section 5(2) of the existing Drug Trafficking Offences Ordinance 1988, the court has a discretion as to the making of certain assumptions in order to determine whether or not the defendant has benefited from drug trafficking in order to assess the value of his proceeds of drug trafficking. The change introduced by this Bill is that the assumptions to be made are no longer discretionary, they are mandatory and this is clause 5(2) of the Bill. We incidentally retain as a proviso to



section 4(a) the very useful provision introduced by Ordinance No.1 of 1993, to the effect that a defendant may show the assumptions to be incorrect only to the extent that the defendant shows that the property or money involved has been declared either to the Commissioner of Income Tax or the taxation authorities in the jurisdiction where the property is located. So subject to that restriction, a defendant can rebut the assumption or the court may not even make the assumption if it is satisfied that in so making it there would be a serious risk of injustice to the defendant's case. The next new point is that the Bill provides in the proposed new section 13 for a new re-assessment procedure within a period of six years after the date of conviction. Within that period the court may revive its assessment of the amount of the defendant's proceeds of drug trafficking or the amount which might be realised under an order or, if no confiscation order was either sought or made it may make such an order. The sixth new major point is this. Previously under the existing legislation where a defendant was ordered to serve a term of imprisonment in default of payment of all or part of a confiscation order, the effect of that was that proceedings were concluded against him and so the court was not empowered to continue to enforce the amount due. The change introduced in this is in clause 10(5), "serving a term of imprisonment in default does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned". The Supreme Court is also given a new power to confiscate the proceeds of drug trafficking if the defendant dies or absconds after conviction. The court may confiscate such proceeds even if there has been no conviction where a defendant has absconded for a period of two years, he may be compensated if he returns and is acquitted. These provisions are contained in clauses 18 through to 23. The next new point, Mr Speaker, is clause 25 of the Bill concerning the provision of information by a defendant expands, it seems to me, and gives a statutory basis to the practice the courts have developed of making what is known as a disclosure order in conjunction with a restraint order on the basis that the court had inherent jurisdiction to make a disclosure order where it was

necessary to render the restraint order effective. Mr Speaker, the judges had developed the approach of saying that the disclosure requirement was made subject to a condition that no disclosure made in compliance with the order was to be used as evidence in the prosecution of an offence alleged to have been committed by the person required to make that disclosure. This provision is not explicitly written into clause 25 but no doubt the wording of sub-clause (3) leaves it open to argument that such a condition can still be imposed. Part III of the Bill deals with mutual assistance. Clauses 37 through to 47, deal with such things as services of overseas process in Gibraltar; service of Gibraltar process overseas; overseas evidence for use in Gibraltar; Gibraltar evidence for use overseas; there are provisions concerning the issuing of search warrants for material relevant to overseas investigations. Clause 44 deals with the enforcement of overseas forfeiture orders. Clause 45 deals with the making of rules of court concerning any of the matters dealt within clauses 37 to 44. Clause 46 deals with the enforcement of external orders and this is broadly derived from section 22 of our existing Drug Trafficking Offences Ordinance 1988. Clause 47 deals with the registration of external confiscation orders and again is broadly derived from section 22(a) of the Drug Trafficking Offences Ordinance 1988. Mr Speaker, I want to take the House briefly back to the Vienna Convention for a moment. Article 7 provides that the party shall afford one another pursuant to this Article the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with article 3(1) and article 3 of the Convention contains an elaborate set of provisions requiring parties to establish a range of criminal offences under domestic law. These include not only offences of production, cultivation and possession of drugs but also manufacture, transport and distribution of equipment, materials or specified substances knowing that they are to be used for their illicit cultivation, production or manufacture. Part IV of the Bill, Mr Speaker, deals with drug trafficking money imported or exported in cash. This part of the Bill is based on Part II of the United Kingdom Drug Trafficking Act 1994. There are six

sections, 48 through to 53, and the scheme of this part of the legislation is to enable customs and police officers to seize and detain cash which has been imported or exported from Gibraltar where the officer has reasonable grounds for suspecting that the cash either represents any person's proceeds of drug trafficking or is intended by any person to be used in drug trafficking. Continuing the detention of the cash after 48 hours must be authorised by a Justice of the Peace and subsequent detention orders each of no more than three months may be made so long as they do not in total exceed two years, subject to the Justice of the Peace being satisfied that the continued detention is justified while the origin of the cash is investigated for the possibility of criminal proceedings is concerned and there are consequential provisions dealing with forfeiture orders made by the Magistrates' Court, appeals against such orders and the making of rules of court to deal with all this. This part of the Bill, that is to say, Part IV reflects section 25 of the Criminal Justice International Co-operation Act 1990 in the United Kingdom. The United Kingdom provisions, Part III of that Act, were made law because American and British law enforcement officers had expressed complaints in evidence to a Home Affairs Select Committee because international suppression of money laundering operations had led to large sums of cash being imported into the United Kingdom where no exchange regulations currently applied. Prior to the 1990 statute in the United Kingdom, there were no powers vested in police or customs officers to investigate the origin of cash imported or exported. So Part III of the United Kingdom Criminal Justice International Co-operation Act 1990 introduced deliberately draconian measures to seize and detain those large sums of cash pending investigations, to forfeit that cash and once again to set the standard of proof in relation to such matters as the civil standard only. Part V of the Bill, Mr Speaker, deals with offences in connection with proceeds of drug trafficking. Clause 54 creates an offence for a person to conceal, disguise, convert, transfer or remove from the jurisdiction any property which represents proceeds of drug trafficking. Clause 55 creates the offence of assisting another person to retain the benefit of drug trafficking. Clause 56 makes it an offence to acquire, possess or

use another person's proceeds of drug trafficking. Clause 57 creates the offence of failing to disclose knowledge or suspicion of drug money laundering. Clause 58 makes it an offence to give a tip-off where a person knows or suspects the customs or police officer is investigating or proposing to investigate a drug money laundering situation. All these provisions are drawn from Part III of the United Kingdom Drug Trafficking Act 1994. Mr Speaker, by the end of 1991 in the United Kingdom, only 26 people had been prosecuted for the money laundering offence that was then contained in section 24 of the United Kingdom Drug Trafficking Offences Act 1986, the equivalent provision to which is found in section 21 of our Drug Trafficking Offences Ordinance 1988. That United Kingdom section 24 was the first attempt there to criminalise money laundering in response, of course, to the Vienna Convention. This was developed somewhat in section 14 of the Criminal Justice International Co-operation Act 1990, is now included in section 49 of the Drug Trafficking Act 1994 and is now, as far as Gibraltar is concerned, included as clause 54 of this Bill. The old section 24, or clause 21 as it is here, had proved very difficult to prove a case against that section in court. Bear in mind, Mr Speaker, that the United States experience that the big time traffickers would enlist the services of specialist money launderers and for their own protection they would organise things in such a way that they did not know of each other. Drug traffickers notoriously make use of elaborate laundering techniques which not only distance them from the trafficking but also from the launderer. So one loophole was our existing section 21. It is precisely that a drug trafficker cannot be prosecuted under that section as it stands with laundering his own proceeds of drug trafficking, hence section 49 in the United Kingdom and now clause 49 in this Bill. Mr Speaker, Part VI of the Bill deals with miscellaneous and supplemental matters which I think, by and large, have been incorporated from the existing legislation. For instance, clause 60 deals with orders to make material available. This is derived from section 23 of the existing 1988 Ordinance and deals with what are commonly known as production orders. It is also based on section 55 of the 1994 United Kingdom Act. The remaining clauses in Part VI of

the Bill deal with, for instance, clause 61 authority for search; clause 62 access and copying of seized material when requested. Mr Speaker, I would like to draw to the House's attention that the hon Members, I am sure, will be aware that in addition to these Bills that there were Drug Trafficking Money Laundering Regulations 1994 promulgated on the 15th December 1994 by Legal Notice No. 134 of 1994 and they were stated to be for the purpose of transposing into the national law of Gibraltar Council Directive 91/308/EEC and the measures, to use the words in the regulations, to prevent the use of the financial system for purposes of money laundering are to commence interestingly enough on the 1st April 1995. Those are the matters that are, strictly speaking, part of the present Bill. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON P R CARUANA:

Mr Speaker, there are some points of principle that arise in relation to drug legislation generally and this Bill in particular. I think that given the propensity that we have witnessed of late to make the Gibraltar political mischief on the basis of allegations about the alleged drug money laundering that is said, without substantiation, takes place in Gibraltar, it is of course vital for that reason, not because there is any great amount of money laundering going on in Gibraltar but in order to disarm those that will manipulate the situation to suggest that there is, it is vital that our anti-drugs legislation should be bang up-to-date if the House will allow me to slip into the vernacular, at all times. It is used as political stick to bring our finance centre into disrepute and for that reason, given that the finance centre is an essential pillar of our economy, it is important that we arm ourselves with all the latest legal provisions in relation to drugs - and I emphasise those words not unintentionally - that international law requires

so that we shall never again be in a position where others can distort the fact that we may not yet have legislated this or legislated that to mean and ergo there must be rampant money laundering of drug proceeds going on in Gibraltar. Mr Speaker, in this connection Government Members may be interested in hearing what the legal advisor of the Luxembourg Bankers Association recently had to say to the Second Annual Conference on Money Laundering - The way forward through international co-operation - that took place in London on the 11th and 12th October 1994. He said, speaking about Luxembourg; "Many are they who in searching for an explanation of the spectacular rise of the Luxembourg financial centre, were assimilating the success to questionable trafficking with shady clients taking advantage of a dubious legislation. Moreover in hearing what efforts against money laundering bring us and to whom they are addressed, one may come to believe that banks are the sole area concerned by this problem; nothing is less true of course but it is unfortunately true, on the other hand, that one expects the most considerable effort on the their part also because one thinks that their deep pockets contain all the money needed to handle this".

Mr Speaker, it is really the first part of that quotation that I think is germane to emphasise, that those that seek to denigrate financial services as a legitimate form of business use these allegations of money laundering as a stick and that apparently Gibraltar is not the only victim at the hands of Spain in the sense that Luxembourg, according to the legal advisor of their banking association, has been victim of the same sort of accusations but, of course, the great difference is that those were not motivated by political considerations which had nothing to do with any legitimate concern for the fight against drugs. The Chief Minister constantly states that they are committed to the fight against drugs and I do not doubt that, but I am sure he will agree with me when I add that full commitment to the fight against drugs must be given expression to in a practical sense by this House ensuring that our police force has all the necessary financial, human and technical resources to investigate offences, to

apprehend offenders and indeed to conduct surveillances. Also we need to ensure that the Attorney-General's Department, as the prosecuting authority in Gibraltar, has adequate financial, human and technical resources to prosecute adequately. It is unacceptable, I am sure Government Members will have no difficulty in agreeing, that Gibraltar based launches should be used in cross strait trafficking of drugs if there is evidence that this has occurred as appears at least by some reports that have been made public by the Royal Gibraltar Police in relation to certain instances where there have been interceptions. I know Government Members will support me in stating that this new legislation that we are passing must result in a commitment to applying it to ensuring that Gibraltar based launches are not used for that purpose. The Opposition have no difficulty, indeed, enthusiastically support the Bill. Nevertheless there are one or two points of principle and, Mr Speaker, one or two points that might not be of broad principle and which technically may be more appropriate to raise at the Committee Stage or arguably so but as this is the only opportunity that I get in the House to give advance notice of the points, if I do not raise them until Committee Stage the Government do not have an opportunity to take them on board before it comes to the Third Reading. Before I move on to those, the Attorney-General referred in his presentation to the Vienna Convention and indeed alluded to article 7 which requires the signatory states to give each other broad mutual legal assistance and that indeed, Mr Speaker, article 7(1) specifically says, "The parties shall afford one another pursuant to this article the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with article 3 of paragraph 1". Of course, the thought immediately comes to one's mind whether the Kingdom of Spain actually is complying with that requirement on it when it refuses to send to Gibraltar members of Spanish law enforcement agencies to testify in our courts for political reasons and I seriously doubt, indeed I assert, that that is manifestly a non-compliance with that obligation under article 7(1). There is, just to put both sides of the argument if only to deal with it, in article

7(15) a provision that says that mutual legal assistance may be refused if, amongst other reasons, the requested party considers that execution of the request is likely to prejudice its sovereignty. Mr Speaker, I do not think that it is open to Spain to argue that recognising the existence of courts in Gibraltar is a threat to its sovereignty. To my knowledge no court in Gibraltar sits on any territory which by its own admission it has not ceded under the Treaty of Utrecht to Britain and this raises the question that if Spain says that she does not recognise the courts of Gibraltar on reasons of sovereignty, what she is in effect saying is that she does not recognise those parts of the Treaty of Utrecht in which she cedes sovereignty of Gibraltar to the British Crown because it would not be consistent with her denying the recognition of the Gibraltar court in Main Street which is not in the disputed isthmus, even by her arguments, unless what she is saying is; "I do not recognise that I have ceded that territory under the Treaty of Utrecht". That is just one more reason why the Treaty of Utrecht is an invalid document because Spain cannot pick and choose which provisions of the Treaty of Utrecht and neither can the British Government pick and choose which provisions of the Treaty of Utrecht are going to be rammed down our throats now and which are not. If the Treaty of Utrecht is valid then it is valid for Spain as well and if it is valid for Spain as well she must recognise that she has ceded sovereignty of Gibraltar to the British Crown. Therefore it is not open to her to rely on article 7(15) as a justification for breaching her obligations under article 7 to afford the authorities in Gibraltar maximum mutual legal assistance in the prosecution and the contribution of evidence to this. It is just one more instance, Mr Speaker, where however important the fight against drugs is to certain Spanish politicians and, indeed, to the Spanish Government, it does not appear to be so important that they put it above peculiar political arguments in relation to the sovereignty of Gibraltar. I think the time has now come for Spain to stop making politics with these issues and demonstrate that her commitment to the fight against drugs is such that she will fully comply with article 7(1), recognise the Courts of Gibraltar and cooperate fully with Gibraltar's prosecuting authority, Her Majesty's Attorney-General, and on all



occasions and without restrictions send Spanish police or customs officers to Gibraltar to testify in our courts.

Mr Speaker, moving on now, if I could refer hon Members to clauses 40(1), 40(2) and 41(8) of the Bill, and I am homing in on the particular phrase "or offences under a corresponding law" which appears, for example, as the last five words in clause 40(1). And I ask at this stage Government Members whether they can clarify what the principle is behind the words "or offences under a corresponding law"? Does it mean a corresponding anti-drugs law or is it capable of being interpreted to mean a corresponding law relating to trafficking in relation to other matters other than drugs. Because if we have said in clause 40 "where the proceedings or investigations are in respect of offences of drug trafficking or offences under a corresponding law", what can the corresponding law in relation to drug trafficking be which is not a drug trafficking offence? And I make this point because, of course, as Government Members know the European Community Directive 91/308 is not limited to drugs. It also urges members to produce anti-money laundering legislation in relation to all "and more generally in relation to all criminal activity". I think that there are many good arguments that are available to us in Gibraltar as indeed they are available to and have been used by Luxembourg that has only legislated under the Directive in relation to drugs. On that and just for the record I would point out from the speech made by the legal advisor to the Luxembourg Bankers Association, the reference to which I made before, in which he makes it a point of underlining the fact that Luxembourg has legislated the Directive only, "the sole laundering of funds issuing from the traffic of drugs is currently affected". The speech is delivered in pitying English because obviously the man is a Luxembourger. But the point that he makes there and in other places in this speech is that Luxembourg has applied this directive only in relation to drugs because it is not mandatory in relation to the other offences and of course one would have to protect, and I know that this is a point that the law draftsman has in her mind as a potential problem, and it is vital that these provisions are not extended so

widely that they could be deemed to apply, for example, to all sorts of things that are perfectly legitimate finance centre business and which others might seek to call a criminal activity. There are many arguments against that. The Directive, for example, says that it has to be derived from criminal activity and that the origin of the funds must be illicit. Well, certain activities that happen in all finance centres may be illegal somewhere else but it does not result in the creation of funds, the origin of which is illicit, and therefore like Luxembourg has been, we have got to be on our guard that no one tries to use this Directive, which is intended in relation to drugs, and that is the reason why I have put on the record the Luxembourg practice, that no one should seek to put pressure on us, generally in relation to our finance centre beyond the question of drug trafficking if they seek to rely on this Directive. In my opinion the directive is fully complied with to the extent that it is mandatory by the provisions in the Bill dealing with drugs. It was in that context, Mr Speaker, that I was a little bit worried by the words "offences under a corresponding law" to make sure that they are intended to mean that it might be that some country does not have laws against drug trafficking. I cannot imagine what those corresponding laws could be - "in respect of offences of drug trafficking or offences under a corresponding law". What can they be if they are not drug trafficking offences and it was because of the concern that I have described and the fact that I cannot think of a conceivable situation in which those words could apply to drug trafficking that I was concerned to make sure that we did not unnecessarily put into our Ordinance anything which might lead anybody to believe that we are seeking to do anything beyond drug trafficking?

Mr Speaker, if I could refer the House to clause 57(9). This whole area of the Bill deals with drug trafficking and the requirement that there is a duty to disclose on the part of banks and other professionals and that is spontaneous disclosure to the police of information that comes to their attention. But I have a residual concern in principle and I say that there is good provision in this Bill taken from the Directive to exempt from that obligation to make spontaneous disclosure people who come by information



in privileged circumstances. So that, for example, if I am defending, as a lawyer, somebody charged with a drugs offence or with something else and he says to me something which causes me to be suspicious that he might be laundering the proceeds of drug trafficking, I cannot be expected to go rushing off to the Attorney-General or to the police and say, "My client who has entrusted me with his defence has told me this" and that is clearly recognised in the Directive and it is, in the main, I think adequately reflected in this Bill except this one area in clause 57(9). Clause 57 creates offences to bankers, lawyers, accountants and anybody else who offers financial services or offers advice. It creates an offence of failure to disclose knowledge or suspicion of money laundering. So that, for example, if one is in the dentist's chair and under the pain of the anaesthetic one says, "Oh my God, my bank account is full of money from the proceeds of money laundering" then the dentist is obliged to go and tell the authorities. But there is an exception in clause 57(9) which reads, "No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose". In other words, there is a general exemption from the offence of failure to disclose suspicion in favour of legal advisers who come by the information in privileged circumstances but this is a drawback from that exemption and it says that there will be no such exemption to the professional adviser if the information that reaches him is communicated or given to the professional adviser with a view to furthering any criminal purpose. I think that there is a need to make clarifications here because otherwise professionals and particularly lawyers in a finance centre such as Gibraltar or any finance centre not because it is like Gibraltar, could be put in an invidious position where there are circumstances in which it is by no means clear whether they have an obligation to disclose or not and certainly I cannot think of many professionals who will wish to rely on successfully defending themselves in a court against a criminal offence in circumstances such that I am about to describe. If somebody walks into my chambers and purports to instruct me or tries to instruct me on the formation of a company

or a trust or buying a property in Gibraltar or making an investment in Gibraltar and I form the suspicion, which is all that the law requires me of being, "There is something fishy here, I do not like the look of this man, I suspect that the company he wants to be formed to launder the proceeds of drug trafficking" or "The property is being purchased with the proceeds of drug trafficking". Of course I will decide that I am not willing and I have no doubt that the vast majority, if not all of my colleagues in the legal profession, would then say to that man, "I am sorry, I cannot help you". But must I then go running to the police and say, "I have just been visited by a client, who is not a client anymore because I have told him I will not act for him, but he came to me in a professional capacity trying to instruct me in a commercial transaction and I sent him away because I formed the suspicion that he was going to fund the investment upon which he sought my advice". A suspicion! We cannot have that degree of uncertainty. Mr Speaker, it is important hon Members pay careful attention to these words, the exemption in favour of the lawyer is lost..... *[Interruption]* The hon Member might be speculating that this is an easy way to incarcerate all the lawyers in Gibraltar but the point is more serious than that. The exemption is lost if the information is given to the lawyer with a view to furthering a criminal purpose and of course it may well be with a view to furthering a criminal purpose on the part of the would-be-client because it would be a criminal purpose for him to try and form a company in Gibraltar with a view to laundering the proceeds of drugs. And, indeed, it would be a criminal purpose for him to try and buy a property in Gibraltar with the proceeds of drugs. So if he comes to a lawyer in Gibraltar, the lawyer forms a suspicion, the lawyer is stripped of his immunity because of course if the lawyer suspects that it is drug money laundering then it is given to the lawyer with a view, on the part of the client not on the part of the lawyer of furthering a criminal purpose. Then the lawyer is in the invidious position of having to decide whether this duty of spontaneous disclosure has been triggered. If it is not disclosed he does not disclose at the peril of being prosecuted for a very serious criminal offence and one against which he will defend himself with some difficulty because, of

course, the whole basis upon which he sent the client away was because he was suspicious that it was money laundering. Therefore if he sent the client away because he was suspicious of money laundering he can hardly defend himself for the non-spontaneous disclosure on the basis that he did not suspect that it was money laundering. Therefore, Mr Speaker, I think it is very clear that the wording of the caveat on the exemption in clause 57(9) has got to be very, very clear to the effect that it inures to the benefit of lawyers in Gibraltar, not lawyers who act for drug money launderers suspecting that they are drug money launderers. Such lawyers are not entitled to any protection from the law but for lawyers who having made that suspicion then decide not to act and do not make spontaneous disclosure because at least for half an hour's duration of the conference during which the information is communicated and during which the lawyer forms this suspicion, he is a client and we cannot be stripped of that immunity without driving an enormous coach and horses through the protection that the Directive intends to give lawyers and without driving a severe coach and horses to the viability of our finance centre. Mr Speaker, I do not say necessarily that the clause has the deficiency that I say it has. I think it probably does but I stand to be corrected. What I am saying is that whether I am right or wrong, the wording is not sufficiently clear. It is not sufficiently unambiguous enough for that degree of comfort and I would ask and urge Government Members to give this matter a degree of consideration during the period between now and the Committee Stage.

Mr Speaker, clause 68 enables the Government to make regulations as a Government; in effect to extend the Drug Trafficking Offences Ordinance to other offences which have nothing to do with drugs. In other words, if the Government decide to take up the offer in the European Union Directive to extend this to other things, the Government can do that by regulation and I would invite the Government to afford themselves the protective mechanism from possible pressure to do that by requiring the extension of this regime to offences which are not drugs offences by requiring any such extension to

be required in this House and not by regulation. Because if it can be done by regulation they are going to be hard put perhaps to explain why they do not do it in particular circumstances or others. In any case I think that the matter is sufficiently important, the extension of this sort of regime to other offences, to warrant I think a debate on the principles in the House.

Mr Speaker, those are the comments that arise on the principles of the Bill which, of course, generally Opposition Members that I can speak for, that is to say, the official Opposition will vote in favour of.

HON CHIEF MINISTER:

I want to deal, Mr Speaker, with the political considerations in relation to the points the hon Member has been making specifically about the degree to which we are complying with our Community obligations in respect of Directive 91/308. It is clear that neither in respect of 91/308 nor in respect of the Vienna Convention are we years behind everybody else as has been reported in the UK press. This is simply not correct. I can tell the House that since February one of the areas of dispute between ourselves and the UK Government in respect of Directive 91/308 has been their requirement that we uniquely should do it on an all-crime basis whatever that may be. Our view which I am glad to see has been confirmed by the analysis of the Leader of the Opposition who knows more about this business than I do, is that if we were placed under that handicap nobody would dare make use of financial institutions. No lawyer would dare touch a client because he might be committing an offence if it is on an all-crime basis. How do we know how much in the whole of the European Union is covered by all-crime? How do we keep up with what is all-crime if it is a changing scenario? We therefore took the line that the UK Government could only require us to do what is mandatory and that they have a right to require us to do what was mandatory because if we did not do what was mandatory they would then be open to infraction proceedings. And the Community says, "Member States must legislate to prevent the

laundering of the proceeds of drug trafficking and may legislate to prevent the laundering of any other crime" and we have said that we are prepared to consider some other crimes, say, trafficking in the sale of arms, for example. There are some things that we would say, "If you have made your money by selling weapons then we do not want you to put your money here. You can put it in Luxembourg or you can put it in Jersey or you can put it in Guernsey but we do not want it here. If you have made your money by selling drugs we do not want it here but frankly if you have made your money by making false tax returns and we tell you we do not want it here" then let us say we do not want people who have not earned a 100 per cent honest living by doing eight hours work a day to have their money in Gibraltar and there are not many people with money of that category in the world, I regret to say. So we certainly would not need 28 banks to handle their cash. We have gone through these arguments many, many times. I am sorry to say we have not made an impact in terms of persuading the United Kingdom and really the arguments have been mainly with officials who in turn have to advise Ministers and when we have been with Ministers, well Ministers have simply been reading what the officials have prepared for them irrespective of any argument we put. It has been like talking to a blank wall so at the end of the day we decided that what we could not do was to have a situation where we had not implemented what was required because we were arguing with them because they wanted us to implement more than is required and more than other people have implemented and more than they themselves have implemented which seems to us to be a highly dangerous thing to do from the point of view of our competitiveness and because we have not got an agreement we are not implementing anything and because we are not implementing anything we are being accused. So let us implement what is required and then at least we cannot be accused of not implementing anything and we will still carry on the argument as to whether anything further should be added in the definition of the criminal activity which is a crime if one launders the proceeds of it. Therefore that is where clause 68(1)(b) comes in. Given the fact that post my September

meeting where according to the Spanish media my ears were pulled by the Foreign Secretary - we all know that that is untrue, people know what happens when somebody pulls my ears and it did not happen so it cannot be true - given the way that it was reflected in the UK press, in looking at whether we should extend it to anything other than what is mandatory under Community law and I have said we have not closed the door to that possibility and that is what that proviso is doing there. The hon Member must take into account that the implicit threat in the reports we have been reading put out by senior officials from the Foreign Office is that if we do not do it they will do it. And it appears that it is easier to do if it has to come to the House than if it does not in the context of the reserve powers.

HON P R CARUANA:

If the Chief Minister will give way. Mr Speaker, if the Chief Minister is saying that the Governor's reserve powers could be deployed to create primary legislation but not to create subsidiary legislation then I think that must legally be wrong but if he will bear with me just for one moment. To be asked to legislate this Ordinance on an all-crime basis is actually, in legalistic terms, nonsensical. The laws of Gibraltar, once we have legislated this, will not greatly differ in practice from the laws of the United Kingdom. We could argue about the proceeds of prostitution and the proceeds of trafficking in slaves and the proceeds of trafficking in arms and things of that kind and I do not know what the law of the United Kingdom says about all that. If that is what they want us to legislate against then *[HON CHIEF MINISTER: No, no.]* it might be all right but to the extent that the request to legislate on an all-crimes basis is intended to suggest that somehow the laws of Gibraltar currently permit some evil which the laws of the United Kingdom currently do not permit, that is a nonsense. The only other areas where the laws of the United Kingdom restrict or make it a criminal offence in effect to traffic in the proceeds of crime is theft and robbery and our laws equally make it illegal to traffic in the proceeds of theft and robbery, it is called handling stolen goods and there are other provisions in

the Ordinance. And if the phrase "on an all-crime basis" is in effect a euphemism for tax then I think we have got to remind those who are making this point that it has been the basis of British jurisprudence for 300 years or more, that the British courts will not cooperate with attempts by a foreign sovereign country to collect tax in British courts, in fact, it is not allowed. There is no civilised western country in Europe or anywhere else that will enforce the tax laws of another country. It is not open, for example, for the tax authorities of Pakistan - to quote just one completely irrelevant example - to sue in the courts of the United Kingdom to recover tax from anyone who might be evading them in the United Kingdom. Therefore I do not know what that phrase means but if it is a euphemism for tax then I do not accept that the laws of Gibraltar are any more liberal than the laws of the United Kingdom and certainly the Directive manifestly does not cover taxation because what the Directive says is, "Money laundering and whatever crimes you include, the definition of money laundering still applies" and the definition of money laundering in the Directive is "Money laundering means the following conduct when committed intentionally: the conversion or transfer of property knowing that such property is derived from criminal activity". Well, even on the assumption which is not the case, that people come to a finance centre to deposit the money that they have saved by not paying the taxes that they should, that money is not derived from a criminal activity. Money is only derived from a criminal activity when the money is the fruit of practising that activity. The fact that one saves money from not paying tax does not identify any particular sum of money as being the fruit of a criminal activity. And it goes on to say; "for the purposes of concealing or disguising the illicit origin of the property". Well, never mind international, if I fail to pay the amount of tax that I am due to pay in Gibraltar under the Income Tax Ordinance, certainly I have committed an offence but there is no sum of money that the Commissioner of Income Tax can point to in my bank account and say, "The origin of that money is illicit". The origin of that money is not illicit, the origin of that money is the practice of my legal profession. The fact that I do not pay the tax that I should in Gibraltar to the Commissioner of

Income Tax - were that the case which I am happy to say it is not - does not render any part of my money of illicit origin and therefore there is not even the semantics scope for including tax in the definition of "all-crime basis" and if that is his fear then I think that unanswerable arguments can be constructed to the effect that the Directive simply would not be applicable to it. Mr Speaker, I am sorry, this was a very generous intervention, it is on the basis of giving way and I am grateful to the Chief Minister.

HON CHIEF MINISTER:

Mr Speaker, I have not been told it is for the purpose of preventing people who are evading taxes or avoiding taxes or whatever it is elsewhere that they want us to do this on an all-crime basis. What I have said effectively is that I do not know what an all-crime basis means but it seems to be capable of meaning almost anything one wants it to mean and I do know, because I only need to read the newspapers to know it, that regularly in Spain our finance centre is accused of leeching the Spanish fiscal system by people avoiding taxes in Spain and laundering it in Gibraltar. That is constantly being said in Spain and therefore, to that extent, what I do not want is to come here and put something that Spain can then say, "Well now we have been told it is an offence on an all-crime basis, we now want to be able to do (a), (b), (c), (d), (e)". What I have said is we will do what is required of us because we believe the United Kingdom is capable of demanding that we should do that. We have not done it until now, not because we were not prepared to do it from day one but because they were not satisfied with that from day one. They wanted us to do much more and, frankly, even they themselves do not say in their law "on an all-crime basis". In their law they have got armaments dealing and terrorist activities and drug trafficking. We said, "We are prepared to do what is mandatory because, as far as we are concerned, you are entitled to be protected from the risk of infraction proceedings". Somebody can come along and say, "Why is Directive 91/308 not in place in Gibraltar?" It is not an argument to say, "It is not in place in Gibraltar because we are still arguing as to whether it



should be on an all-crime basis or as required under the Directive on the proceeds of drug trafficking." "So let us put it in on the proceeds of drug trafficking, that takes away the risk and if you want us to do it for something else you have got to convince us of it and we will provide a mechanism that can, if necessary, enable us to do it". In the context of the measures that we may or may not need to trigger if indeed the civil servant that goes round talking to the newspapers is predicting an event that is going to happen, then in that context we will examine the various mechanisms that may be capable of being used from what the Constitution says, Orders-in-Council, using the Privy Council machinery, the catch on phrase of the Constitution that says anything can be done for the good government of Gibraltar and examine what can be challenged and what cannot be challenged in all those mechanisms. And it was against that background that I was telling the hon Member that it would appear that having to bring it to the House is less under our control than the Government making regulations. So the position is that we are satisfied, certainly, that nobody is going to put Her Majesty's Government in the dock because Gibraltar has failed to comply with its responsibilities in the European Union with what we have got here. That protects them fully and therefore they have got no reason to complain of our conduct or of us not being good Europeans. Given the fact that all the hullabaloo was supposed to be about our reluctance to bring in measures against drug trafficking, we have brought in measures against drug trafficking. Certainly what is not a reflection of Directive 91/308 is a reflection on the Vienna Convention. The Vienna Convention is not a Community instrument and the Vienna Convention is something that the UK may or may not extend to its dependent territories and the other dependent territories do not seem to be under the same pressure from the UK Government to have it extended to them as we are but nevertheless because we are committed politically to the fight against drugs we are happy to go, although we feel we are entitled to say to the UK, "If you think that as the administering colonial power your colonies should have the Vienna Convention on the statute book why pick on us? Because if you pick on us and you do not require it of the

Caymans or BVI or Turks and Caicos then it is not unnatural that people should draw the conclusion that you are insistence that it should be done here is because you suspect that the incidence of trafficking and money laundering in Gibraltar is higher than in the Turks and Caicos" and this is not Spain, this is UK. It is not an unreasonable deduction for a third party to make. "If you are so relaxed about the Turks and Caicos not having to comply with the Vienna Convention and you are so worried about Gibraltar having to comply, is it that you believe that Gibraltar is, in fact, a case for treatment? Well you should not think that because....." As I mentioned in answer to the question the hon Member put to me on the mechanism, the headlines accusing us in February 1990 of drug trafficking and money laundering were virtually identical to the headlines in 1994 prior to the Hurd/Solana meeting, exactly the same thing in paper after newspaper appeared in the meeting between Senor Ordonez and Douglas Hurd. Following that meeting when the bilateral mechanism was put in place, they said to Gibraltar, apart from the meeting that I mentioned in July 1991 which was one where Mr Price from the National Drugs Investigation Service of the United Kingdom led the UK side which included the Commissioner of the Royal Gibraltar Police, the person concerned came to Gibraltar as well and did a thorough study of the way the professionals in the industry worked, and the way the banking system worked. This was in 1991, before they discovered in 1992 that it was important to change the composition of the Commission, before they came along with the requirements in 1993 and in 1994 that they had to have a majority. In 1991 the report produced for them, not for us, by their man following the accusation gave us a clean bill of health and said there was no evidence that there was any money laundering or drug trafficking organised from Gibraltar which would justify the accusation that we were the centre of it or that the incidence of it was such here to give any cause for alarm. Obviously nobody could rule out that some of it may be taking place anymore than it can be ruled out anywhere else. There is no way in this House or in any Government that one can say, "I have a system that is 100 per cent foolproof"; nobody has discovered that system. If somebody had discovered it we would



have eliminated the scourge from the planet because every Government claims to be totally in favour of doing it. All that we can say is it is not as if they had no source of information which then makes them worried because they have got a source of information. Let me tell the House that I did not even know this had happened. There is no reason why I should have known it happened, it happened in 1991 before the last election. It was not an issue as far as we were concerned, the matter was never raised with me, it is only that in the context of the proposed new mechanism I have said, "I want a report on what has happened before because you are asking us now to take a political decision and we want to know in coming to an objective judgement of the kind of decision you want us to take, we want to know what has taken place until now" and we have discovered that an awful lot has taken place until now and that all of it has tended to be favourable to us in terms of the results of the enquiries that have taken place by their own experts. Frankly, it is very difficult to understand why this has been allowed to build up to the degree that it was. Given that we think this is really nothing to do with drug trafficking at all or money laundering at all, that it has to do with relations with Spain and the policy of appeasement, we decided that we would not even give them, Mr Speaker, the benefit of being able to claim that it was the fact that Douglas Hurd and Senor Solana had agreed it between themselves and therefore imposed this on us that we were doing it and this is why what we did, although I have to tell the House that these two items, that is Directive 91/308 and the Vienna Convention are two of the items that on the list of 50. They were not at the top of the list. The British Government was not saying, "We want you to do the next 50 things and the first two on the list are these two". They were not saying that. We decided, as a Government, that given the situation that we could see developing and the way this was being manipulated publicly, we would give this priority whether they liked it or they did not like it over other things and therefore it was the Government that gave instructions to the people drafting the legislation to drop other things which the UK might want and do this instead so that we could put it in front of Douglas Hurd before he met Senor Solana and we wrote him a

letter which we made public to enable us to say, "You can say to Senor Solana we have been working on this for months and the Government of Gibraltar are doing it because they are committed to doing it and I am telling you that this is being done so that you do not come out saying because of the filters at the frontier the Government of Gibraltar have legislated to implement the Vienna Convention". We have never been against the Vienna Convention. It was raised with me in February 1994 and I said, "Yes, provided I am satisfied that what you are asking me to do is something that is reasonable that we should be doing in terms of protecting the abuse of our financial services industry by people who want to launder the proceeds of drug trafficking which we do not want happening in Gibraltar, I am happy to do it. The only thing I am not happy to do is that under the guise of that we create so many restrictions that even Snow White would not use the finance centre of Gibraltar. That I will not do because I have to give a political answer for that action in Gibraltar and I do not see why I should be taken to the cleaners because you tell me to do something which I do not think I should be doing and which I am not prepared to defend". And that has been the position. I am satisfied that, in fact, we have tried again so that we do not give them any room for justifying taking action which would imply removing the constitutional advances that we achieved 26 years ago. We have tried to keep as close to the text of the UK as possible so that it is as familiar to them as possible so as to give them a minimum excuse for saying we are not doing it properly and we are not doing it the way it ought to be done. As I have said, we will not be taking the Committee Stage and therefore I will ask people to go over the points highlighted by the Leader of the Opposition and if we feel we have missed something out we will put it right at the Committee Stage.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the mover to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, there were some six or seven points made by the Leader of the Opposition which are probably best dealt with in detail at Committee Stage. But if I may just very briefly deal with some of them. It is necessary to bear in mind that in relation to the possibility of extending the money laundering provisions to other crimes, that the definition of money laundering is taken almost verbatim from article 3(1)(b) of the Vienna Convention but with a more general reference to criminal activity. There is actually a definition of criminal activity in the Directive which says that it means a crime specified in article 3(1)(a) of the Vienna Convention and any other criminal activity designated as such for the purposes of this Directive by each member State. As the Opposition Member will no doubt well appreciate that concept or definition led to some difficulty with some of the earlier drafts of the Directive. For instance, at one stage there was included in the earlier drafts the definition which included terrorism and any other serious criminal offence including, in particular, organised crime whether or not connected with drugs as defined by the member States. But that was controversial, not surprisingly some member States saw that draft as intruding their own exclusive jurisdiction over criminal law and so the final text reads as it now is, "Criminal activity means a crime specified in article 3(1)(a), etc." As far as the provision in clause 57(1) is concerned and the imparting of information in privileged circumstances, looking at this provision, Mr Speaker, it is a provision which it would seem would be extremely difficult to prosecute. It is interesting to note though that towards the end of article 1 of the Directive, that there is a reference to knowledge, intent or purpose required as an element of the above mentioned activities, may be inferred from objective, factual circumstances but in any event so many lawyers trot down to the police station and advise their clients rightly or wrongly not to say anything in explanation about certain matters so it is hard to imagine that a lawyer that is confronted with a situation where he is asked to form a company or do whatever, is going to say or do anything that might give the authorities the basis to prosecute at all in any event.

HON P R CARUANA:

If the Attorney-General would give way. It would be implicit in the declination to act because of the suspicion, that is the objective fact or circumstance in which the prosecution would be based, not on anything that the lawyer says but on the very fact that because of the suspicion the lawyer decided to turn the client down. If one has that degree of suspicion that justifies one turning away the business then it must be a strong enough suspicion to trigger the spontaneous disclosure provisions of the Ordinance.

HON ATTORNEY-GENERAL:

It is hard to imagine though, Mr Speaker, how that information, the fact that that has happened will ever come to the attention of the authorities unless perhaps the dissatisfied or unhappy client decides to tell the authorities about it.

HON P R CARUANA:

Mr Speaker, the Attorney-General should work on the assumption that lawyers have an inherent desire to comply with their legal obligations imposed on them which does not depend on their chances of being caught.

HON ATTORNEY-GENERAL:

Mr Speaker, the Leader of the Opposition referred to the reference to corresponding laws, I think in section 40. Can I just draw his attention to the definition in section 3 in the Drugs (Misuse) Ordinance, that says, "In this Ordinance the expression "corresponding law" means a law stated in the certificate purporting to be issued by or on behalf of the government of a country outside Gibraltar to be a law providing for the control and regulation in that country of the production, supply, use, export and import of drugs and other substances in accordance with the

provisions of the Single Convention on Narcotic Drugs signed at New York on 30th March, 1961, or a law providing for the control and regulation in that country of the production, supply, use, export and import of dangerous or otherwise harmful drugs in pursuance of any treaty, convention or other agreement or arrangement to which the government of that country and Her Majesty's Government in the United Kingdom are for the time being parties." On the question of mutual legal assistance to which the Leader of the Opposition also adverted while there have been some requests recently for assistance, I am not aware - this is perhaps something that I should check - of there being a refusal as such. The situation has been where we have not had a reply but we have not had an answer saying, "I am terribly sorry" or "We are not going to give you this information". We have also had situations, at least one particular case some two and a half years ago - I do not know whether the Leader of the Opposition is aware of this - where some eight to 10 Spanish Government officials came across to Gibraltar to give evidence at the committal stage of proceedings here. There are also - I do not propose to name names or to go into any details - a number of cases pending that I am aware of where Spanish Government officers have given statements in the form required by the Criminal Procedure Ordinance which it is hoped will be used in evidence in Gibraltar and where on a police-to-police basis, I am told, that the Spanish officers concerned have said that they will come across and give evidence if required. In terms of practicalities that the Leader of the Opposition referred to, I will publicly seek an appointment with the Chief Minister to speak about the staffing levels in the Attorney-General's Chambers. And to deal with the final and first point raised by the Leader of the Opposition as far as the mechanisms and procedures to deal with drug trafficking and money laundering are concerned, as far as the Government are concerned, they are certainly as good, if not better, than those existing in the United Kingdom and elsewhere in Europe.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

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

THE TRADE LICENSING (AMENDMENT) ORDINANCE 1995

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that a Bill for an Ordinance to amend the Trade Licensing Ordinance and thereby to reflect in the national law of Gibraltar obligations under the law of the European Union having as their object protection of the right of establishment and the right to provide services be read a first time.

Question put. Agreed to.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. As the preamble to the Bill indicates, Mr Speaker, the primary dimension in this piece of legislation is the need to amend our existing law in order to make it EC friendly, to coin a phrase. As it stands the Trade Licensing Ordinance and many of the provisions therein can be held to be discriminatory against, technically, persons from another member State wishing to carry on a business or trade in Gibraltar. We have known this on an informal basis for some time and while we have not yet been shown the yellow card, it has been suggested that infraction proceedings might be contemplated against the United Kingdom. Hence the House will note that there are liberalising amendments, if I may use that phrase, in the Bill beginning with the new definitions of "business" and "cross-frontier business" included for obvious reasons which is to put persons from

another member State in the position of equality to the position of Gibraltar nationals setting up business or running a business. As you will know, Mr Speaker, and I think the House will know by now, we have given further consideration to this question of definition and I have therefore given notice of our intention to move, at the Committee Stage, a further amendment to improve the definition in section 2 of the principal Ordinance and the House has notice of that. The House will also note that some of the existing sections of the Trade Licensing Ordinance will be repealed or omitted, those dealing with the exemption from the provisions of this Ordinance hitherto enjoyed by certain trades or activities enumerated under section 3(4), (5) and (6) in the main Ordinance. There are also changes to the schedule, in effect removing the list of specified businesses which is there at present and substituting for this a list of those services where the provisions of the appropriate Banking or Insurance Ordinance and so on. Modern legislation are such that these businesses services can be exempted from the need to apply for a trade licence. I should however emphasise that there is no change in the existing requirement for retail businesses, shops - if I may use the vulgar term - to apply for a trade licence. That standard provision will still stand. The appearance of the legislation as a result of this may seem rather higgledy-piggledy, Mr Speaker, but I am assured by the Government's elegant legal draftsman that it will work. There are one or two minor amendments also included in the Bill. The use of the word "prescribed" rather than "appropriate" which I think is central to the substitution of the Gallic tradition of law for that of the Anglo-Saxon. And also the substitution of the word "Government" for "Governor" which is, unfortunately, anathema to the Leader of the Opposition but notwithstanding that, Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON F VASQUEZ:

Mr Speaker, the Opposition will not in fact be supporting this Bill for reasons really that have more to do with the drafting than with the stated objective of the Bill which we are told is primarily of the need to amend our existing law in order to make it EC friendly. The Financial and Development Secretary has said that the Ordinance is rather higgledy-piggledy, I think really that that is a bit of an understatement. We feel in the Opposition that the Ordinance, in fact, is drafted very scrappily and that the effect is to confuse and to a great extent maybe diffuse the entire object of the Ordinance as stated by the Financial and Development Secretary. We have difficulty in understanding the need for at least 75 per cent of this Bill given that the stated object of the Bill is simply to make the Trade Licensing Ordinance EC friendly. We appreciate, obviously, that the Trade Licensing Ordinance sails close to the wind, as it were, on matters of EC law as being protectionistic, as impeding the free movement of services between member States of the European Community, and as interfering with the Community national's right to establish himself in any Community country. Certainly we support and we can understand, from the Opposition, the necessity for the inclusion of this new entity, the cross-frontier business and why it is necessary to facilitate the establishment in Gibraltar of these types of businesses to ensure that a business established in one member State can establish itself in Gibraltar without difficulty. But the Ordinance goes some way beyond this, Mr Speaker. Whereas under the section 4A the Trade Licensing Authority is given really little discretion on the registration of a cross-frontier business, so that a business established in a member State can come to Gibraltar and as long as it satisfies the trade licensing authority that it has paid the prescribed fee, that it is properly established in another member State and that it has made its application on the prescribed form, then it is entitled to be registered and simply registered is not a licensing mechanism, it is simply a registration of a cross-border business. The Ordinance goes a lot further than that in relation to the licensing of Gibraltarians and Gibraltarian entities. Certainly it seems that

the Ordinance creates more impediments and chiefly the impediments that we in the Opposition take objection to, Mr Speaker, are the following. To begin with, I am surprised that the Financial and Development Secretary should have described the various provisions of this Bill as liberalising amendments. The first of the three points is that by extending the ambit of the definition of "business" this Ordinance extends largely and in a very drastic way the number of businesses that need to apply for a trade licence under the Ordinance at all. As the Financial and Development Secretary will be aware, under the regime that exists at present, there are a number of specified businesses that need to apply for a trade licence and these are specified in schedule 2 of the Ordinance and they are the businesses of building contracting, carpentry, catering, decorating, electrical contracting, hairdressing, joinery, manufacturing, painting, plumbing and woodwork. These are the only businesses that need to apply for a licence by law in Gibraltar at present. By defining the scope of the definition of business to say, "'business" means a business carried on in Gibraltar other than a cross-frontier business or a business regulated under an Ordinance specified in Part I of Schedule 2". It encompasses every single type of business imaginable in Gibraltar. The only exempted businesses under the regime established by the new Bill are those businesses already supervised, as it were, by a number of Ordinances, namely, the Banking Ordinance, the Insurance Companies Ordinance, the Dock Work (Regulation) Ordinance, the Ship Agents (Registration) Ordinance and the Petroleum Ordinance. Any business not covered by those Ordinances now need to apply for the grant of a trade licence at the discretion of the Trade Licensing Authority. That would include, for example, businesses trading perfectly legally today, road transport contractors, welding, lawyers, dentists, bureaux de change, accountants, company managers.... I will certainly give way if my interpretation is wrong but certainly none of these activities..

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Not bureaux de change, I would like to say that. Sometimes I wish they were.

HON F VASQUEZ:

No, I am afraid, again, the Financial and Development Secretary is wrong on this because there is another amendment. Under clause 2(b) of the Bill, sub-section (3)(da) is omitted from the Ordinance. That was the section that actually omitted bureau de change from the ambit of the Ordinance. Now that has been excluded, a bureau de change will have to apply for a trading licence as well as any number of businesses that are established and are trading legally at the moment. We simply cannot see, from the Opposition, why it is necessary, in order to make the Trade Licensing Ordinance comply with EC law, to include every business in Gibraltar that presently is trading without need to apply for a trade licence, to bring all those businesses into the ambit of the Trade Licensing Ordinance. Far from being liberalising amendments, these are amendments that will drastically increase the number of businesses that will have, by law, to apply for trade licences. It will obviously impose a further impediment to the creation of new businesses in Gibraltar. There is, Mr Speaker, another point which constitutes the second main objection from the Opposition to the amendments proposed in this Bill and that is that there are no interim provisions. As soon as this Bill becomes law, any number of businesses that at present do not need to apply for a trade licence will automatically be trading illegally. Clearly, Mr Speaker, some form of interim regime is going to have to be established to allow businesses that at present are trading legally because they do not need to apply for a trade licence, to give them some scope for applying for a trade licence although we consider this is entirely unnecessary and we simply cannot understand the necessity for imposing this obligation to apply for a trade licence but at least they have to be given the opportunity of applying for a trade licence. It seems to us in the Opposition, Mr Speaker, that the



only logic behind these amendments to the Trade Licensing Ordinance are purely to provide another revenue raising measure for the Government of Gibraltar. *[Interruption]* Government Members are shaking their heads but we see from various amendments that it is intended to create a special fund into which licensing fees are going to get paid. This obviously is another new provision, this is something which is not provided in the present regime and gives us, we suspect from the Opposition side, that in fact this is nothing more than a disguised revenue raising measure. We certainly can see no need for imposing on any number of businesses that at present are perfectly well established in Gibraltar and do not need to apply for a trade licence, suddenly the obligation to need to apply for a trade licence. It is anything but a liberalising amendment, Mr Speaker, it is exactly the opposite. It is an onerous amendment to the Ordinance that widens significantly the scope and ambit of the Trade Licensing Ordinance. And there is a third factor in the proposed amendments which have the opposite effect of liberalising the existing regime and that is that the proposed amendments will make it more difficult to transfer an existing trade licence. Transfers of trade licences are at present covered by section 8 of the principal Ordinance, Mr Speaker. The regime as existing at present only gives the Trade Licensing Authority, under section 16 a limited jurisdiction to object to the transfer of an existing trade licence. Under the amendment to section 8, under clause 6 of the present Bill, the Trade Licensing Authority will have greater authority to prevent the transfer of an existing trade licence by making all the provisions relating to the application for a licence apply to an application to transfer an existing trade licence. Again, Mr Speaker, hardly a liberalising amendment but actually at the imposition of an onerous obligation on licence holders at present. For these reasons, Mr Speaker, the Opposition will not be supporting this Bill and specifically there are six points in the Bill, as drafted, which we take objection. Firstly, the re-definition of the word "business" in the Ordinance. We cannot see why it is necessary to extend the ambit of the Ordinance to businesses that are caught by the Trade Licensing Ordinance and regime at present. Certainly if it

is intended, as it were, overnight to require hundreds of businesses in Gibraltar to suddenly apply for a trade licence, clearly one needs to provide an interim regime. The second point, we object to the inclusion of the bureaux de change and that is a different point, Mr Speaker, because that is not caught by the change of the definition of "business" it is caught by clause 2 which omits section 2(3)(da) of the Ordinance. So specifically bureaux de change are brought into the ambit of the Ordinance for reasons that we do not understand and to which we object, Mr Speaker. Thirdly, clauses 3 and 12 impose on the Trade Licensing Authority the obligation, as it were, to police existing statutory provisions in relation to businesses that are already licensed. We feel, in the Opposition, that the Trade Licensing Authority is hard pressed enough as it is, merely dealing with ordinary applications for licences. We feel simply that what are essentially part-time individuals who are brought in at a moments notice to serve on the Trade Licensing Authority, simply are not equipped to be used by Government as an agency to ensure that various types of businesses, irrespective of which various statutory provisions apply are effectively complying with that statutory obligation and specifically, Mr Speaker, I am referring to the proposed section 17(1A) which says, "The licensing authority shall refuse to issue a licence to any person who has not satisfied the authority that he has complied with the statutory requirements in respect of the commencement of the business and now complies with the statutory requirements in respect of the operation of the business". In other words, the Trade Licensing Authority is expected really in circumstances where all that is being done is an application for a trade licence so as if it were to police various other statutory enactments that apply to the way that various businesses carry on their activities. We simply, from the Opposition, fail to see how the Trade Licensing Authority, as presently constituted, is going to be equipped to deal with this new function, as it were, of policing a number of businesses which are covered by existing Ordinances. The fourth point is clause 5 of the Bill. We take exception to the notion that trade licensing fees are going to get paid into a special fund. Obviously

we have our own difficulty with this, as it were, political philosophy of the Government. We think that all Government revenue ought to go into the Consolidated Fund and we fail to see for what reason a special fund should now be created to deal with the income to Government of licensing fees. Clause 6, Mr Speaker, we are also taking objection to because, as I have already indicated, it makes it more difficult for a licence holder to transfer his licence. Again, given the fact, Mr Speaker, that the Financial and Development Secretary has said this evening that he considers that this is a liberalising amendment to the Ordinance, we fail to see why the Government should go out of its way to make it more difficult for an existing licence holder to transfer his licence.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

If the hon Member would give way. On that particular point I hope I did, and if I did not I would now like to correct what I apparently gave the impression of having said to the hon Gentleman, when I used the phrase "liberalising" I meant liberalising in the context of the establishment of cross-frontier, the inclusion of cross-frontier businesses. That was the use, that was my intention at any rate, to use, I think I used the phrase "liberalising measures". This is what I meant not the other provisions of the Bill because I did go on in my remarks to describe the other features of the Bill without actually saying whether they were liberalising or not. Perhaps he was giving me the credit for that.

HON F VASQUEZ:

I accept that, yes, I certainly could not see how this Bill could under any circumstances be described as liberalising the existing trade licensing regime, it does anything but that. The final objection which we in the Opposition, Mr Speaker, take to this Bill relates to the question of the imposition of fines on the standard scale. Again Government Members will be familiar with that, we simply note our objection to that for reasons that have been stated on innumerable occasions in the past. Those then, Mr

Speaker, are generally our reasons for objecting to this Bill. We intend to abstain. We certainly will be objecting and voting against various specific clauses in the Bill; we intend to abstain on the Bill itself. We accept, Mr Speaker, that obviously Government have the difficulty with their obligations under European Community law in relation to the Trade Licensing Ordinance. We have always known in the Opposition that this is a piece of legislation which sails very close to the wind in terms of Community legislation. Clearly something needs to be done but we simply do not understand that actually in terms of the establishment of the cross-frontier entity can be done very easily. Why the other 75 per cent of this Bill is finding its way into our statute book, we simply do not understand. If I can just make a point, Mr Speaker. I fully want to make it clear that we in the Opposition understand that by the amendments to section 16, in fact, because businesses are being taken out of the ambit of section 16(g) of the Ordinance, it is actually easier for a business to obtain a licence. It actually limits the discretion which the authority has to refuse a licence but that does not detract from the point that I am making generally that there are any number of business activities which at present do not need to be licensed at all which are going to be drawn into the ambit of this Ordinance. It will be relatively straightforward to obtain a licence but nevertheless the fact is that there are many hundreds of businesses in Gibraltar that at present do not need a licence at all, that are going to have to apply for a trade licence under the Ordinance, as amended. I will close, with my closing remark which I will address to the Financial and Development Secretary as regards the schedule. Part I of the schedule which sets out those businesses which are not covered by the Ordinance by reason of the fact that they are regulated by other Ordinances and I will close my address with a plea that that schedule be extended to include the Financial Services Ordinance, the Bureaux de Change Ordinance and the Medical and Health Ordinance under which medical practitioners have to register. Because if we do not do that then all lawyers, accountants, all bureaux de change, all dentists, all doctors practising in Gibraltar, are going to have to register as businesses in Gibraltar,

something which we consider in the Opposition is totally iniquitous; these are professional activities which already are regulated by their professional bodies and it seems implausible that a lawyer, doctor or an accountant should have to go along to the Trade Licensing Authority for permission to practice his chosen profession in Gibraltar. For all those reasons, Mr Speaker, it is the intention of the Opposition not to support this Bill.

HON CHIEF MINISTER:

Mr Speaker, as I have indicated to Opposition Members this is a Bill that we propose to complete and not leave for the adjournment and clearly there are quite a number of differences of philosophy between us on this, that it is not a question of changing the odd fullstop and comma here. Let me tell the Opposition Member that certainly when we have had in the old schedule non-licensed activities included they have subsequently had to be removed because the ruling that was taken was that we could not licence activities post-1973 which were not licensed pre-1973. With the approach of reducing the basis upon which a licence is refused and with the approach that we have adopted, we are able to include more activities than were in the schedule already which means, of course, also including welding and transport contracting which the hon Member mentioned which I can tell him were included when I was in the Opposition as a result of me making representations to the then Government to have them included and which were subsequently taken out because somebody ruled that it could not be done and in taking advantage of the challenge to the existing legislation where the risk, if we had done nothing at all, was that the whole thing might have collapsed. It is not protectionist because we are not allowed to be protectionist in the European Union, so we looked at how we could be liberal whilst at the same time maintaining standards and that is what the Bill is doing. It is complying with the spirit of the European Union the same as everybody else in the European Union does which is that when the French wanted to make sure that they were properly recording the import of

camcorders into France since they were not allowed under Community law to place limitations on the numbers coming in but they were allowed to designate the point of entry, they designated one guy in one port in Marseilles who was the man who had to look at every camcorder. Obviously the number of camcorders he could look at in an eight-hour shift was limited and they got away with it. Therefore what I can tell the Opposition Member is that this is Community proof, we had to do something about trans-frontier activities because trans-frontier activities were not mentioned at all previously, they did not require to register or do anything. We had situations where local businesses were saying they were exposed to people competing with them without any requirements, without having to pay insurance, without having to have contracts of employment, unfair competition..... There is nothing that can be done about it. We had, on the other side, a situation where we could not do anything which was a restriction on the right of establishment or a restriction on the right to provide cross-frontier services. Therefore we believe we have managed to find the correct balance between meeting our responsibilities in the European Union to liberalise our market to competition from the outside but in order to be able to do that effectively and not be challenged we are requiring people to go through certain registration and licensing procedures which are intended not to be onerous but to make sure that because everybody has got to go through the same filter we know who is entering into the economy and who is doing what. Therefore it is a political decision that the opportunity has been taken to put on the statute book the changes that protect us against pre-169 action which we need. That is we need to respond with this to prevent the pre-169 inquiry developing into action by going back via the UK to the Commission and showing them what we have done to meet our Community obligations. We are confident that we would be able to satisfy them that our Trade Licensing Ordinance, as amended, is not a barrier to trade and at the same time we are taking the opportunity to do certain things which we think need to be done for which we accept full political responsibility.

HON P R CARUANA:

Mr Speaker, all of which could have been explained at the time that the Bill was presented instead of being told that this was in order to protect ourselves of only being told that it was in order to protect ourselves from the European Union proceedings. The Chief Minister has not addressed this point in his reply. It is not a question of taking political responsibility. Of course he takes political responsibility for every aspect of this Bill whether it is mandatory on him or not or whether it is necessary or not to take but it is clear, is it not, if the Chief Minister will turn to schedule 2 of the Bill, that what he intends to do by clause 2 of the Bill is to list there activities which are already regulated by other means so that he does not need to rely on the Trade Licensing Ordinance to check who is coming in, to use his own words? Why does he exempt banks? Well, is it not obvious because under the Banking Ordinance that is already monitored and controlled and regulated. Similarly insurance companies, similarly dock workers. Why does he exempt ship agents? Well, because under the Ship Agents (Registration) Ordinance they are already exempt. The Petroleum Ordinance the same. There are others. all we are saying is that that list is incomplete. There are lawyers, for example, who are regulated under the Supreme Court Ordinance. There are doctors. Is the Chief Minister saying that he thinks that lawyers in Gibraltar will now be required to apply to the Trade Licensing Authority and constitute, as it currently is or however it might be constituted in the future, for a licence to practice law.... *[Interruption]* Can he please be quiet? The hon Member may not understand the points but they are serious points. That that is the case because I can tell the Government Member that this lawyer will not do so and will see him in court. *[Interruption]* And that other lawyers in Gibraltar will not do so and will see him in court. Are the Government saying that they have made the political decision to require doctors, lawyers and chartered accountants who are also regulated by law already, to do this or not. Do they consider trust managers? Why exclude insurance companies and not trust companies or company

managers? Or are they saying that that comes under the definition of "business"?

HON CHIEF MINISTER:

Will the hon Member give way because I would love to give him an answer?

HON P R CARUANA:

Of course I will.

HON CHIEF MINISTER:

No, Mr Speaker, I think we will consider the possibility of adding other groups to the list that do not require a licence. But, of course, if I am being invited to have the possibility of seeing him in court and maybe even in Moorish Castle, I cannot resist that temptation, so that is one particular category that will not be accepted.

HON P R CARUANA:

It is unlikely that even in Gibraltar where the Hon Mr Bossano makes the laws that any judge is likely to incarcerate me for not obtaining a piece of paper from one of his stooge quango bodies like the Trade Licensing Committee. But of course the possibility always remains that in the future he might create laws to that effect so I certainly take his threat seriously, rather like the threats on direct rule. But, Mr Speaker, the reason why I make this point is because the Chief Minister simply failed to address that particular point in his own reply and led me to believe that that specifically was the policy decision that had been taken. In other words, he led me to believe that he knew that they were businesses that were separately regulated by legislation, that he was conscious of the fact that the list was incomplete and the ones that had been left out, had been left out consciously as a matter of political decision and I think it is implicit in his last

remarks, separated from the element of joviality in it, that he recognises that that list is incomplete. If he recognises that, will he complete the list at the Committee Stage? I will give way.

HON CHIEF MINISTER:

No, we are able to add to the schedule without having to do it by primary legislation. We are able to add other Ordinances to that schedule which will have that effect.

HON P R CARUANA:

Will he do that before the commencement date?

HON CHIEF MINISTER:

No, what I am saying to the Opposition Member is we have taken note of the things that he has said and we will certainly look at the list.

HON P R CARUANA:

As I say, all we can do is express our views. The purposes of the legislative process is to perfect the legislation and certainly he has got plenty of time in which to consider this matter and I think that as a matter of principle.... and what about the transition provisions? Or is he not proposing to deal with those?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

If the hon Gentleman will give way. I was going to answer that particular point which was raised by his hon Colleague while he was out doing something else.

HON P R CARUANA:

But listening attentively through the intercom system. Mr Speaker, I really do not think that it is reasonable for the Chief Minister to expect to rush legislation which he concedes is incomplete through this House in one day if he recognises that it is incomplete. The effect of legislating this Bill and should His Excellency the Governor appoint a day for its commencement prior to the date of the amendment of any additions to this schedule, the effect of that will be serious and I think that that is not an adequate way in which to legislate. Frankly, if this Bill contains provisions the Chief Minister does not intend, then I think it is incumbent upon him to perfect the legislation and not regard the power to make subsidiary legislation as a means of correcting sloppily drafted primary legislation.

HON CHIEF MINISTER:

Mr Speaker, what with sloppily drafted primary legislation and quangos doing all sorts of peculiar things, I do not think it really matters. The more he lets his hair down in using extraneous arguments to persuade me the less success he has. The position is we have taken note of the arguments that he has put but as far as we are concerned we are taking the legislation through. We need to have it through and we are proceeding with it. The hon Member can say he will vote against it being taken tonight and then either we will carry on until one minute past midnight in which case it will be tomorrow or we will come back tomorrow morning.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the mover to reply.



HON FINANCIAL AND DEVELOPMENT SECRETARY:

Obviously I am not going to say very much because I think the Chief Minister has answered the necessary points and has answered the political points and I think in answer to a number of the points raised specifically by the Hon Mr Vasquez, he has said, "Well this is our decision" and this is clearly.....

HON P R CARUANA:

Mr Speaker, if the Financial and Development Secretary will give way. The Bill is sponsored and therefore carries the recommendation of the hon Member.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Well, in fact a lot of difference that makes! I am not going to give way again until I sit down. Just to continue, the Chief Minister has said that the Government will consider, at a subsequent stage, an extension of the list of exempted businesses and services in the schedule and that, I hope, will be some comfort, if not total comfort, to members of the Opposition. The other point, and I am glad that I can say two things actually to the Hon Mr Vasquez. First of all, to apologise, he is quite right, bureaux de change are covered, in fact, by the provisions of the amending Ordinance, much to my surprise. The other more genuine word of comfort is that section 1 of the Bill does actually provide amongst the usual requirements for the Governor to bring into effect various bits of the Bill at appointed days. Also it provides for such transitional and supplementary provisions as the Governor may determine necessary for the purpose of bringing the Ordinance into effect and I would hope that such regulations or provisions as are made will cover the transitional point. I commend the Bill to the House, Mr Speaker.

Question put. The following hon Members voted in favour:

The Hon J L Baldachino  
The Hon J Bossano  
The Hon M A Feetham  
The Hon R Mor  
The Hon J L Moss  
The Hon J C Perez  
The Hon J E Pilcher  
The Hon P Dean  
The Hon B Traynor

The following hon Members abstained:

The Hon Lt-Col E M Britto  
The Hon P R Caruana  
The Hon H Corby  
The Hon P Cumming  
The Hon M Ramagge  
The Hon F Vasquez

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put.

HON P R CARUANA:

Mr Speaker, I have nothing to do between now and midnight but I am not as certain now as I was five minutes ago that the same applies to the Chief Minister. But I will not subject him to any personal inconvenience, I will reluctantly, because it would be churlish not to do so, agree to take the Committee Stage today.

Agreed to.

## THE BANK OF CREDIT AND COMMERCE GIBRALTAR LIMITED (INSOLVENCY) ORDINANCE 1995

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that a Bill for an Ordinance to make provision for the application to creditors of the Bank of Credit and Commerce Gibraltar Limited of the law of England and Wales in respect of insolvency be read a first time.

Question put. Agreed to.

## SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. The House will be surprised to know that I do actually have some knowledge of the background of this particular Ordinance which was.... *[Interruption]* That was meant to be a rhetorical statement rather than one which invites a reply. It was, in fact, considered by the advisory committee on financial services legislation on which the varied professions are represented, and a draft Bill in a slightly different form from the one which is before the House today was evolved as a result of discussions in this committee. I think hon Members on both sides of the House, certainly hon and learned members in the Opposition, will be familiar with the general provisions and, indeed, the detail of the Bill and I hope there is therefore no need for me to go into great detail in my second reading speech. It is, as it says, to put the unfortunate Gibraltar depositors who had interest bearing accounts with the Bank of Credit and Commerce in the same position as similar depositors in the United Kingdom. The House will be aware of the present restriction in the Bankruptcy Ordinance to interest of five per cent and also the fact that the

amount of the debt owed will be calculated in accordance with our Ordinance to a later date than in the United Kingdom, which is the difference between the date of the petition and the winding up order which is critical here. There is also, I believe, in section 64 of our Bankruptcy Ordinance, although I fail to convince myself of this each time I read it, a further provision which horrified the liquidators and they insist that there is this provision, that they have to go back three years in order to calculate the debt and therefore the amount of interest which a depositor will be entitled in these circumstances. There is certainly a reference in section 64, just to let Opposition Members know that I have read it, to this three year retrospection, but as I say, each time I read it I fail to convince myself that I understand it fully. I notice that in an exchange between lawyers on this, it was referred to as an alleged *[Interruption]* so perhaps the doubt is one which exists in other minds and in my own. But with those brief comments, Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON F VASQUEZ:

Mr Speaker, obviously we in the Opposition are as anxious as anybody to help out the Gibraltar creditors of the Bank of Credit and Commerce and naturally we will be supporting the Bill inasmuch as it achieves that. But we do so with a certain reluctance to the extent that we consider that this is an opportunity missed because clearly, in a relatively technical way, our insolvency law is deficient in the two ways principally that the Financial and Development Secretary has pointed out. Firstly, that creditors of companies are limited in the amount of interest that they are allowed to claim against the insolvent company. Secondly, that really it is a quirk of the legislation which has been corrected in England as has indeed the limit on the interest recoverable, a creditor is only allowed to claim for a debt up until

the moment the presentation of the winding-up petition as opposed to the making of the winding-up order and there might be as much as 12 months between one and the other. That is a 12 months period over which a creditor is deprived of interest to which logically and legally he ought to be entitled to. These are matters which the legislation in the UK under the Insolvency Act 1986 have corrected and which really this particular case present the local Government with the perfect opportunity to correct on a proper basis. This is obviously a very ad hoc piece of legislation. It addresses the problem in respect of the Bank of Credit and Commerce Gibraltar Ltd creditors who obviously have to apply to the BCCI liquidator because all the funds from the Gibraltar bank went to BCCI in London and it is he who is distributing the fund. Nevertheless, we find the situation here where the Government of Gibraltar is addressing its mind to the problem. It is now the professionals in the field, both the liquidators and I know representations were made from the Bar Council to Government pointing out that these deficiencies existed. We have actually set out in the Bill as drafted the various sections of the various Ordinances that require looking at and as I understand it, the Bar Council went as far as drafting proposed legislation which would have had the effect of knocking this problem on the head once and for all. Certainly we in the Opposition, obviously support the Bill because we need to, because obviously the creditors of BCCG need to be helped and it would be a complete nightmare for the liquidator to have to recalculate all the amounts and all the interest owed in respect of each creditor in Gibraltar. It would be a monumental task and one that would be totally unreasonable to expect them to carry out. But nevertheless, the fact is that the opportunity has been missed to amend these laws once and for all. We support the Bill in the hope and the expectation that the relevant amendments will presently be made to the Bankruptcy Ordinance, the Bankruptcy Rules in the Companies Ordinance and the Winding up Rules which will effectively knock this problem on the head and up-date our laws to leave them on all fours with the law as it stands in Great Britain in these insolvency matters.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Well, I have a great deal of sympathy with the hon Gentleman, Mr Speaker, but as I said, when we discussed this particular Bill in our advisory committee, it was thought that we were making a general change in the law but subsequently on specialist legal advice it was decided to confine it at this particular juncture, to the circumstances of BCCG because that was where the urgency was and really there is nothing more to that that I can say.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

THE SUPPLEMENTARY APPROPRIATION (1994/95)  
ORDINANCE 1995

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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 1995 be read a first time.

Question put. Agreed to.

## SECOND READING

### HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. I think I know slightly more about this subject even than I do on the previous one or two. As this is an Supplementary Appropriation Ordinance it brings back happy memories of the days when we used to have these. As the House will be aware, what I would regard as a very imaginative change to the usual routine was introduced by this Government while I was not here in Gibraltar although even if I had been here in Gibraltar as Financial and Development Secretary I would certainly have wholeheartedly supported the notion whereby in the annual Appropriation Bill, at the time of the presentation of Estimates, a special Head for reallocations etc is included, this is Head 18 and the two sub-heads there covering the pay supplementary sub-head and the supplementary funding sub-head can be used to meet additional expenditure either for the pay settlement or as required during the year to meet additional spending which has not been foreseen at the time of the Estimates. That normally obviates the need for a Supplementary Appropriation Bill, as is of course the purpose of having these sub-heads in Head 18. On this particular occasion it is thought that the existing provision which taking £1 million pay supplementary funding, £1 million is £2 million compared with £3.5 million in 1993/94 may not be enough and that is really all I need to say on the general principles of the Bill, Mr Speaker. I am merely saying that it may not be enough. At this time of year the departments are producing their first drafts, if I may use that expression, of next year's Estimates. They are submitting these for scrutiny by the Government and also they are producing - and I use the word with continuous process - their Estimates for the forecast outturn. So we cannot be sure, at this stage, whether the full amount, the £0.5 million which we are now seeking supplementary appropriation for will, in fact, be required. So it is a safety first measure and no more. I commend the Bill to the House.

### MR SPEAKER:

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

### HON P R CARUANA:

Mr Speaker, I detected an inclination on the part of the Financial and Development Secretary to disassociate himself from the creation of what he has described as the imaginative mechanism for supplementary funding given that he went out of his way to explain, which was quite unnecessary, that it was not done during his term of office. *[Interruption]* Does he want to correct that?

### HON FINANCIAL AND DEVELOPMENT SECRETARY:

No, no, but simply I hope the hon Gentleman will give me credit for saying that I would have approved if I had been here.

### HON P R CARUANA:

I was going to add that it must therefore have been done during the reign, in his immortal words, of the fool or charlatan who succeeded him, but still it does not matter since he would have approved of it anyway then the point is academic. Mr Speaker, the point is this, obviously when we approve the Estimates for the current year we did have a provision of £1 million under the heading "Supplementary Funding" on a serious note and when we approved, on the Opposition, that £1 million supplementary funding we did not know then what it was for and that theoretically this Appropriation Bill falls into the same category. We are just adding another £0.5 million to the £1 million that we did not know about before. The Financial and Development Secretary has said, and he may be interested in hearing this I do not know, that in respect of 1993/94 the supplementary funding was £3.5 million.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

No, Mr Speaker, what I said was that the supplementary funding plus the pay settlement provision came to £3.5 million. The figures are £2 million for pay and £1.5 million for supplementary.

HON P R CARUANA:

Yes, that of course is true of the approved estimate for 1993/94. In actual fact the forecast outturn for 1993/94 which by now must be more than the forecast, it must actually be a calculated outturn was nil for both figures.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Will he allow me to explain that?

HON P R CARUANA:

I am looking here at the information that was before the House at the time of the Estimates. Forecast outturn 1993/94, pay settlement - nil; supplementary funding - nil. Mr Speaker, whilst I think there is in the whole budget that we approved at the last budget session in the context of the whole budget of expenditure of the Government of Gibraltar, there was £1 million that we did not know what it was for. I think that if the Government come to the House with a Supplementary Appropriation Bill that seeks only to increase that figure of £0.5 million and do not tell us what it is needed for, really what he is coming is for permission to spend an extra £0.5 million without giving us any indication of what departmental expenditure may have been underestimated at the time of the Estimates. Of course, it is true, one could say, "Well, I already had £1 million of such expenditure that I did not explain to you at the time that you approved what it was for so what difference does it make to you to approve another £0.5 million?" The difference is formal, Mr Speaker, in the sense that if I approve this Bill I am approving the Government's expenditure of £0.5 million without having any information at all as to whether

it is necessary or what it might be needed for. Mr Speaker, I do not say that we are going to oppose this by any means but it would be helpful and I think it would make a bit more sense of the mechanism of coming for supplementary expenditure if the Financial and Development Secretary could give some indication of what departmental expenditure has caused this potential underestimation because, of course, he has said that it may or may not be necessary, so this potential underestimation of the figures that the House approved at the Budget session.

HON CHIEF MINISTER:

It is quite obvious, Mr Speaker, the hon Member does not understand how the supplementary funding works notwithstanding the fact that he has now been in the House long enough to do so. Of course the figure is nil at the end. The figure is nil at the end precisely because it is reallocated to other heads. At the beginning of the year what we have got is the equivalent of a contingency reserve which is normal in budgetary terms and then if we find that an unexpected source of expenditure in a particular head of expenditure not predicted at the beginning of the financial year causes us to run out of money, we transfer that money from the block vote to that particular head and at the end of the year we are left with nothing in the block vote because it has been transferred it to all the different heads. Therefore he will find that every year there is zero. He will also find that throughout the year, as has been the case in this House, the information is provided because the Financial and Development Secretary tables lists of virements which show him how the money has been used. So throughout the year we are giving him information. If from the £1 million we need an extra £100 to buy petrol for a fire engine because the fire engine has gone out 20 times more to more fires and the money for petrol has run out, we do not come and say, "We do not put any more fires out until we come to the House and we vote more money for the petrol". The money for the petrol is moved from the £1 million to the vote of the Fire Brigade for fuel and that is shown in writing at the next meeting of the House



when it is tabled and if he adds all the little bits he will come to the total. That is how it has been done since 1988 and certainly it has been done since 1992 when the hon Member has been here. In fact, of the two block votes we introduced the second block vote which was the contingency fund for reallocation and the previous administration introduced the block vote for pay reviews which we supported. We did not think there was anything wrong in putting in a block vote for the potential cost of the pay review rather than having to put a sum of money in each department and then find out that in some departments we had put too much and in others we had put too little. The explanation for the need to have come this year with a Supplementary Estimate and Bill and the fact that we have not been able to do it was that it was more difficult this year to estimate and I explained it in the budget, Mr Speaker, by reference to the fact that we were in April in the middle of the negotiations with the Moroccan workforce and it was impossible, at that time, to know to what extent departmental expenditures were going to be altered by people going because we were not able to make, at that stage, a judgement of whether we would actually have money left over or be short of money. But, of course, one of the things that hon Members no doubt realise is that we are not able to move money from one head to another. We are only able to move money from one sub-head to another sub-head within the same head. So even if we have got an under-spending in one department because X number of Moroccans left and the work has been undertaken in another department, the fact that we did not vote the money originally in the other department means that we are short of money in one department even though we have got a surplus in the first one. That is taken care of because the unspent money when the final outturn produces does not get used and therefore the under-spending stays in the Consolidated Fund and the over-spending is taken care of by virement from the reallocation vote which the House provides and which is then shown in the list of virements tabled at subsequent meetings of the House. Given that scenario because we were not sure we actually reduced the block vote at the beginning of the year partly, frankly, because we wanted to send a message to the

controlling officers that we expected them to try and make savings as a result of the changes because, of course, part of the cost of the exodus of the Moroccans has fallen directly on the Consolidated Fund in quite a large bill for gratuities, some of which fell before the end of the previous financial year because the money was paid out in March and some of it fell in this financial year because the money was paid out in April. Therefore some of that we hope to recoup through under-spending in some departments. We did not want therefore to have a situation where people felt they could spend all the money in the vote and it would still be £1.5 million, so we put £1 million so that the Financial and Development Secretary could send that message out to controlling officers that they ought to try and work as far as possible within the original allocation plus £1 million and we were hoping that we would actually be able to cut expenditure this year on the recurrent vote by £0.5 million to partly compensate us for the extra expenditure of something like £0.75 million that we have had to pay out in extra pensions to 250 Moroccans. We may still be able to do it. We may still finish up having spent £1 million block vote at the end of the year but that maybe because we have actually had to give more money than intended to one department but we will have more money than expected left over in another department but we have not been able to switch them over. So, in fact, it may well mean that although technically we have to give the facility to the Financial and Development Secretary to approve supplementary funding for some departments by virement from this block, at the end of the day the important figure is the bottom line and the bottom line may not be up by £0.5 million.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the mover to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have nothing more to say, Mr Speaker.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the Trade Licensing (Amendment) Bill 1995; the Bank of Credit and Commerce Gibraltar Limited (Insolvency) Bill 1995; and the Supplementary Appropriation (1994/95) Bill 1995, clause by clause:

Question put. Agreed to.

THE TRADE LICENSING (AMENDMENT) BILL 1995

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

Clause 2

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I beg to move the following amendment which has, in fact, I think already been circulated to hon Members. The amendment is that clause 2(a) is amended firstly by re-numbering the sub-paragraphs (i), (ii) and (iii) as sub-paragraphs (ii), (iii) and (iv) respectively and inserting the following new sub-paragraph (i) - "(i) by omitting the definition of "appropriate fee";". Secondly, in sub-paragraph (ii), as now so re-numbered - (i) by

omitting the word "established" and substituting therefor the words "carried on"; (ii) by inserting after the words "other than" the words "a cross-frontier business or".

HON F VASQUEZ:

Mr Chairman, the Opposition are voting against this Bill.

Question put on the clause as amended. The following hon Members voted in favour:

The Hon J L Baldachino  
The Hon J Bossano  
The Hon M A Feetham  
The Hon R Mor  
The Hon J L Moss  
The Hon J C Perez  
The Hon J E Pilcher  
The Hon P Dean  
The Hon B Traynor

The following hon Members voted against:

The Hon Lt-Col E M Britto  
The Hon P R Caruana  
The Hon H Corby  
The Hon P Cumming  
The Hon M Ramagge  
The Hon F Vasquez

Clause 2, as amended, stood part of the Bill.

Clause 3

HON F VASQUEZ:

Mr Chairman, we are voting against clause 3.

HON P R CARUANA:

Mr Chairman, it is clear to the House that we are not giving the reasons or any detailed explanations because it is implicit in the point made in relation to these sections by my hon Colleague at the Second Reading. It would be a thorough waste of time. It is for the record.

MR CHAIRMAN:

I agree on that. You have already made the point.

Question put. The following hon Members voted in favour:

The Hon J L Baldachino  
The Hon J Bossano  
The Hon M A Feetham  
The Hon R Mor  
The Hon J L Moss  
The Hon J C Perez  
The Hon J E Pilcher  
The Hon P Dean  
The Hon B Traynor

The following hon Members voted against:

The Hon Lt-Col E M Britto  
The Hon P R Caruana  
The Hon H Corby  
The Hon P Cumming  
The Hon M Ramagge  
The Hon F Vasquez

Clause 3 stood part of the Bill.

Clause 4 was agreed to and stood part of the Bill.

#### Clauses 5 and 6

Question put. The following hon Members voted in favour:

The Hon J L Baldachino  
The Hon J Bossano  
The Hon M A Feetham  
The Hon R Mor  
The Hon J L Moss  
The Hon J C Perez  
The Hon J E Pilcher  
The Hon P Dean  
The Hon B Traynor

The following hon Members voted against:

The Hon Lt-Col E M Britto  
The Hon P R Caruana  
The Hon H Corby  
The Hon P Cumming  
The Hon M Ramagge  
The Hon F Vasquez

Clauses 5 and 6 stood part of the Bill.

Clauses 7 to 11 were agreed to and stood part of the Bill.

#### Clauses 12 and 13

Question put. The following hon Members voted in favour:

The Hon J L Baldachino  
The Hon J Bossano  
The Hon M A Feetham  
The Hon R Mor  
The Hon J L Moss

The Hon J C Perez  
The Hon J E Pilcher  
The Hon P Dean  
The Hon B Traynor

The following hon Members voted against:

The Hon Lt-Col E M Britto  
The Hon P R Caruana  
The Hon H Corby  
The Hon P Cumming  
The Hon M Ramagge  
The Hon F Vasquez

Clauses 12 and 13 stood part of the Bill.

Clauses 14 to 18 were agreed to and stood part of the Bill.

Clause 19

Question put. The following hon Members voted in favour:

The Hon J L Baldachino  
The Hon J Bossano  
The Hon M A Feetham  
The Hon R Mor  
The Hon J L Moss  
The Hon J C Perez  
The Hon J E Pilcher  
The Hon P Dean  
The Hon B Traynor

The following hon Members voted against:

The Hon Lt-Col E M Britto  
The Hon P R Caruana  
The Hon H Corby  
The Hon P Cumming

The Hon M Ramagge  
The Hon F Vasquez

Clause 19 stood part of the Bill.

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

THE BANK OF CREDIT AND COMMERCE GIBRALTAR  
LIMITED (INSOLVENCY) BILL 1995

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 SUPPLEMENTARY APPROPRIATION (1994/95) BILL 1995

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

The Schedule 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:

I have the honour to report that the Trade Licensing (Amendment) Bill, 1995, with amendment; the Bank of Credit and Commerce Gibraltar Limited (Insolvency) Bill 1995, and the Supplementary Appropriation (1994/95) Bill 1995, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

The following hon Members voted in favour of the Trade Licensing (Amendment) Bill 1995, with amendments:

The Hon J L Baldachino  
The Hon J Bossano  
The Hon M A Feetham  
The Hon R Mor  
The Hon J L Moss  
The Hon J C Perez  
The Hon J E Pilcher  
The Hon P Dean  
The Hon B Traynor

The following hon Members voted against:

The Hon Lt-Col E M Britto  
The Hon P R Caruana  
The Hon H Corby  
The Hon P Cumming  
The Hon M Ramagge  
The Hon F Vasquez

The Bill was read a third time and passed.

The Bank of Credit and Commerce Gibraltar Limited (Insolvency) Bill 1995 and the Supplementary Appropriation (1994/95) Bill 1995, were agreed to and read a third time and passed.

## ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Monday the 27th February 1995 at 2.30 pm.

Question put. Agreed to.

The adjournment of the House was taken at 9.50 pm on Tuesday 10th January 1995.



MONDAY 27 FEBRUARY 1995

The House resumed at 2.35 pm.

PRESENT:

Mr Speaker.....(In the Chair)  
(The Hon Col R J Peliza OBE, ED)

GOVERNMENT:

The Hon J Bossano - Chief Minister  
The Hon J E Pilcher - Minister for the Environment and  
Tourism  
The Hon J L Baldachino - Minister for Employment and  
Training  
The Hon M A Feetham - Minister for Trade and Industry  
The Hon J C Perez - Minister for Government Services  
The Hon Miss M I Montegriffo - Minister for Medical  
Services and Sport  
The Hon R Mor - Minister for Social Services  
The Hon J LMoss - Minister for Education, Culture and  
Youth Affairs  
The Hon P Dean - Attorney General  
The Hon B Traynor - Financial and Development  
Secretary

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition  
The Hon Lt-Col E M Britto OBE, ED  
The Hon H Corby  
The Hon M Ramagge

The Hon P Cumming

ABSENT:

The Hon F Vasquez  
The Hon L H Francis

COMMUNICATION FROM THE CHAIR

Following the Questions and Answers at the last sitting, public comments arose from two sources. No doubt, in the public interest, but utterly mistaken, critical of my ruling regarding the Chief Minister's reply to the questions asked by the Hon Peter Cumming. To eliminate any possible doubt created by these erroneous comments as to the righteousness of my ruling I restate that regardless of the answers given by the Chief Minister, the Hon Peter Cumming continues to possess all the rights and privileges as a member of the House and, of course, this includes the right to ask questions in accordance with the Standing Orders governing questions. On the other hand, I repeat that "an answer to a question cannot be insisted upon if the answer be refused by a Minister," as is clearly stated in Erskine May. This is the current position in the House of Commons and also in this House. I would be grateful to the media if they published this statement in full to correct any wrong impressions created by the comments referred to above.

DOCUMENT LAID

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of documents on the table.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to lay on the table the following documents:

(a) Report of the Registrar of Building Societies for the year ended 31st December 1993;

(b) Statements of Consolidated Fund Re-allocation approved by the Financial and Development Secretary (Nos. 5 to 7 of 1994/95).

Ordered to lie.

MINISTERIAL STATEMENT

MR SPEAKER:

I have received notice from the Chief Minister that he wishes to make two statements. One is a statement on the response of Her Majesty's Government to the resolution on self-determination and another one on the outstanding issues of the categorisation of the shipping register. I would like to point out that we cannot enter into debate on those statements but hon Members are free to make questions to clarify any particular points.

HON CHIEF MINISTER:

Mr Speaker, the House, in January, carried a resolution calling on Her Majesty's Government to amend our Constitution to include the same provision in respect of self-determination as it included in the Constitution of the Falkland Islands. I transmitted the text to the Secretary of State in January. I have now received a reply and I am therefore taking the earliest possible opportunity to inform the House.

The Secretary of State has reminded me in his letter that during the course of his press conference in London on 20th December he had made clear that the 1969 Constitution is not something which lasts forever and that he is willing to listen to views as to how it might be developed. He points out that the situation of the Falkland Islands and Gibraltar are very different. However, he goes on to state that his mind is not closed. I welcome very much this response which does not reject the proposal outright. I believe we must take encouragement from the fact that the concept has not been ruled out as has happened in the past when the question of self-determination has been raised. He refers to previous correspondence on this issue which I have exchanged with the Minister David Davis and informs me that he has asked Mr Davis to find an opportunity to discuss the issue with me in greater detail. I look forward, therefore, to having an early opportunity to discuss this with Mr Davis and I will keep the House informed on how the matter progresses.

I also take this opportunity to inform the House of another unrelated matter in respect of which I have also just received a reply from the Minister of State the Rt. Hon. Douglas Hogg. He confirms that the UK has accepted that Gibraltar should progress towards having a Category 1 Shipping Register. This will put us on a par with the registries of the Dependent Territories of Bermuda and the Cayman Islands. The House will recall that in answer to Question No. 20 of January this year, the Government stated we did not know when, if at all, this would happen. This is very welcome even if in our view long overdue, since we have been arguing the case for upgrading to Category 1 since 1989. Let me just add a caveat that regrettably it does not mean we can from this moment start registering ships. The modalities of the follow up

action are to be discussed with UK officials from the Foreign and Commonwealth Office at the Department of Transport. However, we can be reasonably confident that this exercise, in the practical steps required, will be completed in 1995.

HON P R CARUANA:

If the Chief Minister will give way. Mr Speaker, I do not know that there is any procedure to give way on a ministerial statement, but I welcome the news that the Chief Minister brings to the House in relation to the reply received from the Foreign Secretary to this House's motion calling for the Falkland provision to be introduced in ours. I can add a little bit of information to that, Mr Speaker, and that is that following a conversation that I have had with a Labour member of Parliament at the Conference from which I have just come this weekend at Wilton Park, that Member has today tabled for the Foreign Secretary, a parliamentary question pressing the Foreign Secretary to inform the House when he will approach the Government of Gibraltar on the question of reviewing the Gibraltar Constitution which he will remind the House of Commons has not been reviewed since 1969 and it seems that the question will give the Foreign Secretary an early opportunity to be explicit in public in the United Kingdom on this subject.

I welcome also what the Chief Minister has said in relation to the shipping registry. I think it is excellent news and to the extent that the Government have worked to bring it about, I think they ought to be congratulated. I hope, however, that the Chief Minister's hope that what he calls the "modality" whatever that might mean in Foreign Office speak, will not take as long as they have in relation to other legislative regimes such as the Financial Services etc, but certainly if we are up and running for business

before the end of this year that will be very good news indeed.

## BILLS

### FIRST AND SECOND READINGS

#### THE EUROPEAN COMMUNITIES (AMENDMENT) ORDINANCE 1995

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the European Communities Ordinance so as to include the treaty concerning the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union be read a first time.

Question put. Agreed to.

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that the Bill be now read a second time. Mr Speaker, I do not have a great deal to say in support of the Bill. It is obviously something that we, in common with the other member countries of the European Union are required to do in order to legislate for the enlargement of the Union. The last time this happened it was with the accession of the Kingdom of Spain and Portugal and in fact I recall that at one stage Gibraltar had forgotten to amend its legislation in order to permit the entry of Greece, through an oversight, but of course that did not stop Greece operating as if it were a legitimate member of the Union notwithstanding that we had not included in our legislation and it was done retrospectively. Clearly, it is a symbolic

act rather than a real act which brings about the enlargement of the Community but nevertheless the importance of that symbolic act is that every time we do it it reaffirms our position as an integral part of the Union which as we know occasionally gets questioned by our neighbours, totally without justification. Therefore I commend the Bill to the House in the knowledge that, of course, the enlargement of the Community is something that we in Gibraltar strongly support across party line because it is fundamental to our own perception on the future of the European Union and on the place that Gibraltar rightly deserves to occupy in it as a member comparable to any other country large or small.

MR SPEAKER:

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

HON P R CARUANA:

The Opposition naturally support not only the principles of the Bill but indeed the symbolic value and significance of this House re-asserting its legislative sovereignty, its legislative jurisdiction as a legislature in the European Community with a constitutional right to transpose into European Community law into Gibraltar law the provisions of European Community law. It does, however, raise an opportunity to comment on the point that the Chief Minister has himself raised which is that whilst expanding the Community is fine, I think that at some point the organisms of the European Community, and I say the organisms, the Commission and others, but not the lawyers of the European Community because obviously they should know what the correct position is. But sooner or later the European Union is going to have to start recognising that Gibraltar is an integral part of the Union

and stop regarding special deals as a legitimate way to deal with the so-called Gibraltar problem in the context of the European Union. [Interruption] To the extent that the Brussels Agreement is used to that end I entirely support that the aside comment of the hon Member opposite but it is not only the Brussels Agreement that can be used to that length, I am happy to give way to him if he wants to say something. The fact of the matter is that it becomes increasingly more gauling to see very recent newcomers, now these three members, join the Community, join the fast lane from day one, whereas our status remains increasingly under an entirely unjustified and legally unsustainable question mark in terms of our full right to the privileges of membership. I think it is time that the House and indeed Gibraltar in general addressed this issue directly with the European Union, if necessary, to make sure that the question mark is not left over our heads so the question mark eventually straightens itself out to become a sword of Damocles.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the mover to reply.

HON CHIEF MINISTER:

Mr Speaker, the only thing I want to say in reply with reference to the comments of the Leader of the Opposition that it is quite correct that our position in the Union is not only unsatisfactory but clearly unfair the more the Union enlarges and every new member has from the first day of entry all the things that we should have had from our first day of entry and we did not get. Regrettably, it is not something for which we can pin responsibility on the institutions of the European Union. I think we in Gibraltar carry part of the blame for that. I would remind

the House that when I was an independent member on that side, in 1980, I moved a resolution in this House seeking a consensus to approach the European Union and the United Kingdom Government in order to consolidate our position at that stage, fifteen years' ago in the European Union and, regrettably, I was not able to persuade the other fourteen members to support my initiative. We finished up with an agreement, because that was the most that could be achieved, to which we could all be a party, which called for a committee to be set up to study what needed to be done. That committee met five times in four years and by the time we had reached any conclusion it was really too late because one of the obvious things is that before Spanish entry, as far as the European Union was concerned, Gibraltar was pushing on an open door. There was no objection from anybody in the Union to anything the UK wanted to get for us because, of course, whatever special advantage we might have in a Union of 400 million people is irrelevant and this is why all the small territories feel that they are in a position to negotiate special terms and if we have a situation where, Mr Speaker, in relation to the membership of Finland, the Aland Islanders have negotiated full membership of the Union and yet have not had to concede the free movement of people because there are only 30,000 of them and we are voting to grant them that privilege in this House, in this Bill, like everybody else has done, without the opposition of anybody. The Swedes who are neighbours have not objected. The Finnish have not objected and we have seen that that has been a feature of the Union going back to its very inception in the Dependent Territories Conference in November 1993 in the United Kingdom when the representative of the Dutch Antilles spoke; we discovered to our surprise that the islanders in the Dutch Antilles have got full EEC right throughout the European Union and in Holland and yet from the very beginnings,

from the 1950s they were able to have restrictions because of the recognition that their small size required protective treatment and much of our problem with the EEC is that we are required to meet the same demands as a nation state without being a nation state of millions of people. I think it is very, very difficult to see how that can change in the future, much though I agree with the Leader of the Opposition that it is something we ought to try and get. It is difficult to see how that can change because we are not going to have allies in that battle, regrettably, because other people are getting it without a struggle in the accession negotiations. We only need to remember, Mr Speaker, that a couple of weeks ago in answer to a question from one of our Gibraltar Group MPs in the House of Commons, the Government confirmed that the only reason why we do not vote in the European elections is because we were excluded in 1976 by an Act of Parliament, not of the European Parliament but of the British Houses of Parliament. That was confirmed two weeks ago. I am afraid that we are, in my judgement, in a situation where the people we need to convince are in London and not in Brussels and that if we convince the people in London although convincing Brussels will be more difficult now that it would have been until 1985, without London being willing to take up the issue I do not think we can get very far but nevertheless the enlargement of the Community is something that should increase the scope for our development and therefore I believe that notwithstanding the less than fair treatment that we get in the Union we must still be committed to its development. I commend the Bill to the House.

Question put. Agreed to.



HON CHIEF MINISTER:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

THE CRIMINAL PROCEDURE (AMENDMENT)  
ORDINANCE 1995

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that the Bill be now read a second time. Mr Speaker, as the explanatory memorandum to this short Bill says, the object to the Bill is to amend the Criminal Procedure Ordinance to introduce the right in the prosecution to appeal against the granting of bail in the Magistrates' Court when that court has granted bail to a person who is charged, or convicted of an offence, punishable by imprisonment of five years or more. The Bill makes provision in clause 2, which is the proposed new section 52A(11) for the making of rules of court and that rule has already been prepared and are to be introduced as the Bail Prosecution Appeal Rules 1995. Mr Speaker, the Bill is based upon and indeed almost identical with the United Kingdom Bail (Amendment) Act 1993, the principal provisions of which came into force in that country on the 27th of June 1994. Sir, I commend the Bill to the House.

MR SPEAKER:

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

HON P R CARUANA:

Yes, M Speaker, the fact that this section duplicates a new enactment in the United Kingdom is not going to prevent me from speaking quite critically of it on the basis that I think that this House is entitled to the views of its members even when, in effect what one is criticising is the legislative provisions that has been implemented by a Parliament of greater resources than ours, but if the UK Parliament wants my expertise they will have to pay for it like this House does. I am not terribly enthusiastic about the principles of this Bills although I would support it. I think that Gibraltar has a much better case for allowing the prosecution the right of appeal when bail is granted to an accused person than there is to be made for the same case in England because in Gibraltar we have a very proximate border and it is a border which adjoins us to a country from whom it is difficult to recover absconded accused persons. For that reason alone there is a significant difference which suggests that if a magistrate makes a mistake in granting bail to somebody, very often we never get a second bite of the cherry and that is very often the last that we see of that person in Gibraltar. It is for that reason that we will support the principle of the Bill, but, Mr Speaker, I think it is important not to lose sight of the very Draconian, albeit temporary powers, that in effect we are giving a police officer. This is someone who has been charged with an offence so that therefore he is in accordance with the principles of law that prevail in this community, innocent at that point and the proposal in this Bill is that a magistrate, that is to say, a qualified layer

when it is a Stipendary Magistrate, an experienced person advised by the Clerk when it is a lay Justices, when such people have heard arguments from both sides and have decided that this person that is presumed to be innocent should not be deprived of his liberty, up pops a police inspector sitting further along the bench and says "I appeal" and the result of those two words from a police inspector is that a citizen that is presumed innocent and whom the court has decided should not be deprived of his liberty, is in fact automatically deprived of his liberty. In other words, it grants the automatic right of incarceration of innocent people to a police officer and although the Bill tries to be careful in providing some safeguard for persons who may fall victims of this, I think it does not go far enough because 48 hours excluding weekends and public holidays, can be up to six days. Somebody is granted bail by the magistrate on a Thursday mid-morning and that is the Thursday before along weekend, he will be imprisoned from Thursday to the following Tuesday on the basis of the decision made by a police officer that he is aggrieved with the decision of the court to grant bail to a person that is still innocent.

I will be proposing amendments when we come to the Committee Stage of this Bill which I think will introduce safeguards without depriving the Bill of the principle which I do not oppose. One of the amendments will be that so that the decision is not just made by a police officer.... The section already says that the police has to confirm the appeal in writing within two hours of the oral appeal. I think that that decision should be approved of by the Attorney-General. In other words, that a lawyer, and not a policeman who is riled at the fact that somebody has been nicked is back on the street. In other words that the Crown law officers should advise the police, "Yes, this is a case in which I think the Court has made a mistake on principles of law and that this ought to be appealed".

Otherwise, how are the police going to distinguish between cases that they should appeal and cases that they should..... This decision has got to be made on the spot by a police inspector, the prosecuting officer, there and then he has got to say "I appeal". If he does not say "I appeal" there and then he cannot then appeal in writing two hours later. I hope that when we come to the Committee Stage the Attorney-General who is a more experienced criminal lawyer than me will explain to me the circumstances in which magistrates might be called upon to give bail to someone that has already been convicted because sub-section (1) says "where the Magistrates Court grants bail to a person who is charged with or convicted of an offence....." Well, the only circumstances that occurs to me with my limited criminal knowledge of the circumstances which a magistrates might give bail to a convicted person is someone that he gives bail to depending sentence. In other words, if a case is heard before the magistrate, the magistrate does not want to sentence there and then and has the jurisdiction to say "Off you go on bail, whilst I decide what I do with you, come back next week". If the court that is going to have to pass the sentence has already decided in its mind that it is unlikely to impose a custodial sentence, why should this man then be incarcerated because the policeman said "I appeal", when the Judge that has already tried and convicted the accused knowing that he is going to have to pass sentence releases him which is a very clear indication that the court does not intend to impose a custodial sentence? There may be an explanation which has escaped me and if there is I would be grateful to the Attorney General could educate me on the point. In favour of the principles of the Bill I would say that it actually does not go far enough in certain respects. For example, if we are going to give the prosecution the right to appeal when bail is granted why do we not give them the right to appeal when bail is granted but without

sufficient conditions? In other words, there may be circumstances in which the prosecution do not object to bail but object to bail being granted without conditions. For example, it is often the case that the prosecuting officer says in Court "The police do not object to bail provided that the passport is withdrawn" or "The police do not object to bail provided that the person reports to the police station every 24 hours". There is this Bill that gives no power to the prosecution to object, not to the granting of bail, but to object to the extent or absence of conditions. In other words, one has to appeal only if one objects to bail on any circumstances on any terms and I think that the excludes from the right of appeal what is the much more frequent case of the police being dissatisfied that the magistrate has not imposed the reporting at the police station restrictions or a withdrawal of passport or conditions of that kind. I will be proposing an amendment to that end as well.

I think, Mr Speaker, that the Bill is also deficient, I know it makes provisions for the passing of rules but there are certain principles and this is a potentially Draconian power and therefore I think that the legislature has a responsibility to ensure that it contains adequate safeguards for the possibly and presumably, at that point, innocent citizen. For example, and I will again be proposing amendments at Committee Stage, I believe that the Bill should require the magistrate to certify the time in which the proceedings close. For the benefit of hon Members who may not have read the Bill, the Bill basically provides that if somebody comes before the court on a charge, applies for bail and is granted bail by the court, the prosecuting officer must stand up there and then and say "I object, I appeal". He must then, within two hours send in a written notice of appeal. That two hours has got to be from the conclusion of the proceedings. Let there be no doubt as to exactly when that two hour period

ends and so that there can be no doubt about when that two hour period ends, because the consequences of the two hour period ending is that the appeal is deemed to be lost and the accused is entitled to immediate release from custody. So let there be no doubt about when the two hour period ends and I will be proposing an amendment that will require the Magistrates' Court to certify the exact time of the termination of the proceedings. In other words, the exact minute of the day from which the clock starts to tick the two hours by the end of which the accused is entitled to be released if the prosecution has not put in the paperwork as the Bill requires. Further, I will propose an amendment to impose a positive duty on the Clerk of the Magistrates' Court to check at the precise expiration of the two hour period, and see if the papers have been filed and to issue a certificate, yes or no they have not been filed within the two hour period and if they have not been filed, impose a duty on the Clerk of the Magistrates' Court to immediately get in contact with whoever is the custodian of the person in custody and inform him that the person has automatically acquired a legal right to be forthwith discharged from custody. This is not a case in which we can have a situation where the police rings the Magistrates' Court and says "I know my two hours are nearly up, but my typewriter has broken down, give me another 10 minutes, I am on my way". No, these are Draconian powers that can deprive of their liberty people who may be innocent and therefore the benefit of the doubt of strictness of application of the procedure has to be given to the citizen and not to the prosecution.

There is no right for the accused person to apply to the Supreme Court to secure his release and I will be proposing an amendment that gives not only the prosecution the right to appeal which means that the man is immediately incarcerated, but giving the man as well

the right to apply to the Supreme Court and say, "The prosecution has appealed but let me out on bail whilst the appeal is considered". Finally, Mr Speaker, at this stage of general principles the Bill says that rules of court may be made for the purpose of giving effect to the section but it does not specify who shall make those rules. I presume that it is one court or the other and not the Government. There is no precedence of the Government making court rules and I am sure that that is not the Government's intent but I think it ought to state whether it is the Stipendary Magistrate that makes the rules or whether it is the Chief Justice who makes the rules. It simply says in the very last provision of the Bill "Rules of court may be made for the purpose of giving effect to this section" but it does not say who must make them and I say that those rules ought to be made by the Chief Justice.

Mr Speaker, whilst, therefore, I support the objective of the Bill because I think it addresses an issue which often results in people that should be tried, not ever reaching a court for trial, and that is something that ought to be addressed. There is insufficient, in this statutory provision, safeguards for the innocent citizen and my ability to support the Bill at Third Reading will depend on the extent to which I am able to persuade the Government Members to introduce some amendments which I have prepared, which I have in writing and which if the Government do not take the Committee Stage at this sitting I will allow them to take away and consider to see the extent to which they are able to support the amendments.

HON CHIEF MINISTER:

Mr Speaker, I had not intended to contribute to the debate on the general principles of this Bill but I feel I ought to in response to what the Leader of the Opposition has had to

say on the subject. There has been really no input from us as to the contents of the Bill but we are committed to the philosophy of acting to close what many people have brought to our notice as a loophole which allows people who are charged with offences, as the hon Member himself suggested, to do a disappearing act the moment that bail is granted and quite often they seem to be given bail on the basis of their own cognisance which is quite extraordinary in our view but nevertheless that is what happens and it is in response to the need to deal with that problem that the political decision was taken to proceed along this route. The actual mechanism devised in the Bill to produce the desired result has been the result of consultation with the United Kingdom because, of course, the question of criminal justice is not an area for which there is an elected member with ministerial responsibility like there would be if we succeed in furthering the process of decolonisation in Gibraltar and there would be a Minister for Justice elected by the people. There is not, so it is one area where clearly the responsibility of the United Kingdom is still present and my understanding is that the content of the Bill before it was sent to the printers was the subject of discussion with the judiciary. So we would not be in a position in the elected Government to commit ourselves to supporting any proposed amendments from the Leader of the Opposition without going back and consulting the people that have been consulted on the original. I therefore do not want to deprive the Leader of the Opposition of the opportunity of proposing any amendments which will improve the effectiveness of the Bill and guarantee natural justice, if he feels this one does not and we will go back to the people who did think it did guarantee natural justice and either they will have to persuade us that the Leader of the Opposition is wrong or maybe with these arguments we may be able to persuade them that they are wrong. Our role is like ACAS in this situation. I accept the suggestion

from the Leader of the Opposition that we should not proceed with the Committee Stage at today's meeting to give him the opportunity to put in writing to the Learned Attorney-General his amendments and then when those have been studied we will obtain the necessary advice as to whether we should, when the time comes, vote for or against the proposed amendment, once we have seen them and had them studied.

MR SPEAKER:

If no other hon member wishes to speak I will call on the move to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, I, too, would like to see the proposed amendments that the Leader of the Opposition in detail. May I say that I do have a copy of the proposed draft rules with me to some extent they ameliorate some of the problems that he has averted to this afternoon and I will make a copy of the draft rules available to him later this afternoon.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

Sir, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken at another meeting of the House.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause:

1. The Health Protection (Ionising Radiation) Bill 1995
2. The Ship Agents (Registration) (Amendment) Bill 1995
3. The Drugs Misuse (Amendment) Bill 1995
4. The Imports and Exports (Amendment) Bill 1995
5. The Drugs Trafficking Offences Bill 1995
6. The European Communities (Amendment) Bill 1995

THE HEALTH PROTECTION (IONISING RADIATION)  
BILL 1995

HON J PILCHER:

Mr Chairman, in the second reading of the Bill the Opposition Member posed various questions, should I reply to those questions before we actually start putting it clause by clause?

I think there were three questions that the hon Member posed. One was clause 2(2)(h) which created to exempt specified bodies. I think the hon member was worried about an exemption to the Bill because obviously that would give us the right to exempt whatever we wanted. I think there was one element of it that was mentioned and that was the exemption for the Ministry of Defence on matters related to defence purposes. The other, Mr Chairman, is the power to exempt areas of specific



examples and certain activities. For example a regulation could provide that the need to give notification of 28 days before the commencement for the first time of works with ionising radiation could be overridden in an emergency by the grant of an exemption certificate. For example, Mr Chairman, a ship requiring emergency repairs and thus involving x-ray of equipment or welding of the welding seam would need to have the time element exempted because if not they would have to wait 28 days for the emergency repairs to be carried out. I think that is the purpose of that specific clause 2(2)(h). Regarding clause 2(3)(a), Mr Chairman, the opening lines refer to control. I think that was the other element which the hon Member raised. Such control obviously includes a provision for ensuring treatment under the direction of a suitably qualified practitioner. Mr Chairman it is a question of the control of the administering and that obviously is part of the control exercised by the regulation. I think the third element was regarding the definition of ionising radiation which again was mentioned by the hon Member. This is taken from the Ionising Radiation Regulations 1995 which implemented Council Directive 80/836 Euratom, as amended by Council Directive 84/467 Euratom, as respect Great Britain. In an area which is highly technical and scientific it was thought appropriate to follow this definition which was accepted for that purpose by the European Commission.

HON P CUMMING:

I would just like to say, Mr Chairman, that I welcome this Bill because any clinic can have an x-ray machine, any dental clinic, any doctor's clinic, can have an x-ray machine, hospitals can have new equipment and there have to be procedures for regulating them because they get old and they start to leak radiation and become a health hazard to the public and to the health workers

involved. It seems to me Mr Chairman that I remember that in the last session I was rather distracted with other problems but I seem to remember that this was part of a package of good government that the British Government was insisting that we implement measures. There was an impression being given this was rather unfair because all the atomic things are going on in the Naval Base anyway and we do not have powers to regulate there and that seems to me, Mr Chairman, a distraction from the real issues that this Bill addresses and I welcome that this Bill should go through and that the health of the public should be protected from leaking, old, x-ray equipment.

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

Clause 2

HON E BRITTO:

Mr Chairman, we are not entirely happy with the explanation given by the Minister with regard to our objection to clause 2(2)(h). In other words the exemption clause allowing, we are told, the MOD for defence purposes to make exemptions in respect of persons or bodies which might be subjected to ionising radiation. The point that the Opposition made, Mr Chairman, at the general principles of the Bill was that this legislation is one that affects and is designed to protect lives and protect health and as such the principle of making exception which is not included in the Council Directive - there is no provision in the Council Directive for exemptions anyway - we feel is not one that should be included. Similarly, in clause 2(4)(g) which the Minister has not addressed and which I did address myself in the general principles of the Bill the wording is "To provide for which this extension shall bind the Crown and the extent to which they shall apply to persons in the service of the Crown". The same

objection, Mr Chairman, comes from this side of the House. This legislation should apply across the board to all persons to whom the risk might apply and therefore the right to make exemptions should not be given to anybody and that includes the Crown. Therefore, Mr Chairman, I would propose an amendment to this clause. I do not think it is necessary to have it in writing. All I am suggesting Mr Chairman is that clause 2(2)(h) and clause 2(4)(g) be deleted from the Bill.

HON P CARUANA:

Mr Chairman, the slip ups in the printing we have agreed need not be introduced as an amendment and they are set out in a letter which I have received from the Law Draftsperson. There are some printing errors which need not be taken as amendments but the hon member also has one substantial amendment which is not a printing error.

HON J PILCHER:

Mr Chairman, in clause 2(3)(c) after the word "certificates" where it occurs for the first time the words "as are referred to in paragraph (a)" are inserted.

Mr Chairman, perhaps I can in looking at the proposal made by the hon Member which we cannot support.....

MR CHAIRMAN:

Wait a moment. Let us clear this amendment now.

HON J PILCHER:

If I may, perhaps I can have a set of words which the hon Member will agree with which will not need the removal of paragraph (h).

Question put. Agreed to.

HON P R CARUANA:

I think we have got to make adequate provision for military emergencies or even for civil emergencies and I think it was implicitly...[Interruption] The Minister must listen. He has asked me a question. There is no point in answering to myself. The explanation that he has given is that this is necessary for use in emergencies. Fine, let us say that.

HON J PILCHER:

The explanation that we gave in the last sitting of the House was that this had a dual role. The first was to make regulations which exempted certain activities of the Ministry of Defence which is a clause added here and which has been added in the UK and in every other country because obviously when we are talking about defence purposes we cannot have the country deciding to go to war and giving 28 days' notice of the utilisation of specific weapons which would fall into this category. The second, Mr Chairman, which is I think the worry of the Opposition Members was that the clause was bright enough to be interpreted and to be exempted in whatever area. I have said are only for specific emergencies and therefore what I am saying is that perhaps if we add the words "Provided always that such exemptions granted by

or under regulations made in exercise of the powers conferred by this paragraph shall take into account any relevant Community obligation" then obviously it would only be in furtherance of specific areas where it would not be in conflict with Community obligations which is the only thing that I expect the Opposition Members to be worried about.

HON P R CARUANA:

What the Opposition Members are worried about is the idea that..... I went up for an x-ray the other day and I did not feel at peril whilst the x-ray machine was on, but on the assumption that those who know better about these things than me perceive some serious risk from ionisation from which we should all be protected by law, it seems to me that we should extend that protection to all our citizenry and not allow exemptions which allow others to say, "Civilian MOD employees are not entitled to this legal protection." We just do not see that if this is a real danger and I do not know whether it is a real risk or not but I assume it is because somebody in Brussels has seen fit to produce paper about it, if this is a real risk I do not think that it is up to us to decide here and now that we are all entitled to protection from this risk except those civilian labour workers who happened to be employed in the Ministry of Defence. That was my concern, Obviously, in the case of war, in the case of emergency, it is a different matter.

HON CHIEF MINISTER:

I can see the logic of the position that the Opposition Member is explaining. Let me say that if he looks at the explanatory memorandum he will see that we have been unprotected from atomic radiation since 1980 and we seem to have survived. Certainly, I think this is one of the

pieces of legislation which the UK press, in its coverage, was saying we were 14 years behind everybody else. The position that has been adopted in relation to the requirement to bring in this legislation and not in fact applying it to MOD installations is I think on the premise that MOD installations wherever they are are, by their own internal requirements, having to comply with the implementation of such laws in the UK and under UK Acts. Frankly, we have not wanted to do battle on that particular issue but it would seem that according to the latest experts that have been provided for us the view is taken that on MOD land, as it were, one is protected from ionising radiation by UK Acts and when one leaves the door one has to be protected by Gibraltar. So a person comes from under one protection umbrella and pass under the other protective umbrella. They are not suggested that the person is unprotected.

