# GIBRALTAR

## HOUSE OF ASSEMBLY

# HANSARD

**19TH MAY, 1999**
**(Vol. II)**

**(7th and 9th July 1999)**

## WEDNESDAY 7TH JULY, 1999

The House resumed at 10.00am.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Judge J E Alcantara CBE)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education, Training, Culture and Youth
The Hon Lt Col E M Britto OBE, ED - Minister for Government Services and Sport
The Hon J J Holliday - Minister for Tourism and Transport
The Hon H A Corby - Minister for Social Affairs
The Hon J J Netto - Minister for Employment and Buildings and Works
The Hon K Azopardi - Minister for the Environment and Health
The Hon R Rhoda - Attorney-General
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon A J Isola
The Hon J J Gabay
The Hon J C Perez
The Hon Dr J J Garcia

IN ATTENDANCE:

D J Reyes Esq, ED - Clerk of the House of Assembly

## DOCUMENTS LAID

The Hon the Chief Minister moved under Standing Order 7(3) to suspend Standing Order 7 (1) in order to proceed with the laying of various documents on the Table.

Question put. Agreed to.

The Hon the Chief Minister laid on the Table the following accounts:

(1) The GJBS Annual Report and Accounts for the year ended 31st December 1998.

(2) The Gibraltar Community Care Ltd audited accounts for the year ended 30th June 1996.

(3) The Gibraltar Community Care Investments Ltd audited accounts for the year ended 30th June 1996.

(4) The Gibraltar Community Care Trust audited accounts for the year ended 30th June 1996.

(5) The Gibraltar Industrial Cleaners Ltd audited accounts for the period 1st January 1996 to 31st March 1997 and 1st April 1997 to 31st March 1998.

Ordered to lie.

The Hon the Attorney-General laid on the Table the Revision of the Laws (Supplement No.5) Order, 1999.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the Table a Statement of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos.11 to 13 of 1998/99).

Ordered to lie.

## MOTIONS

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with Government motions.

Question put. Agreed to.

HON CHIEF MINISTER:

I move the motion standing in my name which reads: "That this House do approve by resolution the Federal Republic of Yugoslavia (Supply, Sale and Export of Petroleum and Petroleum Products) Regulation 1999."

Mr Speaker, in response to the killings and deportations of Kosovo Albanians by the authorities of the Federal Republic of Yugoslavia the European Union Council has taken steps to impose further political and economic sanctions on the authorities in Belgrade. This is notwithstanding the agreement at a military level entered into between NATO and the Federal Republic of Yugoslavia. The main aim of the European Community sanctions is to restrict President Milosevic's access to oil and funds and so further damage his ability to conduct military operations against the Kosovo civilians.

Mr Speaker, the Council of the European Union adopted a regulation, namely Regulation 900/1999 which prohibits the sale, supply or export directly or indirectly of petroleum and petroleum products to the Federal Republic of Yugoslavia. It allows exemptions under certain conditions for the sale, supply or export of petroleum and petroleum products for the use of diplomatic and consular missions of EU Member States for the use of a future international military presence and for humanitarian purposes. The motion before the House is to approve subsidiary legislation passed already in the Gazette giving effect to the Regulation passed by the Council of the European Community. The Gibraltar Regulations make it an offence to infringe the prohibition of the EU Council Regulation and specify the penalties to be imposed. It provides also for the licensing of supply, sale and export of petroleum or petroleum products to the Federal Republic of Yugoslavia in those circumstances where the Regulation permits it by the Collector of Customs. Thirdly, they make provision for enforcement. As I have said, in Legal Notice 64 of 1999 the Federal Republic of Yugoslavia (Supply, Sale and Export of Petroleum and Petroleum Products) Regulations, 1999, have already been published and promulgated. That was done pursuant to Section 4 of the European Communities Ordinance. These, of course, are not United Nations sanctions. Unusually, they are European Communities sanctions. That is an unusual distinction. Under Section 4 of the European Communities Ordinance and specifically Section 4(3) of the European Community Ordinance Regulations made under Section 4(1) of the European Community Ordinance shall not come into force until such Regulations have been approved by Resolution of the House of Assembly. Although the Regulations have been promulgated they do not commence until they are approved by Resolution of this House and that is what this motion seeks to do. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, we will be voting against this motion. The mover of the motion has failed to provide an explanation as to why it is that this has been introduced and in any case there are elements in the actual Regulation which we disagree with and consequently approving the motion would mean approving the Regulation. The European Union Regulation is dated the 29th April so it is not something that has just been done by the European Union following the resolution of the military conflict. It was something that was being done previously and this is not a follow-up. Therefore, this is something that Gibraltar was required to do on the 29th April and not today. Indeed, the Regulation says, "These Regulations shall apply within the territory of the Community

including its air space and on board any aircraft or vessel under the jurisdiction of a Member State. The Regulation shall enter into force on the day on which publication in the Official Journal of the European Community..." which was the 29th April. So as far as we can tell, if we have not been stopping oil exports to Yugoslavia since the 29th April, we have been in breach of Community law. We are now saying that we are going to stop doing it as from today by which time other people may be ending the sanction that was introduced on the 29th April, but whether they do or they do not, there is no explanation being given as to why it is that this procedure is being adopted under the European Communities Ordinance, 1972, because, to my knowledge, the provision in the European Communities Ordinance, 1972 allowing the Governor to make Regulations subject to the approval of the resolution of the House has never been used before. We have checked in the United Kingdom and we cannot find that the United Kingdom has introduced Regulations now but it did introduce Regulations a year ago prohibiting exports to Yugoslavia as a result of Council Resolution 926/98 of the 27th April 1998. Why is it that we are required to do it in 1999 and we did not do it in 1998? It was also against Yugoslavia and it says "Article 1 of Council Regulation 926/98 of the 27th April 1998 concerning the reduction of economic relations with the Federal Republic and the prohibition of exports of certain goods". If we are supposed to stop the supply of fuel to Yugoslavia today, presumably we were supposed also to make sure that other things that were being prohibited a year ago were not being done from Gibraltar. I would have thought that other than what is self-evident by reading the motion and reading the Regulation, we would need more of an explanation as to why we are doing something we have never done before. The Regulations apply to ships and aircraft registered in Gibraltar. To my knowledge we have no aircraft registered in Gibraltar. The Regulation has some peculiar powers being given to Customs Officers given that what we are talking about is oil exports. It allows persons suspected of carrying on their body barrels of oil to be stopped by Customs Officers and searched. It is an offence to resist being searched for barrels of oil if you get stopped on the way to Yugoslavia. His Excellency the Governor may be quite happy to put in place that sort of nonsense but the Opposition are not prepared to approve it. There appears to be some, shall we say, loose drafting in the Regulations in that there is definition in the Regulation which says "specified goods means the goods specified in the Annex to the Council Regulation, that is, the petroleum products". But then, in the body of the Regulation, "specified goods" and "any goods" are used interchangeably as if they meant the same thing. On the surface, as a layman, it seems to me that if one puts "specified goods" and one says that what is not permitted is that one exports specified goods to Yugoslavia, one should not then go on to say "any person who without reasonable excuse refuses to make a declaration or fails to produce any goods..." well, then "any goods" cannot mean the same thing as "specified goods".

It seems to me, therefore, that the Regulation that we are approving goes beyond the export of specified goods to Yugoslavia and creates offences which relate to any person refusing to produce evidence of goods that he has which are not necessarily the same goods and that is an offence under these new Regulations. The investigation of suspected ships, for example, provides that where any ship is for the time being chartered to a person who is a British citizen then the officers authorised under the Merchant Shipping Ordinance are able to board and question the Master. Why should it be our obligation to board ships if the ships are chartered to British citizens but not if they are chartered to Spanish citizens if they are in our jurisdiction when the Regulation says we are responsible for any ships that are under our jurisdiction? I would have thought if they are anchored in our territorial waters they are under our jurisdiction. Otherwise, frankly, they could be exporting thousands of pounds of oil because I am sure that none of the ships that are bunkering here or refueling here or taking petroleum products here are in fact chartered to British citizens which are defined in the Regulations as meaning either BDTC Gibraltar or British Citizens from the United Kingdom. The other peculiar drafting is that this investigation of suspected ships is something that the Authorised Officer may do provided the ship is chartered to a body incorporated under the Law of Gibraltar, so whereas in the case of an individual we can board a ship if the charterer is either a

Gibraltarian or an Englishman, in the case of the charterer being a company, we can do it if the charterer is a Gibraltar company but not a UK company. There seems to be a discrepancy in the treatment there, quite apart from the fact that the company can be presumably incorporated anywhere in the world and what the Regulation is seeking to do is, I would have thought, to ensure that Community ports and Community airports are not used to break the sanctions against Yugoslavia. It raises an interesting point as to whether we are a Community airport after all, in this case, having been told we are not a Community airport since 1987, because, of course, the aircraft has to be in territory which is the territory of the European Union and if the aircraft is taking off from the Gibraltar Airport, either the Gibraltar Airport is territory of the European Union or it is not territory of the European Union.

The wording that is being used in fact follows what has been used in other Customs legislation where we are talking about people being suspected of hamming down something, of being about to do it or intending to do it and whether there is, on the Officer's side, reason to suspect. This seems to be much wider a net of the exercise of the power of detaining and investigating and boarding than in fact the wording used by the Regulation which talks about people knowingly and intentionally supplying or shipping goods to Yugoslavia. Quite apart, therefore, from the anomalies in the drafting of the Regulation which we have been able to identify in the short time we have been able to spend on this since it was published, Mr Speaker, I think the essence is that frankly there were EU Regulations adopted in 1998 prohibiting exports about which we did apparently nothing but the UK did. There are similar provisions in 1999 which the UK does not appear to have implemented - at least we have not found a separate Instrument that does it in the UK which we are doing here. We are using a mechanism which has never been used since 1972 when we joined the European Union and in fact the Regulation, as far as we can tell, like all Regulations issued by the European Union is primary legislation and therefore has been applicable in Gibraltar since the day it was published in the Journal of the European Community which is in fact what the Regulation says.

Apart from those considerations of a Parliamentary nature, shall we say, as to the correctness of what we are doing and the fact that we ought to know what we are doing in this House when we vote, I am not sure what it means in terms of what is a very substantial volume of business that is being done in Gibraltar on bunkering and on supplying. Given that we are talking about petroleum products, is it that there is reason to believe that Gibraltar may have been used to send stuff to Yugoslavia and that is why we are being asked to do something about it? In practice, what does it mean to the 5,000 ships that call at Gibraltar? Are we going to be doing regular inspections of all those ships and seeking information from the masters of the ship as to what they are going to do with the fuel they are taking on board? Is this something that we are doing as a paper exercise? Or is it intended that we should be doing this because we believe there is a requirement to do it so that Gibraltar does not become a place which is used to get round a Regulation of the European Union which, of course, we do not want to happen. The last thing we want is that somebody should turn up with a piece of paper in the European Union tomorrow or publish it in the ABC saying "Gibraltar is being used for sanctions busting". That is not what we want. We want to make sure that that is not going to happen. Then, does it mean that we have identified that there is a risk of that happening and that this is not just something which we are going to do which we can just ignore as a paper exercise but which is going to produce a requirement on the part of the Customs and on the part of the Port Department to scrutinise every vessel that comes in and out of Gibraltar? There has been no hint of that in the motion and we would like to have an answer on that part.

HON CHIEF MINISTER:

The Council Regulation No.900/1999 adopted by the Council of the European Community on the 29th April 1999 is, as all hon Members know, like all Regulations, of direct application throughout the whole territory of the Community. But as I am sure the hon Member would also know, had he read the Regulation more carefully, the Regulation itself requires the Member States

to make certain national provisions in areas such as the imposition of sanctions. For example, Article 4 of the Community Regulations says "each Member State shall determine the sanctions to be imposed where the provisions of these Regulations are infringed. Such sanctions shall be effective, proportionate and dissuasive". There are other parts of the Regulations which, without prejudice to the fact that Regulations are, as all Regulations of the Community are, directly applicable to the whole territory of the Community, the Regulation itself, as is not unusual indeed in Regulations, requires the Member States to nevertheless legislate usually in regard to the logistics, the enforcement, the sanctions, the evidential aspects of a requirement. That is why we, the United Kingdom and every other Member State of the European Community is doing this legislative act, in order to give effect to those parts of the Regulation which the Regulation itself requires to be done at Member State level.

The United Kingdom, if the hon Member wonders why we are using this procedure, intended, indeed still intends, I cannot tell him whether the Order in Council has already been passed for the others or not, but the United Kingdom's intention was to adopt this to achieve what we have done through local legislation. Incidentally he wanted to know the number of Statutory Instruments and I will tell him, but in respect of all its Dependent Territories, including those not in the European Community, the United Kingdom intended to do this by Order in Council which is usual, as the hon Member knows, in the case of international sanctions. Indeed, that is how the United Nations sanction which are the ones to which the hon Member is referring, which is the way that international urgent sanction resolutions are normally enforced. The United Kingdom is doing it by Order in Council. It was scheduled to be done by Order in Council for the rest of the territories in June. I cannot tell the hon Member whether it went through in June, as intended, or whether the date has drifted into July, but precisely because these were not United Nations sanctions, but EU obligations, the Government of Gibraltar were not content that they should be done by Order in Council, precisely because there is no precedent for Gibraltar's European Union obligations as opposed to other UN obligations being implemented by Order in Council directly from the United Kingdom. As we were anxious not to create a precedent for the transposition or implementation of our EU obligations by a legislative Act of the United Kingdom, the Government of Gibraltar asked and Her Majesty's Government agreed, that we to the exclusion of all other territories would be allowed to do this by local legislation and would not be included in the Order in Council being adopted in London for the remainder of the Dependent Territories. The language and the provision of the Regulation, of which the hon Member is so critical, is the language in the Order in Council which is the United Kingdom's view of how it wants this international obligation that it has contracted to be extended to all its Crown Dependencies. The difference between us and the others is that we are doing it for the reason that I have explained, by local legislation whereas the other Overseas Territories are having it imposed on them by Order in Council and the hon Member knows the sensitivities of that in relation to Community obligations and the potential precedent value.

HON J J BOSSANO:

Mr Speaker, the sanctions that I mentioned are not UN sanctions. I said they were sanctions introduced by Statutory Instrument 1531 a year ago and they are giving effect to Article 1 of Council Regulation 926/98 of the 27th April 1998. We did not bring then here a Resolution approving Regulations to give, in effect, in Gibraltar comparable Regulations to the ones in the UK. This has nothing to do with the UN, so can I be told whether in fact it is that we did not introduce the sanctions in 1998 or that the United Kingdom introduced them and applied them to Gibraltar or what? If the explanation is that we are doing this for the first time because there has never been EU sanctions before then the answer is that is not correct. There were EU sanctions in 1998. What happened then?

HON CHIEF MINISTER:

Mr Speaker, the motion before the House is to approve these sanctions which are a new set of 1999 Regulations. If the hon

Member wants answers to other questions he will have to give me notice of them. This is not a debate about EU sanctions generally against Yugoslavia. It is about the approval by Resolution in this House of a specific set of local Regulations which were published last month.

I have explained to the hon Member how the United Kingdom intends to apply these sanctions on behalf of the Caribbean and North Atlantic territories. The hon Member queried whether the United Kingdom has itself legislated these sanctions and said that he had not been able to find the Instrument by which it had done so. The United Kingdom has indeed implemented these European Council Regulation sanctions and it is worth remembering that the Council adopted these Resolutions not that long ago on the 29th April. The United Kingdom itself did what we are now doing by Statutory Instrument No.1516 of 1999 which came into effect on the 3rd June 1999. Our own Regulations were published only a few days thereafter, after the United Kingdom, on the 8th June and this is the next opportunity that we have had to follow the procedure under Section 4(3) of the European Communities Ordinance to obtain the ratification of this House without which they do not commence, they do not come into operation.

Mr Speaker, there is no question of Gibraltar having been in breach of Community law since the 29th April just as the United Kingdom has not been in breach of Community law between the 29th April until the 3rd June when it adopted the Regulation which is of direct application. The Sanctions Order applies, different Member States will take different lengths of period of time to do what they need to do at a national level and indeed the hon Member should not assume, although the United Kingdom and, hopefully after today, Gibraltar will have done it, it may be that other Member States, have not yet achieved this. Certainly, there is no question of breach. I have explained to the hon Member why this procedure has been used. There was urgency in Gibraltar legislating this so that we could fall out of the Order in Council mechanism which we thought was important in a general wide EU context and therefore we published and used this procedure which enables us to publish the Regulation and then bring it to the House.

The Government of Gibraltar, in matters to do with sanctions against Yugoslavia is not going to re-invent the wheel. The fact of the matter is that if others have given detailed consideration to how a delicate matter of this nature should be handled, really the suggestion that the Government of Gibraltar then considers separately the question of sanctions, considers separately how the sanctions should in practice be policed and upgraded, I think is an unnecessary dedication of local resources. These have been extended to Gibraltar as they will be extended to the rest of the United Kingdom Dependent Territories by Order in Council. We have satisfied ourselves with retrieving the legislative process for the reasons that I have explained. Obviously the Government have looked at the Regulations and considers that they are not inappropriate and having decided that they are not inappropriate it is not a question of perfecting them to see if they can be improved. If they are not objectionable then there is no reason why we should not subscribe in the required terms to an international initiative in relation to something as laudable as..... I hope hon Members will agree it is laudable, to impose sanctions on the regime in Belgrade, nor has there ever been either in the time of this administration or in previous administrations, including his own, any precedent in Gibraltar for reviewing issues of this sort. When Opposition Members had brought to this House, or had legislated in the Gazette, sanctions orders against Libya for example, this is just a question of accepting in Gibraltar what other international organisations had determined would be the sanctions regime. We do not think that there is anything in this sanctions regime which is loose or improper. It is in terms that apply elsewhere and therefore we are entirely satisfied that it does not deserve, in substance, whatever might be the merit, if any, of the hon Member's point and the theory and the practice of it, we believe that these measures are entirely justified as a means of applying sanctions against the regime in Belgrade. In any case, the hon Member knows that this is an international obligation and therefore it is not a voluntary matter for Gibraltar. These are international obligations contracted on our behalf by

the United Kingdom. I do not think that the hon Member's concerns are justified in respect of the bunkering trade. Bunkering trade means that one sells fuel to ships for its own combustion, in other words, for the running of its own engines. The delivery of cargoes, which is what this is intended to capture, the supply of fuel, petroleum products, to the Federal Yugoslav Republic and the trade that we do in Gibraltar is the ship equivalent of a petrol station, in other words that one sells to ships fuel in order to keep their engines running and not to put in their cargo holds to carry from a buyer to a seller. Therefore, the Government are entirely satisfied that the bunkering trade in Gibraltar will not be affected. It has nothing to do with the bunkering trade in Gibraltar and the trade that is affected is the international petroleum trade and of course they all take it on their chin because this is the consequence of imposing economic sanctions on people, that one foregoes the right to sell them ones products and frankly I am happy, delighted, that Gibraltar should subscribe to that international effort to bring democracy and ordinary human rights values to prevail in the Federal Republic of Yugoslavia. The question, therefore, of how this is going to be policed, whether every ship is going to be checked, does not arise in the context of bunkering. How the Collector of Customs polices this in respect of cargoes is a matter for him to exercise the powers given to him under this Regulation that we have before us in the House today which is precisely the reason why the Regulation contains provisions in that regard, so that there should be a regime of policing and implementation for the local implementers to follow.

I therefore, Mr Speaker, regret that the hon Members will not be supporting this Order. I would hope that whether they support the Order or not that they will signal their agreement to the Government's preference to do this by local legislation rather than have an EU obligation imposed on us by Order in Council. That is the principal reason why we are debating this at all. If it had not been for that factor this would have gone through, Gibraltar would simply have been added to the Order in Council list of applicable territories and therefore it is entirely because the Government have not wanted to create an Order in Council precedent for the implementation of an EU obligation that we have gone to the trouble of discussing that with the United Kingdom, getting their agreement to exclude us from the Order in Council, drafting our own legislation, albeit following the wording of the Order in Council which the UK would require of us anyway, but then at least saving the principle that Gibraltar transposes through its own legislative mechanisms our EU obligations and that we do not have them done for us. I would hope that by itself that might be sufficient to entrap the hon Members' support for the Resolution before the House and that he should not pay an excessive amount of regard to the detail of the Regulation which is standard vanilla as it is going to be applied elsewhere in the Dependent Territories.

HON J J BOSSANO:

Can the Chief Minister confirm, Mr Speaker, whether in fact this follows what they have done in the UK in the Statutory Instrument of which he has given me the number; and whether in fact he knows that the one that is going to come out in the United Kingdom applying it to the other Dependent Territories is going to be the same as this. Is it that the Government of Gibraltar have seen, as it were, the graph of what is going to be applied in the other Dependent Territories and will follow it because in fact my recollection is that every time there has been a UK Order in Council on sanctions it has just been stating what the sanctions are about without going into any detail of people being investigated. Nothing of this size has ever come out as an Order in Council in my recollection. Is it that a new procedure is being adopted this time?

HON CHIEF MINISTER:

No, Mr Speaker, it is not. The reason why Orders in Council as they are seen in Gibraltar apply international sanctions have not been seen to go into this detail before is that normally the only thing that appears in Gibraltar is the notice extending the Order in Council and unless one goes to the trouble of getting the Order in Council, looking at it and finding its provisions, no one ever sees it. The only reason why we are seeing so much detail here is

because we are in effect adopting into Gibraltar law the nitty gritty that normally goes into the Order in Council in the United Kingdom adopting the measure. To answer the hon Member's principal question, he is right in saying that we have seen the text of the Order in Council as it is going to be applied to Dependent Territories. I can tell him that it contains precisely the heading and the language and the text and he is quite wrong, it is a lengthy document. I cannot, however, although I believe it to be the case, I have not myself compared the text line by line and therefore I would be reluctant to assume that the language is identical. For example, there are some bits which are clearly not identical. The Order in Council gives certain powers in the other Territories to Governors which here in this legislation it is given to the Collector of Customs. There are amendments of that sort but I do not believe that there are any substantive amendments. That is in so far as it relates to the other Overseas Territories. I have not seen, myself, the Instrument through which the United Kingdom has itself done it but I would expect that if this is the regime that the United Kingdom thinks is necessary in the Overseas Territories, that this is also the basis upon which it itself has done it but I would be happy to obtain from the hon Member confirmation, firstly, whether this is very substantially the same as the Overseas Territories which I believe is, from what I have seen because I have that document on my file. From what I have seen of it, although not compared it line by line, I believe it is the same as the Privy Council Order in Council for the other Territories and I will check whether it is also the same as the United Kingdom's Statutory Instrument 1516 of 1999 by which they did this, which, incidentally, is called The Federal Republic of Yugoslavia (Supply, Sale and Export of Petroleum and Petroleum Products) Regulations, 1999, which are exactly the same name as we have given to our own Regulation and I think we will find when we look at it that they are identical to the Regulations that are before this House for approval.

Question put. The House divided.

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|---|---|
| For the Ayes: | The Hon K Azopardi |
| | The Hon Lt-Col E M Britto |
| | The Hon P R Caruana |
| | The Hon H Corby |
| | The Hon J J Holliday |
| | The Hon Dr B A Linares |
| | The Hon P C Montegriffo |
| | The Hon J J Netto |
| | The Hon R R Rhoda |
| | The Hon T J Bristow |
| Abstained: | The Hon J L Baldachino |
| | The Hon J J Bossano |
| | The Hon J Gabay |
| | The Hon Dr J J Garcia |
| | The Hon A Isola |
| | The Hon Miss M I Montegriffo |
| | The Hon J C Perez |

The motion was carried.

HON CHIEF MINISTER:

Mr Speaker, I beg to proceed with the motion standing in my name and which reads: "This House does resolve, pursuant to Section 4 of the Public Services Ombudsman Ordinance, that a salary of £35,000 per annum be paid to the Ombudsman and that the additional sum of £110,000 be provided to the Ombudsman in respect of the expenses of his office, including the personal emoluments of staff and other operating expenses, as set out in Appendix A to the Draft Estimates of Revenue and Expenditure for 1999/2000 approved by this House on the 4th June 1999."

Mr Speaker, under Section 4 of the Public Service Ombudsman Ordinance, that Section provides that there shall be paid to the holder of office of Ombudsman a salary, expenses and allowances at such rates as may from time to time be determined by Resolution of the House of Assembly. The salary, expenses

and allowances of the office of Ombudsman shall be a charge on the Consolidated Fund without the need for Appropriation. Mr Speaker, hon Members will recall when we debated the Public Service Ombudsman Ordinance that that provision which reflects, in large measure, the system applicable elsewhere is designed to make the Ombudsman independent financially from the Government as an executive and therefore the funding for the office of Ombudsman comes directly from the House of Assembly, from Parliament, and is approved by Resolution of the House rather than just be included as one line in the Appropriation Bill which gives the House much less opportunity to be, in a sense, the owner of the decision because it just gets involved and mixed up in a much bigger Appropriation mechanism exercise. The hon Members will then also recall that at Appendix A, as the Resolution suggests, of the Estimates booklet, there was a sort of mock departmental expenditure explanation of what the Government believes this House should approve for the Ombudsman. It obviously has not been done in isolation. It reflects discussions that have been held between the Ombudsman and the Government as to the amount of funding that he feels that he requires for the staff that he feels that he wants to recruit and for the operation that he feels he wants to establish there. The Resolution, of course, does contain an element of detail which is not specifically identified at Appendix A but is an important decision for this House to make and that is the personal salary of the Ombudsman itself which the Government believes, and the Ombudsman is entirely satisfied, should be fixed at £35,000 per annum.

