GIBRALTAR

HOUSE OF ASSEMBLY

HANSARD

9TH JANUARY 1995

**(Adj 10th January &
27th 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 9th 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 2nd 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 3rd 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 28th 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 29th 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 confidentially 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 7th January. Although there is now 10 days between now and then, do not give notice to the Opposition until the 1st 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 I 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.

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.

TUESDAY 10TH JANUARY 1995

The House resumed at 10.40 a.m.

MOTIONS

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 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. 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 form 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 of 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 13th 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 13th 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 12th 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 Fed4eration 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 therefore 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 what 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 10th 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 brining 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 6th 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 refuse 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 16th 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 3rd 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 19th century, we must all consider what matters t 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 16th 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 or 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 ours 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 Islands' 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 1994is that, in fact, the members of the Legislative Council in 1964 clearly reflected in this booklet their understanding that in 1964 at least he 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 pint 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 Constituion 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 sub-section 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 draftswoman, 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 draftsperson 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 clawback from that exemption and its 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 draftsperson 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 a 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.

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 no 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 1950's 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 MP's 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 policeofficerand 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 one, 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 onesthen 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.