MR SPEAKER:

We have got to pass the amendment put by the Minister first because otherwise if the clause is deleted there is no more amendment.

HON J PILCHER:

Mr Chairman, the purpose of my intervention was if I could convince the Opposition Members that paragraph (h) is not a Government exemption mechanism so that we could extend whatever we liked. It is for the purpose of Ministry of Defence usage and secondly for exemptions in the case of emergencies, obviously this is why I put the set of word. If what the Opposition Members want to do is remove the clause totally then there is no purpose in me tabling an amendment.

MR SPEAKER:

No, you table the amendment first and if that is carried.....

HON P R CARUANA:

Mr Chairman, if the Minister wishes to write those words as a proviso then I think it is obviously better. If the Government's position is, and I think I can to a certain extent understand their position that they do not want to remove it altogether, I would settle for a formula of words that at least restricts it..... The regulation can actually give the power to somebody else to do the exempting. I would accept the Minister's proposed amendment and on the basis of that withdraw our own.

HON J PILCHER:

Mr Chairman, I then move an amendment which is that in clause 2(2)(h) at the end, we delete the full stop and add the words "provided always that such exemptions granted by or under regulations made in the exercise of the powers conferred by this paragraph shall take into account any relevant Community obligation".

HON P R CARUANA:

Mr Chairman, I have to say that I think the Minister is going too far and I do not think he realises that in a circular way he has conceded my first point because Community regulations is what is in this Bill. Paragraph (h) is the only thing that Community law allows us to exempt under. If we add on the back of that that the exemption is subject to not reaching Community law we have no powers of exemption. I would not want him to trap himself into arriving at the same conclusion, but if instead of Community law he would make some specific

reference for defence purposes and/or emergencies that would deal with the matter.

HON J PILCHER:

Mr Chairman, I hear what the hon Member says. The purpose of the amendment was not to try and get myself into a corner. I think I have explained what paragraph (h) is intended to do and I think I will not move the amendment and therefore it will stay as it is. I withdraw the amendment.

MR SPEAKER:

So now we have the Opposition putting the amendment which is to delete that clause. Is it not?

HON P R CARUANA:

Mr Chairman, our amendment would be "Provided that such exemption shall relate only to defence matters or emergencies." Those are the two grounds, no matter what the Minister has said justifies the need to grant exemptions in civil emergencies or military requirements.

HON J PILCHER:

Mr Chairman, I would prefer to leave the drafting as it is for the reasons that the Chief Minister has mentioned. I have given the hon Member the explanations of the use to which clause 2(2)(h) will be made and I think we had better leave it at that.

MR CHAIRMAN:

The Hon Col Britto withdraws his amendment. We now have the amendment proposed by the Leader of the Opposition.

HON P R CARUANA

Which is "Provided that such exemptions shall be granted only in relation to emergencies or defence matters".

Question put. The following hon Members voted in favour:

The Hon P R Caruana  
The Hon Lt-Col E M Britto  
The Hon H Corby  
The Hon M Ramagge

The Hon P Cumming

The following hon Members voted against:

The Hon J Bossano  
The Hon J E Pilcher  
The Hon J L Baldachino  
The Hon M A Feetham  
The Hon J C Perez  
The Hon Miss M I Montegriffo  
The Hon R Mor  
The Hon J L Moss  
The Hon P Dean  
The Hon B Traynor

The amendment was defeated.

HON P R CARUANA:

For the sake of consistency, if nothing else, because we know what the result will be, at Clause 2(4)(g) we should add the same..... It presently reads "provide for the extent to which the regulations shall bind the Crown and to the extent to which they shall apply to persons in the service of the Crown" "in relation to matters of defence".

Question put. The following hon Members voted in favour:

The Hon P R Caruana  
The Hon Lt-Col E M Britto  
The Hon H Corby  
The Hon M Ramagge

The Hon P Cumming

The following hon members voted against:

The Hon J Bossano  
The Hon J E Pilcher  
The Hon J L Baldachino  
The Hon M A Feetham  
The Hon J C Perez  
The Hon Miss M I Montegriffo  
The Hon R Mor  
The Hon J L Moss  
The Hon P Dean  
The Hon B Traynor

The amendment was defeated.

Clause 2, as amended, was agreed to and stood part of the Bill.



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

THE SHIP AGENTS' (REGISTRATION)(AMENDMENT)  
BILL 1995

HON M FEETHAM:

Mr Chairman, I circulated to you on 13 February further amendments to the existing Bill and indeed, of course, to the legislation. Most of the them are in relation to clerical and clarifying the language as previously reflected in the Bill. Another one is in relation to representations which have been made to the Government since the Bill was introduced in the House. The Hon Mr Vasquez raised the question of clarifying the ability of the board to choose between a bond and a deposit. I have indeed considered that request and I am advised that substituting the word as he suggested "this" for the words "and equivalent" does appear to improve the clarity of the text. The other question was the words regarding that the board could choose an amount more than the £20,000. In fact, I am also advised that the discretion is confined to a choice between a bond and a deposit. On both points I do not feel that there is any need for further clarification of the Bill as it stands.

HON P R CARUANA:

Mr Chairman, I think it is very mean of the Minister not to have acceded to my request to respect the Hon Mr Vasquez's post-nuptial bliss. He was the hon Member who took this Bill. He is not in the House, he is still away on honeymoon. I hear what the Minister has said with respect to those two points. One does not know who he takes advice from but presumably he knows better than to take all the advice that he is given. He presumably therefore has made his own mind up on that and what he

is really saying to this House is that he is satisfied upon the advice that he has received that that is the position. He is not just bringing to this House presumably the views of the person that has advised him but rather he is adopting that advice as his own position on the matter. The position, therefore, Mr Chairman, is that I am not in a position to come back to the Minister in reply to his explanation simply for the reason that I did not take the Bill at Second Reading and I am not in a position to do so. To this or any of the clauses, so as far as I am concerned, Mr Chairman, you can take the entire Bill in one breath.

HON M FEETHAM:

Can I second that, subject to anything that may be raised by any other hon Member?

MR CHAIRMAN:

We shall have to go along with the clauses, we shall have to start going through it and we will see how we proceed.

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

Clause 2

HON M FEETHAM:

Clause 2 as amended, can I put forward that all the words after the words "is amended".....

HON P R CARUANA:

Mr Chairman, I hesitate to interrupt the Minister but can we just not take the Bill as amended in accordance to the Minister's letter dated 13th February? Is he proposing to read out each amendment?

MR CHAIRMAN:

Do you wish to do that?

HON M FEETHAM:

Yes.

MR CHAIRMAN:

Certainly no objection.

Clauses 2 to 12, if amended, as amended were agreed to and stood part of the Bill.

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

THE DRUGS (MISUSE)(AMENDMENT) BILL 1995

HON P R CARUANA:

Mr Chairman, the three Bills of which this is a part of a package which we debated at some length at Second Reading are Bills on which the Opposition has already done a fair amount of work of the committee type with the Law Draftsman before this meeting of the House began. Many of the amendments, indeed, have been agreed to already. Many of the amendments are proposed by the Government in response to observations made by the Opposition to the Law Draftsperson when we got the Bill. So certainly as far as we are concerned although there might be one or two points that I wish to make, but I am quite happy for the Bill to stand before Committee as amended by the terms of the letter dated the 9th January and then we can run through the Bill clause by clause but

already on the basis that it has been amended in accordance with that term.

MR CHAIRMAN:

I know now the sentiments of the Opposition. I do not know that of the Hon Mr Cumming, do you agree more or less with that? So what we will do is we will take about five clauses at a time and give a slight pause and if anyone wants to say anything on those clauses we will comment on them.

Clauses 1 to 10 were agreed to and stood part of the Bill.

Clause 11

HON P R CARUANA:

Mr Chairman, in clause 11(c) I had really a question and perhaps the Attorney-General can answer for me on the spot or perhaps somebody else, whether it is envisaged by the drafting of this Bill that ship includes, for example, launch. In other words, that it is envisaged as drafted that this section would cover fast launches registered in Gibraltar, if they were to be used in breach of the Drugs (Misuse)(Amendment) Ordinance. My question applies to Clauses 11(c) and 11(d). In other words, when we talk about offences committed on ships and when we refer to the ships used for illicit traffic, obviously in relation to drugs which is what we are concerned with in this Bill, does it include both? That there is nothing on the part of ship that it means a big boat. We are not semantic here, ship includes a small registered boat?

HON CHIEF MINISTER:

Mr Chairman, in the absence of a definition in the Ordinance I would imagine that the general provisions on interpretation is the one that determines what is meant by ship and if the hon Member as a lawyer is probably better equipped than I am to say whether a ship in any of our laws normally means anything that floats. I would not be able to tell him the answer to the question, is yes, it does. I would expect that it should because we certainly want to be able to act against those as well but I cannot be sure that it does.

HON P R CARUANA:

In certain Ordinances the words used is "vessel" and not ship. It is just that in the ordinary language the word "ship" would tend to exclude a small boat.

HON CHIEF MINISTER:

I agree that it conjures that in layman's language, something bigger than a vessel that operates in local waters but I cannot say that the particular use of the word "ship" in this particular Ordinance precludes it being of a certain size.

HON ATTORNEY-GENERAL:

The interpretation is given in the Interpretation and General Clauses Ordinance. "Ship includes every description of vessel not propelled exclusively by oars or paddles."

HON P R CARUANA:

I am grateful to the Attorney-General for that clarification.

At Second Reading I raised this point of this context of which is the Chief Minister's constant reminding us. The Government as opposed to the Governor has no constitutional responsibility for law enforcement and we are very much in an area of criminal law enforcement in this business of drugs misuse legislation. The effect of this amendment, because it purports in a critical phrase to change Government instead of Governor is to give the Government the power to appoint. It says a numbers of powers may be exercise by a customs or police officer, fair enough, "or other person appointed for that purpose either generally or specifically by the Government" and I want to know constitutionally responsibility the Government could appoint somebody to enforce the Drugs Misuse (Amendment) Ordinance 1993. I would therefore suggest to the Government, and that is the state of my amendment, and I make no political point about it, I am generally not taking objections as the Government will have noticed to the substitution of Government for Governor. Indeed, there is already several pages at the front end of this Bill in which that has been done but I think in relation to this particular section there is an element of usurpation of functions on the part of the Government in a way that it might not be legally able to discharge and my suggestion would be that in this isolated case we leave Governor.

HON CHIEF MINISTER:

Mr Chairman, I do not think the remarks that I made in relation to the Criminal Justice (Amendment) Ordinance which we have just discussed in fact applies to the Drugs Misuse (Amendment) Ordinance. The decision to act on the misuse of drugs was a political decision in the first

instance and it is not the same as dealing with the administration of the criminal law. The Customs are already an area which is a defined domestic matter and certainly as the Opposition Members will no doubt remember the recent discussions in the United Kingdom between the Foreign Secretary of the Kingdom of Spain and the Secretary of State of the Commonwealth and Foreign Office of the United Kingdom resulted in a tentative agreement which was subject to our agreement before it could come in, not the Governor's, but the Government's and therefore it seems to me perfectly natural that if the Government and not the Governor is responsible for acting against drugs then we also have the right to appoint who does the job. So, the position is we wish to retain it.

HON P R CARUANA:

Mr Chairman, I entirely support the motion that the British Government should voluntarily commit themselves to seek the consent to the Gibraltar Government before they do these things or do not do these things. I do not accept the Chief Minister's arguments that the previous Bill that we took was not his political responsibility because he had not thought it up but this one is his political responsibility because he has thought it up. The answer is that he has thought up neither because all of these Bill result in the implementation of the Vienna Convention which we keep on being told is on the 51 items on the Foreign Secretary's list that he is being beaten over the head with continuously over the last 12 months. So this Bill falls into exactly the same category as the previous one and in any case I do not accept that distinction. He has to take political responsibility for every Bill that he brings to this House whether he dreamt it up or he did not dream it up. The fact of the matter, Mr Chairman, is that it seems to me that there is a clear attempt on the part of the

Government to take powers in relation to law enforcement. Let me tell the Government that I have no conceptual difficulty with law enforcement being transferred to the Government of Gibraltar pursuant to future constitutional reform but it has to be accompanied by a parallel system as there is in the United Kingdom, for example, where things relating to the police are not a departmental responsibility of the Government of the day in the sense that other government departments are. My objection is not therefore political. My objection is technical in the sense that here is a matter the Government is taking in a way which could frankly raise grave doubts about the constitutional validity of any action taken by any person so appointed by the Government pursuant to this section. I can only express my views. If I have not persuaded the Chief Minister to remove them then it will stay but it will not stay with my support. It is bad legislation.

HON CHIEF MINISTER:

Mr Chairman, I do not think the hon Member has been effective in persuading the Government by the arguments that he has paraded. Let me say that in reply to the point that he has made I was not seeking to elude responsibility in the previous Bill by saying we had no hand in drafting it. What I was saying was that we could not accept the amendments without going back and consulting the people that had been responsible for the original thing, not because we do not accept the responsibility for changing what is brought here if we do not know whether the arguments that he is putting in support of those changes hold water or not. What I have said is.....

HON P R CARUANA:

That was a reference, Mr Chairman, to the Ionisation Bill not to the.....

HON CHIEF MINISTER:

Mr Chairman, I did not make the reference, the hon Member has said that when we referred previously to the grey area of the criminal justice and that was in response to the Criminal Justice (Amendment) Ordinance where I said today that the most that we could do was to hold off taking the Committee Stage. The reason why I am saying that in respect of that Bill and I am not saying it in respect of this Bill is because as far as I am concerned, we could either accept or reject this amendment here and now because we are fully responsible for what is on this piece of paper but if he moves an amendment on something where we take the responsibility for bringing it here... We have brought it here, having listened to one set of arguments and he puts other arguments which we cannot reply to, we have to take these arguments and then contrast them with the original arguments that we brought and if we believe that his arguments are more powerful than the other ones then we will overrule the other ones and come along and vote for his amendments. In this case we do not have to consult anybody else and therefore we will take the risk that the law would be disallowed if it is unconstitutional or that it would be challenged if it is used and it breaches the constitution.

MR SPEAKER:

Does the Leader of the Opposition want to bring an amendment to that clause?

HON P R CARUANA:

Yes. The deletion of the last word "Government" and its replacement by the word "Governor" in paragraph (a).

Question put. The following hon Members voted in favour:

The Hon P R Caruana  
The Hon Lt-Col E M Britto  
The Hon H Corby  
The Hon M Ramagge

The Hon P Cumming

The following hon Members voted against:

The Hon J Bossano  
The Hon J E Pilcher  
The Hon J L Baldachino  
The Hon M A Feetham  
The Hon J C Perez  
The Hon Miss M I Montegriffo  
The Hon R Mor  
The Hon J L Moss  
The Hon P Dean  
The Hon B Traynor

The amendment was defeated.

On a vote being taken on the clause the following hon Members voted in favour:

The Hon J Bossano  
The Hon J E Pilcher  
The Hon J L Baldachino  
The Hon M A Feetham



The Hon J C Perez  
The Hon Miss M I Montegriffo  
The Hon R Mor  
The Hon J L Moss  
The Hon P Dean  
The Hon B Traynor

The following hon Members voted against:

The Hon P R Caruana  
The Hon Lt-Col E M Britto  
The Hon H Corby  
The Hon M Ramagge

The Hon P Cumming

Clause 11 stood part of the Bill.

Clauses 12 to 18, if amended, as amended, 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  
1995

Clauses 1 to 4

HON P R CARUANA:

Mr Chairman, in respect of the Drugs (Misuse) Ordinance that we have just done. Just to mention that there is a letter of misprints, dated 9th January which we have agreed to. In the Bill we have just considered there is apart from the amendments a letter setting out agreed printer's errors.

HON ATTORNEY-GENERAL:

Was reference made to clause 19? There was a new clause 19 inserted in the Bill as well, as amended.

MR CHAIRMAN:

As amended, all of them are as amended. All the clauses we have approved are as amended. That is clear is it not?

HON P R CARUANA:

Absolutely. On this Bill I have absolutely no comments. All the ones we had have been accommodated for this meeting.

Clauses 1 to 14 were agreed to and stood part of the Bill.

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

THE DRUG TRAFFICKING OFFENCES ORDINANCE  
1995

HON P R CARUANA:

Mr Chairman, this is a Bill in which I raised several issues at the Second Reading. I do not know if any Government Member is equipped to answer any of those points that were raised. If not I might have to raise some of them again at this stage. In the previous Bills the Members had made notes of our questions and addressed them.

HON ATTORNEY-GENERAL:

Mr Chairman, the major question that I recall the Leader of the Opposition raising on the last occasion was in relation to the concept of suspicion in, I think it is clause 57.

MR CHAIRMAN:

If that is the only one then when we come to it.

HON P R CARUANA:

There are others.

MR CHAIRMAN:

If there are others then I think the best thing to do is if the Opposition tell me how far we can go then we will pause there, discuss that one and go along in that way.

HON P R CARUANA:

Mr Chairman, you can go up to and including clause 39.

Clauses 1 to 39, as amended if amended, were agreed to and stood part of the Bill.

Clause 40

MR CHAIRMAN:

If the hon Member would give me the page number it would help me considerably.

HON P R CARUANA:

Pages 111 and 112, the same point arises. Mr Chairman, this was a point that I had raised which may be one of potential ambiguity in the drafting. Hon Members may recall that clause 40 deals with Gibraltar evidence for use overseas. In other words, the circumstances in which the Gibraltar authorities have got to cooperate in producing evidence to other jurisdictions and the words that are used, not only in clause 40 but also in clause 41 over the page. I am reading from the last paragraph of clause 40(1) beginning "A request for assistance in obtaining evidence in Gibraltar in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on in that country or territory, where the proceedings or investigations are in respect of offences of drug trafficking or offences under a corresponding law." And I said, what is meant by the words "or offences under a corresponding law" and I was particularly concerned that information had been brought to my attention and, indeed, we discussed it at the Second Reading that attempts had been made to get us to extend the ambit of this jurisdiction to other areas of law beyond drug trafficking and I was concerned that "or other corresponding law" logically means corresponding law in an area other than drug trafficking. Because if it does not mean that what does it mean? If it means only drug trafficking why is there not a fullstop after "drug trafficking" so that it would read "where the proceedings or investigations are in respect of offences of drug trafficking"? When they add "or offences under a corresponding law", corresponding to what? To the nature of the offence, to the name of the legislation under which it is read? We have got to make it very clear. And I do not say, Mr Chairman, that the legislation necessarily has that defect. I was raising a query that we have got to be very clear that this very powerful legislation which imposes

severe obligations and if expanded is capable of damaging our finance centre irrevocably, let it be very clear what we think as legislators we are legislating when we use those words. And if there is the remotest doubt that those words may have a broader meaning that extends this beyond the parameters of drug trafficking, let us make sure that we do not. I hope this is not one of those cases in which Government Members are going to give me their opinion of how they read the words and say, "Therefore I am not going to do anything about it." I accept now that the words are capable of an innocent explanation and therefore my concern is not that I am necessarily right, my concern is precisely that the words are capable of ambiguity. But it may well be that the Attorney-General will be able to put my mind at rest even on that basis.

HON ATTORNEY-GENERAL:

Mr Chairman, there is really only a very subtle degree of ambiguity involved in that concept. The expression "corresponding law" under clause 2 on page 64, if the Leader of the Opposition will see that it is given the same meaning as in the Drugs (Misuse) Ordinance so we have had the same meaning under our statutes here for some 22 years because it is defined under the Drugs (Misuse) Ordinance in section 2(1), as having the meaning assigned by section 3. Section 3 then goes on to considerable detail to give the definition as meaning a law - perhaps I should read it for the benefit of the Leader of the Opposition - "In this Ordinance the expression "corresponding law" means a law stated in a certificate purporting to be issued by or on behalf of the government of a country outside Gibraltar to be a law providing for the control and regulation in that country of the production, supply, use, export and import of drugs and other substances in accordance with the provisions of the

Single Convention on Narcotic Drugs signed at New York on 30th March 1961, or a law providing for the control and regulation in that country of the production, supply, use, export and import of dangerous or otherwise harmful drugs in pursuance of any treaty, convention or other agreement or arrangement to which the government of that country and Her Majesty's Government in the United Kingdom are for the time being parties." So there is that precise definition, Mr Chairman.

HON P R CARUANA:

Mr Chairman, I had not appreciated that this was a defined term and that the definition was that specific in the Ordinance from which it is imported. I accept that that deals with the fear that made me raise the point at the Second Reading. I am grateful to the Attorney-General.

HON CHIEF MINISTER:

Mr Chairman, can I just take the opportunity so that we have it on the record, of saying in response to the concerns expressed by the Opposition Member that we share entirely the view that we have an obligation to ensure that our system is not exposed to being used for getting rid of the proceeds of drug trafficking; that that is what we are setting out to do, that that is what we are required to do by the European Union Directive, that in fact we are not required by anything that we belong to to apply the Vienna Convention except that the Vienna Convention has been accepted by the European Union and as members of the European Union the Vienna Convention is, in fact, what led to the EEC Directive 91/308. Therefore we have made it absolutely clear in unmistakable terms to Her Majesty's Government that that is what we are doing and we are satisfied that the law reflects that policy decision because the United Kingdom

Government is still trying to persuade us to go beyond it and if we had gone beyond it already presumably they would have given up of the effort. I wish to say this at this point so that it is on the record if at some future date some doubt is cast as to what this legislation is about.

HON P R CARUANA:

Mr Chairman, I am pleased that the Chief Minister has made that observation. I accept that then there is unanimity in the House about the need to apply this legislation strictly in relation to drugs but in relation to other evils that might arise, we have got to look at that situation as a new situation and decide how it needs to be dealt with and not on the basis of this legislation necessarily.

Clause 40 was agreed to and stood part of the Bill.

#### Clause 41

HON P R CARUANA:

Mr Chairman, it may well be that the need for me to introduce the amendment can be explained the way, again, by the Attorney-General. We are dealing, for the benefit of those listening, Mr Chairman, with the transfer of Gibraltar prisoners to give evidence or assist investigation overseas. In other words, we have got a prisoner locked up in Moorish Castle and these are the circumstances in which he can be sent abroad out of Moorish Castle to give evidence or to assist the police in another jurisdiction. And it talks about the issuing of warrants and that is perfectly all right. And then it says in sub-clause (2), "No warrant shall be issued under this section in respect of a prisoner unless he has consented to being transferred". In other words, prisoners cannot be

sent against their will abroad. If they are incarcerated in Moorish Castle they cannot be forcibly sent abroad to give evidence. I am just wondering whether there is any good reason that the Attorney-General is aware of, of why that consent should not be in writing. Is it seriously suggested that the prisoner could say, "I agree orally" and that then we might be faced with some sort of argument as to whether or not he had consented or not? Unless the Attorney-General could put my mind at rest on that, I would move an amendment that after the word "consented" it should be "in writing". I have scoured the area of that clause to see if there is any general provision that requires consents to be in writing. I have not found it, it may be there but if it is not there I think that this is an area in which for the protection of the prison authorities as much as for the protection of the prisoner, the consent - which is a consent given by a prisoner to be sent abroad to give evidence in a foreign trial or to assist a foreign police force with their enquiries - that that consent should be in writing so that he cannot accuse the Gibraltar Prison Service at some subsequent date of having transferred him contrary to his wishes, contrary to his consent. It seems a prudent small measure.

HON ATTORNEY-GENERAL:

Mr Chairman, I do not believe there is anything specific to say that the consent should be in writing and I am inclined to agree that it is sensible that it should be so for the reasons advanced.

MR CHAIRMAN:

Would you propose the amendment then?

HON P R CARUANA:

Mr Chairman, as I sniff the rare opportunity of getting the Government to agree immediately to an amendment, I would propose that sub-clause (2) is amended by inserting after the word "consented" the words "in writing".

Clause 41, as amended, was agreed to and stood part of the Bill.

Clauses 42 to 56, as amended if amended, were agreed to and stood part of the Bill.

Clause 57

HON P R CARUANA:

Mr Chairman, this was a clause in which I had articulated another view that there might be scope for misunderstanding and this I did in relation to the legal and the finance centre generally. This was the clause that I thought might impose on lawyers, accountants and even trust managers and banks, the obligation to report what clients had tried to instruct them to do which the lawyer had declined to accept instructions to do because the lawyer suspected that it might be connected with drugs. And I asked the question whether in those circumstances instructions that had been put to finance centre operators by someone who then was a client but who by then obviously would not be, would have to be disclosed because, of course, if the lawyer had sacked the person - when I say lawyer I mean finance centre operator - had declined to accept the instructions precisely because the finance centre operator had formed the view that he was suspicious that it might be drugs, as he is obliged to do, reject such instruction, he is then ipso facto required to report it spontaneously because it would have been given

with a view to furthering a criminal purpose. I am talking about sub-clause (9), and I think that what this clause should make clearer is if the finance centre operator needs to be part of the criminal purpose. In other words, if the finance centre operator is part of the criminal purpose, he cannot then say, "Well, I do not disclose it because it was given to me professionally in confidence". If that is not what it means then what it must mean is that if somebody walks into my chambers tomorrow having made an appointment to consult me as a lawyer and tries to instruct me to set up a company or to buy a property or to set up a trust or to open a bank account and I form the view that this man is somehow linked to drugs and that the money that he is going to use to put into the company or to buy the property or to set up the trust or to open the bank account is drug money, I would then say to him as I must, "I am sorry I am not prepared to offer this service to you". At that point, but only at that point, he ceases to be my client. Am I then required to blow the whistle on him because having refused to take him on as a client because I was convinced that he was furthering a criminal purpose, sub-clause (9), on page 128, deprives me of my professional privilege. If that is the intention it seems to me that we are imposing on finance centre operators a duty to blow the whistle on clients that they have sacked, quite rightly, because of the suspicion of ..... We will then find ourselves in a position of having to blow the whistle on past clients. In other words, on people who gave us information thinking that it was a solicitor/client relationship but because we then subsequently, having heard the instructions, decide to reject them and they cease to be our client we then retrospectively have to blow the whistle and the man would have said, "Who is going to give instructions to bank? Who is going to give instructions to a lawyer? Who is going to give instructions to an accountant if information conveyed in the giving of those instructions may put the lawyer" - we are talking



about lawyers specifically because we are talking about professional legal adviser in this sub-clause - "in an invidious position". Mr Chairman, I do not say that the law should not be this, I say that if the law is to be this it ought to be very clear to the legal profession that yes, this is what they are obliged to do because I do not say that what the clause achieves is necessarily bad, it is a matter of judgement and opinion, to the effect that that could have on the finance centre if people could not even give instructions to their own lawyers without the lawyers in certain circumstances having to report them to the police, but that is a matter for the policy of this House, we could well decide that drugs trafficking is so serious that that ought to be the law. But then let the clause make it clear that lawyers have the obligation, even if at the time that it was communicated to them it was communicated to them in a position of confidence. If we agree that that is what the law should be then it is possible that that clause can be left in that word and I will make it my business to ask the Bar Council to circularise the Bar so that the effects of this clause is brought to their attention so that there can be no doubt.

HON ATTORNEY-GENERAL:

Mr Chairman, certainly it would be helpful if the Leader of the Opposition would circulate the Bar Council in the manner that he has just suggested. The provisions in clause 57(9), it seems to me perfectly clear but let me tell the Leader of the Opposition that the whole concept of suspicion in this clause, the very reason why suspicion is referred to rather, for instance, belief, is partly because this phraseology is in essence the United Kingdom version of what is appropriate in this situation but more importantly the words themselves are derived from Articles 7, 8 and 9 of the Directive. For instance, if one looks at Article 7 of the Directive it says, "Member States

shall ensure that credit and financial institutions refrain from carrying out transactions which they know or suspect be related to money laundering until they have appraised the authorities referred to in Article 6. Those authorities may, under conditions determined by the national legislation, give instructions not to execute the operation. Where such a transaction is suspected of giving rise to money laundering and were to refrain in such manner is impossible or likely to frustrate evidence to pursue the beneficiaries of a suspected money laundering operation, the institutions concerned shall appraise the authorities immediately afterwards." So various points in the Directive there is a reference to these concepts of suspicion and that is the essential reason why the clause has been drafted in the way in which it has been. When one looks at the question of disclosure, disclosure based on standards other than suspicion can present individuals with the difficulties of facts which they have to resolve themselves, how much information do they need to satisfy themselves before they could be required to disclose a belief, for instance, and law enforcement agencies themselves often act on suspicion and it is part of the thinking that a lot of intelligence could be lost if all that is disclosed were beliefs.

HON P R CARUANA:

Mr Chairman, I am not sure that the Attorney-General has addressed my concern. We are no longer in the realms of suspicion. If I decide not to accept a client's instructions and, incidentally, the Convention itself purports to give exemption to information communicated with a lawyer because it is still, even in the context of drugs, an overriding legal principle that communications between a person and his legal adviser are privileged and that continues to apply notwithstanding the great evil that drugs is and the Convention recognises it. A distinction is

drawn in the Convention between the position of bankers and accountants and dentists and doctors all on the one hand and lawyers on another. One might ask why but I suppose it might have something to do with the fact that everyone needs to be able to defend themselves without prejudice. If a lawyer decides to sack a client or not to provide the services that he is requested to provide because he suspects that this might have something to do with drugs, then that would have been information communicated to the legal adviser with a view to furthering a criminal purpose. The client was trying to further a criminal purpose, the client was trying to launder drug money by buying a Gibraltar property or by setting up a Gibraltar company or by opening a Gibraltar bank account. The legal adviser provision would have no meaning if what it meant was lawyers are exempted from this spontaneous reporting requirement unless it has something to do with drugs. Well unless it has got something to do with drugs he does not have to report it in the first place. It is just a nonsense. If it is communicated or given with a view to furthering any criminal purpose, I think must mean criminal purpose to which the lawyer is a party. Because if it means a criminal purpose exclusively on the part of the client that is every bit of information that he gives me which leads me to suspect, rightly or wrongly, that the client is laundering drug money. I do believe and I do not want to hold up this legislation because it is an important piece of legislation that needs to be put in place. Let us be clear what the effect of this is and once we are clear what the effect of this is we can legislate it knowing what we are doing which is my principal concern, that we should understand what we are doing. And that is that the principle of legal confidentiality, in other words, that a lawyer's solemn duty not to disclose what his client tells him in a legal conference is thrown out of the window when during that legal conference the client conveys to the lawyer some information or gives to the lawyer or tries

to give to the lawyer some legal instructions which leads the lawyer to believe, rightly or wrongly - some of us are more suspicious than others - that the client is engaged on some money laundering operation. This section puts on me, in those circumstances that I have described, the duty immediately to pick up the telephone and say, "Look here Commissioner of Police, I have just said good-bye to a client who came to Gibraltar's finance centre, tried to instruct me to set up a company or a trust, his name is Joe Bloggs, his address is such and such, I have not provided the service to him because I formed the view, the suspicion, that this might have something to do with drugs" and I put the phone down. That is what lawyers will be required to do. It is driving a coach and horses through the whole concept of legal privilege in a way, of course, let us be clear, from which drug traffic launderers do not deserve to be protected. Legal privilege does not exist for the benefit of enabling drug traffickers to get away with their evil purpose but, of course, because I have got to do it on the basis of suspicion, I have got to do it in relation to people who may not be drug traffickers at all, in fact, and that is the element of invidiousness in which lawyers are put. Because if I fail to report it then I myself will have committed a criminal offence for which, if it turns out that he was a drug trafficker, I can be sent up to the Moorish Castle. So really the position will be that lawyers have got to report... *[Interruption]* Yes, the hon Member may find that an attractive prospect, I do not. He result is that for lawyers to be on the safe side they have got to report the name and address of everybody whom they suspect on the basis of their own subjectively and I think that that is capable of being damaging to the way our finance centre can operate. But if there is anything that the Attorney-General can say on the basis of the briefing that he has had at the bar of the House then I would welcome it.

HON ATTORNEY-GENERAL:

Mr Chairman, it is really putting the lawyers in much the same position as doctors, for instance. This is creating a new offence in exactly the same areas as is being done in the United Kingdom. Why should not the lawyers report that sort of transaction in the circumstances outlined by the Leader of the Opposition? If the transaction proceeds and if there is no question of money laundering, fine the business comes into Gibraltar. But if it is a question of money laundering and if it is a question of drug trafficking then this is a way of trying to stop it and that is precisely the point of the legislation.

HON P R CARUANA:

I do not want to take much more of the House's time on this point but that is not the case. In the first place the United Kingdom is not an offshore finance centre. The United Kingdom is dealing with a completely different set of circumstances. Of course we must report people from whom we have evidence, in other words, that our suspicions are based on evidence. If somebody walks into my office and says, "Look I have just done this run from Columbia and this is the proceeds of it" or if I have reason to believe, of course I must pick up the phone, it would not require this law for me to pick up the phone. The problem comes from the fact that my obligation to report it derives from a simple suspicion on my part. I have therefore got to report every client that cannot satisfy me where he got his money to my standards of satisfaction and it is not I who seeks for lawyers to be put in a different position, the Convention - I stand to be corrected, it is either the Convention or the Directive - itself creates the exemption in respect of lawyers. I wonder if the Attorney-General would just take a briefing on that point so that I do not mislead the House. It is either the Convention or the

Directive. Mr Chairman, so long as we are aware of what we are doing and we do not think that that is damaging to Gibraltar. In other words, that it is not true that the effect of that is not in excess of what we are trying to achieve, then I agree that it is safe to legislate it so long as lawyers understand and the Government understand that this is what lawyers are going to have to do and that do it we will.

HON ATTORNEY-GENERAL:

Mr Chairman, there is a definition in sub-clause (8) which says, "any information or other matter comes to a professional legal adviser in privileged circumstances if it is given to him" in the circumstances in which are then set out in paragraphs (a), (b) and (c). But I must say I cannot find any exemption in the Directive itself, I have been searching for it but I cannot find one there.

HON P R CARUANA:

I think it is in the Convention. The point of sub-clause (9) is that it is itself a clawback from the exemptions granted in sub-clause (8). So sub-clause (8) says in what circumstances a lawyer is exempt and sub-clause (9) says, in effect, notwithstanding everything in sub-clause (8), you do not have that exemption if it is communicated or given with a view to furthering any criminal purpose and then I ask myself, well if it is not with a view to furthering a criminal purpose how could I possibly need the exemption given to me in sub-clause (8)? Because if it is not given to me for a criminal purpose which now includes this Ordinance and the laws created by this Ordinance, why would I need the exemption in sub-clause (8)? It seems to me that it gives a very full exemption to lawyers in one breath and then takes it away with the other and I think it is worthwhile, if necessary, adjourning for tea now just to make sure that this sub-clause (9) is a real part of the

Convention. In other words, that the effect of it faithfully reproduces it. I would like five minutes to look at this point again. If it is a convenient moment to take the tea break I would welcome it being taken now.

MR SPEAKER:

There is no reason why we should not take the tea break now.

HON P R CARUANA:

Or a break without tea, I do not insist on tea, just on the five minutes.

MR SPEAKER:

Yes, I think the answer then is we adjourn for half an hour.

The House recessed at 4.45 pm.

The House resumed at 5.15 pm.

MR SPEAKER:

Perhaps the Leader of the Opposition would like to set the ball rolling.

HON P R CARUANA:

Yes, only to say, Mr Chairman, that our deliberations during the tea break have established that the position is that the intention of the Directive is that lawyers must clearly understand that they have exemption in respect of some services but not in respect of all the services that they provide to their client. In other words, that a lawyer is intended to have that exemption only in respect of the

services that he provides which are listed in sub-clause (8), the litigation and all the defence and all of that. But if one, as a lawyer and as most of us in Gibraltar, also provide other types of services, for example, finance centre services, we and our clients and everyone must understand that there is no privilege in respect of information communicated to one's lawyer and there is no exemption for the solicitor in respect of information communicated by the client in respect of finance centre type work. And that is the distinction which the legal profession must clearly understand. It does not bestow them exemption so that they do not get caught out by this provision and as I indicated before I will point it out to the Bar Council so that they can circulate a paper on it.

Clause 57 was agreed to and stood part of the Bill.

Clauses 58 to 67, as amended if amended, were agreed to and stood part of the Bill.

Clause 68

HON P R CARUANA:

Clause 68(1)(a) I think has the effect of allowing the Government by regulation to extend the provisions of this Ordinance to other offences and given the importance we have all attached to the possible consequences of doing that, given that it might be a radical departure, I might not be so concerned if we were to extend it to the slave trade or something but I think that that subject should come to this House. I think I indicated at the time of the Second Reading that it might actually be of assistance to the Government Members if it had to come to this House so that no smoke filled room, that room pressure could be put on the Government of the day - this or the next one - to accede to any disadvantageous request to do that. It is

no good putting this on a list of 51 because the arguments have to be aired in a debate in the House and that is the point, quite apart from the fact that Government Members know that I like as much as possible to have to come to this House and not done by regulation. I would, Mr Chairman, therefore propose an amendment deleting sub-clause (1)(a)

HON CHIEF MINISTER:

Mr Chairman, clearly we do not share the aversion of the Leader of the Opposition to doing things by regulation and providing in the primary legislation the power to do so. However, in this particular instance since we have made clear already that we have no intention of moving for the present in this direction and that we do not consider and have taken advice and that advice has confirmed our view that we are not under any obligation to move in this direction and therefore we think first we need to see how it works for drug trafficking and leave it to settle for a while and then a political decision has to be taken in Gibraltar and not anywhere else, whether it is considered that we wish in Gibraltar to go further than we are required to go. We do not anticipate therefore that in the near future there will be any desire on the part of the Government to move in this direction and therefore I am prepared to accept the amendment of the Leader of the Opposition and should at some stage we feel there is need to do something different, then we would come back to the House with new legislation. I would ask him, in moving his amendment, that as well as deleting paragraph (a) he re-letters paragraph (b) as paragraph (a), paragraph (c) as paragraph (b), and paragraph (d) as paragraph (c), and paragraph (e) as paragraph (d), and (f) as paragraph (e).

HON P R CARUANA:

I am happy for the Government's agreement, that they support the amendment to do the housekeeping work as well, Mr Chairman, so I propose the amendment should be that clause 68(1)(a) be deleted and paragraph (b) to (f) in sub-clause (1) be consequently re-lettered (a) to (e).

Clause 68, as amended, was agreed to and stood part of the Bill.

Clause 69 was agreed to and stood part of the Bill.

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

THE EUROPEAN COMMUNITIES (AMENDMENT) BILL  
1995

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.

### THIRD READING

HON ATTORNEY-GENERAL:

Sir, I have the honour to report that - (1) The Health Protection (Ionising Radiation) Bill 1995 (with amendments); (2) The Ship Agents (Registration) (Amendment) Bill 1995 (with amendments); (3) The Drugs (Misuse) (Amendment) Bill 1995 (with amendments); (4) The Imports and Exports (Amendment) Bill 1995; (5) The Drug Trafficking Offences Bill 1995 (with amendments);



and (6) The European Communities (Amendment) Bill 1995, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

The Drugs (Misuse) (Amendment) Bill 1995 (with amendments), The Imports and Exports (Amendment) Bill 1995, The Drug Trafficking Offences Bill 1995 (with amendments) and The European Communities (Amendment) Bill 1995 were agreed to, read a third time and passed.

On a vote being taken on The Health Protection (Ionising Radiation) Bill 1995 (with amendments) and The Ship Agents (Registration) (Amendment) Bill 1995 (with amendments) the following hon Members voted in favour:

The Hon J L Baldachino  
The Hon J Bossano  
The Hon P Cumming  
The Hon M A Feetham  
The Hon Miss M I Montegriffo  
The Hon R Mor  
The Hon J L Moss  
The Hon J C Perez  
The Hon J E Pilcher  
The Hon P Dean  
The Hon B Traynor

The following hon Members abstained:

The Hon Lt-Col E M Britto  
The Hon P R Caruana  
The Hon H Corby  
The Hon M Ramagge

The Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn sine die.

Question proposed.

MR SPEAKER:

Before I put the question I would like to bring to the notice of the House that this could well be the last meeting of the House in which Mr John Sanchez will be carrying the mace.

John Sanchez has served this House for over 26 years with an extraordinary dedication that verged in almost religious devotion. He has performed his functions as Gentleman Usher with impeccable precision and impressive stateliness. By so doing he has contributed immensely to provide solemnity to the proceedings of this House and in so doing enhance its dignity.

On the secretarial side, he has contributed enormously to the good administration by being of exceptional assistance to the Clerk and to the Chair. I am sure that hon Members from both sides of the House will agree with me that he has also rendered outstanding service to them individually and collectively and they have never found him wanting.

He has set a very high standard for his successor, Mr Anthony Perera, to follow. He has endeavoured to pass on to him, as his understudy, the tact, respect, confidentiality and impartiality required in his functions concerning the House and hon Members. He has thus shown a loyalty to the House right to the end of his long and overall a commendable service to Gibraltar's legislature, that deserves our highest praise.

Whilst it saddens me to see him come to the end of his long service after voluntary extension, it gives me great pleasure to wish him a much longer happy retirement. He well deserves a break from a dynamically querulous and highly democratic legislature as ours historically is.

HON CHIEF MINISTER:

Mr Speaker, I will simply associate this side of the House and I am sure the Leader of the Opposition will echo the same sentiments on his side with what you have said with respect of our Usher. In my case I can say of course that Johnny was here when I arrived in 1972 and therefore I have shared with him a very big chunk of those 26 years. It is indeed the practice that one calls the longest serving member of the parliament the Father of the Parliament and if there was any doubt about whether I am the Father of the Parliament when he goes there will be no doubt that I shall definitely be the oldest member of the House covering all the facilities, except yourself, Mr Speaker, but your career suffered a short interruption which, happily was cured when you came back to join us as our Speaker and therefore I hope we will not have to say good-bye to you for a very long time to come and we share your sentiments and the affect that it reflects for our Usher as a colleague, as a friend, as well as a servant of the House and the people. I know that his commitment to his duties here have been something that he has been able to give

wholeheartedly with the full support of his wife, who has constantly put up with all the aggravation that he has had to discharge at home when we have put too much pressure on him as well.

HON P R CARUANA:

Yes, Mr Speaker, needless to say I associate my party with all those sentiments and one or two others. One of the enormous qualities and, incidentally from the Opposition we have considered John Sanchez to be a colleague, a fellow parliamentarian and not just a servant of the House. One of the enormous qualities that he brings and has brought to this House and of this I have been a beneficiary personally, is the enthusiasm, friendliness and interest with which, whilst preserving strict political neutrality, he makes the initial months, the learning curve of new members of this House a much less painful process. He has a knack of teaching things to people on a basis that gives the impression that, of course, the student knew all the time and belittling himself and one is able to gratefully learn the lesson without having to admit that one did not know it before he gave the lesson. I am very grateful to him for the extent and the manner in which he has assisted my settling into this House since the day of the bye-election in May of 1991. I think that in his family is due a particular mention and particular vote of thanks for having to put up with so many late night sittings which of course are a relatively recent phenomenon, at least since I was in the House since the current Government decided that they wanted to get the business out of the way in one sitting regardless of how long it lasted.

On behalf of the Chief Minister I apologise to his family and I thank them for having put them through that. He will undoubtedly be missed but our loss will be the gain of his

new colleagues in whatever new activity he pursues because I am certain that he will want to find something to do with his boundless energy and enthusiasm. It remains just for me to welcome his successor Anthony Perera. I am sure that with the passage of time he will establish with all the hon Members of this House the sort of personal relationship that has enabled John to do all the things for which he is being eulogised this evening and certainly we look forward to building that sort of relationship as far as we are concerned as soon as possible.

HON P CUMMING:

I would just wish to associate myself to all the words that have been said about Mr Sanchez. I have found him the most human aspect of service in this House. He has been very friendly and very helpful whenever necessary and I would like to thank him.

MR SPEAKER:

I am sure that John Sanchez has every reason to be very proud for his service given to the House as has been clearly expressed by all hon Members.

Question put. Agreed to.

The adjournment of the House was taken at 5.45 pm on Monday 27 February 1995.



# GIBRALTAR

## HOUSE OF ASSEMBLY



# HANSARD

24<sup>TH</sup> APRIL, 1995  
(adj Friday 26<sup>th</sup> May 1995)  
(Budget)  
VOL I



REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Ninth Meeting of the First Session of the Seventh House of Assembly held in the House of Assembly Chamber on Monday 24<sup>th</sup> April, 1995, at 2.30 p.m.

PRESENT:

Mr Speaker ..... (In the Chair)  
(The Hon Col R Peliza OBE, ED)

GOVERNMENT:

The Hon J Bossano - Chief Minister  
The Hon J E Pilcher - Minister for the Environment and Tourism  
The Hon J L Baldachino - Minister for Employment and Training  
The Hon M A Feetham - Minister for Trade and Industry  
The Hon J C Perez - Minister for Government Services  
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport  
The Hon R Mor - Minister for Social Services  
The Hon J L Moss - Minister for Education, Culture and Youth Affairs  
The Hon Miss K Dawson - Attorney-General  
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition  
The Hon Lt-Col E M Britto OBE, ED  
The Hon F Vasquez  
The Hon H Corby  
The Hon M Ramagge

The Hon P Cumming

ABSENT:

The Hon L H Francis

IN ATTENDANCE:

D Figueras Esq, RD\* - Clerk to the Assembly

OATH OF ALLEGIANCE

Miss K Dawson, Attorney-General took the Oath of Allegiance.

COMMUNICATIONS FROM THE CHAIR:

1.

MR SPEAKER:

It is a pleasure to welcome the recently-appointed Attorney-General, the hon and learned Katherine Dawson, to the House as an ex-officio Member. Miss Dawson, who served some years in the Attorney-General's Chambers as Crown Counsel is well aware that it is no easy job but she must also know that it is a key position that carries tremendous responsibilities in the administration of justice and very particularly in the legislature which is both interesting and fulfilling. Miss Dawson is making history today by becoming the first woman to occupy the Attorney-General's seat in this House and no doubt she will get special support from her gender. I think I should also welcome the Gentleman Usher who is I think well known for being a sprinter so I had to tell him today to go slow because I could not keep up with him. I do wish him the same success as his predecessor who scored 100 and not out.

CONFIRMATION OF MINUTES:

The minutes of the Meeting held on 9<sup>th</sup> January 1995, having been previously circulated, were taken as read and confirmed.

DOCUMENTS LAID

THE HON THE FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to lay on the table the following documents:

(1) Draft Estimates of Revenue and Expenditure 1995/96;

(2) Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary, Nos. 8/11 of 1994/95.

Ordered to lie.

The House recessed at 5.10 p.m.

The House resumed at 5.30 p.m.

Answers to questions continued.

2.

BILLS

FIRST AND SECOND READINGS

THE PROTECTION OF TRADING INTERESTS ORDINANCE 1995

HON M A FEETHAM:

I have the honour to move that a Bill for an Ordinance to provide protection from requirements, prohibitions and judgements imposed or given under the laws of countries outside Gibraltar and affecting the trading or other interests of persons in Gibraltar be read a first time.

Question put. Agreed to.

SECOND READING

HON M A FEETHAM:

I have the honour to move that the Bill be now read a second time.

Mr Speaker, the need to introduce legislation of the kind contained in this Bill was first identified when the drafting of the Civil Jurisdiction and Judgements Ordinance, 1993 was undertaken. It was necessary to consider what statutory provisions in Gibraltar might be affected by the jurisdiction and judgements legislation and what further legislation might be necessary to complement that Ordinance. The object of introducing legislative provisions relating to the reciprocal enforcements or judgements etc. is not only to ensure that the interests of Gibraltar and the Gibraltarians are protected but also to make sure that we have in Gibraltar the legislative infrastructure to make Gibraltar an attractive place to do business. The ability to enforce the judgements of our courts in other jurisdictions and the capacity to enforce overseas judgements here is part and parcel of that. Such provisions are of course important for the social policy reasons as well as commercial reasons. For example, the wife and dependent child abandoned by a husband need to be ensured that the maintenance order made in their favour in a Magistrates' Court in Gibraltar can be enforced in whichever country the husband is now living. The community in Gibraltar needs to know that the enforcement can take place otherwise the wife and children are likely to become a charge on the public purse but if we are to have this opportunity for reciprocal enforcement of judgements between jurisdictions and the increased recognition of such jurisdictions, particularly in the area of commercial interests, we must also take account of the

need to preclude inappropriate extra territorial enforcement which may be harmful to the trading interests of Gibraltar or which may infringe the jurisdiction of the Gibraltar Courts or prejudice the sovereignty of the Crown in the right of the Government of Gibraltar. This Bill makes provision for such protection of Gibraltar's interests in the way that comparable legislation does in the UK in respect of UK interests and as similar legislation to be found in most other common law jurisdictions do. This reference to other common law jurisdictions gives me an opportunity to explain the timing of this Bill. The Bill has been ready to bring to the House since the middle of last year. It was at that time that the subject of extensive consultation with the Foreign and Commonwealth Office legal advisers which built in a delay to this Bill. That apart, the Bill was not published at the time because no progress was being made on the arrangement for bringing into effect the Civil Jurisdictions and Judgement Ordinance 1993 and having waited since 1980 (a date which I will explain in a moment) there seemed little need for a rush. However, two things have occurred to make bringing the Bill to this House timely.

The first is that weary of the delay in relation to the Jurisdictions and Judgement Ordinance we have decided to bring that Ordinance into effect except in relation to the UK. I should tell the House that to assist the UK to cooperate in the arrangements to bring that Ordinance into effect we have even arranged to have drafted the Order in Council necessary to make the arrangements for operating the Ordinance and therefore the Conventions to which it gives effect between here and the UK but even that assistance has not produced any response from the United Kingdom. We are told that there is no hidden agenda on the part of the UK. Their lawyers merely lack the time to deal with the matter as it may be. The second participating event was the need to put in place new reciprocal arrangements with Australia reflecting the fact that there are now new Australian courts to replace the old arrangements that had the time of the Court of appeal the Judicial Committee of the Privy Council. The changes in the Australian court system are more far-reaching than just the final court of appeal and that is the most significant change. The Australian Government requested new reciprocal enforcement arrangements with the UK and these were agreed. They have now been given effect to in the United Kingdom. The agreement is of effect in respect of all dependent territories etc and Australia has itself enacted the necessary new legislation having effect in all Australian states as well as in the federal courts.

It was identified by the draftsman in several territories that to give proper effect to the agreement that the UK had made with the Australian legislative provision of the kind contained in this Bill was required. The new Judgement (Reciprocal Enforcement) Order has been drafted to take account of the changes in the arrangement with Australia but must wait the passage of this Bill before it can be brought into effect. I refer again to the date 1980. The United Kingdom Act replacing earlier and by then outdated provisions was enacted in 1980. That Act contained a provision which permitted it to be extended by Order in Council to dependent territories etc. At the time when provisions similar to those contained in the Civil Jurisdictions and Judgement Ordinance 1993 was introduced in Jersey, Guernsey and the Isle of Man, the Protection of Trading Interests Act 1980, as amended by the Order in Council, to apply to that jurisdiction was extended to the territory.

It is not the policy of this Government to acquire its legislation by Order in Council and I am therefore bringing this Bill to the House. The drafting of the Bill is modelled on the adaptations made to the UK Act when it has been extended to, for example, the Isle of Man and, as I have said, the Bill has been the subject of consultation with Foreign Office Legal Advisers. I recognise that as reading matter it is not the most exciting but it is an essential part of a modern commercial legislative framework and goes to show to the world that Gibraltar has the tools available to permit sophisticated business to be done in Gibraltar and to properly protect the interests of Gibraltar both in terms of trade and in respect of the interests of the Crown. I commend the Bill to the House.

Debate invited on general principles and merits of the Bill.

HON P R CARUANA:

Mr Speaker, I have not yet had an opportunity in the minimum number of days notice that I have had of this Bill, to consider its technical implications. I do of course recognise that there is a Protection of Trading Interests Act in the United Kingdom and that it deals with the same subject matter. I will deal with any issues that arise at the Committee Stage from any differences that might exist between this Bill and the equivalent provision in the United Kingdom. But at this stage, Mr Speaker, I would just like to make one or two observations. The Minister has, I think, given us to understand, at least in reading between the lines, that this piece of legislation has been the subject matter of

some dispute and/or controversy between the Government of Gibraltar and the Foreign and Commonwealth Office. He has given me at least to understand that this is not a piece of legislation that the British Government want to see us legislate. That in itself is not, as far as I am concerned, a good reason for not legislating it. On the other hand, it would be informative if the Minister could advise the House of the objections or the difficulty or the reluctance or the reasons for any of those things that has been proffered to them by the Foreign and Commonwealth Office in causing all that delay. It seems to me that he must explain to the House what the technical issues are that have caused the British Government not to want us to implement this. I ask this and I couple it with the observation that I made a few days ago that this is probably the first Bill that we see coming before this House in which the commencement date is to be established by the Government as opposed to be the Governor. The Minister will be hard put to answer any of my observations if he does not listen to what I am saying. If he is not interested then I will not make the observations. This, as I said, is the first Bill in which the commencement date is to be chosen by the Government and not by the Governor and I ask him to clarify whether that change in mechanism for establishing the commencement date by the Government as opposed to by the Governor reflects or accommodates this disagreement of the Bill that he has alluded to or at least he has insinuated between the Gibraltar Government and the British Government. I would also be grateful to him if he could clarify for my benefit what exactly he understands by the term "sovereignty of the Crown in right of Her Majesty's Government in Gibraltar". That is a phrase that I have come across frequently in Commonwealth legislation. In other words, that is the formula used, for example, in Australia and Canada and it has been the practice there since they enjoyed dominion status because there was a recognition that the status of the Crown was different in relation to the government in those of Her realms which were no longer dependent territories. And I ask the Minister just to explain for my benefit what exactly his Government understanding of that phrase is and whether we should all be celebrating that the Government have unilaterally declared and implemented my party's policy which is for a form of dominion status. Does this denounce UDS, unilateral declaration of dominion status? Mr Speaker, as I said, with Mr Speaker's latitude I reserve the right to raise at Committee Stage particular provisions of this Bill which may, in fact, relate to the general principles.

HON CHIEF MINISTER:

I can explain one of the elements to which the Opposition Member has drawn attention and it will be a feature of all the legislation we bring to the House from now on which is this question of the date on which the legislation is brought in. It arises out of the fact that the newly arrived Deputy Governor seems to think, notwithstanding the fact that we have given him detailed correspondence going back to 1969, that the date on which legislation is brought in after it has been passed by the House and obtained the Royal Assent, is a matter which he, as Deputy Governor, can implement on instructions from the Foreign Office. We have pointed out that this is not the case and that the Governor there is carrying out a role which is a defined domestic matter and therefore it is the Governor on the advice of the Government or on the advice of the Chief Minister or on the advice of the Council of Ministers. An issue which, as far as I am concerned, had been clearly established beyond doubt in 1972 when I was elected, never mind in 1995. Therefore for the avoidance of doubt with this Bill and with every future Bill, my Government has taken the policy decision that it should read Government and not Governor although we have no doubt that in every previous Bill before this House since it was constituted in 1969, in the opening paragraph "Governor" has always meant "Government". That is, it is the Government of the day that decides whether it is appropriate to bring in a provision at a particular time because the reason why this thing is there, frankly, and not have a date of saying, "When it gets the assent the whole Bill comes in" is because in a lot of legislation once the legislation is on the statute book certain resources have to be provided or certain things have to happen and therefore we bring in a particular section when we are ready to carry out what the law says it carries out. How it can be a defined domestic matter which we decide to do or not do by a majority vote in the House and then argue having decided that, that the date on which it stands to happen is going to be decided by the Deputy Governor on the instructions of some mandarin in the Foreign Office is beyond me? So that is the explanation for that element. Clearly the British Government when the time comes will have to decide whether they allow the Bill to become law or not with that proviso in it.

HON P R CARUANA:

If the Chief Minister will give way before he sits down. Not right now but before he sits down.

HON CHIEF MINISTER:

Before I sit down, fair enough. That is independent of any controversy that they may have about any particular technical element or not in the Bill. As far as the Government are concerned, clearly the position of the Government indeed in all the Bills before the House is that we are taking the First and Second Readings, there will be a sufficiently long gap between now and the Committee Stage for any points Opposition Members want to put to us. It is better if there are points that they want to put to us that they put it before we are actually in Committee because then if we can meet what they want it would be easier to do so than having to take a decision here particularly if at the same time we have a situation where people in London want us to take account of views that they may put because it puts us in a very difficult situation if somebody in London suggests to change something and then, say, somebody in the Opposition suggests we change something in the opposite way, well what are we supposed to do, suspend proceedings and go back to London? I can tell the hon Member that although they keep on telling us from some of the non-Foreign Office technical departments that there are things that they want more time to study to give us a reply on, it is also the case that some of these Bills are part of the list that the Foreign Office wanted us to have done by the 15 January. So we have got one arm of the British Government under penalty of excommunication telling me that I must get on with the job and have it completed by January and then other arms of the British Government flapping that they have not had enough time to consider all the technical consequences and they want more time to put things to us. We have got a job to do. As far as we are concerned we are ready with this, there will be time between now and the adjourned meeting for the British Government, the Foreign Office or whoever, to put any things that they think ought to be changed technically but at the end of the day the political responsibility for legislating in Gibraltar lies with the elected Government and nobody else. [HON P R CARUANA: And the Opposition.] Yes, but it is the majority in the House that decides and whereas Opposition Members have got the right to vote against or try to persuade us to amend so as to get their vote, in the Foreign Office they have no vote.

HON P R CARUANA:

Mr Speaker, I have a degree of sympathy to this extent with the position of the Foreign Office and that is that they have found that like me they do not get too much time to read the Bills. I suppose they get them five

days before like I do, or do they get them earlier? But certainly it seems to me that ... [HON CHIEF MINISTER: I am giving way and I will deal with that point.] there is no constitutional double whammy on this business of input by the British Government. As far as I am aware the constitutional mechanism available to the Foreign and Commonwealth Office to disapprove legislation that this House legislates is to withhold the assent. [HON CHIEF MINISTER: Absolutely.] To exercise the Secretary of State's constitutional power to withhold the assent and it seems to me that if the British Government disapprove of a piece of legislation that this House legislates they must do that, not that I am encouraging them to do so or would I necessarily approve if they did, but that is the constitutional mechanism that exists and it seems to me illegitimate to wish to establish a second and less high profile way of achieving the same result which is to frustrate the legislative desire of the elected legislative chamber to seek to bring about the same result by trying to manipulate the commencement date which is a housekeeping provision and not a constitutional provision of approving of the subject matter of the legislation. So certainly and without knowledge of what the British Governments objections might be to this particular piece of legislation which the Chief Minister has not addressed, I would certainly agree as a matter of this House's prerogative that it is entitled to have its legislation implemented by the Government - and I will say something about the particular use of the word the "Government" in a moment - but certainly once a Bill has received the assent thereafter there is no constitutional framework which allows the British Government to decide whether it ought to become law or not. At that point it is a matter for the executive arm to decide as a matter of administrative arrangement when a Bill that has been approved ... So to that extent the Chief Minister has my support for that position. However, equally in this situation as with the situation which often arises as to who may make regulations under Ordinances, I have a difficulty which I think I have articulated before as to whether it is actually in the context of our constitution, proper and legitimate to make a reference to the Government. I question whether in our constitutional framework there is such a thing, there is such a legal entity, we all know what the Government means in political terms but whether there is such a legal entity capable of exercising this sort of power or the power to make regulations as the Government, as opposed to the Minister with responsibility for this or the Minister with responsibility for that or, indeed, the Chief Minister. Certainly that is the concern that I have. It is more a legalistic concern than a political concern but certainly I think it is only a matter of time before somebody who

is aggrieved or falls victim to a piece of legislation especially a piece of legislation that applies sanctions against him, especially or a criminal variety, to argue that in fact the law has not been validly introduced for this reason. It is something that ought to be looked at in terms of the efficacy of the legislation produced and of subsidiary legislation and it is a matter upon which the Government may wish to take their own private legal advice to see whether there is any merit in the very legalistic point that I raise in the context of the wording of our constitution which does not define the term "Government" although there are references to the Government in the constitution.

HON CHIEF MINISTER:

Mr Speaker, since I have given way to the hon Member let me say that I am aware of the technical point that he is making. I am advised that in fact the use of the word "Government" has been in our legislation since 1969 when legislation was altered on the amalgamation of the City Council and the Government and the word "Government" to do certain things was introduced where previously it had said "City Council" and that therefore it can be demonstrated that that has been the case from the beginning of the Constitution and, indeed, an Order-in-Council was made in 1969 making reference to things being transferred to the Government for the purpose of making regulations and rules and so forth and that is the origin of the argument but I am not really qualified to say how strong an argument it would be if it were challenged on technical grounds in court. I take the point and I will ask for the matter to be reviewed in the light of the comments by the Opposition Member because, frankly, independent of whether the content of a rule may be something that they support or not, the point is that if we make a rule or we make a regulation then we want the rule to stand. There is no point in making things if it can all be thrown out of the window on a technicality. On the first point, the position is as I have described it which has been totally reflected in the remarks of the Opposition Member in the sense that our view is as his is that the Constitution already gives half a dozen different things which will allow legislation not to be finalised and be brought into effect all of which would need to be exhausted before one got to the stage of deciding when was the appointed day and if they had said yes all along and then in the eleventh hour they changed their mind, they cannot then come back and say, "But we can also control the appointed day because the Governor is able to take a decision on instructions from the Foreign Office". And although we talk about the British Government I think this is a lot more serious than that because this is not really the British Government. The



politician in London does not even know that this goes on and if he knows it is only because he is told, "This is very important and we have got to do something about it and we have got to put a stop to it" for some reason or other and he just says, "OK, go ahead" and gives the political green light. But we are talking about a situation where we are elected by the people, we have got a certain role to play and because somebody misunderstands something, I mean frankly part of the dispute we had earlier on in the year about bringing in this appointed day legislation was the situation where having brought legislation to the House, the Opposition Member will remember that he moved an amendment in a list of things and I think it was paragraph (d) that he asked to be repealed and we accepted his amendment. That meant that paragraphs (e) and (f) now became paragraphs (d) and (e). People in London, having given the assent and everything else, apparently had not cottoned on to the amendment that we had accepted in the House and they were still working on the text of the unamended Bill and then they said they objected to us bringing in one section which it so happened was the wrong section. They objected to another section except that they had the lettering wrong. This is no way to run a business. The very least we expect from the people we are dealing is a level of professionalism in the job that they do when they propose to overrule people who have been elected and even that was missing. As a result of that situation, frankly, we have been toing and froing on the argument as to whether we are right or they are right and therefore we have taken a policy decision as the Government so that there can be no doubt as to what it means. We are going to say what it means in the law from now on and we will see where that takes us.

Mover invited to reply.

HON M A FEETHAM:

Mr Speaker, most of the points have been taken up by the Chief Minister. I have nothing further to add.

Question put.

The House voted.

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 Hon P Dean  
The Hon B Traynor

The following hon Members abstained:-

The Hon Lt-Col E M Britto  
The Hon P R Caruana  
The Hon H Corby  
The Hon M Ramagge  
The Hon F Vasquez

The Hon P Cumming

The following Member was absent from the Chamber:

The Hon J L Moss

The Bill was read a second time.

HON M A FEETHAM:

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

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Friday 26<sup>th</sup> May at 10.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 10.40 p.m. on Monday 24<sup>th</sup> April 1995.

FRIDAY 26<sup>TH</sup> MAY 1995

The House resumed at 10.50 am.

PRESENT:

Mr Speaker ..... (in the Chair)  
(The Hon Col R J Peliza OBE, ED)

GOVERNMENT:

The Hon J Bossano - Chief Minister  
The Hon J E Pilcher - Minister for the Environment and  
Tourism  
The Hon J L Baldachino - Minister for Employment and  
Training  
The Hon M A Feetham - Minister for Trade and Industry  
The Hon J C Perez - Minister for Government Services  
The Hon R Mor - Minister for Social Services  
The Hon J L Moss - Minister for Education, Culture and  
Youth Affairs  
The Hon Miss K Dawson - Attorney-General  
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition  
The Hon Lt-Col E M Britto OBE, ED  
The Hon F Vasquez  
The Hon H Corby  
The Hon M Ramagge  
The Hon P Cumming

ABSENT:

The Hon Miss M I Montegriffo - Minister for Medical  
Services and Sport  
The Hon L H Francis

IN ATTENDANCE:

D Figueras Esq, RD\* - Clerk to the Assembly

MR SPEAKER:

First of all I would like to tell the House that GBC would like to make a programme on the role of the Speaker and they have asked me whether they could come in with a camera, without sound, whilst the House is in session to take a few shots of the Speaker in action. If the House has no objection I will tell them that they can do so. Any objection? Thank you very much, I will them accordingly.

I have been given notice by the Leader of the Opposition The Hon Mr Peter Caruana that he would like to raise the matter of public urgent importance on the adjournment and I will ask him to seek leave of the House.

HON P R CARUANA:

Mr Speaker, I seek leave to move the adjournment of the Assembly to discuss a matter of urgent public importance, namely, the anxiety and concern that there is amongst citizens in Gibraltar arising from the apparent serious constitutional position that has arisen in relation to matters of legislation and implementation of EU Directives with the United Kingdom and also the question of the non-publication of the Government of the list of measures attached to a letter addressed by the Foreign Secretary to the Chief Minister in September of last year.

MR SPEAKER:

I will briefly give an idea of what the procedure is. The procedure is that first of all the Speaker must consider whether it is a definite matter of urgent public importance. If he agrees to that then it is up to the House to give its consent or if the House does not give its consent then if two Members stand up then he can proceed. If he does proceed and the matter is agreed to then it will be taken five and a half hours from now or at the end of the meeting, whichever comes first. I know this is a difficult situation for me in which I have had to try and find a formula out of the Standing Orders as they are because they are a little bit confusing and even contradictory. By using the principle that freedom of speech is primary in the procedure of the House, I have done my best to find a ruling that I think will stand the test of time and that is that I will allow any Member who has a matter of urgent public importance to raise it by five o'clock the previous day, as one of the rules says it can be done, although it is contradicted by another rule which says that he cannot. So I am taking the more beneficial one towards freedom of speech and therefore if a Member applies to seek leave to raise the matter of urgent public importance on the adjournment if he gives notice by five o'clock on the previous day that will be allowed. Of course, after that it has got to go through the test of the Speaker agreeing that it is a matter of urgent public importance, the House giving its consent or two Members rising and supporting the proposal. So that is the ruling that I have passed.

HON CHIEF MINISTER:

Mr Speaker, the proviso in the Standing Orders that is being used has never been used before in the House since 1972 and to my knowledge since the House first met in 1969 and therefore, as you say, the ruling that you make will be the ruling by which the House in future will be guided. It seems to me that the ability of Members to raise matters on the adjournment is capable of being dealt with in two ways - either it is raised under the Standing Order which requires notice to be given before 5pm on the previous day, in which case there is a limit to two Members being able to do that, or alternately, at the end of Question Time under Standing Order 79 notice of a motion for the adjournment under Standing Order 24A can be given and Standing Order 24A makes clear that it shall be at the time prescribed in Standing Order 7: Order of Business. I say this because I want it on the record that we believe that technically it is not possible to do this without the Government agreeing by the use of its majority to use Standing Order 7(3) to take a specific particular business out of order but since we would not want to use our majority to prevent the Opposition Member raising the matter which he wants to raise so that he can get an answer and so the people outside can get an answer, we are not going to seek to block his move.

HON P R CARUANA:

Mr Speaker, and similarly just for the record, although I welcome the fact that the Government Members do not wish to prevent debate on the issue and therefore say that they will cooperate, for the record, I do not accept the Chief Minister's analysis and interpretation to the effect that it could not happen without his permission. This has happened because, Mr Speaker, before the Chief Minister made these statements, had already expressed the view that in his view it should happen and therefore it happens because the Chair has interpreted two conflicting Standing Orders in favour of it happening and not because the Chief Minister has been magnanimous enough to permit it.

HON CHIEF MINISTER:

I do not want to have a debate about the magnanimity or otherwise of my position but of course if we want to test it then we can put it to the vote and defeat it and then we can have a constitutional crisis with the Leader of the Opposition instead of with Mr Douglas Hurd.

MR SPEAKER:

The last thing we want is another constitutional crisis. We have enough with one. I think that I should express a little bit more my thinking. Again, I think it would be improper in the practice that is being adopted where meetings take place at intervals perhaps of a few weeks where a matter in between can arise in which the Opposition has not had an opportunity of taking it under Standing Order 7 and it is that one other reason why I thought that in every situation this to me seemed fairer and certainly on the side of the freedom of speech of the House. But of course, let me say this, the House has the last word and if they wish to change the ruling or they wish to change a Standing Order to meet whatever situation they think they should, they are liberty to do so.

I will carry on with the procedure which means now that the motion proposed by the Leader of the Opposition will stand five and a half hours. It is 11 o'clock. Half past four this afternoon when we shall interrupt the business for 40 minutes only and if the mover of the motion wants to get a reply from the Government then he has got to allow time to them because the discussion cannot go on for more than 40 minutes. Let me tell the House as well that this is not a substantive motion, it need not be formulated and it is more a glorified question in which the matter is discussed and the person moving the motion can make long statements which obviously he would not be able to do so at Question Time. We carry on now with the order of the day.

#### BILLS

#### FIRST AND SECOND READINGS

THE APPROPRIATION (1995/96) ORDINANCE 1995

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to appropriate sums of money to the service of the year ending the 31<sup>st</sup> day of March 1996 be read a first time.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. As there are no structural changes to the Estimates before the House, Mr Speaker, I do not propose

to make any further comments and I will give way to the Chief Minister.

MR SPEAKER:

I think hon Members might wish to remove their jackets because of the present heat and if any hon Member wishes to do so he can do that.

HON CHIEF MINISTER:

Mr Speaker, in accordance with the practice established since 1988, I will be speaking to the Appropriation Bill of Government expenditure and at the same time giving the analysis of the Government as to the background of the position as regards the economy generally, at present and over the forthcoming 12 months.

Last year, Mr Speaker, when I introduced the Estimates of Expenditure to the House, I explained that we were in a more difficult position than normally in making the Estimates because in fact we had just concluded an agreement with the Moroccan workforce in the Government, totalling some 250 which was due to come into effect in May right at the beginning of the financial year and indeed since the accounts are prepared at the level of departmental requirements as far back as the beginning of January, those accounts did not reflect the anticipated changes either on the revenue or on the expenditure side. I therefore warned the House a year ago that the final predicted outcome of the financial year, 1994/95, was likely to be less close to the original estimates than had been the case in the past. Hon Members will see that that is indeed reflected in the results for the Consolidated Fund that we have brought to this House. I would like therefore to explain for the benefit of hon Members where the differences have come in and to what extent the results that we have got for this year are better or worse than what we hoped they would be.

Part of the cost of the package offered to the Moroccans fell in the year 1993/94 because payments were actually made before the 31<sup>st</sup> of March and that, therefore, was reflected in the final Consolidated Fund balance of 1994. It is mainly for this reason that recurrent expenditure in this year is less than we thought it would be because part of it came in the previous year. That is to say, part of the cost happened in March 1994 as opposed to April 1994 and therefore the cost appeared in the 1993/94 final accounts rather than in the anticipated outturn for 1994/95 which we have before us. That explains, Mr Speaker, why if we compare the position now with the position we expected a year ago, we see that there is a lower Consolidated Fund balance on the 1<sup>st</sup> of April 1994

but a higher Consolidated Fund balance on the 1<sup>st</sup> of April 1995. We also did not find a drop in the yield from PAYE that we thought would happen, partly because the effect of the loss of income from the Moroccan workforce was not as severe as we thought it might be and partly because we have been more successful in the last 12 months in reducing the level of arrears of PAYE which is where the main emphasis has continued in the collection of arrears. I have to say that the collection of arrears of PAYE now I think compares reasonably favourably with what one would expect is the most that can be achieved on the basis that what ought to happen in law which is 100 per cent payment on the 15<sup>th</sup> of each month is not attainable. We are now in a situation where we have got something of the order of £3.4 million of PAYE arrears outstanding which is something like nine per cent but this includes the accumulated areas in respect of companies that are in the process of having been put into liquidation by their creditors and some of which will be written off. These accumulated arrears go back as far as 1986/87. In respect of the current year we are now collecting something like 97 per cent of PAYE. I think it is difficult to collect 100 per cent on time. So of something like £1.8 million of the £3.4 million would be in respect of the last 12 months and the rest would be in respect of the previous year. The figure has in fact been coming down by something like £100,000 a month. That is to say, if we take the figure from one year to the next in terms of arrears of PAYE then we will see that there has been a decline of something like £100,000 a month as between one year and another mainly in the last 15 months which is really when we have been more successful in catching up. Of course, one of the things that I have mentioned in the past is that part of the problem of the increase in arrears that has taken place in the last few years has been reflected in the greater difficulty in collecting PAYE from the private sector than from the MOD and the public sector where the collection happens virtually automatically. Within the Government clearly it is purely a book-keeping exercise; there is no actual movement of money. Within the MOD they have generally been payers on the dot within the month after the PAYE has been deducted from their employees. Something like the replacement of direct labour in DOE by a contractor necessarily means that the level of arrears goes up even though it is a one-off thing. For example, PSA was paying something like £600,000 a year in PAYE at the time of the closure. If we have a situation where the contractor takes over from PSA and it simply brings in a delay of a couple of months, well, a delay of a couple of months means that there is now a running backlog of £100,000 which we will never catch up, which was never there when DOE was collecting and paying. The Estimates that we have got

for PAYE hon Members will see that we have moved from £41.5 million to £41 million this year and last year we put £40 million because we thought there would be a drop which did not materialise for the reasons that I have explained but it does of course indicate clearly that what we have got is a situation where the overall level of earnings in the economy on which PAYE is charged is running flat. There is in fact no growth. That has, of course, to be put into the contexts of the fact that flat is a considerable improvement on the catastrophic prognostications that it would be collapsing. It is not collapsing and it is not collapsing notwithstanding MOD cuts, notwithstanding reductions in the numbers we, as a Government, employ today compared to a year ago where we had, for example, an additional £3 million a year on our wage bill paid to 250 Moroccans and that £3 million produces £900,000 in PAYE. So we have lost £3 million pounds of expenditure. We have lost £900,000 of income but we are still collecting the same amount of money. That indicates that the level of growth in the private sector is barely enough to compensate for reductions in other areas but not enough to generate net increases at this stage in our development.

Mr Speaker, I ended my contribution a year ago by reminding the House that even though we had not been successful in everything we set out to do as a Government we were very clear that we had nothing to be ashamed of and that we had now laid the foundation for a solid economic future and a solid political future. I stand by my statement of a year ago and I have to say to the House that if hon Members take the trouble to analyse the information which is always being demanded they will see just how solid the situation is although it is not the cash generation machine we would like it to be and we believe it could be. The Government have no doubt whatsoever that the structure that we have developed, which we still need to work on, is one which can and will guarantee a sustainable economy for Gibraltar and that we would be today much nearer total achievement of that target if it were not for extranea events outside our control. But whatever extranea events outside our control may or may not develop we have got absolutely no intention of changing direction.

In looking at the proposed expenditure for the forthcoming year the House will see that we are maintaining the levels of previous years on recurrent expenditure and the level we have recently reached of expenditure in the Improvement and Development Fund. In terms, as I mentioned a year ago, of the expenditure of the Improvement and Development Fund, that expenditure had a major impact in the expansion of the construction industry and of employment in the construction industry

in the years prior to 1992. I told the House last year that the broad figures in the private sector construction industry was that we had an industry with roughly 700 jobs in 1987, that it reached a peak of 2,500 jobs in 1992 and that we expected it to get back to what it used to be sometime in 1994 and that is where we are today. I think the size of the industry and the volume of its workload has now completed the cycle and we can expect that it will start expanding from now on but it is highly unlikely to reach ever the level that it reached in 1992 of 2,500 jobs. One of the areas where we have been as a Government concerned to make an impact on unemployment amongst Gibraltarians has been in increasing the Gibraltar component of the construction industry. Hon Members may be interested to know that the position in that respect if we identify what would be considered the lowest common denominator. That is to say, making the definition of the participation of Gibraltarians in the construction industry the narrowest possible to make sure that we are measuring what we want to measure rather than taking, for example, total employment and including part-time typists or storemen or foremen or whatever, looking at the productive element of skilled and semi-skilled workers which can be equated, roughly speaking perhaps, 95 per cent accurately with weekly paid adult males. In that area, between April 1988 and April 1994 when the cycle of growth and contraction back to the original level took place, we saw an increase in the number of Gibraltarians from 10.8 per cent of the industry to 32.7 per cent. We had a situation where 81 out of 800 workers in 1988 were Gibraltarians and 239 out of 750 in 1994. In the meantime, as I have said, the industry reached a peak in October 1991 of 2,000 jobs and at the time, the proportion of Gibraltarians out of the 2,000 jobs were 177. So in fact between April 1988 and 1991, the expansion in the industry was that the industry trebled and the Gibraltarians in the industry doubled. Since then the industry has gone back to one third but the Gibraltar element has doubled again. If we look at that situation it is the one area where we can say we have been most successful in trying to make the permanent construction employment as much made up of Gibraltarians as possible. Clearly there is still room for expansion because if at present the industry employs 32 per cent of male manual workers, Gibraltarians, it means that 68 per cent are not Gibraltarians and since it is an industry where there is a higher level of turnover than in any other one, it is an industry where it is easier to replace foreign labour than in any other one because it is not a question of people being sacked from the jobs they have held and being replaced by somebody else. It is an industry that by definition is made up of maybe 20 employers and those 20 employers expand or contract their workforce depending on their workload and if there is

available local labour then they will take the local labour and that is happening in 1995 to a degree that was not happening in 1988 when we came in when there was no choice if all that there was in the entire industry was 80 people and perhaps 75 were employed and 5 were out of work. Therefore the pool of available construction workers was of five people, no more than that. Today if we have got 250 then clearly it is a situation where there is a greater opportunity. We believe that employers in the private sector are not making the maximum use of their opportunity to employ local people in the construction industry. We believe that there is a clear correlation between the nationality of the employer and the choice of the employee and therefore we clearly see that it is the small Gibraltarian-owned construction company that tends to be most willing to give local unemployed construction workers an opportunity. If they do not deliver then they do not deliver but other UK or Spanish managed and run companies tend to discount the capability of somebody from the local job market who has been in the industry almost as if there was a built-in bias against the Gibraltarians. There is little that we can do within the constraints of Community law to redress what one could term reverse discrimination except to make the point both publicly, as I am doing today, and indeed privately as my hon Colleague Mr Baldachino constantly makes when he talks directly to the Chamber and to employers and explains to them that it is in all our interests. It is not just in the interests of the Government and in the interests of the employee, it is also in the interests of the employer that we should have lower unemployment levels and that people who are more likely to spend a bigger chunk of their income in the domestic economy the better for all concerned. Obviously, it is an area where we will continue to press and the emphasis in the Employment and Training Unit on the training side is in fact geared to achieve greater local participation in the construction industry. We have got a particular problem in that the skills shortage is almost entirely in the trades of the bricklayers and masons where, historically, the Gibraltarian participation has been extremely low, even within the figure that I have given the House of the 32 per cent we have got now and the 10 per cent we had in 1988. It is still the case that we tend to have more electricians and plumbers and carpenters and joiners and painters and plant operators and very, very few people in the bricklaying and mason trades. It is not a popular area and therefore the part of the problem of developing greater Gibraltarian content in that particular field of skills is that my hon Colleague has to work almost like a social worker rather than an employment unit in trying to persuade people that there is a future in that area.

In looking at the level of investment in infrastructure we have no hesitation, Mr Speaker, in saying that if we had to go today through the decision-making process that we went in 1988/89 when we raised the borrowing capacity of the Government of Gibraltar to £100 million and we spent the bulk of that money in investing in assets, we would do exactly the same thing again. The position, as the House knows from answers to questions, is that we have now reached a balance of outstanding debts of just over £99 million. I would remind the House that there were people saying we had already reached £100 million in 1992 and predicting that we would be getting another £100 million on top of that £100 million between 1992 and 1995 and therefore I want to remind the public and the House that it is £99 million in 1995. We do not expect to require to exceed the £100 million limit during the course of the next 12 months and we will consider what policy we should adopt in 1996 after we have won the next election and we are re-elected.

As the House knows the Government introduced a specific special fund in 1992 - the General Sinking Fund - having put a commitment to do it in the manifesto when there was a debate during the general election that we would not be able to pay back the money. The General Sinking Fund, as the House was told in answer to a question by the Financial and Development Secretary, now has just over £15 million. We expect that that General Sinking Fund will keep on growing with the level of activity we have got today, without any further expansion in the economy which we expect there will be, but without relying on it, with the present stream of income which is hypothecated to that fund, we expect that the fund will be in a position, comfortably, to repay the £50 million of national debt which matures in the year 2004. The balance of the debt is in the commercial banks and in local bonds which have got different maturity dates and therefore is in the nature of a revolving facility. Within that revolving facility we expect to be able to have sufficient flexibility to meet our requirements for capital expenditure over the next 12 months. It is quite possible that the repayment schedules will be slightly more than the borrowing needs in which case we may well find that during the course of the next 12 months the debt outstanding actually comes down rather than staying at just under £100 million. Depending on what happens over those next 12 months we will then decide in 1996 whether we need to proceed with considering a higher level of debt or not. Let me say that the management of the national debt of Gibraltar has been one of the many controversial issues over which people have made all sorts of outrageous statements without bothering to check the facts. I think the House now accepts that since we have only now reached £99 million it is axiomatic that



had we had a need to borrow at any earlier stage we would not have used more expensive borrowing via a Government - owned company when cheaper borrowing was available to us directly as a Government from the banking facilities we enjoy which are under-utilised. One would have thought one did not need to explain that if one has an overdraft facility in the bank where only 0.25 per cent is paid over the base rate and is not used because one has got spare capacity, one is not going to go rushing off to another bank to borrow at 1.5 per cent when one can borrow at a 0.25 per cent. Although whenever Opposition Members have asked me to tell them what borrowing was being done by the companies I have refused to do it, I think the Leader of the Opposition finally got the message when I gave him this explanation the last time and he said whether he could draw the conclusion from that that all the borrowing was the borrowing that there was in the Consolidated Fund. Let me also make clear to prevent and pre-empt any possible confusion in his mind that it is not the case that we are substituting national debt by deposits in the Savings Bank, because I want to avoid the pitfall of him falling into another erroneous conclusion. The money in the Savings Bank belongs to the depositors in the Savings Bank not to the Bank, not to the Government. That does not stop the Savings Bank buying Gibraltar Government debt like it can buy United Kingdom Government debt but if it buys Gibraltar Government debt it can only be part of the debt which is the £99 million. It is not possible for the Savings Bank to lend money to the Government of Gibraltar over and above the £99 million and it is not happening so he can scratch that of his list. Debate in terms of the public debt that we have in Gibraltar are quite proper and we should have them. We are entitled to argue amongst ourselves about anything we want and we are certainly entitled to argue as a people about how we spend our money. But unfortunately it is often the case that what we are dealing with here in Gibraltar then gets reflected externally and I can tell the House that the concerns that have been expressed here about borrowing is something that has led to my having to give the United Kingdom Government, to reassure them, the kind of explanation which is reflected of course in the Estimates so they understand that it is not true that we are acting outside the borrowing limits laid down in the ordinance. What does that lead to? I will tell the hon Member what it leads to. It leads to a situation where in 1989 when we came to the House to bring legislation to set the limit, I asked the British Government at the time - since we were new and we did not know what was the constitutional position - whether in fact we required the permission of the United Kingdom Government to establish what the limit should be. The reply that I got in writing was that constitutionally the debt of the

Government of Gibraltar is something that the Gibraltarians are responsible for. This is why we are not able to borrow as cheaply as the UK. The UK is able to issue central Government debt in London at a rate and if I want to go to London and borrow then my debt, as Gibraltar, has to pay a premium in interest over the British Government debt because it is not considered to be sovereign debt of the United Kingdom Government. It is considered to be sovereign debt of the Government of Gibraltar. We accepted obviously, that that was the constitutional position and we went ahead and we borrowed £50 million pounds on the London Stock Exchange and paid the premium. We paid the premium on £50 million and we borrowed £50 million because we were advised by the Crown Agents that it was not possible to borrow less than that. There is a certain level of fees that are charge don the paperwork and those fees are the same whether £1 million of £50 million is borrowed. Therefore if we only borrow £1 million then we finish up paying 20 per cent interest because the fees are such a big chunk of the loan. We have therefore a situation where having done that the fact that in 1991 and 1992 in Gibraltar we had acrimonious debate about whether we were heading for bankruptcy or not heading for bankruptcy caused the British Government to say "Wait a minute, I have told you that it was your responsibility but of course it is your responsibility because I am assuming you are not heading for bankruptcy. If you are heading for bankruptcy in Gibraltar and you are not going to be able to pay the £10 million then, although we told you in 1989 and you could fix it at any level you wanted and that what we would give you was advice if you asked for it, we are now nervous about it and we want to be consulted before you raise the limit". That, in my view, is not their prerogative. As far as we are concerned and the Government of Gibraltar will fight on that issue, if the British Government were to say to me tomorrow that we are not permitted to borrow more than £100 million pounds - it is a self-imposed limit - then our position would be, "Fine, you want to fix the limit? You fix the limit and you underwrite the debt and then I go to the banks and I borrow the money cheaper because it is not Gibraltar Government debt, it is British Government debt. What you cannot do is say to me how much I may or may not borrow but whether I am able to pay or not able to pay what I borrow is my problem and therefore the rate of interest that I must pay to the lender reflects that capacity to repay." We in 1988 tried to persuade the British Government to go down the opposite route and we said to them that we would be interested in seeing whether it was possible to have - because that was the advice we had from the Crown Agents and from BZW that handles our own - in the accompanying

literature of the debenture issue an acceptance by the UK that their constitutional responsibility for the financial and economic stability of the territory meant that anybody lending to us could be guaranteed without necessarily having a written guarantee from the Chancellor of the Exchequer, that there was failsafe mechanism in the constitution which meant that the UK became the lender of last resort, which would be the case with the local authority in the United Kingdom. If a local authority was unable to meet its debts then the reality of the matter is that through the central government the debt would be picked up. If we had been able to get that we would have been able to borrow more cheaply and therefore it would have been worth negotiating with the UK what level of borrowing they would be happy with in exchange for being able to borrow at a lower cost. That was why they came back and they said "No, I am sorry, you have to pay what the market charges because really as far as we are concerned it is entirely your own decision whether you decide to borrow a £100 million or you decide to borrow a £1,000 million. If you want our advice we will give you advice as to what we consider to be a reasonable, realistic, cautious figure or whatever." We took the decision ourselves in 1989 without their advice. We said "It is not advice that we want. What we want is either a commitment that will save us money or we will take our own decisions and act on our own responsibility." Therefore the £100 million has been there and we see, as I have said, no need to change it before the general election in 1996. We will review the position then but on present analysis it is unlikely that Gibraltar will need at any point in time to have more than a capacity of borrowing a £100 million because unless there was a very huge increase in the size of the economy we do not think that the level of public debt to sustain effectively the replenishment of the infrastructure at any point in time will require more than that.

In terms of the ratio of debt to GDP I will remind the House, of course, of what I have said before. We are one of the very few members of the European Union that meet the criteria for economic and monetary union laid down in Maastricht in terms of the ratio of debt to GDP or the ratio of annual public sector borrowing requirement to GDP. We are below the 50 per cent debt/GDP outstanding ratio and we are below the three per cent annual GDP/borrowing requirement ratio. The United Kingdom that has its own ideas of good government and bad government has just finished the year having borrowed £36 billion more in the last 12 months than it already owed at the beginning of the previous year. A mere £3,000 million a month and they expect to be able to survive the next 12 months hopefully by Mr Clarke only having to borrow

£2,000 million a month for the next 12 months, increasing the national debt of the United Kingdom by another £24 billion in 1995/96 whereas I am telling the House we expect not to increase at all over the next 12 months. For the year 1995/96 the Government are projecting a zero net public sector borrowing requirement. No additional borrowing!

Turning, Mr Speaker, to the structure of the Consolidated Fund expenditure for the next 12 months, the House will see that the Government have continued with the policy of exercising constraint in the availability of departmental budgets in order to maintain the ceiling on public expenditure in some areas to compensate for the commitment of the Government not to put any constraints in other areas. I think it is important because that is what we are here to do today, that the position of the Government on public spending should be clearly understood and how we see philosophically and ideologically our responsibility and our right to exercise that responsibility without having to seek the permission of anybody else. The money that we are voting to spend today is not the money of the Government, it is the money of the people and the people have given us, the Government, the responsibility for exercising judgement. We are exercising the judgement in accordance with the criteria we defended in 1988, we defended in 1992 and we will defend in 1996. The democratic process provides that if somebody wants to spend the people's money some other way what they do is they put alternative proposals to people and people choose and nothing is going to change about that in the next 12 months and it would not have changed in the last 12 months and we do not accept that it is the role of the unions in the civil service to sit down with the Government and require the Government to negotiate what should be the size of the budgets in the departments. This is totally unacceptable and will not be accepted now or at any time in the future for as long as we are the Government their proposals for spending money as civil servants, not through their unions. Through their unions they make representations about their own pay and conditions and that they negotiate with the Personnel Department based on comparisons with UK. Let me give the House an example in an area which is not controversial and where it is straightforward and where there is really very little leeway. If the fire service in Gibraltar is based on the pay of the fire service in the United Kingdom and the United Kingdom gives tomorrow 1 per cent, we give here 1 per cent and if the United Kingdom gives 10 per cent, we give 10 per cent because we are totally committed to the principle of parity and we believe we have to honour that commitment unless we reach a point where it was an economic impossibility and then we would have to go back

and explain to people why we would have to stop doing something in which we believe and to which we are committed. But as long as we are able to honour that commitment we want to honour it. We think it is good for Gibraltar. We think it provides stability in industrial relations. We think it provides a good way of dealing with problems of relativities. The Chief Fire Officer then comes to the Treasury with estimates of the money he is going to need into which have been built the estimates for wages and the estimates for fuel, and the estimates for repairs. The allocation of resources to that department is a matter for the civil servants, in their official capacity as advisers of the Government. Not a matter to negotiate with the union that represents the firemen, and that has been one of the issues in dispute over the last month and it needs to be understood that that is why we have said this is not an industrial relations issue. It is a political issue because it is today in this House when we come to the Committee Stage that somebody can say "I think you are giving the Fire Brigade too much money, or too little money" and if they are able to persuade the Government then the Government use their majority to alter the allocation of resources to one department as opposed to another department. If we have put in these Estimates that Mount Alvernia should get £200,000 more than last year, it is because we think that that is where the money should go this year as opposed to going somewhere else. Not because we have negotiated it with anybody. That is something which has been of public interest recently which I think it is important to explain so that it is understood that that is the policy and that if people want to say that because that is the policy in which we believe and for which we stand and which we will defend and which we have believed in when we were in Opposition, then if people want to accuse us of being anti-union or being dictatorial, of not wanting consultation then that is fine and if the Opposition Members publicly support the campaign then it is a matter for them. All I can say is that it is a very peculiar policy to support a campaign which says the distribution of the resources in the Government annual budget should be negotiated with the unions that represent the civil servants who presumably will all want more. I cannot imagine any union coming along and saying "We want to cut the budget". Within the strategy of the Government, since 1988 and here we are, Mr Speaker, in 1995 and it is very peculiar as I mentioned last year for a Government to have to defend decisions taken and implemented in 1988 in 1995 but since we have a situation where people feel that they can question everything we did since we got elected in 1988 then we have to defend everything we did since we got elected in 1988.

Since 1988 we made it absolutely clear that one of the fundamental elements in the restructuring of the economy of Gibraltar required for survival, in our judgement, was the need to maximise the use of manpower and the need to maximise the use of land. We argued from that side in 1987 and from this side in 1988 and the record shows that the policies were the same, that it was nonsense to talk about an economy with many pillars. That it was really an economy with two sources of potential wealth - land and people. It did not really matter in which activity the people and the land were used as long as they were used in the most productive and efficient way possible. That is what would create wealth for Gibraltar and in order to be able to do that one of the things that was manifest to us was that the size of the level of employment in the Government sector was not sustainable and that it had only been capable of being sustained in the past in a situation where for every pound the MOD spent, the Government of Gibraltar spent 25 pence because that was the formula in 1976 that brought us parity. In 1976, Mr Speaker, the situation was self-evident although there were people arguing then against it who eventually were convinced and who eventually saw the benefit of what was being argued, the position was that if the British Government increased the budget of the MOD in Gibraltar on wages by £10 million, two things happened. The Government of Gibraltar got £2.5 million extra revenue and they got £3 million extra of expenditure which they were able to meet from the tax they took from their own employees on the £3 million plus the £2.5 million that have been paid by the MOD. The net result was that it was budget neutral for the Government of Gibraltar in terms of direct expenditure and direct income but of course it had an impact in disposable incomes, in expenditure in the private sector and in indirect revenue to the Government from import duty through the higher levels of consumption. We spent many years between 1972 and 1976 arguing that philosophy and eventually when it came in in 1978 it provided an enormous boost to the Government of Gibraltar and the economy of Gibraltar and income levels at the expense of the UK Government who paid the bill. Today we are committed to maintaining the level of wages and earnings and conditions in the Government of Gibraltar that were established then notwithstanding that the position that was taken by the Government of the day in 1978 was to say "We are accepting it today with the present MOD presence." That was said in this House and it is a matter of public record. The position of the Government then was "We have been convinced that this is sustainable with the size of MOD that there is today but we will not commit ourselves to maintaining this if in fact as a result of the extra cost the MOD start cutting." We came in 10 years later

with the commitment that we would keep it with or without the MOD but what we could not give was that we would keep it for as many people. We would only be able to keep it by being able to maximise the utilisation of the existing manpower by having a commitment that there would not be any redundancy from the Government of Gibraltar but by seeking in exchange for those guarantees that to our knowledge no other Government has given anywhere else, the flexibility, the understanding and the cooperation of members of the public service in the changes that were required to make it possible to do that. It is not possible to honour those commitments unless people in the service help us do it. We have had that help and I want to say that we are very grateful for the understanding and the support that we have had since 1988 and that none of the changes would have been possible if they had been resisted every inch of the way and that we would have a disastrous wrecked economy today if that had been the case but in fact it has not been the case. It is complete nonsense for people in the union to go to our neighbouring country and tell the local newspaper that we are planning to dismiss 1,500 civil servants. It is complete nonsense to say we have already dismissed 1,800. These are the figures quoted. Of course if those figures are quoted I suppose they need to be quoted in the town next door because they cannot be quoted here because here it is so obvious rubbish that nobody would dare print it. But since they are quoted and since what we are doing is voting the pay of civil servants that is what we are doing here now, let us be clear what it is we are doing, we are voting the pay of just under 2,000 civil servants, that is what we are doing. We have never had 3,800 civil servants. We have had maybe 2,400 or 2,500 and of course some of those civil servants are not civil servants because they are now employed by Nynex or now employed by Lyonnaise and they are not classified as civil servants but they are getting paid the same or more than they were getting paid before for doing what it was they were doing before. If we have got people who were previously the Crown Lands Department of the Government of Gibraltar in the 1988 Estimates who are now Land Property Services because they voluntarily agreed to go from the Government, that does not mean we have made five people in the Crown Lands destitute and sacked them. It means that five people helped us by taking the initiative of setting up an entity which would sell to the Government the service they were previously providing as civil servants and still have the ability which they are not supposed to have in the public service but which has never been a 100 per cent foolproof of competing with the private sector. I remember, Mr Speaker, that on many occasions in the past there were those in the private sector who used to argue about unfair competition from

people who were being paid by the Government to be doing a job in a Government office and who according to those complaining were in the Government office but not doing the job they were paid for, doing something else, in competition with the guy in the private sector. That was a constant theme of complaint in the 1980's. Today I am not saying that it is impossible that it should happen but if it happens at all it certainly happens less than in the past but where there are people who are competing in the private sector they are competing in the private sector openly having left the Government service and competing for work with other people with no conflict of interest. They do something for us for which we pay and they do something for another customer for which they get paid and that additional flexibility is good for them, good for public spending and good for the economy of Gibraltar. It is good that people should be more flexible, should have the opportunity to exercise that flexibility, should be given the chance to start their own little businesses and contract their services to the Government and expand and have opportunities that they would not have within the Government. So we are absolutely committed to that policy. But we are also committed to doing it by agreement with those affected who are the ones who have got the right to give or not give their agreement and it is not a matter for us to say to a group of civil servants who want to put proposals to us "Look we will not look at your proposals because your union does not want you to make them." If their union does not want them to make them it is up to their union to stop them making it or it is up to the people to tell the union where to get off because at the end of the day it is the people that own the union and not the union that owns the people. If the union wants to know what the proposals are they get the proposals from their members, not from us and we are entitled as a Government to consider things put to us and what we have said to the unions "The fact that you go running around like a headless chicken because you hear that somebody is talking to somebody it does not mean that we are not following established consultation procedures or a transfer of undertakings or EEC law or Directive 69/50," or any of the other things that they keep on quoting without reading what it is that they are quoting. It simply means that there is a clear position of the elected Government which we have been carrying out with their support since 1988 because as I said we are grateful both to the civil servants and to their organisations for the commitment and the support and the cooperation we had until now and we wish to continue having it but we are not prepared to do a U-turn on the policies on which we got elected in 1988 and 1992 because we believe they are necessary policies and we believe they are good policies. They are difficult. We are

asking people to accept changes sometimes we need to spend a lot of time explaining things and persuading people but we are doing it not because there is some ulterior hidden agenda. None of this is something that pays us as individuals anything, Mr Speaker. We gain nothing out of this personally. All that we are doing is putting up with aggravation because we believe it is the job we have been elected to do. We have the example in this House. Does not the House understand that the Usher of the House and the clerk of the House as individuals have been involved in that exercise for which we are saying we are very grateful? We are grateful that there are committed Gibraltarians in the public service who accept that if their skills can be used today in one department, tomorrow in the Financial Services Commission and the day after in the House they will go where they can be of most use to our country and our people, and we are proud of that. We are proud of that commitment and we are proud of the fact that it has been the solid support of hundreds of workers at all levels within the public service that has enabled us to carry out the transformation we have carried out in 1988, 1989, 1990, in 1991, to which we went back for a renewed mandate to the people in 1992 and which we have carried out in 1993 and 1994 and which we will carry out for the next 12 months and on which we will stand for election in 1996. So I hope there is no confusion. Like Mr Hurd, I want to do things by cooperation.

I explained last year, Mr Speaker, that the ability to do this was now severely constrained. That is to say the most easily identified areas were the ones that we did first. In some respects the approach was one of saying "The reality of it is that running a telephone system is not clearly a job that civil servants do anywhere in Europe. Even where there is a PTT-public utility telephone - it is a nationalised industry which still has commercial ways of working and therefore this was a relic of the old City Council days - the municipal telephone service system. But if we want to be in the 21<sup>st</sup> century with fibre optics and being able to attract people here we have got to get professionals in who can bring in to an investment the cash and the expertise that we are not going to be able to generate locally and if we can persuade the people in the department which we did with the help of the union at the time, that it was in their interests to move into a venture which had a longer term future that we could ever hope to give them, then it was better for them and better for Gibraltar. I am glad to say the message was accepted and it happened and I think the results have been to the benefit of all concerned, both the people in the company and the customers of the company and the ability that we as a Government have had to promote Gibraltar by showing that the level of

telecommunications technology that we have here is as good as that of any of our competitors. We would not have been able to do that with the old system. That does not mean that the workers in Nynex are not entitled to have rows with their managers or take industrial action or fight for more money. They have the same right as any other worker anywhere else but the principle of the decision of what we did is one that we will defend today and in the future because it is self-evident that it was good. Let me remind the House that the Government of Gibraltar have only got two joint ventures since 1988 that it did not have before 1988, which are Nynex and Lyonnaise. In one we are 51 per cent owner in the other we are 30 per cent owners. That is the extent of the privatisation, denationalisation and everything else of which we hear so much. In other areas like the example I have given of Crown Lands what we have are people who own the company that sells their skills to us. It is not a joint venture with the Government. It is owned by the people that were previously in the Crown Lands who came to us and said "We are prepared to sell you a service for such and such a budget." We looked at it and we came to the conclusion that as long as the proposals that they were making to us would not involve extra money because the whole purpose of the exercise from our point of view was that if there was a saving in that area we would then be able to meet increases in another area without the total going up. How else would we be able in this House today to meet extra costs for education, or extra costs for the police, or extra costs for the fire brigade, without the total going up unless we had not gone down this route? How else? And that is the route we have gone down and we will continue to go down as long as we have got people willing to do it, willing to take on the challenge, willing to take on the responsibility and obviously at a price which we consider to be sustainable within the constraint of maintaining public expenditure levels at the levels they are today which it is our intention to continue to maintain. Therefore, it is in the context of the revenue and expenditure that the analysis that I am making for the House any member of the public can make for himself by getting these Estimates and they can see how it is that we have been able to contain areas of expenditure static year after year where we have been able to contract things out to people. How does it happen? It is question that has been asked, Mr Speaker, in the saga of the dispute in the civil service. In interviews, the question was being put. "How is it possible that people can go out of the Government and earn more money and yet it does not cost more money to the Government?" We do not need to have some magic formula to work that one out. The formula is that when people are working for themselves, as I am sure Opposition Members know, they tend to put a level of effort into it

that they do not necessarily put when they are working for somebody else. Therefore, if we have got a situation where if somebody comes to the window with a problem and one is having a cup of tea he can say "I am sorry now it is tea time, come back tomorrow." That person may not come tomorrow he will go to somewhere else but one still has the pay at the end of the month. I regret to say that invariably the person who is the owner of the business or has got a stake in the business and whose wealth is related to customer satisfaction is more likely to let the tea go cold than the customer go cold. These are not secrets that we have discovered, these are self-evident truths that everybody knows everywhere. Opposition Members know it, the people outside know it and the people in the service know it. There can be no doubt, Mr Speaker. The evidence is there in the Estimates. It is in the way we have been able to contain public spending that the improved service has in fact been reflected through major improvement in productivity in a way which was never achieved before through countless negotiations on productivity deals. It never happened before and I can tell the House because I was involved for many, many years in negotiating productivity deals on behalf of the union. Invariably on the initiative of the Government who wanted to achieve these things and it never happened. People would say "If you give me an extra £2 a week I will stop having a tea break and instead I will go with a packed lunch and a thermos flask" and that happened in the first three months. Three months later everybody, including the guy that is supposed to be supervising the guy with the thermos flask and the sandwich, are all having the tea break and I can tell the House that in my experience I sold the same tea break at least 20 times in the 14 years I was in the union. God knows how many times it has been sold since then. Those are the real facts and the truth and if we have got to be honest with each other, fine, we can argue because we want to do different things. We can argue because we think one side is making a mistake or not making a mistake but let us not argue by making false claims and seeking to confuse people because that is dishonest. That is attempting to manipulate public opinion about issues that are not issues.

The Government, Mr Speaker, created in 1988 the Gibraltar Investment Fund and the Social Assistance Fund. At the time the creation of the Gibraltar Investment Fund which was a commitment in the 1988 manifesto was something which was a Government decision. The creation of the Social Assistance Fund was something which the Government did with the support of the Opposition, at the time. Because the Opposition was willing to support, the Government explanations as to the strategy and the objectives and the reasons were given outside the House

and in exchange for that explanations there was unanimity in the House and it was considered that it was in the public interest that the less detailed delving into the mechanics of it that was done the better. It happened, of course, during the time that I was negotiating with Baroness Chalker the dissolution of the Spanish Pensions Fund for 1993. I am saying that because since it is still an issue let us now remind the House of how it started and when it started. The Gibraltar Investment Fund was not done with the support of the Opposition; it was purely a Government decision and the Government went down the route. I have explained it before but since we are at Estimates time and it is conceivable that all this will surface sometime during the debate I might as well explain it again. I gave quite a detailed explanation last year and I have done as I said before that and it may well be that people do not remember these things or do not go back and check. Mr Speaker, in March 1988 the newly elected GSLP administration found itself the owner of a company which employed 800 people, had £8 million of sales and was losing not just its shirt but its underpants and its socks. The House had just voted in November a £2 million subvention on which we abstained because the Financial and Development Secretary then, who is the same one as is here now, told us that he could not tell us what the £2 million was for and we said "We do not want to deprive GSL of the £2 million but if you are not telling us what it is for we will not vote in favour, we will not vote against, we will abstain." This was in November 1987 and of course by March 1988 the £2 million were gone and we found that the UK came along in 1988 as the Member State responsible for our external affairs, which has been a perennial phrase since we got elected in 1988, and told us that we could no longer subsidise the shipyard, having just done it three months before, because there was a new EEC Directive that had just come in on capacity reduction in the European Union on ship repairing which only allowed public subsidies for reducing ship repairing capacity, that is to say, one could give Cadiz or Marseille millions of pounds provided what one was doing was saying "If there are three dry docks I am going to close two down and keep one." But a subsidy could not be given to maintain the level of activity. That is what we wanted to do; maintain the level of activity; maintain the 800 people there in jobs. There was no way out. The yard was losing money daily. It had a problem in meeting its wages. We had given the workers in the election campaign in February 1988 an undertaking that their jobs would be guaranteed throughout our term of office (from 1988 to 1992) and this was a month before and we had no money. That is, we had no money in the shipyard. We were prepared to come to the House and stand here and say "We are putting in the budget £x million for the yard because we have given



them a commitment that we will maintain their jobs for four years" and the philosophy of February 1988 and the philosophy of May 1995 and the commitment as socialists to protecting and defending people is exactly the same, whether people like it or they do not. What we said to the workers in the yard in 1988 was "We will give you a guarantee that you have never had and that you will not get from anybody else of four years employment provided you accept the flexibility that you have to move where you are needed. What we cannot do if there are no ships to put in the dry docks is give you a guarantee that you can sit looking at the empty dry docks and that other people working elsewhere will pay you every week because that is not a way of combatting exploitation." It is a way of institutionalising exploitation and making the worker in the private sector the exploited person and on the basis of that agreement we created a range of companies into which we redeployed people voluntarily and what we finished up with was not a mass of new companies that had taken over the Government. We finished with the same 800 people that were already there. I have explained it innumerable times, Mr Speaker, the same 800 workers that were there when we got elected were there six months later but instead of being 800 employed by one entity there were 800 employed by 20 entities. It was a device which we invented to deal with the problem which appeared insoluble. We had a yard that lost money. We had workers with a commitment and we had a British Government telling us we could not give them a subsidy. So what did we do? We then went back to the British Government and said "I am now removing the security guards from the shipyard and I am creating Gibraltar Security Services Ltd who will employ them and Gibraltar Security Services Ltd will bill the yard for the security work but it will do it below cost. Is there anything in the Directive that says I cannot subsidise a loss-making Government-owned security company?" And the answer was "No, there is nothing in the Directive". Just like we came up with an innovative way of dealing with the Spanish pensions we came up with an innovative way in 1988 of dealing with the shipyard crisis. And what did we do? We finished up with 150 shipyard workers who were actually making money because there were 50 non-shipyard support workers, all of whom were losing money, all of whom could be subsidised. We then started a process in 1988 of seeking to cut on the losses in those other areas by diversifying out of ship repair related services so the people who were originally security guards and who then became Gibraltar Security Services employees eventually also got involved in things like car parks and clamping and other things as a way of reducing the inherited loss-making position which we were funding through the Government buying shares in those companies through the Gibraltar Investment Fund. All this has been

explained and all this is recorded and all this is forgotten and therefore people need to be reminded because if they are not reminded then we get this total nonsense being used of a transfer of work out of the Government to nebulous unknown companies controlled by Ministers. Nobody knows what they are up to. Millions of pounds slashing around and all sorts of things which get repeated so often that people finished up believing them. I sometimes think that even the ones who have invented finish up believing the damned things. The exercise of the creation of companies went on between 1988 and 1992. We defended it in 1992, Mr Speaker. It is not a normal requirement of democratic processes that one goes to an election and defends the policies of the last four years and one has to spend the next four years continuing to defend what was done in the previous four years instead of having to defend what is being done. If people want to talk about democratic deficits, as far as I am concerned, that is a democratic deficit, that I should have to be explaining in 1995 what was done in 1988 because there are people today still twisting it. I am not doing it, of course, for the benefit of the Leader of the Opposition who no doubt will continue repeating the rubbish he normally says irrespective of the explanations I give him. I am doing it, Mr Speaker, for the audience that has tuned in to the radio.

The Government in 1992 set about consolidating and reducing the numbers of companies. In 1991 we went back to the shipyard workers and we said to them "We gave you a commitment in 1988. We are not able to continue to give you that commitment in the future. We could if we chose try and be less than fair to you by waiting till we go to an election in 1992 and then getting elected and closing the shipyard. We will not do that. We are telling you know, in 1991, nine months before, in 1992 we will say in the election campaign that we are not able to give the commitment that we gave in 1988 because we have tried for four years to make a success of this and we cannot. We have done the best, it is not your fault, you have worked very hard, we have been flexible, but it is quite obvious we are not going to make it and we cannot as a Government believe that it is the right policy for Gibraltar to subsidise foreign ship owners by repairing ships at a loss." I could not believe that that was the most sensible way to run the show. "So you have got two choices. You can either carry on working until March 1992 and if we get re-elected we will come in, close the yard and give you your entitlement in redundancy. If we do not get elected then it is up to the new Government to do whatever it wants. Alternately, in the knowledge that this is the position of the Government what we are prepared to do is to pay you until March 1992 nine months

pay on top of the redundancy and we will close the yard now with your agreement." Most people went down that route and some of the people that had gone to other companies came to us and said, "Can you send us back to GSL so that we can also be included in the voluntary package that you have put together for the people because we want to be able to take it too" and this led, not only to the closure of GSL in 1991, but to the reduction in the companies in 1992 which we then said to ourselves "We have now got to a situation where the core activity is gone, do we really want to be involved in a number of other things?" Today, what is the net result of that? The net result of that scenario today is that there are effectively now three Government-owned companies - the Gibraltar Information Bureau, Joinery and Building Services and GSSL which is still active. Those three are the remnants of what started off with 800 people in 1988 and those are the three trading companies which we own and which we started off from 1988. We have Gibraltar Industrial Cleaners which is 100 per cent Government owned and which consists of the people that collect the refuse and where the money that they get paid is voted in the House under the Head "Refuse Collection". There are no other trading companies, Mr Speaker. The other half a dozen companies we have got are the companies that are on Brympton, Westside 1, Westside II, Gib V. We have explained it many, many, many times. I explained it last year and I am explaining it once again in the not very highly optimistic hope that somehow the knowledge of the facts will prevail over the rhetoric. I doubt it, but I have to make the attempt. We expect therefore that this consolidation in one or two trading companies - at the end of the day the commitment is really to the people that are there - will enable us now to group it in a way that we can have one single consolidated account under Gibraltar Investment Holdings. Therefore the primary function of the Gibraltar Investment Fund is now really one which we do not see any further major development in that area unless we have had, which we have always kept as a possibility the situation where somebody came tomorrow, they wanted to invest in Gibraltar and one of the conditions that they put to us was that they wanted us as partners. We are always willing to consider that particular route of investing in a joint venture with somebody if we feel that it is the only way to entice them to come here and invest money which was the case with Nynex.