The only further novelty that I can bring to the attention of the House is that we have now identified the building, out of which the Ombudsman will operate which we have been able to obtain a transfer of from the Ministry of Defence. The Ombudsman will operate from the ground floor of the building in Secretary's Lane which used to be the offices of the Defence Land Agent. It is roughly opposite the courtyard entrance to The Convent. That is a building which the Government had identified for the housing of semi-public functions but which the Government believes ought to be and be seen to be at a distance from the Government. The Ombudsman will go in there. We have recently received a request which we will consider, I believe, favourably from the Police Complaints Authority for their secretary to be relocated away..... I believe it is presently and has been for many years housed in the Ministry of Employment for reasons that I do not understand, a chap who acts as secretary of the Police Complaints Board, he will be moved into that building as well and, indeed, it is probable that the Principal Auditor who is presently housed in the Government Treasury Building and therefore very close to the Government, that we will put him in this building as well, on a separate floor of it, and therefore that building will become a location for publicly-funded entities, especially those that exist for a purpose connected with scrutinising the executive in one form or another. So, bodies that exist for scrutinising the executive, publicly funded, but which ought to be at a distance from Government, Government believe should be housed more visibly separate from other civil service functions and therefore they will go, very probably, into that building as well. In so far as it is relevant to this motion, that is where the Ombudsman will operate.

The Ombudsman intends to employ, in addition to obviously himself, intends to employ a staff of four persons, two Investigating Officers, a Public Relations Officer, in other words an immediate face for the public that comes into his office and then also somebody to manage his computer facilities. That is the staff that he considers he wants and the Government have agreed to bring to this House a motion to provide the funding for that requirement of his. I therefore commend the motion to the House which, as I say, reflects not the Government's imposition on the Ombudsman but rather the proceeds of the fruit of discussions between the Government and the Ombudsman about what his reasonable requirements are. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, the overall budget of the Ombudsman Office was provided in the Estimates when the House voted £145,000, so here we are not seeking a decision on the overall funding, that has already been decided. What the Ordinance says is that the House has to approve the remuneration, expenses and allowances that are paid to the holder of the office of Ombudsman. The fact is that there is a salary of £35,000 and I think that if the holder of the office had any allowances or expenses other than the £35,000 then, presumably, the motion would have had to say so in order to comply with the letter of the law. If what we are doing here is a motion which is giving effect to Section 4(1) of the Ordinance and Section 4(1) says "there shall be paid to the holder" and not to the entity, we are not giving him the £145,000. We are paying the holder salary, expenses and allowances at such rate as may from time to time be determined by resolution of the House, then the Resolution of the House cannot be that he is getting £35,000 and an additional sum of £110,000 in respect of his expenses and allowances because in fact the £110,000 cover the salaries of the other members of the staff. We provided in the £145,000 in Appendix A that the salaries of everybody, including the Ombudsman, would come to £83,000. We are now being told that there are going to be four employees who will between them get £48,000, an average of £12,000 and that the Ombudsman himself will get £35,000. We have not been told how the £35,000 have been arrived at. Certainly, not by reference to Malta? Because in Malta it is half that amount even though the population is ten times that of Gibraltar. The fact that the holder of the office is happy to get £35,000 I imagine most people in Gibraltar would be happy to get £35,000. I had the Chief Minister's job for less than £35,000 for a number of years and I was happy with it, so that is neither here nor there. I would have thought that notwithstanding the fact that his independence is being determined by the fact that there is a Resolution saying what the salary should be, nevertheless there should be some rationale to where it is that the salary has been fixed in relation to what? In relation to what Ombudsmen get in other places with thirty thousand inhabitants? In relation to UK civil service rates? In relation to the pay of Ministers? Or in relation to what? Other than it is the result of negotiation between the holder and the Government, well, we do not know whether that was the opening offer of the Government or the Government offered less and he managed to negotiate upwards or whether that was his suggestion. But certainly we are not supporting the £35,000. We have supported the £145,000 for the office, for the running of the establishment. Having looked at the position in Malta to try and get some guidance, given the importance that was given by the Minister, to following Malta, in fact it was interesting to discover that in the case of Malta the Ombudsman requires that there should be a two thirds majority of the House of Representatives for his appointment, something which the Government at the time said that although they welcomed our support they would certainly not have a veto from the Opposition. Let me say that I think it is only fair to say that this particular Ombudsman himself has been absolutely clear that he would not be interested in the job unless he had the support of both sides of the House and I just want to make clear that the fact that we question the level of remuneration is not that we are questioning his suitability to do the job because we supported the decision in the original Bill.

The Government have in fact provided additional information as to how they see the location where the office is going to be established and it seems to be a reasonably well placed location geographically, in the centre where people will have access and that there is the consideration being given to other semi-independent entities being housed in that same building. What I am surprised is that no mention has been made about the Consumer Advisory Service which I would have thought they would want to have there as well and whether in fact the Consumer Advisory Service which clearly is not what the Ombudsman is there for but is the only thing that there is at the moment and it may be that it needs reinforcing but if the only thing that there is at the moment to do for complaints about the private sector something similar to what the Ombudsman is going to do with complaints about the public sector. There is, therefore, a parallel in the creation of an avenue for grievances to be investigated although clearly the area of the Ombudsman is far

more important and far more serious in terms of redressing unsatisfactory service, shall we say, because after all in the case of the public sector the consumer has no market mechanism to go elsewhere if he does not like the service that he is getting and therefore the Ombudsman is dealing with a monopoly supplier of services when he is looking at the public administration. Nevertheless, I think the Consumer Advisory Service cannot simply be left in limbo and given that other areas like the Police Complaints Committee and the Principal Auditor have been mentioned, I would have thought it was appropriate to give consideration to that at the same time. My understanding is that they have been in limbo for a very long time. They are supposed to be coming under the Development Corporation and they are not very sure who they come under. They are not very sure what is their line of responsibility and to whom they report and I think it is an appropriate time to address that issue in the context of what has been said about the Unit being housed in Secretary's Lane. Mr Speaker, because we are not supporting the £35,000 we will not be voting in favour. We are abstaining on this motion. We are certainly not voting against it because we are in favour of the office and we are in favour of the individual and we are in favour of the £145,000 but I certainly do not think that the fact that of the £83,000 that is going to be shared by five persons, one gets £35,000 and the other four share £48,000 is something that we do not necessarily agree with.

HON CHIEF MINISTER:

Mr Speaker, on the last point first, as the hon Member knows because we have made public statements to that effect, the Government are looking at the question of the Consumer Advisory Service and restoring it to its proper and effective statutory function from which it had, regrettably, been allowed to decline over many years under the previous administration. I am glad to see that when we do what we are going to do with the Consumer Advisory Service, that the hon Members now will agree but, frankly, Mr Speaker, it is certainly touching to see the hon Members new found enthusiasm for the concept of Consumer Protection and Advisory Service which used to be, as he knows, a much more prominent feature of the public service in Gibraltar than it is now principally because it was left in limbo, to use his own words, principally during the years that he was in Government. Let me tell the hon Member the reason why we have not already done so is that we had been discussing with the Ombudsman the possibility that somehow he should sit on the top of the whole thing, to avoid duplication of senior management and that sort of thing. To us it seems a neat solution that the Ombudsman should sit at the top of a structure that could loosely be called, and indeed we called it in our press release, a civic rights agency which would contain not just the office of Ombudsman but the Consumer Advisory Service, as it is now called, which would be not just a consumer protection office as he has referred to but, indeed, we want to extend the Consumer Advisory Service to provide a Citizens Advisory Bureau type service. It seems to us that these are all functions which ought to be independent of Government and if we are going to create an infrastructure in a building which needs to be serviced and provided with receptionist and telephonist, the logical thing is to put as many of these independent from executive services as possible. Let me say to the hon Member that the Ombudsman is not keen, he is quite happy to see them in the same building, but he is not particularly keen to obtain management responsibility for the whole structure. He takes the view that this is a different function to the function of Ombudsman and however neat and convenient it might be he is not sure at this stage that it is compatible with the office of Ombudsman and, of course, the Government respects that, although we would have preferred the neat structured solution.

Mr Speaker, let me say that we are looking at the space available in this building. The building is not quite as big as it looks because although it has got a garden at the back, the building is really just the outshape on two floors as one can see from Governor's Lane and it is not clear which of the various desirable functions would all fit in there. The Ombudsman will take the whole or most of the first floor. We need one room for the Police Complaints. I do not know whether the Consumer Protection Unit and the Principal Auditor can fit on the top floor or whether we are going to have to

choose one of them to stay out and make provision for somewhere else. Certainly, we will report to the House as soon as the Government have made a decision on such issues.

Mr Speaker, with the greatest of respect to the Leader of the Opposition, I do deduce from what he has said that he has not correctly understood the statutory nature either of the office of Ombudsman nor indeed the treatment that was given to the £145,000 reflected in Appendix A. Let us take that second point first. This House in fact has not voted for the £145,000 because the £145,000 was under the Consolidated Fund charges and the House, as he knows, does not vote in the Finance Bill on Consolidated Fund charges. The hon Member sees that under section 4(2) of the Ombudsman Ordinance it says that the salary, expenses and allowances of the office of the Ombudsman shall be a charge on the Consolidated Fund without the need for Appropriation. So the House does not provide for £145,000. A figure which was our best estimate at the time has been provided and not voted on under the Consolidated Fund charges. Appendix A was there as an indication of how the Government had come to that figure which had been included in the Consolidated Fund charges. Under the terms of the Ombudsman Ordinance it is this House, through this mechanism of a resolution brought before it, that decides not just on the question of the salary of the Ombudsman but also on the expenses and allowances that would be allowed to it. Therefore, there is no question of the House already having exercised any of the functions which we are now trying to exercise this morning. Mr Speaker, which brings me to the second point.....

HON J J BOSSANO:

Does that mean in fact that no payment has been possible until the Resolution is passed? Because there has been no figure which could be charged on the Consolidated Fund?

HON CHIEF MINISTER:

Mr Speaker, there may have been a payment on account of a salary, once it has been approved in the Finance Bill. It is in the Estimates as a Consolidated Fund charge and therefore it is a valid payment once it has been approved by this House. I do not know whether the Ombudsman has been living on his savings or whether he has been getting from the Government an advance to tie him along until his official salary is sanctioned.

Mr Speaker, which brings me to the second point, which is that the hon Member said "well, look, it can only be paid to the holder of the salary, his salary, but surely not to the whole, to the entity that we pay the other expenses for the salaries of other staff". Mr Speaker, I believe that this is an incorrect analysis of the situation by the Leader of the Opposition. The Public Services Ombudsman Ordinance does not establish an entity. It does not establish an organisation. This is not a Government Department. It does not establish a statutory body. As an organisation it simply establishes the office of the Ombudsman and therefore all the expenses are his personally. He is the one who is going to do the recruiting, not the Government. He is the one who is going to make the payments. These are his expenses and therefore I take the opposite view to the hon Member that the expenses are actually payable to him. This is not a Government Department with rules and the Ordinance says "there shall be paid to the holder of the office of Ombudsman a salary, expenses and allowances at such rates as the House may.....". Amongst the expenses that have to be paid to the Ombudsman are the expenses in employing people to support him in his role. Therefore, Mr Speaker, as far as the Government are concerned what this Resolution is doing, what the House is doing by this Resolution, is making over a sum of money to the Ombudsman to allow him to pay himself and to discharge a series of other expenses which he will have which will include the salary and other terms of employment of his staff. There will be other office expenses, communication expenses, stationery expenses, electricity consumption, rates, I suppose, all that sort of thing and which are his expenses because all the functions, duties and

obligations under the Ordinance are not imposed by anything called an entity, they are imposed on the Ombudsman himself. Therefore, it is for him to discharge the expenses and the expenses are therefore his. The question of the salary, it is important not to lose sight of the fact that the Ombudsman is not a Government employee and that the Ombudsman's employees, the four people when he recruits them that I have just described, they will not be Government employees. They will be employees of the Ombudsman. Of course, the Government will have to give an element of security to the Ombudsman, that is why hon Members may recall that his powers of engaging people, in other words the number of people and the terms upon which he can engage them, need to be approved by the Chief Secretary. That is in Section 7 "the Ombudsman may, with the written approval of the Chief Secretary and within the limits of allowances and expenses set by the House of Assembly, appoint such Officers as he may determine to be necessary or convenient".

Mr Speaker, the hon Members have been, I was going to say implicitly critical, but I think that they have now been explicitly critical of the salary of £35,000. The Government are determined that the office of Ombudsman shall be regarded as a permanent, prestigious and important post within our community. The Government believe that people that occupy such posts should be properly remunerated. That if one pays too little one necessarily limits the calibre of the person who will be willing to attain that post and therefore the Government believe that the salary of £35,000 is an appropriate salary to have offered the Ombudsman. The Government believe in paying people for the job that they do. The hon Members believe that in respect of some people but not in respect of others. We believe it in the case of everybody because if we were now to analyse the arrangement entered into by hon Members which allowed others to enhance their salaries, then we would also have to consider whether in relation to the function of the Minister or the function of an Ombudsman, some of the people who enjoyed enormous improvements in their personal financial situation as a result of some of the privatisation exercises entered into by the Opposition Members, allegedly to save the taxpayers money, would also need to be put on the table and analysed side by side with the £35,000 salary for the office of Ombudsman and the £40,000 plus salary which we have been implicitly criticised in passing for the office of Ministers. We do not take that view of things. We think that everybody should be paid a salary which is appropriate for the job that he is doing and in the context of the Ombudsman we believe that if the Ombudsman is to attain the respect, prestige, profile, permanence and importance that we on the Government side attach to the office of Ombudsman that he should be properly remunerated. Of course, if there are still Opposition Members who consider that the Ombudsman is a toothless tiger then, of course, I can understand why such a person might think £35,000 is too much. I can tell the House that for this very sharply toothed tiger, which is what he is, the salary of £35,000..... I do not know the relationship that now exists between the hon Member that once said that and the official Opposition of which he is now, for all intents and purposes, a partisan part. I do not know whether that now constrains the hon Member, Dr Garcia, to repeat the views that he expressed at that time. But certainly since he once said that it was a toothless tiger I would expect him to vote against it, not to go along and simply abstain which reflects neither support nor opposition, I dare say. We will interpret the hon Member's failure to oppose the motion as evidence of the fact that he has, and I would congratulate him for doing so, reconsidered his position and reflect the fact that he no longer takes the view that this office is a toothless tiger.

Mr Speaker, to suggest a two thirds majority for anything in this House is tantamount to giving another veto to the Opposition [interruption] well, of course it is Mr Speaker and that is not what happens in other Parliaments when a two thirds majority is required. In this Parliament the Government party can never have a two thirds majority. By definition, we can only have a 50 per cent plus one majority and therefore, Mr Speaker, to use in this House the mechanism of requiring a two thirds majority is tantamount to saying that the Opposition will decide who the Ombudsman shall be, that the Opposition will decide how much money he should have and that the Opposition will decide what the salary is. I know that the hon Member has not quite come to terms with the fact that he is now in Opposition. But surely he has

got to understand that given our parliamentary make up, that if there is to be a majority it has got to be a majority that operates in a usual parliamentary sense and not one that operates in a way which always gives the Opposition the veto because if one were genuinely proposing the two thirds majority approach, the sort of totally honest way of projecting that point in the context of our parliamentary and electoral system is to say that there should be a 100 per cent support because two thirds, in effect, given that we have two parties and at least if there is still a third party which I seriously doubt, it operates under the whip of the second party in this House, I see no evidence of any independent existence for the third party inside this House, that would be tantamount to a 100 per cent majority because the idea that some of his colleagues are going to vote against him on such a motion is unusual. Perhaps in Parliaments which are constituted differently with perhaps more political parties with a more enough possibilility of one party may or may not have the two thirds majority, it is appropriate. Certainly, in our Parliament, constituted as it is, to suggest that something should require a two thirds majority is a rather sly way of saying that the Opposition's approval must be required. The way to achieve that is to simply say so. Therefore, Mr Speaker, I believe that the hon Members could, if they were minded to simply record facts, that they do not approve of the £35,000 salary and nevertheless support the motion so that the office of Ombudsman will get off to the start that it has got off to on the previous occasions that we have discussed it which is with support across the floor of the House. I say that on the assumption that the hon Member Dr Garcia has indeed reconsidered his position and now thinks that the office of Ombudsman as constituted is a worthwhile thing worth his support.

Question put. The House divided.

For the Ayes:
The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

Abstained:
The Hon J L Baldachino
The Hon J J Bossano
The Hon J Gabay
The Hon Dr J J Garcia
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon J C Perez

The motion was carried.

HON CHIEF MINISTER:

Mr Speaker, I beg to proceed with the motion standing in my name and which reads: "There be hereby constituted a Select Committee of this House comprising of three Members nominated by the Chief Minister, namely the Hon P R Caruana, the Hon Keith Azopardi and the Hon Bernard Linares, and two Members nominated by the Leader of the Opposition, namely the Hon J J Bossano and the Hon J J Garcia to review all aspects of the Gibraltar Constitution Order 1969 and to report back to the House with its view on any desirable reform thereof".

Mr Speaker, hon Members will be aware that under the Standing Orders of this House, a motion to constitute a Select Committee has to name the Members of it and cannot be done by a formula which says how they will be appointed. That is why, following consultation with the Leader of the Opposition, I obtained from him the nomination of his two nominees, himself and Dr Garcia.

Mr Speaker, the House well knows that it is the policy of the Government to modernise the Constitution and to achieve a modern relationship with the United Kingdom reflected in an upgraded, reformed, Constitution that will eliminate the colonial

trappings in it so that we can therefore hold Gibraltar up as having ceased to be in a colonial, in a historical sense, relationship with the United Kingdom. The Government have also said in the past that it would be using, in order to achieve two purposes, as I will describe in a moment, the mechanism of the Select Committee of the House, firstly, in an attempt to see if a consensus can be obtained in the House so that when proposals are put to the United Kingdom for constitutional reform in Gibraltar that they should be the Gibraltar position and that they should reflect the consensus view of the whole House. Secondly, that there should be a mechanism through which the whole House can obtain the views of the widest possible cross section of the community of Gibraltar and that therefore a mechanism should be established and this is the one that should be selected to enable anybody in Gibraltar, be they a political party, lobby groups, individuals, who wish to submit evidence either written or oral to the Select Committee of the House, this procedure under Standing Orders allows them to do that. The objective is that the Government should consider what really is a very wide remit and that is to review all aspects of the Gibraltar Constitution and to report back to the House with its view on any desirable reform thereof, having consulted a wide process of consultation which is not stated in the Resolution because it is implicit and provided for in the Standing Orders of the House where the Select Committee have the right, not just to allow people to give evidence, but indeed call upon people to give evidence. We believe that this is the most formal structure that can be established. We believe that there is no more "senior" in local terms Constitutional body that can be established than a Select Committee of this House. The alternative, which would have been some form of Constitutional Conference, and remember that the Constitutional Conference on the last occasion was convened by the United Kingdom, not by the Gibraltar Government. The Gibraltar Government conducted their own process, establishing this under the rules of this House will give that Committee a formal, legislative, standing and backing as an instrument of the Parliament of Gibraltar which we think will give more weight to it in all quarters of the United Kingdom. Therefore, Mr Speaker, the motion sets the widest possible terms of reference. All aspects of the Gibraltar Constitution, not just those institutions incidentally that govern our institutional relationship with the United Kingdom in terms of where particular powers are vested in particular areas, but we as a Government, let me say, attach particular importance to certain domestic aspects of the Constitution. We believe that there are certain transparency issues. That there are certain checks and balances issues, that there are certain local quality of democracy issues, nothing to do with our international status which ought to be enshrined in our Constitution. Therefore, when we talk about Constitutional Review, we are talking not just about the aspects of our Constitution which reflects our institutional relationship with the United Kingdom but also the question, what does the Constitution provide about how we govern ourselves in terms of openness, transparency, checks and balances and the relative interaction of domestic authorities? These are also important to the quality of our Constitution and the enduring quality of our democracy. Therefore, Mr Speaker, hon Members will see that the Motion preempts nothing and is a wide remit that enables the Committee to examine all aspects of this matter and to report without any constraints whatsoever back to the whole House with their findings and recommendations. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, we are voting in favour of the motion. Obviously, we will be participating in the Select Committee. I think it is important to spell out precisely how we see this so that there is no doubt as to what it is we are participating in as far as we are concerned. Let me say that in the statement made to the Committee of 24 by the Chief Minister there were paragraphs which gave the impression that we were talking about changing the Constitution merely to give legal effect to what was already the practice and that consequently the modernisation would then be the appropriate label for it. That is to say, it is something that is out of date, which no longer reflects the reality of today's Gibraltar and we are modernising it in order to reflect, on paper, what happens

in practice. If that was all that was intended we would not want to be a part of that and if we were to finish up with a modernised Constitution that retained the status of Gibraltar as a non-self governing territory, subject to Article 73E of the Charter of the United Nations in respect of which the United Kingdom was required to report annually to the UN until such time as we were decolonised, then effectively, as far as we were concerned the importance of what needs to be done would not have happened and in such circumstances our position would be that if that was put to the people in a referendum we would campaign against its acceptance. I think it is important that that should clearly be understood because we do not want to be seen to be misleading anybody as to where we are coming from.

Having said that, let me say that of course the Chief Minister does not always say the same thing on different occasions. Indeed, he does not even say the same thing on the same occasions, because when he was answering questions, in answer to a question from the Papua New Guinea Ambassador about free association, he said "we are about to put to the United Kingdom proposals for what we call the modernisation of the Constitution but which would take it right out of the realm of colonialism and when we are finished what we will be is much, much closer to the concept of free association". If indeed the policy of the Government is that we are going to come up as a result of the work of the Select Committee with proposals that will bring us much, much closer to the concept of free association, then I will suggest that the Chief Minister talk to the Hon Mr Montegriffo who in fact in 1987 produced a blueprint to bring us much, much closer to free association twelve years ago. We in fact, in the 1996 Election, after experiencing the impossibility of pinning down the United Kingdom to discussing anything, decided that the only way to tackle the situation was precisely to go back to the work that had been done by the AACR up to 1987 on free association and indeed the position that was adopted by the Legislative Council in 1964 with the encouragement of the British Government before the Referendum. It is quite clear from reading what took place at the time that in 1964 when the Legislative Council unanimously, prior to the 1964 Election and post the 1964 Election, unanimously took the position that they wished Gibraltar to be decolonised by opting for the free association route which was then one of the three that existed, because in 1964 there were only three, the fourth one appeared in 1970, they were doing so having been given the tacit go-ahead by the UK. Indeed, in 1964, post the implementation of the 1964 Constitution the Committee of 24 was informed and there is an amazing similarity between what was said in 1964 and what was said in 1996. In 1964 the Committee of 24 was told that we were practically, in reality, self-governing, and that in fact the change of the Constitution which would take place within five years, by 1969, would be the final stage required to decolonise us by putting into the Constitution what was already the reality. In the 1969 Constitution, in fact, it says that the ministerial responsibilities were being given legal form as a result of the 1964 Constitution, but were already operational prior to that Constitution following the 1964 Constitution. In 1964, and indeed in 1968, proposals were put to the United Kingdom for Gibraltar to come under the Home Office. We will be putting that as our view to the Select Committee consistent in fact with what we spelt out in the manifesto in 1996 which was the view of the GSLP as to what it is that is required in order to engage the United Kingdom to commit itself to decolonising Gibraltar because if that is the only real obstacle, the only real obstacle that we face is that if all that the United Kingdom is going to do is to pacify the natives by stringing us along and then making some concessions which they hope will keep us quiet for another 30 years, then, effectively, we will have wasted the time of everybody in Gibraltar and our own and we should not play their game. The fundamental commitment has to come from the UK. It is the UK that has to go back to the UN and face what would be I imagine not a very pleasant experience of telling them "look, we have now reached an agreement with the Gibraltarians. We have negotiated with them the kind of relationship that they want and therefore they are now, as far as they are concerned and as far as we are concerned, decolonised and consequently we are no longer accepting that they are a territory which comes under the terms of reference of the Committee of 24 in respect of which we have to submit annual reports to the Secretary-General". If that does not happen, then

effectively, the decolonisation Constitution and the exercise of self-determination would be something that would be purely domestic as the 1967 Referendum was. Because the real tragedy of the 1967 Referendum was that the people who went to vote and plastered Gibraltar with Union Jacks thought that they were voting in an exercise of self-determination limited to the two options of either staying as a British Colony or passing over to Spain, but nevertheless in an exercise which having voted would then be accepted. The truth is that the UN condemned the Referendum before it was held, rejected it after it was held, and instructed the United Kingdom to hand us over to Spain by October 1969. Frankly, the last thing we want to do is precipitate that kind of sequence of events but nevertheless the alternative cannot be that we stay as we are indefinitely in terms of our international status and in terms of our status in the UN so that the United Kingdom and Spain continue negotiating or not negotiating our decolonisation whilst we kid ourselves that we have ceased to be a colony. In putting forward our views in 1996 we spelt out that there was the example of the free association agreement with the Cook Islands, which was the one that had been looked at in 1986 and 1987 by a sub-committee of the AACR and in fact one of the things that is very clear in that Constitution is that the most important area in the difference between the colonial territories and the freely-associated territories is in the conduct of foreign affairs, because the conduct of foreign affairs in a territory that is freely associated is done on behalf of the territory and at referendum to the territory. That is to say, it is not the case that New Zealand negotiates with other people in the region and does so for itself and the Cook Islands but then decides that if the interests of New Zealand so require it they ditch the Cook Islands and they do a deal for themselves. That is not the case. What New Zealand does is it negotiates for itself what the New Zealand Parliament wants and it negotiates for the Cook Islands what the Cook Islands Government and Parliament wants. Consequently, New Zealand in that situation is the agent of the Cook Islands because the Cook Islands is not in fact an independent state in the sense of handling its own defence and foreign affairs. It has a defence and foreign affairs agreement with the associated state that handles it on its behalf. We consider that that is one of the fundamental elements that need to be tackled and we also think and we said so in the Manifesto that, Mr Speaker, in the case of Gibraltar there is a critical area in the relationship of the European Union and Gibraltar and the United Kingdom for which we blame the United Kingdom because we think that the mess that Gibraltar is in is not a mess created by the Spaniards. It is a mess exploited by the Spaniards but created by the British Government, just like the fact that we were denied the vote in the European Union in 1976, was a unilateral act by the UK and the rest of the issues relating to us in terms of where we stand..... we have a position where the latest statement from the European Union in terms of the Company Accounts directive is to say to the United Kingdom that there will be Infraction Proceedings against the United Kingdom for the United Kingdom's failure to give effect to the directive in its territory. The fact that this is a defined domestic matter in 1969 is meaningless because in 1972 any area of Community law, as far as the Community is concerned, the United Kingdom is required to give effect to in Gibraltar in whatever way it sees fit but it has to give effect. If giving effect to it runs roughshod over the Constitution then that, as far as the European Union is concerned, is neither here nor there. In fact, we are in the European Union as a territory for whose external relations the United Kingdom is responsible. We believe that being responsible for our external relations does not mean that they have the right to impose on us whatever they choose in relation to the European Union. What we believe is that they are responsible for acting in our name and on our behalf, that is what the equation is supposed to be, not the other way round. In looking at the area of external affairs we cannot, in the context of our membership of the European Union, look at external affairs within the Union and external affairs outside the Union as synonymous. It seems to us that when the European Union increasingly participates as a unit in international relations, then the international relations of Gibraltar must fit in with what is being agreed between the Union as a whole and the rest of the world but when we are talking about bilateral, internal relations inside the Union, then that is not the same as talking about foreign affairs because in fact it affects every domestic facet of life, education, employment, health care, working

conditions. All those things cannot now be described as external affairs because they are things on which there are directives, otherwise there are no domestic affairs left. So we have de facto a situation where contrary to the view that was put to the Committee of 24 that we have today by the passage of time effectively achieved a greater level of self-government than when the Constitution was done in 1969, I think it is the opposite. The passage of time has effectively reduced the level of self-government, not increased it because it has extended the concept of the United Kingdom being responsible for implementation of its international obligations in Gibraltar to every nook and cranny of our society. If everything that comes out in the form of a directive, the Yugoslav Regulations that came out, primary law in Gibraltar and the United Kingdom does it by Order in Council in the other Colonies, because it chooses to do it in the other Colonies, presumably it has no requirement to do it but it has a requirement to do it in Gibraltar because Gibraltar is Community territory and the Regulation says "in the territory of the Union" and we are the territory of the Union. But, if everything that has to be done in the territory of the Union is something over which the United Kingdom has the last word then there are no defined domestic matters left, other than the ones that the Community has not yet got round to harmonising because once there are attempts to harmonise those matters, then that is it.

So, we need in fact in terms of domestic issues to recover some of the lost ground and I think that has to be done in re-defining what the United Kingdom does for us in the European Union and how they go about doing it. The Constitution of 1969 in fact, Mr Speaker, has got the same wording as, for example, the one of Bermuda of 1968 or the one of the Falkland Islands of 1985 so it shows that in terms of what the Governor is supposed to do as the head of the Executive, the fact that he controls the Police, the fact that he controls the Civil Service, the fact that he is responsible for appointments, the fact that he is responsible for promotions, it is in all of them. In fact, even in Commonwealth countries which have become independent there is the same concept that the public service are in the employment of the Crown, not in the employment of the Federal Government of Australia, or the Federal Government of Canada. They are employees of the Crown and it is the Governor General that is the head of the Executive obviously, in carrying out the policies that the Government decides by a majority in Parliament. If we are looking at that area then it seems to me that it is not the way that these Instruments are drafted but whether they are in practice being implemented in a way here which is different from what they operate in other places. Clearly, for us, in supporting this motion and in participating in the Select Committee the primary consideration would be not to get bogged down in that but to concentrate on achieving as our first objective a commitment from the United Kingdom that they will be engaging, with Gibraltar, in order to come up with a new Constitution that will replace the one that we have got there and that will mean that once that Constitution is approved by the people in the exercise of their right of self-determination, that that will be the end of Gibraltar's colonial status. Unless and until we get that, effectively, everything else that we do is tinkering with the problem instead of getting to the roots of it. Obviously, the Select Committee, as other Select Committees have done in the past, will give an opportunity to Mr Guy Stagnetto or Mr Andrew Haynes or anybody else that has recently been complaining in the Chronicle of not having sufficient opportunity to ventilate alternatives to put their views to the Committee as to what ought to be done and we, of course, have an obligation, once we set up this Committee to give serious and honest analysis to whatever ideas are put to us from whatever quarter they come. Therefore, we are happy to see this going on. The only regret is that it has taken this long, Mr Speaker. The Chief Minister told the Fourth Committee in 1998 that they had already said in 1997 that they were putting proposals to the United Kingdom and that these proposals were making progress and that they would be followed up by a Select Committee of the House. In fact, we are now in 1996 and it is quite obvious that the Select Committee, if it finds itself loaded with a lot of material, may not survive the life of the House in which case we would have to start the process all over again, presumably after an election. I would imagine that a Select Committee of the House ceases to function once the life of the House expires.

HON CHIEF MINISTER:

Mr Speaker, the Government have formulated its motion in wide terms. We have not sought to limit its scope of enquiry. It is available to look into, to discuss whatever aspect of the Gibraltar Constitution Order 1969 it wishes to discuss. But of course as I am sure the hon Member will also recognise, by the same token, the Government are not willing to mortgage the process to the views, either of itself or to the views of the Opposition. Obviously, what the hon Member has said reflects the Opposition's analysis and the Opposition's view. I suppose if one cannot arrive at a consensus report they will then be reflected in a minority report. That is fine as well. That often happens in Select Committees. The Opposition participates in the Select Committee as oppositions participate in select committees elsewhere in a minority but it is a genuine attempt by the Government to seek consensus. We should neither of us pre-empt, by seeking to impose conditions, suffice it to say that if consensus cannot be reached the Government have the majority and if we are still in office at that time, will be in a position to proceed with its proposals but the Government's preference is to try and seek a consensus Gibraltar position. The mechanism of the Select Committee is a genuine attempt to achieve that. But, of course, whilst we are happy to see common ground and to seek to what extent to a process of give and take a common position can be found, obviously the Government are not going to be willing to mortgage its policy, or rather to exchange its policy for the policy of the Opposition minority in the Committee and in the House and I do not suppose that the hon Members would expect us to do that.

The hon Member draws a very immediate link between the process of constitutional review and what might or might not happen at the United Nations. Mr Speaker, it is not the Government's view that constitutional modernisation is only of value if it is followed by events which he and I might well agree, represents verifiable or auditable decolonisation but things have to be taken in their proper order. The content of the Constitution is not determinated one way or the other on the question of decolonisation. Indeed, I saw the other day a United Nations document that says that even choosing the status quo, even choosing to remain a Colony, is a valid form of the exercise of the right to self-determination. Therefore, the sequential events are constitutional reform, followed by an act of self-determination which is an essential sine qua non of decolonisation. Whatever the Constitution modem that emerges, it has to be put to the people in an act of self-determination which is basically a referendum and then by all means follow, although it is not in our hands to achieve it, it is in our hands to press for it and to call for it, but certainly it is not in our hands by ourselves to obtain Gibraltar's delisting. Time will tell the extent to which, in this Committee, the views of the Opposition are reconcilable with the views of the Government.

The hon Member in quoting from my Question and Answer Session in the United Nations might more constructively, given the point that he was making, have quoted from the text of my speech that preceded that question in which I said that a process of constitutional modernisation followed by an act of self-determination in which that constitutional status had been freely chosen by the people of Gibraltar in what would be an act of self-determination, I said to the Committee of 24 "we believe would then entitle us to be delisted". I am not sure that the hon Member has not spotted that or simply did not think that he could level enough criticism at me if he had quoted it. Certainly I believe that that is far as Gibraltar can go. We can go and say what we believe will entitle us to. To suggest that Gibraltar would then be able to obtain the delisting I think would be to overstate what we are able to achieve ourselves. I think that the hon Member's subsequent contribution was more to the point where he said that of course it would then be a matter for the United Kingdom to delist us. Therefore, at that point it would become a question of Gibraltar lobbying and things of that sort. I think it would be incorrect to signal to the electorate in Gibraltar that there is anything that Gibraltar can do by itself to obtain a delisting. Indeed, the hon Member may be interested to learn that one of the matters of the new Chairman of the Committee of 24 is very

interested in and is working on, I discussed with him over dinner, is the mechanism for delisting, the criteria and mechanism for delisting territories is the issue that most interests him. Therefore, this is a live issue.

Mr Speaker, the reference to free association was in answer to a question and has to be read in that context. What I said was that if we had a modernised Constitution without the colonial trappings in it, that we had a modern relationship with the United Kingdom, freely chosen by the people of Gibraltar in referendum, that that was much closer to the concept of free association which is a more equal partnership, a relationship less colonial in nature. It should not be read in the context of the point in which the hon Member focuses which is this conduct of foreign affairs on an agency basis which certainly I was not intending to suggest that we felt we could achieve that or that the proposals of the Government of Gibraltar have developed in its own mind would achieve that or not achieve that. The phrase "much closer to" means much closer to and does not mean it, free association. It means something less than free association by definition. The hon Member raised the question of the language in the infraction decision - failure by the United Kingdom to implement in its territory. The hon Member I hope was not intending to suggest that that represents new language or a new development. That has always been the position in pre Infraction proceedings letters, in Article 169 letters, in recent opinion. The European Community takes the view that the party who has contracted the international obligation to do these things is the Member State. The Member State is the United Kingdom and that how this is done is a matter for the national laws of Member States which we say means the Gibraltar Constitution Order and not the European Communities Act of the United Kingdom. But the European Community regards that as an internal mechanism of Member State legislation. I think the United Kingdom argues the same thing. Not that she always stands her ground on the matter, indeed she often does not, but when the United Kingdom is defending its right to nominate a competent authority in Gibraltar it says "look, the internal legal arrangement within the Member State for the provision of competent authorities is a matter for the Member State and the Member State has promulgated a law called the 1969 Gibraltar Constitution Order which is United Kingdom law and has created a mechanism which establishes competent authorities in Gibraltar, separate to the United Kingdom's own domestic competent authority" so the United Kingdom argues the same thing about our autonomous powers not just at the legislative level but indeed at the administrative and executive level.

Mr Speaker, I do not want to pre-empt the discussions that we will have. Obviously they will bring their policy, and steer it to the discussion, we will bring our policy, and steer it to the discussion. Let us hope that this is an issue upon which we can find common ground with which both sides of the House are content. The hon Member will have read, in our own Manifesto, that we have things to say about the European Community situation and indeed that many of the issues that exist between the Government of Gibraltar and the Government of the United Kingdom is precisely because this Government of Gibraltar seeks to protect Gibraltar's legislative and administrative and jurisdiction independence in all facets in the context of the European Union and does not concede to the view or does not concede to any agenda that may or may not exist that somehow our membership of the European Union abrogates our constitution, or suspends our constitution rather, in that respect. For that reason we have made proposals in our own 1996 Manifesto for dealing with the situations that arise thereby. Mr Speaker, the question of the timing is clearly a matter that the Government have wanted to choose. We have considered that this is an appropriate moment to proceed. We have been engaged in discussions between ourselves. We have been engaged in discussions with the United Kingdom. We have been wanting to fit this in, in accordance with a timetable that would signal importance but would not signal somehow that this was a life and death urgency, that the idea that somehow Gibraltar has got to rush to this before the 31st December of the year 2000. Obviously, we would like to achieve our objectives as soon as possible but we have not wanted to proceed in a way which adds strenuous and unnecessary pressures to what, I suspect, will already be a difficult and complicated exercise. I actually do not agree with the last remark made by the hon

Gentleman which is that somehow the work of the Committee this side of the Election will be lost. Certainly the Parliament dissolves and therefore the Select Committee with it and the Select Committee could not continue to meet during the interregnum but certainly I think a new Select Committee, either similarly constituted or differently constituted, depending on the results of the Election, obviously we are confident that it will be similarly constituted, would be free to adopt and to take note of and to ratify and to assume and adopt the evidence taking and the records so far of any previous Select Committee. I do not think it is a case of having to start again by taking witnesses and inviting again people to submit their submissions. The incoming Committee would just say "we adopt the examination of this or that witness as our own. We adopt the submission tendered, by a gentleman mentioned by the Leader of the Opposition, or any others and proceed on that basis". It would not be time lost. I think it is time gained in a process which is an important process but it is more important to get it right than to rush into it. Gibraltar needs to do this in a way which is compatible and consistent with all the other things that are also important to Gibraltar and which neither detract from the importance of this nor detract from the importance of those other things. Of course, the hon Member knows that I am talking about political and economic stability and therefore we will want to seriously proceed with this important agenda but not as if this was the only important agenda that Gibraltar needs to have addressed and to have processed and to have progressed. It is an important agenda but it is not the only important agenda to the people of Gibraltar. Therefore I am gratified to learn that we shall be able to adopt the constitution of this Committee by consensus in the House and that I look forward to convening the first meeting of it so that we can agree as a committee how we are going to go about this business and establish methodologies and approaches to the conduct of this exercise which we think is what we will do in our first meeting.

Question put. The motion was carried unanimously.

HON P C MONTEGRIFFO:

Mr Speaker, I have the honour to move the following motion:

"That this House approves the making of the following rules:

1. The Income Tax (Qualifying Companies) (Amendment) Rules 1999.

2. The Qualifying (Category 2) Individuals Rules 1999.

3. The Qualifying (Category 4) Individuals Rules 1999."

Mr Speaker, this motion arises from the need to seek the approval of the House pursuant to Section 98(2) with regard to the introduction of certain Regulations that will amend provisions of the Income Tax Ordinance. The three sets of Rules are relatively straightforward and I will summarise them initially at this stage. The first Rule, the Income Tax (Qualifying Companies) (Amendment) Rules will have the effect of replacing the Financial and Development Secretary with the Finance Centre Director as the statutory authority for the granting of qualifying company status. The second Rule, the Qualifying (Category 2) Individual Rules will have the effect of introducing a new regime for what has come to be known in Gibraltar as "HINWIS", essentially wealthy retirees, replacing the current regime. Thirdly, the Qualifying (Category 4) Individual Rules introduces an altogether new category of what are called "REPS" in Gibraltar, namely a regime which will facilitate the importation into Gibraltar of certain expertise not locally available.

Mr Speaker, dealing with the first of those Rules, the Income Tax (Qualifying Companies) (Amendment) Rules, this is the most straightforward of the three Regulations the House is being asked to consider. This simply substitutes the Finance Centre Director for the Financial and Development Secretary when it comes to defining, in the Regulations who is responsible for granting and regulating qualifying companies. It is nothing more and nothing less than the final legislative piece in the jigsaw which we have

been putting together over the last few months to transfer these responsibilities from the Financial and Development Secretary to the Finance Centre Director. It therefore completes that legislative part of the programme.

The second set of Rules, the set of Rules which has to do with what was formerly known as "HINWIS" is more substantive and has been the subject of extensive consultation with the industry. As the House is aware the current Rules have been a success. We have attracted a large number of retirees to Gibraltar. They have given a significant boost to the property market, in particular in the higher levels of the property market but we have had many representations that the Rules contain deficiencies and indeed should be improved per se. The most important features of the new Rules are properly the following; firstly, whilst a new (Category 2) individual will require to have, for his use, available accommodation in Gibraltar, that will now be available accommodation which he is required to have in terms of purchase. He has to purchase property rather than is the case today which he can purchase or rent. The requirement therefore tightens somewhat in that a (Category 2) individual has to undertake a commitment that he has to purchase property.

Secondly, the approved residential accommodation has to be occupied by this individual for no specific period in the year. The previous Rules, hon Members might recall if they work in this field, in any event, actually stipulated a minimum period of time which the property had to be occupied by such an individual. That has been an unnecessary constraint on the normal tax planning which such an individual would make when determining whether to base his residence in Gibraltar. Therefore, what we have done is taken away that constraint. It now becomes simply a matter for the individual and it advises to determine how long he spends in Gibraltar.

Thirdly, the new Rules clarify certain types of business activities which these individuals can undertake. The previous Rules were essentially silent on this. Originally these Rules were designed for pure retirees - people who simply retire and do nothing else. Many people who fall into this category are people who remain active in a sort of semi-retirement function and therefore we have sought to clarify in the new Rules certain business activities, for example directorships of exempt companies, which such individuals can undertake notwithstanding the fact that they would have this tax status in Gibraltar.

Fourthly, and importantly, the Rules require that there be continuing compliance with the conditions set out in the Rules. There was a gap in the previous Rules to this effect. This now provides that if conditions are not met on a continuing basis the Finance Centre Director can revoke a Certificate given to a (Category 2) person and that includes, importantly, failure to have paid the prescribed level of £10,000 tax which the Regulations provide. It also clarifies the position in respect of the position of certain members of the (Category 2's) family. The current Rules are silent about how a spouse and children are treated. If a person becomes a tax resident on this basis is the wife and minor children included in that? The new Regulations make clear that they are included for the purposes of the exemptions. There are transitional provisions in the Rules as one might expect. This gives current "HINWI" holders the right either to retain the certificate under the old Rules or to elect to fall under the new Rules. It will be obvious from the terminology I have used that we have also decided to change the label that describe these individuals rather than the explicit and somewhat undesirable label of high networth individual, we are now simply substituting it with a much blander (Category 2) qualifying individual. We believe, that these changes will considerably help to improve a programme that, as I said, has already enjoyed some considerable success.

The third and final category, the Qualifying (Category 4) Individual Rules is, as I said at the beginning of this motion, an entirely new set of income tax Regulations. They build on the existing "REPS" status which was introduced by the last administration and if hon Members will recall essentially the existing "REPS" status allows certain types of companies to bring in expertise that is not available in Gibraltar and to have a person providing that

expertise, have a cap on his tax of £10,000 per year. We have received many representations, Mr Speaker, to the effect that a further category was needed to attach itself to the middle management level, in other words, people that are required in Gibraltar in respect of which there is no expertise in Gibraltar but in respect of which the high rate of personal tax in Gibraltar makes it unattractive for them to come and work here. That is what these new Rules seek to do. These new Rules seek to fill that gap at middle management level for skills not available domestically. Essentially, the Rules provide for a tax of £5,000 and the provision of a new job created on the back of such new individual that is brought into the economy. The political view we therefore took is that whilst £5,000 is obviously half of £10,000 the need for a new local job to be identifiably created at the same time as a (Category 4) individual is brought in was also of great significance. Indeed, one would argue, of more significance than simply £5,000 into the Government exchequer. Therefore we felt that balance between providing a new facility for middle managers but at the same time making sure that local employment would complement such a certificate was a very acceptable political position to adopt. Like the existing "REP" rules I have mentioned that only people who have skills not available in Gibraltar would be able to access the certificate. The certificate would be for a three year period although, admittedly, renewable for another three year period in various circumstances. The original "REP" rules passed by the last administration was for a five year period. We have taken the view, in these Rules, that the amendment be brought to the House on the original Rules the last administration introduced that we have modified that three years is more appropriate because it would actually focus employers in the need to train up local people, even though as I say there is provision for a single further extension of three years if necessary. On the tax position, I have mentioned that £5,000 is the tax payable by an individual as long as he earns no more than £50,000 a year. If he goes beyond that then he clocks straight into the £10,000 payment which is the payment of a (Category 3) status.

Mr Speaker, the Rules only apply in the commercial sector to exempt and qualifying companies. This has been the subject of a great deal of discussion with the industry and in particular with those in the industry that are local taxpayers. The Government very carefully considered whether it should not extend this provision to other companies and other practitioners and other business entities other than exempt and qualifying companies. The conclusion we came to is that although the arguments are strong for local companies to have a similar facility it is important at this stage when we are in the middle of a tax reform exercise, not to blur the distinction which has always existed in Gibraltar since 1967 between the onshore and the offshore tax regime. That system in itself has created, one could argue, an element of distortion, an element of unfairness but it has held its own reasonably well for that period of time. We felt it prudent to preserve that ring fencing and not to open it up until of course a more user-friendly tax system across-the-board is introduced in the medium term. We are, therefore, not oblivious Mr Speaker to the very legitimate representations made by the local industry in this regard but we hope that it will understand that it is precisely to defend the ring fencing of the offshore regime which we give so much priority to that we are determined not to tinker with one matter that could open the proverbial can of worms.

Mr Speaker, in conclusion, we believe these Rules will make it attractive for employment to be generated in the new sectors that we are trying to encourage, namely captive insurance and investment services. There obviously are potentially a wider use but I think one will find that the Finance Centre Director in the exercise of his powers will keep a close eye on making sure that they are not abused. The purpose of these rules is to import expertise generally not available here and to create activity in new sectors that we are keen to diversify in. I therefore commend this motion to the House.

Question proposed.

HON A ISOLA:

Mr Speaker, if I may just deal briefly with the second point first, the Qualifying (Category 2) Individual Rules 1999. Certainly, as

the hon Member has already said the product that was introduced some years ago following I believe the Price Waterhouse Report commissioned by the last Government has as hon Members recognise been successful. I think that the changes that are being introduced today will improve that product and I am aware of the industry having been consulted in respect of the proposed change to the Rules. One question that springs to mind from the transitional provisions is where the new requirement that is being introduced about the actual purchase acquisition of property where a person on the previous Rules on rental and he now elects to have the new certificate whether that will in any way be affected or whether it will continue on the same terms and conditions as when the original certificate was granted. We could find that in fact someone has a certificate under these Rules that does not actually comply with them. I do not know what thought has been given to that potential problem because I am aware of the number of these "HINWIS" who actually do rent and although we welcome the change in terms of purchase of property I think at this stage because of the success of the product I think it is possible to increase the stakes in making it more beneficial to Gibraltar to have this product. What happens to those who may be left in limbo?

With regard to the new category being introduced for what the Minister described middle managers, the Opposition do not see the necessity for this particular product and not seeing the necessity for this product we are as the Minister himself has identified, aware of the potential problems that this can cause within the current structures of business as it is today The original "REPS", relocated executives possessing special skills was introduced, I believe, for the same reasons as the Minister has given today which is to assist businesses that are seeking to move to Gibraltar to enable them to bring their experts with them at a favourable tax rate in order to ensure that they are not going to prise up the market by the high tax rates that the rest of us have to pay. I notice that the Minister has said that the intention of these Rules is to encourage the new captive insurance sectors and other, I assume investment services and banking sectors to be able to similarly take advantage of that provision. We feel that where there is already provision for a £10,000 cap of tax there is not really a need to have a further reduced level of £5,000 and secondly the potential problem which can arise where an exempt company already with a presence in Gibraltar, and a qualifying company, already with a presence in Gibraltar is able unlike their competitors..... I think the Minister has recognised and knows very well the difficulty that there is when people competing with each other are on different tax levels. As the Minister has said this has been the case since 1967, it is nothing new, but when there are people at different levels competing with each other and one is paying 35 per cent tax and the other is paying £20 or £25 pounds a year tax or five per cent if it is a qualifying company, then to have an extra facility which is to now take on people and pay £5,000 it puts them at a further and I think to an extent we are further increasing the gap between the two tiers that we already have and giving them I think a further disadvantage. I accept that it is for specialist skills and I accept that the rules relate to essential but with the limited labour market that we have today and although it is improving by the year as more and more graduates come there is the problem of not enough experienced middle managers, not enough experience because we have not had enough time to have those experienced middle managers in place and a product such as a Chartered Accountant for example there are numerous adverts in the press over the last few months of local companies looking for Chartered Accountants. I suppose the Finance Centre Director will be in a difficult position in refusing an application where he has been shown by the employer that a Chartered Accountant cannot be found in Gibraltar. That is the nature of the problem that I think these Rules will further aggravate and indeed may widen the gap.

Mr Speaker, we have already in the original Bill before this House on the question of the transfer of powers from the Financial and Development Secretary to the Finance Centre Director expressed our reservations as to the need for it to happen. We have already raised our concerns as to the marketing and the licensing being from the same department and as we abstained before we will similarly abstain to this single motion, again, particularly as a

result of our not being in favour of item 3 of the motion, being the new (Category 4).

HON P C MONTEGRIFFO:

Mr Speaker, I am grateful for the hon Member's comments although I regret his lack of support for these measures that have a large element of support from the industry albeit on the basis that everybody would like to benefit from them. Let me take up some of his points. Firstly the last point on the transfer to the Finance Centre Director of the Financial and Development Secretary's responsibilities. I really fail to understand why the Opposition has such a fixation on this matter or this inability to recognise the value of the exercise in question. All that is happening here, potentially, is two things. One, that there is a proper constitutional redefinition of who should be responsible for this issue. In other words, the Gibraltar Government are clearly placing itself in the driving seat as it has been de facto notwithstanding the Financial and Development Secretary's statutory position as the authority that grants licences for exempt and qualifying companies. That surely is a welcome step in the context of general constitutional ambitions for Gibraltar but, secondly, and perhaps much more relevant in an immediate sense is the fact that it simply adds substance to the one stop shop concept which we are trying to create in the Financial Services Unit within the DTI. As hon Members know, Gibraltar is not an easy place to get established in. There are many departments one has to go around, whether it is the ETB, whether it is the Income Tax Office or the Social Security. When it comes to financial services we are making an effort, albeit slowly, to actually bring under one roof the important functions that deal with financial services. One of the very important functions is, of course, the fiscal treatment which companies have. That, really, has been what has driven this transfer from the Financial and Development Secretary to the Finance Centre Director. I would have thought that this was a very sensible suggestion. It is within taxation which of course is a fully defined domestic matter, indeed something which we are constantly at pains to constantly reassert is within Gibraltar Government's competence for all sorts of reasons from tax harmonisation right through. Therefore, this move is entirely in accordance with that philosophy.

Mr Speaker, the hon Member raised the point with regard to the transition provisions in relation to qualifying (Category 2) individuals and whether rented accommodation would suffice in the new regime. I do not think it would, actually. My reading of the Rules is that the latitude open to the Finance Centre Director does not extend to taking a different view on what represents residential accommodation which is actually contained in the definition Section of the Regulations. Therefore, I think somebody that does want to move into the new Rules would have to buy property but of course he can stay as he is. There is absolutely no difficulty with a "HINWI" staying under his current certificate benefiting from the Rules that currently apply to him.