When Nynex came in Nynex told us clearly that if it was the option of being 100 per cent owned by them they were not interested. They were only interested in partnership with the Government because they felt that that actually gave them a better foothold in the European Union than being a purely 100 per cent owned subsidiary of an

American multi-national. There are a number of possible ventures in the pipeline which people are discussing with us and it is the policy of the Government not to make announcements on these things until we are as certain as it is possible that they are about to open their doors and go into business. Why is that? Is it because we are a secretive lot that do not believe in open Government? No, Mr Speaker, it is because it is a mistake to announce things which will give people who do not want us to succeed, the opportunity of sabotaging them. We have seen that happening on more than one occasion in Gibraltar and it is because it is a mistake politically to give the Opposition Members the opportunity of asking every month when is it going to happen. There are many things that look very attractive on paper and then when we start digging under the first page and we start reading the fine print then we discover that it is not attractive as the people who came with the proposal would make it out to be and we have had many, many man hours of our time and of time of senior officials in many meetings with many people which, regrettably, have not produced tangible results and employment which we would like to see. We believe, and I have said so many times, that the development of the private sector and of new activities is absolutely crucial to our survival, absolutely crucial. The partnership with the Government has to be in Government exercising a commitment to value for money and efficient use of manpower in order to be able to keep the cost of the public services within the limit that they do not become an even bigger burden on the private sector that has to compete with the rest of the world. For this reason, Mr Speaker, it is that again the years 1988 to 1992 we went down the route of creating the necessary infrastructure to be able to have a much larger economic cake than had been the case before. We have heard from the Opposition Members the definition of what we did as an "optical illusion" on countless occasions but no doubt we will hear it on this occasion as well. Let me therefore tell the House how close are we to achieving the level of growth of the financial services industry that we hoped to be able to achieve and if we have not achieved it then to whom should we be pointing the finger? I have no doubt to whom they will be pointing the finger. When we went down the route of investing in infrastructure and encouraging others to invest in infrastructure we were doing it on a feedback from the British Government which was very clear and very unambiguous and which had been there from the day we got elected.

In 1987, Mr Speaker, when I was the Leader of the Opposition, the Financial and Development Secretary brought to the House legislation on UCITS and in fact he produced a detailed memorandum, not as part of the

legislation, for the benefit of ignorant members like ourselves on the other side so that we can understand what UCITS meant and it looked very attractive. We were told then that we were the first ones off the mark. Nobody else had yet got their act together and we had an ideal opportunity. We came in in 1988 committed to doing whatever needed to be done to do this. I can tell the House it is still not being done in 1995. It is a Directive which has now been implemented taking everything that anybody has ever told us into account. Apparently, I am told the remaining problem at the moment, I cannot predict what the remaining problem will be a year from now, is the qualifications of auditors under the 8<sup>th</sup> Company Directive which has still not been implemented and which the DTI want implemented in a particular way. I am not sure whether it is the Financial Services Commission that does not want it that way or the auditors that do not want it or who it is that does not want it but as far as I am concerned, I want it. I want whatever it is that we need to do so that we finally do it and we finally are in 1995 able to do what we were promised we would do in 1987 but I cannot say I have confidence that it will happen. We have certainly been able to establish to our satisfaction from countless meetings with prospective customers that if we had been able to deliver what we were entitled to deliver we would have got the business. We have found repeatedly, Mr Speaker, people interested in using Gibraltar as opposed to using other jurisdictions provided we could give them a guarantee that Gibraltar's European Union credentials would be honoured and accepted and respected. A guarantee that any sovereign Government would be able to give any potential customer but that the Colony of Gibraltar cannot give a potential customer because the administering power is the Member state responsible for our external affairs in the Union. What does the administering power have to say about this? They say that it is not the desire of the British Government to put any obstacles in our way, that there is a lot of bureaucracy, that these things take time, that they are all very technical. They argue that there is no plot, that they are not doing anything to undermine our ability to succeed and that they want us to have a sustainable, flourishing economy. I believe that the actions do not match the words. People can draw their own conclusions but I have to say in my humble judgement much more could be done and it has not been done. I can certainly point to specific positions where the British Government has reneged on clear commitments given in this area in the past.

In 1991, Mr Speaker, in the area of banking, and I am not saying the banking sector is going to go through the roof if we are able to have Gibraltar licences accepted and

recognised as European Union Licences. I am not saying that. But what I am saying is if we are not able to do it we have not got a future in banking. That I am saying. Why? Because why should anybody want to come to Gibraltar and pay five per cent tax when he can go to the Cayman and pay no tax, or go to the British Virgin Islands and pay no tax, or go to the Turks and Caicos Islands and pay no tax or go to Bermuda and pay no tax? Why pay five per cent tax here? Very simple, because if we were in the Union our nearest competitor is Dublin and in Dublin they pay ten. But if we are not in the Union we are expensive. We are not cheap so we identify being in the Union as the business area in which we were competitive. It is simple arithmetic and we went to the UK and the UK told us in 1991, "No problem, but you have to make sure you implement on time the 2<sup>nd</sup> Banking Coordination Directive, which requires you to change your 1982 Banking Ordinance, so that people will be able to passport into Gibraltar and if you want we are prepared to help you by sending you Bank of England experts to draft for you what is required," and we accepted their offer. We were grateful for it. The experts came, they drafted everything that was needed, we incorporated everything. I consulted people in the industry as to whether it was beyond what was mandatory under Community law. That has always been the policy of the Government. The Government of Gibraltar are fully committed to honouring our obligations in the European Union and we accept we have a responsibility to do this and avoid exposing Her Majesty's Government to the risk of infraction proceedings. That has never been in question. I have repeated that commitment privately many, many times to the Foreign Secretary and I am happy to do so publicly. But that does not mean that they can say to us that they want us to go beyond what could put them at risk. They may advise us. They may recommend it but they cannot impose it. In 1991 the recommendations that they made went beyond what was required but the people in the industry in Gibraltar advised us that although it went beyond what was required it was not a hindrance to being competitive and that they thought it was prudential and they were happy with it. We implemented. We brought the legislation and we did it. Unfortunately, we discovered six months later that the Treasury did not agree with the advice of the Bank of England and that the Treasury wanted us to do something else. This was reflected, as I have told the House in the past, in the UK legislation in 1992 implementing in the UK what we had been asked to implement in 1991 in Gibraltar which we had already done. We were one of the first countries within the European Union to bring into effect the 2<sup>nd</sup> Banking Coordination Directive. The Member State UK did it after us and when they brought it in they left us out. They left us out of the European Union totally and they did

not even have the courtesy to tell us they were doing it and we found out by accident because they put out a consultative document which got to the head office of a bank in Gibraltar who then sent it to their branch in Gibraltar and the branch brought it to me. I raised the matter with Lord Bethell and Lord Bethell wrote to Tristan Garel-Jones who wrote back saying, "The Chief Minister is being alarmist." That was in July 1992. "He does not need to worry I know we have left him out of the law in the UK" and they left us out through a very simple device. In the legislation that was brought into effect in the United Kingdom, in the draft legislation that was published, in May 1992, there was, as there is frequently in the Laws of Gibraltar, a list of definitions and it had a definition which said, "Credit institution can be either a home credit institution" which is a bank licensed by the Bank of England" or a European authorised institution "which is a bank licensed by the competent authority in another Member State." I went back and said, "Wait a minute we have got 28 banks here and they are not licensed by the Bank of England and they are not licensed by the competent authority in another Member State so we fall between two stools, we are not covered by definition A, and we are not covered by definition B, so what are we?" Lord Bethell was told, "This is deliberate" not an oversight "because we have not yet decided how we are going to include Gibraltar but this is only a draft regulation which has gone out as a consultative document to the industry. The regulation has to be law on the 1<sup>st</sup> of January 1993 and therefore before the final version is laid in the House of Commons in December we will have reinstated Gibraltar" and Lord Bethell sent me the copy of the letter he got from Mr Garel-Jones. In November 1992, at a meeting in London with the Foreign Office, the Treasury and the Bank of England, I was told that they deeply regretted that they would not be able to honour that commitment because at the 11<sup>th</sup> hour they had discovered that the regulation which was made under section 22 of the 1972 European Communities Act only allowed, by regulation, the extension of Community obligations. Recognising Gibraltar bank licences, as opposed to recognising Spanish bank licences, was not a Community obligation. Therefore, much though they regretted it they had on the highest authority in the land (they did not identify who that was) been told that it required primary legislation. It required a Gibraltar Banking Act of the House of Parliament. I can tell the House that I was told in November 1992 that there was a commitment to do this but that they would have to find time in the parliamentary timetable. I can also tell the House that at dinner last week with the Foreign Secretary in his house, I asked him how the job of finding time on the parliamentary timetable was going which started in November 1992.

Apparently it had not gone very far yet, in May 1995. Of course that does not prove anything strange. It is just that the man has been thinking about the parliamentary timetable now for two and a half years, that is all. In January 1993 we went back to the UK Government. I notice that the Leader of the Opposition was raising his eyebrows when I gave him the explanation about the virus in the 1972 Act. We had some people who raised their eyebrows when we told them. We went back to the UK and said, "You told us you have got this legal opinion from the highest authority, can we see it because there are people who are telling us that this does not sound right?" They said "Yes. We will consider your request" and then two months later I said "Can you tell me when I am going to see this legal opinion?" They said "No, sorry, we should have come back and told you a decision had been taken that this is an internal legal document of the UK Government so you cannot see it." I said, "How can I argue against it if I do not know the nature of the argument? Suppose I get an independent legal opinion for you, will you be willing to reconsider the position, because I am happy to give it to you." We got an expensive team of three QCs led by Professor Wade to analyse the argument and they produced for us an opinion in March 1993 saying it was nonsense, that they could have included us in 1992 and that they are prepared to sit down with this unknown highest authority in the land to argue the case privately, on technical, legal grounds. The response from the Foreign Office was that they were delighted with the move that I had made that it showed initiative and so forth. It showed that even in the colonies we occasionally demonstrate a bit of grey matter beneath the dark skin and that they would certainly give the matter serious consideration and come back to me. I asked the Foreign Secretary in his house at dinner last week whether he had now finished considering my opinion, if he had found time for the parliamentary timetable because he said, "Are there things that you would like us to be responding to?" I said, "Yes, I would like you to respond to this opinion which you have been sitting on since March 1993. If it is a waste of time and you do not want to do it, why do you not tell me honestly that you do not want to do it and at least I save myself time, money and effort of going round because I have accepted your argument at face value? I believed you. I thought you were telling me the truth, that you had a real problem, that you wanted to do it and that you had been prevented from doing it because of a technicality. I spent money getting experts to look at the technicality and you say, "Fantastic, that is a very good idea" and if the experts demonstrate it can be done it will be done." I am still waiting for an answer, in 1995. In 1994 a year ago, Mr Speaker following the inter-Government Conference where the leading light was my friend Kenneth Clarke Chancellor of

the Exchequer, it was made clear to me that irrespective of what had been said in 1993 and irrespective of what had been said in 1992 and irrespective of what had been said in 1991, the position was changed. I have told the House before that I was not given any reason at the time for the change but that I had subsequently discovered at least one possible reason which was a Spanish veto in the Banking Advisory Committee on Gibraltar licences. The position put to me then by the Chancellor at a dinner we had on my final day of the Conference, he was sitting next to me, and he made it very clear. He said "If Gibraltar banks are going to passport into other countries and into the United Kingdom I must be satisfied that the supervision of those banks in Gibraltar is as good as it would be in the UK, otherwise I will not do it. Forget whether you are entitled to it as a Community law, whether we have promised it to you or we have not promised it, the answer is very simple, either I am satisfied or I will not do it and all I need to do is that I need to pick up this 'phone and call my opposite number in Luxembourg and say, "There is a bank in Gibraltar that wants to open a branch there, be a good boy old chap, let him in." That is all it requires. So much for consolidated supervision, but then, that he tells me is the way the system works. But, of course, if he does not pick up the 'phone we can do whatever we like here but we will never get into Luxembourg or anywhere else. This was something that I explained publicly and to the industry and to the House a year ago, Mr Speaker, when we brought to the House legislation which was what was needed to satisfy Mr Kenneth Clarke that our banks were not all rotten to the core and he was going to be satisfied by ensuring that there was an in-built UK-based majority on the Financial Services Commission. That was a theory and as the House knows although we considered this to be blackmail at the time and still consider it to be blackmail now, since there was no way that we could get Gibraltar banking licences recognised on our own, we went to the industry and said, "This is the choice." They were not threatening direct rule in February 1994, they were simply threatening not to get recognition for us anywhere in the European Union and not to allow us into the United Kingdom, that is all they were telling us. Although we went through unimplemented Directives, and the Spanish pensions and money laundering and everything else, the one thing that was important on which they wanted action within weeks was this. We came back and we tried to satisfy the demands by taking the action that they wanted which had to be done within weeks which the Chancellor wanted me to say yes to there and then and I said no. I have to go back and if people say they will stand their ground, I will stand my ground and if the people in the industry say we do not think they are right but it is not worth having a showdown over this then

fine. It is their jobs, it is their livelihood, it is their investment, they are entitled to advise me whether they want me to take up the cudgels on their behalf or to gratefully retrieve from the position which I think is the correct constitutional position and our right. I think they are wrong in what they have done. I think they have got no justification whatsoever but where are we today? To add insult to injury, this week we have had the commencement notice of the law we passed here at their insistence 14 months ago. This week! Mr Clarke wanted me to sign on the dotted line on the spot. It could not wait, that is how urgent it was in February 1994. It may well be that it is my aggression, the fact that I do not know how to handle the Anglo Saxons or whatever else we want to call it. I think it is a disgrace and I do not think that it is the way the British Government ought to be treating the people of Gibraltar for 291 years of loyalty. Finally, they have found the fourth person willing to work on the Commission and I welcome that this has finally happened. Now we will have to see now that it has finally happened because until now we have seen no move whatsoever to get recognition for the banks of Gibraltar as banks inside the European Union and since that time in fact what we have seen has been the growth in the banking system brought to a halt. There has been no growth since February 1994 and therefore the prognosis of the British Government that the knowledge that they were going to be appointing the Commission would inspire so much confidence that people would be inundating us with requests for licences has not happened. What has happened is that there is no indication of anybody being interested in coming here and that there has been no growth in the amount of money in our system for the first year since we have been in Government. There was growth every single year when the perception of the world was that the banking system was controlled by the incompetent Gibraltarians but since the perception of the world has been that it is controlled by the wonderful Treasury of the United Kingdom, nobody seems to want to put their money here anymore. No doubt they will say that they need proof that they were all laundering money. We cannot win on this one because whatever argument is used one can already predict what their counter-argument will be, but the reality of it is that the legitimate expectation of the Government and the people of Gibraltar for all the efforts that we have made between 1988 and 1992 encouraged to go down that route, advised by the UK and assisted in putting things in place. Now that the time has come for us to get a share of the market we find ourselves, in my judgement, impaired without any justification whatsoever. I cannot believe that now that this appointment has taken place the newly constituted Commission is going to discover anything at all wrong

with our system or that they are going to have to introduce any changes or that they are going to have to find that there are lots of people in the banking system who are not fit to be bankers. I do not see that will be the result. I think the result will be no change. There are important points of principle at stake which we have sacrificed a year ago against a promise of results which have not materialised and which I cannot predict will materialise ever because what I asked the Foreign Secretary again at our dinner last week was, "Now you tell me you finally found a suitable candidate who seems to be a very influential and high-powered individual and we hope that his presence on the Commission will mean that our status will be elevated in the eyes of the world but now that that has happened how quickly is the rest going to happen? Is the Chancellor now that he has got all his people in the Commission likely to relent and do all the things that were promised in 1993 and 1992 and 1991?" He said, "I cannot give you a commitment on that area. He will move when he is satisfied that the system in Gibraltar is working to his satisfaction" which means effectively that I cannot say in 1995 Gibraltar licences will be accepted as European Union licences in the UK, never mind anywhere else. In the UK! No guarantee at all that this will happen in the next twelve months. I have gone into a great deal of detail in this area, not because I want to knock the British Government, not because I want to be aggressive against them, because these are the facts. I can give chapter, verse, dates. These are the facts, I am not inventing these. This is there for anybody to check for themselves, most of it is a matter of public record. It is accepted that in the political game, if people want to say if somebody else other than the GSLP had been in Government, none of this would have happened, it is their right to say that and then the people can believe it or not believe it and if in 1996 people believe that the answer is that if we are removed from office we are going to be recognised everywhere because what the British Government really is concerned about is the fact that we are not trustworthy guarantors of Gibraltar notwithstanding the fact that the people think we are and vote for us, then if that is the reason I do not think it is consistent with having a constitution and elections in Gibraltar because if at the end of the day what we need to do is ask them who they want to be in Government then why bother to go through an electoral process. We could save ourselves a lot of money all we could say to Kenneth Clarke "When you finish nominating the seven members of the Commission please can we have the eight Ministers next?" Save us a lot of trouble. Perhaps, Mr Speaker, I will then continue after lunch.

The House recessed at 1.20 p.m.

The House resumed at 3.20 p.m.

HON CHIEF MINISTER:

Mr Speaker, before we stopped for lunch I was giving the House a brief resume of the history of one particular area of development in the financial services industry to which we have attached a great deal of importance in terms of its prospective capacity to grow in the new rules that came into effect on the 1<sup>st</sup> of January 1993 with the creation of the single market in banking. Therefore, as I go on to explain other areas of potential growth for our economy and of the problems associated with effectively utilising this potential I think it is worth just rounding off the position on banking to explain to the House - it is something we have again dealt with in the past - how we see Gibraltar's position in the European Union, in economic terms as opposed to political terms which is something that I think has to be dealt with in the context of Gibraltar's decolonisation, but in economic terms, in being able to exploit the potential of the single market which was announced as being the major development of 1992 but which, of course, is still in the process of happening and was happening before 1992. It is not a question that on a given date overnight the system changed but the movement is clearly in the direction of liberalisation within the market, removing national barriers to trade and protectionism and as a quid pro quo having to ensure that there is a level playing field because everybody subscribes to the same rules. Therefore, this is intimately linked to our obligation as members of the Union to ensure that the laws of Gibraltar reflect our responsibility in the European Union to the same degree that they are reflected in other Member States. It is something on which we do not see eye to eye with the UK Government. There is no question about that, it has been a market which we have been arguing with them about for several years. In the UK itself, in fact, there has been a number of recent moves in the direction which week have been urging. There have been moves in the UK on de-regulation and there have been critics in the UK on the basis that the UK over-legislates in areas related to Community law and puts UK businesses at a competitive disadvantage compared to French, or Italian or Greek or Germans, or anybody else. We have therefore put the case very forcibly to the United Kingdom that we believe they are entitled to require us to do whatever is mandatory under Community law, the meaning of the Constitution of Gibraltar in the distinction between defined domestic matters and foreign



affairs must mean that subsidiary has to apply between London and Gibraltar, the same as it applies between Brussels and London. Where within that freedom of action, as happened in 1991 with the 2<sup>nd</sup> Banking Coordination Directive, what the UK would like us to do to follow their practice rather than Community obligations is something that we do not think is going to hurt our competitiveness or create additional public expense or make unnecessary work and bureaucracy for the people who have to operate in the business climate in the framework of those loans, then there is no particular reason why we should not do it the way that the UK would like us to do it and by and large if we can please them we try and do it. Where we have got advice that tells us something different, we have got a political responsibility to argue the case with the UK based on the advice that we are getting, otherwise there is no point in us having the right to do something different if we cannot exercise that right without being accused of being anti-British or of wanting bad relations with them, all of which is complete nonsense. Why should any Government of Gibraltar go out of its way to have rows with the UK Government just for the sake of it, but we are not scared to have a row if there is a need to have a row because they will not listen to reason? And, of course, the other side of the coin of European Union membership, the side which we expect to see producing benefits for Gibraltar is that just like the UK is entitled to require us to transpose into our national laws Community obligations which we are committed to doing and have every intention of doing, they have a responsibility to ensure recognition of Gibraltar's competent institutions. There are some areas, other than in banking, where we have got a difficulty in that this has not happened and we do not know when it will happen and our ability to do business depends on it happening. Last year on the 1<sup>st</sup> of July, the United Kingdom brought in regulations to give effect to the Non-Life Insurance Directives of the European Union. We welcomed publicly the fact that at long last there was a piece of legislation of the United Kingdom (on the 1<sup>st</sup> of July) which actually said "A Gibraltar insurer is deemed, in the UK, to be an insurer licenced in another Member State" and therefore by definition able to passport into the UK. At the moment we have I think a potential in that area which has not yet been exploited and which runs the risk of going down the route of banking and going down the route of UCITS unless we can get things put in place and accepted by the UK quicker than has been the case before in those areas and it is an important area. Insurers could be an important user of white collar labour of the financial services industry, of accountants and lawyers and other professionals in that sector of the economy. At the moment we have,

regrettably, a situation where although one arm of the UK Government is urging us to transpose the Directive and indeed wanted it transposed by mid-January, another arm of the British Government is telling us not to transpose the Directive because they still have not made up their mind what they recommend the law of Gibraltar should say. We have got the law ready. We have actually pushed the button recently in bringing in insurance regulations in the non-life sector and the feedback that I have got from Mr Milner and the Financial Services Commission is that people in the DTI are very upset that we did this even though it is overdue and even though the Foreign Office is telling us that they want us to do it and that indeed they would have wanted us to do it a year ago. We have got at the moment a potential area of development and it is an area that is a high priority for us and sometimes in this business of where the priorities lie again we have disagreements with the United Kingdom because the United Kingdom might want us to implement directives in a particular order of priority for one reason which is important to them, because they may be under pressure from Spain and the environment or whatever, whereas for us, frankly, the priority is to try and bring in quickest the ones that are going to produce customers and bring activities which is natural. That is where our priorities lie to draw business to Gibraltar and to create jobs. I sincerely hope that we will be able to see within the next few weeks that the DTI is finally satisfied on this because this is one where there are actually some potential big customers waiting to come in. We have got a situation where I have had a number of meetings with people from the UK who tell me that simply on the fact that we are not inside VAT and that VAT is payable on services and that there is an insurance premium tax in the UK which was introduced recently, being able to write insurance policies in Gibraltar and being able to sell that to customers in the United Kingdom could be a very competitive business if, of course, they are able to use the Gibraltar licence to do that and it is enough that the Commission of Gibraltar notifies the recipient state. That is where it all hinges because for the Commission in Gibraltar to be able to say to the state in which the customers are "This is a bona fide insurer licenced by me and supervised by me" the recipient state must recognise the Commission. Our problem at the moment is not so much that they have to recognise the insurer because the insurer may be somebody that is a household name and is already well known. We are not talking about somebody sort of starting a home grown insurance company in Turnbull's Lane. We are talking about existing companies with existing customers who are transferring their customer base from wherever they are now to Gibraltar purely for fiscal reasons and purely because it is more tax efficient because that is

the commodity we have and it is a perfectly legitimate commodity because it is for that reason that they are going to Dublin and they are going to other places. So it is not that we are doing anything which is contrary to Community law or anything which is wrong or anything which is criticised other than of course in Spain where whatever we do is criticised. So if we can be sure that if an insurer comes to Gibraltar and is selling insurance in Spain not to pay VAT in Spain, the Spaniards will say that that proves what a gang of thieves we are in Gibraltar because we are helping somebody to defraud their Inland Revenue. That we know but we can be also certain that no other Member State will take this position because this is standard practice. So that is an important priority area where in terms of the Estimates of Revenue of the Government of Gibraltar and in terms of our protection for the next 12 months we are making no assumptions whatsoever because although we have got virtually everything we need in place and what we do not have in place has been drafted and is sitting in London waiting for the DTI to say they are happy with it and although I could come along to the House or introduce legislation which is drafted and bring it in, the advice that I have got from the Commission is that to do that would upset people in the DTI and unless the people in the DTI are not upset they will not go the step of notifying other competent authorities in the European Union that Gibraltar has its own competent authority independent of the DTI. The potential customer in fact that has come to us has told us that they see an ability to market the product from Gibraltar into the United Kingdom, into Germany and into Portugal but that the indications that they have got is that irrespective of anything else they would not be allowed to market anything to Spain notwithstanding Community law. However, the advantages in the non-Spanish market are considered to be sufficiently attractive by this customer to want to come to Gibraltar provided we can deliver within a reasonable timescale. We have now been talking about this possibility for nine months. We were approached as a Government shortly after the news came out in the UK on 1<sup>st</sup> July last year about the creation of a single market where I wrote to the Financial Times pointing out that in fact although they had not mentioned Gibraltar in the analysis, Gibraltar was included in the UK legislation and that therefore that should be corrected to make sure that people knew that they could do the business from Gibraltar like they could do it from Luxembourg, Germany or anywhere else. That elicited a fair amount of interest which has led to my making a number of trips to talk to people in the management of captives and in other areas of insurance and it is clear that all the feedback that we have got is that potentially this could be a good business for us. We

hope that in the next month or so we will finally be able to get rid of the remaining wrinkles in the legislation to the satisfaction of the DTI and that this will enable our Financial Services Commissioner to proceed with notifying other authorities that the insurers operating from Gibraltar are licenced under Community law and therefore able to sell their products. As I have said, we do not expect this will happen in Spain and I think it is important that we must establish first that we are able to do it in other places so that we can demonstrate to the EEC institution that Spain is in the wrong in refusing to accept from Gibraltar what other Member States accept but at the moment we are not able to do it anywhere. Clearly, a development in this area in the next two or three months will be something that could start bringing a greater utilisation of the spare capacity we have in our infrastructure.

The whole area of services other than banking and insurance is one that is important and we have been recently, after lengthy debate with the United Kingdom, on the EEC Directive on direct selling, we have been able to establish that we are covered by that Directive and that we will be able to transpose it. This was one occasion where we wanted to transpose it and they did not want us to transpose it and we have managed to persuade them that distance selling is a service and therefore it is part of the single market in services and not part of the single market in goods in which we are excluded. Obviously, there are other areas in which we felt at one stage the United Kingdom could have pursued commitments given a very long time ago which would have enabled us to develop initiatives in the manufacturing side and in particular there is the question which we raised in a motion in this House where in 1985 in the context of the negotiations for Spanish entry into the European Union and the special privileges granted to Ceuta and Melilla, Baroness Young gave a written undertaking to Sir Joshua Hassan, of which I was given a copy I the joint EEC forum we had at the time, that if at any time the privileges granted to Ceuta were such that it put it in a better position than Gibraltar the UK would be able to go back and ask for us to be given the same treatment because the UK and reserved its position with the Commission in not vetoing what Spain was obtaining for Ceuta. In 1985 we were told "What the UK has done is not something that is important now because you have got no manufacturing industry, in any case, we do not think there is any advantage for you at the moment in what Ceuta has got but if at any time in the future that changes we can go back and argue the case because we have entered a caveat in minutes with the Commission. The Commission has acknowledged it. We have got sent a copy of the Commission's acknowledgement and therefore we will

be able to press for you to get the same treatment". The position of Ceuta in the European Union changed in 1992. We discovered this by accident because we saw the change published in the European Journal and we raised it with the UK. In simple terms what Ceuta did in 1985 was that although they are outside the Customs Union like we are, the goods they sold in Spain did not pay customs when they entered Spain but those goods paid customs if they moved from Spain to a third country in the European Union. We felt in 1985 and subsequently in Government in 1988 that it was difficult for us to argue that we should get in the Spanish market the same treatment as Ceuta and that politically this would be an embarrassing position to adopt because Spain would be able to say "Ceuta is Spanish, you want the same treatment you become Spanish" but in 1992 because the internal frontiers were being removed, Spain argued that there was no way of controlling the goods that went from Ceuta into Spain leaving Spain and going to somewhere else because there was no more customs control on the frontier in the Pyrenees. Therefore there was only two ways of dealing with the situation. Either Ceuta had to be put in the position we were of having to pay duty on the goods exported to Spain or everybody else in the European Union had to give the same privilege to Ceuta as Spain gave. When we discovered that we argued "This is a different position now because what you are telling me is that Ceuta can export to the UK duty-free from outside the Customs Union and I cannot do it. I accept that I should not be able to do it in Spain but I do not see why I should not be able to do it in the UK, never mind the other ten members, just looking at the bilateral relationship and of what we are supposed to mean to each other." It was on that basis that we made representations to the UK Government and in fact we brought a resolution to the House and we have pursued it again with them and I regret to say so far they have not yet made up their mind whether they should approach the Commission on this or not. I regret to say. But it is an area that would give us an enormous boost in our capacity to attract manufacturing business to Gibraltar. In fact, Ceuta had made very little of something that I consider to be a very, very lucrative loophole that has been created for it. They do not seem to have taken much advantage of it and the UK argues that the reality of it is that Ceuta is not exporting anything to them. They may not be exporting anything to them but they could. We could, tomorrow have a Gibraltarian businessman setting up a factory in Ceuta and he would be able to export duty free to the UK and if he had a factory here he would not be able to do it and they are outside the Customs Union and we are outside the Customs Union and we feel this is wrong and we feel that there was a commitment given to the previous Government in 1985 and that it is not being

honoured. If at the very least they came back and told us "We do not really want to do it because we think it would create lots of problems and give us a big conflict and so on" then at least we would know where we stand but the position at the moment is that they are still studying the case to decide whether they pursue it or they do not.

Another area where we see possibilities of attracting new activity to Gibraltar has been in relation to retirement homes, particularly as a result of the release of MOD land and property. Again, in this area we see a repetition of the fundamental problem which it seems to me stems from the basic flaw of the 1969 Constitution and the entry into the European Union in 1972 without any attempt to reflect that in the Constitution. Although the Government of Gibraltar made some attempts prior to the Government of Gibraltar made some attempts prior to 1980, the British Government, on the signing of the Lisbon Agreement in 1980, refused to talk anymore about constitutional change in terms of the European Union and defined domestic matters. Clearly, Mr Speaker, if we were integrated none of this would arise and you know and I know that there were some of us who saw that as a possible avenue a very long time ago. But we are neither fish nor fowl. We seem to have all the lack of freedom of action that provinces in Member States have without any of the advantage of a domestic market that is large which is the counterpart for the loss of freedom. In a town in a nation, it is the central government that makes the rules, the rules are not made in the town but in that town one can sell to everybody in the nation on the basis of common rules. We do not have that in this particular area; we have a situation where the DHSS in the United Kingdom, up to a few years ago, were treating Gibraltar as another Member State for the purposes of health cover and then two years ago they changed their mind and their interpretation and they have issued new guidelines and this is no longer the case. It means that a UK national can retire to La Linea and his health care is the responsibility of the United Kingdom. He gets free treatment in Spain and the bill is sent to the UK where he has lived and worked all his life and paid his insurance and his taxes, but not if he comes to Gibraltar. If he comes to Gibraltar either we have to pick up the bill which we are not obliged to do or we have to require him to have private medical insurance which puts us at a competitive disadvantage. This is not something that is being designed as a Machiavellian plot to limit our ability to develop business, this is just one element in the bureaucracy deciding something which happens to be an interpretation that is hostile to our potential. It just so happens that lots of bits of the bureaucracy all seem to be doing the same thing and therefore our way of arguing is to say to the British

Government "It may be that it is true that it is a professional reading the letter of the law and coming to that conclusion but then there must be somebody that has the political will at the top to say to the professional "We want to help Gibraltar. We want to give it the same fighting chance to survive as everybody else has and therefore if you tell me that is what the rules says then tell me what we need to do to change the rule"". We have put the case and I can tell the House that the Minister of State at the Foreign Office that has responsibility for Gibraltar, Mr Davis, with whom I have got a very good personal relationship, has committed himself to fighting this case but the last time we discussed it he told me that the response at present is that the experts consider that this requires primary legislation and that time has to be found in the parliamentary timetable. Although we are continuing to pursue that avenue obviously there are two problems for us. One is that if we are able to attract people to retirement homes in Gibraltar as opposed to somewhere else it is a more expensive business because they would have to take out private medical insurance and private medical insurance for people who are in their late 60's is an expensive business. The other thing, frankly, is that we are a bit nervous about it because suppose the person does not renew the policy once they are here and they get taken ill what can we do? We cannot sort of operate in a small place like Gibraltar as if we were in the States and we say to the guy "When as if we were in the States and we say to the guy "When you arrive at the porters' entrance produce your medical insurance policy otherwise we pack you back into the van and send you away". That would be a very difficult thing and it would be a very unpopular thing and it would put us in a very invidious position but we cannot in fact encourage people to retire to Gibraltar if at the end of the day they are going to be a drain on public funds instead of net contributor to public fund. Our whole purpose of seeking to bring people here is that they would then be people who would be spending in Gibraltar income that they had obtained during their working lives and consequently would be adding to the pool of consumers in a way the service families used to be adding to the pool of consumers without going into the labour market in competition for jobs with our own people. Again, in the Estimates none of this is reflected in the sense that we are not making any assumptions that we are going to be any more successful in the next 12 months on this particular ticket than we have been in the last 12 months but I draw it to the attention of hon Members so that they can see that it is not that we are not trying and exploring different avenues. It is that, I regret to say, we come up against a brick wall more often than not and it all seems to relay back to the fundamentals of the membership of the Union and the interpretation of the rules of the membership of the Union in the relationship

Gibraltar/UK where unless there is in each and every case specific reference to Gibraltar being the same as any other Member State, then for UK purposes we are not in the European Economic Community. It is as simple as that. At one stage about two years ago I tried to persuade the British Government that rather than wait for me to bring up each individual case and then come back and say we need to change the law in the particular sphere they should consider amending the European Communities Act of 1972 which is perhaps something that if we had thought of it in 1972 we might have asked them to do so that in the primary enabling legislation there is a reference to Gibraltar being part of the European Union under article 227 and therefore deemed to be a Member State for the purposes of UK legislation. I do know if it is possible. I do not know enough about legal drafting but it just occurred to me that it was one way of achieving the same result across the board and then they would only have to find time once in the parliamentary timetable. I regret to say although they listened carefully to my arguments I have had no indication that they are prepared to move in that direction and they have not told me whether it is that they do not want to do it or it is that they do not think it is possible technically to follow that route. Clearly the relationship with the UK in our view is one where much more could be done at zero cost to the UK, to make it more probable that we would be able to be more competitive and more attractive in the UK market where we want to compete because it is a natural market for us. I think, logically, there is a certain natural market on our doorstep geographically and there is a certain natural market 2,000 miles north culturally, linguistically and in terms of professional contracts and training which we have not tapped and it ought to be easier to tap the market with which we have been associated for 291 years than the market of which we were part the preceding 203 years. Therefore, our emphasis is to try there first. Obviously, the one on our doorsteps is one where they write the rules as it suits them when it suits them and although I welcome the more direct language that is being used by Mr Davis and by the Foreign Secretary which is a reflection of what they have told me privately. They have said publicly what they told me privately, that they tend to be more robust about pressing the case we will have to wait and see just exactly what being robust means to Anglo Saxons. It may not be the same as it means to the Mediterraneans. Nevertheless we believe and have urged upon the UK that it is the kind of language that is more likely to produce results frankly than what they have been used to doing since 1984. We cannot escape the fact that we think that at best the 1984 deal with Spain for the lifting of the restrictions in Brussels, at best was a serious misjudgement, and at worst it was a total

betrayal of the position we had maintained consistently for 15 years and one month. I can never, for the life of me, understand how you resist for 15 years and one month and then 11 months before the other side has to capitulate they are given a way out. I just cannot understand how one arrives at that except that the way it was sold in Gibraltar at the time publicly and to an even greater degree privately was to say "You have got to understand that if we forced Spain by the weight of Community law to re-open they will not re-open in as friendly an atmosphere and therefore the relationship is not going to blossom so it is really a cosmetic exercise if you like, to get them off the hook and it is a face-saver for them." They do not seem to have understood that that is what it was. They seem to be under a completely different impression and they seem to think that they got us off the hook in 1985 and that we have not delivered. We have always argued with London that diametrically opposed perceptions of what one is doing is a sure receipt for disastrous relations in the future because we consistently believe that the Spaniards have not honoured what they signed in Brussels and they consistently believe that we have not. At the end of the day the facts speak for themselves and it is all very well for the UK to tell us they are going to be very tough about the Schengen business and about the ID card business and about the queues and so forth, but why do not they start getting tough about the Algeciras ferry, for heaven's sake which they signed an agreement on twice? They signed an agreement in 1984 saying the ferry starts on the 5<sup>th</sup> of February 1985 and the law was passed and the ferry never left the moorings and then they signed another agreement in 1987 saying the same as they had said in 1984 and we are now in 1995 and there is not a remotest sign of the ferry appearing over the horizon. So instead of going to battle about what is happening now, why do not we go to battle over what happened then where presumably these agreements and if they do not require to be honoured then let us say "We are now tearing up the 1987 agreement which is never going to be implemented on the airport," and if we have to have some kind of agreement let us start from scratch because at the very least we will remove from Spain the propaganda weapon every year in every forum that the British Government signed an agreement with them and that the Government of Gibraltar is blocking it. Of course, with all this business of the British press reflecting apparent threats of direct rule it does not take a genius to come to the conclusion that the Spanish would sooner or later say to the UK "If you are able to impose EEC legislation on an all crimes basis how is it that you are not able to impose the 1987 agreement which is an international

agreement between you and me?" which is not a defined domestic matter. The House of Assembly has no jurisdiction in international agreements. We have already accepted that. What we do not accept is that they can go beyond international agreements. We cannot divorce the mishandling of our external affairs from the ability to develop and exploit our economic potential and therefore we came to the conclusion in 1992 that having put in place the investment that was required we now have to switch our attention to developing the constitutional relationship. I said in the House immediately after the election that I hoped this House would be remembered as having ushered in the end of the colonial period. It seems to me sometimes as if we are facing in the opposite direction and sometimes we seem to be facing situations which pre-date the 1969 Constitution and pre-date the 1964 Constitution. I have to go back to the 1950's to find anything like it. Certainly, the Government of Gibraltar will not play ball and that does not mean we do not believe or want to work in close cooperation and consultation with Her Majesty's Government in resolving the areas where there are differences. We do. I subscribe entirely to the statements made by Douglas Hurd in the press conference after the meeting with Solana where he said to the press that there was no question of any threat of direct rule and that he wanted to work in close collaboration with me to try and resolve this issue. I want to work in close cooperation with him but as far as I am concerned if close collaboration means that he tells me what to do and I stand up here as if I was guided by remote control and when he presses the button I start telling the House what he wants to hear me tell the House, then I am afraid that is not going to happen. It is not going to happen now, it is not going to happen in four weeks' time, it is not going to happen in a year's time and it will not happen as long as I am sitting here. If they want somebody that will do it and if they had somebody that did it, and I am not privy to sufficient internal information to know whether they had or they had not, all I can tell the House is that from where I stood there and from where I stood there was a puppet on a string, but I might have misread the signals. But certainly if that is what they had and that is what they miss then I am afraid they will have to do it without the GSLP. We sincerely hope it will not come to that and we sincerely hope, Mr Speaker, that we will be able to work together with the British Government over the next few weeks to resolve the one area of difference we have. We want to get on with the job of getting rid of the backlog of EEC legislation during the course of this year. We want to get on with the job of running the affairs of our city and we want to get on with the job of taking them to the negotiating table and decolonising our

country and certainly whoever it may upset in the process we will pursue the struggle for self-determination and for decolonisation in the United Nations and wherever we need to do it unrelentingly, irrespective of the effect it may have on other things. This is a fundamental matter which goes to the very root of the existence of the party and of the right to our land and of the feeling that made Gibraltarians Gibraltarians when they came back to Gibraltar after the Second World War. To do that we need to be able to pay our way and we believe the Government are being honest and sincere with their own workforce and with the population in the leadership that we are giving in producing a strong and a viable economy which is still in a more solid shape than it was in 1988 in spite of all the difficulties that I have explained.

I commend the Bill to the House.

MR SPEAKER:

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

HON P R CARUANA:

Mr Speaker, during some part of his rambling address the Chief Minister asked a rhetorical question which I now intend to answer. He asked when he was in the midst of blaming the British Government for all his woes and clearly they have some blame for some of his woes but he asked the rhetorical question would it have been different with another Government? And I have to tell him sincerely that I believe that the answer to that question is yes because what the Chief Minister does not appear to realise is that one could be agreed as to what one is entitled to, that one can be agreed as to what one wants to achieve but have different views about how one is more likely to achieve it. If the Chief Minister thinks that he can maximise what he achieves for Gibraltar politically and economically by picking a fight head on with the British Government on mischosen issues, the answer is that he cannot and will not and then we will both be disappointed because of course we both wanted the same thing. I believe and he knows that I have said this before, that he has presided - I say this in the full knowledge of those obstacles that have been put in his path only some of which he has related to us here today for the umpteenth time - notwithstanding that, over the mismanagement of the relationship with the British Government. I do believe that some of the difficulties that he and therefore we all face in Gibraltar today with him are the result [Interruption]. No, life is not black and white. One does not either have to be a poodle or provocative [Interruption]. No,

no, because the Government Member is sitting there saying because Sir Joshua ... [Interruption]. No, therein lies his mistake. He thinks that he is either a poodle or a combatant and therein lies his error. I believe, I really do believe that another Government with the same set of legitimate aspirations for this community, many of which he knows we support, even though I say now we would go about trying to achieve in a different way. Many of those aspirations would now be more advanced if there had been a little bit more of what in Spanish they call left hand, and a little bit less brinkmanship and trying to win battles which were unwinnable. It is a matter only, he will say, of approach. I believe it is a matter of approach but I answer his rhetorical question because he has asked it. I really do believe that he has contributed in large measure, but not as the only contributor, certainly, but he has contributed in large measure in the management of the relationship, in the management of the attainment of our aspirations, he has contributed in large measure to the fact that we have reached the impasse long before he used to advocate it was safe to reach it because I remember before I entered politics the Chief Minister used to say something, I will never forget it, and I always used to say, he is absolutely right. What he used to say was until we have a viable, sustainable, self-sufficient economy we cannot push at the frontiers of our political and constitutional development. What has happened is that he has abandoned his own good advice. He has panicked because he has mismanaged the relationship and he has had to abandon that prudent position. He has had to abandon it sooner than he himself advocated it was safe to abandon it because whatever rosy picture he may try to paint here today, clearly he has not been out in the street for some time, about the state of our economy. Not even he can believe that we have today the sort of economy that he meant back in 1984/85/86, 1988 even when he used to talk about a self-sufficient economy.

Mr Speaker, many people that operate in the real economy, in other words, those of us that have to earn a living out there in the street, for whom the economy is not just as it appears to be for the Chief Minister, the state of his Government's finances, many of those people out there in the street today will be gravely disappointed that in three or four hours of mostly irrelevant waffle reminding us all about what his party did in 1988 with GSL, as if that was in any sense germane, relevant, to the issues facing the economy today, many of those people if not all of them will be extremely disappointed that he has not addressed a single one, not one, of the issues which the business community out there upon which by his own admission this economy now depends, are worried and concerned about. Their problems, the problems facing the



private sector economy which he said is absolutely crucial to our survival and with which I agree. It is certainly extremely interesting to hear the Chief Minister explain the progress that he has made in the arrears of PAYE. It is not unimportant. It is certainly interesting, albeit a little tiresome, to listen to him explain in sort of first year constitutional law student terms what the relative growth in society is of the elected Government and trade unions. It is also tiresome to listen to him go on and on about the question of Government borrowing and who asked him? He keeps on saying that people need to be reminded. Who asks him to explain in nearly 40 minutes this whole business of the Social Assistance Fund which he said he was going to the trouble of explaining again it was still an issue? I have made a careful note of it. "It still seems to be an issue." I do not know with whom he thinks he has that issue. I have never said anything about the Social Assistance Fund. We have never done political battle against the Social Assistance Fund. Yes, we have commented on the fact that certain of the expenditure that is now met out of the Social Assistance Fund is no longer reflected in the detailed budget of expenditure which we now have before us today and that is an undeniable truism but that is not an issue about the purpose of the Social Assistance Fund. If I did not know him better I would have thought that he was [Interruption] for some reason or other he did not want to finish until just before the debate on the motion on the adjournment that we are having this afternoon. I could come to no other conclusion as to why he has gone on, and on, and on on those issues.

Mr Speaker, before commenting on those aspects of Gibraltar's economic policies upon which the Chief Minister has said absolutely nothing, there are one or two issues that I wish to address because this is the right moment to do so given that the House, as watchdog of the public purse, is concerned to ensure that the appropriation mechanism by which this House, as a matter of constitutional law, is required to approve every item of expenditure in the budget is not abused and circumvent. I would like to place on record, Mr Speaker, a quotation from a report that I know the Chief Minister does not enjoy reading but of course, you see Mr Speaker, sooner or later he is going to have to understand that not everybody that disagrees with him is either a traitor, an idiot, a fool or simply unknowledgeable. There comes a time when there are people who say things in unison and even the Chief Minister of Gibraltar, in his full arrogant flight, one day will have to stop and think "Well perhaps it is not that I am right and that they are all wrong, it might be that they are right". Professor Arronovitch, who came to Gibraltar and of

course for the record for Hansard let us put on record who Professor Arronovitch is. Professor Arronovitch is a professor of economics. Not a humble ignorant lawyer who does not know one end of the balance sheet from the other as the Chief Minister would have everybody believe is the case with me. This man is a professor of economics infinitely more qualified, I have no doubt, than the Chief Minister in matters of economics. He came out to Gibraltar. We are to take at face value the fact that he says that he conducted an independent. Of course, the fact that he comes to conclusions with which they are not happy does not make his report independent. His report would not have been independent if he had come and spoken only to me but apart from coming to speak to me he went to speak to several of the Government Members and indeed I believe that the Government's economic policy and economic strategy gets a pretty good hearing in that report and a pretty accurate exposition. So when he does say things that is not music to the ears of the Government Members they ought to stop to think whether it might be true. I quote him "What seems to be painfully clear is that the opportunity and mechanisms need to exist for much more detailed scrutiny of Government finances by the House of Assembly, more information, less delay in publication and public availability of accounts of privatised and joint venture companies, the lack of a public accounts committee and the 18 months' delay in publishing the Principal Auditor's Report after the end of the financial year should be remedied". There are items there which I have been harping on to the Chief Minister's chagrin for some time. It is therefore a matter of some satisfaction to me that an expert comes from abroad, without the need to wrestle with him for votes, that comes to say in his independent report, that these things are painfully clear to him. Mr Speaker, the fact that since the Government came to power in 1988 the public accounts of Gibraltar and the Principal Auditor's Report now take 18 months from the end of the relevant financial year to be laid before this House, as opposed to the previous 12 and that therefore by the time that I get this, this document is so much more historical that it almost seems worthwhile taking up the issues that it says on it because after all they relate to 18 months' ago, that is not going to prevent me from putting on record comments that arise from it. Because for me to omit to do so would be to reward the Government Member's strategy with success.

I say, Mr Speaker, that in our capacity as scrutineers of Government and public finances and as holders of the sole constitutional power to authorise expenditure by the executive there are matters raised by the Principal Auditor in his report attached to the financial accounts of the Government of Gibraltar for the year ended 31<sup>st</sup>

March 1993 which are a matter of concern to us and should be a matter of concern to this whole House. I would go so far, Mr Speaker, as to comment that the Principal Auditor's Report constitutes a catalogue of informality, improper accounting and illegal expenditure of public funds. I will now proceed to demonstrate it, not by any analysis of mine, but by unambiguous statements of the Principal Auditor in his report attached to the accounts. Mr Speaker will give me an indication when it is 4.30 p.m. to save me looking at my watch.

Mr Speaker, the first point that the Principal Auditor alerts to and frankly in my opinion it is not amongst the most serious that I am going to make but still is one which is of concern because there has to be an explanation and I would like to know what it is. The Principal Auditor says at paragraph 3.1.2 on page 13, and I quote "There was a significant difference between the opening balance of the Consolidated Fund on the 1st of April 1992 as shown in the financial statement included in the 1992/93 Estimates, which was quoted as £6,577,813 and the revised which appeared in the 1993/94 Estimates which is shown as £7.686 million presented to the House of Assembly on the 26<sup>th</sup> of May 1993". That is to say March, April, May, almost a full two months after the end of the financial year 1992/93. "This is explained by the fact that although the 1991/92 accounts were closed by the Accountant-General for submission to me on 31<sup>st</sup> of December 1992." In other words the accounts to March 1992 were closed for submission to him in December 1992. "adjustments continued to be made up to the 20<sup>th</sup> of July 1993 on which date the books of account were finally closed, i.e. just before the presentation of my report on the accounts to the Governor on the 22<sup>nd</sup> July 1993." This is a man who is saying I have the statutory duty to audit the public accounts of Gibraltar. "They are given to me in respect of the year ended March 1992. They are given to me in December 1992. I start my process of audit and two days before I hand in my report to the Governor on those accounts which I am supposed to have audited, that is to say 12<sup>th</sup> March, one month after the end of the year in question, two days before I am about to give this thing to the Governor with my audit, they are still making adjustments and changing figures here and changing figures there." I want to know, Mr Speaker, what kind of control this Government maintains over public expenditure. I want to know what kind of book-keeping system this Government maintains that requires them one month after the end of an accounting period to have to adjust entries in the accounts which result in the starting balance of the Consolidated Fund being different from what it has been previously stated to be on two occasions. Mr Speaker, certainly I am prepared to recognise that there may be a need to adjust accounts and

to make entries and to shift entries in an account of a period after the period ends but 16 months. Mr Speaker, perhaps the acid test of my question is this, how could the Principal Auditor possibly have audited the adjustment made to the public accounts of Gibraltar for the year March 1992 if those adjustments were made two days before he handed the accounts and his report to the Governor. In case anyone should think that this is an isolated incident and that it happened only in relation to the Consolidated Fund, at page 20, paragraph 4.1. the hon Members will see that the Principal Auditor had the same difficulty with the Improvement and Development Fund. The Principal Auditor says, and I quote him "Hence as shown below there were significant variances between the estimated and actual revenue and expenditure figures provided in the 1992/93 and 1993/94 Estimates, these being more notable when a comparison is made with the revised estimates given the date of their submission to the legislature." The Principal Auditor goes to the trouble of setting out a little table in order to graphically demonstrate the point that he is making. We have a situation where in respect of the opening balance of the Improvement and Development Fund, we were told in the Estimates of 1992/93, given therefore April or May of 1992, that the opening balance was a deficit of £293,567. By the end of the year in the following year's Estimates that figure of a deficit of £293,567 had been revised after the year to a surplus of £888,000 odd. It then turns up that the actual opening balance by the time the accountants had picked the books was actually £1,040,000. There are three different stated opening balances. The same discrepancy in relation to expenditure and therefore obviously the same discrepancy in relation to closing explanations about this expenditure that was scheduled to be taken into one year, it did not fall in that year, and fell into the next one but these discrepancies arise in relation to the accounts of March 1993. How can there be this discrepancy between revised estimates in May 1993, which is already two months after the end of the year which ended in March 1993 and the actual figures given that by May the year had already ended? By the 26<sup>th</sup> May 1993, which is when the estimates for 1993/94 were tabled in this House, surely by then the Government knew whether they had collected £44 million or £34 million and whether they had spent £43 million or £32 million. We are not discussing minor sums of money. There must be a record on which these expenditures are recorded. Somebody must know by May 1993 whether in the year ended March 1993 the Government spent £43 million or £32 million of the Improvement and Development Fund. Then he goes on to say exactly the same thing as I have already read out. "The discrepancy in the opening balance of the Improvement and

Development Fund at the commencement of the 1992/93 financial year is, as already mentioned, explained by the fact that though the 1991/92 accounts were closed for submission to me on the 31<sup>st</sup> December 1992, adjustments continued to be made up to the month of July 1993, i.e. just before I submitted the accounts to the Governor on the 22<sup>nd</sup> July 1993". Exactly the same points that the Principal Auditor is making in respect of the Consolidated Fund and the Improvement and Development Fund.

MR SPEAKER:

I think now the Leader of the Opposition should move the adjournment. I will make a very short explanation how this is going to work. The Leader of the Opposition would move the adjournment to next sitting. I propose it. He then starts the discussion. He can only speak for 40 minutes at the most but if he does speak for the 40 minutes then he can get no reply. I think it is in the interests of the proposer of the motion to allow time for him to get a reply. After that I put the question. If the question is carried then we adjourn until the next sitting. If the question is not carried then I will decide when we sit again this afternoon. Will the Leader of the Opposition please move the adjournment?

MOTION FOR THE ADJOURNMENT

HON P R CARUANA:

Mr Speaker, I have the honour to move that this House be now adjourned to the next sitting.

Question proposed.

HON P R CARUANA:

Mr Speaker, the people of this community have received with a large measure of anxiety and concern what appears to be a repetition of a situation that we first encountered at the end of 1994 following the September meeting between the Chief Minister and the Foreign Secretary, Mr Douglas Hurd. There is a perception in Gibraltar which I think is entirely justified by the information that has so far been given and what the people in Gibraltar have read. There is a perception that there is impending constitutional crisis. That there is a threat of direct rule although of course that phrase is bandied about perhaps in an untechnical sort of way but some sort of British Government intervention in the government of our affairs. Those concerns which are real are magnified by the fact that this issue coincides with what is unquestionably a premeditated restoration of

the campaign by Spain to tighten the screw at the border and therefore maximise the economic, psychological and indeed political pressure that it feels that it can put on Gibraltar. At a time when we are calling upon the British Government to do their duty - we are not asking the British Government to do any favours - but certainly at a time when we are calling upon the British Government to do their duty in relation to that and also in relation to Gibraltar's political future generally, there is a feeling that this is not the time to pick fights with the British Government that can be avoided and that can be avoided, is an essential part of the philosophy of the position that I want to put to this House today. What is at stake here is the quality and nature of our relationship with Britain. What is at stake, if the people are to believe what they are being fed in the press and indeed what appears to be confirmed by some public statements by British Government Ministers, is our hard won constitutional rights of the past. Constitutional rights which we seek to advance on and not to have diminished. What is at stake is a possible constitutional crisis that may or may not lead to direct rule. What is the issue upon which the people of Gibraltar should judge what their own position should be in relation to the apparent crisis? I am sure the Government will not want to deny, indeed I think the Chief Minister has himself said on several occasions that the situation is serious, that they take the threat seriously, that they have taken steps to pre-empt and prevent whatever the British Government might want to do. So we are not talking hypothetically here. We are talking about a situation which is upon us or which might be upon us at any moment of somebody else's choosing. The situation is serious and the people are entitled to be worried about it and I tell this House that in my judgement the people are worried about it. What is the issue? Well, Mr Speaker, again we can only go by what we know in public. We all know what the Chief Minister told us when he came back from that September 1994 meeting with Mr Hurd, that he had been given a list of items. The Foreign Office's position appears to be succinctly reflected in the press release that they issued on the 16<sup>th</sup> of May 1994 following upon Mr Hurd's last meeting, with the Hon Mr Bossano on that day. For the sake of the record I would like to quote the full text of that press release on Hansard. "The Foreign Secretary yesterday met Mr Bossano, Chief Minister of Gibraltar, who was passing through London on his way back from the Far East. At their last meeting in September 1994 the Foreign Secretary handed to Mr Bossano a list of measures on which action was required to ensure good government in Gibraltar and its compliance with EC legislation. The United Kingdom Government has been in close contact with Mr Bossano since and provided help with the drafting of

relevant legislation but there has been insufficient progress. The Foreign Secretary made clear that the present situation could not continue and identified priority action which was needed over the coming weeks. The Foreign Secretary and Mr Bossano also discussed a range of issues of mutual concern including the delays at the frontier".

MR SPEAKER:

Is that a Hansard or are you quoting from a newspaper?

HON P R CARUANA:

Mr Speaker, it is a Foreign Office press release and therefore it is quoted in the press.

HON CHIEF MINISTER:

Is that the report in the press or has he got headed paper of the Foreign Office?:

HON P R CARUANA:

I am reading from the report in the local press. I have to say that now I am speaking only from memory and subject to being corrected. I have also read the text of the Foreign Office's press release and from memory, there is no substantial difference but if there is no doubt the Chief Minister will clear it. Therefore it follows from the statement that the Foreign Secretary made clear that the present situation could not continue and identified priority action which was needed over the coming weeks, that something may be imminent following the passage of a few weeks whatever that length of time might be. We know that there was originally a list of 51 issues, some of which presumably we have been implementing and have been implementing or been implemented since September 1991. What I say is that it is not acceptable for this community to go forward to the brink of a possible confrontation on a constitutional matter with the United Kingdom in ignorance of what those measures are, because I do not forsake my duty as a legislator of this community, as a member of this House of Assembly, to preserve the legislative autonomy which I think the Constitution gives us and which we all should seek to defend. I do not wish to see and will not countenance the imposition of direct rule by the United Kingdom Government. In other words, certainly I will be no part of it and I will take the view that it has to be a constitutional crisis of the gravest order which so far, as far as the information I can see is concerned, is not the case. The UK's position as put to me by His

Excellency the Governor and the Deputy Governor at a meeting that I held with them earlier this week,....

HON CHIEF MINISTER:

I do not think, Mr Speaker, that is correct. Surely, the Governor made clear to him that he was not speaking for the UK?

HON P R CARUANA:

Mr Speaker, the British Government's position as explained to me by the Deputy Governor and also by His Excellency the Governor who was then explaining to me what the British Government's position was, is this. Because they are responsible for the transposition into Gibraltar law of European Community directives they wish to be satisfied that it is effectively implemented. In other words, the judgement whether this House has gone far enough in successfully implementing or transposing EU Directive in a manner that ensures its effective implementation is a matter of judgement for them and not a matter of judgement for us. Mr Speaker, that I recognise raises certain issues that have to be addressed constitutionally with the British Government. The Chief Minister has already alluded to that issue in his earlier address. He has alluded to the dichotomy that exists between that situation and our own defined domestic matters and legislative autonomy for it. I recognise this position and that is a position which I will go to London with the Chief Minister to defend but what is not acceptable, I believe, to the majority of this community today is that we should seek a constitutional crisis over particular items of legislation in respect of which the legislative autonomy of the House may not be abstained. I want to see and the people of Gibraltar want to see the list of 51 measures to see the extent to which it contains items which we simply just ought to be legislating and forgetting about because after all if we do not have fresh water rivers flowing into fresh water fish farms why should we be concerned about implementing a directive that regulates that position. I also want to see the list to see the extent to which it contains measures on which it is necessary to put up a fight. I also want to see the list to see if the Government of the United Kingdom shares my definition of good government or has a completely different one but that does not address any of the issues that concern me domestically. The reason why the people of Gibraltar want to see that list of 51 items is that we want to judge the extent to which these 51 items require the crisis to occur. I say to the Chief Minister that what we ought to be doing is diffusing this crisis if the list of items on it is uncontroversial and then we ought to go to the United

Kingdom Government, the whole 15 members of the House of Assembly if necessary and anyone else that wants to attach to it and deal with the question of the constitutional dichotomy that has arisen in relation to the legislative autonomy of this House and the United Kingdom's obligations under the European Union. I told the Government Members that this community does not want to be led blindly into a potentially catastrophic stand-up political battle with the United Kingdom at this, or I suspect, at any other point in its history at least not whilst the real threat comes from Spain. It was also put to me, at my meeting at the Convent the other day that whereas the question of the 51 items on the list was certainly an on-going matter upon which the Foreign Secretary had said there had been insufficient progress and that urgent action was identified as required that, at present, attention in London is focussed on the one item which is this business of the extension of the money laundering laws on an all crimes basis. Hon Members know because I expressed my views at an earlier debate in this House that I consider that there are issues that affect or might affect the finance centre which need to be taken into consideration when agreeing to that. But certainly Mr Speaker what I was told in the Convent was that the British Government had a desire to sit down with the Gibraltar Government and work out a formula for the legislation that addressed both the United Kingdom's concerns in relation to drug money laundering and - I use the phrase ring fenced - our finance centre from the concerns that I had expounded in the House before. What I say to the Government Members is this. If that is true, if it is true that there is a possibility of consultation to arrive at a position where both the interests of the United Kingdom and the interests of Gibraltar are adequately addressed and protected, then what we must do with that one issue which is the one that appears to be the focal point of the immediate crisis without saying that the others will not become a crisis if we do not get on with them, as well but certainly it was made perfectly clear to me that the crisis was presently focussed on that one issue. If that can be resolved to our satisfaction by a process of discussion with the United Kingdom then I would urge the Government Members to take that route and not use this one item of legislation which can be resolved to our satisfaction as the stalking horse for some premeditated political battle with the United Kingdom which they may wish to have for other political reasons.

Again I put it to the Government Members what I said in my opening remarks on my address on the Appropriation Bill. The issue here is not what we are entitled to, the issue here is how best to achieve it. In my opinion we do not best achieve persuading the United Kingdom that

they must respect the legislative autonomy of this House by engaging on an unnecessary and unwinnable battle because if the British Government is willing to discuss this issue with us, then it is not a necessary battle. Whether it is necessary or not I believe that the battle fought in this confrontational manner and blind, because the people of Gibraltar will not support the Government Members in a blind battle, is unwinnable. Therefore, the position that I am putting to the Government Members is one that this community cannot at this moment afford and does not want a stand-up constitutional battle with the British Government. But that if there is an issue which is one which is so fundamental to us, as for example it would be that we should not go backwards constitutionally, that we all subscribe to, then before taking us into battle on that issue the Government Members have got to exhaust all possible avenues which include informing the people about what the issues are, informing the people about the 51 issues to see if the issue that needs to be defended really does arise and expanding the participation in the lobbying and discussion process with the United Kingdom beyond the occasional and secretive meetings between himself and Mr Hurd. It is not good enough that we go into constitutional crisis on the basis of three dinners between the Hon Mr Bossano and Mr Hurd about which we only get to discover what the Chief Minister chooses to tell us and in the manner in which he chooses to tell us. If it becomes inevitable to do in this community what most people do not want to happen but if for some vital interest of ours it became necessary to do it, I think that the least that the Chief Minister should do is arm us with the maximum amount of information into it so that people can form their views and go in with open eyes.

Mr Speaker, the issue of confidentiality is one enormous red herring. There is nothing confidential about a list of 51 laws which we are led to believe during the next 12 months are going to find their way on to our statute books anyway. Or is there anything on that list that the Chief Minister does not want us to see? The British Government have got no objection to the Chief Minister making public the list. Mr Davis said, and I quote him, "We have had our discussions with Mr Bossano about things that need to be done. He knows it is a serious discussion. We are serious about what needs to be done". Then he went on to say "If the Chief Minister wants to announce this he can do so but for the moment it is for him to think about it". In other words, the British Government have got no objection to him making this list public. If he chooses not to make it public he will have to explain to the people of Gibraltar what vital interests there are that require him to do that or is he now, having spent all morning painting the British

Government as the nigger in the woodpile, is he now going to rely on the fact that it is confidential for the British Government not to do it. In other words, does he regard that there is some issue of confidentiality which is more important and which overrides the possibility that we might find ourselves in grave constitutional crisis? The people of Gibraltar have a right to know. The people of Gibraltar want to know and I add to that that the people of Gibraltar need to know. Mr Speaker, I am told by my acting secretary that 22 minutes have elapsed and I was anxious to give the Chief Minister maximum time. The purpose of this debate is not for me to put to him my views which he has heard already. The point of putting down this motion was to give the Chief Minister an inescapable opportunity to explain what his Government's position is on this issue.

HON CHIEF MINISTER:

Mr Speaker, I would like to start by making clear that I think I represent the people of Gibraltar and not the Opposition Member. Therefore I do not accept that he speaks for more than a minority of the people of Gibraltar, the minority that voted for him the last time which I hope will be considerably reduced the next time round, so we will not have to put up with him at all. It is obvious, that notwithstanding the fact that I made clear that only one issue was raised by the Foreign Secretary as a priority area on which they wanted me to act, it is only when the Governor has told him the same thing that he has believed him because of course he believes what the Governor tells him and not what Joe Bossano tells him who is merely the local guy from the backstreets who made it to Chief Minister after 16 years. That is understandable. This is why he will not be a poodle. I do not think he will even make a Pekinese if he ever were to be in a position of having to defend the Gibraltarians against any onslaught from the British administration which is, of course, not the British people or the British Parliament because at the end of the day although as the hon Member says all I have had is three dinners with the Foreign Secretary. Secret dinners I suppose I will have to see if the Foreign Secretary will allow me to publish the menu. The position is that I imagine part of the reason why they lure me to these dinners is because they think that I will be overawed by having a private dinner with the Foreign Secretary and somehow that will alter my response. It does not alter my response. I say no to the secretary and I say no to the Foreign Secretary and I say no to whoever I have to say no unless intellectually they can convince me that what they want us to do is something (a) that they are entitled to and (b) something that is for the good of Gibraltar. The British Government consider that good

government measures are the implementation of Community obligations in the areas they want and in the way they choose. I do not believe they are right and I think that the fact that they believe that if they are going beyond the letter of the requirement and therefore they cannot use the mechanism of extending to Gibraltar an international obligation which is the mechanism they tried first then, they can rely on section 7 of the Constitution where laws can be made for the good Government of Gibraltar. Since the foreign Secretary knows that if we get to that stage, which I hope we will not, we intend to seek judicial review in the UK then we will have to demonstrate that it is for the good government and therefore they start off by calling the measures good government measures. The Opposition Member has chosen to concentrate on the letter of September notwithstanding the fact that he knows that there is no dispute over the letter of September. The only thing about the letter of September is that the degree of progress is not fast enough to satisfy officials in Whitehall who have then gone presumably to the Foreign Secretary so the Foreign Secretary would impress upon me the need for faster movement on the outstanding list of directives which we have not disputed. We have said yes, we will implement them. We have implemented a quarter of them to date and they think a quarter is not enough. I have told them that the target will be to have the remaining three quarters by September this year. We are talking about a situation where we have got 50 that they give priority to out of 100. There are still another 50, we hope to have done by the end of the year. In some of them we are not able to move because they do not agree with our drafting and we have got a problem in that it is not enough to implement, it is not enough the Commission should be satisfied on top of that we have got a situation where I gave the example earlier on of the DTI, on the one hand the Foreign Office has got on this list of urgent directives the 3<sup>rd</sup> Non-life Insurance Directive and on the other hand the commission is telling me not to do it because the DTI does not want it done yet until they are happy. The fact, Mr Speaker, that we have people worried is a reflection of what has appeared in the UK press. That does not stop the Opposition Member saying we wish to have a conflict for other political reasons. It does not stop him saying that I am painting the British Government as the nigger in the woodpile. Mr Speaker, when I had the meeting with Douglas Hurd in September, as I explained when I came back, and as the press release he did not quote this time, was the press release of the 21<sup>st</sup> of September. The press release of the Foreign Office on the 21<sup>st</sup> of September was that we had had a very useful, cordial and positive meeting. That was the Foreign Office press release of the 21<sup>st</sup> of



September and not the 50 items on the list. He does not quote that now. Why not? Because it does not suit his political motives to quote it. What happened the next day every single UK newspaper said I had been reprimanded by Douglas Hurd. The day after every single Spanish newspaper said how wonderful that Douglas Hurd had reprimanded Joe Bossano. I say there is a dirty tricks campaign and he said "you are making the UK the nigger in the woodpile". If I am not the nigger in the woodpile and he is not the nigger in the woodpile and Braña is not the nigger in the woodpile, somebody must be the nigger in the woodpile or is it that by some stroke of telepathy every newspaper in the kingdom decided to invent the same story the same morning? I can tell the hon Member I had a meeting with David Davis. It was the first meeting we had in September. It went extremely well. I was very happy with it. I had already spoken with Francis Maude who is a close friend. David Davis said to me he wanted to have a meeting alone with me, without officials, off the record. We had an hour and a half together. I then went and saw the Foreign Secretary, we had three quarters of an hour together. He gave me this letter at the end of the meeting which I did not have time to read and I put it in my pocket. I went off to dinner with Neil Kinnock and I finished at two o'clock in the morning. I spoke to GBC between the two events and I confirmed to them what the Foreign Office had told me, that the meeting had been very fruitful, very cordial, they were concerned about the delays. I promised them we would do our best. I explained to them we had limited resources, lots of pressure on the time available to the civil service and to Ministers, that we could not responsibly simply publish laws without knowing what it was we were doing, however much they wanted us to do it. That we had to look at things ourselves to make sure we understood what legal obligations we were putting on people. That is what happened on the 21<sup>st</sup> of September and before I had a chance to read the letter and the list of the things which he just mentioned en passant, he did not specify what it was that they felt was more important, I read in every morning paper that I had been reprimanded and that I had been given a ticking off and that ... I do not like that, Mr Speaker, and therefore what I did was I wrote a stinking letter to the Foreign Secretary. This is not me looking for a conflict. This is not me wanting bad relations with UK, this is me being me, Mr Speaker, and people knew what I was like when they voted me in and if that makes me unsuitable to be the Chief Minister of our country then we will have to pick somebody else. It is as simple as that but I am not picking a fight with the British Government and the hon Member is doing a great disservice to the 20 per cent that voted for him by trying to take political advantage of every occasion to say the bad guy is always Joe

Bossano. [Interruption] That is the issue, not the letter of the 21<sup>st</sup> of September. I will tell the hon Member why. In December having already sent copies to Douglas Hurd of the Drug Trafficking Regulations so that he could put them in front of Solana and demonstrate that we had moved without waiting for the meeting to take place, having already done that, an article came out in the UK press quoting an unknown senior Whitehall officially who said that direct action leading to direct rule was now only weeks away. That is what the newspaper said in the UK at the time. I said, in response to that, we have to take the threat seriously and we have to act as if it is real. What does he expect me to do? Notwithstanding what the UK papers say which the UK papers say is due to a senior official. I do not know what kind of people they employ in Whitehall but I can tell the hon Member that the officials we employ in the Government of Gibraltar would not go off rabbiting to the Gibraltar Chronicle saying "Joe Bossano is contemplating direct rule over John Major". They would not do a thing like that unless they had lost their wits. I do not know whether there has been some kind of bug that has driven them insane in Whitehall so I am assuming that in fact although a senior official is saying they plan to take over Gibraltar by direct rule which can only mean suspending the Constitution and removing this House, I do not see what else it can mean, but I am speculating. I do not know whether the man who said that to the press had the authority to do it. I know that the Earl of Arran in the House of Lords the following day said "My Lords, I make clear straightaway that there is no threat of direct rule. I repeat that cooperation is the best way forward. There are suspicions of money laundering and drug trafficking and it is true the Gibraltarian Government has fallen behind in implementing some Directives. My Rt Hon Friend the Secretary of State is exhorting them to implement the Directives as soon as possible." Fine! I will not pick a quarrel with the Secretary of State because he is exhorting me to do it. He has got the right to exhort me and I want to do it and I am committed to doing it but if while he is exhorting me to do it somebody else tells the press that they are actually planning to send a task force what does the Opposition Member expect me to do sit on my backside and do nothing about it? Well, I am afraid that is not going to happen.

HON P R CARUANA:

Will the Chief Minister give way?

HON CHIEF MINISTER:

No. In fact the hon Member had if he wanted the whole 40 minutes to himself and he generously decided to give half of it to me and I cannot take it back. As far as I am concerned, Mr Speaker, the issue that concerns the British Government at this point in time is the issue that arises out of the fact that at the last House of Assembly when we had the Committee Stage I agreed to remove a proviso in the legislation which allowed the Government by regulation to extend the money laundering law to other crimes moved by him, accepted by me. The first and the last time he will have an amendment accepted by the Government. [Interruption] No, it happens to be factually true. We have removed it and I have now said to the ...

[Interruption] Mr Speaker, if the hon Member will let me finish then he can make whatever judgement he wants. I have now told the British Government that I am prepared to bring amending legislation to the next House to put it back so that we can extend the law to other crimes, which is what they want me to do. [Interruption] No, the issue is that I said to them in December that I was not convinced (a) that they had the right to demand it and (b) that we ought to be doing it given that other people had not done it but that I would put in the law - that is what I promised to do in December - enabling legislation so that we would keep the matter under review. I have promised the Foreign Secretary to reconsider the decision in my last meeting and we will listen to his arguments and it may well be that we will decide that this is not the issue on which we ought to stand particularly after listening to all the arguments the hon Member has put on behalf of the people of Gibraltar that he claims to speak for because we are not going to go backwards constitutionally because it looks as if we are putting them to be the nigger in the woodpile because this is not the right moment to upset the British when we need them to help us with Spain. For all those reasons which he has put today we may decide that the British Government should have their way irrespective of the effect it has on his listeners and the rest of the finance centre.

MR SPEAKER:

I would like to tell the Chief Minister that he has got about three minutes to go.

HON CHIEF MINISTER:

As regards the other items that need to be done, because we are so stubborn, which the hon Member finds so

unacceptable, I can tell him that there are now 100 that need to be complied with although there were 130 and it took us two years and just over one month to finally persuade them in London that 30 of the 130 did not apply in Gibraltar because they were made under Article 100(a) of the Maastricht Treaty which does not apply to us because we are outside the Customs Union. Otherwise, two and a half years ago presumably to avoid making them niggers in woodpiles or upsetting them or being anti-British or being too aggressive or mishandling the situation, we would have finished up with 30 directives, hampering the private sector unnecessarily because the private sector would have had the obligations but not the access to the market because we are outside the Customs Union. It took us two years and one month to reduce the list from 130 to 100. We are ready and determined to remove this backlog. We have told the Foreign Secretary and we sincerely hope that it will be possible to reconcile our differences on the terms that the Earl of Arran has spoken, that David Dumas has spoken, that the Foreign Secretary has spoken in the conference that he gave after his meeting with Señor Solana where he said that he wanted to work on close cooperation with Joe Bossano. We did not say with Peter Caruana. He did say with Joe Bossano and therefore since I would not want the Foreign Secretary to have the misfortune of having to work with Peter Caruana and since he told the general public that there is no question of any attempts to undermine the Gibraltar Government, what we want to do and what we will do, is to work constructively and productively with Joe Bossano to build a stable and prosperous future for Gibraltar. Obviously he has got more faith in me than the Opposition Member, then that is what we will try and do and I hope that we can put this to bed but if we cannot put it to bed the first move will be made by the British Government not by us and we will see who is with us and who is not with us and at the end of the day people will have to be either on one side or the other, there is no sitting on the fence.

MR SPEAKER:

Before I put the question I would like to give a very short explanation. First, the adjournment is for the next sitting if carried. If it is not carried then I will suspend the business of the House until 5.35 p.m.

Question put.

MR SPEAKER:

The motion is defeated and I now suspend the business of the House until 5.35 p.m.

The House recessed at 5.20 p.m.

The House resumed at 5.35 p.m.

#### THE APPROPRIATION (1995/96) ORDINANCE, 1995

HON P R CARUANA:

Mr Speaker, returning to my address on the Appropriation Bill and towards the end of it I will be returning to some of the Chief Minister's extraordinary remarks in relation to that debate in so far as they are relevant on the appropriation debate. Before the adjournment I was taking the House through items arising from the Principal Auditor's report and I had explained to the House substantial discrepancies in respect of the same items as between the date of the original estimate, the date of the revised estimate and the eventual actual sum in the account. The second item refers to expenditure which is simply illegal; contrary to the law; a flagrant breach of the Constitution Order. It cannot be more illegal than that. At paragraph 3.3.3 at page 14 the Principal Auditor says speaking of expenditure "During the course of the year the Financial and Development Secretary authorised £850,309 by way of supplementary funding to meet the additional expenditure requirement of controlling officers. Notwithstanding this there was one case, that of the Education Department, where excess expenditure beyond that appropriated was incurred on the relevant head of expenditure in the sum of £26,280". It is clear what the man is telling us. Whereas the Constitution says that expenditure may not be incurred by the Executive except by the sanction of this House, the Education Department has illegally, unlawfully and in breach of the Constitution spent £26,280 and that is precisely the terms in which the Principal Auditor describes it. On the accounts of Gibraltar, at page 4, of the accounts, as opposed to page 4 of his report, there is a statement of unauthorised expenditure (a) expenditure not covered by appropriation - Section 5 of the Gibraltar Constitution Order - Head 2, Education and Sport - £26,280. I say that that is a thoroughly unacceptable state of affairs. This House is entitled to expect that in the expenditure of public funds, departments of the Government for which the Minister has political responsibility and the Chief Minister has overall political responsibility, will be spent in manner provided by the law and not in a manner which breaches the highest law in the land, namely the Constitution. Another sin to which the Principal Auditor draws attention, is the unauthorised use of savings. At page 14 of his report, paragraph 3.3.4. I quote him, "There were also a number of instances where unauthorised use

was made by the controlling officers of savings within their Heads of Expenditure and these are listed at page 4 on the annual accounts."

The fourth area of the report to which I would like to draw account and as part of the general picture of sloppy control. Sloppy in the case of expenditure that is simply illegal, is too generous a term but then there is this whole question of statements of reallocations of expenditure. At page 15, the Principal Auditor tells us, "A total of 34 reallocation warrants were issued by the Financial and Development Secretary, the last one dated 14<sup>th</sup> of December 1993 i.e. 17 days before the deadline for the submission of the annual accounts to the Principal Auditor." We are talking about the accounts to the 31<sup>st</sup> of March 1993. In December 1993, that is to say nine months later, the Financial and Development Secretary was still issuing reallocation warrants. In other words, retrospectively authorising expenditure for a purpose other than that it had been voted for. Mr Speaker, I recognise that this is not a new practice. If we look at most of the warrants that have been laid before the House this year there is an element of retrospection in almost all of them. I say that expenditure may only be applied for a purpose other than that authorised by this House upon the issue of a reallocation warrant by the Financial and Development Secretary and that therefore that must pre-date the expenditure and not be a bit of paper that is put in place after the event. I would gladly give way to the Financial and Development Secretary if he wishes to explain that. I understand that is not the practice, but it is not the first time that the Principal Auditor makes this point but it is the first time that he says this one is very late in the day. This one is nine months after the event. This one is 17 days before the deadline for the submission of the accounts to the Principal Auditor for auditing and we are still fiddling about with authorising expenditure for a purpose other than it was voted for. If it were not important the Principal Auditor would not have gone to the trouble of putting it in his report.

The fifth items relates to the control of stores. It is clear from a cursory glance at the Principal Auditor's report that the Government's performance on the control of government stores is pitiful. In relation to the Education Department, he says at page 15 of his report, and I quote him "The Director of Education has informed me that the excess expenditure was due to an under-estimation of the cost of unallocated ..." this is not the illegal expenditure of £26,000, this is other expenditure that he spent in excess of that which was authorised. "The Director of Education has informed me that the excess expenditure was due to an under-

estimation of the cost of unallocated stores issued to schools and that estimation was seriously hindered by a lack of information from Support Services on the value of the stores issued by them to his department. Notwithstanding the unsatisfactory situation concerning the unallocated stores accounting system, the Financial and Development Secretary has expressed the view that the Director of Education should exercise closer physical control of the stores used by his Department and if necessary devise his own internal departmental recording and controlling procedures. Given the size of the over spent, namely £38,498 in a sub-head with an original provision of £49,200, it would appear that, as stated by the Financial and Development Secretary, the cause of the excess cannot be solely placed on the failure of the unallocated stores system to issue timely accounts." In the very next paragraph the Chief Fire Officer has a reported complaint to make about the stores as well. "The Chief Fire Officer once again expresses dissatisfaction with the failure of the Support Services Department to bill promptly for the issue of unallocated stores pointing to the fact that he received charges for the issue of stores to his Department relating to the financial year ended 31<sup>st</sup> of March 1993 in November 1993." We have lack of information on values. We now add to that late billings and at page 4 the Principal Auditor says, "It is clear from both these incidents ..." not the ones that I have just described but two incidents that he describes in the paragraph before "... that control over expenditure and the custody of allocated stores continues to be deficient to the extent that the present system is open to malpractice. When the Royal Gibraltar Police completed their investigation into a theft of stores in September 1992 they concluded that the accounting system of the stores was flawed and that necessary action was required to be taken to avoid further loss of Government property. It is regrettable that little or no action appears to have been taken to exercise strict control over the purchase and custody of stores held by the Ministry of Building and Works at its various depots since then. It would appear necessary to point out that controlling officers are by virtue of Section 42(2) of the Public Finance (Control and Audit) Ordinance, liable to be held personally accountable for all monies dispersed and for all stores held". Notwithstanding the unsatisfactory situation in July 1994, which is the date of this report, the Principal Auditor was still complaining of the Government's persistent failure in taking any steps to remedy the situation. Mr Speaker, at page 60, at paragraph 6.9.5. he says "In my report on the 1990/91 Accounts and 1991/92 Accounts I draw attention to an unsatisfactory state of affairs in the operation of unallocated stores." Previously we were discussing

allocated stores. "The current situation continues to be that controls in this important and high value area are very weak. No action has been taken since the last audit inspection when a number of recommendations were made in order to bring a measure of control over the operation of the stores."

Finally, Mr Speaker, in a situation in which the Principal Auditor is pointing out weaknesses open to malpractice, where there have been complaints, one would have thought that the Government, instead of ignoring the Principal Auditor's report for remedial action, the last thing one would expect, Mr Speaker, to discover is that the Government were back pedalling and doing the opposite because at page 66 of his report, paragraph 6.10.17, he says, "In November 1985 the post of Stores Verifier was lost to the Audit Department with the transfer of the incumbent to the Public Works Unallocated Stores. This move marked a return to a position where there was a requirement to appoint boards of survey. I am not, of course, suggesting that we should now move back in time but the present situation with no boards of survey being held and with little or no audit evidence of stock verification being undertaken departmentally, is clearly unsatisfactory and requires to be reappraised". Mr Speaker, I say that it is clear from the remarks of the Principal Auditor that the Government are reckless in their continued refusal to put in place, at least until June 1994 they had not, notwithstanding his repeated requests, reckless, in putting in place the very measures and control which the Principal Auditor had been repeatedly year in, year out, demanding of them.

Mr Speaker, this morning the Chief Minister was talking to us about arrears and he was congratulating himself on the success that Gibraltar Procurement Limited, or now Gibraltar Information Bureau who now does it, had done in collecting PAYE arrears. The Principal Auditor is not as complimentary of his Government as he himself is. At page 17 of the report the Principal auditor points out that total arrears owed to the Government amount to £23.42 million. True, and it is evident from the content of the report and from the contents of the accounts, that a fair amount of these arrears is generated "artificially" by the fact that the Income Tax Office issues assessments in the absence of returns to many, many companies which do not exist or which are abandoned or which do not trade and which never get paid and that they go into the list of arrears. But still the Principal Auditor did point out at paragraph 3.6.3. that there had been no significant action taken to control and bring the arrears situation under control and that whereas the Chief Minister may be able to point to PAYE that there are other very significant areas of arrears.

Electricity, Rates, Housing Rents, where they are making absolutely no effort whatsoever to collect arrears. At page 33, the Principal Auditor gives the enlightening statistic that as at 31<sup>st</sup> of March 1994, 26.8 per cent of all electricity bills then issued were outstanding; 26 per cent of electricity billing as at that date was unpaid and outstanding, to a total value of £2 million out of £7 odd million issued. It may be that since the 31<sup>st</sup> of March 1994 that position has been improved but that is what the Principal Auditor says at paragraph 5.6.6. The Government and members of the Opposition will no doubt agree that the collection of arrears is a matter which ought to be done because it increases the Government revenue and this is helpful to the public finances and might one day enable the Government to reduce the fiscal burden, the tax burden, on the people of Gibraltar. At page 34 the Principal Auditor expressed delight at the fact that he had then been told that the Government were going to set up a new arrears unit. He says "I have once again addressed the Accountant-General seeking his comments on the continued rise in arrears trend and the apparent lack of attention being given to debt enforcement with particular reference to the re-introduction of cutting off procedures for domestic consumers." He replied as follows: "I am pleased to be in a position to inform you that a decision has already been taken by Government to set up a special unit under my direction which will have as one of its functions for responsibility for bringing under control the unsatisfactory electricity arrears position" and then he goes on and on. The point that I make is that in the Estimates that we have before us at least under the head of the Accountant-General's Department there is no indication that there is an establishment increase in that Department which suggests that the new arrears unit has been put under the Accountant-General's Office. Of course, it may be that the Government have put it elsewhere, under the Department of the Environment or something like that, and I expect that they will give me news about that later.

Mr Speaker, the seventh item which I think is a disgrace and which is a disgraceful abuse of the rules of government accounting is the issue reported by the Principal Auditor at page 22 of his report, at paragraph 4.2.5., where he says in relation to the Improvement and Development Fund, "It also appears that reimbursements," that is, monies paid back to the Government by private developers for work that the Government do for the private developers "in the sum of £426,000 made in respect of the 1993/94 financial years have been credited to deposit accounts, instead of the Improvement and Development Fund and that these funds are being utilised to meet expenditure on relevant infrastructural works.

This not only undermines the financial management of the Improvement and Development Fund but is, in my view, a breach of Section 26 of the Public Finance (Control and Audit) Ordinance." In other words, let us be clear what the practice the Principal Auditor is referring to there. All revenue has to be credited to the Consolidated Fund from which it then needs the permission of the House of Assembly to be spent. What the Principal Auditor is here saying is that when the department that deals with this aspect of the Improvement and Development Fund presumably, Trade and Industry, collected £426,000 from developers, instead of putting it into the Consolidated Fund so that it would then only be able to be spent with the permission of the House of Assembly, they were putting it on deposit presumably with the Accountant-General on the Improvement and Development Fund expenditure. Mr Speaker, that is not the only instance of it and it is the Principal Auditor, not me, although it is apparent to me as well that that is irregular, it is the Principal Auditor whose constitutional responsibility it is to report on the Government's accounts. It is he who says that in his opinion it is a breach of Section 26 of the Public Finance (Control and Audit) Ordinance. It is not I who have said, although I share his view. The Electricity Department is doing or was doing exactly the same thing. At page 23 the Principal Auditor tells us "Consequent to an inspection of the Electricity Department I addressed the Financial and Development Secretary on the 18<sup>th</sup> of February 1994 and drew his attention to the practice in this Department of charging expenditure on the provision of sub-stations and distribution networks for development projects to deposit accounts. I have again expressed the view that where the works involved result in the creation of Government assets the cost involved and any recoveries effected should be accounted for in the Improvement and Development Fund. I have dealt with this matter more fully in section 62 of this report". So, Mr Speaker, at section 62 which is at page 43 the Principal Auditor tells us, "As previously expressed, in section 4.3.2. of this report I am of the view that where the works involved result on the creation of Government assets such works at the provisions of sub-stations and distribution networks, it is wrong not to reflect the costs involved and any recoveries effected from developers to the Improvement and Development Fund. The Public Finance (Control and Audit) Ordinance provides for such expenditure to be charged to the Fund as well as for the crediting of monies received for the purpose of the Fund. Not to do so undermines the budgetary control over the finances of the Improvement and Development Fund imposed by the Ordinance." Needless to say, the Education Department was also up to the same thing. At page 41

"Revenue and Expenditure: College of Further Education - in succeeding reports I have drawn attention to the fact that expenditure and revenue related to the running of courses by the Gibraltar College of Further Education was being understated in the Revenue and Expenditure Accounts of the Government. Instead these transactions were being accounted for through a deposit account held in the name of the Director of Education." In other words, off balance sheet accounting. "Given that the Deposit Accounts were essentially being used to account for the costs and corresponding revenue generated by the running of courses for the Employment and Training Board and that the Director of Education was not able to exercise control over it, no further transactions were allowed by the Director to be made to this deposit account as from the commencement of the Financial Year under review. In view of this a new account was opened in the name of the Employment and Training Board. Clearly, this did not rectify the basic anomaly whereby Government expenditure and revenue on education was not being properly accounted for in the appropriation accounts". The final example of that issue and it has got to be borne in mind, Mr Speaker, that the Principal Auditor does not find all the examples, because of course his audit is a random audit and if in a random audit he has discovered all these examples, one shudders to think just how rife this malpractice is because if a random audit of the Government finances reveals all these examples then of one thing we can be sure, the random audit has not found every example of this malpractice. At page 60, he says, "Services performed by Government Garage: Support Services is essentially a spending department but it is also required to account for monies received in respect of services performed by the Government Garage for non-Government bodies such as Lyonnaise des Eaux (Gibraltar) Ltd. The revenue arises from the services amounting to over £50,000 during the course of the financial years 1992/93, 1993/94. I have expressed the view to the controlling officer, namely the Highways Engineer, that it is not correct to account for such revenue or the expenditure incurred by Government in providing such a service through a deposit account but that the revenue and expenditure should be accounted for in the Consolidated Fund and appear as such in the annual accounts of the Government". So, Mr Speaker, all of those are examples of cases in which a Government department collected money, did not put it into the Consolidated Fund and therefore spent it without the sanction of an Appropriation Bill of this House which is what the law requires of it. Then, there is an even graver practice than that. Yes, it is clear to me that the Government attach no importance to onus and proper financial accounting. It comes as no surprise to me that

these financial malpractice have proliferated under the stewardship of the Government Members.

CHIEF MINISTER:

On a point of order, Mr Speaker, the hon Member is saying that he is not surprised that dishonest practices arise. Is he imputing dishonesty to the elected Government?

HON P R CARUANA:

I have said that it does not surprise me that this casual and improper financial accounting should have proliferated under their stewardship. It is not I, Mr Speaker, who has said that there has been illegality. It is the Principal Auditor that has said that there has been illegality. The outburst of which the Chief Minister now complains is provoked because they titter there as if all these were unimportant and amusing matters and I say that it surprises me not one jot that the Government think that this sort of issue is amusing.

The eighth financial malpractice that I highlight to is the blatant misallocation of expenditure by booking it under an irrelevant subhead. In other words, for example, some Government department wants to buy a vehicle and because they have run out of money under their subhead "Vehicles" they buy a vehicle and put it down under "Computers", or they put it down under "Entertainment" or they put it down under "Telephone Services". That does not result in an integral proper financial record. The Electricity Department again, at page 44 of the Principal Auditor's report. What is the point of the law saying that this House has got to authorise expenditure and every item of expenditure, if the Government Members then think that it is fine for departments for which they have political responsibility, departments for which it is their political responsibility to ensure that these malpractices do not occur in the departments for which they have political responsibility or are they now going to say that this is the only area of local affairs for which they have been trying to take political responsibility. At page 44 of the Principal Auditor's report, listen to what the Principal Auditor tell us "The Electricity Department: An inspection of the Department's records identified expenditure incurred on the provision of electrical infrastructural services to the development projects at Eurotowers and Westside" I interrupt the quotation. The Electricity Department did a job of work for Eurotowers and Westside II developers presumably laying down some part of the electrical grill infrastructure. I revert now to the quotation, Mr Speaker, "which have been wrongly charged within the Improvement and Development



Fund classification in the Estimates. In the case of Eurotowers two payment vouchers in the sums of £45,897 and £25,956 had been debited to uprating of sub-stations and HV rings - central south district, respectively whilst the payment related to Westside II ... which any fool can tell is not in the south district has been charged "project amounting to £119,900 had been charged to HV rings central south district as no provision was apparently required to charge this expenditure to the Improvement and Development Fund. This was, however, avoided by debiting existing, though irrelevant, items of expenditure". In other words, let us be very clear, the Government want to spend money for which they have not sought the legally required consent of this House. They, therefore, spend it and book it and conceal it by booking it under an item that has got absolutely nothing to do with what the money was actually spent on. I say to the Government Members that that is an illegal and scandalous disgrace. Mr Speaker, lest anybody should think that these are isolated incidents, in the very next paragraph we have a further example. I am glad to see that the Financial and Development Secretary has suddenly perked up and taken an interest in these proceedings. At paragraph 6.2.6. he says, "It appears that at the time of audit the total duty to be recovered from Westside II developers was £196,624 of which, as already stated, a sum of £199,900 is known to have been misallocated. It seems that the rest of the expenditure has been randomly allocated by the City Electrical Engineer pending a decision on the level of contributions payable by the developers." In other words, out of £196,000 he has mis-allocated £119,000 and randomly allocated the rest. Mr Speaker, the Building and Works Department does not escape this. At page 47 of his report, paragraph 6.3.7. he says "The expenditure audit has revealed that during the period March/June 1992 Gibraltar Security Services Ltd were employed by the Ministry of Building and Works to provide a 24-hour security service at Elliott's Battery. This property has been released by the Ministry of Defence to the Government and was subject to the issue of self-repair lease from the 1<sup>st</sup> of May 1992. The cost of the security service would appear to have come to £70,848. This amount has been identified as having been incorrectly charged in the accounts to Head 101 Housing: Item 2, Refurbishment of Government Housing." The Minister for Government Services will be pleased to note since they think that all this is such fund that his own Department does not escape criticism either. The Post Office saw fit to purchase a £7,750 computer and put it down to the supply of stamps to the Philatelic Bureau. This is extraordinary. It really shows a catalogue of systematic, improper accounting. "The audit inspection

also reveals that additional expenditure incurred by the Department on the purchase of computer software, cabling and training, amounting to £7,750 has been wrongly charged in the annual accounts to the provision made in the Approved Estimates for the supply of stamps to the Philatelic Bureau. The original expenditure related to the computerisation of the Philatelic Bureau's records had been properly allotted to the Improvement and Development Fund where funds for minor computer developments had been approved. I understand that at the time the additional expense was incurred the funds under this head and item of the Improvement and Development Fund had been exhausted. In the circumstances it would appear that an application for supplementary funding should have been made." Mr Speaker, there are two other matters which just out of this Principal Auditor's report which I think demonstrates an unacceptable laxity and casualness and informality on the part of the Government Members in the stewardship of public monies. At pages 34 and 35 of the Principal Auditor's report and in relation to the Workers' Hostel Fund, of course the management of the Workers' Hostel has been privatised in favour of a company called Devil's Tower Hostel and another company called Tower Hostels has had the one at Casemates. This is what the Principal Auditor has to say about that, "I understand that the running of both the Devil's Tower Hostel and the Casemates Hostel has been privatised. The former towards the end of 1992 and the latter a year later. At the time of writing this report (June 1994), however, no formal contract between the Government of Gibraltar and the firm involved, Tower Hostels Ltd, was in place. I am, however, informed by the controlling officer, namely the Accountant-General, that Tower Hostels Ltd is in receipt of all the accommodation fees and pays for the operating costs. An examination of the expenditure of the Workers' Hostel Fund has nevertheless revealed that payments continue to be made by Government towards the running expenses of the Devil's Tower Hostel. I also understand that the Government pays a management fee to Tower Hostels Ltd and that this is reflected in the expenses of the hostel that is showed in the annual statement of accounts". Mr Speaker, what the Principal Auditor is saying is that the Government privatised the hostels, they signed no contract the operator of the hostel collects the revenue and the Government continues to pay running expenses and that there is no accounts. "The audit of the fund account also revealed that neither the expenses incurred by Tower Hostels Ltd or the revenue it received from accommodation fees had been incorporated in the statement of account. This is made necessary by the need to provide a full account of the finances of the operation of the Workers' Hostel as prescribed in the regulations of the Workers' Hostel Fund". In other words, that for at least two years there was a willy

nilly system where this company, in whose favour the Government had privatised the Workers' Hostel, simply collected Government revenue, Government continued to pay the company running expenses and that there is no accounting of it.

The final point that arises from this whole subject of the Auditor's report is at page 28 in relation to the minting of coins. This is what the Principal Auditor has to say about that, at page 28, "The new coinage ..." and there is 1.973 million odd pounds, 1,973,862 coins in circulation "...was introduced in December 1988 in collaboration with Pobjoy Mint Ltd who are responsible for the minting and distribution outside Gibraltar of all coins issued by the Government. In addition to the circulating coinage a total of 46 different sets of commemorative coins had been released by February 1994. In all cases the expenses involved in the production of coins are borne by the Pobjoy Mint with the Gibraltar Government paying of the manufacturing cost of the coins it requisitions from the mint. Also, under the terms of the agreement with Pobjoy Mint Ltd royalties accrued to the Government from the sale of coins by the mint worldwide. The amount received by way of these royalties up to the 31<sup>st</sup> of March 1993 was £389,008. The agreement also provides for the submission to the Government of an annual audited statement of the account of number of Gibraltar coins minted and issued by the Pobjoy Mint. No such statements have ever been received. We have here a mint in England printing whatever coinage of Gibraltar it wants. This is not rent a jurisdiction. What we have here is the Pobjoy Mint publishing whatever commemorative coinage about Gibraltar it wants and the Government cannot even be bothered to collect statements which are mandatory under the agreement, to ensure that it is receiving the full amount of royalties to which it is entitled. "In this connection I addressed the Director of Postal Services on the 28<sup>th</sup> October 1993, who is the controlling officer for the Gibraltar Coinage Fund drawing attention to the fact that the non-submission of the statement of account rendered it impossible for him, or me in audit, to verify the correctness of the royalties received." Mr Speaker, and the Government defend the political position that there is no need for a public accounts committee? What we need is not a public accounts committee, it is a public accounts committee that sits constantly. If this House has got to make sure that expenditure is not only legal but is properly booked and not mis-booked in order to conceal the fact that there was no authority of this House for it, then the Chief Minister may wish to continue to defend the political proposition that he is not in favour of a public accounts committee and whilst he does so I say that people can draw their own inferences, in the light

of his remarks as to why he maintains and defends that view.

Mr Speaker, the "economy" can initially be divided into two although of course the Government finances and the private sector economy but given that it is now recognised by us all including the Chief Minister that the private sector economy is crucial for the general economy given that it has replaced the Ministry of Defence, eventually the prospects and what happens in the private sector economy will, subject to fiscal drag which I do not know how long it takes in Gibraltar, will eventually impact on the economy of this Government. In other words, on the finances of the Government.

In relation to the liquid reserves of the Government of Gibraltar certainly it is true that following answers to questions in May I am now in a position to assess what the recurrent revenue of the Government of Gibraltar is. It is more difficult to assess the real reserves position. In other words, how much money the Government really have put away for a rainy day and it is more difficult to do that without an updated special fund balance of all the various special funds which of course is one of the items that quite extraordinary the Financial and Development Secretary was unable to give me in May, and without knowing, if any - because of course they might or might not have any - possible cash and liquid investments held by companies owned by special funds particularly the Gibraltar Investment Fund. We know that a lot of these funds have received monies. Some of them hold investments as opposed to Government properties and may have maintained an accumulation of not just liquid investment but indeed of cash which at any given time could be withdrawn by the Government and brought back into their own coffers. However, in answer to Question No. 67/95 the Financial and Development Secretary told me that Government's liquid reserves at the 31<sup>st</sup> of March 1995 were £4.8 million. According to the Principal Auditor liquid reserves of Government are deemed to represent not only Consolidated Fund monies but also cash balances of special funds, monies held in deposit, cash advances, unretired imprests and amounts held by the Contingency Fund. As at the 31<sup>st</sup> of March 1993, that is two years ago, this figure was a net £20.9 million or £21 million. The Chief Minister will forgive me for rounding it up by a very small amount of money. By the 31<sup>st</sup> of April 1994, - this was in answer to Question No. 19 of 1994 - that figure had already fallen to £4.5 million. Mr Speaker, perhaps I could just pause there to ask this. How can the Financial and Development Secretary be in a position to give me the figure of liquid reserves which includes cash balances in every special fund account balance and the cash balance of each

special fund when one of those two items, the cash balance, he needed in order to tell me what the total liquid reserves of the Government are. It proves that he had the information. When he gave me his answer to Question No. 68/95, he must have had available to him the cash balances of each special fund because that is one of the vital ingredients of a tit bit of information that he did give me, namely the total liquid reserves of the Government of Gibraltar. I do not see how he could possibly have been in a position to give me the total liquid reserves of the Government of Gibraltar and then tell me that he was not in a position to give me the cash balance of each special fund. I say that he has been caught out.

Mr Speaker, and as to how much the Government have put aside, of course, there are other potential little piggy banks that the Government might have tucked away apart from the £4.8 million in liquid reserves as at 31<sup>st</sup> March 1993, which is the latest figure that I have on that. There were very substantial liquid reserves for example in the telecom fund. There was then £12,733,000. In the Social Assistance Fund there was a balance of £3,618,000 but I have to assume that those liquid reserves because they are liquid reserves of a special fund, are included and therefore netted into the £4.8 million figure he gave me for the general liquid reserves of the Government of Gibraltar. Therefore one would need to know later when we get the information into what the telecom fund has deployed those £12 million cash reserves that it had at March 1993. But what I am sure is not included in the figure of £4.8 million of liquid reserves as at 31<sup>st</sup> March 1993 is the figure of General Reserve Fund of, say, the Gibraltar Savings Bank which I think from memory, I am not sure that I have taken a note of it, but I think it stood at £8 million or £9 million. That reserve may be maintained or at least he will claim that he maintains it. At least this is the explanation that he once gave me that he maintains it, in order to maintain the solvency margin because of the amount of deposits that the Gibraltar Savings Bank Fund holds. Fine! But given that the majority of those deposits are Government monies, all he has to do is to withdraw some of those Government deposits from the Gibraltar Savings Bank and hey presto all or a very, very substantial part of the general reserves of the Gibraltar Savings Bank is suddenly available to the Government for the general purposes of Government expenditure. So, there is a small additional potential rainy day fund for the Government because they certainly do not need a reserve of £8 million or £9 million in the Gibraltar Savings Bank as the margin for the deposit that it has from members of the public which are a very small part of the deposits of the Gibraltar Savings Bank. As I say, a very high, much

more than 50 per cent, I think 60 per cent or 70 per cent, from memory of having looked at the last accounts of the Savings Bank, of the fund on deposit to the Gibraltar Savings Bank, of the fund on deposit to the Gibraltar Savings Bank are funds of one Government Department or of a special fund or of a joint venture company. In other words, monies that the Government control. I assume and I interpret he was much less cagey about it last time that he gave me that little spill. He told me that I could draw whatever conclusions I wanted but that he was not confirming it. As he has now repeated his axiomatic point (I believe that that is one of his favourite words) and he has told me that as the Government can borrow money more cheaply than companies it is axiomatic that the companies would not have borrowed money more expensively the Government would have. I think that it would be positively and premeditatedly misleading, if, having said that, there is any Government-owned company that has borrowed money because anyone who, in good faith, heard what he had to say this morning on that would be fully entitled to assume that there were not Government-owned company which had borrowed money. Excluding Nynex and Lyonnaise des Eaux if this Government has a shareholding as a partner, in other words, excluding the general and commercial partnership, I assume that the combined borrowings of all Government-owned companies and the public debt as defined by the Constitution is £99.3 million. A net £83 million taking into account the content of the General Sinking Fund. Incidentally the net debt of the Government, at March 1994, was £74.5 million and the net debt now is £83 million. In other words, it was £92.1 million at the time the Sinking Fund was £17.6 million and it is now £99.3 million at the time when the Sinking Fund was £15 odd million. I have rounded it up in their favour. The net debt of the Government of Gibraltar is £83 million as opposed to £74 million last year. There is one aspect about the Gibraltar Savings Bank and this issue of public borrowing which I would just put on the record for answer. Anyone who looks at the way in which the assets of the Gibraltar Savings Bank are invested - the assets of the Gibraltar Savings Bank as at the 31<sup>st</sup> of March 1993 amounted to £105,530,407 - would be impressed by the prudence with which the fund is diversified presumably to spread out maturity dates and to reduce the risk of one or other investment going wrong. The things that prudent investors would normally do. If one was investing the nest egg of this community one would expect a prudent investment manager to diversify it as 75 per cent of the Gibraltar Savings Bank has been prudently invested. But then, having gone to the trouble to spread out of the £105 million, £68.5 million of it amongst 40 different investments, we then find that £25 million is deposited with the local subsidiary of Banco Español de Credito (Gibraltar) Ltd and I say my goodness, what has happened

to the prudent diversification? Why do the Government that carefully spread out £68 million over 40 different investments, suddenly lose their head and when it comes to £25 million in cash which is the other 25 per cent almost, subject to another £8 million, they then deposit it in one bank. Because I am the suspicious chap that the Minister for Government Services is always suggesting that I am, I wonder and I put it no more strongly than this, whether that is pursuant to some back to back loan arrangement ... [Interruption] The Chief Minister will have his right to reply later. If it is not that, then he must explain why he considers it to be prudent to have invested £25 million out of a total of £102 million in one local bank, and, incidentally, a local Spanish bank, not that that necessarily means that the bank is more or less solvent, but coincidentally a Spanish bank that has had difficulties. Of course, Mr Speaker, it is all very well for the Government to say everything is hunky dory because recurring revenues are being maintained. "We got more out of PAYE than we were expecting, the Moroccan impact was not as bad ..." but what they never acknowledged is that their recurring revenue, thanks to the failure of their economic plan to deliver sustainable growth in this economy, has been maintained by a series of punitive fiscal measures which are both oppressive to the individual and an obstacle to the success of the very private sector economy that he says is vital to the economy.

Dealing first with the question of personal taxation, Mr Speaker, the Chief Minister may want to say that he has not increased income tax since 1988 but he knows jolly well that arithmetically his failure to increase allowances to accommodate for inflation adds up to an annual tax increase and that his failure to widen the tax bands to accommodate inflation also amounts to a tax increase. It results in wage earners paying a higher percentage of their income in tax than they used to. Then the third and perhaps the most punitive fiscal measure of them all is the maintenance of such narrow tax bands at the lower end of the scale which results in wage earners in Gibraltar reaching the 50 per cent tax bracket, very, very, very much sooner than they would get near the 50 per cent tax bracket anywhere else. In Gibraltar if a person happens not to have a mortgage he reaches the 50 per cent tax bracket by the time he gets to £15,000 income. That is punitive taxation. I believe that only Sweden taxes its citizens higher than Gibraltar and the Chief Minister has increased them every year since 1988. I do not suppose he thinks that people are blind and they do not see the diminishing value of their disposable income. The rises in employees' social insurance contributions, let us not forget. In 1992 these were £12.27 a week, they are now £17.87 a week. They have

risen by 40 per cent in four years. The employee is now paying £265 a year more in social security contributions than he was in 1992. This is just hidden taxation, that is just a disguised increase in taxation. What about measures that have oppressed business? These are the issues that he has not addressed in his own speech. The import duty structure has now resulted, according to the Chamber of Commerce, in a loss of competitive edge on many goods upon which the retail sector of Gibraltar depends. Rates in Gibraltar have become a central overhead for every business. There are businesses in Gibraltar that now go out of business because of the size of their rates bill. The rates now have no relationship with the cost of providing municipal services to those buildings. It is just another form of taxation. Businesses, in the last three years, have suffered a 36 per cent increase in social insurance contributions per employee. As I said before fiscal drag may preserve Government revenues at the current level for a while longer but it will not do so for ever. The difficulties that most businesses face out there, are issues about which the Chief Minister is apparently oblivious. He has not once addressed his mind to it today and it is not long before that impacts on his PAYE receipts, on his company tax receipts, on his rates receipts, on his social security receipts and in his import duty receipts. What is, then, the state of that real private sector economy? I am going to remind him of my little optical illusion boom because, of course, what I am not going to let him do is misquote my quote. He is the master of the misquote. In 1992, I warned about the building boom, then undoubtedly in progress. I am not blind, I could see that there were buildings going up, so the optical illusion was not the buildings. Building boom that was then undoubtedly in progress created an optical illusion of underlying economic health. The optical illusion did not relate to the buildings. It related to the underlying economic health which I said was not existent. The Government Members laughed and certainly more than half of them laughed not actually understanding what I was saying. Sometimes I wonder whether the Chief Minister has a button under his table which he presses, like they do in television studios 'applause' and they all giggle simultaneously. Time has regrettably for Gibraltar proved me right. Everybody can see for themselves the fate of the private sector. Indeed, Professor Arronovitch, this is a man who is an economic expert, the man is a Professor of law at London University and he said the construction boom which resulted masked the problems of the economy. That it has now run its course. Hey presto, here is an economist from London University who makes exactly the same point, choosing almost the same parody as I used, that the building boom was a temporary masking of what was in

reality a not very healthy sustainable economy in terms of what was going to carry on when the last brick had been laid. Only somebody stuck in an ivory tower and out of touch with reality and surrounded by yes men, too scared to report the real position to him and advise him accordingly, can fail to notice the grave problems confronting almost every sector and that is the Winston trade. So, what are these problems? What are the problems facing business? Where have Government got it wrong? I am not so disingenuous as not to acknowledge, but obviously the situation at the border has a negative impact. Some of the things that are going wrong for us would not be going quite so wrong for us. They would still be going not as well as they could, thanks to their economic mismanagement, but certainly the situation at the border has a substantial negative impact on, for example, the willingness of day visitors to come to Gibraltar.

But, Mr Speaker, in addition to that there are severe policy failures coupled with an inexplicable stubborn refusal to consult people who clearly know more than them. Professor Arronovitch said, and I quote him "Miscalculation ..." fancy this man coming to Gibraltar to say that our own economic gurus capable of economic miscalculations - extraordinary, but he did. Almost blasphemy "Miscalculations by the Gibraltar Government itself ..." good grief "aggravated by failures to create effective partnership with the trade unions and the business sector the consequences of which is that Government has deprived itself of valuable advice and experience". In his latest statement to his members the President of the Chamber of Commerce, whose views no doubt the Chief Minister will also wish to disregard for other reasons, says and I quote him "The business sector is recognised as having certain skills and knowledge that without doubt contribute to growth. We demand this recognition to foster the economic growth that is possible ...". In other words, it is not happening "that is possible even with our current political situation. Unfortunately, our political situation with Spain hinders prosperity but there are numerous factors which our Government should address to create a more favourable business climate to enable the trading community to face the future with confidence. Gibraltar has the potential to be developed as a booming trading centre. The Government must improve communications and consultations with the various sectors of the economy to achieve this. Unfortunately, the Government is out of touch in some respects listening only to a selected few". Then we have this Government obsession with ignoring tourism. Professor Arronovitch has this to say about that "Preoccupied by its strategy the Government

neglected the tourist and trade sectors, both critical for the economy". Both critical for the economy! One of them the Minister then with responsibility for tourism probably still is as one loses track of what ministerial portfolios they have, said that the Government policy on tourism was to hand it to somebody else. The President of the Chamber of Commerce says, however "Our tourism industry has been neglected in many aspects in the last few years. Regrettably this sector has lost a great deal of ground since the opening of the border with Spain in the mid 1980's but it is never too late to act, but it must be addressed with urgency. I would like the Government to give a higher priority to tourism and increase the budget towards a more aggressive marketing strategy". In relation to tourism these are precisely the points that we have been making ad nauseam since 1992.

The Port, let me see if I can interest the Minister for Trade and Industry, was an area in which we were experiencing an increase in business. It was based on the fact that although bunkers in Gibraltar was more expensive for ships than in Algeciras, the cost of visiting Gibraltar port in respect of port charges and the like was so much cheaper that it was still worth it for ships to come to Gibraltar instead of to Algeciras for bunkerings, so we experienced a boom. Algeciras has now cottoned on to that and has modified its own port fee structure to deprive us of that price competitiveness. The first results because I fear there will be more, is that the fall in ships visiting Gibraltar between 1994 and 1993 was from 2,798 to 2,425. What was the response of the company of which the Minister for Government Services is its chairman? What was the response to this loss of competitiveness? Our fuel is already more expensive. They were coming to Gibraltar notwithstanding that because the port calling costs were cheaper. We lose that and the very next thing that happens is that the price of water to shipping in Gibraltar is almost doubled from £4 to £8 a metric tonne. In Algeciras it costs 400 pesetas. Not satisfied with having been deprived of the advantage that we had before the eminences that made this decision now say "Well if they have got two out of the three advantages they might as well have all three of them" and they triple the price of the water to shipping in Gibraltar. This is what happened. Mr Speaker, surely hon Members know that the retail trade in Gibraltar is going through a crisis. That the result of the increases in the number of people that have mortgages and therefore have less disposable income in their pockets, has squeezed severely the amount of money that local residents spend in our local shops. In addition to that the frontier situation is choking off the visitors from the border and that thanks to the

Government policy the tourists visiting Gibraltar, except perhaps cruise ships, which appears to be on the increase, is virtually non-existent in terms of long stay tourism. They do not believe for a moment that the retail sector have not got problems. I did not hear the Chief Minister address this morning what measures he was going to take to address those problems.

In past years, Mr Speaker, when the finance centre, I have told him, has been going to the doldrums, he has said no, what is the hon Member talking about? Cannot he see that bank deposits have risen. Now bank deposits have not risen so now will he recognise that the finance centre is in the doldrums? The he is going to have to find another reason to justify buoyancy because if before it was banking deposits and now banking deposits are down, the Chief Minister cannot blame the fall in bank deposits to the fact that Mr Clarke will not give him passports so that Gibraltar-based banks can set up in Paris, because the fact that Gibraltar-based banks set up operations in Paris does nothing to increase the deposits in Gibraltar's banking sector. So the reasons why people are not depositing their money in Gibraltar must be something other than Mr Clarke's failure to unclear the blockage on the passport issue.

Now, we come, Mr Speaker, to something which the Chief Minister appears to think is irrelevant. Two issues which the Chief Minister appears to think is of no significance to our economic prospects. He appears, when it suits him, to say that politics and economics is separate and then when it suits him, as he did earlier today, says, of course, we cannot separate them. Has it occurred to the Chief Minister, as it has occurred to almost everybody else in Gibraltar, that the fast launch activity damages the economic performance of the tourism industry, of the finance centre and of the Main Street trade? That it discourages clients from using Gibraltar? Does he consider that when he counts the money that he collects from tobacco revenue? Or does he not take account of those factors? Does he not recognise that the continuation of the fast launch activity quite apart from the incalculable damage that it is doing to this society here at home, is destroying our image abroad to the point where the finance centre and the tourist sectors are now directly suffering the consequences? He apparently makes no link between these matters.