HON A ISOLA:

Mr Speaker, he retains the certificate which I assume is subject to him continuing to have the things that he had when he originally applied but if the rules are revoked how does that actually happen?

HON P C MONTEGRIFFO:

The transitional provisions make very clear that the Rules are only revoked to the extent that they are not actually relevant in the context of somebody that is still the subject of a certificate issued under them. If somebody wishes to retain the benefit of a certificate under the old Rules it would be governed by those old Rules. In other words, the Rules are there to apply to those individuals in respect of which a certificate remains in force. Those individuals have the choice of moving to the new regime if they so wish.

Mr Speaker, dealing with the Qualifying (Category 4) individuals which the hon Member had more to say about, he has expressed the Opposition's opposition to this measure on the basis that two main conditions were, one that it is not really necessary, not

persuaded of the fact that these Rules were necessary but, secondly, even if they are necessary they are basically unfair to the local industry and therefore they should not be introduced in this fashion. One of the strongest results that emerged from this survey that hon Members are well aware of, of the Finance Centre in 1998, one of the strongest results was the huge difficulty the Finance Centre has in recruiting people, either locals or expats. It is the major constraint to growth. We are trying to redress that position locally through a very vigorous training scheme but these things take time. In the interim what we have is a major problem of people simply not being attracted to Gibraltar and one of the reasons for that, very prominent, is the high level of personal tax. People who are based in Bermuda, where income tax is zero, or based in the Channel Islands where income tax is 20 per cent across the board, are simply not going to come to Gibraltar unless they are paid over the odds and pay 15 per cent tax. That is exactly the thinking that motivated the last administration to pass their Rules and it is exactly the thinking that is motivating us to extend those Rules just to encourage further growth in the business, there is therefore a need, the recruitment is required. There is a problem - high income tax and there is the desire on the Government's part to diversify its economy and to create new areas of activity such as in insurance and investment services. Short of breaking the ring fencing of the offshore and onshore regime, the only way we can deal with this problem as the last administration recognised when it passed the Rules is to do something like this. In other words, to actually create a special category for people who are coming in to grow the economy so that there are jobs, both for Gibraltarians and for expats. I would like to emphasise this point of jobs. We like to believe that this is actually a job creating scheme. It actually requires every (Category 4) individual to have somebody else employed at the same time as he is employed. He actually creates a job that would otherwise not come to Gibraltar at all. Therefore, whilst we continue the distortion that they introduced in their "REP" rules we actually make it much more palatable for Gibraltar by requiring that the job market is grown from locally resident people. We are persuaded therefore that we are responding to a very strong industry demand; that we are trying to tackle the problem of high tax in Gibraltar on an interim basis. This is not a solution for ever and that we are giving Gibraltar and the Gibraltar economy a job creating mechanism which is actually a very good improvement on the scheme introduced several years ago by the Opposition Members. Thank you.

Question put. The House divided.

| | |
|---|---|
| For the Ayes: | The Hon K Azopardi |
| | The Hon Lt-Col E M Britto |
| | The Hon P R Caruana |
| | The Hon H Corby |
| | The Hon J J Holliday |
| | The Hon Dr B A Linares |
| | The Hon P C Montegriffo |
| | The Hon J J Netto |
| Abstained: | The Hon J L Baldachino |
| | The Hon J J Bossano |
| | The Hon Dr J J Garcia |
| | The Hon A Isola |
| | The Hon J C Perez |
| Absent from the Chamber: | The Hon R R Rhoda |
| | The Hon T J Bristow |
| | The Hon J Gabay |
| | The Hon Miss M I Montegriffo |

The motion was carried.

The House recessed at 12.45pm.

The House resumed at 4.05pm.

## BILLS

## FIRST AND SECOND READINGS

### THE UNITED NATIONS PERSONNEL ORDINANCE 1999

HON CHIEF MINISTER:

Mr Speaker, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the First and Second Reading of Bills.

Question put. Agreed to.

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to enable effect to be given to certain provisions of the Convention of the Safety of United Nations and Associated Personnel adopted by the General Assembly of the United Nations on 9th December 1994, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Ordinance gives effect in Gibraltar to the Convention on Safety of the United Nations and Associated Personnel. Hon Members will see that the principal operative section is section 3 which gives jurisdiction to the Court of Gibraltar to try in Gibraltar as if the offence had been committed here certain offences committed anywhere in the world against United Nations personnel. As hon Members I am sure will deduce this Convention is designed to create a patchwork of jurisdictional overlaps and provisions to ensure that those who engage in attacks on United Nations personnel should not be able to take refuge in other jurisdictions from the offences that they have committed in another jurisdiction. Section 3 lists the offences in question, which hon Members will see are the principal offences of violence. There are corresponding provisions in relation to attacks on UN premises and vehicles and to the issuing of threats from Gibraltar to United Nations personnel whether in Gibraltar or elsewhere. The meaning of a United Nations worker who is defined in Section 6 and the penalties and sanctions are imposed as if the offences had been committed in Gibraltar.

Mr Speaker, this is a piece of legislation that we have been asked by the United Kingdom to apply to Gibraltar by means of the implementation here of the Convention which has been extended to Gibraltar. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J J BOSSANO:

Mr Speaker, I think we require more information than simply being told that we have been asked by the UK to do it and that it has been extended to Gibraltar. I believe again this is the first time we are doing something in this area by Gibraltar legislation. The actual Convention which was adopted in New York on the 9th December 1994 had not yet entered into force in September 1996 when it was published in the United Kingdom two years after the event. We do not know when it came into force, we do not know if it has been ratified and we do not know whether this has been extended by the United Kingdom to us only or to all its Dependent Territories and we do not know whether all the Dependent Territories are introducing similar legislation. We would like to know these things before we decide whether we support it.

In looking at the actual text one thing that strikes us is that in fact the Convention seems to require two things. One is, that the intentional commission of a serious act be made a crime under its national law. That presumably already irrespective of whether the commission is against a person employed by the United Nations or otherwise, that is to say, the laws of Gibraltar make it an

offence to commit murder, kidnapping or anything of that nature irrespective of whether the recipient happens to be in the United Nations or not. What is different is the fact that it provides an extra-territorial jurisdiction in that the offence committed anywhere else is capable of being prosecuted against an individual who is in Gibraltar and who is suspected of having committed one of those offences somewhere else. That is provided for in Article 10(4) of the Convention which says "each State party shall take such measures as may be necessary to establish its jurisdiction over the crime set out in Article 9 in cases where the alleged offender is present in its territory and it does not extradite such a person pursuant to Article 15". I would like to have an explanation in respect of that element because in the case of the legislation we have got before the House it says that requirement is being transposed into the laws of Gibraltar by Clause 3 which says "if a person does outside Gibraltar any act in relation to a UN worker which if he had done it in Gibraltar would have made him guilty of any of the offences then he shall be guilty of that offence in Gibraltar". As I read it that is us giving effect to the Article I have just read, that is Article 10(4) of the UN Convention. Article 10(4) of the UN Convention says we have to do that if we cannot extradite the offender. There is no reference here to the alternative of extraditing the offender and when he talks about extraditing the offender it says "pursuant to Article 15" to any of the States that have established their jurisdiction in accordance with paragraph 1 or 2. Paragraph 1 is where the State provides in its laws jurisdiction over the crimes set out in Article 9 in the cases where the crime is committed in the territory of that state or on board a ship or aircraft registered in that State, and (b) where the alleged offender is a national of that state. We have a situation where a State can determine that it has jurisdiction over the alleged offender because the alleged offence took place either in its territory or on its ship or on its aircraft or by one of its nationals or by a stateless person whose habitual residence was in that State. It seems to me that when required to recognise that such cases have priority over our rights because it says that we make it an offence in Gibraltar in cases where we do not extradite pursuant to Article 15 to one of the States that has made a provision in that respect. I do not know whether we have got a problem of extradition in that we may or may not be included in the bilateral extradition treaties existing between the State parties to the Convention. I would have thought that since this Convention says that in the extradition treaties between State parties, those to whom the Convention are extended by the act of extending the Convention, the Extradition Treaties are amended automatically so that these offences form part of those Treaties without the Treaty having to be signed. It seems to me that we cannot be in for one thing and not in for another. Unless we get explanations on the points that we cannot make sense of we will not be voting in favour because we believe, as I said, in relation to the Yugoslav business, Mr Speaker, I believe that if we are voting for or against that thing, we need to understand precisely what it is that we are voting for or against. That is the whole purpose of bringing legislation to the House, I would have thought. So far, neither in the Explanatory Memorandum nor in the introduction of the Bill has neither of those points been clarified.

HON CHIEF MINISTER:

Mr Speaker, I have to say that I have difficulty understanding the hon Member's approach to the legislative process in this House. Whether he supports or does not support legislation appears to depend on whether we are bound to do it or whether we are not bound to do it, whether other people have done it or whether other people have not done it, whether it is identical to the Convention or it is not identical to the Convention. Surely, what the hon Member should do is read the Bill, decide whether as a matter of principle he supports its content or not because we are not legislating here for Botswana or for Bermuda or for anywhere else, we are legislating for Gibraltar and the hon Member has before him a Bill which says that "the Courts of Gibraltar should have jurisdiction to try in Gibraltar the commission of certain offences outside Gibraltar against United Nations personnel in order that United Nations personnel should be given this protection." The hon Member does not express the view on the principles of the matter. Apparently his view of whether he supports the Bill or does not depend on whether he thinks that the content of this Bill is a good idea, but rather the extent to which he

has held it up against the Convention and he has found that it is accurate and that it goes not an inch further than we are required. I have to say, Mr Speaker, that is not the Government's approach. It is irrelevant whether the Government of Gibraltar have not even bothered to check whether the United Kingdom has extended this to other Overseas Territories or not, what the Government of Gibraltar do is say "are we in Gibraltar content to do this? Is this something that the Government and Parliament of Gibraltar wishes to do, yes or no?". Whether or not it has been done in Bermuda or whether or not it has been done in the Turks and Caicos or in any of the other twelve British Dependent Territories does not affect our judgement when we are in principle in agreement with what we are being asked to do. Therefore the relevance of whether it has been extended to anywhere else or not is not, as far as the Government of Gibraltar, a factor. As far as the Government of Gibraltar are concerned it has been ratified by the United Kingdom. It has been extended to us. We have been asked to implement this legislation, which the Government have considered and we are content to cooperate with the work of the United Nations in this way. The point of Article 10(4) is not that one only needs to give oneself jurisdiction when one cannot extradite. I think the hon Member, with respect to him, is misreading that article. What Article 10(4) says is that one can comply with the Convention by either giving ourselves jurisdiction which one then exercises or extradites. Mr Speaker, what this means is that when one has jurisdiction, for example, if after we pass this legislation such an offender comes into Gibraltar the prosecuting authorities of the courts in Gibraltar would have the option either of prosecuting him in Gibraltar under this jurisdiction or extraditing if indeed there is an Extradition Treaty and that is always the case even under the ordinary criminal law of the land..... the fact that the Courts in Gibraltar have jurisdiction to try somebody for an offence is not an obstacle to extraditing that person to be tried for the same or similar offences in other jurisdictions. Therefore, whereas the hon Member appears, if I have correctly understood him, to be interpreting Article 10(4) to say that we only need to give ourselves jurisdiction to try such people, when but only if, we cannot extradite them I believe that that is not a correct interpretation. What Article 10(4) is, I believe, intending to say is that even if one gives oneself jurisdiction, which one must do, it is a compliance of the Treaty with the Convention either to use that jurisdiction to try the person oneself or to extradite the person to another country that does have jurisdiction. That, I think, Mr Speaker, is the proper interpretation of Article 10(4) and, of course, the fact that we take this jurisdiction does not mean that we cannot extradite. I do not think Gibraltar has bilateral extradition treaties with anybody, in fact, the Government are now working on an Extradition Bill for it to line with Extradition Conventions that are coming through in the pipeline. I do not know who Gibraltar has Extradition Treaties with and, indeed, which bilateral UK treaties may or may not have been extended to Gibraltar. The position, in a sense, does not matter. Once this legislation is in place we will be free to choose either to try people ourselves or to extradite them where it is both possible legalistically and adjudged to be desirable by whoever makes these decisions in Gibraltar.

Mr Speaker, I believe that that is the correct analysis. I would urge the hon Member to form a view of the legislation on its merits. I am assured by the Draftsman that this Bill does no more than implement the terms of the Convention itself in a way which is effective and that is the basis upon which the Government bring the legislation to the House. The hon Member has not expressed the view as to what he thinks of the principles of the Bill and that does not require explanations from the Government. The explanation is that it is to implement a Convention which clearly he has examined them. The Bill is self-explanatory on its face. It is perfectly clear as to what it is intended to do and why and I would have thought that the hon Member's decision as to whether they approve or disapprove in the principle this legislation, which is all that we are discussing at the moment in this Second Reading, does not depend on explanation. The only explanation that the Government can give is that we are bringing this legislation to the House because we have agreed to implement this Convention through this legislation. I would have thought that the hon Member might have raised other matters of principle, about extra territorial jurisdiction which he has said he has difficulty with. It does not raise any such issues, this is not

creating jurisdiction outside, this is creating jurisdiction in Gibraltar for the port of Gibraltar, albeit in respect of acts that are taking place outside. Therefore, I would urge the hon Members to support this legislation which simply aligns Gibraltar with the rest of the international community in measures which are supportive of the work of the United Nations and of officers of the United Nations. That is the principle of the Bill and that people who offend against officers of the United Nations doing their work should have no bolt holes to escape to, either because there are Extradition Treaties or because local jurisdictions have taken jurisdiction under this Convention to try them in their own territories. The hon Member started by saying that this is the first time we are doing something in this area. Mr Speaker, it is the first time, of which I am aware, I am not saying it may not have happened in the past, nor do I know it is true that this is the first time that we are doing something like this. Certainly, it is the first time we do something like this since I have been in the House. It is the first time that the House has been invited to legislate for this sort of thing. This is not a question of having done this before but in the past having done it through some other mechanism. One cannot, by Order in Council, in effect, make amendments to our Criminal Offences Ordinance. I suppose we could but I would not regard it as desirable and I expect that the hon Member would not require as desirable either. This is something which intrinsically affects the jurisdiction of the Courts of Gibraltar in criminal matters and I think it is entirely proper and appropriate that it should be done by primary legislation in this House and the matter has not shrouded in any controversy whatsoever.

Question put. The House voted.

For the Ayes:
The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda

Abstained:
The Hon J L Baldachino
The Hon J J Bossano
The Hon J J Gabay
The Hon Dr J J Garcia
The Hon A Isola
The J C Perez

Absent from the Chamber:
The Hon T J Bristow
The Hon Miss M I Montegriffo

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

**THE FAST LAUNCHES (CONTROL) ORDINANCE 1999**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to prohibit the importation, use, ownership or possession of fast launches and certain outboard engines in Gibraltar and in Gibraltar waters and to make provision for matters connected therewith be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill replaces and repeals the Fast Launches (Control) Ordinance and administrative measures ancillary thereto. Mr Speaker, hon Members will recall that the Fast Launches (Control) Ordinance was passed in 1987 and that it basically has the effect of outlawing in Gibraltar vessels with an engine capacity greater than 200 horse power. That piece of legislation has several continuing undesirable effects. In the first place, the 1987 Ordinance did not catch vessels with engines of less than 200 and in fixing the level at 200 horse power in fact propagated the use in Gibraltar of those fast speed boats, usually Phantoms, with engines of less than 200 horse power but which were nevertheless suitable and ideal for very high speed smuggling operations. In a sense the extension of the use in Gibraltar of smaller but faster boats, as opposed to what had been the case before 1987, which was the much larger smuggling boats, in a sense that was a result of the 1987 Ordinance which fixed at 200 the horse power and then liberalised everything less than 200 horse power without realising that they were thereby opening the door for what we now have subsequently come to know as "Phantoms" but not exclusively Phantoms, other speed boats which can travel at very, very fast speeds with engines well below the 200 horse power limit that was fixed by the 1987 Ordinance.

The hon Members will recall that in 1995 they themselves introduced some measures, I believe it was under the Imports and Exports (Control) Ordinance whereby certain restrictions were imposed on the ownership in Gibraltar of semi rigid inflatable boats, basically rubber boats with a solid floorboard and that those restrictions were really limited to having to pay import duty on them and to having to have an authorised berth. The 1995 measure had no impact whatsoever because they did not purport to affect boats other than RIBs and therefore did not capture in any sense the Phantoms which were the ones after the 1995 measures that were commonly used for tobacco smuggling from Gibraltar into Spain. The effect of all this legislation has been quite seriously detrimental to the Marina trade in Gibraltar by outlawing certain bona fide high-spending yacht visitors. The Government have received representations from not just collectively the Marinas' Association but individually from all the marinas in Gibraltar asking the Government to modify this legislation in a way which deals with the desired objective without representing an obstacle to the use of Gibraltar by bona fide yachtsmen which everybody believes is a valuable source of touristic expenditure in Gibraltar. Thirdly, by way of defects, the existing legislation, both the 1987 Ordinance and also the measures introduced by the Opposition Members in 1995 insofar as they affected only RIBs has had and continues to have a detrimental effect on a large number of bona fide speed boat owners in relation to their legitimate leisure enjoyment of their boats. In other words, that people in Gibraltar not engaged in smuggling activities have been restricted not just by the legislation but also by the administrative application of the legislation even when it affects RIBs of less than six metres in length which the hon Members' measures in 1995 did not purport to affect. The measures that the hon Members introduced in 1995 did not affect RIBs less than six metres in length, presumably because the smugglers were not using RIBs of less than six metres, they were longer but in the application of it basically the Police and Customs were forbidding the licencing of RIBs almost of any length including the ones commonly used in Gibraltar for purely leisure purposes and which are incapable of being used for high speed smuggling operations.

Driven firstly by our desire to put into place legislation which catches Phantoms, in other words, all boats that are capable of being used for high speed smuggling of the fast boats smuggling operations, so that Gibraltar should be fully protected from any possibility of resurgence of this activity but also motivated by the representations made to us not just by the marinas but indeed by the Chamber of Commerce to find some other way of achieving that objective which would not continue the detrimental effects to the development of the marinas' business in Gibraltar, the

Government put on its thinking cap and has put together this piece of legislation which I should tell Opposition Members has taken a very long time to put together. The Government started working on this project in late 1996. There has been very substantial consultation. When I explain to the hon Members what the technical principles of the Bill are they will see that it raises terribly complicated boating and marine physics technology issues which are beyond the comprehension of Government and therefore there has been extensive consultation with nautical experts both inside and outside of Gibraltar.There has been detailed consultation with the Attorney-General, with the Royal Gibraltar Police, with the marinas as I have already said, with the Cormorant Boat Owners' Association, obviously with the Captain of the Port, with the Yacht Registry and with the Chamber of Commerce. They have all participated in this. They have all sent in detailed representations, improvements to the legislation, ideas which then had to be looked into, some of them were incorporated into the legislation, others were not incorporated into the legislation.

All supported the objectives of the Bill and the method of achieving those objectives and of course in many cases some of the ideas were not taken on board and others were. The effect of the legislation, as I am sure the hon Members can see from their reading of the Bill, is to create a regime whereby the importation, ownership, use and possession of fast launches is prohibited in Gibraltar. The essential provision of the Bill is therefore the definition of fast launches, because it prohibits all these things, importation, ownership, use and possession, of a fast launch but what is a fast launch? Therefore, the whole philosophy of the Bill is to be found in the definition of a fast launch.

Mr Speaker, hon Members will find that at Section 2, where it is defined, basically it boils down to this, if the launch is more than 60 feet or more than 20 tons it is right out of the regime. It cannot possibly be a fast launch if it is longer than 60 feet or displaces more than 20 tons, because the conventional wisdom and the Government's advise basically, the only shaft which is greater than 60 feet in length and displaces more than 20 tons, which is capable of travelling at the speed which the Government set in its mind as the one that it did not want people to be able to go faster than, are basically warships. The Government have wanted to pitch the restricted speed at between 30 and 35 knots and if it is longer than 60 feet and displaces more than 20 tons then it is basically a warship. Those are the first constraints, so therefore by definition we are talking about boats that are shorter than 60 feet and displace less than 20 tons. If it is less than 60 feet in length and displaces less than 20 tons there are then two conditions that it has to meet in order to be classified as a fast launch. One is that it is fitted with one outboard engine in excess of 115 prop shaft horse power or more than one engine in aggregate adding up to more than 115 prop shaft horse power or alternatively that it has an inboard or fitted with some other sort of engine, there is a sort of hybrid inboard/outboard type of engine, and the boat has a power to weight ratio in excess of 100. The definition of power to weight ratio is also explained there. It is basically a fraction in which the upper figure is the total prop shaft horse power and the lower figure is the boat's displacement in tons. Mr Speaker, how does this work? The Government are advised by all the experts that it has consulted that this definition of fast launch affects those few, if any, local bona fide boat owners. We believe that there may be one or two and I will explain in a moment how we intend to deal with that. Government are advised that the value of 100 in the power/weight ratio effectively catches only boats which are capable of exceeding a speed of 33 to 35 knots. The Government toyed with the idea of simply imposing a straightforward speed limit but was advised that this was just very difficult to police and to enforce. All the experts agreed that by defining power to weight ratio in this way and by setting the maximum permitted power to weight ratio at the figure of 100 it does not catch and cannot catch and would not catch boats with a speed capacity of less than about 33 knots. The Government are of the view that leisure boat owners are perfectly well accommodated at these which are really very fast speeds, 33 to 35 knots, but those speeds are insufficient for the benefit of fast launch smugglers because the Police, GSP, Customs and Port Department launches which are exempt from these provisions are capable of very, very much faster speeds

than 33 to 35 knots. Therefore, the philosophy of the legislation is to impede speeds that smugglers require whilst permitting speeds that bona fide leisure boat owners would wish to be able to access.

Mr Speaker, the power to weight ratio part of the formula, hon Members will see from the definition, only applies to boats fitted with inboard or other types of engines other than outboards. If one has an outboard engine one is subject to (a.) of the definition which means that if the boat is fitted with an outboard engine of more than 115 prop shaft horse power or outboard engine having an aggregate of more than 115 prop shaft horse power then it is a fast boat regardless of such complicated things as power to weight ratio. The need for that is that the measurement of power to weight ratio is not practical in the case of those small light boats where it is very difficult to measure and therefore in the case of small boats which are in effect speed boats the limit is placed at 115 brake horse power. Most European countries have a maximum limit of horse power. Purely as a matter of interest, not that it is relevant, in Spain the limit is set at 125 horse power for the possession of outboard engines.

Mr Speaker, the Bill also prohibits registration of fast launches in the Gibraltar Registry. Why does the Bill do that? Well, hon Members will know that when they took the measures that they took affecting RIBs in 1995 many of these boats were simply exported from Gibraltar and continue to operate, usually actually and ironically given the attacks made on Gibraltar by Spain, from Spanish ports. Indeed, many of these RIBs that were exported are now operating from places like Ceuta and Estepona and other ports of this nation. There was, for a very long time, a continuing guilt by association for Gibraltar because these boats kept their registration markings even though they no longer had any physical connection with Gibraltar. We believe that given Gibraltar's historical connection with boats of this sort, Gibraltar needs to be protected so that there should be no connection between these boats and Gibraltar and we believe that allowing people who do not live in Gibraltar to register in the Gibraltar Registry and fly the Gibraltar Registry flag on the stern, boats which they would not be allowed to have or possess in Gibraltar, is to risk a continuation of guilt by association through registry when in fact Gibraltar has disposed of these vessels, at least as far as the RIBs are concerned, in 1995 and we through Police and Customs actions have seen to it that the Phantoms cease to operate from Gibraltar as well when we came into office. Therefore we believe that if this legislation is to have completely the desired effect there ought to be no association of these fast boats with Gibraltar and that includes their registration.

Mr Speaker, hon Members will see that the Bill gives the Police, Customs and other Law Enforcement Agencies, the GSP, a power to stop and question persons on board boats and to take names and addresses. Then the hon Members may have spotted a particular provision which is really the essential part of that which is that the Police is required to pass that information on to anybody that has suffered an accident with a speedboat. At the moment we have got the rather curious situation that if one gets run into by a speedboat in Gibraltar waters, because no criminal offence has been committed and it is a civil matter, if one wants to sue the other boat because they have crashed into yours and damaged your boat or because they may have run one over and caused one personal injury, the Police actually are not obliged even to tell the victim "I know the name of the person who did this to you" because it is entirely a civil matter. The hon Members will see that the provisions of clause 9 sub-section (4) which in a sense has nothing to do with the control of fast launches but it is just a convenient opportunity to legislate this in Gibraltar, is if the Police has information of the name and address of the driver or owner of a fast boat involved in an accident they are obliged to pass on that information to any person that they have reasonable grounds to believe has or may have suffered damage or personal injuries alleged to have been caused by the use of that vessel in Gibraltar waters.

Mr Speaker, the Bill in clause 13 creates a regime for the issuing of temporary permits to visitors. If there are bona fide yachting visitors to Gibraltar who may arrive in Gibraltar in a boat which forms part of the fast launch definition, provided that they obtain a

permit from the Customs when they report at the Reporting Berth, and obviously Customs and Port Department officials there will be instructed to point these regulations out to visiting bona fide yachtsmen in boats that they think may be in that category then they are able to visit Gibraltar, what we are achieving or trying to achieve is that Gibraltar should not become a base for fast launch smuggling boats but should be a viable destination for bona fide yachting tourists who may be in a fast boat, of which there are many up and down the coast and which are plain yachts, usually owned by wealthy persons who are high-spending tourists and as the Regulations presently stand they cannot visit Gibraltar and that is thought by the Chamber of Commerce to be an unnecessary restriction on the development of that valuable tourism market.

Mr Speaker, just to outline one or two of the other principal more important parts of the Bill, clause 14 creates a regime for the granting of permits to residents in cases where they would fall foul of the rules but the authorities are satisfied that they would not engage or allow their boats to be used in the activities which this legislation is intended to protect Gibraltar from. Mr Speaker, hon Members will also see here, although they are aware of its existence because for two years now in the Estimates there has been this item of expenditure, fast boat compensation, that is if as a result of the passage of this legislation, somebody's property which has been legal in Gibraltar until now becomes unlawful then of course the Government will compensate them for it unless they are in receipt of a residence exemption permit or would be given a residence exemption permit if they were to apply for one. One only gets compensation if either one does not apply for a permit, applies for one and does not get it but one would not get it if one does not apply for one and the Chief Secretary is satisfied that if one did apply it would be issued. This is not a pawn shop. This is compensation for people who are genuinely deprived of the opportunity to continue to enjoy their property in Gibraltar which until now may have been lawful.

Therefore, in summary, the Bill represents many, many months of careful and detailed work, extensive consultation, extensive advice on highly technical nautical matters. Read together with the Tobacco Ordinance it creates a regime which both protects Gibraltar from any risk of resurgence of the fast launch activity and, at the same time, enables the marina trade in Gibraltar to re-attract or to once again be able to attract so that the economy of Gibraltar can benefit from the genuine bona fide high spending yachting tourist to Gibraltar. But, we will obviously keep a close eye on how the legislation works, in the practice of it, since the overriding requirement is the continuing suppression of fast launch smuggling activities. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J J BOSSANO:

Mr Speaker, I think we recognise the difficulty that there is technically in doing this exercise of drawing a dividing line but I have to say that it is difficult to follow, from the explanation, how it is that this achieves it because I would have thought, on the surface of it, if we have a situation where before vessels that did not exceed 60 feet were fast launches if they had a 200 horse power engine and now we have those with 115 horse power engine it ought to mean that this affects more boats than the other one did. If the other one was an impediment to people coming into Gibraltar and it affected a narrower range of boats, then frankly I cannot follow how it is that we are extending the definition of the fast launch to cover boats with smaller engines and at the same time as we are doing that we are making it possible for the boats that were previously being prevented no longer to be prevented, if I have explained myself. Mr Speaker, it seems to me that we have two contrary arguments one of which seems to defeat the other. I think the other point that the legislation raises is that, of course, if I am correct in that the new definition of a fast launch extends the vessels to categories that previously would have not been covered, it must follow that the possibility of such vessels of other nationalities passing within the area of our territorial waters must be greater. There are now more vessels covered than previously and I would have thought on the relevant Customs and GSP and RGP and so on, to police this

area must be greater if not they have to be on the lookout for vessels with smaller engines than was the case in the past as I understand it in the 1987 Ordinance if they came into our waters they had to go to the Reporting Berth and clock in, as it were. In changing the definition I also note that we have replaced what were previously "Controlled Waters" by "Gibraltar Waters". I think in the 1987 Ordinance it was "Territorial Waters" and then in 1988 it was changed and now in the new one we are calling it "Gibraltar Waters". As far as I know this is the first time in the laws of Gibraltar that we call it "Gibraltar Waters" but they are the same as the area defined as British territorial waters which has given us headaches in other circumstances. Presumably, if we have a situation where we have got a requirement that a boat should not have an engine that is more than 115 horse power and we have been told, as a matter of interest, that Spain has one that is 125, is there not a possibility that we will be seeking to stop boats with 120 horse power engines which would be too small to be fast boats in Spain but too big to not be fast boats in Gibraltar, given the fact that we are talking about presumably boats passing through our waters would be intercepted by us, I take it, under this legislation? Because there would be people who would be using the boat within the three mile limit, say, of the East coast. Anybody going through there in a boat which would not be illegal in Spain but illegal for us, we would be requiring our Law Enforcement Agencies to stop that boat on the grounds that what he is doing is in breach of this law. I do not know whether that is something that has been thought about and, if so, whether it is the intention that that should happen. Somebody suggested to me that maybe we can confiscate all the Spanish Police boats in the area for being in excess of 115 horse power. Certainly, I think if we can be given an assurance that that is going to be the result I think we do not need to discuss the general principles or whatever.

Clearly, the regime I think seems to be designed to be as foolproof as it is possible to devise it and therefore we would like when the Chief Minister exercises his right to reply to be given some indication as to whether in fact this is going to create an extra burden which will now mean that we will have to have our people on the lookout for a much higher volume of movement of smaller horse powered driven vessels than was the case in the past because the legislation in the past did not catch them.

HON CHIEF MINISTER:

Mr Speaker, certainly the hon Member is right. This does affect more boats than it used to because it includes, for example, now all the Phantoms. There is no legislation in Gibraltar today that prevents the operation in Gibraltar of a Phantom. They are controlled by Police action and by Customs action, but there is no legislation that prevents them so all of them are included. The hon Member is also right when he says that we are therefore including some new ones but if the advice that the Government have had is correct about the formulae and about who uses what type of boat, the additional ones that we have included that were not included before are the boats that really only smugglers would be interested in using subject to there being one or two legitimate, there could be. I personally know of one person who is certainly not a smuggler that would fall foul of these provisions. On the whole, and subject to that, it can be cured by the residence permit, on the whole the body of boats that has now been included are the ones that would be useful to smugglers and not to tourists. Tourists do not travel around in small speed boats. They travel around in large speedboats powerful but more yachts than speedboats. On the other hand, we have freed from the control the sort of boats that tourists are more likely to be in. So it is true that we have moved the line in a way which includes people that were not presently included and they are, on the whole, the smugglers but in moving the line we have also excluded, we are told, the category of boats which would be used by bona fide yachting tourists. But, of course, there is bound to be people who are caught by the definition somewhere down the line. Mr Speaker, the fact that difference in between the sort of boats that tourists would use, bona fide tourists and bona fide boat people would use, and the smugglers would use, that is of the essence of the whole philosophy of this legislation. If that does not work this legislation will not prove to be effective and it will have to be revisited. The hon Member said that it was difficult

to follow how it worked. Mr Speaker, I have tried to master the technicalities of this myself. It all stems from the fact that the sort of boats identified that tourists would use, which would pass this power to weight ratio formula by definition is not useful to a smuggler because it is not capable of going fast enough. This is not that there will not be speedboats. Smugglers can try to smuggle in boats with outboard engines of less than 115 horse power but we are advised that the combination of these Rules are that with a boat of less than 115 horse power one will always be outrun by the Police, Customs and the GSP who will always have the capacity to travel faster than that and to catch them. That is the principle of how this works, if it does work, which we believe it will and hope it will on the basis of the advice that we have been given.

The hon Member raises the question of the workload of the enforcers. As I indicated to him earlier the Police and Customs have seen this. They are content with it. They believe it is a useful tool. There is, in principle, more workload whereas before in the case of an outboard engine one could look at whether it was more than 200 horse power. Now in the case of an outboard engine one just has to look whether it is more than 115 horse power. That, in itself, has not changed the enforcement technique. It is, however, more complicated in the case of an inboard engine or an inboard/outboard engine because whereas before all one had to do was look in the manual or look wherever one looks in the engine for this sort of thing and see, is it more than 200 horse power? Now one has to work out the power to weight ratio which basically means getting the boat up on a hoist with something called a load cell in between the boat and the hook of the crane which basically measures the boat displacement in tons and it is just a reading on a scale. How the Police will enforce it is up to them. I assume that experience will tell them what sort of boats are likely to be in breach of that and they will police it in that way. The Gibraltar Waters point, Mr Speaker, there is no point there relevant to this Bill. I just happen to believe that the House of Assembly in Gibraltar should not be shy of using the phrase "Gibraltar Waters". I am not sure what controlled waters are which in effect then include the whole of what we know as Gibraltar Waters. It seems to me that it is just somebody's desire to call it something other than Gibraltar Waters for some, perhaps, political reason. I think they are Gibraltar Waters. We call them Gibraltar Waters. The definition in the Schedule of Gibraltar Waters coincides with British waters around Gibraltar in terms of the median line and the three mile limit, where the median line is not relevant and that is just a case of calling a spade a spade, rather than something else. The hon Member made the point that would it raise policing difficulties, enforcement difficulties, the fact that there are boats in Spain of 125 horse power engines I do not know, Mr Speaker, what the answer to that is. There are, of course, at present a whole category of boats that are lawful in Spain but unlawful in Gibraltar. Therefore, it is not a new situation that people who lawfully drive around their boats in Spanish waters become illegal the moment they cross the point of the runway on the eastern side within three miles off the shore. That is the case with anybody driving a RIB which are not unlawful in Spain. It is the case of anybody driving a boat with a horse power of more than 200 which are illegal in Gibraltar but not illegal in Spain in the case of inboard and outboard engines. I suppose that the Police will continue to operate that in the same way. All I can say to the Opposition Members in support of the Bill is that this legislation has done the rounds of everybody and his dog who possibly has anything to do with the enforcement that might be affected by this and that really it is such a technical piece of legislation that the Government have drawn heavily on the advice that it has received and when we have received advice from one person, we have exposed it to the other interested parties "do you agree with this? Do you disagree? Does this affect your view of the matter?" and this is the result. This is the product and I would hope that the hon Members will be able to support the legislation on that basis.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

**THE PENSIONS (AMENDMENT) ORDINANCE 1999**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Pensions Ordinance by raising the minimum retirement age for prison officers to 55 years at the option of the officer, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the origins of this Bill were actually in the case of a particular Prison Officer who wanted to stay on longer than the rules permitted him. Hon Members know that under Section 8 of the Pensions Ordinance at present the Governor may require any public officer in the public service to retire after he attains the age of 55. In special cases, with the approval of the Secretary of State at any time after he attains the age of 50. Under sub-section (ii) of Section 8, however, certain Officers have a compulsory retirement age of 55 as opposed to the compulsory retirement age of 60 which normally applies to other non-industrial officers. The Officers in question are Fire Officers, Police Officers or Prison Officers. Sub-section (ii) of Section 8 of the Pensions Ordinance presently reads "In the case of any Fire Officer, Police Officer or Prison Officer the Governor may require such Officer to retire from the Public Service under the Government at any time after he has attained the age of 50 and retirement shall be compulsory for every such Officer on attaining the age of 55".

Mr Speaker, the Government, in consultation with the staff, consider it appropriate to alter that so that in the case of existing Prison Officers they have the option to continue beyond the age of 55 if they wish. In the case of existing Prison Officers who are defined as anybody who was in post before the 10th July 1998, they have the right to keep the present regime which is to go at 55 if they want to and to apply for early retirement at 50 if they want to and therefore in their case they get the option to stay on if they want to. Their right is unaffected but they get the option to stay longer if they want to stay longer than 55. In other words, they can opt out of the compulsory retirement age of 50. However, in the case of new recruits the Government, as a matter of policy, have decided that the retirement age for new Prison Officers in the future the compulsory retirement age should be 60 and not 55 on the basis that at ages 55 to 60 a person is still capable of carrying out the duties of a Prison Officer. That is what this legislation does. I am not sure that there is very much more than I can add to this except to say that indeed if there is a case to do this, in the case of Police Officers as well, we were not asked to look at the case of Police Officers we are asked to look at the case of Prison Officers by a Prison Officer. We have limited our legislative proposals to them only. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON J C PEREZ:

Mr Speaker, in the opening paragraph and indeed in the explanation that the Chief Minister has given, the amendment has the effect of raising the minimum retirement age. It says that the amendment has the effect of raising the minimum retirement age for Prison Officers to 55 years at the option of the Officer. This, in our view, is totally misleading. If hon Members look closely at Section 8 of the principal Ordinance they will find that today, as the Ordinance stands, the retirement age of Officers is already 55 and they cannot themselves opt to leave earlier. It is the Governor

that has the power to ask them to retire between the time they attain the age of 50 and their age of retirement at 55. A Prison Officer has no power under the Ordinance to choose to leave before the age of 55. In that respect the minimum retirement age is not being raised. What the proposed amendment does is to remove the power of the Governor to ask the Prison Officer to retire before the age of 55 and once he has attained the age of 50. This moves a Prison Officer away from the special provisions applicable to Fire Officers and Police Officers and includes them in the provisions applicable to all other public servants where the Governor may ask them to retire at 55 but they can carry on until 60. The effect of this is that the retirement age of the Prison Officer now becomes 60. This, of course, has the effect of changing the multiplier in counting years of service in order to attain a full pension. The last published Gazette of the 24th June contains amendments to the Regulations of the Pensions Ordinance altering the multiplier for those Prison Officers in service today that before attaining the age of 50 opt out of their present conditions and in favour of the new conditions.

Mr Speaker, it might be that a Prison Officer might have had reason to approach the Government, but my understanding is that the Prison Officers collectively have not been consulted on this matter and as far as the Opposition Members are concerned, if what we are trying to do is give the option for the Officer that has got into the Prison Service late in his working life and is not able to accumulate sufficient years for a relatively decent pension and has not attained 20 years service where the multiplier then changes and increases to allow the Officers to attain a full pension during their working life then I think what we needed to do with this Ordinance was to give the option to all Officers including the Fire Brigade and the Police Officers to opt out under those special circumstances and obviously since the Governor retains the power to allow these Officers to retire at a particular age in terms of fitness then only those Officers who would be fit to carry on would be able to continue. But if the option is going to be given to Officers in this position where they have not got sufficient years accumulated and therefore they see themselves having to retire at the age of 55, whereas they could continue, then I think that that option should be given to all the Officers that have this legislation apply to them and I would think that more consultation is needed. The other point I wish to make is that the changes in the Regulations, and I understand it is the Regulations and not the main Ordinance but it is the only opportunity one has to mention this, does more than change the words "Prison Officers". It changes the words more for either which does not seem to help clarify the meaning of the language used in the clause which is already rather confusing as it is. Perhaps the hon Attorney-General can give us some useful explanation of how that ought to read grammatically in the English language but certainly it does not read to me well now and the amendment that we are doing certainly seems to confuse more the issue.

The final point I would like to make is that the retrospective date of the 10th July 1998 seems to mean nothing because if that is the date when the last Officer was recruited and it is a date used so that it applies to every Officer recruited after that date, but none has been recruited which is what I understand from the Chief Minister that everybody in service today will have the option to opt out or stay with the conditions as they are, then the current date is sufficient without having to mention a retrospective date of the 10th July. The current date includes everybody that is in post today and from now onwards that changes although certainly we would be against again forming a two-tier system with old people having one pension system and new people having another. It creates problems for the future and the idea of amending the legislation giving the option to the Officer depending on the years of service or to the Officers covered by the Regulation without taking the Prison Officer completely away from those provisions would seem to me to be the better way of dealing with the situation. We would therefore give notice that we are voting against the amendment.

HON J J BOSSANO:

I think there is one point that I would welcome clarification on. That is that the Chief Minister said that this had been initiated as a result of representations received from one particular individual.

Presumably, given the nature of the changes that are being proposed the individual in question must have been somebody that, under the existing law, had to go at the age of 55 and wanted to be able to carry on till the age of 60, because that is the only thing the law is being changed on. As my Colleague has pointed out if compulsory retirement is at 60 for the Civil Service and at the discretion of the Governor, at 55, and in the Prison Service it is 55 instead of 60 and 50 instead of 55, then presumably what somebody wanted was to be able to carry on working until 60 which he was not able to do because the maximum age was 55 and what this does contrary to what the Ordinance claims to be doing, if the Ordinance says to amend the Prison Ordinance by raising the minimum retirement age for Prison Officers to 55 at the option of the Officer I do not think the Ordinance says that at all. I think the Ordinance does two things, it raises the maximum compulsory retirement age to 60 for all new entrants and gives the options to existing Officers to move to the age of 60 if they choose or to stay as they are. Presumably, that is because somebody wanted to move and without this change he was not able to move. Is it that there is somebody that will be able to move because the date of the 10th July has been put there because if that Officer had to go at the age of 55 then he is no longer in a position to benefit from these changes so that the changes are not going to be of any use to the person that wanted it given that the legislation says that in order to be able to carry on the person must apply, at least, when he is aged 49 years and 10 months, sixty days before the age of 50. Unless the person making the representations that he wanted to carry on to 60 knew he wanted to carry on to 60, 10 years and 60 days ahead of time, which would be rather odd, this is of no use to him.

HON CHIEF MINISTER:

Mr Speaker, I am not certain that there is any point in clarifying anything now given that the hon Member has already said that they intend to vote against. He said that he would give notice of his intention to vote against so therefore if my words are incapable of persuading him to the contrary I am not sure that I should be replying to him at all. My understanding, Mr Speaker, is that this is useful. This does work for the person notwithstanding the hon Member's explanation but, however, I think the hon Members may have misunderstood me. The Government have not done this in order to accommodate one person. What I said was that the request made on behalf of this one Officer had brought this situation to the attention of the Government and, having considered it, the Government decided to take Prison Officers out of the realms of people that had to retire at 55. That is basically the policy decision that the Government have made to put future Prison Officers, by which we mean Officers recruited after the 10th July 1998, in the same position as all other non-industrial public servants.

On the question of insufficient consultation, hon Members obviously forget that we are not affecting the accrued rights of anybody. They are in the happy position either of being able to keep their regime that they presently have or opting for this one if it suits them. Therefore, it is not normal to consult or ask people whether they wish to be given a gift or not. They are not being deprived of any accrued rights. The alteration of the multiplier and the formula for calculating their pension and the number of years of credit that they get through the increased multiplier to compensate them for the fact that they have fewer years in which to earn the pension that is not depriving them. That presumably goes into their calculation of whether they want to keep the existing regime or opt for the new one. The only people who do not get the option and therefore are stuck as a matter of Government policy with the new regime are the people who could not possibly be consulted, namely people that are not yet in post. I do not know exactly why the date of the 10th of July has been chosen by the Personnel Department for this, nor can I tell him for certain that there has not been a recruit since after the 10th July. If there has been a recruit since the 10th July which is a big if as I do not know whether there has or there has not, he will certainly have been told that he is recruited on new terms as to compulsory retirement age and options of this sort. Having said that, I do not know whether there has been any recruits after the 10th July and if there has not been I do not know why the date of the 10th July was thought to be relevant. I think it has something to do with the

date upon which the Regulations were published, which may have been published with that date. I do not know when. I would have to look at the Regulations to see if there is any reason connected with those Regulations why it is necessary to pin all this on the 10th July. I cannot say what the reason for that is. Mr Speaker, I would urge the Opposition Members to reconsider their position. I do not see how it can be objectionable, which would be the only reason for them voting against, to give existing employees an option which they do not presently enjoy without affecting or depriving them of rights which they presently have. I suppose the hon Members can choose to vote against it on the basis that they do not agree that future recruits should be deprived.....*[INTERRUPTION]* Mr Speaker, the fact that they would like it also to be given to Police Officers is not a reason to deprive Prison Officers. I would have thought that as far as Prison Officers were concerned this was an advantage to them. It gives existing Prison Officers the option to work for another five years which may gain them access to a higher pension than they would otherwise be entitled to. I would have thought that even if the hon Members feel that this should be extended to others, nevertheless it is entirely a matter for them.

Question put. The House voted.

For the Ayes:
The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda

For the Noes:
The Hon J L Baldachino
The Hon J J Bossano
The Hon J J Gabay
The Hon Dr J J Garcia
The Hon A Isola
The Hon J C Perez
The Hon Miss M I Montegriffo

Absent from the Chamber: The Hon T J Bristow

The Bill was read a second time.

HON CHIEF MINISTER:

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

**THE ADMINISTRATION OF ESTATES (PAYMENTS) ORDINANCE 1999**

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to amend the law relating to Statutory Legacies and Payments out of Estates be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, there are two main reasons for bringing this Bill to the House. In the first place it amends the law relating to payments out of Estates without the need for Probates or Letters of Administration. The new law now being brought to the House would bring Gibraltar more into line with the UK position as set out in the Administration of Estates Small Payments Act, 1965. At present, payments can only be made from certain bodies, for example, Savings Banks and Friendly Societies and for small amounts. The Bill extends the current position by adding credit institutions to the institution from which payments can be made

and by increasing to £5,000 the sum that can be paid out. Payments in these circumstances are often necessary when the family of a deceased person requires immediate access to funds held in the name of a person who has died. The need to wait until the formalities of either Probate, if there is a Will, or Letters of Administration if there is no Will, often causes hardship. The new law will remedy this position. Secondly, the Bill significantly increases the level of Statutory Legacy for a spouse in the case of a person dying without having made a Will. As the House is aware, when a person dies without having made a Will the general law determines how the property of such a person's Estate is distributed to the next of kin. The amounts to which a spouse is entitled has remained unchanged in Gibraltar for many years. It is much lower than in the UK. Accordingly, the amount of statutory legacy payable to a spouse from an Estate is being increased from the current level of £20,000 to £150,000. In the UK the Statutory Legacy for spouses is £125,000 if there are children and £200,000 if there are no children but other specified relatives. In Gibraltar we have had the same figure always for the Statutory Legacy for a spouse irrespective of whether there are or are not children. Accordingly, rather than change that basic structure we have adopted a compromise figure of £150,000 to apply to the Statutory Legacy here whether or not there are children to that particular marriage. The devolution of the remaining Estate will remain unaffected and in accordance with current legislation. We believe that there is a need to increase the level significantly because many people still do not make Wills and with life insurance payments and other savings the old £20,000 is often exceeded.

Mr Speaker, I have given notice of various amendments to the Bill and it is probably useful for me to take hon Members through these now. Firstly, the first amendment seeks to delete sub-clause (2)(b). Essentially, the drafter of the Bill sought to rationalise provisions that exist in the Savings Bank Ordinance by including them in this Bill. In other words, provisions that exist in the Savings Bank Ordinance to make payments out without Letters of Administration or Probate. The Section that he was seeking to repeal actually has other important elements and therefore we have reverted to retaining that section, albeit increasing the amounts which are payable out of Savings Bank to the figure of £5,000. Secondly, the words "a registered society as defined by the Friendly Societies Ordinance" requires to be added to sub-section (3)(i) in order to make payments from Friendly Societies also possible and we are deleting the words "the Post Office". Thirdly, clause (7) is being deleted. Clause (7) was to have introduced an amendment to the Cooperative Societies Ordinance pursuant to which members have certain interests under Cooperative Societies. On reflection, it has been thought that that provision is not really relevant in the context of Estates and therefore should be deleted altogether.

Apart from these amendments, the only other amendment that is relevant is the amendment to introduce Sections 62, 63 and 65 of the Administration of Estates Ordinance to this Bill to make clear that the saving provisions that apply to the Ordinance generally also apply to this amending Ordinance. In other words, that this Ordinance does not change the law relating to death that has occurred before this Ordinance has come into force or any other aspect of any situation that applies before the law has been passed. We have done that following some representations we have received after the publication of the Bill. We believe that this Bill puts Gibraltar up to the UK in these two important issues. It is really for social and family purposes that the Bill is being introduced. I commend the Bill to the House.

HON A ISOLA:

Mr Speaker, we will be supporting the Bill. We are aware of the cases in which hardship can be caused to people in having to wait for Probate or Letters of Administration to be granted before they can have access to funds. In relation to the Statutory Legacies we note what the Minister has said. We agree with the principle of increasing the amount and maintaining it on the same basis as we have done in the past, namely one figure for spouses with children as opposed to the two strands in the United Kingdom. We will be supporting the Bill.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

**THE COMPANIES (TAXATION AND CONCESSIONS) (AMENDMENT) ORDINANCE 1999**

HON P C MONTEGRIFFO:

I have the honour to move that a Bill for an Ordinance to extend the concessions in relation to income tax to certain legal entities registered in Gibraltar other than companies, be read a first time.

Question put. Agreed to.

SECOND READING

HON P C MONTEGRIFFO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this short Bill is to make provision for the tax benefits presently applied to exempt companies to apply to other vehicles. As the House will be aware the Government are contemplating the creation of other forms of legal entities to further enhance the services available to the Finance Centre. These include possible amendments to the limited partnership regime and introduction of foundations. It is obviously desirable that as and when we have passed legislation to give effect to those new entities that we should be able to extend taxation benefits to any entity that is not Gibraltarian-owned and otherwise meets the conditions stipulated in the tax exemption. This Bill achieves that aim by extending that the regulation-making process to the Minister for Trade and Industry to apply the benefits of the Ordinance to legal entities other than companies. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill.

HON A ISOLA:

We are aware of the representations made to Government by the industry for these provisions. We will be supporting the Bill bringing those provisions into place and we will await the Regulations to see how in fact they will be introduced but certainly we will support the Bill.

Question put. Agreed to.

The Bill was read a second time.

HON P C MONTEGRIFFO:

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

Question put. Agreed to.

**THE FACTORIES ORDINANCE (AMENDMENT) ORDINANCE 1999**

HON J J NETTO:

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

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. The Bill does nothing but repeal provisions in the Factories Ordinance affecting safety requirements in respect of lifting equipment. Let me hasten to put hon Members minds at ease by saying that the requirements are not lost. They have been replaced and I shall explain how. On the 3rd June 1999 the Government published the Factories Lifting Operations and Lifting Equipment Regulations which give effect to articles in respect of lifting equipment in Council Directive 89/655/EEC on the Minimum Health and Safety Requirements for the use of work equipment by workers at work as amended by Council Directive 95/63/EEC. The Regulations place duties on employers, on self-employed persons and certain persons having control of lifting equipment, for persons at work who use or supervise or manage its use or of the way it is used to the extent of their control. The Regulations make provisions with respect to the strength and stability of the lifting equipment, the safety of lifting equipment for lifting persons, the way lifting equipment is positioned and installed, the marking of machinery and accessories for lifting and lifting equipment which is designed for lifting persons or which might be so used in error, the organisation of lifting operations, the further examination and inspection of lifting equipment in specified circumstances, the evidence of examinations to accompany it outside the undertaking, the making of reports of fire examinations and records of inspections and the keeping of information in the reports and records. The provisions repealed by this Bill have been made redundant by the more extensive health and safety requirements of the Regulations. The intention is to bring this Ordinance and the Lifting Equipment Regulations into operation on the same day. Mr Speaker, I will be proposing some amendments at the Committee Stage. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill

HON J L BALDACHINO:

Mr Speaker, the Bill actually does what the Minister has just said and thus introduces into our laws the directive that the Minister has mentioned. But if I am right the directive says that the minimum provisions should be the ones that the directive says but as we are actually legislating on the question of safety it appears to me that when we repeal Section 27(i) under that Section obviously it was more the safety of the person in that Section than what we are actually introducing. There are certain provisions in the law now which are higher than what we are actually introducing under the Ordinance. What the Ordinance says under Section 27(i), the section that we are repealing, it says that "the hoist or lift should be thoroughly examined at least in every period of six months". If we look at what we are replacing, once in six months, the lift in six months, and the hoist in twelve months. The other thing I would like clarification on is that the Regulations state a "competent person". Under the Regulations I have been looking for an interpretation of what is a competent person and there is no definition for that, whilst under Section 27(1) which we are repealing a person that was only able to carry out an examination was somebody who had a certificate in writing by the Director under the Factories Ordinance. I understand that the employer is the one who is responsible but when we talk about "competent persons" is it that the employer decides who is the competent person? Because there is no definition here and it could be anybody. The Regulation does not say who it is.