Mr Speaker, in relation to job creation and to the training schemes available to our youth and to our other unemployed workers, there is little that I have to say in order to demonstrate the obvious failure of the Government's policy in this direction because the party of the Government Members has recognised this. When the

Transport and General Workers' Union called their seminar at Transport House, two or three weeks ago, to which all parties and other bodies sent two representatives, two representatives of the GSLP attended and they subscribed a motion on behalf of the GSLP, the party of Government, which called on the Government to review their current training policies so that youth and older trainees may be given every possible opportunity to trade and compete when applying for jobs. If two representatives of the GSLP consider it appropriate to subscribe to a resolution calling on the Government to review their current policy so that people in Gibraltar have decent training, then I am entitled to interpret that as a recognition that he existing policy, that according to them needs reviewing, has failed. That it has failed is obvious to every body and I am glad to see that it is now obvious even to the party of which the Government Members form part. Mr Speaker, just before reaching the conclusion, when we are here debating our constitutional rights to which we all attach value and to which we all have to give a lot of thought and which we have to put into priorities, does the Chief Minister, who said that politics could not be divorced from our economic potential, think or not that the public state of our relationship with the British Government had any impact at all on the realisation of our economic potential? Has he considered the extent, if any, to which in his opinion, I have no doubt about my own opinion, that user confidence in the finance centre is reduced by some of the recent goings on in terms of the more public aspect of our dispute with the British Government? Has he considered, even, that the nature of his relationship with the British Government has an impact at all on Britain's willingness to back the finance centre or even on Britain's willingness to challenge Spain's border restrictions which I say they have an obligation to do? Does the Chief Minister think that he can best recruit the support of the British Government in the promotion of our finance centre by hurling personal abuse in public at the three most senior members of the British Government when he chooses to describe the Prime Minister, the Foreign Secretary and the Chancellor of the Exchequer as being unfit persons to express view son the quality of government of Gibraltar and that they are a lousy government? Does he not realise when he is engaged in that act of bare chested bravado that these are the very same men whose help we need in order to unblock some of these things that he says are essential to our economic prosperity? Apparently not.

Mr Speaker, it is essential to our economic prospects that we have immediate and full details of all aspects of this row with Britain (the list of 51) so that it can be put behind us as quickly as possible and thereby maintain



the impact on our economic prospects. That it be solved in an amicable manner, that relations generally improve. The Government are going to have to find a different basis for the conduct of their relations with the British Government. It has got nothing to do with the merits of the points that they raise with them, but they are going to have to find a different way of conducting those relationships if it is not to have a serious impact on our economic prosperity. Money laundering is the only issue and they say it can be resolved through dialogue, let us resolve it quickly. They say that in discussions the potential damage to the finance centre can be avoided and the finance centre can be ring-fenced which is the only concern that I have ever expressed, then let us do it and quickly. It is clear just from the fact that he has addressed none of the issues that affect the private sector economy except blaming the British Government - I have no doubt that they have some blame - and except blaming the border. I have no doubt that it has a fair amount of blame but he only mentions the things about which he says he can do nothing as if there were no reasons for our economic predicament for which he is responsible. I say that the Government just do not know how to make the private sector economy work. They do not understand the private sector. They are obsessed with this public sector notion of the economy. They do not understand the finance centre. If they feel that they need do nothing about the fast launch activity, if they do not understand the damage that that does to the finance centre if they do not understand the damage that public rows of this kind with the British Government does to the finance centre, if they do not understand that, they do not understand what a finance centre is. And they do not understand what a tourist industry is. They do not understand the needs of the business community today. They do not understand either the training needs of workers today and I say to them that Gibraltar can no longer afford them in government. Never mind the casual throwaway remark this morning by the Chief Minister that the economy is set solidly. I say that they are presiding over the economic, political and social ruination of Gibraltar. I say that the electorate now realises this and no longer trusts them to conduct the affairs of this community. If I can just borrow their 1988 election slogan, and adapt it slightly, they must realise what the electorate has already realised and that is that it is time for another change.

Mr Speaker, before I sit down and in protest at the Chief Minister's refusal to make public to the people of Gibraltar the list of measures which are at the heart of what he has said is a constitutional crisis against which he has had to take measures to prevent direct rule and on which the British Government refuses to rule out the

possibility of direct rule, the official Opposition will now withdraw from the House. We will take no further part in the debate on the estimates on the Appropriation Bill and the remainder of the speeches that we were going to make on a departmental basis will be brought to this House by us as substantive motions at the next possible opportunity which is either this meeting, if it is not now adjourned sine die, or the next meeting if it is adjourned sine die.

MR SPEAKER:

I would just like to remind the hon Member that it is contrary to the rules to revive issues that have been debated and therefore he has got to be very careful how he presents that.

HON P R CARUANA:

Mr Speaker, if I bring a substantive motion noting the failure of the Government's tourism policy I can then say about tourism whatever I like.

MR SPEAKER:

All I am saying is that I am just letting you know that that is the position. Therefore, you should take that into account if you want to bring a motion to be debated in the House.

HON J C PEREZ:

Mr Speaker, they always ask for information. We always give it to them. The fact that they are leaving makes the passing of the Estimates much easier for everybody and, if anything, the Chief Minister and the Financial and Development Secretary can have the last word.

MR SPEAKER:

The Minister does not want to speak?

HON J C PEREZ:

Mr Speaker, as I see it, since the whole effort that we do here is to give an account of what the Estimates are for and the expenditure is for, for the coming year and the programme of works that are planned for the coming year in order to give the Opposition the ability to monitor that programme during the year and to reply to the points, since they have left - perhaps because it is a long weekend and they need to go off to their own respective summer houses - I do not think and they are going to bring all the issues back and repeat themselves

in the same way as the Leader of the Opposition has been repeating himself for the past four years on the same issues, I do not think it is relevant that we should continue on that basis.

MR SPEAKER:

That is your prerogative and privilege. All I am saying is of course that whatever you say will be recorded in the Hansard. It will be there for the record if you wish so to do.

HON P CUMMING:

Mr Speaker, some months ago the Chief Minister said that he was trying to have me thrown out of this House by appealing to section 30 of the Constitution which refers to people of unsound mind. It seems to me that now this section applies to him because he thinks that he is going to lance the boil when in fact he is the boil that is going to be lanced. In checking the Constitution in the despatch to the Governor from the Foreign Secretary making the Constitution come into force it says "The successful operation of the new Constitution will depend on a continuance of the harmonious cooperation and working relationships at all levels that have characterised the public affairs of Gibraltar in the past". It is a pity that the phrase is in the past because it is no longer the case. I would like to refer very briefly in response to some of the things that the Chief Minister has said. First of all I welcome greatly the 97 per cent collection of Pay as You Earn. The previous situation was intolerable and I am very glad that this is now up to date. The improvement of the number of Gibraltarians employed in construction is also welcome. There is still much ground for improvement but still there has been improvement and the Chief Minister's dedication to the principle of parity with UK I also find very welcome. The Chief Minister presented the question of lack of growth with great calmness and phlegm and this lack of growth, of course, includes income from the launches but it seems we are shortly to lose and he blames extraneous events outside our control for the lack of growth. Most of these events are outside our control but they are not outside our influence if we were able to enter into dialogue at all levels. The Chief Minister in the budget of 1992 said that in this term of office the GDP had to grow from £300 million to £450 million to maintain the 14,000 jobs and to stand in the same place. He said that the calculations were on the level and that it was not with a rosy picture, this was, I remember the phrase "bar Armageddon" that this would be met. Of course he never made a reference to an Armageddon that was going to be self-inflicted. I must also refer to

some remarks that the Chief Minister made this morning about relations with trade unions. I take exception as a past union member and shop steward to his cynical reference to the number of times the tea break of the workers had been sold, and his great love now of the profit motive as the incentive for productivity and it seems to me that if he was ever a socialist now he is a right wing monetarist Thatcherite and on top of that a cynic. His theories about productivity and the profit motive in fact are contradicted in management courses where it is said that involving the workforce in decision process and giving them a feeling of responsibility and self-esteem and satisfaction in the work is in fact the greatest motivator and not the salary. That is with reference to research and this is in management studies what is presented.

To get back then to my own speech proper, Mr Speaker, in the GSLP manifesto of the last election it says "As the European Community evolves following the Union Treaty there is a requirement to revise the 1969 Constitution to make sure that the implementation of Community Directives remain under local control" and when these doctrines were first promulgated I think everybody agreed with them 100 per cent. I remain myself on a television debate defending this proposition, because otherwise we were going to go backwards because powers given on domestic issues under the Constitution were now going to be taken back to the UK via this mechanism. We all agreed but it seems that in these few sentences already in seed form is the problem which has led to the present crisis. It seems to me that the Chief Minister misunderstands the obligations with reference to implementing Community legislation. I think with our Chief Minister whenever he misunderstands things it is on purpose that he misunderstands things. He thinks that these directives are optional and because Europe cannot do anything to us for failing to implementing these directives (they can only do it to Britain) therefore implementing for us is not obligatory. This attitude surfaced when the European Court ordered that we had to repay £0.5 million of family allowances to Spaniards and the attitude then was that we would not pay that and that Britain would have to make itself responsible if it wanted to. So, the whole point, as it says here in the manifesto about these directives being under local control, is that there is very little scope for local control in any country because these are centralised European directives for everybody so that throughout Europe there are basic standards for dealing with a whole lot of aspects of the lives of Europeans. Now it is true that the Leader of the Opposition has highlighted that we suffer from a chronic lack of information but there is an additional problem. We also suffer from a provision of misinformation. Now very

often the laws that we have to pass are so technical that we have to rely on technicians - on their good faith and their integrity that these are things that need to be done and take on their word but occasionally one has a little knowledge about it and can arrive at one's own conclusions. It so happens that one of the laws that we passed just a few weeks' ago it seems to me that because of my own professional background in teaching nurses I understand this issue more than most of the other hon Members of the House. I refer to the directives of Euratom. The way that this was presented to the House and to the people of Gibraltar was misinformation and misleading the people. This Bill was presented by the Government very reluctantly and following their line of saying "This is unfair that the British Government forces this law upon us because we should be able to choose our priorities and direct our resources to the priorities that we choose, not the ones that the British Government chose to impose on us. After all this is talking about nuclear power and we do not have any nuclear power stations and therefore it is irrelevant". Of course the Opposition fell for that line and the Leader of the Opposition actually said that he had recently been for an x-ray and he felt perfectly safe. It seems to me an ignorant remark. He is not here to defend himself but still that was the attitude that the House took to that law. At those moments most of this passed me by because I was getting very nervous because I had a speech to deliver straight after but afterwards at home I was going over it and said this was all nonsense because the Bill was referred to in the famous debate last week between the Minister for Government Services and the Leader of the Opposition and a journalist on television saying, for example, "The nuclear law, why do we not just pass it and then forget about it because it is irrelevant," but it is not irrelevant, Mr Speaker. This Bill confers powers for the protection for the health of the general public. It is a vital issue, the protection of the health of the general public, or workers and persons undergoing medical examinations. To protect the health of people from radiation. This is not optional for Gibraltar for us to exercise control over it and it is not optional for UK. This is mandatory in all European countries so that in all of Europe wherever someone goes for an x-ray or for medical treatment or workers who have to work with x-rays can be safe from the dangers of radiation. The administration of morphine on large quantities is very dangerous and in our hospitals there is a large quantity of morphine being administered but it is very strictly regulated by law and inspected and supervised and consequently it never goes wrong but it is horrifying to think that something so dangerous as radiation is given free rein. It is never inspected, it is never controlled, any crackpot can buy an x-ray machine, not

look after it, have it leaking radiation and put the health of the general public at risk. This is a serious matter in which we are not given an option because Europe has decided this is a law for all Europeans to protect our health so what are misleading the people on the value of this law? "So there we are this is one of those nonsense things that the British Government forces on us." This is to mislead the people. The other law that we passed only a couple of weeks ago is the Antarctic Ordinance and this was the Ordinance very late at night when we were all very tired when the Leader of the Opposition discovered that it was going to come into effect when the Government decided and not the Governor and then we discovered another source of confrontation with the British Government.

MR SPEAKER:

I must draw attention to the House that the quorum is five, excluding the Speaker. If we get to that stage I will have to clear the gallery and ask all the strangers to go. We wait two minutes until we start again with another quorum so I think we have to be careful what we do.

HON P CUMMING:

Mr Speaker, the Antarctic Ordinance surely we are not going to have a confrontation with our friends in UK over such an irrelevance as the Antarctic Ordinance. This Ordinance applies for the legislation for permits for Gibraltar expeditions to Antarctica, for Gibraltar stations in Antarctica, for protection of the fauna and flora of Antarctica. By what logic are we going to use this Ordinance to fall out with UK? The British Government says that after all we discovered a loophole that puts our ...

MR SPEAKER:

Perhaps I should tell the hon Member that the Bill has not been passed by the House.

HON P CUMMING:

This is a source of confrontation and conflict. The Antarctic Ordinance that has no interest for the man in the street cannot be allowed to be one of the obstacles to a good relationship with Britain because it is nonsense. The British Government have said that there is a loophole here which puts the national interests at risk so what do we care? We just pass whatever they say and not use this and the other two ordinances that have

aspects of it which displease the British Government and do not bother us in the slightest. So it is really looking for trouble to use these ordinances for problems with UK. We know that one of the ordinances that is required to be implemented says it concerns putting public contracts out to tender and this is something that Gibraltar will have an interest in so that, for example, the handling of the contract to CEPESA on a secret way will not be permitted by European law when this law is implemented. The trade unions also have great interest in some of the laws that are on line because some of them concern maternity leave and things that they are struggling to obtain anyway and things that are obligatory throughout Europe. Why should we be a third class European nation? We also want to enjoy the basic standards which apply across Europe. Twice whilst I have been in this House, the Chief Minister has said with reference to something that I have said. "Amongst all the rubbish that Mr Cumming has been speaking there is nonetheless one sensible sentence." One of them referred to something that I said about nurses' overtime where I said that half of that money could be used to employ 10 extra enrolled nurses and the other half of the money to maintain the flexibility of manpower that overtime gives. The Chief Minister pounced on that and said "Very sensible thing to say." Of course my reaction to that was not to be flattered by him praising one thing that I had said but to be very alarmed because knowing the Chief Minister he was going to use it to cut nurses' overtime and to blame it on me. So when the Leader of the Opposition in the last debate said "If the all crimes basis to the Drug Trafficking Ordinance is brought into effect it is going to kill the finance centre." He pounced on that because they are going to use now the Leader of the Opposition so people will believe that this is going to kill the finance centre if this law goes ahead as the British Government want. As I have realised that the Antarctic Ordinance is not at all the way it was presented to the people I ask myself "Can it be that this misinformation also applies to the extension of the Drug Trafficking Ordinance to an all crimes basis?" After all I am a layman totally in these matters but one has a little bit of common sense. Mr Davis has said yesterday "How can it be in Gibraltar's interests for dirty money to flow in the finance centre?" dirty money obviously is money from drugs smuggling, money from prostitution, money from terrorism and all those dreadful things and none of us can possibly want that. But now the Leader of the Opposition said "Yes but that is extended to fiscal crime then we have had it because finance centres we all know in a perfect world there would not be any because everybody would pay their due taxes and keep their money where it can be accounted for

to the income tax departments and so on". So it is inconceivable that income tax departments over the world would start to track down individuals' money across the world. One, because it is totally impractical and enormously expensive and it just could not be done. So the question that fiscal crime is going to be pursued by force and by prosecution over the world is simply a nonsense. A fiscal crime surely is not dirty money because if I take my gratuity and I invest it in London and the bank manager says "Where did you get this money from?" but I prove to him that it is honest money from the sweat of my brow they realise it is not dirty money and they take it in. When that money begins to accumulate interest that interest is not dirty money even if I fail to pay income tax in Gibraltar. So there is a lot of misrepresentation about the aspect here of this all crimes basis. It seems to me that there is no threat to the finance centre from extending this to an all crimes basis. There is going to be good for the finance centre and not bad points. The arguments that have been put forward about killing off the finance centre I think are false. I think that the Government have tended to use the Leader of the Opposition on this issue.

I want to turn, Mr Speaker, to the question of democratic deficit. The accusations against me. The Chief Minister has complained of the dirty tricks department of the UK Foreign Office against him and I do not doubt that there is some element of truth in that but the thing is that the GSLP Government also have their dirty tricks department and it certainly has not hesitated to use that department against me on many occasions. The last occasion that they did was the misinformation about my status in this House by implying to the people that somehow my status here was illegitimate because I had not stood on the ticket for the things that I was saying. All that I have done is to present the Brussels process, to evolve a philosophy and to extend the philosophy about the purposes of the Brussels process and to think aloud around it. This is the ticket on which I stood, just because the GSD refused to talk about the Brussels process for 18 months against my will the people may have forgotten that that was the ticket on which I stood. In the same way as the Chief Minister levelled against me a democratic deficit on the activities that I was involved so, now I say to the Chief Minister that he has no democratic right to bring upon our heads direct rule from the UK because he has no mandate. He should call a general election now and go to the people and say to them "Look, I want to lance the boil and I want a mandate from you to do it". If he has the courage of his convictions that is what he will have to do. He has no mandate from the people to bring upon our heads direct rule from the UK. I think we have heard in the House what his

intentions are. Is he going to back down or is he not going to back down? Because on one sentence he said he is going to back down and in the other sentence he says that he is not. What he is going to do is to continue to exercise brinkmanship right up to the end. He is gambling, in other words, with the constitutional advancements that we have made in the past and the consequences of direct rule are simply incalculable. We do not know how much damage can be done to our national position by it and all of us see it as a disaster and as a tragedy and yet the Chief Minister persists in the brinkmanship that can bring this about our heads without a mandate from the people. There is a definite democratic deficit in this policy of his. He has no mandate from the people for it and he should go to an election now and say "Back me in lancing this boil." I have no doubt that the contrary is true. He is the boil that is going to be lanced. He is not going to do any lancing of any boils. When I was first interviewed, Mr Speaker, on GBC four or five years ago as a prospective candidate to election to this House I said then I was standing because I was worried about the prospect of confrontation not just with Spain but with Britain. These aspects were getting worse. I never realised how prophetic those words were and I still find it hard to believe that we could have come this far down that road, a road which no Gibraltarian wants to go on. The truth is that confrontation is a way of life for the Chief Minister. He started his political career with this and he is going to end it with this. The first constitutional crisis that was threatened was within days of being elected in 1988. It passed most of the electorate by but it did not pass me by because I was in fact the subject of that constitutional crisis for it was totally unprecedented for a Deputy Governor to come out on television and say "Look, I am the head of the civil service and anybody with any complaints about how they are being treated must come to me and I will deal with it" but he backed down and never again has that point been heard. If it had not been for Sir Peter Terry who put pen to paper and lifted from my head the suspension that had been put on me and the disciplinary processes because he saw that they were totally unfair, I would have been in a very bad position. So it is that I know a lady who at election time says "I vote for the Governor." I do not know how she goes about it, in practice, but she always says at election time "I vote for the Governor". I have to understand something of that philosophy when in my own flesh I have felt it, injustice, total injustice, from my own Government and had to go to the Governor for justice and fairness. All Gibraltarians know that the Governors come and we have been very lucky with our last few Governors that as we say in Spanish "They do not marry anybody" and they have no family or friends or

business interests and they can go by the ideal of fair play especially the military governors who are used to being leaders of men and know that it is very important for people not to feel aggrieved by how they are treated. Confrontation started and the threat of constitutional crisis from the very first days of the GSLP in office in 1988. Already threatening, saying to the Deputy Governor "Look, you want to be in charge of the discipline of the civil service then you pay for the civil service but since I pay for it I distribute the justice and the discipline in the civil service". So, the British Government, backed down and backed down and backed down over the issue then of, for example, the downgrading of the post of Attorney-General and Financial and Development Secretary that were downgraded from the post of ministers in the Government to the post of servants of the Government. The downgrading of the Public Service Commission. The humiliation of Governor Reffell in public when he said that he was going to do something about the launches. The breaking of the spirit of the Constitution that required that every penny of revenue and expenditure should be accounted for in this House. The spirit of the constitution required that and it was always obeyed until then. I never understood quite why the British Government went along with that. They backed down. They have never approved of it but they accepted it and they backed down. So, every time there has been a confrontation the Chief Minister has stepped forward and the British Government have stepped back. A lot of the de fact constitutional advance that we enjoyed could actually have been welcomed by the people of Gibraltar as a constitutional advance. The only problem was that this constitutional advance has been bought at a very high price and the price has been loss of support of Gibraltar by the Foreign Office, by the British Parliament and the British press and that price has been simply too high to pay because these advances could have been brought about in other ways.

Mr Speaker, this brings me to the problems at the frontier. We have to ask ourselves, because also here there is a lot of misinformation, are the problems at the frontier a move by Spain to recover sovereignty? We all know that every action that Spain does concerning Gibraltar is coloured and conditioned by a sovereignty claim but they have made very clear that the upping of the stakes at the frontier are directed to put political pressure on us so that we will take action on the launches. I know that diplomacy forbids the linking of the two issues and Mr Davis has been very careful to separate the two issues of Schengen and pressure on Spain and the question of the launches. But we know that they are entirely linked and the real cause of the problem is that Spain has come to a decision. Spain has decided

that it will not tolerate the launches any longer and it is going to up the stakes until something is done. Stakes that will involve Britain in serious confrontations with Spain which they are very anxious to avoid. Serious breakdowns of relation sin Europe and they are talking about naval blockades and sanctions against Britain and Gibraltar. It seems that Britain has determined that now is the time that something must be done so that all these mutual provocations can be dissipated. It is true, as has been frequently pointed out, that the tobacco and drugs that are smuggled by people who use Gibraltar as a base is a tiny amount in proportion to what is taken directly from Spain and Morocco by Spaniards and Moroccans. But it is not just the quantity of smuggling which provokes the Spanish Government. It is the open acquiescence of the GSLP Government to what goes on in the launch activity that provokes them and the British press have gone one step further and have said that what provokes the Spanish Government is the collusion of the Government of Gibraltar. I do not go that far because I do not believe and I have no evidence that there is collusion but certainly there is acquiescence and tolerance. The time is past, we have gone beyond the point when we must choose between protecting the Main Street trade and the launches because obviously they cannot both survive. We have gone beyond that point. Now we have to choose between banning the launches and direct rule. That has been made very clear by Mr Howell, the Chairman of the Foreign Affairs Committee in the House of Commons, that this is one of the conditions to avoid direct rule. Now, Mr Speaker, it may well be that the Chief Minister wants the Governor to do his dirty work for him so that then he can turn to his storm troopers and say "Look, I am sorry chaps it was not me that spoilt the launch activity for you, it was the Governor" and it may be in his interests to leave it for the Governor to grasp this nettle. But what is certainly true is that the Government have been monumentally irresponsible in letting the problem get as big as it has so that it brings disgrace to Gibraltar internationally. The misinformation in which the Government excel has also been felt in the economic field where the Government have misled the people about our economic prospects and refused to make any linkage between economic expectations and our relationship with UK and Spain and this is something that the people of Gibraltar must come to terms with. Unless we have a good relationship with Britain and with Spain we cannot expect our economy to flourish.

The statements that the Chief Minister has been making, if we compare the statements that he has made in the last year to the statements he was making in 1992 about the economy, there is a marked contrast. It seems that he is

coming to accept some of the harsh realities of our situation. Otherwise it would be inexplicable that he should go to Madrid and say there to the Spaniards that Gibraltar's efforts at attaining economic viability are increasingly being hampered by Spain for political reasons. We all know that but to accept that our economic viability is at stake; that our economy is being swamped by Spain and instead of turning round to the Gibraltarians and saying it to them face to face to go to Madrid and to say it there. If I had done that I would have been lynched. But the Chief Minister feels free to go to Madrid and to say that and he goes with a conciliatory tone and I welcome that. It is great. He asks for a new approach to find a modern day formula and I think that is great. He says to the Spaniards in Madrid "Gibraltar is prepared to recognise that Spain has been pursuing a long-standing claim for the sovereignty of the Rock". He is prepared to make a concession to them and say "We accept the reality of your claim and we are going to come to terms with it but you, on the other hand, must recognise our existence as a people" and once again that is great and I congratulate him on that stand. It is a stand of mutual concessions and I congratulate him on that stand and that conciliatory tone and that attempt and hope for finding a formula for our future with reference to Spain. Because he has sat on the Queen of Spain's chair and enclosed himself in a position that he rejects the Brussels process and anything remotely linked to the Brussels process, the Queen of Spain it is said, once upon a time, sat on the mountain across there and said she would never come down until she saw the Spanish flag over the Rock. She made a mistake of judgement and then she had to be hoping that someone would come and rescue her and no one unfortunately is going to come and rescue the Chief Minister from his predicament. He is going to have to face realities and accept as I do that the Siglo XXI Club is not a good forum for a conciliatory initiative in Madrid, that the Brussels process is a far more expective forum for this kind of initiative.

Mr Speaker, on the question of the airport, it practically passed by Gibraltar's awareness but a few weeks ago Sr Ruperez, spokesman for foreign affairs of the Partido Popular, was interviewed by AREA and he spoke about the airport and he said that his party has given up any intention of sharing our airport with us, that the Partido Popular have now decided to build their own airport in the Campo Area. Many people laugh it off but if they go ahead with this project it means that we can kiss goodbye to our airport because the use of our airport will become so prohibitively expensive that it will have to close. We know that there is four years left of the present contract to run and we have no

guarantee that Britain will continue to pay for the airport beyond four years' time. The Partido Popular, who is very likely to come into power, is now saying that they have no further interest in a joint venture with us in the airport. This means that we can kiss goodbye to passenger tax, landing tax, tax on aviation fuel and to all the jobs that go with our airport and all the increasing jobs that would go if our airport were to flourish. This is a very large amount of income which Gibraltar will be saying goodbye to permanently if Spain do actually start to build an airport in the area because we ourselves will be the first to go across to the Campo and use their airport because it will be cheaper than ours.

The Chief Minister in the United Nations has distinguished between recognition of the principle of self-determination and the exercise of that self-determination. The Government have accepted that the exercise of self-determination will require discussions with Spain and acceptance of Spain by the method by which we will exercise self-determination. So all the suffering that we are going through and all the stress that we are going through is really for an abstract principle because what is really important to us is not the principle but the exercise in the flesh of self-determination and the sooner that we get down to including Spain in the argument and discussion the sooner that we will be able to enjoy some aspect of self-determination.

I just want to sum up what I have been saying in a few sentences in conclusion. The first point that I have made in my remarks is that we are suffering from severe lack of information. We are also suffering from the provision of misinformation. The Government are distorting some of the information that they present to the people. I have said, Mr Speaker, that there is evidence of bloodymindedness in the Chief Minister's relations with the UK. For example, I would never have thought it possible that a Chief Minister of Gibraltar passing through London for whatever reason, who was asked to pop in to the Foreign Office would refuse to do so and yet we had the Hon Mr Bossano on television saying that if he had known what the meeting was for he would have refused to go. He went on the understanding that it was for something else. Surely, Mr Speaker, nobody would have thought possible that a Chief Minister of Gibraltar in London, asked to pop in to speak to the Foreign Secretary could possibly consider refusing to do so. Evidence, therefore, for the people that the Chief Minister is being awkward, at least, in his relations with Britain. There is a very important democratic deficit on the part of the GSLP in provoking the risk of direct rule. The

Government's attitude of confrontation loses support for Gibraltar. The Government's acquiescence to the launches gives intolerable provocation to Spain, and, finally, the point that I have made, Mr Speaker, is that Brussels is a better forum for discussion than the Siglo XXI Club. Thank you, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, in replying on the Estimates of Expenditure for the Government I will not be dealing with the ranting and ravings of the hon Member of unsound mind. I leave the public to judge ... [HON P CUMMING: Which hon Member is that, Mr Speaker?] I leave the public to judge having heard him, the kind of service he is going by continuing in this House. I therefore will go to the only views that have been expressed by the Opposition in respect of the Estimates of Expenditure. In fact, the bulk of the contribution of the Leader of the Opposition was not about the Estimates of Expenditure of this year but about a selective choice of picking on comments of the Principal Auditor in the last report tabled in this House. If it had come from someone else one might have thought that it was something that was done through ignorance of the role of the Principal Auditor or through ignorance of what the implications of those comments are but that is not possible from the Hon Mr Caruana who understands how he is deliberately and with malice and forethought twisting the comments of the Principal Auditor virtually verging on the suggestion that the elected Government somehow in 1992/93 permitted what he calls illegal, scandalous, dishonest, malpractices by senior civil servants. Those are the words that he used. Is it that this is the first time that the Leader of the Opposition has taken the trouble to read the report of the Principal Auditor? I would therefore like to draw the attention of the House and particularly the attention of the public that have been listening to the debate in the House, to the comments of the Principal Auditor in 1988 when we came in to office. Therefore, to demonstrate that the same comments have appeared with regularity every year since 1988 and most years prior to 1988 and when, as Leader of the Opposition, we had discussions in this House about the comments of the Principal Auditor never, ever did I or to my knowledge any previous Opposition conclude that some illegal and scandalous activity was taking place perpetrated by civil servants because of those comments. I have to say to the House that the comment that expenditure had been used by controlling officers without the necessary appropriation, as provided for in the Constitution, was there in 1988 and was there prior to 1988. I have to tell the House that in the year 1987/88 the Principal Auditor commented that 17 controlling officers did not obtain the authority



of the Financial and Development Secretary to use savings available in some subheads of the Consolidated Fund to cover excesses in others and the statement of that unauthorised expenditure in that particular year was £345,000. That did not mean that somebody stole £345,000 in 1988. It did not mean that we should have thought then or in previous years that that meant somehow that the then elected Government of Gibraltar, with whom we had many policy differences, were somehow organising or uncaring whichever way we want to put it, for people to do what they liked with public money. What it does show is that there has been, as the Principal Auditor has pointed out year after year, a failure to follow the procedures laid down in which need to be corrected and on which steps have been introduced periodically to have them corrected and which tend then to lapse after they have been corrected unless somebody is on top of it and, of course, that is what we have a Principal Auditor for. The Principal Auditor is there for the purpose of checking that proper procedures are being followed and for identifying when they are not followed so that they can put that right but the Leader of the Opposition has said that people can draw their own inferences from this and that when I say that the GSLP Government do not support the creation of a public accounts committee, which was also the position of the GSLP Opposition, people can draw their inference from that and the inference that he is inviting the public to draw is that because we are manifestly a bunch of crooks in Government, we did not want a public account committee to be created so that our corruption cannot be discovered which must follow that when we were in the Opposition we were such enlightened crooks that we did not want a public accounts committee then to discover how corrupt the then Government were presumably. The reality of it is that we have maintained consistency in our policies today like we have had when we were in Opposition. The truth of the matter is that in terms of political integrity the level of dishonesty in terms of political integrity for which the Hon Mr Caruana has been responsible since he arrived in this House is without precedent in the history of politics in Gibraltar. The truth of the matter, Mr Speaker, is that in 1992 the dirtiest gutter politics ever seen in Gibraltar's history featured throughout the campaign and that in the morning of the Mackintosh Hall after the results when three quarters of the population rejected the assault on the integrity and the honesty and the commitment of people who had been in public life for years - while he was in public school in England - defending the interests of the people of Gibraltar they rejected that insidious campaign and I invited the Opposition Member in 1992 to accept that the election campaign was over. To accept that whilst maintaining his right of independence as an

opposition he should work with the Government for the benefit of our city and the benefit of our people. That invitation was never taken up and in fact the campaign has continued incessantly. As I have said so many times in this House it is not that we want to muzzle anybody but when he talks about the image of Gibraltar, then I accuse him with his political ambition of putting at risk the image of Gibraltar and of being engaged in persistent, never-ending, attempts at character assassination irrespective of the damage that that may do. Fortunately, the damage is limited because he is not believed, because he has got no credibility and because he will never have it. At the end of the day we will defend our record with the people in an election as we are obliged to do because we are a democracy and the people will decide whether they consider that the destiny of our country, the management of our finances and the development of our economy are better in the hands of somebody that stands up in this House and makes a speech against the extension of money laundering on an all crimes basis, not on the constitutional point that is it right that the UK should require us to do something that our competitors in Luxembourg are not doing but is it going to be something that is going to reduce the ability of lawyers to look after the investment of their clients funds? The Opposition Member's argument on money laundering was exclusively the argument, not of a political leader looking at the philosophy, but the argument of a lawyer who does not look too closely at his client's money and who wants to be able to continue doing that. He presented a case here of the special relationship between the investor and the legal adviser which verged on the secret of the confessional. He was saying to the House that what we cannot have is that if somebody says here to a lawyer that he wants to put an investment and the money has been because he has got the results of the great train robbery in the UK and the lawyer suspects this, the lawyer should simply say to him "Look, I would rather not handle your money, go to someone else who may be less sensitive than me" but he should not then go on and report the event and it should not be a crime that he fails to report the event because that bridges the secretness of client-lawyer confidentiality. That is the man that pretends to defend the interests of the people of Gibraltar and has the gall to accuse us when we have been doing precisely that since we got involved in politics 30 years ago.

Mr Speaker, the Leader of the Opposition, in his attack today on the Government, has demonstrated that he does not care and that he does not know what he is talking about three quarters of the time. He says the economy is in a very bad shape and at the same time insinuates that we are overflowing with money stuck away in all sorts of

nooks and crannies and that we have got dozens of rainy day funds. He claims that if the Savings Bank has reserves then all we need to do is somehow rearrange the deposit and we can mobilise those reserves. If we are so well off, as he claims that we are, how come the private sector is so badly off which is the worth-generating sector in the economy? The private sector today employs 9,000 people and in 1998 it employed 6,000 people and there has been a 50 per cent increase in the numbers of employees and the level of company tax collected last year was £14 million and in 1988 it was £2.5 million. It may well be that in 1988 before we got in they were getting away with murder and not paying any taxes. But nevertheless part of it must be increased profitability. It cannot simply be because then there was a scandalous situation which we inherited. If people who ought to have been paying £14 million in 1987/88 were only paying £2 million then it would indicate that in 1987/88 there was in power a Government that were permitting businesses to get away with murder in not paying their taxes and relying entirely on the burden of taxation on wage earners. We never accused the Government of the day once about that. Never once, in all the years that we were in opposition. We never accused them once in terms of their integrity. We criticised their efficiency which is legitimate for an opposition to do. We do not dispute that there are difficulties in some sectors of the private sector as the Leader of the Opposition claims. We do not say that there are no difficulties but what we say is that the one who lives in any ivory tower is he and not only does he live in an ivory tower, he has never been outside the ivory tower. When he went to an election in 1992 he had to get a street map to discover where the workers lived in the Laguna or in the Varyl Begg Estates because he has never been there in his life. That is how much of an ivory tower he is in. If he lived in the real world he would not, as he does, consistently jump on every bandwagon because in the real world everybody knows that every businessman that has got five grammes of common sense always complains of how bad business is doing. I have never known anybody that said anything different, with open frontier, with closed frontier, with dockyard, without dockyard, they have always been having a very bad time, always. That is not something peculiar to human beings. I have known in 14 years in the union anybody coming to me from the workforce saying "I think I am getting too much pay". Everybody that I have known thinks that they are overworked and underpaid even if they just go in to clock in and go home and they still think they are underpaid and overworked. Every businessman, even if he makes a 100 per cent turnover and a 100 per cent profit thinks that why should he be making only a 100 per cent instead

of 200 per cent. Those are the realities and mature, experienced seasoned people, who have lived in the streets know how to introduce a certain level of scepticism when people are lobbying to defend their interests which is perfectly legitimate. It is legitimate for people to lobby and for people to put a very black picture and for people to try and get the Government to give them help or to reduce their taxes or to give them overtime. That is a legitimate thing to do but what one has when one has been around a long time, which he has not, is the ability to try and reduce what is exaggeration and what is real. But, of course, the Opposition Member does not care about any of that. He goes through his political performance in this House and outside the House by thinking that if he jumps on the latest outcry of the latest lobby then he can guarantee for himself a percentage of votes and he is wrong. He will never be able to do that because even the workers who demonstrate and with whom he has his picture taken showing his support for them do not trust him. They are right not to trust him because they know his heart is not in it, he has never cared for them and he does not want anything from them other than their votes.

HON P CUMMING:

Mr Speaker, on a point of order. The Chief Minister is imputing false motives to the Leader of the Opposition. That he is not trustworthy. That the workers cannot trust him. He is imputing false motives to the ...

MR SPEAKER:

I am afraid that that is a remark that he believes that he is not trusted. It is politically of course, that we are talking?

HON CHIEF MINISTER:

Politically, of course.

HON P CUMMING:

The Chief Minister is making a political accusation, not a personal one, against the Leader of the Opposition.

MR SPEAKER:

I imagine so, it is up to him, but I think that we are talking in political sense, that is the way I interpret it.

HON CHIEF MINISTER:

Mr Speaker, the Leader of the Opposition surfaces with each group expressing discontent in the false expectation that he will be able to con them into voting for him and they will not vote for him because they do not trust him. They are right not to trust him because the root of his philosophy goes back to when he was the election agent of the PAG. That is where he belongs and that is where he has always belonged and that is where his real interests lie. Today he has come out in the open on an issue where knowing the cause of friction between the Government of Gibraltar and the Government of the United Kingdom he has deliberately tried to move it to something else, and he has failed. That is why he is not here now because he has failed and he knows that he has failed. It is the height of irresponsibility to spend the whole year moaning about not getting enough information for the estimates and then to walk out when the estimates are being debated. Certainly, it will not make one iota of difference to the policies and the strategy which we have been elected by the people to carry out and for which we will answer to the people and no one else. Not to him, not to the British Government, not to the Spanish Government, not to anybody else. Not to him, not to the British Government, not to the Spanish Government, not to anybody else. If the Leader of the Opposition says that it is virtually sacrilege for me to say that I do not think Mr Major is providing good government for the United Kingdom, well, all I can tell the Leader of the Opposition is that what he shares with Mr Major is that they both seem to have the support of 20 per cent of the population, and that 80 per cent of the population of the United Kingdom appears to agree with me. As a free citizen in a British Colony, although I am not able to vote for the Government of the United Kingdom that have got reserve powers, that have to negotiate with Spain on my behalf, that have to represent me in the Common Market, I am presumably permitted, without the death penalty, to express a political view about their political competence. Or is it that we are so steeped in colonialism and fear and lack of self-confidence that it is perfectly alright for the British Government to say what they think is good government in Gibraltar to say what is good government in the United Kingdom. Is that the degree of our psychological subservice which is engrained in the alternative that the Leader of the Opposition presents to the people of Gibraltar? If that is the case then I can say that by comparison with him, the performance of Sir Joshua which he described as being a poodle, in my judgement is better described as being a rotweiller by comparison with the Hon Mr Caruana, I can tell the House that to my knowledge on more than one occasion when Sir Joshua had to stand his ground with the

UK Government he did and he came very near on more than one occasion to the point of brinkmanship. The one thing that never happened was that irrespective of the deep policy differences, whenever Sir Joshua made clear that he was facing that kind of problem the last thing I or any of my hon Colleagues ever did was to publicly criticise anything he was doing in any way that would weaken his position because we accepted that he was the representative of the whole of Gibraltar including us and that our responsibility was to keep our dirty washing in house. If we had to criticise him or we had to say he was following the wrong policy we said it to him face to face but what we did not do was stand up here and say "The Government of Gibraltar cannot win this one. I am prepared to go with the Government of Gibraltar to London to fight the British Government but I am making a public declaration that we are going to lose it and that the people are not behind us and that nobody wants it." Well, thank you very much for your support but it seems to me that my heart is considerably strengthened if I leave him behind. That is the alternative that the Opposition Member is offering the people of Gibraltar and he is offering it now because he keeps on predicting that we are only weeks away or months away from an election. We are not. It is the intention of the Government to complete our term of office and it is the intention of the Government to go to the people based on the work we have done, on the commitment that we have got, and our willingness to carry on working for them.

Mr Speaker, I arrived in the House in 1972 and the people of Gibraltar have wanted me to continue to be here and I will be here for as long as they want me and when they do not then I accept the decision of the majority if there is somebody else that they think can do better for Gibraltar and its people than I can. No problem, but what is sad to see is that at this stage in the development of our people we have a situation which has never existed before with the AACR in government or the AACR in opposition where the blind ambition of individuals override every consideration, override any respect for integrity, permit people to make use of statements in an auditor's report which have appeared there since time immemorial, every year and say that that is evidence of illegality, of malpractices, of dishonesty, that it is scandalous, that it is unconstitutional and that we are covering it up because all those accusations he is making against the civil servants that he supported in the demonstration in May in Casemates. We are the ones who have given a job guarantee for life to all the civil servants that the Hon Mr Caruana says have committed scandalous, illegal malpractices. It is not us who are doing any of this. The Principal Auditor is not saying the Minister did this

or the Minister did that. He says the departments did it and we welcome the fact that the Principal Auditor points to things that are not following the correct procedures but we categorically reject any insinuation that any of our civil servants have actually been committing illegal criminal activities. If there is somebody that claims that that is what the Principal Auditor is doing then he should claim it outside and not inside the House where an individual has got the right to defend himself or he should go to the police and say "I think this is something that requires a police investigation and people being arrested". As far as I am concerned we may have whatever disputes we want or not want for that matter with our civil servants, but we recognise that the vast majority for most of the time, are totally dedicated people, conscientiously doing a job and responding to the demands we make on them. We do not hide the fact that we have been making demands on them and that we intend to carry on doing it and that we expect them to say yes. If they do not like it and if they think that the Hon Mr Caruana is able to offer them this extraordinary scenario where he does not capitulate to Spanish demands, where he is not going to do a deal to sell us out, where he is not going to accept the airport agreement, where if he goes to the Brussels agreement it is simply under protest and to say no and leave the moment they mention sovereignty, where he is also going to reduce all the taxation, where he is going to do away with tobacco imports, where he is going to bring down the rates, where he is going to increase employment, he belongs in the World Bank, not in the House of Assembly. His talents are totally under-utilised here. I cannot produce those kinds of miracles and I do not pretend but what I can promise the people of Gibraltar is that we will honestly continue to defend their political and economic rights as we have done all our lives and that we are confident that when the time comes they will back us to the hilt and on that basis, I commend, Mr Speaker, the Appropriation Bill for 1995/96.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

THE COMPANY SECURITIES (INSIDER DEALINGS) ORDINANCE 1995

HON M A FEETHAM:

Mr Speaker, Sir, I have the honour to move that a Bill for an Ordinance to prohibit insider dealings in

securities and to provide for investigations into insider dealings and assistance of overseas regulatory authorities and thereby to transpose into the national law of Gibraltar, Council Directive 89/592/EEC be read a first time.

Question put. Agreed to.

HON M A FEETHAM:

Mr Speaker, I have the honour to move that the Bill be now read a second time. The object of this Bill is to provide for the transposition into the national laws of Gibraltar of Council Directive 89/592/EEC concerning insider dealings in transactions relating to securities. The Bill creates an offence of insider dealing and related offences in respect of failure to communicate information to the competent authority. Provision is made for the appointment of a competent authority for the purposes of the Directive and the Ordinances for cooperation between EEC states as provided for in the Directive. The Bill further deals with the powers of the authority under the Financial Services Ordinance 1989 to deal with a licensee convicted of an offence under the provisions introduced by the Bill. I commend the Bill to the House.

MR SPEAKER:

Before I put the question does nay hon Member wish to speak on the general principles and merits of the Bill?

HON P CUMMING:

Mr Speaker, I understand this is one of the bills to which the British Government have some objection because it has loopholes for which they would be held responsible if anybody wishes to manipulate that loophole wrongly they would then have to be responsible. I do not know whether the Government would be willing to clarify that for me.

HON M A FEETHAM:

Mr Speaker, the Bill has been drafted by the Law Draftsman in consultation with the UK and the UK-appointed local official connected with this matter and in any case we have not got a stock exchange in Gibraltar.

Question put. The House voted.

The following hon Members voted in favour:

The Hon J Bossano  
The Hon J E Pilcher  
The Hon J L Baldachino  
The Hon M A Feetham  
The Hon J C Perez  
The Hon R Mor  
The Hon J L Moss  
The Hon B Traynor  
The Hon Miss K M Dawson

The following hon Member abstained:

The Hon P Cumming

The Bill was read a second time.

HON M A FEETHAM:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

#### 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 Criminal Procedure (Amendment) Bill, 1995  
The Protection of Trading Interests Bill, 1995  
The Company Securities (Insider Dealings) Bill, 1995  
The Appropriation (1995/96) Bill, 1995

THE APPROPRIATION (1995/96) BILL, 1995

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I would simply like to register my disappointment, Mr Speaker, at my inability to answer the Leader of the Opposition on one of the few occasions when I am allowed to make a contribution on the question of the Government liquid reserves. He will have the record, I trust, of the proceedings and when the hon and learned Gentleman reads the Hansard he will see that at least I expressed willingness and that I was awake at the time.

I would not wish to bore my colleagues on this side of the House with an explanation. It will do when he asks the same questions next year, I think.

Clauses 1 to 4, the Schedule and the Long Title were agreed to and stood part of the Bill.

THE CRIMINAL PROCEDURE (AMENDMENT) BILL, 1995

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

THE PROTECTION OF TRADING INTERESTS BILL, 1995

Clauses 1 to 9 and the Long Title were agreed to and stood part of the Bill.

THE COMPANY SECURITIES (INSIDER DEALING) BILL, 1995

Clauses 1 to 19, Schedules 1 to 3 and the Long Title

The House voted:

The following hon Members voted in favour:

The Hon J L Baldachino  
The Hon J Bossano  
The Hon M A Feetham  
The Hon R Mor  
The Hon J L Moss  
The Hon J C Perez  
The Hon J E Pilcher  
The Hon Miss K M Dawson  
The Hon B Traynor

The following hon Member abstained:

The Hon P Cumming

Clauses 1 to 19, Schedules 1 to 3 and the Long Title stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to report that the following Bills have been considered in Committee and agreed to without amendments and I now move that they be read a third time and passed.

The Appropriation (1995/96) Bill, 1995  
The Criminal Procedure (Amendment) Bill, 1995  
The Protection of Trading Interests Bill, 1995  
The Company Securities (Insider Dealings) Bill, 1995

Question put.

The Appropriation (1995/96) Bill 1995 was agreed to and passed.

The House voted on the Criminal Procedure (Amendment) Bill, 1995, the Protection of Trading Interests Bill 1995 and the Company Securities (Insider Dealing) Bill, 1995:

The following hon Members voted in favour:

The Hon J L Baldachino  
The Hon J Bossano  
The Hon M A Feetham  
The Hon R Mor  
The Hon J L Moss  
The Hon J C Perez  
The Hon J E Pilcher  
The Hon Miss K M Dawson  
The Hon B Traynor

The following hon Member abstained:

The Hon P Cumming

The Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Monday 3<sup>rd</sup> July 1995 at 2.30 p.m.

Question put. Agreed to.

The adjournment of the House was taken at 8.30 p.m. on Friday 26 May 1995.

# GIBRALTAR

## HOUSE OF ASSEMBLY



# HANSARD

**24TH APRIL, 1995**

Vol II  
(3rd July, 7th July and 21st July 1995)



MONDAY 3RD JULY 1995

The House resumed at 2.40 pm.

PRESENT:

Mr Speaker ..... (In the Chair)  
(The Hon Col R J Peliza OBE, ED)

GOVERNMENT:

The Hon J E Pilcher - Minister for the Environment and Tourism  
The Hon J C Perez - Minister for Government Services  
The Hon J L Baldachino - Minister for Employment and Training  
The Hon Miss K M Dawson - Attorney-General

OPPOSITION:

The Hon Lt-Col E M Britto OBE, ED

ABSENT:

The Hon J Bossano - Chief Minister  
The Hon M A Feetham - Minister for Trade and Industry  
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport  
The Hon R Mor - Minister for Social Services  
The Hon J L Moss - Minister for Education, Culture and Youth Affairs  
The Hon B Traynor - Financial and Development Secretary  
The Hon P R Caruana - Leader of the Opposition  
The Hon F Vasquez  
The Hon H Corby  
The Hon L H Francis  
The Hon M Ramagge  
The Hon P Cumming

IN ATTENDANCE:

D Figueras, Esq, RD\* - Clerk to the Assembly

BILLS

FIRST READING

HON ATTORNEY-GENERAL:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) to proceed to the First Reading of the Criminal Justice Bill 1995.

Question put. Agreed to.

THE CRIMINAL JUSTICE ORDINANCE 1995

HON ATTORNEY-GENERAL:

I have the honour to move that a Bill for an Ordinance to make provision for the confiscation of the proceeds of criminal conduct, other than drug trafficking offences, and its value, to make provision with respect to the laundering of the proceeds of criminal conduct and to transpose into the national law of Gibraltar Council Directive 91/308/EEC be read a first time.

Question put. Agreed to.

ADJOURNMENT

HON J E PILCHER:

I have the honour to move that this House do now adjourn to Friday 7 July 1995 at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 2.44 pm on Monday 3 July 1995.

FRIDAY 7 JULY 1995

The House resumed at 10.45 am.

PRESENT:

Mr Speaker ..... (In the Chair)  
(The Hon Col R J Peliza OBE, ED)

GOVERNMENT:

The Hon J Bossano - Chief Minister  
The Hon J E Pilcher - Minister for the Environment and Tourism  
The Hon J L Baldachino - Minister for Employment and Training  
The Hon M A Feetham - Minister for Trade and Industry  
The Hon J C Perez - Minister for Government Services  
The Hon R Mor - Minister for Social Services  
The Hon J L Moss - Minister for Education, Culture and Youth Affairs  
The Hon Miss K M Dawson - Attorney-General  
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition  
The Hon Lt-Col E M Britto OBE, ED  
The Hon F Vasquez  
The Hon H Corby  
The Hon M Ramagge

The Hon P Cumming

ABSENT:

The Hon Miss M I Montegriffo - Minister for Medical Services and Sport  
The Hon L H Francis

IN ATTENDANCE:

D Figueras Esq, RD\* - Clerk to the Assembly

BILLS

SECOND READING

THE CRIMINAL JUSTICE ORDINANCE 1995

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that the Bill be now read a second time. I am introducing this Criminal Justice Bill as obviously it has legal connotations but in view of the fact that the contents of the Bill were agreed in negotiations between the elected Government and the United Kingdom Government, I will give way to the Chief Minister who will explain the contents.

HON CHIEF MINISTER:

Mr Speaker, when we published the Bill I gave a press conference, which is not a normal procedure, because of the misleading statements that had appeared and interpretations that had been given about what this Bill is doing prior to its publication. I think the first and the most important thing to make clear is that we are not legislating here to act against money laundering which is the proceeds of drug trafficking because we have already done that notwithstanding the fact that in the foreign press it constantly gets treated as if we were acting for the first time in respect of drug trafficking. The genesis of the Bill goes back to the position of the United Kingdom in February 1994 when I had a meeting with a number of ministers about a range of issues. It was raised at that time, in February 1994, but I was told that the priority for the British Government was, as hon Members will recall, that we should introduce changes to the composition and the nature of the appointment of the Financial Services Commission which we did in April. At the time that it was raised, in February 1994, in any case I pointed out to the United Kingdom Government that far from it being the case that we were years behind anybody else, the position was that at that time only five members of the EEC had introduced legislation and the UK itself had brought in regulations which had a starting date of the 1st April 1994 and therefore the view of the Government of Gibraltar was and is that we believe in moving within the same time frame as other people. We do not want to be the last and we do not want to be the first. We want to see what others are doing before we are in a position to make a

political judgement as to what we should be doing to make sure that we are maintaining in Gibraltar the standards that other people maintain but not necessarily the highest standard or the lowest. In July 1994 the matter was raised with me by Mr Heathcoat-Amory, who was then responsible for Gibraltar, on the basis that the United Kingdom wanted us to follow the manner of implementation that they had chosen. The manner of the implementation that they had chosen, which is reflected in this Bill, was not acceptable to us, in July 1994, because we thought the manner of implementation of most other member States was a better approach which was to make it for drug trafficking which is what the Vienna Convention requires and what Directive 91/308/EEC requires and to leave the door open for the possible extension of other specific offences. Most member States have taken that route of listing other things. The Kingdom of Spain has done it in that way and we thought that clearly this was something that was consistent with the Directive since it was what the majority had done. In any case, it was our view, and continues to be our view, that the argument of the United Kingdom which we have never rejected that as they are the member State responsible for our affairs in the European Union, we must comply with the mandatory requirements of Community law otherwise they are exposed to infraction proceedings, were fully met by doing it on drug trafficking because the Directive says it must be done for drug trafficking and it may be done for such other crimes as the member States may decide. The whole saga of implementation of Community law in Gibraltar, since 1992, has revolved on the concept of subsidiarity and on the concept of the demarcation between what is foreign affairs and what is domestic matters, and this was part of that same argument.

In September the Secretary of State informed me that the UK Government felt very strongly that it should be the same as theirs because this was something that primarily affected the financial services industry where the UK had made it clear that independent of Community requirements they expected us to match UK methods and that was the reason for the changes they had asked us to introduce to the Commission which, as we all know, having introduced it at their request as a matter of urgency - something that had to be done in a couple of months - it has actually taken over a year for it to be given effect to because they have had problems in finding the people to man the Commission. The UK's position on this has been that the acceptance of licensed institutions in Gibraltar for the purposes of the single market which they have to pursue with other member States, they will only pursue if the way the institutions are monitored and supervised in Gibraltar is virtually the same. Not necessarily identical, but virtually

the same as they do it in the United Kingdom and therefore it was on that basis that we agreed to the changes in the Financial Services Commission but we have no guarantee of when they will be satisfied that the industry in Gibraltar is being supervised and regulated in a manner which is not inferior to the manner in which it is done in the United Kingdom. Clearly they are now in a position to satisfy themselves on that since we have got a Banking Supervisor who is seconded from the Bank of England and a Commissioner who is appointed with the approval of the Secretary of State and a Commission that has a majority of members from the UK all of whom have been approved by the Secretary of State and we are now about to bring in legislation which matches theirs in terms of money laundering the proceedings of crimes other than drug trafficking. But even after we have done all that, I have to tell the House that that does not mean that they are now satisfied and that they are now going to deliver the commitment that was contained in the letter of which I brought a copy to the House in reply to the one that I had sent which I had sent for the purpose of being able to say so here as to the benefits that would flow from us carrying out the changes that they thought were required. The Foreign Secretary still maintains that this will be very good news for the finance centre industry. I have the distinct impression that the people who have to earn their living in the finance centre do not share his optimism and we have seen, as a Government, no evidence that the changes that we brought in last year to the composition of the Commission, which were also predicted to be very good for the industry, have actually generated any new businesses that would not have come anyway.

In discussing with the United Kingdom, after September, the position, we moved without their agreement on the basis of introducing the legislation and publishing the regulations that would bring in fully the requirements of Community law and the application of the Vienna Convention. We did this deliberately although we had not an agreement in anticipation of the meeting between the Spanish Foreign Secretary and the British Foreign Secretary in December 1994 as we made clear at the time and as I explained to the House in January, so that it could not be said that it was the result of that meeting and it could not be said that it was the fact that they had had that meeting that had led to legislation being introduced in Gibraltar as it were on the insistence of the Spanish Government. But we did not have an agreement with the UK that that was all that was required because their position still was that it should be extended to crimes other than drug trafficking. Nevertheless, the United Kingdom welcomed the legislation we had

brought in and asked me to consider extending it to other crimes quickly. This was the position in January when I brought the Bill to the House and hon Members will recall that in fact we had made a provision allowing the Government, by regulation, to extend the provisions of that particular law to other areas which, in the course of the committee stage, we removed on the basis of the argument that was put to us that as it stood this could have a devastating effect on the finance industry and that it was better to bring separate legislation to deal with any other crimes rather than extend the one that we had on drug trafficking. It would appear that in fact one advantage of doing that is that the one on drug trafficking is in some respects tougher than this one as regards what is an offence in terms of reporting transactions or not reporting transactions. Following further discussions with UK, the position that we have taken is, in line with the explanation that I have given at the beginning of my presentation on the general principles of the Bill, that we would be prepared to bring a bill to the House at this stage to show a commitment to do this but that we wanted an agreement with the United Kingdom that the commencement date in Gibraltar would be either at the UK's preference either when it was done by Luxembourg because the UK's argument is that everybody else is going to be doing this or when it was done by the Channel Islands and the Isle of Man. Therefore we said if we are competing in a European market we are not saying, as has been reported incorrectly, we want to do it when the BVI does it or when the Turks and Caicos does it or when the Cayman Islands does it because they may never do it. Certainly as far as we are concerned the only British dependent territory to date that has introduced legislation that gives effect to the Vienna Convention is us. Nobody else has done it. The argument that we put to the United Kingdom is, "If we do what is required by Community law and if you expect us to do it we accept that that is something that has nothing to do with other British colonies or Crown dependencies because they are not in the European Union and we are and we are demanding recognition of our licences and you are entitled to say, "If you want recognition of your licences then your licences must be based on Community law", but if you want us to do something more than Community law and the argument that you use is that what goes beyond Community law is good government, then we expect that you should want good government in Jersey, Guernsey, the Isle of Man, Bermuda, Cayman Islands and everywhere else or is it that you only want Gibraltar to have good government and good government means doing what you do in the UK?" The same provision exists in all the constitutions so the UK has got an overall responsibility for good government and therefore for ensuring that the laws that regulate the financial services of the territory for whose external relations they are

responsible are laws that they consider to be adequate so that the territory does not become used by people engaged in criminal activities who would not be able to do so in the United Kingdom. The Bill that we have got, which has been drafted by a draftsman provided by the United Kingdom, follows very closely the UK Bill and most of the technical arguments that have taken place over the last few weeks have been in the area where the UK system was being reflected in the way that the law was not compatible with the way we do the laws in Gibraltar. It is not an area that I have got any expertise on but it has been arguments of that nature and therefore many of the amendments are of that nature. On the question of the definition, I will be moving an amendment which I will explain when I get to it which shows how we propose to deal with it and how we are dealing with it in a different way which is the way they have done it in the UK by having a definition on whether it is a crime in another jurisdiction in Part III of the Ordinance as opposed to being in Part I.

At the moment the position is that once the Bill is taken through all the stages today we expect to receive a written commitment from the United Kingdom that the appointed date for its implementation will be in line with the introduction of similar legislation in the Channel Islands and the Isle of Man. This has been the basis upon which we have been arguing, I would say probably now for nine months, and the line of the UK has been, "If everybody is going to take the same line nobody is ever going to do it because everybody else is going to be waiting for everybody else". We do not want to wait until it is law. We want to be in a position to see at least that the law is published and also we have made it clear to the United Kingdom that if we see that there are areas of differences between the law that is published for those other dependencies, then we will want to go back to the UK and see why if they do it in a way which appears to be better for the industry than the way we have done it here, which is based on the way they have done it in the UK, we cannot follow that route. The UK position, I am assured, is that they are making the same demand of the other territories including the other dependencies, that they are making of us that it should be based on what they have got because they think that is the only effective way to do it. I cannot understand why it is the only effective way to do it and hardly anybody else in the world is doing it in the way they are doing it but clearly the view in the United Kingdom, perhaps logically, is that that is the way it should be done because if they had thought it should be done some other way presumably they would have done it some other way. As I said, our feeling is that to extend it, as it were, on the basis of applying it in the light of experience. That was also

an argument that we used, "Look we have brought the new law in in March. Let us monitor its operation and if there is an indication that because it is about drug trafficking and not about other things there are loopholes that need to be closed then we will move to close the loopholes, there is no problem with that". We are committed to acting against Gibraltar being used as a place where people can get rid of money made out of drugs. We are committed to dealing with any other crime provided that is what other people are doing. If it is not something that other people are doing then laudable as it may be, effectively what our law will require people in the financial services industry to say to their clients is, "You cannot do it here but there is nothing to stop you doing it in Dublin, Luxembourg, Jersey, Guernsey or the Isle of Man. The only two places where you cannot do it is here or in London". That is the consequence of us being the only two European jurisdictions that have got legislation which is in fact outlawing any crime whatsoever which is an indictable offence which is a crime that carries a potential prison sentence of more than six months. We have also, Mr Speaker, made the point - and that has been accepted - that we will be reviewing some elements of our Income Tax Ordinance and we will be bringing legislation to the House to do it because we do not want to find that because what is an indictable offence in the law of Gibraltar may be a summary offence in the law of the United Kingdom, we may finish up with also covering things that not even they cover and that is also a condition that we have put which has been agreed with London. It is on the basis of the acceptance of certain caveats that we have been willing to introduce the legislation in this particular aspect of the areas that we have still got which is an on-going business of the whole range of Community legislation; very little of which has anything to do with the finance centre but nevertheless the underlying position is still the same really on all of them as to whether we are talking about external affairs or we are talking about domestic affairs. I have no doubt whatsoever - I have made it clear to the British Government - that if what they are hoping for out of this Bill is that the neighbouring country will say, "Now that they have passed the Criminal Justice Ordinance 1995, there is no longer any money laundering in Gibraltar" they have got another thing coming. I do not think there is the remotest possibility that they will do it because in fact the position of Spain seems to be that if we do not arrest half the people in the finance centre for money laundering that is not proof that they are not money laundering, that is proof that we are being lax about enforcing the legislation. That is the view we put. London's view is, "Well never mind even if they keep on arguing that there is still money laundering the fact that you have got the law there will enable us to put up a stronger defence than we can today because the law is not

there". I think it is also worth pointing out that this law, because it matches UK law, goes further than Spanish law. That means that an act of disposing of the proceeds of certain crimes would be illegal in Gibraltar and be defined as money laundering but would not be illegal in Spain and would not be money laundering in Spain. Presumably, once people are properly advised of the infract of the law all they will have to do is cross in the opposite direction if they claim that they are not crossing in this direction. So it does show the contradictions in the situation and I imagine that that will not stop our neighbour from arguing that we have got less demanding laws here than they have but it can be demonstrated factually by a simple comparison of their law and others because theirs says laundering of the proceeds of terrorism, the proceeds of kidnapping, and that is the way that most of the European Union Members are doing it. Either they have it for drug trafficking only or they have it for drug trafficking and a schedule and in the schedule they add from time to time what they think ought to be added and not every member State has got the same things. That is understandable because terrorism might be a particularly sensitive thing in Spain and would not be a particularly sensitive thing in another part of the European Union where there might be some other crime which as a matter of political choice the member State using subsidiarity decides that in their country they are doing to do this. There is, of course, the contrary argument which is that given the absence of internal frontiers all that happens is that people presumably will launder the money where it is not defined as laundering and therefore will be able to go round shopping in which place they put their money depending on what the laws of the member States do. I have said to the United Kingdom that if they feel so strongly what frankly they ought to be doing as the member State in the European Union is to try and persuade Community partners that the Directive should say it is for all crimes. Then there would be no problems because we would all be required to do the same thing. But the Directive does not say that and we are already fully complying with the Directive and have been fully complying with the Directive since we published the regulations which are being repealed by this and incorporated and that is the regulations that we published last November. So therefore I think it is also worth pointing out that the fact that there is a reference in the introduction that this is an Ordinance to transpose into the national law of Gibraltar Council Directive 91/308 it is not because Council Directive 91/308 is not already in the laws of Gibraltar. It is because we have been advised that technically it is better to repeal the regulations we did for drug trafficking and incorporate the same provisions - there is no change - into this law and therefore we are



giving effect to that Directive for the second time round. I commend the Bill to the House.

MR SPEAKER:

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

HON P R CARUANA:

Mr Speaker, in relation to the last point made by the Chief Minister it might be worth making a small amendment to the long title to reflect that fact. It could be made to read something to make provision in the principal or in the primary laws of Gibraltar to transpose so that no one can pick this up and use it as evidence that we are now transposing it for the first time into the laws of Gibraltar. The position on this side of the House - I do not by that mean to suggest that it has been any different from the Government side of the House - since the first day that we discussed the Drug Trafficking (Offences) Ordinance has been that we have no difficulty with extending the anti-money laundering laws to crimes of a defined nature so, for example, I do not think that there is anything in this House and certainly I would not expect to find any reputable operator in the finance centre who thinks that it ought to be OK for Gibraltar's finance centre to handle the proceeds of bank robberies, prostitution rackets, gun running or slave labour or things of that kind which is what the ordinary man in the street understands. What I said on the second reading of the Drug Trafficking Offences Bill and I maintain is - it has indeed been shown to have been a correct analysis by papers that have circulated amongst those that have been discussing this issue since then - that the definition of all crimes, because there is not a definition of all crimes, includes things which are purely fiscal offences. The laws of the United Kingdom and of most of the civilised world have for centuries treated breaches of tax laws very different to the way they have treated breaches of other laws even when it comes to such things as extradition and things of that kind. It was the effect of this legislation on the finance centre insofar as it brings in fiscal offences that I pointed out had damaging consequences to the finance centre of Gibraltar. I understand, from conversations that I have had with others abroad in other British dependencies within Europe, that they have received a similar request and that they have made similar observations and expressed similar fears. I remain convinced that as currently

drafted, this legislation is capable and indeed probably will create considerable uncertainty as to the position in Gibraltar on various aspects of our finance centre activity. Despite the attempts by the GSLP Government to persuade the United Kingdom to exclude fiscal offences they have not succeeded in doing so. That gives me as a member of this legislature a political grievance against the Government Members because once again, as a result of the way that they have handled this matter regardless of the merits of the argument, regardless of whether they are right or the British Government are right or whether they are both of it right or both of it wrong, regardless of the merits, once again places this community and this Parliament on the horns of a dilemma. Again we have a situation in which we either implement complicated legislation of which we have had seven days notice or we find ourselves on the brink of a constitutional crisis. This is complex, lengthy legislation. It runs into 55 pages. It raised many potential consequences for what is one of our principal industries. It needs, if this legislature were going to perform the function of a proper legislature, careful consideration and it is extraordinary that the Government Members should think that this House, which includes the Opposition as well as the Government, can do justice to the legislative process in relation to a Bill of this complexity and of this importance to Gibraltar on seven days notice. Therefore, what we are now being asked to do is either to vote for a Bill that we have manifestly had insufficient time to consider the ramifications of or to assist in the provocation presumably if one believes all that has been said in the last two months, or alternatively provoke some sort of constitutional crisis with the United Kingdom. That constitutes the horns of the dilemma because neither of those are acceptable to the Opposition. Once again we have a rushed meeting of the House to consider in rushed manner crucial legislation. It appears to be the case from what the Chief Minister has said that there is really no point discussing the Bill because this is what we have to legislate. I am certainly not going to participate in some charade conducting a debate about the principles of this section and the ramifications of that section when the position is that regardless of the merits or virtue of what this House says or discusses it cannot be included in the legislation. That is not what the taxpayer of Gibraltar pays me to come to this House to do. My grievance against the Government Members, regardless of the merits of the arguments, is that as the Chief Minister has himself said they have had knowledge of this issue since February 1994. They tell us nothing. They say that the manner of the UK's implementation was not acceptable to them and I am not addressing the merits of their

arguments, in July 1994. In September 1994 they bring the Drug Trafficking Offences Ordinance to this House which he now says that he moved without the agreement of the United Kingdom Government to the extent that it did not go far enough in the sense that it only covered drugs. He did not say to us then, "Beware chaps because the consequences of doing this and nothing more is that the row that I have not told you about is still on and that we still face constitutional crisis". I do not say that my views on the merits of the argument would have changed if he had told me that. My concerns about the fiscal offences point was not going to disappear just because the Chief Minister told me that he was doing this without the agreement of the United Kingdom Government. But at least it would have laid before this House all the cards and it would have enabled us to have a debate and to make a decision in full cognisance of all the political ramifications of what we were then doing. The result of the Government Members having played the cards close to their chest for a year and three months now is that they now have to come to this House with a deadline to avoid constitutional crisis that is so tight it had to be today, Friday, the 7th July and it was such a crucial deadline in relation to his commitment to the United Kingdom Government that the Chief Minister was unable to accommodate my personal requirement to be outside of Gibraltar today. I say I am quite happy to stay in Gibraltar to discharge and to cancel my private travel if the interests of this community require it and if my duty as a member of this House calls for it but I want to know how we have come into a situation where in respect of a dispute that he has been conducting with the British Government since February 1994 that timing becomes so tight. So tight is the timing to avoid a constitutional crisis that here we have a Bill which he and I have now both agreed has possible, not to say, probable ramifications for what is a major industry in Gibraltar which nobody in the finance centre has had any sensible opportunity to read let alone digest and comment on. The first Bill that hit the streets was unreadable due to printer's devils. I got, for which I am grateful, a computer print-out typed thing which at least enabled me to give the matter one reading but the fact remains that here we are about to implement in one two hour sitting of this House all the stages of this Bill, second reading, committee stage, third reading, and I guarantee the Government that 99 per cent of the persons whom he says their livelihood is potentially affected have not had the opportunity even to read it let alone lobby. Let alone express their views in public. Let alone participate in that ordinary process of consultation that precedes all the legislative process in every other democracy in Europe.

Once again, Mr Speaker, we find ourselves rushing through critical legislation with a gun to our head. I do not say that if the Government had played it differently the gun would not still be to our heads, but at least there would have been a broader participation in the discussion process, in the ability to address representations to the United Kingdom Government, both politically and non-politically, and public opinion to express a view. Instead here we are rushing through this legislation. That is a matter which I regard as unforgivable. It reflects only the style of the Government Members. It is not necessary. There is no reason why he could not have published. There is no reason why he could not have been more forthcoming about the issues as they existed between the Gibraltar and the British Governments at a much, much earlier stage. To that extent we believe that the situation that currently exists is of the Government's making. They have played brinkmanship all by themselves. They have not wanted to allow anybody else to take part in their games of brinkmanship and when they have played brinkmanship with one of our vital industries and they have found themselves in a position where they knew they could not win. They now rush legislation to this House on seven days notice to avoid a constitutional crisis and regardless of the quality of the legislation, regardless of the opportunities that people outside and inside of this House have had to give consideration to the legislation. It is all very well for the Chief Minister to say that genesis of the UK's position is February 1994. The reality of it is that he has been having this argument with the British Government since February 1994 and by July 1994 he had reached the end of his tether and said, "You do it as you like". That is not acceptable to me. In September 1994 he brought legislation to this House which reflected the fact that the British Government's method of implementation was not acceptable to him.

Mr Speaker, having said all that and having said that in terms of its effect on the economy of Gibraltar, the principal danger comes not so much from the detailed provisions of the Bill but from the perception that it will create amongst potential customers of Gibraltar's finance centre. Certainly a delaying of the commencement date until other competing jurisdictions whose current reputation appears to be not questioned to the extent that ours is, will certainly help in avoiding the worse consequences of a situation in which in effect people will not come to Gibraltar to do things because they can do it without any sort of question mark in Jersey or the Isle of Man. I think one would have to be a fool to choose to use Gibraltar as opposed to the Isle of Man and



Jersey when in Gibraltar there is a question mark that one does not understand. Surely we do not expect everybody that uses the finance centre of Gibraltar to read this Ordinance to conclude that it is safe for him to come and use Gibraltar. We all know that these are matters of perception. We all know that Gibraltar's competitors are going to make hay with this and that the word is going to get around that in Gibraltar the place is a sieve for information because even tax avoidance is now in the frame. It will not be true, even on the terms of this legislation, but that is what will be put around. It would therefore have been preferable that the Chief Minister had succeeded in getting the United Kingdom to agree to accept his assurance that this legislation would be legislated, not introduced, as soon as it has been done or simultaneously with other places because the fact that this House passes this Bill will itself start the rumour mill going. The fact that it has not yet been implemented at a time when it has not even been legislated in Jersey and the Isle of Man is not going to save us from the immediate negative effect of such a legislation. The Chief Minister said that he expected a written assurance from the British Government that that would be the case and when he closes on this he might like to comment on whether that is an intelligent expectation, in other words, an informed expectation, in other words, is that the arrangement? Is that what he has been told he would get or does he only expect it as a matter of honour in the sense that he would expect that since he has done this that they would do that? Mr Speaker, the horns of the dilemma to which I referred earlier. In other words, that either this House passes with what I regard to be undue haste, insufficient consideration and certainly no consultation with any of the affected members in this community, all that being option number one and option number two being to vote against this legislation. In other words, not to adopt this legislation which would presumably propel us into a constitutional crisis with the United Kingdom of the sort that has been ventilated in the press, that is not a viable choice to which this legislature should expose itself. They have had knowledge for longer than we have. They have had cognisance of the issues and of the terms of the legislation for longer than we have. This is a problem of their making, in the management of it and therefore let them take the responsibility for this methodology of legislation in Gibraltar and the party that I lead, will abstain at all stages of the reading of this Bill.

HON P CUMMING:

Mr Speaker, on the face of it I would welcome and I think the whole House would welcome a law such as this one whose purpose is to prevent dirty money from circulating round our finance centre and if it should be discovered to be so circulating, to give powers to confiscate that money. Certainly if I had the choice I would prefer Gibraltar to live off tobacco smuggling, than off the handling of dirty money but the curious results of this law is going to be that in fact whilst tobacco smuggling is going to remain legal, going to the bank with the proceeds of it is going to be illegal. It seems to me that if there is any ordinary man in the street listening to us in the House or over the radio that he cannot but be entirely confused at the nature of this Bill and the fuss that it has caused. It seems to me that this confusion arises from the very nature of finance centres themselves because there is an ambiguity at the heart of that concept. Certainly, in Spain, I think, there is a total lack of understanding of the concept of the finance centres. It does not cross the mind of the man in the street that when he has some savings that he can put them offshore and enjoy tax benefits from them. It just does not seem to occur to them because certainly my impression has been from journalists that have come and interviewed and discussed that the facts that a Spaniard brings his money to Gibraltar and from then on Hacienda can kiss good-bye to any tax income from that money fills them with horror. I say to them, "Look, why do you pick on Gibraltar for this harassment? Why do you not pick on London or Dublin or Luxembourg? Do not tell me that there are no Spaniards investing their money in London and when they do that is good-bye to Hacienda from the income of that money". This seems to bewilder the most educated and most intelligent of them. They do not know how to handle it. Then I say, "Look in a perfect world of course there would not be finance centres, there would not be bullfighting either". I was interested to hear the Hon Mr Bossano I think it was in a Spanish interview actually saying that the finance centre industry was an Anglo-Saxon industry which had not occurred to me before and that of course may explain why Spaniards in general are not or do not seem to be familiar with the concept of putting money offshore. Certainly this view is confirmed in the Chronicle of the 26th June by Mr Millner who says Spain has an odd definition of money laundering. Money laundering means converting the proceeds of criminal activity into legitimate assets but Spain appears to take the view that if a Spaniard has a bank account outside Spain which he does not declare then that is money

laundering. Many people may be doing that but that is not what the international community considers to be money laundering and in practice I have found that to be very much so. A Spaniard has a bank account here who does not declare it, that to them, unfortunately in their minds, seems to be money laundering. Therefore there is a lot of work to be done via dialogue and dealings with the press in Spain to try and clarify that idea and to try and help Spain to be in a position to be more tolerant to the legal activities of our finance centre. A curious tit bit of information came my way 10 days or so ago because I was interviewed by a French journalist who works for a French television channel which deals with programmes dedicated to the sea and of course he wanted to do a programme dedicated to the question of the launches. It so happened that at the time that he was staying in Algeciras the Juez Garson, the Spanish super judge was also staying in Algeciras to address the Rotary Club and he took the advantage of having an interview with Juez Garson and in their conversation - I do not know whether it was supposed to be on or off the record - Juez Garson made reference to this Bill that we have before us, the Criminal Justice Ordinance, and said to him that this was a very good piece of legislation. It seems to me how then is it that Juez Garson has been able to see, analyse and judge this before the Opposition in Gibraltar has. It seems to me quite possible that in fact all this legislation has been discussed in detail with the Spanish authorities by Britain and of course then many Gibraltarians will raise their hands in horror and say this is appeasement. Maybe it is but we cannot lose sight of the fact that the more tolerant we can make Spain of our finance centre the more likely it is to flourish and therefore it seems to me that any activity aimed in that direction can only help and not hinder us in the long run. It might even be that in 100 years time when different policies have been put into place both in Gibraltar and in Spain and the political climate between us begins to change that eventually the Financial Services Commission may even have two Spanish independent commissioners who then could have a very useful function in reassuring the Spanish Government that what goes on in the finance centre of Gibraltar is none other than what goes on in London and other reputable finance centres in the world.

When I have been to the CPA in contact with parliamentarians from the Channel Islands, most of whom seem to me to be employed in their finance centre and seem to be very expert in the matter, I was amused by what seemed to me a double standard type of attitude to the finance

centre because they made very clear that in their finance centres they are always willing to talk to a policeman but never willing to talk to a taxman. If police from different jurisdictions come to them and say they are worried about this money which comes from drugs or gun running or from terrorism then they are most co-operative but if a taxman comes and says that somebody in their jurisdiction is avoiding paying tax, then they clam up and nothing can be extracted from them. But the problem is, of course, that the world is moving on and because of the difficulties, particularly in relation to drugs, in controlling the scourge of drugs over the world this new weapon has been discovered and developed by which in trying to control movements of dirty money, damage can be done to drug smugglers and therefore this expertise has built up which has turned many taxmen into policemen. So whereas before they would not talk to the taxman but they would talk to the policeman now they are in a dilemma because there is a new kind of policeman who is, in fact, a taxman. How this will eventually be resolved we do not know. As I say, in a perfect world there would not be finance centres. Certainly the same attitude to finance centres as they have in the Channel Islands we could expect to have. Our own Financial Services Commissioner who says, very rightly, in the Chronicle of 26th June that although he is not privy to discussions he said what Gibraltar should be part of is the international tax planning scheme, not part of the tax evasion scheme. The distinction here between tax planning and tax evasion of course is lawyers' speak because really and truly the working man whose only tax payments are made through pay as you earn schemes and who is liable to sudden bills, huge bills because they have not done the PAYE right and he is suddenly landed with a huge bill, that poor man has no opportunity to plan his tax payments so obviously one has to be rich to be able to indulge in this sort of tax planning which the man in the street can be forgiven for not distinguishing between tax planning and tax evasion. The question then becomes, does putting money offshore protect one from the taxman and this is the crux of the matter in the difficulties that we are having with this Bill because obviously our primary objective here is to protect the finance services industry? Therefore, we would really very much like to know whether putting one's money offshore protects one from the taxman. It is curious that when we receive our tax returns here in Gibraltar we are asked in all the different sections to declare our income and there is one section where it actually says money invested abroad must also be declared in this section. There are some who say that this money is outside the jurisdiction of the Gibraltar Government and therefore they are not

morally obliged to declare it. "If the Government can extend its jurisdiction to reach out to that money in that place then I will declare it but if they cannot I will not and this is the reaction of the man in the street. If on the one hand suddenly now if the Gibraltar Government were for example to say that from now on every Gibraltarian is going to be watched to try and catch him when he tries to put his money offshore in order to recoup taxes from him and at the same time running a finance centre for the same thing to be done in the inverse obviously one thing is not compatible with the other and brings a moral conundrum for the future of finance centres in general. How does it affect us in practice now? We have heard from the Leader of the Opposition who has clearly stated that fiscal offences are not excluded in this law which extends money laundering to an all crime basis. So, among the legal community obviously there is great emphasis on the difference between avoiding tax and evading tax. They are very loath to call anybody a criminal who has deliberately avoided paying taxes that really he should have paid. A great reticence, different countries of course take different views and different attitudes and try and tighten up certainly in America where political candidates are scrutinised to an extent that if ever, ever there was a dollar that they did not pay in taxes it comes to light and excludes them from public offence and there definitely they are calling a criminal somebody who does not pay the tax that he should. There obviously they are trying to put a culture which does not hesitate to label him a criminal. So here we are then with this ambiguity and this dilemma of really coming to grips with this problem. I have not read through this Bill item by item because it would not be a very productive exercise. At one time I was very keen I read the 1st July law in very great detail and it was not till I read it in the press 10 days later that the impact of it came to me. In other words, I did not understand at all what it meant, so spending three or four hours reading through this in detail obviously would not greatly..... But I have scanned through it and looked here and there to try and get an impression. Of course there are sections there which deal with registration of external confiscation orders because of course the problem that we fear is that the Spanish Government will bring a case to Gibraltar against a Spanish citizen who has invested in the finance centre, and try and confiscate that money on the grounds that they are fiscal criminals. Of course this would be very damaging to the finance centre and really and truly we do not know whether that situation is likely to arise. But certainly this law in its section headed 'Registration of External Confiscating Order and Enforcement of External Registration Orders' does put legal and

bureaucratic barriers to the execution of such orders so I would imagine that probably none of us really know in detail what the consequences of this law will be other than of course that it clears up the constitutional problem with UK. Obviously it will have a beneficial effect in enabling because I should imagine that if the Spanish Government came to Gibraltar and said, "Look here in your finance centre you are sheltering in such and such an account the proceeds of ETA". I am sure that everybody would fall over themselves in their anxiety to help the execution of a confiscation order but not in the question of tax avoidance. I should imagine then that the question of bureaucratic obstacles and the expenses involved will actually prevent fiscal crimes being investigated and nothing will come of it and that this law will serve only for the purposes of real crime, of what the man in the street accepts are real crime.

Mr Speaker, this Bill contrary to what we were led to believe at the last meeting of the House, says that it will come into effect the moment that the Governor says that it will. Of course we were led to believe that from now on the laws will come into effect when the Government says that it would. Therefore the Government have climbed down on this issue and very rightly so it seems to me because the headlines in the paper on Wednesday 26th April where it says, "Bossano moves to preempt Deputy Governor...." was really scandalous and brings great anxiety to the people, helps to fill the Mackintosh Hall when the GSD called a public meeting. It is something that I welcome incidentally. But the scandal and the anxiety imposed when the Chief Minister goes on television and says that he has to remind the Deputy Governor that he is not in Burundi or Rwanda is not at all welcome to the people of Gibraltar. It is welcome, of course, that he stands up for Gibraltarian rights against whoever it is including the Foreign Office. But this has to be done in a diplomatic way behind closed doors and only taken to the public when the public are expected to be involved. In other words, when a real authentic stand is going to be made. When the people must be involved in backing that stand but here we have a situation where the general has said to his troops, "Charge" and then in mid-charge he has said, "No, no, stop, do not charge". This confuses the people, dismays the people and swings them radically away from the GSLP which is the aspect of the situation that I welcome. There is no doubt, of course, that the British Government typical of the British character have allowed the Chief Minister to save face over this issue and that with a show of much movement between London and Gibraltar and

technicians being involved and so on, have allowed sufficient show of compromise to allow the Chief Minister to apparently back down graciously. But the fact remains that even though in another Chronicle of 27th May he declares, "I will not be Britain's puppet" in fact the crux of the matter in this public display of aggression resulting in a backdown in fact puts very much in doubt those headlines, "I will not be Britain's puppet" and has caused anxiety to the people for no justifiable cause. It seems to me, Mr Speaker, and I am coming to the end of my comment, that when the Chief Minister goes to his well-earned early retirement in the next few months and he has plenty of time for reminiscence he will have time to consider himself of the headlines of the 19th May which says, "Time to lance this boil once and for all". That will be, of course, the last nail in his coffin. All this issue has reminded me of the prayer in which the person making the prayer asks God to give him the courage to change the things that he can change and the resignation to accept the things that he cannot change and the wisdom to know the difference and, unfortunately, it is that wisdom that has been lacking in this case. Thank you, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, I think I need to remind the Leader of the Opposition that certainly he might not have been aware in February 1994 that this had been raised in London but he was certainly aware in January this year because in January this year he specifically asked me whether this was an issue and whether in fact the law we were passing in January was capable of being interpreted as being something that affected laundering of the proceeds of crime other than drug trafficking. The Opposition Member was questioning a reference where it says "or offences under a corresponding law" and he said, "I do not say, Mr Chairman, that the legislation necessarily has that defect. I am raising the query that here we have got very clear in this very powerful legislation which imposes obligations and if expanded is capable of damaging our finance centre irrevocably, let it be clear what we think as legislators we are legislating when we use those words. And if there is the remotest doubt that these words have a broader meaning that extends beyond the parameters of drug trafficking, let us make sure that we do not" and I replied, "I want to take this opportunity so that we have it on the record of saying in response to the concerns expressed by the Opposition Member that we share entirely the view that we have and obligations to ensure that our system is not exposed to being used as

getting rid of the proceeds of drug trafficking; that is what we are setting out to do, that is what we are required to do by the European Directive. Therefore we have made it absolutely clear in unmistakable terms to Her Majesty's Government that that is what we are doing and we are satisfied that the law reflects the policy decision because the UK Government is still trying to persuade us to go beyond this. In January it was public knowledge that they were trying to persuade us to go beyond it". In the public statements that I have made, not in the House but outside the House, in 1994 I have made clear that we had a difference with the United Kingdom on whether the law was fully in agreement with Community law on drug trafficking only or not when there were comments being made in the press about our failure to implement Community law. Therefore, in case the hon Member has not understood what I have told him, the matter was raised with me in February 1994 for the first time but I was told it was not the priority. I was told in February 1994 the priority was the Financial Services Commission. I made it clear then that in any case it could hardly be a priority for us to do it when they had not done it themselves yet. They did not do it until the 1st April 1994. Having done it on the 1st April 1994 they asked me to follow suit in July 1994 and we said, "We are prepared to do it if we see that people other than the UK are doing it. We are not against it. We think, having looked at others, it is better to use the system other member States have used and not yours but we are prepared to do the money laundering only straightaway". The UK said, "No, we do not want you to do the money laundering straightaway. We want you to reconsider your position and accept that the only way to do it is the way that we do it in UK because we have already agreed in February that the financial services industry in Gibraltar must match the standards of the UK and matching the standards of the UK include this". Clearly in their view much in the standards of the UK includes anything that touches on the finance centre. That is clear, that that is their understanding of what it means. Our understanding was that matching the standards of the UK meant that the standards of regulation and supervision would not be inferior to the UK. I certainly do not think that it is the responsibility of the Government to go public every time we are negotiating with the United Kingdom Government something that needs to be done or that is not to be done or that they would like us to do where we are putting one point of view and they are putting another. To the extent that we have gone public it is because for some reason that we still have not fathomed notwithstanding that it is constantly denied by Ministers, stories appear in the press which attribute things that are not



true and which are obviously being planted. The latest example was in The Times where it said we were closing loopholes because of the shoddy state of our banks. If our banks are in a shoddy state we have already got somebody from the Bank of England here, what are they doing about it? But The Times argued that we are now legislating today to close bank loopholes. This is all a nonsense but the man that wrote this story who is a diplomatic editor did not invent this. Somebody gave him that information and therefore whenever such information has come out, my response has been that something is up with the stories that are being planted because it is not true that this is what has happened and Ministers say that they do not know who is doing it and they do not take the responsibility for the alleged sources and this has been going on since last September and it has happened three or four times.

As regards the priority of the Government in trying to meet the United Kingdom, the position we have adopted throughout has not changed because our position has always been that we were prepared to do it within the same time frame as other people and not just the United Kingdom. We have, as far as we are concerned, got an understanding that that is agreed and that understanding was due to be confirmed in writing by the Foreign Secretary. Unfortunately, it was not possible for him to do it before, otherwise I would have been able to announce today that it was not simply an expectation on the part of the Government of Gibraltar but that we had written confirmation because it is on that basis that I wrote to him and on the basis that there would be a bilateral agreement between our two Governments. Before the hon Members think I have invented something, let me say that the first bilateral agreement on the application of matters relating to the EEC was done in 1973 between our two Governments. I tell him in case he thinks I have invented something by bringing something to the House which has got great consequence which has not been previously debated at length and has been in fact discussed between Gibraltar and the UK, when the House of Assembly was presented in November 1994 with the Brussels Declaration requiring all our laws to be changed to give advance EEC rights to Spanish nationals - 11 months before they were EEC nationals - we discovered, to our surprise, that in fact a willingness on the part of the Government of Gibraltar to do this had already been indicated to the UK Government in November 1993. Not only did we not know it here where we were being given assurances that the position of the Government of Gibraltar was the opposite, we discovered that the non-members of the House in the party had been told, much to our surprise.

*[Interruption]* I complained as much as the hon Member does, so it is a familiar complaint! I can understand it but what I wanted him to take on board is that having been there I can see the logic of his position but being here I can see why the previous Government sometimes brought something when it was agreed and not when they were negotiating and where they felt it was their responsibility to try and achieve a certain result and that is what we have tried to do. What we have tried to do has been to produce what the UK wishes to see produced on the basis of the time frame of its implementation, with which we have no problem, because we do not have an argument. We do not think we can defend a position where other territories are doing it and we do not do it because we would not want to be seen as a place that people come to bring the money which they cannot take anywhere else because in all the other places it would be laundering and in Gibraltar it is not laundering. That would not be a way that we want it and that would not do the finance centre any good. So there are two extreme positions. If we have got weaker money laundering laws than anybody else I do not think it does us any good and if we have got tougher money laundering laws than anybody else I do not think it does us any good. We want to be mainstream. In some places they may have been able to afford to have very, very tough laws because in any case they are dealing with something that is not important to their economy. I think that is the lesson that we learnt. The fact is that Luxembourg is extremely reluctant to move away from drug trafficking because of course financial services is very important to Luxembourg whereas for somebody else it might be less important and therefore attacking crime is a higher political priority than encouraging investment in the financial services industry. We certainly have the peculiar situation which is the way that the UK has done it. I will explain when we come to the amendment that it need not be a crime in the place where it happens, that is to say when we are talking about the proceeds of crime to us it seems more reasonable to say the crime has to be committed somewhere for the money to be laundered. But if someone is doing something that is legal somewhere why should he then be told it may be legal there but it is not legal here so here we consider it to be money laundering because if he had done the same act here then it would be a crime here. This is why I have mentioned we have put the case to the United Kingdom and they have accepted that we need, particularly in the fiscal area, to review the positions that we are sure that things are considered to be minor offences elsewhere and not considered to be indictable offences in our law because it is not being looked at as an important issue in the past.

We then find that somebody innocently handles money which is perhaps avoiding tax somewhere else and might be avoiding it there and evading it here and therefore technically without wanting to they have committed an offence and that is something we want to deal with before this becomes laws. So we will be working on that in order to bring legislation very soon so that is ring fenced before this is law.

I also want to make clear that the alleged imposition of direct rule which is the alleged constitutional crisis which is what I have said repeatedly we would fight every inch of the way if it materialised - that continues to be the position of the Government of Gibraltar - it has always been in response to allegations in the press that such a programme of action was under consideration. All I can say is that it has never once in all the meetings been something that I have been threatened with, ever, and all I can say is that Douglas Hurd in Madrid, sitting next to Senor Solana said, "The Gibraltar Constitution of 1969 does not allow the British Government to give instructions to the Chief Minister of Gibraltar. We have to persuade him and carry him with us" and that was said in Madrid post this particular meeting which led to Douglas Hurd asking me to reconsider our position on the law. Now, the fact that he says that publicly, I am afraid, does not mean that some other people might be thinking something privately or even if they are not thinking they are choosing to tell the press that they are thinking it and therefore we cannot ignore and we have not ignored it and we have made it clear that if that is a signal that is being sent out then we send a signal back. That is the way it is going to continue if the signals keep on coming. Nevertheless, it is not that we want to go down that route and as far as I am concerned the UK position is that within the 1969 Constitution their interpretation of what is foreign affairs and what is not foreign affairs, particularly post 1993, is that what was previously and clearly within the province of the elected Government of Gibraltar is now, at the very least, in what is identified in the Constitution as a grey area which is where it has aspects which are domestic and aspects which are foreign affairs. They have got a point because if we until 1992 gave somebody a licence to have a bank in Gibraltar, although the UK would want the bank to be properly regulated and properly controlled and not used for money laundering and all the rest of it, at the end of the day the bank could not move out of Gibraltar and if it wanted to move it needed to satisfy each country that it went to all over again like a new bank. Their position is the fact that the bank since 1993 under Community law no longer is subject to those controls and it means that the control in the

home jurisdiction has got to be considerably increased and since if a bank from Gibraltar starts travelling in Europe or doing business with Europeans or an insurance company starts writing policies, if it goes wrong, like it happened with Barlow Clowes in 1987, then we finish up picking the bill like we had to do in 1987 with Barlow Clowes. In 1987 we finished up accepting the argument of the Gibraltar Government in 1988 and 1989 that we had no choice but to pick up the bill because in fact we accepted Barlow Clowes in Gibraltar on a licence that they gave them in the UK. If there was any passporting it was passporting from the UK to Gibraltar but if we have got the ability now to issue financial services passports then the UK argument is this now transcends our national frontiers and if something goes badly wrong then they are held to answer for it by Community partners. Nobody is going to say, "What is the Gibraltar Government doing about it?" They are going to say, "What is the British Government doing about it?" Therefore we have now got a locus standi in this matter which we did not have before. It is not an argument that is devoid of merit. The point is that if we do not find a balance and that is what we have been trying to find since 1992 and we have not yet succeeded, but I hope we will succeed, if we do not find a balance then we can finish up - and that is a point we have been making since the 1992 election - with a situation that in order to protect themselves they go to such an extent to be absolutely 100 per cent safe that effectively there is nothing left for us to do here and to some extent this is correct of this legislation. If we have got a situation where we are going to negotiate with the United Kingdom the text of the laws that apply Community obligations or apply things in Gibraltar which have implications in external affairs and that is the position that we are in, effectively we cannot be toing and froing. That is to say, we cannot say we bring a Bill to the House, we listen to the views that are put here, we will get amendments, then we will go back, we will see if the UK will accept the amendments that we have got, if they say no then we will go back, we see..... It is an impossible situation. So at the end of the day we have to take the responsibility for the Government of saying we have to have the negotiations with the United Kingdom and what we finish up with is what we will use our majority and deliver in Gibraltar in exchange for the UK delivering something else for us which still has to materialise. Even now, and even after this I do not think that we are going to see the Treasury in the United Kingdom satisfied that they can now give the seal of approval to the Gibraltar financial services industry which will enable that industry, I think, to develop what is in the judgement of the Government a very considerable potential but that

considerable potential is only in the European Union and if they do not even allow us access into the UK market I do not see how they can persuade the French, the Germans or anybody else to allow us into their market because the example that they are satisfied in my view will be when they actually deliver by amending UK law. We were promised that in 1994 on the basis that they would monitor the system here but they have only appointed people to the Commission a few weeks ago and those are the people presumably who are going to be doing the monitoring and reporting back. There is no knowing how long it will take. In the meantime, the reality of it is that the more legislation that we bring into this area and the more we raise the controls and the standards and the requirements to UK levels the less of the historical, traditional, bread and butter company registry business we are going to be able to do, in our judgement, because that is the business that will flow to less over-regulated places which are outside the European Union and which do not have to comply with those requirements. So it seems to me that one important element which either they do not understand or they do not care is that we run the risk of losing one type of business without, at the same rate, gaining the other type of business simultaneously and that in between the two we could have a situation where the potential is in the future but the disadvantages are in the present. But there is no choice. That is a condition that they say is necessary for us to be able to achieve the penetration of the European Community markets by competing from Gibraltar that we believe we are entitled to, have been entitled to since 1973 and could bring a new level of business to Gibraltar but we have to put the things in place first and wait for the business afterwards. That is the only methodology that is acceptable to the United Kingdom Government and as far as they are concerned that is the way they do it there and that is the way they expect us to do it here and if other people do not do it there other people are not British territories and not responsible for them. We cannot argue that in Italy it is not done like that or in France it is not done like that. The UK view is that they think that is the proper way to do things in London and they expect us to think the same in Gibraltar subject to discussing the odd point of detail here or there or when it starts or when it does not start and that is the only margin, as far as they are concerned, that we have or alternately we ought to have been thinking of leaving the European Union which I think is just no alternative.

HON ATTORNEY-GENERAL:

Mr Speaker, I commend the Bill to the House.

Question put. The House voted:

For the Ayes:	The Hon J L Baldachino
	The Hon J Bossano
	The Hon M A Feetham
	The Hon R Mor
	The Hon J L Moss
	The Hon J C Perez
	The Hon J E Pilcher
	The Hon Miss K M Dawson
	The Hon B Traynor
	The Hon P Cumming

Abstained:	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon H Corby
	The Hon M Ramagge
	The Hon F Vasquez

The Bill was read a second time.

HON ATTORNEY-GENERAL:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

#### COMMITTEE STAGE

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the Criminal Justice Bill 1995, clause by clause.

THE CRIMINAL JUSTICE BILL 1995

The Long Title



HON CHIEF MINISTER:

The Leader of the Opposition has suggested an amendment to the explanatory paragraph at the start of the Ordinance to make sure that it is not possible subsequently for people to argue that prior to this we had not transposed Directive 91/308, and we think it is a good idea, and we are willing to accept it, and therefore I am moving the deletion of the words "transpose into the national law of Gibraltar Council Directive 91/308/EEC" and the replacement of the words "transfer the existing transposition of Council Directive 91/308/EEC from the subsidiary to the primary law of Gibraltar". I would say "from the subsidiary to the primary national law of Gibraltar".

HON P R CARUANA:

Mr Speaker, we support that amendment.

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

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

Clause 2

HON CHIEF MINISTER:

Mr Chairman, I beg to move in Clause 2(7) the deletion of the definition for "criminal conduct" contained therein and the substitution of a definition which says -

""criminal conduct" means conduct which -

- (a) if it occurs in Gibraltar constitutes an indictable offence other than a drug trafficking offence; or
- (b) if it does not occur in Gibraltar would constitute such an indictable offence if it had occurred;". \*

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\* The written notice given by the mover to the Chairman included the words "in Gibraltar" after the word "occurred". These words were inadvertently omitted by the mover when he proposed the amendment.

I will be moving a compensating amendment to Clause 6 which will introduce the definition of criminal conduct which is now in Part I in Part III and that is because in the United Kingdom where we have seen that they have got a different definition they have one definition for the Part that affects the actual administration and another definition for the Part that affects the definition for what constitutes the proceeds of criminal conduct and it being an indictable offence. Following the discussions we had with UK they accepted that we would be able to retain this definition but that it should be properly, in their view, in Part III and not in Part I.

HON P R CARUANA:

Mr Chairman, the Government Members can take it by themselves because certainly we have not seen any such amendment in writing. It is all very well for the Chief Minister to read it to me but I cannot here and now digest it and consider what its consequences, if any, might be. I have not seen anything in print and this is not a proper manner in which to propose amendments to the Bill. Certainly, the House can consider it but it will have to be all by themselves, that is, the Government Members. I express no view one way or the other, I do not know what Mr Chairman is asking me to express favour or antipathy to. I cannot comment on matters of which I am not aware and I am telling Mr Chairman that I am not aware of what this amendment is. I am not commenting on this amendment one way or the other.

HON P CUMMING:

Mr Chairman, I would like to be able to vote in favour all down the line but it just occurs to me, does this change the fact that if it is an offence in another country that becomes criminal conduct for the purposes of this law? Is that still part of the law in spite of this amendment, that is what I would like to know?

HON CHIEF MINISTER:

Mr Chairman, the Bill provides that for the money to be the proceeds of crime somebody must have committed a crime in the place where the act took place. That seemed to us to be the logical way to go about it. The UK has not done it like that. The UK has done it on the basis that if one commits a crime in Spain, given that we are in this part of the world, for the sake of illustration, and the thing that one has done in Spain is not a crime in Gibraltar then getting rid of the money in

Gibraltar is not dealing with the proceeds of crime. However, if one does something in Spain which is not a crime in Spain but would have been a crime in Gibraltar, had it been done in Gibraltar and not in Spain, then getting rid of the money will be money laundering in Gibraltar though clearly not money laundering in Spain. So the effect of this is that, as I tried to explain earlier on in the general principles, there will be a considerable range of profit generating activities which will produce money which can be legally laundered in Spain but would be illegal in Gibraltar.

HON P CUMMING:

The question of the tobacco launches, does that change the position as described in the press? It seems to open, because it is not a crime here therefore this seems to change what has been advertised in the press about the proceeds of tobacco smuggling.

HON CHIEF MINISTER:

Mr Chairman, I cannot help if the hon Member cannot understand what the law says because it is a fairly simple English language sentence. If it is something that had it been done in Gibraltar would have been a crime then it is an offence. All I can say is that this is what the UK would like us to do so whatever the effect may be it must be something that will please them.

Question put. The House voted:

For the Ayes:	The Hon J L Baldachino
	The Hon J Bossano
	The Hon M A Feetham
	The Hon R Mor
	The Hon J L Moss
	The Hon J C Perez
	The Hon J E Pilcher
	The Hon Miss K M Dawson
	The Hon B Traynor

Abstained:	The Hon P Cumming
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Clause 2, as amended, stood part of the Bill.

HON P R CARUANA:

Mr Chairman, as far as it concerns the Opposition you can take the Committee Stage of the Bill in whatever way it suits the Government. You can go straight to the clauses where they have amendments. We do not want to consider the Bill on a clause by clause basis.

Clauses 3 to 5 were agreed to and stood part of the Bill.

Clause 6

HON ATTORNEY-GENERAL:

Mr Chairman, the amendments to Clause 6 are being introduced purely as refining the definitions -

(a) Before the definition of Banking Supervisor" insert:-

""the Authority" has the same meaning as in the Financial Services Ordinance 1989;"

(b) Before the definition of "Customs Officer" insert:-

""Commissioner of Banking" means the person appointed in accordance with Section 12 of the Banking Ordinance 1992;

"Commissioner of Insurance" means the person appointed in accordance with Section 7 of the Insurance Companies Ordinance 1987;" and

(c) Before the definition of "the Money Laundering Directive" the insertion of -

""Insurance Supervisor" means the person appointed in accordance with Section 8 of the Insurance Companies Ordinance 1987".

HON P R CARUANA:

Mr Chairman, please take note for the record that all these amendments fall into the category which I described earlier. We have not seen them. We have not had an opportunity to consider them and therefore we are just not participating. I do not want Mr Chairman to sing "Stands part of

the Bill" even with our abstention. We are simply not participating in the process of the consideration by this Committee of these amendments.

MR CHAIRMAN:

That will appear in the Hansard but as far as the voting is concerned you are abstaining.

HON P R CARUANA:

The majority is a Government majority.

HON CHIEF MINISTER:

I beg to move that after Clause 6(3) a new Clause 6(4) be inserted reading as follows -

"(4) The reference in subsection (3) above to doing any act which constitutes an offence under Sections 2, 3 or 4 of this Ordinance shall, for the purposes of this part of this Ordinance, be construed as a reference to doing any act which would constitute an offence under those sections if, for the definition of "criminal conduct" in Section 2(7) of this Ordinance, there were substituted -

"criminal conduct" means conduct which -

- (a) if it occurs in Gibraltar constitutes an indictable offence other than a drug trafficking offence; or
- (b) if it does not occur in Gibraltar -
  - (i) would constitute such an offence if it had occurred in Gibraltar, and
  - (ii) contravenes the law of the country in which it occurs;"

Therefore what we are now doing is transposing the definition that was deleted from section 2(7) and introducing it as applying to Part III as opposed to Part I of the Ordinance. Renumber old sub-clauses (4) and (5) as (5) and (6) respectively.

Clause 6, as amended, was agreed to and stood part of the Bill.

Clauses 7 to 12 were agreed to and stood part of the Bill.

Clause 13

HON ATTORNEY-GENERAL:

Mr Chairman, I beg to move an amendment to Clause 13 again refining definitions. Clause 13(6)(a) should be amended as follows -

- (a) a new sub-paragraph (i) should be added in the following terms:
  - "(i) a function of the Authority appointed under Section 2(1) of the Financial Services Ordinance 1989."
- (b) the existing sub-paragraphs (i), (ii), (iii) and (iv) should be renumbered (ii), (iii), (iv) and (v) respectively; and
- (c) Clause 13(6)(iv) (as renumbered) should be amended as follows:
  - "a function of the Commissioner of Insurance or the Insurance Supervisor under the Insurance Companies Ordinance 1987, or".

Clause 13, as amended, was agreed to and stood part of the Bill.

Clauses 14 to 16 were agreed to and stood part of the Bill.

Clause 17

HON ATTORNEY-GENERAL:

Mr Chairman, I beg to move an amendment to Clause 17(2). For the reference to "Regulation 9(1)" substitute "section 9(1)".

Clause 17, as amended, was agreed to and stood part of the Bill.

Clause 18 was agreed to and stood part of the Bill.

Clause 19

HON ATTORNEY-GENERAL:

Mr Chairman, I beg to move an amendment to Clause 19. After Clause 19(2)(c) and (d) be deleted and replaced with the following -

- "(c) the Authority appointed under Clause 2(1) of the Financial Services Ordinance 1989;
- (d) the Commissioner of Banking and the Banking Supervisor;
- (e) the Commissioner of Insurance and the Insurance Supervisor."

Clause 19, as amended, was agreed to and stood part of the Bill.

Clauses 20 to 44 were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Criminal Justice Bill 1995 has been considered in Committee and agreed to, with amendments, and I now move that it be read a third time and passed.

Question put. Agreed to.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Friday 21 July 1995 at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 12.40 pm on Friday 7 July 1995.

FRIDAY 21 JULY 1995

The House resumed at 11.03 am.

PRESENT:

Mr Speaker ..... (In the Chair)  
(The Hon Col R J Peliza OBE, ED)

GOVERNMENT:

The Hon J Bossano - Chief Minister  
The Hon J E Pilcher - Minister for the Environment and Tourism  
The Hon J L Baldachino - Minister for Employment and Training  
The Hon M A Feetham - Minister for Trade and Industry  
The Hon J C Perez - Minister for Government Services  
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport  
The Hon R Mor - Minister for Social Services  
The Hon Miss K M Dawson - Attorney-General  
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition  
The Hon Lt-Col E M Britto OBE, ED  
The Hon F Vasquez  
The Hon H Corby  
The Hon M Ramagge

The Hon P Cumming

ABSENT:

The Hon J L Moss - Minister for Education, Culture and Youth Affairs  
The Hon L H Francis

IN ATTENDANCE:

D J Reyes Esq - Clerk to the Assembly (Acting)

MR SPEAKER:

I regret the delay in starting the business due to the Chief Minister having been held back in his office with important Government business. Because of the deadly heat I think we do not want a bye-election, hon Members who wish to remove their jackets may do so.

DOCUMENTS LAID

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of the document on the table.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to lay on the table Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (No. 12 of 1994/95).

Ordered to lie.

## BILLS

### FIRST AND SECOND READINGS

HON ATTORNEY-GENERAL:

I beg to move under Standing Order 7(3) to suspend standing Order 7(1) in order to proceed with the first and second readings of a Bill.

Question put. Agreed to.

THE IMMIGRATION CONTROL (AMENDMENT) ORDINANCE 1995

HON ATTORNEY-GENERAL:

I have the honour to move that a Bill for an Ordinance to amend the Immigration Control Ordinance in respect of the duration of and the terms and conditions which may attach to a permit of residence be read a first time.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

I have the honour to move that the Bill be now read a second time. On the general principles of the Bill as hon Members will see from the text all that the Bill does is it replaces the existing provisions on the granting of residence permits to include the administrative practice. At the moment on a residence permit of under one year, the law limits the ability of the Principal Immigration Officer to have to give permits in multiples of either two days, even days, one month, three months and so forth. This often means that people get permits for periods which do not coincide with their need to be present in Gibraltar and creates unnecessary administrative work. The new provisions simply modernise the system to the extent that the permits can be given for a year or any number of days under a year at the discretion of the Principal Immigration Officer and advantage is being taken of the change being brought in at this stage to make provision for a system similar to the one that exists in the United Kingdom where the permits can be in the form of a stamp on a passport which can include provisos as to the conditions that are attached as has been the case in the UK immigration service for many, many years. I commend the Bill to the House.

MR SPEAKER:

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

HON P R CARUANA:

Mr Speaker, I hear what the Attorney-General has said about what appears to her this Bill achieves. Neither the Explanatory Memorandum attached to the Bill nor, indeed, the Attorney-General's explanation explains what, if anything the underlying policy decision of the Government is and why it is considered necessary to introduce these measures. For example, as I read the Bill and perhaps explanations to the contrary will come from the Government Members, one of the things that the Bill does is to repeal sub-section 18(3). Sub-section 18(3) is the one that says that a residence permit to somebody who is not a defined Community national can only be given if he has an employment permit. That is repealed and the effect of that is to eliminate the need for a work permit when issuing residence permits for under a year. The people in

this category are non-members of the European Union plus the United Kingdom who are excluded from the definition of Community nationals for the purposes of the Immigration Ordinance. Therefore, that repeals sub-section (3) and is replaced by one that says that a mandatory condition about having to have a work permit before someone can get to a residence permit. It is replaced by something which is entirely permissive. In other words, the Principal Immigration Officer may issue visas to which he may attach conditions and the conditions which may be specified in such a permit may be related to employment or may be such other things as he pleases. In other words, this is not just administrative housekeeping. This is not just relieving the Principal Immigration Officer of the inconvenience of only being able to give a visa in multiple of two weeks when somebody asks him for one of three weeks and he scratches his head and says, "Oh, dear, here is somebody who wants a visa for three weeks, and I can only give it to him for two or for four, what a terrible crisis". Therefore, this Bill goes considerably beyond that and if that is the effect of this Bill and it may well be, I express no comment at this stage as to its relative merits or demerits of that degree of liberalisation of the immigration policy currently in the Immigration Control Ordinance, but certainly I think that there ought to be a much fuller explanation of the effect of legislation. If an explanation is going to be given at all I think the explanation ought to be as complete as possible and certainly we would welcome hearing what the underlying policy is in respect of that amendment. We will reserve our position in relation to this Bill until we hear that explanation from the Government Members.

HON CHIEF MINISTER:

Mr Speaker, the Bill does two things. First of all, it removes the restriction that there is in the existing law which goes back to the days when people had to be out of Gibraltar before sunset, which in fact is not being observed and it would be ridiculous if we get a million people coming into Gibraltar and if they stay for two days they all have to queue up and get a two-day residence permit. The fact that the law has been like that for many years and has not been observed for many years does not mean that we do not get round to putting it up to date. Residence permits, and we are not talking about visas because visas is not included in the list of defined domestic matters but residence permits are and this is the issuing of a permit of residence, what we have done is to say rather than have a position when the law says the residence permit has to be for either two days or seven days but it cannot be for three, four, five or six, we say it can be for any number of

days up to 365. Rather than says someone cannot get a one year permit unless he has got a work permit and we have had specific instances of people who have had some connection with Gibraltar and who are caught by a mandatory definition which leaves the Principal Immigration Officer no flexibility whatsoever, what we have done is follow what is the normal practice everywhere else which is that in fact somebody that comes to Gibraltar can get a stamp put on the passport saying, "Allowed to stay in Gibraltar provided they do not take up any economic activity or provided they do not work or provided they work only in a particular thing". The answer is we believe that the Principal Immigration Officer in implementing the policy of the Government and implementing the law should have the framework which gives him the ability to attach the conditions that he considers to be necessary to achieve the desired results without being constrained in saying to somebody, "You cannot get a one-year permit because I am not allowed to give you a one-year permit because you have not got a work permit but you can have four three-months permits over the year and come four times and for that you do not need a work permit". I do not know what the logic was of the original thing but certainly what we know is that from experience of dealing with people who sometimes make representations to us, sometimes make representations to Opposition Members that bring it to us is that when we have gone back and said, "Why is it that there are specific instances of people who seem to have sensible arguments and yet they are finding lots of obstacles?" The answer is because the law only allows me to say yes or not or to do (a) or (b). We know that there have been instances where people have had to effectively invent a job and get a work permit in order to be able to get a one-year residence permit. We do not want that to continue to happen and we do not see a need for it and frankly in terms of the specific instances that I am talking about - we are not talking about more than half a dozen in one year - but we believe that by having the provisions in the law put as they have been put we can monitor the situation and if we feel that by making it more flexible we are creating an influx of people and creating problems for ourselves then we will review it. I will give way.

HON P R CARUANA:

Mr Speaker, that is precisely the point that I was driving at, that in effect, we are uncoupling the employment requirement from the renewable residence permit requirement. Because, of course, this is for a year. It raises questions about whether it has got to be a year minus 10 minutes in order not to trigger other rights of the holder but still, what we have here is a situation where somebody can now be given a 12



month permit renewable continuously and that that facility is available as a result of this Bill for the first time unconnected from the need for that person to have an employment permit. This is the indication that I want from the Government Members, whether I hear what the Chief Minister has said about half a dozen a year but I mean once the administrative machinery exists it will be used on as many occasions as the Principal Immigration Officer applying the Government's policy chooses. In effect, is this the way in for what we might call financial immigration? In other words, is this part of a policy now to attract to Gibraltar more high net worth resident individuals which, of course, is a policy that the Government have floated before in terms of expansion of the population and in terms of using some of the infrastructure that is being created? Really it would be helpful if the Chief Minister would indicate whether this is part of that jigsaw. In other words, this is the part that needs to be changed in the Immigration Ordinance to facilitate that policy implementation.