The other thing is, Mr Speaker, that under the Ordinance, Section 27(2) once an examination was carried out and an inspection was carried out the person has to enter it or attach it to a general register within 14 days of carrying out the inspection or the examination whilst under the Regulations it now states under Section 10(1)(ii)(b) it says "as soon as it is practicable make a record of the inspection in writing". Really, there is no time limit, it just says "practicable" and therefore my understanding is that what we are repealing actually makes much better sense in this area than what we are actually putting in its place.

The other thing is, Mr Speaker, I know that the Minister is proposing to pass an amendment in the Committee Stage, yet again what he intends to amend obviously alters what was the original proposed amendment of the Bill because in his amendments, cranes again are introduced whilst in Section 3(b) crane was removed and I obviously thought that cranes had been removed because it was going to be covered by the principal Ordinance and was not being covered by the Regulations. I do not know where it is. There was a lot of spelling mistakes in that amendment and I thought maybe that the amendment was just to put right the spelling mistakes but it appears that it does not only do that, the amendment now puts cranes back into what is being repealed. I would like confirmation if that is going to be the case because it obviously makes a difference to the Regulations.

There are other things, for example, in the Factories Regulations the ones that were introduced on the 3rd June amendment of Factories Building Regulations for example and the Regulations if the Minister would care to look at that section 12(g) deletes the figure 15 Regulation 80 which Regulation 80 of the Building Regulations, yet Mr Speaker, on (f) of the Factories Building Regulations (f) says by revoking Section 28 to 30 and 33 to 56 but it makes reference to Section 28 which should also be revoked if that was the case and the Factories Regulations because under Regulation 80, 28 is not being removed. It is still there and it does not exist because it has been repealed.

Mr Speaker, before we make a decision on how we will be voting, we would like if the Minister can explain to us why has it been necessary in the cases where the Ordinance already had a more stronger position on safety has been minimised obviously to keep to what the directive says. The directive also says that if Regulations are of a higher standard it does not necessarily mean that it has to be amended only if it were of inferior standards. Could we have those explanations before we make a decision on how we are going to vote on this one?

HON J J NETTO:

Mr Speaker, the hon Member said and if I quote him rightly he said that "the existing regime is a much better system than the last one in some areas than the Regulations which have been introduced". That is not the view which is being shared amongst any particular person in the Health and Safety Advisory Council which really are a number of professionals, not just the Senior Factory Inspector but it has the Chief Environmental Health Officer from the Environmental Agency, the Admiralty Safety Officer, the Divisional Officer from the City Fire Brigade, the Superintendent of the Royal Gibraltar Police and the representatives of the Transport and General Workers' Union and the Chamber of Commerce. I have to say that when the various drafts have been widely circulated in the Health and Safety Advisory Council the view of everyone, the professional and the social partners, have been that the Regulations did not dilute in any extent what has now been revoked from the principal Ordinance. I have to say that no one has said to me either verbally or in writing that we are now providing less standards of health and safety as a result of revoking those clauses from the principal Ordinance and introducing the Regulations. It is not something which I have heard before.

One of the other points that the hon Member said raises the question of competent persons and the register. My understanding is that the competent persons are a number of people, I believe there are three or four, which are registered and they will continue to be the competent persons in the registry. That is my view. I can look it up and we can clarify that matter.

Finally, on the question of the cranes, my understanding, and again I will look into this, is that what the Legislation Unit has done in order to do a more neat exercise, has been to remove, not just from the principal Ordinance, but from the various other Regulations, anything which had to do with lifts, with hoists, with ropes, tackle, etcetera and to provide all of them under the Regulations. That is the way it has been designed to have that effect.

HON J L BALDACHINO:

Yes, and the cranes, will they be covered by Regulation or will they be covered by the principal Ordinance?

HON J J NETTO:

That is my understanding but again I will come back on this issue and clarify it. That has been the logic and the way that they have designed and drafted the Regulations. Therefore, there is nothing more I can add at this stage, Mr Speaker.

Question put. The House voted.

For the Ayes:
The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

Abstained:
The Hon J L Baldachino
The Hon J J Bossano
The Hon J J Gabay
The Hon Dr J J Garcia
The Hon A Isola
The Hon J C Perez
The Hon Miss M I Montegriffo

The Bill was read a second time

HON J J NETTO:

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

Question put. Agreed to.

## COMMITTEE STAGE

HON ATTORNEY-GENERAL:

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

1. The United Nations Personnel Bill 1999.
2. The Fast Launches (Control) Bill 1999.
3. The Administration of Estates (Payments) Bill 1999.
4. The Companies (Taxation and Concessions) (Amendment) Bill 1999.
5. The Factories Ordinance (Amendment) Bill 1999..

## THE UNITED NATIONS PERSONNEL BILL 1999

Clauses 1 to 7 and the Long Title

Question put. The House voted

For the Ayes:
The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

Abstained: The Hon J L Baldachino
The Hon J J Bossano
The Hon J J Gabay
The Hon Dr J J Garcia
The Hon A Isola
The Hon J C Perez
The Hon Miss M I Montegriffo

Clauses 1 to 7 and the Long Title stood part of the Bill.

**THE FAST LAUNCHES (CONTROL) BILL 1999**

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

Clause 2

HON CHIEF MINISTER:

Mr Chairman, in the definition of "Fast Launch" we should delete the words "gross tonnage" and insert the word "displacement" in their place. That is on the second line, so that it would now read: "Fast launch means a vessel which does not exceed 60 feet in length overall or 20 tons displacement", which I am told is the nautically accurate way of expressing that, although gross tonnage is a measure of displacement as well but this is the correct way of putting it. In Clause 2, in the definition of "outboard engine" the word "internally" should be "integrally", means a marine propulsion system whose power is derived from an internal combustion engine mounted integrally and immediately above its power transmission component.

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

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

Clause 5

HON CHIEF MINISTER:

Mr Chairman, here there is a small typographical error which I have not given notice of. In sub-clause (2) the word "or" should be "of", "to own an outboard engine of more than 115 nautical.....".

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

Clause 6

HON CHIEF MINISTER:

Mr Chairman, here the amendment, although it is done by way of deletion of the whole sub-clause 6(3) and the insertion of a new one, it is just that it is easier to do it that way but for explanation purposes but the effect of the amendment is to delete item (a). That would now read "it shall be unlawful for a person to own or use in Gibraltar or in Gibraltar waters an outboard engine which does not have the correct manufacture and identifying model". In other words, it no longer forms part of the definition that it should have more than three cylinders. The reason for that is that in fact three-cylinder engines would have the effect of lowering..... a three-cylinder engine can be an 80 horse power and things of that sort. In order for this to be consistent with the 115 horse power rule, it cannot be three cylinders and four cylinder engines are necessarily bigger than 115 horse power. The smallest four-cylinder engine I understand is 125 or something to that effect. It is completely superfluous now to the equation and indeed this is a hangover from a very early draft of the legislation which has never been taken out.

Clause 6, as amended, was agreed to and stood part of the Bill.

Clauses 7 and 8 were agreed to and stood part of the Bill.

Clause 9

HON CHIEF MINISTER:

Mr Chairman, it says "ate of birth", it should be "date of birth", in line four.

Clause 9, as amended, was agreed to and stood part of the Bill.

Clauses 10 to 12 were agreed to and stood part of the Bill.

Clause 13

HON CHIEF MINISTER:

Mr Chairman, here is an amendment which is not just by way of correction. I indicated earlier that they would all be by way of correction but this one does respond to a representation that has been made to the Government since the Bill was published and that is that the regime for Visitors' Permits is that they can be given for basically two periods of seven days provided that such permits may be extended for any further period or periods for the sole purpose of enabling the vessel to undergo repairs and that was put in because the marinas said people might want to bring their boats to Gibraltar for repairs that may take more than 14 days, why put Gibraltar's marinas out of this business? That is why it says "repair" at the moment. Since the Bill was published the representation has been made that the facility should also be available to bona fide yachtsmen who would have been given a Visitors' Permit to stow their boats in a decommissioned way in Gibraltar during the winter season. Hon Members will know that what a lot of these people do is that they have their boats somewhere in the coast and that they come down for the summer season to drive around and then they leave them in storage for winterisation. They winterise the boats. One marina has said why deprive Gibraltar of that business, it is good business for the marina, they charge and they have asked us whether we would add the words "or storage" after the word "repair" in that proviso so that the permit could be for more than 14 days if it was to undergo repairs or storage at a bona fide marina.

Clause 13, as amended, was agreed to and stood part of the Bill.

Clause 14 was agreed to and stood part of the Bill.

Clause 15

HON CHIEF MINISTER:

Mr Chairman, just to delete words, in sub-section (2), sub clause (ii), which do not make sense and which are the hangover, it stayed there after some amendments to delete the last six or seven words "in default of which no prosecution may be brought", which are, firstly, completely nonsensical, so that the section will read "any fast launch or outboard engines seized or detained under sub-section (1) above and has been liable to forfeiture shall be retained in the custody of the Police or Customs Officers, as the case may be, until any criminal proceedings brought in respect thereof are concluded or it is decided that no such proceedings should be brought, whichever is the sooner". To then go on to say "in default of which no prosecution may be brought" is meaningless and also change the comma for a full stop.

Clause15, as amended, was agreed to and stood part of the Bill.

Clauses 16 and 17 were agreed to and stood part of the Bill.

Clause 18

HON CHIEF MINISTER:

A typographical error, the second "or" on the fourth line should be "of". It is exactly the same typographical error as before "outboard engines of more than 115" not "outboard engines or more than 115".

Clause 18, as amended, was agreed to and stood part of the Bill.

Clauses 19 and 20 and the Long Title were agreed to and stood part of the Bill.

**THE ADMINISTRATION OF ESTATES (PAYMENTS) BILL 1999**

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

Clause 2.

HON P C MONTEGRIFFO:

Mr Chairman, sub-section 2(b) is to be deleted in accordance with information offered to the House at the second reading.

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

Clause 3

HON P C MONTEGRIFFO:

As previously indicated, the words "the Post Office" to be substituted by the words "a registered Society as defined by the Friendly Societies Ordinance".

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

Clauses 4 to 6 were agreed to and stood part of the Bill.

Clause 7

HON P C MONTEGRIFFO:

As previously explained, Clause 7 is being deleted and then a new clause is being introduced as follows:-

Amendment to the Savings Bank Ordinance

7. Section 14(2)(1) of the Savings Bank Ordinance is amended by substituting "£5,000" for "£2,000".

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

New Clause 8

HON P C MONTEGRIFFO:

Mr Chairman, add new Clause 8 as follows:-

"Supplemental

8. Sections 62, 63 and 65 of the Administration of Estates Ordinance shall apply to this Ordinance mutatis mutandis".

New Clause 8 was agreed to and stood part of the Bill.

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

**THE COMPANIES (TAXATION AND CONCESSIONS) (AMENDMENT) BILL 1999**

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

**THE FACTORIES ORDINANCE (AMENDMENT) BILL 1999**

Clauses 1 and 2 stood part of the Bill.

Clause 3

HON J J NETTO:

Mr Chairman, as proposed in my letter, I would like Clause 3(b) to be amended. After the word "words" should be replaced by "hoists and lifts, chains, ropes and lifting tackle, cranes and other lifting machines".

Clause 3, as amended, stood part of the Bill.

Clause 4 and the Long Title stood part of the Bill.

Question put on the Factories Ordinance (Amendment) Ordinance 1999.

The House voted.

For the Ayes:
The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

Abstained:
The Hon J L Baldachino
The Hon J J Bossano
The Hon J J Gabay
The Hon Dr J J Garcia
The Hon A Isola
The Hon J C Perez
The Hon Miss M I Montegriffo

## THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to report that the United Nations Personnel Bill 1999; The Fast Launches (Control) Bill 1999, with amendment, The Administration of Estates (Payments) Bill 1999, with amendments; The Companies (Taxation and Concessions)(Amendment) Bill 1999; The Factories Ordinance (Amendment) Bill 1999, with amendments; The Insider Dealing (Amendment) Bill 1999, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

The Fast Launches (Control) Bill 1999; the Administration of Estates (Payments) Bill 1999; and the Companies (Taxation and Concessions)(Amendment) Bill 1999, were agreed to and read a third time and passed.

The United Nations Personnel Bill 1999; the Factories Ordinance (Amendment) Bill 1999; and the Insider Dealing (Amendment) Bill 1999.

The House voted.

For the Ayes:
The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

Abstained:
The Hon J L Baldachino
The Hon J J Bossano
The Hon J J Gabay
The Hon Dr J J Garcia
The Hon A Isola
The Hon J C Perez
The Hon Miss M I Montegriffo

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 9th July 1999, at 10.30am.

Question put. Agreed to.

The adjournment of the House was taken at 6.25pm on Wednesday 7th July 1999.

## FRIDAY 9TH JULY 1999

The House resumed at 10.40am.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Judge J E Alcantara CBE)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon P C Montegriffo - Minister for Trade and Industry
The Hon Dr B A Linares - Minister for Education, Training, Culture and Youth
The Hon Lt-Col E M Britto OBE, ED - Minister for Government Services and Sport
The Hon J J Holliday - Minister for Tourism and Transport
The Hon H A Corby - Minister for Social Affairs
The Hon J J Netto - Minister for Employment and Buildings and Works
The Hon K Azopardi - Minister for the Environment and Health
The Hon R R Rhoda - Attorney-General
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon J L Baldachino
The Hon Miss M I Montegriffo
The Hon A J Isola
The Hon J J Gabay
The Hon J C Perez
The Hon Dr J J Garcia

IN ATTENDANCE:

D J Reyes Esq, ED - Clerk of the House of Assembly

## COMMITTEE STAGE

The Hon the Attorney-General moved under Standing Order 7(3) to suspend Standing Order 7 (1) in order to proceed with the Committee Stage and Third Reading of a Bill.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider The Pensions (Amendment) Bill 1999 clause by clause.

**THE PENSIONS (AMENDMENT) BILL 1999**

Clauses 1 and 2 and the Long Title

HON J C PEREZ:

Perhaps the Chief Minister might have found out what the significance of the 12th July 1998 was, which he said he was not sure about? Could we perhaps have an explanation of that?

HON CHIEF MINISTER:

I regret that I have not had the opportunity to do that but if the hon Member is interested I will certainly find out and write to him to explain to him the significance, if any, of the date. If it has no significance then it does no harm either.

Question put. The House voted.

For the Ayes:
The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

For the Noes:
The Hon J L Baldachino
The Hon J J Bossano
The Hon J J Gabbay
The Hon Dr J J Garcia
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon J C Perez

Clauses 1 and 2 and the Long Title stood part of the Bill.

## THIRD READING

HON ATTORNEY-GENERAL:

I have the honour to report that the Pensions (Amendment) Bill 1999, has been considered in Committee and agreed to and I now move that it be read a third time and passed.

Question put. The House voted.

For the Ayes:
The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

For the Noes:
The Hon J L Baldachino
The Hon J J Bossano
The Hon J J Gabay
The Hon Dr J J Garcia
The Hon A J Isola
The Hon Miss M I Montegriffo
The Hon J C Perez

The Bill was read a third time and passed.

## PRIVATE MEMBERS' MOTION

HON J J BOSSANO:

I beg to move the motion of which I gave notice that "This House rejects the annual decision adopted by the General Assembly on the recommendation of the Special Political and Decolonisation Committee, (Fourth Committee), which, inter alia, urges the United Kingdom and Spain: 'to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations'.

It further calls on Her Majesty's Government not to support in the Fourth Committee this year, the re-adoption of this decision or its recommendation to the General Assembly for consideration in the 1999 Session."

Mr Speaker, this is a motion which in our view ought to be able to pass through the House unanimously and without there being a great deal of need to argue the merits of the motion since, in fact, it seems to us to be consistent with statements that have been made in the United Nations on behalf of Gibraltar. We believe this is an opportune moment to bring the motion to the House, particularly having just passed a motion to set up a Select Committee to look at the Constitution in all its aspects including the question of decolonisation and on the basis that we are doing that on the premise that Gibraltar's decolonisation is a matter for us and the United Kingdom and not a matter for the United Kingdom and Spain which is what the General Assembly every year urges the United Kingdom to do.

As far as we are concerned the bilateral process between the United Kingdom and Spain negates the right to self-determination of the people of Gibraltar and we have always been opposed to it. Let me say that as far as we are concerned by rejecting the view of the General Assembly we are in fact doing no more than this House did when the Legislative Council adopted the position demanding the right to self-determination in 1964 which was the view of the LegCo Members prior to the 1964 Constitution and after the 1964 Constitution and which was transmitted to the Committee of 24 following the General Election of 1964. The Committee of 24 originally, in 1965, recommended talks between the United Kingdom and Spain on Gibraltar and I think it is important to note that at the same time they made the same recommendation about the Falkland Islands. They recommended that the future of Gibraltar should be a matter for discussion between UK and Spain, taking into account the interests of the Gibraltarians and that the future of the Falklands should be a matter for discussion between the UK and Argentina taking into account the interests of the Falkland Islanders, 34 years ago the United Kingdom rejected both in the Committee of 24. They said no to both until 1973, when the UK did a U-turn on Gibraltar but maintained a position on the Falklands. In 1973 the General Assembly, on the 14th December, passed Resolution 2353(XXII) which was carried with the support of the United Kingdom. The United Kingdom did not oppose it and that called for negotiations between the United Kingdom and Spain to commence taking into account the resolution previously passed which was General Assembly Resolution 2429(XXIII). In 1973 when this happened in the General Assembly, Señor Pinies heralded it as a major breakthrough for the Spanish side and the establishment of what has since been called by Spain "the doctrine of the United Nations on the question of Gibraltar". The "doctrine" was supposed to have been established in 1973 by this resolution. The resolution referred to the talks previously mentioned in Resolution 2429 and in 2429 what the General Assembly had done was to call on the United Kingdom to terminate its colonial rule in Gibraltar by no later than the 1st October 1969. In Resolution 2429 it regretted the United Kingdom's failure to comply with a previous Resolution 2353(XXII) which in December 1967 had rejected, by a vote of two to one, the 1967 Referendum and contained a reference to the principle of territorial integrity. I am placing this as the background to this motion because it has always been our view that that threat, joining of these motions, means that if one supports what is being passed today in the United Nations which talks about the preceding resolutions of the UN, by implication one is supporting everyone of those resolutions that went before it and led to it. In 1985, with the start of the bilateral process under the Brussels Declaration the United Nations passed a resolution which welcomed the start of that process and described it as putting into place the negotiating process foreseen by General Assembly Resolution 2353(XXII) of the 14th December 1973. So there can be no doubt that in 1985 the United Nations, with the support of the United Kingdom welcomed the start of the bilateral process and described it as the process envisaged in 1973. That welcome with the United Kingdom's acceptance implied that the UK was at the level of the United Nations signaling that in our case self-determination was not applicable and giving the Spaniards the arguments that in our case the territorial integrity was applicable as the 1967 resolution had suggested and in fact it linked us back to that resolution of 1969 saying we should be decolonised by the 1st October. There is, of course, something that happened in 1969 which is the creation of the Constitution

that we have today but that did not decolonise us otherwise we would not be needing a Select Committee to finish the job.

The resolution will once again appear before the Fourth Committee and that will be reflected in a decision which will be approved without a vote and which will go to the General Assembly. In June 1998 the Chief Minister told the Committee of 24, in respect of this resolution, "the Fourth Committee continues with your recommendation the same old annual now tired consensus calling for a continuation of the sterile and fruitless bilateral dialogue with the United Kingdom and Spain". What we are saying is that we in this House should reject the same old tired consensus resolution dealing with sterile and fruitless bilateral dialogue and ask the United Kingdom to do the same. The Chief Minister told the United Nations Committee of 24 in June 1998 "I ask you to break with this bankrupt text of the so-called consensus resolution". I am asking this House to break with that so-called bankrupt text of a consensus resolution. Again this year the consensus was described as "sterile and fruitless" and the Committee of 24 was asked not to recommend its continuance. Let me say that we do not think, and we said so last year, that in fact the Committee of 24 recommends these bilateral talks between UK and Spain under consensus. We do not think it does and we think that all that it does is to say that the matter will be kept on the agenda for next year subject to whatever directions the General Assembly or the Fourth Committee may give from the text that we have seen of the documents. Of course, there is a very simple reason why the Committee of 24 does not need to recommend to the United Kingdom the bilateral dialogue. It is interesting that in the consideration of the Falkland Islands this year the Committee of 24 has recommended to the United Kingdom a consensus based on bilateral dialogue with Argentine. The reason why we do not think they recommend it for Gibraltar and they recommend it for Argentina is because the United Kingdom has refused and continues to refuse and ignores the recommendation and in the case of Gibraltar they do not need to recommend it because in fact the United Kingdom has accepted that recommendation a very long time ago and therefore the real culprit in this is not the Committee of 24 and it is not the Fourth Committee but it is the United Kingdom. As far as we are concerned, we can hardly ask other people to block a decision which has been drafted, as it has been the case since this thing first appeared, the actual wording was the result of a joint effort between the Spanish Ambassador to the United Nations and the British Ambassador to the United Nations. Consequently the rest of the international community were being asked to support a text agreed between two of its Member States. To ask the others to overrule the United Kingdom as the administering power is a perfectly legitimate thing for us to do as a colony. It is not something that shows the remotest chance of prospering and therefore it seems to us, getting the United Nations to overrule the administering power, so therefore we ought to mount the attack ourselves on the administering power and get them not to promote what we are asking the rest not to support.

In our view the United Kingdom is to blame for this situation and it is to the United Kingdom that this House should address its request and that in fact should be reinforced when Gibraltar appears before the Fourth Committee in October of this year. The fact that the Foreign Affairs Committee of the House of Commons has recognised, for the first time, that the present bilateral talks under that consensus decision of the General Assembly and the Fourth Committee ought to be terminated and replaced means that at least we have got an argument for saying that it should be terminated. Whether it is replaced or not replaced and what should replace it is a different issue but certainly we have now got for the first time recognition on the part of the House of Commons that supports the view that has been put by Gibraltar to the United Nations that the process should not continue. We believe that this opportunity that we have, an opportunity that comes between the meeting of the Committee of 24 and the meeting of the Fourth Committee, would enable us, in our view, to send a very clear signal that the process is doomed, that nothing is going to bring it back to life, that it should be given up and by taking a common position on this issue I believe we are taking an important step to give a very auspicious kick start to the work of the Select Committee of the House which we agreed the day before yesterday. I commend the motion to the House.

Question proposed.

HON CHIEF MINISTER:

Mr Speaker, the Government, as is well known, do not share the Opposition's long-held view about the consequences and dangers implicit in the Brussels Process itself and instead we trace the areas of difficulty to other conceptual difficulties which are reflected in the Brussels Process but which are not necessarily limited to it. The Government agree and have always defended the position that to participate in any bilateral dialogue, whether it is outside or inside the Brussels Agreement, to participate in any process which is bilateral between the United Kingdom and the third party territorial claimant, Spain, automatically puts the discussions in the realms of problems between the United Kingdom and Spain which can only be territorial dispute problems and do not recognise the fact that the primary player and the primary rights are the rights of the people of Gibraltar and their claim to exercise the right of self-determination which is why, even though we do not reject the Brussels Process conceptually, for the reasons that the hon Members do, and even though we do not believe in the context of the assurances on sovereignty, that the Brussels Process has the dangers for the reasons that the hon Members consider that it has the dangers, notwithstanding all that, we do not participate in the Brussels Process talks unless and until the structure of those talks is modified to correct what we consider to be the fundamental flaw which is the bilateralism of it. For us the fundamental flaw flows from the bilateralism of it and therefore we do not attack the Brussels Process generically, what we say is the Brussels Process, whilst it does not create a separate own voice for the people of Gibraltar, is not a process of dialogue that we can participate in and that would remain true if it was not the Brussels Process but some other process. Mr Speaker, I am sure that there is common ground between Government and Opposition on many aspects of the United Nations Annual Consensus Resolution which I hope we can convert into a resolution before the day is up, that we can both subscribe to.