HON CHIEF MINISTER:

No, Mr Speaker, most of the people who come in under the high net worth individual (and this applies whether they are Community nationals or not, by the way) or people who are not coming in to work have to be able to satisfy the Principal Immigration Officer that they have things like private medical insurance and a private income which does not create a burden on our social services and that is contained in the general rights of residence under the Directive in Community law and in the provisions, for example, for retired persons and in the provision for, say, students. So unless someone is coming here because he is setting up a business or he is in fact taking up employment, the provisions already in Community law and in other sections of the Ordinance allow different criteria to be applied and normally if it is a question of somebody taking up residence in Gibraltar on the basis of not taking up employment but effectively making a contribution to the economy of Gibraltar which is a net contribution, then that is done under section 19(c) of the Immigration Ordinance which is what we introduced at the time the concept was envisaged. I think of the 40-odd people who have come in they have all come in under section 19(c). What we found here was that because one could not get a residence permit for one year without having a work permit, one particular instance that highlighted a deficiency in that necessity recently was a case of somebody who had a Gibraltar connection, who had been away from Gibraltar for a very long time, who then coming back to Gibraltar with small children, a single parent, not being able to work and there was no way in. They were not

high net worth, they were not Gibraltarian by birth, so it is obvious that whatever law we do there can always be situations which the law was not intended to prevent but the wording and the drafting of the law has an unintended effect. We believe that by making the law capable of having the conditions attached that are necessary, the flexibility exists in the Immigration Ordinance to Gibraltar which is the normal thing elsewhere. That is to say, it is not the case in other countries' immigration laws that the immigration officer is given no discretion and that he either has to say, "Either you have a work permit or I cannot give you a residence permit for 365 days". We have got people here for many years and have never had more than three months permits at any one time because there is nothing else that can be done. I will give way.

HON P R CARUANA:

I thank the Chief Minister for giving way again, but I understand all that but the point is that we are moving from a situation in which the Principal Immigration Officer has no discretion, unless someone has a work permit he cannot get a residence permit for a year, into one in which there is total discretion, unbridled discretion because he can impose whatever conditions, if any, he likes and that means whatever conditions, if any, from time to time the Government decide in accordance with that policy. So we move from a situation in which there is no discretion and the laws says who is entitled to come to Gibraltar and who is not to a situation in which the law says everyone can come and live in Gibraltar for up to a year that in effect the Government decide. There is no longer a blueprint in the law of who is entitled to come to Gibraltar and who is not. In other words, we have swung the pendulum completely from one of no discretion to one of unbridled discretion on the part of public administration. No one looking at this law thinking of applying for a one year's permit knows what it is he has got to comply with. There is now no published rules or guidelines that say, "If you need this, you can come and if you do not need that, you cannot". That is the great philosophical change.

HON CHIEF MINISTER:

No, I am afraid he is wrong, Mr Speaker, because this does not do anything to give anybody unbridled rights to come here and the law does not say, "If you have a work permit you shall get a residence permit". The law says, "If you do not have the work permit you shall not get work". That is what the law says. At the moment the Principal Immigration Officer cannot give a residence permit to someone who



does not have a work permit but does not have to give it to somebody who has. The work permit is not a pre-condition, it is a necessary second criteria. If the Principal Immigration Officer wants to give somebody a one-year permit he is not allowed to do it even though the person may have an overwhelming case. The answer has to be, "No, unless you go and fabricate a work permit and come back with a work permit". But if someone turns up with a work permit today he can still say no, for some other reason. So he is not obliged to give anybody one. So it is not to say that now somebody can look at the law and say, "Ah, if I get a work permit I am guaranteed a residence permit". That is not the case. What he can look at the law now and say is, "If I do not have a work permit, I am guaranteed refusal and if I am guaranteed refusal what I will now have to do is go and look for somebody, see if I can persuade him to give me a contract, real or artificial, go and persuade the ETB that there is no available local employment, get a work permit" and even after he does that he can still be told no, today. So there is as much discretion to say no in the law before the change as after the change. There is no discretion to say yes at the moment and we are creating the discretion to say yes because that makes more sense and it is the way other people do it and the fact that it has not been done before is because this has not been highlighted and brought to our attention until there was a very clear case which demonstrated to us that the law which has been there since the year dot, like there are many other laws in Gibraltar, needed bringing it to a more sensible way of doing things but it does not open the door for all and sundry to come in and the Principal Immigration Officer is forced to give permits or not forced to give permits. It really does not more than what I have said.

HON ATTORNEY-GENERAL:

I have nothing further to add.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

## COMMITTEE STAGE

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the Immigration Control (Amendment) Bill, 1995, clause by clause.

THE IMMIGRATION CONTROL (AMENDMENT) BILL 1995

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.

## THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Immigration Control (Amendment) Bill 1995, has been considered in Committee and agreed to, without amendment, and I now move that it be read a third time and passed.

Question put. Agreed to.

## PRIVATE MEMBERS' MOTIONS

HON LT-COL E M BRITTO:

Mr Speaker, I have the honour to propose a motion standing in my name which reads: "This House declares its profound anxiety at the deepening economic and employment crisis".

Mr Speaker, you will no doubt recollect that at the beginning of this meeting of the House the Opposition brought an emergency motion on the subject of the 51 Directives on which we were asking for further explanation and details from the Government and that despite this motion we were not satisfied at the position taken by the Government in not providing that information. As a result of that you will no doubt remember, Mr Speaker, that the Opposition walked out of the House as a sign of protest and as a consequence of that walkout some Opposition Members were not able to deliver the speeches on what is normally known as the budget session, that we had intended to give but we did

give the House and the public in Gibraltar an undertaking at that point that we would be making those contributions at an appropriate later stage. That, Mr Speaker, is the reason why the present motion is couched in such wide terms, so those Opposition Members can have an opportunity to make those contributions. Because of that, Mr Speaker, my own contribution is going to be much narrower than would normally be expected in terms of the motion that I am proposing. It is going to be in fact concentrated on that aspect of business for which I bear responsibility. In other words, for tourism, inasmuch as we understand that the broader subject has already been covered by the Leader of the Opposition in his own contribution at the beginning of this meeting and other subjects like the employment aspect of it will be covered by my hon Colleague Mr Freddie Vasquez.

As I say, Mr Speaker, I will be concentrating on tourism itself and particularly on the Government's failure of its tourism policy or lack of policy as I will show and the consequent effects on the economic situation and the employment situation in Gibraltar. I will do so in broad terms by looking at the potential for growth in world tourism, by examining the Government's commitment to tourism and by proving from the statistics provided by the Government Statistics Office itself how the situation in Gibraltar has been declining roughly since the late 1980s, beginning of 1990s, since in fact this Government came into power in 1988. I will touch on briefly on the reasons for those failures in the conclusion of my contribution to this motion. No less body than the World's Travel Tourism Council itself has produced in its report and suggested that travel and tourism have become, in fact, by now the world's largest single industry. The report by the World Travel Tourism Council suggests that travel and tourism will continue to expand faster than the economy as a whole and faster than comparable industries world-wide. In fact, independent forecasts support that growth strength and predict that by the year 2005 there will be as much as a 33.33 per cent increase in jobs world-wide. There will be a 100 per cent increase in capital investment and there will be twice as much consumer spending and there will be almost two times as much gross output as there is currently. Those are dramatic figures and dramatic predictions indeed by a world body and they provide as a background to a situation where tourism is expanding and increasing world-wide whereas in fact, as I will shortly show, the position in Gibraltar is diametrically the opposite and that we are in a diminishing phase because of the failures of this Government's policies or lack of policies and consequently the negative effect on our economy. But the GSLP when it came into Government told us that for them tourism was a target for improvement.

It said in its manifesto in 1988 that the GSLP "was committed to having a sector", and I am quoting from the GSLP manifesto, "was committed to having a sector that is compact, successful and has a place in the market". It said that this must be done in conjunction with the professionals and as a part and parcel of the study to be developed in their much wanted Gibraltar economic plan. It went on to promise that the Government would co-ordinate their own efforts with those of the private sector in order to achieve maximum results from the promotion efforts in terms of growth in the tourism industry. Mr Speaker, in their subsequent manifesto in the following election in 1992, the optimism of the Government was much more dim and much less obvious but it still went on to say that it would ensure that the maximum impact was achieved from the sums that Gibraltar would be able to devote to this activity. However, the contrary has been the case.

In terms of tourist expenditure, according to the latest Government figures provided by the Government's Statistics Office (the Tourist Survey 1993) we have in fact a situation where, excepting day excursionists from Spain, which I am excluding because, in fact, the footnote to the statistic itself says that the expenditure in respect of excursionists from Spain for 1992/93 had to be treated with a certain caution given the small sample of the annual tourist survey. So with the exception of those day excursionists, in 1993 visitors to Gibraltar were spending less than they were spending in 1988. Up to 1988 there had been a growth trend. In 1988 that growth trend had increased to £17.66 million, the figures given by the Government for 1993 are down to £16.65 million. There is a declining trend overall in this expenditure since 1990.

In terms of the hotel occupancy figures, if I can refer once again to the Hotel Occupancy Survey for 1993, and specifically in terms of arrivals in our hotels, once again there is a declining trend since 1988. Arrivals in our hotels in 1988 were of the order of 65,000 a year. In 1993 those had decreased to 39,000. In terms of sleeper nights there were 286,000 in our hotels sold in 1988 and these have now decreased to 157,000 by 1993. Once again a declining trend and, of course, as we all know in that period three hotels have closed, the Gibraltar Beach Hotel, the Montarik Hotel and the Sunrise Hotel.

In terms of visitor arrivals, once again the figures show the total disaster created in local tourism since this Government came into power. Quoting this time from the Abstract of Statistics provided by the Government Statistics Office for 1993 - the latest figures available - the

visitors by air which peaked in 1989 to 162,000 are by 1993 just under half that figure. The figure for 1993 is just over 80,000, half of what it was in 1989, just after this Government came into power. By sea and by land the figures are holding more or less steady although again by sea there is a slight declining trend. So, on the figures available, the Government's policy on tourism has shown itself to be not only a failure but to be turning tourism into a diminishing market with its consequent negative effect on the economy as a whole and on employment in general. It is, as I said at the beginning, a world market that is increasing everywhere else whereas we in Gibraltar are in reverse mode. The irony of the situation is that I believe that the three main sectors for the failure of this policy were all identified by the Government Members when they were in opposition up to 1987 before they came into Government.

The failures are, firstly, that they are paying lip service to tourism, despite what they promised in the manifesto, the little that they said, that they have quite simply no policy on tourism and that is why they are failing and this is what they blamed the previous Government for. The second failure is that they are providing inadequate financing and marketing in tourism. If one looks at the figures that can be proved as well. The third area in which they are going wrong although they themselves complained about it in opposition is that they have poor consultation and co-ordination with the private sector, something which the private sector bitterly complains about continuously.

On that note and in conclusion, I think the best proof of that feeling generally is to give the opinions of the people who count. The people at the sharp end. The people in the businesses, in the hotel sector, in the retail sector and in the restaurants and to quote from the recent Trading Conditions Survey published just a month ago where 87 per cent of those who responded to that survey were critical of the Government's tourism policy and considered it inadequate. Remember, Mr Speaker, that the people who responded to that survey employ something of the order of 18 per cent of the total labour force in Gibraltar. In that report which I quote now, the Chamber of Commerce say, "There is a clear dissatisfaction with existing tourism policy. It is clear that a major policy review is required. Gibraltar has always had a great potential for a viable tourist industry but has not managed to fulfil this promise. However, the right combination of product development and professional marketing needs to be found". Obviously, Mr Speaker, this Government has not found it. I commend the motion to the House.

HON CHIEF MINISTER:

Mr Speaker, if you will allow me to say something by way of clarification now that we have discovered what it is the motion is about which is not what it appears to be about, let me say that of course in looking at this motion we had assumed that it was a motion about unemployment because there is nothing to indicate even though the hon Member said that it was very widely drawn, all it says is that anxiety on the Opposition benches, that there is an unemployment crisis and we were waiting to discover what it was that led the hon Member to believe that there was an unemployment crisis, which we have not heard. It is obvious after his opening remarks that this is the budget estimate speech that he would have made had he not chosen to walk out. I do not think it gives him the right to make it under some other guise because he chose not to be here when he should have made it but nevertheless if that is what they want then we will try and accommodate it and notwithstanding the fact that we have not anticipated this we will try and give the Opposition Members the answers that they are looking for.

HON P R CARUANA:

Mr Speaker, on a point of order, if the Chief Minister had not anticipated that it is because he does not read the local press. We published this motion, it was published in the company of a press release that stated precisely that this motion was in order to deliver the budget speeches. So clearly he ought to inform himself a little better. The motion speaks about a deepening economic and employment crisis. The employment aspect will be delivered by the spokesman for employment, my hon Friend, Mr Vasquez, and surely the Chief Minister is not now so detached that he does not know how to link the lack of Government's ability to exploit Gibraltar's tourist potential to the economic and employment crisis Gibraltar is now engulfed.

HON CHIEF MINISTER:

Mr Speaker, I do not expect to have to read the press to find out that the motion is intended to say something that it does not say. So far the hon Member has not given one single statistic of the increased unemployment even in the tourist industry which is what the text of the motion is but nevertheless if they want to make their little speeches we will listen to them, we will destroy them as we do every other year and then we will deal with the motion eventually.

MR SPEAKER:

On the motion itself, there is a ruling I am going to pass. Of course that whatever hon Members say on the motion, it must be relevant to employment and if it is not relevant to employment that will be out of order. *[Interruption]* Exactly. Employment and economic crisis. That is the motion and speakers will direct themselves to those principles and none other.

HON J E PILCHER:

Mr Speaker, as the Chief Minister has said, I will try to answer the points made by the Hon Col Britto although we felt that this was going to be the effect of unemployment on the economic activities of Gibraltar. Let me just reassess what the Chief Minister says that although the Hon Col Britto has brought out some statistics on the movements, tourist arrivals in Gibraltar, passenger arrivals at the airport, etc he has not produced any figures of employment in the tourist industry because he knows well that the employment in the tourist industry has increased between 1988 to date; substantially as my hon Colleague, if he speaks to the motion on employment at one stage, will prove. There is, however, clearly a deepening crisis on the overnight market, Mr Speaker. Therefore, the tourist industry in general does not only reflect the employment in hotels, it reflects the employment in restaurants, the employment in cafeterias, the employment at tourist sites, the employment on infrastructure and therefore in general the fact that we have a substantial amount of day visitors has increased a substantial expansion of the tourism industry in Gibraltar. It is not true to say that there has been a decrease in the tourism industry but rather that there has been a decrease in the overnight market of the tourist industry.

Let me start off by saying that the hon Member cannot take us back to 1988, read through the report very briefly which he has done, by the way, between 1988 to date and discards, without even a mention, all the debate, all the discussions we have had here since 1988 to date with major problems of world recession, major problems of the Gulf War, major problems to small islands, that we have discussed here ad nauseam over the last seven years now. Let me point out two things which I think will clearly point to the problem that we are facing in Gibraltar, which I have mentioned before. When I came back about two years ago, having visited a tourism conference in Bermuda, I advised hon Members that one of the things of the conference had been the tremendous problems that small islands had in relation to the overnight

market with the major expansion that there was in tourism world-wide when we were talking about major areas of the United States, major areas of China and major areas in the world, all competing for tourism, with much greater national budgets, with much greater impetus of national carriers and that linked with the major expansion in the communications network across the globe meant that one could probably go from London to Orlando cheaper than one could go from London to Gibraltar or London to Jersey or London to the Isle of Man or London to Guernsey. I think the facts, if they are cared to be checked by the Hon Member, are true.

Mr Speaker, last Monday I had the chance to meet up an old acquaintance of mine who I had met in Barbados, in the Commonwealth Parliamentary Conference, Tony Brown, who is now the Minister of Tourism of the Isle of Man who was at the time, I believe, Sports and Leisure and is now Tourism, who advised me that the overnight market in tourism - and I am not sure whether there is anybody here from the Isle of Man, but the figure can be verified - has gone down over the last six years from 500,000 overnight market tourists to 125,000. A dramatic drop even according to the hon Member's failure of our policy. I am not for a moment saying that we have not got to work our utmost to try and get an overnight market buoyant. If we look at the tourism industry in general, the overnight market is the basis on which any major tourism policy is based because the spending value of people who come to hotels in Gibraltar is greater for obvious reasons than the day excursionist. Taking the hon Member back to 1988, he knows that during the course of 1988/89 and 1990, particularly during the years 1988 and 1989, in conjunction with the industry, particularly with the hotels, we tried desperately to take the profile of our tourists to an up-market situation. It is quite clear that the only way that small islands, small markets, can survive is if the value of the holiday is greater and therefore people are prepared to pay that extra bit more because it is not possible in the mass market tourism for Gibraltar or any small island to be able to compete with the Orlandos of this world. It is just not possible, particularly having a major player across the way as we all know - the Costa del Sol. During the concerted efforts of the industry and the Government at the time we then had major recession, we then had the Gulf crisis, we had the crisis in the civil aviation world, we had initially Air Europe doing down, then Dan Air going down, major crisis in the civil aviation world, and it was then decided by the industry and the Government that we needed to take a step back and start to look again at the tour operator market although we all knew and we continue to know that that is not the best future for Gibraltar in tourism. It is a mass



market and a mass market that produces a lot of problems for the infrastructure of the hotels, the infrastructure of the market in general but, unfortunately, this had to be done. When we launched this activity we were very, very successful. We have a lot of operators serving Gibraltar today and it is something that we set up the United Kingdom/Gibraltar Tourism Association in, I believe, 1990/91 to advise the Government from the point of view of our marketing ability in the UK which continues to be our main market and that, undoubtedly, although I accept and understand that the Opposition Members do not like it, because obviously if I say to them the situation is such that I am being advised by the United Kingdom tour operators, by the airlines, and by the hotels in the United Kingdom/Gibraltar Tourism Association, then obviously that detracts from the ability that they have to criticise a specific policy. The only thing that we have ever had in relation to the difficulties, and I think the word difficulty is not the right word, I think the only difference of opinion that we have had with the UK/GTA and with members of the UK/GTA was not the policy, was not the major drive that we were doing in conjunction with the UK/GTA. I have something to say because obviously I have prepared to advise the hon Member during budget time all the activities that we had planned for this year and I can advise him of that at the end of my contribution. But the only difference that we have ever had is the difference in relation to the money that we spent in the budget and I think every single year, the Chief Minister has made it absolutely clear that although it may be necessary to spend more money in tourism like it may be necessary to spend more money in medical services, like it may be necessary to spend more money in education, like it might be necessary to spend more money in employment, like it might be necessary to spend more money in refurbishing Government buildings, irrespective, at the end of the day, the Chief Minister quite clearly addressed the situation but at the end it has to be a balance and that balance is the balance that has to be struck by the Government in looking at their overall economic policy and in looking at the money that can be spent. At the end of the day a pure housekeeping exercise is required when we are left with the money that the Government have in their coffers.

I think, Mr Speaker, that gives an idea of the problems that we have in the market in tourism, not only in Gibraltar, certainly in all the small islands. I will not say all the small islands because obviously there are new islands. There are very successful islands. There are a lot of Asian islands which are very cheap, and obviously all those elements come together to determine whether it is a successful holiday resort or not but in any case the changing trends and the changing market is such that

people tend to move from Europe which is what used to be the case 10 to 15 years ago to the United States which used to be the case five to seven years ago and now to Asia and a lot of people are now looking at China. So there is a changing trend and therefore irrespective of overall policy, tourism is not a static activity. It changes on a day-to-day basis like, I think, if hon Members remember, happened to the Costa del Sol three years ago where they had an absolute disaster because of various activities in the market which had nothing to do with tourism. It had to do with the devaluation of the peseta, where the peseta was higher or was lower. It is not therefore true to say, Mr Speaker, that the Government have not had a priority in their policy towards tourism. I think that the record shows, it may not show that to the Opposition, but I think the record shows that we have been trying desperately to look at every changing trend. To look at every changing circumstances and adapting at the situation. The major movement, Mr Speaker, in the changes that we have implemented, much to the upsetting of the Opposition, is the setting up of the United Kingdom/Gibraltar Tourism Association which was an independent forum for the discussion of all the problems related to the advice required by the Government in their marketing drive in the UK. Hon Members will also remember that having identified last year that Spain was becoming an important tourist market, the Government, through the Gibraltar Information Bureau have also set up a Tourist Office in Madrid which is now producing results and in conjunction with the Chamber of Commerce it is the second year running - I think this was announced, I believe, on Tuesday or Wednesday - we are in conjunction with the Chamber doing major marketing efforts in Spain at this stage. I think it was very ably explained by the Managing Director of the Gibraltar London Office, Mr Poggio, at this stage on the shopping experience but we are now with the Chamber looking at how to package some things together which will either be a mid-week or a weekend break because that we have been very successful in the market, in relation to the UK market.

We have taken that a step further, Mr Speaker, and I can assure the Opposition Members that it has nothing to do with the sitting of the House today because I think the Chief Minister has mentioned very, very clearly that, and I can certainly vouch for the fact that I did not know we were going to talk about tourism today, but the press, I believe, yesterday, advised the United Kingdom/Gibraltar Tourism Association and the Chamber of Commerce following from the report which the hon Member has mentioned, have come together with the Gibraltar Information Bureau and is setting up a Tourism Advisory Board which I have agreed with them has got the widest possible terms of reference to

look at every single aspect of tourism in Gibraltar, internal and external. The Advisory Board will be responsible for meeting and discussing matters with every single entity, commercial or otherwise, that believes that it has something to contribute towards the policy that the Gibraltar Government should or should not implement and can also comment on the way forward that the individuals or entities believe. Mr Speaker, if that does not show that the Government of Gibraltar are quite clearly saying to the industry, "We want to have your views. If we have done it wrong we want you to tell us". I will not accept what we are told across the floor here because we all know that this Opposition, unfortunately, have been trying to make political capital out of everything. What it shows is that we have been working with the professionals in the industry in the United Kingdom for over the last two years. I will prove that in a moment. The activities that we are holding which, by the way, the United Kingdom/Gibraltar Travel Association is very, very happy with. We have been working with them for the last two years, taking their advice, looking at the marketing strategies, being told by them, "Let us look at public relations and not advertising. Let us look at activities of specialist holidays like bird watching and not putting ads in the Daily Telegraph. Let us look at this juncture in putting articles in the Daily Telegraph because it is better at this juncture". We have been working with them for the last two years. We have now agreed and we welcome it ourselves to get the industry locally to tell us exactly what they feel we should do to activate the overnight market. I have been the Minister for Tourism now for the last seven years and I assure Mr Speaker that there is not a single problem related to the tourist industry that I do not know about. Sometimes the solution is the difficult part. The acknowledgement of the problem is not the finalising of the problem. The problems have been outlined by the Hon Col Britto. Anybody can look at the figures and see that we have got less tourist arrivals at hotels and that we have got less passengers at the airport. But that does not mean that the Government have failed in their tourism policy. *[Interruption]* What it proves is that it is a very difficult industry and I challenge the Opposition to await four months and then see what it is..... *[Interruption]* Then we will see in four months time what it is that the industry feels we have to do and we may find that what the industry feels has to be done is not that far away from what we are doing already. It might require certain drastic measures in certain areas which, unfortunately, until today is an area which I would need to have the support of the industry in general before I was able to move on it. I hope that in three or four months time the industry and the Government will speak in one voice to say what has to be done. It is also possible that, having analysed all the different things that have to be done, it might be

a fact of life that the overnight market in small islands has to adjust itself in relation to what can or cannot be done in the future. But the Opposition Members forget one thing, that unlike other small islands we have a buoyant day excursionist market. If, unlike the Isle of Man and unlike Jersey, we did not have a buoyant day excursionist market, then we would be in far more serious problems that we are from the point of view of our declining tourist market. Those are facts, Mr Speaker. I am not going to say to the hon Member that I have more tourists when I have less or that I have more passengers arriving at the airport when I have less. Obviously he must also understand that there have been major structural changes in the Malaga airport. More structural changes in the road network in Spain and that we have also moved from a situation where statistically we were moving about 70 per cent to 75 per cent of people through the Gibraltar airport into Spain and now it is almost 45 per cent to 50 per cent, so perhaps in that element, if we deduct that there is certain expansion in the airline industry in Gibraltar. I think the frustration obviously is quite clear that what we have done now is we have linked up with the industry and we will pay attention to the industry. Not to the hon Member, not to his colleagues, because even if we had 100 million tourists coming to Gibraltar they would say why do we not have 101 million. I am interested, as Minister for Tourism, to listening to the industry, to negotiating with the industry and hopefully to try and get the industry to tell me globally and as one voice, because all that we have had over the last seven years is one element of the industry saying this is what we need, one element of the industry saying that is what we need. It is sometimes difficult to bring all these things together. We may have failed in expending the overnight market but has the hon Member forgotten totally what the infrastructure was on the 26th May 1988? He has forgotten what the tourist infrastructure..... *[Interruption]* I said leaving aside the overnight market and the..... *[Interruption]* If we take out of the equation the overnight market, which is what I said, the hon Member may wish the people of Gibraltar to forget what the tourist infrastructure was on the 26th March 1988 but I do not think that is possible. The Opposition will have to accept whether they like it or not that the improvement of the product, the improvement of the refurbishment of Gibraltar, the beautification, the cleanliness. I am not for a moment saying that we are perfect but the improvements have not been a hundred fold, they have been a million fold. Nobody that has visited the Nature Reserve and was unfortunate enough to have visited it in 1987 will agree with what I say. We have increased the number of tourist sites. We have increased the activities of tourism in those areas. We have increased employment in those areas. We have beautified the market, never in the history of Gibraltar were there

flowers to be seen anywhere. It is a sad reflection of what we had before. The Gibraltar Botanical Gardens which was gifted to the people of Gibraltar and was in an absolute disaster. Nor the GSD or anybody else will take it away from the success of the GSLP Government. In that area and in many others, but in that area. I challenge any Opposition Member to go round and find any major problem in the tourist infrastructure today, although we know that there are still one or two areas that we know about and we are now actively working to correct them. That is what we do.

Information, another area which again was sadly lacking. Hon Members must have seen the new information now produced by the Gibraltar Information Bureau. Again, commented on by the visitors to Gibraltar and particularly this week by not only the dignitaries but also by the sports people. Mr Speaker, in that area there is nothing but success to report. It is one area that will go down in history as one of the major areas. Not the only one because we have hundreds of those as we will be explaining during the next couple of hours but certainly if not over the next weeks. The other area, Mr Speaker, is in the area of what we have done to try and change the market where we have today very buoyant mid-week and specialist activities, special interest groups. We have been very active in those areas and we now have worked with different organisations and with different entities. We have now bird watching experiences, nature experiences, and I mean we have been very successful in that area. Let me add, which is what I was pointing at the start, is the way forward because unfortunately being a small place and being a small island together with other islands we cannot compete in the major tourist centres which cater for anything between 10 and 31 days holiday whereas the small islands are now catering for the smaller midweek/weekend breaks and up to from five to seven days. We have had a full advertising programme, particularly in features in the specialist market and brought a lot of people out to Gibraltar, in history, bird watching, national magazines, national press. One of the press groups that we brought was so impressed that the National Geographic is going to do an article on Gibraltar. That is certainly very, very good news for Gibraltar because that is one of the major, if not the major, nature magazine, for want of a better word, in the world.

We have now reactivated at the request of the United Kingdom/Gibraltar Tourism Association the so-called road shows, although with a totally different way that they were done before. The one we did in Manchester in May was a tremendous success for Gibraltar and was commented on in the UK press particularly in the Manchester

area as very important and which is now bearing fruit. I mentioned the Spanish Office which we have great hopes just started this year, is now co-ordinating with Spanish tour operators and we have great hopes that slowly the Spanish market will become an important market. At the moment the parameters under which it operates where normally the Spanish market - I think again Mr Poggio said that yesterday - operate on an August/September basis whereas the UK market is an all-year round market. I do not think that Spain will become the main market of Gibraltar but certainly it is a very important market and one which we are now activating because at the end of the day together with the Chamber we feel that we could have a situation where we had major success in Spain despite and irrespective of the difficulties that some of our so-called entities across the way in Spain put in our path particularly at the frontier. We have been to Madrid this year again, Fitur, and this year we want to Bilbao as well because we want to take the message of Gibraltar further afield. We started the first year with Andalucia, although this year the campaign is also targeting at Andalucia but we have now moved further afield to Madrid with the opening up of the office and together with our agents in Madrid we have been to Bilbao this year. Morocco is another market which we are looking at in conjunction with two of the main entities in Gibraltar and particularly from the point of view of the day excursion market and the two-centre holidays. That, again, is an area which I think certainly not in the near future but I think in the medium to long-term future could pay dividends. Mr Speaker, the hon Member has not mentioned the fact that the yachting market has maintained its activities in Gibraltar and that we have the Europa Rally again two years ago last year and we had the Trade Winds Rally as well which is being looked at. The liner market, which is a very, very buoyant market and which has been increasing steadily over the last couple of years and, again, that is a major expansion area for the future. At the time I was going to mention the Island Games but obviously that is now..... I say at the time because the notes that I have here in front of me are the notes that I prepared for the budget debate. We know that there is a requirement for infrastructure improvements for the liner market, following on from what I was saying, and this is now on line. I have discussed the matters with the MTI/DTI authorities where there is some European funding which we hope we can get in order to try and finalise the possibility of having a proper liner terminal in Gibraltar which I think can put us in good stead not only for the increasing activities of the liners coming to Gibraltar on a sort of day trip but also to use Gibraltar as a base now that the fly cruise activities are expanding in the local market.



I think that all I have said shows that the Government have been very, very active since 1988 in the different areas of tourism and the priorities which the Government set in 1988 and which we repeated in 1992 and which we have been working at were one to completely readdress the situation of the tourist infrastructure. We have always said that it is not possible to put pretty pictures in brochures and bring people to Gibraltar only to find the disaster of 1987. What we needed to do was to have a market where people could come to Gibraltar and see that what we were selling was perhaps slightly more expensive but worth the difference. I think that aspect of it we have been able to deliver. The shopping experience with the Chamber of Commerce and the beautification of Main Street is something which as hon Members know we are discussing with the Chamber. The final report and survey done is something which will shortly be made available to the Chamber by the surveyors and will be discussed with the Government but if not the Government are ready to do a minor start to the refurbishment of Main Street. Nowhere near what the Chamber of Commerce want because we are convinced that together we can produce the beautification of Main Street but if that fails certainly we will not allow Main Street to continue to be as it is today. Let me remind the Opposition Members, it is only the way it is today because for the last year, year and a half, in particular when we were going to put in place the refurbishment of Main Street we were asked by the Chamber not to do it because they preferred, together with us, to do a much greater scheme which we have agreed with the Chamber. Of course now needs the blessing of the members of the Chamber because unlike the GSD it is a democratic society. Mr Speaker, obviously if this fails it is not a question of Main Street staying as it is but it would be a situation where we would like as we have done in almost every other area of Gibraltar we have improved.

I think, Mr Speaker, that I have very little to say. When I said that I would read out all the activities planned for the 1995/96 year, and I can but I think I do not want to bore the House with every single activity. If hon Members want me to I will but I think it is a document which is 12 pages long. It is therefore my belief that the Government of Gibraltar that came in and I am taking it back to 1988, have accomplished 85 per cent of what they set out to do in relation to the tourist industry in Gibraltar. The area for the reasons that I have explained ad nauseam over the last seven years and the area which we still have major problems, is the area of the overnight market. Not problems particular to Gibraltar. Not problems peculiar to Gibraltar but problems, which are problems related to the changing trends in the world, the changing

communications network. I am prepared, as I said to the Chamber and the UK/GTA and the GIB privately, and I am saying this now publicly, I am prepared to listen to the industry and assure the industry that the priority that the Government give to tourism is as high as it could possibly be but we have to speak together with the industry so that we can determine what each different aspect of the industry want to do. Every single aspect of the tourism industry believes or advises me that we should do one thing. We have to speak as one voice if that 15 per cent which is the overnight market is to be cured we will do it. The GSLP Government will do it in linking up with the professionals of the tourist industry in Gibraltar. Thank you very much, Mr Speaker.

HON F VASQUEZ:

Mr Speaker, in my three years that I have been sitting in this House of Assembly I do not think I have ever heard such a bigger load of rubbish coming from the Government benches unbelievably not only in defence, crowing, boasting, about their tourism policy in this Chamber. To me it is absolutely unbelievable and I wonder whether I am living in the same community. Does the Minister for Tourism have any idea of the reality of what is going on in the real world? Apparently he does not and he must spend his life in his office without any idea of what really is going on. He has criticised the Opposition for having a go at this administration over their performance in the tourism industry. Let me remind the Minister that in 1987, a few months before this administration was elected into Government, he had the "cara dura" (I use a Spanish term) to present a censure motion in this House condemning the AACR for their tourism policy. For goodness sake, Mr Speaker, does the Minister not realise that since 1988 this Government have been responsible for the scrapping of the tourist department, for goodness sake? He is the Minister for Tourism, what does he do when he gets up in the morning? He does not even have a tourist department or civil servants with whom he can work, supposedly in support of the highfalutin GSLP tourism policy. Does he not realise that since they came into Government, this administration has simply failed to market Gibraltar as a tourist destination at all? They do not have a marketing budget for Gibraltar at all. One does not pick up a colour supplement anymore and see advertisements for Gibraltar. How do we attract the tourists if nobody even knows that we are here? What has he done about that? What the hell does this man do as the Minister for Tourism? Does he not realise that in his seven years in administration he has overseen the dismantlement of the overnight stay tourism in Gibraltar? Has he not seen, with all the nerve when he is criticising the AACR

Government, that since 1988 the number of overnight stays sold in Gibraltar has fallen by 50 per cent? He had the nerve to bring a censure motion against the AACR Government. One cannot believe the arrogant rubbish that these Ministers bring to this Chamber, Mr Speaker. Does he not realise that he has turned the east side of the Rock into a rubbish dump? Tourists come to Gibraltar and think they are in Scunthorpe, not in the pearl of the Mediterranean as he was trying to set up. What the hell does this man do? He says, Mr Speaker, that he listens, that he is there to listen to the industry. Let us tell him what the industry think of him, because in a recent Chamber report 87 per cent of traders thought that the tourism policy of this Government was inadequate. Does he not realise that? When he tell us that he is working with the industry, does he not realise that it is his responsibility to have a tourism policy? That it is his responsibility to formulate the policy and it is his responsibility to bring the tourists to Gibraltar? He is simply not doing it and he has the arrogance to come to this Chamber and not defend this policy but boast about it. It is simply unbelievable and the fact is that the Gibraltarians no longer accept it. They have seen through that and he started most unbelievably his lengthy and rambling address by saying that the numbers employed in the tourism industry had increased during the GSLP administration. It is simply mind blowing. Let me remind him we have not had an employment survey since April 1993. We are two years behind on the employment survey, that is another job the Government are not doing but we will leave that to one side. Basing myself on those figures let me remind him to the contribution I made to the appropriation debate two years ago on the 26th May 1993. I have to refer to this as it includes the figures. I said at the time, two years ago, "I have got news for the Hon Mr Perez and the Hon Mr Pilcher, in 1989 in Gibraltar there were 530 people employed in the hotel industry. Three years later, in April 1992, which is the last year that I have got figures for, there were 355. By now, a year later, April 1993, I suspect that figure is substantially less because, of course, we have lost two hotels since then and I would think the figure was probably between 300 and 315 employed in Gibraltar in the hotel industry". That is, at the same time I read through the number of losses of jobs I calculated then, two years ago, 270 jobs lost in Gibraltar in the hotel, bar and restaurant industry. What have they done since? The last figures we have, I was absolutely right, 305 people employed in the hotel industry in 1993, the last year for which we have figures. The Minister comes before us saying that the numbers have increased. Well, give us the figures. He has got the figures under his nose, when is he going to publish them? In 1993 there were 305 people employed. In 1989 there were 530. That is over 200 jobs lost in the hotel business alone. Whilst he has been Minister for

Tourism we have lost three hotels. We have got another major hotel in Gibraltar in receivership and he comes to this Chamber and boasts about his tourism policy. It is mind blowing. Fortunately the Gibraltarians no longer see it. The Gibraltarians are seeing clean through it. The Minister's attitude, unfortunately, is simply symptomatic of this Government's attitude. They seem to be cut off. They do not realise what is going on. They believe their own propaganda. They do not seem to be in touch. They do not seem to talk to people on the street, it is not our propaganda and I shall refer..... *[HON J E PILCHER: May I ask the hon Member how many times he has been to the Nature Reserve?]* They are simply completely out of touch.

Turning to the general economic situation of this community, they seem to think that everything is blooming in Gibraltar. Let me tell them. I wonder when a Minister last took a stroll down Main Street to talk to the traders in Main Street to find out from them, from the horse's mouth, what they think the economy of Gibraltar is going through. Let me give him some idea. The survey recently released by the Chamber of Commerce revealed that since 1992 cumulatively more and more businesses are doing worse than the previous year. We had four years successively of more and more businesses doing worse than the previous year and for this year only 17 per cent, that is less than one in five businesses in Gibraltar, think the situation is going to get better this year and only 12 per cent, which is only more than one in ten, think it is going to get better in the future. That is the depth of the desperation of the private sector in this economy at the moment.

We only have to look at the empty office blocks, the plummeting commercial rents in Gibraltar, even the banking statistics must speak for themselves. Bank deposits in Gibraltar peaked in late 1993 and they have been falling ever since. We have now seen an 11.7 per cent drop in the total number of bank deposits and an 8.5 per cent drop in the total assets held by banks in Gibraltar. This is supposed to be a finance centre, for goodness sake. If we cannot even attract the deposits what business are we going to attract to Gibraltar? For goodness sake, bank deposits are the boiler house, the fuel of economic activity and certainly the fuel of financial services activity in Gibraltar and what is going on? Whilst the Cayman Islands, whilst the Bahamas, whilst every other offshore financial centre sees its deposits rocketing ours are falling by 10 per cent and those are the figures available until March. I dare say that with the recent scare we have had, the threats of direct rule a good number of people have withdrawn their money from Gibraltar. The figures in future will speak for themselves.

The most damning evidence of all are, of course, the employment statistics. Apart from the fact that in 1992 the Chief Minister was elected with promises of 16,000 jobs in the economy locally, a couple of years later he pared that rather optimistic view down to saying that it was the Government's main thrust. I shall quote the Chief Minister's contribution in that debate. This is the Chief Minister speaking two years ago, "We have said that the emphasis over the next 12 months will be on bringing down the unemployment amongst Gibraltarians from the 600 level rather than on the global figure of maintaining 14,000 jobs". In other words, he says, "We have stopped creating jobs in the economy, now what we are trying to do is make sure that what jobs there are are going to Gibraltarians". He said two years ago that the main thrust of this Government's economic policy was to bring down the number of Gibraltarians unemployed from the level of 600. Well, let me give the Government Members the last figures that we have had supplied to us by the Government in answer to Question No. 107 of 1995. "There are exactly 600 Gibraltarians unemployed in Gibraltar, 256 under 25; 44 over 25". What that does not take into account are the numbers of Gibraltarians who are really unemployed but this Government are pretending are not unemployed by putting them in dead end jobs with SOS Ltd and JBS Ltd. These Government venture companies into which are being channelled millions of pounds from the European Union destined for training. What training are these youngsters getting? They are in dead end jobs earning a pittance on Victorian conditions of employment, on short-term contracts, doing what? They are not learning anything, they are just being bandied around in Gibraltar trying to pretend that they are employed. They are not employed, it is disguised unemployment, Mr Speaker. So we do not believe that figure of 600. We believe the unemployment situation is a great deal worse than this Government have divulged. The irony of all this, of course, is that this was the Government that were elected with the promise of economic miracles. This is the Government that said they were going to create the pearl of the Mediterranean, the Hong Kong of western Europe here in Gibraltar. Where has that got us? The fact is that this economy has undergone fundamental change. We know there are difficulties. We have had the MOD pull out of Gibraltar, big structural changes in this economy, what we in the Opposition wonder is what the hell this Government have done to address those problems? They simply have not addressed them. In fact, all we know is that when the MOD first started announcing that they were pulling out of Gibraltar we actually had Ministers here crowing about it thinking, "Great, we are getting rid

of the colonial yoke. We are free. We are being liberated". For goodness sake, they did not even ask the Minister of Defence.....

HON J C PEREZ:

Would the hon Member give way? Would the hon member say who is he claiming has said that in this House or outside this House? Would the hon Member retract that last statement or prove it here, Mr Speaker? If he claims that that has been said in this House he ought to quote chapter and verse in the Hansard.

HON F VASQUEZ:

Mr Speaker, I will undertake to do so. I do not have the Hansard in front of me. I have a clear recollection.....

HON J C PEREZ:

That is a lie.

MR SPEAKER:

Order. Order.

HON J L BALDACHINO:

Mr Speaker, on a point of order. Are not hon Members in this House responsible for the statements that they make and therefore they have to prove if they make accusations where and when those things have been said?

HON P R CARUANA:

What accusations? What is he talking about?

HON J L BALDACHINO:

I am not asking the Leader of the Opposition. I am asking you, Mr Speaker for a ruling.

MR SPEAKER:

What you say is if an hon Member makes a statement he must be responsible for it. Yes.

HON F VASQUEZ:

I am responsible for the statements I am making. I am saying that this Government made no attempt.....

HON J L BALDACHINO:

Would the hon Member make it outside this House?

HON F VASQUEZ:

What is he talking about? I am making it inside this House, thank you very much.

MR SPEAKER:

Order. Order. Mr Vasquez carry on with your speech.

HON F VASQUEZ:

I am very grateful, Mr Speaker. Thank you for that intervention from the Minister. What I am saying is that this administration made absolutely no effort when the British Government announced that the MOD was pulling out to negotiate any sort of structural package, to negotiate any form of compensation to do anything about it. I am talking from recollection, when it was announced that the resident battalion was leaving Gibraltar did the Chief Minister or any Minister of this Government say, "You are pulling 600 soldiers out of here. We want some sort of structural help for this economy". They did not do anything and let me tell them something and I have had this from the Armed Services the fact is that the resident battalion when it was announced expected to have to stay in Gibraltar one or two more years and when not a whisper was raised in opposition they upped camp and went to Cyprus where they were not even needed, 12 or 18 months sooner than expected to because the door was left wide open for them. What we have seen is no attempt by this Government to address the structural problems that have confronted this economy, no package of financial aid. We have seen it. The MOD has gone. They closed the door behind

them and we did not even ask them for any money on the way out and compare that to the previous administration when the dockyard was closed down obtained, I think, £34 million in aid in 1981 or 1982, double it now in real terms. What money have this Government secured from the British Government to do something about that?

Tourism, I have dealt with tourism, I dealt with it before because I was replying to the Minister. What on earth have this Government done to promote Gibraltar as a tourist destination? What alternative economic activity are this Government promoting to do something about the economic crisis in Gibraltar?

Financial services, we have seen as already mentioned, the fact that the bank deposits are falling. What is happening to the financial services in Gibraltar? I will tell him. It is being undermined, by the record of government of this administration. It is being undermined every time that somebody in England picks up the Sunday Telegraph and reads about the smugglers den and the lack of accountability and the failure of this Government to implement EU Directives. It is scaring potential investors away. The reputation of this jurisdiction has been completely dismantled and destroyed by this administration. That is what we have seen after seven years of GSLP administration and we believe that a lot of these problems are simply of our own making and until, for example, this Government address the social issues and the problems of perception that they create across the board represented by the fast launch activity, until they address that, until they realise that this activity.....

MR SPEAKER:

I must call the hon Member to order. You are anticipating what is going to happen.

HON F VASQUEZ:

I am talking about the economic.....

MR SPEAKER:

Yes, but you cannot go on like that anymore.

HON F VASQUEZ:

All I am saying, Mr Speaker, is that until this administration does something about redressing the collapse in the image of this jurisdiction, of Gibraltar, that has made Gibraltarians ashamed to call themselves Gibraltarians abroad, until that is addressed nothing is going to get any better. The result, if I can summarise of the last seven years is that we have an economy that is weaker than ever. We have relations with Britain and Spain that are worse than they ever have been and which are compounding the problems that we are facing and we have a crippling debt burden. It is a pretty obnoxious cocktail and one of concern to Gibraltarians and one which we are addressing in this motion before this House. I have seen the Minister responsible for employment has walked out. He is not even here to listen to this. What active steps is this administration taking to stimulate the level of employment, to try and create jobs in this community? What incentives are there for a prospective employer to create employment in Gibraltar? Let me tell them this. In 1988 when they were elected, the level of social insurance contributions which an employer made in respect of every employee was £8.79. Now, as of January 1995, it is £21.97, that is a 250 per cent increase on the levels of contributions that every employer has to make for each individual employee. That is nothing more than a 250 per cent increase in tax on employment in Gibraltar. What sort of incentives are they going to provide to prospective employers when they have increased the cost of providing jobs by 250 per cent on employers?

As to the Employment and Training Board, what a misnomer, it is a complete shambles which provides nothing but overwhelming bureaucracy. It must surely be the only employment exchange in the world that makes a secret of the jobs that it is trying to farm out. It is ludicrous, it is laughable. It is completely unaccountable and it creates enormous amount of resentment in the local community because Gibraltarians that go looking for jobs simply do not understand how these jobs are apportioned. All they know is that other people get jobs. Often it seems to be the people who know the right people. They get the jobs and we get people who have been going back to the ETB month after month, year after year, with nothing held out to them. They are not even told what jobs are available in the community. What sort of employment exchange is that for goodness sake? To give them some idea they want some statistics, let me tell them. Clear from the recent and, again I quote the Chamber of Commerce Trading Survey, 66 per cent of traders believe the Employment and Training Board serves no useful purpose and 76 per cent of them, that is three-quarters of traders

in Gibraltar, have difficulty in finding adequately and properly trained staff in Gibraltar. But this is an employment and training board. They are not doing anything about employment, what are they doing about training? Who is the Employment and Training Board training? Answer, absolutely nobody. What opportunities do this Government offer our youth in Gibraltar at the moment other than a job at the wheel of a fast launch or a dead end job in the SOS? What are the 16 or 17 year old school leavers, leaving school in Gibraltar this summer, who have not got 'A' levels or who are not going on to University, what employment prospects do they have in Gibraltar today? They are going to get on a fast launch or they are going to send up scrubbing floors in SOS Ltd. Those are the prospects that we are offering our youth today. The Chief Minister has repeatedly said he does not believe in the old model of the economy. He is more forward thinking than that. He does not believe in the old four pillars of the economy: tourism, ship repair, financial services, etc. No, no, he sees the economy in terms of land and people. These are our two resources. Well, let me ask this Government, what have they done to invest in the people of Gibraltar? What have they done to invest in the training of our youth to prepare them, to give them an even break, to give them an opportunity on the job market in Gibraltar. Government's record on the question of training is nothing short of diabolical. In 1988 when this Government came into office we had a construction industry training college, we had the Technical College and we had the Dockyard Training Centre. That was three centres that were properly equipped and properly administered in administering industry training and providing trade testing in all basic industrial and construction crafts in Gibraltar. This ensured two things, Mr Speaker, firstly, that Gibraltar had a ready supply of Gibraltarians properly trained in industrial craft to take up what jobs there were in the local economy so at least it was not a question of implementing the 1st July law and trying to lock everyone out or hiding what jobs are available from Spaniards and other people. No, it was a question of training our own people to be able to compete for the jobs that are available. If they do not train them 76 per cent of traders and people in commerce are going to say, "I am sorry I cannot employ these people, they are not adequately trained, I cannot do anything with them". They do not train them, they do not get them jobs and they have not trained them. They have stopped, it is unbelievable. The second benefit of training our youngsters is that not only are we filling what jobs there are available with Gibraltarians but at least we are giving our youngsters a sense of dignity, for God's sake. They are being trained in something. They are put on the job market so that they can hold their head up high and say, "Yes, I can do something". It gives them a sense of self-worth



and this, I have to say, and the Government may not be aware of it but this is what the youth of Gibraltar is lacking today, any sense of self-worth. To give them any sense of confidence, any sense of their worth, anything to anyone and that is the biggest failing that this administration has inflicted upon Gibraltar over the last few years. What do we have after seven years of GSLP Government? We have a vocational cadet scheme, which is a joke and everyone knows it is a joke. They put these poor youngsters fresh out of school, they are putting packing boxes and running around as messengers at zero expense to the employers, at the end of six months they are chucked out. How many people have been employed as a result of the vocational cadet scheme? Precious few. Now we have no doubt the Minister for Employment is going to crow, is going to tell us what a marvellous thing they have just implemented, the new apprenticeship scheme that the Chamber of Commerce had to bring to them and put in the Minister's lap, nothing to do with the Government. The Chamber of Commerce had to work many months convincing the Minister at last to do something and yes, at last we have a new apprenticeship scheme, not industrial training, limited only to the service industry and that still excludes the vast proportion of young school leavers who are not adequate for clerical jobs, who are looking for industrial jobs. Too little too late, after seven years we now have a semblance of an apprenticeship scheme that does not even have an apprentice training centre. When are they going to train our people as our bricklayers? I look forward to hearing from my hon Friend that now after seven years in Government they are now, coincidentally six months before an election, suddenly we are going to see investment in training colleges. That is very welcome news, I wonder how far the electorate will accept it though. Why? The question I put is why have the Government done this? This is supposed to be a socialist labour party for goodness sake. Why have they turned their back on young people coming on to the employment market? It is not as if they cannot afford it because under the employment and training levy, Mr Speaker, the Government of Gibraltar take approximately £26,000 a week from employers, £2 per employee in Gibraltar. Where is that supposed to go? That is supposed to go to provide training for Gibraltarians. Where does it go? What about the £3.5 million structural funds that we have had from the European Union, that is supposed to be going to training Gibraltarians? Where has that gone? What have this Government done? Seven years of inactivity. I will tell the House what this Government have done. This Government have simply been the victim of its own propaganda. They came in with all these grandeur schemes. They thought they were going to get people pouring in here. The fastest growing economy in the world; 16,000 jobs; the Hong Kong of the

Mediterranean. None of it came about. None of it has happened, Mr Speaker, and what have they left in its place, absolutely nothing. Dead end jobs or no jobs at all or a job on a fast launch. I could carry on, I am not going to, the point has been made. I commend this motion. It is quite clear that Gibraltar is gripped by an economic and employment crisis. I put it to this House that this Government simply are not in a position to do anything about it, lack the motivation, lack the ideas, lack the gumption to deal with this and I commend the motion to this House.

HON M A FEETHAM:

Mr Speaker, the last two or three words that the Opposition Member has mentioned were we lacked motivation, we lacked vision or words to that effect. Gumption, that is the word I wanted to discuss. In presenting this motion they have the audacity to go back all the way back to 1988 when none of the Opposition Members were in the House. That is to say, they were elected four years, for this term of office, on the basis of a political campaign that was really a political campaign based on smear mongering with really no clear-cut policies of which 23 per cent of the people of Gibraltar put their confidence in them and, frankly, up to now they have demonstrated to the people of Gibraltar that all they have done in the last four years is to continue the same propaganda, the same smear mongering to try to discredit the Government. I did not pick the argument about going back to 1988 but I will say as a Gibraltarian, not as a politician, as a Gibraltarian who feels for the people of Gibraltar, what we found in 1988. In 1988 we found that the people of Gibraltar were looking towards Spain for accommodation. That Gibraltarians were going to buy houses in Spain, in La Linea, because they could not have a home in Gibraltar. That is what we found in 1988. We also found in 1988 that 50 per cent of the land of the people of Gibraltar was in the hands of the Ministry of Defence and in 1988 only 20 per cent of the budget was contributed to for the people of Gibraltar by the Ministry of Defence. They had already run down by 80 per cent their contribution in defence expenditure in Gibraltar. We also found in 1988 that the infrastructure of Gibraltar was so neglected and so rundown that it was impossible to cope with the influx of four million visitors to Gibraltar, never mind the possibility of bringing about a housing programme into Gibraltar to house our people because we did not have the land to start building homes for our people. We did not even have the land to start building offices and workshops for our people so that we could bring about economic prosperity for the Gibraltarians in Gibraltar. I will say what we did on the 23rd April 1988. I presented a paper to the British Government saying that we no longer



could accept the Lands Memorandum as had been agreed by the previous administration in different circumstances and that the people of Gibraltar expected an acceleration of MOD land immediately for us to be able to put our economic programme into effect. Having said that, not for one moment did this Government believe that the Ministry of Defence were going to respond positively to the needs of the Bossano Government because we know what a Bossano Government meant to the British Government in the context of the Brussels Agreement. Therefore, we had to demonstrate gumption which is the word the hon Member used. Gumption and guts and courage to say to the British Government, "You give us the land as soon as possible, but we know you are not going to give it to us immediately" and the proof of the pudding is that they started releasing land in 1993, five years after I put them that petition and if we were going to have to wait five years for us to put our economic policy because land is the definite asset in trying to develop economic policies, the GSLP Government today would not have to argue about the tourist policy or about Main Street, the people of Gibraltar would not have elected us into office because we would not have been able to put our economic policies into effect. Mr Speaker, not only did we not have the land but the infrastructure, we had the absurd situation that the infrastructure that was available even on the sewage side was one that we had our own totally inadequate to meet the needs of demand in 1988 of the economic activity and the movement of people. But we had the MOD with their own infrastructure that for security reasons and military reasons over many years went their own way and there was no co-ordination in that infrastructure so that when we decided enough is enough and we are going to take destiny into our own hands and we are going to do what needs to be done and show the courage to do it, we decided to go into the land reclamation programme. Let me say that when we went into the land reclamation programme and we decided to reclaim 350,000 square metres of land for the people of Gibraltar in the space of six months, no sooner had I started reclaiming that I had the admiral of the day threatening to sue the Government of Gibraltar because I had forgotten one thing that all the waters around Gibraltar in the harbour were Admiralty waters and therefore I could not even reclaim but we went on and we said, "Take us to court" because we are not going to stand around waiting for an admiral that has got no ship, a commanding officer that has got no planes, and a commanding officer of a battalion that was on the way out to tell us what we have to do in order to meet their plans. The MOD had to fall in line with our plans because it was no longer the survival of the people based on defence expenditure on an artificial economy, it was one that we had to build strong foundations so that we could give the people hope for the

future. We went ahead with our land reclamation programme and everybody has seen it there. It is not something that we can talk about figures of statistics, that reclamation is there for history to show that the people of Gibraltar took the destiny into their own hands and produced the land for them to build houses for their people, not having to depend on Spain, not having to depend on the traders of Main Street, some of whom are landlords who have for many, many years taken and scourged the people of Gibraltar through high rents in Gibraltar so that they could not even buy their own accommodation. What has happened is that today rents are more competitive, that even tenants on business sites can compete better for a rental agreement and we did it and the reclamation today shows Westside I. This is what the people have to think about, not what the Hon Mr Vasquez says, who is the most destructive Member in this House because all he does, typical of a public schoolboy, is think he is so superior to everybody that he comes round with very fine words and all he does is destruct, no alternative. People on Westside I will remember that we built those houses, we made it possible for Westside I, we made it possible for Westside II and we built Gib V for our people.

MR SPEAKER:

I suggest we adjourn now and come back at four o'clock.

The House recessed at 1.00 pm.

The House resumed at 4.05 pm.

HON M A FEETHAM:

Mr Speaker, when I finished before lunch I was explaining the realities that this Government were faced with in 1988 in trying to stimulate the economy, in trying to improve the infrastructure and above all in trying to meet the demands of the people of Gibraltar in the area which was the social evil of our community at the time and that was the lack of housing. Because of the reclamation, because of the courage that the Government that were being advised by the professionals. This is one of the things that I will always remember, that we were advised that we did not have the resources. "We have not got the experience. We cannot do this. We cannot do that" and in the end there was a political decision made and we have defended it and the result is in the pudding, and it is there and everybody can see it but let me make it quite clear that if we..... *[Interruption]* Yes, because they have never had a housing

problem. But everyone else on that housing waiting list in 1988, many of whom had been there for 20 years, did not have an opportunity for a house. *[HON P R CARUANA: It was not done by them, it was done by a private developer.]* This is something that needs to be responded to, the remark the hon Member is making. It has not been made by us. It has been made by private developers. Let me make it quite clear that if we had not done what we had done, if we had not packaged and structured our economic development the way we have done, those houses would never have been built because..... *[Interruption]* If the hon Member would keep quiet and shut up I will give him some answers. The realities are that we have to compare like with like. The previous policy of the previous administrations insofar as meeting housing requirements was concerned was averaging out at about 30 housing units a year which meant that by the time 30 houses had been given in a particular year we had another 100 going on the housing waiting list. It was never to be terminated and the fact is that by the time 1992 came about the housing was not a political issue anymore which had been a political issue from time immemorial. In 1992, after four years of GSLP Government, housing was not an issue anymore. That takes gumption and that takes courage and that is something they will never be able to better. But the realities are that it is not only in the area of housing. A top accounting firm in Gibraltar in looking at what this Government had achieved - and I am only talking about 12 months ago, so I am not talking about the first four years, I am talking about averaging over the last seven years - in attracting investment into Gibraltar against the background of recession and every other aspect which will be discussed by other hon Members as we go along, said that Gibraltar had attracted a level of investment that has not equalled for the size of the territory and the number of people living here, £250 million of private sector investment came to our economy during the first four years of our term of office. *[HON P R CARUANA: What firm was that, that made that remark?]* The firm that made that remark is Touche Ross, the people who are looking at inward investment programmes. That needs to be given some credit. So if we are to argue that the level of investment that has come into Gibraltar, not in the first four years, over the last seven years, £30 million of private sector investment from outside into Gibraltar, it is something that needs to be given some credit. Things have been happening. It is not just about Main Street and it is not just about the issues that they try to do to discredit the Government.

But, Mr Speaker, it is not just private sector investment into Gibraltar. It is not about building 2500 housing units. It is not about infrastructure. There are lots of other things which have been going on which have

improved the quality of life as a result of the policies of this Government. Is not the Opposition Member aware as he went this week, we have built the swimming pool on the reclamation which for the last 25 years people have been asking for? We are responsible for that, for the last 35 years (I am sure he is a member of the Calpe Rowing Club) they have been chasing for the new premises. It is there built and so is the Mediterranean Rowing Club and so is the reprovisioning of the Dockyard Sports Association and so are 40 other clubs in Gibraltar that have been given premises. It is all as a result of the vision and the courage that this Government had in making a decision of not depending on the UK Government to give us a piece of land when they want to in order for us to be able to build 20 or 30 housing units because we went in it in the widest possible terms with the greatest, in my opinion, vision that has ever been seen implemented by any government in the history of Gibraltar because that is the reality of life. The reality of life was that we depended on an artificial economy for many, many years without any vision about developing and widening and diversifying our economy. We have waited and for the British Government we have pulled the plug out of the sink and they all realised that we had got a huge problem. That is what we had been waiting and that is the policies that we were not going to pursue when we came in in 1988. A policy that was only based on squaring our accounts by increasing electricity, increasing rents and squaring up the deficits, that was the policy for the previous 25 years. No vision, no diversification and waiting for Britain to give development aid. Well, that development aid finished in 1988, that is another thing. We came into office without one penny of aid from the British Government. It had finished by the time we came in. It is about making political judgement. It is about making political decisions and it is about defending the interests of Gibraltar as we see it. People want somebody else to defend it in a different way, going cap in hand begging, let somebody else do that? I believe that we have got the necessary potential and the will to survive in Gibraltar through our own efforts and if we need to at any time go to the United Kingdom it is not going to go on the basis of the argument being put over by the Opposition. We will certainly go with far more intellectual, far more convincing arguments than the Opposition Members are putting to us. We have been also criticised because lack of EC funding. We went into the European Community in 1973 and we came into office in 1988 and from 1973 to 1988 not one penny came out of the European Community to assist Gibraltar even though we were entitled to until we realised that we were entitled to it and in 1990 we made our first bid and made a major breakthrough when we were allocated funds under Article 10 of the Regional Development

Fund and this was for the development and refurbishment of the Europe Business Centre which is now full of people who have started businesses and let us hope they will continue to prosper. That was a major breakthrough in 1990 even though we had been in the Community from 1973. Hon Members are not giving credit for the efforts of the Government in that respect but ever since then, having made the breakthrough, we have been given and designated as an Objectives 2 area where we are getting something like £3.8 million for the next three years out of the European Community for funding our efforts in improving our infrastructure. That was done through the efforts of the GSLP Government, Mr Speaker.

It is important that people do not forget this and it is important that when we have these gentlemen across there every day going on television jumping on everybody's grievance, jumping on the bandwagon on everything that goes wrong in Gibraltar, criticising every decision that the Government make, I know because I believe in the people of Gibraltar, that they will examine what they have been saying, they will examine the results of this Government and they will judge, based on everything that has previously been happening in Gibraltar whether... *[Interruption]* I have no doubt, Mr Speaker, that we will accept on this side the judgement of the people of Gibraltar but we would certainly continue even if we were not, which is an impossibility, elected at the next term of office, we will be able to look back and each one of us will be proud that we have done what we have done in the circumstances that we have done it. One of the most severe criticisms of previous administrations has been that they have never made a decision. We went through years and years in Gibraltar without the Government making a decision. Fudging here, fudging there that is why we have got so many problems today. This Government have made decisions. This Government have been a Government that have made many, many decisions and have created many, many achievements and the net results of those efforts is bound to be that we will make mistakes. Of course, every Government makes mistakes, of course we have made mistakes but we have been making decisions and we have been creating what we believe is the right policies for the Government. The hon Member who is not in the Chamber now, the Hon Mr Vasquez, even went as far as criticising us in passing, may I say on this occasion, about the non-implementation of EC Directives and the effect that this had on our international reputation, because we are not complying and so on and so forth. Let us not forget that from 1973 to 1988 not one EC Directive was implemented. In fact, 50 to 60 per cent of the Directives that we have implemented now are Directives that should have been

implemented from 1973 to 1988 in the list of 137 Directives that we have got to put in. The realities are that there is a limit to what a Government in a small territory which have got so much pressure, so much demand, so much will to survive, can do. Because that is what we have got, the greatest will the Gibraltarians have is to survive and against that background to have infrastructure to have to be put in, to build people houses, to have the British Government say we have to put in Directives. What else was happening from 1973 to 1988, what is all the rush now? The rush now is that it suits some people to put this Government under pressure but let us examine this question of EC Directives, because we need to, to some extent. Some of these EC Directives that we have to implement we now find that a substantial number of the ones that we have got to implement as a matter of urgency were actually still tied down at this point with different departments in the United Kingdom who have still not got clear what it is they want us to implement and we may be ready to implement them.

HON P R CARUANA:

Mr Speaker, may I raise a point of order about the practice in this House. One thing is for the Minister to think that he is in a theatre addressing the gallery but when he does so with his back to the chair, addressing the gallery like this, I think he departs too far from the practices of this House. He has got to address the Chair and not the gallery.

MR SPEAKER:

There is nothing in Standing Order that a Member has to look at the Chair.

HON M A FEETHAM:

I am sorry if I have offended the hon Member. Last night in the European Movement actually he was slouching on top of the thing looking the other way. I have my style and nobody is going to change it at my age.

MR SPEAKER:

Order. Order.

HON M A FEETHAM:

There, Mr Speaker, when we talk about the pressures about EEC Directives, we have got to know exactly what we are talking about and we have got to understand that there are still EEC Directives that it is not in the interests of Gibraltar to be pushed into implementing because in our opinion it is going to do away with an awful lot of business. Fortunately we are taking the stand that affect certainly the people in the legal profession in the Opposition benches much more than others but that is the irony of this. We are defending the finance centre in looking at these Directives and these hon Gentlemen are telling us that we are killing the finance centre. We are trying to do our best in defending their position but then, of course, one can never win in politics. I appreciate that. But to talk that we have not done anything about the finance centre. When we came into office in 1988 hon Gentlemen, what finance centre did we actually have? In real terms that could develop itself into an international financial centre? No, but we certainly have got a bit further than what we had in 1988. When we came into office in 1988 we did not even have the financial services legislation in place so that we could licence financial services institutions and intermediaries and so on. We did not even have the financial services legislation in place how could we call Gibraltar a financial centre when we did not have the core framework for financial services in place? We did not have it. I was the person responsible for getting the financial industry in place and developing and bringing the financial services legislation to this House helped by the professionals in the field. Even the Banking Ordinance which has been one of the areas where we have best done over the years. Even the Banking Ordinance was not in place meeting EEC Directives and that is something that we have also done. Every area that the hon Member wants to talk about we have got stuck into those areas with determination and with a high level of achievement for such a short time in Government. One of the things, of course, that I could never accept as a person that has developed his roots from the trade unions and from the working class in Gibraltar is for Opposition Members to preach to us about the unemployment, about the problems of young people and the need to do apprenticeships and indeed about us not doing anything in that area. Let them not criticise us if we have not done enough finance centre, criticise us on the economy, but hon Gentlemen do not preach to us about the needs of the working class in Gibraltar. Let them not dare preach to us, Mr Speaker, about their needs when that is an area that we have consistently done our very best. But of course in the changing pattern of our economy one of the things that we have to realise too and that goes for everybody from

the top to the bottom, is that in the changing circumstances of the economy we have to adapt. We have to bring in changes. Those changes affect everyone and unfortunately for people like me who think in a particular way it affects more the working class than it affects the commercial interests of Gibraltar and that is a natural concept that we will never be able to overcome absolutely. Certainly in the circumstances I believe we have done a miracle in the short time that we have been in office. The Opposition have been very critical, for example, of my hon Colleague the Minister for Tourism. Frankly, as a person who has been involved in the tourist product myself I have to congratulate my hon Colleague on the tremendous improvement there has been on the product of tourism in Gibraltar. The tremendous improvement and one has only got to go out and see it with one's own eyes. Statistics is one thing. Visual is another and it can be seen the efforts that he has put in the areas of improving the product has been tremendous and most of the credit has to go to him. When the late Mr Pitaluga did his famous tourist report the whole thing of the report was that we had to improve the product of Gibraltar. I think that has happened and that has been achieved even though there is tremendous scope for even more improvement. One has got to go up to Parson's Lodge and to the Market Place and to see what is happening with the buildings in the market area. There is a whole list of things that shows that we are improving our quality of life in Gibraltar and considering the lack of resources that is available to us and the need to convince people to go in a particular way I think that we have done, as I said before, a miracle. Mr Speaker, I know there are other hon Members who are going to be dealing with other aspects of the criticism that the Opposition have made of the Government's efforts in the last eight years and so I will limit myself to what I have just said.

HON P R CARUANA:

Mr Speaker, very briefly, because I have given my speech at the budget session but I cannot help to be provoked by some of the more outrageous utterances of the Minister for Trade and Industry who now seeks to take credit for everything that has been done in Gibraltar in the last eight years whether it has been done by his Government or whether it has been done by the private sector. They have got a curious vision of what they can take Brownie points for. The reality of the matter is that the westside reclamation existed as a project in the AACR, was already at an advanced stage before they came into power in 1988 and.....  
[Interruption] Yes, the Government Members may wish that we all forget that but everybody knows that the Montagu Basin reclamation project



already existed and what they did in 1987 just before they came into power is renegotiate with Gibraltar Homes Limited the terms that they were going to pay for the infrastructure. The fact of the matter is that they can claim credit if they want to for the 50/50 scheme but let us face it, the development itself was a private sector development with private sector finance and these chaps think that they can put it into their manifesto as an achievement of theirs. The people of Gibraltar are not that silly. The Minister for Trade and Industry says that he will not have his working class origins questioned and that certainly because he thinks that he is from a working class origin and considers that the rest of us are not, that the rest of us are not allowed to preach to him about working class matters in relation to the 51 directives. Well, amongst those directives we are told, although we do not know because the Government will not tell us what they are so that we can all decide how vital it is to Gibraltar's national interests that they are not implemented. We do not know whether it is in the national interests or in their party political interests that make it undesirable for these unknown directives to be implemented and we do not know because they do not tell us but according to the hon Independent Member in the Opposition some of those directives relate to workers' rights and things of that nature which ought to appeal to the Minister's working class background and working class shoes. So let him not come here and now adopt ideologies which he has in effect abandoned. The trade union movement in Gibraltar accuse him of abandoning his trade union roots. It is just not good enough in the run-up to a general election for the Minister to suddenly take out his union card and pin it to his lapel and remind the whole of Gibraltar that he is still a neighbour, a trade union member at heart. That just does not wear anymore. The Government Members got the benefit of the doubt in 1992 and they are not going to get the benefit of the doubt again. One common thread through almost all the points that the Minister for Trade and Industry has made is the one that we have been making for four years. He does not understand the difference between providing infrastructure and providing customers. We spent the last four years warning them. Fine, yes, there is infrastructure, but that is not the end of the matter. It is no point telling us about their tourist infrastructure if the tourists do not come. It is no use telling us that he has got his financial services legislation in place and there are banks all over Main Street if the finance centre cannot attract customers. It is no use telling us that he was able to persuade Baltica to invest £250 million in Gibraltar and the place is still lying there as a white elephant. How many years does he think that he is going to be able to derive credit from an over-supply of infrastructure and a complete failure to deliver consumer demand for those services? He can come here now and

adulate the Minister for Tourism when everybody in Gibraltar knows, including the Government Members, although I understand the need for them to cover his back, that the Government's performance in relation to tourism has been nothing less than disgraceful. Frankly, were it not for the fact that the Minister's intervention was interrupted by the luncheon adjournment I would not have been able to report to the House what I heard on the radio at lunch time. According to the President of the Chamber of Commerce he has said on radio today in an interview that in his meeting with the Chief Minister to discuss the trading conditions survey he says that the Chief Minister has recognised to him that tourism had not been a priority for the Government over the last four years. So how can they all come in here one after the other like one duck clockwork and say about a magnificent performance. Either the Chief Minister is lying to the President of the Chamber of Commerce or the rest of them are not telling the truth in this House. They cannot both be true. *[Interruption]* I am not assuming anything, I am just going by what I have heard. Here I have heard this morning three people saying that the Minister for Tourism is the best thing that has happened to tourism in Gibraltar since the 1969 Constitution was written, which I am sure not even they believe, and on the other hand we are being told that the Government have finally recognised, as if the Minister for Tourism's speech were not itself sufficient recognition, that he has no policy. Here is a Government in the dying days of their second and last term of office now saying that it is about to start consulting with the professionals. Who are they going to persuade with that approach? Of course, the Minister discussed his achievements but not the failures and of course even by his own standards the achievements are yet to prove themselves or are we to regard an empty Europort as a monument to the Minister's activity or not of a continuing nature. I can understand that the Minister is proud of his achievement in securing that investment and certainly securing that investment was a very, very positive step. One cannot be in Government for eight years and achieve nothing. I do not think even the Government Members can do that. So it is not that we recognise that they have achieved nothing, but what I am saying now is exactly the same as I was saying during the election campaign in 1992, three years ago and that hot air about buildings and cranes and white elephants and infrastructure.... *[Interruption]* Yes and is it not obvious now? Where is the clientele? Where are the customers? They have failed to market this territory property. Mr Speaker, therefore, when the Chief Minister says that his party has been brilliant, that his party has been the only one with vision, that his party has rescued Gibraltar from the mire, there are many, many, many people in Gibraltar who blame this Government for much

of the economic, social, cultural and political desolation that they see around them today. He is absolutely right when he says that the people of Gibraltar in 1996 or sooner will judge them on all that they have presided over and unfortunately for the Government Members that is more than just the construction of Europort. Thank you, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, the people of Gibraltar will judge him for having waged an incessant vituperative campaign which started in 1992, if not earlier when he arrived here in 1991 when his predecessor and the one that is after his job, abandoned the House because earning £100,000 a year was more important than serving the people of Gibraltar, and he arrived in this House in a bye-election and he started on a gutter campaign which has brought down the standard of politics to a level not known since the 1969 Constitution was started. That is what he is responsible for having introduced in Gibraltar politics and no doubt..... *[Interruption]* Yes, because trade union leaders took the fight to the places of work and fought them as trade union leaders of workers and not in the cocktail rounds, seeding discord and making the people believe that Gibraltar was going to rack and ruin and they are still ding it today, because what is the motion that we are supposed to be speaking to? What does this motion tell the people of Gibraltar to give them confidence in the future? They do not want the people of Gibraltar to have confidence in the future they want the people to believe that he is Jesus Christ Superstar who is going to save them next year. The only solution that he can give the people of Gibraltar is a deal with Spain which we will never be a party to. That is the only one that..... *[Interruption]*

MR SPEAKER:

Order, order. If the Chief Minister gives way you can speak, otherwise you cannot.

HON CHIEF MINISTER:

No, Mr Speaker, I am not giving way to the Leader of the Opposition. *[HON P R CARUANA: I have said what I wanted to say, thank you.]* He is saying it all the time. He says it in the European Movement in front of 30 people. He makes a party political broadcast every time he opens his mouth. We know that but we have got a motion in the House brought by them ostensibly because they felt they had to make speeches on the

Appropriation Bill of this year, having walked out in a huff. Described as storming out, I do not think they are capable of storming out, it is not in their upbringing to storm. They will never make storm troopers. *[Interruption]* Yes, or street fighters. This is why the people of Gibraltar would be poorly served by them. They bring a motion to the House which ostensibly shows their preoccupation about employment and about a depressed economy. The Leader of the Opposition has said he has been provoked into standing because he already made his speech at budget time. He did not make a speech about the depressed economy or employment at budget time and he certainly has been making a lot of statements now as the Hon Mr Vasquez did in his previous intervention which shows either that they do not know what they are saying - which I do not believe to be true - or they know what they are saying but they do not care about the truth. The Opposition Member is saying the only thing we can take credit for is for the fact that there has been a lot of infrastructure built between 1988 and 1992 but that nothing has been done to make use of the infrastructure and that that is not enough. Well, it is certainly better to have land that has been reclaimed from the sea with 2,500 houses and a supermarket and a swimming pool than to have the water that was there in 1988. Surely, that is better and if that land is now being used 75 per cent it would not be used at all if we had done what they would have done because what they would have done was not to borrow any money and not to invest because what they told people in 1992 - which was not true and which is not true now - is that we had already in 1992 borrowed £100 million; that we would need to borrow more money for the next four years; that it was all an artificial economy. The thing that he has just admitted to us five minutes ago is the only thing that in his book we can take credit for is what he said in 1992 was not real. It was an optical illusion created by spending borrowed money. The Hon Mr Vasquez has told the House today that we have got a crippling mountain of debt and in one of their political broadcasts a year ago they said we had borrowed over the £100 million and it is not true. They know that it is not true. I have told them in the Estimates a month ago that the Government this year have a zero borrowing requirement. I explained to them that if we have got a wrecked economy and a mountain of debt by their standards, with no new borrowing, I imagine that they must think that the management of the British economy by the Chancellor of the Exchequer is an unmitigated disaster because he is going to borrow £28 billion this year. He is going to borrow £28 billion this year and we are going to borrow nothing, and we are supposed to be mismanaging the economy. Their quarrel with us is that when we disagree with the UK Government the UK is right - that borrows £28 billion - and we are wrong that borrow



nothing and we are supposed to be borrowing too much. How can we borrow too much if we do not borrow anything? The fact that we do not borrow is evidence of the strength of Government finances and when I explain that to him what does he say? He has not said it now. That particular gem of intellect he provided us with in the previous meeting of the House when he spoke. He said, "The fact that the Government finances are OK does not mean anything the member opposite needs to go out into the street where I am. I do not know what street that is - Irish Town I imagine - and find out how the real world lives, because there business is very bad." Does he not understand that Government finances reflect business activity because the Government earn its money from the activity carried out in the private sector because the other source is now nine per cent of the economy? The economy of Gibraltar is now nine per cent MOD so how can we possibly have an economy which is able to maintain Government revenues and enable us to provide social services, medical services, sponsored patients to the United Kingdom? We have all that money coming in even though the private sector is disappearing under the weight of economic dearth and inactivity. The Opposition Members know that they are not telling the truth. When the Hon Mr Vasquez says there has been a drop in assets and a drop in bank deposits, is he telling the people of Gibraltar that there has been a drop since 1992? Or is he telling the people of Gibraltar that there has been a drop since 1988? He is telling the people of Gibraltar that there has been a drop since the Financial Services Commission came under UK. That is what he is telling them.

HON F VASQUEZ:

If the Chief Minister will give way. What I am saying is since the peak in 1992 or 1993 we have seen a drop. That is what I said this morning. From a peak in 1992/93 we have seen a drop in assets in deposits.

HON CHIEF MINISTER:

Well, Mr Speaker, I will tell him when the peak was and I will tell him what it was when we came in. In 1987 the assets of all the banks in Gibraltar was £417 million, that is what we inherited. In 1988 it nearly doubled to £808 million. In 1989 it doubled again to £1.398 billion. In 1990 it went up by 50 per cent to £2.322 billion. In 1991 it was £3.7 billion. In 1992 £4.95 billion. In 1993 £6.174 billion and in 1994 it was nearly £6.5 billion. In 1995 it is £5.9 billion, is in fact, as the hon Member said, 10 per cent less than the previous year. Ten per cent less than in 1994 in 1995. But it also happens to be since we are being told

we have been a disaster since we were elected, and it is all an optical illusion, well a growth of 12 times. The fact that we have gone from £400 million to £5.9 billion is real and nobody anywhere in the world can guarantee that there will be an infinite increase every year and I can tell the hon Member, as far as we are concerned, the fact that for the first time since we were elected there was a decline, I think is connected with the fact that the UK insisted on the Financial Services Commission coming under them and I said myself that whether it had a real effect or not on confidentiality there was a risk that it would be seen to have an effect on confidentiality. *[Interruption]* Perception is not my word. It is the word of the Opposition Member but whether we call it perception or whatever we want to call it, my view was that contrary to the judgement of the United Kingdom Government the fact that the Commission would be appointed by them would not result in more people wanting to bring their money to Gibraltar because surely if that was such a good thing, Jersey and Guernsey and the Isle of Man would all have asked for it years ago so as to get more money going there. In my view I thought it was likely to be, at best, neutral and potentially negative. For all I know, even people in the industry might feel that they need to advise their clients that now that the Commission is in a way staffed by people appointed in London they might want to take that into account because they have a duty to tell their clients these things and that that might have an effect. I do not know, all I can say to the Opposition Member that certainly to say that the Government's policy on the development of the financial services is a failure and that the investment in infrastructure has not produced greater use of that infrastructure. OK, we have got the original kudos out of building the places but the business has not come which are all the things that he has said because the amount of assets of the banking system is £5.9 billion in 1995, and it was £6.4 billion the previous year as compared to £0.41 billion, we are talking about six times as much even now. Certainly, it would not be there if the infrastructure had not been put in. The fact that we have got, as the hon Member says, an over-supply of infrastructure is of course deliberate. We have explained it innumerable times. Why? Because what we have found was that the cost of building something to take a certain volume was fixed down that if one puts in a pipe to take a volume of water the cost of building a pipe that takes twice is not 100 per cent higher. The marginal cost makes the investment worthwhile because if we put in just enough which is what used to happen before 1988 then the moment we get expansion we have got a problem that we have got to dig everything up and put it all again. So what do we have? We have got today fortunately for Gibraltar a situation where we do not have to turn people away because there is no way of meeting their

requirements in electricity or water or telephones or housing or offices. That we could handle many more I have no doubt. That we have explained ad nauseam how we had clear written commitments that Gibraltar's financial services would be given EEC recognition and that he knows that to be true and the fact that he chooses to ignore that as a factor why business is not as much as we wanted it to be and as we would like it to be and as he would like it to be because, of course, he happens to be in the trade. That does not mean that the Government of Gibraltar have not achieved any growth at all. It means that the Government of Gibraltar have not achieved as much growth as we would have liked which we do not dispute because we encountered a failure on the part of the United Kingdom to achieve for us acceptance of banking licences promised in writing in 1992. A letter from Mr Garel Jones written in 1992 telling me that there is no problem in getting the Gibraltar licences recognised in the EEC but that it would be prudent to first implement the 2nd Banking Directive with the help of experts from the Bank of England which we did. As I said to him in the European Movement each time we have done something, they have come back and said, "Yes, we are ready to inform everybody that they must accept your licence but can you do this?" and we have done that and this has been going on for five years. In spite of that, which was certainly not built into our equation, frankly we would not have told people, "You are going to be able to use your banking licences in Europe in 1991" had I not had it guaranteed in writing. Then when we found we could not do it in 1991 we went back to them and said, "Sorry, there has been some unexpected problem but you should be able to do it in 1992". I have been doing this now for five years and I am not doing it anymore because I no longer have any confidence that it is finally going to happen because in 1994 it was based on us changing our law, which we did, so that the UK could name the members of the Financial Services Commission and it has taken them 13 months to do that. If the UK position is that they will notify the Commission in Brussels that we have got proper supervision here and the person that supervises the bank is seconded by them from the Bank of England, well, if we have not got proper supervision let them take her away and send somebody else who can do proper supervision. Why is it that she was thought to be doing proper supervision when she was in London and she is not thought to be doing proper supervision now that she is here if she is the same person? What is the problem now? The problem is that they say it has to be going on for long enough for them to be satisfied that the regime that they put in place is now producing the desired results and how long is long enough? They cannot tell me so if they cannot tell me I cannot tell the House and if I cannot tell the House I am not going to tell the

customers. We have been telling people they would be able to do certain things in good faith, based on written commitments which were clear and unambiguous, fully documented, ready to use when the time comes when we find ourselves in an election campaign with the Opposition Member trying to put the blame for any difficulties that we have experienced on us and then we will let the people judge who is telling the truth because we will publish what we need to publish when the time comes. But I can tell the hon Member that notwithstanding that when we introduced the Financial Services Ordinance in 1989 there were 49 businesses licensed originally and that at the last count in 1995 there were 436 and the 436 was a five per cent increase from 1994 to 1995. We would have wanted it to be a 50 per cent increase but it is not true that nobody is coming in.

HON P R CARUANA:

If the Chief Minister will give way. If we are going to present statistics we ought to do it in a reasonable fashion. That leap in licensed businesses reflects the fact that the licensing requirement was introduced and many businesses that were already in operation, unlicensed, had to apply for licences. It does not reflect new businesses.

HON CHIEF MINISTER:

Mr Speaker, the original 49 was what was required when the licence was brought in but I have said we have had five per cent increase in the last 12 months and that is not that we have caught up with 25 unlicensed operators. It is that 25 people started in the last 12 months. So it is not true that there is nobody coming in. That is the point I am making. It is not true to say that nobody has come in since 1992 who were already here in 1992 and those who were not here in 1992 is a 50 per cent increase. We had 50 per cent increase post-1992. Five per cent in the last 12 months, new licensed businesses under the Financial Services Ordinance. *[Interruption]* Obviously, whatever information we provide, since the hon Member wants to believe that it is not true, he is going to continue believing that it is not true but of course since this is not just for his benefit, but in order to make sure that the rest of Gibraltar does not believe that Gibraltar is crippled by debt, does not believe that Gibraltar is on its last legs, does not believe that we have our backs to the wall, because making them believe all that can only be, apart from the fact that it is not true, bad for us because if one paints a picture of doom and gloom all that one is doing is getting people anxious and getting people worried. I can only suppose they want that

because they think they are on the verge of fighting an election and they feel that if they get people sufficiently despondent they will vote for them. They will not get them to vote for them any other way. As regards the number of employees in financial services, Mr Speaker, it has gone up from 940 to 1596 since 1988. This is based on PAYE and social insurance records. Is it that before we came in they were not paying PAYE and they were not paying any social insurance? It is not that we introduced legislation for the first time in 1988 requiring people to pay PAYE and social insurance. Fifty per cent is not enough; an extra 600 jobs in the finance industry is not enough to satisfy us. I wish it were 6000 but what I cannot accept is that hon Members should say that there has been nothing, because it is not true. Therefore, if we give these statistics one is not giving statistics to say how wonderful we are, we have created 600 jobs in the finance centre and that proves our policy is right. Our policy was that there should be much more than this but it is not true to say that the economy is today worse than it was in 1988, that is an outright lie, every statistic proves it. The fact that there are 2000 more people working in the private sector today than there were in 1988 is a fact. It has not been enough, 2000 more jobs in the private sector has not been enough to produce net gain over the loss of MOD employment. I have explained that several times already but if in 1992 we say we are going to bring down unemployment by 300 over the next 12 months and half way through the 12 months PSA disappears then an honest assessment takes into account the fact that at the time we made the projection we had not taken into account the disappearance of PSA. If, at the end of the 12 months, we still have 600 unemployed then what we have proved is that had PSA not gone down we would have reduced the unemployment. With PSA going down all that we have done is run faster to stay in the same place. That is what has happened. That is the true picture and the true picture is that the economy of Gibraltar today has got greater strength than when it had £30 million wasted on the dockyard. It has greater strength when we could not even build a school or a house without UK money. That is the truth. It is true that we have got an economy today which is producing £300 million a year and we had an economy that was producing £150 million and if the growth had been an illusion when the illusion was finished it would have gone back to £150 million. It did not go back to £150 million; it stayed at the level. It is not the level we would have liked it to be. We would have liked it to have been 50 per cent higher and the hon Member can say, "You have not achieved the target that you wanted" and that would be true but it is not true to say, "You are worse off than you were in 1988", that is not true. *[Interruption]* Mr Speaker, the actual words he used were "the economy today is weaker

than ever before." It must be weaker than in 1988 unless he thought the world was created in 1989. If it was weaker than ever before; it is weaker than in 1988. I am telling him it is not weaker than in 1988. It is scandalous to undermine the will to survive of our people by making them believe that. It is scandalous to make the people of Gibraltar believe that. We face totally unjustified problems in the European Union since the arrival of Spain because we did not have them before because Spain was not there making life difficult for the United Kingdom. I have already recognised the problem that the UK have with Spain in the European Union but that should have been foreseen before 1986 because it was a worry that I put to the Government many times from the Opposition. I used to say from the other side, "You need to take advantage of whatever years we have got left before Spain joins because they are going to join sooner or later to try and tighten up whatever loose ends need tightening up." We had a 1982 Banking Ordinance that transposed the 1st EEC Banking Directive. It was only in 1989 that we discovered that in the Journal where Community banks are published, Gibraltar banks had not been included. The Community requires that every bank in every member State of Europe should be published in the Journal and the banks of Gibraltar had never been included. We were included for the first time in 1990 when we brought this to the attention of the member State UK and they have not included us ever since. Notwithstanding that they were included they still cannot passport because the Community requires that the issuing authority in Gibraltar should be notified to other member States and it requires that there should be a Memorandum of Understanding and Spain has gone to the extent in 1993 of not signing the Memorandum of Understanding with the Bank of England for banks from the UK because they do not accept the Gibraltar banks. To that extent they have gone. The UK has got Memorandum of Understanding with everybody else except Spain because Spain refuses to sign with UK because they do not agree with the bank licences in Gibraltar even though we are not included in any of them. We need to know that that is true and that is recorded and that is there and that is an obstacle to our capacity to generate business which should not be there which is not of anybody's making in Gibraltar and which we are entitled vociferously to complain about. Without that frankly getting business to Gibraltar would not have required half the effort we have already put into it because Gibraltar offered a very attractive option and that was obvious to us not because we were experts in the field but because everybody we met told us that this was the case. If we could do what the law appeared to say we could do, people would be queuing up to come here provided we could accommodate them and we set about accommodating based on written

guarantees that we would be able to do it. The fact that it is not there does not mean that we have got no option and therefore we have got to think of alternatives which require buying off Spanish hostilities. That is not the case. We must not believe that that is the case; it is not true. It may require greater effort on our part. It may require harder work. We may have to look for other alternatives but we can do it and we must do it and frankly what I believe Gibraltar needs is that we quarrel with each other about the things we need to quarrel but we do not quarrel with each other about whether our economy is today weaker than ever before where we have got a crippling debt burden because the things are not true. If the people in the street are told that there is a crippling debt burden they must assume that the hon Member knows what he is talking about or that he is mistaken but not that he is lying and having been told in April that there is not going to be any need to borrow money in these 12 months then he must know we have not got a crippling debt burden because the debt he is talking about was the one that was there in 1992 in their manifesto. They put in their manifesto in 1992 before the end of this year the public debt of Gibraltar will be £100 million and I told him three month's ago that it was £99 million so it is still £1 million less than they were telling people in the last election. In fact, we are looking at our debt management programme always on the basis of efficiently finding ways of managing the debt so as to minimise the effect on Government finances. This is why we set the General Sinking Fund in the first place and we are confident that we have not got a problem of public debt at all. Let me say that in the other statistics that I have got about the finance centre, since 1992 what we show is that in the last four years the number of new companies registered in Gibraltar has been growing. Not at the rate that we would like it to grow. Certainly not at the rate it grew in 1988, 1989 and 1990 where I understand we were putting in a lot of companies that were companies as owning one house in Andalucia because the Spaniards stopped that business. But the basic flow of new company registration in 1995 is 3700 and in 1994 it was 3000. To register 700 more new companies than in the previous year which is a 20 per cent increase in company registration is not bad going for a place that is worse than Bosnia if the Opposition Members are to be believed.

Mr Speaker, the area of employment which will be dealt with by my hon Colleague is one where we have made absolutely clear our conviction that the employment and training has got to be geared to the kind of jobs that the private sector is capable of providing and I think he will be able to demonstrate the effectiveness of the measures that we have taken in that direction. As far as we are concerned I am not defending

the Estimates of Expenditure in this House because I did it in the last meeting. I am talking to the motion that has been brought to the House but it is clear to me that irrespective of the subject matter we are going to have to keep on putting the same message across because we are going to be faced with the same slogan from the other side and therefore whether we like it or not we will keep on repeating it and although it is not our style to have to keep on saying the same thing again and again and again it is quite obvious that unless we put the record straight by default we are letting Opposition Members create within our community a sense of despondency and fear about the future which is totally unjustified by reality and we are not going to tolerate it.

HON P CUMMING:

Mr Speaker, the motion talks about profound anxiety at the deepening economic crisis, the crisis that we are facing is due to the failure of the GSLP economic plans. It seems the Government do not accept that that is the truth of the matter. I would just like to read a few extracts from Hansard and this is the first budget of this House of Assembly, that is to say, four years ago in 1992, the budget in which the Chief Minister says, "I will try and give the House and the people of Gibraltar an expose of how we see not just the next 12 months but indeed the next four years. I would like to give broad parameters, broad outlines, of what we would like to achieve in this four year period and one element in that type of scenario is that of course it provides the framework within which performance can be judged." So, how could he have been so arrogantly confident of his economics to give the Opposition such a stick to beat him with. He himself has given us the measure, the ruler, with which to measure his economic success over the past four years. He goes on to say in his budget speech of 1992, "We have set ourselves a target in terms of employment over the next four years of maintaining 14,000 jobs in the economy of Gibraltar and we expect that in order to maintain those 14,000 jobs the economy of Gibraltar will have to increase its output from £300 million to £450 million between 1992 and 1996; an increase of 50 per cent." He goes on to say, "We have to run very fast to stay in the same place". He says, "We are confident that we can achieve this in the next four years notwithstanding the situation in the outside world which is catastrophic". He says, "There are people who are going round saying that the recession is going to take longer to come out of so we are taking a conservative approach in estimating. This is why when we say we are going to grow from £300 million to £450 million and maintaining 14,000 jobs we do not think it is an over-ambitious target. It assumes that there will be no new projects in the



Improvement and Development Fund after the completion of the ones in place. It assumes that there is going to be continuing shrinkage in the UK Departments. It assumes that the world recession is not going to be easy to end. The up-swing will be slower and come later than the optimists expect. I do not know," he says, "other than Armageddon what else we can assume in the equation to make sure that we are not being too optimistic. I say this because it is really important that whilst we have to be totally realistic in understanding the difficulties we face" and this is what I am after, that we should be realistic in understanding the difficulties that we face, this is the objective in my speech today, "as a people and as an economy small and vulnerable as we are I do not want to produce an impression of unmitigated gloom. So in this predication we have taken into account all possible negative factors. It is difficult to think what could go wrong that we have not already assumed will go wrong in the economic models that underlines the Estimates of the next four years." It seems incredible to me that four years later we should be in the position that we are in. Armageddon by the way, has not come and by no means has that target of 50 per cent growth been achieved. In fact, growth has been 3.5 per cent, 1.5 per cent, 1.5 per cent and in the last budget zero, no growth at all. In the previous four years there had been a growth of 100 per cent. So if it was a business we have a projection for the future and we draw a graph and to understand that 100 per cent of growth in the first term of office of the GSLP we have to take two things into consideration - the £100 million of the enormously failed Baltica investment and the £100 million of borrowing which has given an artificial boost to the economy and tremendous stimulus enabling it to become the fastest growing economy in the world. But the scope for artificial messing about with economies is very limited and very dangerous. Immediately the Chief Minister has forecast confidently bar Armageddon 50 per cent growth over these four years, hey presto, growth shrivels down to 3.5 per cent so we end up then with 6.5 per cent growth where he confidently estimated a 50 per cent growth. That to me reads failure of their economic plan. I am reminded of a speech by Harold Macmillan in which he said it takes a great economy a long time to die and little Gibraltar, little economy, but it had a great economy and it does take a long time to die but how will we project the graph into the future, a graph that received an enormous artificial economic boost and then fizzling out to very small amounts of growth until it stops to grow? So we say what happens next, what can we expect next year? Next year we can expect a shrinkage in the economy of 1.5 per cent gradually increasing up as the economy goes into reverse unless we are able to do something to change it. We are not in a catastrophic position yet. We

still have a small handful of years in which to come up with something very solid for our economy and if not the economy is going into reverse and as success succeeds failure fails and the economy will go into reverse faster and faster. I remember a broadcast in which the Chief Minister was being asked about his economic programme and he was saying how he had laid down the infrastructure in the first four years and in these next four years he was going into the marketing and was expecting only very moderate success which would ensure that the project would get off the ground. Then he said, "If we do not do it...." that is to say, make a success of this project, "it is because it cannot be done". Yet now the Chief Minister is saying, "We must not say it cannot be done what we must do is work harder and look at it like this and look at it like that". What we must try and do in this House of Assembly where we are the political leaders of the community and we have to think for the community whose economic expectations are in our hands, is to try and make a responsible analysis of this rather than trying to score political points. The Chief Minister said three years ago, "If we do not do it it is because it cannot be done" and I agree with that analysis. I think the GSLP have tried very hard to make a success of the economy and unfortunately they have not been able to market the infrastructure that they have put in place. This is a very serious matter because in their GSLP manifesto they rightly say, none of us would disagree, that there is no self-determination without economic viability. That is in the GSLP manifesto, there is no self-determination without economic viability and as our economy has reached zero growth and can only be projected to shrink and go into reverse in the future then obviously a question mark over self-determination and there is no doubt that we have to be economically strong in order to be politically strong. It must be that the principal Ministers of the Government must have been the first to realise that their expectations for their marketing campaign was over-pitched and they must have realised this months and months before everybody else in Gibraltar. Some sort of response from them, surely, would have been the right thing. I think that there was a kind of response and it took place in the Chief Minister's speech to the United Nations not this year but the previous one in which he differentiates for the first time between the right to self-determination in theory and the putting into practice of that right because he said to the United Nations, "We accept that the putting into practice of the right to self-determination...." For the first time the response to the failure of the economy is to say it is conciliatory to Britain and conciliatory to Spain to say, "Look, we differentiate between the right in theory and the right in practice, that we must negotiate with Spain to establish how we will put into practice this right". This was followed by a semi-conciliatory trip to

the Madrid Siglo XXI Club with a new attitude but the new attitude has not caught on. In other words, Spain will not accept that position. We have to ask them why has the GSLP economic plan failed? It is not because they did not work hard enough. It is not because they have not put their hearts into it. The reason and I am sure that they will probably agree with me, for their economic failure is one, Spanish hostility and two, British apathy. Certainly we could have expected the GSLP to have taken these factors into account when they took the risk of borrowing so much money but that is done. The Spanish hostility and the British apathy added together make political instability and it is political instability that - I have it on the advice of many people in the Channel Islands high up in the finance centre - that kills a finance centre and scares away potential investors to Gibraltar. So we must ask then, why is it that we are faced with this British apathy to help in the economic programme of the GSLP? The answer is so obvious it scarcely needs mentioning. The fact is that it is 15 years ago now since Britain and Spain decided in Lisbon that what they wanted for Gibraltar was a negotiated settlement and therefore to invest in the GSLP economic plan would be investing in something they saw as alien to their interests. Therefore they have been apathetic and willing to put up obstacles to the various plans that the GSLP has put in place. These then are the facts of our economy. We face hostility from Spain and apathy from Britain in helping in any programme that is to work outside the framework of the search for a negotiated solution to our future.

If I could turn momentarily to the economic plans of the GSD such as we can perceive them to be and because I have no doubt that the election of the GSD to government will result in an improvement in relations between Gibraltar and Britain nonetheless after the honeymoon is over some of those obstacles that the GSLP have been constantly struggling against will also be presented to a GSD government. In a beautiful crest in which the GSD has designed for its party we see the main item of it being Union Jack; the British flag. I have no objection to the British flag but a kind of feeling in Gibraltar of insecurity where people say, "We feel very insecure now. We used to feel secure before. What must we do now to feel secure?" They feel like crawling back into the nest that we had here with Britain before Lisbon. That I am afraid is not likely to be possible. It leads me to think that before the end of the first term in government of the GSD they will be running into problems with the British Government relating to the economy and to the finance centre. I always feel very nervous when the GSD mentions as an economic policy creating jobs because creating jobs is an intensely expensive matter if they are created artificially. The

Wilson government invested in a lot of money in trying to do just that and it had devastating economic consequences for the British economy. Therefore job creation has to be part of the real growth of the economy. So unless we establish real and sustainable growth in the economy it seems to me that it will just not be possible to create more jobs. It would be nice to think that if the GSD come into power - and it seems to me very likely that they will and certainly it is my present intention to vote for seven of their candidates - that out of their new attitude which is more open to dialogue and more reasonable and less nationalist will evolve gradually a policy which will carry Gibraltar with it into first, on dialogue then into negotiation and then a negotiated solution. That would be lovely to say that it will come in time. The problem with time is that the economic projection for the future shows that that time is short if we want to bargain from a position of strength because as the economy becomes weaker we will be more vulnerable to a solution being imposed on us that is not entirely to our taste. We cannot base an economic policy on potential aid from UK. It seems to me that the UK policy is to assist with a policy of reconciliation and negotiated settlement with Spain. To that they will contribute most liberally and without it they will not. Therefore, the honest message from this House from the GSLP and the GSD has to be to the people of Gibraltar, "Tighten your belts and be ready to tighten them a lot harder as the next four or five years pass". In the motion of censure in this House against me some months ago from the Government benches we had a speech from the Hon Mr Mor which I would entitle "Over my dead body speech" which was anecdotal, nationalistic and very anti-Spanish.

MR SPEAKER:

I must draw your attention that you must speak to the motion otherwise I will have to stop you. Do not start wondering about.

HON P CUMMING:

Mr Speaker, I am talking about the economy. In fact, I am talking about the economic urgency. The problem is that the economic viability and the self-determination has been linked.

MR SPEAKER:

You are repeating yourself now.



HON P CUMMING:

Mr Speaker, the fact of the matter is that unless politics in Gibraltar are going to become a very unhappy career, the economic cake has to be made bigger so that there can be a bigger slice for everybody because what is coming is the reverse, that the cake is getting smaller and therefore there is a smaller slice for everybody. Therefore this House will preside over the next few years into apportioning increasingly smaller slices with all the social implications that that will bring to us. It seems to me that if we are not careful on this question of the economy this House will become blind guides and the people who we lead will be led into the ditch. We will lead them into increasing bitterness and frustration as our economic policies are increasingly unrealistic. It is clear to me and clear to many in Gibraltar that Gibraltar will never flourish economically unless we are able to establish a good relationship with Spain. Certainly although Mr Speaker may rule this to be irrelevant we will never enjoy any kind of independence status that does not enjoy support from Britain and Spain. There was a gentleman who came to me at the airport yesterday and said to me, "Look, why do you keep saying we should have goodwill to Spain, why cannot we just at best ignore them?" I said, "We cannot ignore them because they are very important to our economy". He said, "I would rather beg than depend on Spain for my economic well-being" and I said, "Who are you going to beg from, the Spanish day trippers?" This should be an effect of the European Movement that we become increasingly inter-dependent economically on our European neighbours.

My plea in this motion is that we take on a more realistic message to the people of Gibraltar because this motion expresses profound anxiety at the deepening economic crisis. I will say that that is wrong because anxiety yes, profound anxiety I would not go so far just at this moment. Deepening economic crisis; we have not had an economic crisis yet, I do not believe because we are at that part of the graph where we have had growth and now we have come to zero. So we have come to the line where we can only expect that as from next budget it will be shrinking slightly. Therefore, it is not a profound crisis and there is no need for deep anxiety. Anxiety yes, because if we are not very careful over the next few years we will find ourselves in a profound crisis. It seems to me that before that crunch comes of an unmanageable economy we have to make the best use possible of those two or three years that we will have before the economy goes seriously into reverse and I would urge that we use them wisely. The Government Members, I think it was the Chief Minister, have accused the Leader of the

Opposition's solution to the economic crisis as being a deal with Spain and then there have been shouts across one way and the other. I will only wish that that was in fact the position of the Leader of the Opposition. It is not that any deal will do. It has to be a deal which recognises the right to our land, leaves us with our flag and our Parliament and leaves us masters in our own home. But apart from those conditions there are many ways in which we can take the Spanish claim into account and in so doing remove all those obstacles that have prevent the GSLP from bringing their economic plan to success.

HON J L BALDACHINO:

Mr Speaker, I will deal with the comments made by the Hon Mr Vasquez on employment. I think that my hon Colleagues have touched upon other areas that the Opposition have brought up in this debate.

First of all, before I move on to employment, I would like to remind Opposition Members of the question of home ownership. The Leader of the Opposition said that home ownership and the construction of nearly 3,000 flats for the people on the waiting list was an initiative by the private sector and that that initiative was there during the AACR administration. Let me remind the hon Member that prior to the 1988 election and when in Opposition, the GSLP did re-negotiate the conditions that the AACR had made for Westside 1. Westside II, Mr Speaker, was not an initiative of the AACR Government neither was Gib V nor Eurotowers. Let me remind the hon Member that the 50/50 scheme was not the policy of the AACR Government, that the introduction of the £10,000 tax allowance on capital of any flat was the initiative of the GSLP Government. Let me also remind the hon Member that the Leader of the Opposition and his hon Colleague Mr Vasquez were against the 50/50, let it be said ... I will give way.

HON P R CARUANA:

Will the Minister explain where he draws that conclusion from?

HON J L BALDACHINO:

I will. In the Leader of the Opposition's debate in the Mackintosh Hall. Even though he did not clearly set out that he was against he ... *[Interruption]* No, if he wants I can go into his dealings as a professional if he was against it or not. I do not want to go into that area. I give way.

HON P R CARUANA:

Mr Speaker, what the Minister cannot do is say that I am against the 50/50 scheme which is pure fabrication on his part to use the language that they have been using all afternoon with impunity; a lie and then when he realises he is caught out say that in my professional capacity representing one party or ... but what he means is that he is now up to the realms of politics. What he has said is not true and he must either withdraw it or support it.

HON J L BALDACHINO:

I will even go further, Mr Speaker, his Chambers even questioned the memorandum and articles of association of the company. On the question of the Hon Mr Vasquez, when he was a member of the board of the Chamber of Commerce members of the board could not belong to political parties. In a meeting, unless he has changed his attitude ... *[Interruption]* I will not allow him to interrupt, Mr Speaker, but I will give way if he asks me to.

HON P R CARUANA:

He is very generous with the giving of way. In fact is the Minister saying that the evidence that he has in support of his bold assertion that the Hon Mr Vasquez and I opposed the 50/50 scheme is, one, that my legal chambers representing a bank made a legal query about a provision in the memorandum and articles of association of a company and that he was a member of the Chamber of Commerce at the time that the board said God knows what. He has not actually told us what the board has said. That is his evidence in support of his assertion that we oppose the 50/50 scheme.

HON J L BALDACHINO:

Yes, Sir. I would like the people of Gibraltar to know that. Let me tell the Hon Mr Vasquez that the policy on the cadet and training scheme has been successful. Up to 70 per cent of people who have been in the cadet scheme have found employment. A percentage of the remaining 30 per cent are people who then decided to go and study in the United Kingdom. Another percentage of that are people who have found alternative full-time employment. Let me also remind the hon Member that there are now more students attending full-time education in the United Kingdom in Universities and Colleges thanks to the GSLP policy

of removing the pointage system. Some of the hon Members in the Opposition fought an election in 1988 against this. That is also part of training. It is the objective of this Government to have as many people as possible qualified to the highest academic standards. Let me tell the hon Member that he accuses me that the training scheme now put in place with the Chamber of Commerce was the initiative of the Chamber of Commerce. Let me also tell the hon Member that I have no quarrel with that. I do not mind who takes the initiative or who gets the credit for whatever it is. As far as I am concerned I have a duty to perform. I have a responsibility to perform and therefore I will reach any agreement with any institution to try and train our people to the highest level. Let me also remind the hon Member that the scheme that we have put in place with the Chamber of Commerce is one where the cadets will finish up with qualifications up to the standards of NVQ's. Let me also tell the hon Member that I intend to look at putting up a training centre where our youngsters can learn certain craft trades up to the standards of NVQ's. Let me say to the hon Member as well that I am speaking to other leading bodies within the financial centre to try and also get our people to higher qualifications and NVQ's that is required for those sectors like banking. Let me remind the hon Member that at the moment we are running legal secretaries courses and I hope that people in the legal profession take on the young ladies and men who we have trained for legal secretaries rather than go and look elsewhere. Let me also tell the hon Member that I am now reaching agreement with an insurance company for people to be trained within that sector to the qualifications required by the body. I think that the figures that he quoted were the figures that were not the ones that I gave him by a letter on 26<sup>th</sup> April. Gibraltarians unemployed under 25 are up to April. I am convinced that there are much less than that. There are 225 and over 25, 351. He also mentions the criticism levelled at the Employment and Training Board by the Gibraltar Chamber of Commerce but what he conveniently left out was paragraph 9 of that report which states, "This question was perhaps ..." and it is referring to the Employment and Training Board, "not worded correctly. Some respondents felt that the Employment and Training Board was being of some use via the existing Vocational Cadet Training Scheme. However, in the main most employers found little use for the Employment and Training Board which generally restricted practice on employment and unsuitable applicants being sent for job interviews ..." and it goes on on problems that exist within the Training Board and so on and so on. He so conveniently left that out. Let me remind the hon Member that the problem that we have in the ETB I will try my best in dealing with the employers. The hon Member in one of the questions when my hon Colleague Joe Moss was the Minister for

Employment, and I think it is in Hansard somewhere, said that we should leave employers to employ whoever they like, much to the regret of the hon Leader of the Opposition who was making all sorts of faces, biting his lips and trying to get the attention of the hon Member not to go down that road. The hon Member must understand that sometimes employers, when they put in vacancies and when the ETB sends people for those vacancies..... let me give him one example. The ETB sent five Gibraltar applicants who wanted to be chambermaids and that particular industry came back and said that none were suitable. We are talking about chambermaids. That Gibraltarians are not suitable to be chambermaids and then they employ two EEC nationals from the other side of the border. That is the problem that I am having within the ETB and that is something that I need to correct because even though I am obliged to accept that EEC nationals have the same right, what cannot happen is that EEC nationals have more rights than Gibraltarians. The hon Member said that I do not walk down the street. I do walk down the street and every Gibraltarian walks down the street and they only have to walk down Main Street to see who are the shop assistants. the hon Members says that the ETB does not do a job. Of course, it does not do a job. I am talking about some of the business trade because they are unscrupulous businessmen who are in a minority. I must say which other do comply. Others do help; others do employ, but the hon Member in the same speech says that the cadet system does not work because employers get a cadet and after nine months or six months they say they do not require them and pack them off. That is the speech that he said and that is the quotation that he said, that they pack them off. On the question of the training levy, the training levy does go for training. The question is that the training levy is linked to the stamps that are paid to the DSS and the hon Member knows that not all employers keep to that commitment of paying the stamps on time. Some of them even take a year and sometimes they take two years and sometimes we have to chase them to pay. I am talking about a minority, I am not talking generally because these employers do keep to their legal obligations. But some do not even pay the £26 registration which goes to people of the companies that go insolvent. It is the money that normally a worker should get from the employer when the company goes insolvent. What really gets me is the companies that really are good employers are the ones which pay and the ones that are in a higher risk of going into liquidation or of going away from Gibraltar do not. The hon Members knows at least one. Sometimes they even sell all the assets before they go bust and then the employees do not get what they deserve under the law and the reality is that the employer has not paid for that. So, if the hon Member wants to talk about training, if the hon Member wants to

talk about employment, let me tell the hon Member that out of the figure that I have just quoted to him over 325 Gibraltarians in the last month, and I am talking about January, 97 EEC nationals from across the border have been employed when those employers should have looked and given priorities to our people. What am I doing about it? I am going to tell the hon Member. The hon Member was a member of the AACR in 1987 which signed the Brussels Agreement, which gave Spaniards 11 months before all the other EEC countries the right to come in and look for work. How does the hon Member think I can act? I shall tell the hon Member how I can act. Every time that an application for a registration of a Spanish or any other EEC national for that matter comes to the ETB I will check that company to see if that company is keeping to its legal obligations. So now he knows and everybody else knows if that is what he wants me to tell him The truth is that the hon Member quite rightly knows that there is very little legally that we could do, equally very little legally that they could do so it is not a question of legality, it is not a question of putting anything in place to stop people being employed. What I am saying is that Gibraltarian companies that are established here, that do business with the local population should have in mind that they owe something to society, that they owe whatever profit they make by giving a service to the people of Gibraltar. I understand that in some cases we might not have expertise but let me tell the hon Member that in 1960 I did not do the entry exam for an apprenticeship. I went to the then DLSS which was in Montagu Bastion and the person in charge I think was the late Mr Desoiza and he said to me, "Read the Chronicle". So I read the Chronicle and he said to me, "Why do you not take the entrance exam to become an apprentice?" I said, "Look, I do not think I want to go down that road. I want to go and do something else" but in the end I finished up being employed as a shop assistant. The reality was that being employed as a shop assistant at that time did not need a qualification. It appears now that to get our people employed in the retail trade or in the wholesale trade or as a delivery man or as a lorry driver, I have now by necessity had to put in a scheme where people will be qualified to work for NVQ's because when one of the employers comes to me and says, "The person who you have sent is not qualified", we say, "Yes, she is qualified, she has an NVQ". A florist needed to be employed and I said, "I am prepared to give you one of my cadets and you teach her how to be a florist". He said, "No, no, I need somebody qualified, I want you to give me a work permit for somebody who is living on the coast or across the frontier who has an NVQ level 1 as a florist". An NVQ level 1 is the minimum or almost no qualification. For the hon Member to criticise the ETB, for him to say so I think is cheap political points from the hon Member by saying that

people who go to the ETB and they choose who they send and who are not sent. It really puts into question the people who work at the ETB. I can tell him that there are many people in the ETB who actually take things seriously. They try to help our youngsters in particular and the question is that the selection is not done by ETB personnel. If a company asks for a cadet, I have said since I came in in January that the first obstacle that our young people have to pass is to attend interviews. People are sent for interviews to the company that is going to take them on and it is the company or the business who selects the cadet. Of course, what happens is that if a bank asks for a bank clerk, we have to send them the people who have the academic qualifications that the bank requires. We cannot send everybody else and we also take into account the youngster's preference. We try to marry what the youngster really wants to do with the jobs that become available within the ETB. This is nothing different. There is no difference, for employment of people over 25. For people over 25 we have exactly the same problem. We have people who are qualified chefs. They are prepared to take another national than our own person. For waiters they prefer to take somebody else than our nationals. For labourers they prefer to take somebody else than our nationals. They even come for labourers and ask for work permits. I am telling the hon Member I have refused it. I will not even consider that. I will consider if somebody asks for a work permit where he cannot find somebody suitable within our economy and that he is a Gibraltarian or a resident of Gibraltar. When I mention Gibraltarians there are people who are entitled to look for work here because they are resident. Most of them are British people; not necessarily Gibraltarians. I trust them all the same. I will repeat myself, so that the hon Member understands even if he criticises me, even if he says I am doing it because I have got six months for the election. This Government will start training our people so that they have the qualifications that are required so that the private sector does not come back and say that our people are not qualified enough even if that means giving qualifications for chambermaids, for barmen and for whatever it is. It is not true when the hon Member says that this is something that is being done today for six months. This is something I have been working on from January. This is something that happened in a meeting that I had with the Chamber of Commerce. Another thing which he has brushed aside from the report. He has only mentioned the bad things. He has not mentioned what the Chamber president has said in the 'Chamber Review' on the understanding that now exists between the ETB and the Chamber of Commerce and the personal contacts that we have. He should read that, at least he should be honest enough. If he is going to quote the bad things at least he should say that the

Government are now pulling in that direction, that it is speaking to the Chamber of Commerce to try and find solutions so that we make it better for the businesses so that the ETB can at least contribute for the benefit of the business. Let me tell the hon Member that the ETB, if it was properly used by the traders, could be a great help to them. The ETB does many functions; complaints by employees that they have been made redundant; the employer has not paid the insurance stamps; they have not been paid redundancy; that sometimes the employer wants to pay the redundancy in six months. A lot of things that the ETB actually does and the hon Member criticises maybe because it is nice to criticise.

The motion of the hon Member reads, "This House declares its profound anxiety at the deepening economic and employment crisis". I do not think that we are in a crisis. Of course, we are not as well as we would like to be. I would like to have everybody employed but that is Utopia. This Government and I would try our best to lower unemployment to get our youngsters in training but I cannot give a commitment that there will not be any unemployment. It would be stupid of me to say such a thing. I will try to bring it down at least to an acceptable level. I have said that there are many businesses who employ outsiders and other EEC nationals and let me say that we must be conscious that in catering, for example, our people must also be willing to carry out those jobs, otherwise we will still require to bring labour from outside. It is a must that we try and convince our youngsters that the days of the naval dockyard, that the days of the PSA and the military establishments as existed here, are long gone. There can no longer be any more shipwrights; there can no longer be any more pipe fitters, sail makers, boilermakers. Those are trades that we can no longer give training to our people. Our youngsters must understand that the policy of this Government is to train people for the demands in the job market. That is the only way because what we cannot do, and I am not prepared to do, is to give false hopes to our youngsters that we are going to train them in something that will not be of any use for them to find employment and all they are going to be is back in the dole queue. I will work my utmost with the private sector, with all institutions, to try and find an agreement and a solution so that our people can be trained and for the over 25's and for people that are there I also require, as I am actually doing, to see that the priority of employment is given to the Gibraltarians. Having said that and having listened to my hon Colleagues I intend to move and I gave notice, an amendment to the motion standing in the name of the Hon and gallant Lt-Col E M Britto.



Mr Speaker, I beg to move the following amendment, delete all the words after "This House" and substitute by the following:

- "(1) Notes that there is concern that the pace of economic activity could slow down and produce higher unemployment;
- (2) Welcomes the fact that there is so far no material evidence that this is happening;
- (3) Welcomes the fact that this year so far the number of unemployed Gibraltarians has declined and supports the Government objective for further reduction;
- (4) Welcomes the initiative taken to start new businesses of which 136 have been registered in the first six months of 1995;
- (5) Notes that a greater impact on unemployment could be obtained if all employers gave priority of job offers to Gibraltarians and recommends that this should be encouraged".

Mr Speaker, I am speaking on my amendment to the motion. I think that by the contributions that have been made by my hon Colleagues as far as we are concerned have proved that there is no anxiety and deepening economic and employment crisis. We are prepared to recognise that if economic activity does slow down obviously that will affect and produce higher unemployment. I do not want to repeat myself because of the many of the things I have said in reply to the hon Member. What is evident is that the hon Members have given no proof or any evidence that there is an economic and unemployment crisis. The number of unemployed persons in Gibraltar is declining. I agree that it is not declining to the level and at the pace that I would like to see it decline but nevertheless it is declining. The Government are committed to work as hard as possible so that there is a further reduction. The construction industry was an industry that traditionally employed just under 1,000 persons and I am talking about fixed employment (maintenance) there are times and peaks in employment. It is the objective of the Government obviously to move into that area. It is an area that we want to move into. Let me say that when it was at a higher level, I think it was almost 1,900, we have about 16 Gibraltarians employed in the construction industry. Today even though we have now reached the level that the construction industry is not in its pace, let me say that we have made a substantial inroad into that area and today there are 35 per cent employment in that area. I think there is quite a lot

of leeway since two-thirds of the industry are still none local employees. Even though I have said that in the catering industry and the hotel industry we are making very little inroad for the two factors that I have mentioned before and that is the Gibraltarians are reluctant to move into that area of employment and that some employers prefer to employ outsiders rather than our people, nevertheless let me say that employment in that area has also increased very substantially - about 60 per cent of what it was in 1988. I think that specially on the youngsters I am sure it will take a lot of convincing for them to move into that area. Nevertheless, we will try our best to orientate them that that is an employment. I understand that that sector has very unsociable hours and therefore they are not very attractive for local people to be employed but let me say that we have had about five cadets employed in the industry and the five have finished up in employment. It is a question of trying to convince our youngsters. Of course, the Government welcome any initiative from businesses. We are prepared to listen. I am sure my hon Colleague the Minister for Trade and Industry is prepared to listen to people who want to put up small businesses. The glass factory was something that was negotiated by my hon Colleague the Minister for Tourism and the Environment. We have 10 cadets there. There are provisions to employ more cadets if the business picks up. If anybody has any ideas please come forward. Of course we have our own initiatives but there are people who might have ideas. They may not be our ideas but we might want to listen to them. It is as simple as that. I understand that the hon Member if he was in Government probably would just implement his ideas and not listen to anybody else which is what he criticises us for. On point 5, greater impact on unemployment could be obtained from our employers to give priority to job offers to Gibraltarians. This should be encouraged. It is something I have said and it is something that I am all the time in contact especially with the Chamber of Commerce which much to the regret of some people I do have a good relation with the president and therefore I am sure that we will find ways and means of trying to convince businessmen in Gibraltar to give priority to Gibraltarians. I commend the amendment to the House.

MR SPEAKER:

I now propose the motion moved by the Minister for Employment and Training the Hon Mr Baldachino which in fact is not a form of reforming the original motion but totally introducing a new concept and therefore we have now two propositions in the same motion and I explain this because our method of carrying on the debate now will be similar to that

which we have used previously in similar circumstances and that is that hon Members who have spoken already will only be able to speak on the amendment but the other Members who have not spoken can speak on the original motion and the amendment. The procedure will then be that the proposer of the amendment speaks last for the amendment and then finally the proposer of the motion will speak for the original motion and then we shall take a vote on the amendment and if the amendment is passed then automatically the original motion is defeated. I will not read the motion because I think all hon Members have got a copy in writing of the motion so I think it is a waste of time of the House. The debate now continues and if any hon Member wishes to speak he can do so bearing in mind what I have just said because I shall have to be strict and I will not allow any repetition of what was said originally.

HON P R CARUANA:

The rules are very clear, Mr Speaker, as always, thank you. Mr Speaker, the Opposition will not be supporting the Minister's amendment for two very obvious reasons. The first is that the effect of supporting this amendment would be in practice that our own, which we consider to be much more accurate than this one, would be defeated. But the second reason why the Opposition will not support this motion is that it is manifestly inaccurate. The Minister might think as he says here that there is no material evidence that economic activity could slow down. He could only possibly think that if he has not read the Chamber of Commerce's trading conditions survey report or has read it and has not understood it, which is probably more likely, or chooses to believe that everyone that has answered the questionnaire is lying to the Chamber of Commerce. The statistics of business confidence which in every other part of the world is regarded as an indication of the underlying health of the economy could not speak more loudly. Twenty per cent of businessmen think that they would do better next year than this year. Fifty-eight per cent think that they will do worse and in respect of each of the previous years the decline of pessimism is there. The Minister thinks that there is no material evidence of an economic slowdown is because he lives in the same ivory tower as his hon Friend the Chief Minister. The other reason why the Opposition will not support this motion is that it will be regarded as a sick joke by the Gibraltarians and non-Gibraltarians. He is very anxious just to produce the figures of 600 Gibraltarians, I think he ought to resist the temptation to be racist, there are 1,100 people unemployed in Gibraltar, not 600, 1,100! Those will find it a sick joke. The parents of youngsters who cannot find dignified, decent employment will regard these platitudes as a sick joke

and the people whose absence from the employment statistics is manoeuvred only on the basis of offering them slave labour rates in Government owned companies will think it is a sick joke that the Government Members should be patting themselves on the back and trying to make us all believe that there is not an employment crisis in Gibraltar because they are the only ones who are going to believe it. No one else is going to believe it. The people out there in the real world, in the streets of Gibraltar are not going to believe it so they can vote for their self-serving little amendment all by themselves and then they can explain to all the people that I have described, the difference between the rose garden as they see it and then they can decide for themselves when they vote at the next elections what they wish to do about that. Frankly, there is only one paragraph of this amendment that I think has merit and justification because certainly the Government's performance on business creation is not one that deserves the congratulations of the Opposition but I agree with paragraph 5. Regrettably I cannot vote in favour of paragraph 5 without voting in favour of the rest of it, I am not prepared to vote in favour of paragraph 5 either. I will just read paragraph 5 for the benefit of Hansard, "Notes that a far greater impact on unemployment could be obtained if all employers gave priority of job offers to Gibraltarians and recommends that this should be encouraged". I agree. I think that Gibraltarian employers should take that message on board. Everybody in this community, employers as well, have got a community obligation to ensure that they contribute all that they can to the social and economic viability of this community and this is one way that employers can contribute to that and that that is right but, having said all that, it is no use just urging employers to do that. I hear the chambermaid's example that the Minister gave or the example that he gave of the five that were turned down but one cannot ignore either what the employers are saying. It is no point trying to disprove it by reference to five chambermaids which may well be an abuse, I do not know whether it is an abuse or not, sounds a little bit odd. *[HON J L BALDACHINO: I have not used the word abused.]* But his indication was that this was frustrating and defeating the whole objective of employing Gibraltarians. As we presumably can all agree that one example, however good or bad, does not prove or disprove the whole theory, the Government Members cannot ignore the fact that what 76 per cent of the employers are saying to them is that they find that Gibraltarian labour is not adequately trained for their needs. That is the criticism that we have made of the Government that they had ignored adequate basic training of the sort precisely that would give the Gibraltarians a fair chance in the market place and that is their fault. If employers, who should I have said be trying to employ Gibraltarians,



were not employing Gibraltarians who had been properly trained, that would be indefensible but more than half of the blame is to be shared by the Government who I think have failed to equip many of these Gibraltarian job applicants, not all of them, many of these Gibraltarian job applicants. They have failed to equip them with adequate basic training to give them a reasonable chance of impressing a potential employer and that is their fault, and they bear political responsibility for the mishandling and mismanagement of the whole question of training and retraining and apprenticeship schemes and the like over the last six years.

The House recessed at 6.30 pm.

The House resumed at 6.55 pm.

HON CHIEF MINISTER:

Mr Speaker, having spoken to the original motion I am now speaking to the amendment. The amendment that has been moved by my hon Colleague the Minister for Employment and Training, is an amendment that reflects the position on the information that is available to us as a Government and which has been substantiated by the information that we have provided the House. The original motion which we are amending asks this House to declare its profound anxiety at the deepening economic and employment crisis and not one single statistic has been produced by the Opposition at what is the evidence that they have which gives them this profound anxiety. They have not demonstrated that there was already in 1994 a deep economic and employment crisis which has got deeper in 1995 which is what the original text said. Therefore we are reflecting in the first element of the amendment what they tell us which is that there is concern that this may be happening and if the Leader of the Opposition quotes from the Chamber of Commerce survey, the Chamber of Commerce survey does not say there is a deepening economic and employment crisis, it says there is lack of confidence about the future. That is what it says because people are asked, "Do you think that this year you will make more money than last year or the same amount of money as last year or less money than last year?" Of course, how much money they made last year we do not know. We certainly know they made considerably more money last year overall than they did the year before that and that every year the activity in the private sector reflected in statistics from the returns to Government shows an improvement. It may well be that 1994 will prove to have been a better year than 1995 will be. We do not

know that yet. We are not in a position to say how 1995 will compare with 1994 but we do know that 1994 was a good year, and that it was better than 1993, that we can say already. I will not go into the limitations of the analysis produced in the Chamber of Commerce report because I have already promised the president of the Chamber that he will be getting a detailed response to that in writing which will take each item and explain where the conclusions are incorrect in terms of the analysis. It is a technical thing and it will be dealt with technically but I have already taken him through some of them in the meeting we had but I have told him that I will give him the opportunity of being able to study the response of the Government. It is right that he should get it first and not that he should have to hear it from a presentation that I make in the House. It is only fair that it should go to him. Of course, we know that the Opposition jumped to all sorts of conclusions as soon as it came out and is still jumping to conclusions because they are saying the statistics of business companies clearly demonstrates what is happening in the whole of the private sector. When the Opposition Member says 76 per cent of employers are saying that they lack business confidence or that they think 1995 is not going to be a good year, he does not say that it is 76 per cent of 125 employers and that there are 1,500 employers. So it is 76 per cent of less than 10 per cent of all the employers in Gibraltar. Let us get the facts right. It may well be that out of 1,500 employers in Gibraltar there are 100 employers which is the 76 per cent of the 125 that are not going to be increasing their business in the next 12 months. All I can say is that on the basis of the information in that report it is not possible to draw the conclusions that the Opposition Member wants to draw. That, I can assure him and that we will be able to demonstrate that technically and that that information will be given to the Chamber so that they are able to assess the response and that of course we will then make the position public so that everybody else, including the Opposition Member will see that we are right. For the hon Member to talk about slave labour rates in Gibraltar, in Government owned companies, slave labour rates? I can tell the Opposition Member that if the Government companies are paying slave labour rates then most of the members of the Chamber of Commerce have got slaves by comparison. If one is paying slave labour rates most of the others must have slaves in terms of pay, in terms of conditions, in terms of annual leave and in terms of anything else we may care to mention but as far as we are concerned we accept that there is a well-organised union in Gibraltar to which I belong and who would not tolerate people being paid slave labour rates. Therefore, I cannot accept that he should cast that slur on the ability of my colleagues in the trade union movement who are responsible for negotiating these rates. They

tolerate people being paid slave labour rates. Therefore, I cannot accept that he should cast that slur on the ability of my colleagues in the trade union movement who are responsible for negotiating these rates. They might be better if I was still there but it cannot be slaves. The ability of the union to get wage improvements for its members cannot have been reduced to such an extent since I left the job in 1988 that it has now been reduced to slave labour. Of course even if we are able to demonstrate that it is not slave labour, even if we are able to demonstrate that there is no crisis of unemployment, even if we are able to demonstrate that unemployment is coming down but not as fast as we would like. We made that quite clear. We set ourselves an objective in 1992. The reality of it is that it is true to say that if one does what used to be done before we were elected in 1988 and in fact we made that very clear in 1988 when we went to the election campaign and we got into office, we said we know that by being specific we are effectively creating a situation where other people can criticise us if we do not achieve the target we set ourselves. Therefore if one does what used to be done by the AACR and, indeed by every other party before us, which was to say, "If we get elected we will do more houses". Provided they do one house they have done more houses and nobody can criticise them. If one goes to an election and says, "We will do 1,000 houses" there will be always somebody who says, "Failure, you did 999". Therefore we have not said we will reduce unemployment. We said we will reduce unemployment from 600 to 300 and we have not achieved it. We know that. It is obvious we have not achieved it. We want to achieve it and we try to achieve it and we have not succeeded but we have not succeeded because, as everybody knows, when we did that assessment we built in all the things that we could possibly imagine could go wrong but one of the things that we did not image could go wrong was that PSA would disappear 11 months later. There was no indication at all that the PSA was being closed in the United Kingdom. How were we supposed to build that into the equation? Surely, the hon Member can have no doubt that if we had not lost 500 jobs in PSA we would not have 600 unemployed and it is not racist to say we are committed to reducing unemployment amongst Gibraltarians and it is scandalous that we should be accused of racism when we have got half a dozen people parked outside my office because they have been unemployed for a number of years because they were made redundant by the MOD. The reason why those people are there unemployed is because the British Government washed their hands of the workers they imported into Gibraltar and to say that we are racist because we are not prepared to accept that it is the responsibility of the people of Gibraltar to have to find jobs for all the Moroccans the MOD sacked, that does

not make us racist. The Government of Gibraltar have been consistently pressing the United Kingdom to do something for these workers like we did for the ones that we employed in the Government of Gibraltar where we paid £3 million as an inducement for their repatriation and where we are paying them every year £0.75 million in Morocco. That is the commitment that shows that we are not racist. But what the Opposition Member cannot expect is that we also do it for all and sundry at the expense of the Gibraltar taxpayer. If we have got people who are unemployed who are Gibraltarians we feel we have got a responsibility to make those people find jobs first and certainly if we are able to have an economy that can absorb the Gibraltarians and absorb the Moroccans all the better but we cannot give undertakings that those people who have been here, however deserving, however long they have been, however many taxes they paid, at the end of the day the problem of the Moroccan community would be resolved if the British Government that brought them here in 1969 accepted their responsibilities and they have taken the totally indefensible position in our judgement and it was, Mr Speaker, when you were in office that it happened. We have checked the records and we know that at the time the IWPB Government was not happy to see the recruitment of labour in Morocco and we know that the advice that was given by Her Majesty's Attorney-General at the time was that this was not a defined domestic matter and if the Opposition Member looks in the Constitution it says that the Minister for Labour is responsible for labour from within Gibraltar and it was on that ground that the Government of the United Kingdom overruled the Government of Gibraltar and through the Embassy in Rabat negotiated for the Moroccan workforce to be recruited. Then when we said to them, "You did everything. You ignored the advice of the elected Government of the time. You insisted that they had to be brought over because they were needed to maintain the military establishment after the withdrawal of Spanish labour, how can you say that it is our responsibility?" They said, "Yes, because the definition is that before they arrived in Gibraltar this is foreign affairs but once they are within Gibraltar it is domestic affairs so the problem of feeding them is now yours". I suppose since I am so aggressive, unreasonable and such a street-fighter I get riled by these arguments. I dare say if the Opposition Member was there he would say, "Yes, Sir, three bags full, Sir. Thank you very much, Sir. Can I have more Moroccans, Sir?" I know that in the heat of the moment one says things that perhaps one does not really mean but I think it is very unfair to say that we are racist because it is not true, because that kind of thing said in the House tends to get quoted by people who do not want to do us any good. I give way.

HON P R CARUANA:

I said that when one is presenting employment statistics one cannot carry on saying 600 because the figure 600 is only relevant if all we are talking about is Gibraltarians and I did not have the Moroccans in mind. There are people in Gibraltar in unemployment who are neither Gibraltarians nor Moroccans. For the Government to handle the figure of 600 is to exclude everybody except Gibraltarians and I say that that is racist. They think it is legitimate for political purposes to talk of unemployment figures only meaning the figures of Gibraltarians.

HON CHIEF MINISTER:

No, Mr Speaker, I am afraid he does not know what he is talking about. Again, the unemployment statistics show that 90 per cent of the category that is not Gibraltarian and the Gibraltarian category means the Gibraltarians, the spouses of Gibraltarians and the UK citizens that have been here for a very long time, that is the Gibraltarian category. I suppose if nobody explained it to him when he arrived in the House, we have always assumed that the statistics that we publish which are the same as they were published in 1972 throughout, it is whether people are of the local labour market or whether there are people from outside the market and therefore we have got two sets of figures. In our manifesto we did not say, "We are going to bring down the unemployment of everybody that wants to register in Gibraltar" because there are 10,000 in La Linea who under Community law can cross the border and register. So what does that mean? The hon Member can then say to me, "No, no, if you want full employment you must bring it down from 10,600 to 300". I cannot commit myself to doing that. That does not make me racist. What I am saying is it is the residents of Gibraltar who are here, who have been born here or have their home here who are the labour pool of Gibraltar and that is what is loosely defined as Gibraltarians. It does not mean we check whether they are under the Gibraltarian Status Ordinance and then there is the non-Gibraltarian element where it is 90 per cent or 95 per cent Moroccans and there may be the odd German or the odd Frenchman or a couple of Portuguese. There is a figure that we do not include which brings the unemployment even higher. It brings it into the echelon of 1,500 or 1,600 which is the fact that there are people who are frontier workers who appear in the unemployment statistics of Spain but who still go to the ETB and they are entitled to do that under Community law and say, "I am looking for work in Gibraltar" and that is a real pressure on the labour market in Gibraltar but they are not included in the

unemployment statistics of Gibraltar because under Community law they are entitled to claim unemployment benefit in the state of residence and not in the state in which they are seeking employment and therefore they are counted in La Linea's unemployment figures. They are perfectly entitled under Community law to look for work there and look for work here but what they cannot appear is in both sets of statistics because obviously if that happened in every place where there is a frontier we would finish up on paper with more people out of work than there were citizens in the place because it would be counted twice. The fact that the statistics are done this way does not make us racist but of course since we are here in this House defending our performance and since what we put in our manifesto was that there were 600 local people out of work and that the target was to bring it down to 300 we keep on saying 600 down to 300 because as far as we are concerned if tomorrow the 500 others all got jobs and the 600 locals did not get jobs, we would still not be fulfilling the objective we set ourselves and we would still be criticised by the hon Member not for being racist but for not reaching the target that we set ourselves. What I am saying to him is that to use in that context the word racism is not a question of how we define statistics. It is a question of discriminating against people because of the colour of their skin. That is what racism means. It does not mean anything else and I think that is, frankly, a repugnant thing to say and I think it is a very bad thing to say because we have already been accused in a number of quarters of that and it is totally untrue and I reject it totally and nothing would make me happier than that there should be sufficient jobs for all the Gibraltarians and sufficient jobs for all the Moroccans, many of whom have been my close friends for the 15 years of my life that I have given in the union defending their rights. The fact that I cannot deliver that to them and the fact that I cannot afford to use the money from Government sources to give them a gold handshake and send them home and that I do not think morally we have got the obligation to do it, does not mean that I am against them because they happen to be Muslims or because they happen to be darker than I am. It does not make any difference at all to me whether they have got blue eyes and blonde hair or no hair at all. I think that needs to be put on the record so that we have no possible doubt about the integrity of the Government of Gibraltar when it comes to any question of racism

Mr Speaker, I am glad that the Opposition Member says he has no difficulty in supporting point five of my hon Friend's amendment because in fact, as he explained, we have a problem in doing more than persuading employers in Gibraltar and when we have tried to do more

than persuade them he must know that they go running to certain legal practices that sue us and that we are then told we are on a very sticky wicket. I am sure he must know that. So the fact that he supports the moral persuasion may help us in some instances. We believe that in looking at this the involvement of the Chamber of Commerce is something that could help and certainly if there is a situation where 70 per cent of the employers that answered the survey saying they have got a problem of finding qualified staff, I can tell him that that is not reflected in the employment vacancies that are open in the ETB. There is in terms of the non-local labour that gets imported, there is a situation where I think we have had about 20 Portuguese who have come in in the last six months. Virtually all of them have come in to do specialist work in the shipyard and they have come in on very short-term contracts and although local people sometimes resent outsiders coming in to do that, the reality of it is that that is an important element of the ability of the shipyard to be competitive. There are certain ingrained ideas that we have to change because, of course, people with the tradition of the naval dockyard where the workload was programmed, have still got to adjust to the idea that if a ship comes in and they want something done the reality of it is that the job of 10 Gibraltarians may depend on five Portuguese coming in and putting in a propeller because if we do not have the five Portuguese putting in the propeller the propeller does not get painted and we have the 10 guys that can paint it but we may not have the 10 guys who can put it in. There is a problem of getting people to understand that and that we cannot train locals to do that if that is something that happens once for three weeks in 52 because even if we spend lots of money training somebody to do that job the fact that we have got him trained and we pay him for three weeks is no use to him because he is not going to get paid for the other 49. We have got a fundamental problem as a small economy which appears to have no easy solution and that is perhaps one of the most difficult areas that we have got in tackling unemployment in Gibraltar and that is that there is an increasing tendency in many industries. In the construction industry, for example, there is an increasing tendency that the degree of specialisation means that instead of people being broadly skilled in all the range of masonry jobs we have got people who put foundations and they can put foundations blindfold and they can do it with the speed of light and they can make a lot of money in a very short time but they come in and if there is a building site they spend a month in the building site, they put the foundations and they disappear. In a nation they do not disappear on to the dole, they disappear on to the next building site and we have had people here working in constructions projects who worked here, who worked in Seville and who

worked in the Barcelona Olympics. We had it when we had the building of Safeways originally we had a certain amount of resentment from local guys saying, "Why cannot we build Safeways?" and Safeways said, "Because we have got specialists who only do this wherever we have a Safeways". There are still local labour who come in to supplement it. We may need local drivers, guys who push a wheelbarrow or whatever but the specialist people who put the structure up will come in and they actually came in for five weeks and they were here for five weeks and they disappeared. We cannot do that because we have not got an economy that is big enough to do it and because the people who are here want the jobs 52 weeks a year. They do not want to have one week here, one week in Barcelona and one week in Sebastopol. That is not the way they want to live. We need, therefore, to do something which makes more demands on our training facilities and more demands on our workforce than is the norm. We need to have people who are multi-skilled. We need to have people who are plasterers and then when they finish plastering the walls they go on to paint it because otherwise we have to sack the plasterers and employ painters. At this stage we are still fortunately with 35 per cent of the construction industry in Gibraltarian hands in an area where the work trades are still under represented and the programme that the ETB has got is concentrated on not producing more electricians or more carpenters, because we have already got unemployed carpenters and unemployed electricians, but we have not got unemployed masons and the number of masons in Gibraltar are very few. There are more now than there were in 1988 but it is not something that people particularly want to go into. It goes back to the days which I am sure some hon Members in the Opposition may remember, when the old system that was there which people still hanker for, was not racist but certainly something akin to racist in the sense that there were the major trades and the minor trades and the major trades were what the Gibraltarians did and they got paid more. Not for being Gibraltarian but for doing the major trades and the minor trades were for the Spaniards which they did not get paid less for being Spanish, they got paid less for being minor traders. When the Spaniards were removed the Moroccans moved in to do the minor trades and in the old dockyard days there was some justification because the major trades were the trades that had a higher technical content which required a command of the English language, where people had to work from drawings, where people had to do work based on written instructions, on wiring, work as armament fitters and therefore there was a certain elite of craft skills which is no longer possible to deliver because there is no market for the skill anymore. The reality is that since the days of the closure of the naval dockyard the re-



skilling of the workforce has not been upward, it has been downwards. The skills required in the commercial shipyard today and since 1984, which was one of the big problems we faced in 1984, was that the commercial yard wanted people to be less technical because they were so technical that they lost a fortune on every ship they did and this is not how the commercial world works. This is the truth of grappling with Gibraltar's unemployment problem and grappling with Gibraltar's training programme. This is not people in ivory towers. In any case ivory is now banned and there are conservation ordinances. So it will have to be plastic towers nowadays. But I am demonstrating to the hon Member that we do not depend on hearsay, we do not depend on surveys of Main Street traders, we depend on 25 years of personal knowledge of what it means and therefore when we look at statistics and when we look at figures we do it with the benefit of having been on the shop floor ourselves and of knowing the nature of the problem and of trying to come up with practical solutions. It does not mean we always get it right and it does not mean we have got a magic wand to cure all Gibraltar's problems but we have got, as my hon Colleague said earlier, nothing to be ashamed about in either the drives, the commitment or the success rate that we have had in extremely difficult circumstances which no previous Government have had before us.

HON P CUMMING:

Mr Speaker, there are many parts of this amendment with which I agree but there is one part which I disagree and it is number two, which says, "Welcomes the fact that there is so far no material evidence that this is happening". In the forecast that the Chief Minister gave in 1992 for this term in office he made clear that 14,000 jobs in the economy, maintaining them, was the objective of his whole economic drive. The fact that today we have 13,000 jobs indicates material evidence of a failing away from the plan that we needed in order to stay in the same place. Obviously then we cannot be in the same place employment-wise today as we were in 1992. So I believe there is material evidence that the employment situation is not as it was. It may be that some of those employees come and go but nonetheless it was the objective of the Chief Minister to maintain 14,000 jobs as a constant to the economy to stay in the same place therefore that seems to me that there is material evidence. Some of the others even though one by one agrees with it that so many businesses have opened and this year the number of unemployed so far; all this is good and right and welcome. Nonetheless there seems to be just a hint of an element of a mere of disguise to the anxiety that we must have about the economic situation. I believe that

this House needs to express anxiety about the economic and employment situation. I do not agree that we should be profoundly anxious about a crisis because that is three or four years down the road. We have still time to do something about it. Therefore, I do not like the Government's amendment and I do not like the original motion either and therefore I shall abstain on both.

MR SPEAKER:

If no other hon Member wishes to speak I will call on the mover of the amendment to reply.

HON J L BALDACHINO:

Mr Speaker, I am not going to say much because I think that the Chief Minister has replied to the Leader of the Opposition. I am only going to say to the hon Member that I have read the Chamber of Commerce report and I think I have understood it and it appears that after the intervention of the Chief Minister the one who has not understood the report is him.

MR SPEAKER:

Now I call on the mover of the original motion to reply.

HON LT-COL E M BRITTO:

Mr Speaker, I will concentrate on picking up a number of points made by Government speakers and try to be as brief as possible because of the time of day. With reference to the Hon Mr Baldachino and his points about the ETB and the preference of non-Gibraltarians among businesses in town, we have already given the indication that we support the last paragraph of the amendment in principle but I would like to repeat what I put in as interjection earlier on that we would also support, and have in fact indicated support for this in the past, any practical ways of giving priority of employment to Gibraltarians. That is something that obviously we all agree with but something that so far with the greatest of respect to Ministers they have failed to find in any great way. I think with the indications given by employers in the survey report of the Chamber of Commerce and their dissatisfaction with the ETB I think, quite honestly, that Government should give consideration to revising the way in which the ETB works in terms of employment and sending out people for interviews and their contacts with employers. It

seems to me that there is a distinct lack of communication between the ETB and the employers. For so many of them to be unhappy about the way the Employment and Training Board is working clearly shows that there is something wrong. If a body that has been set up by Government to protect jobs for Gibraltarians and to presumably help the employers as well as so many critics amongst the employers and I venture to say as well so many critics amongst the people who are seeking employment, then obviously there is something gravely wrong and I think it needs to be drastically revised. I think there is something basically wrong in the way that the ETB, not just under this present Minister but under the previous Minister as well seem to have a method of wanting to decide who the employees are by the method of pre-selection and by the small number of candidates that they send to a prospective employer. I know from personal experience and from representations made by employers that the employer wants as big a selection process as possible and if it is restricted to two or three people we create a situation where employers tend to go in another direction and find someone themselves that they prefer and that is one of the reasons why this is not working. I will give way to the Minister.

HON J L BALDACHINO:

Just on a point of clarification, which the hon Member has mentioned and I think it is a good idea. Let me tell him that I am in constant dialogue with the Chamber of Commerce president to see the areas that he is saying how we can best improve things. The other thing that he has mentioned which is not totally correct is that we select people to be sent for interviews with employers. We have a problem sometimes which the employer who says to only send him five or 10 and that is when we have the problem. We would be very happy to send 20 or 30 but sometimes the employer says, "I do not want to see any more than 10" and once we have sent six or seven they will probably come back and say, "Do not send me any more because I have already got one" or "I have found somebody else from somewhere else". I would say it is not totally correct that the ETB selects a precise number, sometimes the employer tells us that they only want to see so many.

HON LT-COL E M BRITTO:

I welcome the Minister's comment because in fact it reflects a greater change than probably he himself realises because when I am talking about sending a small number I was not meaning sending only five, I was meaning representations that have been made to me in the past

about the Employment and Training Board sending one person and pre-selecting and say, "This is the one we want you to employ". If that has changed then I welcome it.

If I can now go on to the comments made by the Minister for Trade and Industry he made a great song and dance about Westside reclamation and Westside housing, almost a party political broadcast in some ways and almost a rewriting of history because it seems to me that if we were to accept things the way he put it, it is almost as if there had been no housing put up in Gibraltar before 1988 and, of course, that is not correct. I suppose what he was saying is then that the Humphries building, the Laguna Estate and all those buildings..... *[Interruption]* The number of years is immaterial. It is a question that the buildings have gone up in the past and those buildings have been put up by previous Governments. I will give way.

HON J C PEREZ:

Mr Speaker, he is trying to distort the picture of what has been said here today. In 1988 the GSLP came into government with a very serious housing problem which we started to tackle and we have solved not in eight years, we solved it in four years. It took a lot of effort and a lot of investment and a lot of energy from the time that we came into government to sort out that very grave thing as housing problem that was allowing people to leave for the United Kingdom and to live in La Linea. The purchasing power of the people was being lost in the economy and the people were overcrowded and in unhygienic conditions in the houses. That was due to the very bad handling of the housing situation and the lack of building houses in the previous administrations for at least the last 10 or 12 years before we came into government and it was precisely because housing building was dependent purely on handouts from the United Kingdom and when they stopped, because they stopped long before we came into government, when they stopped there was no housing at all. We had to put our thinking caps and be able to generate sufficient funds to be able to not only start tackling it but to eliminating the housing problem completely from Gibraltar and for the Hon and gallant Col Britto to try and belittle that achievement and try and hide it is totally wrong. He would be doing a disservice to this House and to the community as a whole if he tries to do that.



HON LT-COL E M BRITTO:

Mr Speaker, the point that I was making which I will remake is that the Minister was concentrating on the expansion of buildings and the expansion of houses and what was done on the reclamation. The point that I am making is that that type of building had happened in the past and was not something that was completely new for this Government. In fact, the theme of what the Minister was saying reflects what is common to other Government contributors and that is speaking of past achievements and not looking forward to the future. It is always the reflection of being out of touch with the present in some of the contributions made. I will just finish on that point by saying to the Minister that he said that he will accept the judgement of the people of Gibraltar from what was on the reclamation and what they could see there. He will also have to accept the judgement of the people of Gibraltar for what they do not see like, for example, the occupation of the Europort building, the Hyatt Hotel that never was and the components factory that is now no longer a components factory. On his point on the 51 directives about defending finance centre interests, all I would say to the Minister is that what we have said already as an Opposition in a motion that if they are so keen to demonstrate that they are defending other people's interests then all they have to do is to publish what those directives are and then everybody can make a judgement for themselves. What has really put the cookie from the Minister's contribution is asking us not to preach to the Government on the rights of workers because they came from the working classes and they had always defended the interests of workers and the principles of workers. That comes from a Government who have been in the last two weeks the subject of a motion of condemnation in the..... *[Interruption]* They may laugh at it, Mr Speaker, but whether they like it or not and presumably they laugh because it was proposed by people from Gibraltar but whether they like it or not the union of which they are members, the leader of that union today has taken a motion to a congress in UK and that UK congress, that is the point, has supported that motion of condemnation of this Government for not being the defenders of the working class. That is the point so for them to tell us not to preach to them, I think that the fact that they have been the subject of that motion speaks for itself.

Coming to the Hon Mr Pilcher and his answers to the main thrust of my contribution on the subject of tourism, the Minister once more talks about the time worn arguments and points that he has made on numerous occasions in the past few years in this House. The points of

when recession came up, the point of the Gulf War came up, the changing conditions, it was all there. The usual series of excuses for the Government's policy not succeeding. The proof of the pudding of the failure of the Government's policy on tourism is in the eating. The proof of the pudding is that the Costa del Sol down the road is moving. The hotels are full. The proof of the pudding is in the hotel industry in Gibraltar. The Hotel Association in Gibraltar said in January of this year that the hotel industry was at the lowest ebb it had been for the last 15 years. The proof of the pudding is that three hotels have closed down. The proof of the pudding is that the statistics that I gave earlier on that there are fewer people coming to Gibraltar, those that are coming are filling up less space in our hotels and they are spending less money once they come here. That is the proof of the pudding of what is going wrong with our tourism. Some of the arguments that the Minister put which was described as unbelievable by my hon Friend Mr Vasquez and that was the word that I had written myself. Another Minister today has proved to be out of touch with reality in some of the things he has said. To accuse Members of the Opposition - which is now the catch phrase because obviously they are running out of things to say in defence - of making political capital out of their failure on tourism is quite honestly ludicrous and almost hypocritical. It is hypocritical from a Minister who in 1987 proposed a motion of censure on the then Minister for Tourism in the previous Government and that motion of censure was based on four points. The first one was based on the commitment given by the previous Government had not been met. Well, the commitments given by this Government have not been met either. The second point in that motion was that the figure for tourist expenditure in one year had fallen. Well, I have proved this morning that the figures since the GSLP Government came into power for tourist expenditure have fallen and are continuing to fall and are part of a downward trend. The third point in that motion was that the hotel occupancy survey report showed a decline of guest nights in one year, 1985 to 1986. Again I showed earlier on today that the hotel occupancy figures have fallen consistently or are part of a downward trend since this Government came into power. The final point is concerning the withdrawal of major tourist operators, which withdrew just before this Government came into power or shortly afterwards but once again they have not been able to replace to the degree that we had them before. They accuse us of making political capital on their failures on tourism then we are pulling the leaves out of the Minister's book. All I said this morning was almost exactly the same as he was saying in 1987. The bad thing about it is that having drawn the lessons in 1987 he has not been able, or that Government because I do not want to accuse the Minister personally, but the Government have

not been able to bring those lessons which they said they had learnt in Opposition, they have not been able to put into practice as Government. He admitted a difference with the UK Tourist Association in the amount of money spent on tourism. Of course there is a difference because the amount of money that this Government are spending on tourism is ludicrous. In the last year of the last AACR Government the figures in the budget showed that they were spending in the order of £1.5 million on tourism. If those figures were brought up-to-date it would be in the order of £2 million now. I will give way.

HON J E PILCHER:

Mr Speaker, I will not interrupt the hon Member but I will not let him get away with something which I believe is something that I answered in this House which the Leader of the Opposition may not remember, because obviously he was not in the House in 1988/89 but which the Hon and gallant Col Britto will, and that is that he made that very point or I believe the member of the AACR Opposition who dealt with tourism which could have been in the previous administration Mr George Mascarenhas raised that point and the position is not the same because we were then talking about like with like. The £1.5 million that the hon Member is talking about is a global figure that was used by the AACR Government under the guise of marketing and it covered everything and anything under the sun including the sponsorship of a motor vehicle that used to race in Spain which was the vehicles of the son of one of the members of the Government of the AACR. I remember making that point substantially clear that when we came back to the situation but we checked like for like, the Government of the day, when we took the motion which was the GSLP Government and still is and will continue to be, were spending more on marketing and advertising than the AACR ever had in the whole history of the AACR Government.

HON LT-COL E M BRITTO:

Mr Speaker, no, the Minister is incorrect on two counts. Firstly, it was not a contribution made by me. It must have been by one of my earlier colleagues, possibly but I have only been dealing with this portfolio for the last year of term. The figure of £1.5 million is not on marketing. The figure of £1.5 million is taken from Head 23 of the Estimates of Expenditure for 1988/89 and are the figures for the forecast outturn for 1987/88. They are made up as follows: Cost of the Gibraltar Tourist Office in Gibraltar £795,000 approximately; the cost of the London Office £423,000 giving a total of £1.2 million in round figure plus capital

expenditure of the order of £200,000. In that figure is included obviously the marketing figure in the overall figure but that is not the figure for marketing. What I am equating is the overall figure that I have given of £1.5 million in 1988 which in today's terms would probably be of the order of £2 million to the only item in the current Estimates of Expenditure of the Government which is of the order of £0.5 million which is for tourist and other promotions. Maybe the Minister can rectify that now. Despite questions in this House we have never had a breakdown of that figure from the Government of how much of the £500,000 is actually on tourist promotion and how much is on other promotions.

HON J E PILCHER:

If the hon Member will give way. Again, Mr Speaker, he should go back to Hansard. I believe in 1990 I explained clearly that the old tourist office had been moved out of the Government umbrella and the Gibraltar Tourism Agency Limited was created. He cannot compare the £1.5 million which was the overall cost of the London Office, of the Gibraltar Office and the marketing and everything. I have already explained to the hon Member in my intervention a couple of minutes ago that even the marketing which is a small proportion of that was not used for marketing purposes. I explained how we were dealing with the Gibraltar Tourism Agency and again it is not true to say that this House has not been given an explanation of the £500,000 because if the hon Member cares to look I believe at last year and the year before, he will clearly have seen that the Chief Minister mentioned, I believe two years ago, the figure of £250,000 and mentioned, I believe last year, £300,000 which is the marketing and public relations budget which includes advertising purely dedicated, by this Government to public relations, to marketing and to advertising. Nothing to do with the running of the office. Nothing to do with the running of the London Office which I have already explained, if the hon Member cares to look as well he will see that two or three years ago when we changed to the element of the infrastructure there is a figure of £800,000 in the Minister of the Environment's vote which is purely for the infrastructure side of the tourism vote in Gibraltar. So he has had all the information and as I explained this morning and I do not want to detract from his closing statements, we have taken him through 1988 to date explaining everything that we have done, showing him exactly what it is, proving where the figures are and proving that we are spending more. Of course like in other areas it does not really matter what we say to the Hon and gallant Col Britto or to any of the members of the GSD because I said to

him this morning that I agreed that the overnight market which is 15 per cent to 20 per cent of the overnight tourist industry has got problems which we are trying to address. He has spoken now and the Hon Mr Vasquez equally spoke about the hotel industry and the difficulties there. I admitted that this morning. The problem with the Opposition is that they spend too much time listening to their own thoughts and too little time listening to what we say and we are the ones who govern and, unfortunately, for them very, very well may I add.

HON LT-COL E M BRITTO:

That, Mr Speaker, is very much a matter of opinion which no doubt a lot of people will..... *[Interruption]* The fact remains that it is not accepted by us that Government Members are spending more on tourism than the other Governments have in the past. On the question of the hotel industry, I am glad he reminded me because I had skipped over that one, the Minister accepted the decrease in the overnight stays but claims there to be an increase in the day excursionists. I am afraid that once again the figures do not bear out what the Minister is saying. Arrivals by land, which the Government statistics are qualified because they say that the figure includes the number of people entering Gibraltar by the frontier. The figure includes non-Gibraltarian frontier workers, so therefore the figures immediately become suspect and are not accurate on the admission of the statisticians themselves. Those figures peak the highest point by land of entry within 1990 when the figure was 4.155 million people coming in by land. The last year for which we have statistics, 1993, is lower, it is 4.117 million. That is not increasing as the Minister said this morning. It is not increasing is the point. Not only is it not increasing but it was lower in 1991 and it was lower in 1992 and in 1993, although slightly higher than last year it is still lower than 1990 so it is utterly wrong for the Minister to tell us that the day excursionist market is growing because it is not and even on the figures provided by the Government statistics and those figures in any case are subject, as I said, to query because they include frontier workers. I welcomed earlier on this week and the Minister's reiteration of it today, the formation of the advisory board in conjunction with the Chamber of Commerce. I do not welcome the fact that the Government is not going to have direct representation the way I understand it on that board because it seems to me that what the Minister has done is the favourite trick of creating a committee so that nothing is done. He has conveniently created a committee, passed the problem on to the committee and kept himself out of it. I wait with interest to see what results come out of it but what I will say to the Minister is that that commitment is the one that he gave

us in 1988 before they came into power. In 1988 they promised to work with the experts in the field, they promised to listen to the people who knew and in fact it has taken them seven years to get round to doing it. All I can say is welcome but it is long overdue and let us wait and see what the result is. In one of his closing statements he said that the Government had achieved 85 per cent of the target of 1988. The target of 1988 is here in front of me and I think the greatest one they achieved is making the tourism sector more compact because it is certainly smaller in terms of figures. The rest of it, and I am not going to go into it, I just find the Minister's statement that it is 85 per cent achieved as unacceptable.

Finally, Mr Speaker, to come to the contribution of the Chief Minister, I think the most salient and interesting aspect of his contribution that I found was the fact that he did not seek to deny the comment made by my hon Colleague, the Leader of the Opposition, that he has said to the president of the Chamber of Commerce as reported on radio at lunch time today that the Government had given too low a priority to tourism. It is an admission of the thrust of what I was saying. It is an admission of the three causes that I gave earlier on this morning about the reasons for failure of the Government, two of them were paying lip service to tourism and the second one being inadequate finance and marketing and I think it is virtually tantamount to what the Chamber of Commerce president said today that the Chief Minister was admitting that that was true. My final point is that once again I have heard the Chief Minister today - I concentrate on the tourism aspect - but in other aspects of his contribution as well but in respect particularly of tourism once again he gave us his usual angle of blaming the British Government for non-achievements or for failures of the Gibraltar Government. He once again gave us his line of representations made to the British Government and the British Government not meeting its obligations to the Gibraltar Government. Well, all I say to the Chief Minister is that the more I hear him say that, the clearer it comes to me that something is wrong in the line of communications between the British Government and the Gibraltar Government because either the Chief Minister is not explaining himself properly or the British Government are not listening and if they are listening they are unwilling to act. The Chief Minister has shown in the past that he has the ability of explaining himself properly so I have no doubt that he is doing that. So if he is doing that and he is explaining himself properly then either the British Government are not listening or they are not prepared to act. I find it equally difficult to believe that the British Government are not listening so therefore we come to the third possibility which I find increasingly convincing, as far

as I am concerned, on a personal basis is that they are unwilling to act. I then ask myself that if they are unwilling to act whether they are unwilling to act in the present circumstances or whether they are unwilling to act at all and it seems to me that if they are unwilling to act because they are unwilling to act with this Government then maybe the lesson that we are all getting is that there is a time for a change of Government and for a Government that the British Government will listen to and be willing to act to help Gibraltar. That is all, Mr Speaker.

MR SPEAKER:

I am afraid that the last statement has made your motion a motion of no confidence and we have to take it as a motion of no confidence. You are really telling the Government to clear out and therefore I shall have to make it a motion of no confidence. I shall read the motion moved by the Hon and gallant Col Britto first and then I will read the amendment from the Minister and when I have done that we shall put the amendment to the vote.....

HON P R CARUANA:

Would Mr Speaker just explain what the remark was that he believes.....

MR SPEAKER:

He said that it is time for the change of the Government, that the British Government are not acting in support of Gibraltar because of the Government and therefore it is time for change. To me that is a motion of on confidence. I am the arbitrator of that and I am not prepared to carry on.

HON P R CARUANA:

But, Mr Speaker, I have no confidence in the Government and I have no difficulty in Mr Speaker wanting to convert this into a motion of no confidence but surely it is the wording of the motion, not on what one speaker might say in relation to it.

MR SPEAKER:

The decision as to whether a motion is of no confidence is that of the Speaker as it has to do a lot with the actual discussion that goes on, apart from the wording. I have been almost ignoring all the hints of

"there must be a change of Government"; "they are not governing properly"; "they are making a mess of things". That, to me, is a motion of no confidence.

HON P R CARUANA:

I accept your definition that a no confidence motion is one which reflects that the Opposition have no confidence in the Government.

MR SPEAKER:

Not only that, you have made a definite motion which leads to that particularly, as I said, because of the last statement made by the mover and it could not be clearer than that to me, anyway. That means, of course, that the only difference is that only the elected members can vote in this motion and I will go ahead again saying what I was trying to say before, I will read the motion.

HON P R CARUANA:

Mr Speaker, I wonder if before we go down this exercise we might have a three minute recess.

MR SPEAKER:

If you wish to.

HON P R CARUANA:

If Mr Speaker is not proposing to take a vote on our motion once the amendment is defeated then I do not need the recess, but if we are going to vote and if Mr Speaker thinks that this is a motion of no confidence and he is going to call for a vote on it, in addition to the vote on the amendment, then I want a three minute recess.

MR SPEAKER:

The decision is clear, I said it before. We shall take a vote on the amendment first and if the amendment is passed then the motion automatically is defeated. Do you follow? I think I have made myself clear that I am going to read the motion of the Hon and gallant Col Britto first: "This House declares its profound anxiety at the deepening economic and employment crisis".

Now I will read the amendment which reads: Delete all the words after "This House" and substitute them by the following:

- "1. Notes that there is concern that the pace of economic activity could slow down and produce higher unemployment;
2. Welcomes the fact that there is so far no material evidence that this is happening;
3. Welcomes the fact that this year so far the number of unemployed Gibraltarians has declined and supports the Government objective for further reduction;
4. Welcomes the initiative taken to start new businesses of which 136 have been registered in the first six months of 1995;
5. Notes that a far greater impact on unemployment could be obtained if all employers gave priority of job offers to Gibraltarians and recommends that this should be encouraged."

Question put on the amendment.

For the Ayes:

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 Hon Miss K M Dawson  
The Hon B Traynor

For the Noes:

The Hon Lt-Col E M Britto  
The Hon P R Caruana  
The Hon H Corby  
The Hon P Cumming  
The Hon M Ramagge

The Hon Miss M I Montegriffo and the Hon F Vasquez were absent from the Chamber.

The motion, as amended, was accordingly carried. The original motion was defeated.

HON P R CARUANA:

Mr Speaker, I have the honour to propose the following motion:

"This House:

- (1) Condemns the civil disorder and violence that occurred in Gibraltar during the 7th and 8th July 1995;
- (2) Commends and thanks the Police, Fire Brigade and other emergency services for the professional and dedicated way in which they performed their difficult duties;
- (3) Notes and supports the massive public demonstration on the 12th July 1995 under the slogan "Stop all Launches Now";

and calls on the Government to take immediate steps to stop all fast launch activity, whether related to drugs or tobacco and also to take measures to ensure that adequate training and dignified job opportunities are available to the young persons currently involved in that activity."

Mr Speaker, Gibraltar has experienced over the last two to three weeks an enormous variety of different sentiments and emotions. We have moved from the very disturbing events on the 7th and 8th July to the enormous manifestation of collective will on the 12th July and we have moved through that day to a sense of community as reflected in the VE/VJ celebrations and also in the way the Island Games have been conducted, participated in and enjoyed by this community. It would have been extraordinary if, given the events of the 7th and 8th July and of the 12th July, given the seriousness of those events, this House had not deliberated on what occurred, deliberated on the consequences, deliberated on what Gibraltar must do from here and indeed send a signal out of this House of what the views of this House collectively is on the issues involved. Not because I am making political capital which I regard as the most naively infantile phraseology to have hit the local political vocabulary to be found increasingly on the lips of Government Members but they know that my party has - not since the demonstration of Wednesday the 12th but indeed during the last general election campaign and since - been warning them about the consequences to this community of an activity which we had always described as



undesirable and which they, at different times, had failed to deal with and indeed on occasions encouraged and condoned the fast launch activity in relation to tobacco. I give way.

HON CHIEF MINISTER:

I want to make sure that I have understood what he has said. Has he said that we have encouraged this?

HON P R CARUANA:

Well, Mr Speaker, yes, it is fair that he should ask me to clarify that in the sense that if the Chief Minister of Gibraltar states that there is nothing wrong with it, because it is legal in Gibraltar because no criminal offences are being committed in Gibraltar, he does not have to use the words "I encourage" for somebody in an opinion forming position, like the Chief Minister who is an opinion creator, to see that statements of that kind have the effect of giving encouragement in the sense that if the Chief Minister says it is legal and there is nothing wrong with it, then it is OK. That is the sense in which I used the word encouraged and the Government Members know also that therefore we consider from the Opposition benches that they do bear political responsibility, not since last Wednesday, not since the 7th or 8th, not to the events of the 7th or the 8th but since we have been making these political observations for many years. This motion does not on its words seek to attribute blame or fault. I have said where I think at a political level the blame and the fault lies for not having heeded the warnings that have been delivered at a political level in the past. This motion seeks to express the view of the House not about who is to blame, because obviously I would not expect the Government Members to agree on that, it seeks to express the views of the House on the three issues that it sets out in the three numbered paragraphs; and further to constitute the resolute declaration of the whole of this House as to what should happen in the future and how we should go about achieving it. First, a numbered paragraph, calls on the House to condemn the civil disorder and violence that occurred in Gibraltar during the 7th and 8th of July 1995, and I expect that nobody in this House will have any difficulty in subscribing to that resolution. Second, commends and thanks the Police, Fire Brigade and other emergency services for the professional and dedicated way in which they had performed their difficult duties. I think that no one can be in any doubt about the Police. Policing in a small community is not easy, policing in a small community in circumstances of that kind is even more difficult and that policing the

streets of a small community in the light of the events of that weekend is something for which this community should express its commendation and its gratitude to the emergency services involved. They already know after the events of the 12th of July that they enjoy the overwhelming support of this community and I think it is proper that they should know that in the discharge of their duties, in maintaining law and order, they enjoy the support of all members of this House. I do not, for one moment, doubt that they will subscribe to that motion. Paragraph three calls on the House to note and support the massive public demonstration on the 12th of July 1995 under the slogan "Stop all launches now". What the memorandum meant was clear, between seven and 10, I think nearer 10 but the arithmetic of the crowd is neither here nor there, have expressed the view that the wider interests of this community, the long-term interests of the whole community, require this community to take a different direction. The people of Gibraltar have clearly expressed their wish in this regard. It must be clear to every member of this House, what the people were saying at that meeting and I think as far as we are concerned, it has been the view that we have always expressed, that certainly I think that this House should note and support that public demonstration of collective will to see this grave problem addressed and addressed urgently so that this community can direct itself in relation to those issues. It also calls on the Government Members to take immediate steps. The Chief Minister, in a recent television interview, indicated in circumstances which I would invite him to take this opportunity to make more unambiguous that with the Government, this whole House has the political resolution to deal with this problem. Certainly it must be dealt with in a responsible manner. It must be dealt with in a way that addresses not just the problems that the fast launch itself creates but, of course, the problems that might arise in the resolution of those problems. Certainly we accept that the persons with executive responsibility at this point in time to do that are the Government Members but that they must express a commitment to doing so they will have to choose what steps should be taken. We believe that there is much more scope in the existing laws than has presently been taken advantage of but they must decide what steps they wish to take at this stage to address the will of the people and of course the effectiveness of those measures is a matter upon which they will have to be judged and for which they will have to answer in due course. We will support partial measures conditionally. We realise that this is not necessarily something that can be stopped by just one measure and therefore we are not going to be churlish about this. We are not going to say we will support the Government in any measures until they have announced all the measures which together we think will



be effective but we must see on the Government side a genuine resolution and commitment to address the consequences of this problem as urgently as possible. We are not disingenuous in recognising that there is a difference between the origins of the problem and dealing with the problem. This is a problem that this whole community has. The people with political responsibility to extricate this community from it at this point in time are the Government Members but it is not only their problem. It is the problem of the whole community but we as an Opposition reserve the right to express views about the effectiveness of the measure that they take. I do not expect any of the Government Members to express the view that in doing that which is no more than the discharge of what oppositions exist for, is making political capital or scoring political points. We might say that it is open to one or either of those but we have and we reserve and we will exercise that right to give them the opportunity to alight on measures that will be effective and then to express our views as to whether they have chosen the right measures or whether there are other measures that they should have chosen. The Government know that we in the Opposition take a pretty broad view about the sort of things that will be necessary in order to put into place the full range of measures which will fully protect this community from the economic and social consequences of a successful eradication of the fast launch activity. We regard this motion to be step one. The Government know now because it has received publicity before this date that we expect the United Kingdom and Spain and the European Union, all three of them, to recognise. This is not any belief on my part that the problems that we have with any of those three are the result of the fast launches and that if we did not have the fast launches we would not have a problem with Spain. I shall be expressing my views about the linkage between the fast launches and the border restrictions in the next motion. The fact of the matter is that both the United Kingdom Government and the Spanish Government have responsibilities in this matter. The United Kingdom Government have a responsibility to ensure the economic stability of this community and let us face it, if the United Kingdom Government give financial aid to over 80 countries around the world (independent sovereign states) what is wrong with us recognising that in common with hundreds of other sovereign states which we are not one, recognise the need for aid and accept aid, why should we feel shy about saying that we who have a small economy in transition, we who have a United Kingdom Government that have contributed to some of the problems of that small economy should contribute to the resolution of the problem. I do not say to the United Kingdom Government pay us for stopping the fast launches, no. Give us financial aid to which we are entitled to and that

might include budgetary and structural aid and Spain has got to be made to understand by the United Kingdom Government that she has got to operate a frontier at the border which is not a noose around the neck of our economy because when we have stopped doing the things that others can legitimately accuse us of having been doing wrong, we will then be in a better position to say, "Now we have stopped doing what the international community regarded as objectionable. Now you stop doing what the United Kingdom Government have already described as objectionable". We will then be in a stronger position to say to the United Kingdom Government, "You go off and tell the European Union Commission to start pushing its weight around in Brussels to get the Spaniards to operate the border in that way". We have heard already about our views on training, employment and business start up opportunities. This community has got to offer the people involved in the fast launch activity, conventional employment and business opportunities. We have got to do that of course not just for them. We have got to do that for the people that have similar problems and are not in the fast launch activity. It is not a question of giving preference to the people in the fast launch activity but the political class, the Government and we as an alternative government in waiting, accept that political obligation as well. We have got to provide conventional alternatives in the form of jobs, or business creating opportunities and at this stage the responsibility is theirs. After the next election I expect it to be ours. As far as I am concerned I accept that responsibility here and now and the Government must accept it.

Mr Speaker, it is not necessary for me to say anything further because we are on record in Hansard on numerous occasions spelling out the reasons why we believe and have believed for several years, that this activity was not in Gibraltar's interest. We have on numerous occasions spelt out not just the social and economic consequences but also the political consequences of the image and reputation that this community was developing as a result. It may well be that Government Members may have a different set of proposals as to how they would wish to deal with the problem. That is secondary, the question of the motion because clearly that is their prerogative as a government at this stage but I would sincerely hope that all hon Members in this House will be able to unite around a motion in these terms or at the very least in terms of paragraphs numbers one, two and three and in words that commit the whole House to the eradication of this activity. I commend the motion to the House.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, I am answering on behalf of the Government on the understanding that there are no other contributors. The Government will be supporting part of the motion but I am moving an amendment to it which deals with the final element of it. The Government do not vote for motions calling on the Government to do things. That does not happen. If the Government want to do something, we do it, we do not call on ourselves to do it.

HON P R CARUANA:

If the Chief Minister will give way. I know that in this House the distinction is sometimes difficult to maintain but, of course, I draw the distinction between the Parliament of which, of course, members of the Government are a part and the government of the Executive and I think it is important to draw that distinction, and that is why it is drafted in these terms.

HON CHIEF MINISTER:

I do not know whether in fact the hon Member in drafting that particular paragraph held the same views as he has expressed today but to say that the Opposition recognise the sensitivity of this particular problem and the fact that there are measures that need to be taken which will genuinely resolve it as urgently as possible, is not quite the same as to say to take immediate steps to stop all launches, because the Opposition Member may say that the motion that was addressed to me was clear but in fact when I asked the representatives that had brought the motion to come and see me it was precisely so that I could understand what they thought it meant, because I was not very sure whether they were saying to me, "We want the Government to send the riot squad and pick every launch in sight out of the water and make off with it" as a way of restoring peaceful and harmonious relations in our community. I can tell the Opposition Member that that seemed to be the view of quite a number of them and I was quite categorical in saying, "We will not do that". There is absolutely no way and I have explained to them that the action we had already taken on the RIBS was that we decided after months of interception where everything intercepted was released because at the end of the day the most we could say was, "You have petrol in a plastic can and it should be in a metal can and we will take you to the Magistrates' Court and you get fined £5". It was

decided that given the fact that the surveillance and the interception were indicative that if it was presumed that people that crossed the straits were crossing the straits for a particular purpose and that they left Gibraltar not with duty paid anything, they left Gibraltar with nothing and they returned to Gibraltar with nothing. So let us be absolutely clear that the boats against which we moved were patently not breaking any law in terms of taking anything or bringing anything or exporting without a licence or anything else. Since the evidence was that these were the boats allegedly involved and given the fact that I had agreed with the United Kingdom that it was important to be able to deny without fear of contradiction - which were the words used by Douglas Hurd in that article in The Times before he went to see Senor Solana - that the hundred odd boats which were allegedly leaving Gibraltar for Morocco were not in fact transporting drugs from Morocco to Spain, we came to the conclusion that the only way to get to grips with the problem and deal with the situation on the basis of being able to deny, was to first of all ensure that no new addition could be made to the boat, that our report - which was the same report that Douglas Hurd had - said were already here and that the registration of those boats should be brought under the Royal Gibraltar Police as a deterrent to certain individuals who might want to use those boats for that particular activity being made to think twice about how they would explain what they were using the boats for if they had to go to the Police station to do it. The move that was made on the 6th of July was the move which said, "As from midnight tonight no new RIBS shall be imported into Gibraltar" and it was done on the basis that what was here already was on the 7th of July illegal if it was not able to demonstrate its legal presence. That meant its legal importation, its having paid duty, its having registered with the Port Department initially, its having the registration number, its being berthed in the place where it was required that it should be berthed, because one of the conditions of importation is the requirement for a berth. In fact, out of the supposed 106 we found that there were 60 and out of the 60 that were taken into police custody there are some 27 which apparently have no owners because nobody comes forward to say, "The boat is mine". We do not know whether that means that the owner is beyond our shores or that the owner is somebody that maybe was in the demonstration saying take the boats away and does not want to come and say he is the one that owns it. Our law officers have taken the step, of looking at the engine number or trying to find out as best they can, tracking it back, if necessary, to the manufacturer, how it arrived here initially and to whom it was initially consigned or sold or imported by or whatever. Twenty-eight days notice have been given to these people to say, "Come and claim your property or else you will lose

it" and then we will see what happens. I think from the point of view of the operation certainly what we are left with now is that instead of a supposed 106 boats leaving Gibraltar and going to Morocco we are now left with something like 30 boats that are still in the process of having to find a berth which is permitted. If they do not find a berth which is permitted then they lose it or they remove it and obviously any one of those boats is not capable of being replaced so I think the step that was taken - which was in fact by the measure of what is permitted in most countries is that people are allowed to own property - was a measure that went well beyond anything anybody had done anywhere else to tackle the problem but at the end of the day we felt that we could not do anything other than get rid of them from Gibraltar because whatever measures we put in place, whatever regulations we put in place, whatever forces we put in there, whatever help we get at the end of the day it was very difficult to see what it was that they could be stopped for and how it could be proved one way or the other. Clearly the action that was taken by the Royal Gibraltar Police in furtherance of that law took everybody by surprise and the reaction which originally may have involved people who were boat owners and subsequently may have been joined by other people, we do not know who they were. Certainly some of those who were involved and were arrested were not people who owned the RIBS. I am not sure why they were involved in public disorder except that it seems clear that it is possible that other people were being told, "You are next in line" and that that was the reason for their reaction. No excuse can be made for the action that took place that day or the public disorder for the destruction of private property and as I said in my statement the day after, having called in the owners and told them to their faces first, which is the way I tend to do things, I then went on television and said that such conduct could not and would not be tolerated. Just like I had said at an earlier stage that the Government were determined to act decisively against any question of any connection between Gibraltar and drug running between Morocco and Spain and we would take whatever measures were required to bring that about. I think the motion fails to recognise that before the 7th of July the Government were already acting against drugs and to suggest as it does in the last paragraph that the Government are being called to do something about drugs, whether related to drugs or tobacco, seems to suggest that we have not yet acted against those alleged. We have not got any evidence. If we had the evidence we would not need to do anything other than take them to court, convict them and confiscate the property. We have had the powers to do that since 1989 under the Drug Trafficking Ordinance which says that if somebody is convicted of drug trafficking then the property can be forfeited. The reason why this

property cannot be forfeited is because they are not being acted upon on the basis that they are drug traffickers. They are being acted upon on the basis that either they are illegal imports which were not declared and did not pay import duty or they are illegally berthed because they have not got permission to berth where they are. So my amendment seeks to correct that, Mr Speaker. The amendment also seeks to demonstrate that we have taken immediate steps and that we are being quite categorical in the reply that I gave the people who came to see me. I said to them we would immediately initiate action to deal with the other activities which was worrying people from a public order problem and from the possible consequences on the conduct of younger generations, not because there may be queues or there may not be queues. As I have said to those involved whether there is a queue from here to Irun is not going to make me respond but if there are people in Gibraltar that are worried about our society and they think that the activity that fast launches are involved in whether they are involved in carrying tobacco or in carrying perfume - it is not the content that worries them, it is the activity then we need to address that problem. The Government cannot ignore public opinion on this issue and we are responding to that public opinion and I told them quite categorically that we would take immediate steps to deal with it but that it was our responsibility to deal with it on the basis of minimising any possibility of any further disorder which is what none of us want. The answer is not to say, "Well, let us take a step and then we will wait and see what happens and then we will make sure that we provide whatever reasons are required to crush the rebellion". That is not the way to approach it and it is not the responsible thing to do and I made that quite clear to the people who came to see me. If the result that I have made quite clear to them that I am not prepared to conduct the decision and the implementation of that decision by the Government in this manner dismays them, well that is too bad. As far as I am concerned this is a matter which the Government have been asked to act. I have been personally asked to take some action and it is my responsibility to exercise my judgement in the best way to go about it to produce the desired result. The Opposition Member is quite entitled to then criticise whether the measures that I have taken are effective or are not effective. What people are not entitled to do is to criticise the effectiveness of the measures before I have taken them. I found that the people who had come to see me at one o'clock issued a press release two hours later saying the measures were not going to be effective. Well, how could they say the measures were not going to be effective when they had been out of my office for two hours? I propose to move an amendment that will reflect that in the motion; that in fact I saw the representative body; listened to them and explained that we

would take immediate action in a meeting that finished at one o'clock and I called people to my office at four o'clock to start the ball rolling. I do not think I could have been more immediate than that but if by immediate action what they meant was that I should go hot foot to Waterport or wherever and start fishing boats out of the water, then the answer is they were disappointed. What I did was and what I am asking this Government to support is an approach, which I hope will produce the desired result but if we can succeed in doing this in that way it is in all our interests that it should be done that way. If it is not an approach that succeeds then I think we have got a very difficult problem facing all of us.

Before I move the amendment to the motion which reflects the points that I have said I would just like to deal with the alternatives which have been referred to only slightly by the Leader of the Opposition but which according to Europa Sur are Mr Montegriffo's proposed alternatives. Let me say that the Leader of the Opposition is wrong in thinking that it is my shyness for which I am renowned that prevents me from approaching the British Government for help. I know that I am a very shy person but I am not that shy. He is wrong in thinking that the question of budgetary aid is something that constitutionally is straightforward because I can tell him that the House, whoever has been in Government, have always opposed the concept of budgetary aid because there are very clear rules about budgetary aid. In the one or two colonies that get grant-aided budgets effectively the control of public expenditure is removed from the legislature, that is a Treasury condition. It happens in St Helena, it happens in Montserrat. I can tell the House that when we were facing the dockyard closure following the White Paper in 1982 the position of the AACR in Government was that they would resign rather than go down the route of being grant-aided and I think Sir Joshua was even shier than me. But I think that is something which is capable of being argued and which I think would meet perhaps what the Leader of the Opposition is suggesting in terms of budgetary aid and which I think is an entirely defensible argument. That is, under the Constitution of Gibraltar foreign affairs is the responsibility of the British Government and they pay for it. Defence is the responsibility of the British Government and they pay for it. And the police and internal security is the responsibility of the British Government and we pay for it. So why should not the British Government pay for the cost of policing Gibraltar if they are the ones who determine the policy of the policing? I doubt whether they would accept the argument but that argument, I think, has got a logical consistency in that if they say, "We have to pay for the policing of

Gibraltar even though we are not constitutionally responsible for it," then presumably tomorrow they could ask us to pay for defence or ask us to pay for foreign affairs. I have to tell the House that I have not asked them to pay for the police but I did write to the Foreign Secretary in June and I pointed out that grateful as we were for the assistance that they had given us in providing equipment, the equipment in question had put demands on the police budget which, incidentally, is £6 million now and used to be £3 million in 1988, so it is not that they are starved of resources but it is true that the cost goes up every year and that it is very difficult to live with it. The time was when we had taken the action of greater surveillance and so on and I was responding to the article in The Times when it talked about there being 100 boats making frequent trips allegedly transporting drugs from Morocco to Spain which is what the article said. And I responded to that article by telling him, "I agree that we need to be able to rebut without fear or contradictions, suggestions that such boats are involved in the drug trade." At the time I had only had a report from the Commissioner, which I informed the Foreign Secretary about, telling me that the action of surveillance and so forth had reduced the activity of the cross straits movement by 95 per cent. That was the report that I had and I communicated this. But I said, "This may be a temporary phenomenon and maybe if you relax the surveillance it will go up again so we need to do something more permanent". And I went on to say that the Government were determined that there should be no boats based in Gibraltar taking drugs from Morocco to Spain and that, if necessary, I would prohibit the import of any boats of this type. This was done well before the whole fracas developed. I went on to say that given the importance that Her Majesty's Government attached to this, they might consider sympathetically request for financial assistance on the running cost of the marine section. I was not talking about £12 million for three years, as was suggested in a recent letter to the Chronicle, or £9 million for three years as I think was being suggested by Mr Montegriffo, I was talking of something like £100,000. I am afraid that they have not said no but they have not acknowledged this at all in the reply. It is as if I had not said it. So I think we need to know that this, in an area which is so important to them, where I am told we have got to take action, where I am saying, "We are grateful that you have given us these boats but if I did not have money for the boats and the boat is £100,000, how do you expect me to have the money to spend £100,000 on petrol every three months? So would you help me with paying for the petrol? Not budgetary aid, not a massive programme", just so that we know what we are talking about. As I have said, they have not said no so I cannot tell the House that it has been rejected, I can tell the House it has been ignored. But given



the fact that the hon Member thinks that we must not be shy about going to the European Union, he might wish to know that I have overcome my shyness in that quarter as well and that we have submitted to DG16, with the support of the United Kingdom, a bid for technical assistance under the Inter-Reg Programme which is a programme available for things which are connected between a member State and the Maghreb countries. And we said that what we wanted to do was to bring in technical support and equipment and cost and things like that related to acting against the illicit trafficking between Morocco and Spain and to ensure that Gibraltar was not used as a base for such trafficking. The proposal was turned down by the European Union. Again we were not asking for £27 million over three years, we were asking for a one-off grant of £250,000 of which the Foreign Office would contribute £125,000 and the European community, out of its billions, would contribute £125,000. Although it had the full support of the United Kingdom and although it was re-submitted to the Commission with the full backing of the United Kingdom, it was turned down the second time. I think I need to say that to show the hon Member. It may well be that if there is at some remote future date a change of Government the Commission will celebrate the occasion by pouring millions into here and so will the Foreign Office. Their hopes and expectations of the Hon Col Britto in that respect may one day be realised, sometime in the next century I imagine but we never know. Obviously the fact that Mr Montegriffo has ceased to be a member of the House so long ago means he must be out of touch with these things now that he is no longer with us. There were other things that he put in his proposals which, in fact, are not things that we have considered but the idea of the package is something that I have to say to the House there is no harm in sounding anybody out but there is absolutely no indication. We have made very, very modest demands and I cannot imagine that because we have had some civil unrest they may be more willing to provide assistance now than they were before. It may be that that will change their minds. We will certainly find out if they are more receptive. As I said, as far as the United Kingdom themselves are concerned, the fact that they have not acknowledged it does not mean they have turned it down and we are not taking that as a rejection. But something that I have been asking for a number of years and which I mentioned in relation to my previous intervention on the motion of employment, is something which I think is their clear moral and possibly legal obligation which is providing a package for the unemployed Moroccans. I can tell the House that in my recent meeting with Malcolm Rifkind I made the point that in terms of reducing social pressures in Gibraltar, creating job opportunities overnight and getting a return for a

particular level of investment, probably the quickest way to do it would be to say if there are 150 people in the Ministry of Defence who can be attracted to the idea of voluntarily returning to Morocco and it will cost the British Government X pounds that immediately creates 150 jobs in the Ministry of Defence or 150 jobs in contractors, because the work is contracted out, or even 100 and they save 50. That will probably be the quickest return for the money of anything we can think of and it will do two things. It will I think show the concern that we have as a community to help the people by getting the UK to honour its moral obligations and it will help us immediately. I have been arguing this now for several years and I have recently raised it again in London and there is no indication that they are willing to do this. I can tell the House that if we go to the United Kingdom for an investment package they will say, "Tell me what it is you want to invest in" and I cannot say, "We want money to build houses" because we have not got a waiting list like we used to have, I cannot say, "We want money to build a generating station" like they did before because we have now got spare capacity in the generating station. I cannot say, "We want money to produce a desalination plant" because we have got spare desalinating capacity and the British Government will not give money to set up businesses. As far as social funding what we could get, I suppose, is more out of the social fund than we have got so far but they think we have had a great deal actually although we believe that, frankly, as my hon Colleague said between 1973 and 1988 we did not get a penny out of the EEC because the Government of Gibraltar were told by London that we were not entitled and because they were told by London that we were not entitled and London know better we never applied. The only reason why we got the money was because my hon Colleague Robert Mor went on his own digging and discovered that in fact we were entitled to the social fund and that Ceuta and Melilla had been getting lots of money out of the social fund since they had joined in 1986 even though they did not pay VAT and we had been fobbed off for 15 years by being told that unless we paid VAT we could not claim money from the social fund. We are grateful for the amount of money that we have had because that has enabled us to do twice as much. If we are giving somebody a wage subsidy of £80 and we have got, say, £800,000 and we get £800,000 matched by EEC funding then we can cover twice as many job vacancies. It is not a question of shyness preventing us from exploring the avenues that might be open to us and certainly if there is any indication that there are areas which we can tap which we have not thought of we are willing to explore it but I have to tell the House that what I have been floated until now we have attempted to tap very, very modestly and with very powerful arguments. There has been, at best, a

lukewarm response from London and a total rejection from Brussels. We have not got an answer to the alternatives that are required in order to meet the part of the memorandum that talks about putting in place a package which would give alternatives to the people involved and their families. We have not got that in place. As I said the other night at the European Movement, clearly it is not a question of a special package, it is a question of using the packages that we have got but providing additional funding. One of the things that I told the representatives who came to see me was that the first thing we had to do was to identify how many families we were talking about, how many individuals we were talking about, what sort of age structure they had and what sort of skills they had because we cannot talk about a package if we do not know what we are talking about. How many of the people who are supposedly involved in such activities have got full-time jobs already and do not need a package? Half? Ninety per cent? Ten per cent? Why is it? Since the action that I have taken as is being reflected in my proposed amendment has been to go directly to those that have got a relationship either by being owners or by being suppliers of goods to owners who I think have clearly also benefited from the trade for many years, and therefore must also take part in participating in finding a solution. It is, on the basis of their involvement that we are approaching this so that we move forward with all the parties agreeing what we are going to do. Let me say that the situation has been spelt out by me face to face absolutely clearly to those concerned that this cannot be fobbed off and it cannot be fudged and that it has to be tackled but we want to tackle it with sensitivity and taking them with us and that we do not want any excuse for anybody to do something stupid on the grounds that they are being pushed into it or provoked into it or making threats which others may take seriously. We have heard lots of stories. I am sure the Opposition Members have heard them as well. We cannot, as a Government, act on those stories. I have sent a very clear message to those concerned that they should not even think that that will be tolerated because it will not be tolerated. I do not want to go into repeating the stories and the rumours because that in itself simply adds credence to them and I do not think they serve any useful purpose. I think the hon Member will know quite clearly what I am getting at. Therefore, Mr Speaker, I move that the motion be amended one by the deletion in clause 2 of the words "Police, Fire Brigade" and the substitution by "Royal Gibraltar Police, the Gibraltar Services Police, the City Fire Brigade" and then of course it continues "and other emergency services". Two, the deletion of the final paragraph of the motion and the substitution of the following which reflects the points that I have been making in my contribution -

"(4) Notes that the Government had already taken action to prevent the importation of rigid inflatable boats prior to the 7th July and that such types of vessels were the ones allegedly engaged in the transport of drugs from Morocco to Spain;"

I have already explained to the House that I had written to the Foreign Secretary saying we would do this if we felt it was required well before the stage that it was done. Add

"(5) Notes that on the 18th July, the Chief Minister informed the Representative Bodies that immediate steps would be taken to deal with other fast launch activity and to bring about the objectives set out in the memorandum;"

I am saying that so that there should be no doubt that we gave a very clear response that we would act immediately but we also made clear that acting immediately did not mean that before they had left the buildings we would have confiscated everybody's boat just like that and there were people who seemed to think that that is what was required and that was what we should be doing. Add

"(6) Notes that on the same day meetings were held with tobacco importers and owners of fast launches when the position was fully explained to them;

(7) Supports the Government's approach to involve all the parties concerned in co-operating to achieve the cessation of the launch activity and development of alternatives for those concerned."

which is what the memorandum has asked us to do. I commend the amendment to the House.

The House recessed at 6.30 pm.

The House resumed at 6.55 pm.

HON P R CARUANA:

Mr Speaker, the Opposition can support the amendments proposed by the Chief Minister subject to the following amendments which have been the subject matter of discussion during the extended recess that we have just had. The amendments that I would propose to the Chief



Minister's amendments are the following: In the proposed paragraph (4) after the words "Notes that" we add the words "on the 6th July 1995". In line two of that same paragraph the word "prevent" is replaced with "prohibit". In the third line the reference to "prior to the 7th July 1995" are removed. In proposed paragraph (5) after the word "Notes" we insert the words "the Chief Minister's report to the House". Further along that line the references to the Chief Minister are placed by the word "he". In line four of that paragraph before the word "other" we add the word "all". In paragraph (6) after the word "Notes" we insert the words "the Chief Minister's report to the House". That paragraph (7) be deleted and substituted with the following, "(7) Supports the Government's approach to seek the co-operation of all parties concerned in Government's task of bringing about the cessation of the launch activity and development of alternatives for those concerned."

Mr Speaker, as I said in moving my own motion, I had already indicated that it was proper that whilst acknowledging the fact that of course the executive responsibility of governing falls on the Government that nevertheless given the dimensions of this problem and the complicated nature of it and, indeed, the dire consequences that it has for this community, that as many parties as possible should cooperate in its resolution and I think that those amendments to the amendments and indeed the Chief Minister's amendment recognise those principles to which both sides of this House are willing to subscribe.

MR SPEAKER:

To make the position clear, the way that we are going to vote will be, the first vote will be taken on the amendment to the amendment of the Chief Minister. If that is passed then automatically that becomes, having amended the amendment, the final motion and we shall take them if the amendment to the amendment is passed we shall take the final motion. There is no need to take the final motion, as amended. There will be no need to take the original motion or the amendment from the Chief Minister.

HON CHIEF MINISTER:

As the Leader of the Opposition has said he has made us aware of the proposed amendments which the Government accept. I think there is no question as to whose task it is. It is not the task of the House, it is the task of the Government. The memorandum was presented to the Government and not to the House and what we are saying to the House

is in approaching this task that we have been asked to undertake by the people in the memorandum that was presented to me, we are adopting an approach which seeks to minimise any potential risks that there might be in the changes that need to be brought about. I do not think anybody would want that that should not be the approach since it is the objective and the final result that people want to see and if that can be achieved by an approach that gets those involved to accept the inevitability of the direction in which it has to go rather than a confrontational approach I think it is in the interests of everybody including those involved. Therefore I am glad to have been able to express that support and to see that the approach is one that has support although I am not trying to say that it is something that we are doing jointly because the actual action has to be undertaken by the Government side.

HON P R CARUANA:

Mr Speaker, I think that I have said all that I need to say on this. Just to say that, of course, the Chief Minister is entirely right in saying that it is the effectiveness of the result which is what has to be achieved, the people have indicated that they want this achieved quickly and therefore the Government's initiatives ought to bear in mind the time-scale as well as the ultimate result.

Question put on the amendment to the amendment to the motion. Agreed to unanimously. The motion, as passed, read as follows -

"This House:

- (1) Condemns the civil disorder and violence that occurred in Gibraltar during the 7th and 8th July 1995;
- (2) Commends and thanks the Royal Gibraltar Police, the Gibraltar Services Police, the City Fire Brigade and other emergency services for the professional and dedicated way in which they performed their difficult duties;
- (3) Notes and supports the massive public demonstration on the 12th July 1995 under the slogan "Stop all Launches Now";
- (4) Notes that on the 6th July 1995 the Government had already taken action to prohibit the importation of rigid inflatable boats

and that such types of vessels were the ones allegedly engaged in the transport of drugs from Morocco to Spain;

- (5) Notes the Chief Minister's report to the House that on the 18th July, he informed the Representative Bodies that immediate steps would be taken to deal with all other fast launch activity and to bring about the objectives set out in the Memorandum;
- (6) Notes the Chief Minister's report to the House that on the same day meetings were held with tobacco importers and owners of fast launches when the position was fully explained to them;
- (7) Supports the Government's approach to seek the co-operation of all parties concerned in Government's task of bringing about the cessation of the launch activity and development of alternatives for those concerned."

HON P R CARUANA:

Mr Speaker, I have the honour to move the following motion standing in my name:

"This House:

1. Notes the increasing queues and delays at the frontier following upon Spain's introduction of new measures purportedly in implementation of the Schengen Agreement;
2. Notes that, following the introduction of these new measures, Spain continues to operate the immigration control on a single file basis with only one police officer and that Spain has not deployed additional resources to minimise delays;
3. Notes that Spain continues to operate the Customs post at the frontier without a red and green channel and without the random only checks customary at other international frontiers;
4. Considers that the Schengen Agreement is a pretext used by Spain to introduce new measures which are in reality calculated to maximise queues and delays at the frontier for political purposes in order to isolate and damage Gibraltar economically;

5. Notes and welcomes the fact that Her Majesty's Government view the situation with concern and consider the delays at the frontier to be unacceptable;
6. Notes with no surprise that Her Majesty's Government has been unable to obtain a satisfactory explanation from Spain for the new measures and the resulting further delays;
7. Considers that no such satisfactory explanation exists.

AND given the serious effects of the new measures upon Gibraltar and therefore the importance of this issue for Gibraltar CALLS UPON Her Majesty's Government to urgently take all necessary steps and measures to ensure that Spain operates its border with Gibraltar in accordance with normal practice between two EU member territories and in accordance with normal international practices and conventions."

Mr Speaker, I had toyed with the idea of taking the view that recent events had rendered this motion redundant but I quickly concluded that they had not because of course there are several long-term and broad principles recognised in the motion which are not addressed by the fact of a relaxation of the strictness of the measures that have been imposed following the 26th March commencement of the complementary convention to the Schengen Agreement. The reason why this motion is not out-of-date are these: first of all I think this House ought to take this opportunity to express the view that it is not acceptable to us and ought not to be acceptable to the United Kingdom Government that Spain uses or should use the border as a sort of political whip against this community, whether it be on the fast launches, whether it be on any other political posture that Gibraltar might adopt or on any other issue. It is not acceptable that Spain should seek to use the border and thereby in effect to strangle our economy or to attempt to adversely affect our economy as a means of bringing us round to her way of thinking on whatever the issue might be. Secondly, the motion is not drafted in terms of an elimination of the restrictions. The motion is not drafted in terms of reversing the 26th March measures. The motion is drafted in terms of a normalisation of the border and, of course, a normalisation of the border does not mean putting it back to where it was on the 25th March. I think that this is now a convenient moment for this House to put formally on the political agenda our demand that that border should function as a normal border. I realise that this point has not been made now for the first time but what we should use this

opportunity to emphasise the fact that when we talk about normalisation we do not mean a slight relaxation of the strictness of the last screw that was turned. We mean that it operate as the border would between two EU member territories and if we are not in the Customs Union and that has a difference that the border should be operated no more strictly than another European community member State would operate its border with a non-member State which is also not in the Customs Union. That in relation to Customs, in relation to immigration, their obligation is to extend to Gibraltar the facilities and rules and regulations of the European Union in respect of free movement of persons. The third reason why I think this motion is not redundant is that the United Kingdom Government have recognised, as I will mention in a moment from quoting the Minister of State in Hansard, the importance of the border to the economic buoyancy in Gibraltar and given that the United Kingdom Government have joined with the Spanish Government in expressing a desire to see in Gibraltar established a sustainable economy, it would be of course entirely inconsistent with that statement for either Spain to operate or for the United Kingdom to tolerate the operation by Spain of a border which has the effect of obstructing the establishment of that sustainable economy which they claim they desire for us. As I said, just for the matter of record, the measures that were recently relaxed had been introduced on the 26th March 1995 under what I said the very same day was a pretext for implementation, not of the Schengen Agreement itself, but of the complementary convention of the 19th June 1990 which came into effect on the 26th March 1995. Those were clearly ritualistic measures to waste time. I remember one incident when I crossed the border in my car with all my family in it and I was made to tender all seven passports and the frontier guard ritualistically examined each passport, looked at the photograph but made no attempt to compare the photograph with anybody in the car. In other words, there was no attempt to match the travel document with the actual persons who had tendered those travel documents. It is incidents of that kind, and there are of course many comparable incidents, which have persuaded all of us at a very early stage that these were just time-wasting rituals and proved that there was no serious intention of operating a Schengen border but rather that it was a pretext. Another example of that is the fact that they suddenly started getting tough with people leaving Spain. There is no justification for being equally strict with people wanting to leave the Schengen area as there is with people entering the Schengen area so there is no real justification for the sudden appearance of queues getting into Gibraltar. That was another symptom. A third one was, of course, that similar delays were not experienced at other borders between Schengen and

non-Schengen territories including other Spanish borders with non-Schengen territories but of course we no longer need to rely on sort of forensic examination of instances of that kind because the figures proved that it always was a pretext. It has come from the fact that the measures have ostensibly as a gesture of goodwill in recognition at the manifestation by the people of Gibraltar of their desire to see the fast launch activity eradicated. The Schengen Agreement is not about fast launches, nor about tobacco smuggling and therefore the expression of the desire to see that activity eliminated of course does not relieve Spain of whatever obligations she might have had to implement the Schengen Agreement for the benefit of all seven Schengen members and therefore that was the ultimate proof that our own suspicions were entirely correct. The Schengen Agreement itself required member States to deploy adequate resources to avoid unnecessary delays and Spain clearly failed to comply with that. The third paragraph alludes to the fact that Spain, of course, has always failed to operate a customs post with a red and green channel and with random only checks. I know of no border in Europe in which there is a systematic examination of every vehicle. That is simply not the way in which civilised frontier crossings operate. That is an abnormality amongst many others. The Schengen Agreement clearly provides, as has been stated in the House of Commons by Mr Davis, that rather the European Union rules should prevail over the Schengen Agreement. I am quoting now from Hansard of the House of Commons in the debate on the 17th May 1995 on the motion brought by Mr Andrew McKinley MP in relation to this issue generally. I quote him, "But for European Union nationals those controls should not amount to more than a light passport or identity card check to confirm that they are indeed European Union nationals. There is no need whatsoever for that to generate delays. The controls at the Gibraltar frontier go well beyond such checks, they are as unacceptable because of the extreme delays that they cause". Mr Speaker, he also told the House of Commons, and I quote him, "It cannot..." that is to say Schengen "cannot supersede the rights of UK citizens, including Gibraltarians under EC law".

Mr Speaker, on many occasions it has been highlighted in this House that this community will not succumb now or ever to an attempt by Spain to subject us to economic attrition and the sooner that the Spanish Government realise the fact and start adopting a philosophy towards Gibraltar which takes on board the fact that we are never going to be brought to our knees economically it seems to us the better. The motion is drafted at a time when all that the British Government have said on the matter was that the frontier delays were unacceptable to the

British Government. Of course, subsequent to that initial statement Mr Davis went on to express the unacceptability of the practice of the British Government in much firmer terms. He said, and I quote him, "The delays at the Gibraltar/Spain frontier are intolerable and unjustifiable". Further on he said, "Spain has attempted to justify the delays on the grounds of the Schengen Convention but I will show that that justification is wholly fallacious". Later on he said, and I quote him again, "The recent delays for cross border traffic is sadly not the first time that the Spaniards have tried to impede traffic at the Gibraltar frontier", a clear recognition that this was just a naked attempt by the Spaniards to impede traffic. A little later on he refers to Spanish tactics and expressed Her Majesty's Government fervent desire that such tactics would not be allowed to succeed. He said, and I quote him, "It appears, however, that the Spaniards have returned to their previous tactics of squeezing Gibraltar", a recognition there of squeezing, Mr Speaker, "now using Schengen rather than customs checks as an excuse. That tactic will not succeed, it did not succeed in December and it will not be allowed to succeed now". Here is the recognition, in the next few lines and I quote, by Her Majesty's Government of the importance of not allowing Spain to get away with that squeezing at the border to our economy. Mr Davis said to the House of Commons, and I quote him, "The House will realise how damaging those delays can be for Gibraltar, the economy of which depends to a considerable extent on tourists and day trippers". That is a clear and unequivocal statement by Her Majesty's Government of the link that exists between Spain's abuse of the frontier for political purposes and the obstructive effect that it has on our ability to have the sustainable economy that both the British Government and the Spanish Government say that they desire for us. Therefore, it is a recognition by Her Majesty's Government that that frontier needs to be operated in a way that does not cause those delays and I think it is timely for this House to remind the British Government that she must establish with the Spanish Government a clear understanding that it is not a question of Spain introducing measures as she pleases, Britain protesting and three or four months later the measures being relaxed. We are entitled to ask Her Majesty's Government to establish it once and for all with the Spanish Government that Britain does not and will not accept and will not tolerate this being done on a stop/go basis. Because every time there is a stop/go basis we suffer economic damage.

In conclusion, the motion in what it calls upon Her Majesty's Government to do, calls upon Her Majesty's Government to "take all necessary steps and measures to ensure that Spain operates its border

with Gibraltar in accordance with normal practice between EU Member territories and in accordance with normal international practices and conventions". That goes much further than simply asking Britain to protest at the 26th March tightening of the screws. What we would be asking Her Majesty's Government to do, if we adopt this motion, is to say once and for all take on board the task of ensuring that that border operates normally by which we mean not less tough than it used to operate a month ago but as it has never operated since the day it opened. What we now ask Her Majesty's Government to do is to take seriously on board the diplomatic task of securing that that border operates, for example, on a random check basis only with a red and green channel and in whatever manner is consistent with both the fact that we are not in the Customs Union and the fact that it is a European or that it is a border between two EU member territories and I think because the motion was drafted that broadly it did not become redundant simply because the Governor of Seville has taken the decision, the permanence of which remains to be seen in relation to relaxing the latest tightening of the screws. I commend the motion to the House.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, if I can just comment on the closing remarks of the Leader of the Opposition, I think it is the Governor of Cadiz. It might have been the Barber of Seville, he may have started off as the Barber of Seville but I think he has finished up as the Governor of Cadiz.

I agree with the hon Member that the motion is not out of date. We will support the motion on the basis of an amendment which extends its ambit, not just to what has been happening now but to everything that has happened before. I am glad the hon Member has in fact himself said that the border has never operated as it should since the day that it opened. But, of course, when it opened it did not open as a border between two member countries of the European Union because we were in the European Union and they were not. Therefore in February 1985 we could not say to Spain, "You must treat us as a fellow member of the European Union" but Spain did not open the border because they had joined the European Union, Spain opened the border in 1985, 11 months before they joined the European Union because we gave in to something which we had been saying no to for 15 years and one month and because that happened Spain has always maintained that their

restoration of communication by land in 1985 was not a consequence of joining the Union because it pre-dated their joining the Union. It was a consequence of a bilateral agreement, the infamous Brussels Agreement, and they put it on record with the United Nations, with NATO and with the European Commission in July 1985 and having put it on record what the United Kingdom did was to acknowledge that it had been put on record. They did not put anything back on record then and those are facts that we cannot escape from. We have got a difficult task in redressing the situation because although the United Kingdom today may say it is intolerable, it is unacceptable, it should not be permitted, the reality of it is that it was brought about by a decision which the United Kingdom did not impose on this House but a decision which 11 years later we are still suffering the consequences of and which was carried by the Government majority over the Opposition following an election in 1984, eight months before that decision was taken when it was not put to the test of whether the people would support it or not. They might have supported it. My argument always was if we had campaigned against it in the 1984 election and the AACR had won the election with that in their manifesto that would have been the end of the matter, although we would still be saying to people we were right and they were wrong but in fact at the time the party that won the election won the election with less than 50 per cent of the votes and the party in Opposition, which was the GSLP, and the party that did not get any seats which was the Integration with Britain Party (or the Democratic Party of British Gibraltar as it was called then) between us had over 50 per cent of the votes, rejected the Brussels process so it was carried in this House by a party representing a minority of the people of Gibraltar. I do not want to say that what they did they did not do thinking they were doing the best for Gibraltar at the time. It was their responsibility and they took the decision but what I can say is that with every passing day it becomes clearer and clearer what a tragic mistake that was. I can understand that the Government of Gibraltar then might well have been under considerable pressure but the £34 million that the hon Member keeps on praising them for getting from the United Kingdom might not have been because of their shyness but because of their willingness to support the Brussels Agreement in this House because it so happens that both the £34 million and the Brussels Agreement arrived in the same month. It may be coincidence! There are people who were then there who claim that it was not coincidence but it is not for me to say. What I can say is that the sustainable economy that Spain says it wants clearly is one which they consider to be brought about by the integration of our economic structure with those of the hinterland because they think that is what makes economic sense and it might make economic

sense that there should be very close co-operation economically, if there was not a threat of a take-over. But with the threat of a take-over it does not make sense to make our economy dependent on theirs. It makes sense to make it as independent as possible and if the United Kingdom wants us to have a sustainable economy, then the United Kingdom should not have accepted the blackmail of Spain since 1992 blocking the development of our banking system as European Union banks which to date I honestly believe is illegal. I have to tell this House what I have told the British Government on countless occasions, that their failure to get licences for banks in Gibraltar recognised as licences of the European Union is contrary to Community law because if a bank in Gibraltar is not properly licensed under Community law it should not be permitted to operate in Gibraltar or else Gibraltar is not part of the European Union. That does not require the absence of queues at the frontier. We have not got in our banking system assets of £6 billion where we have had assets of £400 million as I have already demonstrated to the Opposition Members in 1987 because it was open in 1987 and it is open in 1995. We might argue that if it was closed in 1984 and it was open in 1985 and the flow of money in the banks was because of the open frontier then we would have seen the jump the moment it opened. Jersey has got £6 billion increase every three months. The whole of our system is their increase of three months. It has nothing to do with frontiers or queues. I am not saying that there is not a trickle of money but Spain argues that the banking system of Gibraltar is fed exclusively by tax evasion and money laundering from Spain across the frontier because that is the argument as I mentioned in the recent meeting of the European Movement that Senor Brana has used for stopping people entering Gibraltar when it has suited him, that he was to see whether they were trying to launder money in Gibraltar that he was stopping it. He can invent that argument any time he wants. In July 1985, Spain made clear that the relationship with Gibraltar was not going to be altered by its accession to the Community, that its accession to the Community was without prejudice to the negotiating process that had already started in Geneva in February 1985. In Geneva in February 1985 for the first time in our history there was a meeting between Her Majesty's Government representative and the representative of the Kingdom of Spain with the participation of the elected leader of Gibraltar where the issues of sovereignty in the plural were on the table. For the first time we permitted, not just discussion on sovereignty, but discussion of sovereignty of the city and fortress of Gibraltar as having been ceded legally and of the isthmus as having been occupied illegally. How can we say to the United Kingdom, "You must insist that Spain respects the border with Spain" when Spain



argues that it is not the border with Spain. Spain argues that there is a fence there illegally put up by the British on Spanish land, dividing the bit that they stole from the bit they did not steal which is La Linea. If we want to get to the root of this then we have no choice but to call on Her Majesty's Government to take a consistent line on all the things that Spain should have done on entry in 1986 and did not do. Let us be clear that what Spain has succeeded in doing is what they set out to do in 1980 under the Lisbon Agreement. When the Lisbon Agreement was due to be implemented and it never got off the ground the first time round in 1980 the dispute arose over a difference of interpretation and at that time I was the only member of this House that voted against the Lisbon Agreement. That particular Agreement was approved 14 votes to one but it was not implemented because Spain said, "We want to see progress and therefore our position is that restoration of normality must be accompanied by progress". Nobody was talking then about launch activity, about drug smuggling, about anything other than the real issues. Therefore, the Agreement never got off the ground because the Gibraltar Government and the main Opposition party had supported it on the understanding of the British interpretation - which was different from the Spanish interpretation - and the British interpretation was that they took off the restrictions first and then we would start talking and see if we could make progress. The Spaniards were saying, "No, no, what we are saying is we take off one restriction and you start talking and then when we agree something we take off another restriction and when we agree something else we take off another restriction and therefore there is a parallel process taking place". That is what they actually have been doing since 1985, what they wanted to do in 1980. In 1980 one of the conditions that they wanted, which was rejected by the people who had supported the agreement who produced a paper answering the House of Commons Foreign Affairs Committee, saying the truth about Gibraltar was, Spain was making it a condition of the opening of the frontier, the advance implementation of EEC rights. We had a resolution of this House carried unanimously, moved not by me, because I was against the agreement. Moved by those who had supported the agreement saying, "There is no question of advancing EEC rights before Spain joins the EEC" and that is precisely what we did in 1985. We treated them in February 1985 and we changed all our laws in January 1985 and the only place in Europe where the Spaniards were considered to be Community nationals without being in the Community was in Gibraltar. Did we do that simply to get 11 months of an open frontier which they can switch on and off whenever it suits them or Brana gets out of the wrong side of the bed, like a tap? Is that what gave them the advantage of enjoying Community rights in Gibraltar for

11 months which subsequently has allowed them for ever more to claim that the rights that they had in Gibraltar did not flow from the EEC because they preceded them? We cannot escape the dilemma that we have that the defence of Spain if we wish to pursue our claims against them in Community institutions and we cannot pursue them unless the UK decides to. The UK could have chosen, rather than keep on saying we needed to do changes to our banking laws the first time that Spain started objecting to our licences in 1992/93, because they want us to have a sustainable economy and they want us to be able to develop in a way which does not expose us to Spanish pressure, so they tell us. They could have said, "No, you will comply with Community law in Gibraltar's case or else we will go to the European Court and start infraction proceedings against you" which presumably they would do if a bank from the United Kingdom wanted to open a bank in Spain and which we are entitled to require them to do for us because if they do not do it and we try and do it we get told we do not have locus standi, like we found in the case of the airport. As I mentioned when I spoke at the European Movement we see the opportunity for the United Kingdom Government to do something on which both UK and Spain agree because we keep on quoting the things that they agree to and what they agree is that we want to see action and not words. We all agree we want to see action and not words but what we expect to see is action on the recognition of the Gibraltar identity card as a valid Community travel document. The Gibraltar identity card on which we spent many, many years working in order to replace the cards that we used to have here which we accepted from the United Kingdom was so easily forged that nobody in the European Union could accept that as a genuine travel document because it was a piece of cardboard going back to pre-war days. We had to produce, spending quite a lot of money on sophisticated equipment, forgery-proof machine-readable cards, which were cleared with the Home Office for size, for text, for colour, for everything one could think of. We spent two years negotiating with the Home Office so that we did everything that they said needed to be done so that it could be accepted by the Community and now we have done it. Spain has already made publicly that they will not accept what they choose to call "Bossano's identity cards". I seem to have much more power than I thought I had because I am the guy who is responsible for the identity cards, according to Senor Brana and I am the guy who expelled the resident battalion from Gibraltar according to the Hon Mr Vasquez, so my powers grow by the minute. The action on getting that accepted by other member States is the sensible way to approach it, obviously, because it is far better to test it elsewhere than to test it first with Spain but if we are in a position, as I hope we will be, to announce in the not



too distant future that Gibraltarians will now be able to travel freely within the territory of the European Union on a Gibraltar identity card except in Spain we would then expect the United Kingdom to act on it. I must say that there is one encouraging thing which, to my knowledge, since we have been in Government since 1988, and as far as I am aware in the preceding three years, is the first time that the European Commission has actually forced Spain to do something which it was not doing in relation to Gibraltar because their position was contrary to Community law. This is that at one stage there was a complaint made to the Commission by Spanish nationals not being allowed to enter Gibraltar with a Spanish identity card. The Commission, on the assumption that we were the guilty party, I suppose because we are bound to be the guilty party, complained to the British Government about it. The British Government came to us and said, "Look, under Community law you cannot refuse Spanish identity cards" and we said, "We are not refusing it, you agreed it in 1984 in the Brussels Agreement. It is nothing to do with us but we accept that in 1984 Spain was not in the European Union and that therefore that agreement has been obviously superseded by Community law". This is very important because, having made that statement and had it accepted by the United Kingdom, we have at least one instance of something that was agreed in Brussels before Spain was in the Union which no longer requires renegotiation. Until that point the position of Spain was, since it is a bilateral agreement between the United Kingdom and Spain, it can only be altered by a new agreement to replace the old one and our argument was Community law, if in conflict with the bilateral agreement, supersedes and annuls the bilateral agreement. The British Government accepted our view and then went back to the Commission and said, "Look, we are now able to confirm that the Immigration Authorities in Gibraltar will accept Spanish nationals but we have to inform you that the information available to us is that they have a problem in that the Spaniards will keep their own nationals out". The Commission then went to Spain and told them, "You have to do something about this because this is contrary to Community law" and because they went to the Ministry of the Interior which is the department responsible for identity cards, the Ministry of the Interior gave instructions at the frontier at 12 o'clock on a Thursday that the cards could be accepted and the Foreign Ministry discovered this at three o'clock on the same Thursday and gave counter instructions that they should not be accepted. Therefore Community law applied for three hours on one Thursday and we then reported this to the Foreign Office who reported it to the UK Representative in Brussels who complained to the Commission and told them, "This is scandalous, here are these people, they have

implemented the instructions of the Commission for three hours and then they have gone back to their bad old ways". The Commission took this very badly and then made it very clear to Spain that if they did not do it they were risking infraction proceedings and it had to be put and put permanently and that and not any gesture of goodwill is what produced the change a few weeks ago. It is important that this should be known and be a matter of public record because in fact they were made to capitulate and an important argument of Spain in relation to Brussels has been destroyed in the process. Therefore although, as I have attempted to demonstrate, the argument of Spain for doing what they like is that that is what they are entitled to do in relation to Gibraltar because the bilateral agreement preceded entry we have had one instance where that theory has been bridged and therefore we should seek that the United Kingdom should make an attempt to bridge it in all other areas. In order to ask the United Kingdom to do that I am proposing that paragraph (7) should be deleted and that in paragraph (6) we add the words "Considers that no such satisfactory explanation exists." after the word "delays". This moves the first sentence of paragraph (7) to paragraph (6) and we have a new paragraph (7) reading -

"(7) Considers that this latest move by the Spanish Government is a continuation of the policy that Spain has embarked upon since the partial reopening of the land frontier in 1982

(a) in failing to remove all the restrictions imposed by the previous regime against Gibraltar which cut off communications between Gibraltar and Spain by land, sea and air, as they should have done on joining the European Union on 1 January 1986;"

because we think that when they joined the Union they should have got back to being normal Europeans without anything else changed.

"(b) in failing to observe the legislation introduced in Spain enabling ferry services to be restored;"

their own law published in February 1985.

"(c) in failing to permit the resumption of flights between Gibraltar, Madrid and London;"

which were going on even after the closure of the frontier with British Airways.

"(d) in failing to operate the frontier for commercial traffic on an unrestricted seven day basis;"

we do not seem to be conscious of the fact that if something arrives at the frontier on Friday afternoon it is stacked there till Monday morning because they all go home at lunch time to have their siesta and they do not come back until after the weekend. That is not the way Europeans behave. If they want to have the siesta they get a replacement.

"(e) in failing to comply with Community obligations and accept Gibraltar's right to enjoy the freedom to provide services in the Spanish market;"

and that applies to the fundamental freedom of services which we accept in the opposite direction and which we have accepted 11 months before they joined. We gave Spanish businesses the right of access to the Gibraltar market in February 1985 and they are still denying it to us in July 1995, 10 1/2 years later.

"Therefore calls on Her Majesty's Government to take all the necessary steps and measures to ensure that Spain fully accepts Gibraltar's rights of membership within the European Union in all these areas".

The United Kingdom may not do any of it but they might not have done what the Leader of the Opposition was asking them to do anyway and if we are going to ask them to do something we might as well ask them to do the whole lot. I commend the amendment to the House.

HON P R CARUANA:

Mr Speaker, I have no difficulty whatsoever with any of those amendments and indeed will be happy to support it except that I do not know whether intentionally or by oversight it has the effect of excluding requesting the normal practice of the border because having eliminated all my call the Chief Minister's reference to the border appears to be limited in paragraph (d) to commercial traffic, whereas my motion calls for them to operate the border in accordance with normal practice between two EU member territories in accordance with normal international practice and conventions and the references to in accordance with normal international practices and conventions is

intended as a reference to the fact that even though we are outside the Customs Union the border is still not being operated. Not commercial traffic, the ordinary border for pedestrians and ordinary vehicles is still not being operated in accordance with normal European frontier practices even accepting the fact that we are not in the Customs Union. I do not know whether there is any reason why the Chief Minister has wanted to exclude that. In other words the motion should say that even if we are outside the Customs Union, the British Government ought to insist that the Spanish Government operates the border with a green and red channel with adequate resources so that it operates, for example, in customs terms as the border between Germany and Austria. I will give way.

HON CHIEF MINISTER:

Since I am the mover of the amendment if I leave it until I answer he will not be able to respond to anything that I say. Let me say that in removing the last paragraph certainly there was something that I wanted deliberately to remove and that is the question of the importance of this issue for Gibraltar and I noted that the quote that the hon Member made from the Hansard of the House of Commons when Mr David Davis was referring to the unacceptability of the delays at the frontier taking into account how damaging they are to the economy of Gibraltar. If we believe that what they want to do is damage the economy of Gibraltar it is not a very bright thing to tell them that we want them to stop because they are damaging us because that is what they want to do, not a very clever thing to do. In any case, since what we are talking about is the rights that we have, I believe the correct approach is to say irrespective of whether there is damage or no damage. If we have a situation where we say, "The queues at the frontier are creating a situation where we are benefiting because people are not going over there to spend money", it is still something that is unacceptable because it is treating us as if we were not part of the European Union. It is not a matter which has to do with the economic effect and in any case I think the whole policy of the Government and of the people of Gibraltar has to be that we welcome normal relations with Spain. We welcome the opportunity to trade with them. We think it is good for them and for us but at the end of the day there are many other things that we are being deprived of in the European Union which make the economic damage of the border, frankly speaking, in our judgement, pale into insignificance. We have been at pains to demonstrate just what a potential we have with banking licences which we cannot develop until the banking licences are recognised, or flights to Madrid or ferry services or all those things. The

fact is that the border is damaging because the border is intended to be the lifeblood, because the policy has been to stop everything else except the border because what they cannot do is say, "We recognise Gibraltar banking licences in 1994 and we are going to stop recognising them for one month in 1995 because of Schengen and then for two months....." They cannot do that. The only thing that they can switch on and off is that gate and therefore they want us to have an economy that is dependent on that gate and we must say we repudiate their fascist tactics, not because of the effect on the economy but because it is a nasty thing to have to live next to fascists. So I have deliberately wanted to make the call to the United Kingdom, cover the request that our Community rights should be in respect of the points that I have included in paragraph (7) on the assumption that the request for normality at the frontier was already covered by the six points of the hon Member which reject Schengen. I think it is implicit in the fact that he says he notes and welcomes the fact that the continuation of the situation is unacceptable, that the delays are unacceptable, that this is just a pretext, that they continue to operate a post without a red and green channel. I think implicit in all that is that our rights of membership are being injured by all these things as much as by the points that I have mentioned in paragraph (7). So it is not an attempt to eliminate that. It is an attempt to put it in context and not to make a special case for the land frontier as if the land frontier was the thing that mattered.

HON P R CARUANA:

Our rights to have, from a customs point of view, the frontier operated on a more normal basis is not a Community right because the community rights in relations to customs control are based on membership of the Customs Union. Insofar as the customs post as opposed to the immigration point is concerned, they will always whilst we are out of the Customs Union, be entitled to operate a customs post between Gibraltar and Spain even though they are not entitled to operate one between Spain and Portugal because we are outside the Customs Union. What I say is that notwithstanding the fact that they are entitled to operate a customs post, we are entitled to ask the British Government to ensure that they should operate that customs post in a normal and civilised fashion and that call is not derived from any Community rights. It is derived from an entitlement which we assert that there is no reason why Spain should seek to protect the European Union from breach of customs regulations from Gibraltar than, for example, Germany felt it necessary to do at the Austrian border before Austria joined the European Union. In other words, from a European

Community point of view, the Gibraltar/Spanish customs post does not require to be operated any more abnormally than, for example, the customs post between Germany and Poland and that is the point which is not covered by the motion. It is implicit in the criticisms of paragraphs (1) to (5) as the Chief Minister has indicated but there is no call for action on that point. I give way.

HON CHIEF MINISTER:

Mr Speaker, the hon Member has to remember that the guy that looked at all his seven passports and did not look at his face to see if he was an illegal Moroccan immigrant or one of the people in the passport was not the customs officer. The delays have invariably had nothing to do with customs and that the people who were leaving Spain were not having to go through customs because they were leaving the customs area. They were being stopped by the Policia Nacional and having their identity documents checked. I think it is stronger for us to say to the United Kingdom we are not asking favours. We are not asking Spain to be civilised. We are asking Spain to abide by international law. If we get them to operate the frontier normally except for customs, I think we will have won a major battle. I think it would be a mistake to say it is not the way civilised countries behave with each other because we cannot say to them, "You should be civilised". They can be civilised if they want and if they do not want to they do not have to be but we can say to them, "If you are not entitled under Community law to keep me an hour sitting in my car while you look at every page in my passport, then you will either stop doing it or the United Kingdom, who is responsible for my Community rights, will take you to court" and that is what we have to do. Just like other people say to us, "If you do not implement directives we will take you to court". Just like they say that to us when they go and complain about the environment to Europe or anywhere else. Let us start asking the United Kingdom to use Community law to defend Gibraltar not just to make life difficult for us and, frankly, I believe that it is much stronger a thing to do than to weaken the strength of that position by saying and on top of that they are civilised. If they are breaking every law in the land being uncivilised is a petty offence.

HON P R CARUANA:

I take the distinction that the Chief Minister seeks to make between demanding things that we think we are entitled to as a matter of right under Community law and therefore excluding things which do not fall into that category but, of course, the delays at the border in the last 12

months have primarily been at the customs post. On nine out of 10 occasions, the delays have been caused not on passports but at the customs post. It does not of course alter my willingness to support the amended motion simply because it does not go on to ask for a twelfth thing having asked for 11 but I will continue to support the motion, as amended, even if the Chief Minister does not acceded to the arguments that I am now putting. I believe that in addition to asking for compliance with our EU rights we are entitled to ask, as indeed the political bodies in Gibraltar have asked frequently in the past, for normality at the customs post otherwise if my argument on that is wrong what justification does he have for his sub-paragraph (d)? Sub-paragraph (d) is "in failing to operate the frontier for commercial traffic on an unrestricted seven day basis". That is a customs point, not an immigration point.

That is all. I do not seek to dilute or compromise the Chief Minister's desire to be specific on the items that are a matter of right under EU law.

HON CHIEF MINISTER:

I wish to add a further sentence to the last paragraph of my amendment replacing the full stop by a comma to say, "and to operate customs control in accordance with normal international practices and conventions".

HON P R CARUANA:

That is entirely acceptable.

HON CHIEF MINISTER:

I do not think we should limit it to the land frontier since we are asking them to restore air traffic and sea traffic.

Question put on the motion, as amended. Agreed unanimously. The motion, as passed, read as follows -

"This House:

1. Notes the increasing queues and delays at the frontier following upon Spain's introduction of new measures purportedly in implementation of the Schengen Agreement;

2. Notes that, following the introduction of these new measures, Spain continues to operate the immigration control on a single file basis with only one police officer and that Spain has not deployed additional resources to minimise delays;
3. Notes that Spain continues to operate the Customs post at the frontier without a red and green channel and without the random only checks customary at other international frontiers;
4. Considers that the Schengen Agreement is a pretext used by Spain to introduce new measures which are in reality calculated to maximise queues and delays at the frontier for political purposes in order to isolate and damage Gibraltar economically;
5. Notes and welcomes the fact that Her Majesty's Government views the situation with concern and considers the delays at the frontier to be unacceptable;
6. Notes with no surprise that Her Majesty's Government has been unable to obtain a satisfactory explanation from Spain for the new measures and the resulting further delays. Considers that no such satisfactory explanation exists;
7. Considers that this latest move by the Spanish Government is a continuation of the policy that Spain has embarked upon since the partial reopening of the land frontier in 1982
  - (a) in failing to remove all the restrictions imposed by the previous regime against Gibraltar which cut off communications between Gibraltar and Spain by land, sea and air, as they should have done on joining the European Union on 1 January 1986;
  - (b) in failing to observe the legislation introduced in Spain enabling ferry services to be restored;
  - (c) in failing to permit the resumption of flights between Gibraltar, Madrid and London;
  - (d) in failing to operate the frontier for commercial traffic on an unrestricted seven day basis;

- (e) in failing to comply with Community obligations and accept Gibraltar's right to enjoy the freedom to provide services in the Spanish market;

Therefore calls on Her Majesty's Government to take all the necessary steps and measures to ensure that Spain fully accepts Gibraltar's rights of membership within the European Union in all these areas and to operate customs control in accordance with normal international practices and conventions".

#### ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn sine die.

Question put. Agreed to.

The adjournment of the House sine die was taken at 11.20 pm on Friday 21st July 1995.



# GIBRALTAR

## HOUSE OF ASSEMBLY



# HANSARD

**30TH NOVEMBER, 1995**

(adj to 18th December, 1995)



## REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Tenth Meeting of the First Session of the Seventh House of Assembly held in the House of Assembly Chamber on Thursday the 30th November 1995 at 10.30 am.

### PRESENT:

Mr Speaker..... (In the Chair)  
(The Hon Col R J Peliza OBE, ED)

### GOVERNMENT:

The Hon J Bossano - Chief Minister  
The Hon J E Pilcher - Minister for the Environment and Tourism  
The Hon J L Baldachino - Minister for Employment and Training  
The Hon M A Feetham - Minister for Trade and Industry  
The Hon J C Perez - Minister for Government Services  
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport  
The Hon R Mor - Minister for Social Services  
The Hon Miss K M Dawson - Attorney-General  
The Hon B Traynor - Financial and Development Secretary

### OPPOSITION:

The Hon P R Caruana - Leader of the Opposition  
The Hon Lt-Col E M Britto OBE, ED  
The Hon F Vasquez  
The Hon H Corby  
The Hon M Ramagge  
  
The Hon P Cumming

### ABSENT:

The Hon J L Moss - Minister for Education, Culture and Youth Affairs  
The Hon L H Francis

### PRAYER

Mr Speaker recited the prayer.

### CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 24th April, 1995, having been circulated to all hon Members were taken as read, approved and signed by Mr Speaker.

### DOCUMENTS LAID

The Hon the Chief Minister laid on the table the report and audited accounts of the Gibraltar Development Corporation for the year ended 31 March 1994.

Ordered to lie.

The Hon the Minister for the Environment and Tourism laid on the table the report and accounts of the Gibraltar Heritage Trust for the years ended 31 March 1994 and 31 March 1995.

Ordered to lie.

The Hon the Minister for Medical Services and Sport laid on the table the report and audited accounts of the Gibraltar Health Authority for the year ended 31 March 1994.

Ordered to lie.

The Hon the Minister for Social Services laid on the table the accounts of the John Mackintosh Homes for the years ended 1989, 1990, 1991 and 1992.

Ordered to lie.

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

1. Accounts of the Government of Gibraltar for the year ended 31 March 1994 together with the report of the Principal Auditor thereon.
2. Audited accounts of Gibraltar Community Care Trust for the years ended 30 June 1992 and 30 June 1993.
3. Report and audited accounts of the Gibraltar Broadcasting Corporation for the year ended 31 March 1994.
4. Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 13 to 15 of 1994/95).
5. Statements of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (Nos. 1 and 2 of 1994/95).
6. Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 1 to 3 of 1995/96).

Ordered to lie.

#### ANSWERS TO QUESTIONS

The House recessed at 1.10 pm.

The House resumed at 2.55 pm

Answers to questions continued.

The House recessed at 5.00 pm.

The House resumed at 5.20 pm.

Answers to questions continued.

#### MOTION

HON CHIEF MINISTER:

Mr Speaker, I beg to move the motion of which I have given notice which reads as follows -

"That the Honorary Freedom of the City of Gibraltar be conferred upon Her Majesty's Royal Marines in recognition of their long-standing relationship with Gibraltar dating from 1704 and the part played by them in the defence of the Rock since that date".

Mr Speaker, I know that the motion and the granting of the Freedom of the City to the Royal Marines will be something that will particularly be welcomed by all those Gibraltarians who have had links with the military and with the Gibraltar Regiment. The Royal Marines have always been an impressive sight in our city and I think it is an opportune moment now that we have, for the first time in our history, a Royal Marine as the Commander of the British Forces in Gibraltar. Let me say that the record of the arrival of the Royal Marines in Gibraltar in the afternoon of the 21st July 1704 was that in the campaign that was then being waged in the war of Spanish succession, the attempt was made by the ship carrying the Royal Marines to take Barcelona which was not successful and therefore they moved on to Gibraltar. In fact, had that not happened on the 21st July 1704, I suppose we might now have been talking Catalan and they might be talking English in Barcelona. Fortunately for us, Barcelona was not

taken, it was too well protected and a total of 1,800 between British and Dutch marines, arrived here and were involved in the attack and conquest of Gibraltar which.....

*[Interruption from the Public Gallery]*

MR SPEAKER:

Order. Order. You must leave the House immediately. Order. Order.

HON CHIEF MINISTER:

I think the gentleman is not entirely in control of his grey cells and therefore we must forgive him his outburst, Mr Speaker. I realise you must keep order in the House but I do not think the gentleman is entirely healthy in the upper portion of his anatomy.

In 1704, on the evening of Sunday 24th July, the Governor of Spanish Gibraltar capitulated and Gibraltar became, at that stage, a city which was technically, as is well-known, being captured in the name of the pretender to the Spanish throne, Charles III. In fact, happily for us, the British immediately realised the important strategic value to the British Empire and it remained as a valuable asset for the military which the marines played an enormous part in defending and protecting immediately after when attempts were made to reconquer. The attacks were repelled against enormous odds and that led to the identity in the military history of the Royal Marines with the capture and the defence of Gibraltar notwithstanding that they have, of course, a military history of valour and effectiveness in many, many parts of the world to the extent that Gibraltar was selected in 1827 to be the one battle honour that would be reflected in the Royal Marine Crest. On the 26th September 1827 when new colours were presented, on the part of His Majesty

King George IV, Gibraltar appeared for the first time above the Crown and a globe and the importance of Gibraltar to the British Empire in 1827 made it a matter of national necessity that it should be given such a prominent place and that the connection with the Royal Marines should be reflected in this way. Let me say that the decision to bring the motion, which is something that the Government have been asked to do over a period of years, has produced a response from somebody who says, "The Royal Marines were reported to have removed the word 'Gibraltar' from their cap badge in the 100th Royal Tournament in order not to upset the Spaniards". Such report did appear in the Peterborough Column, I think it is in The Telegraph, and subsequently the Chronicle carried a report from Mr Brufal in London saying that the original story was wrong and that it was not true that this action had been taken to avoid embarrassing the contingent of Spanish marines that took part in the tournament. At the same time the report commented that the Gibraltar authorities did not escape criticism because the Gibraltar municipality - which, of course, ceased to exist in 1969 - had not granted the Royal Marines the Freedom of the City of Gibraltar notwithstanding the fact that they had been granted the Freedom of Deal in 1945, Chatham in 1949, Plymouth in 1955, Portsmouth in 1959, Stanley, Falklands in 1977, Medway in 1979. So clearly they have got the freedom of many, many cities with which they have had a connection and the truth of the matter is that the connection is nowhere as greater as it is with us because at the end of the day one cannot say, "If it had been somebody else in 1704 that took this place or if it had been somebody else that having taken it had to defend it, we would be here today to tell the story". There is no guarantee that somebody else would not have done as good a job but nevertheless the Royal Marines are particularly good at the job they do. I think the people of Gibraltar have always felt very proud and very happy to see them here as they were recently when the band was here and therefore it seemed to the Government that we should take the opportunity, following the visit of the band recently, given the fact that we have as the Commander of British Forces, as I said, for the first time ever in

our history a Royal Marine, that we should move this motion in the House and have him here in Gibraltar to receive the honour on the part of the Gibraltarians and on behalf of the Royal Marines. I commend the motion to the House.

Question proposed.

HON P R CARUANA:

Mr Speaker, I have and my hon Colleagues, in the Opposition, no difficulty in supporting the motion although I cannot help thinking that it is something of a road to Damascus conversion by the Chief Minister. Worthy as the Royal Marines unquestionably are, given their long military and historical association with Gibraltar, worthy as they undoubtedly are for that reason to receive the honorary Freedom of our fair City which we bestow on them from this side of the House with great pleasure, certainly to my knowledge the Royal Marines have not deployed militarily in defence of Gibraltar since 1992. Therefore I can only assume that the Government Members' decision to bring this motion to the House in the run up to this election, is principally driven by what the Chief Minister has himself admitted to, in fairness to him, the hope and indeed expectation that this will be particularly welcome by those Gibraltarians with military connections and the Gibraltar Regiment. Well, I think it is transparently so, indeed, the Chief Minister's regard for matters military is not legion and is certainly not favourable in any well documented sense, indeed, I remember when as Leader of the Opposition..... *[Interruption]* Does the Minister want me to give way? I am quite happy to do so. *[Interruption]* I see, but not in such a loud voice. I recall an occasion when he was Leader of the Opposition when he used to disapprove even of attending at Poppy Day celebrations claiming that he had much better things to do in his job as Branch Officer of the Transport and General Workers Union. So certainly a real road to Damascus conversion. But no less well deserved by the body of the Royal Marines for that. Mr Speaker, if the Chief Minister wants to ingratiate himself to the Commander British Forces who happens to be an eminent Royal

Marine, I would have thought that he could have picked another way of doing so. If he had felt genuine gratitude, not that I think that his gratitude was not genuinely felt to the extent that we can all now so many hundreds of years later feel gratitude, but if the Government Members feel genuine gratitude for what the Royal Marines unquestionably did for Gibraltar over the last three centuries, it seems extraordinary that they should have waited for their eighth year of office to move this motion. Therefore, Mr Speaker, I for my part, have little doubt that this is yet another item in the list of the Chief Minister's pre-electoral gimmicks in order to convey to the electorate of Gibraltar, who are not going to be this easily confused, that somehow the Government Members have rediscovered their desire to profess great friendship with and affinity to Britain and all the things British. Mr Speaker, I have no hesitation, speaking for myself - I do not know if any of my hon Colleagues wish to speak but if they do not - and for them that we will, of course, be supporting the motion.

HON P CUMMING:

Mr Speaker, when I saw this motion I found it hard to believe because it is so innocent, so gracious in tone, so pro-establishment. The Chief Minister seeks to bestow honours on an organ of the British establishment. And I asked myself, "Is this the same man? The same man who rushed to London breathing fire in order to reprimand his Foreign Secretary? The man who refused meetings with the Governor? The man who was going to lance the boil. The man who nearly brought direct rule crushing down on our heads?" And I ask myself, Mr Speaker, would the Royal Marines have hesitated for a moment to enforce direct rule in Gibraltar had they been asked to do so? There are Gibraltarians who merit the honour of the Freedom of the City for having led the struggle to take the Government of Gibraltar from the hands of the likes of the Royal Marines and put it in our own hands. Gibraltarians who led the struggle to advance civil rights against the overwhelming power of the very military that the Government now seek to honour. This motion smells to me of

hypocrisy. The self-government obtained for us by our political forefathers has been put at serious risk by the confrontational anti-British attitude of this Government. Between the Chief Minister and the Royal Marines, the Freedom of the City was nearly taken off us as free citizens of Gibraltar during this summer. We nearly reverted to colonial militarily imposed government during the course of this summer because of the very confrontational style of this Government. These serious underlying major problems of relations between the GSLP Government and Britain cannot be smoothed away by motions like this. This motion is a cynical attempt to please the simple good people of Gibraltar who hold the British Forces in high esteem and to coax them before the elections to overlook the damage that the GSLP has done to relations between Britain and Gibraltar. Thank you, Mr Speaker.

MR SPEAKER:

If no other hon Member wishes to speak I will ask the mover to reply.

HON CHIEF MINISTER:

I am very grateful, Mr Speaker, for the speeches that have been made in the House because, of course, they are heard by our citizens who are listening who will no doubt realise what a farce this institution has become since the arrival of the Opposition Members who irrespective of the subject matter convert the opportunity into a censure motion against the Government, irrespective of whether we were granting the Freedom of the City or canonising somebody. If we do something the position is, why did we not do it before? And if we do not do it, then the answer is, we should do it. It is quite obvious to every citizen in this place that whatever the issue the response is the same. It is like pressing a button and one can predict the nature of the speech that we will get back give or take or another nuance. Obviously

the last speaker whose contribution, as far as I am concerned, is totally irrelevant because he has got no right to be present in this House, was only slightly better than the one that we had from the audience that had to be dragged out by the police in the middle of my speech. I think we can bracket both those contributions to the debate on the Freedom of the City in the same context. Therefore all I can say is that I regret the fact that Opposition Members feel that they have to go back to 1976, which certainly I imagine the Leader of the Opposition cannot remember, I do not know whether he was in Gibraltar or somewhere else, but he was probably in short pants in 1976 which is the incident that he referred to when I was the Leader of the Opposition, in 1976, he needs to go back to that and say..... *[Interruption]* Of course he does not know why. He does not know we were in the middle of a lockout and the line that we took was to say, "How can we consistently go along and defend the freedom of people by commemorating that a lot of people died to have basic trade union rights when all the employees of the MOD had been sent home and had been out for six months locked out? *[Interruption]* Yes, sent home for six months without pay, Mr Speaker, which is something that of course they might have liked to be able to throw at us but they cannot because we have had many disputes and we have paid people 100 per cent to sit down and do nothing. Given the fact that they have neither a philosophy nor political integrity nor sense of direction they will simply go wherever they need to go and say whatever they need to say in the forlorn hope that they will get elected and be the Government of Gibraltar. God alone knows why they want to do that, other than presumably to have tripartite dialogue which is the only thing that seems to concern the Opposition Member. No doubt if I had included the Spanish Marines as well as the Royal Marines there would have been a more enthusiastic reaction. I commend the motion to the House.

Question put. Carried unanimously.

## ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Monday 18th December 1995 at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 8.25 pm on Thursday 30th November 1995.

MONDAY THE 18TH DECEMBER 1995

The House resumed at 11.05 am.

PRESENT:

Mr Speaker..... (In the Chair)  
(The Hon Col R J Peliza OBE, ED)

GOVERNMENT:

The Hon J Bossano - Chief Minister  
The Hon J E Pilcher - Minister for the Environment and Tourism  
The Hon J L Baldachino - Minister for Employment and Training  
The Hon M A Feetham - Minister for Trade and Industry  
The Hon J C Perez - Minister for Government Services  
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport  
The Hon R Mor - Minister for Social Services  
The Hon J L Moss - Minister for Education, Culture and Youth Affairs  
The Hon Miss K M Dawson - Attorney-General  
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition  
The Hon Lt-Col E M Britto OBE, ED  
The Hon F Vasquez  
The Hon H Corby  
The Hon M Ramagge

The Hon P Cumming

ABSENT:

The Hon L H Francis



IN ATTENDANCE:

D Figueras Esq, RD\* - Clerk to the Assembly

#### DOCUMENTS LAID

The Hon the Minister for the Environment and Tourism moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of documents on the table.

Question put. Agreed to.

The Hon the Minister for the Environment and Tourism laid on the table the following documents:

- (1) The Hotel Occupancy Survey 1994.
- (2) The Air Traffic Survey 1994.
- (3) The Tourist Survey 1994.

Ordered to lie.

The Hon the Minister for Employment and Training laid on the table the Employment Survey Report, October 1993 and April 1994.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the table Amendments Nos. 1 and 2 to the Integrated Tariffs notified by the Sixth Supplement to the Gibraltar Gazette published on 17 August 1995 and 23 November 1995 respectively.

Ordered to lie.

#### MOTION

MR SPEAKER:

Before I put this motion perhaps there might be Members in the House who may have to raise a point of order. If that is the case please do it now because later on we cannot at all refer to the question of sub judice.

HON P R CARUANA:

Mr Speaker, we have taken the view that this motion raises an important point of order and our objection to it is not based only on the Standing Orders of the House. Our view is that this motion is a breach of Standing Order 45(4) which reads, "That references shall not be made to any matter on which a judicial decision is pending in such a way as it may prejudice the interests of parties thereto". Erskine May says in relation to the practice of the House of Commons on this matter as follows, and I quote from page 377, "Subject to the discretion of the Chair and to the right of the House to legislate on any matter or to discuss any matters of delegated legislation, matters awaiting adjudication of a court of law should not be brought forward in debate. Following the First Report of the Select Committee on Procedure (1962 to 1963) the House passed a resolution on the 23rd July 1963 which set out the rule in detail. The resolution bars references in debate (as well as in motions, including motions for leave to bring in bills and questions including supplementary questions) to matters awaiting or under adjudication in all courts exercising a criminal jurisdiction from the moment the law is set in motion by a charge being made to the time when verdict and sentence have been announced and again when formal motion of appeal is lodged until the appeal is decided and in courts martial from when the charge is made until the sentence of the court has been confirmed and promulgated" etc, etc. "The resolution of the 23rd July 1963 also applies to the

civil courts and in general bars references to matters awaiting or under adjudication in a civil court from the time that the case has been set down for trial or otherwise brought before the court, as for example, by notice of motion for injunction; such matters may be referred to before such date unless it appears to the Chair that there is a real and substantial danger of prejudice to the trial of the case. The ban again applies from when formal notice of appeal is lodged", etc, etc.

Mr Speaker, there is no doubt that there is a certain amount of discretion permitted to the Chair and what the standing order prevents is references to the issues. Here we have a case, not of references to the subject matter but a suggestion in the motion that the House should actually make the very decision that the court has to make. So in my opinion whereas we have a rule that prohibits references to the subject matter, this motion goes much further because it does not just refer to the subject matter of the case, it actually says what the House thinks the position is in law on the very issues that are before the court. Mr Speaker, it is my view and the view of my party in this House that this motion does not actually represent a sincere or genuine desire on the part of the Government Members that this House should debate a matter of public importance in general terms such as the pensions. Indeed, we have done so in numerous occasions and this House has, on numerous occasions, expressed its support for the resolute defence of the pensions case by the Government and they and indeed us in the Opposition have frequently expressed our view on that issue and indeed the standing order, in my submission, does not prevent the House from discussing generally, at a political level, the question of the pensions issue. But any honest, objective reading of the terms of this motion leads to the inescapable conclusion that this is not any desire for the House to properly debate a matter on which it has, in any case, recently expressed its view. This motion, in the terms on which it is drafted, mentions by name the firm of solicitors conducting the case referred to in every single paragraph except the first two; one, two, three, four, five, six. It is clearly, as far as we are concerned, an attempt on the part of the Government

Members to make political hay whilst they think the sun shines for them in the run-up to an election and frankly a crude attempt to make political capital for themselves on a matter which they think will be electorally popular and not a genuine desire to debate an issue which is of national importance for its own sake. Mr Speaker, as I have indicated to you, our objection to this motion goes beyond the question of the standing order. Our objections extend to what we consider to be much broader principles than the rules of this House and extend to questions of the separation of powers to the proper and separate roles in a democratic state between parliament and the courts. This motion asks the House to take note of the contents of an affidavit filed in court by a civil litigant. I, notwithstanding the fact that I was a member of the law firm that was dealing with the case and my hon Friend, Mr Vasquez, who is still a member of that firm, but speaking for myself, I have not read those affidavits and yet the Chief Minister expects this House to take note of the contents of documents before the court presumably on the basis of his private reading of them. It asks this House to declare on the very issue or one of the issues that the litigants in that court have raised in the House for decision of the Supreme Court of Gibraltar. I sincerely hope that the Government of Gibraltar persuade the Chief Justice that these arguments are wrong and that if they are able to persuade the Chief Justice that the Government are entitled to judgement in this case. I sincerely hope that that happens but my desire for that to happen does not require me to throw out of the window 300 years of democratic and legal-making tradition and convention about what is proper for this House to do and what is not proper for this House to do. This motion requests that the House should declare that the statement made by Triay and Triay referred to above is false. First of all, the statement is on the basis of a document that we have not read. Then he asks us to decide, on the basis of his assertion, that the statement is false. These are subsidiary objections. These are.....

MR SPEAKER:

I think we have got to keep to the point from the legal aspect.

HON P R CARUANA:

Mr Speaker, what the Chief Minister's motion seeks to do is to get this House, not just to make reference - it would be bad enough if we were just being called to make reference to the subject matter of the court case - it actually goes much further and requires this House to, in effect, give its judgement on legal grounds on the very issue that the Supreme Court of Gibraltar has before it for legal consideration. Well, the Government Members may believe that they have us against a rock or a hard place. They may think that they have been so clever.....

MR SPEAKER:

This is what we must not do. All I am interested is from the legal point of view, otherwise I shall have to ask you to resume your seat.

HON P R CARUANA:

Thank you, Mr Speaker, I will limit myself at this stage then to the question of legalities. Mr Speaker, this is my final point. These views that I have expressed are not just my own. The Bar Council of Gibraltar.... *[Interruption]* The Government Members, Mr Speaker, may giggle but when they issue a public statement saying.....

MR SPEAKER:

Order, this is a serious matter and there will be no interruptions.

HON P R CARUANA:

I am obliged, Mr Speaker. The Government Members say that the GSD have jumped to conclusions as always. Well, if we had jumped to conclusions which I do not believe that we have, Mr Speaker, we are not the only ones. The Bar Council has issued a public statement saying that the tabling of the motion constitutes a serious threat to the independence of the Supreme Court which has yet to decide upon the matters raised in the motion and is an attack on the proper administration of justice and ultimately to civil liberties in Gibraltar. This is not the Opposition speaking. This is not Mr Caruana speaking because he is embarrassed.....

MR SPEAKER:

I think you have made the point. It is the Bar. You need not emphasise that anymore. I take full recognition of what the Bar Council has said. Have you concluded?

HON P R CARUANA:

I have concluded on the point of order, Mr Speaker.

MR SPEAKER:

But remember the question of sub judice cannot be referred to when we are discussing the motion later. Does any other Member wish to add on the question of sub judice only, from the legal aspect only?

HON P CUMMING:

First of all I would like to associate myself with the remarks made by the Leader of the Opposition. It seems to me that in Part X of the rules of debate "Miscellaneous", rule 45(4) clearly prohibits....

MR SPEAKER:

This has already been mentioned. This is again repetition.

HON P CUMMING:

Mr Speaker, I feel that I have never had any complaint whatever about your own impartiality and your own.....

MR SPEAKER:

Yes, but do not come into that now. The point is that you are repeating what has been said and that is repetition.

HON P CUMMING:

I am sure Mr Speaker would not have allowed me to bring forward this motion and very rightly so.

MR SPEAKER:

Of course.....

HON P CUMMING:

And neither should you have allowed the Chief Minister to bring it forward.

MR SPEAKER:

This is not a motion, this is just a point of order on the question of sub judice. So you can speak on that but you cannot repeat what the other Member has already said. That is all I am saying, alright?

HON CHIEF MINISTER:

Mr Speaker, I have not yet moved the motion and I have not yet explained the reasons for it and everybody else has pronounced themselves on it which is a very peculiar thing for these great defenders of 300 years of democracy that they condemn something without having had an argument. I find it odd. Let me say that whether the Opposition Members are aware of it or not and whether the Bar Council has been put in full possession of the facts, it is of course a fact that one of the peculiarities of the constitution of the Bar Council is that the people who are QCs, by virtue of their title, automatically constitute members of the executive committee of the Council and that most of the QCs happen to be with Triay and Triay. That is an independent.....

HON P R CARUANA:

Mr Speaker, on a point of order. The Chief Minister is misleading the House because he knows jolly well that the Bar Council has said that all QCs and all lawyers in the Bar Council.....

MR SPEAKER:

Order, order.

HON P R CARUANA:

.....from Triay and Triay or from Hassan and Partners did not participate in this decision so for him now to come and attribute the decision to the fact that most of the QCs belong to Triay and Triay is first of all, factually inaccurate and, secondly, misleading of this House and of the public at large.

HON CHIEF MINISTER:

Mr Speaker, I have not given way and therefore the hon Member is not entitled to interrupt.....

MR SPEAKER:

He raised on a point of order. I allowed him on that.

HON CHIEF MINISTER:

It is not a point of order. He is saying that I am misleading the House because I have said of the constitution of the Bar Council, which is not the first time that it has been wound up to do something. In 1993 the Bar Council was wound up to do and complain to the Governor asking him to use his powers to overrule the elected Government in a decision on the Companies Registry and it was the first thing that I put before Sir John Chapple when he was in the House of Assembly being sworn in as Governor of Gibraltar. I have no doubt that it will not be the last time that the Bar Council as an institution is asked to intervene in an issue which is something that can be debated politically but which people tend to use whatever orders are available to them to promote their cause and good luck to them.

There are, Mr Speaker, two issues currently on which a ruling is pending and it seems to me that under the rule of debate the motion should be debate cognisant of the fact that these two issues are pending a ruling and aware that, as I have already stated publicly, it is not the purpose of the motion to tell the people who have to take the decision that are pending how they should decide.

One issue is the question of security for costs where the judgement has gone in favour of the Government and Messrs Triay and Triay are appealing against that. It will be the Court of Appeal that will decide that and I doubt very much if the Court of Appeal that is nowhere near us is going in March next year to have its decision on whether security for costs should be upheld or overruled and if it is overruled we will appeal against that decision when the time comes. But I doubt very much whether anybody can argue that the debate on this motion is going to influence the Court of Appeal but we will be careful not to say

anything that is likely to make it impossible for the judges from the United Kingdom to come to any conclusion other than the correct one in their judgement on a matter of law.

The other issue which is pending is the leave that Messrs Triay and Triay have sought - I am not sure on whose instructions. That is not clear because they say their sole client is this new gentleman who has substituted for the previous one - to move for my indictment on a criminal offence of contempt of court because of the Government press releases and therefore it is whether leave should be granted or not and we, that is to say the Government, have argued in this case that leave should not be granted and we have made clear that if leave is granted that decision will be appealed against. It is quite obvious that a number of important statements have been made which are not true in this case and which are not public and which should be public. It is quite clear that having sought to silence us and prevent us from making that information public by moving in the courts to put the case that if we publish information we are in contempt of court that now an attempt is being made to silence us in this House so that the people are not told what are the arguments being used and why those arguments are not true. I believe we have a right to bring that information out and I believe the hon Member who has consistently said publicly that he is a 100 per cent behind the Government, that if he were the Government he would go to even greater lengths than what we are going to defend the position, should not try and stop me from saying what I know and he does not know. All that it does is it gives him an opportunity to distance himself quite properly because he is on my side and not on the side of Messrs Triay and Triay. Distances himself quite properly and therefore strengthens the position of the Government in our argument by affirming the views of the Government being the views collectively of all the elected members. The fact that they are our views does not mean that the court has to agree with us. All that the motion does is it gives Opposition Members an opportunity to put their money where their mouth is and associate ourselves with the arguments we have already put but which people should

know about. People should know why we feel that certain statements have been made and why we feel that there are certain things that should be made public which just do not make sense in the context of the issue of whether the fund should have been dissolved or not have been dissolved which is the matter on which ultimately in some remote date in the future..... We do not know when because we have not go anywhere near the original court case. Nowhere near it and we have been two years at this. At some stage somebody will decide whether the decision to dissolve the Social Insurance Fund of Gibraltar as a result of an agreement entered into between the Government of Gibraltar and the Government of the United Kingdom in 1989 was constitutionally correct or not and that is not something that bothers me one way or the other and I am able to explain why without any problem. It will not take me 10 minutes to explain why that is not an issue. It is everything else that has happened which is not an issue which really is not justified by that original issue and that should be told and should be known.

HON F VASQUEZ:

I would like to reply to that. There are various other.....

MR SPEAKER:

This is not a debate. You have to address yourself to me on the actual legal side of sub judice. I will not allow any more rumbling now. We have had enough of that on both sides.

HON F VASQUEZ:

There are various points, certainly points of fact that the Chief Minister is saying.....

MR SPEAKER:

First of all are you still with Triay and Triay?

HON F VASQUEZ:

Yes, I am indeed.

MR SPEAKER:

You must declare an interest if you are going to speak on the motion or anything to do with it.

HON F VASQUEZ:

Mr Speaker, I declare the fact that I am a partner in the firm of Triay and Triay which is precisely why, Mr Speaker, this motion should not be before this House.

MR SPEAKER:

Alright you have declared your interest.

HON F VASQUEZ:

The Chief Minister has said in the course of that submission to you, Mr Speaker, that the Government are seeking to publicise various lies contained in the case brought by the applicants in the court proceedings of which this House can have no knowledge at all. The fact is that in relation to the contempt proceedings that have been brought, what is clear from the record and the reports that have been issued in the press, from the public record, is that the party moving for the contempt is alleging that the Chief Minister or the person issuing public statements on behalf of the Government of Gibraltar himself has been telling lies about the parties conducting that case before the Supreme Court, been making scurrilous allegations.....



MR SPEAKER:

I am not interested in that. You are saying what is happening in court. *[Interruption]* Order, order. When I speak you should stop speaking. The point is this, if you have anything more to say on the legal aspect, not of what is going on in court or coming out of court, only that, if you have not then I am afraid that is the end.

HON F VASQUEZ:

There are two points I seek to make, Mr Speaker, and that is the very point about the issue of sub judice.....

MR SPEAKER:

You have to refer to the Standing Orders. I am not interested in the rest.

HON F VASQUEZ:

Mr Speaker, I am most certainly referring to the Standing Orders and the Standing Orders say that no reference should be made to any matter on which a judicial proceeding is pending.....

MR SPEAKER:

Already that has been said. You are repeating yourself. I have had enough. What is the other point? You are going back over the same now.....

HON F VASQUEZ:

We are not going back over the same.....

MR SPEAKER:

Order. I say we are and therefore you must accept my decision.

HON F VASQUEZ:

But I have not made the point yet, Mr Speaker.

MR SPEAKER:

Yes, you have, you were referring to a standing order which the Leader of the Opposition has already referred to.

HON F VASQUEZ:

I am turning to another point now, Mr Speaker.

MR SPEAKER:

Oh, alright, let us see.

HON F VASQUEZ:

And that is that in the course of this submission the Chief Minister also said that he is not going to refer to any matters which is going to make it impossible for the Court of Appeal or for the Supreme Court to make its decision. The only point I am seeking to make is that the standing order does not say that it has to be impossible. The standing order says that no matter should be discussed which is before a court.....

MR SPEAKER:

All that has been said by the Leader of the Opposition.

HON F VASQUEZ:

Let me make my point, Mr Speaker. ....which may prejudice the interests of the parties. This House has not considered the meaning of the word prejudice. I can explain.....

MR SPEAKER:

Order, order. I am not going to accept that. People know exactly what the word prejudice is and I am not going to have any more. I have had enough. I have heard both sides and as in every court you will find that one lawyer will argue in favour of one thing, the other one will argue in favour of the other and both believe that they are right and then the judge has got to make a decision but it is almost impossible to find two lawyers to agree when they are defending a case. You will find one side which is prosecuting will have all the good reasons why that is the right course for the judge to take and you have on the other side the defence saying all the reasons why it would be right for the judge to dismiss the case. I have given a lot of thought to this and therefore before calling on the Chief Minister, the Hon Joe Bossano, to move the motion standing in his name, I must tell the House that prior to giving the Chief Minister leave to introduce the motion I examined it as I am required to do with all motions to ensure that it was admissible. Indeed, I scrutinised it with particular intensity because the matters it touches on are immersed on local and international politics and particularly because it refers to a case in court on which a judgement is pending and therefore is sub judice. As a former law student, I am very conscious of the gravity of the sub judice aspect in the interests of justice generally and on the personal rights of citizens to a fair trial without interference. This cannot be taken lightly by the legislature and it has to be weighed up with other relevant factors. Thus the rules of procedure are protective for the judiciary in this respect but not inflexible. Having considered it from all aspects, on balance, I came to the conclusion that it was in the national interests as provided for in Erskine May that the motion should be allowed to be tabled especially as it deals with issues that affect the legitimate functions of Government, the welfare of elderly people belonging to Gibraltar and the supremacy of the House of Assembly as Gibraltar's parliament based on the communal and individual democratic rights of the electorate. After carefully weighing these matters up I decided that it would be a travesty of the privileges inherent in this House

to carry out its functions if I had disallowed the tabling of this motion and that I would thus be setting a precedent detrimental to parliamentary government. I came to this decision after fully taking into account the rules of procedure as set out in our Standing Orders and in Erskine May in the latter case as relegated to it in our rules of procedure and after exercising the discretion the Speaker has in the interpretation and the application of the rules in instances such as this. I have listened to the two sides of the argument. Nothing that has been said in this House changes my mind on what I consider to be my right decision and now I say that there is no appeal to my decision. If the House wishes to change my decision then it has got to be done with a motion after notice. I will hear no more about that and no more references will be made in this debate to the sub judice clause.

HON P R CARUANA:

As Mr Speaker has rightly said there is no appeal regrettably against your.....

MR SPEAKER:

Order. That is the end. I will have no such insolence in this House and Members must respect the Chair otherwise everything that has been said about the sub judice clause is just hollow and humbug because it is just as important to respect the Chair of this House as it is to respect the judge of the court.

HON CHIEF MINISTER:

Mr Speaker, I beg to move that:-

"This House :

- (1) Notes that Gibraltar Community Care Limited is a private registered charity established in 1989 which provides assistance to senior citizens in Gibraltar;

- (2) Notes that the Government's Social Assistance Fund whose objects include providing support to registered charities has provided grants to Gibraltar Community Care Trust;
- (3) Notes that by affidavits submitted to the Supreme Court, Messrs Triay and Triay have alleged that Gibraltar Community Care are distributing public funds in order to discriminate against Spanish pensioners following the dissolution of the Social Insurance Fund on the 31 December 1993;
- (4) Declares that the statement made by Triay and Triay referred to above is false in that the payments made by Gibraltar Community Care Limited are not public monies, that this entity is not the agent of the Government but a private registered charity and that it has not been making substitute payments following the dissolution of the Social Insurance Fund for the purpose of discriminating against Spanish pensioners;
- (5) Notes that Triay and Triay consider the statements published by the Gibraltar Government giving details relating to the Spanish court case to be detrimental to the prospects of obtaining a judgement in favour of the Spanish litigant;
- (6) Notes that on this basis Triay and Triay allege that by publishing such information the Gibraltar Government has acted in contempt of Court;
- (7) Notes that pursuant to this view, Triay and Triay has sought leave of the Court to an action for the indictment of the Chief Minister the Honourable J J Bossano;

- (8) Totally rejects the above views expressed by Triay and Triay and fully supports the Gibraltar Government in the action it has taken to defend Gibraltar's interests including publishing information relating to the conduct of the case".

Mr Speaker, I think to tell the story we need to start at the beginning and right at the beginning we have the peculiar situation that the Andalucian Parliament is quite free to debate this matter without anybody claiming that the statements, which are public statements, are a contempt of the court of Gibraltar or can influence the decision of the court in favour of the Spanish litigants and against the Government of Gibraltar.....

MR SPEAKER:

We have got to be careful Chief Minister not to go into the question of sub judice please. Argue basically on the merits of your motion.

HON CHIEF MINISTER:

I am simply pointing out, Mr Speaker, that the motion to which I am speaking can be moved in the Andalucian Parliament without any inhibition.

MR SPEAKER:

It is being moved in this House now.

HON CHIEF MINISTER:

Therefore I am going to be using in my submission to the House references to statements made in the Andalucian Parliament in relation to this case. The Andalucian Parliament decided after the dissolution of the fund took place to do two things. To provide support by way of loans to the Spanish pensioners who were previously obtaining up to and including the end of December 1993 the payment which had been financed by the

United Kingdom Government. Let me remind the House that those payments would have ended in 1988 had the Government of Gibraltar not argued with the United Kingdom Government for their continuation. I think that is relevant because we have been accused of putting in place something designed to deprive Spanish pensioners of the payments they were getting whereas it is a matter of public knowledge, published at the time, that the payments would have ended in 1988 had we not been able to obtain the agreement of the United Kingdom to continue those payments at vast expense, let me say, of £10 million a year. Much more than Gibraltar ever got through the years of the closed frontier to the benefit of course of Spanish former workers in Gibraltar. Those payments were made on the condition that they lasted for five years; that the fund was dissolved at the end of the five years. The Government are not seeking in this House a motion which deprives or criticises the Spanish pensioners for challenging that decision nor does it criticise Messrs Triay and Triay for acting on their behalf in challenging that decision. Anybody that was a former recipient of money from the Social Insurance Fund irrespective of his nationality has got a right to go to court and question the decision and the judgement on that particular decision is not something that creates a particular problem for Gibraltar because at the end of the day what we did was we implemented an agreement with the United Kingdom Government which the United Kingdom Government with their vast resources and their knowledge of the constitution and their knowledge of Community law advised us was perfectly legal. This is why the United Kingdom Government have a responsibility to defend that decision in court alongside us but what has happened since January 1994 is that we have not actually got round to somebody saying that the dissolution of the fund agreed in 1989 was right or was wrong. If that is all that the court case had produced until now this would not be the contentious issue it is. As far as I am concerned what I think I have got a right to bring to the attention of the public is that there has been an awful lot of political statements made in this case which I am entitled as a politician to make public and refute which has nothing to do with whether constitutionally the fund

was possible to be dissolved or not possible to be dissolved. It seems to me a fairly straightforward thing on which a judge can make a judgement. The motion draws particular attention to the question of Gibraltar Community Care Limited. Let me say this is not a matter that is sub judice in the sense that the courts are not being asked to express any view on whether Gibraltar Community Care Limited is or is not the agent of the Government. There is before the court a demand for the Government.....

MR SPEAKER:

I would not like you to carry on referring to the court. You can explain what Gibraltar Community Care Limited is without referring to the court. I think you are quite entitled to that but I would not go into the question of the court otherwise we are on the verge again of the sub judice.

HON CHIEF MINISTER:

Very well, Mr Speaker. Messrs Triay and Triay have demanded of the Government information as to the payments made by Gibraltar Community Care Limited and the Government of Gibraltar refuse to provide that information. The motion seeks the support of the House in a clear statement that Gibraltar Community Care Limited is not the agent of the Government but an independent entity. Let me say that it is the view of the Government that involving Gibraltar Community Care Limited in this matter when it has absolutely nothing to do with it and I can prove it is an extremely dangerous thing for Messrs Triay and Triay to have attempted to do and totally unnecessary.

When the case was first presented it was presented in the name of a certain Senor Clavijo Ruiz and the Government responded to that by seeking information as to who was financing the action. It may well be that it is perfectly admissible not to have to disclose who is ultimately the litigant on the other side but it has been disclosed publicly in Spain. In Spain public statements were

made saying that a law firm had been engaged in Gibraltar in order to pursue the defence of the Spanish pensioners in the context of the dissolution of the Social Insurance Fund. We have been accused, hence the reference in the motion, of setting up Gibraltar Community Care Limited specifically for the purpose of discriminating against Spanish pensioners by continuing pension payments from January 1994 and this is not true. We have been accused in correspondence of acting in a way which is motivated by anti-Spanish feelings in the defence of our interests. This is not the case. We have been accused of trying to deprive an impoverished Spanish pensioner of exercising his constitutional rights in Gibraltar and it is not true. When we have a lawyer telling us, "I am taking instructions" we do not know who he is taking instructions from but if the name of the client is Senor Clavijo Ruiz in a representative capacity albeit presumably he is the one giving the instructions and since he is saying he cannot afford to guarantee that we will recover the many thousands of pounds we have spent so far in this case if we win, as I hope and expect that we will eventually when the case eventually is heard - which has nothing to do with this motion - then we have to go and we are entitled to go into the details of the thing and bring it out into the public. I do not believe that the rule of law, the independence of the judiciary, the views of the Bar Council, or anything else is there in order to enable a law firm to make totally unjustifiable accusations and we are not allowed to tell anybody that this is being done. We are required to shut up and put up with it and therefore I believe people are entitled to know that when we challenged the argument that was being put what we discovered was that the client had in fact not stopped being paid. He had continued collecting money from the Key and Anchor. The lawyer receiving instructions from the client did not know this, which shows a very peculiar level of instruction giving and instruction receiving. We discovered it because we said, "Well, right you have got to declare the income that you are getting" and then it came to light and when it came to light we were told that Mr Clavijo Ruiz had been picked at random simply because of the 10,000 pensioners, or whatever, he happened to be the first name on the list. This is a very strange way of conducting

the case. I do not know if this is not malpractice that lawyers in Gibraltar obtain clients by taking a list and at random picking the first name on the list and he is now their client who gives them the instructions. I believe that much of what is the subject matter of this motion has nothing to do whatsoever with the basic argument of a constitutional right that somebody has to say, "I contributed to the Social Insurance Fund of Gibraltar before 1969. The Government of Gibraltar may have done an agreement with the Government of the United Kingdom but I do not think they have a right to do that agreement. I am going to go to court. I am going to put my case in court and I want the court to say either the agreement is right or the agreement is wrong" and we have no objection in that happening. We will then go and argue that it is right and then the judge will say whose case is better argued and more powerful and that is what we employ lawyers to do. But when we are being told many other things let me say that we can only defend ourselves against those other accusations in the political arena and we can only do it in public without being stopped in the House and that is what we are trying to do today. Therefore the sequence of events is that Community Care, as the motion demonstrates, existed prior to the dissolution of the fund in 1993. The facts are that Messrs Triay and Triay, in correspondence with the Government, has claimed that Gibraltar Community Care Limited is relevant to the case because it commenced making substitute payments in January 1994. This is not true. It is public knowledge that it is not true because if it were true there would be people receiving such payments and there are people within Messrs Triay and Triay who receive community care payments so they know it is not true. How do the Government deal with this situation? How do the Government bring out into the public that things are being argued in court which are demonstrably not correct but which in our judgement, if pursued further, create a danger which has nothing to do with the legitimacy or otherwise of the decision which everybody supported in this House. The decision that was taken to dissolve the fund is something that the Leader of the Opposition has always quoted in public as something which he supported and I thanked him for. The fact that he supported it

and I thanked him for does not mean that a third party may not think we are both wrong in having done it. It does not matter if we are both wrong because all that we did was what the UK said was right and at the end of the day if we acted on their advice and they got it wrong then we have got a clear-cut argument for going back to them and saying, "Look, you cannot leave us now holding the baby and meeting the bill because we did what you said". But of course, Gibraltar Community Care Limited has nothing to do with the British Government. This is a home-grown outfit and to challenge the legitimacy of that is an extremely dangerous thing to do if somehow in a court somebody puts an argument which is totally unnecessary, totally irrelevant, certainly did not occur to Senor Clavijo Ruiz who does not have a clue about the existence of Community Care. I can tell the House that I have had a number of meetings with the organisation that represents Spanish pensioners in the Campo Area. It is something that Messrs Triay and Triay have objected to very strongly. They have objected to it on the grounds that by meeting these elderly people I was planning to take advantage of their advanced years and lack of knowledge in order, somehow, to con them. I find that objectionable. Presumably, since I am not a lawyer and not a member of the Bar Council and not a QC and not anything else people can say all those things to me and that is not contempt of anything but I cannot answer. Well, I have to say I come to the conclusion that the reasons why Messrs Triay and Triay did not want me to meet the pensioners was because they did not want me to find out that the pensioners, as far as they were concerned, did not have a clue what was going on in the court case; were not giving instructions to anybody and, as far as they were concerned, this was something that was being done by the Junta de Andalucia and good luck to the Junta de Andalucia because it is the responsibility, as far as the pensioners are concerned, of an organ of the state to fight the case, be it in the Gibraltar courts or in the European courts. But we are not in a situation where we are dealing with a collective of elderly people who are being persecuted by the Government of Gibraltar so that they are deprived of their rights.

The motion, Mr Speaker, seeks the support of the House in order to ensure the protection of Gibraltar Community Care Limited. It seeks to do it by declaring what is the view of the House, which is not a matter which is sub judice. The view of the House has to be that Gibraltar Community Care Limited is an entity at arm's length from the Government of Gibraltar because if that is not the view of the House then a lot of other people can challenge the existence of Gibraltar Community Care Limited. This is why the Government of Gibraltar have always been careful to say that we will ensure when the time comes that the interests of present and future Gibraltarians are fully protected and we have not, as the alternative motion published by the Leader of the Opposition suggests, made a statement saying that we are able to guarantee the payments by the company to the senior citizens or that we support it because in fact we are not doing anybody any favours by doing that. I would have thought that the hon Member with his legal training would understand that the wording of his alternative motion is not going to strengthen my defence. It is going to strengthen the other side. I am not for one moment suggesting that that is his intention but that in fact is what he is doing, whether he realises it or not.

MR SPEAKER:

The amendment has not been proposed.

HON CHIEF MINISTER:

No, no, I accept that.

MR SPEAKER:

So please refer to your own motion.

HON CHIEF MINISTER:

But I need to explain Mr Speaker.....



MR SPEAKER:

Yes, but there will be plenty of time for that when the amendment is proposed.

HON CHIEF MINISTER:

I need to explain because in fact in previous debates in this House I have cautioned Opposition Members in the use of words because of course those words can then be quoted and are quoted. Let me say that although it is argued that I may not quote what is said in correspondence or what is said in affidavits, it does not seem to stop them quoting what we say here. They do it quite liberally, and therefore I think we have to measure our words carefully on the basis of defending that the structure that exists is that here is an entity created in 1989 set up for a particular purpose; that entity has been making payments prior to 1994 and post 1994 and those payments have not in any way been influenced by what took place on the 1st January 1994. To attempt to say that they do is in fact to say something that is not true, that can be proved not to be true and that the people making it should know that it is not true because the facts are public facts. It is difficult to understand that such statements have been made on instruction from anybody as it sometimes appears to be the case. Therefore if we ask in the House to declare that Gibraltar Community Care Limited is not an agent of the Government and has not been making substitute payments, it is because these allegations have been made, they are not true and the House should say that they are not true. That is the best thing the House can do to protect Gibraltar Community Care Limited and that will not alter one iota what decision is taken on whether the dissolution of the fund was right or was wrong. It does not really affect us one way or the other which way the decision goes. In seeking to do that we have made public a number of statements again reflecting information available to the Government and not available to the public. It is the view of Messrs Triay and Triay and it may be the view of other members of the legal profession that we are not entitled, as a Government,

to publish that information. We believe we are entitled to publish that information because particularly where the information is not correct, it seems to me that publishing it is an important element in making people understand the nature of the challenge that we are facing. Mr Speaker, the argument that has been used in relation to Gibraltar Community Care Limited is that the purported abolition of the Social Insurance Fund is part of the strategy of the Government intended to discriminate against Spanish nationals, whilst continuing to provide pension benefits to Gibraltarians. The suggestion is made therefore that it is to make these continued payments that Gibraltar Community Care came into action in 1994 which, as I have said, is not in fact true. The argument that has been put is based on assumptions which are incorrect and the Government have refused to provide information about the nature of the payments that Gibraltar Community Care Limited makes to people because as far as we are concerned if we accept that we had a responsibility to provide such information we would in fact be proving the case for the other side. Why should we, as a Government that make grants to a separately constituted charitable institution, be required to provide information of the work of that institution any more than tomorrow somebody can say Mount Alvernia is an agent of the Government, under Community law every Spanish national is entitled to a place in Mount Alvernia and because it gets Government grants it is not really independent and consequently the Government can be sued in court on the grounds of discrimination under Community law; discriminating between pensioners of different nationalities. Mount Alvernia accepts Gibraltarians and permanent residents of Gibraltar and nobody else and it does discriminate because there is nothing in the law of the Community to say that private charities cannot be set up for whatever is wanted. One can set up a private charity for any particular segment of society and there are many. What Community law says is that the state cannot treat different Community nationals in different ways. The fact of the matter is that Community law clearly applies in one way on this side of the frontier and in another way on the other side of the frontier. That is clear and it is quite clear that in Gibraltar we are much more

anxious to prove how law-abiding we are in defending the right of others than they are on the other side of the frontier because one of the things that the Junta de Andalucia did when they brought in their decree to pay advances to former Spanish pensioners is that they made it to former Spanish pensioners not to pensioners residing in Spain of any other nationality and any Gibraltar living in Spain, after the dissolution of the fund, if not paid from Gibraltar would not get a penny from the Junta de Andalucia whereas in the case of the Gibraltar end the interim payments that have been paid post January have been paid irrespective of nationality. Yet on their side, when they are accusing us of discrimination on grounds of nationality, they actually pass a law which says only Spanish nationals. Indeed, only Andalucians are going to get this, and I imagine nobody would even dream of starting an action over there with the remotest hope that it would ever get anywhere.

Mr Speaker, the support of the House for the motion is an important contribution to the commitment that has been given publicly to take steps to protect the independence and the continuity of Community Care and that is what it is designed to do and to refuse and rebut incorrect statements that have been made which if not countered eventually - not immediately - when they get there, could represent a risk. Let me say that the position of the Government of Gibraltar is not only that we refuse to provide information as to what Community Care does, if anybody wants to know what they do they ask Community Care not us. But should at any stage we be asked to do it we will appeal that particular decision all the way to the House of Lords and we have made that clear. This is going to be a long and expensive business. Explaining as we have attempted to do through press releases the sequence of events is important so that people understand why it is that we have been placed in a situation where what we are defending Gibraltar against is a range of accusations going beyond the dissolution of the fund. The first press release we issued which was related to the question of security for costs which I have explained was an important element in protecting the pensioners' funds that are

being currently used to meet the defence of the case. We said in that first press release that without taking full instructions from their clients, Messrs Triay and Triay had accused us in a lengthy letter - and this is not an affidavit in court. This is a letter from Mr Triay to us and presumably if he writes me a letter I am entitled to say what he says in his letter. In a lengthy letter he put a whole range of arguments saying that by seeking to be able to recover our costs when we win this case we were impeding the constitutional rights of the Spanish pensioners to have recourse to the Gibraltar courts and that these were reviving the memories of the discrimination that these pensioners had suffered when they had worked in Gibraltar. These, to my mind, Mr Speaker, are not arguments on points of law. They are arguments that one may be perfectly entitled to hold but in my judgement what one is not entitled to hold those arguments, to put those arguments but to insist that nobody should know. If one believes that then one should come out and say so openly and therefore if they do not want to know then I think we are entitled to say, "This is what we are up against and this is what we are arguing against". As I have demonstrated, in fact the impoverished pensioner who we were supposed to be discriminating against has since been removed from the case because when it turned out that he was actually collecting the money and the case was because supposedly we had stopped paying him, how could he sue us for not paying him and be collecting it, and the lawyers that represented him apparently did not know? If we were told at the time without taking full instructions and we say Messrs Triay and Triay are contesting the Government's arguments that the Spanish side should pay our costs if we win then why should Messrs Triay and Triay object so virulently and accuse us of being malicious and also some other things simply because we say publicly what they have said to us privately in a letter? It may be, as they argue, that the normal courtesies between lawyers and the gentlemanly conduct with which they behave in respect of pursuing their clients' interests does not normally lead to such statements reaching the public. Well, I am afraid the public in this one has to be told what is going on because this is not a private case against me about my money. The money that we are

talking about and the payments that we are talking about are payments which every working man in Gibraltar has made a contribution to and which 4,000 pensioners depend on and they are entitled to know that these things are being said. Having disposed of that argument we have then been in great difficulty in trying to establish precisely how it is that the instructions come. It may well be that - here I am only surmising - the Junta de Andalucia believes that we have set up an alternative system. It may well be and therefore have instructed their lawyers to try and uncover this alternative system and their lawyers have got it totally wrong and are making all sorts of judgements reflected in statements without knowing what they are talking about. That is the most generous interpretation that one can put on it. If that is indeed the case then the motion may help those lawyers to go back and do their homework and discover that they have made false statements which presumably can be something that we could take actually the courts on. I do not know but I imagine if somebody makes a statement saying, "I declare that this is true" and it is not then presumably we can do something about it in court but presumably also if we point out to them publicly that the statements that they have made are not true they can go back and withdraw those statements and therefore withdraw the inherent threat to the survival of Community Care as an independent entity which is an important thing that we should all be united in defending.

Mr Speaker, I am asking the House, effectively, to join the Government in defending two positions. The independence of Gibraltar Community Care so as to ensure that it is kept out of the issue of the dissolution of the Spanish Pensions Fund with which it has absolutely nothing to do and to defend my position which is supported by the whole of the Government. Let me say that when Messrs Triay and Triay took objection to our press releases it initially asked every single Government Member, elected and non-elected, to disown the press release, which did not happen. It then threatened to take action against every single member of the Government including Her Majesty's Attorney-General, the Financial and Development Secretary, His

Excellency the Governor and the Deputy Governor. At the end of the day they decided just to go for me. Obviously, this was a purely legal decision and had nothing to do with politics because lawyers do not indulge in politics, but they decided just to go for me. And since lawyers do not indulge in politics but politicians do, I am asking my fellow politicians in this House to close ranks with me against Messrs Triay and Triay and say that they defend the correctness of the Government of Gibraltar politically in publishing information relating to the case of which I can assure the House there is a considerable amount still to be published which will be published. And as we publish we will then take at the same time if we need to take, legal remedies to stop the attempts to put the information that is in our possession to the people who effectively are the litigants because if it is argued that the litigant on the other side is not the Spanish Government but impoverished Spanish pensioners, then presumably the litigants on this side are equally impoverished Gibraltarian pensioners who are the people who stand to lose if the other side wins because the money does not belong to us. It is not part of the Consolidated Fund or the Improvement and Development Fund, the Social Insurance Fund belongs to the people who paid money into it. That is who it belongs to and it so happens that these ill-treated pensioners on the other side have done remarkably well so far. Having paid in £0.25 million before 1969, they finished up with that money and £0.25 million that Gibraltarian employers paid growing to be worth £4.5 million and that £4.5 million entitled them to a pension for life of £1 or £1.50 which would have cost £4.5 million because that is what they paid for and that is what they bought and instead in his wisdom Sir Geoffrey Howe decides in December 1985 that instead of getting £1.50 they will get paid £47. Well, obviously the money that was supposed to last 25 years lasted eight months. They have done very well because they have actually collected millions. In the last five years alone £50 million. In the previous year £20 million. Now, £70 million for an investment of £0.25 million must rank as the biggest return on investment since the Klondike gold rush in Canada. I have never heard of anything like it but if they still feel ill-treated, by all means let them put their

case and if they win it will be the British Government that will have to meet the cost of that because it was the British Government that told us what we were doing was perfectly legal, it was perfectly constitutional and that it could not be challenged. We have religiously observed the agreement with Her Majesty's Government, religiously! The only area, as I have informed the House before, of disagreement between us and London has been on the question of the successor to the Social Insurance Fund and I have had questions in the House and I have explained to hon Members in the House that our view is that we are not going to put in a successor to the Social Insurance Fund because that would pre-empt the decision of the courts. If the dissolution of the fund is being challenged then presumably if we were to lose that we will have to restore what we dissolved. If we restore what we dissolved and we have a new one in place then presumably we would have to dissolve the new one which then somebody else could challenge us on so our view to London has been to say, "Look, we cannot go ahead and put something new in place. All that we can do is pass interim arrangements which will protect people, which is being done and which will ensure that people do not face hardship which is being done and that therefore at the end of the day when either there is a ruling in the courts in Gibraltar or a ruling in the courts in the European Union where the Spanish Government at national level is pursuing the argument. Then, depending on that ruling, if it comes down on our side we are then free to proceed with something else. If it does not come down on our side then you will have to tell us where we go from there". That on which we are all in agreement, which is the challengeable bit, is not what is at the core of this motion because as I have said a consistent attempt has been made to bring in and mix with the issue a totally unrelated and independent activity which preceded the dissolution of the fund by five years. Community Care was doing before 1993 what it has been doing post 1993, nothing different, so why should it be brought into this issue? We have told Messrs Triay and Triay on nine separate occasions that Community Care has nothing to do with the Social Insurance Fund; nothing to do with any payments made because of the dissolution and nothing to do with the

Government and that therefore it is not something we are prepared to assume the responsibility for providing information about. We are very clear about one thing; that if we had been stupid enough to respond positively to that request for information we would have created a link which we are not prepared to see created because we went to great pains initially to devise a way of making grants to a private institution which was no different from the making of grants to any other private institution. We went to great pains when we thought about the future to make sure that things were being done in a way that the independence and the integrity of Community Care was not something that could be put back on our plate. Therefore I think it is pernicious to try and put it on our plate which does nothing to help the case of the Spanish pensioners and potentially does a lot of harm even to the people who are arguing the case who themselves are getting nearer to becoming entitled to community care payments than I am and some of whom, as I have said before, have already been getting them and they know what they are getting. I would like somebody to explain to me when I get a letter from a law firm telling me, "I want to know what payment is being made to pensioners" and I said to myself, "But you have got a pensioner in your ranks why do you not ask him?" He knows what payments are being made. He is collecting them. We know he is collecting them. I cannot explain the strategy but I can only suppose that there is an objective which is not immediately visible. It certainly cannot be an objective which Opposition Members can want because they are on public record, inside the House and outside the House, repeatedly saying they fully support the Government's actions in defence of Gibraltar's interests and if need be they would go even further than we are going. Well, now it is an opportunity for them to go at least as far as we are going, not further, and when that happens what do we get? Before we have even argued the case we get an attempt to stop us putting the case in this House, like an attempt has been made to stop us putting the case in the public domain where it belongs. Where it belongs! I cannot possibly accept, Mr Speaker, the technical arguments in the court case, which is a matter for the court, and where we will

engage the best brains in England when we need to defend that and where we are already saying we will go all the way to the House of Lords irrespective of the judgement. This is not going to be a battle that we are going to give up half way. Irrespective of that there are serious, emotive, totally unjustifiable arguments being reflected in these things which we feel we are entitled to refute and deny because (a) they are not true, and (b) because they are not technical arguments on law. On technical arguments on law then fine, if somebody says to me that it is contrary to regulation 1408 let him argue that it is contrary to regulation 1408 but if somebody says to me, "This is something that you carefully planned because of your hatred of the Spaniards and therefore it must be contrary to regulation 1408", well, no, in order to break regulation 1408 we do not have to hate anybody, we can love them and still break regulation 1408. It is the nature of those arguments in this correspondence and in these letters which we intend to make public and which we feel we have a right to make public and which we feel Opposition Members should say yes we have a right to make public. Perhaps the hon Member when he contributes can stand up and say from his personal knowledge, if he has. I do not know, because he has always maintained that he has nothing to do with this case. Well, if he has nothing to do with this case, presumably he does not know the letters that I have been getting from his partners and I imagine that if he knew he would agree with me and not with them. Then, Mr Speaker, if he has read my press releases.... *[Interruption]* If the press releases of the Government contain lies then the answer is not to stop us issuing press releases but to issue a writ against the Government.... *[Interruption]* No, Mr Speaker, because the issue of proceedings for contempt of court and I do not want to get into that matter which is sub judice.... *[HON F VASQUEZ: Perish the thought.]* Perish the thought, yes. Not my language but I will use his terminology which is not one that I am familiar with, I used stronger words than perish the thought as he knows. If, indeed, the Opposition Member believes that the Government press releases are full of lies which he believes that to be the case and which I can assure him they are not because I can assure him

that every single word in the Government press releases can be backed by the publication of the source and the source of those words are not in the Government office but in his chambers. We have copied word for word the stuff in the press releases but even if it were the case that in a press release, the Government made a false statement, as I am saying, Messrs Triay and Triay have made false statements. I am saying, Mr Speaker, that it is a false statement to say Gibraltar Community Care is making substitute pension payments post the dissolution of the fund, that is not true. Everybody in Gibraltar knows that it is not true. *[Interruption]* No, why should I have to go into court and argue because Messrs Triay and Triay have invented something. I am telling the Opposition Member not only is it not true I am saying Messrs Triay and Triay knows it is not true because one of the members of Messrs Triay and Triay has been getting community care payments since it started in 1989 and therefore he knows that he is not getting a substitute pension, he knows it.

HON F VASQUEZ:

On a point of order, Mr Speaker, the issue in the contempt proceedings is not that the Government of Gibraltar are issuing press releases on the case, which they are entirely justified to do, not one is arguing that the Government of Gibraltar have every right to tell the people of Gibraltar what is going on inside the case. What the Government of Gibraltar cannot do is to launch into attacks against individuals making representations and that is the issue in the contempt proceedings as the Chief Minister knows perfectly well. The Chief Minister has made repeated attacks against the integrity of the lawyers representing the parties in that case. He has told lies....

MR SPEAKER:

Order, order. The Chief Minister is entitled to speak on his motion. That has been decided here. The question of sub judice as it stands now, the Chief Minister can speak on his motion and to change that ruling has got to be a substantive motion with



notice and therefore the Chief Minister is fully entitled to talk on this motion. The question of sub judice cannot..... *[Interruption]* Order. That is the ruling.

HON F VASQUEZ:

Is the Chief Minister allowed to tell lies in this Chamber and make misrepresentations?

MR SPEAKER:

The Chief Minister is not allowed to tell lies but the Chief Minister is responsible for his statements and that is that.

HON CHIEF MINISTER:

Mr Speaker, let me make absolutely clear that I will unreservedly withdraw anything that I have said which can be demonstrated to me to be a lie. The Opposition Member says our press releases are lies. Let me quote one of the press releases and it says in January 1995, "Earlier this week the Gibraltar Government made its application to obtain security for costs at the Supreme Court against those who are financing the legal challenge instituted on behalf of the Spanish pensioners by Messrs Triay and Triay. The cost to the Government of the court case is substantial and it is necessary to protect the position of taxpayers and keep them informed of the action being taken to the court". Presumably, there is no lie there. This is a fact. We have made an application to obtain security for costs because we know who is paying for the case. The case was presented in the name of Senor Clavijo Ruiz in a representative capacity and Clavijo Ruiz did not have a clue what was being done except that his name happened to be the first on the computer printout. We then have a legal firm that keeps on telling us they are receiving instructions from impoverished pensioners which are things that have been said which do not seem to us to be in accordance with the fact and I do not know whether that is something that is correct. Is it correct to argue something which is not the truth? I do not know. All I

know is that we..... *[Interruption]* The court has been asked to decide whether the Gibraltar Pension Fund was properly dissolved or not properly dissolved on the 31st December 1993. That is what the court has to decide. That is the argument that is being put by the people who were being paid out of that fund. An agreement was done five years ago. The agreement was implemented. We were told by the British Government, "This agreement is foolproof, go ahead and do it". We did it. The people who got money from the fund go to court and say, "I do not agree with the British Government and I do not agree with the Gibraltar Government" and they are perfectly entitled to do it. We are not disputing that except that..... *[Interruption]* I am not trying to put Senor Clavijo Ruiz in Moorish Castle and they are trying to put me in Moorish Castle for issuing press releases. That is the slight difference. The press release says, "Messrs Triay and Triay have argued that the Government's legal attempt to obtain security for cost is an act of discrimination to deprive Spanish pensioners with limited incomes from pursuing their case". This is a fact, they have argued that. They may not want people in Gibraltar to know it. Well, look, hard cheese. If they do not want people to know that their argument is that we are leaning on poor, impoverished pensioners, they should not use that argument because I think that if they use it I am entitled to make it public. We then go on to say that we have made enquiries and it has been revealed that the Junta de Andalucia is meeting the cost of the applicant, Senor Clavijo Ruiz, and that therefore there is no question of anybody being deprived. In fact the Junta de Andalucia has said publicly that if need be they are prepared to meet security for costs to let the case get on. This is a press report. I have no way of knowing whether the press report is accurate or not accurate. All I can say is that the politician that made it on the other side was not inhibited in any way from making any statements he wants but then I am entitled as a politician on this side to say, "Well, look, if it is true that the people who are putting up the money are prepared to meet the cost why do we have a fight on our hands to obtain security for costs?" On whose instructions? Certainly not on the instructions of the individual. That has now been established beyond doubt.



In this press release in January we revealed that the argument had been used that Senor Clavijo Ruiz could not give security for costs because he had no income. We then said, "Well, then you must provide us with a detailed breakdown of his income" and when they provided us with the detailed breakdown of his income was when we discovered that he was one of the ones who had continued getting payment after the dissolution of the fund and apparently Messrs Triay and Triay discovered it at the same time when they had to provide us with the information. Obviously, we could have found that out earlier by checking the names of all the people who were coming to the Key and Anchor to collect cheques but it never occurred to us to go and check if the person that was suing us was actually suing us and collecting the money simultaneously. That is what we made public in January 1995. This is one of the things which we are being told we should not be doing. I see nothing there, Mr Speaker, nothing at all in that press release which casts any aspersions on any of the members of Messrs Triay and Triay. We are saying this is what they have argued and it is true that is what they have argued because I have got it black upon white. If the hon Member says there is a press release in that then all that is needed is that somebody should come out saying, "This is not true. We have not argued that" and then we would have had to check our facts and if we had got it wrong we would have had to come out apologising and withdrawing what we had said. It is not the case. At no stage has that been done. In fact, Mr Speaker, the Opposition Member is wrong when he says we are entitled to publish information but what we are not entitled to do is to publish lies. Of course we are not entitled to do it and nobody disputes that but that is not the case that is being made. The case that is being made against me making me personally responsible for everybody including the actions of His Excellency the Governor which is quite an extraordinary thing constitutionally that I actually am in a position to bear the responsibility for anything that he does and that he has now become one of my agents. Constitutional progress at last, that is all I can say.

Mr Speaker, the position is what we are being told is we should not say anything in any shape or form in any way remotely connected with anything to do with the Spanish pensions case. It is an attempt to gag us totally and completely and in every manner. That is an extraordinary thing for people who are constantly parading the rule of law, the right of democracy and free speech and all the rest to try and stop us from making public anything whatsoever. Let us not forget that we are not suing anybody. This is not us. We are not the aggressor in this business. We are the respondent. We are defending ourselves against an attack and all that we are doing is making public what is the nature of the attack, that is all. We have not published anything else. We have not published any argument other than to say, "This is what is taking place and this is what they are saying to us and either they are saying it in court and the argument of Messrs Triay and Triay is that the things that they are saying in court is privileged information which the public should not know". We think the public should know it. It may be that if it was a private case between two private individuals it would be nobody's business but this is not a private case between two private individuals. This is a case where the Government of Gibraltar are being taken to court by the Government of Spain. Let us be clear. This is what we have got. The Government of Spain are using Messrs Triay and Triay not, Mr Speaker, because no other lawyer would take their case and in order to uphold the independence of our system of law here. They have to take cases as they originally argued whether they are murderers. Lawyers have to defend murderers and so on otherwise what would happen if a murderer found nobody to defend him then he would not get a fair trial? That was the argument at one stage. We know that this is not true. The truth of the matter is, and I am sure the Opposition Members know that, that ever since the frontier opened in 1985 the Government of the Kingdom of Spain notified the Government of Gibraltar that they wanted Messrs Triay and Triay to handle all the cases for Spanish nationals. We have got that in our records, or have they forgotten that we have got it? I did not know it then when I was on that side but I know it now that I am on this one. That is

why they used Messrs Triay and Triay as they use them in all the cases, and why not? As long as the money comes into our economy and we receive tax on it, as far as I am concerned the more that they charge them the better. I understand that they claim to have spent already £0.33 million. It is good for our economy that we should keep this case going. Not only are the Junta de Andalucia's finances anywhere near as strong as ours, of course, from what I hear in the Spanish press but nevertheless as long as they are prepared to finance the court case by all means it is good that Gibraltarians should be able to earn money at the expense of the Spanish exchequer and pay tax to the Government of Gibraltar. It all helps.

So, we need, Mr Speaker, to put the motion in the context and in the spirit in which it has been intended. I can understand the emotional responses of the Opposition Member to whom I gave way earlier. It indicates that this is an issue that frequently generates more heat than light but I am trying to shed light on it, and therefore what I am saying to the members of this House is that the correct thing for the Government to do, politically, and the court may say technically, legally the political decisions that we take are in conflict with the law and we will then dispute that in court all the way up. But politically is that we keep on churning information and that we point out that the refusal of the Government to have Community Care drawn in is totally, totally backed by the House of Assembly which supports the contribution as grants but does not accept that because we contribute grants they are an arm of the Government. If we were to even remotely consider there was validity in that argument let me assure this House that they would drive a coach and horses through the system and that there would be little we could do to prevent it. It is absolutely fundamental that we have a position where we maintain collectively that this is not the case and then if we need to prove it in court we will prove it in court. I can say to the House quite honestly that the information which shows that this is indeed the factual position is already in the public domain and we should not need to prove anything. I believe that if Opposition Members can accept that by supporting this motion

all that they have to do is to gain politically and not lose then they should have no problem in backing the position of the Government as they have long promised to do and this is an opportunity to do it. I commend the motion to the House.

MR SPEAKER:

Before I put the motion I must now propose it and I will not read it. I take it that the members of the Opposition have got copies of the motion and all members of the House as well. I now propose the terms of the motion moved by the Chief Minister. A debate now can ensue and any Member who wishes to speak can do so.

HON P CUMMING:

Mr Speaker, when this debate was last before the House, when we were voting to wind up the Pensions Fund I did point out to the House that there were human rights aspects to the whole debate. That we were voting on taking pensions away from innocent elderly people and although there are many circumstances that made that right thing to do at the time, or that it seemed to be the right thing to do at the time, nonetheless we had to be very careful of the colour that we gave to the debate because obviously we know that history has produced in Gibraltar anti-Spanish feelings and anything that could be said here could be interpreted by the people as a kind of making it right that because the pensioners are Spaniards therefore it is perfectly alright to take their pensions off them. At no time could anybody in this House sanction that kind of attitude to go down from this House into the people because in that way we would be damaging the social fabric of the Gibraltarian community. It is one thing to say, "Look, we cannot pay the pensions and in any case we have no moral obligation to pay the pensions" and quite another thing to say, "Look, we do not care at all what happens to these Spaniards". Because we have seen recently on the television the horrors that have gone on, for example, in Bosnia, a Serbian general standing on a hilltop with a cannon

cannonading women and children queuing up for water and being interviewed by an international reporter and saying, "Why are you doing this? This is a war crime" and he said, "War crime? I am defending my people from their enemies", How can it be that a whole people can come to be so brainwashed and to rationalise their crimes in such a way that this obviously can happen? What I am saying is that it can happen and we have to ask ourselves as we treat this subject what kind of people are we? We have to make sure that we do not stir up anti-Spanish feelings in this issue because otherwise we ourselves would descend to those racks of ethnic cleansers.

I did urge, Mr Speaker, at the time, the Chief Minister to meet with the Mancomunidad and to try and organise something to help the pensioners continue to receive payments from UK, from Spain, from wherever in order to show that there was no anti-national feeling. That it had nothing whatever to do with the way Gibraltar looks at this case and, of course, I was indignantly told whether I thought I had been elected here to defend the interests of the people in the Campo. I am going to go very briefly into the history of the case as I see it. The problem was initiated of course by the hostile actions of General Franco in removing the Spanish workers from here and of course in doing that he not only made the Gibraltar economy a victim, but also and in particular the Spanish pensioners themselves. I believe that what was done in those days then was to separate the fund of the Spanish contributions that they were taken apart and it was attempted to give it back to the Spaniards and of course the Spaniards would not receive it. Therefore this money was invested separately to gain interest for them until such a time until the money could be paid back to them. So as far as I can see, there were two funds. We did what we thought was proper according to our own laws and we thought that the matter of the Spanish pensions was closed and then we come to the Spanish accession to the European Community. We have many times asked ourselves whether Sir Geoffrey Howe did his homework properly on this issue. Of course that is a matter for him, because of course the British Government had a veto over

Spanish entry into the Common Market. The same as when Britain was applying to join the Common Market it had to overcome the French veto. For many years the French were exercising their veto and Britain could not get into the Common Market. I remember the headlines on one famous speech of General De Gaulle saying no very nicely, but saying no and it was called the velvet veto of General De Gaulle against Britain. Britain was in a position of great strength at that moment and they were able not only had they wanted to get concessions for Gibraltar from Spain which they did not but also on this specific issue to arrive at a bilateral agreement with Spain on how that separate fund that had been taken away was going to be dealt with. I have it from Sir Joshua Hassan directly looking into his eyes he said, "I never took any responsibility for the payment of Spanish pensions. It was Sir Geoffrey Howe" and therefore I believe that to be exactly the position. Now we are in a position that, having started the pensions, we are in a different moral position when the pensions are taken away because if one has no responsibility to give somebody a pension and one does not one has not done them any harm. But if one gives somebody a pension which they believe to be for life and make them depend on it and then take it away then one has done an injustice to those people. Whilst it is true that the British Government in my view are totally responsible for the payment of these pensions, nonetheless we cannot get away from the fact that in a superficial, legalistic, technical sense the responsibility falls to the Gibraltar Government. Therefore the court case against the British Government can only be taken in the first instance to the Gibraltar courts and not in UK. Nonetheless the moral responsibility belongs to the UK and I say this against the background of the recent statements made by Mr Tristan Garel Jones, ex-Foreign Office Minister, very recently in charge of Gibraltar's affairs, in an article where he makes an amazing statement that Gibraltar is being reduced to an undignified squalor by the two bullies of Britain and Spain, that our economy is being reduced by the actions of these two enormous countries against tiny Gibraltar. It is against that background that we say, "Look, the moral responsibility for these payments is entirely in

the hands of the British Government" which brings me to what I would call the demographic argument. In most developed countries the elderly population is increasing and those in employment are decreasing and therefore it falls to a smaller number of people to maintain a larger number of people earning payments from pensions. This is bringing a problem to England where those funds borders on deficits and has to be corrected so that a crisis can be avoided for their pension fund in the future. This is something that all developed countries have to deal with. A problem that we ourselves also as a developed country would have had but that problem has been distorted by being magnified hugely by the labour needs of the British Garrison, that brought 16,500 employees of the Garrison to work in Gibraltar who became, for a short time, contributors to our pension fund. Then what happens is that the frontier closes. The Spaniards are taken away. Their contributions are left in the account. Obviously time passes. We increase the contributions and the benefits but from a smaller base the Garrison in the meantime is being dismantled so that there are constantly less and less people in employment in Gibraltar maintaining a fund to pay a lot of elderly people of our own plus a responsibility to 16,000 people who worked for the MOD. The injustice that at any time Britain should think that we have an obligation to pay these pensions is simply mind boggling. The British Government should at any time try to pursue that argument and that all Gibraltar would not be united in rejecting that view is simply beyond question it seems to me. So that then is the demographic argument. If we have two funds, that is to say, if according to Gibraltar law we separated the Spanish contributions at an early stage, keeping them invested for early return to the Spaniards then our own fund is not bankrupt. We are able to pay our own way and to continue on the road but if for technical reasons it is considered that there is only one fund then obviously that fund is technically bankrupt but it has been bankrupted by the initiatives that Britain has taken. If there are two funds then our fund is OK and the Spanish pensioners' fund is only bankrupt when Britain refuses to pay any further payments into it. I hate to take a position that may sound anti-British but the truth as they say in Spanish, only has one

road, that British pressure to freeze contributions and benefits is not entirely honourable because it puts people in difficulties in order to save money that they already made a commitment to pay. I remember a very important question that I asked the Government in the debate that we had on the dissolution of the fund and I said, "Are these new arrangements for the pensions legally watertight?" I was answered that according to advice they had received from the British Government they were legally watertight. This is a very important question and a very important answer and why am I asking and why is it that the Government are already ready with an answer? Obviously because we are anticipating that there is going to be a court case. If people have a pension and it is taken off them it is obvious that they are going to be aggrieved and that they are going to try and seek redress and the obvious way to seek redress is through the courts of law. It seems to me that that advice about the legal water tightness in view of the apprehension that is current about the Spanish court case seems to make that legal advice dodgy. I would question the quality, frankly, of the advice given by the British Government. But it seems to me that both UK and Gibraltar being jurisdictions subject to the rule of law, we have to have a total respect for any person who seeks justice through our courts as according to the rights conferred by our Constitution. The Chief Minister has sought now to question the reputability of the involvement of the Andalucian Government in this question as though if some impoverished, aggrieved pensioner comes in on his own to go to court then that is fine but if he comes with the backing of the Andalucian Government somehow that is very wrong. It seems to me entirely natural. How can a poor pensioner challenge in the courts? The ex-Attorney-General said in this House a few months ago, "Take the matter to court. The court is open to all like the Ritz Hotel". Of course the Ritz Hotel is closed to the poor Spanish pensioner unless he is able to get powerful people to help him. Of course they have organised with their unions. They have sought the help of their politicians and they have obtained it and they have organised themselves in a structure in order to be able to take this step, but this is perfectly natural. Why should we question the reputability of that

behaviour? It seems to me that it is what we should have expected and our constitution and our rule of law and our belief in the need for the rule of law means that we have to grid our teeth and bear it when this case is proceeded with through the courts. I give way.

HON CHIEF MINISTER:

Mr Speaker, I want to clarify for the hon Member that we are not saying the Junta de Andalucia should not do it. What we are saying is it has been denied here and admitted there. The reason why they do not want to meet our cost if they lose is because they say the poor Spanish pensioner has no money.

HON P CUMMING:

Personally, I think they must pay for their court case as I would have to pay for mine, which brings us to the more painful question of Gibraltar Community Care Limited.

The House recessed at 1.05 pm.

The House resumed at 3.20 pm.

HON P CUMMING:

Mr Speaker, I was saying, to get us back into the mood of the subject that there is a background to this case of human rights aspects and the care that we must take not to colour with anti-Spanish feelings this debate. I got in briefly to the history of the case as I see it, highlighting the question of the two funds, ours and separating the Spanish contributions to return to them under our own laws and how we thought that the battle was over then until Spanish accession to the EC. I questioned the amount of homework Sir Geoffrey Howe did prior to the Spanish accession and said that he could have made more of his strong position prior to Spanish accession. I said that the legalistic responsibility may be ours but without a doubt the moral obligation to pay the

Spanish pensions lies with UK. I got into the demographic argument about how huge numbers of pensioners would have to be supported by a small number, by 13,000 working people at present in Gibraltar, and the problem being enormously aggravated by the sheer weight of numbers of Spanish employees in the MOD. I had gone into the question of the morality or otherwise of attempts to freeze the pensions in order to let Britain off the hook and that it had impaled itself on with its own eyes open. I had gone into the question of the dissolution of the fund, how really our own pension fund was not bankrupt and the Spanish pension fund was bankrupt only if Britain refused to pay any more money into it. The very important question that I asked in the last debate, "Were these arrangements watertight?" and this is more or less where we left what I said this morning. The importance of the arrangements for the pensions being legally watertight obviously was in anticipation of court cases which of course in due course have come.

This brings us to the question of Gibraltar Community Care Limited and its role. I am not sure whether the British Government's advice covered not only the dissolution of the fund but the setting up of Gibraltar Community Care Limited. I assume that it was part and parcel of the advice. It seems to me that we have built a house with match sticks and that the Government are anxious that nobody should sneeze lest the building should come tumbling down. In spite of the obvious fact that sooner or later a court case would come and it seems to me that there is no justification in stirring up public opinion in Gibraltar against the Spanish pensions court case because this is an inevitable result of the course of events that we have embarked upon. Their rights under the constitution to pursue the issue in the courts is clear and we have no alternative but to abide by the rule of law in this case. It seems to me that as decent, democratic people we must respect the on-going conduct of this case. This is where I see, shall we say, malice in this motion and in the information campaign that the Chief Minister has embarked upon. He seems to be saying to Mr J E Triay, "Look, as a Gibraltarian it is your patriotic obligation not to be such a good lawyer in pursuing your



case because you keep sneezing and this house of match sticks is going to come tumbling down" and it seems to me that this is a question of professional ethics. Mr Triay has no alternative but to pursue this case to the best of his ability and if that means sneezing in the precinct of Community Care then we have to hold our breath and wait to see what happens. Because you see, Mr Speaker, I feel that in this campaign of information there has been a process of personal harassment directed against Mr J E Triay and I feel that this is an abuse of power and authority and abuse of this House also to continue the campaign.....

MR SPEAKER:

I must call your attention to that now. The ruling has been passed by me and the Chief Minister and any other Member can speak on this case. Therefore you must not repeat that otherwise I shall ask you to resume your seat.

HON P CUMMING:

No, Mr Speaker, I am not talking about sub judice.....

MR SPEAKER:

You were giving the impression that he is using the right given in this House to do that and that I cannot allow.

HON P CUMMING:

Mr Speaker, by publishing outside this House communiqués which discuss the case at the same time the spotlight has been put on a person, Mr J E Triay, who is taking the case and the name of the lawyer who is taking the case is totally irrelevant but the spotlight keeps being put on this person. I associate myself with him in the way that he has had to suffer this persecution on the case of professional ethics because I myself have been subject to a similar campaign of vilification on the grounds of a dispute arising from professional ethics. I had to suffer exactly

the same case when as a trade union leader he made a campaign against me arising from the question of professional ethics. Therefore I sympathise with Mr J E Triay who is now in a similar position. In my own case it went on, a Government cannot pursue a personal vendetta as though it were an equal to a private citizen. The whole power of the establishment is used to focus attention against somebody that they want to present in a bad light and I have been on the receiving end of that kind of publication. Eventually when my own case came to the Governor, under the law, the Governor stated that this was not a question of a disciplinary action and re-instated me in my job in the hospital. There was a constitutional crisis mostly behind closed doors but some of it also in the press and on television whereby the Governor's constitutional role in disciplinary cases was challenged by the Government and of course the question of the professional ethics involved was what persuaded the Governor that I was in the right. Mr Speaker, it seems a gross abuse of power and authority when the office of Chief Minister is used publicly against an individual and of course history repeats itself. There is a new vendetta against Mr J E Triay but there was a previous vendetta and members of the GSLP already in the past successfully stirred up the public against Mr Triay because of his politics and the hon Member sitting across here took a leading role in taking so-called patriotic pleasure in terrorising a decent Gibraltarian family. This now, it seems, is part of the same on-going campaign of using access five times a week to headlines in the press to put the spotlight on an individual who is legally and decently going about his business according to the ethics of his profession. It seems to me, Mr Speaker, that the Chief Minister has been blaming Mr Triay for sneezing and threatening the match stick house where perhaps he should be examining himself for his role in putting up such a flimsy structure. The supply of information to the public which has culminated in this motion of course has been a most selective desire to inform the public. We would only wish, and I am sure I am speaking for the whole Opposition, that the Chief Minister was as anxious to inform the people about Government business in such detail on every matter and if this had been his practice



perhaps we would not question it in this case. It has not in fact been a campaign to inform but a campaign to harass and of course Mr Triay has access to the courts and he has tried to put a stop to this campaign by his action on the contempt of court. This has put the Chief Minister on thin ice and persuaded him to stop the flow of information until this new opportunity in the House today. I believe that underlying all these manoeuvres is the Chief Minister's defiant, rebellious, unconventional attitude and this is a source of great damage in my opinion to Gibraltar.

In passing I should like to mention the problem of the Moroccans who if the original Spanish pensioners were innocent victims, these are even more totally innocent victims of the manoeuvres with regard to the pensions. The Moroccans who came to serve Gibraltar when the frontier was closed and the Spanish workers were taken away who in those days were received with great sympathy and even gratitude when they came to live amongst us at first. Now we tend to see the question of the Moroccans as a problem weighing upon Gibraltar but until recently the community expressed gratitude to the Moroccans who came to live and work amongst us. Naturally they were contributors to the pension fund and now in order that the bill to the UK should not be increased we have agreed to freeze the pensions and the Moroccans' pensions remain frozen from 1988 or 1989. Not enough years have passed yet so that they feel any big disadvantage but it will not be too long if we continue down that road that they will be greatly disadvantaged and it seems to me an injustice that we should deprive them of a pension which keeps up with inflation and retains its buying power to the best of the ability. It seems to me therefore that alternative arrangements should be extended to them without a hesitation so that this injustice can be rectified.

I should like to think back to November 1994 when we debated this issue and we were told that the dissolution of the fund would result in the Spanish pensions stopping being paid as from the 1st January. We read in the press how the pensioners received in their pension packets information that they would cease receiving their pensions from that date. In fact it was the Chief

Minister himself who made the warning bells in the Mancomunidad to be fair to him when they should have been aware five years before that the pensions were stopping and they should have made alternative emergency arrangements to protect their own people. Six weeks before it was the warning from the Chief Minister that started the pot boiling and that was an action on behalf of the pensioners which I take to be an action in goodwill. But nonetheless we were all led to believe that the pensions then were stopping in January 1995. We were discussing this in November 1994, in mid January of 1995 I came across in the Europa Sur an interview with the Chief Minister by a Spanish reporter of Europa Sur called Guillermo Ortega who I know personally and of whose professional competence and professionalism I am convinced and if I was not convinced I would say this is nonsense what he is writing. In interviewing the Chief Minister he takes up the question of the pensions and he says, "The dissolution of the fund is the big problem that we are facing now with Spanish workers on the Rock" and, hey presto, the Hon Joe Bossano says to him, "Look the pensioners are receiving the same pension now as they always have the only change that we have made is that they used to get £10 a week, now they are getting £40 monthly and the British Government instead of sending us the money on a monthly basis they are sending it on a three monthly basis, these are the only changes. So why is it that the Junta de Andalucia is warning them not to accept these on-going payments of their pension?" I was amazed when I read this. Seeing the signature at the bottom of Guillermo Ortega, I thought this is very strange business here altogether so I cut it out and I put it away for future reference and with my antenna open to see if I could pick up some information as to what on earth was going on. Of course shortly after that my questions were no longer answered to help in keeping me and the rest of the people in ignorance at what was really happening. It seems to me if I can speculate for a moment that what is actually going on behind closed doors is that Britain is getting cold feet about the legal advice that it is being given on the issue and in fact may have involved themselves and us in what is commonly known as a "cock up" because the whole purpose of

the European law in this issue is to forbid discrimination. It allows us to do with the pensioners whatever we like on the only condition that we do the same thing to our own people as to other Europeans. So long as the treatment is the same we can do with the pensioners what we like but how could we possibly dissolve our pension fund? How could we leave our pensioners? It is out of the question. How come that there has not been an uprising against the question of the freezing of the fund? Well, of course, there has been a matchbox structure been put up so that we get out of the problem. But the whole question is was this legally watertight from the beginning because if it is not we cannot blame Mr J E Triay for the matter, we can only blame those who gave wrong legal advice if what is claimed to be watertight is not afterwards found to be watertight? I hesitate around this issue because I do not want to be the sneezer that brings down the matchbox building. But it seems to me, Mr Speaker, that we are in difficulties with the question of European law on this issue and it seems to me that for the way ahead we must expect Britain to urgently seeks a bilateral agreement with Spain as to how it can acceptably deal with a separate fund for the Spanish pensions. The monies that we separated from the beginning and from the beginning we believed that that money had been put aside for repayment to Spaniards as soon as possible and then our own fund instead of being dissolved can function properly and fully in a statutory way to continue serving the people of Gibraltar. In the meantime Britain must bite on the bullet and pay the pensions as Sir Geoffrey Howe undertook to do. They should not seek to freeze our pensions on the grounds that this helps them. I know that Britain is our only friend and ally and when they came asking for assistance to get them off the hook it is hard to say, "Look.....". In the end this is a question also of human rights. They went into this problem with their eyes open. They must bite on the bullet and pay up. I believe that our fund should continue as it was, that it should be unfrozen, that our elderly peoples' pensions in its entirety should be statutory and not of a charitable, voluntary nature. I believe that the fund should absorb into itself Community Care and its payments. I would venture to predict, Mr Speaker, that the Spanish pensions

case will be settled out of court and in the meantime of course I have no alternative but to support the continued existence of Community Care. Thank you, Mr Speaker.

HON P R CARUANA:

Mr Speaker, I have expressed my views this morning on the substantive motion which I have not the remotest intention of supporting. Not now and not in a month of Sundays. If the Chief Minister wishes to preside over the brick by brick dismantling of what this House is for he can do it.....

MR SPEAKER:

I must stop the Leader of the Opposition there and now. No references must be made to the ruling that I have made. Anything that is said now on this motion is valid in this House and if the Leader of the Opposition pursues that line I shall have to ask him to sit down.

HON P R CARUANA:

In my opinion this motion is a cynical attempt on the part of the Chief Minister to manipulate this House for his own political ends. It does not represent a genuine desire on his part to secure the supportive unanimity of this House on any matter because if it were, if such were his motives - which I hereby declare them not to be - would not the normal thing have been for him to have rang me up as Leader of the Opposition and said, "Now, look here, Leader of the Opposition, it is absolutely vital for the defence of Gibraltar's interests that the House of Assembly speaks with one voice on this terribly important issue on this motion. How about you coming to have a cup of tea with me and we both see if we can together draft a motion that will have that effect?" No! Instead he drafts a motion which he jolly well knows I will not and cannot support and I do not get to hear about it until it gets served on me by the House and he has the audacity, the gall, to come to this House, not even able to keep a straight face.

Look at him. I was going to say with a straight face but he cannot keep a straight face. He comes to this House with the audacity to pretend that he is motivated by the unselfish defence of the best interests of Gibraltar. The problem with the Chief Minister is that he has not yet learnt that the times when he could say what he likes in this community in the certain expectation that he would be believed at face value, has finished. The people of Gibraltar have seen through his goings on. The people of Gibraltar now know how he operates and the people of Gibraltar know when he is winding them up for his own little political purposes. Frankly, the Chief Minister's presentation of his motion this morning confirmed my worst fears about his motives in bringing it to this House. He has converted this august chamber into a kangaroo court and he can conduct however many kangaroo courts he likes inside or outside of this House, he cannot count on the support or co-operation of the Opposition in doing so. The Chief Minister urges me to support the motion because it will be "we will only gain politically". Exactly! That is all he is interested in. Gaining politically! He thinks that because he is willing to mortgage the democratic future of this community in order to make politically popular sound bites, he believes that I am going to mortgage the democratic legacy of my children for votes. Well, he is mistaken. He is mistaken and he misjudges the opinion of the people of Gibraltar if he thinks that he has a blank cheque to do on their behalf whatever he likes regardless of the consequences to the difference between right and wrong because it is the Government that are supposed to be setting the example for the rest of the community. "The attack is on me", he kept on referring this morning to "attacks on us. These attacks on us by Triay and Triay". I have to say to the Chief Minister that I have not read any attacks on him from any law firm in Gibraltar, everything has been said by him. When I was a member of that firm one of my complaints was that they would not react publicly to the allegations that he was making. They have said nothing in public. Everything that has been put in the public domain, damaging or undamaging to Gibraltar's public interests, has been put in the public domain by the Chief Minister. The Chief Minister has selectively put material in the public domain for his own

personal political ends. That the Chief Minister of Gibraltar should have the temerity - not heard, I venture to suggest, in a civilised democracy in the last 50 years - to stand in the parliament of this country and say that it is dangerous to raise arguments in a court of law about Community Care because others will then be able to challenge it. Listen to the words, listen to what he is saying, Mr Speaker. What he is saying is that we in this House are going to decide what arguments litigants can deploy in our courts of law because we will decide if it is in the national interests for arguments of such nature to be deployed or not. It is an outrage. I am not going to give him one iota of assistance in doing away with what freedoms there are in this society. In all free societies people can challenge things in court regardless of what parliament thinks about the merits or the dangers of their arguments. Furthermore, it is not what this House thinks that protects Community Care from legal challenge. I think I have him in quotes when he said this morning, "If the House does not think Community Care is independent a lot of people can challenge it". He must know that people can challenge it whether this House thinks it is independent or not, but that is not frankly of all the diatribe that I have heard this morning from the Chief Minister what I have said so far is not the most duplicitous. The most duplicitous comes now. Of course he had to find, Mr Speaker, the reason why he did not want to support my motion because of course my motion although it serves all the useful purposes of showing unanimity and support and solidarity. It does not serve his purpose.....

MR SPEAKER:

The amendment to the motion.

HON P R CARUANA:

Yes, I beg your pardon, Mr Speaker. He has already indicated that he will not be supporting my amendment and then of course he had to find a reason for not doing so because that would spoil the party. It would spoil the party because he is not really after

unanimity. He is not really after unity. What he wants is to try and embarrass me because he thinks it would be desperately embarrassing for me to point a finger at my ex-partner or at my father-in-law or even at my hon Colleague Mr Vasquez who is still in this House. That is all that he is interested in and the proof is that he will not vote in support of my perfectly uniting motion. That he, of all people, Mr Speaker, should stand up in this House and say, "I cannot support Mr Caruana's motion because it....."

MR SPEAKER:

Would you please correct that - the amendment.

HON P R CARUANA:

"Mr Caruana's proposed amendment to his motion because it says that it expresses the House's assurance to our senior citizens that payments currently being made to them will continue regardless of the outcome of any case currently....." and he says, "Be careful Mr Caruana, I do not impute to you any improper motives but be careful with your choice of words because you could be doing terrible damage to our argument". Mr Speaker, this is the man who gets Gibraltar Community Care Limited to write a letter to the pensioners of Gibraltar saying to them, "Mr Bossano has phoned us" or "we have consulted with Mr Bossano and he has told us not to worry because whilst he is Chief Minister of Gibraltar your payments are guaranteed" and I immediately put pen to paper and I said, "Dear Mr Community Care....." I think the Manager's name is Santos, "Dear Mr Santos, be careful with what you write for goodness sake in these letters because the whole essence of the Government's case is that Gibraltar Community Care Limited is independent of the Government so how on earth can you tell the senior citizens of this community that Mr Bossano, the Chief Minister of the Government of Gibraltar, has personally confirmed to you not to worry because he is a very clever man and whilst he is in No. 6 Convent Place payments by Community Care are....." and I say the same thing and he has got the cheek to stand up and warn

me about the possibility of doing damage? He who has spent the last three weeks telling every old age pensioner that would listen to him that their payments are guaranteed, not to worry because Uncle Joe is here to look after them. He now has the audacity to stand up in this House and say, "Mr Caruana's proposed amendment to the motion links the Government to Community Care because it suggests that this House is able to guarantee the continuation". He has told the whole of the world over the last month that payments are guaranteed. He has told the pensioners in my earshot on several occasions. Community Care has written this letter or are we to believe that the General Manager of Community Care wrote that letter without consulting the Chief Minister? Who on earth is he trying to kid about that? And let me give a warning to the Chief Minister who has this morning demonstrated an enormous amount of ignorance on matters which are clearly beyond his understanding. If he is genuinely concerned not to damage the Government of Gibraltar's case against the Spanish pensions, I would seriously advise him to refrain from using phrases like he did this morning about the great pains to which he went to devise a system to overcome the problem because he must know, but I can only suspect, that the essence of the Spanish pensions case is precisely that Community Care is just a devise so he ought to be careful. He is the one who should choose his words more carefully. The Chief Minister's motion seeks support from the House on two fronts, he told us this morning. The first he said was that Community Care was independent of Government. We in the Gibraltar Social Democrats - I cannot speak any longer for the Hon Mr Cumming but I suppose that he will not disagree - inside and outside of this House have always proceeded and acted on the basis that Community Care is indeed a private registered charity with a legal status and existence independent of Government. That is the view that we hold and that is the view that we would defend politically and in court if we were the Government, as I presume this Government are doing in the conduct of this case. That is why when I was drafting the proposed amendments to the Chief Minister's motion, I did not tamper with the first two paragraphs of it which would remain in

my proposed amendments so that the first two paragraphs would continue to read, "Notes that Gibraltar Community Care Limited....." Mr Speaker, I am now delving into what will be the wording of my motion, perhaps Mr Speaker prefers that I leave that until I have.....

MR SPEAKER:

No, no, I do not mind.

HON P R CARUANA:

"Notes that Gibraltar Community Care Limited is a private registered charity established in 1989 which provides assistance to senior citizens," and my intended amendment would have stopped there but having heard the Chief Minister this morning and wishing to go as far as my conscience would permit me in supporting him, I would propose to add to that proposed amendment "and has a legal status and existence separate and distinct from Government". The second paragraph of the motion continues even as amended by me to read, "Notes that the Government's Social Assistance Fund whose objects include providing support to registered charities has provided grants to Gibraltar Community Care Trust". Mr Speaker, those two paragraphs make it more than crystal clear that what the political position is on the status of Community Care. It cannot be a private registered charity if it is a Government department. The only way of protecting the national interest on the question of the separateness of Community Care is not only one way of skinning that cat, anyone listening to the Chief Minister would have thought that it was necessary to mention the words Triay and Triay 10 times in order to provide the support of this House to our view that Community Care has always been treated by this House as being a separate legal entity. See how relatively easy it is to do it without all the vitriol and without all the ulterior motives that lie behind the drafting of the Chief Minister's motion.

The Chief Minister, Mr Speaker, also asks for our personal solidarity with him on the question of contempt, so you see what he is asking us to do is to say, "Now look chaps we are all buddy politicians here". We know the way footballers all hug each other when they score a goal, "We are all buddy, buddy members of this House. I mean it does not matter what we try to do. It really is not right that someone should be wanting, that someone should even be arguing that I might have transgressed the law. I think that you should all now rally around me and send a loud and clear signal that you are all behind me. Whatever I have done, never mind, what I might have done or not done or whether it was proper or improper, legal or illegal. We are all politicians. We are all colleagues in the House. You all give me a vote of confidence here and you see how we deal with this". I am sorry, he cannot have that. He just cannot have that. No one in this community and certainly I think it is unbecoming of the Chief Minister to be heard with an argument on his lips that he might be above the law. Nobody in this community is above the law and certainly the Government are not above the law. If the Chief Minister had been subject to arguments like the ones that he tried to give the impression this morning attacks on us as if solicitors had been standing on a soap box here on a Saturday morning in Main Street shouting out to the whole world what the arguments were going to be and what a dreadful man the Chief Minister is. If he had been subject to attacks of that kind I would have been the first one to stand up here and recognise, "No, no, if you are being attacked, you must defend yourself". I will defend the Chief Minister's rights to make public statements. Certainly I endorse 100 per cent the comments of my hon Colleague in the House, Mr Cumming, when he says that it is all hypocrisy. How a Government with such an unblemished record, unblemished in the sense that no one could possibly accuse them of having been excessively accountable, should now want to tarnish their image for transparency machismo by now pretending on this issue it is vitally important for the people? I endorse the Hon Mr Cumming's comments 100 per cent but let us all leave that to one side. Even if the Chief Minister's craving for keeping his citizens, his people as he now likes to call them,



informed, even if that were another conversion on the road to Damascus it would be welcomed. The only constraint that I put on it is that it must be within the laws of Gibraltar to do so. He cannot come here and say, "Support me in whatever I want to say in public". I say, "No, I support you in saying in public whatever you want provided it is not against the laws of Gibraltar to do so because you are bound by the laws of Gibraltar and it is not for me to say whether you are in breach of the laws of Gibraltar or not". That is what we have courts of law for; to decide whether or not the Chief Minister has transgressed the laws of Gibraltar in the public statements that he has made and certainly he can, with my blessing, indeed with my encouragement, make any statements he likes to keep the people of Gibraltar as informed about this as I think he should have been keeping them informed about everything else that he has done over the last eight years and has not, subject only to not transgressing the rules of law and the rules of court in doing so. That is what he is asking and I have dealt with that matter also, Mr Speaker, in my proposed amendment to his motion in which I have included a paragraph which reads: "Approves of the Government publishing information relating to the case in manner that complies with the laws of Gibraltar". If he wants my legal advice as to what statements comply with the laws of Gibraltar or not, for a fee I will give it to him, or indeed perhaps given that I know that he is only motivated by the interests of Gibraltar I might even waive the fee. Of course, this House is the lawmaker. We are sovereign subject to one or two unfortunate antiquated constitutional provisions. We are sovereign. We make the laws in this community and everybody has to live by them. Are we not powerful? Well, if the Chief Minister thinks that the laws of contempt of court are not to his liking, the proper thing for him to do is to bring a bill to this House to change the laws to the extent that he feels they cramp his style but what he cannot do with my help certainly is to say, "Because I am the Chief Minister I can say what I like even without whether it is legal or not" and this is the only condition I am imposing on his liberty. The only restriction I am imposing on his freedom of speech is the same

restriction that applies to everybody else in this community and that is that we do not break the law in doing so.

MR SPEAKER:

We have greater privileges in this House than the general public.

HON P R CARUANA:

Inside this House, not outside. I am talking about outside, Mr Speaker. Inside this House there are many people sitting in Irish Town today who have learnt at their cost the extent of the privileges that we have in this House.

MR SPEAKER:

Almost identical as those of the House of Commons.

HON P R CARUANA:

Yes, the interesting thing would be, Mr Speaker, to hear how many of those things would be repeated outside as well. *[Interruption]* Well, yes, but as hon Members know he has gone considerably further this morning than he has in his press releases. For the reasons that I have just at length gone through I am not willing to even address the motion as drafted. I propose now with Mr Speaker's leave to propose an amendment and my amendments have the effect of providing to the Chief Minister all the political support that he could probably expect from the Parliament of this community and if he is interested, as he claims to be, in unanimity that the whole world knows what we politicians think about these things, he should support our amendment and to the extent that he chooses not to, I charge him with not doing so because really what he wants is his pound of flesh in the terms of his own motion and that he is not getting from me. I have got this ready now.....



MR SPEAKER:

Go ahead and read it.

HON P R CARUANA:

But I can circulate.

MR SPEAKER:

The hon Member should read the amendment.

HON P R CARUANA:

Yes, indeed, Mr Speaker, I will. I beg to move an amendment to the motion standing in the Chief Minister's name by deleting all the words after the words "This House" and substituting therefor the following words:

"Notes that Gibraltar Community Care Limited is a private registered charity established in 1989 which provides assistance to senior citizens, and has a legal status and existence separate and distinct from Government;

Notes that the Government's Social Assistance Fund whose objects include providing support to registered charities has provided grants to Gibraltar Community Care Trust;

Supports the provision of grants by the Social Assistance Fund to Community Care Limited and the making of payments by that company to senior citizens in Gibraltar;

Expresses its assurance to our senior citizens that payments currently being made to them will continue, regardless of the outcome of any case currently, before the Courts;

Supports the Government's attempt to protect Gibraltar's interests by its defence of the case brought by Spanish pensioners;

Approves of the Government publishing information relating to the case in manner that complies with the laws of Gibraltar;

Condemns the Spanish Government for the hypocrisy demonstrated in pursuing the pensions claim at all levels while at the same time seeking to deny and obstruct Gibraltar's status and rights in the European Union".

Mr Speaker, for the record of Hansard as I have already indicated paragraphs one and two, that is to say, the first two notes are the same as they are in the Chief Minister's motion except that I have added to the first paragraph the words "and has a legal status and existence separate and distinct from Government" and I have done so, Mr Speaker, not because that was not implicit in the fact that what the statement already said that it was a private registered charity which implies that it has a legal status and existence separate and distinct from Government but as the Chief Minister has asked that it is particularly important to make that, that is a demonstrable fact and I am happy that that goes in. As I have said and I have deployed much of the argument in support of this amendment before actually reading it so I will not repeat myself except to this limited extent that in my submission that motion fully and properly expresses the solidarity of this House with the issues upon which this House ought in my opinion to properly express the view. I am surprised that the Chief Minister should have any difficulty expressing the House's assurances on a matter on which he has repeatedly expressed his own assurance and that is in the assurance to our senior citizens that payments currently being made to them will continue regardless of the outcome of any case currently before the courts. I am disappointed as I am sure will be our senior citizens that the Chief Minister does not feel able to give that assurance. I can and I do because what the paragraph says is that one way or another, payments in those

amounts will continue to be made and if the court finds that the way it is presently being done is not quite up to scratch well we shall just have to find another one and if we are ready to do that. So if the Chief Minister feels that he is not in a position to give an assurance to our senior citizens perhaps he ought to get Mr Santos, the General Manager of Gibraltar Community Care Limited to write another letter to the senior citizens saying, "I have had another chat with the Chief Minister and he is now no longer able to give you his assurance that your payments are secure" and in the same letter he will say to them, "But do not worry because Mr Caruana is able to give you those assurances". I commend, Mr Speaker, my amendments to the House.

MR SPEAKER:

This is an amendment that modifies the original motion so we will now debate the amendment. The Leader of the Opposition of course will have his reply on the amendment. All Members can speak on the amendment.

HON CHIEF MINISTER:

Mr Speaker, one valuable thing about the fact that the proceedings of the House are being transmitted live on the radio is that nobody listening in can have any possible doubt in whose contribution the vitriol and the malice and the venom is to be found - whether in the contribution that I made this morning or in the contribution we have just heard from the Leader of the Opposition. It seems to me perfectly clear that the Leader of the Opposition made up his mind about this motion before I spoke and continued with the speech that he intended to make after I spoke and that that was going to happen, it is quite obvious, irrespective of anything that I said and therefore he has not addressed any of the issues that I put to the House this morning in defence of the motion that I was moving. He is, of course, responsible for the truth of the things that he says in this House as I am. I already in giving way, to the Hon Mr Vasquez said this

morning that if anything that I have said here or anything that I have said in a press release is not true, I will unreservedly withdraw it because I have factual evidence of the truth. I am quoting things in my possession received from the firm that is defending the Junta de Andalucia and I am quoting what they have said. The Opposition Member claims that the letter was sent to everybody saying that I will guarantee their existing payments and that now I am going back on that in not accepting his amendment. It is not true. That is not what the letter says. I was particularly careful not to say that for the reasons that I gave him this morning. The letter says, "Mr Bossano has told us that his Government will ensure, when the time comes, that the interests of present and future Gibraltar pensioners are fully protected". The difference is that if I had said I will guarantee whatever the outcome of the case, I would have had that tomorrow appearing in an affidavit from Messrs Triay and Triay. I will put to him why, because in the latest piece of paper in the Supreme Court in Gibraltar to which he has put his name - in the contempt case - which he has said he is going to withdraw but up to now I do not think has happened, and he certainly has not spoken this morning as if he did not believe in supporting that case, he supported it before, he said he was going not to support it any more and this morning has spoken as if he was going to support it. I have to tell him that in support of that one of the things that Messrs Triay and Triay used in support of their case is a claim that we are suggesting that the Government will protect present and future Gibraltar pension rights against the action of Messrs Triay and Triay whatever the final outcome of the court case. I have not actually said whatever the final outcome of the court case. He has said it and yet that is used in the piece of paper that he has signed as evidence against me. This is the degree of duplicity and double standards of which the Opposition Member is capable. The motion was intended to give him the opportunity to say here, irrespective of the arguments that Messrs Triay and Triay may be putting which we do not agree with and he does not have to agree with because he is no longer a part of the firm, "We support the stand of the Government of Gibraltar" and by saying, "We support the stand of the

Government of Gibraltar" then they would strengthen the stand of the Government of Gibraltar. He is not prepared to support the stand of the Government of Gibraltar because I have explained to him that it is not simply a question of whether the courts here in Gibraltar or indeed in the House of Lords - because that is where it will finish up if need be - determine that by publishing the contents of letters from Mr Triay we are in contempt of course because we intend to carry on publishing them. The courts can say that. I want to know whether he agrees that I should not do it or he agrees that I should do it. I think I am entitled to ask of him, independent of what the courts think, because if he says if he were the Government he would defend the position even more than I am doing, well, what I am doing, which is less than what he would do, is being challenged every inch of the way and he would do more, and he supports what I am doing and supports the challenge. He cannot run with the hare and hunt with the hounds. I am not asking him to do both. I am asking him to do one of the two things and the motion gives him the opportunity to do it and therefore we cannot accept that everything should be deleted. Therefore we would ask that a separate vote be taken on the proposed amendment of the Opposition Member because for example he knows that we have no difficulty whatsoever in condemning the Spanish Government for the hypocrisy they demonstrate in this which is no different from the hypocrisy that they demonstrate all the time on everything else. I am quite happy to join him in condemning the Spanish Government for their hypocrisy and certainly, as far as we are concerned, the information that we have published, we consider and are going to defend in court, is not in conflict with the law. We intend to keep on doing it because we do not believe it to be conflict with the law. The fact that we do not believe it does not mean that the court may not decide otherwise. The fact that we state we do not believe it is anything in conflict with the law does not mean that the court will change their minds because we say so and the fact that the House of Assembly says we support the press release will not in one moment interfere with the independence of the people who are looking at the merits of the case. They will not be influenced by the fact that

he says he agrees with the press release. But of course he has difficulty in saying that he agrees with the press release because he does not agree with it. Then he has to say he does not agree with the press release. I think I am entitled to say to him, "Is it that you do not accept that we should come out saying Messrs Triay and Triay are making statements which are false or is it that you do not believe them to be false?" It is not simply a question that the court will rule whether it is false or not. We have got incontrovertible evidence and when it comes to the court we will prove it. We have no problem with that but he is supposed to be sufficiently well informed about the dissolution of the fund to know whether what we are saying is true or not and we are saying that it is true because we can prove that it is true. We are saying, and this is what I pointed out this morning and I even went as far as to suggest that perhaps the most generous interpretation that one could put on the totally false arguments that are being put forward, is that Messrs Triay and Triay did not know what they were talking about. But if Messrs Triay and Triay write a letter to the Government and in that letter they say, "It is our submission that the matter of the role of Community Care Limited is relevant because it is only following the abolition of benefits under the Ordinance that the company has played a role in the social services of Gibraltar". If that is the reason, that it is only following the abolition of benefits then that reason is wrong. It is not true. They have not only been involved since 1994. They have been involved since 1989. He knows that; I know that; 4,000 people in Gibraltar know that and one of the 4,000 people was a partner in Messrs Triay and Triay when this was written because he was collecting the payments of Community Care. I am entitled to say, "How can something like this be put down black upon white?" and we write back and say, "You have got it wrong, this is not the case" and because we tell them nine times they then go to court to seek information which they can only justify by saying Community Care is the agent of the Government. The Opposition Member does not agree that Community Care is the agent of the Government because he has just amended the first clause to reinforce the independence of Community Care by saying it is a separate entity. Well, then if he

agrees with me that it is not an agency of the Government he cannot also agree with Mr Triay that it is the agent of the Government. If we say in this House it is not the agent of the Government then it may well be that the matter will be reviewed by Messrs Triay and Triay who may then realise they are totally up the creek and not pursue it any further. Who knows? Maybe if they see that not only am I saying it but they are also saying it, maybe they will believe it. At the moment we have not been able to persuade them and certainly we are going to resist the link-up because we believe the link-up has got implications which goes beyond this and it is a point that I have made on many, many occasions, the independence of Community Care is very important. It is not something that can collapse just like a match stick house. I have said we are going to fight it all the way to the House of Lords at vast expense, totally unnecessarily. The point that I have been making and the point that I made this morning and the reason why we feel this has had to be highlighted is not to make political capital, embarrass the Opposition Member because it is his father-in-law or his great uncle. It is because what they are doing is playing with fire. It has to be said that they are playing with fire because this goes beyond winning the next election. This is about putting at risk something that was created in 1989 and kept separate from what was going to happen in 1994, in the full knowledge that steps were being taken well before the event so that nobody could say this is something that has just been brought into play. It was not the case and therefore the people who are saying it have got it wrong. All these arguments when the case is finally heard will be put and since we are able to document everything that we are saying, we are very confident but in the interim we have got a situation where by raising these matters are totally unnecessary. I made this point this morning and I make it again. Nobody is saying to Messrs Triay and Triay, "We are trying to deprive you from arguing in the courts in Gibraltar that the fund should not have been dissolved". They can argue till the cows come home that the fund should not have been dissolved. We have no problem with that whatsoever. I said so this morning because we dissolved the fund on the basis of the advice that we got from the United Kingdom and this

is why the United Kingdom is joining us in defending that decision. They are confident that the dissolution of the fund is not challengeable and either they are right or they wrong but whether they are right or they are wrong is not a matter which alters anything else. But of course if what is argued, as is being argued is that Community Care has been making substitute payments of pensions since January 1994, which is not true, then the people who have put these arguments surely..... I do not pretend, Mr Speaker, to be as eminent a lawyer or even a lawyer at all as the Opposition Member but instead of giving me free legal advice perhaps he had better give that legal advice to his father-in-law who seems to have made a total cock-up of this case. Maybe he can tell his father-in-law that the submission that Community Care only came into being after the abolition of benefits is wrong; that it is not true and that consequently the argument that Gibraltarian residents are getting payments which until December 1993 were being paid by the Social Insurance Fund and since January 1994 are being paid by Community Care is wrong. That is not happening and the fact of the matter is that the interim payments since 1994 are being paid to the Gibraltarians because the Gibraltarians are accepting them and they are not being paid to the Spaniards because the Spaniards are refusing them. It is as simple as that. It is that simple. There is a cheque in the Key and Anchor which people are not collecting on instructions from the Junta de Andalucia who then is suing us because they are not collecting the cheques on their instructions. We are very confident of our ability to demonstrate the insanity of this case. In the interim, while this is going on, we have created a monster in a situation by bringing in totally irrelevant and unrelated arguments and at the same time by finding ourselves in a situation where the case cannot be defended in court because there are so many subsidiaries before the substance is heard. This case is going to take years because at the moment we have got a situation where the other side is appealing against the decision of the court of Gibraltar that the Government of Gibraltar should be given security for costs so that in the event that it wins it is able to recover the money that it has spent. The Junta de Andalucia apparently instruct their

lawyers in Gibraltar to contest this and appeal against it and to say they are not willing, as a sovereign state, they are not willing. That is what their lawyers claim the Junta says to them. It is not, of course, what the Junta says in Spain to the Spaniards because when we read the Spanish newspapers we hear there that they are saying to their constituents that they are willing to put up security for costs so that the case will proceed. We do not have to suppose that what they say politically is the truth and what they say through their lawyers is not the truth but the fact is that presumably we can in court produce as affidavits the articles which allege that the Junta de Andalucia is willing to meet these costs. Presumably we can do that as an argument. Now, given the fact that we have not even got to considering anything other than who is going to foot the bill at the end of the day and we have been at it for two years. It may well be that well before anything is decided here of course the United Kingdom and the Kingdom of Spain may sort it out between them. We do not know. But certainly, Mr Speaker, we cannot accept the motion that the hon Member has moved because it is quite obvious.... Well, it is a motion that is different from mine other than the first two paragraphs.