We believe that the resolution needs to be much more specific in identifying the aspects of the United Nations resolution that we object to because the hon Members know that they will not get the Government side to sign up to a motion in this House which is capable of being interpreted as subscription to the Opposition's long-held views about the Brussels Process and their reasons for it even though we have other reasons for not participating in the Brussels Process unless it is modified. Their position is different. Their position is that even if the Brussels Process were modified they would not wish to have anything to do with it for other reasons. That is not the Government's position. That is the Opposition Members position and therefore we would wish the motion to reflect the fact that we are, in expressing a view on the consensus resolution, that we are expressing a view of the consensus resolution and on no other thing. I should also say I do not know if the Leader of the Opposition who has proposed the motion has considered one or two potential pitfalls and, indeed, dangers in the language of his resolution. In citing from the United Nations Annual Consensus Resolution text he has honed in on the words "to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations". I know, because I know the hon Member's politics, and I know what his views are, I know that the words that he intends to highlight from that sentence are the words "to continue their negotiation", whereas in fact to the outside objective reader it could mean and it could be interpreted to mean that we are conceding that the relevant resolutions of the General Assembly and the spirit of the Charter of the United Nations are against us and that in highlighting this particular sentence from the UN's Consensus Resolution, this House is really saying "let us not continue negotiation which intend to apply the relevant resolutions of the General Assembly and the spirit of the Charter" because that in turn is capable of interpretation as this House conceding that the Spanish interpretation of what is doctrine, the Spanish interpretation of the spirit of the Charter, the Spanish interpretation of what they regard as the relevant resolutions are against us and whereas he

knows that both he and I have gone to the United Nations since 1992 on the basis that we do not accept, and the United Nations should not accept, that there is anything in the spirit of the Charter of the United Nations that is against us nor do we accept that the doctrine of the United Nations or the relevant Charter or Resolutions of the United Nations are things that we should be afraid of. When he and I use the words "relevant resolutions" we mean the resolution which is, in effect, the declaration of the right to self-determination of non-self-governing people and that is the one that we say upholds our right to self-determination but which the Spaniards say because of preambular of paragraph 6 and the no breach of territorial integrity preambular paragraph they say that same resolution means that it is doctrine of the United Nations that we are not entitled to self-determination. Therefore, when I propose the amendment one of the amendments that I intend to propose is that we quote the whole of the resolution of the United Nations and not just three lines which in a sense do not even address the points that the hon Member has addressed in his opening address and which are capable of mis-interpretation as meaning that we are nervous about what the relevant resolutions might be, for what the spirit of the Charter of the United Nations might be.

The hon Member says that the bilateral process by which he presumably means the bilateral process under the Brussels Agreement negates the right to self-determination. We would put it in a different way. We would say that it is not the process that negates the right to self-determination. There is nothing inherent about the Brussels Process that itself negates the right to self-determination. What I believe signals, or what I believe is incompatible with proceeding on the basis that we do have the right to self-determination, is, as I said before, the fact that the structure of the dialogue that it calls for is bilateral in nature between our administering power, on the one hand, and the third party territorial claimant on the other. That would be true of the Brussels Process and any other Process and if that were corrected in the Brussels Process the Government of Gibraltar would be willing to participate in dialogue under the Brussels Process. Therefore, it is the bilateralism nature of the structure of the talks and not to the Process that the Government of Gibraltar object. The hon Member said that it was the UK's failure to oppose the 1973 Resolution which signalled the UK's view in the United Nations that self-determination was not applicable in Gibraltar's case. That is a deduction that the hon Member makes, but he must know that that is not the United Kingdom's position. It is not the United Kingdom's position either in 1973, even now it is not the United Kingdom's position that the principle of self-determination does not apply in the case of Gibraltar. The United Kingdom's position with which he and I also disagree is that the right to self-determination which they assert that we have is "curtailed" by the Treaty of Utrecht, meaning that the option of independence is not available uniquely in the case of Gibraltar because the United Kingdom considers that the provisions of the Treaty of Utrecht in that respect remain valid. I believe that we agree, he and I, but certainly I can assert that I do not accept that that Treaty provision has validity to have that result but that is the United Kingdom's position. I have not seen anywhere a document. On the other hand there are documents and statements to the contrary where the United Kingdom asserts or signals that the principle of self-determination is not applicable, to quote the hon Member's words, in Gibraltar's case.

Mr Speaker, the hon Member quoted from my speeches in 1998. He could have quoted from many or all of my speeches to the United Nations since 1996 because since 1996 what I have been trying to achieve is that the United Nations should change the text of the United Nations Consensus Resolutions but I have not been asking the Committee to change it in order to eliminate all reference to the Brussels Agreement which really is at the root of the hon Member's fundamental political philosophy. I have been asking the Committee to change the resolution. I have been describing the resolution as tired and sterile and fruitless because of its bilateral nature, because it does not leave a space, an adequate, a sufficient, a proper space at the table that would enable us to participate in dialogue. The process is bankrupt for two reasons as I repeatedly point out to the United Nations. I tell them that it is bankrupt not because it makes reference to the Brussels Agreement and the Leader of the Opposition is dead

against the Brussels Agreement and I come here as his messenger boy. I told them that it is bankrupt for reasons which reflect my policy which is that it is bankrupt and sterile, firstly because it does not recognise the right to self-determination of the people of Gibraltar. It does not assert and declare the existence of the right which is the primary purpose of he and I going to the United Nations in the first place and, secondly, because it calls for dialogue, albeit by reference to the Brussels Declaration but if it were not by reference to the Brussels Declaration I would have the same objection because it calls for dialogue between the United Kingdom and Spain for them to resolve the differences between them and that would be a defect of any resolution that called for such dialogue whether it was linked to the Brussels Agreement or not. If the United Nations Resolution were changed tomorrow to say "and calls on the United Kingdom..... to resolve all their differences....." and made no reference at all to the Brussels Declaration I would still not go to the talks and I would still go to the United Nations to make exactly the same pleas on behalf of Gibraltar as I make. Therefore, the objection, the essence of the bankruptcy and of the sterility and of the lack of fruit of the resolution, the reason why I describe it in those ways, the change for which I asked specifically.....if the hon Member has read all of my speeches in full he will see that I actually asked the Committee how I would like them to change the resolution. I asked them to change the resolution by: (1), declaring our right to self-determination and, (2), by not calling for dialogue which does not make a proper place at the table available in terms of our own voice and I do that for the same reasons that he used to ask for his own voice when he used to go to the United Nations between 1992 and 1995.

Mr Speaker, I do not accept the view of the hon Member that there is no point going to the United Nations and ask them to do something which the United Kingdom Government is itself not willing to do because if the hon Member had himself subscribed to that principle when he was in my job he would not have gone to the United Nations at all when indeed the United Kingdom did not want him to go. If he decides to go to the United Nations in the face of opposition from the administering power it must have been because he thought that there was something that he could achieve at the United Nations which he could not achieve bilaterally with the United Kingdom. Otherwise, why go to the United Nations to make the speeches that he used to make, full of things with which he knew that the United Kingdom did not agree, full of things of which he knew the United Kingdom was opposed, if it was not what he was really doing is going to the United Nations and said "look, my administering power opposes this but I am appealing to you because you are the guys with responsibility under international law to oversee the process of decolonisation and my administering power's views are not the criteria by which you should be guided". That same principle remains applicable today. The idea that we do not ask the United Nations to modify the consensus resolution because, after all, the United Kingdom and Spain have agreed to it and if the United Kingdom and Spain have agreed to it, then why dare ask the United Nations to change it? What we should do is do battle with the United Kingdom and Spain. Mr Speaker, the United Kingdom denies that we have the right to self-determination in the same terms as he and I have gone to the United Nations to assert it. The hon Member did not say "hang on, what is the point of going to the United Nations to try and persuade the Committee of 24 and the Fourth Committee that I have the right to self-determination uncurtailed by the Treaty of Utrecht? What I should do, which is the United Kingdom's position, is go and persuade the United Kingdom who is the obstacle in the recognition of the right to self-determination uncurtailed by the Treaty of Utrecht". The philosophy that he now recommends to me is therefore not the philosophy, nor the analysis to which he used to subscribe and which he deployed in his decision which the Government support now and always supported at the time of taking Gibraltar's case directly to the United Nations, not just for defensive reasons, to ensure that Spain did not have the open field, but also to try and persuade others of views that we were unable to persuade the United Kingdom and Spain bilaterally or even trilaterally.

Mr Speaker, for all of these reasons and in order that the comment that this House makes on which I hope we can agree, even if we cannot agree on the things that I have just said, that

should not prevent us from being able to agree on those aspects of the resolution with which we both disagree and that would be without prejudice to each other's views and position on the bits with which we disagree. I would like to propose in that spirit and for that reason an amendment to the Leader of the Opposition's motion which would delete all the words appearing after the first two words "This House" and would replace it by the words:

"1. Notes the annual decision adopted by the General Assembly on the recommendation of the Special Political and Decolonisation Committee (Fourth Committee) which reads as follows:

"The General Assembly recalling its decision 42/422 of 10th December 1993 and recalling at the same time that the statement agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on the 27th November 1984, stipulates, inter alia, the following:

> "The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting co-operation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar and set out in the Preamble to the 1969 Constitution'. Takes note of the fact that, as part of this process, the Ministers for Foreign Affairs of Spain and of the United Kingdom of Great Britain and Northern Ireland hold annual meetings alternately in each capital, the most recent of which took place in Madrid on 1st March 1993, and urges both Governments to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations".

Everything that I have just read is the Resolution that the United Nations General Assembly passes annually as a consensus, this means without a vote, at the United Nations. Continuing now with the substance of our own Resolution in this House:

"2. Considers that a definitive solution to the so-called "Gibraltar problem" in accordance with the relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations can only be achieved by the recognition and through the exercise, of the inalienable right of self-determination by the people of Gibraltar.

3. Notes and applauds the fact that between 1992 and 1999 both the current Chief Minister, the Hon P R Caruana QC and his predecessor (currently Leader of the Opposition) the Hon J J Bossano, have called on the Committee of 24 and the Fourth Committee to stop recommending to the General Assembly the adoption of annual consensus resolutions calling on the United Kingdom and Spain to conduct bilateral negotiations between themselves and instead to recognise the right of the people of Gibraltar to be present in talks with their own separate voice.

4. Calls on the United Nations to reflect in future resolutions relating to Gibraltar both a recognition of the existence of the people of Gibraltar's right to self-determination and our right to be represented in dialogue in our own right and with our own voice."

I commend the amended resolution to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, I do not think this is an amendment to the original motion. I think this is a motion that endorses what is being done in the United Nations instead of a motion that seeks to reject it. Let me say that in dealing with the points made by the Chief Minister the choice of words in my motion are not my choice, they are his. The only reason why I did not put the entire text and I did

not see any risk of misinterpretation is because I put the bit of the text that he quoted in his speech to the Committee of 24. I do not think it was out of context. He told the Committee of 24 a month ago when the Fourth Committee adopts every year the consensus resolution urging UK and Spain "to continue their negotiation with the object of reaching a definitive solution to the problem of Gibraltar in the light of the relevant resolutions and in the spirit of the Charter of the United Nations", what is the light to which the resolution is referring to? He has just told this House we should not put that there because we are creating a doubt as to what these resolutions mean and we are very clear what they mean. He has just told the United Nations we are not very clear what they mean and that the people of Gibraltar want clarification. The people of Gibraltar want to know what resolutions we are talking about, what the spirit of the United Nations is. Does it mean recognition or the denial of the right to self-determination? He has just told us that my motion in this House is going to suggest that we are doubting that we have the right to self-determination. I do not think my motion does that. He has already done that himself in June. He has already said to the United Nations "does it mean the recognition or the denial of the right to self-determination of the people of Gibraltar?". That is not an assertion of one interpretation. This motion does not open the door to the Spanish recognition. The door has been opened a very long time ago by other people, not by us. We are seeking to close it and I regret to say that whether he intends to or not the so-called amendment seeks to keep it open and therefore we are not going to waste the time of the House or anybody else, Mr Speaker, because it is quite obvious from the response that the gap is not a gap it is an unbridgeable gulf between the two sides of the House. It is not possible in this House for us to seek to reconcile our differences because if in fact we are all agreed that the consensus resolution in the United Nations in October is a sterile, meaningless, bad thing and should not be recommended, how come that we do not reject it? The original motion rejected the resolution. The amendment does not reject it. It notes it. Noting something is endorsing it. I have come to the House asking this House to reject what the United Nations is saying which has just been described as sterile and bad and we finish up with the proposal that instead of rejecting it we should note it. Fantastic! I am sure that Sr. Matutes would be overjoyed to learn that the House of Assembly has noted the resolution which persistently is being used by Spain since 1985 to say we do not have the right to decide our future. It then goes on in the amendment to note and applaud what he and I have been saying in the United Nations. I do not think it is the business of this House to indulge in self-congratulation. If other people want to applaud let them applaud and if they do not want to applaud it it does not make any difference. I certainly do not need the applause of anybody for anything I have done in the United Nations before or that I hope to do in the future. But let me say that I cannot understand why the Chief Minister, in moving this amendment, shows to make out that I was saying that we should not go to the United Nations. Of course, I went to the United Nations in 1992 against all-out opposition from the United Kingdom. I do not see that there is that all-out opposition from the United Kingdom any more. They seem to be much more content with the present trend of events and that is not surprising when one looks at this resolution which does not even call on the UK. We are asking the rest of the world not to support the consensus resolution and we are not asking our own colonial power because that has also gone from the original motion. We have not got any objection obviously to the first amendment that simply puts the whole text or if he wants he can put the text with all his doubts which I would not have thought is a good thing. It is quite true that I did not quote the whole of the paragraph. I quoted the good bit of the paragraph which was the one that said we do not support and we ask this Committee not to support a resolution urging the UK and Spain to continue their negotiations. I did not quote the fact that what are the relevant resolutions and what are the views on the correct interpretation because if he is inviting the Committee's views, presumably he is opening the possibility that Venezuela or Syria or the Peoples Republic of China might agree with the Spanish interpretation. I would not have thought it was a very wise thing to invite the Committee of 24 to give us an interpretation.

There is no doubt that the Spanish position, whether we like it or whether we do not, is consistent with the sequence of events and

there is no doubt that the 1973 resolution of the United Nations, drafted by the British Government..... if the Chief Minister cares to go back and search the records he will find that this was something which at the time the United Kingdom view put to the Government of Gibraltar was that the initiative for this resolution which came from the Chairman of the Committee who was then from Venezuela was an attempt to bounce the British Government into negotiation with Spain. They tried to rescue the situation and indeed they had Maurice Xiberras and Sir Joshua Hassan on standby in case they needed to rush into the United Nations to counteract the Spaniards, but in fact they came up with a modified wording which nevertheless considered the ground that had been defended until then. It is not true that that has always been the UK position. The United Kingdom told the United Nations originally that as far as they were concerned the Treaty of Utrecht did not constrain our right to self-determination. It is complete rubbish to suggest, as the United Kingdom continues to suggest, that the Treaty of Utrecht constrains our right to self-determination having conceded in this resolution that the issues, in the plural, of sovereignty will be discussed, which was in fact a recognition that the Spanish position that the Treaty of Utrecht gave title up to Casemates but did not give title over the isthmus and that the isthmus was not covered by the Treaty of Utrecht. The British Government accepted that in this resolution and that is why the word "issue" was in the plural and in fact when it was published in Gibraltar they forgot to put the "s" and The Convent came out saying it had been a typing error. The biggest typing error in our history. That distinction of that "s" means that by the British interpretation the people of Laguna and Glacis, who are on the isthmus have got the right to self-determination because they are not covered by a territory that is subject to the Treaty of Utrecht. So, maybe all we need to do is to all move down there and then we can exercise it. Given that that is the kind of rubbish we have been fobbed off for the last 34 years, and I regret to say that the British Government has not defended our rights in the way they have defended throughout those 34 years the rights of the Falkland Islanders and continue today, they continue today to oppose recommendations calling on bilateral negotiations with Argentine, I would have thought that the text of my motion did not require the Government to accept our reasons for wanting to terminate it. They can have different reasons for wanting to terminate it but we must both want to terminate it and the resolution before the House as a result of the proposed amendment does not say that we want to terminate it. It does not say in this resolution we want the Committee of 24 not to recommend the consensus resolution. Well, what is the use of him going there and saying we do not want you to recommend the continuance of this resolution. His reason is because it is bilateral. Our reasons are because independent of whether it is bilateral or trilateral or multilateral it is in fact based on the resolutions of the UN and it is only possible to interpret that in one way in our view. We may have different reasons for wanting to end it but we both want to end it, supposedly. Then if we want to end it why do we not say that we want to end it? And why do we not say to the United Kingdom "the first step towards ending it is that you start supporting it, at least if we cannot get the rest to stop supporting it, you do not support it", because in fact it would not be possible for the matter to proceed in the Fourth Committee without the support of the United Kingdom because it is a consensus decision taken without a vote precisely because the two Member States of the UN that are involved are both backing it. It would not be a consensus if Spain tried to push it through on its own. This is why until the United Kingdom backed it there was no such consensus. Before 1985 what there was, was a call on them to do it but not to continue with what they were doing already because no agreement had been reached. It seems to us very clearly that to suggest that all that has been done in the United Nations since 1992 is in our view a waste of time because what we are saying to the Government is "look, you are not going to get very far in persuading the United Nations to reject the consensus if you do not reject it in this House and if you do not call on the UK to reject it, how can you go round telling other people to do what you are not prepared to do yourself?". You put your money where your mouth is. Of course, it is quite obvious that they are not prepared to do it. They are prepared to indulge in the rhetoric in front of the cameras for the benefit of others but when it comes to the crunch and we have to make a stand and say to the UK "look, we want you not to go ahead" and then we

will have an opportunity, having had the reaction of the Foreign Affairs Committee and with a unanimous resolution of this House to mount a lobby in the UK to get the United Kingdom to break with that process.

The issue that it is in Brussels is not the issue, Mr Speaker. When it was agreed in Lisbon the issue was the same one. It is an issue which he says he subscribes to sometimes but not always. He has not said it today but when he was asked by the Chairman of the Committee of 24 about talks with Spain he said "the decolonisation of Gibraltar is a matter for the administering power and the colony, not for the third party claimant". The decisions in the United Nations are about involving the third party claimant either in decolonising our country with the administering power or decolonising our country with the administering power and him because I am certainly not going to become a party with the administering power and me. That is for certain. They are not going to do that with me but they are prepared to do it with him because he is prepared to do it with them although he says some times that he is not. If he sticks to the line as he did in the Fourth Committee last year, he told them something completely different. He told them last year that his position was quite separate from the question of our decolonisation and the difficulties that we have arising out of Spain's outdated territorial claim to Gibraltar. The new constitutional arrangements with UK which would not settle the dispute with Spain, so sometimes he argues "we want to decolonise bilaterally with the United Kingdom, but we want to engage Spain in dialogue in order to have good neighbourly relations". He has talked about welcoming the fact that the socialists in Spain are talking about putting sovereignty on hold. The consensus resolution in the United Nations which he supports and he wants to participate in do not put sovereignty on hold. Even when the AACR accepted the Brussels Agreement in 1985 they entered a reservation about not forming part even with a third voice or any other kind of voice on the sovereignty side of the Brussels Agreement. They are not doing that today so not only are we endorsing the resolutions of the United Nations, we are saying that all that we require is that we are given a role in the bilateral decolonisation process which then modifies its bilateral nature. I am afraid if that is the fact as this Government are committed to, then we are not going to get anywhere very far, either today or in the near future when we try and come to grips with what it is we want the United Kingdom to do because, certainly, the first thing we will want the United Kingdom to do is to stop talking about our future with the Spaniards.

Therefore, Mr Speaker, I really think that it is quite obvious that what this motion has done is, first of all, to show the very great dividing line that there is between the two sides of this House and secondly to show that contrary to the impression that we gained that this year the Government had gone further in wanting to put to one side the consensus resolution it is not the case. We actually, I regret to say, misread the speech of the Chief Minister to the Committee of 24 and assumed that having told the Committee that for two years it had been asking them to amend the thing to give them a third voice and amend the thing to give them the right to self-determination that he was now saying "well, look, this is a waste of time" and he was taking the same line as the Members of Parliament in the Foreign Affairs Committee had taken which is to say the process, which is the process in the motion, should be terminated and should be replaced by something else. As far as we are concerned we support that it should be terminated and then we will discuss what should replace it but we support that it should be terminated. I am happy to say that our position counts with the backing of the Foreign Affairs Committee and therefore since it is not what they want then we have to agree to disagree.

HON CHIEF MINISTER:

Mr Speaker, the Leader of the Opposition is of course free, like any politician, to change his mind and to change his policies. What he is not free to do is to adopt policies now and pretend that his position has never been different in the past. What he cannot do is misrepresent my position to the people of Gibraltar as being constantly changing as being inconsistent, paragraph 3 with paragraph 6, and to describe me as a political chameleon whereas in actual fact the only political chameleon on this issue,

as I will now proceed to demonstrate in detail, whereas in fact the only person who says one thing on one occasion and another thing on another, the only person who says one thing to people here and another thing to the United Nations, the only person who..... I do not know whether a chameleon can do a 180 per cent U-turn, but the only person who has done a 180 U-turn on this issue is him. I suggest that the Hon Mr Perez waits to hear what I am going to say before he giggles.

HON J C PEREZ:

I have known the integrity of my Colleague for 27 years.

HON CHIEF MINISTER:

Well, let us test the hon Member's blind faith in the political integrity of his Leader, shall we? Of course, if the hon Member's position is that he is incapable of being persuaded that his great Leader is capable of doing anything wrong, then of course there is no point in addressing him. I suppose that his position is not quite as unintelligent as that. If the hon Member is provided with incontrovertible evidence of the Leader of the Opposition's extraordinary chameleon-like qualities, then he can of course ignore it and pretend it does not exist. I can understand the Hon Mr Gabay's nervousness on this issue because of course he will also have some questioning to put given that he always says that he is only in politics because he supports the foreign policy position of the Leader of the Opposition, he may be interested in some of the things that I am now going to point out to him and which he obviously has not read.

The Leader of the Opposition who accuses us in press releases of not being able to take criticism is really throwing stones from a glass house. Here I made a perfectly neutral and low key position asking whether the hon Member had considered whether highlighting those particular three lines without any explanation or context might not give an unintended false signal and as the hon Member interprets this as a challenge to what he regards as his macho infallibility on matters of Gibraltar's foreign affairs, he replied by firing an exocet missile about what I have said in my own speech. If he wants to quote from my own speech, he has to quote without the same degree of dangerous selectivity as was at the root of my very constructive observation about his dangerous selectivity in the section of the resolution that he had chosen to quote from. I was not in my speech to the United Nations reading out three lines of the consensus resolution as he has done because, frankly, none of the lines that he has cited from, is relevant to his objection to this matter. My quotation of the similar words were put into context and I will read the context for him, given that he did not do me the consideration of placing my own words into context. What I told the Committee of 24 is, and I now quote from my speech: "When this special Committee speaks about eradicating colonialism in Gibraltar, is it....." presumably the hon Member understand because if he does not I am confident that the members of the Committee of 24 understand the impact of irony and the impact of rhetorical questions and I suspect that the hon Member does as well but simply does not want to give me the benefit of his understanding. "When this Special Committee speaks about eradicating colonialism in Gibraltar, is it advocating the handing over of my country to Spain against the unanimous wishes of its inhabitants? Or....." Incidentally, apparently the fact that I now refer to "my country" as he used to do which incidentally I have always done, some people interpret to mean that he and I now share a foreign policy..... "when this Special Committee speaks about eradicating colonialism in Gibraltar, is it advocating the handing over of my country to Spain against the unanimous wishes of its inhabitants? Or does it set out to promote the right of the people of my country to self-determination? Does this Committee see its task as recognising and helping us to exercise our right to self-determination or to help Spain recover a territory that she not only lost in 1704 but ceded in perpetuity to the British Crown in 1713. Spain's territorial claim which is being used to obstruct our right to self-determination is the very antithesis of the declaration on the granting of independence to the colonial country and people of Gibraltar which is the sole mandate of this Committee. The position is, in reality, quite simple. As Gibraltar is on this Committee's list of non self-governing territories, its case is within this Committee's mandate

and therefore can be decolonised only by the application of the principle of self-determination in accordance with the declaration. In the opposite case Gibraltar would simply be a disputed territory whose people have no such rights. It would then not be a colonial situation at all falling within the terms of reference of this Committee and would not be on its list.

I say this Mr Chairman because every year and despite our protestations this Committee limits itself to recommending to the Fourth Committee the adoption of a consensus resolution calling upon the United Kingdom and Spain to negotiate to resolve 'the differences between them over Gibraltar' in bilateral discussions between them. With respect, the decolonisation of the non self-governing territory of Gibraltar in accordance with the United Nations Declaration on the granting of independence to colonial countries and people cannot by definition be a matter of bilateral resolution of the differences between the administering power and a third party territorial claimant. That would be relevant in the resolution of a territorial dispute which is very different to the process of decolonisation which preoccupies this Committee and the Fourth Committee. Gibraltar is neither the UK's to give away nor Spain's to re-obtain. The decolonisation of Gibraltar in accordance with the United Nations Declaration can only be a matter of the existence, recognition and exercise of the right of self-determination by the people of the territory. It is a matter between the colonial people and the administering power". That is the context in which there now follows the paragraph in which I cited the words when the Fourth Committee adopts every year with the Special Committee's recommendation the consensus Resolution urging the United Kingdom and Spain "to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit and Charter of the United Nations" what is the light to which the resolution is referring? What are the relevant resolutions of the General Assembly and what, in this Committee's view, is the correct interpretation and accusation to our case? What is the spirit of the Charter of the United Nations to which reference is made? Does it mean the recognition of the denial of the right to self-determination of the people of Gibraltar?

Mr Speaker, I put it that no objective reader or listener of that context could possibly suggest that the effect of those words in that context were somehow to express lack of confidence or doubt or insecurity or uncertainty about what the correct position is and what we were asking. Presumably the hon Member who highly values his quality as a linguist, presumably knows that the fact that he puts a question mark does not necessarily mean that he is asking a question to which he does not know the answer. There is also the style of the rhetorical question and there is also the style of the leading question. Mr Speaker, the hon Member presumably is aware of that.