MR SPEAKER:

I have defined it as a motion that modifies the original motion.

HON CHIEF MINISTER:

Thank you, Mr Speaker. The motion that modifies the original one, the reason why I cannot accept it is because it is quite obvious that in moving his amendment the Opposition Member has moved the amendment not on the basis of the text of the motion but on the basis of the motives that he imputes to me for moving it. He says he cannot accept this because of all the explanations that he has given which have not referred to anything in the text because he is arguing that in bringing this motion what I am trying to do is to dictate to the courts what they must decide and there is nothing here that says what the courts

have to decide or does not have to decide in the matters which are before the courts. But either the Opposition Member agrees with me that the statement by Messrs Triay and Triay that payments by Community Care are public monies and that the entity is an agent of the Government and that it is making substitute payments following the dissolution of the Social Insurance Fund for the purpose of discriminating against Spanish pensioners, that statement has been made and he either has to agree with me that Messrs Triay and Triay are wrong or he agrees with them that Messrs Triay and Triay are right, it is that simple. If he agrees with me that they are wrong then I do not see what it is that inhibits him from saying they are wrong. That statement is false and that is not true and that is the view not just from the Government but the view of the House. If it is not the view of the House, it is the view of the Government and the Government will pursue that view and have already pursued it and will continue to pursue it with or without the view being shared by the Opposition. Obviously, if the view is shared by the Opposition then I believe it will strengthen our hand in the case but it will not guarantee the result except that I am saying to the House quite categorically that I make myself responsible for the accuracy of what there is in this motion and that I have everything that it says here documented and I can produce it. I would not have put it down if it were not so because obviously when we bring a motion to the House we have to make sure that we are able to demonstrate the accuracy of the statements that we make and if it were not the case then I would be bound to come back and put the record straight in Hansard that a statement that I had made previously in the House was incorrect and therefore I had misled the House in coming to a decision by giving it information which was not true. But of course as I have already pointed out to you, Mr Speaker, I am unable to understand how it is that the information which presumably the Opposition Member has in his possession the same as I do, I can only imagine that even though the hon Member may not have been involved in the actual exchange of correspondence with the Government and may not have been involved in the actual arguments put by Messrs Triay and Triay as to the role of



Community Care and I understand that he always made clear that he had no involvement in that even though he has not been involved in any of that presumably before he has put his name to the question of seeking leave of the court on the basis that the contents of five press releases constituted a contempt of the court he must have presumably checked the five press releases and checked the references in the five press releases.....

HON P R CARUANA:

If the Chief Minister will give way. As I have repeatedly said the answer to that question is no. I am not familiar with the papers in this court, any of them. What I know about this case is what he has told me across GBC air waves, that is what I know about this case.

HON CHIEF MINISTER:

Mr Speaker, then I do not understand how the hon Member can be included in the list of applicants before the Supreme Court of Gibraltar, where I am the respondent, as one of the persons who alleges that my press releases are a contempt and that they contain matter which is not true if he does not know whether or not that is the case. I would have thought that if he was going to allow his name to be included he would have said, "Before this goes forward I had better make sure that I agree". I am in fact giving him the opportunity now.

MR SPEAKER:

He will have the opportunity because the Leader of the Opposition will have the last word on the amendment.

HON P R CARUANA:

I can do it now if the Chief Minister will give way. For two reasons, Mr Speaker. Firstly those press releases speak for themselves. The Chief Minister can only be expressing these

views based on total ignorance of what the rules of contempt of court are. I do not know whether the Chief Justice is going to find that they are in contempt, in fact, or not but anyone who knows what the rules of contempt of court are would at least immediately recognise that he is in the ball park, that he is in danger, that he is in jeopardy and that the case is arguable. One has just to read the sheer malice with which the press releases are drafted, and as to why my name appears as a party, first of all because I was a partner of Messrs Triay and Triay and because if my partners told me that something is factually incorrect I believe them, unless he thinks that all 17 partners in the firm have read every scrap of paper in this case if so he just lives in cloud cuckooland.

HON CHIEF MINISTER:

No, Mr Speaker, the answer is quite simple, it is not that I live in cloud cuckooland, it is that I do not accept that the courts have ruled to determine that this is contempt. I am telling the Opposition Member that it is not a universal view because in fact when the first one came out his firm wrote to the Attorney-General and the previous Attorney-General disagreed with his firm. We have brought a QC from the United Kingdom who disagrees and the answer why he disagrees is because it is not as straightforward as he thinks because the very essence of contempt; little though he claims I know about it, and much as he knows about it, is that the essence of contempt is that all previous incidents where there has been such an allegation has been in the situation where it is conjectured that juries can be influenced by matters being published before a judgement is made. Mr Speaker, whether it is or it is not..... *[Interruption]* No, no, Mr Speaker, the standard of the advice I have got is that exposing a judge to improper influences happens when somebody actually leans on a judge. Not when somebody issues a press release. What the hon Member is saying is the absurdity of the position, Mr Speaker. The absurdity of the position that the hon Members are trying to do which is that they are trying to prove that what is black is white which presumably is how they



earn their living so they are comfortable doing it. It is that we quote publicly something that the judge already has. He is not going to discover anything in the press release that he does not know already because we are quoting what Messrs Triay and Triay have told the judge. So the judge is going to be influenced by hearing it the first time from Messrs Triay and Triay, why should they be further influenced because we say in a press release, "In an affidavit Messrs Triay and Triay have made the following complaints and allegations"? We say that that is what they have said. Either they have said it or they have not, but we are not saying anything that is news. The public may not know it but the person who has to make the judgement knows it already. He had it first, before we did and I think it is unprecedented for anybody to suggest that if a lawyer puts an argument to a judge and somebody then makes that argument public then the judge is going to be influenced against the case that the lawyer is putting. Why should he be influenced? Because there is a public reaction to the information and that is going to influence the judge? It is total rubbish. It presupposes that when a case is heard a judge first tries to find out whether his judgement is going to be popular or unpopular before he comes to a conclusion, that is nonsense. The matter will be determined.....

HON P R CARUANA:

On a point of order, Mr Speaker. I am quite happy to debate all day the question of sub judice but Mr Speaker will no doubt recall that when we had tried to incorporate arguments about sub judice all morning Mr Speaker has come down on us like a ton of bricks. I am afraid that what is sauce for the goose has got to be sauce for the gander otherwise we must be released from our restraints as well.

HON CHIEF MINISTER:

Mr Speaker, I am only answering it because they raised the point. It certainly was not something I was going to raise in my contribution. As far as I am concerned the motion that we are

moving in this House has no effect whatsoever on the decision the courts may or may not take and none of the press releases has had effect and either he agrees with me or he does not and what he is actually doing, wriggle though he may, is in fact demonstrating that when the crunch comes he agrees with the arguments that have been paraded against the Government of Gibraltar and then he says..... *[Interruption]* He does or he does not do, one of the two. *[Interruption]* No, Mr Speaker, the motion is to give the hon Member the opportunity to agree with us, that is the opportunity that I am giving him. I am not putting him in any difficult or embarrassing position, all he has got to do is to say, "Yes, we agree they have got it wrong" and we are asking him to do that because we know we are right and we know we are going to win and we know we are going to prove it and when we do he will of course regret not having taken the opportunity that I am giving him because he will not be able then to argue as he is trying to argue now that there is some doubt or some question mark about the legitimacy of the statements that we have made publicly and which we intend to continue making.....

HON P R CARUANA:

On a point of order, Mr Speaker, he cannot make that remark. It is completely unsupported by anything that I have said. He cannot stand up there and say that there is a doubt in his mind about the correctness of the independent of Community Care when only 10 minutes ago he was thanking me for having amended my motion to say it. He has got to stick to the truth of what I have said and not invent attributions to me in order to continue to cover his arguments.

HON CHIEF MINISTER:

Mr Speaker, if the hon Member is as convinced as I am and he claims to be then presumably he should not have a difficulty in declaring that the statement by Messrs Triay and Triay, that it is not independent, is false. He cannot agree with me that it is independent but not be willing to say so in the context of the

allegation by Messrs Triay and Triay that it is not independent. If Messrs Triay and Triay argue that Community Care is an instrument of the Government making substitute pension payments and it is his business to know that they have argued that. He has to know that because he cannot claim to be taking sufficient interest in this matter to the extent of allowing his name to be put in an attempt to institute contempt of court proceedings and not having taken the trouble to find out whether in fact such a statement has been made. I am telling him the statement has been made. I am telling him I am making myself responsible for the truth of what I am saying. I am telling him I can prove it. I am telling him he can find out for himself because he has got access to the source of that statement and I am telling him the statement is false and Messrs Triay and Triay have got it wrong. We will prove that they have got it wrong and he agrees with me that Community Care is a private registered charity and to reinforce that he has added that it has a legal status and existence separate and distinct from the Government. Precisely because it is a private charity, precisely because it has a legal status and existence separate from the Government, precisely for those reasons there is no need whatsoever to attempt to portray as something that it is not. *[Interruption]* No, Mr Speaker, I can support the amendment that I have just read out but I certainly cannot support the hon Member saying that we support the payments made by Community Care because that will be used by Messrs Triay and Triay against me in court and I can demonstrate it because he has used far less than that. *[Interruption]* Mr Speaker, when I warned the hon Member this morning and, Mr Speaker, you told me that I had to wait until the amendment was moved, I was anticipating it. It was not some roundabout way to try and find an excuse for saying no. I do not need an excuse to say no. I can simply vote against it and since we have the majority this will not be passed. I am explaining to him that there are elements of this which give us no problem and that there are elements of this which are dangerous and which we cannot support and for the House to say, "The House will continue and support the continuation of grants to a registered charity" is one thing and for the House to say, "And the payments

the registered charity makes which we are insisting is a totally independent thing" we should not be expressing in a motion in the House because I have no doubt that that is something that somebody can make capital out of. I have no doubt of that because they have attempted to make capital of far less than that so far in the case. Far less than that! So therefore in that situation we would move an amendment deleting part of it. This is why I am saying, Mr Speaker, we would want the different elements to be taken because some we will oppose, some we will support and some we will leave unchanged.

MR SPEAKER:

I think the answer to that is that you shall have to make an amendment to the amendment in the way that you would like to have it and then we will talk on that amendment and if that amendment is passed then it becomes the amended amendment.

HON P R CARUANA:

Mr Speaker, I am very happy during the tea adjournment to get together with the Chief Minister for five minutes to see if we can eliminate what he now finds dangerous. Let us keep the language as uncontroversial as possible with the elements of my motion which he thinks are dangerous and to see if we can come to the sort of unity that he appears to think is desirable.

MR SPEAKER:

Remember that we are talking about an amendment to the original motion and therefore if the amendment is agreed by both parties here and it is passed then obviously the motion will be defeated, do you follow?

HON CHIEF MINISTER:

Mr Speaker, the point that I am making is that the Opposition Member has moved an amendment that removes the entire contents of my motion and replaces that with a number of new paragraphs. The first two of which restore what he has removed. Some of which introduce some new elements and which also leave out some statements which they are not prepared to support but which we will include and which we will carry with our votes if necessary. So therefore rather than have the situation where the Opposition may have to vote against the whole motion because there is a paragraph in it which we will put back and carry, I am suggesting that we take separate votes so that if we are all agreed on the first one and we are all agreed on the second one but they do not agree with the fourth one then we will take a vote on the fourth one. Alternately, then we will, Mr Speaker, move to defeat their amendment and move our own amendment to our own motion incorporating some of theirs and that is it.

MR SPEAKER:

I think that is the best way because I cannot see the other way working. The answer is then that if the Government feel that there are matters in the amendment that they can support then the answer is for the Government to amend the amendment, take that and then we will amend the original motion accordingly. Has the Chief Minister finished his contribution?

HON CHIEF MINISTER:

Yes, Mr Speaker, I have finished on the amendment of the hon Member.

MR SPEAKER:

We have another five minutes. If anybody wants to speak on the amendment for five minutes.

HON F VASQUEZ:

Mr Speaker, I want to speak in support of the amendment proposed by the Leader of the Opposition and in so doing, before speaking I think I must bring to the attention of the House what was already mentioned this morning, the fact that I have an interest in this matter in that I am a member of the firm Triay and Triay which is referred to repeatedly in the course of.....

MR SPEAKER:

I will just ask you one question. You obviously receive remuneration from this firm?

HON F VASQUEZ:

Yes, I am a partner.

MR SPEAKER:

Although you can speak you cannot vote on the motion.

HON F VASQUEZ:

Presumably I can vote in favour of the amendment?

MR SPEAKER:

You cannot vote on the motion. Not if you are receiving remuneration from Messrs Triay and Triay but you can speak.

HON F VASQUEZ:

Thank you, Mr Speaker, the fact is that I am not going to vote for the Government's motion anyway but be that as it may. I really want, as it were, to recapitulate on the thinking behind the Leader of the Opposition's modifying motion because it is not

really an amendment, it is a modification, to try and recap. The Chief Minister in the course of his submission this morning in support of his own motion said that there were two principal reasons for bringing this motion to the House. The first was to try and throw the weight of the House behind Government's efforts to keep Gibraltar Community Care Limited out of the Spanish pensions litigation. He said very clearly that this point was fundamental. It was important that this House stress the independence of Gibraltar Community Care Limited and this House must stand collectively behind the point that payments by Community Care are not payments made by the Government of Gibraltar. That was his first and paramount concern and the second concern which he expressed in this House was that he wanted this House to throw its weight behind him to defend his position personally in the contempt proceedings. These are the matters that he seeks the support of the House on. It has to be said that subject to the acceptance by this House that whatever this House says the law of the land is the law as applied by the courts of Gibraltar such desires on the part of the Hon Mr Bossano, the Chief Minister, are laudable and are perfectly acceptable. For this reason the Leader of the Opposition has proposed modification to the motion that precisely addresses those very points.

The first paragraph notes, as the Chief Minister requires, that Community Care is a private registered charity; the second paragraph supports the making of payments by that company to senior citizens in exactly the same way as the Chief Minister had in his own motion. The third paragraph supports the efforts of the Government of Gibraltar in protecting Gibraltar's interests in defending the case. It then goes on to approve the publishing of information by the Government in a way that complies with the laws of Gibraltar and, surely the Chief Minister is not asking this House to endorse the Chief Minister's breaking of the laws of Gibraltar and, finally, it condemns the Spanish Government for the hypocritical attitude in bringing the whole case on the pensions and in seeking to sue the Government of Gibraltar for their pensions whilst refusing to recognise that Gibraltar has any

rights in the European Community otherwise. Consequently, the modified motion attains to achieve everything that the Chief Minister said he wanted to achieve by his motion and by voting against it as he has indicated that he intends to do he demonstrates that the Chief Minister has no good faith in bringing the motion to this House in the way that he has brought it. There are no matters of national interest that the Chief Minister is seeking to protect. He is merely protecting..... *[Interruption]* ....to making political capital and protect his own political position in relation to the whole issue of the Spanish question on the litigation relating to the Spanish pensions in court. In fact as my hon Colleague, the Leader of the Opposition, already pointed out various elements of his submission this morning betray the mala fide, the bad faith in which that motion is brought to this House. He actually referred to the fact that the litigants were seeking to raise dangerous arguments in a court of law as if implying that this House somehow had the jurisdiction, had the means, to prevent litigants from bringing arguments to a court of law. The most astounding statement that I have certainly heard in my four years in this House and it betrays the failure on the part of the Chief Minister to understand the essence of litigation before the courts and to understand the fundamental constitutional guarantees that individuals have in bringing matters to the courts. It seems to me that in seeking to pursue the motion in the way that he has, the Chief Minister is hell-bent on creating a constitutional crisis between this House and the courts of Gibraltar and that is something which this House must endeavour to avoid. The justification for the motion in the form that the Chief Minister has brought it is based on a fundamental, mendacious premise. It is a lie which founds the substance of the Chief Minister's argument and that is its main premise is that he has to bring a motion in the way that he is doing it because the court and Messrs Triay and Triay somehow are muzzling him from making statements to his people, to the people of Gibraltar, about the case. I quote him directly. He said this morning, "Triay and Triay are objecting simply because the Government say in public what Triay and Triay say in a letter and this", he says, "is the foundation of the contempt proceedings". That, Mr Speaker,

is simply untrue, that is not the case at all. It is a lie. Nobody anywhere has ever attempted to prevent the Chief Minister from publicising information, from commenting on matters that are going on in those proceedings. It is not because the Chief Minister is divulging information or details of the court proceedings that the contempt proceedings have been brought against the Chief Minister. The contempt proceedings have been brought against the Chief Minister because the Government of Gibraltar have been telling lies, have been making misrepresentations, have been distorting and have been making fabrications about the role of Messrs Triay and Triay in the conduct of those proceedings and that is what constitutes the contempt, not anything he is saying about the case. He can stand up and say anything he wants about the case and about the arguments. I give way.

HON CHIEF MINISTER:

Mr Speaker, if the Government of Gibraltar have been saying in the five press releases that are referred to, lies, then the hon Member is assuming personally now the responsibility for demonstrating that there are lies in those five press releases and he has either got to withdraw what he has just said or prove it. The reason why I believe that I was saying the truth this morning was because I was quoting on what the piece of paper to which he put his name says which is that they are asking for an order that the said Hon Joseph Bossano, by himself and his Ministers or other officers of the Government of Gibraltar, its servants or agents be restrained from publishing or dealing with evidence relating to any issue arising therein or contain any discussions of the merits of the case or the conduct of the case. If stopping me, my Ministers, any officer, my servants, my agents, from publishing, causing, authorising or procuring to be published or printed any matter that deals with any evidence or any matter arising or containing any discussion on the merits of the case is not an attempt to shut me up totally, never mind whether it is a lie or not. I could understand if he had said to stop him saying lies but he does not say that. It does not say here that it cannot be

true, it says whether it is true or not true I should not be allowed to say it.

HON F VASQUEZ:

Mr Speaker, the essence of the contempt proceedings brought against the Chief Minister is that by publishing and by disseminating lies about Messrs Triay and Triay's role in prosecuting the pensions case that they are contentious because they are attempting to bring pressure on Messrs Triay and Triay and there is one fundamental misconception that the Chief Minister has betrayed in the course of his submission this afternoon. He seems to think that contempt of court only amounts to bringing pressure on a judge or bringing pressure or doing something which may or may not influence the jury. That is not the case, there are many different types of contempt and one very important element of contempt is in contempt of court as much as it is in contempt of the House is to bring pressure on individuals, on officers of the court, who are discharging their responsibility to try and dissuade them or pressure them from conducting their professional responsibility in arguing the case on behalf of the client. The Chief Minister has brought my attention and asked me to stand by the allegations that I have made which I maintain that those press releases contain lies about the firm of Triay and Triay and I will very happy go through them now. First, repeatedly the Government have stated that the firm of Triay and Triay is not taking its clients. How more can one try and discredit a professional man than to argue that they are bringing a case, not because they are being instructed by their clients but they are doing it on their own bat. Secondly, and in support of that, he then says repeatedly that Messrs Triay and Triay are fighting the case politically and not legally, that they are bringing political arguments to the court. Thirdly, they stated quite clearly that Messrs Triay and Triay have behaved unprofessionally and unethically. They said it, I have got the press release in front of me, "The Government consider that the actions of Messrs Triay and Triay are the very opposite of what they claim. They are indulging in making judgements, valued

judgements and allegations of a political nature". Constantly, for the last year and a half the firm of Triay and Triay have been subjected to misrepresentations and abuse in public in an attempt that can only be seen as an attempt by the Government of Gibraltar to try and scare the firm of Triay and Triay away from doing this case. That is a contempt of court in the same way as if somebody stops me on the way to this House and tries to bully me from taking up a point in this House he is in contempt of this House. Lawyers are there to do a job and they will do it and it is a contempt to try and dissuade them, to bully them, to blackmail them or to bring them to public opprobrium which is what the Chief Minister and those Government press releases have been trying to do in relation to Messrs Triay and Triay. That is the essence of the contempt. No one is going to say, "You cannot disseminate this information". I will say what it amounts to. A case in point where the partners of Triay and Triay really came to the conclusion that the Chief Minister was trying to start a riot against the partners of Triay and Triay who are only discharging their obligation. Yes, they are making sucking breaths but the Government Members know full well the history of what has happened in relation to the Triays in the past. I give way.

HON CHIEF MINISTER:

Mr Speaker, that may make the individual concern perhaps ultra sensitive but that is the reason why I have said that we are not lying and that we can prove everything we say. The hon Member has just said that we have repeatedly said that Messrs Triay and Triay were acting without instructions. The press release that we first issued was on the 23rd May 1994 (Press Release 23/94) and we say, "Without taking full instructions from their clients Messrs Triay and Triay are saying that in seeking security for costs the Gibraltar Government is impeding the constitutional rights of Spanish pensioners to have recourse in the Gibraltar courts". This is a lie if we had invented it but we have not invented it. I have got the letter from Messrs Triay and Triay dated 12th May, 11 days before which said, "Without full instructions on the question of security for costs, however

pending receipt of this we make the following points....." These were not points made after receiving full instructions and we have said so publicly because they say so in their letter and if somebody tomorrow presumably takes us to court and says, "You are doing this to turn people against Messrs Triay and Triay", we can say, "No, we are doing this because this is what they put in their letter". On the 12th May and we published it on the 23rd May, 11 days later.

HON F VASQUEZ:

Mr Speaker, the difficulty that we now find ourselves is the very reason that the procedures of judgements are taken this morning. This House cannot now start pouring through correspondence and affidavits in those proceedings which are sub judice in an effort to try and determine who is lying and who is telling the truth. That is what the court is there for and those contempt proceedings have been brought for the reasons that I have said, because this Government have made attack after attack on a professional firm. It gets to the stage where the people of Gibraltar must think that Messrs Triay and Triay are arguing this case on their own behalf, that this is Messrs Triay and Triay's case. It is not Messrs Triay and Triay's case, Mr Speaker, it is the representative action brought by the Spanish pensioners, funded by the Junta de Andalucia and they have instructed the firm of Triay and Triay who are discharging their professional duties by arguing the case on behalf of their clients in court. It is not Messrs Triay and Triay's case.

MR SPEAKER:

Let us go back to the amendment.

HON F VASQUEZ:

It is quite clear from the Chief Minister's objection to the modified motion that what he is interested in doing is not seeking unanimity. He is not protecting Gibraltar's interests but in



continuing to fight the Government's case, not in the courts but on the streets of Gibraltar and in this House and that is not what the House is for, Mr Speaker. To have the Chief Minister of Gibraltar justifying the scurrilous and repeated statements he is making about the case publicly in those press releases on the basis that he feels he has to inform his people, keep his people informed, Mr Speaker. This is the man who has made it the very essence of his Government that they do not divulge information, that they are unaccountable who on countless occasions has refused to provide his people with any sort of information, now claims, over this issue that it is bound in duty to keep his people of Gibraltar informed. Nonsense! He is trying to make political capital. He has been doing it for the last year and a half and he is trying to do this in this House. He is abusing this House for his own political ends. What is achieved by the motion that he wants this House to pass? He wants this House to declare that he is not in contempt of court. Who is this House to determine whether he is in contempt of court or not, Mr Speaker? That is what the court is for and it seems very clear to members in the Opposition that the Chief Minister is hell-bent on bringing this House into a constitutional conflict with the Supreme Court of Gibraltar because it is in his own interest to do so and it is certainly not in the interests of this institution, under the Constitution of Gibraltar, to embroil itself in that sort of political argument.

MR SPEAKER:

You are now getting again into deep waters and I told you before the question of sub judice has now been settled and I have passed the ruling.

HON F VASQUEZ:

Yes, and I have to abide by that ruling, Mr Speaker. To close, it is very clear, the Spanish pensions case is not a popular case in Gibraltar. This House has already expressed the view, time and again, in support. Both sides of this House have expressed their view in support of the Government of Gibraltar in resisting the

claim of the Spanish pensioners. The firm of Triay and Triay have an unpopular case on its hands but the place to fight that case is in the court and not in this House and certainly not through press releases in the local media. For that reason I commend the amended motion. The amended motion does everything that the Hon Mr Bossano this morning in this House said he wanted his motion to achieve. It expresses the unanimity of this House in noting that Gibraltar Community Care is a private charity; it notes that the Government Social Assistance Fund grants monies to Gibraltar Community Care Trust; it supports the provision of the grants by Gibraltar Community Care Trust to the citizens of Gibraltar; it supports the Government's attempts to protect Gibraltar's interests by defending the Spanish pensioners case; it approves the publishing of information relating to that case in a manner that complies and it condemns the Spanish Government for their hypocrisy in bringing the case. What more can the Chief Minister ask for, Mr Speaker? The answer is that what he wants is to make political capital out of this for his own ends and in that way, as a side issue which no doubt is of no concern to him, provoke a constitutional crisis and that is not the business that the Opposition is in this House for, Mr Speaker.

MR SPEAKER:

I take it that there are other Members and certainly the Leader of the Opposition who would like to wind up. So I think the time is right now to have a 20 minutes recess.

The House recessed at 5.10 pm.

The House resumed at 5.35 pm.

HON P CUMMING:

I only want to say, Mr Speaker, that I support the Leader of the Opposition's amendment because I believe that it extracts from the original motion the unnecessary evils and leaves only the necessary evils.

HON P R CARUANA:

Mr Speaker, the Chief Minister says that he is entitled to ask me why I will not support his motion. The answer is as I explained at length this morning and Mr Speaker refuses to allow me to explain again and therefore I will not. It has nothing to do with the content of the motion. I explained this morning at length that the Opposition's refusal to support the Chief Minister's motion had nothing whatsoever to do with the content of the motion in terms of whether it was factually right or wrong. Then we got into all those arguments about sub judice which Mr Speaker will not allow me to address again so I will not. But those are the reasons why notwithstanding the fact that Mr Speaker has ruled that it is not a breach of the rules of the House which is why the debate has carried on, I am still free to decide that I do not wish to participate in this motion because I believe that what we are being asked in this House to do is to express legal judgements on matters that are before the court. What is more, what we are being asked to participate in and that is why I will not support the Chief Minister's motion is what has been described by the Bar Council, a view which I share, and adopt as my own, and I had said so before I had seen the Bar Council's statement. The Bar Council's statement is entirely independent of my own that this procedure is a threat - leave aside the question of sub judice - to the proper administration of justice and ultimately to civil liberties in Gibraltar. I would urge the Chief Minister whatever political motives he feels he can attribute to me for adopting the position which he says I am adopting, whatever personal difficulty or embarrassment he imagines I still have as a result of my family involvement with the firm of Triay and Triay, being as ungenerous as he wants to be with me on those issues, he should ask himself what manner of concern does not provoke the entirety of the senior Bar of Gibraltar to convene spontaneously an emergency meeting and issue a public statement to say that the tabling of this motion constitutes a serious threat to the proper administration of justice and ultimately to civil liberties in Gibraltar. Just so that the Chief Minister might know and just to place on record once again that

the reasons why I do not support his motion are not silly little wriggling reasons as he has tried to make out. I am not wriggling unless of course the Bar Council is also wriggling and they have not got a political hook to wriggle off. Nor have I incidentally got a political hook to wriggle but they certainly have not and they have got the same view as me. He said that he was entitled to ask me whether I agreed that he should publish. I agree that he is entitled to ask me and I answered even before he asked me so when I repeat my answer now it is not because he has put me against the ropes and forced me to give the answer. I am repeating the same things that I said before he asked me. He is entitled to my support which he has to making such public comments for the purposes of informing the citizens of Gibraltar as of the conduct of the pensions case as he is permitted by the laws of Gibraltar to make. It is not for me to adjudicate about whether a particular publication is or is not in breach of the laws of Gibraltar. That is a matter for the judgement of him and his legal advisers and for the ultimate adjudication of the Supreme Court of Gibraltar which is the other reason why I do not want to support the motion. I am not trying to run with the hares and hunt with the hounds, I have expressed myself in terms which I would have thought were perfectly clear and of course they are clear but the problem with the Chief Minister is that he is frustrated that I have found a formula to uphold my obligation to defend the political interests of the people of Gibraltar without at the same time dismantling and irreparably damaging another vital interest of the people of Gibraltar and he may not have the dexterity to protect two vital interests but I do and his frustration stems from the fact that my formula allows me to defend both interests whereas his formula is making political hay at the expense of what the entirety of the senior profession in Gibraltar has described as an assault on the administration of justice and ultimately to the civil liberties of Gibraltar, and that is the reason why I do not support his motion. If the arguments being used by Messrs Triay and Triay are wrong what is he worried about? If the arguments used by Messrs Triay and Triay are false and wrong, then I suppose that the Supreme Court of Gibraltar will find in favour of the Government and everything will be OK. Why

is he working himself and his whole community up into this tizzy because some lawyer that he considers to be incompetent has alighted upon arguments which he assures us are bound to fail because they are wrong? Of course, the answer is that he wants to make political hay because if the arguments of the lawyers for the plaintiffs are wrong they will lose. He will not have to go to the House of Lords. He will not have to go beyond the Supreme Court of Gibraltar and we can all sleep comfortably in our beds in the knowledge that because the arguments are wrong the case will be lost by the Spanish pensioners. Surely, he ought to be thankful that the Spanish pensioner is deploying false arguments. Presumably he would be more worried if they were deploying correct arguments because then there would be a risk of losing. All this just shows, Mr Speaker, beyond the pale of doubt if indeed there is a pale of doubt which frankly I cannot see that there is, but all this demonstrates beyond the pale of doubt that this motion that the Chief Minister brings to this House is not motivated by any desire to achieve anything except what he thinks is good stuff for the electorate in the run-up to a general election. That is all that motivates this motion and the rest is demonstrably not true. I agree, as a lawyer, that the Government's case is best served, as the Chief Minister says, by resisting the link-up between the Government and Gibraltar Community Care Limited but that is not a link-up that he has been particularly concerned not to make. When it has suited him, yes he may frown, but he may think that there is a difference between my words guaranteeing the continuity of payments and what he actually had Community Care tell the pensioners in his letter about, "Do not worry when the time comes everything will be alright". What does he think the difference is between guaranteeing the continuity of the payments on the one hand and telling the pensioners and the world, "Do not worry chaps, whatever happens in the case, when the time comes you will be alright"? Seriously, is he seriously arguing that those two formula of words convey a different meaning? Do they not both say to the senior citizens of Gibraltar which is my political commitment to them and his, repeatedly stated in function after function, after which I have had to be traipsing behind him listening to him, is it

not both our political positions that whatever happens in the pensions case, payments will continue to be made one way or the other to our senior citizens? My formula of words, which is identical in effect to his, damages the case but when he wants to bolster his electoral appeal amongst the 4,000 elderly people in this community, he is quite happy to go in print to say, "Do not worry Uncle Joe is here to save you all from the terrible fate that you may suffer at the hands of this dreadful law firm and his son-in-law who are taking us to court". What is sauce for the goose is sauce for the gander and the Chief Minister's cynical, transparent and crude attempts to deceive the old age pensioners in Gibraltar that pensions are safe with him but not with me will not wash. At least I am going to do everything that I can to make sure that it does not wash by with the same political force as he does explaining how secure the pensioners are going to be with me just as he explains, whenever it suits him, how secure the pensioners are with him. I do not care how many times he tells me that when I say it it is bad for Gibraltar but when he says it it is perfectly OK. He complains that the case will take years. If this case is going to take years what is the urgency of working us all up a few weeks before a general election? The purpose of working us all up a few weeks before a general election in respect of arguments in this case that are not going to come to the court for years is evident to everybody including the Government Members. They cannot even be persuaded themselves, let alone hope to persuade anybody else. I would have thought that as far as the Government were concerned the longer the case goes the better. Mr Speaker; without making any comment on your ruling which Mr Speaker knows I accept because Mr Speaker has ruled on the general principles of sub judice, the Chief Minister cannot argue in this House as if something is only sub judice if we are dictating to the judge how he must find. I do not know what first year law student sort of shorthand book he has read but I cannot imagine where he gets the notion that sub judice means that we all rush up to the Chief Justice's house, corner him, all 15 of us and tell him how he must rule. That is the definition of sub judice? He cannot be taking legal advice. Sub judice means to prejudge the issue and he is

asking me to prejudge whether or not he has been in contempt of court and I say I am sorry. It is not my job to do that and I think it is improper to be asked to do that which is why I will not do that. I am not prepared to say that he is in contempt and I am not prepared to say that he is not in contempt. I am not prepared to be put in the position by the Chief Minister where these 15 or 17 people in effect become a court adjudicating on facts; interpreting the law. As far as I am concerned, there are only three people here competent to do that and it does not include anybody on the elected side of this House. So it is not a question of whether we share the Chief Minister's view. I am not prepared to tell the Chief Minister whether I share his view or not. What I am saying is that it is a thoroughly improper use of the procedures of this House to ask me to express my view on a point of law which is before the court for decision. Or does he think that when the Bar Council said that his motion constituted a serious threat to the proper administration of justice and ultimately to civil liberties in Gibraltar, what they were really saying was that there was a connection between Gibraltar Community Care Limited and the Government, that it was not independent? He seems to think that everything in life has got to be black or white. Because I am not willing to be supportive of him in exactly the same words as he writes on a piece of paper, it must mean that I think that what he is saying is wrong and he is mistaken. He is not going to use false patriotism to wind us up to express a view on an issue which we believe and the Bar Council believes is an abuse of the functions of this House. For the Chief Minister to say it is dangerous for this House to support payments by Community Care when this House annually..... Certainly this House does not. But whoever controls the Social Assistance Fund obviously supports the payments made by Community Care or they would not be making the grants to the Community Care Trust. The same man who thinks it is alright for us to express the view on what the court has not yet decided, also thinks that it is wrong for us as a parliament to say, "Well done Community Care we support what you are doing. Please carry on because it is a jolly good thing". Where is the consistency of principle there? They want us to pre-empt the

court's decision but they do not want us to pat Community Care on the back. The duplicity and hypocrisy is self-evident and the Government Members may think they are fooling some people. I venture to suggest that they have fooled nobody at all and certainly I am confident that they have not fooled themselves so what they are doing they are doing with their eyes wide, wide open. They can do it by themselves, they cannot do it with our support. As far as we are concerned, our amendment to the Chief Minister's motion is a perfectly proper political defence of Gibraltar's legitimate political interests. The Government Members can vote for or against it as they please, I would urge them to vote in favour. If they do not vote in favour I believe that that will expose their strategy for the crude machination that it is. It certainly will not result in us voting for their motion, which we will not for the reasons that I have now stated repeatedly. Mr Speaker, I call for a division on the vote of my amendment

MR SPEAKER:

Before I put the question I want to correct a ruling that I made before. I told the Hon Mr Vasquez that he could not vote. I am afraid that I was listening so much about Messrs Triay and Triay that I thought that he was related with Messrs Triay and Triay and of course the subject matter is not Messrs Triay and Triay, the subject matter is the pensioners and he gets no money as far as I know as a pensioner so the Hon Mr Vasquez can vote, of course.

Question put on the Hon P R Caruana's amendment.

The House divided.

For the Ayes:	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon H Corby
	The Hon P Cumming
	The Hon F Vasquez

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

Abstained:         The Hon Miss K M Dawson  
                          The Hon B Traynor

The Hon M Ramagge was absent from the Chamber.

The amendment was defeated.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, if I can speak on behalf of the Attorney-General and myself. We have abstained from all the votes in these motions which is not to be taken as any expression of dissent but simply because as the issue is one where there are wide political differences between the Opposition and the Government, we think it is more appropriate for us to abstain.

MR SPEAKER:

So now we continue with the original motion and those who have spoken on the motion cannot speak again but those who have not can of course do so.

HON J E PILCHER:

Mr Speaker, just to put the record straight, particularly in the final comments of the Leader of the Opposition, when he said that by voting against his amendment to the motion would show the crude machinations of the Government benches and to clarify the reasons why the Government have voted against the

amendment, which I think has been clearly explained by the Chief Minister. There are elements in that although we have voted against which as a Government we support and therefore what we are trying to do both in standing up to the challenge and showing that it is not crude machinations by voting against and incorporating what we feel makes sense from the original motion. Mr Speaker, I am moving an amendment to the original motion by the Hon J Bossano as follows: first.....

MR SPEAKER:

Have you circulated the amendment?

HON J E PILCHER:

Yes, Mr Speaker, although given the fact that there are very few people in the Opposition benches, I am not sure.....

HON LT-COL E M BRITTO:

Mr Speaker, the amendment is not available in this side of the House.

HON J E PILCHER:

The amendment was given to the Clerk and is now coming.

Mr Speaker, now that it is clear that the two Opposition Members have got the amendments I am about to propose I will then start. Paragraph (1) is amended by adding at the end and after the words "in Gibraltar;" the following words "and has a legal status and existence separate and distinct from Government." Paragraph (2) is amended by adding at the end and after the words "Gibraltar Community Care Trust;" the following words "and supports the continued provision of the present level of grants". Delete all the words after "Triay and Triay" in paragraph (8) and add the following paragraphs at the end of the original motion - New paragraph "(9) Expresses its assurance to our

senior citizens that, when the time comes, the interests of present and future Gibraltarian pensioners will be fully protected". New paragraph "(10) Supports the Government's attempts to protect Gibraltar's interests by its defence of the case brought by the Spanish pensioners". New paragraph "(11) Approves of the Government continuing to publish information relating to the case in a manner that complies with the laws of Gibraltar" and new paragraph "(12) Condemns the Spanish Government for the hypocrisy demonstrated in pursuing the pensions claim at all levels while at the same time seeking to deny and obstruct Gibraltar's status and rights in the European Union".

Mr Speaker, as can be seen what this amendment has done is it has clarified not the positions because I think the positions are quite clear and I do not intend to add anything to the position raised by the Government. It is up to the Leader of the Opposition but it follows the arguments that have been produced by the Chief Minister and it is clear that the only paragraph that has been left out of the amendment produced by the Leader of the Opposition is his paragraph (3) for the reasons that the Government have already stated. Whether the Leader of the Opposition believes or does not believe that a formula of words means the same it appears to me that he is the one that is hypocritical from the point of view that he is always the one in this House that is checking every single word because the Leader of the Opposition sometimes does not know where his role as lawyer ends and his role as politician starts. Even his demeanour in this House and the fact that he sometimes mistakes Mr Speaker for Your Lordship which he does quite often I think clearly shows that. The formula of words is important for the reasons which the Chief Minister has mentioned. Again as I said for the record what this does is it puts back all the areas that the Government are able to support in the amendment so that it is quite clear that we are not voting against, for example, the paragraph where it calls on the Government to condemn the Spanish Government. We have said we are quite happy to do that and by adding virtually the whole of the amendment to the

motion by the Leader of the Opposition it is quite clear that what will now be left is for him to show the crude machinations and not being able to vote clearly for a motion that now contains both sides plus declaring quite clearly the positions as it declares in paragraphs (3), (4), (5), (6), (7) and (8) of the original motion. I will leave this House with one comment and that is that the hon Member and I think it follows from the fact that as I said before he does not know where his role as lawyer starts and his role as politician ends. What I think has not been discussed or mentioned by the hon Member which I think is the basis of what the Chief Minister has been saying that at the end of the day the protection that politicians need against the assault of their basic rights in informing their electorate is this House and it is quite clear that in this area the whole House should be speaking with one voice and the amendment allows the Leader of the Opposition to do that unless of course he clearly shows that it is him who is politicising this motion from the point of view that he thinks that there will be an election within the next two or three weeks, Mr Speaker.

MR SPEAKER:

Now we have another amendment to the original motion and I now propose the question in the terms of the amendment to the original motion. Except for the Hon Mr Pilcher all the other Members can speak except that the Hon Mr Pilcher of course has the right to wind up.

HON P R CARUANA:

Mr Speaker, either the Minister for the Environment has not understood anything of what I have said today or he is trying to get the last word in the hope that his description of what I have been saying will be the one that people remember. If I said to him repeatedly today that my objection to this motion is that having called upon this House to make a legal judgement on matters which are before the court, he does not address that by simply adding in his motion to mine. Therefore leaving in the



combined motion all the objectionable parts of his original motion. If I were willing to vote in favour of his own amendments to his own motion we would not have been here all day. I would simply have voted for his motion at 10.30 am. He has addressed nothing. He has addressed none of the arguments that calls the Bar Council to say that he was assaulting the proper administration of justice and ultimately the civil liberties in Gibraltar. When he has addressed those concerns, when he has addressed the parts of the motion that are open to those legitimate and justifiable criticisms I will then vote for his motion. Not until that time arrives, however many additional paragraphs he adds to it, so the answer is that our views remain exactly the same as it has been.

HON CHIEF MINISTER:

Mr Speaker, the amendment to my original motion that has been moved incorporates in the original motion the text of what was moved by the Leader of the Opposition and we have just defeated and therefore although he might not be able to support the amended motion, it is very peculiar that he should not support the amendment since the amendment is in fact what he was asking us to vote for two seconds ago. *[Interruption]* Yes, Mr Speaker, it is not the first time that this House has had motions before it, or legislation before it, where members of the Opposition have been in favour of part but not in favour of the whole. It has happened consistently and the House.....

MR SPEAKER:

By supporting the amendment you are not necessarily supporting the motion because then the motion will have to be taken as amended and this if you so wish is when you can vote against. What I am saying is that you are voting only for the amendment.

HON P R CARUANA:

Yes, Mr Speaker, but we all know what this is about. This game of cat and mouse is about whether the Government can draw me into a procedure which I think is disreputable. I will not through the device of an amendment to his own motion be drawn into playing a voting part in a procedure which I think is disreputable to this House. It is as simple as that and he can amend his motion as often as he likes. Unless he accepts the principle of the Opposition's view, we are not participating in the same process, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, the Opposition Member is totally incapable. I do not know if that is how they behave in court, because it is not my practice to turn up there, I only turn up when I am facing an indictment for contempt but it seems that he cannot deliver an argument without casting aspersions on anybody that does not agree with him. It seems to me that the entire process that lawyers use, if his is an example, is to intimate people who disagree with them as a way of persuading them to change their minds. The position is that since the Opposition have now disappeared from the House of Assembly, which is no bad thing, we are able to say that we make our own the alternative that he produced and without any help from them I have the opportunity of being able to say that it is exclusively on the vote of the Government that this House will pass a resolution asserting the independence and the separate existence and the distinct status of Gibraltar Community Care because the Opposition Member proposed it five minutes ago but has now disappeared. It is only on the Government vote that we are going to pass a motion maintaining a commitment to provide support from the Government Social Assistance Fund to Gibraltar Community Care Trust. It is only the Government that are expressing their assurance to our senior citizens that when the time comes the interests of present and future Gibraltarian pensioners will be fully protected. I will not go into the type of language that the

Opposition Member seems to relish using of talking about inconsistency and hypocrisy. He has got a track record of inconsistency and hypocrisy which is difficult to match. He is the man who one minute is burying Brussels but the next minute resuscitating it and then burying it again. He clearly has a similar approach in this issue because as far as we are concerned the Bar Council may hold the view that it does presumably we are entitled in a democracy to hold a different view from the Bar Council and we are not committing some heinous crime by saying that we disagree with the Bar Council. I predict, Mr Speaker, that the rule of law in Gibraltar and civil liberties tomorrow will not be changed one millimetre because we pass this message today. It is not the first time that the Bar Council has got itself engaged in party political disputes. It did it with the issue of the Companies Registry but it has certainly never done it in all the disputes in the history of Gibraltar when I sat on the Opposition, ever. In nothing that has ever happened in Gibraltar between 1969 and the GSLP administration did the Bar Council ever find anything to criticise in the public administration of Gibraltar, quite extraordinary. But, of course, we respect that the Bar Council are entitled to hold the views that they hold and we say to the Bar Council, "We disagree with you" and we are entitled to say we hold a different view. We are entitled to say this motion is simply asserting a statement which when the courts have to decide they will have to decide on the evidence put in front of them but when that happens and it may happen a long time in the future well before that happens let us make clear that if we have not until now made public statements, out of deference for the fact that the courts were thinking to whether leave should be granted or not be granted, it is not because we are in any doubt about the fact that the statements that we have got before us that have been made. The five press releases we have made in two years comply with the laws of Gibraltar in the judgement of the Government of Gibraltar. Whether they comply with the laws of Gibraltar in the judgement of the Opposition is not clear. It would appear that since they are not prepared to express a view on it they must be doubtful whether it does or it does not. Presumably, when we win as we will in court, they will

agree that we were right throughout. We have no doubt that we will win and we have no doubt that the arguments that we will put in that court will win it but we are entitled to say like any litigant we believe we are right. If we did not believe we were right we would have in fact taken action to correct it. If somebody had been able to demonstrate to us at the time that the press release was made that there was something in that press release which was going to influence the course of the action and we have been told today that when they are talking about the matter being sub judice it is not what everybody thinks it is, it is not that we are going to be intimidating the judge, now that is not an issue so it does not make any difference now as to the judgement of the case. We are told by the Hon Mr Vasquez that the people that we are intimidating are Messrs Triay and Triay. Well, we have been singularly unsuccessful in intimidating if that had been our intention because the first press release was made on the 23rd May 1994 and it certainly has not done anything to stop them going on with the argument. They have carried on with exactly the same argument post that release as they were doing before the release. I have demonstrated today when challenged, Mr Speaker, that if we said in a press release on the 23rd May 1994 that Messrs Triay and Triay had put a series of arguments without taking full instructions this was not casting an aspersion on their integrity, this was quoting their letter. I said the letter that we were quoting had that sentence in it and was dated the 13th May which was 11 days before we issued the release and when I say that the reaction of the Opposition is well that proves he should not get into details because this is a matter for the court to decide. Well, it is not a matter for the court to decide. It is a matter for the court to decide on the evidence whether we have done anything that we should not do but what we cannot have is "Let the court decide whether it is true that there is such a letter" and what we cannot have is people saying to us "We are claiming there is a letter but we are not allowed to publish it." Well, if we are not allowed to publish it and there are people saying these are fabrications by the Government how else can we defend ourselves because we are being attacked? How can we defend ourselves against the scurrilous accusations we have

heard in this House today unless we are able to do it either outside the House where there is an attempt to stop me making any reference on anything to do however remote through my agents, Ministers or anybody else who I can think of, that has anything to do with that case or inside the House where, according to the arguments that were put by the QC that came from the United Kingdom to argue against the leave being granted, one of the arguments that the QC used was, "Look even if it was argued that these things could not be said in Government press releases there is absolutely no doubt that they could be said in the House of Assembly". That is what was said in the court when the court considered this matter and that was not disputed in the court. So having had a situation where in the court it is said, "Well even if the argument is that it cannot be made public there is nothing to stop the Government making the same point in the House where they are not subject to any action" and where it is being heard over the radio and where it can be repeated in print and where nobody can get writs because we seem to forget that there are writs flying to the Chronicle, to GBC and to all and sundry from the Governor down. It finished up with an action just against me but it started off with an action against everybody and it is peculiar that if these things are not politically motivated why is it? Is it that somebody thought, "This is a dangerous thing and if we are going to upset so many people we better concentrate on just one guy who it does not matter if we upset because we know he is on the other side. There is no way that Joe Bossano is going to vote for Caruana because we bring an indictment against him. His vote is lost already so we are safe by going for him". But the others it might be a mistake. It is not an unreasonable thing to speculate on that. To speculate about that and then to go on to say that proves the hypocrisy, the bad faith, the ill-will of the other side. Well we have not said any of those things and I find it peculiar that we are being lambasted the way that we are given the moderation of our language in this case and we are supposed to be the aggressors who are putting the rule of law, parliamentary democracy, the freedom-loving people of Gibraltar, all at risk simply because we are..... [Interruption] Yes, Mr

Speaker, that is the essence of the kind of attack we have been subjected to today. It is the end of the Western system. This is what we are doing. We are putting in I think one particular view which appeared in print somewhere called "This is the last nail in the coffin of parliamentary...." I do not know who wrote that one. No doubt it emanated from Irish Town where most of these things seem to emanate from but that is the essence of the way it has been portrayed. Well, I can tell the Opposition Member that will not be accepted and believed and washed with anybody. Nobody really believes that this motion, which may be difficult for the Opposition Member to support for reasons which he could have validly made clear, is going to create a situation where as from tomorrow the rule of law disappears from Gibraltar. If that is what the Bar Council believes then, by Christ, we better have a look at regenerating the Bar Council, most of whom, as I said, appear to be recipients of community care anyway and bring in some younger blood who may have more open ideas as to the fact that..... [Interruption] I have little influence over the Bar Council. My only bone of contention with the Bar Council, Mr Speaker, was that shortly after we came into Government I was presented with a draft to change the Supreme Court Ordinance in order to provide for the constitution of the Bar Council and not unnaturally I said, "Well, look I know nothing about this and if I am going to take a piece of legislation to the House of Assembly I do not expect to have it presented in draft form simply because somebody somewhere has negotiated this draft with the then Attorney-General in 1988". I said the answer is, "No, we take to the House of Assembly the legislation that we are prepared to support politically" and if somebody wants us to introduce legislation to the House they do not come to me and say, "Look this is what you have got to vote for". I do not know if that is how it used to be done before 1988 but it is certainly not how it is done since 1988. Unless we can be given sound reasons for wanting to do it and then have to come here and defend it we do not do it. One of the peculiar things about the constitution which I found very odd was that the constitution provided for QCs, as I mentioned earlier on, to be automatically on the governing council by virtue of being QCs and it did not seem to me to be

the most democratic of constitutions. If that is the constitution they want to have good luck to them. The profession can constitute themselves in whatever way they like but if it is a constitution that we have to defend then presumably we have some say in it. That is the only time I have had anything whatsoever to do with the Bar Council. I have never had anything to do with them since and I do not know whether it is that they still feel that I put the rule of law in jeopardy by not doing what they wanted me to do in 1988 and they have never forgiven me since, but certainly they have never come back with any alternatives for us to consider.

Perhaps, Mr Speaker, I can also mention that the only things that may be of benefit to the Opposition Member in not voting for the amendment is that in fact one of the clauses of the amendment, in paragraph (9) expressing our assurance to our senior citizens that when the time comes the interests of present and future Gibraltarian pensioners will be fully protected. The hon Member has made a big song and dance about saying that there is no difference between that and what he had. There is a difference and it is a difference that the firm of lawyers in question would no doubt home in like a Polaris missile given the way they have dealt with everything else up till now and of course that is what was said in the letter from Community Care but he need not, if he has been following this with the interest which presumably he ought to be following it given his commitment to the cause, he would not have made such a big song and dance about the Community Care letter because all the letter did was to repeat verbatim what was in Government press release 64/95 of September 1995. In press release 64/95 of September 1995, it said, "The Government of Gibraltar will resist this action by Messrs Triay and Triay with all the means at its disposal" which the Opposition Member agrees that we should do. "Whatever the final outcome of the court case the Government of Gibraltar will ensure, when the time comes, that the interests...." without spelling out what that means ".....of present and future Gibraltarian pensioners are fully protected". That, which appeared in print in a press release and was publicised

everywhere in Gibraltar in September 1995 was the only thing that was repeated in the letter. That is the only thing, nothing more than that, we did not make any further promises or quantify or called them payments or said anything else, that is all we did. However, little as that is, in the court case which I am facing, to which the Opposition Member is a party, as one of the partners, that is one of the things that he has complained about. Amongst the complaints listed is listed interference with Messrs Triay and Triay and one of the things which Messrs Triay and Triay claim that impinges on the professional integrity is press release 64/95 and Messrs Triay and Triay say that one of the things that impinges on their professional integrity is that it is suggested that the Government of Gibraltar will need to protect present and future Gibraltarian pension rights against the actions of Messrs Triay and Triay whatever the final outcome of the court case. Obviously, it is fortunate that the Opposition Member has decided not to vote for the amendment because otherwise he would be voting for an amendment which in the judgement of Messrs Triay and Triay, with his support, impinges on their professional integrity. Therefore, one of the things that clearly comes along and having made up his mind what this is all about, he has not bothered to read any of it because if he read it he would realise that if he agrees that to say, "We will look after the interests of present and future Gibraltarian pensioners when the time comes, whatever the final outcome of the court case". If that is something he thinks we cannot do without impinging on the professional integrity of Messrs Triay and Triay why is it that Messrs Triay and Triay do not take him to court when he says it. I have no doubt that I can defend that this impinges on the professional integrity but if he agrees with me that it does not then by his logic that is interference with the independence of the judiciary because presumably it is the judge who will have to decide when the time comes whether by saying what I have just quoted which I am quoting from the affidavit of Messrs Triay and Triay, presented in the Supreme Court of Gibraltar, which is I understand a public document because it is criminal proceedings and this is what he read out in court and the press was there, then if the judge has not yet made up his mind whether I am

attacking the integrity of Messrs Triay and Triay he and the rest of the Bar Council agree with him, cannot say that they will protect present and future Gibraltar pensioners whatever the final outcome of the court case. Well, I am afraid in the amendment that he brought to the House, if I am not mistaken, the words "whatever the final outcome of the court case" also appear "regardless of the outcome of any case currently before the courts". Those words are not identical to mine, mine say "whatever the final outcome of the court case" he says, "regardless of the outcome of any case before our courts". Mine attacks Messrs Triay and Triay's integrity. His does not attack the integrity. I give way.

HON P R CARUANA:

Mr Speaker, I am only speculating you understand, but does he not think that the allegation that that phrase defending the interests of the pensioners is an interference with Messrs Triay and Triay, he is focusing on the wrong words. It is a suggestion that the pensioners need protecting from Messrs Triay and Triay not that they need protecting by their payments being guaranteed, does he not see that? Or does he think that Messrs Triay and Triay think that it is interference with them for them to agree that they will carry on paying the pensions, is that what he thinks? He cannot possibly think that.

HON CHIEF MINISTER:

What I think, Mr Speaker, is that he cannot say we can vote in this House saying we will guarantee whatever the final outcome of the court case and that is not casting any aspersions on Messrs Triay and Triay but if I say it then it is because if the words are virtually identical, one says regardless of the outcome we will assure that our pensioners are looked after when the time comes. Messrs Triay and Triay say the fact that the Government say they will need to protect whatever the outcome of the case, well of course. If we win the case we will not need to protect anybody, we lose the case, we will need to protect them. If he

protects them who is he protecting them against? The Junta de Andalucia, who is using Messrs Triay and Triay to attack the system we have got and if I protect them I am protecting them against the same but if I say I will protect them it must follow, according to his analysis and the analysis of other people in his camp, that the only reason why I am saying it is to cast aspersions of Messrs Triay and Triay. Well, no, I am saying it because it happens to be Messrs Triay and Triay who are conducting the case against us and they are conducting it in a way - and we have not finished dealing with that - that certainly in my view is something that we will need to pursue outside the House. They are conducting it in a way which to me seems clear, goes beyond purely legal arguments because I do not think that it is a legal argument, I have my doubts now after hearing the way the hon Member has been conducting the court case in this House. I suppose it is possible that when the hon Member interrogates a witness on the other side he says to the witness, "Your malicious statements in order to undermine the poor guys" and says them before he gets a chance to do it. It may be the way they behave all the time, I do not know. All I can say is that if Messrs Triay and Triay say that something that we are doing is malicious, then to me that is not a matter of law and I do not think any judge in any court of law is entitled to say, "I will rule whether what the Government are doing is malicious or not malicious". The judge will rule whether what we are doing is contrary to law or in keeping with law. If Mr Triay says that our handling of the case is malicious then we are doing something that is not permitted but if I say that his handling of the case is malicious then that is something that we have to be prevented from. I do not see why he can call us malicious and we cannot call him. It seems to me that we are as entitled to express value judgements about the conduct of the case on behalf of the Junta de Andalucia as the lawyer paid by the Junta de Andalucia is entitled to express value judgements about the way the Government of Gibraltar behave and it seems to me that it is in fact quite incredible that that should be questioned in Gibraltar because I have no doubt that on the other side it would be totally one-sided. The Junta de Andalucia presumably would be able to

say whether they like and they do with great regularity and nobody would try and muzzle them. On this side we are not trying to prevent them from saying what they like. We are simply asking that we should be able also to say what we think is relevant and what we think is pertinent and what we think puts the thing in balance and therefore if Messrs Triay and Triay say Gibraltar Community Care Limited is a sinister device to discriminate against Spanish nationals, I am entitled to say that is a lie. Community Care is not a sinister device and if Messrs Triay and Triay say Community Care started operating after the dissolution of the fund, I am entitled to say that is not true and I am entitled to say Mr Triay knows that it is not true because it is possible to establish that it is not true and because the Junta de Andalucia might not know it but presumably the reason why they have lawyers here is so that the lawyers establish the truth and they cannot expect to establish the truth by asking us because we are not there to help them in their case. They have got independent means of establishing it which are very easily established and they have chosen not to do it and this is why throughout we have been trying to demonstrate that the pursue of the case, without bringing Community Care is perfectly possible that Messrs Triay and Triay could do a 100 per cent perfect job in challenging the dissolution of the fund and in trying to get the fund restored - which as I say is a problem for Her Majesty's Government because we did what we were advised we should do and could do and we have no problem with them - without having to bring in anybody else or anything else or any other payments or any other activities of the Social Fund or Community Care. None of it has anything to do with it and we have told them nine times and they say, "We do not believe you". "Well, look if you do not believe me then do your own inquiry and then find out for yourself and then advise your clients but what we told you is the truth but you are not doing that and therefore I have to ask myself why? Why are you not doing it?" I cannot come up with an answer and since I cannot come up with an answer I say, "Well, right, here we have an opportunity to strengthen our argument" because presumably if he does not believe it from me he will believe it when he is told by the whole

House that one thing has nothing to do with the other and that really without wanting to interfere on the job that he feels he has to do for his paid masters - and good luck to him, he can do as good a job as he likes - he should not stray away from the subject matter and delve into other areas which are not going to be good for anybody. That is what we try to put across and we have tried to put it across here because we have difficulty in putting it across outside because when we have tried to do it there has been clearly a number of threats over two years to try and stop us and finally action initiated where at the stage that we are is that the courts have to decide whether that action can proceed or not proceed and we are arguing that it cannot. I commend the amendment to the House.

HON J E PILCHER:

Mr Speaker, I have not got a lot to say because the point has been made. But I would like to comment again on the smoke screen of the Leader of the Opposition when he took us back to everything that he said this morning. He did not take the trouble to read the motion as amended, in that he has been quite clearly saying that he cannot support paragraphs (3), (4), (5), (6), and (7) because that is referring to in the case of paragraph (3), noting the affidavit, declaring the statement, noting that Messrs Triay and Triay consider the statement published, noting the basis of Messrs Triay and Triay alleging that the publishing of such information by the Gibraltar Government and then noting that pursuant to this all are facts which the hon Member has accepted that the Chief Minister, in putting those facts in front of this House, is in fact clearly stating something which is fact. Then paragraph (7) notes that pursuant to that Messrs Triay and Triay have sought leave of the court to an action for the indictment of the Chief Minister, the Hon J J Bossano. Paragraph (8) which is the only thing that the Leader of the Opposition cannot get to is "totally rejects the above views expressed by Triay and Triay" because everything else, Mr Speaker, is noting, declaring, noting, noting and, finally, noting that a summons has been served so the only thing of the whole thing is "totally rejects the



above views expressed by Triay and Triay". It is of course because we want to abide by the law but the amendment, Mr Speaker, in paragraph (11), "Approves of the Government continuing to publish information relating to the case in a manner that complies with the laws of Gibraltar". So here we have a situation of an Opposition that over the last four years have been saying that we should have open Government, that we should have freedom of speech and that there should be more meetings of the House of Assembly that we are gagging everybody for fear of reprisals and after all that the first time, according to them, that the Government go public on what I consider is a major point of information to the public, first of all the Chief Minister is gagged by Messrs Triay and Triay, a firm of which the hon Member was a partner till up to a few weeks ago, failing that they then try to gag us through you this morning, Mr Speaker, so that we then are not allowed to say that in the House of Assembly. After that since they are not able to do that when we out manoeuvre, out negotiate, out discuss them and convince them, what do they do? What do this Opposition that is abiding by the rule of law, believes in discussions, open government, what do they do? When we get to the vote they all walk out, Mr Speaker, every single member of the Opposition walked out. Having not appeared to have gagged us what do they think they do? They do not listen to us that is the same thing but of course the information is information to the public and what happens after that? What happens after that is that the Government were in the House at the time but I can imagine the Leader of the Opposition who thought that by walking out that would bring the debate to an end, the debate continues and he must have been walking up and down in the ante chamber and then given the strong convictions of their actions he walks back in and sits there on his own, Mr Speaker. That epitomises what this Opposition is all about and what the hon Member should be voting for in this House is whether they vote for the Government and the House of Assembly or whether he votes for Messrs Triay and Triay. That is the machination that the hon Member does not know how to get out of and what has he done, Mr Speaker? *[Interruption]* End of debate, no. *[Interruption]* We will end the debate when we

feel we have to end it. I said it at the last House of Assembly. I have been in this House for 12 years. I have been sitting in the Chamber for the last 20 because I always followed politics. I have never seen, except on one occasion, the continuous bickering and laughing and switching off of microphones that goes out on the Opposition side of the House when they want the public either to hear bickering or to hear laughter. This is the party that genuinely says that they believe in democracy, that they believe in free speech, that they believe in everything. Now is the time to prove it. This motion is about democracy. This motion is about free speech. This motion is about defending this House against the machinations of the Bar Council or any other legal entity that thinks that they can quash information that is duly owed to the people of Gibraltar, Mr Speaker, and with that I commend the motion, although the Chief Minister commended it before to this House.

Question put on the Hon J E Pilcher's amendment. The House divided.

For the Ayes:	The Hon J L Baldachino
	The Hon J Bossano
	The Hon M A Feetham
	The Hon R Mor
	The Hon Miss M I Montegriffo
	The Hon J L Moss
	The Hon J C Perez
	The Hon J E Pilcher .

Abstained:	The Hon Miss K M Dawson
	The Hon B Traynor

Absent from the Chamber:	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon H Corby
	The Hon P Cumming
	The Hon M Ramagge
	The Hon F Vasquez

The amendment was carried.

HON CHIEF MINISTER:

Obviously the House is a much better place when they all walk out, it ought to be encouraged. Mr Speaker, the amendment that we have just passed incorporates virtually in its entirety the motion that originally sought to amend mine and which we defeated. I think it is important that we have done that because, as I said, there were certainly things there, such as condemning the Spanish Government for its hypocrisy, which we would not have wished to miss the opportunity of voting upon and therefore they introduced that amendment, we voted against it as a substitute and replacement of our motion not because we are against that sentiment and we have reinstated it and given them the opportunity of voting for their own proposals which they have declined to take. We therefore now have an amended motion which has got, as I said, the support of all the Government Members. It clearly does not have the support of the Opposition Members that are not here and of the one Opposition Member who should never have been here for a very long time now. The amendment does not alter of course the original motion, it adds to it and adding to that original motion it does nothing of course to address the arguments that were.....

MR SPEAKER:

Members cannot be approached from the Gallery.

HON CHIEF MINISTER:

.....it does nothing to address the nature of the arguments that we have paraded. As I have said, the Government are fully confident that the passing of this motion will have absolutely no effect whatsoever on the issues that are pending before the Supreme Court which, as I mentioned at the beginning, is the granting of leave on the question of whether the five press releases constitute a contempt of court - which we do not believe

they do and which we will argue when the time comes in court - and the question of security for costs where we have already won the case and Messrs Triay and Triay allegedly, on instructions from the Junta de Andalucia, denied by the Junta de Andalucia in Spain. It is something we will no doubt have to bring to the notice of the courts how it is that the principal denies publicly in Spain what their lawyers claim here. If they were saying that the Junta de Andalucia is not prepared to put up security for costs we could understand it because it may be that that would be a situation where one good thing would have come out of all this presumably which would have been the first time that an institution of the Spanish State has recognised the courts of Gibraltar because one thing that we cannot forget, which is one of the pernicious things about the conduct of this case, is that, as I mentioned in my original opening remarks, this case has been brought in the name of a Spanish pensioner and it was only as a result of constant probing by the Government that it was revealed that the Spanish pensioner was not paying for the case, that it was the Spanish Government that were paying for the case and that therefore when the lawyers tell us "We are acting on instructions" we are entitled to say "Whose instructions are you acting on?" It certainly cannot have been the instructions of the named pensioner, albeit in a representative capacity because the named pensioner has had to be removed because what he complained of, which was not getting paid in the Key and Anchor, was not true because he was getting paid and the lawyer who was defending him for not getting paid did not know that he was getting paid until after he had collected three payments of 13 weeks each. These things, none of which had yet been considered by the court are all things that will need to be brought up when the substantive hearing gets under way. In the meantime it may well be that although we do not expect that this motion will influence the judge and now the Opposition has made clear that that is not what they considered to be what makes the case sub judice or capable of being in contempt, it is not that the judge will be influenced but that the lawyers might be frightened to carry on because of a nasty experience they had many years ago. Well, we would not expect that the lawyers

should be frightened but we hope that it may well be that if they have listened into what is being said they will go back and do their homework and correct the submissions that they have put which are false and having been told repeatedly that they are false and now having had a motion in this House declaring them to be false perhaps they will now go back and check it and having found that they are false presumably they will go back to the court and withdraw those submissions knowing them to be false. I cannot understand how they did not know them to be false in the first instance but I thought, generous enough in my opening remarks, to say, "Perhaps the most generous interpretation that one can put is that they have put these arguments without realising how wrong they have got the whole thing" and if that is indeed the case then they can rectify not because we are intimidating them but because we are being given an opportunity to put publicly an argument which they have sought to deny us. They have sought to deny us that opportunity outside the House and they sought to deny us that opportunity inside the House presumably on the basis that if we say as we say, "The statement made by Messrs Triay and Triay that the arrangements that exist and making substitute payments following the dissolution of the fund is false", that we are doing that to put people against them. We are not doing it to put people against them. We are doing it because that is the truth. That is why we are saying it. Now, if we are told, "You must not say it because people will be worked up against the firm of Triay and Triay" well, look, what are we supposed to do? If Messrs Triay and Triay make false statements what do we do about it? If we tell them that they are wrong and they say, "It is not enough that you tell me. Give me a detailed account of the payments made by Gibraltar Community Care Limited" and we say, "No, we cannot give you a detailed account of the payments of Gibraltar Community Care Limited because if we gave you a detailed account then you would be right and we would be wrong. If you are saying Community Care is our agent and we are saying it is not our agent, and you say, "To prove that it is not your agent tell me every payment they make". Well, if I told you every payment they make you would then use that in evidence against me as

proof that they are my agents" and do they think we are stupid? So we have said to them, "No, no, we do not need to tell you anything. We are telling you that this is the case and we are telling you that this is possible to establish and it is up to you to establish it" and we maintain that position and we will maintain it in court and we will win in court, of that I have no doubt because we are able to document and prove every single thing I have said in this House today and therefore we move forward with this motion in the confidence that it does not represent any threat whatsoever to the civil liberties unless the civil liberties that exist in Gibraltar are one where the legal profession are free to say what they like about anybody and are immune and none of us who are normal mortals can do the same to them. If that is the case then it is a very one-sided set of civil liberties, that is all I can say, Mr Speaker.

MR SPEAKER:

Before the Chief Minister finishes his contribution I would like him to read the motion, as amended, for the record.

HON CHIEF MINISTER:

Mr Speaker, the motion, as amended, reads:

"This House :

- (1) Notes that Gibraltar Community Care Limited is a private registered charity established in 1989 which provides assistance to senior citizens in Gibraltar and has a legal status and existence separate and distinct from Government;
- (2) Notes that the Government's Social Assistance Fund whose objects include providing support to registered charities has provided grants to Gibraltar Community Care Trust and supports the continued provision of the present level of grants;

- (3) Notes that by affidavits submitted to the Supreme Court, Messrs Triay and Triay have alleged that Gibraltar Community Care are distributing public funds in order to discriminate against Spanish pensioners following the dissolution of the Social Insurance Fund on the 31 December 1993;
- (4) Declares that the statement made by Triay and Triay referred to above is false in that the payments made by Gibraltar Community Care Limited are not public monies, that this entity is not the agent of the Government but a private registered charity and that it has not been making substitute payments following the dissolution of the Social Insurance Fund for the purpose of discriminating against Spanish pensioners;
- (5) Notes that Triay and Triay consider the statements published by the Gibraltar Government giving details relating to the Spanish court case to be detrimental to the prospects of obtaining a judgement in favour of the Spanish litigant;
- (6) Notes that on this basis Triay and Triay allege that by publishing such information the Gibraltar Government has acted in contempt of Court;
- (7) Notes that pursuant to this view, Triay and Triay has sought leave of the Court to an action for the indictment of the Chief Minister the Honourable J J Bossano;
- (8) Totally rejects the above views expressed by Triay and Triay;
- (9) Expresses its assurance to our senior citizens that, when the time comes, the interests of present and future Gibraltarian pensioners will be fully protected;

- (10) Supports the Government's attempts to protect Gibraltar's interests by its defence of the case brought by the Spanish pensioners;
- (11) Approves of the Government continuing to publish information relating to the case in a manner that complies with the laws of Gibraltar;
- (12) Condemns the Spanish Government for the hypocrisy demonstrated in pursuing the pensions claim at all levels while at the same time seeking to deny and obstruct Gibraltar's status and rights in the European Union."

I commend the amended motion.

Question put. The House voted -

For the Ayes:	The Hon J L Baldachino The Hon J Bossano The Hon M A Feetham The Hon R Mor The Hon Miss M I Montegriffo The Hon J L Moss The Hon J C Perez The Hon J E Pilcher
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Abstained:	The Hon Miss K M Dawson The Hon B Traynor
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Absent from the Chamber:	The Hon Lt-Col E M Britto The Hon P R Caruana The Hon H Corby The Hon P Cumming The Hon M Ramagge The Hon F Vasquez
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The motion, as amended, was carried.

## BILLS

### FIRST AND SECOND READINGS

#### THE MONEYLENDING (AMENDMENT) ORDINANCE 1995

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have the honour to move that the Bill be now read a second time. I think the explanatory memorandum is fairly informative and really says it all. The House might wish to know that the introduction of the Bill is as a result of complaints received by Government of oppressive behaviour on the part of moneylenders in Gibraltar. I do not want to go into detail of the cases. The rate which has been 48 per cent has been fixed at 25 per cent because this is, broadly speaking, the rate which is comparable to that charged by credit card companies. The provisions of the Moneylending Ordinance do not in fact apply to banks and in fact most credit cards are now issued by banks. Since moneylending can be a lucrative activity it was felt that the fees charged under the Ordinance to those who obtain a licence and a certificate were rather low and the opportunity has been taken to increase these to a rate more in keeping with modern times. That is all I think I need to say, Mr Speaker. I commend the Bill to the House.

MR SPEAKER:

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

HON P R CARUANA:

Mr Speaker, I think it is absolutely dreadful that people should be charging others 48 per cent per annum interest, in most Arab countries they would have both hands chopped off for that and if that is the only purpose of this Bill then obviously we support it. I am not sure that 25 per cent is any more reasonable but I would say that 25 per cent per annum rate of interest is still pretty excessive but still if the sole object of this Bill, both in intention and in effect, is to reduce the rate of interest from 48 per cent to 25 per cent then I feel it is a move in the right direction.

HON CHIEF MINISTER:

Mr Speaker, all I can tell the Opposition Member is that until very recently 25 per cent was what was being charged on credit cards. That is how reasonable it is and that in fact... *[Interruption]* ....it is still excessive of course, yes because the money they pay on deposit keeps on coming down but the money they charge on the lending does not seem to but nevertheless it is not out of the realms of what banks charge and it is the kind of rate which normally would not be charged on an agreed overdraft, may well get charged on unexpected overdrafts where banks charge penal rates. It is something that has been there unnoticed for a very, very long time irrespective of what the market rate is and because we have had a number of recent instances brought to our notice where people borrowing small sums never seemed to be able to repay the principal because they could never get past paying the interest, we thought we had to act quickly on it. Let me say that the one thing that we have done is that as well as establishing the rate at 25 per cent we have left it open for the rate to be changed without having to introduce primary legislation so that we can take account of the market if rates keep on coming down as many people predict.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The only thing I need say, Mr Speaker, is to rectify the omission in my introductory remarks and to point out what I should have said in my little speech that the opportunity has been taken to change the penalties for offences from being references to a fixed monetary amount to being references to a level on the standard scale. I apologise for omitting that in my earlier remarks.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

#### THE CRIMINAL OFFENCES (AMENDMENT) ORDINANCE 1995

HON ATTORNEY-GENERAL:

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

Question put. Agreed to.

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that the Bill be now read a second time. This Bill modifies section 279 of the Criminal Offences Ordinance by making a reference to the Nature Protection Ordinance of 1991 and any subsidiary legislation made thereunder. It is necessary to ensure that there is not a conflict between the provisions of section 279 from the provisions of subsidiary legislation made under the Nature

Protection Ordinance 1991 which sets up and regulates the Marine Nature Reserve. Section 279 of the Ordinance provides that a person who firstly carries or uses an aqualung or any other respiratory apparatus for the purpose of underwater fishing in the seashore, in the port, or in the harbour and seas adjacent thereto, which is subject to the Dominion of Her Majesty or, secondly, carries or uses any weapon constructed or adapted for the purpose of underwater fishing within an area designated by order of the Governor in the Gazette, and marked by notice boards at or near such area as an area within which such carrying or using is prohibited is guilty of an offence. The regulations made under the Nature Protection Ordinance 1991, for setting up the Marine Nature Reserve deals in much more detail with diving activities and with underwater fishing. The provisions of section 279 therefore remains with the general prohibition but it is subject to the licensing regime created by the Nature Protection Ordinance 1991, that is to say, a person will not be in breach of section 279 if he is, for example, carrying out diving activities under the terms permitted by the regulations setting up the Marine Nature Reserve. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON P R CARUANA:

Mr Speaker, we support the principles of the Bill in terms of what it seeks to achieve. I would make only one caveat which will not affect our support of the Bill but as a matter of legislating technique we dislike making one primary legislation subject to what might be done in subsidiary legislation under another. In effect the Criminal Offences Ordinance can be amended in its effect by regulations made under the Nature Protection Ordinance. As a legislative technique we are not greatly enamoured of it but in this application of it, it is in relation to a



subject which I think is right and we do not think that it is capable of harbouring the sort of dangers that could flow from a wider use of that technique in legislation and therefore we will support it notwithstanding.

HON ATTORNEY-GENERAL:

Mr Speaker, I have nothing to add. I have noticed the hon Member's remarks.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

HON P R CARUANA:

Yes, Mr Speaker, I would hate if all of these Bills did not get into the statute book before the House was dissolved. So to ensure that happens we are co-operating with this device.

#### THE HOUSE OF ASSEMBLY (AMENDMENT) ORDINANCE 1995

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the House of Assembly Ordinance be read a first time.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that the Bill be now read a second time. This Bill does exactly what the explanatory memorandum says it does. It puts in the list of public offices to which section 10 of the House of Assembly Ordinance applies for teaching grades. Teaching grades are now grades that can enjoy the opportunity to stand for election without having to resign from the civil service on the undertaking that should they be elected they will resign. If they do not resign they cannot take up their seat in the House. Teaching grades are now in the same position as the majority of civil servants in relation to standing for the House of Assembly. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

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

HON P R CARUANA:

Mr Speaker, this Bill gives us the opportunity to state our view generally on this matter which is that we believe that the law of Gibraltar is far too restrictive as to who can stand for election. We therefore have no objection in expanding it. We believe that a system that requires people to resign from their post if elected is too harsh, if it does not also allow some sort of way back in after being de-elected at some future stage. It is all very well to say to people, "Look, you can stand for election so long as you resign your job if you are elected" but the fact of the matter is that the salary of a member of the Opposition is £11,800 or thereabouts and therefore the financial sacrifice is real. We will therefore be supporting politically provisions which are much more liberal in freeing people genuinely to stand for election rather than just tackling it in this way. Of course we will support this, we see no reason at all why teachers should not benefit like everybody else from the rules such as they are but it is very

curious that this should be rushed through just before an election and of course I can only assume that there is a member of the teaching profession wanting to stand for a party and of course several names are being mooted. Initially I thought this might be the big gun that the Chief Minister has been threatening to wield, Maurice Xiberras or somebody like that but I took the precaution of establishing that Maurice Xiberras' name is not on the Electoral Register so it is not a question of giving him a job as a teacher and then putting him up as a candidate, in case they get into a position which they must be reckoning on. But there are other teachers being mooted. I can only suppose that this Bill is brought at this stage because a teacher who is considering standing has complained and Ministers consider that he ought to be free to stand notwithstanding that he is a teacher and of course we support that. The longer the list is the better and we do not think that teachers are in a profession that requires them to be deprived of the same freedom that extends to other non-sensitive employees of the public service. This decision should certainly help other parties find the necessary number of candidates with which to contest the election and the move is to be approved of for that reason if for no other.

HON CHIEF MINISTER:

Mr Speaker, the move to widen the franchise has always been led by the GSLP in this House and every change that has taken place has taken place as a result of arguing by the GSLP from the Opposition that it needed opening. In fact, way back in 1972 when I stood for the House 70 per cent of Gibraltarians could not stand. That was the degree of democracy we used to enjoy here which apparently nobody in the Bar Council at the time thought needed questioning, that only 30 per cent of the citizens of Gibraltar were able to stand for the legislature and it was thought to be very dangerous to the stability of our society and our democracy that people who were in the public service should be allowed to have political opinions and stand for election and if not elected go back into the public service, to the degree that when I stood for election in 1972, having given up my job in Birmingham

University and came back here, and having been interviewed for a job as a night telephonist in the Health Centre, there was a ruling made by the then Attorney-General that because I was a member of the House earning £500 a year I was in conflict as a public servant with answering the telephone at night. I assured those concerned that if somebody ran up dying in the middle of the night I would not ask him who he was voting for before I sent the ambulance, but they did not believe me and I was forced to give up my job and finished up working in the construction industry, just to give the hon member some background as to where we come from. Eventually, we persuaded the previous administration to widen the franchise considerably and of course it became less of a problem with the decline of the MOD since at the time that I am talking about with the MOD and the Gibraltar Government virtually as I said seven out of every 10 Gibraltarians was debarred. In 1988, when we came in, we reviewed the position and added to this list and in fact in the General Orders we introduced the provision allowing teachers to stand on the same terms as other civil servants, and it has been recently brought to our notice that there is a conflict between the provisions in General Orders which makes it possible for teachers to stand and the Ordinance which should have been amended at the time and was not amended at the time. So that in fact although under the terms of employment they can stand and have been able to stand for a very long time they would be in breach of the law if they did and it is a nonsense to say, as an employer, "I allow you to do it but it is illegal" so what we are doing is correcting that anomaly. Whether the representations that have been made to us pointing this out is indicative of somebody wanting to stand or not I am not privy to such knowledge.

HON ATTORNEY-GENERAL:

I have nothing further to add, Mr Speaker, other than I have noted the comments made.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

### THE INCOME TAX (AMENDMENT) ORDINANCE 1995

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have the honour to move that the Bill be now read a second time. This Bill to amend the Income Tax Ordinance has been drafted to ensure that there cannot inadvertently be indictable offences under the Income Tax Ordinance which would force Gibraltar to give assistance to other jurisdictions pursuing unpaid tax. The background to this is quite fortunately, I have the edition of Hansard in front of me, the discussions on the Criminal Justice Ordinance taken earlier in this year which the Members of this House will no doubt remember and the Chief Minister explained at the time that we would be reviewing some elements in our Income Tax Ordinance and bringing legislation to the House to do it because we do not want to find that because what is an indictable offence in the law of Gibraltar may be a summary offence in the laws of the United Kingdom, we may finish up with also covering things that not even they cover and that is a condition for our introducing the Criminal Justice Ordinance which, as the Chief Minister pointed out, had been cleared with London at the time. I note that the Leader of the

Opposition himself in commenting on this made the point that the laws of the United Kingdom and in most of the civilised world had for centuries treated breaches of tax laws very differently from the way they had treated breaches of other laws even when it comes to such things as extradition and things of that kind. The Leader of the Opposition pointed out in effect that this sort of legislation but for the amendment to the Income Tax Ordinance which we are introducing now, could have damaging consequences for the finance centre insofar as it might bring fiscal offences within the ambit of the all crimes, anti-money laundering net and that in effect is the purpose of the Bill before the House today, Mr Speaker, as I have no doubt hon Members of the Opposition will have already realised themselves. The essence of it is that unless an offence is indictable it cannot be pursued across national boundaries. I commend the Bill to the House.

MR SPEAKER:

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

HON P R CARUANA:

Yes, Mr Speaker, I am not sure whether the Financial and Development Secretary was trying to ensure that I could not possibly argue against the Bill by reminding me of all the things that he, the Chief Minister and I had said at the time. We recognise this if that was what he was doing there was no need for him to have concerned himself. We recognise this Bill was being precisely for the purpose that he has described. It really is unfortunate that this point has to be saved in this way because of course it is reducing the criminal seriousness of what still is a serious criminal offence in Gibraltar. The only consolation is that it is not a law that to my knowledge has ever been used. In other words, I do not think that anyone has ever been prosecuted in Gibraltar for false tax returns or reduced tax returns or no tax returns or things like that. *[Interruption]* Not as an indictable

offence exactly. Whilst we are giving up something we are gaining something which I think is also very important to Gibraltar, this protection from tax enquiries and at the end of the day what we are giving up is not a legal device that had ever been used as a tax collection or tax enforcement means anyway. So really it is regrettable that we should have to resort to this sort of thing but in the events as they are I think it is correct that we should do so. We will support the Bill.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have nothing really to add, Mr Speaker, except to say that I am delighted to find on such an occasion as this there are some measures which unites both sides of the House.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

### COMMITTEE STAGE

MR SPEAKER:

Before we start on this, I do not believe that there are any amendments at the Committee Stage. So if there are no amendments then I think it would be a waste of time to read clause by clause and therefore if the Clerk would call all the clauses.

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 -

- (1) The Moneylending (Amendment) Bill 1995.
- (2) The Criminal Offences (Amendment) Bill 1995.
- (3) The House of Assembly (Amendment) Bill 1995.
- (4) The Income Tax (Amendment) Bill 1995.

#### THE MONEYLENDING (AMENDMENT) BILL 1995

Clauses 1 to 8 were agreed to and stood part of the Bill.

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

#### THE CRIMINAL OFFENCES (AMENDMENT) BILL 1995

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 HOUSE OF ASSEMBLY (AMENDMENT) BILL 1995

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 INCOME TAX (AMENDMENT) BILL 1995

Clauses 1 to 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 Moneylending (Amendment) Bill 1995; the Criminal Offences (Amendment) Bill 1995; the House of Assembly (Amendment) Bill 1995; and the Income tax (Amendment) Bill 1995, have been considered in Committee and agreed to without amendments and I now move that they be read a third time and passed.

Question put. Agreed to.

### PRIVATE MEMBERS' MOTIONS

HON P CUMMING:

Mr Speaker, I wish to withdraw the first motion referring to the Freedom of the City and to proceed with the second motion.

HON CHIEF MINISTER:

Does he not need leave of the House to withdraw the motion?

MR SPEAKER:

I will check on the Standing Orders. I know that if it has not been proposed he can withdraw it but I would like to check the Standing Orders. It is a technicality.

HON P R CARUANA:

Mr Speaker, standing order 22 "Once a motion has been proposed by a Member it may be withdrawn only with the leave of the Assembly but if still withdrawn may be made again at some other meeting of the House on due notice".

MR SPEAKER:

He has only been given right of note to propose but has not been proposed.

HON P CUMMING:

I wish to propose, Mr Speaker, the second motion which reads:

"That this House takes note of the mutual hostility that exists between Spain and Gibraltar, and believes that a peace process is needed to bring about a settlement".

Mr Speaker, I have for a long time been saying that the style of the GSLP produces polarisation in our problems with Spain because of the confrontational, provocative and defiant attitudes. It seems that in the near future we may be exposed to a further twist in the screw of increasing polarisation as across the way they consider imposing a toll for entering into Spain and proposed reactions suggested locally whereby there will be calls for discrimination against Spanish workers that would aggravate on both sides the question of polarisation of the dispute between Gibraltar and Spain. So why is it then, Mr Speaker, that I wish to propose a peace process and a settlement? Why have I been willing to stake my political future in an attempt to put a settlement with Spain if not on Gibraltar's political agenda at least to plant the seeds of the idea in the minds of the people. The main reason is the inevitability of the economic decline. Already our unemployed who do not have any dole are the worse off unemployed in the European Community and we want for our children and we want prospect of decent living standards and as things are within the next few years it will be very hard to reverse the economic decline. In this House, at the beginning of this term of office, on the first budget day the Chief Minister said that unless Armageddon came he would increase our economy by 50 per cent and this would only leave us in the same place with 14,000 jobs in the economy. Of course, now we have gone down

to less than 13,000. Armageddon has not arrived, and we only have 6.5 per cent economic growth and zero growth achieved last year shows that if we made a graph from next year there would be the beginning of a sharp recession. The next major factor other than the economy which makes me realise that we must begin to think on the lines of putting a settlement with Spain on the agenda is the British attitude which is one of marked apathy when dealing with Gibraltar's problems. Gibraltar has been relegated to the back burner and it is a low priority in their foreign affairs. A recent example of this is quite clearly the acceptance by Britain of the appointment of Senor Solana to NATO where we are told reassurances were sought and given that he would not use his new position against Gibraltar. But, of course, what credence do those assurances carry when only recently we saw him standing beside Douglas Hurd whilst Douglas Hurd discussed the tripartite mechanism that was going to be introduced and Senor Solana who speaks English perfectly did not interrupt to say, "No, the talks are not trilateral, they are bilateral" and the phrase 'qui facit vide consentit', the one who keeps quiet is seen to agree, we saw him agreeing with the states of those talks and afterwards it came to nothing? Britain did not consider that a serious enough matter for a veto in the question of Senor Solana's appointment to NATO which to me, who favours the peace process, then came as a shock and filled me with dismay. This is a recent example, Senor Solana, but an old example of the apathy with which Britain considers this problem is the acceptance of Spain in the Common Market without requiring from Spain any concessions on Gibraltar. For example, they could have required the recognition of the self-government of Gibraltar, and of course in considering that the problems of Gibraltar are dealt with apathetically by Britain we have the amazing declarations made recently by Mr Garel Jones when Ministers come from the UK and they say they are in little bits and pieces, one sometimes wonders what they really think inside and are restrained from saying by the responsibilities of their office. Of course with Mr Garel Jones the top is blown off now since he has no further political ambition and he has said what is in his mind about the question of Gibraltar and of course

he is in a position to know all the recent ins and outs of the question of how Britain sees the future of Gibraltar. In his article in El Mundo on the 10th November last Mr Garel Jones refers to Senor Felipe Gonzalez who says that the Rock of Gibraltar was a stone in the Spanish shoe and confesses that to the English it is a very tight-fitting shoe so in other words major problems for both is how they see it. The amazing statement that Gibraltar is being reduced to undignified squalor between the two bullies, between them having a 100 million population, bullying the 30,000 Gibraltarians, he says is a sorry sight and he calls upon the three sides in the dispute to confront reality. The Spanish reality of course is that we must have a voice in debating our future and of course he is right and we welcome that statement by him. For the British, the reality is that they are stuck with the preamble to the Constitution, that they cannot betray us, that we are the last symbol of empire and they want to relinquish that phase of their history with dignity. But for the Gibraltarians the reality that Mr Garel Jones calls on us to face is the fact that we need a new constitution and that a new constitution must carry the approval of Spain. There have been other clues that this is the thinking of the Foreign Office. I wrote recently to Mr David Davis on the question of a settlement with Spain via an Andorra situation and he answered me not in the terms of a settlement but in terms of constitutional reform. In other words, the same thing. They are looking for a settlement via constitutional reform that will carry the approval of both Britain and Spain and of course in the last talks to be held under the Brussels process, I believe if my memory does not fail me, that Mr Douglas Hurd invited the Chief Minister to join him in discussions about a new constitution for Gibraltar with Mr Solana. The people hope that British aid will be forthcoming to prevent any marked economic decline in Gibraltar. That was my view when I began this term of office but I must admit that my opinion has evolved and it is my belief now brought about by studying all ministerial statements from UK and with slight contacts with the Foreign Office as junior members have come to Gibraltar that they will not support any local political programme. They will not support financially any local political programme that goes against their own policy



which is a policy of seeking a negotiated settlement to the problem of Gibraltar's future. The Chief Minister in the past has referred to the preamble of the Constitution as a minimal position on the part of Britain and of course I think most of us would agree that it is a minimal position from our point of view but my understanding of the matter is that from the British point of view it is not the minimal position it is the maximum position. That is what they are going to do and no more. They have relegated us to the back burner and are going to allow us to stew in our own juice. The result will be within the next few years mass immigration, decline in living standards, the standards of our unemployed as I say already the lowest in the Common Market. I scrutinise the press and public statements, letters to the press and so on for the beginnings of a recognition amongst our people that at some future time if we want peace and prosperity we can only have it in a settlement. That does not say what the terms of the settlement will be but a settlement with Spain nonetheless. People will face that reality and political leaders will not hide the harsh realities from the people and I was surprised, gratified really, to find just the beginnings of a flicker of that recognition in the Chief Minister's very recent speech at Chatham House to the Royal Institute of International Affairs on the 13th December, in the final paragraphs of which he makes mention of this problem. He says, "My appeal to the UK Government is to honour their obligations to my people by giving us access to the UK market and to the market of other member States so that we can survive economically. Unless this is done the commitment to honour our wishes in the Constitution is a hollow one. If we have to defend our birthright by sacrificing our living standards, not because we cannot compete to earn a living but because we are not permitted in order to appease Spain". So here we see in this very recent statement the flicker of a facing of the reality that unless Britain shakes off its apathy on our behalf, which it shows no sign of doing, that our economic survival is in doubt and in those circumstances the preamble to the Constitution becomes a relatively hollow one. He goes on to say, "If we have to defend our birthright by sacrificing our living standards....." This is now a possibility that he is beginning to face, that we will have to

sacrifice our living standards in order to defend our birthright. In the press recently, two months ago, the National Party referred to this matter saying that most Gibraltarians will prefer to accept falling standards of living and emigration as an acceptable price to pay in order to prevent a surrender to incorporation into the Spanish state and I must say that I agree with that of course. I agree that that is a price, if we have to pay it we will pay it rather than being incorporated into the Spanish state. Of course it has never been my political position that I propose or would have any track with incorporation into the Spanish state. My position is entirely different. It is looking for a fair compromise in which there is no surrender on either side. Whilst I have, Mr Speaker, the Hon Mr Bossano's speech in my hand of Chatham House there are another few matters that I would like to comment on. He refers to the British policy of the preamble to the Constitution on the one hand and telling us that they will never sell us to Spain as it were on the one hand and telling the Spanish Government that they should woo the Gibraltarians and that that has been their policy for 30 years and it has failed. I remember of course Douglas Home I believe was the first to make that suggestion about the wooing and I think its result was to us Gibraltarians to give us a rather smugly feeling that we now had to be wooed and we could reject them and send them off and they would come back to woo us and it would be a relatively nice position to be wooed. Now, they of course are well-known for their national pride and really it is not surprising knowing the Spanish character that they are not prepared to take that slightly humiliating position of wanting to woo the people of Gibraltar, but that of course wooing can work both ways, the ideal situation I believe, Mr Speaker, is that they should woo us and we should woo them and that is the way to bring about a peace process and a settlement favourable to all sides. The Hon Mr Bossano made reference in this conference to Sir Joshua Hassan's speech in 1983 in that Royal Institute and he says, I am quoting Sir Joshua, "The majority of Gibraltarians want to live under British sovereignty but given normal and friendly relations, mutual respect, co-operation in tourism, trade and outbound contacts and common status as nationals in the European Community,

the people of Gibraltar may one day take a different view of this relationship with the Spanish state". He added that this is not a promise, not even an offer. Of course we cannot guarantee what our grandchildren or great-grandchildren will think in the future but nonetheless it is obvious that if confidence-building measures were taken rather than counter-productive aggravation to Gibraltarians there would be a gradual changing of views. What the results of that could be we cannot tell of course. Neither must one assume from what Sir Joshua Hassan has said that he is thinking that if they woo us long enough we might be willing to be Spanish. All he said was a different view of the relationship with Spain. The relationship does not need to be one of integration. It could be of a link that falls far below integration with Spain. Now, the Hon Mr Bossano goes on and he says, "I will go further. If that gives Spain hope then Gibraltar will never be Spanish. I will campaign as long as I live against my country's incorporation into the Spanish state and others will follow me". I agree with the content but not with the inflammatory way that this is put. I also will campaign against incorporation into the Spanish state and I have said my first reason for wanting a settlement is the economic one and incorporation into the Spanish state that will not get us economically anywhere at all. It will make us like La Linea which is the poorest city of the poorest province of the poorest autonomic region and we will be reduced to those circumstances unless we can have fiscal independence there would be no economic advantage in a settlement which required incorporation to Spain. Therefore, I have absolutely no desire, on the contrary I also will campaign against incorporation into Spain.

If I can just read the paragraph that I read before, "My appeal to the UK Government is to honour their obligations to my people....." I would just like to make a little comment on this phrase that the Chief Minister is using quite often nowadays, talking about my people and it seems to me that the use of this phrase to arise from the same attitude which allowed the GSLP in its GBC political broadcast to use our national anthem as those were the legitimate use of it for promoting a political party to say my people for a Chief Minister to say my people is equally

inappropriate. The Queen can say my people. Perhaps the Governor who represents the Queen could say my people. Perhaps even His Worship the Mayor could say my people since his is a symbolic representative non-political role that he plays but a Chief Minister who plays a role of political leadership in a community should not. It is inappropriate for him to say my people because large sections of the community do not consider themselves to be his people. For example, the present opinion poll shows that 70 per cent of Gibraltar do not consider themselves to be his people and therefore there is a fraternalistic inappropriateness here about referring to my people. Certainly I would prefer not to be called his person. The plea to the United Kingdom to pull its finger out on the question of the Common Market, I do not know whether this plea will be effective or not but of course I hope that it would be but I do not see any signs and I do not have any great expectations that Britain will suddenly become hammer and tongs to give us the level playing field that we have been wanting. But nonetheless in this paragraph where he shows the awareness that unless something happens soon our living standards will be sacrificed compares rather sharply with the attitude that he took in this House last July when the GSD presented a motion saying, "The House declares profound anxiety at the deepening economic and employment crisis" which of course they shrugged off with one of those hijacking motions which changes everything after "This House" and says that reducing it to such an extent to say, well yes they take note that some people are worried that the economy could slow down but there is no sign whatever that unemployment is down, that there are more businesses. In other words, generally putting a very good gloss on how things were going which compares very drastically with this latest statement to the international affairs body. We have to defend our birthright. Now of course we say our birthright. It is becoming popular to say our birthright but what is our birthright? This is really a very ambiguous emotional statement. I have frequently been branded as seller of our birthright and what does it mean? What does it mean? It seems to imply Gibraltarian sovereignty over Gibraltar and there is nothing that I would more greatly want than that but

regrettably we have not been born with sovereignty. It is something we still have to fight for. We have some sovereignty represented by this House. This House exercises some sovereignty but it is a minor shareholding in the sovereignty of Gibraltar so this is something still that we have to fight for. "Let us get on with the job of building a sustainable economy for Gibraltar by exercising our rights in the Union and forget the Brussels process". It goes on to complain "That our rights are being ridden over roughshod by the Spaniards and we hope that Britain will redress that but up to now they have not shown great desire to do this". The question of the rights in the Union makes me wonder how far Spain can go and get away with abrogating our rights in the Union.

There was the case in the European Courts where there was conflict between Greece and Macedonia which is one of the newly independent countries of Yugoslavia which borders on Greece and there was a dispute. There is ongoing dispute about the use of the main Macedonia which Greece claims to be a Greek prerogative and which they believe to be their prerogative. It does not seem like much of a hassle to us but to them apparently it is a very important matter. In spite of Common Market agreements with Macedonia that they had Common Market rights of freedom of movement into Greece the conflict came to a stage when there were problems at the border, apparently something similar to the ones that we have and the Macedonian Government sought an injunction from the European Court. One would have thought a most excellent case, it was obviously a case where the Greek Government were overriding rights that they had because of their treaty with Europe and yet the judge refused to grant an injunction on the grounds that the question of Macedonia was a matter of huge national importance to Greece. They had to be allowed a court case of course but the court case may go on for years and years, the injunction was denied. In the same way of course it would be illegal for Spain to close the frontier with Gibraltar. That is no guarantee that they will not do it and that they would not get away with it for some time if they decided to go down that road

and I hope that they do not. The Hon Mr Bossano goes on to say in this talk, "Forget the Brussels process" in the hope that developments in the Union and in Spanish society will produce new opportunities for putting the Spanish/Gibraltar relationship on the basis that should have happened 10 years ago and did not of mutual beneficial co-operation and peaceful coexistence. In other words this is the way that the GSLP and many in Gibraltar think that a settlement will have to come. That is to say, by Spain backing off, forgetting its claim altogether and beginning to treat us with the respect that we deserve as neighbours and fellow partners in the Common Market. He says, "in the hope that" and it seems to me that if we are going to be realistic at all, this is a vain hope to put this as the main policy of our future to put it in the hope that Spain will develop and change and so on. We cannot wait long enough. Our economy will not stand the pressures. I had great difficulty of course with explaining, trying people to see the difference between compromise and surrender which are very different. I will not surrender to incorporation into the Spanish state but I do propose and try to encourage the view that a compromise settlement is in our interests. I was interested to read in the recent Panorama poll that people had been asked whether they thought Gibraltar should have a Spanish head of state and one person is claimed to have said yes. I would like to meet that person because it certainly was not me. If I was asked in the street "Do you think there should be....?" I would say, "Of course, jolly well not" and I hope that the vast majority of people see it like that, out of its context of course not. We have to look at the question in the context of a gradual evolution towards a solution that may take 30 or 50 years of confidence-building measures of co-operation, of building up of mutual trust, of every safeguard built into the process that is possible and in those circumstances as the one concession with sovereignty implications the accepting of a co-head of state, not the King. I have always felt that the King is far too close to the Spanish Government. The King of course would probably be dead by that time but rather somebody out of the line of succession and certainly this head of state would exercise an honorary role because the powers vested in Spain through

this arrangement would have to be very minimal. I suggest of course the constitutional court, a role in the constitutional court as being the only role that Spain would play in our affairs under this kind of arrangement and of course the most important thing of all about the head of state is that the only way that a Spaniard could ever become co-head of state in Gibraltar is by a free act of self-determination on the part of the people of Gibraltar through a referendum and through a map of our own parliament in which that Spaniard is given the title of head of state. There is no other way that it would be possible and there is a lot of mileage and a lot of work to be done to bring on both sides of the border to bring that day forward. I mentioned that I had written to Mr David Davis on the question of an Andorra solution and how he had answered me about constitutional reform. I also took the opportunity when he was here to ask him what he meant by propositions for constitutional reform. He happened to be realistic and he answered me that the bedrock of realism in this issue was first the preamble to the Constitution, that the Spaniards had to be realistic and accept that but the second one was that proposals had to take account of the sensitivities of Spain. Later on, on television, he was interviewed and he hummed and hawed round the subject of realism but never actually said in public what he had said to me in private, which leads me to think that there is of course that the British Government do not want to send ministers out to Gibraltar to accept the natives and cause kerfuffles and riots and demonstrations and things they do not want, the boat to be rocked and so I understand the constraints that there are upon him. But there is no doubt in my mind that the Foreign Office see the subject of constitutional reform in the light of producing a final settlement. In Sir Joshua Hassan's biography there is a reference to 1971 when Sir Varyl Begg consulted Sir Joshua who was then Leader of the Opposition about a possible proposal from Spain to which Sir Joshua is said to have answered, "Any proposal which comes from Spain which would not lead to total sovereignty will be worth looking at". It goes on to say in 1972 the electorate did not fall for what the AACR dubbed the big lie about Sir Joshua being willing to make unwise concessions and they voted for him for at least three

more elections, in spite of having said that. An attitude which to me seems like sheer flame common-sense to say yes we must find a compromise and if there is a compromise proposal which does not involve full sovereignty then we have to look at it with a view to perhaps accepting it and of course on those lines I would not agree with the AACR calling it a big lie, I would call it a little lie because obviously if someone is prepared to examine something it can only be because perhaps he will be prepared to agree with it. But in the same way that I would say we must look at any proposal, surely Spain will have the common-sense to say the same thing in reverse, that any proposal from Gibraltar, which in some way took account of their historical claim, would be worth looking at and this is why I feel that we want a level playing field. We are the ones to take the initiative to level it and not wait for Britain or Spain or the United Nations or the European Common Market to level the playing field for us. We have got to be the ones to take the initiative in dialogue and in discussions to see whether it is possible to find an acceptable compromise. It seems to me, Mr Speaker, that the hope of mutually beneficial co-operation and peaceful co-existence without any gesture on our part to take account of their claim is a vein of hope and to make it the central policy for our future condemns us to mass emigration and increasing poverty. There has been a campaign recently spearheaded by the GSD, taken up very strongly by Sir John Chapple, looking for a voice for Gibraltar. We have heard of flags and voices. Sir John Chapple declared very strongly that Gibraltar must be given a voice and of course I support that campaign. Of course, we must have a voice in all negotiations concerning our future but what do we want a voice for? The important thing about a voice is what are we going to say with that voice? What I would like to say with a voice such as that is that we want a just settlement that will guarantee our right to our land and to self-government, that we want a peace process that will also take account of Spain's historical claim. Thank you, Mr Speaker.

Question proposed. Debate ensued.

HON P R CARUANA:

Mr Speaker, the wording of this motion is not, in our opinion, appropriate. The use of the phrase "mutual hostility" connected to the phrase "peace process" may import into the minds of people accustomed to watching international news bulletins that there is a genuine process of two-way aggression. Spain is hostile to Gibraltar. She is hostile to Gibraltar in that she constantly harasses us and attempts to deny us our international and our European Union rights. The people of Gibraltar are not naturally hostile to Spain were it not for what I have just said but what the people of Gibraltar do is quite understandably resent that they are subject constantly to the aforementioned harassment. Therefore I believe and as do the members in the party that I lead in this House, that it is not appropriate for this House to adopt a motion which somehow might suggest to the uninitiated observer that the Gibraltar problem is a case of six of one and half a dozen of the other. It is not. It is a case of a dozen of one and the victims of the dozen resent the fact that they are constantly under assault, and that what we need from Spain is not a peace process because peace processes, as all three parties in the Bosnia conflict have just discovered, invariably require the making of substantial concessions by all parties. Whilst Spain maintains the position that the only thing she wants from us is the sovereignty of Gibraltar there is nothing about which peace can be made and therefore a peace process is not appropriate. What we need is a process that will establish normality in a European and civilised context between Gibraltar and Spain. In other words, normality as good neighbours living in mutual co-existence and respect for one another as befits two parts of the European Union. What we need is not so much a peace process although I make due allowance for the Hon Mr Cumming, the mover of this motion, it is in his general nature and style perhaps because he is not a lawyer to apply too much careful attention to the exact words that he chooses. What we need is not a peace process but a process of dialogue in which Gibraltar is able to represent itself with its own voice so that in

such a process of dialogue we can establish that relationship of good neighbourliness and mutual coexistence that befits two parts of the European Union to which I have just referred. Mr Speaker, I think that it is one thing for this House as I think we have done several times in the past, to recognise that there is a problem but in recognising that there is a problem I think it is a mistake to misstate the nature of that problem. Therefore, as drafted we in the Opposition cannot support the motion because, as I say, it fails to recognise the causes of the reality of the situation and suggests a degree of equality in responsibility for what the position actually is which we do not accept is true. We do not accept that the problem that we are faced as a community at the moment derives from the fact that there is mutual hostility. It derives principally from the fact that there is hostility by Spain to us which the people of Gibraltar resent and are not willing to submit, surrender or capitulate to. Maybe we can agree that the difference is semantic and we will see if that is true. I propose, Mr Speaker, an amendment to the motion presented by the Hon Mr Cumming. I hope I have not made a mistake in the papers that I have passed up because I have had various drafts of this but it is one that had writing down the side.

Mr Speaker, I now propose that we delete all the words after the words "That this House" and substitute them by the following -

- "(1) Takes note of Spain's constant harassment of and hostility to the people of Gibraltar, and of Spain's attempt to deny us our international and EU rights;
- (2) Notes that the people of Gibraltar understandably, resent such behaviour on Spain's part;
- (3) Calls on Spain to recognise our right to determine our own future;



- (4) Invites Spain to engage Gibraltar in a process of dialogue in which Gibraltar represents itself with its own voice in order to establish that relationship of good neighbourliness and mutual co-existence that befits two parts of the European Union".

I commend my amendment to the House.

HON CHIEF MINISTER:

Mr Speaker, let me say that in relation to the amendment that the Opposition Member has just moved and as regards his opening remarks, I of course entirely agree with him that it is a serious misconception to have anybody saying in this House that there is mutual hostility since to my knowledge we have never sought from Gibraltar to doing anything to interfere with Spain's rights anywhere and it is entirely in the opposite direction that the evidence of hostility exists so I think it is absolutely right that to talk about the need to stop the mutual hostility as if we were Bosnians fighting Serbs is a complete nonsense. The Government will not support the hon Member's amendment because the Government will not be prepared to do anything other than defeat the original motion. And certainly if we wanted to bring a motion to this House relating to the policy to which we were prepared to commit the Government it would not be phrased in this way and we would have different language and we would not be talking about a process in which Gibraltar represents itself with its own voice without explaining what that process meant and the Opposition Member knows how I feel about some processes. So although I certainly agree that his amendment is a much better reflection of reality than the impression created by the original motion, we are not prepared as a Government to go down this route on the basis of amending something that really is putting a completely different version on the situation from the one that there is reflected in this amendment and that in fact if we were talking about their continued hostility we would want to do more than simply note it and put exactly what we think of that hostility in any motion in this

House. So we are voting against this amendment and therefore we will also be voting against the original motion to which I do not intend to speak because our views on the contributions of the hon Member that moved the original motion in this House whether it is question time or moving motions or participating in debates on Bills is on the record, well-known and has been repeated more than once. I will just have a few words to say on the original motion before we vote against it once the amendment has been defeated

HON P R CARUANA:

Mr Speaker, I see no point in answering that, there is really nothing to reply to. The Chief Minister's decision not to support my amendment is more tactical than anything else. I think what he is saying is that it is a brand new motion and if it is a brand new motion it rather be in his language and not in mine. Fine, these are four points on which I thought we could agree by way of modifying the sentiments expressed in the mover's original motion. He does not want to have any track with that because of who the original mover is, he knows that that is not a position which we endorse in this House but I take note of what it is. There is really no point in us replying, so I will not reply further.

MR SPEAKER:

You will have your opportunity of course to express your views when you vote on the original motion.

Question put on the amendment to the motion. The House voted:

For the Ayes:	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon H Corby
	The Hon P Cumming
	The Hon F Vasquez



For the Noes:       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 L Moss  
                          The Hon J C Perez  
                          The Hon J E Pilcher  
                          The Hon Miss K M Dawson  
                          The Hon B Traynor

The Hon M Ramagge was absent from the Chamber.

The amendment was defeated.

HON CHIEF MINISTER:

Mr Speaker, we are voting against this motion. Let me just say that since the motion refers to a peace process, perhaps I can draw the attention of the House that the war over Gibraltar ended on the 13th July 1973 and that what was signed in Utrecht is called a Treaty of Peace and Friendship and all that happened is that having had a peace process in 1713 and having signed a peace treaty which provided for peace and friendship, what has been singularly absent since 1713 was precisely the peace and the friendship that was promised. I do not see why we should be expecting that peace and friendship would be any more honoured in future than it has in the past to judge by the actions of our neighbours because actions speak louder than words. We will of course be voting against the motion.

HON P CUMMING:

Mr Speaker, perhaps I should have said just a brief word about the amendment. I voted in favour of the amendment because I feel that something is better than nothing. I do not think that the amendment suggested would solve any of the major problems that Gibraltar faces quickly enough. It is possible that by dialogue

new situations may suggest themselves and evolve an evolutionary approach but in my view it would take too long to solve the problems that will come about in the next few years. Nonetheless, I felt that something was better than nothing and therefore this amendment would have been better than nothing. It is a curious thing. I am going to be very, very brief. I would just like to take up one point and it is the point that the Leader of the Opposition has made in saying that of course not being a lawyer sometimes my phraseology is not quite and therefore imprecise and of course the Chief Minister has said that there is a serious misconception to say mutual hostility referring to Gibraltar and Spain as though we were Bosnians and Serbs. Of course it links the two ideas in my mind perfectly. The question of the use of language. Now we all come coloured by our backgrounds to this House, some by trade union background or legal backgrounds, I come with one of nursing and of teaching of nursing and I have had to prepare several projects for students on the subject of hostility and this is just to agree with the point that the Leader of the Opposition has made that there are many slight differences in language which may mean different things to different people because of course in nursing, in looking after the sick there are frequent occasions where hostility shows its face. To me hostility is the same whether it is in an angry relative complaining about the care given to their loved one or whether it is the hostility which we see on our televisions night after night between the Bosnians and the Serbs. The beast is of exactly the same nature but it may have different signs and symptoms in different circumstances that, obviously, I grant, thank God there is no cannonading of our shops, of our schools or anything like that. If Gibraltar was in different circumstances that hostility could be fanned to grow to produce exactly the same situation as in Bosnia and Serbia if we let it, because the seed produces the same fruit. Slightly different manifestations according to the circumstances and therefore obviously to some it may seem inappropriate to say there is mutual hostility between Britain and Spain looking at it from a legalistic point of view but looking at it from a psychological point of view, hostility is hostility wherever you find it and it is exactly the same. It seems to me that this is

exactly what we have, mutual hostility. I talked previously about polarisation; the matter getting out of hand and it seems to me, Mr Speaker, that if we face the fact that there is mutual hostility, if we identify the problem as mutual hostility we might then get on to a solution to that problem which would be dialogue and confidence building measures. Thank you, Mr Speaker.

Question put on the motion. The House voted.

For the Ayes:           The Hon P Cumming

For the Noes:           The Hon J L Baldachino  
                          The Hon J Bossano  
                          The Hon Lt-Col E M Britto  
                          The Hon P R Caruana  
                          The Hon H Corby  
                          The Hon M A Feetham  
                          The Hon Miss M I Montegriffo  
                          The Hon R Mor  
                          The Hon J L Moss  
                          The Hon J C Perez  
                          The Hon J E Pilcher  
                          The Hon F Vasquez  
                          The Hon Miss K M Dawson  
                          The Hon B Traynor

The Hon M Ramagge was absent from the Chamber.

The motion was defeated.

#### ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn sine die.

MR SPEAKER:

Since we are coming to the season of goodwill and friendship, I would like to wish all the hon Members a merry Christmas and a happy new year. I say this because perhaps this is the last meeting before the end of the year. I am glad to see that at the end of this meeting there seems to be a lot of goodwill in the House.

Question put. Agreed to.

The adjournment of the House was taken at 8.30 pm on Monday 18th December 1995.