Mr Speaker, the hon Member says that we cannot agree on this amended resolution because what there exists between both sides of the House is not a gap, it is an unbridgeable gulf. Well, he has really just confirmed what were our fears and suspicions about his real motives for bringing this resolution because the only difference in substance apart from the difference between rejection and asking to change, the only other difference in substance, and I will deal with that in a moment, but the only substantive difference in terms of the rights that we all, presumably he is not refusing to support my amendment because he does not think that Gibraltar should not have a voice in talks and presumably he is not..... my resolution does not speak of Brussels, presumably yours does by implication, mine does not explicitly and that is the difference. The hon Member's resolution was not designed to obtain genuine consensus in this House on matters on which he knows we all agree. The motive of his resolution was to try and corner the Government into collapsing into the Opposition's view on the Brussels Process and the Brussels Declaration which he has been trying to do to me since that fatal day for Gibraltar, as he constantly reminds his more hysterical supporters, that fateful day for Gibraltar when the people of Gibraltar were foolish enough to allow me into this Chamber at all. Since that very day he has been trying by one means or another to seduce, cajole, the Party which I lead into

collapsing into his position on the Brussels Agreement. The Government do not agree with him and it is not usual in democracies for Opposition parties to demand consensus, not around the position of the Government, but around the position of the Opposition. That is neither usual nor possible, nor probable. Therefore, the hon Member has chosen not to support this resolution, not because he does not agree with the philosophy of our amendments but because of the unbridgeable gap and the only unbridgeable gap, as I will now demonstrate to him by what he has had to say in the past about the difference between amending and rejecting the consensus resolution, the only unbridgeable gap between us is on the need to totally reject the Brussels Agreement, because everything else..... not only is there no unbridgeable gap, there is no gap at all. Let us be clear what the unbridgeable gap which we have not been able to close today and which we cannot close on the basis that the hon Member pretends, the unbridgeable gap which is not raised in my amendment is that he does not end up with a text that allows him to hold it up and say "you see, at last, the Government have at last implicitly, by implication, rejected the Brussels Resolution". That is the reality of it, Mr Speaker. What I think we agree to, obviously I do not impute to him agreement that there is not, but what I think we agree to is what is in this resolution. What I have left out of the resolution is what we do not agree to and I have left it out precisely because I know that we do not agree with and I wanted to bring a motion to this House which we could all subscribe to, not a motion for which there was a risk attendant to either side to subscribe to and that is the difference between a genuine desire to achieve a consensus motion and one which is not driven by those considerations.

Mr Speaker, he is absolutely correct when he says the hon Members are not asking the UN to reject their resolution but to change it, absolutely correct. I have never gone to the United Nations to ask them not to pass a resolution. I have gone to the United Nations and asked them not to pass that resolution in those terms and I have pointed out to them what are the terms that I would like them to include in the resolution and, of course, why should I call for a rejection of the UN resolution now when what I am looking for is not a rejection of any resolution but for a modification of the UN's resolution. Mr Speaker, anyone hearing the hon Member would think that it was some sort of cardinal sin not to go to the United Nations and ask them to reject as oppose to modify their consensus resolution. Not only did he never, on no occasion, ask the United Nations to do that when he was in office, and presumably if he never asked them to do it, it cannot be so terrible that I have not asked them to do it. In fact, what he asked the United Nations to do was the opposite. The hon Member used to go to the United Nations to say to them "I am not asking you to change your resolution". That is very different to what he is arguing today and that is very different to the importance that he is attaching to it today. I know that the hon Member does not like to be reminded of things that he has once said or of policies that he once defended but I have to do so, not because he is not entitled to change his mind. I wish he would, but because in criticising and in trying to bring his opponents' policies into the public opprobrium it is not irrelevant that he used to adopt those positions himself not very long ago and when he went to the United Nations in July 1992, trumpeting the fact that he was the first Chief Minister to do so since the 60s what he said to the United Nations and I quote from the official text of his speech is "Let me say that in saying this I am not asking Mr Chairman that this Committee should, having heard me, adopt a different resolution from the one that has been submitted to it as a consensus by the administering power and the Kingdom of Spain or to amend it in any way. I say this in total honesty to you and I am sure that you will understand that I have no desire to upset either London or Madrid. Each of them outnumber me a thousand to one and I would be very unwise to go out of my way to take on a Goliath of that size". Not only was he not asking the United Nations to reject the Resolution, he did not even want them to change it. What I have just read he told the Committee of 24, but this is what is said to the Fourth Committee who do recommend to the General Assembly the adoption of the consensus resolution, he says to them "Therefore, what is missing in the annual repetition of a resolution which calls on both sides to meet and talk about Gibraltar is that notwithstanding the reference in the text to the commitment of the United Kingdom to respect the

wishes of the people of Gibraltar it failed to recognise the paramountcy of such wishes in the exercise of the right to self-determination." In other words, what he was saying to the Committee is, what is missing in your resolution and therefore, by implication, what I am asking the Committee to change, is to recognise the paramountcy of the principle of the people's right to self-determination which is exactly what this resolution before the House today calls for. This was not that long ago, this is nearly half way through his second term of office. As recently as October 1993 he was telling the Fourth Committee that the only thing he wanted changed from the consensus resolution that is so fatefully flawed and dangerous for Gibraltar, the only thing that he wanted amended in it was that they should recognise the paramountcy of the wishes of the people of Gibraltar in the exercise to the right of self-determination. Mr Speaker, the hon Member has obviously changed his mind and as he is accustomed to saying to people who change their minds that they are inconsistent, that they are chameleons, that they have no political principle, that unlike him they have not defended the same philosophies since 1972 when he appeared in this House, he cannot say those things because the Chief Minister in Gibraltar, who has most frequently changed his message, depending on when it suits him, is him, except in the matter of the Brussels Agreement which he has made his political sacred cow and which he expects the Government to help him slaughter.

Mr Speaker, the hon Member must know what the word "applaud" means in a political context. It does not mean that we all break out into spontaneous hand clapping. What it means is that the House applauds..... I am telling him because as he considers himself to be a linguist, he must know the different nuances of meaning of the same word in different contexts. He obviously understands that when I call on the House to note and applaud what he and I have been saying at the United Nations, that that is not an invitation for our 13 Colleagues in this House, and even the ex-officio Members, to stand up and give us a standing ovation but, having said that, his memory cannot be so short that he has forgotten the resolutions that he used to bring to this House when he was the Chief Minister calling on the House to support the Government, calling on the House to express its support for the Government, calling on the House to adopt the Government position and generally calling on the House to raise him on their collective shoulders. He has been the master of the use of resolutions of this sort, of the sort that says "strike everything off after the words 'this House'" and then to insert self-congratulatory language. He is the master of it. Indeed, I regard that I have learnt that from him. Perhaps if I had not learnt from him this very useful technique it might never have occurred to me at all. I honestly wish that the Leader of the Opposition would not misrepresent my arguments for the purposes of distorting them. The hon Member said in his reply "I do not know why the Chief Minister says that I suggested that we should not go to the United Nations". The Chief Minister did not say that the hon Member had suggested that he should not go to the United Nations. If that is what he believes then he has not understood what I tried to explain and therefore I will explain it to him again. What I said was that there was no point in going to the United Nations to ask others to change something which the United Kingdom is itself not willing to change. I said if that is the correct philosophy the hon Member will have to extend it to all other things that we go to the United Nations and ask them to do, including the recognition of our uncurtailed right to self-determination, including his call to the United Nations to reject the Brussels Process. Why did he go to the United Nations to ask them to reject the Brussels Process when he did not need the United Nations to reject the Brussels Process. What he ought to have done, in accordance with what he was recommending to me, was to have gone to London and bashed the door until they did, which I know he did as well but he did not do it instead of going and asking the United Nations to do it which is what he is now asking me to do. He was asking me to not go and ask others not to support the consensus resolution but rather to persuade Britain.....*[INTERRUPTION]* Yes, Mr Speaker, his words, "we should mount an attack on the United Kingdom" were his words. "What is the point of asking others not to support the resolution, what we should do is go and mount an attack on the United Kingdom and get them not to agree to the consensus." Mr Speaker, all I am saying and I am not saying any more than this in relation to this point, all I am saying is that it has

never been the criteria either of mine or his that one only goes to the United Nations to address things that it is not in the United Kingdom's power to resolve. We go to the United Nations precisely because the United Kingdom will not adjudicate in our favour on certain matters on which we think we are entitled to their adjudication. It is all very well for the hon Member to now stand up in this House and say "well, I think it is a risk to ask the United Nations to clarify what their doctrine is because we might be giving the Peoples Republic of China the opportunity to reaffirm it."

Amongst one of his better points, and many of the points that I use in my UN speeches are continuation and adoption of arguments that he first developed, Gibraltar's fundamental position at the United Nations does not change because there is a change of Government both of whom believe profoundly in our peoples' right to self-determination, but it was him, amongst the various arguments that he developed, one of them was "please United Nations refer to an international Court of Justice whether the Treaty of Utrecht curtails our right to self-determination because we the people of Gibraltar are entitled to clarity". "There is no point in us banging our heads against a brick wall" to quote his exact words "there is no point in the people of Gibraltar banging their heads against a brick wall demanding a right to which they are not entitled". Mr Speaker, I really cannot conceive a more cataclysmically and a more unambiguously and a more definitively formulated question the answer to which, if it went against us, would be fatal. If the United Nations says "my doctrine is that you should be handed over to Spain", the United Kingdom is not going to agree to it. She has never done so. Therefore, I have run much fewer and smaller risks with the resolution on these issues than he has done. The hon Member says that the resolutions in the UN are about involving the third party claimant in our decolonisation and then as if to satisfy his credentials in that area he says "well, they will not ever achieve it with me, they might with him but never with me if I am Chief Minister". I have to tell him that that is also a U-turn. I have to tell him that that is also an extraordinary volte face, the most monumental political U-turn in the political history of this community. Again, the hon Members may wish to giggle but I do not know if the giggles are in an attempt to muffle the clarity with which the evidence can be heard by others. It is the only explanation that I can think of for their giggles before they have even heard what I am going to say.

Mr Speaker, let me tell the House what the Leader of the Opposition, who has just made the remark that "the third party claimant has no role in our decolonisation and that they might achieve that with me but not with him". This is what he told the United Nations Seminar for the Eradication of Colonialism in its Trinidad and Tobago Seminar as recently as July 1995, within the last nine months, of his last Government "I said that myself, Mr Chairman, in my first submission to the Committee of 24 in 1992. I am fighting for recognition of the principle to exercise the right to self-determination. Whether I choose to exercise it, when I choose to exercise it and how I choose to exercise it, has to be taken into consideration whether I want to be alive the day after. Therefore we are a realistic people with a powerful neighbour who want to live in harmony and peace and cooperation with them and we would not, I would not, lead my people or recommend to them a way of decolonising that would extinguish us just for the sake of having proved the point that we are able to do it." I do not know what that means unless it means that the hon Member was saying that he is fighting for the recognition of the right to self-determination but that he knew that to exercise it safely so that he continued to live the day after and so that he continued to live in harmony and peace and cooperation with his neighbour the exercise of it would have to be discussed with Spain. What other meaning is this paragraph capable of being given? And, Mr Speaker, if anybody doubts, if anybody hearing this debate doubts that that is what he meant, the hon Member produces a glossy-coloured brochure with him triumphantly standing at the front of the National Day stage against the backdrop of red and white balloons going up into the air, prints hundreds and hundreds of copies which he takes to the United Nations, the place where he goes to assert our right to self-determination, distributes it to every member of the United Nations and what does he say in it? What does he say in it? I quote what he says from it, at paragraph

14 "Gibraltar recognises that the exercise of its right to self-determination may be constrained and may require a process of dialogue....." wait for it "with the United Kingdom and with Spain". Mr Speaker, I do not know if I do not understand the English language, but it seems to me that those words are only capable of meaning one thing, that he distinguishes between the recognition of the right and the exercise, that the recognition is something that he goes to get in the United Nations and that the exercise of it after he has had it recognised is something that he will have to talk to Spain as well about. I do not know what he means when he says "they may be able to involve him....." meaning me "in the decolonisation process but they would never achieve it with me", the great Joe Bossano! That is not what he has told the United Nations repeatedly and when I quoted this language out to him last time in this House he had the audacity to stand up and answer that it was Francis Cantos, then the editor of the Chronicle in 1993, now my Press Officer, who had written this. Did he also write his speech three months before, in July 1993, in which he as part of his speech, not as part of the glossy brochure to hand out, as part of his speech, he, Joe Bossano, the Hon J Bossano, then Chief Minister, said exactly the same thing. Did Mr Cantos then write his speeches? And then I will want to know whether the Leader of the Opposition, then the Chief Minister had his speeches for the United Nations written on his behalf by the Editor of the local daily newspaper because what he said in his speech is indistinguishable. There is a lengthy paragraph about the virtues of local dialogue. I think it might be worth reading this as well for the benefit of his Colleague the Hon J Gabay who so critical is about our policy of local dialogue. I quote "as a Government I can report an important move in developing links with other neighbouring cities in Spain", this is the United Nations, this is not a speech over a lunch in Almoraima. He went to New York to tell the United Nations that his Government were now in a position to report an important move in developing links with other neighbouring cities in Spain. This is the creation of the Economic Coordination Council. "The aims of the Council are to establish and promote economic cooperation and development in Gibraltar and the neighbouring part of Southern Spain to undertake projects for studies for the creation and expansion of economic activities in the region and to seek funds for financing such projects, studies or activities from international agencies and private investors. The Council now includes all the municipal leaders of the surrounding towns and cities, Algeciras, La Linea, Tarifa, Castellar, San Roque, Los Barrios, Jimena as well as Ceuta", names which I am sure meant an awful lot to people sitting in New York. "Meetings were held in January and May this year in Spain and in Gibraltar when an agreement was signed to promote joint venture activities by Spanish and Gibraltar companies. Another meeting is to be held in September in Ceuta" and then he goes on to say because all that is just about local dialogue, fine, but the very next thing he says and therefore by juxtaposition "where does all this leave us?" he asked in an obviously dangerous..... if he thinks my rhetorical questions are dangerous I cannot think of a more dangerous one than that. "Where does all this leave us? I would not wish to mislead Your Excellencies into thinking the problem of Gibraltar's decolonisation is on the point of being resolved but there are clearly some signs that indicate that meaningful dialogue may be more probable in the future than it has been in the past. Meaningful dialogue about decolonisation and I also have to stress that the people of Gibraltar have to be a primary player in any new initiative and cannot be relegated to a subsidiary or indeed a subservient role". Amongst all these quotations that I have put it is clear from them that the position that Leader of the Opposition defended in the United Nations between 1992 and 1995 was that he did not even ask them to modify, let along the reject the consensus resolution because he did not want to upset Goliath next to him, Spain. He asked the United Nations to recognise his right to self-determination and he asked for his own voice in dialogue. Those are the very three things that this resolution before the House of Assembly today does and he is now saying that he cannot support it because he is against this approach. If he is against this approach he has to have the courage to explain to the people of Gibraltar that it is entirely the approach that he took to the United Nations over three long years and therefore that he has changed his mind which is fine, but let him not talk about chameleons and political lack of principle and political lack of adherence to policy.

Mr Speaker, I regret that the Leader of the Opposition thinks that he has misread my speech at the United Nations. I do not think he has misread it. I do not think he has read it at all. It is clear from what he has said and from the nuances and from the meaning that he wishes to stigmatise us with, I think he has not read it at all and if he has read it he has not misread it, he has misunderstood it because it is perfectly clear and very difficult to misread but of course even simple language can be misunderstood. Mr Speaker, the Leader of the Opposition cannot say that, as he insinuated, because of course his position here has been that he is not calling for us to support him in the cancellation of the Brussels Process, that he is calling for our support in the rejection of the UN consensus resolution. Then he said "what a terrible pity that we are missing the Foreign Affairs Committee's support for this". The Foreign Affairs Committee did not say anything about the UN resolution. The Foreign Affairs Committee did not say "we think the consensus resolution should be changed". What the Foreign Affairs Committee said was that the procedure and the process established under the Brussels Agreement ought to be changed and went on to say that the approach of the Chief Minister in this respect is eminently sensible, this Chief Minister, when I explained to them in detail what our position was and why we held it on bilateralism in talks.

Mr Speaker, in conclusion, I have to tell Opposition Members that they have two choices given the evidence that I have placed before this House, they have two choices, they either admit to the people of Gibraltar that they have changed their position on these matters and that the policies which they now try to stigmatise on the part of this Government are the policies that they themselves used to hold, that is one option. The other option is that they should all apply for membership of the GSD.

Question put on the amendment.

The House divided.

For the Ayes: The Hon K Azopardi
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon J J Holliday
The Hon Dr B A Linares
The Hon P C Montegriffo
The Hon J J Netto
The Hon R R Rhoda
The Hon T J Bristow

For the Noes: The Hon J L Baldachino
The Hon J J Bossano
The Hon J J Gabay
The Hon A Isola
The Hon Miss M I Montegriffo
The Hon J C Perez

Absent from the Chamber: The Hon Dr J J Garcia

HON CHIEF MINISTER:

Mr Speaker, my understanding of the procedure, but of course you are the sole judge of these things, is that as the motion has now been amended it is no longer before this House to debate. There is no longer an original motion before this House to either continue to debate or indeed to vote against.

MR SPEAKER:

What you have voted for is that this amendment be made. The amendment is now made so now you vote on the whole of the motion as amended. It is because of what you said before that the practice here has been that you can amend a motion by just leaving one word which is not the practice in the United Kingdom, but carry on, you have the last word in any case.

HON J J BOSSANO:

Mr Speaker, I will not take up much of the time of the House because I do not believe that there is any point in debating an issue where the positions are very clear. Of course, I think what has been revealed is that the innate genetic suspicion that is part of the character of the Chief Minister means that he assumes some sinister motive behind everything anybody does. Consequently he has come prepared, obviously he does not just read what I said the last time, he has read every word I have ever said and I do not do that with his speeches certainly but he has come prepared with all his material which he has not just produced on the premise that he knew that what he was doing was not going to achieve consensus because it was not acceptable, that we were going to react negatively and that he was then going to have all this stuff, with little notes, so that he could pick and choose bits and pieces of different speeches from different years. Let me say that nobody in Gibraltar has ever suggested that it is better to be at loggerheads with Spain than to be on friendly terms, ever in the entire history of Gibraltar, no party has ever said that. Therefore, to say that I on many occasions have said we want to have friendly relations, we want to have friendly cooperation with our neighbours is nothing new and that is not a U-turn. I say it now and I have said it previously but I can tell the Chief Minister something, he has also said in the same context that we have never changed our position on Brussels and that is also true and this is why he cannot argue both things. He cannot say that we have never changed our position on Brussels and say that I have done a monumental U-turn because in the Seminar I said something which presumably he chooses to interpret as meaning possibly that I was now willing to participate under the Brussels Process. I have never said that in the Seminar, in any leaflet or anywhere else. What I have said and I have said that in many contexts, I have said the people of the Pitcairn Islands have got the right to self-determination recognised. They do not have a hostile neighbour but they have got a population of 55. Their isolation and their size constrains their right to self-determination. As far as we are concerned, in exercising the right of self-determination we may have to weigh up, as the United Kingdom has suggested that we should the fact that Sr. Matutes will go ballistic and then we take a decision, whether we risk it or we do not. But, of course, it is the willingness to take that step which should be the political debate that we should have in Gibraltar, whether we do it or whether we do not but we are not anywhere near that point because what we have done today is not that I have brought to this House a motion where I call on the GSD to go to the United Nations and do what I have not done, that is to say to go to the United Nations and call for the rejection of Brussels. He said today two things, he said that I have done it and that I have not done it and I will produce Hansard to demonstrate that. When we are talking about being a chameleon, a chameleon changes colour from one leaf to the next and that is what he has done today. In the same speech he has said "I have gone to the United Nations to say we are against Brussels and we want it rejected" and "I have gone to the United Nations not....." yes he has said that today, he has said that I have done that. Having said that he has also said that there is no difference between our policy and his but he does not reject Brussels and that therefore we should all join the GSD. He is not going to get us to join the GSD but at least he has got half of the House to applaud him which is in fact, whether it was linguistically what he wanted or it was not linguistically what he wanted, it was the result that he has achieved - the applause of all his Colleagues, not of ours.

I am sorry that we have taken the decision that we have taken in this House to pass this motion by one side because, of course, passing it by one side of the House does not have the force that a unanimous resolution would have and I regret to say that what we have decided today is to undo what we did in 1991 when we unanimously rejected the Brussels negotiating process. We have just undone that today. I wish he had taken the same position then and that we had that continuation of that consensus but, regrettably, it has not been possible to persuade him, cajole him or do anything else. I still think, since I believe it is best for Gibraltar, that I have an obligation to keep on trying. I do not think he should castigate me for doing this. It is part of my job to try and lobby for the view that I think is better for Gibraltar and which I

thought, honestly, that this year he had moved much closer to. I honestly believed, Mr Speaker, that the line that he had taken before the Fourth Committee was to say "well, look, I have asked you in the past to amend it and you have not given me a positive reaction. I have asked you to recognise self-determination and you have not given me a positive reaction and I am asking you not to support the consensus". Therefore, all that we have said in our original motion and the choice of words was not motivated by anything other than by picking the words that he himself had used, that we have no intention to misrepresent him. I may be critical of the way he puts something in one place and he is entitled to be critical of me in another context when I use some other way but that is not the point. The point is that we had an opportunity today to do two things. One was to reject ourselves the consensus resolution which he has described in much stronger language than I have, negatively. I cannot understand why he does not want to reject something that he has described in such hostile fashion a few weeks ago in the United Nations and, secondly, to put the United Kingdom in the position of saying "we want you to reject it" because if we are saying we want the United Nations not to continue with that consensus resolution, then we should be saying to the United Kingdom that they should be against it. After all, they are one of the 187 Members whom we are asking collectively not to proceed with the consensus.

HON CHIEF MINISTER:

Would the hon Member give way? If that is the hon Member's difficulty in supporting the Government's motion, I believe that the Government would have no difficulty in adding a fifth paragraph to its motion that read "and therefore rejects the text of the Annual Consensus Resolution as it presently stands" or in its current language, or in its current text. If what he wants is to reject the resolution as it is currently drafted, I have no difficulty with that at all. What I do not want to do is to reject it in language that leaves in any doubt what exactly it is that we are rejecting and not rejecting. The reality is that our lists of what we would reject from the resolution would not coincide. They coincide on two or three items and then his would always have one more item on the list which would be the reference to the Brussels Process of 1984. But if we can do the rejection in language that says "as presently drafted" so that he can accept it, I have no difficulty at all with that, but that is not his resolution, that is making it clear on the basis of our resolution exactly what it is that we are rejecting and why. I accept that he would reject it for a third reason. There are three reasons why the consensus resolution may be rejectable by Gibraltar. One is that it does not give us our own voice and we agree on that. The second is that it does not recognise our right to self-determination. We both agree on that. The third one would be it contains a reference to the Brussels Process on which we do not agree. So let us put it in that language.

HON J J BOSSANO:

Mr Speaker, I know the motion before the House is not the one I gave notice of but with your leave can I remind the Chief Minister that all that the motion said originally was "This House rejects the annual decision adopted by the General Assembly" and it did not say why. So he left it completely open for those who want to reject it, to reject it for whatever reasons they thought pertinent. In fact, we deliberately chose not to make any reference to the Brussels Agreement which he has in fact reintroduced in his amendment. He is the one that by saying we need to quote the thing in full, he has brought the Brussels Agreement into it. We have got our own reasons for doing it and he knows them and he may have different reasons for doing it, that is fine but if all that we have asked is "this House rejects the annual decision adopted by the General Assembly" all that we needed was a full stop and then say "and it further calls on Her Majesty's Government". That is all we needed. The fact is that the motion that has been put, Mr Speaker, is not in fact simply spelling out the reasons for doing it and I think it would be better in any case to reject it without giving any reasons as to why one bit is acceptable and not another. The fact is that this year, for example, the Chief Minister when he spoke to the United Nations has used a new concept which he has condemned in Gibraltar. He has talked about wanting to participate with an open agenda. Participating with an open agenda in dialogue with Spain which I do not seem to remember

him having said before, but it is in this year's speech, unless I have misread that, participating in an open agenda is by definition not participating under Brussels because Brussels does not have and cannot have an open agenda. The agenda is constrained by the nature of the agreement but *[INTERRUPTION]* we do not disagree on that, if we disagree on anything is that he was virulent about open agenda and he accused the Liberals when they first came out with this business of an open agenda, of wanting to negotiate sovereignty with Spain because that is what an open agenda meant and he said in a Government Press Release that in fact it was not him who wanted to talk about sovereignty with Spain but those who were in favour of an open agenda. I have not made any reference to this in my previous contribution because as far as I am concerned the only pertinent fact about the open agenda is that an open agenda for us means moving away from Brussels. Let us just take that as an example. If we were to be in agreement that what we want is to have an open agenda, what difference does it make whether he does not think that that means rejecting Brussels and I think it is rejecting Brussels, if we both agree on the open agenda business. The fact is that he did not agree with it in the past and he has mentioned it this time. I can tell the House that when I brought this motion I honestly believed that the message that was being conveyed on behalf of Gibraltar by the present administration was much, much closer to telling them "we want you to stop this consensus resolution that calls for the bilateral negotiating process to continue, we want that stopped, we do not want you to recommend it, this is sterile and it is a waste of time and it is counter productive". If that is exactly right then as far as we were concerned, the only thing we were asking the House to do, to reject the annual decision which we are asking other people to do and to ask the United Kingdom to do likewise. If that is still a possibility then I think it is not a question of making further amendments but certainly, in the light of the latest remarks, we will now go back and look at bringing another motion to the House where we avoid the pitfalls of risks to the GSD vote-catching potential that he might think is behind this motion. I hope that the next time we can agree on it.

Question put on the motion, as amended.

The House divided.

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| For the Ayes: | The Hon K Azopardi |
| | The Hon Lt-Col E M Britto |
| | The Hon P R Caruana |
| | The Hon H Corby |
| | The Hon J J Holliday |
| | The Hon Dr B A Linares |
| | The Hon P C Montegriffo |
| | The Hon J J Netto |
| | The Hon R R Rhoda |
| | The Hon T J Bristow |
| For the Noes: | The Hon J L Baldachino |
| | The Hon J J Bossano |
| | The Hon J J Gabay |
| | The Hon A Isola |
| | The Hon Miss M I Montegriffo |
| | The Hon J C Perez |

Absent from the Chamber: The Hon Dr J J Garcia

The motion, as amended, was accordingly carried.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House sine die.

Question put. Agreed to.

The adjournment of the House was taken at 12.42pm on Friday 9th July, 1999.